



Appeal Decision

Inquiry held 28 November to 1 December 2022

Unaccompanied site visit made on 1 December 2022

by Matthew Nunn BA BPI LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2023

Appeal Ref: APP/X5990/W/22/3304054

Kilmuir House, Ebury Street, London SW1W 8TH

- 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 Kilmuir House (UK) Ltd against the decision of the Council of the City of Westminster.
- The application Ref 20/1346/FULL, dated 21 February 2020, was refused by notice dated 27 June 2022.
- The development proposed is described as 'demolition of existing buildings and erection of a new building of basement, lower ground, ground and six upper floors and plant at rooftop level to provide residential floorspace (Class C3), flexible retail floorspace (Class A1/A2/A3/A4), disabled car parking and associated landscaping works.'

Decision

1. The appeal is allowed and planning permission granted for the demolition of existing buildings and erection of a new building of basement, lower ground, ground and six upper floors and plant at rooftop level to provide residential floorspace (Class C3), flexible retail floorspace (Class A1/A2/A3/A4), disabled car parking and associated landscaping works at Kilmuir House, Ebury Street, London SW1W 8TH, in accordance with the terms of the application Ref 20/1346/FULL, dated 21 February 2020, subject to the conditions in the attached schedule.

Procedural Matters

2. Following comments of the Health and Safety Executive (HSE) on fire safety, some very minor amendments have been made to the internal design of the scheme. It is agreed that it would not be prejudicial to any party to allow the substitution of certain relevant plans. I have proceeded on this basis.
3. The appeal scheme was originally recommended for approval by Council officers subject to conditions and the completion of a legal agreement¹, but refused by the relevant Council Committee. The single reason for refusal related to inadequate provision of affordable housing² with an alleged breach of Policies H4 and H5 of the London Plan (2021), and Policy 9 of the Westminster City Plan (2022), as well as the Mayor's Supplementary Planning Guidance on Affordable Housing and Viability³ ('Affordable Housing SPG').

¹ Committee Report [CD 2.1]

² Decision notice [CD 2.2]

³ Supplementary Planning Guidance on Affordable Housing and Viability dated August 2017 [CD 6.7]

4. On the second day of the Inquiry, under cross-examination, the Council withdrew its sole reason for refusal. It is now the Council's position that there is no breach of planning policy and that permission should be granted. For completeness, I set out below why permission should be granted for the scheme. The only outstanding matter remaining between the parties relates to the Review Mechanism in the planning obligation.
5. At the Inquiry, the appellant initially indicated that it was likely to apply for costs. However, it was subsequently confirmed that no application for costs would be pursued. An important factor in that decision was that the appellant's wish to maintain a positive working relationship with the Council.
6. As agreed with the parties, I undertook my site visit unaccompanied.

Reasons

7. The proposal is to redevelop a brick built residential block fronting Ebury Street, with side elevations to Eaton Terrace and South Eaton Place. The block includes a commercial unit and a Public House at ground floor level. The appeal site also includes a three-storey end-of-terrace property fronting South Eaton Place (Nos 60-64). I understand all these structures were built following bomb damage sustained in the Second World War. The new scheme will provide 60 residential units with flexible retail floorspace at ground floor level.
8. Policy H4 of the London Plan sets the strategic London-wide target of 50% affordable housing and requires major development that triggers affordable housing policy to provide it according to the threshold approach identified in Policy H5. This policy offers either a 'fast track' route or a 'viability tested' route for developers. To follow the 'fast track' route, applications must amongst other things, meet or exceed the relevant level of affordable housing on site without public subsidy. In this case, the scheme does not achieve this and consequently the 'viability tested route' applies. Policy H5(F) requires developers to set out the viability of the scheme in a standardised and accessible format as part of the application. Policy H5(G) requires the viability assessment to ascertain the maximum level of affordable housing transparently and in line with the Mayor's Affordable Housing SPG.
9. Policy 9 of the Westminster City Plan includes a target of 35% of affordable housing across Westminster, and the supporting text (Paragraph 9.1) notes that developments which fall short of this requirement will be subject to viability assessment and review in line with the 'Viability Tested Route' as part of the threshold approach to planning applications set out in the London Plan. Viability evidence should be submitted in a standardised and accessible format in accordance with London Plan requirements. Therefore, other than the different headline target provision, the policy approach is essentially the same in both the London Plan and Westminster City Plan.
10. Paragraph 3.10 of the Affordable Housing SPG states that applicants should demonstrate that their proposal is deliverable and that their approach to viability is realistic. It states that appraisals would normally be expected to indicate that the scheme does not generate a deficit, and that the target profit and benchmark land value can be achieved with the level of planning obligations provided. If an appraisal shows a deficit position the applicant should demonstrate how the scheme is deliverable. This approach is to

safeguard against permission being granted for schemes that have no realistic prospect of being built.

