



City of Westminster

# Committee Agenda

Title:

**Planning & City Development Committee**

Meeting Date:

**Wednesday 26th October, 2022**

Time:

**6.30 pm**

Venue:

**Rooms 18:01 - 18:03 18th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6QP**

Members:

## **Councillors:**

Ruth Bush (Chair)	Md Shamsed Chowdhury
Jason Williams (Vice-Chair)	Paul Fisher
Robert Rigby	Ed Pitt Ford
Jim Glen	Ryan Jude
Mark Shearer	Amanda Langford
Nafsika Butler-Thalassis	Ellie Ormsby
Barbara Arzymanow	Cara Sanquest



**Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda**

**Admission to the public gallery is by ticket, issued from the ground floor reception at City Hall. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.**



**An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Georgina Wills, Committee and Governance Officer.**

**Email: [gwillis@westminster.gov.uk](mailto:gwillis@westminster.gov.uk); Tel: 07870 548348**  
**Corporate Website: [www.westminster.gov.uk](http://www.westminster.gov.uk)**

**Note for Members:** Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Committee and Governance Services in advance of the meeting please.

## **AGENDA**

### **PART 1 (IN PUBLIC)**

#### **1. MEMBERSHIP**

To report any changes to the membership.

#### **2. DECLARATIONS OF INTERESTS**

To receive and record declarations of interest.

#### **3. MINUTES AND MATTERS ARISING FROM THE MINUTES**

To sign the minutes of the last meeting as a correct record of proceedings.

Matters Arising from the Minutes.

(Pages 3 - 12)

#### **4. PLANNING APPLICATIONS AND APPEALS PERFORMANCE MID-YEAR UPDATE - 2022/23**

(Pages 13 - 58)

#### **5. AMENDMENTS TO SUB-COMMITTEE LATE REPRESENTATIONS PROCEDURES**

(Pages 59 - 62)

#### **6. UPDATE ON PARTIAL CITY PLAN REVIEW**

(Pages 63 - 66)

#### **7. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

#### **8. DATE OF NEXT MEETING**

29 March 2023

**Stuart Love**  
**Chief Executive**  
**18 October 2022**



CITY OF WESTMINSTER

MINUTES

## Planning & City Development Committee

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Planning & City Development Committee** Committee held on **Wednesday 27th July, 2022**

**Members Present:** Councillors Ruth Bush (Chair), Jason Williams (Vice-Chair), Robert Rigby, Jim Glen, Mark Shearer, Barbara Arzymanow, Ryan Jude, Amanda Langford and Cara Sanquest

**Also Present:** Councillors Geoff Barraclough, Matt Noble and James Small Edwards

**Apologies for Absence:** Councillor Nafsika Butler-Thalassis, Councillor Md Shamsed Chowdhury, Councillor Paul Fisher and Councillor Ed Pitt Ford

#### 1 MEMBERSHIP

1.1 There were no changes to the Membership.

#### 2 DECLARATIONS OF INTERESTS

2.1 There were no declarations of interests.

#### 3 MINUTES AND MATTERS ARISING FROM THE MINUTES

3.1 Agreed that the minutes of the Planning and City Development Committee meeting held on 30 March 22 be approved.

##### 3.2 Matters Arising from the Minutes

3.2.1 Minutes 3.2 - Minutes 3.2.1 Draft Early Community Engagement Guidance

Members were advised that there has been a positive response to the Early Community Engagement guidance amongst the developer community and all interested parties including officers were adapting to the new ways of working regarding pre-application and application engagement. The Guidance is still in its infancy and to date there have been no planning schemes which have fully tested the new engagement process.

3.2.2 The Committee will be provided with further updates on the pilot phase and how earlier engagement has influenced schemes. The committee report template for the Planning Applications Sub-Committees now includes an expanded section identifying the community engagement that has occurred. Officers continue to explore options for how best to introduce a community planning advice or 'Community Champion' service which could provide support to interested parties during the planning engagement.

3.2.3 Minutes 3.2 - 4 National Policy & Planning Reform Update. 4.4 Design and Heritage Supplementary Planning Documents

Members were advised that Design and Heritage Supplementary Planning Documents (SPDs) would be considered through revisions that need to be made to the Council's Local Development Scheme. The Local Development Scheme sets out the planning policy work programme over a 3 year period and includes information on what SPDs we intend to produce. The previous timetable for producing Design and Heritage SPDs will be impacted by new work streams. Members noted that a Design and Heritage SPD would give 'weight to Conservation Area Audits regarding in determining applications.

3.2.4 Minutes 3.2 - 4 National Policy & Planning Reform Update. 4.4 Article 4 Direction

Members were advised that proposals regarding Article 4 Direction for the Central Activities Zone (CAZ) to remove permitted development rights from Class E commercial floorspace to residential have been modified by Central Government and have now been brought into force. The Sub-Committee were reminded that a large area of the CAZ was originally proposed by the council, but Central Government have reduced this, boundary of what area is covered. The areas covered do, however, include the main commercial areas and Policy designated areas in the City Plan such as 'Opportunity Areas', Special Policy Areas, the West End, and CAZ clusters. Members were advised that policies regarding the smaller centres outside the CAZ would be implemented in December 2022 as it can only be brought into force 12 months after this modification was initially consulted on.

Members were reminded that permitted development rights enabled commercial units to be converted into residential units without the need of planning permission. These developments would not be subject to the Council's Planning Policies including The City Plan, London Plan, and Neighbourhood Plans. The Article 4 Direction removes these rights and enables designated areas within the Borough to be subject to the Council's Planning Policies.

3.2.5 Minutes 3.2 - 4 National Policy & Planning Reform Update. 4.4 Weekly List

Members were advised that the Weekly List includes prior approval applications that propose a change of use from Class E to residential. The Committee were advised that there had not been any applications or informal enquiries regarding change of use under these permitted development rights

to date. Members were reminded that some applications were still covered by the existing Article 4 Direction.

3.2.6 Minutes 3.2 - 4 National Policy & Planning Reform Update. 4.4 Affordable Housing and Planning Obligations SPD

Members were advised that consultation on the Affordable Housing and Planning Obligations SPD ended in April 22 and that responses from key stake holders were being reviewed. There have been objections from the Greater London Authority (GLA) regarding the approach to affordable housing, and from the development industry in respect to Carbon Offset fees. The guidance on Affordable Workspace was also viewed as being overly prescriptive. The SPD will be revised and be subject to a viability assessment to ensure that contents do not undermine development viability. It is expected that the revised Affordable Housing and Planning Obligations SPD will be adopted towards the end of the year at the earliest.

3.2.7 Minutes 3.2 - 4 National Policy & Planning Reform Update. 4.5 Late Representations.

Members were advised that the imposition of deadlines for late representations which are submitted to the Planning Sub-Committees would be reviewed and that any proposed changes would be presented to Members for discussion'. The Committee noted that the right to make representations should not be put at risk or be perceived as such. Members noted that late representations can currently be received by the Council up to the start of the Sub-Committee and that this impacted adversely on the ability of Members to consider the contents.

3.2.8 Minutes 3.2 – 5 VAT on New Build and Refurbishment Schemes. 5.3 Incentives for Retrofit rather than Redevelopment.

Members were informed that currently different VAT rates are applied to new build and refurbishment/retrofit schemes differs with a lower rate applicable to new build development. This currently disincentivises refurbishment/retrofit approaches to building renewal and upgrade and favours more carbon intensive redevelopment. The Committee was reminded that as VAT rules are set by Government, achieving any changes to the current position would involve lobbying.

The Committee agreed that officers should prepare a briefing for the Cabinet Member for Planning and Economic Development that sets out the merits of the Council lending its support to existing campaigns to reform VAT levels applied to refurbishment/retrofit schemes. Members were informed that the development community were supportive of the sustainability agenda and was therefore likely to welcome a level playing field for different forms of development.

3.2.9 Minutes 3.2 – 6 Planning Enforcement Team Performance and Local Enforcement Plan.

Members were reminded that Local Enforcement Plans are strategic documents which govern the enforcement activity of a local authority. The Governments' White Paper on 'Levelling Up' sought to strengthen enforcement powers.

The Committee were advised that a greater number of conditions are now imposed on permitted developments under more recently introduced permitted development rights, with this approach likely to continue and become more prevalent in future. This means that the Planning Enforcement Team are required to undertake more work in relation to permitted development than was previously the case. Local Enforcement Plans can identify where enforcement resources need to be focused. Members were advised that resources could be focused in a specific area or be spread borough wide. Officers are currently scoping the contents of the Local Enforcement Plan and would liaise with the relevant Cabinet Members on available options in the autumn. The draft Local Enforcement Plan will be subject to consultations with local communities prior to adoption. All Ward Councillors will also be consulted. The response to this engagement will be used to help shape the finalised Local Enforcement Plan.

#### **4 ANNUAL UPDATE ON PLANNING APPLICATIONS AND APPEALS PERFORMANCE - 2021/22**

- 4.1 The Committee received a report which provided an update on the performance of the Town Planning Service in terms of the timeliness and quality of its planning application decision making and the success rate of planning appeals. The performance of the department over the period between April 2021 and March 2022 continues to exceed the required performance thresholds set by the Department for Levelling Up, Housing and Communities (DLUHC).
- 4.2 Members were advised that the Council was one of the largest planning authorities in the country and this status added unique pressures in relation with dealing with the volume of applications and ensuring that they are dealt with speedily, whilst ensuring that the quality of decision making is maintained. The volume of planning applications was affected by the Covid-19 pandemic; however, these numbers have begun to increase and this trend will be monitored. The Committee were reminded that introduction of Pavement Licences and greater permitted development rights during the pandemic have contributed to a small proportion of the overall reduction in application numbers. Members were informed that, in addition to applications, officers also provided pre-application advice to members of the public, businesses, and developers to enhance application success rates and ensure development proposals are consistent with the development plan.
- 4.3 For major applications, the DLUHC sets a threshold of at least 60% of all decisions being made within 13 weeks or within an alternative timeframe agreed with the applicant. For non-major development, the DLUHC threshold is 70%. For 2021/22 the Council exceeded the DLUHC performance

thresholds for major applications by 28.5% and by 7.7% for non-major applications.

4.4 The DLUHC measures the quality of decision making by Local Planning Authorities (LPAs) by monitoring their success rate at appeal. For both major and non-major development, the DLUHC sets a threshold of not more than 10% of the total number of decisions made by an LPA being subsequently overturned at appeal. The Council continues to operate significantly below these figures for major and non-major development. Whilst there was a fluctuation in the yearly statistics, this is a result of appeals being determined by the Planning Inspectorate rather than the Council. It was noted there was an increase in the number of advertisement appeals allowed. Members were advised that there have been no significant trends that have emerged as a result of the new policies within the City Plan 2019-2040, which was adopted in April 2021.

4.5 Members held a discussion and noted the following: -

- That there was one major application which had been appealed since September 2020. To date there have been no other appeals lodged regarding major scale developments. Members were advised that major applications and large schemes were normally widely consulted on and that developers were more likely to amend applications of this scale to overcome possible grounds for refusal. Members were advised that data on appeals were available on the Council's Website and were in the process of being updated so that they are fully up to date.
- Members noted that the former Paddington Green Police Station application had been subject to a 'Call In' by the Mayor of London and a hearing was scheduled for autumn 2022. There have been ongoing discussions regarding amending the scheme. The appeal against the Council's decision to refuse permission for the redevelopment of Leconfield House is due to be determined by the Planning Inspectorate in the forthcoming months.
- Members were informed that statistics regarding the volume of applications received for 'Other' applications listed in Table 1 of the report included applications such as advertisement consents, listed building consents and approval of details applications. The Committee noted that applications for listed building consent could sometimes be complex.
- Members commented on Table 7 of the report which provided data on the speed of major application decisions of Inner London LPAs and noted that Westminster was at the lower end of the spectrum. Members were informed that a number of the other local planning authorities listed used tools such as extensions of time (EOTs) and planning performance agreements (PPAs) to a greater extent than Westminster and these agreements with the applicant allow LPAs to legitimately remove applications from the statutory 8- and 13-week timeframes set by the DLUHC. Officers noted that whilst EOTs and PPAs allow a greater number of applications to be determined within an agreed timeframe, it does not necessarily equate to decision making being

quicker than when decisions that are made outside of the statutory timeframes without an EOT or PPA in place.

- Members were informed that the service has increased its use of EOTs during 2021/22. EOTs enable a bespoke timetable to be agreed between the applicant and the planning service. The increased use of EOTs, along with other measures, has enabled the planning service to improve its speed of decision making in year during 2021/22, resulting in more favourable comparison with other Inner LPAs than in previous years. Members agreed that when reporting on performance in future, it would be helpful for further information to be provided regarding the use of EOTs, such as the length of extensions of time that had been agreed between the parties.
- Members noted that since April 2022, the Service has provided a discounted pre-application advice fee for advice to householders on energy efficiency and sustainability improvements. Members asked that statistics should be provided in future years on how many pre-application advice requests of this nature had been received.
- Members agreed that it would like to receive more frequent update reports identifying the performance of the Town Planning Service in terms of the timeliness and quality of its planning application decision making and the success rate of planning appeals.
- Members were advised that the cost of appeals would be reported to future Committees and that the Council, like most planning departments, has a contingency budget for legal costs.

## **RESOLVED:**

1. Members considered the contents of the report and noted the ongoing overall good performance of the Town Planning service in terms of its determination of planning applications in a timely manner and defending decisions to refuse permission at appeal.
2. That the Committee receive more frequent update reports which provide an in-year performance update for the Town Planning service in terms of the timeliness and quality of its planning application decision making and the success rate of planning appeals. The report should include statistics on the use of EOTs and the timeframes agreed with applicants and also the cost of appeals.

## **5 DISCUSSION OF THE FUTURE FORMAT AND TERMS OF REFERENCE OF THE PLANNING & CITY DEVELOPMENT COMMITTEE**

- 5.1 The Committee received a report which provided an overview of the current format and terms of reference of the Planning and City Development Committee. The Committee, which they then discussed.
- 5.2 The Planning & City Development Committee comprises 15 members of the Council, consisting: of 10 Majority Party members and 5 Minority Party



members. These members must be members of the Planning Applications Sub-Committees. Attendance of 3 members constitutes a quorum. Planning & City Development Committee meetings are held in a hybrid format, and, unlike Planning Applications Sub-Committee meetings, members of the Committee are able to join the meetings remotely along with those observing the meeting. The Committee currently meets three times a year'.

- 5.3 The Committee considers proposed local plan policies (and supplementary planning documents) at appropriate stages of the statutory process for their preparation and adoption and makes recommendations to the relevant Cabinet Member, has oversight of the practices and procedures of the Planning Applications Sub-Committees, and considers and recommends a training programme for members of the Planning Applications Sub-Committees. The Committee has developed and assisted officers with the introduction of recordings of virtual Planning Applications Sub-Committees.
- 5.4 Councillor Geoff Barraclough, Cabinet Member for Planning and Economic Development, addressed the Committee and advised that his portfolio included planning policies. Councillor Barraclough advised that planning was split into two components, namely the adjudication and decision of planning applications and planning policy. The Committee were advised that there was a drive for economic development and ensuring that the benefits of working and residing in the city are widely spread. Councillor Barraclough's portfolio also includes the Smart Cities Initiative which aims to review how technology can be used to manage the city and make it more habitable
- 5.5 Councillor Matt Noble, Cabinet Member for Climate Action, Regeneration and Renters, addressed the Committee and advised that he would be working in collaboration with Councillor Barraclough on the Environmental SPD. Councillor Noble advised that current mechanisms would be used to maximise affordable housing and work is continuing to produce an Affordable Housing SPD. The Council will also be reviewing the climate impact of its own schemes to ensure that the net zero carbon emission target is met across the city by 2040.
- 5.6 Councillor James Small-Edwards, Deputy Cabinet Member for Planning and Economic Development, addressed the Committee and commented that he would be supporting Councillor Barraclough and will take lead on in certain topics. Councillor Small Edwards advised that he was currently working with officers on the introduction of a Design Review Panel (DRP), work on which was at an early stage'
- 5.7 The Chair hoped that members of the Committee would use their experience of Planning Application Sub-Committee sittings to identify key points and trends in the applications that come before them in order to inform Cabinet Members' work on developing policy. She also hoped they would share their experiences with each other. The Committee noted that Members would be able to identify trends in the applications that come before them at the Planning Applications Sub-Committees.

