
CLOSING SUBMISSIONS BY SAVE BRITAIN'S HERITAGE

Introduction

1. These closing submissions¹ are structured as follows: (1) the effect of the proposals on the significance of heritage assets; (2) the effect of the proposals on the UK's transition to a zero-carbon economy; (3) the planning balance.

The effect of the proposals on the significance of heritage assets

Significance of Orchard House and the impact of demolition

2. Orchard House is a non-designated heritage asset. The NPPF² requires that these assets, like designated heritage assets, "*should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations*". The WCP³ provides that "*although the highest level of protection will be afforded to designated heritage assets, non-designated heritage assets also contribute positively to Westminster's historic environment*". As WCC's Historic Environment Background Paper⁴ states, "*other buildings ... while not statutory listed ... can nonetheless be of architectural and historic interest or may make a significant contribution to the character and appearance of an area*". The paper also talks about the challenges to ensuring that such assets are protected⁵.
3. CM accepted⁶ that: (a) a building can still have heritage significance even if not listed; (b) an "*exacting standard*" is applied to the listing of heritage assets; (c) the standard becomes an "*increasingly discriminating exercise*" the younger a building gets; (d) a heritage asset, even if non-designated, can be of "*considerable significance*", as was found by the Secretary of State in the case of the "*Welsh Streets*"⁷. AF's evidence is that "*the failure to meet Historic England's*

¹ Abbreviations: JG = Dr Julie Godefroy; SS = Simon Sturgis; AF = Alec Forshaw; FP = Fred Pilbrow; CM = Dr Chris Miele; MA = Mel Allwood; CG = Chris Goddard; RHKC = Russell Harris KC; XIC = Examination in Chief; XX = Cross-Examination; REX = Re-Examination; WCC = Westminster City Council; HE = Historic England; WCP = Westminster City Plan 2021; LP = London Plan 2021.

² para. 189;

³ (CD6.3) para. 39.27

⁴ (INQ23) para. 4.5

⁵ paras. 5.8-5.10

⁶ in XX

⁷ para. 13 [INQ24]

*exacting criteria does not mean that Orchard House is not of considerable heritage interest and heritage significance*⁸.

4. CM is alone in his overly critical assessment of Orchard House. He is also alone in finding that it makes a “*neutral*” contribution to the significance of the Grade II* Selfridges (despite having an “*affinity*” with it). HE identify the building as possessing architectural and historic interest, and as one which “*contributes positively to the setting of Selfridges, with which it has strong group value, owing to their stylistic similarities*”⁹. Although Orchard House does not have “*the same flair or quality*” as Selfridges, HE consider it to be “*essentially an evolved version of the same design principles, following the trend of simplifying classical detailing in favour of the steel frame behind*”. The cornice lines of the two buildings (as well as Hesketh House) are exactly the same height¹⁰. AF explained the clear parallels¹¹, rejecting the criticism by CM of it being “*top heavy*” and a “*profound*” contrast with Selfridges. AF agreed¹² with CM’s statement that Orchard House “*magnifies the brilliance of Selfridges*”. It is precisely the supporting and “*deferential*”¹³ role played by Orchard House to Selfridge’s which gives Orchard House merit and significance (a quality entirely lacking, seemingly deliberately so, in the proposed building). As HE note:

“Orchard House is understood as a near contemporary building of lesser status, promoting Selfridges’ landmark quality and enabling an appreciation of its influence on later design. They share a similar structural and façade design (incorporating classical detailing, stone cladding and metal spandrel panels), in addition to a consistent roofline.”