11. In this instance, the appeal scheme shows a deficit of over £8 million⁴ although it is not argued that the scheme would not be delivered. However, it follows that in terms of the relevant policy and guidance, the scheme cannot provide any affordable housing. The Council's witness accepted this proposition and accordingly acknowledged the scheme was compliant with Policies H4 and H5 of the London Plan, and Policy 9 of the Westminster City Plan, having been viability tested according to the Affordable Housing SPG. This notwithstanding, the appellant is offering 4 affordable units as a 'planning benefit'. As the appellant notes, this is 4 more units than currently exist on the site.
12. The Council's viability advice at planning application stage was that certain design choices (including the design of the basement and second car lift) had been made which unnecessarily inflated the costs of the scheme. That said, the viability advice was not that permission should be refused, but that any permission should be granted with both early and late-stage reviews included. The officer's Committee Report reflected that advice. At the Inquiry, the evidence appeared to show that even with certain notional costs savings achieved by re-designing the scheme, it would still not record anything close to a surplus. A key reason is the high Benchmark Land Value of the site⁵ which acts as a major obstacle to the provision of affordable housing.
13. Overall, having regard to the evidence before me, and taking account of the Council's withdrawal of the sole reason for refusal, I am satisfied there would be no breach of planning policy as set out in the London Plan or Westminster City Plan in terms of affordable housing.

Other Matters

14. The Council has raised no objections to the design of the scheme. The existing Kilmuir House is a somewhat stark and plain 1950s block detailed in brick, rising to nine storeys, with a series of projecting balconies and modern UPVC windows. It is not of any particular architectural merit, and the Council does not object to its loss. The terrace building fronting South Eaton Place, also constructed in the 1950s, is Neo-Georgian in style, and replicates the design of the original terraces in the street. However, its demolition and redevelopment had already been permitted by the Council.
15. The site is adjacent to, but outside the Belgravia Conservation Area, and there are some Grade II listed buildings nearby. The Council has undertaken a careful analysis of the scheme and its effects on the adjacent Conservation Area⁶ and nearby listed buildings, and it concluded that the proposals are acceptable in design terms and sympathetic to the surrounding locality. Indeed, the Council found the proposed design to be of 'high quality' and that would 'respond sensitively' to the townscape context⁷. Overall, the Council found that the scheme would not cause harm to the setting of the adjacent Conservation Area, nor to nearby listed buildings. The Council concluded there would be no breach of statutory duties in relation to heritage assets⁸. I see no

⁴ Appellant's Closing Submissions, Paragraph 22 [ID 9]

⁵ In excess of £50 million

⁶ Section 9.4 of the Committee Report [CD 2.1]

⁷ Section 10: Conclusion, Committee Report [CD 2.1]

⁸ Planning (Listed Building and Conservation Areas) Act 1990, s66 & s72

reason take a different view on these matters. Whilst the loss of trees was regarded as regrettable by the Council, it has not concluded that the loss would amount to a breach of Policy 34(H), and provision for replacement planting, including funding, is covered in the planning obligation.

16. The Council carried out a careful and thorough analysis in its Committee Report⁹ on the likely impact on nearby properties affected by the proposal in terms of daylight and sunlight. The Committee Report considered effects on the block of flats on Ebury Street opposite the site; other properties in Ebury Street, properties in South Eaton Place and Eaton Terrace. Daylight and Sunlight testing using the methodology in the BRE Guidance¹⁰ was undertaken and a Daylight and Sunlight Report submitted by the appellant¹¹. It was noted that certain properties would experience some losses in daylight and sunlight beyond the BRE guidelines, but that the effect overall was not sufficiently serious to warrant refusal of permission. The Daylight and Sunlight Report also noted that in densely built-up urban environments, alterations to daylight and sunlight to neighbouring properties can occur. It also noted that the BRE Guidance should be interpreted flexibly, especially in areas with narrow streetscapes, where higher degrees of obstruction may be unavoidable.
17. The Council concluded overall that there would be no unacceptable impacts on the living conditions at neighbouring properties in terms of loss of privacy, daylight or sunlight. Whilst the Council acknowledged that some properties could experience a greater sense of enclosure as a consequence of the increased overall bulk the new building, the effect was not significant enough to warrant refusal of permission. Again, after carefully considering these matters, I see no reason to take a contrary view.
18. The Council has agreed that various other matters that have been raised do not give rise to objection. It is agreed that the homes to be provided are not excessively sized and comply with relevant policy; that the scheme does not breach policies aimed at the 'optimisation' of the site¹²; and that the provision of private amenity space and balconies complies with Westminster City Plan Policy 12 (Housing Quality).
19. In terms of play space, it is accepted that on-site provision would be impossible, but that a financial contribution to the improvement of nearby open space is acceptable, secured by the planning obligation. The Council raises no highway objections, including in terms of impacts on South Eaton Place. No objections are raised in relation to the loss of the public house. I see no reason to take a different view on any of these points.
20. I give full weight to the findings in the Council's Committee Report on all these matters, noting no reason for refusal was advanced by the Council in respect of any of them.

