



## Appeal Decision

Hearing Held on 29 October 2019

Site visit made on 29 October 2019

**by Graham Wyatt BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> December 2019**

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**Appeal Ref: APP/X5990/W/19/3221726**

**Westcourt House, 191 Old Marylebone Road, London NW1 5DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Whitbread Group PLC against the decision of City of Westminster Council.
  - The application Ref 17/04194/FULL, dated 12 May 2017, was refused by notice dated 23 October 2018
  - The development proposed is described as the "redevelopment of the Site to provide a 294 bedroom hotel (Use Class C1) alongside ancillary ground floor café/restaurant in buildings of 9, 10 and 13 storeys above ground".
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### Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of the Site to provide a 294 bedroom hotel (Use Class C1) alongside ancillary ground floor café/restaurant in buildings of 9, 10 and 13 storeys above ground at Westcourt House, 191 Old Marylebone Road, London NW1 5DZ in accordance with the terms of the application, Ref 17/04194/FULL, dated 12 May 2017, subject to the conditions on the attached schedule.

### Application for costs

2. At the Hearing an application for costs was made by Whitbread Group PLC against City of Westminster Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The planning application was originally submitted with the servicing and taxi arrangements proposed from Harcourt Street (HS). The Council at its Planning Sub-Committee on 24 October 2017 deferred the planning application to consider off-street serving arrangements. The appellant stated off-street servicing could not be provided and on-street servicing from HS was necessary with a taxi set-down area on Old Marylebone Road (OMR) which was considered on 27 February 2018. The application was deferred again while servicing from OMR was considered within the taxi set-down area and if necessary, the bay enlarged through the loss of two Ginkgo trees. The application was then presented to the committee on 26 June 2018 with on-street servicing and taxi arrangements provided from OMR. Despite an objection for Transport for London (TfL) the Council made a resolution to grant planning permission subject to the appellant entering into an agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the Act).
4. While this matter was being dealt with by the Council, the Greater London Authority (GLA) directed that planning permission should be refused on the

grounds that the servicing of the building from OMR would result in potential conflict for highway and pedestrian safety and the loss of a street tree. The Council subsequently refused planning permission as directed by the GLA.

5. At the Hearing the Council questioned whether it was within my jurisdiction to consider on-street servicing from HS as the development that was recommended for approval sought servicing from OMR. Moreover, having regard to the Wheatcroft principles<sup>1</sup> in doing so, I would be denying those that should have had the opportunity to be consulted on the choice of access. I am mindful that Annexe M of the Procedural Guide<sup>2</sup> states that. *"If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application... If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought"*. At the Hearing, the Council argued that it would be itself alone that would be denied such an opportunity as all other statutory consultees and third parties had been consulted on the servicing arrangements either from OMR or HS.
6. I have carefully considered the Council's argument on this matter. However, I am not persuaded that this would remove myself from reaching a decision on the development before me for servicing from either OMR or HS as the Council clearly had three opportunities to consider servicing arrangements for the site and it was its elected Members that requested that servicing be relocated from HS to OMR. I therefore find that the Council has had the opportunity to consider the proposals before me and would not be prejudiced by any consideration of on-street servicing from HS.
7. At the Hearing I was presented with a number of documents. A completed unilateral undertaking (UU) pursuant to section 106 of the Act was presented as part of the appellant's submission. I was provided with the Council's notification letter of the Hearing dated 9 October 2019, a signed Statement of Common Ground dated 12 September 2019 and a copy of the Report of the Examination in Public of the London Plan 2019 dated 8 October 2019. The Council provided a photograph of a parking bay on Baker Street and the appellant provided a list of drawing numbers accompanied by complete set of drawings. The appellant provided a written copy of its application for costs against the Council who in turn provided a written rebuttal statement.
8. The Council's decision notice refers to Policies G1, G5, G7, T2 and T7 of the Draft London Plan 2017 (DLP). However, the panel have recommended changes to these policies and I cannot be certain that these changes will be adopted. Consequently, I attach limited weight to the DLP at this point in time, in line with paragraph 48 of the National Planning Policy Framework (the Framework).