- 5.8 Councillor Barraclough commented and welcomed the proposals for the Committee expertise being used to inform policy development and suggested that this is undertaken in a different setting such as informal workshops. The Committee was advised that the redesign of the officer reports to the Planning Applications Sub-Committees could be a possible topic for consideration in a workshop setting. This will ensure that the report formats meet the requirements of the Planning Application Sub-Committee Members. It was agreed that the Committee should continue to meet three times a year for the time being, and that the frequency of their meetings be reviewed at later stage when all Members have gained further experience.
- 5.9 The Legal Officer advised that the Council's Constitution was currently being reviewed and that she would liaise with the Monitoring Officer regarding the timetabling and report back to the Committee. Members were informed that membership of the Committee was allocated on a proportional basis.
- 5.10 The Committee were informed that the room layout for Planning Applications Sub-Committee had been revised following comments from Members and would continue to be assessed to ensure that it is fit for purpose.

## **RESOLVED**

1. Members noted the contents of the Report.
2. That Members inform the Chair about their views on the use of informal workshop to discuss policy ideas and other topics.
3. That Officers provide feedback regarding the work programme and timetable for revising the Constitution.

## **6 SUMMARY OF MEMBER TRAINING DURING 2022**

- 6.1 The Committee received a report which provided an overview of the training that Members have undertaken during 2022. Members were advised that they could put forward topics on which they wish to receive training. The Committee will continue to receive legal updates and there will be ongoing training regarding sustainability. Officers advised that the training work programme would be bespoke to ensure the training needs of the Committee are fully met.
- 6.2 The Chair requested that Members fully engage with their training programme and provide officers with feedback about sessions, and this should include views on contents, format, frequency, facilitators, and possible use of external training resources. The training sessions are open to all Ward Councillors. Members agreed that Ward Councillors should be encouraged to attend these sessions and noted that they would be beneficial when dealing with planning enquiries from constituents.

## **RESOLVED**

1. Members noted the contents of the report
2. That the Committee provide officers with training topics which they wish to be included in their training work programme and give feedback about the format of training sessions, in particular, subject contents, frequency, course facilitators and the use of external providers.
3. That the planning training work programme be published and that all Ward Councillors be encouraged to attend sessions.

## **7 ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT**

- 7.1 The Committee were requested to remind colleagues that representations regarding planning applications should be based on planning policy grounds. The Chair advised that Ward Councillors are expected to attend the Planning Applications Sub-Committee when making representations. Any Councillor substituting for the Ward Councillor who originally made a representation but who is unable to attend the Sub-Committee meeting should similarly attend the meeting in person, if at all possible.

## **8 DATE OF NEXT MEETING**

- Wednesday 26 October 2022
- Wednesday 29 March 2023

The Meeting ended at 8.10 pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_

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City of Westminster

## Planning & City Development Committee

**Date: 26 October 2022**

**Classification: General Release**

**Title: Planning Applications and Appeals Performance Mid-Year Update – 2022/23**

**Report of: Director of Town Planning and Building Control**

**Financial Summary: None.**

**Report Author and Contact Details: Oliver Gibson (ogibson@westminster.gov.uk/07971026919)**

### **1. Executive Summary**

- 1.1 This report presents a mid-year update on the performance of the Town Planning service in terms of the timeliness and quality of its planning application decision making and the success rate of planning appeals for the first two quarters of 2022/23. Performance against all measures exceeds Department for Levelling Up, Homes and Communities (DLUHC) and relevant internal performance indicators.
- 1.2 This report should be read in context with the [annual report on planning applications and appeals performance for 20221/22](#) which was reported to the PCD Committee on 27 July 2022. The annual report sets out the methodology used to calculate the DLUHC performance indicators.

### **2. Recommendation**

- 2.1 This report is provided for information. Members are asked to consider the contents of this report and to note the on-track performance of the planning service.

### **3. Planning Application Volumes**

- 3.1 The council's planning service is one of the busiest in the country in terms of the total volume of applications it handles on annually. Tables 1-3 set out the number of applications received, the number withdrawn, and the number of applications determined during Q1 and Q2 2022/23 in context with comparative volumes for the same quarters during preceding years.

**Table 1 – Volume of applications received.**

Half Year (Q1 & Q2)	Major Applications	Non-Major Applications	Other Applications (No. of LBC apps in brackets)	Total Validated
2022/23	15	1504	2437 (896)	3956

2021/22	16	1602	2536 (888)	4154
2020/21	24	1389	2066 (691)	3479
2019/20	37	1916	2864 (981)	4817

**Table 2** – Volume of applications withdrawn or otherwise closed prior to determination.

Half Year (Q1 and Q2)	Major Applications Withdrawn	Non-Major Applications Withdrawn	Other Applications Withdrawn (No. of LBC apps in brackets)	Total Withdrawn
2022/23	3	257	329 (139)	589
2021/22	0	167	142 (56)	309
2020/21	4	155	149 (72)	308
2019/20	1	276	357 (136)	634

**Table 3** – Volume of applications determined.

Half Year (Q1 and Q2)	Major Applications	Non-Major Applications	Other Applications – (No. of LBC apps in brackets)	Total Determined
2022/23	15	1276	2211 (805)	3502
2021/22	12	1354	2260 (777)	3626
2020/21	18	1283	2000 (682)	3301
2019/20	19	1704	2623 (936)	4346

- 3.2 Tables 1-3 demonstrate that determination of applications (either by way of a decision or where the application has been withdrawn) has matched the rate at which applications have been submitted over recent years. The increase in withdrawn applications during Q1 and Q2 2022/23 reflects the ‘housekeeping’ that the service has undertaken in recent months to withdraw historic applications that have become inactive or where applications have been submitted without being subsequently validated by the applicant.
- 3.3 In addition to handling planning and other related applications, the planning service provides a comprehensive pre-application advice service for residents, businesses, and developers. Table 4 shows the total volume of valid pre-application advice requests that were received during Q1 and Q2 2022/23 in context with volumes for the same quarters in previous years. No major applications were subject to EOTs during Q1 and Q2 2022/23.

**Table 4** – Volume of pre-application advice requests handled.

Half Year (Q1 & Q2)	Pre-Application Requests
2022/23	434
2021/22	417
2020/21	529
2019/20	688

- 3.4 Following the introduction of the discounted pre-application fee of £300 for pre-application advice in late March 2022, the Council has received 10 requests for advice on proposals to enhance energy performance. It should be noted that whilst this is a

low proportion of the overall number of pre-application requests, householders of non-listed buildings can undertake may sustainability improvements to their homes using permitted development rights. Also of note is that the discounted fee is only offered where the pre-application advice request is limited solely to energy performance improvements. Therefore, proposals for wider refurbishment of flats and listed buildings, including measures to improve energy performance do not benefit from the discounted fee.

#### 4. Planning Applications Speed and Quality of Decision Making

##### Speed of Application Decision Making

- 4.1 During the first two quarter of 2022/23 the planning service has met and exceeded the DLUHC performance thresholds for both major and non-major applications. The major applications. The minimum performance level for non-majors is 70% of applications within the statutory 8-week timeframe (or another timeframe agreed between the applicant and LPA via an extension of time (EOT) or a planning performance agreement (PPA)). For majors the minimum performance level is 60% of applications within the statutory 13-week timeframe (or another timeframe agreed between the applicant and LPA). Performance for Q1 and Q2 is shown with comparative data for the preceding three full years in Tables 5 and 6.

**Table 5** – Performance against DLUHC thresholds for major planning applications.

Year	Total Decisions	Total under 13 weeks/ PPA's or EoT's within target	% < 13 weeks or within PPA/EoT Target
2022/23 (Q1 & Q2)	15	14	93.3%
2021/22	26	23	88.5%
2020/21	35	26	77%
2019/20	49	36	74%

**Table 6** – Performance against DLUHC thresholds for non-major planning applications.

Year	Total Decisions	Total under 13 weeks/ PPA's or EoT's within target	% < 8 weeks or within PPA/EoT Target
2022/23 (Q1 & Q2)	1276	975	76.5%
2021/22	2550	1982	77.7%
2020/21	2534	1771	70%
2019/20	3168	2317	73%

**Table 7** – Performance for other applications (not monitored by DLUHC).

Year	Total Decisions	Total under 13 weeks/ PPA's or EoT's within target	% < 13 weeks or within PPA/EoT Target
2022/23 (Q1 & Q2)	2238	1741	77.8%

- 4.2 During the first two quarters 368 non-major applications were subject to an EOT of which 306 were determined within the agreed extended timeframe. The average additional timeframe agreed for EOTs on non-major applications was 72 days, whilst the mean additional time was 40 days.
- 4.3 For 'other' applications determined during the first two quarters, 192 were subject to an EOT of which 158 were determined within the agreed extended timeframe. The average additional timeframe agreed for EOTs on other applications was 68 days, whilst the mean additional time was 28 days.
- 4.4 The latest data published by the DLUHC for the rolling 24-month period up to the end of June 2022 (see Tables 8 and 9) shows Westminster's performance for major applications to be 84.6% (up from 77.7% for the 24 months to December 2021), whilst performance for non-major applications is 74.5% (up from 73.8% for the 24 months to December 2021). The latest data reflects the steady improvements in the speed of decision making that the service is making relative to performance over the initial quarters of the current 24 month rolling period.

**Table 8** – Comparison of speed of major application decision making with other Inner London Local Planning Authorities for 24-month period to end of June 2022.

Local Authority	Total Major Apps	Decisions in agreed time limit (13 Weeks, PPA, EoT or EIA)	No. of Apps with EOT, PPA or EIA	% of Apps that had a PPA, EoT or EIA	% Within 13 Weeks or Agreed Time Limit	% change on previous performance for 24 months to Dec 2021
Camden	75	67	67	100.0%	94.7%	-0.6%
City of London	44	39	41	95.1%	90.9%	+0.7%
Greenwich	62	58	58	100.0%	100%	0.0%
Hackney	62	51	53	96.2%	93.5%	+0.7%
Hammersmith and Fulham	37	32	32	100.0%	97.3%	-0.2%
Islington	47	42	42	100.0%	97.9%	0.0%
Kensington and Chelsea	45	34	34	100.0%	100.0%	0.0%
Lambeth	84	72	73	98.6%	97.6%	-0.1%
Lewisham	49	42	42	100.0%	100%	0.0%
Southwark	143	89	104	85.6%	74.1%	-2.6%
Tower Hamlets	84	66	70	94.3%	91.7%	+3.2%
Wandsworth	98	70	75	93.3%	90.8%	+2.7%
Westminster	65	50	55	90.9%	84.6%	+7.6%
<b>Inner London Average</b>	<b>69</b>	<b>55</b>	<b>57</b>	<b>95.4%</b>	<b>91.2%</b>	<b>+0.2%</b>

**Table 9** – Comparison of speed of non-major planning application decision making with other Inner London Local Planning Authorities for 24-month period to end of December 2021.

Local Authority	Total Non-Major Apps	Decisions in agreed time limit (8 Weeks, PPA, EoT or EIA)	No. of Apps with EOT, PPA or EIA	% of Apps that had a PPA, EoT or EIA	% Within 8 Weeks or Agreed Time Limit	% change on previous performance for 24 months to Dec 2021
Camden	2,522	2,047	1,888	89.0%	81.2%	-1.5%
City of London	378	322	279	75.2%	85.2%	-2.3%



Greenwich	2,777	2,658	940	34.7%	95.7%	0.0%
Hackney	2,591	2,173	663	28.8%	83.9%	-0.6%
Hammersmith and Fulham	2,856	2,643	1,380	49.5%	92.5%	-0.1%
Islington	2,379	2,296	895	39.0%	96.5%	+4.1%
Kensington and Chelsea	3,218	2,401	720	28.3%	74.6%	+4.7%
Lambeth	3,354	3,158	1,405	41.7%	94.2%	-1.5%
Lewisham	3,383	3,168	950	27.4%	93.6%	-0.6%
Southwark	2,843	2,339	713	24.4%	82.3%	-3.3%
Tower Hamlets	1,623	1,469	521	33.7%	90.5%	+2.8%
Wandsworth	4,678	3,967	1,377	30.1%	84.8%	+3.4%
Westminster	5,096	3,796	1,087	25.8%	74.5%	+1.6%
<b>Inner London Average</b>	<b>2,900</b>	<b>2,495</b>	<b>986</b>	<b>36.7%</b>	<b>86.0%</b>	<b>-0.3%</b>

- 4.5 Whilst the timeliness of decision making for non-majors remains below that of other Inner London LPAs, with the exception of Kensington and Chelsea, measures that were implemented during 2021/22 to improve data monitoring and case management and monitoring are continuing to drive incremental improvements in performance, as identified in paragraph 5.2. However, as identified in Tables 1 to 3, the council handles a high volume of listed building consent applications, which are not monitored by the DLUHC and are recorded as 'Other' applications (see Table 6). Listed building consent applications typically require significant resources to ensure the council complies with its statutory duty to preserve or enhance the heritage assets within the city and this workload and resource, which is much higher than most other Inner London LPAs, impacts upon resources available to deliver quicker decision making for non-major applications.
- 4.6 As has been previously reported, a number of other LPAs utilise EOTs to a significant degree to enable a high proportion of decisions to be issued within agreed timeframes. Where EOTs are used the extended timeframes, the extended timeframes can often be in excess of non-EOT applications that have only exceeded the statutory timeframe for decision making by a small number of days. Therefore, whilst the data above demonstrates the proportion of applications determined within agreed timeframes, it is not a comparative assessment of the actual average time it takes the respective LPAs to determine major and non-major applications.

#### Quality of Application Decision Making

- 4.7 The latest data published by the DLUC for major application appeals demonstrates that in the 24-month period to the end of March 2021 (latest period published by the DLUHC) the council handled 84 major applications, which resulted in two appeals, one of which was allowed, and one refused. For non-major application appeals during the same 24-month period, the council handled 5,702 non-major applications of which 148 resulted in appeals and of this number 50 were allowed. As a percentage of the total number of non-major applications handled in this period this equates to an appeal success rate of 0.9%. In both cases, the appeal success rate substantially below the 10% threshold for designation set by DLUHC.
- 4.8 Tables 10 and 11 benchmark Westminster's appeal performance against other inner London boroughs. In addition to overturned decisions, they include the number of appeals made per 100 applications. This continues to demonstrate that the rate of appeal in Westminster is amongst the lowest across comparable inner London boroughs and indicates that planning decisions are well justified having and have full regard to the requirements of the development plan.

**Table 10** – Comparison of quality of major planning application decisions with other Inner London LPAs for the 24-month period to the end of March 2021 (latest period published by DLUHC).

Local Authority	Total Major Apps	Total Appeal Decisions	No. of appeals made per 100 apps	Total Decisions Over-turned	Quality of Decisions (% over-turned at appeal)	% change on previous 24-month period to September 2020
Camden	55	2	3.6	0	0.0%	0%
City of London	27	0	0.0	0	0.0%	0%
Greenwich	68	2	2.9	1	1.4%	-1.2%
Hackney	79	2	2.5	0	0.0%	0%
Hammersmith and Fulham	43	4	9.3	1	2.3%	-2.1%
Islington	51	2	3.9	1	1.9%	-0.8%
Kensington and Chelsea	55	3	5.5	1	1.8%	-0.1%
Lambeth	79	3	3.8	1	1.2%	-3.7%
Lewisham	43	3	7.0	1	2.3%	+0.3%
Southwark	112	3	2.7	2	1.8%	-0.1%
Tower Hamlets	97	3	3.1	2	2.1%	-0.1%
Wandsworth	92	5	5.4	3	3.3%	0.0%
Westminster	84	2	2.4	1	1.2%	+1.2%

**Table 11** – Comparison of quality of non-major planning application decisions with other Inner London LPAs for 24-month period to the end of March 2021 (latest period published by DLUHC).

Local Authority	Total Non-Major Apps	Total Appeal Decisions	No. of appeal decisions per 100 apps	Total Decisions Over-turned	Quality of Decisions (% over-turned at appeal)	% change on previous 24-month period to September 2020
Camden	2,654	129	4.9	37	1.4%	+0.1%
City of London	488	2	0.4	0	0.0%	-0.2%
Greenwich	2,468	189	7.7	71	2.9%	-0.3%
Hackney	2,818	114	4.0	45	1.6%	0%
Hammersmith and Fulham	2,616	145	5.5	57	2.2%	+0.3%
Islington	2,295	148	6.4	37	1.6%	+0.1%
Kensington and Chelsea	3,125	107	3.4	40	1.3%	0%
Lambeth	3,254	142	4.4	36	1.1%	0%
Lewisham	3,221	171	5.3	36	1.1%	+0.2%
Southwark	2,744	78	2.8	20	0.7%	+0.1%
Tower Hamlets	1,553	84	5.4	14	0.9%	-0.1%
Wandsworth	4,587	104	2.3	29	0.6%	0%
Westminster	5,702	148	2.6	50	0.9%	0%

## 5. Planning Appeals Performance

### Performance Statistics

- 5.1 In addition to the DLUHC targets, as set out above, the Council sets its own performance target for the percentage of appeal decisions that it expects to be

dismissed. This target is set at 60%. This includes appeals dismissed or part dismissed as a percentage of total number of appeals decided. The performance for planning appeal decisions received during the first two quarters of 2022 and 2023 are set out below in Table 12, with previous four years provided for comparison. above the target. This demonstrates we are on track to meet our target.

