

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 19 April 2022	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved West End	
Subject of Report	Audley Square, London W1		
Proposal	Erection of a plinth and public art sculpture, and associated works within Audley Square.		
Agent	DP9		
On behalf of	CAUDWELL PROPERTIES (109) LIMITED		
Registered Number	21/08677/FULL	Date amended/ completed	7 January 2022
Date Application Received	17 December 2021		
Historic Building Grade	Unlisted		
Conservation Area	Mayfair		

1. RECOMMENDATION

<p>1(i) Does the Sub-Committee consider that the additional information submitted and the results of the public consultation exercise address the concerns previously expressed?</p> <p>(ii) If so, grant conditional permission subject to completion of a S106 unilateral undertaking to secure the following:</p> <ol style="list-style-type: none"> a) Lighting of the public art, b) the proposed structural support for the public art, c) a maintenance programme for the public art, d) public liability insurance for the public art, e) the proviso that the Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction, f) the cost of monitoring the agreement, g) costs of the stopping-up process; and h) a commuted sum of £50,000 for maintenance of the public art <p>2. If the S106 unilateral undertaking has not been completed within six weeks then:</p> <ol style="list-style-type: none"> a) The Director of Place Shaping and Town Planning shall consider whether it would be possible and appropriate to issue the permission with additional conditions attached to secure the benefits listed above. If so, the Director of Place Shaping and Town Planning is authorised to determine and issue such a decision under Delegated Powers; however, if not;