### **Main Issues**

9. The main issues are the effect of the development on highway safety and street trees.

### **Reasons**

10. The appeal site forms an existing commercial office tower building that that lies on the junction of OMR, HS and Marylebone Road (MR). The proposal seeks to demolish the existing building and replace it with a 13 storey hotel building that

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE & Harborough DC [1982] P&CR 233

<sup>2</sup> Procedural Guide Planning Appeals – England 2019

will contain an ancillary ground floor restaurant and a basement. As stated earlier, the planning application initially sought planning permission for the development with on-street servicing from HS. The Council argued that servicing of the appeal site from HS would harm the living conditions of residents that live in the area, notably the surrounding residential roads such as Seymore Place (SP) and York Street (YS), that lead to HS, and the residents of HS itself. Moreover, these areas are recognised as having particularly poor air quality and all lie within the Marylebone Low Emission Neighbourhood, the Congestion Charging Zone and the Ultra-Low Emission Zone and vehicles waiting, manoeuvring and travelling in this area would further harm air quality.

11. As such, the appellant sought, at the behest of the Council, to relocate the servicing bay onto OMR which would be shared with a taxi set down area. However, this arrangement was considered unacceptable to the GLA and planning permission was subsequently refused as the servicing arrangement off OMR would unduly impact on highway, cyclist and pedestrian safety as well as resulting in the unnecessary loss of a healthy street tree.
12. The proposed servicing bay on OMR would be created almost at the junction of MR and would stretch along OMR requiring the removal of an existing telephone kiosk and a street tree. The bay would not be solely for the use of the appeal site and would be open for all vehicles, of whatever size that would be able to be accommodated within it, to set down within the bay. However, a coach drop-off point would be provided to the south of the site along OMR, close to the junction with Chapel Street.
13. During my visit I witnessed the junction of OMR and MR and the traffic signals used to stop traffic, which are also pedestrian operated. Understandably, in this part of London, and MR itself forming a major thoroughfare, traffic that was not stopped or being controlled by the signalised crossing tended to turn the corner into OMR at speed. Although, I cannot be certain of the speeds the vehicles were travelling at, it seems logical to me that any impediment to moving traffic at this junction could result in a conflict between vehicles and pedestrians as a result of the proposed servicing bay on OMR being located so close to the junction with MR. However, while a banksman would be used to control traffic at the site through activating the pedestrian crossing at the junction of OMR and MR, at the Hearing it was stated that a banksman was only ever used as a temporary measure and during the construction of a development. There were no instances that could be provided where a permanent banksman was used for a site that was completed and operating.
14. I find it quite unreasonable to insist that a member of staff undertake the responsibility of acting as a banksman required to activate the pedestrian crossing for no other reason than stop the flow of traffic in order to allow a large vehicle from within the bay on OMR to enter the main carriageway and proceed without caution. While this not only interrupts the flow of traffic along OMR and MR, there is no guarantee that a banksman will be used on every occasion or for those vehicles that may set down within the bay and are unconnected to the appeal site. While I accept that drivers of large vehicles are trained in manoeuvring out of such spaces into the flow of traffic when it is safe to do so, the use of a permanent banksman only serves to demonstrate the inadequacies of the servicing arrangement off OMR.
15. Furthermore, notwithstanding the collision data supplied by the Council at other areas considered similar to the appeal site, I am not persuaded that the sites at Buckingham Palace Road, Baker Street, The Strand or Shaftsbury Avenue are so similar to the proposed servicing bay at OMR. In the case of Baker Street, The

Strand and Shaftsbury Avenue, these parking bays are on straight roads that provide the vehicle user clear vision of traffic in either direction. While the bay at Buckingham Palace Road is on the corner of Victoria Street, the pavement at the junction is significantly wider than that at the appeal site with buildings set back by a greater distance, thereby allowing greater visibility when turning onto Victoria Street than that at OMR. Thus, I do not find the parking bays referred to by the Council to demonstrate sufficient similarities as to represent a precedent to find in favour of a servicing bay on OMR.