**Table 12 – Appeal Performance between 1 April 2022 and 30 September 2022**

Year	Total No. of Appeals	No. of Appeals Allowed	No. of Appeals Dismissed or part dismissed	% of Appeals Dismissed or part dismissed	WCC Target for Appeal Success
<b>2022/23 (Q1 &amp; Q2)</b>	<b>64</b>	<b>19</b>	<b>45</b>	<b>70%</b>	<b>60%</b>
2021/22	119	41	78	66%	60%
2020/21	147	40	107	73%	60%
2019/20	433	101	332	77%	60%
2018/19	191	60	131	69%	60%

- 5.2 A full breakdown of the types of appeal that have been received and the volumes of each type of appeal will be provided in the end of year review for 2022/23 in summer 2023.
- 5.3 Almost all of the above appeals relate to delegated decisions taken by officers. During the first two quarters of 2022/23, there was no allowed appeal decision received which related to an application where the decision to refuse permission was taken by one of the Planning Applications Sub-Committees. A summary of all allowed appeals during this period is in the appendices. Some notable appeals are highlighted below at XX.

#### *Awards of Costs & Costs Associated with Appeals*

- 5.4 Awards of costs can be made against the council if it has behaved unreasonably in a way that has resulted in the appellant incurring costs that could otherwise have been avoided. Likewise, the Council can seek an award of costs where the appellants behaviour during the appeal process has been unreasonable. Awards of costs for and against the Council remain as reported to the Planning and City Development Committee in June 2022 and no further costs awards have been settled in the intervening period.
- 5.5 The costs to the planning service arising from the officer cost of handling planning appeals are unavoidable and result from the quasi-legal structure of the planning system which affords applicants a right of appeal against the Council's decision. To ensure the Council is able to effectively implement its current planning vision for the city, as set out in the City Plan 2019-2040, it is necessary to ensure that appeals against the Council's decisions are appropriately defended. For these reasons the officer time costs attributable to the planning service as a result of appeals are not recorded on a case-by-case basis and these costs are absorbed into the annual budgets for the three planning area teams and the Planning Enforcement Team.
- 5.6 For more complex and larger scale appeals that are held as Hearings or as a Public Inquiry it is often necessary to secure support from Legal Services. These additional costs, which are only required in a small proportion of appeals, are recorded and are set out in Appendix B for 2021/22 and 2022/23 (year to date).

*Notable Appeal No.1 – Leconfield House, Curzon Street (Protection of Offices in the CAZ and Basement Development Policy)*

- 5.7 The most notable appeal decision in the first half of 2022/23 relating to an application determined at a Planning Applications Sub-Committee was that relating to substantial remodelling of Leconfield House, Curzon Street, W1 (RN: 20/01200/FULL). The scheme proposed the replacement of the existing 7th floor level and roof plant area and excavation of three new basement levels, along with various elevational changes. The alterations and extensions were proposed in connection with the use of the building as a hotel and private members' club.
- 5.8 The application was initially reported to the Planning Applications Sub-Committee on 16 February 2021. The Sub-Committee resolved to grant conditional approval, subject to the concurrence of the Mayor of London and completion of a S106 agreement. However, following the adoption of the new City Plan 2019-2040 on 21 April 2021, the proposal was no longer in accordance with the adopted development plan, owing to significant land use and basement development policy changes in the newly adopted City Plan.
- 5.9 Following reassessment against the newly adopted development plan, officers reported the application back to the Planning Applications Sub-Committee on 3 August 2021, with a recommendation for refusal on grounds that the loss of the existing office use within the Central Activities Zone (CAZ) was contrary to Policy 13 in the new City Plan, which seeks to protect loss of office floorspace to hotel use within the CAZ. The Sub-Committee agreed with this reason for refusal and also concluded that the proposed three-storey basement was contrary to the new basement development policy (Policy 45), which precludes basements of more than a single floor where sites do not have high levels of accessibility, resulting in significant adverse impact on surrounding occupiers during the construction phase.
- 5.10 The appeal against the Council's decision was heard at a public inquiry held between 7 and 13 June and on 20 June 2022. In addition to a planning officer, the Council fielded a consultant with expertise in basement construction impacts as witnesses at the inquiry to ensure it was able to robustly defend the reason for refusal relating to the impact of basement construction.
- 5.11 Following the conclusion of the inquiry, the Inspector dismissed the appeal on both the grounds cited by the Council. The Inspector concluded that the site was well connected, but that the position of the main site access would cause local disruption such that the site would not have high levels of accessibility as required by the policy to justify the provision of more than one basement level. The Inspector also found that *"As a result, both the construction process and its associated traffic, which would be in operation over a prolonged period of time, would cause adverse effects for neighbouring occupiers and uses"*. The Inspector was particularly concerned about the harm that would be caused to the occupiers of flats in Chesterfield House, immediately neighbouring the site.
- 5.12 In respect of the reason for refusal relating to the loss of the existing office use, the Inspector found that the appellant had failed to provide the minimum requirement of 12 months marketing evidence and that insufficient information was presented at the Inquiry to demonstrate that the loss of office floorspace to hotel use was justified in the absence of this evidence.
- 5.13 In addition to contesting the Council's reasons for refusal, the appellant also sought an award of costs in respect of the Council's behaviour prior to the appeal. The award of costs claim focused on the Council's evidence base for concluding that the site was not

highly accessible and on the basis that the Council should have determined the application under delegated powers pursuant to the initial February 2021 Sub-Committee resolution to grant conditional permission, subject to the concurrence of the Mayor of London and completion of a S106 agreement. The Inspector agreed that the Council's reason for refusal relating to basement construction impact was evidenced and was therefore not unreasonable. He also agreed that the Council was right to respond to the adoption of the new City Plan in April 2021 by reporting the application back to the Planning Applications Sub-Committee in August 2021 so that the Sub-Committee could consider the application afresh in light of the significant weight that the new policies had accrued following adoption. Accordingly, the costs award against the Council was fully dismissed. The appeal decision and associated award of costs decisions for this appeal are included in the background papers for information.

*Notable Appeal No. 2 – 49 Cambridge Street (Residential Amalgamations Policy)*

- 5.14 Also of note amongst the appeals determined in the first half of 2022/23 is an appeal relating to the amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house at 49 Cambridge Street, London, SW1 (21/05401/FULL). The Council refused permission under delegated powers in November 2021 on grounds that the amalgamation of the lower ground floor flat with the maisonette above would result in the loss of a residential unit and result in a residential unit that was in excess of 200m<sup>2</sup>, contrary to parts (B) and (C) of Policy 8 in the City Plan 2019-2040. An associated listed building consent application was also refused on grounds that the works proposed to facilitate the amalgamation would harm the special interest of the listed building.
- 5.15 In determining the appeal via written representations the Inspector concluded that the works to the listed building were not harmful and would enhance the special interest of the listed building. The Inspector noted though that Policy 8(B), which only allows the creation of units larger than 200m<sup>2</sup> where this would be required to protect a heritage asset, did not apply as the building was already in viable use as two residential units.
- 5.16 Policy 8(C)(2) sets out an exception to the policy to protect all residential existing residential units to allow reconfiguration of non-family sized housing to create family sized housing. The Inspector accepted that the upper maisonette was capable of being used as a three-bedroom unit, despite currently being arranged as a two-bedroom flat. However, he concluded that *“The dwelling on the upper floors currently benefits from a large ensuite bathroom on the second floor and during my site visit I observed that there is another ensuite bathroom on the third floor. As such the dwelling lacks a common bathroom. The proposal would result in a common bathroom on the lower ground floor albeit not accessed in the most convenient way. As such, the proposal would result in the residential use being reconfigured to better meet the needs of a family without further alterations to the building fabric.”* Consequently, Inspector allowed the appeal as an exception to the policy on the basis that the residential use would be reconfigured to better meet the needs of families and the harm that would result from the conflict with the Policy 8 in the City Plan 2019-2040 would be “limited”. The appeal decision for this appeal is included in the background papers for information.
- 5.17 It should be noted that the outcome of this appeal is principally of relevance to the assessment of amalgamations within listed buildings where amendments to the internal layout of buildings are more limited in scope due to the potential for these to harm the significance of the heritage asset. Where a building is unlisted, the lack of a communal bathroom within a family sized unit could be resolved by amendments to internal layout without the need for planning permission. Accordingly, the argument in favour of amalgamation in this case is unlikely to be supported by an Inspector where an appeal relates to an unlisted building.

## **6. Financial Implications**

- 6.1 None. A contingency fund is allocated within the Town Planning and Building Control budget to allow for costs awards at appeal and there is no requirement arising from this report for this to be increased.

## **7. Legal Implications**

- 7.1 None.

## **8. Conclusion**

- 8.1 Having regard to the significant volume of applications and appeals that are received annually by the council, including high volumes of listed building consent applications, the Town Planning service has met or exceeded the necessary DLUC performance indicators, and these demonstrate that the department is continues to provide a good level of service in terms of both the speed and quality of planning outcomes it delivers to applicants, communities, and other stakeholders.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)**

## **Appendices:**

- A. Allowed Appeal Decisions Summary for Q1 and Q2 2022/23.
- B. Legal Costs for Planning Appeals for 2021/22 and 2022/23

## **Background Papers:**

- 1. Appeal decision for Leconfield House appeal dated 11 August 2022.
- 2. Costs decision for Leconfield House appeal dated 11 August 2022.
- 3. Appeal decision for 49 Cambridge Street dated 20 September 2022.

## Appendix A – Allowed Appeal Decisions Summary for Q1 and Q2 2022/23

A summary of appeals that were allowed during Q1 and Q2 2022/23 is set out below.

<b>April 2022</b>
<p><b>Site: 57-59 Beak Street, London, W1F 9SJ</b></p> <p><b>Description:</b> Variation of Condition 1 and removal of Condition 13 of planning permission dated 21 December 2018 (RN: 18/08655/FULL) for: 'Use of basement and part ground as dual alternative shop (Class A1) or restaurant (Class A3) and installation of roof level kitchen extract.</p> <p><b>Reason to Allow:</b> The proposal sought to vary the original application and extend the depth and rear projection of the property and alter the form and profile of the existing elevation at these levels, which would increase the overall massing and bulk of Nos 57-59. Main issues are the effect of the proposed variation on i) the appearance of Nos 57-59 Beak Street; and ii) the character and appearance of the Soho Conservation Area. The Inspector considered the rear elevation of the host building is of minimal architectural quality and interest, having already been compromised by previous changes and the proposed amendments acceptable, noting the revised proposal would not be discordant on the rear elevation of the host building, would not harm the appearance of Nos 57-59 and cause no harm to the Soho Conservation Area.</p>
<p><b>Site: 19 Graham Terrace, London, SW1W 8JE</b></p> <p><b>Description:</b> Variation of condition 1 of planning permission dated 23 April 2019 (RN: 19/01643/FULL) (as amended by non-material amendment dated 10 December 2020, RN: 20/07314/NMA) for the: Demolition of existing building, excluding front elevation and party walls, and construction of replacement building with mansard roof and rear extensions and altered front lightwell. NAMELY, to allow change of rear glazed facing wall to brick including altered form at ground floor level and alteration to black metal railing profile.</p> <p><b>Reason to Allow:</b> The proposal subject to appeal sought to retain the development as constructed, the design of which is different from that approved. The Inspector considered the changes to design to be sensitive to the modern design approach of the ground and basement levels at the rear of the house and the traditional form and character is still evident in the higher levels of the building and noted that while the design of the black metal railings enclosing the ground floor roof terrace is different to that previously approved by the Council, it is an acceptable alteration to the house. The Inspector noted that the appeal property is enclosed to the south and west by tall boundary walls and views toward the proposal are either over the wall from higher levels of a neighbouring school building, which is some distance away, or obliquely from houses to the northeast in the terrace. The proposal is not therefore so prominent that it is harmful to the character and appearance of the CA. The Inspector concluded that the proposal does not have a harmful effect on the appearance of the host building and preserves the character and appearance of the Belgravia Conservation Area. This satisfies the requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the design and heritage aims of Policies 38, 39, and 40 of the LP</p>
<p><b>Site: 18 - 20 Queensway, London, W2 3RX</b></p> <p><b>Description:</b> Display of a wooden frame A board measuring 1.00m x 0.60m at the outside seating area.</p> <p><b>Reason to Allow</b></p> <p>The Inspector considered the proposed advertisement would add little in terms of visual clutter, particularly if sited within a seating area and would be consistent with the signage associated with other commercial premises in the area. They also noted the proposed siting of the advertisement would leave several metres of unobstructed pavement for people to pass by safely and in the location shown on the submitted plan it would leave sufficient space around it for people to pass. Therefore, the Inspector considered the addition of the A frame board would not be harmful to the character and appearance of the conservation area or to the visual amenity of the area; it would not cause an obstruction of the highway would not affect pedestrian safety and would not harm public safety.</p>
<b>May 2022</b>
<p><b>Site: Bridgefield House, 219 Queensway, London, W2 5HR</b></p> <p><b>Description:</b> Installation of six antenna apertures across three steel support structures (approx. 29.75m AGL to top), four 600mm diameter dishes across four support structures and eight cabinets all at rooftop level, one Meter Cabinet at ground level plus ancillary works including works to the front elevation.</p>

**Reason to Allow**

The Inspector noted that the proposal would have an unacceptable effect on the character and appearance of the host building and surrounding area, while failing to preserve or enhance the character or appearance of nearby heritage designations. This harm was considered to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the National Planning Policy Framework (2021) (the Framework) advises that this harm should be weighed against the public benefits of the proposal. Policy 19 of the City Plan supports investment in digital and telecommunications infrastructure and those public benefits will be weighed against impacts on local character, heritage or the quality of the public realm. The Inspector noted that the scheme's benefit of providing replacement and improved digital communications networks attracts significant weight. The Inspector therefore concluded that the moderate level of less than substantial harm to designated heritage assets would be outweighed by the significant public benefits that would be achieved by the proposal.

**Site: 18 Ennismore Gardens, London, SW7 1AA**

**Description:** Installation of two new windows on the side wall at first and second floor levels and removal of redundant pipework to the rear side wall in connection with the amalgamation of a one bedroom first floor flat and two bedroom second floor flat to provide a three bedroom maisonette and associated internal alterations including changes to door openings, partitions, cornicing, new interior staircase and panelling between first and second floors, and new bathroom at second floor (First and Second Floor Flat).

**Reason to Allow**

The Inspector considered that the proposed works would result in an overall enhancement of the significance of the listed building, albeit this is in the context of accepting that there would be less than substantial harm caused by the insertion of the new stair and the fabric loss. The Inspector considered that harm would be outweighed by public benefits identified and overall, the works would satisfy section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990; the Framework; and accord with policy 39 of the CP insofar as it requires works to listed buildings to preserve the asset's special interest, relate sensitively to the period and architectural detail of the building and protect or, where appropriate, restore original or significant details and historic fabric.

**June 2022****Site: 20 John Prince's Street, London, W1G 0BJ**

**Description:** Display of an externally illuminated integrated LED screen, flush within the Portland Stone, with matching Portland Stone trim, measuring 2.8m X 5.8m and 2.8m X 4.5m at first floor level on the corner of Oxford Street and Holles Street.

**Reason to Allow**

The Inspector did not consider that the screens would be unduly large or incongruous and noted that they would sit flush to the corner splay of the parapet adding a new, distinct and contemporary element to the Oxford Street scene. When seen against the backdrop of the large monolithic office block to the rear as well as the highly commercialised nature of Oxford Street, the screens would not appear inappropriate in their context. While there might be some effect on the setting of nearby listed buildings and conservation areas, the setting of these assets is already defined by the commercial nature of Oxford Street. The Inspector concluded that the erection of these screens would not materially harm one's enjoyment of the assets or the way in which they are currently experienced. And was satisfied the effect of the development would be neutral.

**Site: Ground Floor Flat, 71 Randolph Avenue, London, W9 1DW**

**Description:** Replacement of existing chimney cowl (Retrospective application)

**Reason to Allow**

The Inspector noted that the cowl is integrated into a low wall on the flat roof at first floor level. Given its location to the rear of the building, there is no impact on the street scene and the works are only really visible from neighbouring flats and considered that the replacement cowl preserves the host building's features of special architectural or historic interest and does not undermine the public's enjoyment or the significance of the heritage asset. Accordingly, the Inspector considered there to be no conflict with Policies 38, 39 and 40 of the City Plan nor Section 66 or 72 of the 1990 Act.

