



## Appeal Decision

Inquiry held 7 to 13 and 20 June 2022

Site visit made on 14 June 2022

**by A J Mageean BA (Hons), BPI, PhD, MRTPI**

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

**Decision date: 11 August 2022**

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### **Appeal Ref: APP/X5990/W/22/3292545**

#### **Leconfield House, Curzon Street, London, W1J 5JA**

- 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 Leconfield House Limited against the decision of Westminster City Council.
  - The application Ref 20/01200/FULL, dated 18 February 2020, was refused by notice dated 12 August 2021.
  - The development proposed is replacement of existing 7th floor level and roof plant area, excavation of three new basement levels, infilling of windows at the rear, replacement windows and doors at ground and first floor level, new loading doors onto Chesterfield Gardens and refurbishment works, all for use of the building as a 60 to 70 bedroom hotel and private members' club including restaurants, spa/wellness centre and retail (sui generis use), with plant at 6th, 7th floor, roof level and basement level 3 and roof terraces at seventh floor level.
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### **Decision**

1. The appeal is dismissed.

### **Applications for costs**

2. At the Inquiry an application for costs was made by the appellant against Westminster City Council. This application is the subject of a separate Decision.
3. An application for costs was also made by Westminster City Council against the appellant. This application is the subject of a separate Decision.

### **Preliminary Matters**

4. Whilst the applicant's details on the planning application form refer to 'Leconfield House Holdings Limited', during the course of the Inquiry it was confirmed that the name of the appellant is 'Leconfield House Limited'. I have amended the banner heading above accordingly.
5. The banner heading includes the amended description of development agreed prior to the determination of the planning application.
6. Updated demolition plans to account for first floor slab demolition were submitted by the appellant after the close of the Inquiry. These changes are minor and do not amount to materially different proposals. I have therefore considered the appeal on this basis.
7. A completed Section 106 agreement dated 1 July 2022, providing financial contributions towards the Westminster Employment Service and the Council's

Carbon Off-set fund, and also discounted gym membership for local residents, was submitted by the appellant.

## **Main Issues**

8. I consider that the main issues in this case are:

- The extent to which the basement aspects of the proposal accord with development plan policies, with particular reference to the effects of the operations involved in, and associated with, basement excavation on the living conditions of the occupiers of neighbouring properties;
- Whether sufficient information has been presented to demonstrate that the loss of office floorspace to hotel use can be justified; and,
- Whether the proposal accords with the development plan taken as a whole and whether there are any other material considerations which justify a determination other than in accordance with the development plan.

## **Reasons**

### *Basement excavation*

#### *i. Policy provisions*

9. Policy 45 of the Westminster City Plan 2021 (the City Plan) addresses the fact that basement extensions have become an increasingly common form of development in Westminster in recent years. Whilst often hidden from view, they can have significant impacts on the amenity of the occupiers of neighbouring buildings and may affect local ground conditions. Policy 45 supersedes Policy CM28.1 in seeking to control the size and depth of basements. Whilst Policy CM28.1 was similar and more detailed in some regards, its provisions did not apply to commercial developments in the Core Central Activity Zone (CAZ).
10. Policy 45 sets out the measures necessary to ensure that excavation in dense urban environments is subject to appropriate controls and management. The requirements at 45(A) apply to all basement additions. Specifically, this requires that such developments incorporate measures to 'safeguard structural stability' (45(A)(1)). It also sets out the need for basement developments to 'be designed and constructed to minimise the impact at construction and occupation stages on the surrounding area' (45(A)(2)). In this regard the supporting text refers to the need to demonstrate that reasonable consideration has been given to potential impacts of construction in line with the adopted Code of Construction Practice (CoCP). Further, consultation with neighbouring occupiers prior to submitting an application is strongly encouraged.
11. The provisions at 45(B) set out further controls for specific circumstances, recognising that controlling the depth of basement development can help reduce construction risks and also mitigate environmental and amenity impacts. Specific reference is made at 45(B)(3) to support for basement developments where they (do) 'not comprise more than one storey beneath the lowest original floor level – exceptions may be made on large sites with high levels of accessibility for construction'.