5. HE find that the loss of Orchard House would be “*regrettable*”. HE in the assessment of the listing application¹⁴ find Orchard House to be a “*well considered and sensitive response*” to Selfridges.
6. WCC share HE’s view, finding that the “*height, massing and detailed design of Orchard House contributes positively to the setting of Selfridges, and for the same reasons to the setting of the Stratford Place CA*”¹⁵. Harold Clunn’s *The Face of London*¹⁶ (much maligned and unfairly so by RHKC and CM¹⁷) correctly observes that Orchard House “*harmonises admirably*” with Selfridges. Although the Survey of London¹⁸ offers neither a positive nor negative assessment of the building, the former General Editor of the Survey of London and Emeritus Professor of

⁸ AF PoE para. 4.10, reiterated in XIC

⁹ (CD4.4)

¹⁰ CD1.5, Existing Section B-B Looking North 1827-PP-ZZ-XX-DR-A-01-3002, and AF XIC, and INQ46

¹¹ in his XIC

¹² in XIC

¹³ AF XIC

¹⁴ CD5.02, p.3

¹⁵ (CD8.1, para. 120)

¹⁶ (CD8.1, Appendices p.71)

¹⁷ see AF XIC

¹⁸ (CD6.43-6.49)

Architecture at the University of Cambridge, Professor Andrew Saint, has written in opposition to the scheme¹⁹, finding Orchard House to be “*a very decent stone building ... and suited to the dignity and scale of the street as it then was*”. Dr Alan Powers comments among other things on the “*playfulness*” at Orchard House²⁰.

7. Many others have queued up to praise and support the retention of Orchard House, including: Nicholas Boys Smith, Director of Create Streets²¹; Dr Barnabus Calder²²; the 20th Century Society²³.
8. The contribution of Orchard House to Selfridges needs to be taken with the point that the building (in the words of HE) “*speaks to the wider historic association of Oxford Street with department stores, most of which date from the same period*” and thereby “*contributes positively to ... the historic retail character of Oxford Street*”²⁴. That judgment by HE is undiminished by the fact that the building was not designed for M&S (which HE expressly acknowledge), and also would not be diminished by M&S ceasing to occupy it in future²⁵. CM accepted²⁶ that the occupation of (at least part of) Orchard House by M&S for the entire period since the building was first constructed in 1930 (some 92 years) is a material factor in the significance of the building.
9. The effect of the loss of some exterior fabric is also overstated by CM. WCC correctly observe²⁷ that the upper floors “*retain most of their architectural detailing*”. AF states²⁸ that the lost details (i.e. balconies and sculpture) are:

“... something of a minor matter, and should not distract from the fundamental merits of the building including its overall legibility, the strength of its architectural composition, its place in the transition of architectural style at the end of the 1920s, its deference to Selfridge's next door, its contribution to the townscape of Oxford Street as a whole, and to its value as a familiar landmark, long associated with a famous brand well- known to the wider community.”
10. In any event²⁹, the various items of decoration and embellishment “*which apparently has detracted from its eligibility for listing, could quite easily be reinstated*”³⁰ in a refurbishment scheme (along with installing more sympathetic shopfronts).

¹⁹ (AF1, p.31)

²⁰ (CD5.12)

²¹ (AF1, p.12)

²² (AF1, p.13)

²³ (AF1, p.35)

²⁴ (CD4.4)

²⁵ (AF XIC)

²⁶ in XX

²⁷ (CD8.1, para. 30)

²⁸ (AF PoE 4.12)

²⁹ as AF explains and CM fairly accepted in XX

³⁰ (AF PoE 4.11)

