

MAYOR OF LONDON

Nathan Barrett

Westminster City Council
Development Planning
PO Box 732
Redhill, RH1 9FL

Our ref: GLA/4190/02/NR

Your ref: 17/04194/FULL

Date: 1 October 2018

Dear Mr Barrett

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008

191 Old Marylebone Road

Local planning authority reference: 17/04194/FULL

I refer to your letter of 21 September 2018 informing me that Westminster City Council is minded to grant planning permission for the above application. I refer you also to the notice that was issued on 21 September 2018 under the provisions of article 5(1)(b)(i) of the above Order.

I have now considered a report on this case, reference GLA/4190/02 (copy enclosed). The proposed loading bay and servicing arrangements fail to ensure the safety of road users and safeguard urban greening, which is unacceptable. I consider that the proposed development is contrary to the London Plan and would prejudice the implementation of the policies within the London Plan.

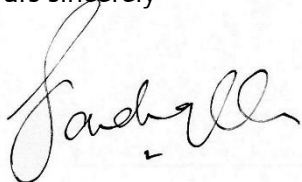
I therefore direct you to refuse planning permission, under the powers conferred to me by Article 6 of the above Order. My reason is as follows:

- **Highway safety and urban greening**

The proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety; and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and paragraphs 108-110, 127 and 130 of the NPPF.

I would, nevertheless, be minded to withdraw this direction if the applicant were to submit an amended servicing and loading bay arrangement that would not give rise to such highway safety and street tree conflicts. This could be easily achieved by reverting to an earlier proposal by the applicant for servicing to take place from Harcourt Street. I therefore urge the Council to hold this direction in abeyance and engage with GLA planning officers and the applicant to address this matter, and ensure that the scheme provides safe and well-considered servicing arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sadiq Khan', written over a light grey grid background.

Sadiq Khan

Mayor of London

cc Tony Devenish, London Assembly Constituency Member
Nicky Gavron, Chair of London Assembly Planning Committee
National Planning Casework Unit, DCLG
Lucinda Turner, TfL
Guy Bransby, JLL

1 October 2018

191 Old Marylebone Road

in the City of Westminster

planning application no. 17/04194/FULL

Strategic planning application stage II referral

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

The proposal

Redevelopment to provide a hotel (Use Class C1) with ancillary ground floor cafe/restaurant in a 14 storey building.

The applicant

The applicant is **Whitbread Group** and the architect is **Sheppard Robson**.

Key dates

Pre-app meetings: 22 February 2017

Stage 1 reporting: 19 July 2017

Planning committees: 24 October 2017, 27 February 2018 and 26 June 2018

Strategic issues

The proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety; and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and paragraphs 108-110, 127 and 130 of the NPPF.

Other comments with respect to **urban design, climate change** and **transport** have been appropriately addressed.

The Council's decision

In this instance Westminster City Council has resolved to grant permission subject to planning conditions and conclusion of a Section 106 legal agreement.

Recommendation

That Westminster City Council is directed to refuse planning permission under Article 6 of the Mayor of London Order 2008, for the reason set out in paragraph 52 of this report.

Context

1 On 1 June 2017 the Mayor of London received documents from Westminster City Council notifying him of a planning application of potential strategic importance to develop the above site for the above uses. This was referred to the Mayor under the following categories of the Schedule to the Order 2008:

- Category 1C: Development which comprises or includes the erection of a building of one or more of the following descriptions — the building is more than 30 metres high and is outside the City of London.

2 On 19 July 2017 the Mayor considered planning report D&P/4190/01, and subsequently advised Westminster City Council that the application does not comply with the London Plan, for the reasons set out in paragraph 30 of the above-mentioned report. The resolution of those issues could lead to the application becoming compliant with the London Plan. A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report.

3 The application was reported to the Council's planning committee on 24 October 2017 with a recommendation for approval. The application was deferred for the applicant to reconsider:

- revising the proposal to provide off-street servicing at ground floor level;
- the location/provision of coach and taxi drop-off and access;
- retention or replacement of street trees; and
- ensuring employment opportunities for Westminster residents.

4 Following resolution of the above issues, with the exception of off-street servicing, the application was subsequently reported back to planning committee on 27 February 2018, again with a recommendation for approval. However, the application was again deferred with the committee requesting that the proposed on-street loading bay be re-located from Harcourt Street to Old Marylebone Road.

5 The applicant made this amendment and following consideration at planning committee on 26 June 2018 Westminster City Council resolved to grant planning permission. The Council advised the Mayor of this decision on 21 September 2018. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, direct refusal under Article 6, or issue a direction to the Council under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application. The Mayor has until 4 October 2018 to notify the Council of his decision and to issue any direction.

