



Sent by Eric Reynolds
Chair of SAVE Britain's Heritage Trustees
Sent from email: office@savebritainsheritage.org

Marks and Spencer Group Plc
Waterside House
35 North Wharf Road
London W2 1NW

FAO: Mr Archie Norman, Chairman

Sent via email to: chairman@marksandspencer.com
corporate.press@marks-and-spencer.com

8th November 2022

Dear Sir/Madam,

1. On 4 November 2022, Marks and Spencer (“**M&S**” or “**you**”) published a press release on your website corporate.marksandspencer.com entitled “Bold, Sustainable and Innovative: M&S Sets Out Comprehensive Case to Deliver Fit for the Future Marble Arch” (“**the Statement**”). The Statement was also issued to the press on the same day. The identity of the individual author of the Statement is unknown but for present purposes it was clearly published on your behalf.
2. A screenshot of the Statement taken from the M&S website is attached at the Appendix to this letter as a PDF. As at the date of this letter, the Statement is still accessible via the following URL: <https://corporate.marksandspencer.com/media/press-releases/bold-sustainable-and-innovative-ms-sets-out-comprehensive-case-deliver-fit> (“**Offending Webpage**”). The Statement is also appended to this letter.
3. The Statement purports to summarise M&S’s case presented at the public inquiry which closed on 4 November 2022 (“**Inquiry**”) into the proposed redevelopment of M&S’s store on Oxford Street (“**Scheme**”). Although SAVE Britain’s Heritage (“**SAVE**” or “**we**”) disagrees with that case for the reasons articulated at the Inquiry, no issue is taken with M&S restating its own case in the Statement.

4. However, the Statement also makes a number of false claims about SAVE's case at the Inquiry, which are injurious of SAVE as set out below ("**Defamatory Statements**").
5. The publication of the Defamatory Statements is likely to cause serious harm to the reputation of SAVE. The Defamatory Statements misrepresent the differences between SAVE and M&S's sustainability analysis; claim that SAVE accept M&S's position on the long-term sustainability benefits of the Scheme; and misrepresent the evidence of Mr Simon Sturgis. The Defamatory Statements are knowingly false in this regard, for the reasons set out below at paragraphs 6 – 14 inclusive.
6. The following passages from the Statement are inaccurate:
 - 6.1. *"M&S's analysis of long-term sustainability benefits of its scheme accepted by SAVE in major move"*.
 - 6.2. *"During the course of the inquiry, SAVE accepted M&S's sustainability analysis and that of our independent experts Arup, a significant move on their part. As a result, despite the planning inquiry anticipated to be focused on the impact of the built environment on carbon emissions, no witnesses on sustainability were called."*
 - 6.3. *"In one of the key sessions of the hearing, Simon Sturgis, SAVE's lead architectural expert, put forward SAVE's proposed alternative of deep retrofit refurbishment. However, under questioning he agreed this also required significant demolition of the existing site including modifying the front Orchard House façade and the removal of a 1930's staircase, both of which SAVE previously argued should be protected, illustrating the impossibility of retrofit at the site. He went on to describe Marble Arch to the inquiry as having "poor architectural merit" and agreed that M&S had done all it could to put forward a proposal in line with the GLA and Westminster City Council guidance."*
7. The ordinary and natural meaning of the statements is clear. They inaccurately mean that:
 - 7.1. SAVE accepted M&S's position;
 - 7.2. SAVE abandoned its own position and therefore its own underlying principles;
 - 7.3. SAVE did not present witnesses as it agreed with M&S;
 - 7.4. SAVE did not stand by its initial proposed alternative scheme;
 - 7.5. SAVE's initial proposed alternative scheme was hypocritical as it did not protect elements of the building.
8. For the reasons set out below, these are false and defamatory claims.
9. In relation to paragraphs 6.1 and 6.2, SAVE's whole life-cycle carbon witness, Dr Julie Godefroy, and M&S's whole life-cycle carbon witness, Ms Mel Allwood, agreed a "Joint Position Statement" ("**JPS**") on the penultimate day of the public inquiry (3 November

2022). The JPS was the product of extensive discussions between the two witnesses during the course of the inquiry. Contrary to the Statement, there is no acceptance in the JPS of “M&S’s analysis of long term sustainability benefits of its scheme”.

