

MAYOR OF LONDON

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

Our ref: GLA/1679b/02/MJ
Your ref: 17/06350/FULL
Date: 14 May 2018

Dear Ms Asghar

**Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008
Berkeley Hotel, 40 Wilton Place and 33-39 Knightsbridge
Local planning authority reference: 17/06350/FULL**

I refer to your letter of 30 April 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 11 May 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/1679b/02 (copy enclosed). The application provides no affordable housing, which is unacceptable. I consider that the proposed development is contrary to the London Plan, would prejudice the implementation of the policies within the London Plan and would be contrary to good strategic planning in Greater London.

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

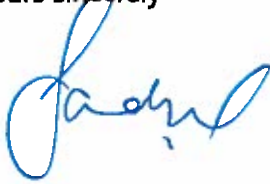
- **Lack of affordable housing provision**

The proposed development would fail to provide affordable housing, which would have a detrimental impact on the provision of much needed affordable housing stock within the City of Westminster, and London. The applicant has not demonstrated that it would be unviable to provide affordable housing, or make a contribution towards off-site delivery. Review mechanisms, essential to ensure that scheme viability is reassessed over the course of the development, have not been secured. As such, the proposal is contrary to London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG.

I would, nevertheless, be minded to withdraw this direction if the applicant were to submit a significant and justified affordable housing offer consistent with London Plan policy. I therefore urge the Council to hold this direction in abeyance and engage with my planning officers and the applicant

to address this matter, and ensure that the scheme provides the maximum amount of affordable housing that residents of Westminster, and London, desperately need.

Yours sincerely



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
Michael Blair, Blair Associates Architecture Ltd, 88 Golden Lane, London EC1Y 0UA

Berkeley Hotel, 40 Wilton Place and 33-39 Knightsbridge

in the City of Westminster

planning application no. 17/06350/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

Partial demolition and redevelopment to provide buildings of up to 11 storeys, 4 basement levels, an additional storey to the existing hotel, providing 59 additional hotel rooms, upgraded facilities, 13 residential units, 492 sq.m. of retail and restaurant space, and basement car parking.

The applicant

The applicant is **the Berkeley Hotel** and the architect is **Rogers Stirk Harbour and Partners**.

Key dates

Stage I report: 2 October 2017

Planning Committee: 27 March 2018

Strategic issues

Affordable housing: The application provides no affordable housing and review mechanisms have not been secured, which is unacceptable. The application does not therefore comply with London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG.

Matters relating to **inclusive design, transport** and **climate change** should be addressed should the application be considered at appeal, or if a revised application is submitted.

The Council's decision

Westminster City Council has resolved to grant planning permission, subject to conditions and completion of a section 106 agreement.

Recommendation

That Westminster City Council be directed to refuse planning permission, for the reasons set out in this report.

Context

1 On 21 August 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 Categories 1B and 1C of the Schedule to the Order 2008:

- 1B *“Development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings (b) in Central London (other than the City of London) and with a total floorspace of more than 20,000 square metres.”*
- 1C *“Development which comprises or includes the erection of a building of (c) more than 30 metres high and is outside the City of London.”*

2 On 2 October 2017 the Mayor considered planning report D&P/1679b/01, and subsequently advised Westminster City Council that the application did not comply with the London Plan, for the reasons set out in paragraph 40 of the above-mentioned report.

3 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. On 27 March 2018, Westminster City Council resolved to grant planning permission, and on 1 May 2018 it advised the Mayor of this decision. 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 Westminster City Council under Article 6 to refuse the application, or issue a direction to Westminster City 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 14 May 2018 to notify the Council of his decision and to issue any direction.

4 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.

5 The matters specified in Article 6(2) of the 2008 Order have, so far as they are material, been taken into account in the consideration of the exercise of the Mayors powers.

6 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

7 At consultation stage, Westminster City Council was advised that the application did not comply with the London Plan for the reasons set out below; however, the possible remedies could address these deficiencies:

- **Affordable housing:** 0% affordable housing is wholly unacceptable. The 9 proposed residential units are 2-3 times larger than the London Plan minimum space standards. Consequently, the residential element of the site has capacity to provide 10 or more units and a significant affordable housing contribution must be secured. GLA officers will robustly interrogate the applicant’s viability.
- **Inclusive design:** 10% of new hotel rooms must be provided as wheelchair accessible.
- **Transport:** The proposal to service construction from Knightsbridge by closing the bus lane temporarily and installing a pit lane is not acceptable and alternatives must be

investigated. Cycle parking must be increased in accordance with London Plan standards and consideration given to a reduction in car parking.

- **Climate change:** Full energy details must be provided separately for both domestic and non-domestic elements. A drainage strategy must be provided.

Update

8 Since consultation stage, neither the applicant nor the Council have fully engaged with GLA officers with a view to addressing the above matters. Revisions to the application were submitted to change the floor layouts, which increased the residential units from 9 to 13, and decreased the proposed hotel rooms from 69 to 59. Minor amendments were also made to the proposed elevations.