11. In terms of the interior, the dismissiveness by CM of the original main Art Deco staircase as “ordinary” is a defensive response to having missed this significant feature in his PoE. The Inspector is invited to prefer AF and Dr Alan Powers’ evidence that the staircase is “*an impressive feature in the building*”³¹, makes a contribution to the significance of Orchard House and “*could add positive value to an imaginative refurbishment scheme*”, which is supported by the evidence of Dr Alan Powers³².
12. WCC does not – unlike “*virtually every other London borough*” – maintain a local list of NDHAs. As AF explained³³, if WCC did have one, Orchard House would be on it.
13. M&S is right that Orchard House is not in a CA. But the boundaries of the Stratford Place CA, Mayfair CA and Portman Estate CA were last reviewed in 1990, i.e. 32 years ago, a third of the life of Orchard House. CM accepted³⁴ that perceptions of heritage significance change over time: Selfridges is a prime example, being elevated from II to II* as recently as March 2020. CM accepted³⁵ that he “*could not stand by*” the statement in his PoE³⁶, that “*boundary revisions [to the Stratford Place CA] were considered as part of the 2008 [CA] audit*”. There is nothing in the 2008 audit of the Stratford Place CA to suggest that it reviewed the boundaries. CM “*drew an inference*” that it had, but there is no evidential basis for that inference.
14. The duty on WCC is “*from time to time to review ... and to determine whether any parts or any further parts of their area should be designated as conservation areas*” (emphasis added)³⁷. It is not³⁸ a “*constant duty to consider and reconsider the boundaries of CAs*”, which would be onerous and unworkable. There are around 11,000 listed buildings in WCC’s area, and WCC’s conservation officers will be busy dealing with listed building applications, and so there may be a resource issue in terms of reviewing CA boundaries (something to which AF can attest given his extensive experience as a local authority conservation officer)³⁹.
15. CM alleged⁴⁰ that WCC’s evidence base for the WCP included a review of CA boundaries. M&S refer⁴¹ to WCC’s Historic Environment Background Paper⁴², in which WCC claim that their “*statutory duties in relation to heritage ... have been reviewed to make sure we fulfil*

³¹ (AF XIC)

³² (CD11.17, AF Rebuttal para. 3.1-2, AF XIC Presentation [INQ36], p.14-17)

³³ (XIC)

³⁴ in XX

³⁵ in XX

³⁶ para. 5.71

³⁷ s.69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990

³⁸ as RHKC suggested in Opening (para. 92)

³⁹ As AF explained in XIC

⁴⁰ For the first time in XX (not in his written evidence)

⁴¹ RHKC in REX of CM

⁴² (June 2019) at para. 3.1 INQ23

requirements set out in legislation and policy. Some key issues identified from the policy review are set out below and fuller extracts and lists of other key policy documents in relation to heritage in Local Plans are attached at Appendix 2”. WCC note⁴³ that “statutory duties in relation to heritage assets remain largely unchanged since the adoption of the existing UDP policy”. Appendix 2 includes a reference to s.69 and the requirement on the authority to review the areas designated. But all this proves is that WCC reviewed the statutory duties applicable to them (and found them to be unchanged). It is not evidence of a review of CA boundaries. There is no evidence of this having been either proposed or undertaken. WCC representatives have been at every day of the inquiry and if there were evidence of a CA boundary review in the WCP evidence base (or otherwise), then presumably they would have told the Inspector.

16. M&S point out that SAVE do not claim WCC have unlawfully failed to comply with their duty under s.69(2). But that is because this is a public inquiry into the M&S scheme, not a court of law examining the lawfulness of WCC’s action or inaction. It is clearly not the Inspector’s function to determine whether WCC have acted lawfully in relation to CA boundary review.
17. SAVE do say that, as a non-designated heritage asset found by HE and others to make a positive contribution to the directly adjacent Selfridges (which is inside and a major contributor to the significance of Stratford Place CA), Orchard House is an obvious candidate and “*clear case*”⁴⁴ for a CA boundary extension. In AF’s words⁴⁵, Orchard House has “*fallen through the net*”. There are many buildings within CAs which are not themselves non-designated heritage assets. It is highly regrettable that WCC have not considered in some 32 years whether to extend the boundary to include it.
18. In any event, Orchard House contributes positively to the setting of Stratford Place CA⁴⁶. The loss of Orchard House will cause harm to the setting of the Stratford Place CA, as well as to the setting of the Mayfair CA⁴⁷. The Welsh Streets Secretary of State decision⁴⁸ is an example of harm being identified to a CA⁴⁹ by development outside of it (even in a situation of “*limited inter-visibility*”, which is not the case with Orchard House and the adjoining CAs).
19. Finally on the subject of CAs, HE⁵⁰ note with some regret that “*Oxford Street does not benefit from a continuous linear conservation area designation, which might have allowed for greater*