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

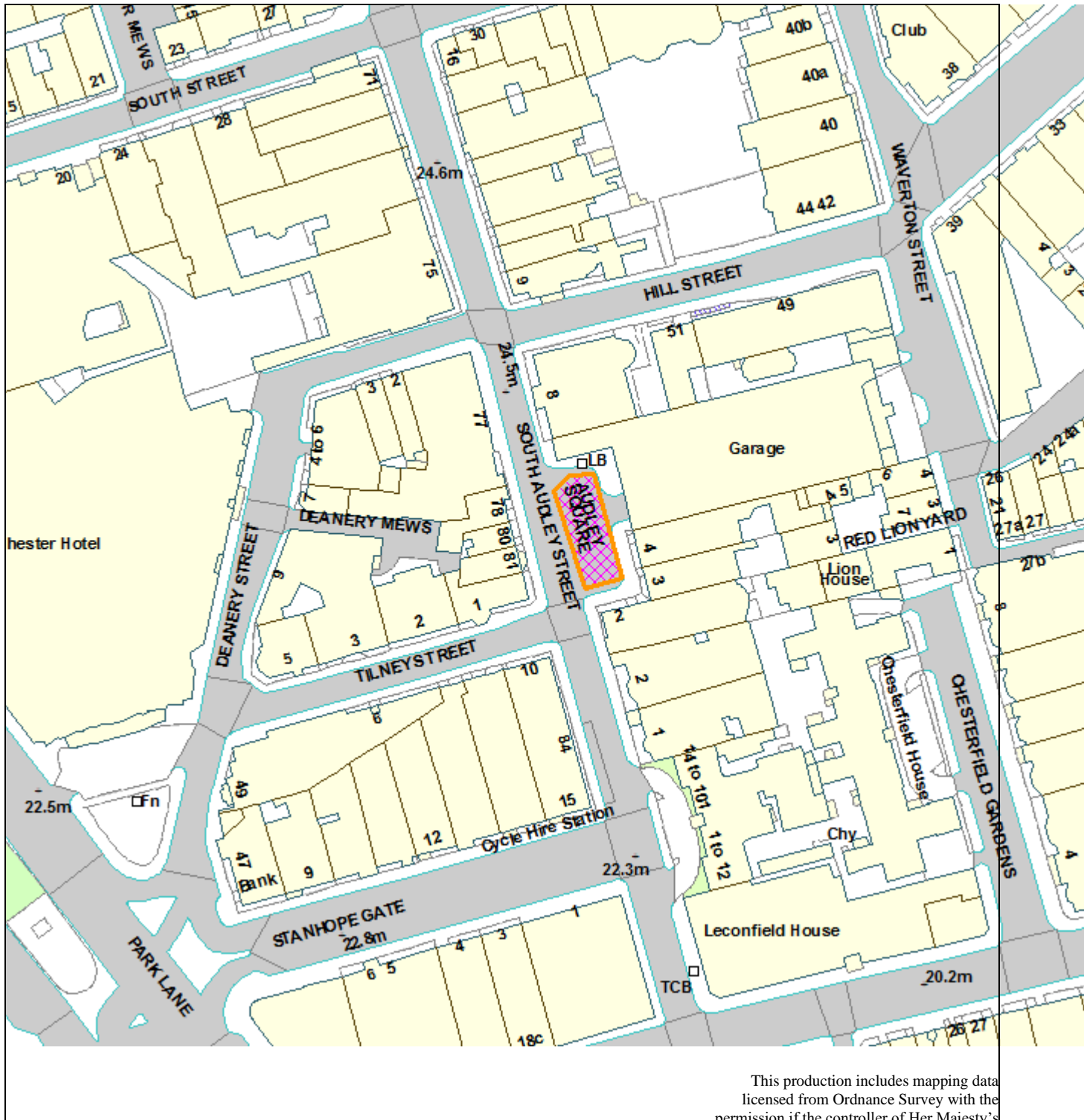
2. SUMMARY

Permission was granted in March 2016 for redevelopment of the Audley Square Garage site. Work is underway building out this development.

A proposal for the public art in Audley Square, pursuant to Condition 2 of the planning permission, was reported to the Planning Applications Sub-Committee (1) on 28 August 2018. Having considered the proposal, the decision was deferred for the applicant to consider alternative designs which are more in keeping with the area.

The current application is for planning permission because the proposed artwork would fall outside of the application site of the main application for the redevelopment of the garage. The design of the public art is the same as that considered by the Planning Applications Sub-Committee (1) on 28 August 2018 but is submitted with additional justification and following a public consultation exercise.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

RESIDENTS' SOCIETY OF MAYFAIR & ST. JAMES'S:

Any comments to be reported verbally

MAYFAIR RESIDENTS' GROUP:

Any comments to be reported verbally

HIGHWAYS PLANNING MANAGER:

Objection. See section 8.4 below.

ARBORICULTURAL SECTION:

Any comments to be reported verbally

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 19

Total No. of replies: 4

No. of objections: 0

No. in support: 4

SITE NOTICE:

Yes.

6. BACKGROUND INFORMATION

6.1 The Application Site

Audley Square is in the Mayfair Conservation Area towards to the southern end of South Audley Street opposite its junction with Tilney Street. Buildings on the south side of the square and one building on the east side are grade II listed, and there are grade II listed buildings on the west side. The application site is in front of a new development forming the northern and most of the eastern sides of the square. It comprises public highway.

6.2 Recent Relevant History

15/02197/FULL

Demolition of existing buildings (with the exception of 4 Red Lion Yard which is to be retained with external alterations) and the erection of new building of eight/nine storeys (plus lower ground floor and four basement levels) to provide 30 residential units with swimming pool and gymnasium, creation of roof terraces, car parking and cycle parking; vehicular access from Waverton Street; hard and soft landscaping; and plant at roof level.

Application Permitted 9 March 2016

18/00303/NMA

Amendments to planning permission dated 9 March 2016 (RN: 15/02197) for: Demolition of existing buildings (with the exception of 4 Red Lion Yard which is to be retained with

external alterations) and the erection of new building of eight/nine storeys (plus lower ground floor and four basement levels) to provide 30 residential units with swimming pool and gymnasium, creation of roof terraces, car parking and cycle parking; vehicular access from Waverton Street; hard and soft landscaping; and plant at roof level.

Namely, amend the wording of Condition 2 so that it refers to public art within Audley Square only. Revised condition to read: You must apply to us for approval of detailed drawings of the following parts of the development - 1. Typical facade details at all levels, including roof; , 2. Public art on Audley Square. You must not start any work on these parts of the development until we have approved what you have sent us. You must then carry out the work according to these detailed drawings.

Application Permitted 24 January 2018

17/04129/ADFULL

Details of public art (sculpture) in Audley Square pursuant to condition 2 (part 2) (as amended by Non-Material Amendment 18/00303) of planning permission dated 9 March 2016 (RN: 15/02197/FULL).

No Further Action 26 November 2019

7. THE PROPOSAL

The application seeks permission for the erection of a plinth and public art sculpture, and associated works within Audley Square.

The submission of this application seeks the City Council's agreement in respect to the location and detail of the public art secured under Schedule 1 paragraph 6.1 of the legal agreement (dated 9 March 2016) which states, *"The Owner undertakes that the Public Art shall be provided and displayed in a prominent location at the Development or such other position agreed in writing with the City Council acting reasonably as an integral part of the Development and the detail of the Public Art shall be submitted by the Owner to and approved by the City Council acting reasonably before Occupation of the Development"*.

