



Ministry of Housing,
Communities &
Local Government

DP9 Ltd
100 Pall Mall
London
SW1Y 5NQ

Our ref: APP/X5990/V/3301508
Your ref: 21/04502/FULL

5 December 2024

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY MARKS AND SPENCER PLC
456-472 OXFORD STREET, LONDON W1
APPLICATION REF: 21/04502/FULL**

This decision was made by the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC who held a public local Inquiry from 25 October to 4 November 2022 into your client's application for planning permission for demolition of the three existing buildings on site and for the construction of a 2-basement, ground plus 9 storey mixed use development (Use Class E) comprising retail, café/restaurant, office and gym as well as a new pedestrian arcade, public realm works and associated works, in accordance with application Ref. 21/04502/FULL, dated 30 June 2021.
2. On 20 June 2022, the previous Secretary of State, the Rt Hon Michael Gove MP, directed in pursuance of Section 77 of the Town and Country Planning Act 1990 that your client's application be referred to him instead of being dealt with by the local planning authority.
3. The previous Secretary of State issued his decision to refuse the above application by way of his letter dated 20 July 2023. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 1 March 2024. The application has therefore been redetermined by the Secretary of State. In redetermining the application, she has taken into account all of the evidence submitted prior to the earlier determination of the application, including the Inspector's report, and all other material representations received following the close of the Inquiry, including the High Court judgment and subsequent representations.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that permission should be granted.

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5. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and has decided to grant permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the Inquiry

6. Following the quashing of the previous Secretary of State's decision, on 13 March 2024 the previous Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of re-determination of the application. These matters were:
 - a) the progress of the City Plan Partial Review; and
 - b) any material change in circumstances, fact or policy, that may have arisen since his decision of 20 July 2023 was issued and which the parties consider to be material to the Secretary of State's further consideration of this planning application.
7. Alternatively, interested parties could ask for the Inquiry to be reopened. No party did so, and no party objected to the redetermination proceeding on the basis of written representations. Responses to the letter of 13 March 2024 and subsequent responses were recirculated to parties as set out in Annex A. On 5 September 2024 the Secretary of State informed parties that she was of the view that there were no substantive issues that required the Inquiry to be re-opened.
8. A number of matters have arisen since the previous decision. These are summarised below, along with the approach which the Secretary of State has taken to them.

Changes and emerging changes to national and local policy and guidance

- a) On 20 December 2023, a revised and updated version of the National Planning Policy Framework (the Framework) was published. The Secretary of State notes that revisions to paragraphs 88, 96, 128 and the heading of Chapter 12 of the Framework emphasise the importance of beautiful buildings and places.

The Secretary of State has taken these matters into account in reaching her decision. She notes that these changes were not raised by parties in their Rule 19 representations. She does not consider that the changes make a material difference to her decision, or that these matters raise any issues that would require her to refer back to the parties for further representations prior to reaching her decision, and she is satisfied that no interests have thereby been prejudiced.

- b) On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published. On that same date, the government launched a consultation on proposed reforms to the Framework and other changes to the planning system.

The Secretary of State has taken the WMS into account in her decision. She considers that the proposed reforms to the Framework and other changes to the planning system are material, but as they are subject to consultation and may be subject to change, she gives them no weight in the determination of this case.

- c) On 7 March 2024, Westminster City Council (WCC) adopted its updated Planning Obligations and Affordable Housing Supplementary Planning Document (SPD). A deed

of variation, dated 19 July 2024, to the s.106 planning obligation of 15 November 2022 was provided by the Applicant on 19 July 2024. This amends the Applicant's contributions in respect of the City Council's carbon offset fund and the Westminster Employment Service.

The Secretary of State has taken these matters into account in reaching her decision. She agrees with parties that the deed of variation amends the Applicant's contributions in respect of the City Council's carbon offset fund and the Westminster Employment Service to a policy-compliant level, in line with the requirements of this SPD.

d) On 14 March 2024 the draft City Plan Partial Review was published for consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012, until 25 April 2024.

The Secretary of State has taken this matter into account in reaching her decision, in particular emerging Policy 43. The weight attaching to the emerging plan is addressed at paragraph 14 below. The Applicant and SAVE disagree on whether the proposal is in conflict with emerging Policy 43, and the Secretary of State has addressed this at paragraph 49 below.

e) SAVE in its letters of 18 April and 22 October 2024 refers to new RICS Standards Framework Guidance: Whole Life Carbon Assessment (WLCA) for the built environment, 2nd edition. This came into effect on 1 July 2024.

M&S notes in its representation of 22 October 2024 that this guidance has not been adopted for development management purposes at a national, local or London level, and that the London Plan Guidance on WLCAs has not currently been revised to reflect this guidance. It therefore considers that the current WLCA Guidance is still the most appropriate basis of assessment for the proposals. SAVE notes in its representation of 22 October 2024 that RICS members are required to act in accordance with the updated RICS guidance, and also notes that it is referenced in the emerging UK Net Zero Carbon Buildings Standard (see paragraph 8(f) below). Given it is now in force, the Secretary of State considers that the updated RICS Standards Framework Guidance, 2nd edition, is a material consideration in this case, and she has taken it into account in reaching her decision. However, she further notes that the London Plan Guidance on WLCAs does not require a revised WLCA in light of the updated methodology, and that there are no transitional arrangements set out in the Standard itself. She therefore does not consider that M&S is required to provide an updated WLCA at this time. She further does not consider that the update to this Guidance changes her overall conclusions on whether reasonable alternatives have been considered (paragraph 31 below), or the carbon impacts of the proposal (paragraphs 40-52 below), and does not change her overall conclusion on this case.

f) SAVE in its letters of 18 April and 22 October 2024 refers to the emerging UK Net Zero Carbon Buildings Standard.

The Secretary of State notes that the Pilot of this Standard was launched on 24 September 2024. M&S states in its representation of 22 October 2024 that this is still in Pilot form and has not been subject to consultation or assessment. As this is still a Pilot and the Standard has not been adopted for development management purposes, the Secretary of State does not consider that M&S is required to provide any updated assessments in line with this Standard. She further does not consider that this Pilot changes her overall conclusions on whether reasonable alternatives have been considered (paragraph 31 below), or the

carbon impacts of the proposal (paragraphs 40-52 below), and does not change her overall conclusion on this case.

- g) SAVE in its letter of 18 April 2024 refers to a City of London Corporation draft Planning for Sustainability Supplementary Planning SPD which was issued for public consultation in March 2024.

The Secretary of State has noted SAVE's assertion in its letter of 18 April 2024 that this indicates a 'direction of travel'. However she considers that as an emerging draft SPD for a local planning authority which is unconnected with the current proposal, it is not material to the decision before her.

- h) M&S in its letter of 23 September 2024 refers to MHCLG's Statement of Intent, published on 16 September 2024, to set up a Mayoral Development Corporation (MDC) for Oxford Street.

The Secretary of State has taken this Statement of Intent into account in reaching her decision, although she gives it only limited weight in her consideration of the proposal. Her conclusions on matters relating to economic and regeneration aspects of the case are set out at paragraphs 35-39 and 53-60 below.

Changes to the application proposal

- i) In its letter of 19 April 2024, M&S proposes a fixed embodied carbon outturn, which would be achieved by an amendment to Condition 21.¹ On this basis M&S considers that the guaranteed Whole Life Carbon position (Modules A1-A5), would be 10% better than forecast at Inquiry.

While the Secretary of State notes the critique of the 10% figure and the adequacy of the amendment put forward by SAVE in its Rebuttal of the Arup Report and Pilbrow & Partners Documents of 23 September 2024, she considers there would be no prejudice to any party in considering the decision on the basis of this amended condition, and has proceeded to do so. She notes that the amended condition refers to the RICS Professional Standard version 1, and that as per paragraph 8(e) above, version 2 has now come in to force. As set out above, there are no transitional arrangements set out in the Standard itself. She also notes that paragraph 1.3 of the Standard version 2 states that it must be clear in the

¹ The Arup Report section 5.4 states that Draft Condition 21 provided in the Inspector's Report would be amended as follows to achieve this guaranteed reduction (amendment in bold text):

21 Prior to the Commencement of demolition, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA.

Prior to commencement of sub-structure works, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA. Changes to the assumptions which have a material impact on the results of the assessment, including carbon factors, should be clearly stated and justified.

In each case, the updated assessments shall set out the feasible scope for further whole lifecycle carbon reduction through the detailed design stage, including material selection and specification. **At the stage prior to commencement of sub-structure works, the updated Whole Life Carbon Assessment shall identify how 587 kgCO₂e/m² (modules A1-A5 of BS EN 15978 in accordance with the RICS PS v1) will be achieved.** The construction of the scheme shall be carried out in accordance with the Assessment approved prior to commencement of sub-structure works.

relevant report which standards are being adopted, and the reason for the departure from [the version 2] standard. Secretary of State considers this has been appropriately addressed. Her conclusions on the carbon impacts of the proposal are set out at paragraphs 40-52 below.

Court judgment

- j) On 1 March 2024, the judgment of Mrs Justice Lieven² was handed down, quashing the previous Secretary of State's decision on five grounds.

The Secretary of State has taken this judgment into account in her decision on this case, and has addressed it in the relevant sections below.

Updated evidence

- k) In its representation of 19 April 2024, M&S has provided a considerable quantity of updated evidence, covering a range of issues. This is itemised at Annex A.

The Secretary of State has noted SAVE's representations in its letters of 3 May and 23 September 2024 that much of this evidence goes beyond what was asked for in the letter of 13 March 2024 and as such should be disregarded in the Secretary of State's redetermination of the case. SAVE also state that it does not have the time or resources to review and comment substantively on the new reports, or call its own expert evidence in relation to their content, and does not have the opportunity to cross-examine on the evidence. The Secretary of State notes that further time was allowed for representations (her letter of 5 September 2024), that SAVE has made further representations relating to this material, and that SAVE did not seek to have the Inquiry re-opened. She does not consider it would be appropriate to take a blanket approach to the updated evidence. In each instance she has made a judgement as to whether the additional material is relevant, materially adds to or changes the case which was put forward at Inquiry, and should be taken into account. Her conclusions are set out in the relevant sections of this letter.

Other matters

- l) SAVE in its letters of 18 April and 21 August 2024 refers to re:store, a SAVE and Architects' Journal ideas competition for the M&S Oxford Street site, which launched in March 2024.

The Secretary of State notes the views put forward by M&S in its representation of 3 May 2024 that the terms of the competition do not include any requirement to consider viability or deliverability, or to meet the development plan requirements for the site, and that Applicants are only required to submit a single drawing or illustration along with their submission. She considers that this competition, which additionally has not yet concluded, does not provide any meaningful evidence on the viability, deliverability or appropriateness of an alternative to the M&S proposal, and gives it no weight.

- m) SAVE in its letters of 18 April and 21 August 2024 refers to refurbishment/conversions of the former DH Evans/House of Fraser store, the former Debenhams store, the former Top Shop store on Oxford Street, and Hesketh House. M&S in its letter of 19 April 2024

² Marks and Spencer plc v Secretary of State for Levelling Up, Housing and Communities and Westminster City Council and SAVE Britain's Heritage [2024] EWHC 452 (Admin)

(DP9 report) refers to the Secretary of State decision on the former London Television Centre on Upper Ground.

The Secretary of State considers that it has not been demonstrated that the facts in these cases, or other cases referred to by SAVE, including the developments referred to at IR13.68-69, are sufficiently similar to allow a meaningful comparison to be made with the M&S proposal, and notes that each case must be determined on its own merits.

Correspondence

n) A number of other representations have also been received since the previous decision. These are listed as 'general representations' in Annex A of this decision letter.

The Secretary of State is satisfied that the issues raised in these general representations do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters, as well as any post-Inquiry correspondence listed in Annex A of the original decision letter of 20 July 2023, may be obtained on request to the email address at the foot of the first page of this letter.

Policy and statutory considerations

9. In reaching her decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the London Plan (March 2021) and the Westminster City Plan 2019-2040 (April 2021). The Secretary of State considers that relevant development plan policies include those set out at IR3.2-3.11.
11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance ('the Guidance'), as well as those matters set out at IR3.12-3.22 and elsewhere in this decision letter.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. In respect of conservation areas (CAs), as only a small portion of the bridge at the end of 23 Orchard Street is partially located within the Portman Estate Conservation Area (IR2.15 and IR13.27), the Secretary of State has not applied section 72(1) of the LBCA Act in reaching her decision. She considers that even if she had applied section 72(1), it would not have changed her conclusions on the heritage impacts of the proposal, and would not have changed her overall decision.

Emerging plan

13. The emerging plan comprises a Partial Review of the Westminster City Plan. The draft City Plan Partial Review was published for consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 from 14 March 2024 to 25 April 2024. The Secretary of State considers that the emerging policies of

most relevance to this case include a new policy prioritising retrofit and refurbishment of existing buildings where appropriate (Policy 43) (IR3.20).

14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that WCC and SAVE consider that the emerging plan carries limited weight, while M&S is inconsistent on this point, stating in its representation of 19 April 2024 and Annex 1 of its representation of 23 September 2024 representation that it carries limited weight, but in its representation of 3 May 2024 and its letter of 23 September 2024 that it carries very little weight. Given the early stage of the Partial Review and these representations, the Secretary of State agrees with the Inspector at IR13.93 that the emerging development plan policies carry limited weight.

Main issues

Heritage

15. In reaching her conclusions on the heritage impacts of the proposal, the Secretary of State has taken into account the relevant parts of the Inspector's report, the High Court judgment which found the decision of 20 July 2023 to be lawful on heritage grounds, and the subsequent representations on heritage matters put forward by M&S and SAVE. The Secretary of State notes that there are no changes of fact or policy which affect heritage matters. She does not consider that the representations constitute a reason to reach a different conclusion on the matters set out below.

Designated heritage assets

16. The relevant designated heritage assets are listed at IR13.1(i). The Secretary of State agrees with the Inspector that there would be no direct effect on designated heritage assets (except nominally to the Portman Estate through demolition of the link building) and that any harm would be from the impact of the development on the significance, or appreciation, of these assets derived from their settings (IR13.2).
17. For the reasons given at IR13.3-5, 13.8-10 and IR13.18, the Secretary of State agrees that when viewed from the other side of Oxford Street and from North Audley Street, the height and appearance of the cornice of the proposed development would be prominent and distracting from the Selfridge's façade, especially when compared with the deferential appearance of Orchard House. She further agrees that from North Audley Street, the additional storeys of offices would be more apparent, and would add to this distraction (IR13.10). She considers that there would be a significantly detrimental impact on the setting of Selfridges. She considers that in terms of paragraph 208 (formerly 202) of the Framework there would be 'less than substantial' harm to the setting, and so to the significance, of Selfridges, and further considers that this harm would be at the upper end of the 'less than substantial' category.
18. The Secretary of State has considered the Inspector's reasoning in respect of harm to the settings of the Stratford Place, Mayfair and Portman Estate CAs (IR13.6, 13.8-10, 13.14-13.16 and IR13.18). She agrees with the Inspector at IR13.14 that the contribution setting makes to the significance of the Stratford Place CA is closely aligned with that which it makes to Selfridges, and for that reason she considers that the harm to the setting of the Stratford Place CA is also at the upper end of the 'less than substantial' category. Given

the impact identified at IR13.10 when viewed from North Audley Street, and noting at IR13.15 that the contribution to the setting of the Mayfair CA arises chiefly on account of views along North Audley Street, she considers that the harm to the setting of the Mayfair CA is in the middle of the 'less than substantial' category. She agrees with the Inspector at IR13.15 that there is a lower order of harmful impact on the setting of the Portman Estate CA, and considers that the harm is at the lower end of the 'less than substantial' category. For the reasons given at IR13.5 and IR13.10, she agrees that the replacement of Neale House and 23 Orchard House would have a neutral impact in respect of the impact on the settings of the designated heritage assets, and for the reasons given at IR13.12-13 and IR13.17, she further agrees that no harm would arise to 24-29 North Audley Street, 10 Portman Street or other designated heritage assets.

19. In reaching her conclusions, the Secretary of State has taken into account and applied the requirements of s.66 of the LBCA Act, and that a finding of harm to the setting of a listed building gives rise to a strong presumption against planning permission being granted (IR8.28). The Inspector considers that the harm to the setting of Selfridges, and the harm to the settings of the Stratford Place CA, the Mayfair CA and the Portman Estate CA, attract considerable importance and weight (IR13.79). However, as s.72(1) has not been applied in this case (see paragraph 12 above), the Secretary of State has addressed matters relating to designated heritage assets in terms of s.66 of the LBCA Act and paragraph 205 (formerly 199) of the Framework, which states 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). Given the significance of Selfridges, and her conclusions in paragraphs 17-18 above, the Secretary of State considers that the harm to designated heritage assets in this case carries very great weight. She does not agree with the Inspector's assessment that the harm to the setting and so to the significance of Selfridges, including with the additional harm to the settings of the CAs, carries only moderate weight (IR.13.11 and IR13.78).

Non-designated heritage asset (Orchard House)

20. The Secretary of State has carefully considered the Inspector's analysis of the non-designated heritage asset of Orchard House at IR13.19-13.26. While Orchard House was rejected for listing, this does not mean that it is without significance or merit, both on its own terms as a non-designated heritage asset and in terms of its contribution to the streetscape and the setting of Selfridges. The Secretary of State has had regard to the evidence put forward by Historic England (HE) in its consultation response of 26 October 2021 (CD4.04). HE stated that 'Orchard House is a prominent non-designated heritage asset which contributes positively to the settings of Selfridges and the historic retail character of Oxford Street', and that it 'possesses architectural and historic interest'. HE went on to state that 'Orchard House contributes positively to the setting of Selfridges, with which it has strong group value, owing to their stylistic similarities' and that 'Orchard House is understood as a near contemporary building of lesser status, promoting Selfridges' landmark quality and enabling an appreciation of its influence on later design. They share a similar structural and façade design (incorporating classical detailing, stone cladding and metal spandrel panels), in addition to a consistent roofline'. HE further stated that 'Historic England considers the proposed development to be a missed opportunity to retain, reuse and adapt the good quality elements of the site'. The Secretary of State agrees with this assessment. She notes that HE did not formally object to the proposal, and further notes HE's later decision of 10 November 2021 that Orchard House does not meet the criteria for listing. However she does not consider that those considerations undermine HE's assessment of the value and importance of Orchard

House as a non-designated heritage asset. The Secretary of State further notes that WCC share HE's view in respect of the merits of Orchard House in the context of Selfridges, finding that the height, massing and detailed design of Orchard House contributes positively to the setting of Selfridges and for the same reasons to the setting of the Stratford Place CA (IR8.6). She agrees with these assessments.

21. The Secretary of State considers that the context of the number of other listed classical Portland stone buildings in London (IR13.25) does not undermine the value of this building, in this location. She agrees with the Inspector that the colonnade along Orchard Street detracts from Orchard House's otherwise sympathetic elevation opposite that side of Selfridges (IR13.11) and that the alterations such as removal of balconies and statues have not been kind (IR13.21). The Secretary of State however agrees with SAVE's view that the upper floors have retained much of their architectural detailing and that the lost details are a more minor matter that do not detract from the building's fundamental merits (IR8.9). Overall she considers that, notwithstanding the alterations, Orchard House has significant value in its own right and in its context. She therefore differs from the Inspector at IR13.25 in considering that the harm that would be caused by its loss attracts substantial weight. In reaching this conclusion she has taken into account the loss of the internal staircase referenced in IR13.23-24, but has not attributed any additional weight to it.
22. The Secretary of State agrees for the reasons given at IR13.27-8 that there would be no harm to the settings of other non-designated heritage assets. For the reasons given at IR13.29, she agrees with the Inspector that the possibility of an Oxford Street CA carries limited weight against the proposal (IR13.92), and for the reasons given at IR13.72 and IR13.92-93, she agrees that the possibility of demolition of the existing building (without rebuilding) carries limited weight in favour of the proposal. The Secretary of State is content that if permission were to be granted and Orchard House demolished, the new development would proceed.

Heritage policies

23. In reaching her conclusions on the heritage impacts of the scheme, the Secretary of State has applied s.66 of the LBCA Act and the provisions of the Framework. She has found that in terms of paragraph 208 (formerly 202) of the Framework, the harm to the settings, and so the significance, of the designated heritage assets would fall into the 'less than substantial' category. In respect of Selfridges and the Stratford Place CA, she has found the harm would be at the upper end of that category; in respect of the Mayfair CA it would be in the middle of that category; and in respect of the Portman Estate CA it would be at the lower end of the category. Overall she has found at paragraph 19 above that the harm to the settings of, and significance of, the designated heritage assets carries very great weight. In line with paragraph 208 (formerly 202) of the Framework, the Secretary of State has weighed the harm in respect of designated heritage assets against the public benefits of the proposal. Her conclusions on this matter are set out at paragraph 69 below.
24. Paragraph 209 (formerly 203) of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. In this case the scale of the harm or loss would be at the highest level as, apart from the aspiration to reuse some materials and to replace a few decorations (IR13.19), Orchard House would be

completely lost. The Secretary of State has concluded at paragraphs 20-21 above that although Orchard House did not meet the listing criteria at the time it was considered for listing in 2021, it has significant value in its own right and in its context. She has attached substantial weight to its loss.

25. The Secretary of State has considered the application of paragraph 195 (formerly 189) of the Framework. Taking into account the 'less than substantial' harm to the setting of Selfridges and the CAs, and the total loss of Orchard House, she considers that the proposal would overall fail to conserve the heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. She notes that this policy is reflected in development plan policies HC1(C) and 39(B)(1).
26. The Secretary of State has considered whether the proposal is in accordance with the relevant development plan heritage policies. She does not agree with the approach taken by the Inspector where he concluded that the development plan heritage policies are consistent with the Framework and found that it therefore followed that the proposal accords with development plan heritage policies but if not, compliance with the Framework would have outweighed any conflict with the development plan (IR13.83). The Secretary of State considers that it is necessary to consider compliance with the development plan policies themselves and that the Inspector's approach does not reflect the statutory primacy of the development plan in suggesting that compliance with the Framework would outweigh development plan policy conflict.
27. The relevant policies are London Plan Policy HC1 and the Westminster City Plan Policy 39. The Secretary of State considers that the proposal is in accordance with some elements of the development plan heritage policies, relating to some public realm enhancements, replacement of Neale House and 3 Orchard Street, removal of the bridge over Portman Mews South, as well as contributing to the economic viability, accessibility and environmental quality of the place. However, she has identified harm to the setting of Selfridges and three CAs (paragraphs 16-18 above), and harm arising from the loss of the non-designated heritage asset of Orchard House (paragraphs 20-21 above). She notes that unlike in paragraph 208 (formerly 202) of the Framework, there is no provision in Policy HC1 or Policy 39 for heritage harm to designated assets to be outweighed by the public benefits of the proposal. She considers that the proposal gives rise to conflict with Policy 39(B)(1) and (B)(2), which deal with conservation of heritage assets and their continued beneficial use; partial conflict with Policy 39(R), which states among other things that non-designated heritage assets should be conserved; and partial conflict with Policy HC1(C), which states among other things that development should avoid harm to heritage assets.
28. Overall the Secretary of State considers that there is partial accordance and partial conflict with the relevant development plan policies on heritage, Policies HC1 and 39, and does not agree with the Inspector at IR13.83 that overall the scheme accords with these policies.

Whether there is a viable and deliverable alternative

29. The Secretary of State has gone on to consider the extent to which alternatives to demolition have been properly considered, and whether the benefits could be achieved with less harm. She agrees with the Inspector that the onus lies on the Applicant to demonstrate that refurbishment would not be deliverable or appropriate (IR13.61). She

also agrees with the Inspector that it is for the Applicant to show that it had considered all reasonable alternatives (IR13.65).

30. In reaching her conclusions on this matter, the Secretary of State has taken into account the findings of Mrs Justice Lieven, which are set out at paragraphs 59-77 of the judgment (Ground 2) and paragraphs 78-87 of the judgment (Ground 3). She has also taken into account the Inquiry evidence; the Inspector's analysis and conclusions at IR13.58-77; representations made by M&S in its letter of 19 April 2024 and attachments; and representations made by SAVE in its representation of 19 April 2024. The Secretary of State notes that the Inspector's acknowledgement at IR13.66 that M&S's expert advisers were not able to make detailed comments on the SAVE draft scheme at the time of the Inquiry. She considers that the subsequent evidence put forward by both M&S and SAVE are material to this case, and fall within the scope of her Rule 19 letter of 13 March 2024.

Whether reasonable alternatives have been considered

31. The Secretary of State has considered whether reasonable alternatives had been adequately considered at the time of the Inquiry. For the reasons given at IR13.34-37 and IR13.54-56, the Secretary of State agrees that there was little record of any wholly dissenting voices at any stage in the process, or to suggest that the parties had gone back to first principles before confirming they had not changed their minds, and also that the contemporaneous evidence to refute this says little about the consideration of refurbishment and refers mostly to M&S's specifications and standards (IR13.55). For this reason the Secretary of State considers that the Applicant has not clearly demonstrated that the requirement under section 3.1.2 of the London Plan Guidance (LPG) on WLCAs that 'options for retaining existing buildings and structures have been fully explored before considering substantial demolition, including incorporating the fabric of existing buildings into the new development' was fully met at the time the proposal was being worked up and considered by WCC and GLA. However, taking into account the Inquiry's examination of whether refurbishment is an achievable and deliverable option, as well as the extensive representations made by parties during the Rule 19 process, she considers that there has been an adequate exploration of this matter, and that alternatives to demolition have been properly considered. She therefore does not consider that any shortcomings in the WLCA at the time of the Inquiry weigh against the proposal.

Whether refurbishment would be viable and deliverable

32. The Secretary of State has carefully considered the evidence put forward by M&S³, which sets out the reasons any SAVE-type scheme would not be technically feasible, and even if feasible why it would not meet the requirements for the site or provide the public benefits accepted to be delivered by the application proposal⁴. She has also carefully considered the rebuttal by Simon Sturgis on behalf of SAVE dated 23 September 2024. This challenges many of the assumptions made in the Arup analysis and many of the Inspector's conclusions. It states that no scheme was or could be presented at the Inquiry by SAVE. The Secretary of State notes SAVE's position that there is no 'SAVE scheme' as such, and M&S's comments on this point in its representation of 22 October 2024. The IR, other parties and the judgment have referred to a 'SAVE scheme' and hence for convenience this decision letter maintains that wording. Given her agreement in paragraph 44 below that the analysis of the SAVE scheme on behalf of M&S would also

³ Pilbrow & Partners Report, Arup 'Additional Technical Documentation' Report.

⁴ Pilbrow & Partners Report, paragraph 3.2.

equally apply to any reasonably similar scheme, references in this decision letter to a 'SAVE scheme' or to 'either scheme' should be construed as applying also to any reasonably similar scheme.

33. The Secretary of State considers that the evidence put forward on behalf of M&S is material to the case, falls within the scope of her Rule 19 letter of 13 March 2024, and credibly demonstrates that refurbishment of the site would be, as the Inspector finds at IR13.70, deeply problematic. She further agrees that there are inescapable structural issues and an awkward combination of three buildings (IR13.70). She does not agree with SAVE's contentions that these issues have been 'greatly exaggerated'⁵.
34. Overall the Secretary of State considers that this evidence reinforces the Inspector's analysis at IR13.62-77, his conclusion that the refurbishment scheme is so deeply problematic, even for Oxford Street, that no one would be likely to pursue it or fund it (IR13.70), and his further conclusion that there is no viable and deliverable alternative (IR13.74). She considers that the evidence put forward by M&S would also apply to any reasonably similar scheme. She has found at paragraph 31 above that there has been an adequate exploration of reasonable alternatives, and concludes that there is a compelling justification for demolition and rebuilding. She agrees with the Inspector that notwithstanding the locational advantages of the site, redevelopment is the only realistic alternative to a vacant and/or underused site (IR13.75). She considers that in the light of the evidence before her, a clear conclusion can be drawn on these matters and she agrees with the Inspector's assessment. Returning to her question in paragraph 29 above, she does not consider that the benefits of the proposal could be delivered with less harm.

Impact on vitality and viability

35. The Secretary of State notes that M&S has stated that it will not continue to occupy and trade from the store for very much longer if permission is refused (IR13.46). This position is repeated in its representation of 19 April 2024 (Annex H of the DP9 update) which states that if M&S is unable to secure this planning permission, it would have no alternative but to close the store and leave Marble Arch. Whether or not M&S would leave the store following a refusal of permission would be a commercial decision for the company, however, the Secretary of State agrees with the Inspector's assessment that on balance, there is a strong probability that if the scheme does not proceed, then sooner or later the M&S store will close and will not be replaced by comparable retail concerns. (IR13.97).
36. The Secretary of State has considered the extent to which there would be harm to the vitality and viability of Oxford Street if M&S were to leave the store. This is addressed by the Inspector at IR13.46-47, where he concludes that its loss would cause serious damage to the vitality and viability of the whole of Oxford Street and to London's West End (IR13.46) and that the loss of M&S would probably result in a significant drop in footfall and a severe harmful impact on the vitality and viability of the area (IR13.47).
37. In reaching her conclusions on this matter, the Secretary of State has taken into account the findings of Mrs Justice Lieven on this matter, which are set out at paragraphs 88-101 of the judgment (Ground 4). She has also taken into account the evidence before her on this matter: the Inquiry evidence; the Inspector's analysis and conclusions at IR13.46-47;

⁵ SAVE's Rebuttal of the Arup Report and Pilbrow & Partners Documents dated 23 September 2024, paragraph 2.1.

the representations made by M&S in its letter and attachments of 19 April 2024 (in particular the Savills Report for M&S, Appendix C of the DP9 Report, which sets out an updated analysis of retail market conditions, retailer demand, and the impact of the potential closure of the M&S store on the west of Oxford Street, Oxford Street as a whole and the West End); and the representations made by SAVE in its letters of 18 April 2024, 23 September and 22 October 2024 (which provide evidence on the retail context on Oxford Street, citing evidence from *Retail Week*, the *Evening Standard*, the *Retail Gazette*, the Savill's publication *Market in Minutes: Central London Retail Q2 2024a*, and the WCC/NWEC Oxford Street Programme). SAVE questions whether the position for Oxford Street is as gloomy as the DP9 Report makes out. The Secretary of State considers that the evidence put forward by M&S is material to this case, and falls within the scope of her Rule 19 letter of 13 March 2024. The Secretary of State has also taken into account SAVE's comments on the impact on vitality and viability of a three-year closure should permission be granted⁶.

38. The Secretary of State accepts that the varying assessments of the health of Oxford Street West and the West End do not point all one way, and does not dispute SAVE's assertion that 'investment and regeneration of the area is not solely dependent on M&S'. However, these varying assessments do not alter the evidence put forward by M&S, which the Secretary of State accepts, that since September 2022 there have been no new lettings to department stores in the West End (Savills Report for M&S, paragraph 5.05), and there is no reasonable hope of a reletting of these premises in their existing configuration to a department store or any reasonably similar operator (*ibid.* paragraph 7.02). In the light of paragraphs 93-94 and 99 of the judgment, the Secretary of State accepts that the appropriate area against which to consider the impact of the potential loss of M&S is the International Centre of the West End.
39. Overall, the Secretary of State agrees with the Inspector's conclusion at IR13.46 that the balance of evidence is that if M&S were to leave, it would not be replaced by another department store. She considers that the likely loss of M&S in the event of a refusal of permission would cause significant harm to the vitality and viability of the west of Oxford Street. In reaching this conclusion she has taken into account the importance of the store, even in its current state, in drawing footfall to this edge-of prime location⁷. However, she considers that within the context of the International Centre of the West End, which is a far larger area and includes another M&S at the Pantheon (173 Oxford Street), these effects would be diluted and there would be only a moderate level of harm to the vitality and viability of the International Centre of the West End. Overall she considers that the impact on vitality and viability carries moderate weight in favour of the proposal. If permission were refused, the benefits which have been identified at paragraphs 53-60 below would also not be delivered.

UK's transition to a zero-carbon economy

40. The Secretary of State agrees with the Inspector at IR13.43 that while there would be harm through substantial quantities of embodied energy in the demolition of three sound structures and the construction of a new, larger building with two levels of basement, much must depend on the circumstances of how important it is that the use of the site should be optimised, and what alternatives are realistically available. She has addressed the question of the relative extent of embodied carbon in each scheme at paragraph 45

⁶ Representation of 10 October 2024 and Rebuttal of Montague Evans Report and DP9 Supplementary Report, dated 23 September 2024.

⁷ Appendix C of the DP9 Report, paragraph 8.02.

below. She has addressed the policy justification for the proposal and the importance of optimising development on the site at paragraph 58, and has addressed the question of alternatives at paragraphs 29-34 above.

41. The Secretary of State has very carefully considered the Inspector's analysis at IR13.31-13.43, the Sustainability Strategy, Circular Economy Statement, Energy Statement and WLCA put forward by the Applicant (IR13.34), as well as the parties' cases on this matter. She has also considered the material put forward as part of the Rule 19 process, including parties' comments on the emerging City Plan Partial Review (paragraph 49 below), the updated and emerging methodology, standards and guidance (paragraph 8(e)-(f) above), the findings of Mrs Justice Lieven in respect of ground 5, the Arup Report on structures and carbon issues (Additional Technical Documentation), other reports, and the amendment to Condition 21. She considers that the evidence put forward by M&S is material to this case, and falls within the scope of her Rule 19 letter of 13 March 2024.
42. She notes that there was no dispute that the proposals would demolish and remove structurally sound buildings for a new larger development (IR13.32). Equally there was no dispute that the proposals would use the latest techniques for energy efficiency or that the building could achieve a rating of BREEAM *Outstanding* (IR13.38), and the Secretary of State has also taken into account M&S's argument that over the life of the building it would use less carbon than any refurbishment, which would have to rely on an inefficient building envelope (IR13.38). She agrees with the Inspector, for the reasons given in IR13.37 and IR13.39, that the understanding of WLCAs and the tools available for calculations are still developing, and therefore it is no surprise that there was disagreement over the lifetime carbon usage for the proposals and, more particularly, for a refurbishment.

Whether redevelopment would involve greater embodied carbon than refurbishment

43. Mrs Justice Lieven found in her judgment at Ground 5, limb 1 (paragraphs 102-112) that the Secretary of State was in error to say there was no dispute about whether redevelopment would involve much greater embodied carbon than refurbishment (IR13.33 and paragraph 21 of the previous decision letter). The question of the relative amounts of embodied carbon under the M&S proposal and a refurbishment option is addressed by M&S in the Pilbrow & Partners Report for M&S (paragraph 4.4) and in the Arup 'Additional Technical Documentation' Report (paragraphs 8-8.5). The Arup Report acknowledges that the embodied carbon impact of the SAVE scheme would be at the upper end of the uncertainty range, and goes on to state that the embodied carbon intensity of the SAVE scheme may be greater than can be achieved with the new build (paragraph 8.5). The same matter is addressed by SAVE in its rebuttal by Simon Sturgis dated 23 September 2024. This challenges many of the assumptions made in the Arup analysis, and concludes that 'it is not possible for Arup/Pilbrow to come to any other conclusion, ie that an intelligent, contextual and creative refurbishment, possibly accommodating other uses, would be better for the environment and climate' (paragraph 2.4).
44. The Secretary of State agrees that this is still a developing field, as noted by the Inspector in IR13.37 and IR13.39 and at paragraph 42 above, and as highlighted by the new and emerging methodologies and standards as set out at paragraph 8(e) and (f) above. She considers that, as illustrated by the different assumptions made by M&S and SAVE, there is a significant amount of uncertainty about the potential embodied carbon impact of a refurbishment scheme for this site. She agrees that the analysis of the SAVE

scheme on behalf of M&S would also equally apply to any reasonably similar scheme⁸. The Secretary of State has found that the M&S scheme would give rise to harm through substantial quantities of embodied energy (paragraph 40 above). She considers it is likely that any refurbishment scheme which met the development plan aspirations for the site would also give rise to harm in terms of embodied energy. However, as no alternative fully worked-up scheme is before her, it is inevitably more difficult to quantify the potential harm in that scenario.

45. Overall, on the basis of the evidence before her, she does not consider that it is possible to come to a definitive conclusion on the extent to which an alternative refurbishment scheme on this site, which would achieve the aspirations of the development plan, would result in less embodied carbon than the M&S proposal, if at all. In terms of the comments made by Mrs Justice Lieven at paragraph 112 of the judgment, she finds that harm in terms of embodied carbon would flow from either scheme and is therefore an inevitable consequence of achieving the aspirations of the development plan. However, the Secretary of State has found that there is no viable or deliverable alternative scheme (paragraph 34 above). Therefore the potential differences in this respect are a purely theoretical matter, and in the particular circumstances of this case, she does not consider that this is material to her overall decision. She does not consider that it is necessary for the purposes of this determination to reach a definitive conclusion on the relative extent of the embodied carbon harm arising from either scheme. Her conclusions on the weight attaching to the embodied carbon inherent in the M&S proposal are at paragraph 52 below.

Local policy on greenhouse gases, energy, waste and the circular economy

46. The Secretary of State has reviewed the assessment of Policy SI 2 of the London Plan, which deals with minimising greenhouse gases, in the light of Mrs Justice Lieven's findings on limb 2 of ground 5 in her judgment (paragraphs 113-121). She agrees that this policy is concerned with operational carbon impacts. The Secretary of State has reconsidered this matter on the basis of operational carbon impacts. The policy makes provision for a scenario in which major development is not net zero-carbon at SI 2(C). The Secretary of State notes that an appropriate contribution was secured via the s.106 Agreement (IR12.1), and that this has been updated as per paragraph 8(c) above. Policy SI 2(D) requires boroughs to establish and administer a carbon offset fund, and states that offset fund payments must be ring-fenced to implement projects that deliver carbon reductions. A carbon offset fund has been established by WCC and is in operation. The carbon offset payments secured via the s.106 Agreement will therefore be used to deliver carbon reductions. The Secretary of State further notes that an Energy Strategy has been provided in accordance with SI 2(B). She therefore considers that the requirements of SI 2(A) to (E) have been met. She notes that in line with SI 2(F) a WLCA has been provided and that the LPG for WLCAs encourages the retention of existing buildings. For the reasons set out at paragraph 31 above, the Secretary of State considers that adequate consideration has been given to the retention and reuse of existing buildings. Therefore, she disagrees with the Inspector's conclusion at IR13.32 and considers that there is overall compliance with Policy SI 2 as a whole.
47. The Secretary of State has reviewed Policy 36 of the Westminster City Plan, which deals with energy. She accepts that the supporting text at paragraph 36.1 indicates that this policy is concerned with operational carbon impacts. The policy makes provision for a scenario in which major development is not net zero-carbon at 36(C). The Secretary of

⁸ Pillbrow Report paragraph 3.2.

State notes that a carbon offset payment has been secured via the s.106 Agreement (IR12.1), and that this has been updated as per paragraph 8(c) above. Policy SI 2(D) of the London Plan requires boroughs to establish and administer a carbon offset fund, and states that offset fund payments must be ring-fenced to implement projects that deliver carbon reductions. A carbon offset fund has been established by WCC and is in operation. The carbon offset payments secured via the s.106 Agreement will therefore be used to deliver carbon reductions. The Secretary of State further notes that an Energy Strategy has been provided. She therefore considers that the requirements of 36(C) have been met and there is overall compliance with Policy 36.

48. Policy SI 7 deals with reducing waste and supporting the circular economy. Given her conclusions in paragraph 34 above that there is a compelling justification for demolition and rebuilding, the Secretary of State considers that in this case it has been demonstrated that the products and materials in these buildings have been kept at their highest use for as long as possible, and therefore considers that the proposal is in accordance with Policy SI 7(A)(1). A Circular Economy Statement has been submitted by the Applicant in line with the requirements of SI 7(B), and the Secretary of State is content that it has been demonstrated that the development would meet the other requirements of SI 7. For these reasons she disagrees with the Inspector's conclusion at IR13.32, and considers that there is overall compliance with Policy SI 7.
49. The Secretary of State has considered whether the proposal is in accordance with emerging Policy 43. SAVE states in its letter of 18 April 2024 that it is in conflict and wouldn't meet any of the four exceptions in Policy 43(A), and also note that accompanying policy text to Policy 43B refers to the new RICS methodology referred to at paragraph 8(e) above. In its representation of 19 April 2024, M&S has provided an Assessment by Pilbrow and Partners of the emerging policy. The Secretary of State considers that the evidence put forward by M&S is material to this case, and falls within the scope of her Rule 19 letter of 13 March 2024. She has found that options for retaining the buildings have been adequately explored (paragraph 31 above), and that there is no viable and deliverable alternative (paragraph 34 above). Overall she considers that the proposal is not in conflict with emerging Policy 43.

Decarbonisation of the grid

50. The Secretary of State has considered the arguments put forward at IR13.40-41 and IR13.99 that if redevelopment were delayed until the grid were decarbonised, the extent of embodied energy, particularly from manufacturing materials, and from vehicle emissions, would be much lower or eliminated. She agrees that the proposed development now would result in far more carbon emissions than after the UK has achieved a net-zero grid (IR13.99), because a fully renewably sourced electricity grid should allow most construction vehicles, and the manufacture of concrete, steel and other materials, to be undertaken using renewable energy rather than fossil fuels (IR13.40). An assessment of the weight to give to the fact that development now will give rise to far more carbon emissions than in the future with a net-zero grid depends on the facts of the case and the planning policy context. Evidence has been put before the Secretary of State that the existing store is currently assessed as failing (IR13.71), and M&S has stated that it will not continue to occupy and trade from the store for very much longer if permission is refused (IR13.46). The Secretary of State has also concluded that the development is supported by current and up to date development plan policies which aim to support the regeneration and economic development of the area (paragraphs 58-

59 below). Overall she considers that this matter carries limited weight against the proposal.

Conclusions on embodied carbon

51. In respect of paragraph 157 (formerly 152) of the Framework, the Secretary of State has taken into account Mrs Justice Lieven's finding on ground 1 of the judgment (paragraphs 38-58), which found that the previous decision letter misinterpreted the policy. Following this judgment, she considers that rather than 'a strong presumption in favour of repurposing and reusing buildings',⁹ paragraph 157 encourages the reuse of buildings. She has found that the options for retaining the buildings have been adequately explored (paragraph 31 above), that there is no viable and deliverable alternative (paragraph 34 above), that there is a compelling justification for demolition and rebuilding (paragraph 34 above) and that harm in terms of embodied carbon would flow from either scheme (paragraph 45 above). She has also taken into account the sustainability credentials of the new building (paragraph 42 above). However, she has also found that a substantial amount of carbon would go into construction (paragraph 40 above), and agrees with the Inspector at IR13.87 that this would impede the UK's transition to a zero-carbon economy. The Inspector further concluded at IR13.87 that in theory this should weigh heavily against the scheme. Following the interpretation of paragraph 157 set out above, overall, she considers that in terms of that policy, there is a partial failure to support the transition to a low carbon future. Taking that into account, and further taking into account her findings as set out above, she considers that this carries limited weight against the scheme.
52. The Secretary of State has gone on to consider the Inspector's conclusion at IR13.99 that the extent of embodied energy weighs 'most heavily' against the scheme. She has addressed the question of decarbonisation of the grid at paragraph 50 above, and the question of current and developing climate change policy at paragraph 61 below, and has also taken into account her conclusions on the matters set out in paragraph 51 above and the reasons for them. She has further taken into account the provisions of Condition 21, which requires updated assessments setting out the feasible scope for further whole lifecycle carbon reduction through the detailed design stage, and as now amended, requires a fixed embodied carbon outturn. Overall she considers that in the particular circumstances of this case, the embodied carbon inherent in the M&S proposal carries moderate weight against the proposal.