**Site: Flat 3, 39 Hereford Road, London, W2 4AB**

**Description:** Erection of a roof extension to increase size of top floor flat together with associated terrace.

**Reason to Allow**

The Inspector considered that the proposal would preserve the character and appearance of the Conservation Area and would not, subject to a planning condition to add screening, harm the living conditions of occupants of the upper floor flat at Baynards House and Nos 113 and 115, with



regards to noise and disturbance, privacy and outlook. As such, the proposal would accord with City Plan Policies
<p><b>Site: 28A Leicester Square, London, WC2H 7LE</b></p> <p><b>Description:</b> Display of two internally illuminated neon frontage signs measuring 0.51m x 1.71m and 0.14m x 0.70m and internally illuminated projecting sign measuring 0.60m x 0.60m.</p> <p><b>Reason to Allow</b></p> <p>The Inspector noted that the new adverts would be illuminated, which, in the context of the illuminated adverts in the Square that operate during the day and night, they considered would not be harmful. The location of the adverts would respond to the general position of adverts on commercial premises in the Square and the conservation area. As such, overall, the Inspector considered the adverts contribute to the vibrant nature of the appeal building and the conservation area.</p>
<p><b>Site: 28A Leicester Square, London, WC2H 7LE</b></p> <p><b>Description:</b> Installation of a new shopfront including new awning and menu board.</p> <p><b>Reason to Allow</b></p> <p>The Inspector considered the new shop front is modest in size and in the same location as the former shop front, and follows the established layout and general design. The use of blue coloured metro tiles with white grouting does stand out next to the shop fronts either side of the appeal premises but the previous shop front was also of a stark colour, in contrast with the public house façade and the upper floors. Against this context, and that of other shop fronts in the Square and the area, the Inspector concluded that the character and appearance of the appeal building, and that of the conservation area would be preserved by the schemes.</p>
<p><b>Site: Eaton House School , 3-5 Eaton Gate, London, SW1W 9BA</b></p> <p><b>Description:</b> Replacement of rear lower ground floor and erection of single storey rear extension at 3 Eaton Gate (first floor to mews) and use of roof as external learning areas, erection of single storey rear extension at 5 Eaton Gate (first floor to mews) and use o</p> <p><b>Reason to Allow</b></p> <p>The Inspector considered that the public benefits arising in terms of the improved educational facilities and access for all within the school would outweigh the less than substantial harm arising from the proposal.</p>
<b>July 2022</b>
<p><b>Site: 20 Berkeley Street, London, W1J 8EE</b></p> <p><b>Description:</b> Variation of conditions 12 and 13 of planning permission dated 22 December 2020 (RN: 20/05970/FULL) for the: Variation of Condition 5 and 8 of planning permission dated 16 January 20 (RN 19/08031/FULL), for use of the basement, lower ground floor and ground floor as a restaurant (Class A3). Erection of full height extract duct, alterations to the front fenestration in Hay Hill to create a new shopfront, and alterations to the rear lower ground floor fenestration and lowering of the lower ground floor by 500mm. NAMELY; to extend opening hours of the restaurant, and the hours of use of the plant, to between 07.00 to 02.30 Monday to Saturdays and 08.00 to 02.00 on Sundays and Bank Holidays.</p> <p><b>Reason to Allow</b></p> <p>The application seeks to vary conditions attached to previous permissions and extend restaurant opening hours. The main issue relates to the effect of the proposed extended customer hours on the living conditions of nearby residents, with regards to noise and disturbance. The restaurant has been vacant for eight years and feedback from interested parties has pointed to the existing permitted opening / operational hours as being too restrictive. The Inspector considered that the proposed extension of customer hours would, on balance, having regard to the site's location and subject to planning conditions, minimise noise impacts and prevent noise intrusion to residential developments so that there would be no material additional adverse effects and would accord with Policies 7, 16, 33 and 36 of the City Plan 2019 – 2040 and Policy MRU1 of the Mayfair Neighbourhood Plan..</p>
<b>August 2022</b>
<p><b>Site:</b> Apartment 24, Harcourt House, 19 Cavendish Square, London, W1G 0PL</p> <p><b>Description:</b> Installation of external awning at seventh floor level.</p> <p><b>Reason to Allow</b></p> <p>The main issues are whether or not the proposal would preserve the special interest of the listed building and, linked to that, whether or not the proposal would preserve or enhance the character or appearance of the Harley Street Conservation Area. The awning would be located on a new part of the building and would not therefore affect any historic fabric. the top of the awning would be glimpsed from within the public realm around Cavendish Square but, sited on the 7<sup>th</sup> floor and set back from the front façade of the building, it would not be readily visible or prominent feature in the</p>

street-scene and represents a very modest change to the building as a whole. The Inspector considered proposals would preserve the special interest of the listed building and would comply with Policies 38, 39 and 40 of the City Plan (2021) which in various ways seeks to ensure that new development is in keeping with its context and preserves heritage assets.

**Site:** Flat 4, 121 Sutherland Avenue, London, W9 2QJ

**Description:** Creation of a first floor rear balcony with balustrade and enlargement of existing window opening to allow access via French doors

**Reason to Allow**

The application sought to enclose an existing bay window roof with a metal balustrade to form a balcony area at rear first floor level as well as alter the existing large sash window above the bay to create a doorway to the balcony. The inspector noted the modest alteration to the window, which would be replaced by French doors, utilises the same width of opening, but is extended to meet the roof of the bay, incorporates sensitively designed glazing and retains a vertical emphasis. The slope to the roof of the bay window roof is minimal and its replacement with a flat roof would not be significantly discernible. Moreover, he considered the scale of the balcony is modest and along with the proposed materials and detailing of the balustrade, reflects those found elsewhere in the conservation area, both on front and rear elevations. Consequently, the inspector concluded that the proposal would not be at odds with the vernacular form of the host building or harm the significance of the CA. Therefore, it would preserve the character and appearance of the CA. As such, the proposal would comply with Policies 38, 39 or 40 of the City of Westminster City Plan 2019- 2040 (2021).

**September 2022**

**Site:** 68 Queensway

**Description:** Display of advertisements on railings (enforcement appeal)

**Reason to Allow**

The site is in the Queensway Conservation Area which the inspector noted is a very busy and vibrant commercial area with a great deal of activity at street level which is reflected in the variety of mainly commercial ground floor frontages which have different types of advertisements, including illuminated and non-illuminated fascia signs and projecting signs. The Inspector noted that as a consequence of their relatively small size, their simple non-illuminated design and the existing visual clutter and bustling ground floor activity along the street the advertisements in question are lost in their immediate visual context and are not visually prominent or intrusive. As such the Inspector considered that the special interest of the conservation area is not diminished by the advertisements and concluded that the continued use of the appeal site for the display of advertisements would not cause substantial injury to amenity, and quashed the notice.

**Site:** 49 Cambridge Street, London, SW1V 4PR

**Description:** Amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house

**Reason to Allow**

The Inspector noted that the proposal would conflict with CP Policy 8 as it would result in the loss of a residential unit and would not meet the stated exceptions. It would result in a dwelling of 218sqm and would therefore exceed the limit stated in the Policy. He also noted that the proposal would enhance the special interest of the listed building. However, the continued viable use of the appeal property as a residential dwelling is not dependent on the proposal as the building has an ongoing residential use that would not cease in its absence. As such the proposal is not necessary to protect a heritage asset and would not accord with CP Policy 8B the proposal would create a dwelling that would be only slightly greater in floor area than the limit set in the Policy and would certainly not create a 'super-sized' property. The Inspector considered that although the existing dwelling on the upper floors is capable of being a three-bedroom property in terms of size, the amalgamation of the two dwellings would result in a more attractive family home with three bedrooms, two reception rooms and family bathroom. As such, the residential use would be reconfigured to better meet the needs of families and the harm that would result from the conflict with the CP Policy 8 would be limited.

## Appendix B – Legal Costs for Planning Appeals for 2021/22 and 2022/23

### 2021/22

Appeal Site	Reason for Refusal	Committee Decision?	Inquiry / hearing?	Allowed/ Dismissed	Internal Costs	External Costs
Wilton Road - 19/06682/FULL	Height/ form/ design - harm to CA	Committee overturn	Oct 2021 - 4 day Inquiry	Allowed	£9,191	£17,000
118- 258 Lauderdale Mansions - 19/01391/FULL	Mix of AH, lack of vertical windows/ poor outlook, roof design harm to CA	Committee added 2 additional grounds	22/11/21 - 1 day hearing	Dismissed	£5,003	N/A

### 2022/23

Appeal Site	Reason for Refusal	Committee Decision?	Inquiry Date	Allowed/ Dismissed	Internal Costs	External Costs
Leconfield House - 20/01200/FULL	Loss of offices, extent of basement construction	Committee with additional ground	07/06/22 - 8.5 days	Dismissed	£16,950	£16,250
M&S, 456-472 Oxford St - 21/04502/FULL	N/A - SoS call-in	Committee resolved to grant on 23/11/21	25/10/22 - 8 days	TBC	TBC	TBC
Kilmuir House - 20/01346/FULL	Inadequate level of on-site AH	Committee overturn	29/11/22 - 4 days	TBC	TBC	TBC

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## Appeal Decision

Inquiry held 7 to 13 and 20 June 2022

Site visit made on 14 June 2022

**by A J Mageean BA (Hons), BPI, PhD, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 August 2022**

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**Appeal Ref: APP/X5990/W/22/3292545**

**Leconfield House, Curzon Street, London, W1J 5JA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Leconfield House Limited against the decision of Westminster City Council.
  - The application Ref 20/01200/FULL, dated 18 February 2020, was refused by notice dated 12 August 2021.
  - The development proposed is replacement of existing 7th floor level and roof plant area, excavation of three new basement levels, infilling of windows at the rear, replacement windows and doors at ground and first floor level, new loading doors onto Chesterfield Gardens and refurbishment works, all for use of the building as a 60 to 70 bedroom hotel and private members' club including restaurants, spa/wellness centre and retail (sui generis use), with plant at 6th, 7th floor, roof level and basement level 3 and roof terraces at seventh floor level.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Inquiry an application for costs was made by the appellant against Westminster City Council. This application is the subject of a separate Decision.
3. An application for costs was also made by Westminster City Council against the appellant. This application is the subject of a separate Decision.

### Preliminary Matters

4. Whilst the applicant's details on the planning application form refer to 'Leconfield House Holdings Limited', during the course of the Inquiry it was confirmed that the name of the appellant is 'Leconfield House Limited'. I have amended the banner heading above accordingly.
5. The banner heading includes the amended description of development agreed prior to the determination of the planning application.
6. Updated demolition plans to account for first floor slab demolition were submitted by the appellant after the close of the Inquiry. These changes are minor and do not amount to materially different proposals. I have therefore considered the appeal on this basis.
7. A completed Section 106 agreement dated 1 July 2022, providing financial contributions towards the Westminster Employment Service and the Council's

Carbon Off-set fund, and also discounted gym membership for local residents, was submitted by the appellant.

## **Main Issues**

8. I consider that the main issues in this case are:

- The extent to which the basement aspects of the proposal accord with development plan policies, with particular reference to the effects of the operations involved in, and associated with, basement excavation on the living conditions of the occupiers of neighbouring properties;
- Whether sufficient information has been presented to demonstrate that the loss of office floorspace to hotel use can be justified; and,
- Whether the proposal accords with the development plan taken as a whole and whether there are any other material considerations which justify a determination other than in accordance with the development plan.

## **Reasons**

### *Basement excavation*

#### *i. Policy provisions*

9. Policy 45 of the Westminster City Plan 2021 (the City Plan) addresses the fact that basement extensions have become an increasingly common form of development in Westminster in recent years. Whilst often hidden from view, they can have significant impacts on the amenity of the occupiers of neighbouring buildings and may affect local ground conditions. Policy 45 supersedes Policy CM28.1 in seeking to control the size and depth of basements. Whilst Policy CM28.1 was similar and more detailed in some regards, its provisions did not apply to commercial developments in the Core Central Activity Zone (CAZ).
10. Policy 45 sets out the measures necessary to ensure that excavation in dense urban environments is subject to appropriate controls and management. The requirements at 45(A) apply to all basement additions. Specifically, this requires that such developments incorporate measures to 'safeguard structural stability' (45(A)(1)). It also sets out the need for basement developments to 'be designed and constructed to minimise the impact at construction and occupation stages on the surrounding area' (45(A)(2)). In this regard the supporting text refers to the need to demonstrate that reasonable consideration has been given to potential impacts of construction in line with the adopted Code of Construction Practice (CoCP). Further, consultation with neighbouring occupiers prior to submitting an application is strongly encouraged.
11. The provisions at 45(B) set out further controls for specific circumstances, recognising that controlling the depth of basement development can help reduce construction risks and also mitigate environmental and amenity impacts. Specific reference is made at 45(B)(3) to support for basement developments where they (do) 'not comprise more than one storey beneath the lowest original floor level – exceptions may be made on large sites with high levels of accessibility for construction'.

12. A fair reading of the provisions of 45(B)(3) indicates that, where the basement proposal comprises more than one storey, the first matter to be addressed is whether it is a large site with high levels of accessibility for construction. In such circumstances exceptions 'may' be made to the limiting provisions. In contrast to directive terminology such as 'should' or 'must', the use of the word 'may' provides some discretion for the decision-maker to make their judgement. The supporting text refers to 'some cases' in which large and accessible sites 'are able to accommodate plant and machinery and include appropriate access (e.g. rear or side access) to enable construction without an adverse impact on neighbouring uses or occupiers' (paragraph 45.9). In this way the nature of the sites which may fall into this category and the reason for this, to avoid adverse impacts, are set out, thereby aiding policy interpretation. This does not duplicate the provisions of 45(A)(2), but rather allows for greater consideration of the impacts associated with deeper basement excavations.
13. The City Plan Policy 33 and Section 1.4 of the CoCP clarify that the provisions of the CoCP apply to a wide range of development activity, including all new or extended basement developments, regardless of size. It does not follow that in all cases compliance with the CoCP would be sufficient to ensure that the impacts of development are acceptable, also noting that the CoCP is directed primarily at the management of permitted schemes, with compliance secured by planning condition. Specifically, the London Plan Policy D10 advises Boroughs to establish policies to address the negative impacts of large-scale basement development, where this is identified as an issue locally. Therefore, whilst meeting the requirements of the CoCP has the effect of 'reducing disruption' for those affected by development activity, this must be based on the development being found acceptable in planning terms.
14. It is not unreasonable in principle for planning policy to allow for consideration of the issues associated with large scale basement development beneath existing buildings. My view is that the nature of the effects considered could include those which unreasonably interfere with, or cause harm to, neighbouring occupiers/uses, including the duration of such effects.
15. To summarise, large scale basement development has the potential for greater negative effects on the local environment than single level basement additions. The purpose of Policy 45 is to provide the decision maker with a framework for considering how the resulting risks and negative environmental and amenity impacts could be managed in each individual site circumstance, to allow for a balanced decision overall.

*ii. Assessment against policy*

16. In considering the application of the provisions of Policy 45 to the present case, the Council and appellant have agreed that the site is 'large'. I have no reason to take a different view. What follows therefore, is consideration of the appeal scheme in terms of the requirements of Policy 45. That is firstly, whether it has high levels of accessibility for construction, and secondly the effect of construction on neighbouring uses or occupiers, before concluding overall on whether it meets the requirements for an exception to be made.

*a. Accessibility*

17. In general terms the site's position near to the Park Lane and Piccadilly arterial routes means that it is reasonably well-connected, with a clockwise route to

access Curzon Street via Piccadilly and Half Moon Street indicated. This route is capable of carrying large vehicles. Nonetheless, my view is that the access expectations of Policy 45 go beyond this, requiring consideration of the nature of construction access to the site. Specifically, the supporting text refers to the need for appropriate access to enable construction without adverse impacts locally. This points to sites being able to accommodate such access without undue disruption to the local highway and its users.