⁴³ In para. 3.2,

⁴⁴ (AF XIC)

⁴⁵ (XIC)

⁴⁶ (as recognised by WCC itself – CD8.1 para. 120)

⁴⁷ (a point recognised by HE – CD4.4)

⁴⁸ [INQ24]

⁴⁹ (see para. 14)

⁵⁰ (CD4.4)

protection of this historic retail character, and the street has instead developed a fragmentary character more recently, as such buildings are lost". AF supported the idea of an Oxford Street CA⁵¹, noting a whole chapter of the Survey of London dedicated to it⁵².

20. SAVE considers that the loss of Orchard House (quite apart from any consideration of the proposed scheme) will:
- (1) Result in the total loss of a non-designated heritage asset. That harm is permanent and irreversible. It is the greatest possible harm that can be done to a heritage asset.
 - (2) Cause less than substantial harm to the setting and significance of Selfridge's, as well as to the Stratford Place CA and Mayfair CA.

Impact of the proposed building

21. Further heritage harm arises from the proposed building to replace what is currently on site. SAVE endorses HE's analysis⁵³ that:

"The new development is of an uncharacteristic scale and materiality, and of a particularly bold design. The strident cornice and three floor levels above, which present a cluttered roofline and would be visible in several key views of Selfridges. This would cause the proposals to distract from and diminish the latter's pre-eminence in the townscape, causing harm to its significance.

There would also be some harm to the Mayfair Conservation Area, particularly along North Audley Street, where the uncharacteristic scale and design of the new development would terminate views out of the conservation area, undermining its consistent historic character and scale."

22. The "*strident*" and "*bold*" projecting canopy is over 4 metres, or a full storey height, above the Selfridge's cornice⁵⁴. That extra height and the dominant form is readily apparent when one looks at M&S's own drawings⁵⁵. It is a continuous unbroken element along both frontages, oversailing new set-back building lines, whereas Selfridges frontages to both Orchard and Duke Streets are a collection of distinctly different elements, both architecturally and in scale. The apparently classical references will be unrecognisable to ordinary members of the public walking past⁵⁶. The canopy and set-back building line is "*a significant departure from the historic building line of Oxford Street*", and the canopy is a "*massive element in the townscape*"⁵⁷.

⁵¹ in XIC

⁵² (see also the 20th Century Society – CD9.8, p.35)

⁵³ (CD4.4)

⁵⁴ (see Cornice Measurements INQ46)