Public benefits

Location

53. For the reasons given at IR13.42 and IR13.89, the Secretary of State agrees with the Inspector at IR13.89 that there are benefits of developing at one of the most sustainable locations in the country. She agrees with the Inspector in giving substantial weight to the advantages of concentrating development in such a highly accessible location. However, given that there is no empirical evidence before the Inquiry relating to a possible reduction in pressure for development elsewhere, the Secretary of State gives that consideration no weight.

⁹ As set out in paragraph 24 of the previous decision letter.

Heritage benefits

54. In terms of heritage benefits, the Secretary of State agrees that the scheme would provide a single coherent, albeit larger, backdrop to Selfridges and other relevant heritage assets (IR13.9). She further considers that the proposal would result in some positive factors within the setting of Selfridges, namely the removal of the colonnade along Orchard Street, and the integrity of the proposals compared with the three existing buildings (IR13.11). The Secretary of State agrees with the Inspector that avoiding the possibility of a derelict building next to Selfridges could be viewed as a heritage benefit (IR13.17). For the reasons given at IR13.27, she agrees with the Inspector that the bridge over Portman Mews South is an unsightly addition to Hesketh House which harms its significance and its setting, and that its removal would be an enhancement to this non-designated heritage asset, to the Portman Estate CA and to the setting of Selfridges. She further considers that there are heritage benefits associated with restoring an East-West connection along Granville Place, and that a general improvement to the public realm would have a beneficial effect on the settings of heritage assets (IR13.30). She considers that these heritage benefits collectively carry moderate weight.

Design and public realm

55. For the reasons given at IR13.44-13.53 and IR13.88-89, the Secretary of State agrees with the Inspector that the appearance of the building would be bold and striking, with detailing of high quality. She further agrees that the angled building lines and choice of materials, whereby the fine grained façade would be complementary while also subservient to the giant orders, would be sympathetic to Selfridges (R13.51). In terms of other aspects of urban design she agrees that the proposal would achieve permeability and connectivity, restoring a traditional route from Orchard Street to Granville Place, and opening up a new space at Granville Place, with wider and safer footways along Oxford Street and Orchard Street. She further agrees that the removal of the colonnade would have benefits for appearance, safety and shopping experience (IR13.52). Heritage benefits are addressed separately at paragraph 54 above. Overall, and taking into account SAVE's critical analysis of the quality of the spaces that would result, she agrees with the Inspector that the public realm would be a vast improvement and that it would be difficult to do better (IR13.52).

Employment and regeneration

56. The Secretary of State agrees for the reasons given at IR13.48-13.50 and IR13.53 that there would be benefits to employment and regeneration through improved retail and office floorspace (IR13.53). She has taken into account the agreed evidence that was before the Inquiry¹⁰, which indicated the creation of circa 450 jobs during the construction phase, creation of circa 2,000 additional full-time equivalent jobs based on the employment density of the proposed office use and indirect employment opportunities in the wider vicinity. She has further taken into account the evidence which was put forward on behalf of M&S¹¹, which states that 'the urgency for demand of exemplar offices in the West End that Marks and Spencer is set to deliver has strengthened even further in the intervening period making the need for office space such as this even more pressing' (paragraph 8.11). She considers that the evidence put forward by M&S is material to this case, and falls within the scope of her Rule 19 letter of 13 March 2024. The Secretary of State notes the Inspector's comment at IR13.50 that the benefits arising from economic

¹⁰ CD9.04 – Statement of Common Ground.

¹¹ DP9 Report paragraph 8.11 and Appendices D and E

benefit and regeneration would in theory also flow from a refurbishment, a point also made by SAVE. However, given her findings that there is no viable and deliverable alternative (paragraph 34 above), she does not consider that this has been demonstrated, or that this 'in theory' finding constitutes a reason to ascribe less weight to the benefits arising from the M&S proposal.

57. Overall, in the light of the significant employment and regeneration benefits offered by the M&S proposal, the importance which the Secretary of State places on these matters, and the evidence of strengthening of demand for the type of high-quality office space which would be provided by this proposal, the Secretary of State considers that the collective weight attaching to the design, public realm, employment and regeneration benefits has increased since the previous decision, and that these benefits now carry substantial weight.

Local policies on design and optimising site capacity through the design-led approach

58. For the reasons given in at IR13.88-89, the Secretary of State agrees with the Inspector that the relevant designations and associated policies do not just support commercial development on the site but set an imperative to support retail and maximise office space to meet its growth agenda, and that the development plan contains a definite mandate for maximising development on the site, where consistent with other policies (IR13.88). She considers that the scheme attracts support from LP Policy D2, which actively seeks to link the density of development proposals to the provision of infrastructure, and City Plan Policies 13 and 15, which support economic growth, including by the provision of new and improved office floorspace (Policy 13).

59. Policy D3 deals with optimising site capacity through the design-led approach and promotes higher densities in locations that are well served. The Secretary of State has taken into account her conclusions on the impact on designated heritage assets (paragraphs 16-19 above), to which she has given very great weight. She has also taken into account the benefits of the scheme in terms of design and the public realm, which she has addressed at paragraph 55 above. Overall she considers that on balance there is no conflict with D3(D)(1) and D3(D)(11), and that the proposal is in accordance with Policy D3 as a whole.

60. Policy 38 sets out design principles. The Secretary of State has taken into account her conclusions on the impact on designated heritage assets (paragraphs 16-19 above), to which she has given very great weight. She has also taken into account the benefits of the scheme in terms of design and the public realm, which she has addressed at paragraph 55 above. She concludes that on balance there is no conflict with Policy 38 B(1), and no conflict with Policy 38 as a whole.

Other matters

61. The Secretary of State has considered the Inspector's comments at IR13.94 that there is a 'growing principle that reducing climate change should generally trump other matters'; and his comments at IR13.99 that as climate change policy is still developing, the Secretary of State is entitled to use her judgement to give this consideration greater weight than the Inspector has attributed to it. Policy in this area will continue to develop and in due course further changes may well be made to statute, policy or guidance. This

decision letter sets out the Secretary of State's judgement on the weight which attaches to these matters in the circumstances of this particular case.

62. The Secretary of State has considered the Inspector's comment at IR13.95 that fear of precedent could be a material consideration of sufficient weight to justify dismissing the application. However, she is confident that any future decision-maker would pay attention to the whole decision and the detailed reasoning and not just to the outcome of the decision. In any event, the decision turns on its own very specific facts, including the relevant development plan policy matrix, the Inspector's report and the evidence which was before the Inquiry, which are all unlikely to be replicated in other cases.

Planning conditions

63. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.3, the recommended conditions set out at the end of the IR and the reasons for them, the Applicant's proposed amendment to Condition 21 at paragraph 8(i) above, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector, along with the proposed amendment to Condition 21, comply with the policy test set out at paragraph 56 of the Framework, and that the conditions set out at Annex B should form part of her decision.

Planning obligation

64. Having had regard to the Inspector's analysis at IR12.1-12.2, the planning obligation dated 15 November 2022, the deed of variation dated 19 July 2024, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12.1-12.2 and paragraph 8(c) above that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

Planning balance and overall conclusion

65. For the reasons given above, the Secretary of State considers that there is partial conflict with heritage policies HC1 and 39. Notwithstanding the importance of heritage matters in this case, given the accordence with policies for optimising site capacity through the design-led approach and other relevant policies, she considers that the proposal is in accordance with the development plan overall. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

66. Weighing in favour of the proposal are the advantages of concentrating development in such a highly accessible location, which carries substantial weight; the design, public realm, employment and regeneration benefits, which collectively carry substantial weight; the potential harm to the vitality and viability of the International Centre of the West End which could follow from a refusal of permission, which carries moderate weight; the heritage benefits, which carry moderate weight; and the possibility of demolition, which carries limited weight.

67. Weighing against the proposal is the embodied carbon, which carries moderate weight; the Secretary of State's finding that in terms of paragraph 157 (formerly 152) of the Framework the proposal would in part fail to support the transition to a low carbon future, which carries limited weight; and the future decarbonisation of the grid, which carries limited weight.

68. When assessing the heritage impacts of the proposal, the Secretary of State has taken into account the requirements of s.66 of the LBCA Act and the provisions of the Framework. She has found that in terms of paragraph 208 (formerly 202) of the Framework, the harm to the settings, and so the significance, of the designated heritage assets would fall into the 'less than substantial' category. In respect of Selfridges and the Stratford Place CA, she has found the harm would be at the upper end of that category; in respect of the Mayfair CA it would be in the middle of that category; and in respect of the Portman Estate CA it would be at the lower end of the category. Overall she has found that the harm to the settings of, and significance of the designated heritage assets carries very great weight. The Secretary of State considers that harm from the loss of the non-designated heritage asset of Orchard House attracts substantial weight and has considered paragraph 209 (formerly 203) of the Framework in coming to this decision. In respect of paragraph 195 (formerly 189) of the Framework, the Secretary of State considers that the proposal would overall fail to conserve the heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. She considers that the possibility of an Oxford Street CA carries limited weight.
69. The Secretary of State has considered paragraph 208 (formerly 202) of the Framework. Taking into account the very great weight she has attached to harm to designated heritage assets (paragraph 19 above) and the public benefits set out at paragraphs 53-57 above, she finds that the public benefits of the proposal outweigh the harm to the significance of the designated heritage assets. The heritage balance is therefore favourable to the proposal. In reaching this conclusion she has taken into account the increased collective substantial weight she has applied to the design, public realm, employment and regeneration benefits of the proposal, and the reasons for that increased weight, as set out at paragraph 57, and therefore the overall increased weight she has given to the public benefits since the last decision.
70. In applying s.38(6) of the PCPA, overall the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.
71. The Secretary of State therefore concludes that permission should be granted.

Formal decision

72. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby grants planning permission, subject to the conditions in Annex B below, for demolition of the three existing buildings on site and for the construction of a 2-basement, ground plus 9 storey mixed use development (Use Class E) comprising retail, café/restaurant, office and gym as well as a new pedestrian arcade, public realm works and associated works, in accordance with application Ref. 21/04502/FULL, dated 30 June 2021.
73. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

Right to challenge the decision

74. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

75. A copy of this letter has been sent to Westminster City Council and SAVE Britain's Heritage, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Decision officer

This decision was made by the Secretary of State, and signed on her behalf

Annex A Schedule of representations

RULE 19 PROCESS

Representations received in response to the Secretary of State's Rule 19 letter of 13 March 2024

Party	Date
Westminster City Council	28 March 2024
SAVE Britain's Heritage	19 April 2024, enclosing a letter dated 18 April 2024
Dentons on behalf of the Applicant, enclosing: <ol style="list-style-type: none"> 1. Montagu Evans Report on heritage matters 2. Arup Report on structures and carbon issues (Additional Technical Documentation) 3. DP9 Report on planning matters with appendices: <ol style="list-style-type: none"> a) Qualifications and experience of Chris Goddard MRTPI, MRICS b) Summary of WCC City Plan Partial Review Regulation 19 c) Updated Expert Report by Andrew Bond of Savills on Retail Market Conditions d) Letter from Knight Frank dated 18 April 2024 e) Letter from Savills Workplace & Design (formerly KKS Savills) dated 19 April 2024 f) DP9 Planning Policy Review of the SAVE 'Alternative Concept' under the adopted development plan g) 'Delivering Good Growth in Westminster' dated 2024 by The WPA and Arup h) Letter from M&S dated 3 April 2024 i) Decision Notice for 60-72 Upper Ground (Ref 21/02668/EIAFUL) dated 6 February 2024 4. Pilbrow & Partners Report on heavy refurbishment feasibility for this site 5. Pilbrow & Partners Assessment against emerging draft WCC Policy 43 	19 April 2024

Representations received in response to the Secretary of State's recirculation of responses of 23 April 2024

Party	Date
Dentons on behalf of the Applicant	3 May 2024
SAVE Britain's Heritage	3 May 2024
Dentons on behalf of the Applicant, enclosing the completed s.106 deed of variation	19 July 2024

The representations above dated 3 May 2024 were recirculated on 3 May 2024, with no further responses received

Representations received in response to the Secretary of State's letter of 5 September 2024

Party	Date
Dentons on behalf of the Applicant	23 September 2024
SAVE Britain's Heritage, enclosing: 1. Rebuttals of Montagu Evans Report and DP9 Supplementary Report 2. Rebuttals of Arup Report and Pilbrow & Partners Documents	23 September 2024

Representations received in response to the Secretary of State's recirculation of responses of 8 October 2024, which attached the following letters:

- *Sacha Berendji (on behalf of the Applicant) dated 19 July 2024*
- *SAVE Britain's Heritage open letter dated 21 August 2024*

Party	Date
Dentons on behalf of the Applicant	22 October 2024
SAVE Britain's Heritage	22 October 2024

The representations above were recirculated on 30 October 2024, with no further responses received

General representations

Party	Date
Ryan Oakley	2 December 2024
Rachel Blake MP	3 December 2024, containing letter dated 29 November 2024

Annex B Conditions

1. The Development hereby permitted shall be carried out in accordance with the following drawings³⁶⁸:
 - Site Location Plans
1827-PP-ZZ-00-DR-A-00-0001 Rev P1, 1827-PP-ZZ-00-DR-A-00-0003 Rev P1, 1827-PP-ZZ-00-DR-A-00-0004 Rev P1
 - Demolition
1827-PP-ZZ-00-DR-A-02-0100 Rev P1, 1827-PP-ZZ-01-DR-A-02-0102 Rev P1, 1827-PP-ZZ-00-DR-A-02-0103 Rev P1, 1827-PP-ZZ-01-DR-A-02-0104 Rev P1, 1827-PP-ZZ-00-DR-A-02-0105 Rev P1, 1827-PP-ZZ-01-DR-A-02-0106 Rev P1, 1827-PP-ZZ-00-DR-A-02-0107 Rev P1, 1827-PP-ZZ-01-DR-A-02-0099 Rev P1, 1827-PP-ZZ-01-DR-A-02-2001 Rev P1,
 - GA Plans
1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-0M-DR-A-10-0100M, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-02-DR-A-10-0102 Rev P1, 1827-PP-ZZ-03-DR-A-10-0103 Rev P1, 1827-PP-ZZ-04-DR-A-10-0104 Rev P1, 1827-PP-ZZ-05-DR-A-10-0105 Rev P1, 1827-PP-ZZ-06-DR-A-10-0106 Rev P1, 1827-PP-ZZ-07-DR-A-10-0107 Rev P1, 1827-PP-ZZ-08-DR-A-10-0108 Rev P1, 1827-PP-ZZ-09-DR-A-10-0109 Rev P1, 1827-PP-ZZ-09-DR-A-10-1109 Rev P1, 1827-PP-ZZ-10-DR-A-10-0110 Rev P1, 1827-PP-ZZ-10-DR-A-10-1110 Rev P1, 1827-PP-ZZ-97-DR-A-10-0097 Rev P1, 1827-PP-ZZ-98-DR-A-10-0098 Rev P1, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4
 - GA Elevations
1827-PP-ZZ-XX-DR-A-11-0001 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0002 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0003 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0004 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0005 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0006 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0007 Rev P1
 - GA Sections
1827-PP-ZZ-XX-DR-A-12-0001 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0002 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0003 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0004 Rev P1
 - Assembly
1827-PP-XX-DR-A-21-0050 Rev P1, 1827-PP-XX-DR-A-21-0051 Rev P1, 1827-PP-XX-DR-A-21-0052 Rev P1, 1827-PP-XX-DR-A-21-0053 Rev P1, 1827-PP-XX-DR-A-21-0054 Rev P1, 1827-PP-XX-DR-A-21-0055 Rev P1, 1827-PP-XX-DR-A-21-0056 Rev P1, 1827-PP-XX-DR-A-21-0057 Rev P1, 1827-PP-XX-DR-A-21-0058 Rev P1.
2. Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday;
 - between 08.00 and 13.00 on Saturday; and
 - not at all on Sundays, bank holidays and public holidays.

Piling, excavation and demolition work shall only be carried out:

- between 08.00 and 18.00 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).

3. Prior to the commencement of any:
 - a) demolition, and/or
 - b) earthworks/piling, and/or
 - c) construction,

evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party responsible for carrying out such works, will be bound by the Council's Code of Construction Practice (CCP), shall be submitted to the Local Planning Authority (LPA) and approved in writing. Such evidence must take the form of the relevant completed Appendix A checklist from the CCP, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the CCP and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the submission of details prior to each stage of commencement has the written approval of the LPA.

4. Samples of facing materials, including glazing, and elevations and roof plans annotated to show where the materials are to be located shall be submitted to the LPA and approved in writing prior to relevant works. The development shall not be carried out other than in accordance with any such approval given.
5. (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 10dB below the minimum external background noise, at a point 1m 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 LPA. 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.

(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 15dB below the minimum external background noise, at a point 1m 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 LPA. 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, a fixed maximum noise level shall be submitted to and approved by the LPA. 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 LPA. The submitted 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 1m 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 to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
 - g) The lowest existing LA90, 15 mins measurement recorded under (f) above; measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
 - h) The proposed maximum noise level to be emitted by the plant and equipment.
6. 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.
7. Before first occupation or opening to the public, the separate stores for waste and materials for recycling shown on drawing number 1827-PP-ZZ-97-DR-A-10-0097 Revision P1 shall be delivered and made available at all times prior to Occupation and permanently retained thereafter.
8. No waste should be left or stored on the public highway.
9. Each cycle parking space shown on the approved drawings shall be delivered and made available prior to Occupation of the Development. Thereafter the cycle spaces must be retained and the space used for no other purpose.
10. With the exception of collecting rubbish, no goods (including fuel) that are delivered or collected by vehicles arriving at or leaving the building must be accepted or sent out if they are unloaded or loaded on the public road. Goods may be loaded or unloaded only within the boundary of the site.
11. All doors or gates shall be hung so that they do not open over or across the road or pavement.
12. The Development shall target a BREEAM rating of 'Outstanding' for the Office floorspace and rating of 'Excellent' for retail floorspace or any such national measure of sustainability that replaces that scheme of the same standard. A post construction certificate confirming this standard under BREEAM has been achieved must be issued by the Building Research Establishment, and submitted for approval to the LPA within 6 months of completion of the development on site.

13. Demolition works shall not begin on site until the following has been submitted and approved to the LPA:

- a) a construction contract with the builder to complete the redevelopment work for which planning permission has been given, or
- b) an alternative means of ensuring the LPA is satisfied that demolition on the site will only occur immediately prior to development of the new building.

The demolition and development must be carried out in accordance with the approved arrangements.

14. A scheme of public art shall be submitted to the LPA for approval in writing prior to the commencement of relevant works. The approved scheme of public art shall be delivered prior to the Occupation of the Development and retained and maintained on site thereafter.

15. A detailed lighting strategy which includes details of all external light fittings and lighting levels shall be submitted to and approved by the LPA prior to the commencement of the development, and the development shall be carried out in accordance with the approved details.

16. A detailed Servicing Management Plan (SMP) shall be submitted to and approved by the LPA prior to the Occupation of the Development. The plan should identify process, internal storage locations, scheduling of deliveries and staffing. In particular it should consider:

- Restricting deliveries to the size of vehicle that can fit within the delivery bays
- Managing arrivals to the delivery bay so that not too many arrive at the same time.

All servicing shall be undertaken in accordance with this strategy unless otherwise agreed in writing by the LPA.

17. Detailed drawings and a Biodiversity Management Plan in relation to the construction method, layout, species and maintenance regime shall be submitted to and approved by the LPA prior to commencement of relevant works. The Development shall be carried out in accordance with the approved details and maintained thereafter.

18. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) (England) Order 2015:

- i) The area shaded in Green as shown on ground floor plan numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2 shall only be used for retail Class E (a), restaurant/café Class E(b) and/or indoor sport, recreation and fitness Class E (d) purposes only.
- ii) The floorspace shaded yellow annotated as Retail Class E as shown on the lower ground, ground and first floor plans numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4 shall only be used for retail Class E(a) purposes.

iii) The remaining floorspace of the development hereby approved shall only be used for retail (Class E(a)); café/restaurant (Class E(b)); commercial uses (Class E(c)(g)); and indoor sport, recreation or fitness (Class E(d)). No more than 1,500 sqm (GIA) shall be used as café/restaurant (Class E(b)).

19. Prior to the Occupation of the area shaded in Green as shown on ground floor plan numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2 and any other area to be used as a restaurant/café (Class E(b)), a management plan to show how customers will be prevented from causing nuisance for people in the area, including people who live in nearby buildings shall be submitted to and approved in writing by the LPA prior to Occupation of the restaurant/café use. The Development shall be carried out in accordance with the approved management plan thereafter.

20. There shall be no primary cooking on site (including cooking of raw or fresh food) prior to approval of details of the ventilation system to get rid of fumes, including details of how it will be built and how it will look. Thereafter the approved ventilation system shall remain in situ whilst primary cooking takes place.

21. Prior to the Commencement of demolition, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA.

Prior to commencement of sub-structure works, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA. Changes to the assumptions which have a material impact on the results of the assessment, including carbon factors, should be clearly stated and justified.

In each case, the updated assessments shall set out the feasible scope for further whole lifecycle carbon reduction through the detailed design stage, including material selection and specification. At the stage prior to commencement of sub-structure works, the updated Whole Life Carbon Assessment shall identify how 587 kgCO₂e/m² (modules A1-A5 of BS EN 15978 in accordance with the RICS PS v1) will be achieved. The construction of the scheme shall be carried out in accordance with the Assessment approved prior to commencement of sub-structure works.

22. Prior to the Occupation of the building the post-construction tab of the GLA's Whole Life Carbon Assessment Template should be completed in line with the GLA's Whole Life Carbon Assessment Guidance. The post-construction assessment should provide an update of the information submitted at planning submission stage, and approved under Condition 21 including the whole life carbon emission figures for all life-cycle modules based on the actual materials, products and systems used.

This should be submitted to the GLA at: ZeroCarbonPlanning@london.gov.uk, along with any supporting evidence as per the guidance. Confirmation of submission to the GLA shall be submitted to, and approved in writing by, the LPA, prior to occupation of the relevant building.

23. The Development shall comply, where feasible, with the Circular Economy commitments in Table 5 of the approved Circular Economy Statement.

Prior to the Occupation of the building a Post Completion Report setting out

- 1) Compliance with the Circular Economy commitments in Table 5 of the submitted Circular Economy Statement; and
- 2) the predicted and actual performance against all numerical targets in the relevant Circular Economy Statement shall be submitted to the GLA at: CircularEconomyLPG@london.gov.uk, along with any supporting evidence as per the GLA's Circular Economy Statement Guidance. The Post Completion Report shall provide updated versions of Tables 1 and 2 of the Circular Economy Statement, the Recycling and Waste Reporting form and Bill of Materials.

Confirmation of submission to the GLA shall be submitted to, and approved in writing by, the LPA, prior to occupation.

24. The Development shall be implemented in accordance with the approved Fire Statement prepared by Bureau Veritas (issue 7 dated 03.06.2021) and retained as such for the lifetime of the development.

25. A final Travel Plan shall be submitted to and approved in writing by the LPA prior to Occupation of the Development. The Development must be carried out in accordance with this strategy unless otherwise agreed in writing by the LPA. Reports monitoring the effectiveness of the Travel Plan shall be submitted to and approved in writing by the LPA one year and three years following the approval of the document, setting out any required changes to overcome any identified problems.

26. Prior to Commencement of the Development, a Construction Logistics Plan shall be submitted to the LPA for approval in writing in consultation with TfL.

27. Prior to the Commencement of the Development detailed plans shall be submitted to and approved in writing by the LPA demonstrating the provision of sufficient space for full fibre connectivity infrastructure within the Development. The Development shall be carried out in accordance with these plans and maintained as such in perpetuity.

28. The following sustainability measures must be provided, maintained and retained prior to the Occupation of the Development in accordance with the approved development:

- Sustainable drainage measures including green/blue roofs, surface water attenuation and rainwater harvesting;
- Provision of water use components in line with BREEAM Wat 01 requirements and retained thereafter.

29. The terraces at 6th floor, 7th floor, 8th floor and 9th floor levels hereby permitted shall only be used between the hours of 09:30-21:30 on any day. No amplified music which is audible from the boundary of the site shall be played.
30. Details of the following parts of the development shall be submitted to and approved in writing by the LPA prior to the commencement of the development excluding demolition works, and be retained as approved for the lifetime of the development: the locations for reinstatement of:
- the existing clock from the corner of Oxford Street and Orchard Street;
 - the White Knight carving and M&S Insignia on the new building.
31. Detailed drawings of a hard and soft landscaping scheme which includes the number, size, species and position of trees and shrubs; and details of the terraces shall be submitted to and approved in writing by the LPA prior to the relevant works. The landscaping and planting should be provided within one planting season of completing the development (or within any other time limit agreed with the LPA in writing).
- Any trees which are part of the approved planting scheme that are removed, or found to be dying, severely damaged, or diseased within five years of planting them, must be replaced with trees of a similar size and species.
32. Notwithstanding the submitted drawings, the retractable shopfront awnings shall only be installed at ground floor level.
33. The Development shall be carried out in accordance with the approved Crime Prevention Statement prepared by GDA (dated June 2021), which shall seek to achieve the Secured by Design accreditation award from the Metropolitan Police.
34. The Development shall achieve an Urban Greening Factor rating of no less than 0.41.
35. The floorspace shaded yellow annotated as Retail Class E on the lower ground, ground and first floor plans numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4 shall not be first opened to the public until an agreement has been entered into under section 106 of the Town and Country Planning Act 1990 or section 35 of the Highways Act 1980 securing public access to the east-west arcade linking Granville Place to Orchard Street from at least 8am to 8pm each day.



Report to the Secretary of State

by **David Nicholson RIBA IHBC**

an Inspector appointed by the Secretary of State

Date **1 February 2023**



TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 77)

WESTMINSTER CITY COUNCIL

APPLICATION BY MARKS AND SPENCER PLC

Inquiry held on 2022. Accompanied site visits held on 25 October 2022

456-472 Oxford Street, London W1

Planning Inspectorate Report Ref: APP/X5990/V/3301508

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¹ Cover photomontage from Mr Pilbrow's proof of evidence CD10.09 p78

List of abbreviations used in this Report

CA	Conservation Area
CCP	Code of Construction Practice
CE	Circular economy
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
COIL	Certificate of Immunity from Listing
EIA	Environmental Impact Assessment
GIA	Gross Internal Area
GLA	Greater London Authority (the Mayor of London)
GPDO	General Permitted Development Order
HE	Historic England
HTVIA	Heritage, Townscape and Visual Impact Assessment
IC	Examination in chief
LB&CA Act	Listed Buildings and Conservation Areas Act
LPA	Local Planning Authority
LPD	London Plan Document
LTR	light-touch refurbishment
M&S	Marks And Spencer Plc
NPPF	National Planning Policy Framework
NDHA	Non-designated heritage asset
P&CP Act	Planning and Compulsory Purchase Act 2004
PPG	Planning Practice Guidance
PTAL	Public transport accessibility level
ReX	Re-examination
s106	Section 106 of the T&CP Act
SoC	Statement of Case
SoCG	Statement of Common Ground
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
T&CP Act	Town and Country Planning Act (1990)
TfL	Transport for London
WCC	Westminster City Council
WLC	Whole life-cycle carbon
XX	Cross examination

File Ref: APP/X5990/V/3301508
456-472² Oxford Street, London W1

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning (T&CP) Act 1990, on 20 June 2022³.
- The application is made by Marks and Spencer plc (M&S) to Westminster City Council (WCC)
- The application Ref. 21/04502/FULL is dated 30 June 2021.
- The description of development proposed (as amended by agreement)⁴, was: *Demolition of the three-existing buildings on site and for the construction of a 2-basement, ground plus 9 storey mixed use development (Use Class E) comprising retail, café/restaurant, office and gym as well as a new pedestrian arcade, public realm works and associated works.*
- The reason given for making the direction was that the Secretary of State (SoS) has considered his policy on calling in planning applications and concluded, in his opinion, that the application should be referred to him instead of being dealt with by the Local Planning Authority (LPA) (called-in).
- On the information available at the time of making the direction, the following were the matters on which the SoS particularly wished to be informed for the purpose of his consideration of the application:
 - a) *The extent to which the proposed development is consistent with Government policies for Conserving and enhancing the historic environment in NPPF (NPPF Chapter 16⁵);*
 - b) *The extent to which the proposed development is consistent with the development plan for the area; and*
 - c) *any other matters the Inspector considers relevant.*

Summary of Recommendation: that the application should be approved.

1. Procedural matters

- 1.1 The Inquiry sat from 25 October to 4 November 2022. As well as conducting an accompanied site visit on 25 October 2022, I made unaccompanied visits on 27 and 28 October, and on 1, 2 and 3 November 2022⁶. It was a physical event, but interested parties were able to watch virtually/electronically⁷.
- 1.2 A combined general Statement of Common Ground (SoCG)⁸ was agreed between the Applicant (M&S) the Council (WCC) and SAVE. Separate heritage, public benefits and sustainability SsoCG were agreed between the Applicant and SAVE⁹.
- 1.3 It was agreed¹⁰ that an Environmental Statement was not required.
- 1.4 A signed and dated Legal Agreement was submitted¹¹; I deal with its contents and justification below.

² The street numbers were confirmed in the Statement of Common Ground (SoCG) not as the Application form

³ Core Document (CD)7.01 as amended by email dated 27 July 2022 CD7.02.

⁴ SoCG Addendum Inquiry Document (INQ)40: by adding the words: *2-basement*

⁵ As amended

⁶ See INQ27 for details

⁷ Via a link published daily

⁸ CD9.02

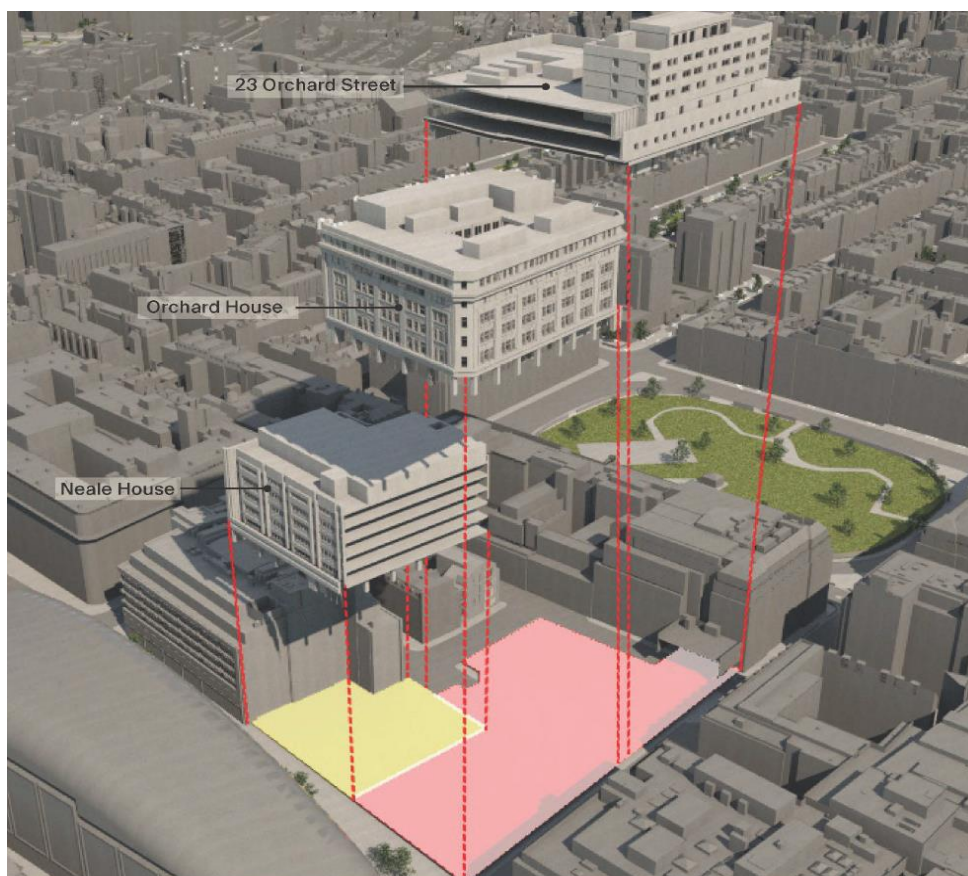
⁹ CD9.03-9.05

¹⁰ It was confirmed by Westminster City Council on 7 May 2021 that an Environmental Impact Assessment was not required. CD3.01 and CD9.02 para 4.2.3

¹¹ INQ47 made under Section 106 of the T&CP Act 1990 (as amended) and all enabling powers

2. The site and surroundings¹²

- 2.1 Oxford Street runs through the City of Westminster. Its length is predominantly in retail and commercial use, in addition to cafés and restaurants. The Site scored a Public Transport Accessibility Level (PTAL) of 6b, the highest possible, even before the advent of the Elizabeth Line to the nearby junction with Bond Street. There are fewer more accessible locations in the country.
- 2.2 The area has the following planning designations: Central Activities Zone (CAZ); West End Retail and Leisure Special Policy Area (WERSPA)¹³; West End International Centre¹⁴. The retail nature of the area has changed in the last few years, probably exacerbated by the pandemic. Oxford Street has become popular with low grade stores, described to me by the Applicant as *American Candy-stores*, that is shops selling cheap sweets and (allegedly) counterfeit goods.
- 2.3 The Application Site covers approximately 0.71 hectares and is occupied by three buildings: Orchard House, Neale House and the Extensions at 23 Orchard Street.



The three existing buildings¹⁵

- 2.4 Apart from the lower floors of Neale House, which sell luggage independently of the department store, all the buildings are occupied by M&S on long leases.

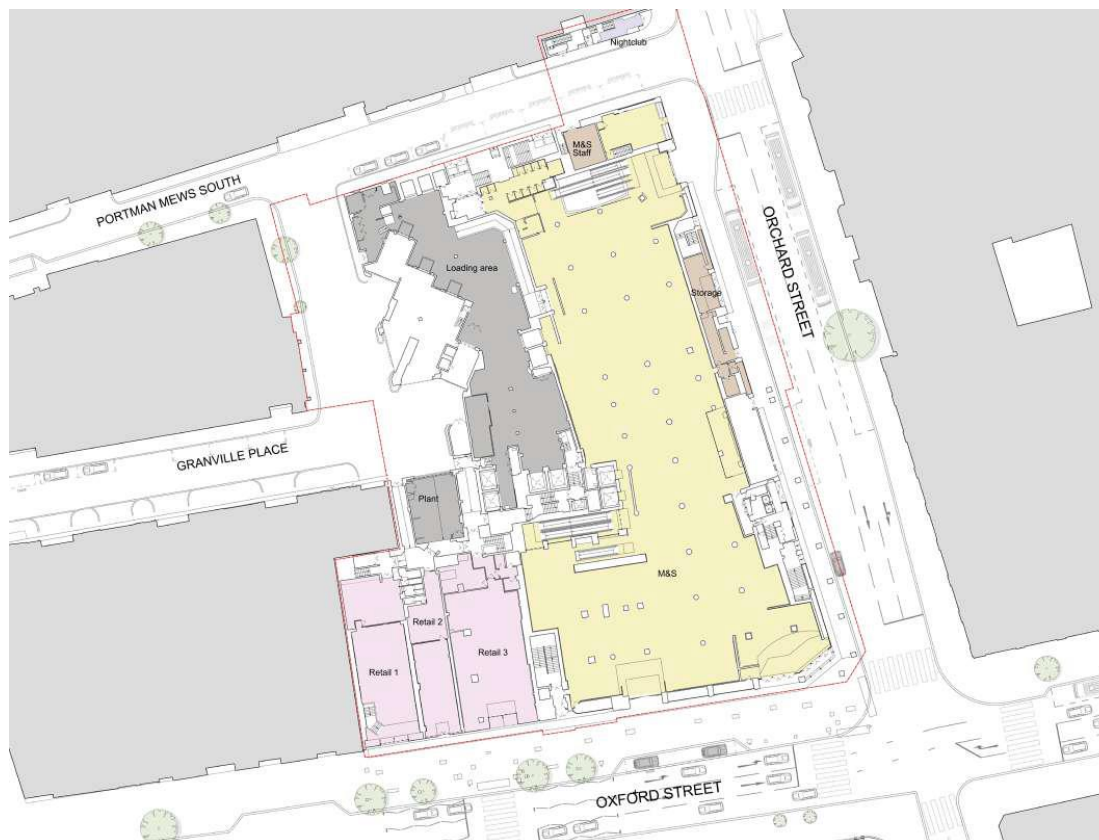
¹² See SoCG CD9.02 s5

¹³ CD6.03 Fig 8 p36

¹⁴ See policy map in DAS at CD1.07A p22-3 and CD6.03 Fig7 p31

¹⁵ From Mr Pilbrow's proof CD10.09 p29.

- 2.5 Internally, the three buildings which make up the site are connected above the lower floors and include a number of circulation cores (escalators, lifts and stairs) distributed around the buildings. The three connected buildings have separate structures, and column arrangements, and the floor levels do not all coincide. There has been a lack of investment in the store¹⁶. Existing servicing to the rear appeared complicated, unattractive, and potentially unsafe.
- 2.6 Portman House, comprising retail at ground and first floor with office accommodation above and over the second to seventh floors, adjoins the site towards Marble Arch. The building at 23 Orchard Street is linked by a bridge to Hesketh House (43-45 Portman Square). The latter is a commercial building comprising serviced office and co-working floorspace.



Plan showing existing ground floor layout, colonnade and adjacent streets¹⁷

- 2.7 Park House, a modern building recognisable for its curvilinear shape, is located directly opposite the Site and comprises luxury apartments at the upper levels, seven floors of office accommodation and retail units at ground floor. The site is one of two M&S department stores on Oxford Street, with the second, known as the *Pantheon*, located towards the eastern end. There are a significant number of empty former department and other stores along Oxford Street. I was told that the former hotel to the rear of Selfridges has been vacant since 2008.

¹⁶ I noted on my visit: a squeaky escalator, a lack of air conditioning to the upper levels, scuffed floor coverings, stained ceiling tiles, one of the cafés operating reduced hours, unused retail areas, and a sense of unloved displays especially on the upper floors with few visitors.

¹⁷ DAS CD p54

Heritage assets

2.8 None of the existing buildings on the site is statutorily listed, however it is located within close proximity to the following listed buildings¹⁸:

- Selfridges - Grade II*
- 10 Portman Street- Grade II
- Church of St Mark's - Grade I
- Portman Square Registered Park and Garden - Grade II
- Nos 24-29 North Audley Street - Grade II

2.9 Other relevant designated heritage assets¹⁹ are:

- Manchester Square Registered Park and Garden - Grade II
- Hyde Park Registered Park and Garden - Grade I
- Portman Estate Conservation Area
- Stratford Place Conservation Area
- Mayfair Conservation Area
- Royal Parks Conservation Area²⁰.

2.10 The significance of these assets is described in the Heritage, Townscape and Visual Impact Assessment (HTVIA)²¹. In this Report I have focussed on those most affected.

2.11 Of particular relevance amongst the surrounding designated assets, Selfridges Department Store stands across Orchard Street from the site with most of its retail frontage onto Oxford Street. Described in the listing as *an American commercial Beaux-Arts design on the theme of a giant colonnade*, this was recently elevated to Grade II* with a very detailed list description²² which

¹⁸ Relevant list descriptions at Miele's Ax2 CD10.06

¹⁹ To use the definition in the NPPF Glossary CD6.01

²⁰ CD6.16-CD6.18

²¹ CD1.10, but note that SAVE considered that the significance of the heritage assets affected by the proposals is undervalued in the HTVIA CD9.03 point 8

²² CD1.10 Ax3. This provides a summary of the Reasons for Designation, including Architectural interest:

* one of the most ambitious purpose-built department stores of the early C20, Selfridges has remained an icon of British retailing and one of the greatest and most recognised stores in the world;

* for the landmark architectural quality of the store exterior; the first phase heralded as Edwardian London's 'most sophisticated exercise in orthodox classicism' whilst upon completion it became the largest shop façade in Britain;

* as a design by leading architects, artists and craftsman of the day, including D H Burnham and Co, who were among the world's pre-eminent retail architects, with contributions by other celebrated architects such as Frank Atkinson, Sir John Burnet and Thomas Tait;

* for its construction, along the lines of American high-rise technology, which saw it become the first large building in London to fully exploit steel frame and reinforced concrete construction with possibly the largest plate glass windows yet seen in a British commercial building;

* for its influence on the evolution of building regulations and the adaptability of its structural system which was widely replicated in subsequent British store design, ultimately changing the face of the nation's high streets; staircases, original signage and brass roundels next to the staircases, and the Ionic, Roman Doric and Tuscan columns.

captures its significance, including *the landmark architectural quality of the store exterior*.

- 2.12 Nos.24-29 North Audley Street²³ is a single block of shops with flats above which span the next block over from Oxford Street, on the other side of Park House. They represent a fine example of late Victorian Flemish style, significant for their red brick and ornate terracotta shop fronts and friezes²⁴.
- 2.13 No.10 Portman Street (Grade II) stands on the corner with Portman Mews South. It is a 1760s terraced house which retains its original plan, stair and other internal fittings and joinery. It is one of only a few C18 houses on the Portman Estate to the south and west of Portman Square to survive WWII bombing and post-war redevelopment. It forms a cohesive group with Nos.7-9 Portman Street, which although unlisted, are of the same date but have been redeveloped behind their façades. Most of the significance of No.10 lies within the building itself, although the uniform heights and building lines of immediate neighbouring structures assist in providing an appropriate setting.



Stratford Place CA²⁵

(continued)

Historic interest:

* for Selfridges transformative influence on Britain's retail scene, elevating the concept of a department store as a social and cultural institution open to everyone, with innovative window dressing, exceptional customer service and masterly advertising;

* as a focal point within society and major venue for public events during the earlier C20.