12. A fair reading of the provisions of 45(B)(3) indicates that, where the basement proposal comprises more than one storey, the first matter to be addressed is whether it is a large site with high levels of accessibility for construction. In such circumstances exceptions 'may' be made to the limiting provisions. In contrast to directive terminology such as 'should' or 'must', the use of the word 'may' provides some discretion for the decision-maker to make their judgement. The supporting text refers to 'some cases' in which large and accessible sites 'are able to accommodate plant and machinery and include appropriate access (e.g. rear or side access) to enable construction without an adverse impact on neighbouring uses or occupiers' (paragraph 45.9). In this way the nature of the sites which may fall into this category and the reason for this, to avoid adverse impacts, are set out, thereby aiding policy interpretation. This does not duplicate the provisions of 45(A)(2), but rather allows for greater consideration of the impacts associated with deeper basement excavations.
13. The City Plan Policy 33 and Section 1.4 of the CoCP clarify that the provisions of the CoCP apply to a wide range of development activity, including all new or extended basement developments, regardless of size. It does not follow that in all cases compliance with the CoCP would be sufficient to ensure that the impacts of development are acceptable, also noting that the CoCP is directed primarily at the management of permitted schemes, with compliance secured by planning condition. Specifically, the London Plan Policy D10 advises Boroughs to establish policies to address the negative impacts of large-scale basement development, where this is identified as an issue locally. Therefore, whilst meeting the requirements of the CoCP has the effect of 'reducing disruption' for those affected by development activity, this must be based on the development being found acceptable in planning terms.
14. It is not unreasonable in principle for planning policy to allow for consideration of the issues associated with large scale basement development beneath existing buildings. My view is that the nature of the effects considered could include those which unreasonably interfere with, or cause harm to, neighbouring occupiers/uses, including the duration of such effects.
15. To summarise, large scale basement development has the potential for greater negative effects on the local environment than single level basement additions. The purpose of Policy 45 is to provide the decision maker with a framework for considering how the resulting risks and negative environmental and amenity impacts could be managed in each individual site circumstance, to allow for a balanced decision overall.

*ii. Assessment against policy*

16. In considering the application of the provisions of Policy 45 to the present case, the Council and appellant have agreed that the site is 'large'. I have no reason to take a different view. What follows therefore, is consideration of the appeal scheme in terms of the requirements of Policy 45. That is firstly, whether it has high levels of accessibility for construction, and secondly the effect of construction on neighbouring uses or occupiers, before concluding overall on whether it meets the requirements for an exception to be made.

*a. Accessibility*

17. In general terms the site's position near to the Park Lane and Piccadilly arterial routes means that it is reasonably well-connected, with a clockwise route to

access Curzon Street via Piccadilly and Half Moon Street indicated. This route is capable of carrying large vehicles. Nonetheless, my view is that the access expectations of Policy 45 go beyond this, requiring consideration of the nature of construction access to the site. Specifically, the supporting text refers to the need for appropriate access to enable construction without adverse impacts locally. This points to sites being able to accommodate such access without undue disruption to the local highway and its users.

18. Indicative arrangements provided at appeal stage<sup>1</sup> suggest that all plant and machinery could be contained within the retained structure of Leconfield House, with construction access achieved through an internal loading bay, which would be used for spoil removal and concrete deliveries. Apart from the use of the existing side access on Chesterfield Gardens for small vehicles, the main site access would be via the principle building frontage onto Curzon Street, rather than a rear or side access. This would accommodate vehicles reversing into the building.
19. The limited data collected on 4 May 2022 indicates that Curzon Street operates at well below the maximum capacity for a single lane two-way street of 800-900 passenger car units per hour. Nonetheless, and notwithstanding the fact that local road works installed on that day may have caused vehicles to re-route, this data demonstrates that Curzon Street is a reasonably busy route for both pedestrian and vehicular traffic. The appellant suggests that the construction access could accommodate a substantial proportion of delivery vehicles loading/unloading on site, though a pit lane would also be required on Curzon Street itself. Whilst Curzon Street is of generous width, this would involve the suspension of four parking bays on the north side of the street. A further seven bays would be suspended on the south side to maintain two-way traffic flows. Access to pedestrian footways adjacent to the site frontage would be disrupted, with a diversion route indicated. Whilst it may be possible to provide a narrow footway on the north side of the street, it is likely that there would be practical challenges in managing this alongside construction traffic, particularly at piling/excavation stages.
20. The appellant's estimate for vehicle generation varies, though it is accepted that the development would require up to 40 vehicles per day to remove excavated soil, averaging at perhaps 4 vehicles per hour over a ten-hour construction day. Indicative site access arrangements show the muck away vehicles arriving from the east and reversing into the internal loading bay across both traffic lanes, such that both lanes of traffic would have to be stopped to facilitate the manoeuvre. Whilst this would be overseen by traffic marshals, it is inevitable that the few minutes required to execute both arrivals and departures of such vehicles would cause local interruption to vehicular and pedestrian traffic. There would also be the potential for conflict with articulated vehicle deliveries locally. So, whilst in theory Curzon Street may have 'redundant capacity' to accommodate additional traffic, it does not follow that impacts of this nature, which I would characterise as moderately disruptive, would be acceptable.
21. Comparisons with other nearby developments in which similar arrangements may have been put into place do not assist. Those involving single storey basement additions are not required to justify an exception to policy

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<sup>1</sup> Mr Hart PoE, Appendix D

restrictions in terms of accessibility. Most of those involving deeper excavations will have been considered under the previous Policy CM28.1 which, as I have noted, did not allow for consideration of the local impacts of basement excavations of greater than one additional storey in the CAZ.