⁵⁵ see e.g. FP PoE p.85 and CM PoE p.32 Fig 4.19

⁵⁶ CM fairly accepts this at PoE para. 4.90

⁵⁷ AF XIC

23. Above the canopy are four further storeys. Although set-back to a greater extent on Oxford Street, the set-back is much less on Orchard Street, causing greater harm to views from North Audley Street in the Mayfair CA, with none of the careful modelling of the roof and massing of Park House to avoid such harm (*“with only 4 floors on North Audley Street, and the roof raking back at a very gentle angle, leaving no impingement on the streetscene”*⁵⁸). The additional storeys show a lack of cohesive design overall and have nothing to do with the supposed classicism below the canopy⁵⁹. The additional storeys present in HE’s words a *“cluttered roofline”*⁶⁰, which is clearly visible from the street⁶¹, and the visualisations⁶² dispel CM’s claim that it would not be possible to see the upper floors above Park House from North Audley Street). In terms of materials used in the new building, the use of timber and brick is unlike anything in Selfridges next door⁶³. AF⁶⁴ goes through key viewpoints identifying the *“massive change in scale”* arising from the new building, and the harm this would cause to settings of designated assets. HE suggest that⁶⁵ *“reconsidering the scale, massing and design of the proposed development could ensure a more sympathetic impact. This might include a quieter cornice and simplified roof form”*.
24. CM’s defence to the various claims of harm by HE, SAVE and others is to celebrate the boldness, arguing that the scheme would *“create a companion flagship building”* and *“the difference in scale module and the striking modern design proposed would make one better appreciate the novelty and power of the Selfridges’ design”*⁶⁶. This relates to his contention⁶⁷ that Selfridges *“does not need buildings to be deferential to it”*.
25. SAVE considers CM’s entire approach to be wrong. Pushed to its logical conclusion, it would justify almost any form of development next to Selfridges provided that it creates a significant contrast. SAVE fundamentally rejects the school of thought underpinning CM’s analysis, and considers that it is not the right way to preserve the setting and significance of heritage assets affected by a proposal. SAVE aligns with HE, whose response is *“informed by the idea that a new building here, in the immediate setting of Selfridges, should be less demonstrative”*⁶⁸.
26. SAVE invites the Inspector, for the reasons given by AF in his evidence, to find less than substantial harm arising from the loss of Orchard House and the proposed building to the setting

⁵⁸ (AF XIC)

⁵⁹ AF in XIC

⁶⁰ CD4.4

⁶¹ See CM PoE Fig 4.17

⁶² Site Inspection Booklet INQ12 p.59 & 69

⁶³ AF PoE para. 5.18

⁶⁴ in his XIC Presentation [INQ36], p.47-52

⁶⁵ (CD4.4)

⁶⁶ (CM PoE para. 5.41)

⁶⁷ in XX

⁶⁸ as CM fairly accepts at CM PoE para. 5.49

and significance of Selfridges (middle-to-upper end of scale), the Stratford Place CA (lower end of scale), 24-29 North Audley Street (moderation-to-high end of the scale), the Mayfair CA (moderate-to-high end of the scale), and the Portman Estate CA (moderate end of the scale).

27. The Secretary of State’s decision in Anglia Square, Norwich⁶⁹, is a prime example of harm to the significance of a heritage asset through impacts on the setting reaching the upper ends of the scale of “*less than substantial*” harm⁷⁰. The Secretary of State found harm “*at the upper end of the ‘less than substantial’ scale*”⁷¹ arising from impacts on setting. M&S made passing reference⁷² to the decision on this issue having been the subject of a legal claim, but that claim was withdrawn (in SAVE’s view, rightly, because it amounted to an attack on the Secretary of State’s planning judgment which is deprecated by the courts). So, the decision stands. The reliance by M&S on the more recent decision in Summerskill House⁷³ goes nowhere. In that decision, the Inspector stated that “*unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance*”⁷⁴. AF considers⁷⁵ that a significant proportion of Selfridges’ significance is derived from its setting because it is unchallenged in terms of “*presence and swagger*”⁷⁶.
28. The Secretary of State is required to have special regard to the desirability of preserving a listed building or its setting, and any harm to the significance of a designated heritage asset is to be given “*considerable importance and weight*”⁷⁷. Further, “*a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted*”⁷⁸.

Effect of the proposals on the UK’s transition to a zero-carbon economy

29. The significant heritage impacts, not outweighed by public benefits, would alone warrant a refusal of planning permission. But there is another very substantial harm and policy conflict arising from this scheme, which concerns the effect of the proposals on the UK’s transition to a zero-carbon economy. This section is to be read with SAVE’s Opening Statement, in which it

⁶⁹ INQ37

⁷⁰ see AF XIC Presentation [INQ36] p.41

⁷¹ INQ37 para. 44

⁷² RHKC in XX of AF

⁷³ [INQ38]

⁷⁴ At para. 12.50 (p.78)

⁷⁵ As AF explained in XIC and XX

⁷⁶ RHKC Opening

⁷⁷ *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), at [55]

⁷⁸ *Ibid*, [49] (note that this applies to the setting of both listed buildings and CAs)

underlined the context of the global climate emergency and the present failure of the construction industry to play their part in addressing it⁷⁹.