Strategic planning policy and guidance update

9 The following draft policy and guidance are now material considerations:

- Draft London Plan 2017, which should be taken into account on the basis explained in paragraph 216 of the NPPF.
- In addition, on 5 March 2018, the Government published the draft revised National Planning Policy Framework for consultation (until 10 May 2018). This should be taken into account appropriately in accordance with its early stage of preparation.

Officer recommendation

10 This report sets out the matters that the Mayor must consider when deciding whether to allow Westminster City Council's draft decision to proceed unchanged; direct the Council under Article 6 to refuse the application; 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 and any connected application.

11 Further to the consideration within this report, GLA officers have concluded that significant concerns raised at consultation stage regarding affordable housing are still outstanding. Accordingly, officers believe that to grant permission would be contrary to, and would prejudice, the implementation of the policies in the London Plan and draft London Plan to deliver the maximum affordable housing provision, and would be contrary to good strategic planning in Greater London.

- **Lack of affordable housing provision**

The proposed development would fail to provide affordable housing, which would have a detrimental impact on the provision of much needed affordable housing stock within the City of Westminster, and London. The applicant has not demonstrated that it would be unviable to provide affordable housing, or make a contribution towards off-site delivery. Review mechanisms, essential to ensure that scheme viability is reassessed over the course of the development, have not been secured. As such, the proposal is contrary to London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG.

12 Should a revised application be submitted, or should the application be the subject of appeal, the applicant should have regard to the outstanding issues discussed below, as well as the comments set out within GLA consultation stage planning report (ref: D&P/1679b/01).

Outstanding issues

13 The following issues remain outstanding.

Affordable housing

14 The Council's Committee Report sets out the residential provision as below:

	Existing	Permitted scheme (2008)	Proposed
Floorspace (GIA)	1,783 sq.m.	3,549 sq.m. (GEA)	1,704 sq.m.
Units	24	12	13

15 London Plan Policy 3.9 seeks to promote mixed and balanced communities by tenure and household income. Policy 3.12 'Negotiating Affordable Housing' seeks to secure the maximum reasonable amount of affordable housing and Policy 3.13 'Affordable Housing Thresholds' requires affordable housing provision on a site that has capacity to provide 10 or more units. Policy H5 'Delivering affordable housing' of the draft London Plan and the Mayor's Affordable Housing and Viability SPG set a strategic target of 50% affordable housing. Policy H6 'Threshold approach to applications' and the Affordable Housing and Viability SPG identify a minimum threshold of 35% (by habitable room) affordable housing, which applies to proposals capable of delivering ten units or have a combined floorspace of more than 1,000 sq.m. Applications not meeting this threshold are required to submit a viability assessment and be subject to a late stage viability review (in addition to an early stage viability review).

16 The proposal includes 13 residential units across 1,704 sq.m. (GIA) of floorspace, comprising 8 one-beds, 3 two-beds, and 2 three-beds. It should be noted that the units are very large, being 2-3 times larger than London Plan minimum space standards. Consequently, in line with London Plan, draft London Plan, and the Mayor's Affordable Housing and Viability SPG, affordable housing provision is required.

17 No affordable housing was offered at consultation stage, and consequently the Mayor's Stage I report stated that this is wholly unacceptable and required a significant contribution towards affordable housing, noting the very high-value location and the nature of the development. Westminster City Council's City Plan (2016) requires proposals for housing of either 10 or more *additional* units or over 1,000 sq.m. *additional* residential floorspace to provide a proportion of the floorspace as affordable housing, which differs from the London Plan. On the basis that 1,783 sq.m. (24 units) previously existed on the site, Westminster City Council did not request an affordable housing contribution. Despite ongoing request from GLA officers, the applicant has not submitted a viability assessment, and has not responded to the request to calculate a payment in lieu of affordable housing based on Westminster City Council's 'Guidance Note on Affordable Housing'.

18 As identified in the Committee Report, it is also noted that the proposal represents a reduction in residential floorspace and a loss of 9 units compared to that previously existing on the site. As stated in the Mayor's Stage I report, this loss would only be acceptable should a significant contribution towards affordable housing be secured. It should also be noted that affordable housing contributions of £3.1M were secured for the 2008 permission; however, it is understood that these monies were never transferred as payment was linked to later phases of that scheme, which were never commenced.

19 The complete lack of an affordable housing contribution is unacceptable in this very high-value area, particularly considering the loss of existing residential floorspace and units on the site. The applicant has not demonstrated that provision of affordable housing would be unviable. Furthermore, review mechanisms, essential to ensure that the viability of the development is appropriately re-appraised over the course of construction, have not been secured. The application does not, therefore, comply with London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG.

Inclusive design

20 As requested at consultation stage, in accordance with London Plan Policy 4.5 'London's Visitor Infrastructure', 10% of the new units are now wheelchair accessible. Should a revised application be submitted, or should the application be the subject of appeal, this must be secured by condition.