Planning Obligation

21. A planning obligation has been completed dated 13 January 2023, signed by the Council and the appellant, along with a number of other relevant land interests. Although I understand there are some pending applications in

⁹ Section 9.5 of the Committee Report [CD 2.1]

¹⁰ Building Research Establishment (BRE): Site Layout for Daylight and Sunlight (2011)

¹¹ Daylight and Sunlight Report, GIA, dated 1 February 2020 [CD 1.9]

¹² Policy D3 of the London Plan

respect of certain of the Land Registry Titles relating to the obligation, both the appellant and Council agree that these do not affect the enforceability of the obligation. I see no reason reach a different view.

22. Although much is agreed within the obligation, a number of points of disagreement have arisen between the parties in terms of definitions in the Review Mechanism. This mechanism is to assess whether any market changes post permission could result in the scheme supporting the delivery of more affordable homes. At issue is how 'application build costs' and 'build costs' should be defined in respect of the Viability Review. Two alternative options have been identified. Put simply, 'Option A' - the appellant's preferred approach, proposes a much wider definition of what constitute 'build costs' - and includes for example professional fees, marketing and letting, s106 fees and finance costs. Option B, on the other hand, favoured by the Council proposes a narrower definition, namely that 'build costs' should comprise solely pure build costs.
23. The Council's approach essentially follows that set out in the Affordable Housing SPG. The approach to 'Build costs' is set out at out Paragraphs 3.21 to 3.25, with 'Professional Fees, Marketing and Finance Costs' and 'Planning Obligations and CIL' considered separately at Paragraphs 3.26 to 3.27, and 3.28 to 3.31 respectively. The SPG does not advocate the appellant's approach of conflating these items. They are identified as distinct categories of costs to be considered separately.
24. The appellant's argument for a wider definition of build costs seems to be based on recent 'turbulent market conditions' which are said have worsened since April 2022¹³, with rising base rates having a significant impact. The appellant argues that the suggested cost inclusions are directly connected with the build costs and can be dramatically affected by market conditions. A significant increase in such additional costs can affect whether a scheme creates a surplus, and failure to take these into account can give rise to a misleading result. Consequently, there is a risk of a request by the Council to contribute more money to affordable housing where a very large deficit is actually accrued. It is said that such turbulent market conditions were not envisaged when the Mayor's Affordable Housing SPG was originally drafted.
25. Much time could be spent debating these matters. I accept the point that the Mayor's SPG is not mandatory and should not be applied rigidly or without regard to the specific circumstances of the scheme. That said, it is not entirely clear why this scheme warrants a different approach to that outlined in the SPG. For example, the Council has cited other recent examples where the standard SPG approach has been used, including the Millbank Tower¹⁴. On the evidence before me, there is nothing especially unusual in this appeal scheme compared with other cited examples to warrant a substantially different approach. The Council has already accepted that 'third party costs' in this case should be included in the 'build costs', thereby showing a flexible approach.
26. Moreover, there is also a danger that appellant's approach, by widening the matters to be considered, risks verging towards something almost akin to a full viability re-appraisal. The Planning Practice Guidance notes that 'as the potential risk to developers is already accounted for in the assumptions for

¹³ Appellant's Closing Submissions, Paragraph 33 [ID 9]

¹⁴ Paragraph 5.15 of Proof of Anna Booth

developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism'. It continues that 'review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project'.¹⁵

27. The appellant refers to the 'Lodge Road appeal'¹⁶ in support of its position, where it is highlighted that the associated planning obligation adopted a wider definition of costs, to include professional fees, finance and marketing costs. I have little knowledge of the precise details of that appeal, and whether the cost definitions within that planning obligation were at issue between the parties. The discussion at that appeal appears to have centred more around whether, amongst other things, 'extra care' housing generated a requirement to deliver affordable housing, rather than how build costs in the obligation should be defined. Whatever the position, it is clear that the scheme and circumstances in that case were different and do not provide a precedent for this case.
28. Overall, I see no reason in this case to depart from the general approach advocated within the Affordable Housing SPG which clearly disaggregates pure 'build costs' from an array of other costs. The SPG ensures a simplicity and consistency in approach across London which is an important consideration. Additionally, such an approach is easier to administer, and provides less areas for dispute, using easily verifiable data. The appellant's approach could require time consuming reviews of multiple invoices, with details of the work or service, with a justification of why they should be included, with protracted discussions to reach agreement. I therefore conclude that for Build Costs and Application Build Costs, the Council's preferred approach should be used, namely 'Option B'.
29. There is also disagreement as regards to what constitutes 'substantial implementation'. The appellant's preference is completion of ground enabling works and foundations for the basement floor – Option A; whereas the Council's preferred approach is completion of all ground enabling works and construction up to and including first floor slab level – Option B. There was little detailed discussion on this point at the Inquiry, with limited evidence from the Council justifying its preferred position. It seems to me that works comprising ground preparation, site-wide enabling works and completion of the foundations for the basement floor clearly indicate a large financial commitment in terms of the project. This is, in my view, sufficient to demonstrate substantial implementation of the scheme, and to show it is actively being taken forward. On this point, I prefer 'Option A'.
30. At the Inquiry, there was disagreement between the appellant and Council as to the quantum of payment in lieu if the affordable housing were not to be taken by a registered provider. It was originally intended that this aspect would be dealt with via a Unilateral Undertaking (UU). However, this amount has now been agreed between the parties and is incorporated into the main obligation, negating the need for a separate UU.
31. Aside from the above issues above, the obligation contains the following: the provision of 4 affordable housing units; an affordable housing contribution (£6,176,000) payable in the event that the affordable housing units are not