²³ CD10.6 Miele appendices p76 and CD9.08 Forshaw appendices Photo 1 p149

²⁴ See also Survey of London Vol XL

²⁵ CD6.11 p11 Fig 5 Ordnance Survey 1910 © WCC

- 2.14 The Stratford Place Conservation Area (CA)²⁶ is quite small and surrounds Selfridges and an area to the east to Stratford Place, including St Christopher's Place. The latter is the only remnant of Georgian architecture in this stretch of Oxford Street and central to its character. As a whole it is a lively CA with a strongly urban character and mixed townscape which can be divided into: the retail frontage of Oxford Street; the formal composition of Stratford Place; and the more intimate streets and alleys around St. Christopher's Place.
- 2.15 The Portman Estate CA²⁷ covers the Estate to the north of the site with a small portion of the bridge at the end of 23 Orchard Street partially located within it²⁸. This is largely made up of Georgian squares and terraces with simple façades forming a uniform backdrop with decorative highlights.
- 2.16 The Mayfair CA²⁹ lies to the south of Oxford Street through to Green Park. Its townscape, and significance, derives from its piecemeal development resulting in a generally formal street pattern with an informal mixture of building types of varied architecture covering many periods and styles.
- 2.17 Orchard House was agreed to be a non-designated heritage asset (NDHA)³⁰. It was not purpose-built for the firm but rather a mixed-use speculative development that was only partially occupied by them until 1967³¹. As with Selfridges, it is constructed of Portland stone ashlar on a steel frame with classical columns with inset metal framed windows and panels with oxidised finishes. The Orchard Street extension is clad in Portland stone on a steel frame with granite surrounds to the windows while Neale house is faced in red brick and tile on a steel frame³².



*The 1973 Alterations*³³



*Orchard House today*³⁴

²⁶ CD6.10-CD6.12

²⁷ CD6.07-CD6.09

²⁸ CD9.02 SoCG para 5.2.4

²⁹ CD6.13-CD6.15

³⁰ That is, a heritage asset as defined in the Glossary to the NPPF, but without a designation such as listed building or part of a conservation area (CA)

³¹ See full details in CD6.46 Survey of London Draft Vol 53 Chapter 11

³² See also Certificate of Immunity from Listing (COIL) consultation report CD5.07 and reference to original surviving staircase

³³ CD1.07 DAS p51. Areas in red highlight many of the distinctive decorative features on the façade which were lost. See also Historic England (HE)'s numerous comments on the buildings at CD5.02-5.10 and the detailed response by the twentieth Century Society CD5.11.

³⁴ WCC SoC Ax2 p88

- 2.18 Historic England (HE) identified that: *Since it was originally constructed in 1929 to 1930, the exterior of Orchard House has seen a number of alterations and a considerable loss of original fabric, including the entire ground floor with its original entrances and display windows, four first floor balconies, carved sculptures from Lewis Carroll's children's novels, and palmette decorations to the parapet. In addition, the retail spaces of Orchard House appear to have lost virtually all the original interiors. Whilst the exterior of Orchard House represents a well-considered and sensitive response to the adjacent Selfridges (Grade II*-listed), it is not regarded as innovative nor of sufficient architectural quality in its own right especially given the above losses. The late-C20 extensions are relatively utilitarian and of limited interest in architectural terms. Although Orchard House is of some historic interest for its association with Marks and Spencer, it was not purpose-built for the firm but rather a mixed-use speculative development that was only partially occupied by them until 1967 with their mid-C20 flagship West End store being The Pantheon, 169 to 173 Oxford Street. Orchard House does possess some group value with the adjacent Selfridges (Grade II*-listed), but this is insufficient to compensate for the above*³⁵.
- 2.19 In addition to the changes identified by HE, the ground floor to the Orchard Street elevation has been considerably altered in order to widen the street and move the footway under a colonnade within the building.
- 2.20 Granville Place runs along the back of M&S, culminating in the service yard. Nos.11-25 are pleasant mid-late-19th century buildings, in use as a hotel, and are significant for their group value and their contribution to the Portman Estate CA, although this is diminished by the service bays opposite.
- 2.21 Nos.7-9 Portman Street are also NDHAs which form a group with the listed building at No.10 (see above). Nos.1-2 Portman Mews South is an attractive public house dating from the mid-19th century with a number of alterations. Its setting is now mostly modern and contributes little to its significance (Nos.3-7 Portman Mews South now comprise 21st century buildings).
- 2.22 Hesketh House, at 43-45 Portman Square, is of some historic interest being one of the handsome Georgian buildings typical of the square.
- 2.23 The history and buildings of Oxford Street are set out in some detail in the Survey of London³⁶.

3. Planning policy

- 3.1 All relevant policy and guidance, including Supplementary Planning Guidance (SPG) and emerging policy is listed in the SoCG³⁷. It was common ground³⁸ that the development plan includes the *London Plan* (March 2021)³⁹; and the *Westminster City Plan 2019 - 2040* (April 2021)⁴⁰.

³⁵ CD5.02

³⁶ CD6.42-6.50

³⁷ SoCG CD9.02 s7

³⁸ Ibid §2.1

³⁹ CD6.02

⁴⁰ CD6.03

London Plan (LP)

- 3.2 The latest version of the LP was published in March 2021. The following policies are of particular relevance to this Inquiry.
- 3.3 Chapter 1 explains that Good Growth underpins the LP and its policies. Policy GG2⁴¹ aims to *make the best use of land to prioritise sites which are well-connected by existing or planned public transport and intensify the use of land ... , promoting higher density development, particularly in locations that are well-connected* Policies GG5 and GG6⁴² are summarised in some detail below (§§8.74).
- 3.4 Policy SD4⁴³ requires that the CAZ should be *promoted and enhanced* and that *The nationally and internationally significant office functions of the CAZ should be supported and enhanced ... , including the intensification and provision of sufficient space to meet demand.* It also expects boroughs to *define the detailed boundaries of the CAZ, ... town centres (including the International centres), CAZ retail clusters, Special Policy Areas* Policy SD5 notes that generally *Offices ... are to be given greater weight relative to new residential development in all other areas of the CAZ.* Policy SD8⁴⁴ *Town centre network* Part D notes that *International, ... centres should be the focus for the majority of higher order comparison goods retailing whilst securing opportunities for higher density employment ... development in a high-quality environment.*
- 3.5 Policy D2 *Infrastructure requirements for sustainable densities* expects that *The density of development proposals should: 1) consider, and be linked to, the provision of future planned levels of infrastructure.* Policies D3, SI 2 and SI 7 are summarised in some detail below (§§6.101-102, §§7.17-18 and §§8.59-70) and I don't repeat them here. Paragraph 9.7.3 to Policy SI 7 explains that there will be *further guidance on Circular Economy Statements.* That has now been published and adopted (see below).
- 3.6 LP policy HC1⁴⁵ *Heritage* requires that *Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.* In doing so, it echoes the NPPF.

Westminster City Plan (WCP)

- 3.7 The *City of Westminster: City Plan 2019-2040* was adopted in 2021.
- 3.8 Spatial Strategy Policy 1⁴⁶ *promotes Protecting and enhancing uses of international and/or national importance and Supporting town centres and high streets, including centres of international importance in the West End.* It identifies the West End International Centre⁴⁷.

⁴¹ CD6.02 p17

⁴² Ibid p24-27

⁴³ Ibid p70

⁴⁴ Ibid p91

⁴⁵ Ibid p157

⁴⁶ CD6.03 p30

⁴⁷ Ibid Fig7 p31

- 3.9 WCP Policy 2 sets out the aspirations for the WERSPA⁴⁸, including *Significant jobs growth through a range [of] commercial-led development including ... the sensitive refurbishment and extension, or replacement of existing buildings ... the transformation of the Oxford Street District, and An enhanced pedestrian environment*. For Oxford Street, supporting paragraph 2.8 notes that *Growth in retail and leisure floorspace will ensure the West End responds to change in the sector and its status and reputation is enhanced. ... the built form of Oxford Street offers scope for increased height to deliver a range of commercial floorspace that complements the retail offer and provides modern workspace*.
- 3.10 Policy 13 *Supporting economic growth* aims for *[N]ew and improved office floorspace ... to provide capacity for at least 63,000 new jobs over the Plan period*. Policy 15 seeks to *maintain and enhance the attractiveness of Westminster as a visitor destination ...* Policies 36, 38 and 39 are summarised in some detail below (§§8.71-8.73). In requiring that, for *proposals affecting non-designated heritage assets, a balanced judgement will be made*, WCP Policy 39 *Heritage*, is consistent with the NPPF.
- 3.11 Policy 37 *Waste management* aims to *promote the Circular Economy*. Policy 40 *Townscape and architecture* requires that *Development will be sensitively designed, having regard to the prevailing scale, heights, character, building lines and plot widths, materials, architectural quality and degree of uniformity in the surrounding townscape*.

Supplementary Planning Guidance (SPG)

- 3.12 London Plan Guidance (LPG) includes *Whole Life-Cycle Carbon (WLC) Assessments* (March 2022)⁴⁹ and *explains how to prepare a Whole Life-Cycle Carbon (WLC) assessment in line with LP Policy SI 2 part F⁵⁰* and applies to planning applications which are referred to the Mayor. Table 2.1 sets out the LPG WLC principles. Principle 1 is headed *[R]euse and retrofit of existing built structures which should be prioritised before considering substantial demolition*. Table 2.1 (16) explains *The circular economy principle focuses on a more efficient use of materials ... Optimising ... reuse and retrofit of existing buildings*. It notes⁵¹ that *The UK's electricity grid is decarbonising and this will have an impact on the WLC emissions However, at present, the data is not reliable to do so accurately for embodied carbon emissions. Applicants are therefore not required to account for the long-term decarbonisation of the electricity grid in their WLC assessments*.
- 3.13 Section 3 sets out stages for the WLC Assessment including *Confirmation that options for retaining existing buildings and structures have been fully explored before considering substantial demolition, including incorporating the fabric of existing buildings into the new development. If substantial demolition is proposed⁵², applicants will need to demonstrate that the benefits of demolition would clearly outweigh the benefits of retaining the existing building or parts of*

⁴⁸ Ibid p34-36

⁴⁹ CD 6.32 adopted by the Mayor on 16 March 2022 Ref MD2962

⁵⁰ Ibid As stated on p1

⁵¹ Ibid para 2.8.1

⁵² Ibid para 3.1.3

the structure. Retention should be seen as the starting point; this will usually be the most sustainable option.

- 3.14 *LPG Circular Economy (CE) Statements (March 2022)⁵³ explains how to prepare a CE statement to comply with Policy SI 7 It also includes guidance on how the design of new buildings, and prioritising the reuse and retrofit of existing structures, can promote CE outcomes. It includes a Decision Tree for existing buildings⁵⁴.*

Figure 4: Decision tree for design approaches for existing structures/buildings

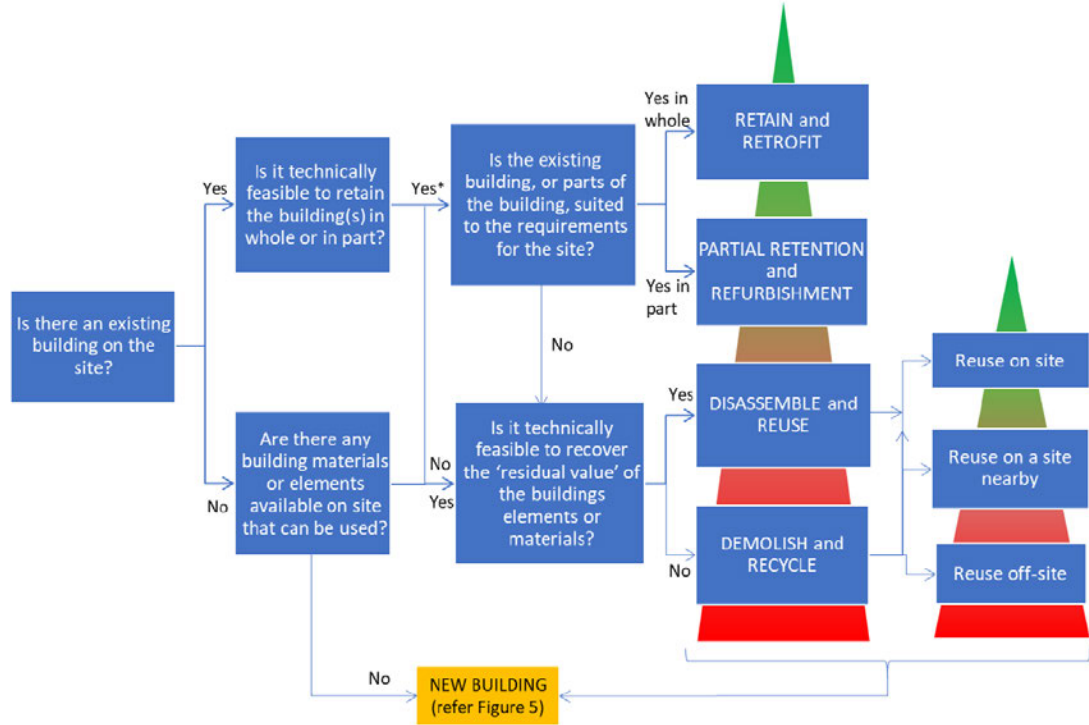


Figure 4: Decision tree

- 3.15 *The WCC Environment Supplementary Planning Document (SPD)⁵⁵ provides guidance, including to follow the GLA’s approach to WLC assessments which requires applicants to consider the retrofit or reuse of any existing built structures before embarking on the design of a new structure or building. This guidance accepts that this needs to be carefully balanced against other sustainability objectives, the need to deliver new housing and economic growth, meaning demolition will still be appropriate in some circumstances.*

Other legislation and policy

- 3.16 *Of particular relevance, the latest version of the National Planning Policy Framework (NPPF)⁵⁶ was published on 20 July 2021. Chapter 16 deals with Conserving and enhancing the historic environment.*

⁵³ CD6.30 also adopted by the Mayor on 16 March 2022

⁵⁴ CD6.30 p11

⁵⁵ CD6.25 adopted on 28 February 2022

⁵⁶ CD6.01

- 3.17 The 2019 Revision to the Climate Change Act of 2008⁵⁷, strengthens section 1(1) to state: *It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.* The Government announced on 20 April 2021 that: *The UK government will set the world's most ambitious climate change target into law to reduce emissions by 78% by 2035 compared to 1990 levels.* This is now reflected in the sixth Carbon Budget.
- 3.18 Page 1 of *The United Kingdom of Great Britain and Northern Ireland's Nationally Determined Contribution for COP26* states: *the UK is committing to reduce economy-wide greenhouse gas emissions by at least 68% by 2030, compared to 1990 levels.* The Industrial Decarbonisation Strategy 2021, Action 5.5 p64, states: *Increasing resource and material efficiency in practice means keeping products and materials in circulation for longer through circular economy approaches such as reuse, repair, recycling and reducing the quantity of materials used within manufacturing.*
- 3.19 The *Climate Change Committee's Report on the 6th Carbon Budget 2020* Manufacturing and Construction: Introduction: a) states: *The pace of decarbonisation in the Balanced Pathway for manufacturing and construction gradually accelerates through the 2020s to mid-2030s with the increasing implementation of new technologies, policy, resource efficient approaches, and development of infrastructure and supply chains. Most decarbonisation of the sector is complete by 2040.*
- Emerging policy*
- 3.20 WCC's Reg. 18 statement⁵⁸ proposes a new policy on retrofit.
- Other considerations*
- 3.21 Section 66 of the Listed buildings and Conservation Areas Act (LB&CA) Act⁵⁹ has been interpreted by the Courts as requiring that *considerable importance and weight* should be given to the *desirability of preserving the setting of listed buildings*⁶⁰ in any balancing exercise.
- 3.22 The Judgment in *Bedford*⁶¹ established that substantial harm (NPPF§201) requires that: *very much if not all of the significance of the asset was drained away.* In agreeing with the Inspector in *Summerskill House*⁶², the SoS found that: *[T]he range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar [of substantial harm]. In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how*

⁵⁷ See Sturgis appendices CD9.11 of this and following. The summaries were not challenged.

⁵⁸ CG in REX

⁵⁹ Listed buildings and Conservation Areas Act 1990

⁶⁰ *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), at [55]

⁶¹ *CD J01 Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin)

⁶² INQ38 para 13 and IR paras 12.49-12.50

an impact on its setting can advance a long way along the scale towards substantial harm to significance.

4. Planning history

- 4.1 See the SoCG⁶³ for details. The first building on the site appears to have been Orchard House, a speculative 1930s office building. This was followed by Neale House and the Orchard Street extensions roughly 50 years ago. There is no online record for the 1970s extension⁶⁴.
- 4.2 Nearby, Selfridges pre-dates all the buildings on the site. The recent Park House development opposite the site contains shops, offices and luxury apartments⁶⁵.
- 4.3 A Decision on an application for a Certificate of Immunity from Listing (COIL) was issued on 23 May 2022⁶⁶. It confirmed that the Secretary of State (SoS) for the Department for Digital, Culture, Media and Sport (DCMS) had certified that it does not intend to list the building.
- 4.4 The Applicant argued that the existing buildings could be demolished without further consent. WCC helpfully set out⁶⁷ the details of the relevant Order (GPDO) and its position⁶⁸. In short, the Applicant would be required to apply for a determination as to whether *prior approval* would be required. If it is required, WCC would be limited to approving the method of demolition and proposed restoration, and not the principle of demolition (for which permission is granted by the GPDO). The only exception to this might be the small amount of bridge to Hesketh House which appears to be within the Portman Estate CA.

5. The proposals⁶⁹

- 5.1 The proposed building would require the demolition and removal of all the buildings on site, excavating two floors of basement, and redeveloping the site with retail space to the lower floors and offices to the upper floors, as well as a gymnasium and café/restaurant. The scheme would extend well above the existing in tiered levels of offices increasingly set back with a series of planted living walls and garden terraces. There would be a substantial ground floor office entrance area.
- 5.2 The proposals would be brick-faced with stone details and bronze-finished window frames. The façades would be topped by a timber cornice or canopy. The slightly angled frontages to Oxford Street and Orchard Street House would aim to add interest and emphasise new routes through the site.
- 5.3 It was common ground⁷⁰ that the Proposals would deliver (a) a new, arcaded route through the site from Orchard Street to Granville Place, reinstating a

⁶³ Planning SoCG CD9.02 s6

⁶⁴ Ibid s6

⁶⁵ CD9.02 para 5.3.3

⁶⁶ CD5.10

⁶⁷ At my request. See INQ31. Under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).

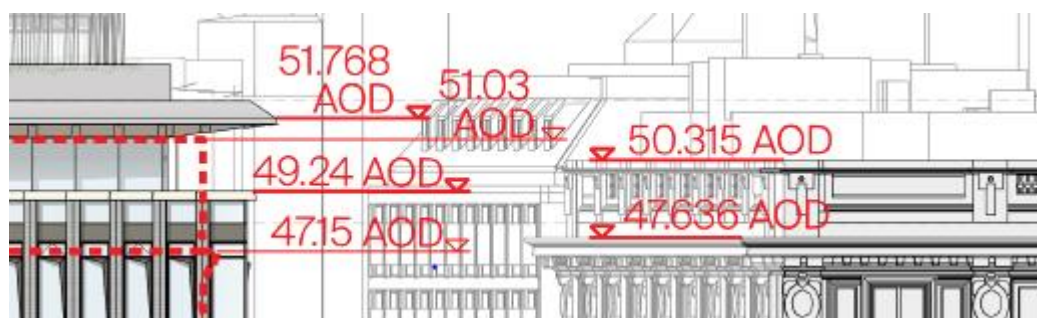
⁶⁸ INQ31

⁶⁹ See also view from the south shown on the front cover

⁷⁰ CD9.02 para 9.3.3

historic route; (b) enhancement of the entrance to Portman Mews from Orchard Street through the removal of the existing bridge structure over the mews; (c) additional high quality publicly accessible space of over 1,000m²; (d) substantial public realm improvements at the rear of the site to the benefit of Granville Place and Portman Mews South, which currently has an unattractive character and is an underutilised servicing area.

- 5.4 There was no agreement as to whether the proposed active frontages would create a greatly improved streetscape, and SAVE considered that the agreed benefits could be achieved through refurbishment. There was no Design Review Panel, as that is not how WCC operates.



Extract from agreed drawing illustrating relative cornice heights⁷¹

- 5.5 The present cornice to Orchard House is 0.5m lower than that of Selfridges. The furthest protrusion of the cornice to the proposed building would be 4m higher.
- 5.6 The architect⁷² explained through illustrations in the DAS⁷³ how a series of alternative refurbishments, which would have retained parts of the existing buildings, had been considered. He also explained that the scheme was developed in consultation with WCC and the GLA⁷⁴ and that the plans are specifically configured to meet M&S's requirements for a store⁷⁵. He claimed that he *started* work by carefully testing whether the existing buildings could be configured⁷⁶. Contemporaneous evidence⁷⁷ produced to support this claim refers mostly to M&S's specifications and standards.
- 5.7 As well as the architect's testimony, the Applicant included reports from experts on office development to defend its decision to redevelop. These found that⁷⁸ no refurbishment was likely to be viable or deliverable. The Applicant claimed, with evidence⁷⁹, that the new store was designed specifically for M&S.

⁷¹ Extracted from agreed annotated Pilbrow & Partners Dwg. No. 1827-PP-DR-A-SK-0001 at INQ46

⁷² Mr Pilbrow. He gave credible evidence, by which I mean that he gave open answers to questions, and demonstrated a willingness, even an interest, in engaging fully with SAVE's sustainability objectives.

⁷³ CD1.07 p100

⁷⁴ CD1.07 p99

⁷⁵ INQ39

⁷⁶ CD4.18 p3 Response to Sturgis dated 4 April 2022

⁷⁷ INQ39 which I requested on Day 1, was produced on the final morning of evidence. It notes that there is no such documentation and mostly refers to 2019.

⁷⁸ CD10.04 Goddard A^{ces}3-5: Reports by Nash Bond, Leslie Jones, Knight Frank & KKS Savills

⁷⁹ Pilbrow PoE CD10.09

- 5.8 The Planning Application included a Sustainability Strategy⁸⁰, a Circular Economy (CE) Statement⁸¹, an Energy Statement⁸² and a Whole Life-cycle Carbon (WLC) Assessment⁸³ with accompanying *template*⁸⁴. The GLA sought additional information and clarifications on these which were provided⁸⁵.
- 5.9 The scheme would aim to follow all current best practice for minimising and recycling waste. Having noted that *The embodied carbon of the materials represents 40% of the total whole life cycle (embodied and operational) carbon footprint*, the Applicant *identified the construction elements with the greatest embodied carbon (notably concrete and steel) and looked at alternative low carbon solutions*.
- 5.10 The Joint Position Statement on Carbon⁸⁶, effectively a further SoCG, sets out the respective positions between the Applicant and SAVE. There was only one main remaining point of significant disagreement between the witnesses⁸⁷, who were not called, which was the relevance and accuracy of the comparison of the whole life-cycle carbon emissions of (i) the Application Scheme and (ii) a light-touch refurbishment (LTR).
- 5.11 There was some disagreement with regard to the proposed decarbonisation of the grid, which the Applicant claimed was accounted for in the figures. The WLC assessment template refers to the 2022 adopted LPG⁸⁸ and provides embodied and operational carbon emissions figures. It acknowledges that *Reductions in operational energy and progressively lower carbon intensity inherently means that the embodied carbon emissions accounts for a greater proportion of the buildings Life Cycle emissions*⁸⁹.
- 5.12 SAVE argued that grid decarbonisation reduces the relative benefits of new build energy efficiency and that any carbon payback which is not achieved early on is unlikely to ever be achieved. However, while future grid decarbonisation has generally been allowed for, the WLC online tool does not currently allow for it to be considered in the cradle to gate impacts⁹⁰: extraction, processing and manufacturing of the materials.
- 5.13 HE noted⁹¹, *the proposals potentially represent a missed opportunity to retain the best parts of the existing building, through its reuse and adaptation. This could enable a more sustainable form of development (as promoted by the NPPF), with the positive elements of Selfridges' setting being preserved*.

⁸⁰ CD1.23

⁸¹ CD 1.21

⁸² CD 1.17

⁸³ CD1.22

⁸⁴ CD 1.36

⁸⁵ Allwood PoE CD10.07 p6-7. These centred around the reporting of demolition and construction waste; commitments to manage operational waste in accordance with the waste hierarchy; strategies for segregation of operational waste, monitoring of operational waste performance; and a commitment to submit a post-completion CE update on completion.

⁸⁶ INQ49

⁸⁷ Dr Godefroy and Ms Allwood

⁸⁸ CD6.32 Section 2.8.2

⁸⁹ As referenced in Section 4.1 of the WLC Assessment CD1.22

⁹⁰ Ibid. This is on account of the use of the online One Click LCA tool. See also CD10.07 para 77

⁹¹ CD4.4

6 The case for the Applicant

The following case was made on behalf of M&S

Introduction and summary.

- 6.1 On any party's case the proposals before the Secretary of State are agreed to meet planning and spatial requirements for the site.
- 6.2 Functionally, it is agreed that the site will effect a transformation of this part of Oxford Street consistent with the needs of the CAZ, the International Centre and that the stated requirement for "urgent and compelling change" set out in WCCs Place Strategy and Delivery Plan will be met.
- 6.3 These represent heritage and public benefits of such a strategic order that they would significantly outweigh any reasonably identifiable heritage harm associated with the proposals. As a result, the heritage policies of the NPPF would be met. This is a powerful conclusion.
- 6.4 No party is asserting that there actually is another, better way of achieving these or substantially similar benefits either through refurbishment or at all. The highest it is put is that there might be.
- 6.5 The evidence establishes conclusively that there are no realistic prospects of a viable or deliverable refurbishment option given the multiple and inescapable constraints associated with the existing buildings in this particular market.
- 6.6 That evidence was unchallenged, unmet (and largely unread) by the relevant objectors' witnesses.
- 6.7 The substantive issue for the decision maker in this case therefore is whether such urgently needed benefits should be turned away on the basis that there **might** be a refurbishment option which **might** be suited to meeting the requirements for the site.
- 6.8 A complaint that both the local authorities⁹² in this case deliberately failed to properly consider the justification for the redevelopment of the site is both inaccurate and irrelevant given the evidence. It is notable that in closing the substantive issue, the practical real world potential for reasonable refurbishment, was almost entirely side-lined in favour of SAVE's assessment that there was not a specific consideration of Mr Sturgis's deep retrofit prior to application.
- 6.9 There is no reason to set aside the very clear and unambiguous findings of the authorities in this case, to the effect that a redevelopment option is "strongly supported" by the development plan.
- 6.10 That being so, there should be a finding that the proposal accords with the provisions of an up-to date development plan when read as a whole and that planning permission should be granted without further delay.
- 6.11 In opening I said that the case for the proposal would be based on 4 broad propositions, each one of which has been accepted by the relevant planning

⁹² The GLA and WCC

authorities. That opening is annexed to this closing and is hereby incorporated by reference into the closing.

- A. The existing site and its 3 separate buildings make a wholly inadequate contribution to the spatial operation of a sustainable capital: they are not suited to meeting the land use requirements for the site.**
- B. The existing buildings are not protected from demolition: they make a limited contribution to the settings and significance of a number of designated heritage assets.**
- C. The proposed redevelopment clearly meets the spatial requirements for this site and brings very significant public benefits.**
- D. The proposal brings these huge public benefits without unacceptable heritage harm and is entirely consistent with Government and development plan policy on sustainability, circular economy and carbon.**

6.12 I now return to these propositions in closing with the benefit of the evidence having been heard.

A. The existing site and its 3 separate buildings make a wholly inadequate contribution to the spatial operation of a sustainable capital: they are not suited to meeting the land use requirements for the site.

6.13 This proposition can be taken shortly in closing because it is agreed between all 3 main parties.

6.14 In short, the existing buildings are woefully and inappropriately underused.

6.15 At this location, that is inexcusable. For the policy reasons set out below, this is a site which should be making the most of its location.

6.16 As a result, there is common ground now at the Inquiry that there is no “do nothing” option. The planning system needs to intervene on this site.

6.17 This is recognised by the fact that it is no part of SAVE’s case that a light refurbishment or a façade retention would be appropriate. These options would, it is agreed, fail to reflect the place of the site in the spatial make-up of the City.

6.18 What is needed is something more, everyone agrees: the question is what that might be. With the extent of agreement now in mind the spatial inadequacies of the buildings can be summarised more briefly than in opening.

Retail Failings

6.19 The existing store was in large part not designed to be a retail building. The buildings’ composition and internal make-up reflect their history: a speculative 1930s office building of its time reflecting the structural expediencies of 1930s technology and an accretion of later make-do and mend additions of no quality which have been accumulated, adapted and converted in a piecemeal way over the century.

6.20 The 3 buildings now mainly house M&S Marble Arch. In retail and in wider planning terms, the store element of the buildings at the site should now be serving a thriving flag-ship function at this place of global importance in the retail hierarchy.

- 6.21 The buildings are failing in this respect and others. M&S explain why in their evidence.
- 6.22 That evidence was not seriously challenged as to its essential truth.
- 6.23 Their evidence, and that of Nash Bond, explain that customer expectations of a store (especially at this location in the global "International Centre" where it would need to compete with other flagship stores of international quality) simply cannot be met in and about the existing buildings due to their multiple and compounding constraints. These reflect its structure, composition and history. As such the buildings are not now close to fit for purpose at this location.
- 6.24 Uniquely M&S has chosen to disclose its trading/footfall figures for the store to the Inquiry. They confirm a trading pattern which is inconsistent with the function of the site and the centre and which, in retail and commercial terms, is unsustainable.
- 6.25 These mean that the existing store and its *modus operandi* caused by the inescapable constraints of the building is failing and that, in turn, is causing reputational harm to the brand.
- 6.26 As a result, consistent with the position it takes on any failing store, M&S has indicated that it will not continue trading from the existing store. It cannot be criticised for that: it owes a duty to its shareholders and the decision is exactly the decision it is having to make in the new retail world across the UK.

Oxford Street failings as an International Centre

- 6.27 The fact that the existing store is failing both contributes to and is compounded by the fact that the west end of Oxford Street is also in decline. That decline is obvious and palpable.
- 6.28 I said in opening: go there! It has a smell. I didn't have in mind the smell of diesel but rather the more intangible reek of failure, of second or third best: of cheap sweets and counterfeit goods.
- 6.29 That decline needs to be reversed if this part of the capital is to continue serving its function as part of the International Town Centre.
- 6.30 Such centres are required to be the "focus for the majority of high order comparison goods retailing" whilst securing opportunities for *inter alia* higher density employment in a high-quality environment.
- 6.31 The Council describes the need for change at this part of the iconic shopping street as "both urgent and compelling": WCC Place and Delivery Strategy.
- 6.32 The SoS should heed this call for action.
- 6.33 But the position is more stark in retail terms. Without M&S at this location and, **for the reasons set out above and not challenged by SAVE**, they will leave if this application fails, the decline of this area of the Centre will accelerate yet more dramatically.
- 6.34 So too, consequently, will its ability to act as a spatially important sustainable location for growth.

- 6.35 There is on the evidence now no department store operation in the UK retail market which would come close to being in a position take the entire site vacated by M&S.
- 6.36 On their departure therefore, the site would inevitably be split. The (absence of) quality of occupier that might be found for the remaining space is already apparent from the existing non-M&S retail representation in the vicinity. Such an outcome - further decline - is not consistent with the requirement that investment in Oxford Street should enhance the West End's position as a globally competitive retail destination.
- 6.37 Suggestions from objectors and others to the effect that M&S leaving would free up the location for smaller, edgier, shorter leases and food and beverage businesses are not supported either by policy or evidence. The nature of the occupation of this part of the street is already clear and deteriorating.
- 6.38 The loss of M&S could only make this worse. The aims of the policy to use the street as the focus for higher order comparison retail, typically flagship stores, and associated higher order offices, are wholly inconsistent with the inevitable and potentially terminal decline of the area if the last remaining national department store brand departed.
- 6.39 The submissions of local businesses should be given substantial weight in this regard. They share the fears of the local planning authority, the spatial planning authority and M&S itself as to the very future of the street: once the iconic shopping street for the UK.
- 6.40 The development plan calls for positive transformative and urgent action. A failure to facilitate such a change will inevitably result in a land use planning reverse and not to a positive transformation.

Employment Use

- 6.41 This International Town Centre also sits in the CAZ. Both are front line designations requiring them to deliver London's growth.
- 6.42 In this part of the CAZ, so important is the strategic employment function of the Zone that the provision of offices is to be given even greater weight than even the meeting of London's pressing need for housing. Housing is, for these reasons, not an acceptable use at the application site.
- 6.43 The development plan requires WCC to provide a minimum of 445,000 sqm employment land. The site represents one of the best potential locations to assist in meeting that need.
- 6.44 The failure of the site to make any meaningful contribution to employment uses at all, in the heart of the West End Office market at this accessible location, is a glaring one.

Employment/retail combined to effect transformative regeneration

- 6.45 The Westminster City Plan specifically targets Oxford Street as a location where much of its plan for growth can be met to significant effect.
- 6.46 This must, we are told, "include the transformation of Oxford Street to ensure a more diverse and interesting mix of uses and better-quality public realm that

prioritises pedestrians, enhances the shopper experience, and makes it a more attractive place to visit and enjoy. Along with an improved public realm, the built form of Oxford Street offers scope for increased height to deliver a range of commercial floorspace that complements the retail offer and provides modern workspace - reinforcing its role as a key commercial centre.”

- 6.47 The application site is one of a very few sites where such transformation would be achievable. It is by far the one which would benefit from transformative change most.

Overall

- 6.48 In summary therefore the existing buildings are agreed by all to be failing to make an appropriate contribution in retail and town centre terms. They are inefficient and wasteful in terms of the uses which are on site and make no meaningful contribution at all to the strategic function of the CAZ or the stated need overall to transform Oxford Street to create a globally competitive retail mixed-use multi-functioning destination.
- 6.49 These conclusions are not, and are not capable of being, in realistic dispute. They are now agreed with SAVE and of course shared by the local and strategic authorities.

Refurbishment suited to meeting requirements for the site?

M&S as serial refurbishers

- 6.50 M&S is one of the country’s most responsible businesses. Their remarkable and recent track record of re-using and repurposing their own stores (and other town centre buildings owned by their now defunct rivals) is second to none. The scheme architect for many of these projects has produced evidence speaking to this experience for the purposes of the Inquiry⁹³.
- 6.51 Wherever and whenever M&S can repurpose a building consistent with the needs of the location they will do so. Their record speaks for itself and is the best real-world evidence of their *bona fides* in this regard. They understand the potential benefits of refurbishment better than most and probably better than any other High Street occupier.
- 6.52 But as SAVE accepted⁹⁴, refurbishment cannot be the answer in all cases.

Need for refurbishment to be viable and deliverable

- 6.53 First and most obviously, as SAVE⁹⁵ fairly conceded, refurbishment as an option can only be a benefit if there is a realistic prospect of it becoming viable and deliverable.
- 6.54 If there is no such prospect, then refurbishment does not and cannot offer any benefit.
- 6.55 There is in this case, on the evidence, no prospect of a viable and deliverable refurbishment at this location.

⁹³ See Table 1 Appendix 1 (CG) for recent refurbishments

⁹⁴ Mr Sturgis in XX

⁹⁵ Ibid

- 6.56 It is common ground between the parties that overall retail floorspace at the buildings (as well as being of poor quality) needs to be reduced in quantum. The site has too much retail space for it to operate efficiently in the present market. SAVE⁹⁶ agreed.
- 6.57 In order for any development to succeed, there needs to be another use. No redevelopment or refurbishment would stand a chance of success simply by reducing the area of its existing land use. A second land use is thus necessary. SAVE agreed this proposition also.
- 6.58 In this case, the only meaningful appropriate choice for development is the priority use at this location, namely office use.
- 6.59 On any meaningful refurbishment such office use would need to occupy the upper floors of the existing building and would also need a ground floor presence or address. The viable and deliverable delivery of this space over three buildings is critical to the delivery of any reasonable refurbishment option. SAVE agreed.
- 6.60 Once this fundamental element of any refurbishment option is understood, the criticality of the evidence as to the delivery of this part of any refurbishment tangram⁹⁷ has to be agreed.
- 6.61 And it was. SAVE agreed in terms⁹⁸ that if this element of the proposal was undeliverable then any reasonable refurbishment option was also undeliverable.
- 6.62 As the evidence below makes clear, it was always understood that for these and other reasons, the potential for refurbishment was undeliverable.
- 6.63 For the purposes of the Inquiry, that evidence on the state of the present market was again reconsidered. The expert market-led evidence⁹⁹ was not challenged by SAVE. Indeed it had not ever even been read¹⁰⁰.
- 6.64 Nor in truth was it challengeable. The experts¹⁰¹ are: 1. probably involved in more West End Office transactions than any other agent, and 2. an immediate past president of the British Council for Offices (BCO) and an expert on the internal and external requirements of the market in the West End.
- 6.65 In the absence of any indication of what SAVE had meant by way of a deep refurbishment at any time, they were tasked with independently considering whether ANY reasonable refurbishment was deliverable at the location. They had the benefit of the structural potential for extensions provided by Arup.
- 6.66 Their conclusions are unambiguous and inexorable. They are based on in depth assessment of the site and a 3 fold retail office methodology employed by themselves and by those actively in the market for office accommodation in the West End.

⁹⁶ Ibid

⁹⁷ "Jigsaw" or "puzzle"

⁹⁸ Mr Sturgis in XX

⁹⁹ of Mr Ian McCarter and Mrs Katrina Kostic Samen

¹⁰⁰ By Mr Sturgis. As acknowledged in XX

¹⁰¹ Mr McCarter and Mrs Samen respectively

- 6.67 They did not restrict themselves to a consideration of a light refurbishment as suggested by SAVE¹⁰². If their evidence had been read, it would have been aware of this fact.
- 6.68 The Inspector will appreciate the main parts of their analysis but for the assistance of the SoS they indicate¹⁰³ that:
- The issues with the site are so fundamental ... that any refurbishment of the existing buildings cannot address the main and inescapable structural issues with the building which include but are not limited to its floor and ceiling height, dense column grid pattern and its consequences and the disjointed nature of the 3 floorplates and resulting spaces;
 - The rental levels would be so low as to mean that no reasonable developer would consider it viable to undertake such a refurbishment;
 - Considering the key criteria and recommendations coming out of the NLA expert Panel on Work/New London Mayor's Plan 2024, it is my opinion that these Premises are not fit for purpose. Low ceilings, lack of natural light, small spaces to collaborate and gather, poor amenities, no connection to the public realm, limited connection with nature and the outdoors, loss of identity and poor operational efficiency will not attract tenants in today's changed world¹⁰⁴.
- 6.69 In addition, they speak to the now accepted post pandemic structural *flight to quality*. It is neatly put¹⁰⁵ that there is an increased focus on place and delivering user experience to *earn* the commute.
- 6.70 Their evidence is then supported by real world comparable evidence.
- 6.71 Thus, and as an example, evidence about the difficulties of letting the Adelphi as a result of its restricted floor to ceiling height and column density was relevant because those constraints over one large floorspace were magnified in the circumstances of the present 3 multi-limbed, multi-constraint, 3-building agglomeration.
- 6.72 It was also pointed out that three other large department store refurbishments nearby would represent the immediate and direct competition for the premises. They all explained neatly why refurbishment was only an option in appropriate circumstances: and not here.
- 6.73 Thus, of these three refurbishments:
- a. Debenhams benefits from large rectangular single floors with no changes in levels. The floor to ceiling height is good and it benefits from good natural light on all 4 sides.
 - b. House of Fraser has a regular column grid floor to ceiling height of 3.6 and a design density of 1.8. The building has NONE of the constraints that the

¹⁰² Mr Sturgis in evidence, in rebuttal and in chief

¹⁰³ All in CG Appendix 5

¹⁰⁴ CG Tab 5

¹⁰⁵ by Ms Samen

- Marble Arch site does. The M&S has none of the benefits of the House of Fraser block.
- c. The John Lewis block has a 4m slab to slab dimension and large floorplates which M&S does not. Even here an element of redevelopment may be necessary.
- 6.74 They also make it clear in viability terms¹⁰⁶ that the likely retail values achievable at this location for the compromised floorspace (£45/sqm) do not come close to meeting the costs of provision (£250/sqm) giving rise by a very long way to a negative residual valuation for the premises, reinforcing their evidence that such floorspace would simply not be deliverable.
- 6.75 There was no challenge to any of this evidence¹⁰⁷.
- 6.76 Both market experts¹⁰⁸ were shown SAVE's original objections and Rule 6 statement. The latter expert commented "I am not surprised that despite many, many months of suggesting there is an alternative refurbishment option, not a single workable solution to the difficulties of these buildings for such an option has been forthcoming"¹⁰⁹.
- 6.77 Then SAVE¹¹⁰ produced several sketches of an option which explained his position. He did so without the benefit of any office or retail market assistance and without even, we now know, reading the fundamental issues raised by the experts about the potential for refurbishment given the clearly identified and explained multiple and inescapable constraints to viable refurbishment contained in the evidence.
- 6.78 That late sketch proposal underscored the complete unworkability of the refurbishment option.
- 6.79 Thus:
- a. unsurprisingly, it didn't deal with any of the structural and multiple inescapable problems identified in the unread evidence which meant that the refurbishment was undeliverable and unfundable in the marketplace;
 - b. it proposed a servicing solution which was literally unusable;
 - c. it proposed a solution for the colonnade which was unsafe because it would only allow 2.2 m wide footway between the façade and the footway, considerably below the minimum required at this location by the TfL guidance on pedestrian comfort and safety; and,
 - d. Failed to identify the location and disposition of any of the pillars and columns which had been identified over many years as a central constraint.

¹⁰⁶ see Mr Goddard's Rebuttal

¹⁰⁷ presented by Mr Goddard, himself a valuation surveyor with copious experience of the London office and retail market, and who specifically agreed, adopted and spoke to the evidence of the market experts

¹⁰⁸ Mr McCarter and Ms Samen

¹⁰⁹ Appendix 5 Mr Goddard Proof

¹¹⁰ Mr Sturgis, in rebuttal

- 6.80 The market experts¹¹¹ were specifically asked to look at this late evidence and confirmed¹¹² that all of their main concerns remained unresolved. In addition, the expense of removing the multiple cores added further cost taking delivery yet further out of reach.
- 6.81 Finally and without advance notice, SAVE¹¹³ produced yet further evidence in chief as to which the Inspector gave leave for the Applicant to respond.
- 6.82 That evidence was even more unorthodox and was wrong. And in hugely probative ways. Thus:
- a. the documents showed how fundamentally the constraints associated with the proposal had not been understood. Slide 25¹¹⁴ suggested that the columns were largely regular. But unfortunately this shows 88 columns when in fact there are 114. Very many of them were placed in the wrong position¹¹⁵.
 - b. it was accepted¹¹⁶ that the original response to the service bay was undeliverable, but the new slides produced no credible alternative. This in principle element of the operation is simply not resolved or resolvable¹¹⁷.
 - c. 101 New Cavendish Street was used as an example of how refurbishment might work. It is a bad example.
 - i. It is a wholly different building from a different period and with a very different structural floorspace and column density. It is not comparable for the purposes for which it was provided.
 - ii. If anything, its failure as a building (refurbished twice in quick succession, long periods of voids, still large areas of non-occupation) speaks to the absence of potential for the more constrained M&S sites.
 - d. When asked¹¹⁸ whether the West End market was a particular and a special one it was accepted that it was. When asked to identify premises which had the multiplicity of constraints which were displayed at the site, and the Inspector identified those in terms, not one successful refurbishment could be identified which shared all of these characteristics. After the close of evidence a number of premises were identified by SAVE. As to those:
 - i. none is in the West end; and,
 - ii. most are in evidence already and all are self-evidently very different and less constrained than M&S (none is spread over three buildings for example).