Transport

21 The proposals for construction servicing were requested to be amended at consultation stage so as to not require closure of the bus lane on Knightsbridge for the duration of the works, with the consequent impact on bus operations and delays to passengers. Whilst no amendments have been made to the outline construction management plan, this document has not been approved as part of the draft decision and the Council resolved to impose a condition which, inter alia, requires submission of details of the construction servicing arrangements for approval in consultation with TfL, prior to commencement, and for the work to be carried out only in accordance with the approved details. This largely addresses the main transport consultation stage concern, although given this concern it would have been appropriate to include informatives advising that highway authority approvals and licences for construction arrangements would also be required from TfL as the highway authority for Knightsbridge, and that closure of the bus lane would not be acceptable. Should a revised application be submitted, or should the application be the subject of appeal, a condition and informatives must be secured.

22 Should a revised application be submitted, or should the application be the subject of appeal, the electric vehicle charging points, Blue Badge parking spaces; London Cycling Design Standards compliant cycle parking; a full construction logistics plan; a full construction management plan; travel plan; and delivery servicing plan are to be secured by condition. A total of 14 car parking spaces are proposed, which is within London Plan maximum standards, although the development should be car free (except for Blue Badge parking) for compliance with the draft London Plan, and this should be reflected if a revised application is submitted or in the event of an appeal.

Climate change

23 The energy strategy issues raised at consultation stage have not been resolved, and the application does not, therefore, comply with London Plan Policy 5.2, and draft London Plan Policy SI2. Should a revised application be submitted, or should the application be the subject of appeal, a revised energy strategy is required.

24 As stated at consultation stage, the Basement Impact Assessment considers a range of flooding and hydrogeological risks to the building; however, a drainage strategy is required, including more detail on surface water attenuation volumes and discharge rates; attenuation rates due to the proposed storage tanks; pumping of groundwater to the sewer; basement design to confirm safety and resilience in the event of localised surface water flooding. Should a

revised application be submitted, or should the application be the subject of appeal, a drainage strategy must be secured by condition.

Response to consultation

25 Westminster City Council advertised the application by site and press notices, and 216 consultation letters were sent to neighbouring occupiers. The Council received two objections on grounds that the proposed new building would be out of context and scale with its surroundings; design of rooftop steelwork; and lack of clarity of application materials.

26 The following statutory bodies commented as follows:

- **Historic England** – archaeology condition recommended.

27 Having considered the responses to public consultation, Westminster City Council has proposed a condition in response to the issues raised. Having had regard to these, GLA officers are satisfied that the statutory and non-statutory responses to the public 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/1679b/01.

28 The Committee Report and this report suggest a number of other conditions and section 106 heads of terms to address various issues. Should a revised application be submitted, or should the application be the subject of appeal, these must be secured.

Draft Section 106 agreement

29 The draft section 106 agreement includes a carbon offsetting contribution of £228,600.

30 As no affordable housing contribution has been secured by the Council, no affordable housing is secured in the draft agreement. Should a revised application be submitted, or should the application be the subject of appeal, affordable housing contributions and the appropriate review mechanisms must be secured.

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

31 Under Article 7 of the Order the Mayor could take over this application provided the policy tests set out in that Article are met. An initial review of these policy tests suggests that the scale of the application means that not all of the tests would be met and there would be no basis to take over this application. In this instance, GLA officers are recommending that the Mayor directs refusal.

Legal considerations

32 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. He also has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application. 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 good strategic planning in Greater London. 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. If the Mayor

decides to direct that he is to be the local planning authority, he must have regard to the matters set out in Article 7(3) and set out his reasons in the direction.

33 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.

Financial considerations

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

35 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.

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

37 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. 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 the maximum amount of affordable housing and would be contrary to good strategic planning in Greater London.

38 Further to the considerations within this report, the application provides no affordable housing and review mechanisms have not been secured, which is unacceptable. The application does not therefore comply with London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG. The Mayor is therefore recommended to direct refusal under Article 6 of the Order for the reason set out below:

- **Lack of affordable housing provision**

The proposed development would fail to provide affordable housing, which would have a detrimental impact on the provision of much needed affordable housing stock within the City of Westminster, and London. The applicant has not demonstrated that it would be unviable to provide affordable housing, or make a contribution towards off-site delivery. Review mechanisms, essential to ensure that scheme viability is reassessed over the course of the development, have not been secured. As such, the proposal is contrary to London Plan Policies 3.12 and 3.13; draft London Plan Policies H5 and H6; and the Mayor's Affordable Housing and Viability SPG.

for further information, contact the GLA Planning Team:

Juliemma McLoughlin, Chief Planner

020 7983 4271 email juliemma.mcloughlin@london.gov.uk

Nick Ray, Principal Strategic Planner

020 7983 4178 email nick.ray@london.gov.uk

Martin Jones, Senior Strategic Planner, Case Officer

020 7983 6567 email martin.jones@london.gov.uk