8. DETAILED CONSIDERATIONS

8.1 Land Use

No floorspace is proposed and therefore the proposal raises no land use issues.

8.2 Townscape and Design

The site is in the Mayfair Conservation Area and within the setting of listed buildings on the south and west sides of Audley Square.

The key legislative requirements in respect to designated heritage assets are as follows:

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building*

or its setting or any features of special architectural or historic interest which it possesses.”

Section 72 of the same Act requires, *“In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*

Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

Audley Square is in the Mayfair Conservation Area towards to the southern end of South Audley Street opposite its junction with Tilney Street. Buildings on the south side of the square and one building on the east side are grade II listed, and there are grade II listed buildings on the west side. The application site is in front of a new development forming the northern and most of the eastern sides of the square. It is designed with classical detailing that will restore an appropriate architectural character to Audley Square and to this part of the Mayfair Conservation Area. In this context a similar approach to the artwork’s design, also grounded in the classical tradition, is appropriate.

The design considered by Sub-Committee(1) in 2018 is the same as currently proposed, namely *'The Spirit of Mayfair'* (previously, *'The Spirit of Fashionable Mayfair'*) comprising a group of three fictional figures depicting icons of fashion, style, and elegance, cast in bronze. This sculpture celebrates the beginning of fashionable endeavour and enterprise in eighteenth century Mayfair. This accords with the broad aims of Mayfair Neighbourhood Plan where policy MPR1(b) seeks to create attractive streetscapes, including public art in connection with major new developments, and this is in conformity with City Plan policy 43E.

The proposed artwork stands upon a plinth which includes tree planting/greening within the enhanced Audley Square public realm. The sculptor is Philip Jackson who is a renowned artist responsible for many high-profile works.

In response to comments from the Sub-Committee, the applicant's team undertook a full review of the proposal. It is stated that the work of a wide variety of well-established artists forming a robust portfolio of images and general information regarding artists' genres, use of materials, experience in the provision of public art, national and international reputation was considered. There followed an in-depth discussion as to whether there was any evidence that an alternative artist would produce a better solution to public art for Audley Square that meets with the client's expectations and requirements. After careful consideration, the applicant concluded that the proposal by Philip Jackson presented best solution to public art for Audley Square with both the context and history of the immediate setting and wider Mayfair area in mind.

In May 2020, the Applicant appointed Kanda Consulting, a specialist public consultation company, to undertake a pre-application community consultation. A series of targeted

public engagement activities took place to present the proposed public art and public realm, as a series of virtual presentations, to the key local stakeholders. This gave them the opportunity to meet with representatives of the project team to discuss and leave their feedback on the proposals. Responses to the consultation were broadly positive.

As confirmed in relation to the previous application, the applicant is willing to maintain the public art in perpetuity and a maintenance agreement can be secured to ensure the public art is the responsibility of the applicant and not the council. The agreement will also need to secure the removal of the public art with associated works of making good above ground level, and the re-instatement of the paving, to match adjoining areas, should the maintenance regime fail. There would also have to be public liability insurance associated with the artwork.

There have been letters received strongly supporting of the application, including from the University Women's Club at 2 Audley Square, and from the architects of the garage redevelopment (A.M.Stern Architects).

It is considered that the public art is acceptable in design and conservation terms subject to securing an appropriate unilateral undertaking having regard to policies 38, 39, 40, and 43 of the City Plan 2019-2040 and policies MPR and MD of the Mayfair Neighbourhood Plan; For these reasons, the proposal is considered to be compliant with the requirements of the NPPF and the statutory duties of the Town and Country Planning Act 1990, and the Planning (Listed Buildings and Conservation Areas) Act 1990.

8.3 Residential Amenity

The proposal raises no amenity concerns.

8.4 Transportation/Parking

The Highways Planning Manager maintains his objection from before, namely that the public art will be on the public highway and may cause an obstruction to pedestrians. Concerns are also raised about the design and height of the public art, which may encourage members of the public to climb it. Consequently, the proposed public art could have a significantly adverse impact on highway users who engage with it in an unintended but foreseeable way, as well as being a safety hazard within the highway.

Previously, the Sub-Committee did not object to the proposed public art on these grounds.