18. Indicative arrangements provided at appeal stage<sup>1</sup> suggest that all plant and machinery could be contained within the retained structure of Leconfield House, with construction access achieved through an internal loading bay, which would be used for spoil removal and concrete deliveries. Apart from the use of the existing side access on Chesterfield Gardens for small vehicles, the main site access would be via the principle building frontage onto Curzon Street, rather than a rear or side access. This would accommodate vehicles reversing into the building.
19. The limited data collected on 4 May 2022 indicates that Curzon Street operates at well below the maximum capacity for a single lane two-way street of 800-900 passenger car units per hour. Nonetheless, and notwithstanding the fact that local road works installed on that day may have caused vehicles to re-route, this data demonstrates that Curzon Street is a reasonably busy route for both pedestrian and vehicular traffic. The appellant suggests that the construction access could accommodate a substantial proportion of delivery vehicles loading/unloading on site, though a pit lane would also be required on Curzon Street itself. Whilst Curzon Street is of generous width, this would involve the suspension of four parking bays on the north side of the street. A further seven bays would be suspended on the south side to maintain two-way traffic flows. Access to pedestrian footways adjacent to the site frontage would be disrupted, with a diversion route indicated. Whilst it may be possible to provide a narrow footway on the north side of the street, it is likely that there would be practical challenges in managing this alongside construction traffic, particularly at piling/excavation stages.
20. The appellant's estimate for vehicle generation varies, though it is accepted that the development would require up to 40 vehicles per day to remove excavated soil, averaging at perhaps 4 vehicles per hour over a ten-hour construction day. Indicative site access arrangements show the muck away vehicles arriving from the east and reversing into the internal loading bay across both traffic lanes, such that both lanes of traffic would have to be stopped to facilitate the manoeuvre. Whilst this would be overseen by traffic marshals, it is inevitable that the few minutes required to execute both arrivals and departures of such vehicles would cause local interruption to vehicular and pedestrian traffic. There would also be the potential for conflict with articulated vehicle deliveries locally. So, whilst in theory Curzon Street may have 'redundant capacity' to accommodate additional traffic, it does not follow that impacts of this nature, which I would characterise as moderately disruptive, would be acceptable.
21. Comparisons with other nearby developments in which similar arrangements may have been put into place do not assist. Those involving single storey basement additions are not required to justify an exception to policy

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<sup>1</sup> Mr Hart PoE, Appendix D



restrictions in terms of accessibility. Most of those involving deeper excavations will have been considered under the previous Policy CM28.1 which, as I have noted, did not allow for consideration of the local impacts of basement excavations of greater than one additional storey in the CAZ.

22. That said, I am aware that the five-basement level development at the Ritz Hotel was approved by the Council under Policy 45. This site was considered to be large and accessible, allowing for direct access to strategic road networks. It is accessed from Arlington Street to the side of the main Hotel frontage, a relatively short, quiet side street with one way traffic only, limited through traffic and pedestrian flows, meaning that local disruption is limited. Therefore, there are circumstantial differences between this and the appeal site.
23. The most recent officer report relating to the appeal scheme found that the site is well-connected and that it would be possible to manage construction traffic to minimise disruption to local road users. On the basis of the evidence before the Inquiry, my view is that, whilst the site is reasonably well connected, and it would be possible to accommodate most plant and machinery on site, the position of the main site access, and the local disruption this would cause, is such that the site would not have the required high levels of accessibility for construction.

*b. Impact of construction on neighbouring user or occupiers*

24. Basement developments are required to safeguard the structural stability of the existing building and nearby buildings. In this case concerns are raised by the two Rule 6 Parties about the potential for structural harm or damage to Chesterfield House resulting from the significant excavation and construction works proposed. I am aware that Chesterfield House shares a party wall with Leconfield House in two places, that sensitive plant and machinery is located close to one party wall, that the Chesterfield House services contain a lot of brittle material and that there is little reference to these facts in the appellant's Structural Method Statement (SMS).<sup>2</sup> In these regards it is suggested that the appellant has not engaged sufficiently with this neighbouring interest, noting that in the supporting text to Policy 45 applicants are 'strongly encouraged' to engage with neighbouring occupiers prior to submitting a planning application.
25. I acknowledge the real concerns of Chesterfield House Management and residents and, given the close relationship, I agree that it would have been advisable to engage with these interests as part of SMS preparation. That said, there is a limit in the extent to which structural and geo-technical considerations are material to planning decisions. Rather, the structural integrity of development during construction is controlled by other regulatory systems. The findings of the SMS are said to be based on an extensive knowledge of the ground conditions of the area, and a ground movement and building impact assessment, looking at the likely damage to neighbouring properties. Its conclusion is that the proposed basement excavation should not have an unacceptable impact on either Leconfield House or Chesterfield House. It is predicted that these buildings would suffer 'negligible' damage at worst in accordance with the Burland scale.<sup>3</sup>

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<sup>2</sup> Structural Engineering Report and Subterranean Construction Method Statement, Elliot Wood February 2020

<sup>3</sup> Used to describe or measure the damage, or risk of damage, to properties as a result of changes such as subsidence. Negligible damage refers to hairline (up to 0.1mm wide) cracks.

26. On this basis the Council's view is that the appeal scheme would comply with the requirement of Policy 45(A)(1) to 'incorporate measures recommended in the structural statement ....to safeguard structural stability'. For the purposes of this decision, I agree. I also note that, should this application be acceptable in other regards, such structural matters would be managed through compliance with the CoCP.
27. Turning to wider environmental and amenity considerations, it is generally accepted that basement extensions can have a significant impact on the amenity of neighbouring occupiers in terms of matters such as noise, vibration and dust. It is also the case that construction activities would be prolonged for the installation of multi-level basements in comparison with single basement extensions. Specifically, these activities can be identified as the greater duration of the installation of contiguous piled walls and bearing piles, along with the effects of both the excavation of additional levels and the installation of additional slab levels and concrete lining walls.
28. It is reasonable to expect that an experienced contractor operating within the parameters of the CoCP could significantly mitigate construction impacts on neighbour amenity. In this regard the CoCP states that consideration should be given to minimising noise and vibration from construction at planning application stage, with the 'noisy work' phases referred to being demolition, earthwork and piling. Measures referred to in terms of managing such works include identifying noise sensitive receptors and restricting the periods when noisy work would be allowed, which would assist with ensuring that impacts are managed.
29. In the present case some, albeit limited, consideration is given to dust, noise and vibration in the SMS. This includes reference to the breaking out of existing structures using diamond saw cutting and hydraulic bursting where possible to minimise noise and vibration to the adjacent properties, and the use of non-percussive breaking techniques where practicable. It is also assumed that the basement would be constructed in a top-down sequence, with this offering various benefits over the usual bottom-up construction, including the early installation of concrete slabs to reduce the acoustic effects on the surrounding environment. Also, the retention the Leconfield House structure would mean that the noise, dust and vibration arising from associated demolition works would be lesser in comparison with works involving the removal of a greater amount of the building.
30. The effect of basement construction on living conditions is difficult to quantify and as a result the evidence before the inquiry was sparse. As a starting point I accept that the appellant's information meets the basic CoCP requirements for this stage, and that the mitigation measures proposed would assist with managing the extent of harmful effects. That said, it is inevitable that, in a constrained urban environment such as this, palpable impacts from the demolition, excavation and construction processes would remain. In this regard the SMS acknowledges that those most likely to be affected by noise, dust and vibration would be the immediate neighbours at Chesterfield House.
31. I note particularly the close proximity of the Chesterfield House flats along the lengthy rear boundary of Leconfield House, with windows as close as around 1.5m from the appeal site. Whilst the top-down method would to some degree mitigate the disturbance caused by the installation of the lower basement

levels, there is a limit to the extent to which the impacts of such a significant and intensive development can practically be mitigated. Further, the regular presence of construction traffic throughout the working day would be audible to neighbouring occupiers, particularly the noise of reversing vehicles. In these circumstances the construction process would have an adverse impact on the living conditions of the occupiers of these neighbouring properties.

32. The overall estimate of the construction programme was initially around 131 weeks. Whilst it is now accepted that this was underestimated by some three weeks, and in general terms there will be variations around such estimates depending on the contractor, it remains that construction would take the best part of three years. The parties disagree over whether the time associated with the construction of the additional basement levels would be 18 or 24 weeks, that is 4½ or 6 months. Nonetheless, in either case, this would represent a significant period of time during which nearby residential occupiers would experience regular disturbance and activities associated with excavation and construction works.
33. In seeking to justify likely effects the appellant has referred to a number of approved basement developments, suggesting that they have more significant or similar levels of construction activity impact and similar boundary conditions. However, with the exception of the Ritz, these developments were considered in the context of Policy CM28.1 which, as I have already noted, lacked specific control over deep basement development in the CAZ.
34. In relation to the Ritz basement development, the approach to the management of construction impacts is demonstrated by the appellant with reference to contractor reports on noise and vibration monitoring. I am aware that there are some residential occupiers close to this site, and also that the Hotel is remaining open during construction works. However, in the present case I have identified amenity concerns relating to the particularly close relationship between Leconfield House and the Chesterfield House flats.
35. Overall, bearing in mind that a degree of nuisance is to be expected within urban areas such as this, I would characterise the resulting adverse effects on the living conditions of the occupiers of neighbouring properties and neighbouring uses as causing moderate levels of harm. Whilst it is possible that cumulative impacts with other construction works could exacerbate such harm this does not form the basis for my conclusion. Finally, the fact that objections to this aspect of the proposal were not raised by the Council's Environmental Health or Building Control teams does not alter this finding as, whilst there are some parallels, their remit relates to other statutory regimes and not the implementation of planning policy.

*iii. Conclusion on basement extension*

36. It would in practical terms be possible to construct the proposed basement, with many of the most harmful impacts mitigated to some degree through the imposition of appropriate planning conditions, including the requirement for compliance with the CoCP. However, the question is whether this development would meet the requirements of Policy 45 which seeks to manage the negative environmental and amenity impacts of basement developments of more than one storey. It is not the case that Policy 45 requires that there should be no construction impacts, but rather that the additional impacts on amenity considerations should be within acceptable parameters.

37. I have found that the appeal site meets the Policy 45 requirement for deep basement sites to be large, and also that it would be possible to manage the structural and geotechnical matters that have been raised. However, I have identified concerns in relation to the site's accessibility and also its proximity to the Chesterfield House flats. As a result, both the construction process and its associated traffic, which would be in operation over a prolonged period of time, would cause adverse effects for neighbouring occupiers and uses.
38. Even if I were to find that the scheme would not be harmful in this regard, I would need to give consideration to whether an 'exception' could be made under the terms set out at Policy 45(B)(3). The Officer Report relating to the basement development at the Ritz Hotel refers to the stated requirement to improve and modernise the Hotel, with the development encompassing a comprehensive upgrading and expansion of facilities, to maintain its reputation as one of the most luxurious hotels in the world. This was clearly a factor in the decision not to refuse the development. In the present case, whilst there is general acceptance that the principle of the proposed use would be acceptable in wider policy terms, I see no reason to justify an exception being made in these circumstances.
39. I therefore conclude that the basement aspects of the proposal would conflict with the City Plan Policy 45 with particular reference to the effects of the operations involved in, and associated with, basement excavation on the living conditions of the occupiers of neighbouring properties.

*Loss of office use*

*i. Policy context*

40. The City Plan Policy 13 and the London Plan Policy E1 are both recently adopted policies setting out the reasons for and basis of managing the office market in London, including the CAZ. In Westminster, a reduction in supply across the entire West End since 2005 has resulted in very low vacancy levels, leading to high rents. The reasoned justification for Policy 13 sets out the need for this trend to be halted in order for Westminster to continue to compete globally, to support continued growth of emerging sectors and to adapt to modern working practices. The reasoned justification for Policy E1 also sets out office employment projections, estimated to rise by 31% by 2041, with significant increases in floorspace required. Parties to the Inquiry agreed that the office market had substantially recovered following the Covid-19 pandemic.
41. In this context one of the purposes of Policy 13 is to protect central London's office function. In addition to supporting new and improved office floorspace, it also seeks to restrict the net loss of office floorspace to both residential and hotel use in the CAZ. Policy 13(D)(2) sets out that conversion to 'hotel use will only be permitted where there is no interest in its continued use for office or any other Class E (commercial, business and service) uses education or community use, as demonstrated by vacancy and appropriate marketing for a period of at least 12 months.'
42. The London Plan Policy E1(I) supports the change of use of surplus office space. However, the supporting text sets out the requirement for evidence to demonstrate that office space is surplus, such that there is no reasonable prospect of its use for business purposes. This 'should include strategic and local assessments of demand and supply, and evidence of vacancy and

marketing (at market rates suitable for the type, use and size for at least 12 months, or greater if required by a local Development Plan Document).’ This is also subject to the provisions at E1(G) and (H) relating to the requirement to take into account the need for a range of suitable workspace including lower cost and affordable workspace, and the need to explore the scope for the re-use of otherwise surplus large office spaces for smaller office units.

43. Before considering the evidence before the Inquiry relating to the requirements of these policy provisions, it is appropriate to address two of the matters raised by the appellant challenging the basis for this reason for refusing the planning application.
44. Firstly, the appellant questioned the relevance of Policy 13 to an application seeking a change of use from office to what is described as a private members club, which falls within the *sui generis* use class. I agree that private members clubs elsewhere in the CAZ are a distinctive part of the social and cultural environment. However, in this case the description of the application is more broadly framed as being for ‘use of the building as a 60 to 70 bedroom hotel and private members’ club including restaurants, spa/wellness centre and retail (*sui generis* use).’ The hotel element, and its associated features, appear as the major component, with guestrooms occupying five of the 11 floors and ancillary elements including the hotel reception and back-office services located elsewhere. Furthermore, the appellant’s planning statement refers to the proposed land use being ‘mixed hotel and private members’ club’. Policy 13(D)(2) is therefore clearly applicable.
45. Moreover, even if I were to find that the provisions of Policy 13 were not applicable to this proposal, the London Plan Policy E1 applies to proposals involving the loss of surplus office space, irrespective of the proposed use.
46. The second matter refers to the Council’s determination of the planning application in terms of the loss of office space, and the requirements of the policy provisions in this regard. Events prior to the determination of the application indicate that at the point it was first considered at planning committee in February 2021, neither the London Plan nor the City Plan had been adopted, with the latter noted as having limited weight. The resolution to grant planning permission at this point was subject to the completion of a S106 agreement within 6 weeks.
47. The S106 agreement was delayed beyond the 6 week period for reasons which are not entirely clear, said to be linked to the national lockdown. In these circumstances the committee resolution authorised the Director of Town Planning and Place Shaping to proceed on the basis of two possible outcomes. Firstly, they could consider whether the permission could be issued with additional conditions in order to secure the S106 agreement benefits. Alternatively, the application could be refused on the basis that these benefits had not been secured within the timescales.
48. At this point consideration could have been given to the use of a negatively worded condition prohibiting development until a completed S106 agreement had been secured. The Government’s planning practice guidance (PPG) sets out that this is unlikely to be appropriate in the majority of cases, but that it could apply in ‘exceptional circumstances’ where there is clear evidence that the delivery of the development would otherwise be at serious risk, which may



apply to particularly complex development schemes.<sup>4</sup> Whilst in this case policy support for the development was at risk due to the imminent development plan adoption, it is not clear that this represents the sort of exceptional circumstance envisaged by the PPG. Specifically, there is nothing to suggest that delivery per se was at risk due to viability or other issues, nor that this was a particularly complex scheme. It follows that it would have been possible to refuse the application under delegated authority at this point, whereas in fact the negotiations on the S106 agreement continued.

49. The point at which the S106 agreement was approved by the Council in April 2021 coincided with the adoption of the City Plan. The London Plan was also adopted in March 2021. The Council then required that the application be reported back to committee for reconsideration against the adopted policy provisions. The reason for refusal on this matter refers specifically to there being insufficient information to meet the requirements of Policy 13 and Policy E1 to demonstrate that there is no interest in continuing office use.
50. Questions about the procedural robustness of the Council's management of the application in relation to the office loss matter, specifically the requirement to provide 12-months marketing information at that point, are addressed in the appellant's costs application. Nonetheless the starting point for decision-making is Section 38(6) of the Planning and Compulsory Purchase Act 2004. This requires determinations to be made in accordance with the development plan unless material considerations indicate otherwise.
51. The nature of development plan preparation is such that all parties will have had an appreciation of emerging policy provisions for an extensive period prior to adoption. At the point of adoption development plan provisions and associated policy requirements carry full weight. To suggest otherwise would create ambiguity and uncertainty within a system which must be based on fairness and transparency.
52. The change in status of the City Plan clearly had significant consequences for the appellant's scheme. Nonetheless the requirement to demonstrate a minimum of 12 months marketing evidence to support the case that the building is unsuitable for office use is a necessary element of the objectives of Policy 13 and Policy E1 seeking to protect the central London office function. I therefore disagree with the appellant's view that the effect of the Council's decision was to apply office loss policy provisions retrospectively. The appellant also suggests that as the loss of this building from office use had been approved in principle it could not have been envisaged as part of supply over the new plan period. However, this is of little consequence in the context of Section 38(6).

*ii. Assessment against policy*

53. As a starting point the parties agreed that it is unlikely that there would be demand for the other Class E, education or community uses set out in Policy 13. The focus is therefore on whether Leconfield House could provide viable office space. The fact is that if, as the appellant argues, the appeal site represents surplus office space, this must be demonstrated by vacancy and appropriate marketing for a period of at least 12 months.