16. With regard to servicing from HS, it is clear that the taking into account the on-site parking that currently exists at the site and the unrestricted servicing from HS that can take place for the commercial office building that currently occupies the site, the proposal would reduce the amount of traffic that accesses the site in terms of servicing. Although the Council questions the ability, or indeed the inclination of the appellant, to resume the lawful use of the site as a commercial office, it was stated at the Hearing that should this appeal fail then it would refurbish and re-let the building to realise an income from the property. The Council has not provided any substantive evidence that this scenario would or could not occur. Thus, the reduction in traffic to an average of two vehicles per day that would arrive via HS would also reduce the amount of emissions that are produced as a result of visiting the appeal site and improving air quality in the area.
17. Although I acknowledge that other premises would still use HS as a service road, any reduction over the current operation can only serve to reduce air pollution and noise and disturbance in the vicinity. Moreover, the appellant also stated that the long term intention is to replace its current diesel vehicles fleet with electric vehicles. While I acknowledge that no specific guarantee was provided for this change over, it has to be recognised that the Mayor of London's Office may ultimately seek to further restrict certain types of vehicles from entering this, and other parts, of the city.
18. Moreover, I was not presented with any evidence that the type of vehicle that the appellant would use to service the site would be prohibited from accessing the building from the route that would include SP, YS and HS. Thus, notwithstanding the proposed bay on OMR, there is no persuasive evidence before me that there will not be occurrences of other vehicles using this route to access other businesses and premises on HS, despite the presence of a servicing bay on OMR. It is clear therefore that HS would still be used by other operators in the area.
19. Turning to trees that may be affected by the development, there is some disagreement regarding the category of the Gingko tree and its potential longevity. Nonetheless, the tree in question adds to the overall amenity of the area as it forms part of a small group of trees that exist along this corner of MR and to the front of OMR. The creation of the servicing bay on OMR would result in the loss of the tree and although I accept that replacement planting on the corner of HS and OMR could compensate for its loss, it would still result in the loss of a tree that could otherwise be avoided should servicing take place from HS. This adds to my concerns regarding any servicing taken from OMR.
20. Thus, for the avoidance of doubt, from the evidence that has been presented before me, I find that the use of Harcourt Street to service the site would not result in harm to traffic or pedestrians nor result in the loss of a street tree. It would not be in conflict with Policies 5.10, 6.3, 6.9, 6.10 and 7.21 of the London Plan 2016 and the Framework which seek, amongst other things, to ensure that developments do not adversely affect vehicle, pedestrian and cyclist safety on the

highway network and to promote urban greening and protect and retain existing trees.

### **Planning Conditions and Planning Obligations**

21. The Community Infrastructure Levy Amendment Regulations 2019 came into force on 1 September 2019 and made a number of important changes to the operation of the CIL and s106 Planning Obligations. Amongst other matters, Regulation 123 of the CIL Regulations is deleted in its entirety and removes the restriction on pooling of funds for a single infrastructure project from more than five s106 Planning Obligations. It also allows both CIL and contributions secured under s106 for the same infrastructure project, although the tests in Regulation 122 continue to apply.
22. A signed UU was presented to the Hearing which took into account the different financial contributions required for either servicing on OMR or HS. As a result, the UU includes matters relating to a street tree strategy and tree pruning contributions should they be necessary. The UU also includes contributions towards cycle hire docking stations, legible London signage (wayfinding) and Crossrail which the Council acknowledged would satisfy Policies 8.2 and 8.3 of the London Plan 2016 towards securing the provision infrastructure to make the development acceptable in planning terms. Although these aspects of the UU are a neutral factor required to make the development acceptable in planning terms, I consider the obligation to be necessary, relevant and fairly related to the development proposed as required by CIL Regulation 122.
23. As well as works to existing trees, the UU also requires the appellant to enter into an agreement under s278 of the Highways Act 1980 to secure off-site works to the highway. However, the appellant argues in its letter of 23 September 2019 that these matters can be secured by condition and have suggested two conditions to secure highway works and a scheme of works to any trees as a result of the development.
24. Taking the suggested tree condition into account, I am satisfied that this particular element meets the tests as set out with the Framework and the National Planning Practice Guidance (NPPG) in that it is reasonable, necessary and related to the development before me. Turning to the highway improvements, this would require the appellant to enter into a s278 agreement with TfL for these works to be delivered.
25. I am mindful that the Framework states at paragraph 54 that planning obligations should only be used where it is not possible to address unacceptable impacts through the imposition of a planning condition. A planning condition can require that no other development on site shall take place until full details of the works affecting the public highway have been agreed. To comply with that condition will inevitably require the developer to enter into the necessary s278 agreements and so it is not necessary for that to be required by a planning obligation. I therefore take no account of the UU as set out in paragraph 5 to Schedule 1, because it is unnecessary and so does not comply with the CIL regulations. Such matters can be secured by a planning condition (35).
26. The parties have also agreed a number of conditions as set out in the Statement of Common Ground dated 12 September 2019. I have considered these in accordance with the NPPG and the Framework and have amended or reworded them in the interest of clarity or precision. The appellant has also agreed in