30. M&S's proposal to demolish the existing buildings and construct a new building is not consistent with achieving the UK's transition to a zero-carbon economy, and is in conflict with LP policies D3, SI2 and SI7 and WCP policies 36, 38 and 39. Before considering these policies, it is necessary to set out the consideration of alternatives to demolition and a new building.

M&S's consideration of alternatives to demolition and new build

31. To look at M&S's consideration of alternatives, the Inspector will not find it in M&S's Whole Life Carbon GLA Template⁸⁰, because this, in the fourth box on p.1, against the heading "*confirmation that options for retaining existing buildings and structures have been fully explored before considering substantial demolition*", refers to "*Arup 'Justification of demolition' report for further details*". There is however no such document as a "*justification of demolition*" report, as confirmed by M&S to SAVE in correspondence following the exchange of proofs. Nor will the Inspector find it in the Circular Economy Statement⁸¹, which contains a summary reference to the "*limitations of the existing buildings*"⁸², but no analysis of alternatives to demolition (including in the "*strategic approach*" section⁸³ which is where it is required and wrongly not provided⁸⁴. That section⁸⁵ is focused on how to be circular in demolition, the new build, and management of waste, rather than on the decision to demolish itself.
32. For any actual consideration of alternatives in the application documents, it is necessary to look at the DAS⁸⁶. Despite FP's claim⁸⁷ to have considered a deep retrofit of the kind advocated by SS back in the 2018 feasibility studies, the DAS⁸⁸ indicates that the two refurbishment options given any actual analysis were a "*light touch*" refurbishment and a "*façade retention*" scheme. That is reflected also in what the GLA have said about the consideration of alternatives⁸⁹ and in the Whole Life-Cycle Carbon Assessment⁹⁰, which compares the scheme only against a "*light touch*" refurbishment. There are thumbnail sketches of 16 alternatives on p.100⁹¹, of which FP claimed that option 16 was the closest to the SS proposal, but (a) even that appears to be very

⁷⁹ INQ3

⁸⁰ (MA PoE Appendix)

⁸¹ (CD1.21)

⁸² (p.5)

⁸³ (p.9)

⁸⁴ (see CD10.16, Appx 4, p.60 para. 3.2.6)

⁸⁵ as SS noted in REX

⁸⁶ (CD1.7A-B)

⁸⁷ orally in XX

⁸⁸ (CD1.7A, p.55-59)

⁸⁹ (CD4.13, paras. 3-4)

⁹⁰ (CD1.22)

⁹¹ (CD1.7B)

different from SS's scheme, and FP accepted⁹² that core reconfiguration was not considered, and (b) there is nothing more than this thumbnail image to show any exploration of the option.

33. The “*light touch*” and “*façade retention*” options are not reasonable refurbishment alternatives to a new build. They are easily out-performed by the new build scheme, and it is telling that they are the alternatives which formed the focus of M&S's consideration. Façade retention is “*really not sensible*”⁹³ because it still involves very significant embodied carbon costs, and presents alignment issues between the façade and a new build.
34. A light touch refurbishment, applying M&S's assumptions to this option, is self-evidently not enough to deliver a product of sufficient quality, with sufficient energy efficiency improvements⁹⁴. That is especially so when one looks at how the “*light touch*” option is said to perform in terms of operational carbon emissions. M&S's assumption for the energy use by the light refurbishment scheme is that it would perform poorly against similar stores, and be 50% higher than previous energy use figures provided by M&S for the un-improved existing building; as an example of poor performance assumptions, the existing gas boilers would remain in operation for 10 years, rather than being changed for a lower carbon source⁹⁵. The scheme has therefore only been tested against a “*very poorly performing* [light touch refurbishment]”, and by contrast the comparison of whole life carbon impacts is made against a theoretical modelling of emissions for the new building that is likely to be optimistic⁹⁶.
35. Accordingly, no weight can be placed on any claim by M&S that the scheme would enjoy a carbon “*payback*” (after any period) against a refurbishment alternative. The Applicant has not robustly compared the Scheme against a reasonably performing light touch refurbishment (let alone a comprehensive refurbishment of the kind advocated by SS).
36. As well as only testing two refurbishment options that were always “*straw men bound to fail*”⁹⁷, FP accepted⁹⁸ that the key objectives or criteria against which options were assessed did not include looking at a whole life carbon impact of the options (only operational sustainability). The DAS⁹⁹ indicates that the assessment of refurbishment was “*first and foremost*” an assessment of the heritage merits of retention. Even as against such inadequate objectives, there is no indication in the DAS of how the alternative options were scored and compared.