¹¹¹ Mr McCarter and Ms Samen

¹¹² through Mr Goddard in chief

¹¹³ Through Mr Sturgis

¹¹⁴ Of Mr Sturgis's presentation

¹¹⁵ See rejoinder note

¹¹⁶ By Mr Sturgis

¹¹⁷ As Mr Pilbrow's response note establishes, it would not allow the relevant service vehicle enough height to get into the bay as a result of the need to keep the existing floor to ceiling height.

¹¹⁸ Mr Sturgis, by me

- e. Both market experts again looked at the new element of the scheme. They provide a statement to the Inquiry which SAVE¹¹⁹ has simply looked past. It was said¹²⁰ that none of the experts had seen a comprehensive scheme of the type that SAVE was suggesting. Wrong. Their statement identifies clearly¹²¹ and persuasively why the newly minted proposals presented stand no prospect of delivery in the West End market. They indicate that all of their previous concerns about ANY reasonable refurbishment are also applicable to the proposed scheme.
- f. The new consideration of, and reliance upon, the Nike store as a comparable for the first time in chief was also simply incorrect as a matter of fact. The dimensions spoken to at Nike don't exist. The proper measurements (which far exceed those which would apply at M&S) were measured and the correct measurements added to the slides). SAVE's closing simply sidesteps the fact that the floor-ceiling dimensions relied upon¹²² are plainly and very significantly incorrect¹²³.
- 6.83 Overall, this Inquiry has had the benefit of a site visit to all parts of the 3 buildings, has heard from 3 witnesses¹²⁴ and has had the benefit of an expert tribunal examining the various plans with an understanding of the building. There will never be, or has been, a more thorough examination of the difficulties presented by the existing building. The Inquiry is able to report clearly and securely on that evidence, particularly in relation to the multiplicity of elements that simply cannot be changed across the 3 units, that there is no reasonable prospect of a deliverable refurbishment option.
- 6.84 SAVE¹²⁵ has further helped establish that conclusion, even focussing on the essentials of a refurbishment scheme, that there are simple understandable, obvious and structural (in both senses of the word) impediments to a workable and deliverable refurbishment.
- 6.85 Such self-evident constraints on the evidence are fatal to the potential for any reasonable refurbishment option being viably delivered. Nobody is going to finance the delivery of several main, deep, fundamentally constrained floors of office accommodation across the existing plates of the building as the base for new floors of office above.
- 6.86 Once this element of the proposal is understood to be structurally undeliverable, it is common ground with SAVE that there is no refurbishment option. This alone, and without more, means that the entire refurbishment potential benefit is nugatory.
- 6.87 It also on reflection (see below) puts into context the clear and consistent findings of the GLA and WCC on the issue of the justification for demolition. This substantive assessment clearly explains the conclusions reached by both

¹¹⁹ Mr Forshaw

¹²⁰ Ibid

¹²¹ INQ 43

¹²² By Mr Sturgis

¹²³ see rejoinder INQ 42

¹²⁴ Messrs Pilbrow, Sturgis and Goddard

¹²⁵ Mr Sturgis

authorities on the strong support for refurbishment and also how artificial are the other procedural concerns of SAVE.

Refurbishment and retail delivery

- 6.88 M&S has explained why the existing store is failing in the rapidly altering dynamics of retailing. The store is insufficient in quality and flexibility to be a destination of the type expected. There is no meaningful challenge to this expert judgment on the evidence.
- 6.89 M&S won't run such a failing store and have closed many that are failing because that is the rational and proper thing to do (they are opening many others too where that is rational).
- 6.90 SAVE does not demur from the fact that M&S are not obliged to be sentimental or to keep stores open when they are not performing.
- 6.91 So, when the multiple, inescapable constraints of the 3 buildings they presently occupy are such that they are, with their massive experience at refurbishment, able to say that they would not occupy such a store, then again that is an entirely rational position.
- 6.92 If the office provision is not deliverable then this element of the case is of course purely theoretical because there will be no new retail floorspace.
- 6.93 But in truth, and for completeness, even if there were a viable office element, any refurbished retail element of any potential refurbishment would not provide anything truly meaningfully better than the store which M&S believes is failing and will not continue to occupy.
- 6.94 The same problems and the same constraints are largely in play post any meaningful refurbishment, as prior. The existing constraints are fundamentally inconsistent with the running of a flagship store here.
- 6.95 Further, there is no rational solution to the inescapable physical constraints to any retail refurbishment¹²⁶. Thus:
- a. There is still no solution to the literal inability to gain access to the service area. SAVE¹²⁷ introduced a hugely complex and new concept for transferring load above the servicing bay. But it still doesn't allow the relevant service vehicle enough height to get into the bay. This is an inescapable constraint caused by the need to keep the existing floor to ceiling height at this part of the building.
 - b. The colonnade, it is now accepted, is an inescapable and unpleasant retail fixed point if Orchard Street is safely to accommodate the tens of thousands of additional footfall associated with the Elizabeth Line.
- 6.96 The original flagship store is no longer serving that function and the reasons why it can't would all be maintained in a refurbished store (following a potentially tens of million pound expenditure in the theoretical refurbishment which won't happen in any event because the offices are undeliverable).

¹²⁶ As identified by Mr Pilbrow

¹²⁷ Mr Sturgis in evidence in chief

- 6.97 SAVE argued¹²⁸ that for a refurbishment M&S might have to accept a series of necessary compromises. That's not true.
- 6.98 If the refurbished store is unable to perform materially better than the existing store, which it has already indicated it will rationally and sensibly close, then it wouldn't have to accept, much less pay for, the pleasure of a compromise. It would be irrational for it to deliver the refurbished store by parity of reasoning.
- 6.99 There is nothing irrational about such a decision, nor is it a threat as it was portrayed by SAVE¹²⁹ in his opening. It is no more than a business decision not to keep running a failing store.
- 6.100 There is no issue as to the reliability or accuracy of the M&S position. SAVE¹³⁰ was clear and precise in his answer to the Inspector on this point that he did not doubt the truth or logic of the M&S intention. "I understand that they can't afford to be sentimental and don't challenge the fact that they will leave. "

Refurbishment and whether the existing buildings are suited to "the requirements for the site"

- 6.101 LP Policy D3 requires the optimisation of land at locations such as the appeal site (see below). It says that: *Higher densities should generally be promoted in locations that are well [served]* ¹³¹.
- 6.102 Under, importantly *Quality and character*, as part of the optimisation of the site, decision makers are told to *take into account the principles of the circular economy*¹³². That is the policy requirement. At 3.3.12, we are told sensibly that *The best use of land needs to be taken into consideration when deciding whether (or not) to retain existing buildings*.
- 6.103 In other words, the main thrust of the policy to deliver higher densities at the best locations is a relevant part of the decision as to whether to retain existing buildings. There will be occasions when retaining the building and its circular economy benefits will be inconsistent with the other requirements for the site.
- 6.104 This need for a balanced approach to the circular economy is inevitable if London is to meet its ambitious growth targets on brownfield land (the majority of which already has lower density buildings on it).
- 6.105 It is for this reason that even the most recent of guidance reflects the policy intent of ensuring that keeping existing buildings does not unduly harm meeting the wider requirements of the planning system for the site.
- 6.106 This is reflected in a number of places across the DP and LP Guidance (LPG), notably it is shown graphically in the decision tree¹³³ in the LPG Circular economy statements: March 2022. This tree is not policy, and following it is not and cannot be mandatory (see below) but the way it expresses itself is, as SAVE agreed¹³⁴, reflective of the intention of Policy D3.

¹²⁸ Mr Fraser in XX

¹²⁹ Mr Fraser

¹³⁰ Mr Forshaw

¹³¹ Policy D3B

¹³² Policy D3D13)

¹³³ CD6.30 Fig4 p11

¹³⁴ Mr Sturgis

- 6.107 The LPG asks that regard is had to the benefits of retaining existing buildings but not if the buildings are not *suited to the requirements for the site*.
- 6.108 The wording is well chosen to reflect the spatial strategy of the development plan. Thus it does not refer to the requirements **of** the site, or things that site needs, but requirements **for** the site. That is the things the site is required to do. If the buildings are not suited to the things the site is required to do in development plan terms then, consistent with the circular economy, the buildings should be redeveloped and the best use made of the materials released.
- 6.109 In the present case, the requirements for the site reflect its location and public transport accessibility, its designation within the CAZ and its ability to effect a transformation at this now failing end of Oxford Street. It is a hugely important location for the spatial future and continued operation and existence of Oxford Street and of the West End and London.
- 6.110 The question is whether the buildings (and benefits of retaining them) are suited to these requirements. It is to be remembered that it is common ground that the status quo at the site is not sustainable and that Parliament has already granted planning permission for their demolition (see below).
- 6.111 First, plainly and straightforwardly, if the refurbishment is not deliverable then it won't meet the requirements of [for?]¹³⁵ the site at all. SAVE agreed¹³⁶. The present absence of contribution will continue and get worse, terminally so on the evidence.
- 6.112 Second, SAVE is clear, that on its case any refurbishment should include and needs to include the retention of all the buildings on site. The Applicant, for the reasons set out above, is clear that such a refurbishment won't be delivered.
- 6.113 But there **is** agreement that there is no potential for a sustainable refurbishment of just Orchard House or a façade retention. All main parties now accept in terms that none of these potential refurbishments could be viable, deliverable, or sustainable in carbon terms. There is even on SAVE's case, and for very good reason, not a sustainable, deliverable Orchard House-only based refurbishment.
- 6.114 That means that SAVE agrees that buildings that, by any reasonable assessment are unarguably of significantly poor quality, need to be retained as part of any refurbishment approach. In townscape, character and heritage terms put simply, these buildings are not suited to the requirements for the site.
- 6.115 They represent to a lesser or greater degree an abject failure of the architectural profession at this location. Trying to suggest otherwise is frankly hopeless. Not only do they present inescapable functional viability and deliverability constraints to the proper re-use of the site. They are also uncontextual eye-sores of the highest order which are clearly *not suited to the requirements for the site* however reasonably understood.

¹³⁵ The closing reads 'of' but should probably be 'for'

¹³⁶ Mr Sturgis

- 6.116 Third, the retention of the existing buildings frustrates the way in which the site is capable of meeting the spatial strategy of the LP, itself the main tool in the planning armoury for reducing emissions associated with accommodating London's necessary growth.
- 6.117 If net-zero is to be achieved consistent with accommodating growth, and that is the policy of the Government as reflected in the NPPF, then London as the most sustainable node in the country has also to grow. That growth of 70,000 people a year and their associated activities including millions of sq feet of employment growth is to be accommodated here because, if it were to be met more diversely, it would have incalculably higher consequences for emissions.
- 6.118 Within London, which is required to accept that growth and associated activity, growth has to be directed to the most sustainable locations within the most sustainable city. That has to be done on a spatial and strategic level, with decision makers making the best use of the land at those locations. SAVE¹³⁷ agreed that if this strategic policy is not followed, then accepting growth on other less well located sites even in the capital is bound to have large and literally incalculable impacts on the production of more emissions. The imperative to make the best use of land reflects, and is the embodiment of, the best and biggest thing that planning can do to achieve net zero.
- 6.119 Those locations best suited to reduce emissions from the consequences of accepting growth are identified through the LP's Good Growth agenda. And, as a location, the application site is at the highpoint of the good growth tree. It falls within almost all of the categories of most sustainable developments. It is in the CAZ, it is an international centre, it has a PTAL of 6B, it is sitting above the new Elizabeth Line. There can be few better located sites in the whole of London at which growth should be directed.
- 6.120 If and insofar as a decision in this case frustrates the delivery of growth to this location, and it does, then ironically it harms the very benefit it seeks to achieve.
- 6.121 That is especially so if the out-turn of this process is the further decline and deterioration of Oxford Street which all of the relevant retailers¹³⁸ are telling the SoS is the inevitable consequence of turning away this application.
- 6.122 Rather than transforming the location and Oxford Street in line with policy, the legacy of the decision to refuse would be an unsustainable set of buildings which are accepted by all to make an insufficient contribution to sustainable patterns of development and the absence from the street of one of its biggest remaining anchors.

The GLA and WCC have chosen not to apply their own *policy*?

- 6.123 The redevelopment of this site for the purposes proposed has the *strong* support of the relevant and democratically elected councils who have been considering the application on an ongoing basis since 2019.

¹³⁷ Ibid

¹³⁸ See Selfridges' representations below

- 6.124 SAVE¹³⁹ was driven to argue that the authorities have *chosen* to disregard their own policies in relation to sustainability matters and have supported the redevelopment option without due care and attention. It repeated the claim, when prompted by the Inspector, that the Applicant had done all that was reasonably required of it by the authorities and it was they which had failed.
- 6.125 This is both an improper and an unevidenced suggestion. It is also, in the light of the evidence above on the substantive matters heard at the inquiry, an allegation of little relevance.
- 6.126 Especially since it was clear that SAVE's witness¹⁴⁰ not only had not read the evidence in this case most directly relevant to his own case but that he was unfamiliar with and had never seen the GLA and WCC documents concerning these issues.
- 6.127 I shall nonetheless deal with this (as in evidence) briefly.
- 6.128 The case advanced originally was that insufficient options for refurbishment had been considered by the Councils contrary to their own *policy* and that the Councils had only in reality considered a light touch refurbishment option.
- 6.129 These allegations are inaccurate. They also fall to be seen in the context of the examination of the deliverability of any reasonable refurbishment scheme set out above.
- 6.130 There are two fundamental errors underlying these assertions.
- 6.131 First on the facts, the GLA is recognised as a leading authority in this field. It operates at a level significantly beyond Central Government and is the authority responsible for the largest area of brownfield land in the UK.
- 6.132 It is clear from the reports that the GLA and Westminster were fully aware of the inescapable constraints to refurbishment and the rationale for redevelopment. The points set out above relating to column density, floor to ceiling height, and the interaction of these across three separate floor plates are not complex or difficult to understand. They do not need to be represented by reference to a specific number of schemes or options. You do not have to have SAVE's rebuttal scheme or in-chief scheme¹⁴¹ before you to understand the insuperable constraints to delivery. All you need is a proportionate and understandable understanding of the extent of the constraints.
- 6.133 Thus¹⁴²: *The Applicant investigated both a site-wide refurbishment and Orchard House façade retention ... however due to economic structural and sustainability issues neither option was chosen.*

Structurally inadequate floor-to-ceiling heights and the buildings' inability to safely support additional floors in combination with qualitative difficulties would prevent the delivery of an improved retail and leisure building. This constraint would pose a risk to the viability of such an approach and the future

¹³⁹ through Mr Sturgis

¹⁴⁰ Mr Sturgis

¹⁴¹ Ibid

¹⁴² at Para 18 of Stage 2 CD 4.12

competitiveness of the retail establishment given the changing dynamics of the sector.

- 6.134 It is factually incorrect to have asserted that the GLA and WCC only had a light touch refurbishment option before them. The reports to committee explain very clearly that more than these options were considered. So too, on a proper reading, does the Design and Access Statement.
- 6.135 Thus¹⁴³, more than 16 options were identified as having been considered. One of those options was very clearly a cut and carve option involving office extensions above office floorspace. The very image above the text identified that this was one of the options specifically being described in the text below.
- 6.136 It is to be remembered that there were upwards of 15 pre-application meetings which took place prior to application and then a continuous engagement with the authorities following application on these and other matters.
- 6.137 There is no evidence to suggest that either WCC or the GLA engaged in these pre-application assessments in anything other than a professional and responsible manner having regard to the content of the adopted and then emerging New LP. By the time the application was made the New LP had been published and the Intend to Publish Plan, which is in all respects identical to the present plan on the relevant policies, was being used for development control purposes.
- 6.138 The Inquiry and the SoS should proceed on the basis that these pre-application exchanges took place properly and in a way which is consistent with the advice in the NPPF. The evidence establishes that at all stages the GLA and the Council remained strongly supportive of the redevelopment option.
- 6.139 The engagement and cross checking on these issues: CE, WLC and other energy issues continued. There were scores of post application queries which are reflected on the soon to be familiar consultation sheets before the Inquiry.
- 6.140 In this case, the information on the sheets has also to be seen in the context of the pre-application exchanges which took place throughout 2019 to 2021.
- 6.141 Sadly, when looking at the CE report submitted in response to the GLA's specific requests on, amongst other things, *strategic approach*, SAVE failed to have regard to the section which, in combination with all of the matters with which the GLA were familiar and which are set out in full in their earlier reports, deals with the inescapable, and by now familiar to all, constraints of the building namely:
- a. the complex and confusing layout, with five small retail floorplates;
 - b. that each building has its own structural grid and external elevational treatment;
 - c. floor to floor heights - below current standards and particularly compromised on the upper floors;

¹⁴³ at: CD 1.07b

- d. dense column grids and columns from various sections of development which sit immediately adjacent to one another¹⁴⁴.
- 6.142 The GLA Stage 2 Report considers all of the relevant evidence supplied. It is clear that the evidence as a whole, by this stage considered over 4 years, was sufficient to allow it to find that the proposal on these issues accorded with the development plan. Thus:
- a. regarding CE, additional information relating to the strategic approach, operational waste, bill of materials etc. was requested. This information was provided. The Application therefore accords with LP Policy SI7 (para 31);
 - b. the submitted WLC template satisfactorily addresses LP Policy SI2F and is acceptable (para 30).
- 6.143 There was a Stage 2 Addendum Report for 2 purposes:
- a. to consider the very claims that SAVE is now making about inadequate policing of its *own policies* by the GLA, particularly in relation to other potential refurbishments; and,
 - b. to consider whether the adoption of *Guidance* which was not in play at the time of the application should alter the position taken at Stage 2 that the application was fully in accord with the relevant CE and WLC policies.
- 6.144 That Addendum was taken to the Mayor with the benefit of leading counsel's advice¹⁴⁵.
- 6.145 The conclusion was that the GLA confirmed that the Applicant had given sufficient consideration to the retention of the building.
- 6.146 Second and briefly, SAVE confuses policy with guidance in coming to the conclusion that the GLA and WCC chose not to follow their own policy. It states in terms on several occasions for example that the provisions of the suite of guidance notes are policy which the GLA has deliberately ignored, particularly those relating to demolition.
- 6.147 What is of importance is whether the development plan requirements have in substance been met. As the GLA states, there is no development plan policy requiring priority to be given to retention or any requirement to test a given set of alternatives to a particular standard or in a particular defined way or by completing an identified Table.
- 6.148 WCC is considering the potential for such a policy (Reg 18) but no weight can be given to that and in any event any such policy is expressly stated to be applicable only *where appropriate* and the appropriateness of the circumstances where priority is to be given will be key to an understanding of how that policy, if adopted, might work.

¹⁴⁴ (CD1.21 at 2.3)

¹⁴⁵ as Mr Sturgis accepted

- 6.149 It is common ground that Guidance is not development plan policy and that it should not contain new land use policy. That is the place of the development plan.
- 6.150 If SPGs are drafted in a way which do in fact create new land use planning policies, and go beyond the Development Plan, then put simply they should not be treated as such by a decision maker. That would be an error of law.
- 6.151 It should also be common ground that guidance does not have the same status as policy and cannot prescribe or delimit the ways in which a development plan policy can be complied with as a matter of law.
- 6.152 That would be to elevate the guidance to the status of a development plan policy. A good way of testing this is to understand that a development plan policy can clearly be capable of being complied with in a number of ways absent the existence of guidance. There may be many legitimate ways of finding accord with a development plan and a guidance note cannot remove such routes and say it shall only be done in one way. It is not a policy it is guidance.
- 6.153 SAVE is in error in elevating Guidance notes, which are aimed at guiding those who produce statements and what should be put in them, to policy. Particularly in stating that the requirements of the guidance represent up to date policy which must be followed¹⁴⁶.
- 6.154 Realising this, SAVE's advocate¹⁴⁷ sought by some difficult intellectual gymnastics to finesse himself out of the error contained in the proofs: namely by clearly confusing guidance with policy.
- 6.155 He did so by in effect elevating the guidance notes - there to assist those producing statements - to essential elements required to ensure policy compliance. That is **not** SAVE's case or close to it. And it is **not** as a matter of fact or law an appropriate approach. The policy requirements are in the Plan. The guidance is guidance and can't be elevated to policy. Neither can the guidance identify the only required way by which the policy can be complied.
- 6.156 As the GLA themselves indicate at Stage 2, having regard to their own policies AND a full suite of adopted guidance notes, this proposal is in full accord with the Development Plan policies. And having regard to the guidance, in the particular circumstances of this case where all relevant further queries have been answered and understood, sufficient justification for demolition has been provided.
- 6.157 There is no good reason in this case, particularly following the further consideration of the evidence as to the delivery of SAVE's preferred alternative, to set aside this considered and reconsidered position of the leading authority in the UK on these matters. That underscores the strong preference for redevelopment expressed by both councils.

B. The existing buildings are not protected from demolition: They make a limited contribution to the settings and significance of a number of designated heritage assets.

¹⁴⁶ See for example Para 5.4 of Mr Sturgis Proof

¹⁴⁷ Mr Fraser

- 6.158 This section of the closing will be very brief because we have an expert tribunal well used to dealing with such matters¹⁴⁸ and because the contribution that the buildings make to settings is properly reflected in the buildings' status.
- 6.159 The fact that as a matter of law the buildings are not protected from demolition, and indeed have been granted permission for demolition by way of the GPDO¹⁴⁹, is now accepted by all. As I said in opening this is not a simple legal nicety.
- 6.160 It represents the Government's policy position in relation to protecting buildings of this category. The Government has actually granted a planning permission by order for the demolition of these buildings. It is as valid as a grant of planning permission by any local authority for demolition and as such and alone is a material consideration of weight irrespective of the fall-back position. In this case, an extant grant of planning permission would be a material consideration in its own right. The same applies here.
- 6.161 SAVE understands this, which is why it sought to invent a spurious potential for WCC to extend a CA to remove the right. There is no evidence of the intention of WCC to extend the CA for ANY purpose much less for this one which would be unlawful.
- 6.162 All parties now accept that such a permission exists and there is no evidence of it being removed. The SoS should be so advised.
- 6.163 That does not mean that the issue of demolition should not be considered as part of this application which is an application to demolish and redevelop: clearly it should be considered and has been.
- 6.164 But planning permission whether given by direct grant or general order represents the planning system's view of where the public interest lies. And in this case, the Government has said that it is not appropriate or in the public interest for developers to need to apply for planning permission or much less to pass tests for demolition of buildings such as this.
- 6.165 Further, the fact that the application site does not lie within a CA is (and can only be) deliberate. As a matter of law the site cannot be treated in any other way by the decision maker.
- 6.166 It has not been thought important enough to qualify or to pass the tests required for inclusion. Local authorities are under a duty to consider and reconsider the boundaries of CAs. There is no suggestion that WCC is in default of such a legal duty and, as SAVE¹⁵⁰ accepted, had it thought that the site merited inclusion in the CA, it could, as part of its consideration over the 4 years of this case, have so added it.
- 6.167 The absence of listing of Orchard House is also deliberate. It is not a building which has somehow *slipped through the net*. An application to list the building has now recently been rejected by the SoS twice and the certification which followed will of course be given full weight by the decision-maker.

¹⁴⁸ Me

¹⁴⁹ INQ31

¹⁵⁰ Mr Forshaw

- 6.168 It follows that the highest heritage *value* that can be ascribed to any part of the Orchard House building is that of non-designated heritage asset. It should not be treated as if it were a listed building. The purpose of the *designation* in the concept *designated heritage asset* is to engage a very different level of protection as a matter of law and policy.
- 6.169 The staircase appeared as a *trump card*¹⁵¹. It had always been understood as being present and is referred to in the COIL, without great enthusiasm because it is commonplace in this architect's work. A true estimation of its worth is that in each of the refurbishment options (rebuttal and in chief) the SAVE scheme actually removes the staircase as an integral part of opening up the retail area and removing cores.
- 6.170 SAVE really should have disclosed this loss, rather than hoping that nobody would discover it. But it chose not to.
- 6.171 It was claimed¹⁵² that its significance could be saved in part by salvaging the material. We agree that it could but disagree that it is a significant feature. Clearly it was not thought significant enough to save even in a building refurbishment by SAVE.
- 6.172 Further, large parts of the site (notwithstanding this status) and the other buildings clearly detract from the settings of the relevant designated assets as the site visit undoubtedly made clear.
- 6.173 Selfridges, the main but not only designated asset in play in the present case is bold, confident, appropriately a little brash and monumental. It is a hugely significant presence. And it was for years before Orchard House was even built.
- 6.174 In truth, very little of Selfridge's significance derives from Orchard House and its environs. That judgment is of course consistent with the fact that the boundaries of the CA are drawn tightly around it and do not include the Application site. (See below).
- 6.175 If Selfridges, the most significant asset in scope here truly relied upon the application site for *a large proportion* of its significance then its exclusion from the CA would be inexplicable. And it is not. It is entirely rational and consistent with the absence of listing.
- 6.176 Overall, therefore, Orchard House is not protected from demolition at all: indeed it has planning permission to be demolished. Its exclusion from the conservation area and the refusal of an application for it to be listed are legal facts.
- 6.177 The buildings are non-designated heritage assets but the designated assets do not really rely on them for their significance to any meaningful extent.

C. The proposed redevelopment clearly meets the spatial requirements for this site and brings very significant public benefits.

- 6.178 The spatial requirements for the site were carefully sketched out in opening because they are relevant to the issue of whether the existing collection of

¹⁵¹ Played in Forshaw's rebuttal

¹⁵² By Forshaw

buildings can in truth be *suited to* meeting the planning and other good growth requirements for the site.

- 6.179 I do not need to revisit these matters in closing particularly since it is now accepted (and reflected in the statement of common ground) that the proposal does in fact very significantly meet the requirements for the site. With one or two small exceptions all of the hugely powerful benefits contained in the Report to Committee and the Mayoral Reports are accepted by SAVE as being:
- a. deliverable in full by a viable scheme;
 - b. capable of viable occupation by land uses that are consistent with the relevant designations which make the site one of the most sustainable in the capital, and which are;
 - c. strategic in their scope and breath.
- 6.180 The proposals make the best use of brownfield land in a Town Centre with the highest public transport level of accessibility. From the earliest pre-application meeting, the principle of redeveloping the site into a multi-use transformative presence on Oxford Street has been strongly supported.
- 6.181 The proposals replace three interconnected, poor pieces of townscape, when read as a whole, with a high-quality sustainable building of exemplary design quality. They replace existing execrable public realm and permeability with a new high-quality arcade through the site restoring a traditional route, a new pocket park at Granville Place, widened and safe footpaths along Oxford Street and Orchard Street. This is all consistent with the requirement for investment to *transform* Oxford Street.
- 6.182 The proposals sustain and enhance the retail offer of the street in a significant way. Footfall will increase and there will be an overall enhancement of the functioning of this part of the retail frontage.
- 6.183 The provision of much needed Grade A offices will be a significant improvement. These premises would be expected to let quickly and efficiently introducing for the first time a true multi-use CAZ offer at this key location. SAVE agreed¹⁵³ with this proposition.
- 6.184 The building would be one of the most sustainable buildings in the whole of the capital with the offices achieving BREEAM Outstanding.
- 6.185 The wider economic benefits have not been the subject of dispute at the Inquiry. But that does not mean that they should not be the subject of report to the SoS. Notably the Volterra Report¹⁵⁴.
- 6.186 This carefully dissects the retail need case for the proposals and the benefits which will flow from it. It confirms that in the absence of the proposals the potential downward spiral is likely to have wider economic effects than simply on Oxford Street.

¹⁵³ Forshaw

¹⁵⁴ Contained and summarised in Mr Goddard Appendix 6

- 6.187 It assesses the need for commercial space in the West End from an economic perspective and confirms that at this most well-located site, the proposal would represent 10% of the WCC office floorspace requirement for the Plan period in this area¹⁵⁵.
- 6.188 All of these benefits are not challenged by SAVE and indeed are accepted. What is said is that they might potentially be achieved also by an alternative full refurbishment of all of the buildings.
- 6.189 For the reasons set out above, there is no realistic prospect of such a refurbishment or of a refurbishment being suited to meet the requirements for the site.
- 6.190 Overall this is a delivery on the requirements placed on the site by the development plans which is strategically important in terms of its delivery of the spatial vision for Westminster and beyond.

The proposal brings these huge public benefits without unacceptable heritage harm and entirely consistently with Government and development plan sustainability.

- 6.191 The impact of a proposal upon heritage assets is, as said in opening rarely assisted by lengthy submission.
- 6.192 So I propose simply to consider SAVE's primary submission namely that the proposals unacceptably harm the setting of Selfridges as a Grade II* building.
- 6.193 The impact of the proposal on the relevant settings of the CAs and other listed assets has been considered exhaustively¹⁵⁶.
- 6.194 In short, and for reasons relating to the quality of the proposal and the paucity of quality in many of the existing settings, the Applicant's expert witness¹⁵⁷, the GLA and WCC are of the view either that there is enhancement or there is no harm that is not outweighed by the benefit of the quality of the building itself.
- 6.195 As to the quality of the building, the analysis in the GLA and WCC documents speaks to its excellence and to the fact that it is of exemplary quality. Your treatise on beauty being in the eye of the beholder¹⁵⁸ and the subjective element involved in assessing quality means I shall refrain from poetic exposition in this case.
- 6.196 But the care and scholarship which have gone into this building will be apparent, the appreciation of context by the architect was clear and the detailing and handling of bulk, scale, mass and material are rightly lauded by the conservation officers of this authority¹⁵⁹.
- 6.197 Returning to Selfridges, the first thing to note is that Selfridges is one of the most robust, demonstrative buildings in the whole of London. It was designed to have that swagger and presence.

¹⁵⁵ 1.18

¹⁵⁶ in the evidence of Dr Miele

¹⁵⁷ Dr Miele

¹⁵⁸ See my Report into the *Tulip*

¹⁵⁹ CD 3.02

- 6.198 This means that the vast majority of its significance is intrinsic to the building in and of itself. It is, as the SoS has recently put it in another case, locked into the fabric of the building. None of this intrinsic significance disturbed by the proposal itself.
- 6.199 As mentioned above, Selfridges pre-dates Orchard House. All of that intrinsic fabric significance existed at the time of its constructed and did not depend on Orchard House at all. It still doesn't. Any significance which Selfridges has, does not depend significantly or in *large proportion* upon the presence of Orchard House.
- 6.200 Further, the proposal sits in the International Centre, but outside the Stratford Place CA. Oxford Street at this location is properly characterised by strong buildings of scale and presence. The existing setting of Selfridges and of the CA itself is thus already characterised by buildings which properly reflect the globally important nature of the centre. This is appropriate and not harmful. It is part of the existing character of the CA.
- 6.201 Yet further, as we have seen throughout the Inquiry, the policy requirement for Oxford Street is a transformational one. That policy specifically recognises the need for and compatibility of transformation with the ability to preserve heritage assets. Thus "the distinct environment and heritage of the CAZ should be sustained and enhanced through development decisions... such as the transformation of the Oxford Street District."¹⁶⁰ That is a clear recognition that transformation is not only compatible with, but required for, the sustaining of environmental and heritage character in this very location.
- 6.202 If there is to be a transformation in Oxford Street then it is this end of the street which needs transformation more than any other. More of the same is neither deliverable nor appropriate. And if there is a site on this part of Oxford Street which can deliver this transformation, then this is it.
- 6.203 It is of more than passing note as I mentioned in opening that the owners and occupiers of Selfridges share the applicant's view that the proposed M&S enhances the significance of their listed building. This opinion, though inexpert, is nonetheless instructive where a significant part of the case against the proposal is that it diminishes the presence of and competes with Selfridges. Clearly in retail terms the owners of Selfridges do not see this.
- 6.204 Finally, again as I mentioned in opening and as brought to life during the Inquiry¹⁶¹, a building's presence and prominence depends on so much more than just its size. Selfridges has a presence and a prominence because of its :
- a. form – it is a statement building which brings a block of Chicago to Oxford Street. It creates the context and does not respond to or need one to be significant;
 - b. consistency – 21 recessed bays separated by giant engaged ionic columns which are not shy or sensitive to neighbours;

¹⁶⁰ LP para 2.4.9

¹⁶¹ by Dr Miele

- c. detailing which is exquisite and omnipresent. It is not ever likely to be challenged.

6.205 In this context the proposal provides a building which:

- a. reflects the proper function of the site at this location with a single building purpose designed for its place. In doing so it sweeps away the awful elements of the existing townscape which clearly add nothing to the setting of Selfridges and positively harm the setting of the Stratford Place CA;
- b. deliberately does not challenge the monumentality of the Selfridges building but rather presents a finer grain detailed gridded façade, which is complementary in materiality but clearly subservient to the giant vertical order of Selfridges;
- c. is broken down by its angled building line and changes in grid heights which specifically respond to Selfridge's presence on the street front.
- d. opens up new sight lines of the Selfridges store enabling and better revealing the asset in terms of the guidance.

6.206 The applicants, WCC and the GLA identify no harm to the setting of Selfridges as a result of the proposal. Indeed, WCC specifically assert that the proposal represents a tremendous improvement to the appearance of the site as a whole in its consideration of the impact on setting.

6.207 The evidence in support for the Applicant¹⁶² is not repeated here.

6.208 But the aforementioned opening up of more and wider views of the building by the proposal's comfortable rake, showcase the listed building in a new and exciting way, allowing its monumentality to be read and understood in the streetscape better than before.

6.209 In addition, the removal of the ugly colonnade and indeed all of the other unacceptable and uninspiring buildings are a much better foil to the listed building. The creation of a cohesive high quality piece of townscape and a high quality sense of place are recognised as significant benefits of the proposal by both authorities and for good reason.

6.210 Significant weight and importance should be given to the enhancement to this setting.

6.211 HE does find harm on its assessment. But as I explained in opening it has not objected or indicated that planning permission should not be granted having regard to other heritage or planning benefits.

6.212 SAVE¹⁶³ says that HE is only a consultee and their absence of objection doesn't mean anything. They don't object. Well if only that were true!

6.213 EH object to the grant of a planning permission when they believe that harm is unacceptable. It is not shy of asking the SoS to call in applications either, when it thinks necessary. It has done nothing of that nature here.

¹⁶² Provided by Dr Miele

¹⁶³ Mr Forshaw

- 6.214 Indeed, it puts the level of harm to the setting to Selfridges on the lower end of less than substantial applying the criteria it explained to the Inspectorate in the *Holocaust Memorial Inquiry*.
- 6.215 SAVE's contention that there is harm to Selfridges towards the middle to upper end of less than substantial harm is in the context of this case simply not sustainable. It is a judgmental benchmark which is not rational and does not respect recent Court Judgments or SoS Decisions.
- 6.216 This is particularly the case when the existing uninspiring and poor quality buildings are said by SAVE¹⁶⁴ to make a neutral or minor harmful contribution to the setting. This indicates that either Selfridges' setting is not so sensitive to impacts or an internally inconsistent set of judgments by SAVE.
- 6.217 The SoS's decision in *Summerskill House* for example (building on the analysis at *Citroen* and at the *Chiswick Curve* and *Brentford Arts Centre* cases) is apposite. It post-dates *Bramshill* (which itself post-dates *Anglia Square*) and is compelling in its clarity and logic.
- 6.218 The SoS there agreed in terms with the Inspector's analysis which was to the effect that:
- [T]he range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar [of substantial harm]. In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance.*
- 6.219 In the present case, for the reasons set out above, the Selfridges building's significance is very substantially locked into its fabric. Most of its significance is entirely independent of its setting. Its *flown in from Chicago* acontextuality as I called it in opening is part of its intrinsic interest.
- 6.220 Of course, any harm to the significance of a designated heritage asset would, if found, be given considerable weight and importance. But where harm (if any) lies on the scale is relevant to the nature of public benefits which would be sufficient to outweigh such harm.
- 6.221 And of course the demolition of the Orchard House building will involve the removal of its significance as an undesignated heritage asset.
- 6.222 But in the present case the public benefits identified above and not repeated here are of strategic scale and importance and they are felt at a critically important part of the capital's spatial make-up.
- 6.223 The very future of this part of the International shopping centre in the CAZ will be secured by the proposal.

¹⁶⁴ Ibid

- 6.224 These benefits are as set out above not the subject of challenge. The only reason they are not given full weight by SAVE relies on the potential for a refurbishment option.
- 6.225 There has been no consideration of the NPPF§202 or NPPF§203 balances which might be at play here if refurbishment is not a deliverable option. That is an important omission, and a strange one given the nature of SAVE's *raison d'être*.
- 6.226 Only the local authorities have undertaken that balance. They were correct that applying the fasciculus¹⁶⁵ of policies in the national guidance, the public benefits associated with this proposal very significantly outweigh any conceivable harm to heritage assets, designated or non-designated.
- 6.227 Their analysis remains wholly unsullied in that regard by the evidence at this Inquiry.

Sustainability Details and methodology- the dog that didn't bark.

- 6.228 In addition to the matters discussed above as to the existence of the potential to refurbish, SAVE also raised a number of detailed methodological criticisms relating to the GLA and WCC's consideration of the carbon elements of this case.
- 6.229 Almost all of the detailed methodological complaints have now fallen away and have not troubled the Inquiry.
- 6.230 It's a shame that they ever did. But the exercise which has gone on outside the Inquiry has helpfully reduced our workload and that of the SoS.
- 6.231 The remaining issue is also not truly an issue of substance to the way either of the main parties put their case.
- 6.232 It relates to the assessment of the whole life-cycle carbon (WLC) emissions of the application scheme and in essence the building as is (but subject to a light touch and necessary series of refurbishments).
- 6.233 SAVE is not now saying that a light-touch refurbishment (LTR) is meaningful approach to the site. We agree. But there are those that did take that view and still do at this Inquiry.
- 6.234 The assessment produced by the Applicant is accepted, in the SoCG, not to be a necessary requirement. It was produced as the *least worse* viable option and to deal with the case that the building was simply *best left alone* on carbon grounds.
- 6.235 It establishes that the proposed building will at a point in the future become more carbon efficient than the existing building as it is because of the operational inefficiencies of the building, which are significant, and the operational efficiencies of the proposed building which are profound. That point is 11-17 years after the first practical completion on the Appellants analysis depending on whether the comparison is made on the basis of regulated or unregulated energy.

¹⁶⁵ Or 'bundle'

- 6.236 As a matter of principle, the GLA was content with the methodology underlying this analysis and the broad outcome of the analysis. The GLA is not unfamiliar with such calculations and the appropriate methodology. The Applicant stands by its methodology and the results for the reasons set out in the SoCG. SAVE's approach has not been the subject of such analysis or checking and with respect its methodological complaints in respect of almost all of the matter it originally put into play have fallen away on an explanation and proper understanding of how the GLA's WLC system operates in practice.
- 6.237 Of course, on sustainability and other grounds, SAVE now accepts that leaving the buildings as they are, or to make them the subject of LTR, is not sustainable or viable. There is, it is agreed, no sustainable do nothing option. If the SoS agrees with this consensus then the debate is little more than academically interesting (for some if not others).

Overall Conclusion.

- 6.238 The options for the SoS are clear in this case. The consequences for the future of Oxford Street are profound.
- 6.239 The SoS has before him a proposal which on all parties cases will meet the functional need to regenerate and to transform this part of the street which is in need of urgent and compelling intervention by the planning system.
- 6.240 It does so by removing a NDHA which has been found not to be listable and sits outside a CA. The benefits mentioned above overwhelm any harm as a result of the loss on any rational measure or any setting impacts at this robust International High Street.
- 6.241 The benefits extend to a building of exemplary quality and design.
- 6.242 The potential for these benefits to arise from a refurbishment is on the evidence illusory.
- 6.243 M&S is the High Street's arch renovator and refurbisher. Its expertise in this respect is second to none. If there were a deliverable option here it would have delivered it. But there is not. The structural multiple and immovable constraints to deliverable refurbishment here are legion, understandable and irreducible. SAVE's evidence¹⁶⁶ has helped to establish this rather than the reverse.
- 6.244 Suggestions that the GLA and WCC failed to follow their *policy* are based on a misunderstanding of policy on the one hand and a failure to follow the facts on the other. Their strong support for a redevelopment which makes best use of the site is correctly stated.
- 6.245 The support of the authorities in this case is well placed. That support emphasises the urgency of the need for change here.

¹⁶⁶ Mr Sturgis

7 The case for Westminster City Council¹⁶⁷

The Council did not call any witnesses, undertake any cross-examination or make any closing submissions. Its Opening Statement was as follows.

Introduction

- 7.1 This is the Opening Statement of Westminster City Council (WCC) in this Inquiry relating to a called-in application for planning permission for the redevelopment of the Marks and Spencer Plc flagship store at 456-472 Oxford Street, London (the proposed development).
- 7.2 The Inspector has identified the main issues for consideration¹⁶⁸ having regard to the positions of the SoS and the Rule 6 Party, SAVE.
- 7.3 The professional officers of WCC authored a report on the Application¹⁶⁹ and, in line with officer recommendation, the Planning Applications Sub Committee (the Committee) resolved to grant permission for the scheme, subject to conditions, a section 106 Agreement and GLA Stage II approval¹⁷⁰.
- 7.4 Oxford Street is an international retail destination¹⁷¹. Overall, the proposed development will help facilitate the delivery of renewal and improvements to the Oxford Street District which is a key corporate objective of WCC. The vision for Oxford Street supports not only the traditional shopping experience, but also invites developers to diversify into other areas; consistent with the national drive to re-imagine the high street.
- 7.5 The proposed development does exactly that: it will support a vibrant West End, and bring a new experiential retail store, with the delivery of over 45,000 sqm Gross Internal Area (GIA) of office accommodation. Redevelopment will ensure that the retail and office spaces optimise the use of the Site¹⁷².
- 7.6 There is substantial agreement between WCC and M&S on these matters and the main issues for determination at this call-in largely concern the issues raised by SAVE. They predominantly relate to: (1) heritage and associated townscape impacts and (2) sustainability matters. Accordingly, we will deal briefly with WCC's case on those two issues below.