writing that in accordance with the pre-commencement regulations<sup>3</sup>, such conditions are acceptable. In addition to the standard time condition (1) it is also necessary in the interest of certainty to define the plans (2) with which the scheme shall accord.

27. In order to protect the living conditions of adjoining occupiers and future users, both during and post development, conditions relating to the submission of details and the implementation of approved schemes relating to the following matters are required and necessary; hours of construction (3), Code of Construction Practice (4), Construction Logistics Plan (13), Servicing Management Plan (14), obscure glazing of south east elevation below seventh floor (16), plant and equipment (17), vibration (18), emergency plant (19), structural noise from the Underground tube network (20), servicing times (21), contaminated land (22), ventilation systems for fumes (23), ancillary use and opening times of the café (24 & 25), coach and taxi management plan (26), the storage of waste (28), glazing and ventilation of proposal (29) and the use of the roof space (33).
28. In the interest of the visual amenity of the site and the area, conditions are necessary for the submission of details relating to; samples of materials (5), façade bays (6), drawings of other parts of the development such as windows, external doors (7), public art (9), to prevent the obscuring of ground floor café and reception area and painting of outside walls (8 & 10).
29. In order to protect any archaeological remains that may exist at the site a scheme of investigation (15) is required to be submitted to the Council. In the interest of sustainable development details of the green roof (11) and secure cycle parking (27) at the site are also necessary. In the interest of highway safety, doors and gates must not overhang the pavement or highway (30) or have a minimum clearance (34). To reduce crime, details of all safety and security features are necessary (32). To protect trees a tree retention and replacement plan is also necessary (31). Details of foundations, piling and other underground works are also necessary to ensure that existing transport infrastructure is not affected by the development (12).

## **Conclusion**

30. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is allowed.

*Graham Wyatt*

**INSPECTOR**

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<sup>3</sup> Town and Country Planning (Pre-Commencement Conditions) Regulations 2018

## **APPEARANCES**

### **For the Appellant**

Douglas Edwards QC	FTB Chambers
Neil Rowe	RGP
Bob Sadler	DWF Law LLP
Mitch Cooke	Greengage Environmental
Jennifer Watson	JLL Planning
Guy Bransby	JLL Planning
Dan Burr	Sheppard Robson Architects
Derek Griffin	Whitbread Group PLC

### **For the Council**

Ian Morrison	Westminster City Council
Nathan Barrett	Westminster City Council

### **For the Greater London Authority**

Grayham Tindal	Arborculturist - Transport for London
Richard Green	Transport for London
Andrew Coventry	Transport for London

### **Documents**

Council's notification letter of the Hearing dated 9 October 2019  
Signed Statement of Common Ground dated 12 September 2019  
Report of the Examination in Public of the London Plan 2019 dated 8 October 2019  
Photograph of Baker Street parking bay  
List of drawing numbers accompanied by complete set of drawings  
Unilateral Undertaking dated 29 October 2019  
Cost application – appellant  
Cost rebuttal - Council

## **Schedule of Conditions**

1. The development hereby permitted must begin within 3 years of the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