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<sup>4</sup> Paragraph: 010 Reference ID: 21a-010-20190723

54. The appellant's client took the decision not to renew leases that were due to end in June 2022, nor to pursue any further tenancies. This was based on the positive assessment of the proposal against the previous development plan. At the time of my site visit I was able to see that the building is substantially, though not completely, vacant. The marketing information provided dates from the point at which the appellants witness, Mr Browning, was instructed in mid-March 2022, a maximum period of less than three months at the point that evidence to the Inquiry was required.
55. This cannot simply represent a technical policy breach. The point of requiring a marketing period of 'at least 12 months' is to allow the market to decide over a reasonable period of time whether there is any continuing interest in the building for office use. There was much debate at the Inquiry about the adequacy of the marketing information to date and what it demonstrates. However, at this point such considerations are of no real consequence as the marketing information does not meet the minimum 12-month requirement.
56. Similarly, the suggestion that the Council has failed to understand the nature of the Mayfair office market does not take us very far. Neither does the fact that Mr Browning was the only marketing expert present at the Inquiry. During the site visit I was able to appreciate the fact that the office accommodation at Leconfield House is somewhat dated and falls short of what is considered to be 'best-in-class' in terms of specification. Mr Browning's evidence indicates that Mayfair/St James's transactions in the first few months of 2022 have largely been focused on best-in-class office space. However, there was no evidence to indicate that the most vacancy is in poorer quality buildings, nor that there is no market for such buildings.
57. It was also suggested that there are fundamental and insuperable problems in achieving a reasonable rent for the Leconfield House offices. Whilst the strength of this building's prominent location at a well-known address was acknowledged, a range of physical problems were identified, the greatest considered to be inadequate floor to ceiling heights and the presence of structural columns. On this basis it was suggested that refurbishment would not be viable, nor would the achievement of market rents be possible. However, evidence before the inquiry indicates that over the past year Mayfair office rental levels have varied from around £87.50 per square foot (ft<sup>2</sup>) to prime rents of around £117.50 ft<sup>2</sup>. There is nothing to indicate that Leconfield House would not be able to achieve rental levels around the lower end of this spectrum. On this basis the fact that this property has been marketed at £100 ft<sup>2</sup>, based on a 'light touch' refurbishment, may well not be a realistic price.
58. Notwithstanding its apparently sub-standard nature, the fact remains that until relatively recently Leconfield House was fully occupied. Whilst I am aware that a past anchor tenant moved out to higher spec accommodation, there is no other suggestion that there was any particular concern about the quality of this accommodation. In such circumstances, the lack of conclusive evidence directs the decision-maker towards the importance of the minimum 12-month marketing period at appropriate rates as a basis for a robust and objective determination of demand. At this point in time it is not clear that that the Leconfield House office space has come to the end of its economic life.

*iii. Conclusion on loss of office use*

59. I conclude that, in the absence of the minimum requirement of 12 months marketing evidence, insufficient information has been presented to demonstrate that the loss of office floorspace to hotel use can be justified. In this regard there would be conflict with the provisions of the City Plan Policy 13. There would also be conflict with the London Plan Policy E1 as it has not been demonstrated that this is surplus office space with no reasonable prospect of being used for business purposes. The limited provision of 'new' workspaces as part of the proposal would not address this conflict.
60. I have had regard to the views expressed by the Greater London Authority (GLA) when they considered the application in June 2020. The policies of the emerging City Plan and the intend to publish London Plan were noted. Reference was made to the central aim of the CAZ to support and enhance office floorspace, as well as the emerging City Plan's resistance to the net loss of office space, except in specific exceptional circumstances. However, at that time, Policy S20 of the Westminster City Plan stated that the loss of office floorspace to other commercial or community and social uses was acceptable, as these uses contribute to commercial activity. Therefore, as the proposed uses were also strategic functions of the CAZ, this loss was considered acceptable to the GLA.
61. However, whilst the policies of the emerging City Plan were material considerations at this time, they had not been examined and would therefore have had reduced weight. As both the City Plan Policy 13 and the London Plan Policy E1 have now been adopted the balance of considerations in relation to the loss of office space has shifted. This explains why my conclusions on this point are at variance with the GLA.

*Other Considerations*

62. The appellant has raised a range of other matters to be considered as part of the assessment of the proposals.
63. If planning permission is refused then the flexibility inherent in Class E of the Use Classes Order means that it is possible that the office space could be converted to some elements of the proposal, including restaurant, spa and retail use, without the need for planning permission. It is suggested that this not only undermines the objectives of office protection policies, but it also means that Leconfield House could lawfully be changed to uses other than office use without delivering the benefits specific to this development. Nonetheless, I have noted that the hotel element is a substantial component of the appeal proposal. This does not fall within Class E. Further, the extent to which some of the proposed facilities, particularly restaurant use, would serve visiting members of the public, a requirement of Class E, is unclear. Overall, my view is that there is little likelihood that the suggested fallback position would be taken forward and so I give this consideration limited weight.
64. I have also considered the nature of the proposed use and its contribution to the CAZ. The London Plan Policy SD4 supports the unique international, national and London-wide roles of the CAZ, particularly the rich mix of strategic functions. It sets out the importance of promoting and enhancing 'the unique concentration of cultural, arts, entertainment, night-time economy and tourism functions.' The appeal proposal is noted as drawing on the international appeal



- of clubs such as Annabel's, blending this with what is described as 'a luxury hotel with enhanced leisure offerings to create a new, all-inclusive, hospitality experience.' Mayfair is considered to be one of the few locations that could support such a development, though there is no specific policy support for this.
65. My view is that the proposal would represent a notable investment in social and cultural infrastructure, with resulting support to the visitor economy. This would be a benefit of moderate weight in favour of the appeal. In terms of other economic benefits, the suggestion that employment in the hospitality sector has the potential to secure the general upskilling of staff in comparison with typical office-based employment is not supported by evidence. More generally, modest weight can be attached to the economic benefits associated with the construction phase.
66. The appeal site is located within the Mayfair Conservation Area (CA) and as such I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.<sup>5</sup> It is also within the setting of listed buildings on both Curzon Street and Chesterfield Gardens and so I must consider the desirability of preserving their setting.<sup>6</sup> The area around Curzon Street is characterised by an informal grid layout with a rich mix of buildings dating from the early 18<sup>th</sup> Century, including high-quality terrace and town houses alongside commercial buildings. The result is that the significance of the CA is closely linked to this varied and interesting townscape. Leconfield House itself dates from the 1930's and, whilst it has undergone various internal and external changes, it retains its overall modern classical appearance, making a positive contribution to the townscape.
67. The appeal proposal would replace the existing seventh floor level with a modified design, including a raised brick parapet and stone band, complementing the design of the lower levels. The existing exposed plant above this would be replaced with integrated plant contained within a roof enclosure. Whilst this would address the fact that there is some limited visibility of the untidy appearance of plant in local views, the result would be that the building would appear a little bulkier at this level. There would be alterations to the ground floor façade, including the replacement of smooth stone cladding with a rusticated stone base and reconfiguration of the window apertures to align with those on the upper storeys. Overall, there would be some modest improvements to the appearance of the building, which would subtly enhance the character of the conservation area and the setting of adjacent listed buildings.
68. The National Planning Policy Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). The small scale and incidental nature of these improvements in the context of the wider significance of these heritage assets means that this point achieves at most moderate weight in favour of the appeal scheme.
69. The other matters referred to are of limited or neutral weight. The active frontage provided by the ground floor retail unit may add slightly to local visual interest and therefore footfall, but this would be a very modest benefit

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<sup>5</sup> Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>6</sup> Ibid, Section 66(1)

attracting limited weight. There may be some improvement to the noise environment as a result of the containment of the rooftop plant. However much, if not all, of the existing rooftop plant is conditioned to operate at 10db below background noise levels adjacent to noise sensitive receptors. Therefore, this consideration attracts very limited weight.

70. Whilst the building being partially occupied/empty may not be supporting the achievement of policy goals, as this is due to the appellant's commercial decision rather than redundancy per se this point does not carry any weight. Similarly, whilst off-street servicing would be provided as part of this development, the total number of delivery trips required by the appeal scheme would increase and an element of on-street servicing by larger vehicles would remain, meaning that this point does not attract beneficial weight.
71. Finally, the S106 agreement would provide a contribution to the Westminster Employment Service, a carbon off-setting contribution, and discounted gym membership for local users. Should the development be acceptable in other regards, these provisions would be required to ensure policy compliance and to mitigate the impacts of the development. Similarly, a Community Infrastructure Levy contribution is a standard payment aimed at assisting local authorities in delivering the infrastructure needed to support development in their area. Therefore, these elements cannot be considered as public benefits.
72. In summary, I have recognised that the role the appeal scheme would play as part of the CAZ social/cultural infrastructure would be moderately beneficial. Other benefits, including the subtle improvement to the character and appearance of the CA and the setting of listed buildings, and the general economic benefits associated with construction, would attract at most moderate and modest beneficial weight respectively. However, I have found that the other matters referred to have either limited or no weight in the planning balance, the matter to which I now turn.

### **Planning Balance and Conclusion**

73. I have found conflict with the City Plan Policy 45 in terms of the negative environmental and amenity impacts of the proposed basement development. Also, the change of use proposed would conflict with the City Plan Policy 13 and the London Plan Policy E1 which seek to protect office floorspace within the CAZ.
74. The proposed use would not conflict with, and in some cases would be supported by, a number of other development plan policies. Those referred to by the appellant include the London Plan Policy GG5 which refers to 'growing a good economy', Policy HC6 which seeks to support the night-time economy and Policy E10 which supports the strengthening of visitor infrastructure. Reference is also made to the City Plan Policy 14 which promotes the intensification of town centres, high streets and the CAZ to provide additional floorspace for main town centre uses, Policy 15 which seeks to maintain the attractiveness of Westminster as a visitor destination, Policy 16 supporting food and drink and entertainment uses and Policy 17 supporting new community infrastructure and facilities. However, support for the proposal from the London Plan Policy SD4 is not clear cut. Whilst this Policy refers to the importance of cultural, arts, entertainment, night-time economy and tourism functions, and social infrastructure, it also supports the office function of the

CAZ, referring to the provision of sufficient space to meet demand for a range of types and sizes of occupiers and rental values.

75. It is not uncommon for development plan provisions to pull in different directions. In such circumstances the decision-maker must make a judgment on compliance with the development plan overall, bearing in mind factors such as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In this case the scheme gains policy support in relation to the principle of the proposed use. The fact that the proposal would accord with the strategic functions of the CAZ is not in itself in dispute. Rather the points of concern relate to matters over which policy seeks to exert specific control: that is changes of use away from office floorspace, unless redundancy is demonstrated, and the need to manage the environmental and amenity impacts of basement development. I have identified clear policy breaches in relation to each consideration.
76. Therefore, my view is that the appeal scheme would conflict with the development plan taken as a whole. Whilst there would be benefits associated with the development, they would not outweigh the identified harm and its associated development plan conflict. Consequently, material considerations do not indicate a conclusion should be made other than in accordance with the development plan.
77. I therefore conclude that the appeal should be dismissed.

*A J Mageean*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

James Pereira QC and Charles Streeten, instructed by R20 Advisory Limited.

*They called*

Justin Gathercole                      Meng CEng MStructE

Alexander Browning                  BSc MRICS

David Hart

Blythe Dunk                              MRTPI

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jack Parker, instructed by the Council's Bi-Borough Director of Legal Services

He called

Philip Soloman

Damian Levelle                          BSc (Hons) MSC

### **FOR CHESTERFIELD HOUSE RESIDENTS**

Robert Goddard

### **FOR CHESTERFIELD HOUSE MANAGEMENT LIMITED**

Daniel Stedman-Jones, instructed on behalf of Chesterfield House Management Limited by Ms Nicola Gooch

He called

Andrew Billingham                      CEng FStructE (A.E. Wynn Prize) MCI Arb MAE  
FConsE MRICS

Nicola Gooch (representing CHML during round table discussions)

### **INTERESTED PARTIES:**

Annala Blixt                                  Chesterfield House Management Limited

## DOCUMENTS SUBMITTED DURING THE INQUIRY

- ID.1 Appellant's opening
- ID.2 Council's opening
- ID.3 CHR opening
- ID.4 CHML opening
- ID.5 CHML Letter, 7 June 2022
- ID.6 Topic Specific Statement of Common Ground
- ID.7 Updated conditions
- ID.8 Updated Section 106 Agreement
- ID.9 Note on Appellant's Name
- ID.10 Council's closing statement
- ID.11 Chesterfield House Residents' closing statement
- ID.12 CHML's closing statement
- ID.13 Appellant's closing statement
- ID.14 Appellant's application for costs
- ID.15 Appellant agreement to pre-commencement conditions

## DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1. Completed S106 agreement
- 2. Council's response to appellants costs application and application for costs on behalf of Council.
- 3. Appellants response to Council's submissions on costs and to Council's costs application.
- 4. Council's response to appellants submissions on costs.

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## Costs Decisions

Inquiry held on 7 to 13 and 20 June 2022

Site visit made on 14 June 2022

**by A J Mageean BA(Hons), BPI, PhD, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 August 2022**

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### **APPLICATION A:**

**Costs application in relation to Appeal Ref: APP/X5990/W/22/3292545  
Curzon Street, London, W1J 5JA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Leconfield House Limited for a partial award of costs against Westminster City Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for replacement of existing 7th floor level and roof plant area, excavation of three new basement levels, infilling of windows at the rear, replacement windows and doors at ground and first floor level, new loading doors onto Chesterfield Gardens and refurbishment works, all for use of the building as a 60 to 70 bedroom hotel and private members' club including restaurants, spa/wellness centre and retail (sui generis use), with plant at 6th, 7th floor, roof level and basement level 3 and roof terraces at seventh floor level.
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### **APPLICATION B:**

**Costs application in relation to Appeal Ref: APP/X5990/W/22/3292545  
Curzon Street, London, W1J 5JA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Westminster City Council for a partial award of costs against Leconfield House Limited.
  - The inquiry was in connection with an appeal against the refusal of planning permission for replacement of existing 7th floor level and roof plant area, excavation of three new basement levels, infilling of windows at the rear, replacement windows and doors at ground and first floor level, new loading doors onto Chesterfield Gardens and refurbishment works, all for use of the building as a 60 to 70 bedroom hotel and private members' club including restaurants, spa/wellness centre and retail (sui generis use), with plant at 6th, 7th floor, roof level and basement level 3 and roof terraces at seventh floor level.
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## **Decisions**

1. Application A is refused.
2. Application B is refused.

### **Application A: Submissions for Leconfield House Limited**

3. The submissions were made in writing. In summary, the appellant's application relates firstly to substantive and procedural matters associated

with the basement construction reason for refusal, and secondly to procedural and substantive matters relating to the Council's refusal to grant planning permission in this case.

4. In relation to the first matter, for which the appellant seeks a partial award of costs, it is said that basement construction is primarily a technical area demanding technical expertise. The only Council officers with the relevant expertise to express a view on this point, that is building control and environmental health, were consulted and raised no objection. As the evidence of the Council consisted of vague, generalised and inaccurate assertions about the proposal's impact which were unsupported by any objective analysis, the Council failed to substantiate this reason for refusal. Reference is also made to the difficulty of engaging the Council's witness in the production of topic specific Statements of Common Ground (SoCG) seeking to narrow the issues before the Inquiry.
5. In relation to the second matter, for which the appellant seeks a full award of costs, it is said that the Council acted unreasonably by not granting planning permission in accordance with the committee resolution. As a result of the consequent delay, it is also said that the Council acted unreasonably by applying the newly adopted policy requirement for 12 months marketing evidence, with which it was impossible for the appellant to comply.

#### **Application A: Submissions for Westminster City Council**

6. The Council's response was made in writing and is summarised here. In relation to the first matter, the point is not whether the basement can technically be constructed, but whether the additional impacts on residential amenity would be acceptable. The Council maintains that it has not been demonstrated that the basement could be constructed without such harm. There was a high degree of consistency between the evidence of the respective witnesses in this regard. As the cases of the two Rule 6 parties also referred to basement excavation, the appellant would have incurred the same expense in the appeal process.
7. With reference to topic specific SoCG, the Council's position is that the later documents requested by the Inspector seeking to further narrow the differences between the parties were produced late in the day, with no opportunity for the Council to engage prior to the opening of the Inquiry.
8. In response to the second matter, the publication of the Inspector's Report on the City Plan, and its subsequent adoption, altered the balance of considerations, thereby calling into question the principle of development. In terms of whether the committee resolution could have been implemented with the use of a negatively worded planning condition to secure the S106 agreement, this situation did not amount to the 'exceptional circumstances' referred to in the Government's Planning Practice Guidance (PPG).