¹⁵ PPG Paragraph Ref ID: 10-009-20190509

¹⁶ ID 4

taken up by a registered provider; a carbon offset contribution (£166,208); a car club for residents; a car lift maintenance and management plan; a car parking strategy; a contribution towards on-street electric charging and low emission infrastructure (£50,000); a contribution towards initiatives providing employment, training and skills (£51,404.31); various highway works including removal of redundant vehicles crossovers, creation of new crossovers, relocation of on-street parking spaces, changes to on-street restrictions; a contribution towards play space (£61,825); replacement tree planting contribution (£50,000); costs towards Stopping Up Order; and monitoring costs.

32. I have no reason to believe that the formulas and charges used by the Council to calculate the contributions and provisions of the planning obligation are other than soundly based. The Council has produced a Statement of Compliance¹⁷ with the Community Infrastructure Levy (CIL) Regulations¹⁸. I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the National Planning Policy Framework ('the Framework')¹⁹ and CIL Regulations. I have taken the planning obligation into account in my deliberations.

Planning Balance and Overall Conclusions

33. The relevant legislation requires that the appeal be determined in accordance with the development plan, unless material considerations indicate otherwise²⁰. In this case, the Council no longer pursues its single reason for refusal, and raises no objections to the scheme. It has been demonstrated through viability testing that the scheme cannot meet the relevant threshold level of affordable housing sought by policies in the London Plan and Westminster City Plan. Consequently, there would be no conflict with Policies H4 or H5 of the London Plan, nor with Policy 9 of the Westminster City Plan.
34. As previously noted, the scheme includes 4 affordable units. This is 4 more than currently exist on the site, and 4 more than policy can require, given the scheme shows a deficit. The provision of these affordable units is clearly a benefit of the scheme, and carries significant weight, especially given the pressing need for affordable housing across London. The scheme would be of high quality and employ a varied and attractive palette of materials. It would preserve the character of the adjacent Conservation Area, as well as the setting of nearby listed buildings. It would incorporate sustainable measures through construction, minimising energy use and carbon emissions, including the use of air source heat pumps and photovoltaic panels. There would be no unacceptable impacts on living conditions at neighbouring properties.
35. To sum up, and as accepted by the Council, the proposal would accord with the development plan. In these circumstances, the Framework is clear that development should be approved without delay²¹. Accordingly, I conclude that the appeal should be allowed subject to conditions.

¹⁷ ID6

¹⁸ Regulation 122

¹⁹ Paragraph 57

²⁰ Section 38(6) of the Planning and Compulsory Purchase Act 2004 & Section 70(2) of the Town and Country Planning Act 1990

²¹ Paragraph 11(c)