10. Instead, the JPS sets out clearly what points are now the subject of agreement, and what points continue to be in dispute. As anyone reading the JPS will see, a significant amount remained in dispute. SAVE did not (and do not) accept M&S’s “sustainability analysis”. This statement is therefore materially inaccurate. SAVE’s case, as made clear in the JPS, was and remains that the analysis of supposed benefits from the scheme, as advanced by M&S, is unreliable and unrealistic, and that no weight can be placed on the claim by M&S that the Scheme would enjoy a carbon “payback” against a refurbishment alternative. SAVE’s continued opposition to the application on sustainability grounds was articulated in detail in SAVE’s Closing Statement at paragraphs 29-73, which make it clear that SAVE did not accept M&S’s sustainability analysis. It remained a central part of SAVE’s case.
11. It is also incorrect to say that “no witnesses on sustainability were called”. It was agreed that, instead of calling Dr Godefroy and Ms Allwood to give evidence formally at the inquiry, the JPS could be prepared and submitted. However, SAVE did call another sustainability witness, Mr Simon Sturgis, whose evidence is referred to later in the Statement. It is misleading and inaccurate to refer to Mr Sturgis as ‘SAVE’s lead architectural expert’.
12. Turning to paragraph 6.3, Mr Sturgis did not accept that “significant demolition of the existing site” was a requirement of his suggested comprehensive retrofit scheme. To quote him accurately, he agreed with M&S’s architect that roughly a quarter of the floorplate would need to be taken out (primarily in the context of core reconfiguration, not floorspace) to facilitate the refurbishment: see SAVE’s Closing Statement at paragraph 49 and the references to the evidence cited in footnotes to that paragraph. As he explained, this is significantly different to the scheme, which would see 100% of the existing fabric demolished, and an entirely new building (including three basement levels) constructed.
13. In addition, Mr Sturgis did not at any time claim that the façade of Orchard House should not be protected. His reference to modifying the façade was to making localised façade improvements where necessary such as window upgrades. Mr Sturgis was also not questioned about the staircase. Although his suggested scheme would see the removal of the staircase from the present position, Mr Alec Forshaw (another witness for SAVE) explained that it could be retained within the comprehensive refurbishment, in a different location.
14. Finally, Mr Sturgis did not at any time describe the existing buildings as having “poor architectural merit”, nor did he agree that “M&S had done all it could to put forward a proposal in line with the GLA and Westminster City Council guidance.”
15. Paragraph 6.3 is therefore materially inaccurate in numerous respects.
16. The differences between M&S’s and SAVE’s respective positions on the long-term carbon implications of the Scheme were a central part of our decision to appear as Rule 6 Party at the Inquiry.

SERIOUS HARM

17. As you will be aware, SAVE is a strong, independent voice in conservation that has been fighting for threatened historic buildings and sustainable reuses since 1975.
18. We are at the forefront of national heritage conservation. We intervene to help historic buildings and places in serious danger of demolition or decay. We stand apart from other organisations by bringing together architects, engineers, planners and investors to offer viable alternative proposals.
19. The misrepresentation of SAVE's position is likely to cause serious harm to the organisation in that it undermines the wider work that SAVE carries out to promote the sustainable reuse of historic buildings; and negates SAVE's position advanced at the Inquiry on the implications of "embodied carbon" resulting from the Scheme.
20. It tells the wider reading public that SAVE is inconsistent and hypocritical and does not stand by its alternative schemes or its experts when under scrutiny. None of this is true.
21. The publication of the Defamatory Statements is not a true or honest opinion of the position advanced by SAVE at the public inquiry and their publication is highly irresponsible of M&S.
22. The Offending Webpage is hosted by M&S. The law requires M&S to act expeditiously to remove or disable access to the Defamatory Statements if M&S wishes to avoid liability for them.
23. This letter is written under section 5 of the Defamation Act 2013 and the Defamation (Operators of Websites) Regulations 2013 requiring that SAVE's complaint is acted on within 48 hours, either by removing the Defamatory Statements if unattributable or notifying the poster of the complaint and the necessity of their providing a response and, if they choose, their identity.
24. SAVE consents to the poster of the Defamatory Statements being informed of its identity.
25. If M&S wishes to prevent SAVE taking further action against it in relation to this matter then we require you to provide us with written confirmation that the Defamatory Statements have been removed or access to them disabled within 48 hours.
26. SAVE also requires M&S, within 24 hours of receipt of this letter, to:
 - 26.1. publish an agreed corrected version of the Statement and send it to all media outlets to whom the Statement was originally disseminated, and to any other media outlets of which M&S is aware have subsequently published or commented on the Statement even though they did not receive it directly from M&S; A version should to be sent to us forthwith for agreement.
 - 26.2. ensure that any media stories which referred to the Statement publish both the corrected statement and the apology;