#### **Application B: Submissions for Westminster City Council**

9. Procedurally, the delay in the delivery of the appellant's application for costs caused the Council to incur additional costs in responding to the application after the Inquiry had otherwise concluded. On substantive grounds the appellant's case is without basis and unreasonable.



## **Application B: Submissions for Leconfield House Limited**

10. The timing of the appellants costs application was not unreasonable, and the time required to prepare a response was not altered by this. The appellant's application on substantive grounds is not unreasonable.

### **Reasons**

11. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

### *Application A*

12. Turning firstly to the appellant's substantive and procedural concerns regarding the basement construction matter. The newly adopted City Plan Policy 45 provided the basis for this reason for refusal. I am aware that the officer report did not identify conflict with this Policy, nonetheless the planning committee was entitled to reach a different view, providing this could be substantiated.
13. Policy 45 requires that such developments should both safeguard structural stability and minimise impacts on the surrounding area, with the supporting text referring to the serious impacts basement construction can have on the quality of life of neighbours. Greater control is provided for basement extensions of more than one storey, which may be allowed in certain 'exceptions'.
14. It does not follow, therefore, that basement construction is primarily a technical matter. The Council's building control and environmental health officers raised no objection, and I have accepted in my decision that technically it would be possible to construct the appeal proposal. However, Policy 45 also allows for consideration of effects on surrounding uses and occupiers in terms of whether construction impacts would be adverse. For example, the evidence relating to the site's accessibility focused on the effects of construction traffic on neighbouring uses and occupiers in terms of noise and general disruption. Such matters require planning judgement to be exercised rather than an assessment against the technical standards of other regulatory regimes.
15. The Council's witness on construction matters may not have had technical construction qualifications, though their evidence was based on their experience of schemes involving deep basement construction. This looked at the likely impacts on quality-of-life considerations arising from such construction, focusing on the nature of the works and timescales involved, and making comparisons with single storey basement additions. The witness agreed that in technical terms it would be possible to construct the basement, with compliance with the Code of Construction Practice required by condition. However, whether the development would comply with planning policy was a different matter, requiring the exercise of planning judgment.
16. There was a high degree of consistency between the party's witnesses on construction impacts in terms of processes and timescales. Beyond this,

some of the Council's evidence relating to quality-of-life impacts was not verified. Nonetheless, I found that there was sufficient evidence to demonstrate that the Policy 45 tests for deep basement construction had not been met. It follows that I cannot agree that the Council's evidence overall on this point was vague, generalised or inaccurate. Even if I were to find that the Council had failed to substantiate this reason for refusal, the appellant would have had to produce evidence to address the similar concerns raised by the Rule 6 parties.

17. The appellant suggests that the Council has acted inconsistently by reaching a different conclusion under Policy 45 in relation to the permitted deep basement development at the Ritz Hotel. However, my decision identified the circumstantial differences supporting different conclusions in each case.
18. The appellant sites the difficulty of engaging the Council's witnesses on the production of topic specific SoCG, suggesting that a lack of cooperation at this point was unreasonable. However, I am aware that there was dialogue between the parties on this point in the week prior to the Inquiry, and also some confusion around exactly what form the SoCG should take. I am also aware that at this point there was limited opportunity for meaningful engagement before the Inquiry opened. My view is therefore that in these circumstances the Council did not act unreasonably.
19. I turn now to the second matter, the appellants suggestion that the Council acted unreasonably by not granting planning permission in accordance with the committee resolution. As I have set out in my decision, the fact that the committee resolution in February 2021 allowed for consideration of whether a negatively worded planning condition could be used to secure the S106 agreement did not in itself require that planning permission be granted on this basis. With reference to the PPG on this point, whilst the development was at risk due to imminent policy changes, this in itself did not represent an exceptional circumstance for the use of a negatively worded planning condition. The committee resolution also gave the option of refusing the application if the S106 agreement had not been completed within the appropriate timescales, on the basis that its provisions had not been secured. Whilst there is no evidence of the Council acting in accordance with the committee resolution, it is clear that it would have been possible to refuse planning permission at this point.
20. The emerging City Plan was noted as having limited weight at the time of the February 2021 planning committee as this was prior to the publication of the Inspectors report on the Examination in Public. The day the City Plan was adopted coincided with the agreement of the amended S106 agreement. The fact that the S106 agreement was agreed a few hours prior to the adoption of the City Plan is immaterial, noting that the emerging plan provisions would have attracted increased weight, thereby altering the balance of considerations, at the point of the publication of the Inspector's report in March 2021.
21. It was appropriate that at this point the application should be reconsidered under the newly adopted policy framework. This included the Policy 13 requirement for a minimum of 12 months marketing evidence to support the loss of office floorspace. It was not unreasonable to seek full compliance

with this policy from the point of adoption, noting that there would have been prior awareness of the emerging policy and its implications for some time prior to adoption.

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated for Application A.

#### *Application B*

23. The PPG advises that costs applications should be made 'as soon as possible', the deadline being no later than the close of the inquiry. As a matter of good practice and where circumstances allow, it is suggested that costs applications should be made in writing before the hearing or inquiry and added to or amended as necessary in oral submissions.
24. In this case the appellant's costs application related to both the Council's actions in the period leading up to the refusal of planning permission, and the nature of the evidence presented to the Inquiry. It therefore appears that it would have been possible for the appellant to submit a timelier costs application. Nonetheless, the parties' positions on such applications had been reserved from the point of the Case Management Conference. As such I do not consider the appellant's subsequent actions in this regard to be particularly unreasonable. Specifically, whilst it may have been more convenient for the Council's advocate to prepare a response prior to the delivery of closing submissions, there is no evidence before me to suggest that additional costs have been incurred by having to respond to the application after the Inquiry would otherwise have concluded.
25. I have also considered the Council's suggestion that, as the appellant's costs application had no reasonable prospect of succeeding, the Council is entitled to seek the costs of responding to it. Specifically, it is suggested that the appellant's case is based on a number of misconceptions.
26. The adoption of the City Plan led to the refusal of this application which had previously been on course to be permitted. In these circumstances it is perhaps unsurprising that the appellant sought to challenge this decision in terms of both the application and parameters of the newly adopted policies. The purpose of the planning appeal regime is to allow for such an independent review. The fact that the appellant's costs application pursued similar points is also understandable. Therefore, whilst my findings in relation to both the appeal decision and the appellant's costs application are in the Council's favour, this is not to say that the appellant was not entitled to test the basis on which the Council's decision had been made.
27. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated for Application B.

*A J Mageean*

INSPECTOR

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## Appeal Decisions

Site visit made on 8 September 2022

**by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 September 2022**

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### **Appeal A Ref: APP/X5990/W/22/3295480**

#### **49 Cambridge Street, London SW1V 4PR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Sabir against the decision of City of Westminster Council.
  - The application Ref: 21/05401/FULL, dated 5 August 2021, was refused by notice dated 1 November 2021.
  - The development proposed is amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house.
- 

### **Appeal B Ref: APP/X5990/Y/22/3295484**

#### **49 Cambridge Street, London SW1V 4PR**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Sabir against the decision of City of Westminster Council.
  - The application Ref: 21/05402/LBC, dated 5 August 2021, was refused by notice dated 1 November 2021.
  - The works proposed are amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house; installation of a new kitchen and removal of internal fixtures/partitions.
- 

## **Decision**

### **APPEAL A**

1. The appeal is allowed and planning permission is granted for amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house at 49 Cambridge Street, London SW1V 4PR in accordance with the terms of the application, Ref: 21/05401/FULL, dated 5 August 2021, subject to the conditions set out in the schedule at the end of this decision.

### **APPEAL B**

2. The appeal is allowed and listed building consent is granted for amalgamation of the existing lower ground floor flat with the upper floors to form a single dwelling house; installation of a new kitchen and removal of internal fixtures/partitions at 49 Cambridge Street, London SW1V 4PR in accordance with the terms of the application Ref: 21/05402/LBC dated 5 August 2021 subject to the conditions set out in the schedule at the end of this decision.

### **Applications for costs**

3. Applications for costs were made by Mr Sabir against City of Westminster Council. These applications are the subject of a separate decision.

### **Preliminary Matters**

4. I note the description of development stated in the application form for planning permission. However, I have used the description from the decision notice and appeal form in the header and decision relating to the planning permission in the interests of clarity.
5. The site lies in Pimlico Conservation Area (PCA). The Council has not objected to the proposal on this basis. Since the proposal includes only nominal alterations to the external building fabric, a vent and associated grill to serve the proposed kitchen, I see no reason to disagree. On this basis, the proposal would preserve the character and appearance of the PCA and would accord with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
6. As the proposal is in a conservation area and relates to a listed building I have not only had special regard to section 72(1) of the Act but also section 66(1).

### **Main Issues**

7. The main issues are:
  - whether the proposal would preserve a Grade II listed building, 45-51, Cambridge Street SW1 (Nos 45-51), and any of the features of special architectural or historic interest that it possesses; and
  - whether the proposal would accord with the Council's development plan strategy for the loss of residential units.

### **Reasons**

#### *Listed Building*

8. The building was listed in 1987 (Ref: 1066341) and the list description dates the terrace to around 1840. Cambridge Street forms part of the Grosvenor Estate which was developed from 1835 onwards to designs by Thomas Cubitt. The Heritage Impact Assessment (HIA) states that the street was amongst the first streets to be developed and completed as part of major development of the Pimlico area.
9. It also states that Cubitt's development scheme for Pimlico ensured architectural uniformity and was very similar to the design of buildings of Belgravia, but less grand. Nos 45-51 are in keeping with this uniformity in terms of being stucco and brick-fronted terraces of classical design proportions.
10. Interior changes to No 49 include a modest rear extension and the subdivision of the dwelling to create a basement apartment. The HIA also states that the interior retains little historic fabric of any real note. Although the property including the basement is generally two-rooms deep, its subdivision to include a basement apartment has resulted in substantial erosion of the historic plan form and building hierarchy. Notwithstanding this, the legibility of the two-

room deep plan form remains and contributes to the historic and architectural interest of the listed building.

11. Given the above, I find that the special interest of the listed building, insofar as it relates to these appeals, to be associated with the legibility of the historic plan form and the architectural detailing of the front elevation which epitomise Cubitt's development of the Grosvenor Estate and Pimlico area.
12. The subdivision of the building has resulted in the loss of the lower flight of stairs and the alteration of the historic building hierarchy of the dwelling. Notwithstanding this the property appears to be in good condition.
13. The proposal to amalgamate the basement apartment with the upper floors would reinstate the staircase and return it to a more historically authentic single dwelling with a kitchen on the lower ground floor. The Council considers that the proposed stair is able to be reinstated without requiring the amalgamation. Since the proposed stair would lead from the upper ground floor to the lower ground floor, connecting the two dwellings, the amalgamation of the two dwellings is necessary in order to reinstate the staircase.
14. Therefore, since the proposal would not result in the loss of historic fabric and would reinstate the historic building hierarchy of the property, it would have a moderately beneficial effect on the special interest of the listed building.
15. Given the above, I conclude that the proposed works would enhance the special architectural historic interest of the Grade II listed building thus satisfying the requirements of the Act, paragraph 199 of the Framework and would be consistent with CP Policy 39 which seeks, among other things, development that ensure heritage assets and their settings are conserved and enhanced, in a manner appropriate to their significance.

#### *Loss of residential units*

16. Policy 8B of the City Plan 2019 – 2040 Adopted April 2021 (CP) states that no new homes in Westminster will exceed 200 sqm Gross Internal Area (GIA), except where it is necessary to protect a heritage asset. The CP states that the 200sqm limit will enable generously sized homes to be developed to meet demand from the prime market and large families.
17. The proposal would result in a dwelling of 218sqm and would therefore exceed the limited stated in the Policy. As discussed above, the proposal would enhance the special interest of the listed building. However, the continued viable use of the appeal property as a residential dwelling is not dependent on the proposal as the building has an ongoing residential use that would not cease in its absence. As such the proposal is not necessary to protect a heritage asset and would not accord with CP Policy 8B.
18. CP Policy 8C states, among other things, that all existing residential units, uses, floorspace and land will be protected. Exceptions to this include where non-family sized housing is being reconfigured to create family sized housing. Family sized housing is defined as having between three and five bedrooms.
19. The existing property at No 49 consists of a basement apartment and a dwelling occupying the ground to upper floors of the building. While the drawings show the dwelling on the upper floors as a two-bedroom property, this includes a reception room on the ground floor and living room on the first



floor. I see no reason why the living room on the first floor could not be used as a bedroom. Indeed, the living room appeared to be used as a bedroom at the time of my site visit.

20. Consequently, the proposal would not accord with the development plan strategy for the loss of residential units. Therefore, it would conflict with CP Policy 8 which relates to housing delivery.
21. The proposal would also not accord with the aims of Policies H1 and H2 of The London Plan The Spatial Development Strategy For Greater London March 2021 (London Plan) which seek to increase housing supply and supports well-designed new homes on small sites among other things.

### **Other Matters**

22. I acknowledge the evidence regarding the subdivision of the property without planning permission. However, this matter has not altered my overall decision which has been made based on the planning merits of the scheme.
23. I note the comments of the Inspector for the case at Blandford Street. However, since that scheme did not relate to a listed building, it is not directly comparable with this proposal.

### **Planning balance**

24. Planning law requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.
25. The scheme would conflict with CP Policy 8 as it would result in the loss of a residential unit and would not meet the stated exceptions. The CP states that the size restriction is needed because Westminster's position in the global housing market can create demand for super-sized properties do not optimise development density on scarce land.
26. However, the proposal would create a dwelling that would be only slightly greater in floor area than the limit set in the Policy and would certainly not create a 'super-sized' property.
27. In addition, the CP states that the continued need to provide for family-sized homes means that the only exceptions where the loss of residential uses or floorspace may be acceptable, is where they are being reconfigured to better meet these needs.
28. The dwelling on the upper floors currently benefits from a large ensuite bathroom on the second floor and during my site visit I observed that there is another ensuite bathroom on the third floor. As such the dwelling lacks a common bathroom. The proposal would result in a common bathroom on the lower ground floor albeit not accessed in the most convenient way. As such, the proposal would result in the residential use being reconfigured to better meet the needs of a family without further alterations to the building fabric.
29. Therefore, although the existing dwelling on the upper floors is capable of being a three-bedroom property in terms of size, the amalgamation of the two dwellings would result in a more attractive family home with three bedrooms, two reception rooms and family bathroom. As such, the residential use would



be reconfigured to better meet the needs of families and the harm that would result from the conflict with the CP Policy 8 would be limited.

30. The London Plan states that where the amalgamation of separate flats into larger homes is leading to the sustained loss of homes and is not meeting the identified requirements of large families, boroughs are encouraged to resist this process. The Council accepts that one dwelling would not result in a sustained loss. It may be the case that if the policy was not in place a sustained loss would result. However, each proposal must be assessed on its own merits and given the particular circumstances of this case, the loss of the lower ground dwelling would be unlikely to lead to a sustained loss of homes. Therefore, the harm that would result from the lack of accordance with London Plan Policies H1 and H2 would also be limited.
31. The proposal would reinstate the historic plan form of the dwelling which provides a considerable contribution to the special interest of the listed building. I therefore attribute moderate weight to the benefit of the scheme. As such, these material considerations outweigh the limited harm that would result from conflict with the development plan and indicate that the appeal should be allowed.

### **Conclusion and Conditions**

32. For the above reasons and having regard to all other matters raised I conclude that, subject to conditions, the appeals should be allowed.

#### *Appeal A*

33. The standard conditions regarding time limit and specifying plans are necessary in the interests of certainty. A condition regarding external materials is necessary to safeguard the character and appearance of the PCA. Since the proposal does not include piling, excavation or demolition work, the suggested condition relating to hours of work is not necessary and has not been attached.

#### *Appeal B*

34. The standard condition regarding time limit is necessary in the interests of certainty. Conditions regarding the staircase, the retention of fabric and making good are necessary in the interests of safeguarding the special architectural and historic interest of the building.

*R Sabu*

INSPECTOR

## APPEAL A CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P001, P002, P199, P200, P220, P230, P650 and P651.
- 3) No work to the outside of the building shall commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed other than in accordance with the approved details: (a) vent and associated grill to serve the new kitchen.

## APPEAL B CONDITIONS

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) The materials to be used for making good any disturbed internal or external surfaces shall be of matching composition, form and finish to those of the adjoining original fabric.
- 3) All existing fabric including chimney pieces, wall and ceiling plasterwork, architraves, panelling, doors and staircase balustrades shall be retained, unless notated otherwise on the drawings approved under this consent.
- 4) The staircase shall be constructed to match the existing staircases in the building in terms of materials, finish and colour.