Heritage and townscape

- 7.7 The Statement of Case (SoC) also sets out WCC's analysis of the heritage and associated townscape impacts of the proposed development. It is common ground that none of the existing buildings on the site are statutorily listed, however, the Site is close to several listed buildings, conservation areas (and partly within the Portman Estate CA), and Registered Park and Gardens¹⁷³. With

¹⁶⁷ INQ02

¹⁶⁸ Inspector's Pre-Inquiry Meeting (Case management conference) Summary and Directions dated 16 August 2022

¹⁶⁹ CD 8.01, page 50

¹⁷⁰ The GLA then confirmed on 7 March 2022 that strategic issues raised at consultation stage had been addressed and that the Mayor of London was content for WCC to determine the planning application. See also CD3.04, page 5

¹⁷¹ CD8.01 WCC Statement of Case (SoC), §11

¹⁷² CD8.01 WCC SoC, §116

¹⁷³ See Heritage Statement of Common Ground, item 4

that in mind, the heritage case can be distilled to three key aspects. These are the impact on: (1) the setting of listed buildings including Selfridges, (2) the setting of the Stratford Place CA; (3) the setting of the Portman Estate CA; and (4) the setting of the Mayfair CA. There are several key points to make.

- 7.8 First, the primary consequence of the redevelopment is the change to the age and appearance of the buildings on the Site, and how these affect the setting (and, ultimately, the significance) of Selfridges. Whilst Orchard House has an *affinity* with Selfridges¹⁷⁴, it is merely the façades of Orchard House that are of more historic and architectural interest, rather than the rest of the Site.
- 7.9 WCC recognises that the façades do have a limited importance in terms of their contribution to the setting, but do not greatly aid the understanding of how significant the design of Selfridges was at the time of its construction. The façades do not represent a particularly good example of the type of commercial architecture Selfridges may have subsequently influenced¹⁷⁵. Other buildings in Oxford Street, contemporaneous with Orchard House, better reflected the move from overt classicism to art deco than Orchard House does [for example, Woolworth's (1925), Drages (1929-30) and Bourne & Hollingsworth (erected from 1922 to 1958, in stages)]¹⁷⁶.
- 7.10 Second, the impact on proximate CAs is also considered to be acceptable. In ground level views along Oxford Street, including those in the Stratford Place CA, the proposed roofline will be clearly delineated by the strongly defined timber canopy. This is harmonious with the historic and robust cornice line of Selfridges, and also with the development of that part of Oxford Street, including buildings towards Marble Arch which are in the Portman Estate CA (north of Oxford Street) and the Mayfair CA (south side of Oxford Street).
- 7.11 Similarly, from Granville Place, Portman Mews South and the other streets to the west of the site, the increased massing will be obvious. However, as proposed, the change is not in itself harmful in heritage terms because it occurs in the context of other similarly large-scale development¹⁷⁷. With regard to the impacts on the Mayfair CA (and views to and from it), its setting is defined by large-scale commercial buildings in Oxford Street¹⁷⁸. The proposed development is of an equivalent height and scale to other developments in Oxford Street and does not harm the setting of the Mayfair CA.
- 7.12 Third, the retention of Orchard House would only serve to retain the undesirable characteristics of the building's original, obsolete, internal planning¹⁷⁹. Whilst it demonstrates the application of planning principles at the time of its construction, it was designed as a much smaller commercial operation. It is now unsuitable for the retail offer at the flagship M&S store. Ultimately, WCC concluded that the proposed development accords with City Plan Policy 39 and, in particular, Part (B) – which requires that development must *optimise the*

¹⁷⁴ WCC note that HE commented of that affinity that the similarity may, in part, be owed to Thomas Tait who, earlier in his career both worked on the design of Selfridges and produced similar façade design for Trehearne and Norman. See letter of HE dated 26 October 2021

¹⁷⁵ CD8.01 SoC §124

¹⁷⁶ See also illustrations in WCC Statement of Case CD8.01 pp99-104

¹⁷⁷ See 10 Portman Street, for example

¹⁷⁸ CD8.01 SoC §135

¹⁷⁹ CD8.01 SoC §113

positive role of the historic environment, in Westminster's townscape, economy and sustainability (emphasis added).

- 7.13 Finally, the route that permeates the proposed development, from Orchard Street to Granville Place and the entrance to Portman Mews South from Oxford Street will also be enhanced. At the rear of the Site, there will be substantial improvements to the public realm where the undesirable public services area will be swept away in favour of greatly improved streetscape, with active frontages. A return reminiscent of an arcade will create a modern interpretation of the M&S beginnings of the Penny Bazaar in Leeds¹⁸⁰.
- 7.14 Put simply, WCC recognises that the Site, comprising three commercial buildings which were progressively adapted over the course of the 20th century to meet the changing retail needs, are no longer fit for purpose. WCC has had regard to the heritage implications of the development and have found that the improvements to the site as a whole, including the delivery of the substantial public benefits, outweigh the less than substantial harm caused by the loss of the Orchard House façades¹⁸¹.

Sustainability

- 7.15 Since the application was considered by the Committee, SAVE objected to the proposed development¹⁸² which was sent to the GLA. This objection was then addressed by the GLA in the Addendum Stage 2 Report¹⁸³. The conclusion reached by the GLA is one with which WCC concurs.
- 7.16 The options for a *heavy refurb* (retaining the facades at Orchard House) were explored, but not considered feasible as the embodied carbon saving would have been immaterial¹⁸⁴ - there would be lower operational energy performance when compared to a *new build*. A *light touch refurb* was also considered (focusing on minimal repairs to the internal fabric, limited buildings services interventions, and new internal partitions and finishes, retaining the existing basement)¹⁸⁵. This would require refurbishment every 5-10 years and, over a 60-year period, would be less efficient than a new-build over the same period. This is owing to the need for repeated refurbishment, maintenance, and poor operational energy performance.
- 7.17 Policy SI 2 of the LP deals with minimising greenhouse gases; it requires that major development should be net-zero carbon, and where it is clearly demonstrated that the zero-carbon target cannot be fully achieved on-site, then any shortfall should be provided through a cash in-lieu contribution¹⁸⁶. Such a contribution has been secured in this case¹⁸⁷.
- 7.18 Policy SI 7 supports the reduction of waste and the *circular economy*. The Whole Life-cycle Carbon (WLC) Assessment and the Detailed Circular Economy (CE) Statement were considered by the GLA with respect to the retrofitting options.

¹⁸⁰ CD8.01 SoC §134

¹⁸¹ Within the meaning of §202 of the NPPF

¹⁸² through Mr Sturgis' Report

¹⁸³ CD4.13

¹⁸⁴ See CD4.13, GLA Stage Addendum Response (Report and Letter) §3

¹⁸⁵ Ibid §4

¹⁸⁶ See Policy SI 2, criterion C

¹⁸⁷ See [Draft] s.106 agreement

Neither Policy SI 2, nor Policy SI 7 prohibit demolition; and the GLA was satisfied that the applicant had given sufficient consideration to retrofit and refit. In this instance, the GLA was content that the buildings could be demolished.

7.19 In addition, GLA Officers have actively worked with WCC and the Applicant to address matters raised at the consultation stage, namely relating to the energy strategy, the circular economy, and WLC Assessment. These have all been satisfactorily resolved and the requisite post-construction monitoring requirements have also been appropriately secured. Carbon reduction and urban greening that exceeds the target prescribed have also been factored in. For these reasons, WCC's view is that the proposed development is acceptable in planning terms.

Conclusion

7.20 WCC's evidence is that which has been submitted by way of its Statement of Case and the material that is appended thereto.

7.21 WCC respectfully invites the Inspector to positively recommend the scheme, for the SoS to duly adopt such a positive recommendation, and grant planning permission.

8 The case for Save Britain's Heritage (SAVE)

Its case was as follows.

Introduction

8.1 These closing submissions¹⁸⁸ are structured as follows: (1) the effect of the proposals on the significance of heritage assets; (2) the effect of the proposals on the UK's transition to a zero-carbon economy; (3) the planning balance.

The effect of the proposals on the significance of heritage assets

Significance of Orchard House and the impact of demolition

8.2 Orchard House is a non-designated heritage asset (NDHA). The NPPF¹⁸⁹ requires that these assets, like designated heritage assets, *should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.* The Westminster City Plan (WCP)¹⁹⁰ provides that *although the highest level of protection will be afforded to designated heritage assets, non-designated heritage assets also contribute positively to Westminster's historic environment.* As WCC's Historic Environment Background Paper¹⁹¹ states, *other buildings ... while not statutory listed ... can nonetheless be of architectural and historic interest or may make a significant contribution to the character and appearance of an area.* The

¹⁸⁸ Abbreviations: JG = Dr Julie Godefroy; SS = Simon Sturgis; AF = Alec Forshaw; FP = Fred Pilbrow; CM = Dr Chris Miele; MA = Mel Allwood; CG = Chris Goddard; RHKC = Russell Harris KC; XIC = Examination in Chief; XX = Cross-Examination; REX = Re-Examination; WCC = Westminster City Council; HE = Historic England; WCP = Westminster City Plan 2021; LP = London Plan 2021

¹⁸⁹ Para. 189

¹⁹⁰ (CD6.3) para. 39.27

¹⁹¹ (INQ23) para. 4.5

paper also talks about the challenges to ensuring that such assets are protected¹⁹².

- 8.3 CM accepted¹⁹³ that: (a) a building can still have heritage significance even if not listed; (b) an *exacting standard* is applied to the listing of heritage assets; (c) the standard becomes an *increasingly discriminating exercise* the younger a building gets; (d) a heritage asset, even if non-designated, can be of *considerable significance*, as was found by the SoS in the case of the Welsh Streets¹⁹⁴. AF's evidence is that *the failure to meet Historic England's exacting criteria does not mean that Orchard House is not of considerable heritage interest and heritage significance*¹⁹⁵.
- 8.4 CM is alone in his overly critical assessment of Orchard House. He is also alone in finding that it makes a *neutral* contribution to the significance of the Grade II* Selfridges (despite having an *affinity* with it). HE identify the building as possessing architectural and historic interest, and as one which *contributes positively to the setting of Selfridges, with which it has strong group value, owing to their stylistic similarities*¹⁹⁶. Although Orchard House does not have *the same flair or quality* as Selfridges, HE consider it to be *essentially an evolved version of the same design principles, following the trend of simplifying classical detailing in favour of the steel frame behind*. The cornice lines of the two buildings (as well as Hesketh House) are exactly the same height¹⁹⁷. AF explained the clear parallels¹⁹⁸, rejecting the criticism by CM of it being *top heavy* and a *profound* contrast with Selfridges. AF agreed with CM's statement that Orchard House *magnifies the brilliance of Selfridges*. It is precisely the supporting and *deferential* role played by Orchard House to Selfridges which gives Orchard House merit and significance (a quality entirely lacking, seemingly deliberately so, in the proposed building). As HE notes:

Orchard House is understood as a near contemporary building of lesser status, promoting Selfridges' landmark quality and enabling an appreciation of its influence on later design. They share a similar structural and façade design (incorporating classical detailing, stone cladding and metal spandrel panels), in addition to a consistent roofline.

- 8.5 HE finds that the loss of Orchard House would be *regrettable*. HE, in the assessment of the listing application¹⁹⁹, finds Orchard House to be a *well-considered and sensitive response* to Selfridges.
- 8.6 WCC share HE's view, finding that the *height, massing and detailed design of Orchard House contributes positively to the setting of Selfridges, and for the same reasons to the setting of the Stratford Place CA*²⁰⁰. Harold Clunn's *The Face of London*²⁰¹ (much maligned and unfairly so by RHKC and CM) correctly observes that Orchard House *harmonises admirably* with Selfridges. Although the Survey

¹⁹² Paras. 5.8-5.10

¹⁹³ In XX

¹⁹⁴ Para. 13 [INQ24]

¹⁹⁵ AF PoE para. 4.10, reiterated in XIC

¹⁹⁶ CD4.4

¹⁹⁷ CD1.5, Existing Section B-B Looking North 1827-PP-ZZ-XX-DR-A-01-3002, and AF XIC, and INQ46

¹⁹⁸ In his XIC

¹⁹⁹ CD5.02, p.3

²⁰⁰ CD8.1, para. 120

²⁰¹ CD8.1, Appendix 2 p.71

*of London*²⁰² offers neither a positive nor negative assessment of the building, the former General Editor²⁰³ of the *Survey of London*, has written in opposition to the scheme²⁰⁴, finding Orchard House to be *a very decent stone building ... and suited to the dignity and scale of the street as it then was*. Dr Alan Powers comments among other things on the *playfulness* at Orchard House²⁰⁵.

- 8.7 Many others have queued up to praise and support the retention of Orchard House, including: Nicholas Boys Smith, Director of Create Streets; Dr Barnabus Calder; and the 20th Century Society²⁰⁶.
- 8.8 The contribution of Orchard House to Selfridges needs to be taken with the point that the building (in the words of HE) *speaks to the wider historic association of Oxford Street with department stores, most of which date from the same period and thereby contributes positively to ... the historic retail character of Oxford Street*²⁰⁷. That judgment by HE is undiminished by the fact that the building was not designed for M&S (which HE expressly acknowledges), and also would not be diminished by M&S ceasing to occupy it in future. CM accepted²⁰⁸ that the occupation of (at least part of) Orchard House by M&S for the entire period since the building was first constructed in 1930 (some 92 years) is a material factor in the significance of the building.
- 8.9 The effect of the loss of some exterior fabric is also overstated by CM. WCC correctly observes²⁰⁹ that the upper floors *retain most of their architectural detailing*. AF states²¹⁰ that the lost details (i.e. balconies and sculpture) are: *... something of a minor matter, and should not distract from the fundamental merits of the building including its overall legibility, the strength of its architectural composition, its place in the transition of architectural style at the end of the 1920s, its deference to Selfridges next door, its contribution to the townscape of Oxford Street as a whole, and to its value as a familiar landmark, long associated with a famous brand well-known to the wider community*.
- 8.10 In any event, the various items of decoration and embellishment *which apparently has detracted from its eligibility for listing, could quite easily be reinstated*²¹¹ in a refurbishment scheme (along with installing more sympathetic shopfronts).
- 8.11 In terms of the interior, the dismissiveness by CM of the original main Art Deco staircase as *ordinary* is a defensive response to having missed this significant feature in his PoE. The Inspector is invited to prefer AF and Dr Powers' evidence that the staircase is *an impressive feature in the building*²¹², makes a contribution to the significance of Orchard House and *could add positive value to*

²⁰² CD6.43-6.49

²⁰³ Emeritus Professor of Architecture at the University of Cambridge, Professor Andrew Saint

²⁰⁴ AF1, p.31

²⁰⁵ CD5.12

²⁰⁶ AF1, p.12, 13 and 35

²⁰⁷ CD4.4

²⁰⁸ In XX

²⁰⁹ CD8.1, para. 30

²¹⁰ AF PoE 4.12

²¹¹ AF PoE 4.11

²¹² AF XIC

an imaginative refurbishment scheme, which is supported by the evidence of Dr Powers²¹³.

- 8.12 WCC does not – unlike *virtually every other London borough* – maintain a local list of NDHAs. As AF explained, if WCC did have one, Orchard House would be on it.
- 8.13 M&S is right that Orchard House is not in a CA. But the boundaries of the Stratford Place CA, Mayfair CA and Portman Estate CA were last reviewed in 1990, i.e. 32 years ago, a third of the life of Orchard House. CM accepted that perceptions of heritage significance change over time: Selfridges is a prime example, being elevated from II to II* as recently as March 2020. CM accepted that he *could not stand by* the statement in his PoE²¹⁴, that *boundary revisions [to the Stratford Place CA] were considered as part of the 2008 [CA] audit*. There is nothing in the 2008 audit of the Stratford Place CA to suggest that it reviewed the boundaries. CM *drew an inference* that it had, but there is no evidential basis for that inference.
- 8.14 The duty on WCC is *from time to time to review ... and to determine whether any parts or any further parts of their area should be designated as conservation areas* (emphasis added)²¹⁵. It is not a *constant duty to consider and reconsider the boundaries of CAs*, which would be onerous and unworkable. There are around 11,000 listed buildings in WCC's area, and WCC's conservation officers will be busy dealing with listed building applications, and so there may be a resource issue in terms of reviewing CA boundaries (something to which AF can attest given his extensive experience as a local authority conservation officer).
- 8.15 CM alleged²¹⁶ that WCC's evidence base for the WCP included a review of CA boundaries. M&S refer to WCC's Historic Environment Background Paper²¹⁷, in which WCC claim that their *statutory duties in relation to heritage ... have been reviewed to make sure we fulfil requirements set out in legislation and policy. Some key issues identified from the policy review are set out below and fuller extracts and lists of other key policy documents in relation to heritage in Local Plans are attached at Appendix 2*. WCC notes²¹⁸ that *statutory duties in relation to heritage assets remain largely unchanged since the adoption of the existing UDP policy*. Appendix 2 includes a reference to s.69 and the requirement on the authority to review the areas designated. But all this proves is that WCC reviewed the statutory duties applicable to them (and found them to be unchanged). It is not evidence of a review of CA boundaries. There is no evidence of this having been either proposed or undertaken. WCC representatives have been at every day of the Inquiry and if there were evidence of a CA boundary review in the WCP evidence base (or otherwise), then presumably they would have told the Inspector.
- 8.16 M&S points out that SAVE does not claim WCC has unlawfully failed to comply with their duty under s.69(2). But that is because this is a public Inquiry into

²¹³ CD11.17, AF Rebuttal para. 3.1-2, AF XIC Presentation [INQ36], p.14-17

²¹⁴ Para. 5.71

²¹⁵ S.69(2) of the Planning (LB&CA) Act 1990

²¹⁶ For the first time in XX (not in his written evidence)

²¹⁷ (June 2019) at para. 3.1 INQ23

²¹⁸ In para. 3.2

the M&S scheme, not a court of law examining the lawfulness of WCC's action or inaction. It is clearly not the Inspector's function to determine whether WCC has acted lawfully in relation to CA boundary review.

- 8.17 SAVE does say that, as a non-designated heritage asset (NDHA) found by HE and others to make a positive contribution to the directly adjacent Selfridges (which is inside and a major contributor to the significance of Stratford Place CA), Orchard House is an obvious candidate and *clear case* for a CA boundary extension. In AF's words, Orchard House has *fallen through the net*. There are many buildings within CAs which are not themselves NDHAs. It is highly regrettable that WCC has not considered in some 32 years whether to extend the boundary to include it.
- 8.18 In any event, Orchard House contributes positively to the setting of Stratford Place CA²¹⁹. The loss of Orchard House will cause harm to the setting of the Stratford Place CA, as well as to the setting of the Mayfair CA²²⁰. The Welsh Streets SoS decision²²¹ is an example of harm being identified to a CA²²² by development outside of it (even in a situation of *limited inter-visibility*, which is not the case with Orchard House and the adjoining CAs).
- 8.19 Finally on the subject of CAs, HE²²³ notes with some regret that *Oxford Street does not benefit from a continuous linear conservation area designation, which might have allowed for greater protection of this historic retail character, and the street has instead developed a fragmentary character more recently, as such buildings are lost*. AF supported the idea of an Oxford Street CA, noting a whole chapter of the *Survey of London* dedicated to it²²⁴.
- 8.20 SAVE considers that the loss of Orchard House (quite apart from any consideration of the proposed scheme) will:
- (1) result in the total loss of a non-designated heritage asset. That harm is permanent and irreversible. It is the greatest possible harm that can be done to a heritage asset.
- (2) cause less than substantial harm to the setting and significance of Selfridges, as well as to the Stratford Place CA and Mayfair CA.

Impact of the proposed building

- 8.21 Further heritage harm arises from the proposed building to replace what is currently on site. SAVE endorses HE's analysis²²⁵ that:

The new development is of an uncharacteristic scale and materiality, and of a particularly bold design. The strident cornice and three floor levels above, which present a cluttered roofline and would be visible in several key views of Selfridges. This would cause the proposals to distract from and diminish the latter's pre-eminence in the townscape, causing harm to its significance.

²¹⁹ As recognised by WCC itself – CD8.1 para. 120

²²⁰ A point recognised by HE – CD4.4

²²¹ INQ24

²²² See para. 14

²²³ CD4.4

²²⁴ See also the 20th Century Society – CD9.8, p.35

²²⁵ CD4.4

There would also be some harm to the Mayfair CA, particularly along North Audley Street, where the uncharacteristic scale and design of the new development would terminate views out of the CA, undermining its consistent historic character and scale.

- 8.22 The *strident* and *bold* projecting canopy is over 4 metres, or a full storey height, above the Selfridge's cornice²²⁶. That extra height and the dominant form is readily apparent when one looks at M&S's own drawings²²⁷. It is a continuous unbroken element along both frontages, oversailing new set-back building lines, whereas Selfridges frontages to both Orchard and Duke Streets are a collection of distinctly different elements, both architecturally and in scale. The apparently classical references will be unrecognisable to ordinary members of the public walking past²²⁸. The canopy and set-back building line is *a significant departure from the historic building line of Oxford Street*, and the canopy is a *massive element in the townscape*²²⁹.
- 8.23 Above the canopy are four further storeys. Although set-back to a greater extent on Oxford Street, the set-back is much less on Orchard Street, causing greater harm to views from North Audley Street in the Mayfair CA, with none of the careful modelling of the roof and massing of Park House to avoid such harm (*with only 4 floors on North Audley Street, and the roof raking back at a very gentle angle, leaving no impingement on the streetscene*²³⁰). The additional storeys show a lack of cohesive design overall and have nothing to do with the supposed classicism below the canopy. The additional storeys present in HE's words a *cluttered roofline*²³¹, which is clearly visible from the street²³², and the visualisations²³³ dispel CM's claim that it would not be possible to see the upper floors above Park House from North Audley Street). In terms of materials used in the new building, the use of timber and brick is unlike anything in Selfridges next door²³⁴. AF goes through key viewpoints²³⁵ identifying the *massive change in scale* arising from the new building, and the harm this would cause to settings of designated assets. HE suggests²³⁶ that *reconsidering the scale, massing and design of the proposed development could ensure a more sympathetic impact. This might include a quieter cornice and simplified roof form*.
- 8.24 CM's defence to the various claims of harm by HE, SAVE and others is to celebrate the boldness, arguing that the scheme would *create a companion flagship building and the difference in scale module and the striking modern design proposed would make one better appreciate the novelty and power of the Selfridges' design*²³⁷. This relates to his contention that Selfridges *does not need buildings to be deferential to it*.

²²⁶ See Cornice Measurements INQ46

²²⁷ See e.g. FP PoE p.85 and CM PoE p.32 Fig 4.19

²²⁸ CM fairly accepts this at PoE para. 4.90

²²⁹ AF XIC

²³⁰ Ibid

²³¹ CD4.4

²³² See CM PoE Fig 4.17

²³³ Site Inspection Booklet INQ12 p.59 & 69

²³⁴ AF PoE para. 5.18

²³⁵ In his XIC Presentation [INQ36], p.47-52

²³⁶ CD4.4

²³⁷ CM PoE para.5.41

- 8.25 SAVE considers CM's entire approach to be wrong. Pushed to its logical conclusion, it would justify almost any form of development next to Selfridges provided that it creates a significant contrast. SAVE fundamentally rejects the school of thought underpinning CM's analysis, and considers that it is not the right way to preserve the setting and significance of heritage assets affected by a proposal. SAVE aligns with HE, whose response is *informed by the idea that a new building here, in the immediate setting of Selfridges, should be less demonstrative*²³⁸.
- 8.26 SAVE invites the Inspector, for the reasons given by AF in his evidence, to find less than substantial harm arising from the loss of Orchard House, and from the proposed building, to the setting and significance of Selfridges (middle-to-upper end of scale), the Stratford Place CA (lower end of scale), 24-29 North Audley Street (moderate-to-high end of the scale), the Mayfair CA (moderate-to-high end of the scale), and the Portman Estate CA (moderate end of the scale).
- 8.27 The SoS's decision in *Anglia Square, Norwich*²³⁹, is a prime example of harm to the significance of a heritage asset through impacts on the setting reaching the upper end of the scale of *less than substantial* harm²⁴⁰. The SoS found harm *at the upper end of the 'less than substantial' scale*²⁴¹ arising from impacts on setting. M&S made passing reference to the decision on this issue having been the subject of a legal claim, but that claim was withdrawn (in SAVE's view, rightly, because it amounted to an attack on the SoS's planning judgment which is deprecated by the courts). So, the decision stands. The reliance by M&S on the more recent decision in *Summerskill House*²⁴² goes nowhere. In that decision, the Inspector stated that *unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance*²⁴³. AF considers that a significant proportion of Selfridges' significance is derived from its setting because it is unchallenged in terms of *presence and swagger*.
- 8.28 The SoS is required to have special regard to the desirability of preserving a listed building or its setting, and any harm to the significance of a designated heritage asset is to be given *considerable importance and weight*²⁴⁴. Further, *a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted*²⁴⁵.

Effect of the proposals on the UK's transition to a zero-carbon economy

- 8.29 The significant heritage impacts, not outweighed by public benefits, would alone warrant a refusal of planning permission. But there is another very substantial harm and policy conflict arising from this scheme, which concerns the effect of the proposals on the UK's transition to a zero-carbon economy. This section is to be read with SAVE's Opening Statement, in which it underlined the context of

²³⁸ As CM fairly accepts at CM PoE para. 5.49

²³⁹ INQ37

²⁴⁰ INQ36 p.41

²⁴¹ INQ37 para. 44

²⁴² INQ38

²⁴³ At para. 12.50 (p.78)

²⁴⁴ *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), at [55]

²⁴⁵ *Ibid*, [49] (note that this applies to the setting of both listed buildings and CAs)

the global climate emergency and the present failure of the construction industry to play their part in addressing it²⁴⁶.

- 8.30 M&S's proposal to demolish the existing buildings and construct a new building is not consistent with achieving the UK's transition to a zero-carbon economy, and is in conflict with LP policies D3, SI 2 and SI 7 and WCP policies 36, 38 and 39. Before considering these policies, it is necessary to set out the consideration of alternatives to demolition and a new building.

M&S's consideration of alternatives to demolition and new build

- 8.31 To look at M&S's consideration of alternatives, the Inspector will not find it in M&S's Whole Life-Cycle Carbon (WLC) GLA Template²⁴⁷, because this²⁴⁸, against the heading *confirmation that options for retaining existing buildings and structures have been fully explored before considering substantial demolition*, refers to Arup 'Justification of demolition' report for further details. There is however no such document as a *justification of demolition* report, as confirmed by M&S to SAVE in correspondence following the exchange of proofs. Nor will the Inspector find it in the Circular Economy (CE) Statement²⁴⁹, which contains a summary reference to the *limitations of the existing buildings*, but no analysis of alternatives to demolition (including in the *strategic approach* section which is where it is required and wrongly not provided²⁵⁰. That section²⁵¹ is focused on how to be circular in demolition, the new build, and management of waste, rather than on the decision to demolish itself.
- 8.32 For any actual consideration of alternatives in the application documents, it is necessary to look at the DAS²⁵². Despite FP's claim to have considered a deep retrofit of the kind advocated by SS back in the 2018 feasibility studies, the DAS²⁵³ indicates that the two refurbishment options given any actual analysis were a *light touch refurbishment* (LTR) and a *façade retention* scheme. That is also reflected in what the GLA have said about the consideration of alternatives²⁵⁴ and in the WLC Assessment²⁵⁵, which compares the scheme only against a *light touch* refurbishment. There are thumbnail sketches of 16 alternatives²⁵⁶, of which FP claimed that option 16 was the closest to the SS proposal, but (a) even that appears to be very different from SS's scheme, and FP accepted²⁵⁷ that core reconfiguration was not considered, and (b) there is nothing more than this thumbnail image to show any exploration of the option.
- 8.33 The LTR and *façade retention* options are not reasonable refurbishment alternatives to a new build. They are easily out-performed by the new build scheme, and it is telling that they are the alternatives which formed the focus of

²⁴⁶ INQ3

²⁴⁷ GLA Whole Life-cycle Carbon Template [sic] MA PoE Appendix

²⁴⁸ In the fourth box on p.1

²⁴⁹ CD1.21

²⁵⁰ See CD10.16, Appx 4, p.60 para. 3.2.6

²⁵¹ As SS noted in REX

²⁵² p.9

²⁵³ CD1.7A, p.55-59

²⁵⁴ CD4.13, paras. 3-4

²⁵⁵ CD1.22

²⁵⁶ CD1.7B

²⁵⁷ In XX

- M&S's consideration. Façade retention is *really not sensible*²⁵⁸ because it still involves very significant embodied carbon costs, and presents alignment issues between the façade and a new build.
- 8.34 A LTR, applying M&S's assumptions to this option, is self-evidently not enough to deliver a product of sufficient quality, with sufficient energy efficiency improvements²⁵⁹. That is especially so when one looks at how the LTR option is said to perform in terms of operational carbon emissions. M&S's assumption for the energy use by the LTR scheme is that it would perform poorly against similar stores, and be 50% higher than previous energy use figures provided by M&S for the un-improved existing building; as an example of poor performance assumptions, the existing gas boilers would remain in operation for 10 years, rather than being changed for a lower carbon source²⁶⁰. The scheme has therefore only been tested against a *very poorly performing* LTR, and by contrast the comparison of whole life-cycle carbon impacts is made against a theoretical modelling of emissions for the new building that is likely to be optimistic²⁶¹.
- 8.35 Accordingly, no weight can be placed on any claim by M&S that the scheme would enjoy a carbon *payback* (after any period) against a refurbishment alternative. The Applicant has not robustly compared the Scheme against a reasonably performing light touch refurbishment (let alone a comprehensive refurbishment of the kind advocated by SS).
- 8.36 As well as only testing two refurbishment options that were always *straw men bound to fail*²⁶², FP accepted that the key objectives or criteria against which options were assessed did not include looking at a WLC impact of the options (only operational sustainability). The DAS²⁶³ indicates that the assessment of refurbishment was *first and foremost* an assessment of the heritage merits of retention. Even as against such inadequate objectives, there is no indication in the DAS of how the alternative options were scored and compared.
- 8.37 FP confirmed that (a) the decision to proceed with a new build was made in 2018 and has never been re-visited; (b) there is greater understanding now compared with 2018 about embodied carbon issues, and the policy framework on such issues has evolved, (c) there was no involvement or consultation of WCC in the decision to proceed with a new building in 2018. The many pre-application meetings between M&S and WCC subsequently were to consider iterations of a new build scheme, not to revisit the principle of new build in the first place.
- 8.38 M&S rely on the endorsement of their consideration of alternatives by the GLA. But: (a) CG accepted the obvious point that the GLA's position is not binding on the Inspector or the SoS; (b) SS considers the GLA did not *dig deep enough* in terms of assessing M&S's consideration of alternatives (for example by not requiring the CE Statement²⁶⁴ to actually justify the strategic approach for

²⁵⁸ See SS Rebuttal para. 3.9.7.3

²⁵⁹ See SS PoE para. 11.2.3 and SS XIC Presentation p.33

²⁶⁰ As JG explains in the Joint Position Statement [INQ49, row 6]

²⁶¹ See Joint Position Statement, INQ49, row 6

²⁶² SS XIC

²⁶³ CD1.7A p.57 & p.59

²⁶⁴ CD1.21

demolition and a new build – see above); (c) the guidance is very new²⁶⁵ and GLA is still on a learning curve as to how it needs to be applied.

- 8.39 Finally, M&S were asked by the Inspector on Day 2 to provide contemporaneous evidence of their brief to the architects. SAVE wondered if this would show that M&S instructed the architects to consider all refurbishment options as FP alleged. But the evidence submitted²⁶⁶ says nothing at all about the consideration of refurbishment and refers only to M&S's specifications and standards. For all that is known from this evidence, M&S could have instructed Pilbrow and Partners to design a scheme that simply maximises commercial value.

SAVE's consideration of refurbishment

- 8.40 Since first objecting to the application, SAVE has always maintained that M&S should have properly considered a comprehensive retrofit of the existing buildings. It is only by exploring this reasonable alternative that the case for demolition and new build could be adequately justified. The purpose of SS's evidence is not to present a fully worked up comprehensive refurbishment scheme, or to prove it is deliverable, but instead to show that there is a significant gap in M&S's consideration of alternatives. M&S should have explored the kind of comprehensive scheme envisaged by SS from day one, looking creatively at how it could be achieved, what public benefits could be realised, whether it could suit M&S's requirements, how it would look to the market, whether it would be deliverable. That is what (in the language of the guidance) is meant by *robustly/fully exploring* and *prioritising* refurbishment. There is nothing unusual or special about SS's scheme, which is instead a straightforward and logical optimisation of the existing resources on site bringing them functionally up to current standards and achieving a high quality space. There is no reason why it was not properly considered by M&S.
- 8.41 Instead of doing the job at the time, M&S have been forced to try and retrospectively justify their decision in 2018 to proceed with a new build, by considering a comprehensive retrofit for the first time in the evidence of FP. Inevitably, that consideration is driven by a need to defend the new build proposal, rather than objectively and neutrally look at what can be done on site with an appropriate degree of imagination and pragmatism. This site presents an ideal opportunity for a market-leading innovative comprehensive retrofit of the buildings, which would: (1) introduce greater operational energy efficiency in the buildings; (2) avoid the large embodied-carbon emissions of the demolition and re-build; (3) achieve the desired improvements in terms of providing high quality retail and office space, together with new public realm; and (4) avoid the harmful heritage impacts of the proposed new build scheme²⁶⁷.
- 8.42 SS and SAVE are not alone in this view. Significant numbers of eminent architects, developers and others interested in sustainable conservation have taken the time out of their busy professional lives to make representations to the Inquiry in opposition to the scheme. As Tyler Goodwin said in his evidence

²⁶⁵ SS explained this in XX

²⁶⁶ INQ39

²⁶⁷ See SS's Rebuttal and in XIC

to the Inquiry²⁶⁸, sustainable renovation is good for the environment and good for business, because tenants are now thinking about their commitments to achieving net zero and wanting to be *in a building that helped make a difference*. M&S celebrate the sustainability of their proposed new building in terms of energy use, but there is a big difference between a *sustainable building* and a *sustainable site strategy*.

- 8.43 The claim of a *120 year design life* for the new build applies only to the structural frame²⁶⁹. SS explained²⁷⁰ that a new build is not so different to a substantial refurbishment in times of life expectancy of systems and services.
- 8.44 It would be unfair to compare the outcome of a retrofit scheme with what is possible in a new build, which gives the architect a blank canvas (in the words of Charlie Baxter²⁷¹, it is *easier*). A retrofit scheme will require creative solutions to work around potential obstacles in the existing structure, and the question is not whether there will need to be a degree of compromise (which is likely to be inevitable), but rather whether any compromise is so significant that the benefits of retention are (in the language of the guidance) *clearly outweighed* by the benefits of the new building.
- 8.45 In the present case, it is correct that the retrofit could not achieve the same new floorspace as a new build. SS estimates 15,000 sqm new floorspace in addition to 35,000 sqm existing area (total: 50,000 sqm), versus 60,777 sqm for the new build, i.e. 82%²⁷². FP accepted that (a) more additional floorspace could be added than was proposed by Arup, and (b) there were other factors to consider alongside the benefits of additional space, such as the heritage and visual impacts, the additional embodied carbon cost, and the need for such space. On that latter point, AF explained that there are three former department stores (Debenhams, House of Fraser and John Lewis) which are all converting retail space no longer needed into new office space, and there is also the Selfridge Hotel which has been empty since 2008, all of which are making or could make a significant contribution to meeting the need for office space in the area.
- 8.46 Although there is a compromise that will inevitably need to be made on column grids, this is an acceptable compromise that would not preclude a highly successful and attractive retail and office space²⁷³. The issue of column grids has not prevented the Nike Store at Oxford Circus from being a successful retail refurbishment of an existing building²⁷⁴. There is also potentially a compromise to be had in relation to losing the East - West Linkage from Orchard Street to Granville Place²⁷⁵. But as AF explained²⁷⁶, the public benefit associated with this orientation of linkage is over-stated due to the route through Selfridges from St

²⁶⁸ Point (2)(b) INQ29

²⁶⁹ FP accepted this in XX (see also SS (Rebuttal 3.4.3) and in XIC)

²⁷⁰ XIC Presentation INQ32 p.5-9

²⁷¹ INQ4

²⁷² SS XIC Presentation [INQ32], p.26 & 36 and SS Rebuttal 3.4.1.1-4

²⁷³ (SS Rebuttal 3.2.6.1 & 3.2.11.1-3). As the written response to the Inspector's question to SS on day 5 shows, there are other examples of buildings that have undergone retrofit development that faced similar challenges to the site.

²⁷⁴ SS XIC Presentation INQ32 p.22 photo

²⁷⁵ Albeit further design consideration could achieve it - SS Rebuttal 3.12.2.1

²⁷⁶ Presentation [INQ36] p.71-75

Christopher's Place to Orchard Street not being public realm with good connectivity. There is a *limited floor to ceiling height in the food hall, it is full of people and there is a steep flight of stairs on the route*. The proposals for Granville Place cannot hope to compete with St Christopher's Place. More important to achieve is the North - South linkage from Oxford Street to Granville Place, which a comprehensive refurbishment could readily do.

- 8.47 Many of the alleged obstacles said to be *fundamental* by M&S are not in fact problems at all, and are easily resolvable to achieve a scheme of high quality both in terms of retail and office space, and public realm improvements, sufficient to meet the requirements for the site in terms of transformation of Oxford Street, best use of the land in the International Centre and compliance with the spatial strategy. SS and AF cover them all comprehensively in their evidence²⁷⁷: floor heights, differences in levels, inefficient core arrangement, services, blank windows to the exterior, identity and façade improvement, the loading bay, retail frontage, public realm, the colonnade and Orchard Street pavement width, and level access from the street²⁷⁸.
- 8.48 In relation to the latter two points, (1) the existing 5.5m wide pavement outside Selfridges could be reduced to 3.5m, which, with the proposed road realignment and reduction to 3 lanes, would enable the required 3.5m on each side of the street (or even more if the road were reduced to 2 lanes in an effort to discourage traffic; (2) there are multiple existing entrances with level access, which is better than the Pantheon, and the steps to the entrance on the corner of Orchard and Oxford Street is a consequence of topography which will need to be handled equally in a new build. Selfridges' interior is full of steps.
- 8.49 Although a comprehensive retrofit would inevitably have a higher embodied carbon cost than a LTR, that cost would be very significantly below that of a new build. FP and SS agree that a scheme like this would involve the rationalisation of roughly a quarter of the floorplate of the existing building (mainly by core reconfiguration), but²⁷⁹ that is still a *significantly different* embodied carbon impact compared with losing the whole fabric of the buildings and starting again (especially with carbon intensive multi-level basement excavation as proposed²⁸⁰). He said: *you can't really argue that point* and indeed it was not challenged. As to operational efficiency, SS estimates that a comprehensive retrofit would achieve 95%+²⁸¹, compared with 100% for the new build, given that some of the comprehensive retrofit will be new floorspace and the existing space can be subject to significant improvements (e.g. double glazing, insulation). In terms of waste, refurbishment easily out-performs a new build, circa 9,000 sqm compared to 35,000 sqm²⁸². All of that waste needs

²⁷⁷ FP has put in an overly long last-minute response to SS's XIC Presentation (INQ45). M&S as the Applicant has the last word, but the Inspector should treat with caution new evidence from FP which (a) has not been subject to cross-examination, and (b) has not been responded to by SS

²⁷⁸ See SS Rebuttal 3.2.3.1-4 and SS XIC Presentation [INQ32] p.13-22; SS Rebuttal 3.2.12.1; SS Rebuttal 3.3.4.1-3.3.4.2 and SS XIC Presentation [INQ32] p.23-25; SS Rebuttal 3.6.3.1; SS Rebuttal 3.8 - 3.10 and XIC Presentation [INQ32] p.25; SS Rebuttal 3.11.13.2; SS Rebuttal 3.12.2.1, SS XIC Presentation p.25 and AF XIC Presentation [INQ36] p.71-75; SS Rebuttal 3.11.13.2 and AF XIC Presentation [INQ36] p68-70; AF XIC Presentation [INQ36] p.30-34

²⁷⁹ as SS explained in XIC (Presentation [INQ32] p.36)

²⁸⁰ See the evidence to the Inquiry of Julia Barfield INQ5

²⁸¹ SS XIC Presentation INQ32, p.34

²⁸² Ibid p.36

removing from the site, and then a vast quantity of building materials needs to be brought to the site, all generating carbon emissions and huge interference to the locality²⁸³.

- 8.50 The evidence of SS, which involves a considered and creative approach to sustainable refurbishment, goes far beyond a mere assertion that there *might be a refurbishment option which might bring some of the benefits of the application scheme*²⁸⁴. He is the only person at this Inquiry to have actually undertaken a robust exploration of retention options as required by guidance. He has presented a clear case for an effective refurbishment scheme that would meet the requirements for the site.
- 8.51 FP and CG's viability concerns regarding a comprehensive retrofit are difficult to believe given the prime location of this site, and the oral evidence of Mr Keith Howard²⁸⁵ that retailers (and offices) would be queueing up to be next door to Selfridges on Oxford Street in a well-refurbished building²⁸⁶. In any case, there is no evidence to suggest any viability appraisal of a reasonable refurbishment alternative by M&S. One aspect of *fully exploring* and *robustly exploring* opportunities to retain the existing building (as required by guidance – see below) is to assess the viability and deliverability of a reasonable refurbishment option, and that responsibility falls upon the applicant rather than anyone else (especially not SS or SAVE, a small charity with limited resources objecting to the scheme). It is difficult to understand how a scheme for refurbishment could be robustly explored by the applicant without undertaking any kind of viability appraisal.
- 8.52 Although M&S say they have sought to consider the market reaction to refurbishment by obtaining advice from Knight Frank, SS is right that property agents and other advisers will only consider schemes they have been asked to consider, and they have never seen a comprehensive refurbishment scheme of the kind suggested by SS²⁸⁷. Knight Frank's expertise is not in actually considering refurbishment alternatives themselves, but advising on the market for alternatives proposed to them. It is clear from the Knight Frank report²⁸⁸ that the refurbishment option they considered was not a deep retrofit as per SS's suggestion, because it was (for example) still assuming retention of the existing core configuration. Leslie Jones Architects²⁸⁹ only considered what was set out in the DAS, which has already been shown to have been limited to light touch and façade retention.
- 8.53 The Inquiry has heard that M&S is struggling financially, and there is no wonder that they are pursuing what would be the most valuable scheme for them.

²⁸³ See AF XIC Presentation [INQ36] p.66-67

²⁸⁴ M&S Opening, para. 19

²⁸⁵ INQ11

²⁸⁶ See also SS XIC Presentation INQ32 at p.20, concerning the rental rates for the refurbished 101 New Cavendish Street, in a worse location, dense columns, and lower floor to ceiling heights

²⁸⁷ The Inspector is invited to place no weight on the 11th hour evidence from Knight Frank [INQ43] which has not been subject to cross-examination and is a defensive effort (from property agents with no architectural refurbishment expertise like SS) to retrospectively prop up M&S's decision to proceed with a new build. It is a regrettable attempt to plug a significant hole in the report they submitted as evidence (see CG Appendices). It is no surprise that Knight Frank and other advisers wish to promote a scheme that will be the most commercially valuable for their clients, and undermine any alternative.