Conditions

36. I have reviewed the agreed list of suggested conditions in the light of the discussions at the Inquiry and advice in the Planning Practice Guidance. The Framework is clear that conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects²².
37. There was some discussion about the format and language of the suggested conditions. The Council has moved towards a more accessible and simpler style of condition using 'plain English'. Given that it will be for the Council to enforce the conditions, and the appellant had no objection to their format, I see little point in rewording them to a more conventional style²³. Therefore, I have largely left them untouched, except for rewording phrases such as 'you must apply to us' as in this instance the decision is not issued by the Council. The numbers in brackets relate to the conditions in the schedule.
38. A commencement condition is necessary to comply with the relevant legislation (1). A condition requiring compliance with the approved plans is necessary for certainty and to ensure a satisfactory form of development (2). Conditions restricting hours of construction and requiring compliance with a Code of Construction Practice are necessary to minimise disturbance to local residents (3, 4). Conditions relating to approval of external materials, including glazing, doors, railings and balustrades are necessary to ensure a high quality environment (5, 6, 7). Conditions restricting placing of equipment or paraphernalia (except as shown on the approved drawings) on the roof or balconies of the building are necessary to protect the character and appearance of the area (8, 9). A condition is necessary to ensure items of archaeological interest are adequately dealt with (10).
39. A condition is required to ensure a sustainable and energy efficient form of development (11). Conditions restricting the uses of the commercial unit and specifying when customers can visit are necessary to secure an acceptable form of development, and to protect the living conditions at nearby residential properties (12, 13). Various conditions are required relating to the commercial unit to protect the living conditions of neighbouring residents, especially in terms of noise and disturbance (14, 15, 16, 17). Conditions relating to design, structure, insulation and ventilation of the building, and requiring compliance with specific noise criteria, are necessary to ensure future residents are protected from noise and vibration (18, 19, 20, 21, 22, 23, 24, 25). Conditions relating to waste storage and servicing, including recycling, are required to ensure the provision of such facilities (26, 27, 28). A condition requiring approval of a servicing management plan is needed to avoid blockages on the surrounding streets (29).
40. A condition specifying that all doors and gates should not open across the road or pavement is necessary in the interests of public safety and to avoid road blockages (30). Conditions relating to cycle parking are required to encourage sustainable forms of transport (31, 32). A condition requiring the provision of electric vehicle charging points is required to ensure a sustainable form of development (33). Conditions are necessary to ensure appropriate and safe provision of vehicle parking within the development (34, 35, 36). Conditions

²² Paragraph 56

²³ This was the approach taken in appeal APP/X5990/W/21/3275399

relating to landscaping, soil profiles and biodiversity features are necessary to ensure a high quality scheme and to encourage biodiversity (37, 38, 39). A condition requiring a site investigation is necessary to make sure that any contamination is identified and treated, so as not to harm anyone using the site in the future (40).

41. A condition requiring a 'Circular Economy Statement and Operational Waste Management Strategy' is required in the interests of sustainable waste management and to maximise re-use of materials (41). A condition requiring approval of design and method statements for any works potentially affecting London Underground infrastructure is necessary to ensure these assets are fully protected (42). A condition requiring approval of a specification for construction materials which demonstrates that opportunities have been taken to minimise embodied carbon is necessary to ensure an environmentally sustainable form of development (43).
42. A number of conditions relate to pre-commencement activities. In each case, the requirement of the condition is fundamental to make the scheme acceptable in planning terms. Subject to the imposition of these conditions, I conclude that the appeal should be allowed.

Matthew Nunn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Rupert Warren of King's Counsel

He called

James Brierley Viability

FOR THE COUNCIL

Hashi Mohamed of Counsel

He called

Anna Booth Viability

Max Leonardo Planning

In addition to the appearances above, the following participated in the round table discussions in relation to planning obligations and conditions. For the Council: Louise Metson (Solicitor); and for the appellant: Jed Holloway (Solicitor); Jonathan Marginson (planning).

INQUIRY DOCUMENTS

1. Appellant's Opening Statement
2. Council's Opening Statement
3. Council's list of appearances
4. Appeal decision APP/X5990/W/19/3229842 ('Lodge Road')
5. Draft planning obligation
6. CIL Compliance Statement
7. Appeal decision APP/X5990/W/21/3275399 ('Wilton Road')
8. Council's closing submissions
9. Appellant's closing submissions