6 The Mayor can direct refusal where he considers that to grant permission would be contrary to the London Plan, prejudicial to its implementation or otherwise contrary to good strategic planning in Greater London.

7 The matters specified in article 6(2) of the 2008 Order have been taken into account in the consideration of the exercise of the Mayors powers.

8 The Mayor's decision on this case, and the reasons, will be made available on the GLA's website www.london.gov.uk.

Consultation stage issues summary

9 At the consultation stage Westminster City Council was advised that, whilst the principle of the redevelopment of this site for a hotel is supported, the application did not comply with the London Plan for the following reasons:

- **Urban design:** the loss of mature street trees is a concern. These should ideally be retained or if replacement is necessary further justification is required, in order to comply with London Plan Policy 5.10.
- **Climate change:** the energy strategy does not fully accord with London Plan Policies 5.2, 5.6, 5.7 and 5.9. Further information regarding overheating, CHP and renewable energy is required. The final agreed energy strategy should be appropriately secured by the Council.
- **Transport:** to ensure that the scheme accords with London Plan policies 6.3, 6.9, 6.10 and 6.13 the applicant should make a contribution towards wayfinding and cycle hire docking stations. Blue badge parking and drop off/pick up requires further consideration and cycle parking should be increased. A travel plan, construction logistics plan and delivery and servicing plan should be secured by condition.

Update

10 Since consultation stage various revisions to the application and additional information submitted to address concerns raised by GLA and Council officers. These are discussed in more detail in the relevant sections of this report, but the principal change to the proposal is the re-location of the loading bay moved from Harcourt Street to Old Marylebone Road in response to the concerns of the Council's planning committee.

National planning policy and guidance update

11 On 24 July 2018, the Government published the revised National Planning Policy Framework and Planning Practice Guidance.

Strategic planning policy and guidance update

12 On 1 December 2017, the Mayor published his draft London Plan for public consultation. The consultation period on the draft London Plan expired on the 2 March 2018. Minor Suggested Alterations to the draft London Plan were published on 13 August 2018.

13 Paragraph 48 of the NPPF explains that from the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given), the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given) and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

14 The draft London Plan should be taken into account on the basis explained in the NPPF.

Officer recommendation – refuse planning permission

15 GLA officers have concluded that the proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety, and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and the NPPF.

16 Accordingly, officers believe that to grant permission would be contrary to the London Plan and draft London Plan, would prejudice the implementation of the policies within the London Plan and draft London Plan to deliver Good Growth and ensure the safety of the public in the Capital.

17 It is therefore recommended that the Mayor exercise his powers under Article 6 of the 2008 Order and direct refusal of the application for the following reason:

Highway safety and urban greening: The proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety; and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and paragraphs 108-110, 127 and 130 of the NPPF.

Outstanding issues

18 Further to the above reason for refusal, an assessment of the outstanding strategic planning issues on this case is set out below. The applicant is strongly advised to have regard to the issues discussed below if a revised application is submitted.

Urban greening

19 At Stage 1, concern was raised over the loss of mature street trees and GLA officers questioned whether the locations for the proposed replacements were feasible, given the presence of underground services in the footway. In discussion with GLA and TfL officers and prior to the initial consideration of the application at Westminster's planning committee, it was agreed that the trees could be retained in situ adjacent to the proposed building to give them an opportunity to survive. As part of the S106 heads of terms, a commuted sum of £35,000 for bi-annual pruning for 50 years by TfL was agreed. Another S106 clause obligation ensures retention of the existing trees in situ unless and until such time as the Council, TfL and the applicant (or a future landowner of the site) all agree in writing that any of the trees should be removed, in which case the applicant would pay TfL CAVAT compensation, removal costs and funding for replacement trees as previously proposed. These arrangements were considered to overcome concerns raised at initial consultation stage.

20 Following consideration at planning committee, the scheme was amended to relocate the loading bay to Old Marylebone Road. The amended proposal would result in the removal of a healthy Gingko street tree on Old Marylebone Road to facilitate the proposed loading bay. The Council's committee report advises this can be relocated, but TfL's arboriculture adviser considers that relocation would likely cause its death within a short period.

21 Given that the provision of the Old Marylebone Road servicing bay is unacceptable on highway safety grounds (discussed below) and unnecessary given the alternative and preferable on-street location on Harcourt Street, the likely loss of the healthy street tree is unacceptable. The proposal would therefore be contrary to London Plan Policy 5.10 which requires development proposals to integrate green infrastructure from the beginning of the design process to contribute

to urban greening, including the public realm, particularly within the Central Activities Zone. It would also be contrary to London Plan Policy 7.21 which requires existing trees of value to be retained. The application would also be contrary to Draft London Plan Policies G1, G5 and G7.