22. That said, I am aware that the five-basement level development at the Ritz Hotel was approved by the Council under Policy 45. This site was considered to be large and accessible, allowing for direct access to strategic road networks. It is accessed from Arlington Street to the side of the main Hotel frontage, a relatively short, quiet side street with one way traffic only, limited through traffic and pedestrian flows, meaning that local disruption is limited. Therefore, there are circumstantial differences between this and the appeal site.
23. The most recent officer report relating to the appeal scheme found that the site is well-connected and that it would be possible to manage construction traffic to minimise disruption to local road users. On the basis of the evidence before the Inquiry, my view is that, whilst the site is reasonably well connected, and it would be possible to accommodate most plant and machinery on site, the position of the main site access, and the local disruption this would cause, is such that the site would not have the required high levels of accessibility for construction.

*b. Impact of construction on neighbouring user or occupiers*

24. Basement developments are required to safeguard the structural stability of the existing building and nearby buildings. In this case concerns are raised by the two Rule 6 Parties about the potential for structural harm or damage to Chesterfield House resulting from the significant excavation and construction works proposed. I am aware that Chesterfield House shares a party wall with Leconfield House in two places, that sensitive plant and machinery is located close to one party wall, that the Chesterfield House services contain a lot of brittle material and that there is little reference to these facts in the appellant's Structural Method Statement (SMS).<sup>2</sup> In these regards it is suggested that the appellant has not engaged sufficiently with this neighbouring interest, noting that in the supporting text to Policy 45 applicants are 'strongly encouraged' to engage with neighbouring occupiers prior to submitting a planning application.
25. I acknowledge the real concerns of Chesterfield House Management and residents and, given the close relationship, I agree that it would have been advisable to engage with these interests as part of SMS preparation. That said, there is a limit in the extent to which structural and geo-technical considerations are material to planning decisions. Rather, the structural integrity of development during construction is controlled by other regulatory systems. The findings of the SMS are said to be based on an extensive knowledge of the ground conditions of the area, and a ground movement and building impact assessment, looking at the likely damage to neighbouring properties. Its conclusion is that the proposed basement excavation should not have an unacceptable impact on either Leconfield House or Chesterfield House. It is predicted that these buildings would suffer 'negligible' damage at worst in accordance with the Burland scale.<sup>3</sup>

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<sup>2</sup> Structural Engineering Report and Subterranean Construction Method Statement, Elliot Wood February 2020

<sup>3</sup> Used to describe or measure the damage, or risk of damage, to properties as a result of changes such as subsidence. Negligible damage refers to hairline (up to 0.1mm wide) cracks.

26. On this basis the Council's view is that the appeal scheme would comply with the requirement of Policy 45(A)(1) to 'incorporate measures recommended in the structural statement ...to safeguard structural stability'. For the purposes of this decision, I agree. I also note that, should this application be acceptable in other regards, such structural matters would be managed through compliance with the CoCP.
27. Turning to wider environmental and amenity considerations, it is generally accepted that basement extensions can have a significant impact on the amenity of neighbouring occupiers in terms of matters such as noise, vibration and dust. It is also the case that construction activities would be prolonged for the installation of multi-level basements in comparison with single basement extensions. Specifically, these activities can be identified as the greater duration of the installation of contiguous piled walls and bearing piles, along with the effects of both the excavation of additional levels and the installation of additional slab levels and concrete lining walls.
28. It is reasonable to expect that an experienced contractor operating within the parameters of the CoCP could significantly mitigate construction impacts on neighbour amenity. In this regard the CoCP states that consideration should be given to minimising noise and vibration from construction at planning application stage, with the 'noisy work' phases referred to being demolition, earthwork and piling. Measures referred to in terms of managing such works include identifying noise sensitive receptors and restricting the periods when noisy work would be allowed, which would assist with ensuring that impacts are managed.
29. In the present case some, albeit limited, consideration is given to dust, noise and vibration in the SMS. This includes reference to the breaking out of existing structures using diamond saw cutting and hydraulic bursting where possible to minimise noise and vibration to the adjacent properties, and the use of non-percussive breaking techniques where practicable. It is also assumed that the basement would be constructed in a top-down sequence, with this offering various benefits over the usual bottom-up construction, including the early installation of concrete slabs to reduce the acoustic effects on the surrounding environment. Also, the retention the Leconfield House structure would mean that the noise, dust and vibration arising from associated demolition works would be lesser in comparison with works involving the removal of a greater amount of the building.
30. The effect of basement construction on living conditions is difficult to quantify and as a result the evidence before the inquiry was sparse. As a starting point I accept that the appellant's information meets the basic CoCP requirements for this stage, and that the mitigation measures proposed would assist with managing the extent of harmful effects. That said, it is inevitable that, in a constrained urban environment such as this, palpable impacts from the demolition, excavation and construction processes would remain. In this regard the SMS acknowledges that those most likely to be affected by noise, dust and vibration would be the immediate neighbours at Chesterfield House.
31. I note particularly the close proximity of the Chesterfield House flats along the lengthy rear boundary of Leconfield House, with windows as close as around 1.5m from the appeal site. Whilst the top-down method would to some degree mitigate the disturbance caused by the installation of the lower basement