END OF SCHEDULE



**City of Westminster**

## Planning & City Development Committee

**Date: 26 October 2022**

**Classification: General Release**

**Title: Amendments to Sub-Committee Late Representations Procedures**

**Report of: Director of Town Planning & Building Control**

**Financial Summary: None.**

**Report Author and Contact Details: Oliver Gibson ([ogibson@westminster.gov.uk](mailto:ogibson@westminster.gov.uk)/07971026919)**

### **1. Executive Summary**

- 1.1 This report provides an overview of the recommended changes to the current procedures for accepting late representations in advance of Planning Applications Sub-Committee meetings. The recommended procedure includes the introduction of a deadline for submission of late representation in advance of the commencement of the committee meeting to allow Members and officers appropriate time to fully consider the planning merits of the issues being brought before the committee.

### **2. Recommendation**

- 2.1 Members are asked to consider the contents of this report and make recommendations where they consider the recommended process for accepting late representations could be improved prior to implementation.

### **3. Current Late Representations Procedure**

- 3.1 The current approach to receiving late representations is set out in the Committee Procedure Rules. The Committee Procedure Rules were last updated in May 2021 to reflect the hybrid committee meeting processes that were introduced at that time to maintain the option for interested parties to make remote verbal recommendations to the Sub-Committees, following the cessation of the temporary legislation that allowed fully remote public meetings during the pandemic.
- 3.2 The Terms of Reference for the Planning Applications Sub-Committees (set out in Part 23 of the Constitution) and the Council's current Statement of Community Involvement in Planning (2014) are both silent on the process by which the Council accepts representations in advance of a Sub-Committee meeting. Therefore, they do not require any update to accommodate the recommended amendments to the late representations procedure set out in this report.
- 3.3 At present representations received prior to the publication of the committee report are summarised and addressed in full in the report and full copies of the representations are provided in the background papers. The existing Committee Procedure Rules

include provision for representations received after the publication of the committee report and prior to 2.00pm on the Thursday prior to the committee meeting to be circulated to Members by the close of business on that day.

- 3.4 For representations received after 2.00pm on the Thursday prior to the committee meeting there is currently there is no defined 'cut off' after which representations will not be accepted. Consequently, representations are regularly accepted from interested parties up until late afternoon on the day of the Sub-Committee meeting, with occasional late representations received as late as immediately prior to the commencement of the meeting itself.
- 3.5 The current approach has been identified by Members and officers alike as being disadvantage to those participating in the decision-making process, as neither Members nor officers are able to appropriately consider the merits of representations that are made at such a late stage. This is particularly the case for Members who are currently required to read and digest representations during the Sub-Committee meeting, immediately prior to the officer presentation. The current arrangement also disadvantages those making representations as their representations do not receive the level of scrutiny that they would were they provided to the Sub-Committee Members in advance of the meeting.

#### **4. Recommended Late Representations Procedure**

- 4.1 Officers have reviewed the approaches taken by other comparable local planning authorities (LPAs) and assessed the practicality of introducing a deadline on a variety of days prior to the committee meeting. Of the ten other LPAs analysed, 5 had introduced a deadline for late representations prior to planning committee meetings and 5 accepted representations up until the start of the committee meeting. Of those with a deadline, 2 were set earlier on the day of the committee meeting, whilst 3 were set on the working day immediately preceding the committee meeting.
- 4.2 In light of the approaches taken by comparable LPAs, and having regard to the processes that are required to be undertaken by Legal Services and the Committee and Councillor Liaison Team in advance of a Planning Applications Sub-Committee meeting, officers have considered the following options for introducing a deadline for late representations:

##### *Option 1 – Deadline at 12.00 on the day of the committee meeting*

- Would continue to leave limited time for officers to assess and circulate late representations to Members.
- Members would continue to have limited time to read and consider representations prior to the committee meeting, particularly where Members have other commitments immediately prior to the committee meeting.

##### *Option 2 – Deadline at 12.00 on the working day prior to the committee meeting*

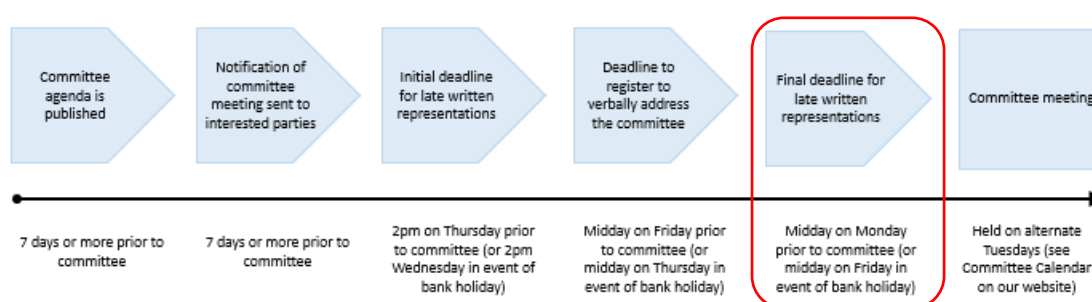
- Would allow time for assessment of late representations and circulation to members by email.
- Members would receive representations by email by close of business on the day prior to the committee meeting allowing Members to read and consider all representations prior to the committee meeting.
- Those wishing to make verbal representations that may have missed the deadline for this or have not been allocated a speaking slot on the preceding working day still have the option to make final/additional representations in writing.

##### *Option 3 – Deadline at 12.00 two working days prior to the committee meeting (to align with current public speaking deadline)*

- Would allow for time for assessment of late representations and circulation to members by email and hard copy.
- Members would have representations by email prior to the weekend prior to the committee meeting allowing Members to read all representations together prior to the committee meeting.
- Those wishing to make verbal representations that may have missed the deadline or have not been allocated a speaking slot would no longer have the 'fall back' option to make final/additional representations in writing. This may lead to more requests for acceptance of late representations on an exceptional basis after the deadline.

- 4.3 Of the options set out above it is recommended that Option 2 is pursued. This approach strikes an appropriate balance between enabling Members to read and consider late representations prior to the committee meeting and ensuring that the rights of interested parties to make representations and respond to the content of the committee report are not compromised.
- 4.4 Crucially, the preferred option affords those persons who have missed the deadline to verbally address the Sub-Committee or where a person has not been allocated a public speaking slot (i.e. where these limited slots are oversubscribed) the opportunity to make additional/final representations in writing.
- 4.5 In addition to careful consideration of the timing of the deadline for late representation, as set out in paragraph 4.4, to ensure that a deadline does not prejudice the ability of the committee to consider representations that raise genuinely new material planning considerations that are not included in the committee report, it is recommended that the Committee Procedure Rules include a chair's discretion to accept late representations after the deadline in exceptional circumstances. It is recommended that the discretion would be exercised in consultation with the Presiding Officer and the Solicitor to the Council who would be on hand to advise the Chair whether the late representation does or does not raise new material planning considerations. It will be the responsibility of the Presiding Officer to advise the commentator of the chair's decision regarding whether to accept their representation.

*Diagram 1 – Existing deadlines for committee meetings, including recommended deadline for late representations (outlined in red).*



- 4.6 Existing arrangements for circulation of the committee agenda and report, the initial batch of late representations (faced with a blue cover sheet and known as 'Additional Representations') and the deadline for public speaking would remain unchanged. Diagram 1 above identifies the various existing deadlines and shows how and where the recommended late representations deadline would fit into the pre-Sub-Committee meeting period. Hard copies of the late representations, which will have been circulated to the Members of the Sub-Committee electronically the working day prior to the meeting under the proposed arrangements, will continue to be provided at the Sub-Committee meeting.

## **5. Financial Implications**

5.1 None.

## **6. Legal Implications**

- 6.1 Subject to the provisions set out in Section 4, to ensure those unable to make verbal representations have the option to make additional/final written representations and to enable the chair to exercise discretion in exceptional circumstances, the proposals would not prejudice those who wish to comment on planning applications that are reported to the Planning Applications Sub-Committees.
- 6.2 The introduction of the new deadline for late representations will be clearly identified on the Council's website to ensure all interested parties are aware of its introduction.

## **7. Conclusion**

- 7.1 The recommended option for introducing a deadline for late representations is considered to strike an appropriate balance between enabling the Sub-Committee to fully consider all representations received, whilst maintaining the opportunity for interested parties to make late representations in response to the committee report and other new material planning considerations that may arise following the publication of the committee report. Members are invited to consider the preferred approach and make recommendations where they consider it could be enhanced. Subject to the resolution of the committee, it is expected that the updated procedure for late representations can be introduced by the end of 2022.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact: Oliver Gibson (ogibson@westminster.gov.uk / 07971026919)**

## **Background Papers:**

1. None.



**City of Westminster**

## Planning & City Development Committee

**Date: 26 October 2022**

**Classification: General Release**

**Title: Update on Partial City Plan Review**

**Report of: Director of Policy and Projects**

**Financial Summary: The resourcing of the Partial Review to the City Plan will be met from existing budgets, and where there is a financial risk should the scope of the review be expanded, from corporate funding or reserves.**

**Report Author and Contact Details: Kimberley West ([kwest@westminster.gov.uk](mailto:kwest@westminster.gov.uk))**

### **1. Executive Summary**

- 1.1 This report provides an overview of the Partial Review to the City Plan which was launched on 7<sup>th</sup> October, running to 18<sup>th</sup> November 2022. It explains the scope of the review and role of the Planning and City Development Committee in the preparation of the Plan.

### **2. Recommendation**

- 2.1 Members are asked to note the content of this report.

### **3. Scope of the partial City Plan review**

- 3.1 The City Plan 2019-2040 was adopted in April 2021 and work on a new Site Allocations Development Plan Document began shortly thereafter. Once adopted, the Site Allocations Development Plan Document would have equal weight to the City Plan. Rather than provide 'thematic' policies as per the City Plan, it would provide site specific guidance on how key named development sites that can help meet our housing and commercial growth targets, and need for supporting infrastructure, should be developed. It would likely include guidance on what types of land use are supported, how much new floorspace we think a site can reasonably accommodate, and design considerations such as how the development should respond to the townscape and heritage value of the surrounding area.
- 3.2 Following a change in political administration in May 2022, the Council has a new vision for the city as set out in the Fairer Westminster Strategy. To better align with key commitments set out in the Strategy regarding affordable housing delivery and responding to the climate change emergency, a partial review of the City Plan to

address these issues as a priority, and to incorporate Site Allocations, has been agreed.

3.3 The first stage in this revision, known as a Regulation 18 consultation, sets out a statement on the scope of the revision to the City Plan and invites comment from stakeholders (including landowners, developers, amenity societies, neighbourhood forums, and statutory consultation bodies such as the Mayor of London, neighbouring boroughs, the Environment Agency, Historic England and Natural England) on what the content of those policies should be.

3.4 Undertaking a review of a local plan is a time and resource intensive activity. If it included a wider scope than that proposed (i.e. revisiting additional policies), it would result in a considerable delay in adopting the new policies, their application and ultimately in the meantime have an impact on development decisions. Given the current City Plan was only adopted last year, it was decided in agreement with the Cabinet Member for Planning and Economic Development to focus the partial review only on those policies which are not considered fit for purpose in the context of the Fairer Westminster Strategy. Therefore, the scope of the review is as follows:

**1. Updates to Policy 9 on affordable housing to deliver more affordable housing**

Our policy currently seeks a greater proportion of intermediate (60%) compared to social (40%) housing, but we want to explore options to redress this balance with the objective of delivering a greater quantity of affordable housing as social, particularly on public land if it is shown to be viable.

In order to meet the high affordable housing challenge the City faces we also want to explore options and viability implications of requiring affordable housing from small sites below the current size thresholds set out in adopted Policy 9.

**2. A new policy prioritising retrofit and refurbishment of existing buildings where appropriate**

We acknowledge that sometimes demolition is the only route and although there are higher embodied carbon costs associated with this route initially, it may derive larger carbon savings in the future, along with wider social and economic benefits. But we want to achieve a better balance between sustainability and growth and have a more effective tool to assess whether the social and economic benefits outweigh the environmental cost of demolition and subsequent contribution development makes to climate change.

**3. The inclusion of Site Allocations to guide the development of key sites that make a significant contribution to growth targets and other policy objectives**

Incorporating Site Allocations into the City Plan Partial Review offers cost and time efficiencies over progressing as a separate document, given that it will remove the need for separate consultation activities, examination and evidence base. It also ensures this important work in helping shape how key sites are developed, and providing greater certainty to developers and our communities, is not delayed until after the City Plan Partial Review is complete.

3.5 For the reasons explained above, the Regulation 18 consultation asks for views, evidence and ideas on these policy areas only – it does not invite comment on other aspects of the adopted plan which are not within the scope of the review.



## **4. Next steps and engagement with PCD**

### **4.1 To publicise consultation on the City Plan Partial Review**

- A dedicated web page ([City Plan consultation | Westminster City Council](#)) explaining what we are doing and why, has been set up, with a direct link from the Council's homepage;
- All consultees on the Council's planning policy database (which includes landowners, developers, amenity societies, neighbourhood forums, and statutory consultation bodies such as the Mayor of London, neighbouring boroughs, the Environment Agency, Historic England and Natural England) have been directly notified of the consultation;
- Engagement with other teams within the Council is ongoing throughout the consultation period; and
- Workshops/roundtable discussions are being arranged with neighbourhood forums and amenity societies, the development industry (Westminster Property Association), the Westminster Commission and Historic England.

### **4.2 Once the consultation has closed, the responses will be used to form or revise policy wording, based on any necessary evidence base which will be commissioned. The Council will use the period between Regulation 18 consultation and the formal Regulation 19 consultation (expected towards the end of 2023) for on-going engagement with stakeholders as policies evolve. This will likely take a range of formats including questionnaires, meetings, and workshops. This will help build consensus as the plan is progressed and before the next round of formal consultation (which would be the last opportunity for stakeholders to comment before independent examination).**

### **4.3 A detailed paper will be presented to the Planning and City Development Committee's March 2023 meeting with findings of the Regulation 18 consultation. The PCD Committee will be invited to comment on the proposed direction of travel for the policies within the scope of the partial review, taking into account results of the consultation and emerging findings of any evidence which has been commissioned by this date.**

## **5. Financial Implications**

### **5.1 The costs associated with the preparation of the City Plan revision, including commissioning of evidence base and public examination are to be met from the existing Policy and Projects planning policy budget. However, risks are involved should the scope of the plan review be expanded following pressure through consultation responses to include a greater number of policies, which will require commissioning of relevant evidence base and a longer examination - leading to greater Planning Inspectorate costs. In the event of this cost rising in excess of the planning policy budget, additional funding will be sought corporately or from reserves.**

## **6. Legal Implications**

### **6.1 Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires local planning authorities to notify stakeholders of its intention to prepare a local plan and invite representation from them. The publication of the Regulation 18 Statement and launch of consultation satisfies this regulation. Section 26 of the Planning and Compulsory**

Purchase Act 2004 requires that revisions to development plan documents (DPDs) go through the same statutory procedures as new DPDs.

- 6.2 Legal officers have reviewed this report and are satisfied that all legal requirements have been met to date.

## **7.1 Equalities Impacts**

- 7.1 Under the Planning and Compulsory Purchase Act 2004 regulations, a Sustainability Appraisal (SA) - including a Strategic Environmental Assessment (SEA) - prepared in accordance with the Strategic Environmental Assessment Directive EC/2001/42, is required for all Development Plan Documents. This stipulates that all local plans and spatial development strategies must be informed through an appraisal which considers how specific economic, social and environmental objectives will be met.
- 7.2 To meet these requirements for the City Plan partial review, an Integrated Impact Assessment (IIA) will be prepared to assess the likely impact of draft policies on environment, sustainability, health and equalities. The IIA process is iterative, re-assessing policies as they evolve and informing policy decisions.
- 7.3 The equalities implications of the policies in the draft City Plan as they are developed will therefore be assessed as part of an Integrated Impact Assessment (IIA). This will assess whether draft policies will have a positive, neutral or negative impact on any of the groups with protected characteristics under the 2010 Act and the Public Sector Equalities Duty and make recommendations on policy wording as necessary.
- 7.4 Completion of the IIA is an iterative process, so the document will be kept updated as the plan proceeds through its consultation stages and on to examination, ensuring that any equalities issues that arise as modifications are made to the plan will be identified and can be considered.

## **8. Conclusion**

- 8.1 Members are asked to note the content of this report and are invited to submit their comments on the public consultation by the closing date of 18<sup>th</sup> November 2022.

<p><b>If you have any questions about this report, or wish to inspect one of the background papers, please contact: Kimberley West (<a href="mailto:kwest@westminster.gov.uk">kwest@westminster.gov.uk</a>).</b></p>
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### **Background Papers:**

[Cabinet Member Report](#)

[Regulation 18 Statement](#)