### **Harcourt Street Option V2**

5616-00-001 Rev B Site Location Plan  
5616-00-002 Rev B Site Area Plan  
5616-00-199 Existing Basement Plan  
5616-00-200 Existing Ground Floor Plan  
5616-00-201 Existing First Floor Plan  
5616-00-202 Existing Second Floor Plan  
5616-00-203 Existing Third Floor Plan  
5616-00-204 Existing Fourth Floor Plan  
5616-00-205 Existing Fifth Floor Plan  
5616-00-206 Existing Sixth Floor Plan  
5616-00-207 Existing Seventh Floor Plan  
5616-00-208 Existing Eighth Floor Plan  
5616-00-209 Existing Roof Plan  
5616-00-260 Existing North and Southeast Elevation  
5616-00-261 Existing Southwest and Northeast Elevation  
5616-00-262 Existing West Elevation  
5616-00-300 Existing West Elevation  
5616-00-301 Existing Southwest Elevation  
5616-00-302 Existing Southeast Elevation  
5616-00-303 Existing Northwest Elevation  
5616-01-199 Basement Demolition  
5616-01-200 Ground Demolition  
5616-01-201 First Floor Demolition  
5616-01-202 Second Floor Demolition  
5616-01-203 Third Floor Demolition  
5616-01-204 Fourth Floor Demolition  
5616-01-205 Fifth Floor Demolition  
5616-01-206 Sixth Floor Demolition  
5616-01-207 Seventh Floor Demolition  
5616-01-208 Eighth Floor Demolition  
5616-01-209 Roof Demolition  
5616-01-300 West Elevation Demolition  
5616-01-301 Rev B Southwest Elevation Demolition  
5616-01-302 Southeast Elevation Demolition  
5616-01-303 Northwest Elevation Demolition  
5616-20-199 Rev B Basement Plan  
5616-20-200 Rev B Ground Plan  
5616-20-201 Rev B Level 1-7 Plan



5616-20-202 Rev B Level 8-9 Plan  
5616-20-203 Rev B Level 10 Plan  
5616-20-208 Rev B Level 11-13 Plan  
5616-20-209 Roof Plan  
5616-20-250 Section AA  
5616-20-251 Section BB  
5616-20-260 Northwest Elevation  
5616-20-261 West Elevation  
5616-20-262 Southwest Elevation  
5616-20-263 Southeast Elevation  
5616-20-264 Northeast Elevation  
5616-20-270 North and Southeast Elevation  
5616-20-271 Southwest and Northeast Elevation  
5616-20-272 West Elevation  
5616-21-001 Bay Study 1  
5616-21-002 Bay Study 2  
5616-21-003 Bay Study 3  
2015/2931/001 Rev A Delivery Swept Path  
2016/2931/017 Rev D Proposed Servicing Arrangements  
2018-D1485-200 Rev A Horizontal Alignment & Visibility Splays Taxis Only Layby Option  
2018-D1485-201 Rev A Swept Path Analysis Taxis Only Layby Option  
018-D1485-202 Rev A Levels & Contours Taxi Only Layby Option  
2018-D1485-203 Rev A Drainage & Surface Finishes Taxi Only Layby Option  
2018-D1485-204 Rev A Road Markings & Signage Taxis Only Layby Option  
OMR-SRA-XX-00-DR-A-20-301A Rev P02 Proposed Ground Floor Plan

3. Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:
- between 08.00 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.

You must carry out piling, excavation and demolition work only:

- 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).

4. Pre-commencement Condition

Prior to the commencement of any demolition or construction on site the applicant shall submit an approval of details application to the City Council as local planning authority comprising evidence that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the council's Code of Construction Practice. Such evidence must take the form of a completed Appendix A of the Code of Construction

Practice, signed by the applicant and approved by the Council's Environmental Inspectorate, which constitutes an agreement to comply with the code and requirements contained therein. Commencement of any demolition or construction cannot take place until the City Council as local planning authority has issued its approval of such an application.

5. You must apply to us for approval of samples of the facing materials you will use, including glazing, and elevations and roof plans annotated to show where the materials are to be located. You must not start any work on these parts of the development until we have approved what you have sent us. You must then carry out the work using the approved materials.
6. You must apply to us for approval of 3m x 3m fabricated sample panels of the following part of the development:

- typical facade bays.

The sample(s) should demonstrate the colour, texture, face bond, pointing, component interfaces and means of construction (including any typical expansion/movement joints). You must not start any work on the external cladding of the development until we have approved the sample panels. You must then carry out the work according to these approved sample(s).