levels, there is a limit to the extent to which the impacts of such a significant and intensive development can practically be mitigated. Further, the regular presence of construction traffic throughout the working day would be audible to neighbouring occupiers, particularly the noise of reversing vehicles. In these circumstances the construction process would have an adverse impact on the living conditions of the occupiers of these neighbouring properties.

32. The overall estimate of the construction programme was initially around 131 weeks. Whilst it is now accepted that this was underestimated by some three weeks, and in general terms there will be variations around such estimates depending on the contractor, it remains that construction would take the best part of three years. The parties disagree over whether the time associated with the construction of the additional basement levels would be 18 or 24 weeks, that is 4½ or 6 months. Nonetheless, in either case, this would represent a significant period of time during which nearby residential occupiers would experience regular disturbance and activities associated with excavation and construction works.
33. In seeking to justify likely effects the appellant has referred to a number of approved basement developments, suggesting that they have more significant or similar levels of construction activity impact and similar boundary conditions. However, with the exception of the Ritz, these developments were considered in the context of Policy CM28.1 which, as I have already noted, lacked specific control over deep basement development in the CAZ.
34. In relation to the Ritz basement development, the approach to the management of construction impacts is demonstrated by the appellant with reference to contractor reports on noise and vibration monitoring. I am aware that there are some residential occupiers close to this site, and also that the Hotel is remaining open during construction works. However, in the present case I have identified amenity concerns relating to the particularly close relationship between Leconfield House and the Chesterfield House flats.
35. Overall, bearing in mind that a degree of nuisance is to be expected within urban areas such as this, I would characterise the resulting adverse effects on the living conditions of the occupiers of neighbouring properties and neighbouring uses as causing moderate levels of harm. Whilst it is possible that cumulative impacts with other construction works could exacerbate such harm this does not form the basis for my conclusion. Finally, the fact that objections to this aspect of the proposal were not raised by the Council's Environmental Health or Building Control teams does not alter this finding as, whilst there are some parallels, their remit relates to other statutory regimes and not the implementation of planning policy.

*iii. Conclusion on basement extension*

36. It would in practical terms be possible to construct the proposed basement, with many of the most harmful impacts mitigated to some degree through the imposition of appropriate planning conditions, including the requirement for compliance with the CoCP. However, the question is whether this development would meet the requirements of Policy 45 which seeks to manage the negative environmental and amenity impacts of basement developments of more than one storey. It is not the case that Policy 45 requires that there should be no construction impacts, but rather that the additional impacts on amenity considerations should be within acceptable parameters.

37. I have found that the appeal site meets the Policy 45 requirement for deep basement sites to be large, and also that it would be possible to manage the structural and geotechnical matters that have been raised. However, I have identified concerns in relation to the site's accessibility and also its proximity to the Chesterfield House flats. As a result, both the construction process and its associated traffic, which would be in operation over a prolonged period of time, would cause adverse effects for neighbouring occupiers and uses.
38. Even if I were to find that the scheme would not be harmful in this regard, I would need to give consideration to whether an 'exception' could be made under the terms set out at Policy 45(B)(3). The Officer Report relating to the basement development at the Ritz Hotel refers to the stated requirement to improve and modernise the Hotel, with the development encompassing a comprehensive upgrading and expansion of facilities, to maintain its reputation as one of the most luxurious hotels in the world. This was clearly a factor in the decision not to refuse the development. In the present case, whilst there is general acceptance that the principle of the proposed use would be acceptable in wider policy terms, I see no reason to justify an exception being made in these circumstances.
39. I therefore conclude that the basement aspects of the proposal would conflict with the City Plan Policy 45 with particular reference to the effects of the operations involved in, and associated with, basement excavation on the living conditions of the occupiers of neighbouring properties.