⁹² in XX

⁹³ (see SS Rebuttal para. 3.9.7.3)

⁹⁴ see SS PoE para. 11.2.3 and SS XIC Presentation p.33

⁹⁵ As JG explains in the Joint Position Statement [INQ49, row 6].

⁹⁶ See Joint Position Statement, INQ49, row 6.

⁹⁷ as SS in XIC put it

⁹⁸ in XX

⁹⁹ (CD1.7A p.57 & p.59)

37. FP confirmed¹⁰⁰ that (a) the decision to proceed with a new build was made in 2018 and has never been re-visited; (b) there is greater understanding now compared with 2018 about embodied carbon issues, and the policy framework on such issues has evolved, (c) there was no involvement or consultation of WCC in the decision to proceed with a new building in 2018. The many pre-application meetings between M&S and WCC subsequently were to consider iterations of a new build scheme, not to revisit the principle of new build in the first place.
38. M&S rely on the endorsement of their consideration of alternatives by the GLA. But: (a) CG accepted¹⁰¹ the obvious point that the GLA’s position is not binding on the Inspector or the Secretary of State; (b) SS¹⁰² considers the GLA did not “*dig deep enough*” in terms of assessing M&S’s consideration of alternatives (for example by not requiring the Circular Economy Statement¹⁰³ to actually justify the strategic approach for demolition and a new build – see above); (c) the guidance is very new¹⁰⁴ and GLA are still on a learning curve as to how it needs to be applied.
39. Finally, M&S were asked by the Inspector on day 2 to provide contemporaneous evidence of their brief to the architects. SAVE wondered if this would show that M&S instructed the architects to consider all refurbishment options as FP alleged¹⁰⁵. But the evidence submitted¹⁰⁶ says nothing at all about the consideration of refurbishment and refers only to M&S’s specifications and standards. For all that is known from this evidence, M&S could have instructed Pilbrow and Partners to design a scheme that simply maximises commercial value.

SAVE’s consideration of refurbishment

40. Since first objecting to the application, SAVE have always maintained that M&S should have properly considered a comprehensive retrofit of the existing buildings. It is only by exploring this reasonable alternative that the case for demolition and new build could be adequately justified. The purpose of SS’s evidence is not to present a fully worked up comprehensive refurbishment scheme, or to prove it is deliverable, but instead to show that there is a significant gap in M&S’s consideration of alternatives. M&S should have explored the kind of comprehensive scheme envisaged by SS from day one, looking creatively at how it could be achieved, what public benefits could be realised, whether it could suit M&S’s requirements, how it would look to the market, whether it would be deliverable. That is what (in the language of the

¹⁰⁰ in XX

¹⁰¹ In XX

¹⁰² (In XX)

¹⁰³ (CD1.21)

¹⁰⁴ SS explained this in XX

¹⁰⁵ in XX

¹⁰⁶ INQ39

guidance¹⁰⁷) is meant by “*robustly / fully exploring*” and “*prioritising*” refurbishment. There is nothing unusual or special about SS’s scheme, which is instead a straightforward and logical optimisation of the existing resources on site bringing them functionally up to current standards and achieving a high quality space. There is no reason why it was not properly considered by M&S.