7. You must apply to us for approval of detailed drawings of the following parts of the development:
  - i) windows;
  - ii) external doors;
  - iii) shopfront including fascia details;
  - iv) location and size of movement joints;
  - v) interfaces with windows;
  - vi) any ventilation and other services terminations at façade and roof;
  - vii) CCTV cameras - showing details of cameras and precise location;
  - viii) rooftop structures, including plant enclosures;
  - ix) external lighting - including details of extent, type, colour and location;
  - and x) signage strategy - showing extent and intended location.You must not start any work on the superstructure of the development until we have approved what you have sent us. You must then carry out the work according to these approved drawings.
8. You must not paint or apply vinyl films or obscure the window glass to the ground floor of the hotel reception or café area or block it in any other way. The windows must be clear glazed and maintained as such.
9. You must apply to us for approval of a scheme of public art. You must not start work on the public art until we have approved what you have sent us. Before anyone moves into the building you must carry out the scheme according to the approved details. You must maintain the approved public art and keep it on this site. You must not move or remove it.
10. You must not paint any outside walls of the building without our permission. This is despite the fact that this work would normally be 'permitted

development' (under class C of part 2 of schedule 2 to the Town and Country Planning General Permitted Development (England) Order 2015) (or any order that may replace it).

11. You must provide the following environmental sustainability features (environmentally friendly features) before you start to use any part of the development, as set out in your application.

- biodiverse roof

You must not remove any of these features.

12. Pre-commencement Condition:

The development hereby permitted shall not be commenced until detailed design and method statements (in consultation with London Underground) for all of the foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent), have been submitted to and approved in writing by the local planning authority which:

- provide details on all structures;
- provide details on the use of tall plant and scaffolding;
- accommodate the location of the existing London Underground structures and tunnels;
- accommodate ground movement arising from the construction thereof; and
- mitigate the effects of noise and vibration arising from the adjoining operations within the structures and tunnels.

The development shall thereafter be carried out in all respects in accordance with the approved design and method statements, and all structures and works comprised within the development hereby permitted which are required by the approved design statements in order to procure the matters mentioned in paragraphs of this condition shall be completed, in their entirety, before any part of the building hereby permitted is occupied.

13. Pre-commencement Condition:

You must apply to the City Council (in consultation with Transport for London) for approval of a Construction Logistics Plan, which identifies efficiency and sustainability measures to be carried out while the development is being built. You must not carry out the development until the plan has been approved. You must then carry out the development in accordance with the approved plan.

14. The development hereby approved shall not be occupied until a Servicing Management Plan has been submitted to and approved in writing by the City Council, in consultation with Transport for London. You must then carry out the development in accordance with the approved details.

15. Pre-commencement Condition:

(a) You must apply to us for approval of a written scheme of investigation for a programme of archaeological work. This must include details of the suitably qualified person or organisation that will carry out the archaeological work. You must not start work until we have approved what you have sent us.

(b) You must then carry out the archaeological work and development according to this approved scheme. You must produce a written report of the investigation and findings, showing that you have carried out the archaeological work and development according to the approved scheme. You must send copies of the written report of the investigation and findings to us, to Historic England, and to the Greater London Sites and Monuments Record, 1 Waterhouse Square, 138-142 Holborn, London EC1N 2ST.

(c) You must not use any part of the new building until we have confirmed that you have carried out the archaeological fieldwork and development according to this approved scheme.

16. The glass that you put in the south east elevation below level 7 (adjacent to Mina Palace) must not be clear glass, and you must fix it permanently shut. You must apply to us for approval of a sample of the glass (at least 300mm square). You must not start work on the relevant part of the development until we have approved the sample. You must then install the type of glass we have approved and must not change it without our permission.

17. (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. 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 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed

fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
  - (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
  - (c) Manufacturer specifications of sound emissions in octave or third octave detail;
  - (d) The location of most affected noise sensitive receptor location and the most affected window of it;
  - (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
  - (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures
  - (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
  - (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
  - (i) The proposed maximum noise level to be emitted by the plant and equipment.
18. 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 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
19. (1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.
- (2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.
- (3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.
20. The design and structure of the development shall be of such a standard that it will protect occupier from structural borne noise from the district and circle line so that they are not exposed to levels indoors of more than 35 dB LASmax within habitable rooms during day and night.
21. All servicing must take place between 1000 and 1600 on Monday to Sunday. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.