It is not proposed that the public art be transferred into the City Council's ownership. In order to ensure that the public art will not fetter the City Council's ability to properly exercise its functions as the Highways Authority, a unilateral undertaking will ensure that the City Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction.

Finally, the detailed design of the alterations to the public highway to allow this public art to be placed in the location proposed have not yet been agreed. There is therefore no

guarantee that the final design of the public highway will be able to accommodate the proposed public art. The public art will need the approval of the Highways Authority to be placed upon the public highway. This is separate from the planning process. If granted permission, this decision would not fetter the City Council's decision as the Highways Authority as to whether or not to allow the art to be placed upon the public highway.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size.

8.6 Access

The proposed sculpture is sited in the public realm and may be seen from surrounding pavements and from the island area on which it is situated.

8.7 Other City Plan/Westminster Policy Considerations

None

8.8 Westminster City Plan

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and the Mayfair Neighbourhood Plan (adopted December 2019) (see further details in Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

8.9 Neighbourhood Plans

The Mayfair Neighbourhood Plan includes policies on a range of matters including character, heritage, community uses, retail, offices, housing, cultural uses, transport and the environment. It has been through independent examination and supported at referendum on 31 October 2019, and therefore now forms part of Westminster's statutory development plan. It will be used alongside the council's own planning documents and the Mayor's London Plan in determining planning applications in the Mayfair Neighbourhood Area. Where any matters relevant to the application subject of this report are directly affected by the policies contained within the neighbourhood plan, these are discussed elsewhere in this report.

8.10 London Plan

This application raises no strategic issues.

8.11 National Policy/Guidance Considerations

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are considered to be consistent with the NPPF 2021 unless stated otherwise.

8.12 Planning Obligations

The draft 'Heads' of agreement are proposed to cover the following issues:

- a. Lighting of the public art,
- b. the proposed structural support for the public art,
- c. a maintenance programme for the public art,
- d. public liability insurance for the public art,
- e. the proviso that the Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction,
- f. the cost of monitoring the agreement,
- g. costs of the stopping-up process; and
- h. a commuted sum of £50,000 for maintenance of the public art