- 26.3. issue a public apology for misrepresenting the position advanced by SAVE at the Inquiry; acknowledging the work SAVE undertakes to promote the sustainable reuse of historic buildings; and for the embarrassment and inconvenience caused to SAVE through the publication of false and misleading information.
27. If we do not receive the required confirmation, we reserve the right to issue proceedings against M&S for defamation without further notice. Such proceedings may include a claim for injunctive relief to prevent further publication of the Defamatory Statements, damages and legal costs along with any relevant interest. In the meantime, we reserve all of our rights in respect of this matter. You should consider that this letter has been written in compliance with the Pre-Action Protocol for Media and Communications Claims.
28. Correspondence regarding our complaint should be addressed to the email address of the writer of this letter, as shown above.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Eric Reynolds', written in a cursive style.

Eric Reynolds
Chair of Trustees, SAVE Britain's Heritage

CC: Roy Pinnock
Partner
Dentons UK and Middle East LLP
One Fleet Place
London
EC4M 7WS

Sent via email to: roy.pinnock@dentons.com

Appendix

Bold, Sustainable and Innovative: M&S Sets Out Comprehensive Case to Deliver Fit for the Future Marble Arch

M&S proposal for innovative and highly sustainable scheme securing its future on Oxford Street set out to public inquiry.

- Support for M&S scheme spearheaded by leading retailers Selfridges & Ikea with over 2000 jobs and significant improvements to wider Oxford Street district delivered as part of plans
- M&S' analysis of long-term sustainability benefits of its scheme accepted by SAVE in major move

Marks & Spencer has set out its bold, sustainable and innovative proposal for its Marble Arch scheme – the only retail-led regeneration in London's most famous high street – to the public inquiry which has concluded today.

Across the eight-day hearing, M&S and its range of expert witnesses extensively set out its robust analysis across heritage, sustainability and the future of retail, which determined that redevelopment is the only viable and deliverable plan to establish a Marble Arch site which is better for customers, colleagues and the communities it serves.

Russell Harris KC in his closing remarks said: "No party is asserting that there actually is another, better way of achieving these or substantially similar benefits either through refurbishment or at all. The highest it is put is that there might be."

Since launch M&S has maintained the long-term sustainability benefits of its forward-thinking scheme. During the course of the inquiry, SAVE accepted M&S' sustainability analysis and that of our independent experts Arup, a significant move on their part. As a result, despite the planning inquiry anticipated to be focused on the impact of the built environment on carbon emissions, no witnesses on sustainability were called.

During the inquiry M&S presented an updated assessment which confirmed it should deliver a carbon payback in 11 years, with more reductions possible. This will see M&S' proposed scheme, with a planned lifespan of 120 years, delivering a net positive contribution to the environment from 11 years onwards once complete, a significant achievement for new schemes in a highly sustainable building. The proposal will use less than a quarter of the energy of today's structure, will promote circular economy principles, with 95% of the existing building materials to be recovered, recycled or reused and, on completion, be amongst the top 1% of new buildings in London on sustainable performance.