²⁸⁸ As SS explained in REX - CD10.4, p.209, paras. 10.33-10.36

²⁸⁹ CD10.4, p.159

Although a retrofit might not be of such high development value as the new build, (a) the private commercial value to M&S is not a factor to be given much if any weight by the Inspector, and (b) there is nothing to suggest that a comprehensive retrofit could not achieve a very significant uplift in value for M&S (as well as reputational kudos for pursuing a market-leading sustainable retrofit consistent with their Plan A commitments).

- 8.54 The Inspector should also not be swayed by M&S's threat to leave Orchard House altogether if planning permission is refused. As said in Opening, this is not the constructive attitude of a retailer dedicated to sustainability, heritage conservation and the future success of Oxford Street. It is of a piece with M&S's dismissive approach to any form of refurbishment. There is also no guarantee even with the new build that they would remain in occupation²⁹⁰.
- 8.55 To repeat SAVE's Opening, this is not a case where overriding the initial embodied carbon cost is justified because the buildings in question are causing significant heritage harm or are structurally unsound. There is no fundamental structural, façade deterioration or safety reason why these buildings should be demolished²⁹¹. They are fully viable carbon assets and positively contribute to the setting of designated assets (alongside Orchard House being a NDHA in its own right). The sustainability and heritage cases in support of retention intertwine. As HE noted²⁹², *the proposals potentially represent a missed opportunity to retain the best parts of the existing building, through its reuse and adaptation. This could enable a more sustainable form of development (as promoted by the NPPF), with the positive elements of Selfridges' setting being preserved. Such a solution might also be more sustainable in an environmental sense* SAVE could not improve on how it is put in WCC's Historic Environment Background Paper²⁹³: *... the re-use of historic buildings can also help in the fight against climate change. Demolishing buildings uses a considerable amount of energy, combined with the energy costs of producing new materials, transporting them to site and constructing a replacement building. A sustainable future will need to find ways to reuse and regenerate our existing building stock and this is particularly important for Westminster. With 80% of the building stock we will have in 2050 already here today, our older buildings will play an important role in our ability to function effectively in the future and deliver our housing and employment needs.*

Policy conflict

- 8.56 It is important for the Inspector to understand how SAVE considers there to be a breach of development plan policy in relation to this issue, because SAVE's interpretation of the policies has been consistently misunderstood by M&S.
- 8.57 SAVE's case is attacked as wrongly interpreting policy, for example as imposing an *embargo on demolition*²⁹⁴ or as requiring an applicant to *rule out* retention²⁹⁵, or as requiring retention even where the building is not suitable for the

²⁹⁰ Absent a personal condition which all parties consider to be inappropriate

²⁹¹ As FP accepted in XX, in agreement with SS

²⁹² CD4.4

²⁹³ INQ23, p.4.27

²⁹⁴ CG PoE para. 8.4

²⁹⁵ M&S Opening 17 and 77

requirements of the site or making the best use of land²⁹⁶. This is not SAVE's position.

- 8.58 M&S is also wrong to say that SAVE does not understand the distinction between policy and guidance. SAVE correctly uses the supporting text to a policy as an aid to the interpretation of that policy, and uses guidance produced in respect of a policy as an aid to the application of that policy²⁹⁷. M&S itself advocates that *the purpose of the guidance is to assist the GLA [or now the Inspector] to form its expert judgment as to whether the provisions of the Plan have been complied with*²⁹⁸. CG agreed that: (1) the guidance informs the decision-maker how to assess an application under the relevant policy, and decide whether policy has been complied with; (2) although a breach of guidance is not itself a breach of policy, it can be relevant to the consideration of whether a policy has been breached.

LP Policy D3 Optimising site capacity through the design-led approach

- 8.59 Policy D3 provides that *all development must make the best use of land by following a design-led approach that optimises the capacity of sites ... Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site. The design-led approach requires consideration of design options to determine the most appropriate form of development, which involves considering what best delivers the requirements set out in Part D. Part D refers to a number of requirements, including for development to aim for high sustainability standards (with reference to the policies within LP Chapters 8 and 9) and take into account the principles of the circular economy.*

- 8.60 The explanatory text for policy D3²⁹⁹ states:

Figure 3.2 shows a hierarchy for building approaches which maximises use of existing materials. Diminishing returns are gained by moving through the hierarchy outwards, working through refurbishment and re-use through to the least preferable option of recycling materials produced by the building or demolition process. The best use of the land needs to be taken into consideration when deciding whether to retain existing buildings in a development.

- 8.61 Figure 3.2 indicates that *Retain, Refit and Refurbish* are the priority options in the hierarchy of building approaches. Deciding on the best use of the land and the most appropriate form of development involves consideration of whether to refurbish or rebuild, and there will be cases where the best use of land and form of development is a refurbishment³⁰⁰. As CG said³⁰¹: *if retaining existing buildings would result in an important site not making best use of land then the requirements of D3 would not be met.* The converse would also be true, namely

²⁹⁶ Ibid at 15, 74, 78 and 82 and CG Rebuttal para. 6.6

²⁹⁷ An approach which CG rightly endorsed in XX

²⁹⁸ CG agreed with MA (Rebuttal, para. 14)

²⁹⁹ CD6.2 clause 3.3.12, p114

³⁰⁰ CG accepted this in XX

³⁰¹ CG Rebuttal para. 3.9

that if refurbishment would be the best use of land, then policy D3 would be breached³⁰².

- 8.62 In view of their inadequate consideration of refurbishment options, M&S have failed to show that the scheme makes *the best use of the land* and is *the most appropriate form of development*. For the reasons set out in relation to policies SI 2 and SI 7, the development also does not deliver requirement D3(D)(13), which is to aim for high sustainability standards, taking into account the principles of the circular economy. This is the basis upon which the Inspector is invited to find a breach of policy D3.

LP Policy SI 2 Minimising greenhouse gas emissions

- 8.63 Alongside the requirement for major development to be net zero carbon, part F of policy SI 2 requires that *Development proposals referable to the Mayor should calculate whole life-cycle carbon emissions through a nationally recognised Whole Life-Cycle Carbon Assessment and demonstrate actions taken to reduce life-cycle carbon emissions*. This is explained in the supporting text at para. 9.2.11³⁰³, which provides that information on what assessments should contain will be set out in guidance.
- 8.64 The guidance is the LPG on WLC Assessments (March 2022)³⁰⁴. As para. 1.1.1 states, *this guidance explains how to prepare a [WLC] assessment in line with Policy SI 2 F of the LP 2021 using the WLC assessment template*. At para. 1.1.2, *this guidance explains how to calculate WLC emissions and the information that needs to be submitted to comply with the policy*. Table 2.1 of the LPG WLC Assessments sets out the *WLC principles*, which are to *inform the design of the development ... throughout the WLC assessment process*. The first WLC principle is entitled *reuse and retrofit of existing built structures*. The principle requires that the retention of existing built structures for reuse and retrofit should be *prioritised* before considering substantial demolition. Principle 16, named the *circular economy* similarly focuses on the need to *reuse and retrofit existing buildings*. Section 3 of the LPG WLCA requires that (emphasis added) *options for retaining existing buildings and structures have been fully explored before considering substantial demolition, including incorporating the fabric of existing buildings into the new development*³⁰⁵. Para. 3.1.3 provides (emphasis added):

If substantial demolition is proposed, applicants will need to demonstrate that the benefits of demolition would clearly outweigh the benefits of retaining the existing building or parts of the structure. Retention should be seen as the starting point; this will usually be the most sustainable option as it can make an immediate contribution toward the Mayoral objective of London becoming a zero carbon city by 2030, as well as reflecting the need to both move towards a low-carbon circular economy (set out in Good Growth objective GG6 – Increasing efficiency and resilience) and to push development up the waste and energy hierarchies (see Policy SI 2 – minimising greenhouse gas emissions; and Policy SI 7 – reducing waste and supporting the circular economy).

³⁰² CG accepted this in XX

³⁰³ CD6.2, p.346

³⁰⁴ CD6.32

³⁰⁵ See e.g. for the planning application submission stage para. 3.2.2, Box 4, point 5 (CD6.32, p.26)

- 8.65 M&S point out that, at the time the Application was submitted, the LPG WLCA was only in draft form³⁰⁶. However, that does not assist M&S: (a) the Inspector must consider the application against the adopted guidance as it applies today; (b) in any event, the guidance expressly states³⁰⁷ that *Applicants are encouraged to keep returning to the WLC principles throughout each stage of the WLC assessment so that they continue to inform the design of the development as it evolves*.
- 8.66 CG accepted that, if there were *substantive* breaches of the guidance, for example a failure to *prioritise* and *fully explore* options for retrofitting the existing buildings, and a failure to demonstrate that the benefits of demolition *clearly outweigh* the benefits of retaining the existing building, then the decision-maker could conclude that an *appropriate* WLC assessment has not been submitted to comply with the policy. That is SAVE's case to the Inspector. It would be open to the Inspector to conclude a breach of policy SI 2(F) due to the failure to submit an appropriate WLC assessment and *demonstrate actions taken to reduce life-cycle carbon emissions*³⁰⁸.

LP Policy SI 7 Reducing waste and supporting the circular economy

- 8.67 Part A of this policy provides that *Resource conservation, waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal will be achieved by the Mayor, waste planning authorities and industry working in collaboration to: 1) promote a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible, 2) encourage waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products*. Part B of the policy requires referable applications to *promote circular economy outcomes and aim to be net-zero waste*, and requires the submission of a *Circular Economy Statement*. Para. 9.7.1 of the supporting text explains what is meant by a *circular economy* and para. 9.7.3 explains that Mayoral guidance will be published on Circular Economy Statements.
- 8.68 Para. 1.1.3 of the LPG on CE provides that this document *includes guidance on how ... prioritising the reuse and retrofit of existing structures ... can promote CE outcomes*. *CE design approaches* are introduced in section 2.3, which includes the same *hierarchy for building approaches* that is found in the supporting text to policy D3 of the LP (see above). The use of existing materials must be *maximised*³⁰⁹. Section 2.4 deals with *CE design approaches for existing buildings*. Figure 4 explains that, if there is an existing building on site, consideration should be given to whether it is *technically feasible to retain the building(s) in whole or in part*, and whether the *existing building, or parts of the building [is] suited to the requirements for the site*. If so, then retention and retrofit is the correct approach to take.
- 8.69 Para. 2.4.2 provides that *retaining existing built structures totally or partially should be prioritised before considering substantial demolition*. Para. 2.4.3

³⁰⁶ MA Rebuttal para. 9

³⁰⁷ At para. 3.1.5 (CD6.32, p.25)

³⁰⁸ CD6.2, p.343

³⁰⁹ See para 2.3.4

provides that (emphasis added) *proposals that are further down the hierarchy will require more detailed and compelling justification*. Para. 2.4.5 provides that (emphasis added) *applications should robustly explore the options for retaining existing buildings (either wholly or in part)*, and that *applicants should set out how the options for retaining and reconstructing existing buildings have been explored and discounted*.

- 8.70 For the reasons given above, M&S has failed to *prioritise* retention, and have not given the required *detailed and compelling justification* for demolition and re-build. There has been no *robust exploration* of options for retention. They have applied the decision tree to conclude that the existing buildings are not *suited to the requirements for the site* without adequately considering a deep retrofit scheme. SS has carefully set out (as explained above) how the existing buildings can, with a comprehensive refurbishment, be suited to the requirements for the site (which SS accepted³¹⁰ include optimisation, transformation of Oxford Street and compliance with the spatial strategy). CG accepted that *substantive* guidance breaches, if found, would be relevant to deciding whether policy SI 7 has been complied with. Those breaches should lead the Inspector, in applying policy SI 7(A) & (B), to find a breach due to failure by the scheme to achieve acceptable *resource conservation, waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal* through (1) *promoting a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible*, and (2) *encouraging waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products*.

WCP Policy 36

- 8.71 Policy 36A³¹¹ requires applications to *promote zero carbon development and minimise the effects of climate change*. Para. 36.1 of the supporting text, which is an aid to the interpretation and application of the policy, states *it is essential that developments utilise every opportunity to reduce emissions now to limit the extent of future climate change*. Para. 36.2 states that support will be given to *proposals that seek to sensitively refurbish or retrospectively improve the performance of current buildings to reduce their energy use Interventions to upgrade historic buildings will be undertaken sensitively in recognition of their heritage value*. SAVE's case is that the scheme has not utilised every opportunity to reduce emissions, and has failed to properly consider a proposal for sensitive refurbishment and retrofitting of energy measures. It therefore does not *promote zero carbon development and minimise the effects of climate change*.

WCP Policy 38

- 8.72 Policy 38³¹² sets out a number of *design principles*, requiring at part A that *new development will incorporate exemplary standards of high quality, sustainable and inclusive urban design and architecture befitting Westminster's world-class*

³¹⁰ In XX and in his Rebuttal 3.1

³¹¹ CD6.3, p.137

³¹² CD6.3, p.146

status, environment and heritage Under part D of the policy, headed sustainable design, development will enable the extended lifetime of buildings and spaces and respond to the likely risks and consequences of climate change by incorporating principles of sustainable design, including ... optimising resource ... efficiency. The Inspector should also read the supporting text to this policy at para. 38.11 as an aid to interpretation and application of the policy. Policy 38D is breached because the development does not adequately incorporate principles of sustainable design, including optimising resource efficiency, due to the inadequate consideration of deep retrofit.

WCP Policy 39

8.73 Policy 39³¹³ provides at point B that *development must optimise the positive role of the historic environment in Westminster's townscape, economy and sustainability*, which includes the need for securing (at (2)) *the conservation and continued beneficial use of heritage assets through their retention and sensitive adaptation which will avoid harm to their significance, while allowing them to meet changing needs and mitigate and adapt to climate change.* The Inspector should also read the supporting text to this policy at para. 39.3 as an aid to interpretation and application of the policy. Policy 39B is breached because the development does not optimise the positive role of the historic environment in Westminster's sustainability. There has been a failure to retain and sensitively adapt the existing buildings, and there is inadequate mitigation against climate change due to the carbon emissions associated with demolition and a new building, as opposed to pursuing a deep retrofit scheme.

Planning balance

8.74 M&S has argued³¹⁴ that SAVE's position on retrofit and heritage is contrary to LP and WCP principles of *good growth* and the *best use of the land*. But WCP policy 39B(3)³¹⁵ requires heritage to be *at the heart of place making and good growth*³¹⁶. Policy GG5 of the LP³¹⁷ recognises the role in growing a good economy by (1) under point F, promoting and supporting London's rich heritage assets, and (2) under point H, *recognising and promoting the benefits of a transition to a low carbon circular economy to strengthen London's economic success*. Policy GG6 similarly indicates the centrality of sustainability to the good growth agenda. CG accepted in XX that the *best use of the land* (as explained above in relation to policy D3) involves considerations of both heritage and sustainability, and that there is *no policy steer* in LP policies SD4, SD5 or SD8 in favour of demolition and re-build over refurbishment (the policies are instead *neutral* in that regard).

8.75 For the reasons set out above (i.e. the heritage impacts and the effect of the proposals on the transition to a zero-carbon economy), the scheme does not comply with the following policies: LP policies D3, HC1, SI 2 and SI 7, and WCP policies 36, 38, 39 and 40. Although there are many ways in which the scheme complies with development plan policies, the conflicts identified are so

³¹³ CD6.3, p.148

³¹⁴ See e.g. CG Rebuttal paras. 2.3, 3.2 and 6.5

³¹⁵ CD6.3 p.148

³¹⁶ See also paras. 39.1 and 39.3 of the supporting text

³¹⁷ CD6.1, p.24

significant that the Inspector is invited to conclude that the scheme fails to accord with the development plan taken as a whole, and no material considerations would justify a departure.

- 8.76 There is one alleged *highly material consideration* which is in fact not a material consideration at all: the threatened demolition of Orchard House without planning permission for a new building. SAVE can only make sense of this threat as an apparent fall-back in the event that permission is refused for the scheme. For a fall-back to be a material consideration, there needs to be a *real prospect* of such fall-back development coming forward should planning permission be refused³¹⁸. CG accepted that M&S had no intention of undertaking demolition, but may sell the site to someone who would.
- 8.77 But the problem with the claimed fallback is two-fold: (1) there cannot be any evidence of a future intention to demolish because nothing is known about the identity of any future buyer, (assuming M&S does sell the site); (2) even if a prior notice to demolish were given, it is known from condition 13, requiring a construction contract to be in place before demolition begins, (which all parties agree is necessary to make the development acceptable) that WCC is concerned about having a vacant site due to the harm that would be caused to heritage assets³¹⁹. There is therefore a *strong chance* that WCC would move to extend the CA boundary to cover Orchard House on account of it being a newly-threatened NDHA which makes a positive contribution to the setting of designated assets. WCC Councillor³²⁰ said there is a *strong case* for inclusion of Orchard House in the CA, and no other Councillor has sought to gainsay that. The WCC Statement of Community Involvement³²¹ only provides that WCC *may* consult on proposals for CA extensions, not that they must. Where there is an urgent threat of demolition, WCC would not permit any delay for consultation.
- 8.78 Another consideration which is not at this stage material is WCC's Reg. 18 statement³²², which proposes a new policy on retrofit. No weight can be given to it at this early stage. Even if it were material, such a policy is not needed, in light of the existing policies, but helpfully shows a clear direction of travel in strengthening further WCC's ambition to prioritise retrofit.
- 8.79 Applying the balance in NPPF§202, the Inspector is invited to accept the evidence of AF, for the reasons he gives, that the less than substantial harm³²³ to multiple heritage assets is not outweighed by the scheme's public benefits (many of which – as SS and AF demonstrate – could be achieved without the heritage harm, through a sustainable comprehensive retrofit scheme, in support of the CAZ and International Centre). There is also the total loss of Orchard House which must be weighed into the planning balance under NPPF§203. The scheme also breaches NPPF§152: the planning system should support the transition to a low carbon future by encouraging *the reuse of existing resources, including the conversion of existing buildings*.

³¹⁸ See *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314, para. 27

³¹⁹ As AF explained in XIC

³²⁰ Jessica Toale INQ10

³²¹ INQ41 p.28

³²² Raised in REX of CG

³²³ Even if calibrated to the level of less than substantial harm suggested by HE rather than AF: AF REX

Conclusion

8.80 The Inspector is invited to recommend to the SoS that the application be refused.

9 Other representations

- 9.1 **Charlie Baxter** of the Alchemi Group, a developer of several award winning buildings in Westminster, spoke in support of retaining and retrofitting Orchard House on environmental grounds and welcomed the Inquiry to investigate the applicant's claims that this proposal would create a net carbon positive building. He notes that the RIBA says that *Buildings should be preserved and repurposed whenever possible*. He advised that today's carbon emissions would contribute to global warming for longer and so have a larger impact than those released in the future. By comparison, it is better to convert a gas-guzzling car than to scrap them in favour of a new electric vehicle. He concluded that it is time for the Government and WCC to push applicants to step up to the plate and encourage them (forcefully, if necessary) to make choices that are best for the environment. And that means retrofitting and not demolition.
- 9.2 The renowned architect **Julia Barfield**³²⁴ reminded the Inquiry that WCC, the GLA and the UK Government have all declared a Planetary Emergency. She highlighted that the IPCC told us in 2018 that we have 12 years to avoid a catastrophe, and we see growing evidence all around the world that it is happening – with floods, droughts, fires and melting ice caps. Instead of acting as if there is an emergency, by proposing to throw a huge carbon bomb unnecessarily into the atmosphere, the scheme misunderstands the urgency of our situation. What the science tells us is that what we do in the next 8 years is critical. The brief here was clearly to maximise the site's potential and the architects have fulfilled their brief well – creating a building minimising operational carbon that 5-8 years ago would have been considered fine. However, now that we understand the upfront impact of embodied carbon it really isn't. Particularly building two extra basements! They are the worst in terms of embodied carbon.
- 9.3 She claimed that everything needs to change given the emergency we find ourselves in, and as an architect, believes that we also have a higher responsibility to the planet as well as to our clients. It is disappointing that one of the country's best-loved retailers appears not to be taking a lead on climate. Conversely – if the brief to the design team had been to maximise the site potential within the constraints of a retrofit she was sure the team would have done a great job and M&S would have demonstrated true climate leadership. She argued that it is entirely possible to successfully retrofit existing buildings and found, while doing a deep retrofit of 3 buildings into one, including a 1930s building, that she was able to successfully, radically transform them into a high-quality contemporary work space.

³²⁴ Managing Director of Marks Barfield Architects, best known for the London Eye and Brighton i360, and one of the initiators of Architect Declare

- 9.4 Representing *Heritage Declares*³²⁵, **Dr Christopher Whitman**³²⁶ focussed on four points:
1. to use its position to promote environmental awareness and action and foster the necessary cultural changes;
 2. to actively seek out opportunities to adapt heritage sites to reduce their carbon footprints;
 3. to promote research into carbon reduction, climate adaptation and biodiversity in heritage contexts; and,
 4. to bring whole-life carbon and energy efficiency analyses to bear on choices, for example through adapting existing buildings as an alternative to demolition.
- He went on to argue that the exploration of retrofit options was biased in favour of new build with insufficient investigation of how the existing buildings might be reconfigured for public benefits and commercial requirements.
- 9.5 **Eric Reynolds**³²⁷ of Urban Space Management has 49 years' experience of urban regeneration projects in the UK and the USA with examples in Bath, Spitalfields and the edge of the City of London. From this, he questioned demolition and replacement as the only solution suggesting that the driving force was the potential for a larger building with greater rental value. He pointed to the Inquiry venue, with restricted headroom but resulting in a perfectly pleasant place. He cited the example of reuse at Smithfield Market and suggested that the larger building would make more money as a property development than as a flagship store. He drew attention to the risk that the site might lie empty for a considerable time and that construction could take 6 years. He felt that there was no guarantee that M&S would trade from a smaller area within the store and advised that IKEA is moving to Oxford Street. He suggested that the low quality of retail offer alongside M&S (in Neale House) might be on account of short term leases to preserve vacant possession. Without running down the store in preparation for redevelopment, M&S might have made more investment in the existing store.
- 9.6 The chartered architect **David Coughtrie**³²⁸ has witnessed the changes to Oxford Street over many years. He felt that Orchard house is iconic and did not want its appearance to resemble any new worldwide city through the loss of its Portland stone structure and oxidised panels which complement Selfridges. He also considered that it turns the corner effectively which the replacement would not. He saw reconfiguring the interior while retaining the exterior envelope would be a winning formula.
- 9.7 **Barbara McFarlane**³²⁹ spoke on behalf of Architects Climate Action Network (a network of built environment professionals) from the point of view of the Climate Emergency. Quoting the Intergovernmental Panel on Climate Change (IPCC) she drew attention to the need to limit greenhouse gas emissions immediately. She argued that the high quality retrofitting of an existing building would be a better solution than knocking it down and rebuilding it. Turning to the WLC Assessments, these are an evolving, complex and imperfect science. They aim to look at CO₂ emissions released by the mining, production and transportation of

³²⁵ A counterpart to groups such as *Architects Declare* and *Engineers Declare*

³²⁶ INQ06 Director of the MSC Sustainable Building Conservation course - Welsh School of Architecture

³²⁷ INQ07

³²⁸ INQ08

³²⁹ INQ09

building materials as well as those from future operational use. She argued that it would be worse to demolish and rebuild now, which would emit tonnes of CO₂, than in half a century, when we might have better technology for absorbing CO₂ emissions. For these reasons a viable refurbishment option exists.

- 9.8 Ward Councillor **Jessica Toale**³³⁰ told me that the M&S building has been a characteristic feature of this high street for almost 100 years and is well-loved by the community. It is an exemplar of early twentieth century art deco architecture and provides a complementary aspect to the Grade II* listed Selfridges building to its east. This heritage and complementarity should not be under-estimated. While it is a non-designated heritage asset, plans to demolish the building would be a considerable loss to the UK's catalogue of architectural heritage. In my view, it should be preserved for the character it lends to Oxford Street and for future generations to enjoy. The Decision could also set a precedent.
- 9.9 **Keith Howard** made a detailed written submission³³¹. These set out his discussions with M&S in 2020 and his case for refurbishment. They illustrate alternatives for the colonnade, the window to the food hall, the entrance and other suggestions. He made three points in addition to his written representations. Regarding the concern that if M&S were to leave the site it would diminish the footfall on Oxford Street, he thought this staggeringly pompous, because the big store on Oxford Street is Selfridges, and if M&S left it would make almost negligible difference to footfall. He thought that upmarket retailers akin to Hugo Boss, on the other side of Selfridges, and stores along Bond Street would queue up to be next door to Selfridges in a well-refurbished building. The big revenue for M&S is now food, and it recently announced³³² plans to close 67 of its full service stores. Closure should not be treated as a threat. See the example of Nike at Oxford Circus. Finally, regarding spatial value, this should not be the rationale for everything or else Bond Street would be redeveloped for another Westfield.
- 9.10 **Griff Rhys-Jones**³³³ spoke as a resident for 30 years, and representing the Victorian Society and president of Civic Voice. He extolled the need to re-use buildings and suggested that M&S had not looked at the space imaginatively.
- 9.11 Ben Oakley (of SAVE) read a statement on behalf of **Susie Garnier**³³⁴ which emphasised that Orchard House was a landmark building which complements Selfridges.
- 9.12 **Tiler Goodwin**³³⁵ felt that listing wasn't everything, pointed to HE's acknowledgement of the architectural and historic interest in Orchard House and, as a parent of two *Gen Zs*, argued that there must be a new way forward to avoid tearing down buildings.

³³⁰ INQ10

³³¹ CD11.03 pp3-14

³³² See INQ11 for references

³³³ INQ17

³³⁴ INQ28

³³⁵ INQ29

10 Written Representations

- 10.1 A number of written responses were received³³⁶, most objecting to redevelopment. Many made points fully covered by SAVE. The following representations stood out.
- 10.2 **Michelle Ludik**, Regional Leader Conservation HOK, found it a pleasant surprise that the sustainability argument has taken precedence in the ongoing debate, referred to M&S's pledge to cut its carbon footprint, and cited examples of refurbishments such as in Brixton, the 1930s Ivor House was transformed by Cartwright Pickard from a 1930s Art Deco co-op department store into 26 high-quality apartments and some commercial space and in Kings Cross, Orms converted an unlisted and unloved 1970s Brutalist office block into a trendy hotel. The Department Store in Brixton was converted to a contemporary workplace and retail units in what had been an unlisted, dilapidated Edwardian-era department store³³⁷. Finally, she made a plea that government and stakeholders should collaborate with expert architectural practices to rethink the legal and regulatory environment to incentivise innovative solutions to retrofitting our historic buildings.
- 10.3 **Nicholas Boys Smith**, Director of Create Streets, urged the rejection of demolition of an elegant and important Art Deco building which would waste oodles of embodied carbon.
- 10.4 Architect **Ross Cowie** argued that SAVE had demonstrated that the existing M&S building is suitable for a deep retrofit that would bring it up to the highest standard.
- 10.5 **Steven Tompkins** of Architects Declare (a multi-disciplinary alliance of over 7000 professional practices in 28 countries) is part of a concerted effort to avoid the environmental collapse that will almost certainly result from business as usual with a specific commitment to prioritise deep retrofit rather than demolition of existing buildings wherever this is feasible in order to minimise greenhouse gas production. He referred to a recent project from his own studio of deep retrofitting for Kingston University.
- 10.6 **Eva Palacios**, architect + heritage consultant, argued that M&S's building in Oxford St. should be retained and retrofitted on heritage and environmental grounds, citing examples at Battersea Power Station, Billingsgate and other buildings in London.
- 10.7 **Ian Chalk**, architect, argued that transforming buildings is entirely possible through working sensitively with the existing built fabric and cited two of his award winning such projects at The Standard Hotel, Kings Cross, and at 16 Chart Street, Hoxton.
- 10.8 **Ian Ritchie**³³⁸ was convinced that retro-fit was feasible for the M&S building in order to meet the imperative to reduce energy consumption, reduce material

³³⁶ Reproduced anonymously in CD4.01 and CD11.01, and with details in CD11.02 and CD11.03. See also Schedule in Forshaw Appendix AF1

³³⁷ Letter in CD9.08

³³⁸ Member Akademie der Künste, Honorary Visiting Professor of Architecture Liverpool University, Royal Academician, Advisor Politecnico di Milano Academic Board, Advisor Backstage Trust, CABE Commissioner Emeritus

waste and reduce atmospheric carbon. He gave examples of the Royal Academy of Music, Mercer Walk and Sussex House in Covent Garden.

- 10.9 **Mark Hines**, project architect for the redevelopment of the BBC's headquarters on Regent Street, believed that by converting the building M&S have a tremendous opportunity to lead the way and let their corporate values shine through in their architecture.
- 10.10 **Scott Lindsay** of Simpson & Brown architects wrote to support the retaining and retrofitting of 458 Oxford Street (Orchard House) pointing out, with existing and proposed floor plan drawings, its successful repair, alteration and retrofit of an eight-storey category B-listed former 1930's department store on an iconic corner site in central Edinburgh to produce the successful and energy-efficient Johnnie Walker Princes Street for its client, Diageo.
- 10.11 **Sarah Wigglesworth**³³⁹ believed that it would be a climate crime to demolish and rebuild the store, when WCC has declared a climate emergency and when it would go against the GLA's climate policies, and that M&S should demonstrate best practice for others to follow.
- 10.12 **Prof. Andrew Saint**³⁴⁰, former General Editor, *The Survey of London* and Emeritus Professor of Architecture, University of Cambridge, wrote at SAVE's request to support its case. As editor of the Survey of London's volume of Oxford Street, he has a particular interest and, while acknowledging that the Orchard Street branch does not measure up to the *Pantheon* store, he advised that it is a very decent stone building, designed by well-known and competent architects of the time, and suited to the dignity and scale of the street as it then was. It is also a serviceable building in decent structural condition, and he therefore entirely agreed with the opponents of its demolition.
- 10.13 **Will Arnold**³⁴¹, Head of Climate Action for the Institute of Structural Engineers, wrote to outline its work on embodied carbon emissions and the need to reuse an existing building to halve the associated embodied carbon.
- 10.14 **Jacob Loftus**³⁴², CEO of General Projects specialises in the reinvention of existing buildings to create design-led, sustainable, best in class mixed-use developments and was disappointed that the owners have opted to knock this important building down, as opposed to undertaking a thoughtful, creative refurbishment. He referred to the restoration and retrofit of the former Woolworths HQ on Marylebone Road whilst still retaining the existing structure and façades.
- 10.15 **Ashley Nicholson**³⁴³, Director Verve Properties Ltd, cited the former Debenhams (originally Bobby's) and the former Bealesons department stores in Bournemouth as examples of the retention and re-use of existing buildings.
- 10.16 **Dr Alice Moncaster**³⁴⁴, Senior Lecturer at the School of Engineering and Innovation at The Open University, referred to the huge number of peer-

³³⁹ Director of her own practice and Design Council Expert

³⁴⁰ CD11.03

³⁴¹ Ibid

³⁴² Ibid

³⁴³ Ibid and CD9.08 (refers to Bobby's in Bournemouth)

³⁴⁴ CD11.04

reviewed, academic calculations of the whole life-cycle carbon (embodied plus operational impacts over the full service life) of buildings. She pointed to the IEA Annex 57 project, which included several case studies of deep retrofits, and concluded that new buildings 'cost' around 77% more initial embodied carbon than the deep retrofits, even though all the projects resulted in buildings with equivalent operational energy and carbon. She also highlighted the 1930s Rylands building in Manchester, most recently occupied by Debenhams which is being refurbished and extended by developer AM Alpha.

- 10.17 **Dr Barnabas Calder**³⁴⁵, Head of Architectural and Urban History Group at the University of Liverpool School of Architecture, identified the two major planks of the argument against demolition as the up-front carbon emissions in the face of a climate emergency, and the loss of the distinguished piece of architecture, and significant and distinctive landmark, that is the 1929 building.
- 10.18 **Duncan Baker**³⁴⁶, Conservative MP for North Norfolk, highlighted the Government's legally binding Net Zero objectives and that the proposed new building would be outside UK's downward emissions trajectory. He argued that demolishing the M&S building on Oxford Street would pay no attention to the immediate embodied carbon cost that a brand-new building on this site would have. A deep retrofit would be far less damaging in terms of carbon emissions. If this country is to reach its Net Zero objectives, it is vital that we rethink proposed demolitions like this, with far more attention paid to the embodied carbon impact.
- 10.19 **Sean Ketteringham**³⁴⁷ and **Joe Mathieson**³⁴⁸, caseworkers for The Twentieth Century Society, welcomed the call-in and listed its objections to the demolition of Orchard House which it considers to be a non-designated heritage asset of value to the historic fabric of central London whose demolition would cause substantial and unjustified harm to the character of Oxford Street, the Mayfair Conservation Area, and the setting of the nearby Grade II* Selfridges. He set out the significance of the building including its historic value as an example of an English attempt to create an urban fabric, akin to Hausmann's Paris, through liberal rather than absolutist planning practices in addition the building's aesthetic significance. They felt that Orchard House should be considered a non-designated heritage asset of high historic and architectural value within the context of Oxford Street, and of positive townscape value. He considered its total demolition to be extreme, disproportionate and unjustifiable based on current evidence under consideration.
- 10.20 **Murray Fraser**³⁴⁹, Chair of The Society of Architectural Historians of Great Britain, expressed its support for the growing expert consensus that the retrofit of existing buildings is more sustainable than their demolition and replacement and urged that such crucial environmental considerations should

³⁴⁵ CD11.05

³⁴⁶ CD11.07

³⁴⁷ CD11.08

³⁴⁸ CD5.11

³⁴⁹ CD11.09

weigh heavily in any decisions about what to do with significant historical buildings in our country.

- 10.21 **Kristin Scott Thomas**³⁵⁰ wrote in support of SAVE's objections, highlighting the string of handsome buildings along Oxford Street and the contribution the 1920s M&S building makes to these. She urged M&S to do the right thing and commission an imaginative retro-fit scheme as an example to others.
- 10.22 In his updated statement³⁵¹, **Alan Powers** extolled the virtues of the Trehearne and Norman practice and the popularity in Edwardian Britain of the Neo-Grec style, one of the origin points of Art Deco, which replaced the generally florid commercial style of the 1890s with dignity and scholarship to resemble the high standard of street architecture in Paris. At Orchard House, he described the *playfulness*, hierarchy of framing, and counterpoint in the form of window aedicules. He commented on the way that the Ionic order is only articulated in the centre bays as a mannerist device. He referred to the photograph of Orchard House in the Survey of London, which shows the calculation of these shadow effects and their amplification of the design. Finally, he refers to the internal staircase as a feature of considerable interest.
- 10.23 **Christine Humphreys**³⁵² has worked as an architect in central London since 1986. She queried the need for column-free office space, the promise of reused materials, the ability of the local authority to monitor conditions, and the notion of 'offsetting' embodied carbon with future savings.

In support:

- 10.24 Dee Corsi³⁵³ of **The New West End Company**, which represents 600 retailer and leisure businesses across the West End, wrote to explain that the scheme would be a significant investment into the local area for the benefit of customers and the wider community. Most importantly, it would be a major sign of confidence in the UK's most famous shopping district at a time when it needs it most and is currently lagging behind Regent Street and Bond Street which have been transformed by public and private investment in both the buildings and public realm. By replacing 3 inter-connected buildings of varying ages and design, lacking any true architecturally remarkable features, the proposals would create a fit for purpose, best in class, highly sustainable building with a mix of retail and office floorspace that is fully aligned to the needs of the West End International Centre Market. With over 1,000 sqm of public realm it would create new public space and contribute to a more welcoming environment.
- 10.25 Simon Loomes³⁵⁴, Strategic Projects Director to **The Portman Estate** (freehold owner of the site), supported the scheme as a means to achieving much needed regeneration and investment on the western end of Oxford Street. He emphasised a vacancy rate of over 30% which is becoming evident with empty stores being repurposed by short term tenancies, for example *American Candy-stores*, which do nothing to enhance the viability of west

³⁵⁰ CD11.20

³⁵¹ CD5.12 and CD11.17

³⁵² CD11.

³⁵³ CD11.10

³⁵⁴ CD11.11

Oxford Street and damage the reputation of the existing tenants, contrary to principles in the LP and Westminster City Plan.

- 10.26 **Peter Jelkeby**, Country Retail Manager/Chief Sustainability officer IKEA UK³⁵⁵, wrote in support of the scheme having recently committed to a significant investment at Oxford Circus and preparing to open its newest London store next year. He considered that the high street, and particularly a street of such international economic importance as Oxford Street, needs this type of investment and regeneration to continue attracting customers and visitors.
- 10.27 The new owners of **Selfridges** also supported the proposals.

11 Conditions

- 11.1 The suggested conditions were discussed at the Inquiry arriving at a final agreed version³⁵⁶ which I have adopted, other than for minor wording for clarification and brevity. These must be necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects³⁵⁷. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests and, in the event that permission is granted, these should be imposed as set out in the attached Schedule – Appendix 1.
- 11.2 Following a question³⁵⁸ regarding the Applicant's commitment to occupy the premises, it submitted the wording of a possible condition that the SoS could impose that would be personal to it and seek to ensure it did occupy the retail floors³⁵⁹. However, I have doubts that such a condition would be adequately enforceable for it to have any real value.
- 11.3 Under section 100ZA(5) of the T&CP Act 1990: *Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.* Accordingly, the Applicant confirmed³⁶⁰ agreement to the terms of the pre-commencement conditions.

12 Planning Obligation

- 12.1 A Planning Obligation was submitted under Section 106 of the T&CP Act (s106)³⁶¹. This is by Agreement between the Owners³⁶² and WCC. Under it, the Owners undertake to make contributions towards Employment and Skills, Cycle Parking and Stopping Up Order Costs; provide an Energy Strategy and pay a Carbon Offset Contribution; to use all reasonable endeavours to retain the Architect until the end of RIBA Stage 6 (handover); and to submit details of Threshold levels (for approval between the development and the public

³⁵⁵ CD11.16

³⁵⁶ INQ42 dated 3 November 2022

³⁵⁷ NPPF§56

³⁵⁸ From me

³⁵⁹ INQ35

³⁶⁰ INQ34

³⁶¹ INQ47

³⁶² Including the freeholder and lessees

highway) and pay costs to check this. WCC undertakes to use the sums paid for the specific purposes set out.

- 12.2 The NPPF§57 sets 3 tests³⁶³ for such obligations. Following discussions and amendments at the Inquiry, which explained the Energy Strategy and grey areas with regard to the highway works, I am satisfied that the obligations in the Agreement all comply with the Regulations and the NPPF and I have given weight to them in my conclusions.

³⁶³ See also CIL Regulation 122(2): A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —
(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and
(c) fairly and reasonably related in scale and kind to the development.