Highway safety

22 The proposed loading bay would be in close proximity of the major Transport for London Road Network (TLRN) junction of the A501 Marylebone Road and Old Marylebone Road, pedestrian crossing and traffic signals, with poor visibility turning in and out in an area of high traffic, cyclist and pedestrian flows. This fundamental flaw in the safety of the proposed design has been highlighted in a formal Road Safety Audit. There would be a high risk of conflicts and collisions, especially between motorised vehicles and vulnerable highway users such as pedestrians and cyclists.

23 This would be wholly unacceptable given the Mayor's 'Vision Zero' approach, to make London's streets safer for all by eliminating all deaths and serious injuries from road collisions by 2041 (set out in both Policy 3 of the Mayor's Transport Strategy (MTS) and Draft London Plan Policy T3). Minimising road danger is also fundamental to the creation of Healthy Streets where everyone feels safe walking, cycling and using public transport.

24 The applicant proposes that staff at the hotel would be required to push the button to call the green man at the pedestrian crossing to the rear of the proposed bay whenever a delivery is due to arrive or leave. This expectation is unrealistic and moreover, unlikely to ensure the safety of vulnerable road users. Operating signalised pedestrian crossings to support servicing vehicle movements will also cause general traffic, bus and cyclist delays, potentially leading to frustration and contravention of red lights. The proposed arrangements would also prioritise the movements of servicing vehicles over other road users on the TLRN especially pedestrians, whose journeys on the footway and over the crossing would be disrupted.

25 The Council could have taken the opportunity to rationalise the current informal servicing arrangements on Harcourt Street by creating a formal on street bay through a Traffic Management Order (TMO) with limited hours of operation. Instead, the decision to insist loading takes place on the footway of Old Marylebone Road will increase both the negative impact of development on the transport network and create potentially harmful public health impacts. Informal loading outside the controlled hours on the single yellow line in Harcourt Street will also be able to continue, for the hotel and by others.

26 The proposal would therefore be contrary to London Plan Policies 6.3, 6.9 and 6.10, which seek to ensure the safety of the highway, cycle and pedestrian movement network. It would also be contrary to Draft London Plan Policies T2, T4 and T7.

Update on other strategic issues

27 An update on the other strategic issues raised at consultation stage is set out below.

Climate change

28 At consultation stage, further information regarding overheating, CHP and renewable energy was requested. The applicant has subsequently submitted a thermal comfort report, justification for the absence of photovoltaic panels and clarified the performance of the air source heat pumps. This information is considered satisfactory and the application complies with London Plan Policies 5.2, 5.6, 5.7 and 5.9.

Transport

29 In terms of the other transport issues not addressed above, for pick up and drop off by coaches, the applicant has proposed use of existing loading facilities at the junction with Chapel Street and has accepted a no group bookings condition (10+ guests) will apply to the hotel if the necessary Traffic Order cannot later be implemented to enable coach use of the bay. This is acceptable. Construction Management, Deliveries and Servicing and Travel Plans would also all be secured in accordance with London Plan Policy 6.3 and draft London Plan Policy T4. The proposed car free development is welcomed in accordance with London Plan and draft London Plan policy. Cycle parking would also meet current and draft London Plan standards.

Planning conditions

30 It is noted that the Council's draft decision notice incorporates appropriate conditions as requested by the Mayor at Stage 1. Such conditions should be similarly imposed if a revised scheme is submitted and subsequently approved.

Response to consultation

Responses to neighbourhood consultation

31 Following neighbourhood consultation to 1,439 addresses, Westminster Council received a total of 24 responses, 23 in objection and 1 in support.

32 The objections raised the following concerns: building height and impact on local character; heritage impact; loss of light, overlooking and privacy/overlooking; additional traffic and impact on parking; noise and disturbance; delivery and servicing conflict; safety and security; and excessive provision of hotels in the area.

Responses from local amenity groups, business groups and adjoining landowners

33 **Marylebone Association:** Objection; support this principle of a hotel use concerned about the height, ground floor layout and construction management.

34 **The St Marylebone Society:** Regret the demolition of the existing building, raise design, height and servicing concerns.

Responses from statutory bodies and other organisations

35 The following responses were received from statutory consultees and other organisations:

- **Historic England Archaeology:** Request a condition requiring a scheme of archaeological investigation to be approved and implemented.
- **London Underground:** No objection, subject to infrastructure protection conditions.