#### *Loss of office use*

##### *i. Policy context*

40. The City Plan Policy 13 and the London Plan Policy E1 are both recently adopted policies setting out the reasons for and basis of managing the office market in London, including the CAZ. In Westminster, a reduction in supply across the entire West End since 2005 has resulted in very low vacancy levels, leading to high rents. The reasoned justification for Policy 13 sets out the need for this trend to be halted in order for Westminster to continue to compete globally, to support continued growth of emerging sectors and to adapt to modern working practices. The reasoned justification for Policy E1 also sets out office employment projections, estimated to rise by 31% by 2041, with significant increases in floorspace required. Parties to the Inquiry agreed that the office market had substantially recovered following the Covid-19 pandemic.
41. In this context one of the purposes of Policy 13 is to protect central London's office function. In addition to supporting new and improved office floorspace, it also seeks to restrict the net loss of office floorspace to both residential and hotel use in the CAZ. Policy 13(D)(2) sets out that conversion to 'hotel use will only be permitted where there is no interest in its continued use for office or any other Class E (commercial, business and service) uses education or community use, as demonstrated by vacancy and appropriate marketing for a period of at least 12 months.'
42. The London Plan Policy E1(I) supports the change of use of surplus office space. However, the supporting text sets out the requirement for evidence to demonstrate that office space is surplus, such that there is no reasonable prospect of its use for business purposes. This 'should include strategic and local assessments of demand and supply, and evidence of vacancy and



marketing (at market rates suitable for the type, use and size for at least 12 months, or greater if required by a local Development Plan Document).’ This is also subject to the provisions at E1(G) and (H) relating to the requirement to take into account the need for a range of suitable workspace including lower cost and affordable workspace, and the need to explore the scope for the re-use of otherwise surplus large office spaces for smaller office units.

43. Before considering the evidence before the Inquiry relating to the requirements of these policy provisions, it is appropriate to address two of the matters raised by the appellant challenging the basis for this reason for refusing the planning application.
44. Firstly, the appellant questioned the relevance of Policy 13 to an application seeking a change of use from office to what is described as a private members club, which falls within the *sui generis* use class. I agree that private members clubs elsewhere in the CAZ are a distinctive part of the social and cultural environment. However, in this case the description of the application is more broadly framed as being for ‘use of the building as a 60 to 70 bedroom hotel and private members’ club including restaurants, spa/wellness centre and retail (*sui generis* use).’ The hotel element, and its associated features, appear as the major component, with guestrooms occupying five of the 11 floors and ancillary elements including the hotel reception and back-office services located elsewhere. Furthermore, the appellant’s planning statement refers to the proposed land use being ‘mixed hotel and private members’ club’. Policy 13(D)(2) is therefore clearly applicable.
45. Moreover, even if I were to find that the provisions of Policy 13 were not applicable to this proposal, the London Plan Policy E1 applies to proposals involving the loss of surplus office space, irrespective of the proposed use.
46. The second matter refers to the Council’s determination of the planning application in terms of the loss of office space, and the requirements of the policy provisions in this regard. Events prior to the determination of the application indicate that at the point it was first considered at planning committee in February 2021, neither the London Plan nor the City Plan had been adopted, with the latter noted as having limited weight. The resolution to grant planning permission at this point was subject to the completion of a S106 agreement within 6 weeks.
47. The S106 agreement was delayed beyond the 6 week period for reasons which are not entirely clear, said to be linked to the national lockdown. In these circumstances the committee resolution authorised the Director of Town Planning and Place Shaping to proceed on the basis of two possible outcomes. Firstly, they could consider whether the permission could be issued with additional conditions in order to secure the S106 agreement benefits. Alternatively, the application could be refused on the basis that these benefits had not been secured within the timescales.
48. At this point consideration could have been given to the use of a negatively worded condition prohibiting development until a completed S106 agreement had been secured. The Government’s planning practice guidance (PPG) sets out that this is unlikely to be appropriate in the majority of cases, but that it could apply in ‘exceptional circumstances’ where there is clear evidence that the delivery of the development would otherwise be at serious risk, which may

apply to particularly complex development schemes.<sup>4</sup> Whilst in this case policy support for the development was at risk due to the imminent development plan adoption, it is not clear that this represents the sort of exceptional circumstance envisaged by the PPG. Specifically, there is nothing to suggest that delivery per se was at risk due to viability or other issues, nor that this was a particularly complex scheme. It follows that it would have been possible to refuse the application under delegated authority at this point, whereas in fact the negotiations on the S106 agreement continued.

49. The point at which the S106 agreement was approved by the Council in April 2021 coincided with the adoption of the City Plan. The London Plan was also adopted in March 2021. The Council then required that the application be reported back to committee for reconsideration against the adopted policy provisions. The reason for refusal on this matter refers specifically to there being insufficient information to meet the requirements of Policy 13 and Policy E1 to demonstrate that there is no interest in continuing office use.
50. Questions about the procedural robustness of the Council's management of the application in relation to the office loss matter, specifically the requirement to provide 12-months marketing information at that point, are addressed in the appellant's costs application. Nonetheless the starting point for decision-making is Section 38(6) of the Planning and Compulsory Purchase Act 2004. This requires determinations to be made in accordance with the development plan unless material considerations indicate otherwise.
51. The nature of development plan preparation is such that all parties will have had an appreciation of emerging policy provisions for an extensive period prior to adoption. At the point of adoption development plan provisions and associated policy requirements carry full weight. To suggest otherwise would create ambiguity and uncertainty within a system which must be based on fairness and transparency.
52. The change in status of the City Plan clearly had significant consequences for the appellant's scheme. Nonetheless the requirement to demonstrate a minimum of 12 months marketing evidence to support the case that the building is unsuitable for office use is a necessary element of the objectives of Policy 13 and Policy E1 seeking to protect the central London office function. I therefore disagree with the appellant's view that the effect of the Council's decision was to apply office loss policy provisions retrospectively. The appellant also suggests that as the loss of this building from office use had been approved in principle it could not have been envisaged as part of supply over the new plan period. However, this is of little consequence in the context of Section 38(6).