13 Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the application site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

- 13.1 The matters on which the Secretary of State (SoS) particularly wished to be informed are set out above. [bullet points] Combined with other matters raised, I find that the main considerations in this Application are:
- i. the effect of the proposals on the significance of designated heritage assets derived from their settings, with particular regard to the listed buildings at: Selfridges - 400 Oxford Street (Grade II*), 10 Portman Street and 24-29 North Audley Street (Grade II), and to the Mayfair, Portman Estate and Stratford Place Conservation Areas (CA)s;
 - ii. the effects on the significance of non-designated heritage assets (NDHA)s, with particular regard to Orchard House, Oxford Street; 11-25 Granville Place; 7-9 Portman Street; 1-7 Portman Mews South; and Hesketh House (43-45 Portman Square);
 - iii. the effect of the proposals on the UK's transition to a zero-carbon economy with particular regard to the scheme's sustainability and its whole life-cycle carbon (WLC) assessment;
 - iv. the weight to be given to the public benefits of the proposals, including improved retail floorspace, employment, new commercial floorspace, improvements to Hesketh House, permeability and connectivity through the site and improved public realm, the regeneration of Oxford Street and any improvements to the character and appearance of the area as a result of urban design, townscape and architectural quality;
 - v. whether the public benefits would outweigh any harm identified in the heritage balances, and whether the same benefits could be achieved with less harm;
 - vi. the extent to which the proposed development is consistent with Government policies for conserving and enhancing the historic environment (Chapter 16 of the National Planning Policy Framework 2021) (NPPF);
 - vii. the extent to which the proposed development is consistent with the development plan for the area, and the overall planning balance with regard to the NPPF and any other material considerations.

i. Designated heritage assets

- 13.2 The relevant assets and their settings are set out above. There would be no direct effect on designated heritage assets (except nominally to the Portman Estate CA through demolition of the link building). Rather, any harm would be from the impact of the development on the significance, or appreciation, of these assets derived from their settings. I shall therefore consider the extent to which these settings contribute to, or allow an appreciation of, significance. [s2]
- 13.3 Chief amongst the relevant designated heritage assets is Selfridges. This is a very fine building in its own right with considerable significance inherent in its

fabric and history meriting its Grade II* status. Of relevance to assessing the contribution made by its setting, one of the highlights in the listing refers to *the landmark architectural quality of the store exterior; the first phase heralded as Edwardian London's 'most sophisticated exercise in orthodox classicism' whilst upon completion it became the largest shop façade in Britain.* Although its setting does provide a generally helpful backdrop to an appreciation of the Selfridges department store, and so is of value to its significance, it is also useful to remember the Inspector's approach in *Summerskill House* (endorsed by the SoS and unchallenged) when assessing the weight to be given to the contribution setting makes to significance. [2.8 2.11]

- 13.4 The site lies across Orchard Street from the side of Selfridges such that its buildings can be seen side by side along Oxford Street. There is not a lot of uniformity in the surrounding townscape. From the corner, I consider that Orchard House is pleasant enough to look at, better than inoffensive if not quite attractive, and so is a positive contributor to the historic character of Oxford Street. I also find that its use of classical details, Portland stone and comparable cornice and roof heights make it deferential to Selfridges. Whether these aspects of its design were a deliberate response to Selfridges, or simply a function of the commercial classical architecture of the time, is unclear but there can be no question that its architect was aware of its very grand neighbour. Notwithstanding the various changes to the building (see s2 above) Orchard House provides a suitable and sympathetic backdrop and setting to this side of Selfridges. Either way, and for whatever reason, it has an affinity with Selfridges. Even if (as below) Orchard House contributes little to Selfridge's significance, it certainly doesn't detract from it. [2.17 2.18]
- 13.5 These virtues do not apply to the buildings on the rest of the site and to the other two façades in particular. While both Neale House and the Orchard Street extensions have some integrity for buildings of their time, in heritage terms they are quite out of place on this stretch of Oxford Street and within the setting of Selfridges. [2.3 2.4 2.5]
- 13.6 The boundary to this part of Stratford Place CA roughly follows that of Selfridges and the contribution that setting has to its significance is similarly comparable. The impact on the setting of the Portman Estate CA would be of a lower order again apart from the Orchard Street extension. This includes the bridge across to Hesketh House which is not only an unsympathetic addition to this NDHA but as a result also harms the Portman Estate CA. The setting of Mayfair CA would be chiefly affected on account of views along North Audley Street but these would be of significantly less consequence than the effect on the Stratford Place CA. [2.14 2.15 2.16]
- 13.7 Other designated heritage assets in the area, and their significance, are also set out above but, while not to be ignored, their sizes and distances from the site mean that the contribution that it makes to their settings is of little importance compared with that of Selfridges and these CAs. [2.8 2.9]

PROPOSALS

- 13.8 The proposals would clear the site and replace the three connected buildings with a single entity. This would be appreciably taller than either Orchard House or Selfridges, both to its cornice and overall. The front façades to Oxford Street and to Orchard Street would be splayed back from the edge of the current

footways towards openings that would announce the entrances. The cornice, on the other hand, would oversail the façades and at a rather greater height than that of the existing buildings. This would be particularly apparent when viewed from across Oxford Street from the site and from North Audley Street within the Mayfair CA. [5.1 5.2 5.5]

- 13.9 As well as the demolition of Orchard House, the proposals would remove Neale House and 23 Orchard Street. Whether or not these have any inherent merit, they are nowhere near as sympathetic as Orchard House and stylistically do nothing for the setting of Selfridges. On the other hand, they do have similar heights and building lines. The scheme would provide a single coherent, albeit larger, backdrop to Selfridges and other relevant heritage assets. [5.1 5.3]

IMPACT

- 13.10 Whether the proposals would harm the setting of a heritage asset requires a comparison between the contribution that the current setting makes and that which would be provided by the scheme before me. I found that when viewed from the other side of Oxford Street, and from North Audley Street, the height and appearance of the cornice would be prominent and distracting from the Selfridges façade, especially when compared with the deferential appearance of Orchard House. In addition, from North Audley Street, the additional storeys of offices would be more apparent, and would add to this distraction. With regard to setting, I find that the scheme would be neutral with regard to the replacement of Neale House and 23 Orchard Street within the settings of designated assets as these are currently at odds with Selfridges and the Stratford Place CA. [2.12 5.5 8.21]
- 13.11 The scheme would also remove the colonnade along Orchard Street which I found currently detracts from Orchard House's otherwise sympathetic elevation opposite that side of Selfridges, particularly at ground level where most people would experience the setting. The integrity of the proposals compared with the three existing buildings would be a relatively positive factor within its setting. Overall, I find that moderate weight should be given to the less than substantial harm that would be caused to the setting, and so to the significance, of Selfridges. [2.19 6.79 6.209 8.47]
- 13.12 With regard to Nos.24-29 North Audley Street, I find that most of its significance lies within the fabric and that the setting towards Oxford Street has already been greatly altered by Park House and the proposal for a further modern building, on the other side of Oxford Street, would be of no greater prominence of distraction and so no harm would arise. [2.12 4.2 5.5 8.23]
- 13.13 The listing for No.10 Portman Street notes that, although it forms a cohesive group with Nos.7-9 Portman Street, these other houses are unlisted and that they have been redeveloped behind their façades. It is a reasonable inference, with which I agree, that most of the significance in No.10 lies within the fabric of the building itself and I find that there would be no harm to its setting. [2.13]
- 13.14 Turning to the CAs, the contribution setting makes to the significance of the Stratford Place CA is closely aligned with that which it makes to Selfridges and I do not repeat the reasoning here. [2.14 6.200 7.10 8.6 8.17 8.26]
- 13.15 The contribution to the setting of the Mayfair CA arises chiefly on account of views along North Audley Street. The effect on this CA, as opposed to the

impact on the settings of Selfridges and the Stratford Place CA in views from here, would be of a much lower order. Aside from Hesketh House (see below) the impact on the Portman Estate CA as a whole would be lower still. [2.16 7.11 8.13 8.18 8.20]

- 13.16 In the case of each CA, I find that the change from Orchard House to the proposals would be slightly harmful to their settings.
- 13.17 As above, I have considered the effect of the proposals on the contribution setting makes to the significance of other identified designated heritage assets. While not to be ignored, I find that these would be even less likely to be affected and that no harm would arise. I have noted the other large scale developments in the area but these do not alter the impact I have found. In theory, avoiding the possibility of a derelict building next to Selfridges could be viewed as a heritage benefit, but given the commercial uncertainties, I give this limited weight. [2.8 2.9]
- 13.18 On this issue, I find that the visual changes would cause less than substantial harm to the settings, and so significance, of these designated heritage assets. This would arise as a result of the loss of the sympathetic backdrop that is Orchard House and from the greater prominence and distraction of its proposed replacement, in particular its higher cornice when viewed from the other side of Oxford Street and from North Audley Street.

ii Non-designated heritage assets (NDHAs)

- 13.19 The most relevant NDHA is Orchard House. Apart from the aspiration to reuse some materials and to replace a few decorations, this would be completely lost as a result of the scheme. [2.17 2.18 4.1]
- 13.20 As above, Orchard House was the result of a commercial design, not specifically for M&S (unlike Selfridges or the M&S Pantheon store). Today, it is a rather bland piece of architecture, albeit with good quality Portland stone cladding and generally sound proportions (with the possible exception of the top storey). In terms of rarity, I have noted that other Oxford Street buildings, of a similar date to Orchard House, probably better reflect the move from overt classicism to Art Deco. [2.18 6.167 6.174 6.199 7.9 7.11 8.2 8.3 8.4 8.11 10.3 10.12 10.22]
- 13.21 To my mind, the alterations have not been kind. As well as the loss of some attractive statues, widening the road and creating the colonnade has rather butchered the ground floor level of the Orchard Street façade. The removal of the balconies not only leaves the elevations looking rather dull, but undermines and dilutes the framing of the bays at each end of the façades. Their loss leaves a mismatch between the three Ionic columns in the middle of the street façades and the plain tops to those on either side, which would have made sense when the balconies were in place to highlight these bays. [2.18 6.174 7.9 8.4 8.9]
- 13.22 Whether or not Orchard House displays *playfulness* is more subjective, but if it did, much of this has been lost with the removal of the balconies, the *Lewis Carroll* sculptures, and the ground floor details of the façades. These alterations also undermined the hierarchy of bays, and the overall articulation of the design. I acknowledge that the balconies and other features could be

replaced with reasonable copies but it seems highly unlikely that anyone would be motivated to do so, beyond the minor items proposed. [2.18 8.6 10.22]

- 13.23 Internally, as I saw on my visit, there is a rather charming period staircase, identified late on in the application process, including a pleasant balustrade and attractive tiling, alongside the outer wall to Orchard Street. This is not a part of the store which is open to the public but is for staff and emergency use only. It was originally missed, but is referred to in the COIL assessment. It has been altered, but sensitively, by raising the height of the handrail, presumably to comply with subsequent regulations, and by ground floor lobby alterations to accommodate the widening of Orchard Street. [2.17 f/n32 26.169 8.11 10.22]
- 13.24 On the face of it, within the context of a NDHA, moderate weight should be given to the loss of the staircase. However (as below) SAVE acknowledged that even in its notional refurbishment scheme, the staircase would need to be removed. Consequently, if the need to revitalise the store is accepted, which it generally was, minimal weight should be given to its loss. [6.169 8.11 10.22]
- 13.25 For all these reasons, I find that Orchard House is a respectable, if not quite handsome, building for its time. Its loss would be a little sad to those for whom it is a familiar sight but, in the context of the vast number of listed, classical, Portland stone buildings in London, I find the harm would be no more than that. This is consistent with the views of HE in the COIL and otherwise, to which I give significant weight. In isolation, I give moderate weight to the harm that would be caused by the loss of this NDHA.
- 13.26 As with the designated assets, but using a less onerous test under NPPF§203, the harm through the loss of Orchard House should be taken into account in reaching a balanced judgement with the heritage and public benefits of the scheme. I do this below.
- 13.27 Hesketh House (43-45 Portman Square) is also a NDHA which stands within the Portman Estate CA and is connected to the appeal site by a raised section of building which bridges over Portman Mews South. Indeed, part of the bridge is probably within the CA and I have proceeded on this basis. This bridge is an unsightly addition to Hesketh House and harms its significance and its setting. The scheme would remove the bridge and reinstate the end wall. This would be an enhancement to this NDHA, to the Portman Estate CA and to the setting of Selfridges and warrants a modest amount of weight as a heritage benefit. [2.6 2.22 8.4]
- 13.28 As above, there are other NDHAs at 11-25 Granville Place, 7-9 Portman Street and 1-2 Portman Mews South. Given the distance between these assets and the parts of the site with heritage interest, and the other large and tall buildings in the area, I find that there would be no heritage harm to their settings. [2.20 2.21 5.3 7.11 7.13 8.46]

Other heritage matters

- 13.29 HE's letter, reiterated by SAVE, raised the possibility that the length of Oxford Street might be worthy of consideration as a CA. It is not, and therefore the considerations that would apply if it was designated are not before me. However, as it was raised I deal with it briefly. First, it was argued that a CA for Oxford Street might follow the audit in the Survey of London and recognise Orchard House as one of a number of buildings in a classical style from the

first half of the 20th Century. The nearest and most significant of these, by some margin, is Selfridges. If this were to happen, the considerations to be applied might be similar to those which did apply when HE considered Orchard House as worthy of listing, partly because it possesses some group value. It rejected listing, including for group value, and this is consistent with the fact that the boundaries of the adjoining CAs do not include the Application site. To my mind therefore, even if there was an Oxford Street CA, given the underwhelming assessments of the merits of Orchard House by HE and DCMS, and the quality of the buildings on either side, there would be no guarantee that it would be in it. Even if it was, the only material difference to this Inquiry would be that planning permission for relevant demolition in a conservation area would be required. The merits would be the same. Consequently, for reasons of procedure and merit, my recommendation would be the same. [2.23 8.6 8.19]

- 13.30 WCC stated that the proposals represent an improvement to the appearance of the site as a whole in its consideration of the impact on settings. I have noted the potential heritage benefits of restoring an East-West connection along Granville Place, and the extent to which a general improvement to the public realm would have a beneficial effect on the settings of heritage assets, and give these a small amount of weight. [6.68 6.207 7.8 8.2 9.6]

iii The UK's transition to a zero-carbon economy with particular regard to the scheme's sustainability and its whole life-cycle carbon assessment

- 13.31 The world faces a climate emergency. This is recognised in a raft of UK Government law, policy and guidance, including the *2019 Revision to the Climate Change Act*, *The Industrial Decarbonisation Strategy 2021*, and ever tougher commitments to *reduce economy-wide greenhouse gas emissions*. A string of esteemed architects and other professionals have testified to the need to reduce greenhouse gas emissions, and carbon in particular, to prevent a rapidly deepening climate catastrophe. This urgent need is reflected in the recent development plan which, perhaps for the first time, officially identifies embodied carbon as an obstacle to achieving zero-carbon. At any rate, none of the parties to the Inquiry was aware of the issue of embodied carbon having been previously raised and debated at a Public Inquiry³⁶⁴. [3.12-3.19 7.17 8.29 8.55]

- 13.32 The proposals would demolish and remove relatively recent and structurally sound buildings for a larger new development. This would include two levels of basement, when only one exists at the moment (and the floor plans suggest that the justification for the extent of the second is tenuous) and further floors of offices above the current roof level. Every step of this process would involve the use of energy, currently provided by fossil fuels, and so exacerbate climate change. The scheme would not achieve net-zero but would rely on a financial contribution to comply with policy. The amount of embodied energy, that is the energy that would go into construction, would be substantial. This would be contrary to the aims of NPPF§152, that: *the planning system should support the transition to a low carbon future in a changing climate, ... and help to ... encourage the reuse of existing resources, including the conversion of existing buildings*. It would not accord with LP Policies of *Minimising Greenhouse Gas*

³⁶⁴ In response to an open question from me

- Emissions (SI 2) and of Reducing Waste and Supporting the Circular Economy (SI 7). On the face of it, the scheme should be roundly condemned, as it has been by SAVE and many other participants and commentators. [3.12 3.14 5.1 6.101 7.16 7.17 8.49 8.67 9.2]*
- 13.33 Furthermore, it was not argued that the embodied energy (carbon) would be justified because the buildings are causing significant heritage harm (other than disputes over the merits of Neale House and the Orchard Street extensions) or that there was any fundamental structural or safety reason why they should be demolished. Nor was there any dispute that redevelopment would involve much greater embodied carbon than refurbishment. [8.55]
- 13.34 A Sustainability Strategy, a CE Statement, Energy Statement and WLC Assessment with accompanying *template* were submitted with the Application and considered by WCC and the GLA for retrofitting options. The GLA sought additional information and clarifications, around demolition and construction waste and a commitment to submit a post-completion CE update on completion, and these were provided. I note that none of the GLA's formal requests at that time specifically related to the principle of demolition and redevelopment. [3.12-3.15 6.143 8.68]
- 13.35 Since the Application, and initial assessments by WCC and the GLA, the WCC Environment SPD has been published. It *provides guidance for developers on how they can meet the environmental policies within Westminster's City Plan*. As above, SAVE argued failure to submit an appropriate WLC assessment and to *demonstrate actions taken to reduce life-cycle carbon emissions* could amount to a breach of policy SI 2(F). [3.12-3.15 5.11 6.139 6.142 6.236 7.19 8.66 8.70]
- 13.36 The approach in the GLA's LPG: *CE Statements* includes a *Decision Tree* to demonstrate if an existing building could and should be retained. There was no dispute that it would be technically feasible to retain the existing buildings, albeit that the Applicant claimed that the resulting spaces would be severely compromised. The *Tree* then moves on to whether the building is suited to the requirements for the site and expects that applicants should robustly explore the options for retaining existing buildings. M&S has stated that the present structures cannot be made to satisfy the aims of its brief, but my interpretation of the Guidance is that this is not the test. Rather, it is a matter of assessing options against the requirements of the development plan, taken as a whole, which I deal with below. [3.12 3.14 6.106 8.64 8.68]
- 13.37 Despite the impact of embodied energy on climate change having been a matter of concern for many decades, even the GLA (which is ahead of most authorities) is still formulating its approach, some of which is currently around data gathering. An example is its requirements for data after construction, when goals would be difficult to enforce. [3.12 3.19 5.9 7.19 8.31]
- 13.38 Several points were made in defence of the scheme's sustainability strategy. There was no dispute that the proposals would use the latest techniques for energy efficiency or that the building could achieve a rating of BREEAM *Outstanding*. The Applicant argued that, over the life of the building, it would use less carbon than any refurbishment, which would have to rely on an inefficient building envelope. As part of this, it made a detailed comparison with a light-touch refurbishment (LTR). [6.184 7.19 8.42 8.47 8.70]

- 13.39 WLC Assessments are no longer new, but the understanding of them, and the tools available for calculations, are still developing. Consequently, it was no surprise that there was disagreement over the lifetime carbon usage for the proposals and, more particularly, for a refurbishment. As with other casework involving many calculations, such as retail patterns or viability studies, I note that a series of small changes can produce a large overall difference, and so it is particularly important to test the assumptions behind the figures. Here, the witnesses differed fundamentally on which schemes should be assessed: the Applicant's original comparison against LTR or a more comprehensive refurbishment. Time did not allow a detailed comparison with SAVE's most recent outline refurbishment scheme. Given that neither side now advocates for a LTR, the submitted comparisons are of limited help in assessing the relative carbon emissions. Equally, it would be wrong to find a breach of policy for not submitting a WLC Assessment for a scheme which did not exist. [3.12 5.12 6.139 6.143 7.19 8.32 8.36 8.64 9.7]
- 13.40 The UK Government's plan is for the electricity grid to become carbon neutral (decarbonisation). It was agreed that the extent to which the harm from embodied energy would be offset by lower fossil fuel use in later years could be reduced as much of this would come after the planned decarbonisation, although the Applicant demonstrated, and the GLA accepted, the extent to which this had been taken this into account. [3.12 3.19 5.11 5.12]
- 13.41 Moreover, if redevelopment were delayed until the grid is de-carbonised, the extent of embodied energy, particularly from manufacturing materials, and from vehicle emissions, should be much lower or eliminated. I noted in particular that the embodied energy for a redevelopment undertaken now (identified in modules A1-A3: extraction, processing and manufacturing of the materials) would be much higher than if undertaken after decarbonisation of the grid. That is because a fully renewably sourced electricity grid should allow most construction vehicles, and the manufacture of concrete, steel and other materials, to be undertaken using renewable electricity rather than fossil fuels. In theory, this weighs against the scheme. [3.12 5.9 7.16 8.33 8.37 8.45 8.49 9.2 10.3 10.13 10.16 10.18]
- 13.42 A second strand to the sustainability argument is over location. The embodied carbon that would be expended in redeveloping the site would pale into insignificance when measured against that already put into the Elizabeth Line and its junction at Bond Street. The intention is that the extension to the underground will facilitate public transport to a well-developed node and reduce the need for other transport elsewhere, particularly by the private car. If so, the overall carbon costs of the Elizabeth Line to the Bond Street station could be beneficial in moving to a zero-carbon economy. By extension, concentrating travel to shops and offices near to Bond Street, and other nodes, could result in a reduction in carbon emissions. To the best of my knowledge, this is all theoretical and, with no empirical information before the Inquiry, I give it modest weight relative to other matters. [2.1 3.3 6.15 6.23 6.103 6.105 6.117-6.120 8.51]
- 13.43 For the above reasons, I find that there would be harm through substantial quantities of embodied energy in the demolition of three sound structures and the construction of a new, larger building with two levels of basements. While there should generally be a strong presumption in favour of repurposing and reusing buildings, much must depend on the circumstances of how important it

is that the use of the site should be optimised, and what alternatives are realistically available. In proposing a more comprehensive refurbishment, SAVE's objection on sustainability grounds was reliant on there being a reasonable prospect of an alternative scheme going ahead. I therefore consider, below, whether any such scheme could be delivered.

iv Public benefits: improved retail floorspace, new office floorspace, employment, public realm, design, regeneration and other matters

- 13.44 The proposals would provide retail floorspace at lower levels and configure it for a new flagship department store with state of the art office space above. The scheme would be on a brownfield site in one of the most accessible, and so sustainable, locations in London. Not only would there be investment in a new store and offices in the west end of Oxford Street, but doing so would avoid the store closing with the consequential loss of a flagship outlet. Oxford Street is an international retail destination. It has several commercial designations in the development plan. WCC expects that the scheme would help deliver renewal and improvements to the area which are key to its vision for Oxford Street. [5.1 3.8 6.23 6.104 6.180 7.4 10.26]
- 13.45 In line with its location, the stated aspirations for the scheme are for the very best provision in retail and offices. This would not just be a department store; it would be a department store for one of the UK's most cherished brands. It would serve as a new flagship for one of the most successful names in retailing, where it has had its home for approaching a century. Above the retail floors, it was also claimed that it would provide the opportunity to attract the office headquarters of a global company. There are few other locations as well connected but not in a CA where development would be feasible. [5.1 6.20 6.23 6.47]
- 13.46 M&S has stated that it will not continue to occupy and trade from the store for very much longer if permission is refused. The balance of evidence was that if M&S were to leave, it would not be replaced by another department store and that its loss would cause serious damage to the vitality and viability of the whole of Oxford Street and to London's West End. [6.33 6.98 8.54 9.9]
- 13.47 Bearing in mind the other empty former department stores along Oxford Street, and the configuration of the buildings (see below) I find that it is unlikely that any competitor would be interested on any terms. This would leave the lower floors to be occupied by multiple traders, if at all. Whether this would be more of the prevalent *American Candy-store* type shop or other lower grade outlets, such as the luggage-type unit(s) currently on the site, or higher-end shops is unclear. Either way, the loss of a department store, and of it being split into separate units, would be damaging. Only one objector thought that upmarket retailers would queue up to be next door to Selfridges in a well-refurbished building and argued, with limited evidence, that there would be little harmful effect. I find that the loss of M&S would probably result in a significant drop in footfall and a severe harmful impact on the vitality and viability of the area. [2.2 9.9 10.25]
- 13.48 The parties agreed that weight should be given to the benefit of new offices, which would be an appropriate use for any space not in retail. It follows that more weight should be given to alternatives which offer more office space. Indeed, the Applicant argued that City Plan paragraph 2.8 effectively identifies

the need for office space in the surrounding area as higher than that for housing, which is prohibited in the area for that reason. Even SAVE acknowledged, as it must, that there is an imperative to enhance Oxford Street, that the buildings do not adequately serve their intended purpose or the aspirations of the recently adopted City Plan. It was similarly agreed that the site should be exploited for retail and office use and that a course of action that would leave the buildings empty or under-used would not accord with the City Plan. [3.9 6.42 6.118 6.183 8.51 9.9]

- 13.49 The retail benefit of a new flagship store would only be realised if M&S continued operating from the site. I note the extent to which the plans are specifically configured to meet M&S's requirements for a store to cover the lower floors, something that would otherwise be unlikely. As above, the Applicant also offered a condition to require it to occupy the retail floors. While its limited enforceability means that this should not be attached, the willingness to consider such a requirement adds to my confidence that this always has been, and remains, the intention. While no commercial decisions can be guaranteed, the Applicant produced persuasive evidence that the plans are specifically configured for M&S and this increases the likelihood that it would proceed with redevelopment and occupy it in the event of permission. [3.4 3.9 5.6 6.24 6.33 6.35 6.48 7.4 7.5 8.41 8.46 9.4 10.24]
- 13.50 The proposals would employ construction workers in the short term and provide long term employment in the retail and office floorspace. Greater economic activity should result in the secondary effect of greater footfall in the area. Consequential economic activity and regeneration would be further benefits. In theory, these benefits would also flow from a refurbishment. [6.46 6.117 8.55]
- 13.51 The appearance of the building would be bold and striking. Its detailing would be of a high quality and, with efforts to retain the architects if possible (see above), the end result should be as good as the presentation. This approach would be the same as was originally adopted in the design of Selfridges and of Park House opposite. It would certainly stand up for itself. To this extent the strong aesthetic would be an appropriate neighbour. Like Park House, it would reflect its retail and office function and its higher floors would step back to provide additional accommodation without overshadowing Oxford Street. Aside from my concerns with regard to the height and prominence of the cornice, the angled building lines and choice of materials, whereby the fine grained façade would be complementary while also subservient to the giant orders, would be sympathetic to Selfridges. [6.181 8.21 8.24]
- 13.52 Turning to other aspects of urban design, the scheme would replace the site's limited existing public realm with a new arcade through the site, and enhanced access to Portman Mews South from Oxford Street, achieving permeability and connectivity, and restoring a traditional route from Orchard Street to Granville Place. It would open up a new space at Granville Place, and with wider and safer footways along Oxford Street and Orchard Street. There would be heritage benefits from these improvements and to the appearance of Hesketh House. It would allow the removal of the colonnade with benefits for appearance, heritage, safety and shopping experience. While some of SAVE's critical analysis of the quality of spaces that would result may be valid, and this tempers the weight to be given to the benefits, I have no doubt that the

public realm would be a vast improvement and that it would be difficult to do better. The SAVE scheme, were it deliverable, would at best offer comparable advantages. [5.3 6.46 6.181 7.13 8.46 8.47 10.24]

- 13.53 Overall, for the above reasons, I find that the benefits to employment and regeneration through improved retail and office floorspace, concentrating economic activity at a highly accessible location, in a high quality building with urban design benefits to the public realm, and some heritage benefits, should be given substantial weight. Indeed, in the absence of alternatives, these benefits would outweigh the harm to the historic environment and to the UK's transition to a zero-carbon economy. I have therefore considered whether there are better ways that these benefits could be achieved.

v Whether the same public benefits could be achieved with less heritage harm

- 13.54 Having acknowledged the above benefits in principle, SAVE turned to the extent to which alternatives to demolition had been properly considered and this was at the heart of the Inquiry. As above, the architect used illustrations to explain how a series of options had been considered. While there must be a reasonable likelihood that these specific drawings were produced after the event, they nevertheless illustrate alternative proposals. Minutes show that the details of the scheme were reviewed and developed in consultation with WCC and the GLA. Moreover, given the architects' track record at refurbishment as well as new build, it is unlikely that this was not given careful consideration. I was told that wherever and whenever M&S can repurpose a building, consistent with the needs of the location, they will do so and there are plenty of examples of this. I also note that M&S has a strong record of carrying out refurbishments and expect that the shorter construction period would have been a factor in its favour. [5.6 6.17 6.128 6.134 6.135 7.16 8.31-8.33 8.36 8.39 8.50 8.66 9.4]
- 13.55 The claim that M&S had properly considered refurbishment was disputed. The allegation by SAVE was that it had made up its mind early on (2018) to redevelop the site and had not reviewed this in the light of growing evidence of the impending climate catastrophe and of policy to try and avert this. Also, that the GLA and WCC had similarly failed to review its early opinions. From the evidence, I acknowledge that there was little record of any wholly dissenting voices at any stage in the process, or to suggest that the parties had gone back to first principles before confirming that they had not changed their minds. I accept that the contemporaneous evidence to refute this says little about the consideration of refurbishment and refers mostly to M&S's specifications and standards. [5.6 8.32 8.37 8.39 8.41]
- 13.56 Equally, although there was no Design Review Panel, nor was there persuasive evidence that either WCC or the GLA had failed in its duty to consider the Application at each stage. Rather, there were records of many meetings, and notes of the extent of matters discussed, albeit little conclusive evidence that the overall principle had been reviewed. What is important is whether or not the redevelopment can be justified in the face of the heritage harms and the newer presumption against demolition. While it would be unkind to impose climate change requirements on the Applicant which did not apply at the time of the Application, that is nevertheless what I have done. [5.4 6.166 8.14 8.16]

- 13.57 The refurbishment alternatives put forward by the architect considered, and ruled out, all options including either light-touch refurbishment (LTR) or façade retention. SAVE also ruled these out, accepting that a LTR would not overcome the shortcomings of the buildings. With an upgrade of just Orchard House, or a façade retention, it accepted that the embodied carbon savings would be immaterial compared with redevelopment, while it would have lower operational energy performance. Acknowledging that none of the possibilities shown in the DAS was feasible, SAVE put forward an outline option for a comprehensive refurbishment which it argued ought to be a sound alternative to complete demolition. [5.10 6.17 6.113 6.233 6.237 6.82 8.32-8.34 8.40-8.41 8.52]

VIABILITY & DELIVERABILITY

- 13.58 The merits of any refurbishment option would be academic if such a scheme was not viable or deliverable. There was no evidence that HE had considered these matters before objecting that this was a lost opportunity for reuse and adaptation. WCC and the GLA did consider options on more than one occasion and found, whether or not alternatives might be deliverable, that redevelopment would best accord with the development plan. The Applicant also emphasised the benefits of maximising the use of the site but did not try to denigrate refurbishment options solely on account of the lower quantum of floorspace. Rather, it argued that no option for the reuse of the existing buildings would be fully deliverable. Given the configuration of the three buildings, their connectivity and limited internal separation, it is highly unlikely that the upper floors of the building could be occupied as separate offices without substantial alterations. SAVE reached this conclusion and put forward its major refurbishment. [5.77 6.5 6.53-6.55 6.68 6.179 8.55 9.7]
- 13.59 The evidence of the Applicant's expert advisers on office developments was that the constraints were such that no investor would be interested. They claimed that the rental levels would be so low that no reasonable developer would consider it viable. They emphasised the post pandemic *flight to quality*, advising that there is now an increased focus on place, and on delivering user experience to *earn the commute*. If the office provision could not be delivered then there would not be the funding for new retail floorspace. Even if there were a viable office refurbishment, they argued that the retail element of any potential refurbishment would not provide anything meaningfully better than the current store which M&S assesses as failing and which it will not continue to occupy. [6.63 6.69 6.76 6.194 8.52]
- 13.60 Given the locational, and other, advantages of Oxford Street, I find it difficult to judge the viability evidence of an office refurbishment without detailed information on land values (or long lease values), which in turn ought to be adjusted to reflect the anticipated rental levels. It would be surprising if these expert viability comments were not partially influenced by the chance to advise their client to look at the prize of letting a brand new, state of the art office development, with the potential to attract a global brand. Equally, it is likely that they were reluctant to comment on theoretical schemes, and their evidence was not tested. Nevertheless, they have enormous expertise in the field, they have signed statements of truth, and their evidence should be given weight. On the other side, only one developer spoke to argue that M&S was not such a big draw to this end of Oxford Street and that its importance should

not be over-rated, particularly when compared with Selfridges. [5.1 6.20 6.23 6.47 6.74 8.52 9.9]

- 13.61 To accord with relevant development plan policies, the onus for considering a refurbishment option and demonstrating that refurbishment would not be deliverable or appropriate, as part of considering the CE and WLC or otherwise, lies with the Applicant. The GLA and WCC also have a role in checking compliance. To show that this has not been done properly, SAVE has only to demonstrate that, on the balance of probabilities, there might be another route. It would be unreasonable to expect SAVE to present a fully worked alternative. It has not, and has not claimed to have done. Nonetheless, any alternative must have some chance of proceeding, that is, it must be potentially viable and deliverable such that developers and investors would be interested. I turn to this below. [6.156 7.15 7.19 8.47 8.70]

SAVE'S ALTERNATIVE REFURBISHMENT SCHEME

- 13.62 SAVE argued that the site would be an ideal opportunity for a market-leading innovative comprehensive retrofit of the buildings, which would: (1) introduce greater operational energy efficiency in the buildings; (2) avoid the large embodied-carbon emissions of the demolition and re-build; (3) achieve the desired improvements in terms of providing high quality retail and office space, together with new public realm; and (4) avoid the harmful heritage impacts of the proposed new build scheme. It therefore put forward an alternative scheme which, it claimed, was not a worked-up proposal, but showed that the Applicant had not properly considered an appropriate level of refurbishment, somewhere between LTR and façade retention. [5.4 8.40 8.41 8.50]
- 13.63 This extensive refurbishment would retain the overall structure and external envelope but replace substantial areas, particularly the circulation cores, and all the services. Recognising the imperative for additional office space, both to satisfy the development plan priorities and in acknowledgement that any scheme must be viable, it would include a number of additional floors above the existing buildings through a complex means of transferring load, including above the servicing bay, in order to support additional offices. This option would remove the Orchard Street colonnade, by reducing the Selfridges pavement and reducing the road to 3 lanes. [2.5 6.79 6.82 6.95 8.47 8.50]
- 13.64 SAVE accepted that shortcomings to the latest scheme were to be expected, as it was not fully worked up. Given that SAVE's final refurbishment preference was only made available during the latter part of the Inquiry, it is not surprising that this was not fully analysed by either party for its CE and WLC implications. This does not mean that CE and WLC assessments should be ignored, only that there should be no criticism for their absence. In any event, there was no dispute that retaining the overall structure and external envelope would save significant amounts of embodied carbon, only whether or not such an option was deliverable. [3.12 5.9-5.11 6.234 6.236 7.16 8.40]
- 13.65 I agree that it is not for SAVE to present a fully resolved scheme in order to demonstrate that refurbishment could be an option. Rather, to comply with of recently adopted policy and guidance on carbon emissions, the Applicant should show that it had considered all reasonable alternatives. Moreover, the fact that policy has been adopted since the scheme was submitted for scrutiny

does not resolve it of the responsibility to meet current policy. [6.128 6.142 6.157 7.16 8.32 8.40 8.50 8.52]

- 13.66 The Applicant's expert advisers on office development had not previously been asked to provide evidence on a comprehensive refurbishment scheme of the kind suggested by SAVE, although they did look rapidly at the last minute submission before confirming their previous opinion that it would be unviable and undeliverable. In the circumstances, it would be unreasonable to expect them to be able to make any detailed comments on such a draft scheme so late in the day. [6.63 6.68 6.76 8.52]
- 13.67 Despite this, the Applicant's evidence on the SAVE scheme was that:
- floor to ceiling heights would be too low for contemporary offices
 - dense column grid patterns and resulting spaces would be problematic
 - the 3 disjointed floor levels would be awkward
 - a deep plan and low ceilings would cause a lack of natural light
 - there would be only small spaces to collaborate and gather
 - there would be poor amenities and no easy connection to the public realm
 - limited connection with nature and the outdoors would be unattractive
 - the scheme would lack identity as a single unit
 - there would be poor operational efficiency
 - one large floorspace would be constrained by the 3 buildings
 - widening Orchard Street footways may not be feasible
 - the disadvantages of the Orchard Street colonnade would probably remain
 - the service bay would be too low for vehicles to enter, and
 - the scheme would not attract tenants in today's changed world. [6.68 6.82 6.95 6.132 8.46-8.48]
- 13.68 I saw from my visits that, as SAVE argued, such problems are not uncommon in office developments and are to be expected in refurbishments. I accept that competent architects, such as those presenting the scheme, are used to facing and overcoming such difficulties through skilled design. They have demonstrated this elsewhere. However, I was not directed to any development which suffered from ALL these shortcomings. By comparison, No.101 New Cavendish Street is a single building, with a regular plan and column grid, and level floors, not spread over three buildings with different floor levels and structural grids. As I saw, the Nike store at Oxford Circus has much greater ceiling heights as well as being a single, coherent structure. Debenhams, House of Fraser and John Lewis refurbishments along Oxford Street do not suffer from many of these difficulties. [6.73 6.82 8.45 8.46 8.51 9.9 10.15]
- 13.69 SAVE was invited³⁶⁵ to identify premises which had all the shortcomings which were displayed at the site. It was unable to do so at the time but, after consideration, identified four examples of buildings that it claimed had been retrofitted and which faced similar challenges to the M&S building³⁶⁶. Of these, one is in Bournemouth, two in south London, and the fourth in Edinburgh; none is in Central London, all have significant differences. [10.2 10.10 10.15]

³⁶⁵ Mr Sturgis was asked by me on 2 November 2022.

³⁶⁶ SAVE replied by email dated 3 November, after all evidence had been heard. It's examples were: Bobby's Department Store, Bournemouth; The Department Store, Brixton; Arding and Hobbs (see CD9.08 AF3: Departing Stores *Emporia at risk* Harriet Lloyd and SAVE, Clapham Junction); and 146 Princes Street Edinburgh (CD11.19)

- 13.70 While many interested parties, including some of the most renowned and capable UK architects, gave evidence on the benefits of their experience of retrofitting existing buildings for new uses, and of the substantial savings in embodied carbon, only SAVE put forward a considered example. On the evidence before the Inquiry, I consider that the only remaining refurbishment scheme for the site is so deeply problematic, even for Oxford Street, that no-one would be likely to pursue it or fund it. Even disregarding the difficult question of theoretical viability without detailed land/lease values, in my view the likelihood is that the inescapable structural issues and the awkward combination of the three buildings would deter investment in any meaningful refurbishment for office use, if not result in a negative residual valuation for the premises, as the expert advisers contend. [6.68 6.76 8.52 9.1-9.7]
- 13.71 If the office redevelopment cannot be delivered then it is doubtful that there would be any substantial new investment in retail floorspace either, and certainly not enough to fund a major refurbishment of the lower floors. Even if a reduced site value, and low rental levels, allowed some viable overhaul for office use, any refurbished retail element would be unlikely to provide anything significantly better than the current store. M&S considers, with evidence of trading and footfall, that this is failing and asserts that it will not continue to occupy it indefinitely. It follows that without a deliverable office refurbishment there would be no department store either. [6.24 6.26 6.93]
- 13.72 On the balance of probability, a refurbishment will not take place under the current M&S lease, or at all. There is no other major retailer that is likely to take on the existing building, let alone retain and refurbish it as a department store. It is unlikely that anyone would finance the cost of refurbishing the upper floors as offices without a more attractive ground floor. While the site has so much potential value that it is unlikely to be left completely vacant, and I give little weight to the fallback position of demolition, I find that even smaller, high quality stores are unlikely to move in without improving the building overall (noting that only low quality stores moved into Neale House and there are plenty of other competing locations on Oxford Street). [2.4 6.36 9.5 10.24]
- 13.73 To conclude, SAVE acknowledged that the buildings do not adequately serve their intended purpose. It accepted the public benefit of keeping the site in active use rather than risk long-term vacancy, that the *status quo* was not an option, and that there is a City Plan imperative to enhance Oxford Street, on which this M&S store is a key site. It further accepted that there is no potential for LTR, a sustainable upgrade of just Orchard House or a façade retention, and instead, put forward an alternative scheme. It follows that avoiding the harm I have identified above to heritage and to moving to a zero-carbon economy, would depend on there being a viable and deliverable alternative. [3.8-3.10 6.52-6.54 6.118 7.14 8.40 8.57]
- 13.74 For the reasons given above, even allowing for the necessarily draft nature of SAVE's thoughts and that the onus lies with the Applicant, I find that there is no viable and deliverable alternative and that refusing the application would probably lead to the closure of the store, the loss of M&S from the Marble Arch end of Oxford Street and substantial harm to the vitality and viability of the area. This is a material consideration of substantial weight. [6.53-6.83 8.40-8.50]

- 13.75 None of the above is to say that considerations of WLC assessments and effects on the CE are not critically important, and of growing importance, or that SAVE and many very well meaning members of the public were wrong to raise these aspects of sustainability, perhaps for the first time at an Inquiry. Rather, the error, if there was one, was in choosing a target where sustainability had been considered but where the difficulties of the three connected buildings render the viability and deliverability of any refurbishment in such doubt that redevelopment is the only realistic option to a vacant and/or underused site. Although hard to quantify, refurbishment would, in itself, have some unfavourable consequences for transition to zero carbon as it would indirectly encourage development in less sustainable locations. [9.1-9.12 10.1-10.23]
- 13.76 I accept, as SAVE put it, the attraction of a *market-leading innovative comprehensive retrofit* as an ideal exemplar of what could be achieved. However, advocating for an exemplar is not my role and, even if it were, the Application before would be a poor example given that no such scheme has been shown to be either viable or deliverable. [8.41]
- 13.77 As above, M&S has stated publicly that if it cannot redevelop the site, the store will close. The timing of this would no doubt depend on the ongoing profitability relative to the terms of its lease. Nevertheless, whatever the details, perpetuating a declining store would only delay the inevitable. This probability then needs to be examined against the provisions of the development plan which I do below. [6.89 6.98 8.54 9.9]

vi NPPF - historic environment (Chapter 16)

- 13.78 For the above reasons, I find that the public benefits of the scheme would outweigh the less than substantial harm to the setting of Selfridges. The additional harm to the settings of the adjacent Stratford Place, Portman Estate and Mayfair CAs adds little to this. The settings of other listed buildings would be unharmed. While I have considered these balances individually, even when combined, they do not lift the weight significantly above the moderate weight to the less than substantial harm that would be caused to the setting, and so the significance, of Selfridges. [3.22 6.3 6.214 6.220 6.226 7.14 8.20 8.26 8.27 8.40 8.79 9.4]
- 13.79 I therefore find that the proposals would be consistent with the heritage balance in NPPF§202. Even taking account of s.66 of the LB&CA Act, which means that this harm must attract considerable importance and weight in any balancing exercise, I find that the benefits would outweigh the less than substantial harm to the significance of any designated heritage asset. [3.21 6.225 8.79]
- 13.80 I have considered the loss of Orchard House as a NDHA and, following NPPF§203, I have carried out a separate exercise, reached a balanced judgement, and conclude that here again the harm would be outweighed by the public benefits. [6.225 8.79]
- 13.81 On balance, I consider that the harm to all the affected heritage assets, individually and collectively, but particularly to the setting of Selfridges and through the loss of Orchard House, would be outweighed by the public benefits, particularly to Oxford Street and the West End of London. Having considered whether an alternative scheme could provide many of the benefits

without the same level of harm, I find that no such scheme is likely to be deliverable and so my conclusions on the NPPF balance remain as above.

vii The extent to which the proposed development is consistent with the development plan for the area, and the overall planning balance with regard to the NPPF and any other material considerations.

- 13.82 For planning applications³⁶⁷, determination must be made in accordance with the development plan unless material considerations indicate otherwise. The NPPF must be taken into account in preparing the development plan, and is a material consideration, as are relevant international obligations and statutory requirements.

CONCLUSIONS ON HERITAGE

- 13.83 The heritage policies in the development plan, particularly LP Policy HC1, *which requires sympathy towards the significance of heritage assets and appreciation within their surroundings*, and City Plan Policy 39 which, for NDHAs, *requires a balanced judgement to be made*, are consistent with the NPPF and much of their wording echoes that in national policy. It follows that, on the heritage issues, the scheme would not only accord with the relevant development plan policies but had it not, the NPPF heritage policies would amount to a sufficient material consideration as to outweigh any conflict with the development plan. [3.6 3.10 7.12 8.73 8.75]

CONCLUSIONS ON ZERO-CARBON

- 13.84 LP Policy D3 for *Optimising site capacity* expects *All development must make the best use of land*. Policy SI 2 seeks energy reduction or a *contribution to the borough's carbon offset fund* (which has been offered). Policy SI 2F expects that referable proposals *should calculate whole life-cycle carbon emissions through a nationally recognised Whole Life-Cycle Carbon Assessment*. However, it would be unreasonable to expect an Assessment to have been submitted for the SAVE scheme when, at the time, this did not exist. [3.5 6.101-6.103 8.30 8.59-8.62 8.63-8.66 8.68]
- 13.85 Policy SI 7 aims for *waste reduction and collaboration to: promote a more circular economy (CE)*. City Plan Policy 36 aims to *promote zero carbon development and minimise the effects of climate change*. Policy 38 covers *Design Principles with Sustainable Design* at D aiming to *enable the extended lifetime of buildings* and E *utilising environmental performance standards* including at least *BREEAM Excellent*. [3.5 3.14 6.101 6.102 7.18 8.30 8.62 8.64 8.67-8.70]
- 13.86 These policies all require issues of climate change, carbon emission, energy and waste minimisation to be addressed and so echo policy in NPPF§152 which expects that *[T]he planning system should support the transition to a low carbon future in a changing climate, and help to encourage the reuse of existing resources, including the conversion of existing buildings*. None of these policies prohibits demolition and redevelopment in appropriate circumstances.

³⁶⁷ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the T&CP Act 1990 2

- 13.87 As above, I have concluded that, on the face of it, the proposals would generally impede the UK's transition to a zero-carbon economy (with some support from Policy D3) and that in theory this should weigh heavily against the scheme.