8.13 Environmental Impact Assessment

Not applicable

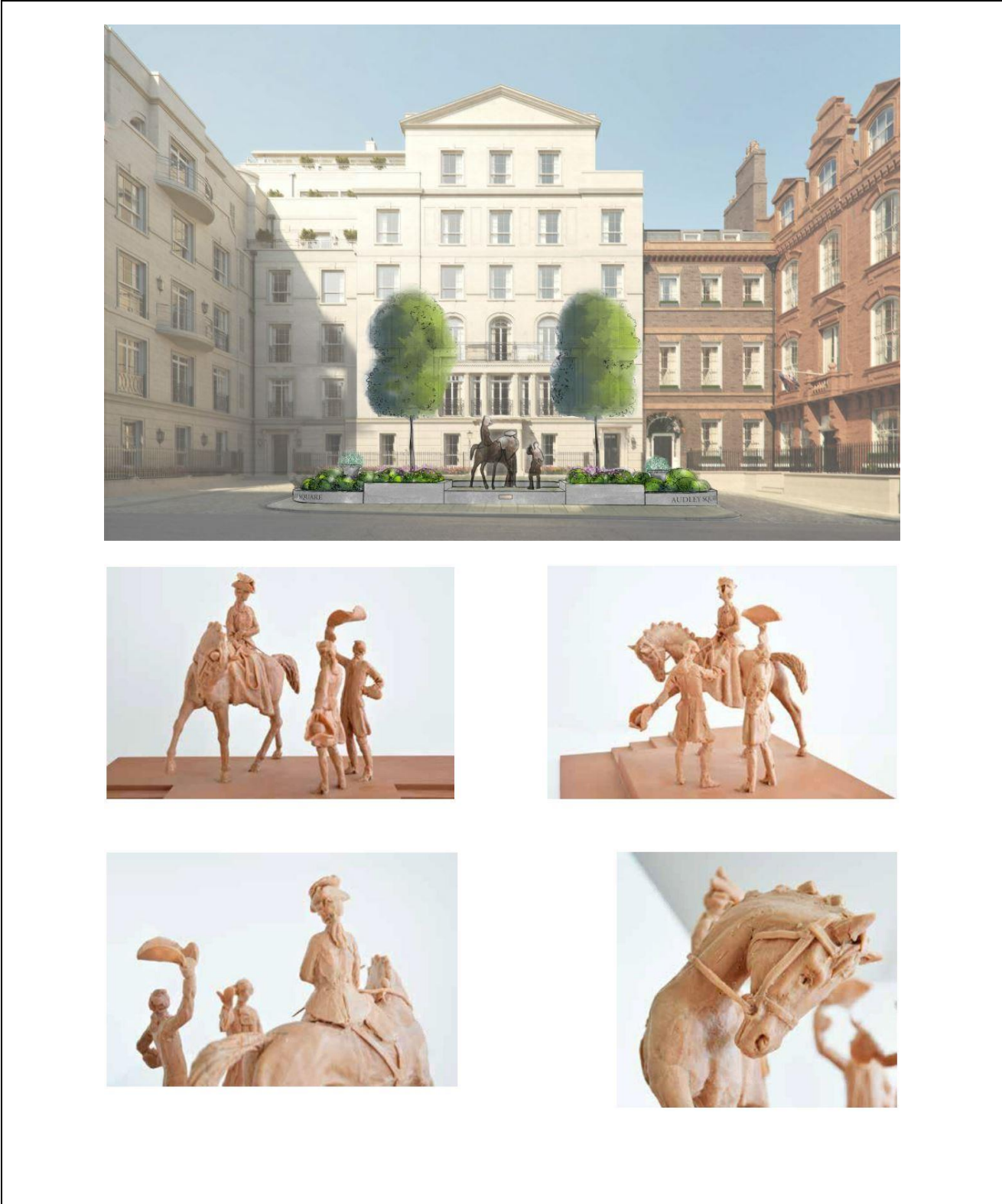
8.14 Other Issues

None

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT, PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT mhollington2@westminster.gov.uk

9. KEY DRAWINGS



DRAFT DECISION LETTER**Address:** Audley Square, London W1**Proposal:** Erection of a plinth and public art sculpture, and associated works within Audley Square.**Reference:** 21/08677/FULL**Plan Nos:** ASH-EPR-ZZ-ZZ-DR-A-89-5000 Rev P01; ASH-EPR-ZZ-WE-DR-A-89-5002 Rev P01; ASH-EPR-ZZ-SE-DR-A-89-5003 Rev P01; 2217-11-01 Rev X; 2217-13-02 Rev F.**Case Officer:** Matthew Pendleton**Direct Tel. No.** 07866 039923**Recommended Condition(s) and Reason(s)**

1	The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.
2	<p>Reason: For the avoidance of doubt and in the interests of proper planning.</p> <p>Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:</p> <ul style="list-style-type: none"> o between 08.00 and 18.00 Monday to Friday; o between 08.00 and 13.00 on Saturday; and o not at all on Sundays, bank holidays and public holidays. <p>You must carry out piling, excavation and demolition work only:</p> <ul style="list-style-type: none"> o between 08.00 and 18.00 Monday to Friday; and o not at all on Saturdays, Sundays, bank holidays and public holidays. <p>Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)</p> <p>Reason: To protect the environment of neighbouring occupiers. This is as set out in Policies 7 and</p>

33 of the City Plan 2019 - 2040 (April 2021). (R11AD)

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You need to speak to our Highways section about any work which will affect public roads. This includes new pavement crossovers, removal of redundant crossovers, changes in threshold levels, changes to on-street parking arrangements, and work which will affect pavement vaults. You will have to pay all administration, design, supervision and other costs of the work. We will carry out any work which affects the highway. When considering the desired timing of highway works in relation to your own development programme please bear in mind that, under the Traffic Management Act 2004, all works on the highway require a permit, and (depending on the length of the highway works) up to three months advance notice may need to be given. For more advice, please email AskHighways@westminster.gov.uk. However, please note that if any part of your proposals would require the removal or relocation of an on-street parking bay, this is unlikely to be approved by the City Council (as highway authority).
- 3 Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice and to apply online please visit www.westminster.gov.uk/suspensions-dispensations-and-skips.
- 4 All new installations will need to be endowed with either a regular revenue stream or a commuted sum so that the new work can be properly maintained in perpetuity. The amount of the endowment depends on the complexity of the piece and the attention it will need. Prior to the commencement of development, the applicant will need to ensure they have all necessary approvals. The applicant will need technical approval for the works to the highway (supporting structure) prior to commencement of development. The applicant should contact Louisa Augustine (laugustine@westminster.gov.uk) in Westminster Highways Infrastructure and Public Realm to progress the applicant for works to the highway.

Item No.

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Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.