*ii. Assessment against policy*

53. As a starting point the parties agreed that it is unlikely that there would be demand for the other Class E, education or community uses set out in Policy 13. The focus is therefore on whether Leconfield House could provide viable office space. The fact is that if, as the appellant argues, the appeal site represents surplus office space, this must be demonstrated by vacancy and appropriate marketing for a period of at least 12 months.

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<sup>4</sup> Paragraph: 010 Reference ID: 21a-010-20190723

54. The appellant's client took the decision not to renew leases that were due to end in June 2022, nor to pursue any further tenancies. This was based on the positive assessment of the proposal against the previous development plan. At the time of my site visit I was able to see that the building is substantially, though not completely, vacant. The marketing information provided dates from the point at which the appellants witness, Mr Browning, was instructed in mid-March 2022, a maximum period of less than three months at the point that evidence to the Inquiry was required.
55. This cannot simply represent a technical policy breach. The point of requiring a marketing period of 'at least 12 months' is to allow the market to decide over a reasonable period of time whether there is any continuing interest in the building for office use. There was much debate at the Inquiry about the adequacy of the marketing information to date and what it demonstrates. However, at this point such considerations are of no real consequence as the marketing information does not meet the minimum 12-month requirement.
56. Similarly, the suggestion that the Council has failed to understand the nature of the Mayfair office market does not take us very far. Neither does the fact that Mr Browning was the only marketing expert present at the Inquiry. During the site visit I was able to appreciate the fact that the office accommodation at Leconfield House is somewhat dated and falls short of what is considered to be 'best-in-class' in terms of specification. Mr Browning's evidence indicates that Mayfair/St James's transactions in the first few months of 2022 have largely been focused on best-in-class office space. However, there was no evidence to indicate that the most vacancy is in poorer quality buildings, nor that there is no market for such buildings.
57. It was also suggested that there are fundamental and insuperable problems in achieving a reasonable rent for the Leconfield House offices. Whilst the strength of this building's prominent location at a well-known address was acknowledged, a range of physical problems were identified, the greatest considered to be inadequate floor to ceiling heights and the presence of structural columns. On this basis it was suggested that refurbishment would not be viable, nor would the achievement of market rents be possible. However, evidence before the inquiry indicates that over the past year Mayfair office rental levels have varied from around £87.50 per square foot (ft<sup>2</sup>) to prime rents of around £117.50 ft<sup>2</sup>. There is nothing to indicate that Leconfield House would not be able to achieve rental levels around the lower end of this spectrum. On this basis the fact that this property has been marketed at £100 ft<sup>2</sup>, based on a 'light touch' refurbishment, may well not be a realistic price.
58. Notwithstanding its apparently sub-standard nature, the fact remains that until relatively recently Leconfield House was fully occupied. Whilst I am aware that a past anchor tenant moved out to higher spec accommodation, there is no other suggestion that there was any particular concern about the quality of this accommodation. In such circumstances, the lack of conclusive evidence directs the decision-maker towards the importance of the minimum 12-month marketing period at appropriate rates as a basis for a robust and objective determination of demand. At this point in time it is not clear that that the Leconfield House office space has come to the end of its economic life.

*iii. Conclusion on loss of office use*

59. I conclude that, in the absence of the minimum requirement of 12 months marketing evidence, insufficient information has been presented to demonstrate that the loss of office floorspace to hotel use can be justified. In this regard there would be conflict with the provisions of the City Plan Policy 13. There would also be conflict with the London Plan Policy E1 as it has not been demonstrated that this is surplus office space with no reasonable prospect of being used for business purposes. The limited provision of 'new' workspaces as part of the proposal would not address this conflict.
60. I have had regard to the views expressed by the Greater London Authority (GLA) when they considered the application in June 2020. The policies of the emerging City Plan and the intend to publish London Plan were noted. Reference was made to the central aim of the CAZ to support and enhance office floorspace, as well as the emerging City Plan's resistance to the net loss of office space, except in specific exceptional circumstances. However, at that time, Policy S20 of the Westminster City Plan stated that the loss of office floorspace to other commercial or community and social uses was acceptable, as these uses contribute to commercial activity. Therefore, as the proposed uses were also strategic functions of the CAZ, this loss was considered acceptable to the GLA.
61. However, whilst the policies of the emerging City Plan were material considerations at this time, they had not been examined and would therefore have had reduced weight. As both the City Plan Policy 13 and the London Plan Policy E1 have now been adopted the balance of considerations in relation to the loss of office space has shifted. This explains why my conclusions on this point are at variance with the GLA.