Consultation conclusion

36 Having considered the responses to public and statutory consultation, GLA officers are satisfied that the statutory and non-statutory responses to the consultation process do not raise any material planning issues of strategic importance that have not already been considered in this report, or consultation stage report D&P/4190/01.

Draft section 106 legal agreement

37 As part of Westminster Council's draft decision to approve the application, the following draft Section 106 heads of terms are included:

- A contribution of £45,000 towards the expansion of a nearby cycle hire docking station;
- A contribution of £25,000 towards Legible London wayfinding;
- A contribution of £27,239 towards Crossrail;
- A contribution of £35,000 towards bi-annual pruning of street trees by TfL;
- Provisions for payment of a £135,000 contribution for new tree planting should any street trees need to be removed;
- Off-site highway works;
- Local employment strategy during construction and operation; and
- Travel plan.

Legal considerations

38 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power under Article 6 to direct the local planning authority to refuse permission for a planning application referred to him under Article 4 of the Order. The Mayor may also leave the decision to the local authority. In directing refusal the Mayor must have regard to the matters set out in Article 6(2) of the Order, including the principal purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to the London Plan, would prejudice the implementation of the policies within the London Plan or would be contrary to good strategic planning in Greater London.

39 If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice.

Officer recommendation – Article 6: Direction that the Mayor refuse planning permission

40 Section 38(6) of the Planning and Compensation Act 2004 requires the decision to be determined in accordance with the development plan unless material considerations indicate otherwise.

41 As set out above, GLA officers have concluded that to grant permission would be contrary to the London Plan, would prejudice the implementation of the policies within the London Plan to deliver safe and green streets. In the light of the conflict with the development plan, Section 38(6) of the 2004 Act requires planning permission to be refused unless material considerations indicate otherwise. Whilst the development would deliver benefits in the form of additional hotel rooms, together with other economic, social and environmental benefits, these are not considered to outweigh the conflict with the development plan, particularly the London Plan the aims of which would be prejudiced by a grant of planning permission.

42 The proposed development is thus not sustainable development for the purposes of the NPPF. Accordingly, it is concluded that Section 38(6) of the 2004 Act requires the refusal of planning permission.

43 The Mayor is therefore recommended to direct refusal under Article 6 of the Order for the reason set out below:

- Highway safety and urban greening: The proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety; and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and paragraphs 108-110, 127 and 130 the NPPF.

Article 7: Direction that the Mayor is to be the local planning authority

44 Under Article 7(1) of the 2008 Order the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance, for the reasons detailed above, GLA officers are recommending that the Mayor directs that Westminster City Council refuse the application. GLA officers have however considered the application against the statutory tests in Article 7:

(a) the development or any of the issues raised by the development to which the PSI application relates is of such a nature or scale that it would have a significant impact on the implementation of the spatial development strategy.

45 The proposal would contribute towards the provision of hotel rooms in the Central Activities Zone. London Plan Policy 4.5 identifies a need for 40,000 net additional hotel rooms over the plan period and this scheme would provide 294. This could therefore be considered to be a significant contribution towards the implementation of the London Plan.

(b) the development or any of the issues raised by the development to which the application relates has significant effects that are likely to affect more than one London Borough.

46 Owing to the nature and scale of development, as well as its location, the effects of the development are unlikely to be felt outside of the City of Westminster.

(c) there are sound planning reasons for issuing a direction.

47 Given the conclusions drawn above on the main outstanding issues, it is considered unlikely that these would be resolved should the Mayor call the application in. The applicant should work with the Council to ensure acceptable servicing arrangements through a revised submission. As such there are no sound planning reasons for issuing a direction.

48 Statutory tests (b) and (c) are not met and there are no grounds for the Mayor to take over the application.

Financial considerations

49 Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government Planning Practice Guidance emphasises that parties usually pay their own expenses arising from an appeal.

50 Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.

51 Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the council to do so) and determining any approval of details (unless the council agrees to do so).

Conclusion

52 Further to the consideration within this report GLA officers have concluded that the proposal fails to ensure the safety of the highway, cycle and pedestrian movement network and contribute to urban greening. It is recommended that the Mayor directs refusal of the application for the following reason:

Highway safety and urban greening: The proposed loading bay and servicing arrangements would unduly impact on highway, cyclist and pedestrian safety; and would result in the unnecessary loss of a healthy street tree, contrary to Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan (2016) and Policies G1, G5, G7, T2, T4 and T7 of the draft London Plan (2017) and paragraphs 108-110, 127 and 130 of the NPPF.

for further information, contact GLA Planning Unit (Development & Projects Team):

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