CONCLUSIONS ON BENEFITS

- 13.88 The site enjoys a host of designations with associated policies, such as LP Policy D3 and City Plan Policies 13 and 15, which do not just support commercial development on the site but set an imperative to support retail and maximise office space to meet its growth agenda. This is not just a gentle acknowledgement that such development might be appropriate, it is a clear exhortation that this is the desired goal and needs to be delivered. While I acknowledge the tension between policy aimed at growth and that advocating sustainable development, nonetheless the development plan contains a definite mandate for maximising development on the site, where consistent with other policies. [3.5 3.10 6.101 6.106 8.30 8.59-8.62]
- 13.89 Policy D2 expects *densities* to reflect *planned levels of infrastructure*. This has now been completed, in the form of the Elizabeth Line to Bond Street. Policy D3 requires a *design-led approach that optimises the capacity of sites*. This is essentially what the Applicant has put forward. In other words, the LP requires development to be concentrated in highly accessible places. There are few better connected locations in the country. Development here might reduce pressure for growth in less sustainable locations, but there was little evidence to support this. Considering the wider issue of sustainability, there are the benefits of developing at one of the most sustainable locations in the country, and reducing the likelihood of the disadvantages of potential development elsewhere. I give substantial weight to the advantages of concentrating development in such a highly accessible location, but little weight to the uncertainties of a possible reduction in pressure for new development elsewhere. This is particularly relevant to the question of embodied carbon. These considerations temper the harm through increasing carbon emissions. [3.2 3.5 6.101-6.103 8.59-8.62]

Other matters

- 13.90 There has been a lack of investment in the store. This should not be viewed as a criticism; it is understandable when its owner (of a long lease) plans its redevelopment, but these plans been delayed. The trading and footfall figures support the evidence of a decline in trade but it is difficult to separate the cause of these falls between the fundamental shortcomings of the buildings and several years of under-investment. It is likely to be both. [2.5 9.5]
- 13.91 The *Volterra* Report identified and expanded on the retail need case and the potential for wider economic benefits. This was not challenged but does little more than provide evidential support for the policies already in the development plan. [6.185]
- 13.92 The Applicant argued that the buildings could be demolished anyway. WCC helpfully set out the legal position (s3). Regardless of this, M&S does not own the freehold and, for financial reasons, it is doubtful that it, or any subsequent owners, would proceed to demolish such a valuable building without a new planning permission. Indeed, any suggestion that this was a fallback position

was clarified towards the end of the Inquiry with confirmation that it was no part of M&S's case. Instead, it was argued that this illustrated the difference in the status of the relevant assets – essentially the difference between NPPF§202 and §203. The Applicant claimed that SAVE understands this, which is why it raised the potential for WCC to extend a CA to remove the right. I acknowledge that the GPDO right is a material consideration but, without it being a serious fallback position, give it limited weight. Similarly, I give limited weight to the notion that there might be an Oxford Street CA. I give no weight to alleged motives. [4.4 6.158-6.164 8.77]

- 13.93 I was told that WCC is considering the potential for a policy in its next City Plan to prevent demolition without express consent (Reg 18). While the emerging development plan policies may, in due course, place even more onerous zero-carbon requirements on developers, and may give an indication of current thinking, and so are material considerations, their stage in the process means that they should be given limited weight. [3.20 6.148]
- 13.94 Finally, several interested parties raised, or alluded to, the issue of precedent. In short, they were interested in the signal a refusal would send to the wider public: that the Government is serious about the Climate Emergency and the extent to which embodied carbon is contributing to this disaster. They felt that the converse would be true if it is allowed. I accept that this is a legitimate concern. My options are therefore twofold. First, I could recommend refusal on the grounds that permission would encourage unnecessary demolition and redevelopment, with consequential costs to the future of the planet. Alternatively, I could try and explain why the extreme complications of the three connected buildings mean that refurbishment is not an achievable option and therefore granting permission would not undermine the growing principle that reducing climate change should generally trump other matters. [9.1-9.9 10.1-10.11 10.13-10.18 10.23]
- 13.95 I favour the latter option but that is a matter of judgement. Should the SoS be concerned that only the headline decision were likely to receive widespread publicity, and that permission might be used to justify other, destructive schemes, that could be viewed as a material consideration of sufficient weight that fear of precedent could indicate determination other than in accordance with the development plan, and a reason to dismiss the Application.

CONCLUSION ON THE DEVELOPMENT PLAN

- 13.96 For the above reasons, refusing the Application would, at best, be likely to lead to an expansion of the type of store in Neale House and limited occupation of the upper floors. Other than policy support for saving Orchard House, its embodied energy and the current setting to Selfridges and surrounding CAs, refusal would be against a raft of recently adopted development plan policies aimed at improving Oxford Street, the International Centre, the CAZ and the SPA. It gains some support from minor heritage benefits, the sustainability advantages of concentrating development at such a well-connected location and other benefits listed above. For these reasons, I give considerable weight to the benefits of the scheme as illustrated by the extent to which it would comply with the development plan taken as a whole. [2.2 2.4 9.5 10.25]

OVERALL CONCLUSIONS

- 13.97 On balance, there is a strong probability that if the scheme does not proceed, then, sooner or later, the M&S store will close and will not be replaced by comparable retail concerns, let alone a flagship store. The existing buildings are not suited to meeting the needs for the site. There is unlikely to be a meaningful refurbishment of the buildings and the potential benefits would be lost. The prospects for substantial office development would be unlikely for the foreseeable future.
- 13.98 A Decision which made closure and partial vacancy more likely would not only miss out on potential benefits but would intensify the concerns for the vitality and viability of Oxford Street. In both ways this would run counter to the development plan. These benefits would outweigh the harm I have found, both to heritage and to the UK's transition to a zero-carbon economy, and taken together.
- 13.99 Of the material considerations of which to take account, the extent of embodied energy that would be required weighs most heavily against the scheme. This is particularly pertinent as the extent of carbon release would be long before it could be provided by a decarbonised electricity grid. The Applicant's calculations suggest that a new building would perform better over its lifetime than a refurbishment but, even if that were found to be true, it would still result in far more carbon emissions than after the UK has achieved a net-zero grid. As policy is still developing in this area, the SoS is entitled to use their judgement to give this consideration greater weight than I have attributed from current policy alone.
- 13.100 In conclusion, none of the material considerations alter my findings that the proposals should be determined in accordance with the development plan and that permission should be granted.

14 Recommendation

- 14.1 I recommend that the application should be approved, and planning permission granted subject to the attached Schedule of conditions and all the obligations in the Legal Agreement.

David Nicholson

INSPECTOR

Appendix 1

Schedule of conditions and reasons for imposing them:

- 1 The Development hereby permitted shall be carried out in accordance with the following drawings³⁶⁸:
 - Site Location Plans
1827-PP-ZZ-00-DR-A-00-0001 Rev P1, 1827-PP-ZZ-00-DR-A-00-0003 Rev P1, 1827-PP-ZZ-00-DR-A-00-0004 Rev P1
 - Demolition
1827-PP-ZZ-00-DR-A-02-0100 Rev P1, 1827-PP-ZZ-01-DR-A-02-0102 Rev P1, 1827-PP-ZZ-00-DR-A-02-0103 Rev P1, 1827-PP-ZZ-01-DR-A-02-0104 Rev P1, 1827-PP-ZZ-00-DR-A-02-0105 Rev P1, 1827-PP-ZZ-01-DR-A-02-0106 Rev P1, 1827-PP-ZZ-00-DR-A-02-0107 Rev P1, 1827-PP-ZZ-01-DR-A-02-0099 Rev P1, 1827-PP-ZZ-01-DR-A-02-2001 Rev P1,
 - GA Plans
1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-0M-DR-A-10-0100M, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-02-DR-A-10-0102 Rev P1, 1827-PP-ZZ-03-DR-A-10-0103 Rev P1, 1827-PP-ZZ-04-DR-A-10-0104 Rev P1, 1827-PP-ZZ-05-DR-A-10-0105 Rev P1, 1827-PP-ZZ-06-DR-A-10-0106 Rev P1, 1827-PP-ZZ-07-DR-A-10-0107 Rev P1, 1827-PP-ZZ-08-DR-A-10-0108 Rev P1, 1827-PP-ZZ-09-DR-A-10-0109 Rev P1, 1827-PP-ZZ-09-DR-A-10-1109 Rev P1, 1827-PP-ZZ-10-DR-A-10-0110 Rev P1, 1827-PP-ZZ-10-DR-A-10-1110 Rev P1, 1827-PP-ZZ-97-DR-A-10-0097 Rev P1, 1827-PP-ZZ-98-DR-A-10-0098 Rev P1, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4
 - GA Elevations
1827-PP-ZZ-XX-DR-A-11-0001 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0002 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0003 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0004 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0005 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0006 Rev P1, 1827-PP-ZZ-XX-DR-A-11-0007 Rev P1
 - GA Sections
1827-PP-ZZ-XX-DR-A-12-0001 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0002 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0003 Rev P1, 1827-PP-ZZ-XX-DR-A-12-0004 Rev P1
 - Assembly
1827-PP-XX-DR-A-21-0050 Rev P1, 1827-PP-XX-DR-A-21-0051 Rev P1, 1827-PP-XX-DR-A-21-0052 Rev P1, 1827-PP-XX-DR-A-21-0053 Rev P1, 1827-PP-XX-DR-A-21-0054 Rev P1, 1827-PP-XX-DR-A-21-0055 Rev P1, 1827-PP-XX-DR-A-21-0056 Rev P1, 1827-PP-XX-DR-A-21-0057 Rev P1, 1827-PP-XX-DR-A-21-0058 Rev P1.

Reason: For the avoidance of doubt and in the interests of proper planning.
- 2 Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday;
 - between 08.00 and 13.00 on Saturday; and
 - not at all on Sundays, bank holidays and public holidays.

Piling, excavation and demolition work shall only be carried out:

 - between 08.00 and 18.00 Monday to Friday; and
 - not at all on Saturdays, Sundays, bank holidays and public holidays.

³⁶⁸ Also listed with descriptions at Annex A to the SoCG CD9.02

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).

Reason: To protect the environment of neighbouring occupiers. This is as set out in the City Plan 2019 - 2040 (April 2021) (City Plan) Policies 7 and 33.

3 Prior to the commencement of any:

- (a) demolition, and/or
- (b) earthworks/piling, and/or
- (c) construction,

evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party responsible for carrying out such works, will be bound by the Council's Code of Construction Practice (CCP), shall be submitted to the Local Planning Authority (LPA) and approved in writing. Such evidence must take the form of the relevant completed Appendix A checklist from the CCP, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the CCP and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the submission of details prior to each stage of commencement has the written approval of the LPA.

Reason: To protect the environment of neighbouring occupiers. This is as set out in City Plan Policies 7 and 33.

4 Samples of facing materials, including glazing, and elevations and roof plans annotated to show where the materials are to be located shall be submitted to the LPA and approved in writing prior to relevant works. The development shall not be carried out other than in accordance with any such approval given.

Reason: To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in City Plan Policies 38 and 40.

5 (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 10dB below the minimum external background noise, at a point 1m 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 LPA. 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.

(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 15dB below the minimum external background noise, at a point 1m 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 LPA. 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, a fixed maximum noise level shall be submitted to and approved by the LPA. 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 LPA. The submitted 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 1m 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 to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- g) The lowest existing LA90, 15 mins measurement recorded under (f) above; measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- h) The proposed maximum noise level to be emitted by the plant and equipment.

Reason: Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in City Plan Policies 7 and 33 and the draft Environmental Supplementary Planning Document (May 2021)(SPD), so that the noise environment of people in noise sensitive receptors is protected, including the intrusiveness of tonal and impulsive sounds, and by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 6 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.

Reason: To ensure that the development is designed to prevent structural transmission of noise or vibration and to prevent adverse effects as a result of vibration on the noise environment in accordance with City Plan Policies 7 and 33 and the draft Environmental SPD.

- 7 Before first occupation or opening to the public, the separate stores for waste and materials for recycling shown on drawing number 1827-PP-ZZ-97-DR-A-10-0097

Revision P1 shall be delivered and made available at all times prior to Occupation and permanently retained thereafter.

Reason: To protect the environment and provide suitable storage for waste and materials for recycling as set out in City Plan Policies 7 and 37.

- 8 No waste should be left or stored on the public highway.

Reason: To protect the environment and provide suitable storage for waste and materials for recycling as set out in City Plan Policies 7 and 37.

- 9 Each cycle parking space shown on the approved drawings shall be delivered and made available prior to Occupation of the Development. Thereafter the cycle spaces must be retained and the space used for no other purpose.

Reason: To provide cycle parking spaces for people using the development in accordance with City Plan Policy 25.

- 10 With the exception of collecting rubbish, no goods (including fuel) that are delivered or collected by vehicles arriving at or leaving the building must be accepted or sent out if they are unloaded or loaded on the public road. Goods may be loaded or unloaded only within the boundary of the site.

Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in City Plan Policy 29.

- 11 All doors or gates shall be hung so that they do not open over or across the road or pavement.

Reason: In the interests of public safety and to avoid blocking the road as set out in City Plan Policies 24 and 25.

- 12 The Development shall target a BREEAM rating of 'Outstanding' for the Office floorspace and rating of 'Excellent' for retail floorspace or any such national measure of sustainability that replaces that scheme of the same standard. A post construction certificate confirming this standard under BREEAM has been achieved must be issued by the Building Research Establishment, and submitted for approval to the LPA within 6 months of completion of the development on site.

Reason: To make sure that the development affects the environment as little as possible, as set out in City Plan Policies 36 and 38.

- 13 Demolition works shall not begin on site until the following has been submitted and approved to the LPA:

(a) a construction contract with the builder to complete the redevelopment work for which planning permission has been given, or

(b) an alternative means of ensuring the LPA is satisfied that demolition on the site will only occur immediately prior to development of the new building.

The demolition and development must be carried out in accordance with the approved arrangements.

Reason: To maintain the setting of the Portman Estate, Mayfair, and Stratford Place Conservation Areas, and the setting of the Grade II* listed building at 400 Oxford Street (Selfridges)

- 14 A scheme of public art shall be submitted to the LPA for approval in writing prior to the commencement of relevant works. The approved scheme of public art shall be delivered prior to the Occupation of the Development and retained and maintained on site thereafter.

Reason: To make sure the art is provided for the public and to make sure that the appearance of the building is suitable. This is as set out City Plan Policy 43(E).

- 15 A detailed lighting strategy which includes details of all external light fittings and lighting levels shall be submitted to and approved by the LPA prior to the commencement of the development, and the development shall be carried out in accordance with the approved details.

Reason: To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in City Plan Policies 38 and 40.

- 16 A detailed Servicing Management Plan (SMP) shall be submitted to and approved by the LPA prior to the Occupation of the Development. The plan should identify process, internal storage locations, scheduling of deliveries and staffing. In particular it should consider:

- Restricting deliveries to the size of vehicle that can fit within the delivery bays
- Managing arrivals to the delivery bay so that not too many arrive at the same time.

All servicing shall be undertaken in accordance with this strategy unless otherwise agreed in writing by the LPA.

Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in City Plan Policy 29.

- 17 Detailed drawings and a Biodiversity Management Plan in relation to the construction method, layout, species and maintenance regime shall be submitted to and approved by the LPA prior to commencement of relevant works. The Development shall be carried out in accordance with the approved details and maintained thereafter.

Reason: To protect and increase the biodiversity of the environment, as set out in City Plan Policy 34.

- 18 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) (England) Order 2015:

- i) The area shaded in Green as shown on ground floor plan numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2 shall only be used for retail Class E (a), restaurant/café Class E(b) and/or indoor sport, recreation and fitness Class E (d) purposes only.
- ii) The floorspace shaded yellow annotated as Retail Class E as shown on the lower ground, ground and first floor plans numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4 shall only be used for retail Class E(a) purposes.
- iii) The remaining floorspace of the development hereby approved shall only be used for retail (Class E(a)); café/restaurant (Class E(b)); commercial uses (Class E(c)(g)); and indoor sport, recreation or fitness (Class E(d)).

No more than 1,500 sqm (GIA) shall be used as café/restaurant (Class E(b)).

Reason: In accordance with City Plan Policies 1, 13, 14 and 16.

- 19 Prior to the Occupation of the area shaded in Green as shown on ground floor plan numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2 and any other area to be used as a restaurant/café (Class E(b)), a management plan to show how customers will be prevented from causing nuisance for people in the area, including people who live in nearby buildings shall be submitted to and approved in writing by the LPA prior to Occupation of the restaurant/café use. The Development shall be carried out in accordance with the approved management plan thereafter.

Reason: In accordance with City Plan Policies 7 and 33.

- 20 There shall be no primary cooking on site (including cooking of raw or fresh food) prior to approval of details of the ventilation system to get rid of fumes, including details of how it will be built and how it will look. Thereafter the approved ventilation system shall remain in situ whilst primary cooking takes place.

Reason: To protect the environment of people in neighbouring properties as set out in City Plan Policies 7 and 33.

- 21 Prior to the Commencement of demolition, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA.

Prior to commencement of sub-structure works, an updated Whole Life Carbon Assessment completed in line with the GLA's Whole Life Carbon Assessment Guidance shall be submitted to and approved in writing by the LPA.

Changes to the assumptions which have a material impact on the results of the assessment, including carbon factors, should be clearly stated and justified.

In each case, the updated assessments shall set out the feasible scope for further whole lifecycle carbon reduction through the detailed design stage, including material selection and specification. The construction of the scheme shall be carried out in accordance with the Assessment approved prior to commencement of sub-structure works.

Reason: In the interests of sustainable development and to maximise on-site carbon dioxide savings.

- 22 Prior to the Occupation of the building the post-construction tab of the GLA's Whole Life Carbon Assessment Template should be completed in line with the GLA's Whole Life Carbon Assessment Guidance. The post-construction assessment should provide an update of the information submitted at planning submission stage, and approved under Condition 21 including the whole life carbon emission figures for all life-cycle modules based on the actual materials, products and systems used.

This should be submitted to the GLA at: ZeroCarbonPlanning@london.gov.uk, along with any supporting evidence as per the guidance. Confirmation of submission to the GLA shall be submitted to, and approved in writing by, the LPA, prior to occupation of the relevant building.

Reason: In accordance with London Plan (LP) Policy SI 2 A(4) and in the interests of sustainable development and to maximise on-site carbon dioxide savings.

- 23 The Development shall comply, where feasible, with the Circular Economy commitments in Table 5 of the approved Circular Economy Statement.

Prior to the Occupation of the building a Post Completion Report setting out

- (1) Compliance with the Circular Economy commitments in Table 5 of the submitted Circular Economy Statement; and
- (2) the predicted and actual performance against all numerical targets in the relevant Circular Economy Statement shall be submitted to the GLA at: CircularEconomyLPG@london.gov.uk, along with any supporting evidence as per the GLA's Circular Economy Statement Guidance. The Post Completion Report shall provide updated versions of Tables 1 and 2 of the Circular Economy Statement, the Recycling and Waste Reporting form and Bill of Materials.

Confirmation of submission to the GLA shall be submitted to, and approved in writing by, the LPA, prior to occupation.

Reason: In accordance with LP Policy SI 7 and in the interests of sustainable waste management and in order to maximise the re-use of materials

- 24 The Development shall be implemented in accordance with the approved Fire Statement prepared by Bureau Veritas (issue 7 dated 03.06.2021) and retained as such for the lifetime of the development.

Reason: To ensure that adequate arrangements are made for fire safety in accordance with LP Policy D12 and requirements of the NPPF.

- 25 A final Travel Plan shall be submitted to and approved in writing by the LPA prior to Occupation of the Development. The Development must be carried out in accordance with this strategy unless otherwise agreed in writing by the LPA. Reports monitoring the effectiveness of the Travel Plan shall be submitted to and approved in writing by the LPA one year and three years following the approval of the document, setting out any required changes to overcome any identified problems.

Reason: To promote sustainable modes of transport and mitigate transport impacts in accordance with City Plan Policy 24 and LP Policy T4.

- 26 Prior to Commencement of the Development, a Construction Logistics Plan shall be submitted to the LPA for approval in writing in consultation with TfL.

Reason: To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise, vibration, dust, lighting or other emissions from the site, in accordance with City Plan Policy 29 and LP policies D6, D10, D14, T3, T4 and T7.

- 27 Prior to the Commencement of the Development detailed plans shall be submitted to and approved in writing by the LPA demonstrating the provision of sufficient space for full fibre connectivity infrastructure within the Development. The Development shall be carried out in accordance with these plans and maintained as such in perpetuity.

Reason: To provide high quality digital connectivity infrastructure to contribute to London's global competitiveness.

- 28 The following sustainability measures must be provided, maintained and retained prior to the Occupation of the Development in accordance with the approved development:
- Sustainable drainage measures including green/blue roofs, surface water attenuation and rainwater harvesting;
 - Provision of water use components in line with BREEAM Wat 01 requirements and retained thereafter.

Reason: To promote sustainable drainage and water infrastructure in accordance with LP Policies SI 5 and SI 13

- 29 The terraces at 6th floor, 7th floor, 8th floor and 9th floor levels hereby permitted shall only be used between the hours of 09:30-21:30 on any day. No amplified music which is audible from the boundary of the site shall be played.

Reason: To safeguard the amenity of the adjoining premises and the area generally in accordance with City Plan Policy 7.

- 30 Details of the following parts of the development shall be submitted to and approved in writing by the LPA prior to the commencement of the development excluding demolition works, and be retained as approved for the lifetime of the development: the locations for reinstatement of:

- the existing clock from the corner of Oxford Street and Orchard Street;
- the White Knight carving and M&S Insignia on the new building.

Reason: In accordance with City Plan Policy 39.

- 31 Detailed drawings of a hard and soft landscaping scheme which includes the number, size, species and position of trees and shrubs; and details of the terraces shall be submitted to and approved in writing by the LPA prior to the relevant works. The landscaping and planting should be provided within one planting season of completing the development (or within any other time limit agreed with the LPA in writing).

Any trees which are part of the approved planting scheme that are removed, or found to be dying, severely damaged, or diseased within five years of planting them, must be replaced with trees of a similar size and species.

Reason: To preserve trees on the site in the interests of visual amenity and the character of the area, having regard to City Plan Policy 34 and the NPPF.

- 32 Notwithstanding the submitted drawings, the retractable shopfront awnings shall only be installed at ground floor level.

Reason: To protect the appearance of the building - City Plan Policy 38.

- 33 The Development shall be carried out in accordance with the approved Crime Prevention Statement prepared by GDA (dated June 2021), which shall seek to achieve the Secured by Design accreditation award from the Metropolitan Police.

Reason: In pursuance of the LPA's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning

functions and to improve community safety and crime prevention in accordance with the NPPF.

- 34 The Development shall achieve an Urban Greening Factor rating of no less than 0.41.

Reason: To contribute towards the greening of London in accordance with LP Policy G5.

- 35 The floorspace shaded yellow annotated as Retail Class E on the lower ground, ground and first floor plans numbered 1827-PP-ZZ-00-DR-A-10-0100 Rev P2, 1827-PP-ZZ-01-DR-A-10-0101 Rev P2, 1827-PP-ZZ-99-DR-A-10-0099 Rev P4 shall not be first opened to the public until an agreement has been entered into under section 106 of the Town and Country Planning Act 1990 or section 35 of the Highways Act 1980 securing public access to the east-west arcade linking Granville Place to Orchard Street from at least 8am to 8pm each day.

Reason: In accordance with City Plan Policy 43.

Appendix 2: APPEARANCES

For the Applicant, M&S:

Russell Harris KC
supported by
Heather Sargent of Counsel

instructed by Dentons UK and
Middle East LLP

He called

Fred Pilbrow MA (Cantab) AA Dipl, ARB, RIBA

Pilbrow & Partners

Dr Chris Miele PhD MRTPI IHBC FRHS

Montagu Evans LLP

Chris Goddard BA(HONS), BPL, MRTPI, MRICS

DP9 Ltd

For Save Britain's Heritage (SAVE):

Matthew Fraser of Counsel

instructed by Save Britain's
Heritage

He called

Simon Sturgis

Targeting Zero LLP

Alec Forshaw

Heritage & Planning Specialist

FOR THE LOCAL PLANNING AUTHORITY:

Sioned Davies of Counsel

instructed by Louise Metson

She did not call witnesses

INTERESTED PERSONS:

Charlie Baxter
Julia Barfield
Dr Chris Whitman
Eric Reynolds
David Coughtrie
Barbara McFarlane
Councillor Jessica Toale
Keith Howard
Griff Rhys Jones
Ben Oakley on behalf of Susie Garnier
Tyler Goodwin

Appendix 3: DOCUMENTS

INQUIRY DOCUMENTS

INQ 01	Opening Submission by Applicant - 25.10.22
INQ 02	Opening Submission by Westminster City Council - 25.10.22
INQ 03	Opening Submission by SAVE - 25.10.22
INQ 04	Third Party Representation – Charlie Baxter – 25.10.22
INQ 05	Third Party Representation – Julia Barfield – 25.10.22
INQ 06	Third Party Representation – Dr Chris Witman – 25.10.22
INQ 07	Third Party Representation – Eric Reynolds – 25.10.22
INQ 08	Third Party Representation – David Coughtrie – 25.10.22
INQ 09	Third Party Representation – Barbara McFarlane – 25.10.22
INQ 10	Third Party Representation - Councillor Jessica Toale – 25.10.22
INQ 11	Third Party Representation – Keith Howard – 25.10.22
INQ 12	Pilbrow & Partners – Site Inspection View Booklet – 25.10.22
INQ 13	Applicant Witness Appearance List – 25.10.22
INQ 14	SAVE Witness Appearance List – 25.10.22
INQ 15	Recording of Inquiry Day 1 – 25.10.22
INQ 16	Transcript of Inquiry Day 1 – 25.10.22
INQ 17	Third Party Representation – Griff Rhys Jones – 26.10.22
INQ 18A	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 1 of 8
INQ 18B	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 2 of 8
INQ 18C	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 3 of 8
INQ 18D	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 4 of 8
INQ 18E	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 5 of 8
INQ 18F	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 6 of 8
INQ 18G	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 7 of 8
INQ 18H	Fred Pilbrow - Evidence in Chief – 26.10.22 – Part 8 of 8
INQ 19	Dr Chris Miele – Evidence in Chief – 26.10.22
INQ 20	Recording of Inquiry Day 2 – 26.10.22
INQ 21	Transcript of Inquiry Day 2 – 26.10.22
INQ 22	Historic England Design Case Study: Welsh Streets Liverpool 8
INQ 23	Westminster’s Historic Environment Background (November 2019)
INQ 24	Welsh Streets Decision APP/Z4310/V/13/2206519 (15 January 2015)
INQ 25	Applicant Regulation 122 Statement (10.10.22)
INQ 26	Applicant S106 Summary (10.10.22)
INQ 27	Additional Site Visit Correspondence - 27.10.22
INQ 28	Recording of Inquiry Day 3 – 27.10.22
INQ 29	Transcript of Inquiry Day 3 – 27.10.22
INQ 30	WCC City Plan Commercial Growth Evidence Topic Paper (June 2019)
INQ 31	Note On Demolition - On Behalf of Westminster City Council (31.10.22)
INQ 32	Simon Sturgis – Evidence in Chief – 02.11.22
INQ 33	Building to Net Zero: Costing Carbon in Construction - House of Commons Environmental Audit Committee (26.05.22)
INQ 34	Russell Harris KC Letter Confirming Pre-Commencement Conditions 2.11.22
INQ 35	Draft Wording of Personal Condition
INQ 36	Alec Forshaw - Evidence in Chief - 03.11.22
INQ 37	Anglia Square Decision APP/G2625/V/19/3225505 (12 November 2020)
INQ 38	Edith Summerskill House Decision APP/H5390/V/21/3277137 (4 July 2022)
INQ 39	M&S Response to Inspector Questions – 03.11.22
INQ 40	Addendum to M&S and WCC SoCG CD 10.01 – Signed 02.11.22
INQ 41	WCC Statement of Community Involvement in Planning (June 2014)
INQ 42	Updated Draft Schedule of Conditions – 03.11.22 – Tracked

INQ 43	Applicant's Commercial Response to Simon Sturgis New Evidence in Presentation (2.11.22) – 3.11.22
INQ 44	Architects Journal Article 'Whole-life carbon assessments – a whole new type of greenwash' (21.10.22)
INQ 45	Applicant's Architectural Response to Simon Sturgis New Evidence in Presentation (2.11.22) – 3.11.22
INQ 46	Cornice Measurements – 03.11.22
INQ 47	Section 106 Engrossment – 03.11.22
INQ 48	Section 106 Engrossment – 03.11.22 (tracked changes since 19.10.22)
INQ 49	Joint Position Statement on Carbon – 03.11.22
INQ 50	Appendix to Joint Position Statement on Carbon – 03.11.22
INQ 51	Simon Sturgis Response to Inspector Questions – 03.11.22
INQ 52	Closing Submission by SAVE – 04.11.22
INQ 53	Closing Submission by the Applicant – 04.11.22
INQ 54	Updated Draft Schedule of Conditions – 03.11.22 – Clean

CORE DOCUMENTS

APPLICATION DOCUMENTS	
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CD 0.00	Core Documents Schedule
CD 1 – Full Planning Application Submission Documents	
CD 1.01	Cover Letter and Application Summary
CD 1.02	Application Form
CD 1.03	CIL Form
CD 1.04	Site Location Plan
CD 1.05	Application Drawings (Existing)
CD 1.06	Application Drawings (Proposed)
CD 1.07A	Design and Access Statement – Part 1 of 4 (Pages 1-93)
CD 1.07B	Design and Access Statement – Part 2 of 4 (Pages 94-199)
CD 1.07C	Design and Access Statement – Part 3 of 4 (Pages 200-317)
CD 1.07D	Design and Access Statement – Part 4 of 4 (Pages 318-378)
CD 10.8	Planning and Economic Statement
CD 1.09	Statement of Community Involvement
CD 1.10	Heritage Townscape and Visual Impact Assessment (HTVIA)
CD 1.11	Daylight and Sunlight Report
CD 1.12	Fire Statement
CD 1.13	Transport Assessment
CD 1.14	Travel Plan
CD 1.15	Outline Construction Logistics Plan
CD 1.16	Delivery and Servicing Plan
CD 1.17	Energy Statement
CD 1.18	GLA Emission Reporting Sheet - Full Building
CD 1.19	GLA Emission Reporting Sheet - Office
CD 1.20	GLA Emission Reporting Sheet - Retail
CD 1.21	Circular Economy Statement
CD 1.22	Whole Life Carbon Assessment
CD 1.23	Sustainability Statement
CD 1.24	Drainage Design Strategy
CD 1.25	WCC SUDS Proforma
CD 1.26	Preliminary Ecological Appraisal
CD 1.27	Air Quality Assessment
CD 1.28	Noise Impact Assessment
CD 1.29	Ventilation and Extraction Statement

CD 1.30	Archaeological Desk Based Assessment
CD 1.31	Fowl Sewage and Utilities Statement
CD 1.32	Structural Methodology Statement
CD 1.33	Signed WCC Code of Construction Practice
CD 1.34	Lighting Assessment
CD 1.35	Crime Prevention Statement
CD 1.36	GLA WLC Template
CD 1.37	TFL Response Technical Note
CD 1.38	Low and Zero Carbon Feasibility Study
CD 2 – Other Documents	
CD 2.01	Draft Section 106 Agreement
CD 2.02	Applicant Request for EIA Screening Opinion
CD 2.03	WCC Public Inquiry Notification Consultee Letter 13.07.22
CD 2.04	Public Inquiry Site Notice
CD 3 – Westminster City Council Documents	
CD 3.01	EIA Screening Opinion
CD 3.02	Planning Applications (Major) Sub Committee Report
CD 3.03	Planning Applications (Major) Sub Committee Report- Memorandum
CD 3.04	Planning Applications (Major) Sub Committee Minute
CD 4 – Consultation Responses	
CD 4.01	Public Comments
CD 4.02	GLA Stage 1 (Report and Letter) 04.10.21
CD 4.03	Transport for London 08.10.21
CD 4.04	Historic England 26.10.21
CD 4.05	WCC Highways 10.11.21
CD 4.06	GLA Energy Memo 16/09/21 – 07/12/21
CD 4.07	GLA Circular Economy Memo 26/10/21 – 09/12/21
CD 4.08	GLA Whole Life-cycle Carbon Memo 18/11/21 – 02/12/21
CD 4.09	Marylebone Councillors 22.11.21
CD 4.10	SAVE Britain’s Heritage 22.11.21
CD 4.11	Montagu Evans on behalf of REM Ltd 22.11.21
CD 4.12	GLA Stage 2 (Report and Letter) 07.03.22
CD 4.13	GLA Stage 2 Addendum (Report and Letter) 04.04.22
CD 4.14	Historic England (GLAAS) 19.10.21
CD 4.15	WCC Projects Officer (Waste) - Highways Planning 22.07.21
CD 4.16	New West End Company 29.07.22
CD 4.17	Targeting Zero Carbon Report by Simon Sturgis: Why a comprehensive refit is more carbon efficient than the proposed new build (20.01.22)
CD 4.18	Subsequent Response by Fred Pilbrow to the SAVE Carbon Report (04.04.22)
CD 5 – Historic England Documents	
CD 5.01	Listing Application (Case Number 1478729) Consultation Report 20.10.21
CD 5.02	Listing Application (Case Number 1478729) Advice Report 15.11.21
CD 5.03	Listing Application (Case Number 1478729) Drawing 1478737 (15.11.21)
CD 5.04	Listing Application (Case Number 1478729) M&S Response 27.10.21
CD 5.05	Listing Application (Case Number 1478729) WCC Response 27.10.21
CD 5.06	Listing Application (Case Number 1478729) Historic England Decision 23.11.21

CD 5.07	Certificate of Immunity (Case Number 1480211) Consultation Report 03.03.22
CD 5.08	Certificate of Immunity (Case Number 1480211) Advice Report 21.04.22
CD 5.09	Certificate of Immunity (Case Number 1480211) Drawing 1480700_1 (21.04.22)
CD 5.10	Certificate of Immunity (Case Number 1480211) Historic England Decision 23.05.22
CD 5.11	Twentieth Century Society Application for Listing of Orchard House (22.04.21)
CD 5.12	Alan Powers: Orchard House, Oxford Street; Comments on the Design (April 2021)
CD 6 – Planning Policy	
CD 6.01	National Planning Policy Framework 2021
CD 6.02	London Plan 2021
CD 6.03	Westminster City Plan 2019-2040
CD 6.04	Westminster City Plan 2019-2040 Policy Map
CD 6.05	Oxford Street District Place Strategy and Delivery Plan 2019
CD 6.06	Oxford Street District Framework 2021
CD 6.07	Portman Estate Conservation Area Map
CD 6.08	Portman Estate Conservation Area Audit 2003
CD 6.09	Portman Estate Conservation Area Mini Guide 2004
CD 6.10	Stratford Place Conservation Area Map
CD 6.11	Stratford Place Conservation Area Audit 2008
CD 6.12	Stratford Place Conservation Area Mini Guide 2004
CD 6.13	Mayfair Conservation Area Map
CD 6.14	Mayfair Conservation Area Directory 1998
CD 6.15	Mayfair Conservation Area Mini Guide 2004
CD 6.16	Royal Parks Conservation Area Map
CD 6.17	Royal Parks Conservation Area Directory 1989
CD 6.18	Royal Parks Conservation Area Mini Guide 2004
CD 6.19	Harley Street Conservation Area Audit 2008
CD 6.20	Harley Street Conservation Area Mini Guide 2004
CD 6.21	Accessible London: Achieving an Inclusive Environment GLA SPG 2014
CD 6.22	Character and Context GLA SPG 2014
CD 6.23	Control of Dust and Emissions during Construction and Demolition GLA SPG 2014
CD 6.24	Westminster Way: Public Realm Strategy WCC SPD 2011
CD 6.25	Environmental WCC SPD 2022
CD 6.26	Draft Sustainable Transport, Walking and Cycling GLA LPG 2021
CD 6.27	Draft Air Quality Positive GLA LPG 2021
CD 6.28	Draft Air Quality Neutral GLA LPG 2021
CD 6.29	Be Seen Energy Monitoring Guidance GLA LPG 2021
CD 6.30	Circular economy statements GLA LPG 2022
CD 6.31	Energy Assessment Planning Guidance GLA 2022
CD 6.32	Whole Life-cycle Carbon GLA LPG 2022
CD 6.33	Draft Optimising Site Capacity: A Design Led Approach GLA LPG 2022
CD 6.34	Fire Safety GLA LPG 2022
CD 6.35	Draft Urban Greening Factor GLA LPG 2021
CD 6.36	City London – Hilson Moran Whole Lifecycle Carbon Optioneering Planning Advice Note March 2022
CD 6.37	National Design Guide (October 2019)
CD 6.38	National Planning Policy Guidance [ONLINE VERSION ONLY] https://www.gov.uk/government/collections/planning-practice-guidance

CD 6.39	Historic England - Managing Significance in Decision-Taking in the Historic Environment Historic Environment Good Practice Advice in Planning: 2
CD 6.40	Historic England - The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)
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CD 6.42A	Survey of London - Volume 40 - The Grosvenor Estate in Mayfair, Part 2 (The Buildings) Pages 173-176
CD 6.42B	Survey of London - Volume 40 - The Grosvenor Estate in Mayfair, Part 2 (The Buildings) Pages 176-184
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CD 6.46	Survey of London - Draft Volume 53 - Chapter 11: 456-556 Oxford Street and 1-7 Marble Arch; Orchard Street to Edgware Road
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CD 6.48	Survey of London - Draft Volume 53 - Chapter 20: 257-373 Oxford Street; Swallow Place to South Molton Street
CD 6.49	Survey of London - Draft Volume 53 - Chapter 22: 453-533 Oxford Street; North Audley Street to Park Lane
CD 6.50	Survey of London - Draft Volume 53 - Chapter 17: 161-195 Oxford Street; Poland Street to Ramillies Street
CD 7 - PINS Correspondence	
CD 7.01	Call in Letter from DLUHC dated 20.06.22
CD 7.02	DLUHC email correspondence 27.07.22 correcting initial letter dated 20.06.22
CD 7.03	Letter from PINS - Inquiry Procedure - dated 30.06.22
CD 7.04	Letter from PINS - Inspector's Summary and Directions from Pre-Inquiry Meeting (Case Management Conference) - dated 16.08.22
CD 8 - Westminster City Council Inquiry Documents	
CD 8.01	Statement of Case - Westminster City Council dated 11.08.22
CD 9 - SAVE Inquiry Documents	
CD 9.01	Statement of Case - SAVE Britain's Heritage dated 11.08.22
CD 9.02	Statement of Common Ground - SAVE Comments - Applicant and LPA
CD 9.03	Statement of Common Ground - SAVE Comments - Heritage
CD 9.04	Statement of Common Ground - SAVE Comments - Public Benefits
CD 9.05	Statement of Common Ground - SAVE Comments - Sustainability
CD 9.06	SAVE Proof of Evidence (PoE) - Summary of Alec Forshaw (Heritage) - 27.09.22
CD 9.07	SAVE PoE - Alec Forshaw (Heritage) - 27.09.22
CD 9.08	SAVE PoE - Appendices to Alec Forshaw (Heritage) - 27.09.22
CD 9.09	SAVE PoE - Summary of Simon Sturgis (Sustainability) - 27.09.22
CD 9.10	SAVE PoE- Simon Sturgis (Sustainability) - 27.09.22
CD 9.11	SAVE PoE - Appendices to Simon Sturgis (Sustainability) - 27.09.22
CD 9.12	SAVE PoE - Summary of Dr Julie Godefroy (Sustainability) - 27.09.22
CD 9.13	SAVE PoE - Dr Julie Godefroy (Sustainability)- 27.09.22
CD 9.14	SAVE PoE - Appendices to Dr Julie Godefroy (Sustainability)- 27.09.22
CD 9.15	SAVE PoE - REVISED Julie Godefroy (Sustainability) - 11.10.22

CD 9.15A	SAVE PoE – REVISED Julie Godefroy (Tracked Changes) – 11.10.22
CD 9.16	SAVE Rebuttal - Alec Forshaw (with Appendices) - 11.10.22
CD 9.17	SAVE Rebuttal - Simon Sturgis - 11.10.22
CD 9.18	SAVE Rebuttal - Dr Julie Godefroy - 11.10.22
CD 10 – Marks and Spencer Inquiry Documents	
CD 10.01	Statement of Common Ground – WCC and M&S signed 11.08.22
CD 10.02	Statement of Case – Marks & Spencer dated 11.08.22
CD 10.03	M&S PoE – Chris Goddard (Planning, town centre, retail and office planning) 27.09.22
CD 10.04	M&S PoE – Appendices to Chris Goddard (Planning, town centre, retail and office planning) 27.09.22
CD 10.05	M&S PoE – Dr Chris Miele (Heritage) 27.09.22
CD 10.06	M&S PoE – Appendices to Dr Chris Miele (Heritage) 27.09.22
CD 10.07	M&S PoE – Mel Allwood (Sustainability) 27.09.22
CD 10.08	M&S PoE – Appendices to Mel Allwood (Sustainability) 27.09.22
CD 10.09A	M&S PoE – Fred Pilbrow (Architecture) 27.09.22 Part 1 of 3
CD 10.09B	M&S PoE – Fred Pilbrow (Architecture) 27.09.22 Part 2 of 3
CD 10.09C	M&S PoE – Fred Pilbrow (Architecture) 27.09.22 Part 3 of 3
CD 10.10	M&S PoE – Summary of Chris Goddard (Planning, town centre, retail and office planning)
CD 10.11	M&S PoE – Summary of Mel Allwood (Sustainability)
CD 10.12	M&S Rebuttal – Chris Goddard (with Appendices) – 11.10.22
CD 10.13	M&S Rebuttal – Dr Chris Miele – 11.10.22
CD 10.14	M&S Rebuttal – Appendices to Dr Chris Miele – 11.10.22
CD 10.15	M&S Rebuttal – Mel Allwood – 11.10.22
CD 10.16	M&S Rebuttal – Appendices to Mell Allwood – 11.10.22
CD 10.17	M&S Rebuttal – Fred Pilbrow – 11.10.22
CD 11 – Representations sent to PINS	
CD 11.01	Public Representations #1-14 (Redacted)
CD 11.02	Architect, Heritage and Consultant Representations #1-10 (Redacted)
CD 11.03	Other Interested Representations #1-6 (Redacted)
CD 11.04	Alice Moncaster – Open University – 29.07.22
CD 11.05	Dr Barnabas Calder – Liverpool University – 04.08.22
CD 11.06	Councillor Jessica Toale – WCC West End – 11.08.22
CD 11.07	Duncan Baker MP Norfolk – 05.08.22
CD 11.08	Twentieth Century Society – 10.08.22
CD 11.09	The Society of Architectural Historians of Great Britain – 11.08.22
CD 11.10	New West End Company - 26.09.22
CD 11.11	The Portman Estate – 28.09.22
CD 11.12	Selfridges – 19.10.22
CD 11.13	Public Representation 15 – 21.10.22
CD 11.14	Public Representation 16 – 22.10.22
CD 11.15	Public Representation 17 – 24.10.22
CD 11.16	IKEA – 25.10.22
CD 11.17	Alan Powers – 28.10.22
CD 11.18	Christine Humphreys Architect – 28.10.22
CD 11.19	Simpson and Brown Conservation - 30.10.22



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.