*Other Considerations*

62. The appellant has raised a range of other matters to be considered as part of the assessment of the proposals.
63. If planning permission is refused then the flexibility inherent in Class E of the Use Classes Order means that it is possible that the office space could be converted to some elements of the proposal, including restaurant, spa and retail use, without the need for planning permission. It is suggested that this not only undermines the objectives of office protection policies, but it also means that Leconfield House could lawfully be changed to uses other than office use without delivering the benefits specific to this development. Nonetheless, I have noted that the hotel element is a substantial component of the appeal proposal. This does not fall within Class E. Further, the extent to which some of the proposed facilities, particularly restaurant use, would serve visiting members of the public, a requirement of Class E, is unclear. Overall, my view is that there is little likelihood that the suggested fallback position would be taken forward and so I give this consideration limited weight.
64. I have also considered the nature of the proposed use and its contribution to the CAZ. The London Plan Policy SD4 supports the unique international, national and London-wide roles of the CAZ, particularly the rich mix of strategic functions. It sets out the importance of promoting and enhancing 'the unique concentration of cultural, arts, entertainment, night-time economy and tourism functions.' The appeal proposal is noted as drawing on the international appeal

of clubs such as Annabel's, blending this with what is described as 'a luxury hotel with enhanced leisure offerings to create a new, all-inclusive, hospitality experience.' Mayfair is considered to be one of the few locations that could support such a development, though there is no specific policy support for this.

65. My view is that the proposal would represent a notable investment in social and cultural infrastructure, with resulting support to the visitor economy. This would be a benefit of moderate weight in favour of the appeal. In terms of other economic benefits, the suggestion that employment in the hospitality sector has the potential to secure the general upskilling of staff in comparison with typical office-based employment is not supported by evidence. More generally, modest weight can be attached to the economic benefits associated with the construction phase.
66. The appeal site is located within the Mayfair Conservation Area (CA) and as such I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.<sup>5</sup> It is also within the setting of listed buildings on both Curzon Street and Chesterfield Gardens and so I must consider the desirability of preserving their setting.<sup>6</sup> The area around Curzon Street is characterised by an informal grid layout with a rich mix of buildings dating from the early 18<sup>th</sup> Century, including high-quality terrace and town houses alongside commercial buildings. The result is that the significance of the CA is closely linked to this varied and interesting townscape. Leconfield House itself dates from the 1930's and, whilst it has undergone various internal and external changes, it retains its overall modern classical appearance, making a positive contribution to the townscape.
67. The appeal proposal would replace the existing seventh floor level with a modified design, including a raised brick parapet and stone band, complementing the design of the lower levels. The existing exposed plant above this would be replaced with integrated plant contained within a roof enclosure. Whilst this would address the fact that there is some limited visibility of the untidy appearance of plant in local views, the result would be that the building would appear a little bulkier at this level. There would be alterations to the ground floor façade, including the replacement of smooth stone cladding with a rusticated stone base and reconfiguration of the window apertures to align with those on the upper storeys. Overall, there would be some modest improvements to the appearance of the building, which would subtly enhance the character of the conservation area and the setting of adjacent listed buildings.
68. The National Planning Policy Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). The small scale and incidental nature of these improvements in the context of the wider significance of these heritage assets means that this point achieves at most moderate weight in favour of the appeal scheme.
69. The other matters referred to are of limited or neutral weight. The active frontage provided by the ground floor retail unit may add slightly to local visual interest and therefore footfall, but this would be a very modest benefit

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<sup>5</sup> Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>6</sup> Ibid, Section 66(1)



attracting limited weight. There may be some improvement to the noise environment as a result of the containment of the rooftop plant. However much, if not all, of the existing rooftop plant is conditioned to operate at 10db below background noise levels adjacent to noise sensitive receptors. Therefore, this consideration attracts very limited weight.