22. Pre-commencement Condition:

You must carry out a detailed site investigation to find out if the building or land are contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated land, a guide to help developers meet planning requirements' - which was produced in October 2003 by a group of London boroughs, including Westminster.

You must apply to us for approval of the following investigation reports. You must apply to us and receive our approval for phases 1 and 2 before any demolition or excavation work starts, and for phase 3 when the development has been completed.

Phase 1: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property.

Phase 2: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution.

Phase 3: Validation report - summarises the action you have taken during the development and what action you will take in the future, if appropriate.

23. You must apply to us for 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. You must not begin the use allowed by this permission until we have approved what you have sent us and you have carried out the work according to the approved details.
24. The restaurant/cafe shall only be used in an ancillary capacity to the hotel use.
25. Customers shall not be permitted within the restaurant/cafe premises before 06:00 or after 23:00 each day.
26. The development hereby approved shall not be occupied until a Coach and Taxi Management Plan has been submitted to and approved in writing by the City Council, in consultation with Transport for London. You must then carry out the development in accordance with the approved details.
27. You must apply to us for approval of details of secure cycle storage for the hotel use. You must not start any work on this part of the development until we have approved what you have sent us. You must then provide the cycle storage in line with the approved details prior to occupation. You must not use the cycle storage for any other purpose.
28. You must apply to us for approval of details of how waste is going to be stored on the site. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the waste store in line with the approved details, and clearly mark it and make it available at all times to everyone using the hotel. You must not use the waste store for any other purpose.
29. You must apply to us for approval of a detailed glazing and ventilation scheme to ensure that the overheating risk to the new dwellings is minimised. You

must not start work on these parts of the development until we have approved what you have sent us.

You must then carry out the work according to the approved glazing and ventilation scheme and all measures outlined in this document must be in place and operational prior to the first occupation of the development hereby approved. All measures shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

30. You must hang all doors or gates so that they do not open over or across the road or pavement.
31. The development hereby approved shall be carried out in accordance with the approved Tree Retention/Replacement Strategy (Appendix 3 of the Tree & Arboricultural Implications Assessment drawing reference 550754nf23Nov18FV01.dwg, dated 23.11.2018).

Other than as provided for in the abovementioned approved Tree Retention/Replacement Strategy, no work shall be done to any trees as a result of the development unless a scheme for those works has been submitted to the local planning authority and approved in advance. Any such works shall be carried out in accordance with the approved scheme.

Should any newly planted or existing tree affected by the development die or become severely damaged or seriously diseased within five years from the completion of the development hereby permitted, then another tree shall be planted of such a size, species and in a position to be agreed in writing with the local planning authority.

32. Pre-commencement Condition:

You must apply to the City Council (in consultation with the Metropolitan Police) for approval of safety and security features to be installed on the development, having regard to Secured by Designs "Commercial Developments 2015" Guide and "Resilient Design Tool for Counter Terrorism". You must not carry out the development until the safety and security features have been approved. You must then carry out the development in accordance with the approved features.

33. You must not use the roof of the building for sitting out or for any other purpose. You can however use the roof to escape in an emergency and/or for maintenance purposes.
34. Any structure over the footway (highway) must maintain 2.6 metres vertical clearance from the footway surface at all times and not extend closer than 1 metre to the kerb edge. Any structure within 1 metre of the kerb or over carriageway must maintain a minimum vertical clearance of 5.3 metres.
35. No construction shall take place until a s278 agreement(s) of the Highway Act 1980 (as amended), setting out in full details of the works affecting the public highway on Old Marylebone Road and Harcourt Street has been entered into and agreed in writing by the relevant highway authority. The schedule of works must be in accordance with the approved drawings Reference 2018-

D1485-200 rev A – Horizontal Alignment & Visibility Splays, 2018-D1485-201 rev A – Swept Path Analysis, 2018-1485-202 rev A – Levels and Contours, 2018-D1485-203 rev A – Drainage & Surfaced Finishes and 2018-D1485-204 rev A – Road Markings & Signage).

All works affecting the public highway should then be carried out in accordance with the approved s278 agreement(s). The development must not be occupied until the highway works have been certified in writing as being substantially complete (defined as receipt of certificate confirming that the highway works are substantially complete), in accordance with the local planning authority and the relevant highway authority's written approval.

**~End~**