Schedule of Conditions

- 1) The development shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1627-PP-Z1-99-DR-A-01-204; 1627-PP-Z1-00-DR-A-01-205; 1627-PP-Z1-01-DR-A-01-206; 1627-PP-Z1-02-DR-A-01-207; 1627-PP-Z1-97-DR-A-10-097/3; 1627-PP-Z1-98-DR-A-10-098/5; 1627-PP-Z1-99-DR-A-10-099/6; 1627-PP-Z1-00-DR-A-10-100/8; 1627-PP-Z1-01-DR-A-10-101/2; 1627-PP-Z1-02-DR-A-10-102/2; 1627-PP-Z1-03-DR-A-10-103/2; 1627-PP-Z1-04-DR-A-10-104/2; 1627-PP-Z1-05-DR-A-10-105/2; 1627-PP-Z1-06-DR-A-10-106/2; 1627-PP-Z1-07-DR-A-10-107/2; 1627-PP-Z1-07-DR-A-10-108/2; 1627-PP-Z1-XX-DR-A-11-200; 1627-PP-Z1-XX-DR-A-11-201/1; 1627-PP-Z1-XX-DR-A-11-202; 1627-PP-Z1-XX-DR-A-12-101/02; 1627-PP-Z1-XX-DR-A-12-102/02; 1627-PP-Z1-XX-DR-A-15-1001/2; 1627-PP-Z1-XX-DR-A-15-1002/2; 1627-PP-Z1-XX-DR-A-15-1003/1; 1627-PP-Z1-XX-DR-A-15-1004/1; 1627-PP-Z1-XX-DR-A-15-1005/1; 1627-PP-Z1-XX-DR-A-15-1006/1; 1627-PP-Z1-XX-DR-A-15-1007/1; 1627-PP-Z1-XX-DR-A-15-1008/1; 1627-PP-Z1-XX-DR-A-15-1009/1; 1627-PP-Z1-XX-DR-A-15-1010/2; 1627-PP-Z1-XX-DR-A-15-1011/1; 1627-PP-Z1-XX-DR-A-15-1012/2; 1627-PP-Z1-XX-DR-A-15-1013/1; 1627-PP-Z1-XX-DR-A-15-1014/1; 1627-PP-Z1-XX-DR-A-15-1015/1; 1627-PP-Z1-XX-DR-A-15-1016/1; 1627-PP-Z1-XX-DR-A-15-1017/1; 1627-PP-Z1-XX-DR-A-15-1018/1; 1627-PP-Z1-XX-DR-A-15-1019/1; 1627-PP-Z1-XX-DR-A-15-1020; 1627-PP-Z1-XX-DR-A-15-1021; 1627-PP-Z1-XX-DR-A-21-1001; and 1627-PP-Z1-XX-DR-A-21-1002.
- 3) 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: between 08.00hrs and 18.00hrs Monday to Friday; between 08.00hrs and 13.00hrs on Saturday; and not at all on Sundays, bank holidays and public holidays. You must carry out piling, excavation and demolition work only: between 08.00hrs and 18.00hrs Monday to Friday; and not at all on Saturdays, Sundays, bank holidays and public holidays. 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).
- 4) Prior to the commencement of any: demolition, and/or earthworks/piling and/or construction on site, you must apply to the local planning authority for written approval of evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the Council's Code of Construction Practice. Such evidence must take the form of the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the

City Council as local planning authority has issued its written approval through submission of details prior to each stage of commencement.

- 5) You must apply to the local planning authority for approval of samples and specifications of the facing materials you will use, including glazing, and elevations and roof plans annotated to show where the materials are to be located. You must not start work on the relevant part of the development until it is approved in writing by the local planning authority. You must then carry out the work using the approved materials.
- 6) You must apply to the local planning authority for approval of a sample panel of brickwork, built on site, which shows the colour, texture, face bond and pointing. You must not start work on this part of the development until the details have been approved by the local planning authority. You must then carry out the work according to the approved sample.
- 7) You must apply to the local planning authority for approval of detailed drawings (scale 1:20 and 1:5) of the following parts of the development: (i) Railings and balustrades; (ii) external doors and windows; (iii) vehicle entrances. You must not start any work on these parts of the development until the details have been approved by the local planning authority. You must then carry out the work according to these details.
- 8) You must not put any machinery or associated equipment, ducts, tanks, satellite or radio aerials on the roof, except those shown on the approved drawings.
- 9) You must not put structures such as canopies, fences, loggias, trellises or satellite or radio antennae on any balcony.
- 10) Excepting works of demolition of the existing buildings to ground floor level, no development shall take place until a written scheme of archaeological investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development (excepting works of demolition of the existing buildings to ground floor level) shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and: (A) The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works; (B) The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 11) You must provide, maintain and retain the following energy efficiency measures before you start to use any part of the development, as set out

in your application: Photovoltaic Panels and Air Source Heat Pumps. You must not remove any of these features.

- 12) The commercial unit at ground floor level shall only be used for the following purposes: (i) for the display or retail sale of goods, other than hot food, principally to visiting members of the public; (ii) financial and professional services; (iii) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises; and/or (iv) public houses, wine bars or other drinking establishments (but not nightclubs) including drinking establishments with expanded food provision. You must not use the unit for any other purpose, including any within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended September 2020) (or any equivalent class in any order that may replace it).
- 13) Customers shall not be permitted within the commercial unit at ground floor level before 07.00hrs or after 23.30hrs each day.
- 14) You must apply to the local planning authority for approval of a management plan for the commercial unit at ground floor level if it is occupied for either restaurant or bar use, to include operating procedures, numbers of staff and customers and to show how you will prevent customers who are leaving the building from causing nuisance for people in the area, including people who live in nearby buildings. You must not start the restaurant or bar use until the management plan has been approved in writing by the local planning authority. You must then carry out the measures included in the approved management plan at all times that the restaurant or bar is in use.
- 15) No music shall be played in the commercial unit at ground floor level such as to be audible outside the premises to the nearest noise sensitive residential receptor.
- 16) If the commercial unit at ground floor level is used for either restaurant or bar use you must apply to the local planning authority for approval of details of the ventilation system to get rid of cooking smells, including details of how it will be built and how it will look. You must not begin the restaurant or bar use allowed by this permission until you have carried out the work according to the approved details.