70. Whilst the building being partially occupied/empty may not be supporting the achievement of policy goals, as this is due to the appellant's commercial decision rather than redundancy per se this point does not carry any weight. Similarly, whilst off-street servicing would be provided as part of this development, the total number of delivery trips required by the appeal scheme would increase and an element of on-street servicing by larger vehicles would remain, meaning that this point does not attract beneficial weight.
71. Finally, the S106 agreement would provide a contribution to the Westminster Employment Service, a carbon off-setting contribution, and discounted gym membership for local users. Should the development be acceptable in other regards, these provisions would be required to ensure policy compliance and to mitigate the impacts of the development. Similarly, a Community Infrastructure Levy contribution is a standard payment aimed at assisting local authorities in delivering the infrastructure needed to support development in their area. Therefore, these elements cannot be considered as public benefits.
72. In summary, I have recognised that the role the appeal scheme would play as part of the CAZ social/cultural infrastructure would be moderately beneficial. Other benefits, including the subtle improvement to the character and appearance of the CA and the setting of listed buildings, and the general economic benefits associated with construction, would attract at most moderate and modest beneficial weight respectively. However, I have found that the other matters referred to have either limited or no weight in the planning balance, the matter to which I now turn.

### **Planning Balance and Conclusion**

73. I have found conflict with the City Plan Policy 45 in terms of the negative environmental and amenity impacts of the proposed basement development. Also, the change of use proposed would conflict with the City Plan Policy 13 and the London Plan Policy E1 which seek to protect office floorspace within the CAZ.
74. The proposed use would not conflict with, and in some cases would be supported by, a number of other development plan policies. Those referred to by the appellant include the London Plan Policy GG5 which refers to 'growing a good economy', Policy HC6 which seeks to support the night-time economy and Policy E10 which supports the strengthening of visitor infrastructure. Reference is also made to the City Plan Policy 14 which promotes the intensification of town centres, high streets and the CAZ to provide additional floorspace for main town centre uses, Policy 15 which seeks to maintain the attractiveness of Westminster as a visitor destination, Policy 16 supporting food and drink and entertainment uses and Policy 17 supporting new community infrastructure and facilities. However, support for the proposal from the London Plan Policy SD4 is not clear cut. Whilst this Policy refers to the importance of cultural, arts, entertainment, night-time economy and tourism functions, and social infrastructure, it also supports the office function of the



CAZ, referring to the provision of sufficient space to meet demand for a range of types and sizes of occupiers and rental values.

75. It is not uncommon for development plan provisions to pull in different directions. In such circumstances the decision-maker must make a judgment on compliance with the development plan overall, bearing in mind factors such as the importance of the policies which are complied with or infringed, and the extent of compliance or breach. In this case the scheme gains policy support in relation to the principle of the proposed use. The fact that the proposal would accord with the strategic functions of the CAZ is not in itself in dispute. Rather the points of concern relate to matters over which policy seeks to exert specific control: that is changes of use away from office floorspace, unless redundancy is demonstrated, and the need to manage the environmental and amenity impacts of basement development. I have identified clear policy breaches in relation to each consideration.
76. Therefore, my view is that the appeal scheme would conflict with the development plan taken as a whole. Whilst there would be benefits associated with the development, they would not outweigh the identified harm and its associated development plan conflict. Consequently, material considerations do not indicate a conclusion should be made other than in accordance with the development plan.
77. I therefore conclude that the appeal should be dismissed.

*A J Mageean*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

James Pereira QC and Charles Streeten, instructed by R20 Advisory Limited.

*They called*

Justin Gathercole                      Meng CEng MStructE

Alexander Browning                  BSc MRICS

David Hart

Blythe Dunk                              MRTPI

### FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker, instructed by the Council's Bi-Borough Director of Legal Services

He called

Philip Soloman

Damian Levelle                          BSc (Hons) MSC

### FOR CHESTERFIELD HOUSE RESIDENTS

Robert Goddard

### FOR CHESTERFIELD HOUSE MANAGEMENT LIMITED

Daniel Stedman-Jones, instructed on behalf of Chesterfield House Management Limited by Ms Nicola Gooch

He called

Andrew Billingham                      CEng FStructE (A.E. Wynn Prize) MCI Arb MAE  
FConsE MRICS

Nicola Gooch (representing CHML during round table discussions)

### INTERESTED PARTIES:

Annala Blixt                                  Chesterfield House Management Limited

## DOCUMENTS SUBMITTED DURING THE INQUIRY

- ID.1 Appellant's opening
- ID.2 Council's opening
- ID.3 CHR opening
- ID.4 CHML opening
- ID.5 CHML Letter, 7 June 2022
- ID.6 Topic Specific Statement of Common Ground
- ID.7 Updated conditions
- ID.8 Updated Section 106 Agreement
- ID.9 Note on Appellant's Name
- ID.10 Council's closing statement
- ID.11 Chesterfield House Residents' closing statement
- ID.12 CHML's closing statement
- ID.13 Appellant's closing statement
- ID.14 Appellant's application for costs
- ID.15 Appellant agreement to pre-commencement conditions

## DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Completed S106 agreement
2. Council's response to appellants costs application and application for costs on behalf of Council.
3. Appellants response to Council's submissions on costs and to Council's costs application.
4. Council's response to appellants submissions on costs.