Throughout the inquiry, M&S and its representatives have reiterated its unwavering commitment to achieving its Plan A commitment to be net zero by 2040, a full 10 years ahead of the Government's ambition, with the redevelopment of Marble Arch a key part of that strategy.

M&S' bold and innovative proposal modernises Marble Arch and the surrounding site to be fit for the future. The scheme incorporates materials in keeping with the rich heritage of Oxford Street, including Portland stone and white Roman brick, while establishing contemporary high ceilings and adaptable retail space reflecting the experience today's customers are looking for. Alongside this, M&S' investment will create over 2000 new jobs and 10,000 sq ft of new public realm across the site with planting and trees to create a natural sheltered canopy in the heart of the West End.

As a result, major retailers and organisations including Selfridges, Ikea, New West End Company and Portman Estate have come forward during the inquiry in support.

M&S' lead architect Fred Pilbrow considered 16 alternative proposals for the site, with only the established proposal proving viable. In one of the key sessions of the hearing, Simon Sturgis, SAVE's lead architectural expert, put forward SAVE's proposed alternative of deep retrofit refurbishment. However, under questioning he agreed this also required significant demolition of the existing site including modifying the front Orchard House façade and the removal of a 1930s staircase, both of which SAVE previously argued should be protected, illustrating the impossibility of retrofit at the site. He went on to describe Marble Arch to the inquiry as having "poor architectural merit" and agreed that M&S had done all it could to put forward a proposal in line with the CLA and Westminster City Council guidance.

Russell Harris, KC said in his concluding remarks: "SAVE now accept that leaving the buildings as they are or to make them the subject of light touch is not sustainable or viable. There is, it is agreed, no sustainable do nothing option. If the Secretary of State agrees with this consensus then the debate is little more than academically interesting for some if not others."

Throughout the hearing M&S has emphasised its experience and expertise in upgrading the fabric of existing stores across its estate, with over 40 stores renewed in the last year alone including historic stores in Chelmsford and Cheltenham. But the poor layout of the three buildings comprising Marble Arch today, with Orchard House comprising just under 30% of the site, renders a retrofit, as proposed by Sturgis and SAVE, as neither deliverable nor viable.

Sacha Berendji, Operations Director: "Two years ago we launched our proposal to redevelop Marble Arch and deliver a significant and sustainable investment into Oxford Street, which has been supported at every stage. Extensively setting out our case again to the inquiry has confirmed to us that this is absolutely the best and only way to deliver a Marble Arch which is fit to serve and support our customers, colleagues, communities and the planet for the next century and beyond."

– ENDS –

For further information, please contact:

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corporate.press@marks-and-spencer.com

Notes to editors

Further background

- The Marble Arch redevelopment delivers the most sustainable long-term boost for the site and wider local area.
- Retrofit is not an alternative – a full review of the existing three, poorly connect buildings determined it would be unfeasible.
- The current site has a poor sustainability performance – inadequate insulation, single glazing and an inefficient room configuration mean the store is expensive both to heat and maintain.
- The M&S redevelopment would create a building in the top 1% of sustainability performance in London with BREEAM outstanding rating.
- The building will use less than a quarter of the energy used by today's structure – with plans including an all electric strategy using solar panel to improve local air quality, a greywater harvesting system (reducing drinking water consumption by 55%) and reuse of 95% of existing materials in the construction.
- The M&S scheme also offers a forward-thinking design which modernises Marble Arch while reflecting the proud history and heritage of Oxford Street.
- Whilst the current building was rejected for listing twice by Heritage England and excluded from the surrounding conservation area – the M&S design modernises Marble to fit for the future with contemporary high ceiling, adaptable retail space and a prime quality office environment on the upper levels.
- The plans are supported by the Community – Westminster City Council and local residents – supported by Businesses – Selfridges, Ikea, Portman Estate – and supported by a cross section of experts across heritage, sustainability and real estate.
- It will also deliver 10,000 sqft of new public realm, including the creation of a new pocket park, St Michael's Place, and the reopening of the heritage east-west pedestrian arcade through the site from Orchard Street to Granville Place.

04 Nov 2022



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