If a recirculation system is to be used, all equipment within the premises shall operate by electricity only and not by gas or solid fuels such as coal or wood. Following installation of a recirculation system, you must submit a further report to include: (i) A schedule of all plant and equipment installed; (ii) Details of monitoring devices interlocked with the electric cooking equipment, such that cooking is only enabled when all parts of the system are operating; (iii) Proof that the breakout noise in the working environment in the kitchen is not exceeding 55dB (A); Details of the whole ventilation scheme in the kitchen that maintains an ambient temperature

of not more than 25 centigrade whilst cooking equipment is operating;
(iv) Details of service and filter replacement and maintenance arrangements.

- 17) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the commercial units hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.

Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within the use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.

Following completion of the development, you may apply in writing to the local planning authority for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report including a proposed fixed noise level for written approval by the local planning authority. Your submission of a noise report must include: (a) The location of most affected noise sensitive receptor location and the most affected window of it; (b) Distances between the application premises and receptor locations and any mitigating features that may attenuate the sound level received at the most affected receptor location; (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey is to be conducted in conformity with BS 7445 (Description & Management of Environmental Noise) in respect of measurement methodology and procedures; (d) The lowest existing LA90, 15 mins measurement recorded under (c) above; (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition; (f) The proposed maximum noise level to be emitted by the activity.

- 18) The design and structure of the building shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.
- 19) The design and structure of the building shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night. Inside bedrooms 45 dB L Amax is not to be exceeded more than 15 times per night-time from sources other than emergency sirens. The design of the separating wall and/or floor should be such that the received value in the residential habitable spaces, with music playing, should be 10 dB below that measure without music events taking place, at the quietest time of day and night, measured over a period of 5 minutes and in the indices of Leq & LFM_{ax} in the octave bands of 63 Hz & 125 Hz.
- 20) You must apply to the local planning authority for approval of sound insulation measures and a Noise Assessment Report to demonstrate that the sound insulation will be sufficient to protect the residential units from external noise and that the development will comply with the Council's noise criteria set out in the relevant conditions of this permission. You must not start work on this part of the development until the details have been approved in writing by the local planning authority. You must then carry out the work according to the details approved before the residential units are occupied and these measures must be retained for the lifetime of the development.
- 21) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the local planning authority. The background level should be expressed in terms of the lowest LA₉₀, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqT_m, and shall be representative of the plant operating at its maximum.
- (2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise

level is approved in writing by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the local planning authority for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for written approval by the local planning authority. Your submission of a noise report must include: (a) A schedule of all plant and equipment that formed part of this application; (b) Locations of the plant and machinery and associated ducting, attenuation and damping equipment; (c) Manufacturer specifications of sound emissions in octave or third octave detail; (d) The location of most affected noise sensitive receptor location and the most affected window of it; (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location; (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate; this acoustic survey is to be conducted in conformity to BS 7445 (Description & Measurement of Environmental Noise) in respect of measurement methodology and procedures; (g) The lowest existing LA90, 15 mins measurement recorded under (f) above; (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition; (i) The proposed maximum noise level to be emitted by the plant and equipment.

- 22) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 23) You must apply to the local planning authority for approval of detailed drawings of the design, construction and insulation of the whole ventilation system and any associated equipment. The system shall ensure: (1) A system of air quality filtration is installed and or inlets are positioned so that that they are drawing air of a sufficient quality so that the National Air Quality Objectives and WHO guideline levels for Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{10/2.5}) are not exceeded within the properties. (2) The mechanical ventilation is designed in compliance with the current Technical Memorandum produced by the Chartered Institute of Building Services Engineers (CIBSE) to prevent overheating when the windows are closed. You must not start on these parts of the work until the local

planning authority has approved the details in writing. You must then carry out the work according to the approved drawings.

- 24) You must apply to the local planning authority for approval of details of a supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in the relevant conditions of this permission. You must not start work on this part of the development until the local planning authority has approved the details in writing.
- 25) The emergency plant and generators hereby approved shall only be used for the purpose of public safety and life critical systems and shall not be used for backup equipment for commercial uses such as Short Term Operating Reserve (STOR). The emergency plant and generators shall be operated at all times in accordance with the following criteria: (1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the LA90, 15 mins over the testing period) by more than 10 dB one metre outside any premises. (2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required in an emergency situation. (3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00hrs to 17.00hrs Monday to Friday and not at all on public holidays.
- 26) Before anyone moves into the property, you must provide the separate stores for waste and materials for recycling shown on drawing number *1627-PP-Z1-98-DR-A-10-098/5* and *1627-PP- Z1-00-DR-A-10-100/8* prior to occupation and thereafter you must permanently retain them for the storage of waste and recycling. You must clearly mark them and make them available at all times to everyone using the building.
- 27) No waste shall be left or stored on the public highway by occupiers of the development.
- 28) Waste Servicing must be carried out in accordance with the Waste Management Strategy dated February 2022 and drawing number 3017002/A/11A.
- 29) You must apply to the local planning authority for approval of a Servicing Management Plan prior to occupation of the development. The plan should identify process, internal storage locations, scheduling of deliveries and staffing arrangements, as well as how vehicle size will be managed. You must not occupy the development until the details have been approved. The Servicing Management Plan must thereafter be maintained and followed by the occupants for the life of the development, unless otherwise agreed in writing by the local planning authority.
- 30) You must hang all doors or gates so that they do not open over or across the road or pavement.

- 31) You must provide each cycle parking space shown on the approved drawings prior to occupation of the development. Thereafter the cycle spaces must be retained and the space used for no other purpose.
- 32) You must apply to the local planning authority for approval of details of short term cycle parking (minimum 2 additional spaces) and one long term cycle parking space for the commercial unit. You must not start any work on this part of the development until the details have been approved in writing by the local planning authority. You must then provide the cycle storage in line with the approved details prior to occupation and make it available at all times. The cycle storage shall not be used for any other purpose.
- 33) All car parking spaces shall have electric vehicular charging points.
- 34) The car parking shall only be used by disabled residents/white badge holders living in the residential part of this development. You must provide a minimum of two car parking spaces shown on the approved drawings prior to occupation of the development and thereafter permanently retain them.
- 35) You must apply to the local planning authority for approval of details of the following parts of the development: (1) The detailed design of the vehicle entrance and exit and adjoining walls to ensure adequate visibility splays can be achieved to other highway users, including pedestrians; (2) A vehicle signalling system for the car parking. You must not start any work on these parts of the development until the details have been approved by local planning authority. You must then carry out the work according to these details and maintain them for the lifetime of the development.
- 36) South Eaton Place shall be used for exiting vehicles only.
- 37) You must apply to the local planning authority for approval of detailed drawings of a hard and soft landscaping scheme which includes the number, size, species and position of trees and shrubs. You must not start work on the relevant part of the development until the local planning authority has approved the details in writing. You must then carry out the landscaping and planting within one year of completing the development (or within any other time limit agreed to in writing). If you remove any trees that are part of the approved planting scheme, or find that they are dying, severely damaged or diseased within three years of planting them, you must replace them with trees of a similar size and species.
- 38) You must apply to the local planning authority for details of the depth, specification and profile of the soil which you propose above the basement level, and on the podiums including details of the drainage layer and other components. You must not start any work on this part of the development

until the local planning authority has approved the details. You must then carry out the work according to the details approved.

- 39) You must apply to the local planning authority for approval of a management plan including details of biodiversity features, for all areas of soft landscaping, including the courtyard and terrace planting. You must not occupy the development until the local planning authority has approved the details. You must carry out this work according to the approved details and timetable, and thereafter retain and maintain these features in accordance with the approved management plan.
- 40) You must carry out a detailed site investigation to find out if the building or land are contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated Land Guidance for Developers submitting planning applications' - produced by Westminster City Council in January 2018. You must apply to the local planning authority for approval of the following investigation reports. You must apply to the local planning authority and receive written approval for Phase 1 prior to any above ground demolition work; for Phases 2 and 3 prior to any ground works commencing (excluding demolition); and for Phase 4 when the development has been completed but before its occupied.

Phase 1: Desktop study - full site history and environmental information from the public records. Phase 2: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property. Phase 3: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution. Phase 4: Validation report - summarises the action you have taken during the development and what action you will take in the future, if appropriate.

- 41) Prior to the commencement of the development, you must apply to the local planning authority for approval of a detailed Circular Economy Statement and Operational Waste Management Strategy in line with the Greater London Authority's Circular Economy Statement Guidance (March 2022). The development shall be carried out in accordance with the details so approved.
- 42) Prior to the commencement of the development, you must apply to the local planning authority, in consultation with London Underground, for approval of detailed design and method statements for each stage of the development, including the demolition, foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent). These must provide details on all structures, showing proximity to London Underground's assets; accommodate the location of the existing London Underground structures

and tunnels; accommodate ground movement arising from the construction to sufficiently demonstrate that safe operation of the railway can be maintained during the course of the construction works and mitigate the effects of noise and vibration arising from the adjoining operations within the structures and tunnels. The development shall thereafter be carried out in complete accordance with the approved design and method statements before any part of the building hereby permitted is occupied.

- 43) You must apply to the local planning authority for approval of a specification for all construction materials which demonstrates that all opportunities to minimise embodied carbon have been undertaken in accordance with the Whole Life Carbon and Circular Economy assessments, here approved or subsequently approved. You must not start any construction work until the details have been approved.