41. Instead of doing the job at the time, M&S have been forced to try and retrospectively justify their decision in 2018 to proceed with a new build, by considering a comprehensive retrofit for the first time in the evidence of FP. Inevitably, that consideration is driven by a need to defend the new build proposal, rather than objectively and neutrally look at what can be done on site with an appropriate degree of imagination and pragmatism. This site presents an ideal opportunity for a market-leading innovative comprehensive retrofit of the buildings, which would: (1) introduce greater operational energy efficiency in the buildings; (2) avoid the large embodied carbon emissions of the demolition and re-build; (3) achieve the desired improvements in terms of providing high quality retail and office space, together with new public realm; and (4) avoid the harmful heritage impacts of the proposed new build scheme¹⁰⁸.
42. SS and SAVE are not alone in this view. Significant numbers of eminent architects, developers and others interested in sustainable conservation have taken the time out of their busy professional lives to make representations to the inquiry in opposition to the scheme. As Tyler Goodwin said in his evidence to the inquiry¹⁰⁹, sustainable renovation is good for the environment and good for business, because tenants are now thinking about their commitments to achieving net zero and wanting to be “*in a building that helped make a difference*”. M&S celebrate the sustainability of their proposed new building in terms of energy use, but¹¹⁰ there is a big difference between a “*sustainable building*” and a “*sustainable site strategy*”.
43. The claim of a “*120 year design life*” for the new build applies only to the structural frame¹¹¹. SS explained¹¹² that a new build is not so different to a substantial refurbishment in times of life expectancy of systems and services.
44. It would be unfair to compare the outcome of a retrofit scheme with what is possible in a new build¹¹³, which gives the architect a blank canvas (in the words of Charlie Baxter¹¹⁴, it is

¹⁰⁷ See below

¹⁰⁸ See SS’s Rebuttal and in XIC

¹⁰⁹ (point (2)(b) INQ29)

¹¹⁰ As SS pointed out in XIC

¹¹¹ FP accepted this in XX (see also SS (Rebuttal 3.4.3) and in XIC)

¹¹² (see XIC Presentation INQ32 p.5-9)

¹¹³ As FP accepted in XX

¹¹⁴ INQ4

“easier”). A retrofit scheme will require creative solutions to work around potential obstacles in the existing structure, and the question is not whether there will be a need to be a degree of compromise (which is likely to be inevitable), but rather whether any compromise is so significant that the benefits of retention are (in the language of the guidance¹¹⁵) “clearly outweighed” by the benefits of the new building.

45. In the present case, it is correct that the retrofit could not achieve the same new floorspace as a new build. SS estimates 15,000 sqm new floorspace in addition to 35,000 sqm existing area (total: 50,000 sqm), versus 60,777 sqm for the new build, i.e. 82%¹¹⁶. FP accepted¹¹⁷ that (a) more additional floorspace could be added than was proposed by Arup, and (b) there were other factors to consider alongside the benefits of additional space, such as the heritage and visual impacts, the additional embodied carbon cost, and the need for such space. On that latter point, AF¹¹⁸ explained that there are three former department stores (Debenhams, House of Fraser and John Lewis) which are all converting retail space no longer needed into new office space, and there is also the Selfridge Hotel which has been empty since 2008, all of which are making or could make a significant contribution to meeting the need for office space in the area.
46. Although there is a compromise that will inevitably need to be made on column grids, this is an acceptable compromise that would not preclude a highly successful and attractive retail and office space¹¹⁹. The issue of column grids has not prevented the Nike Store at Oxford Circus from being a successful retail refurbishment of an existing building¹²⁰. There is also potentially a compromise to be had in relation to losing the East West Linkage from Orchard Street to Granville Place¹²¹. But as AF explained¹²², the public benefit associated with this orientation of linkage is over-stated due to the route through Selfridges from St Christopher’s Place to Orchard Street not being public realm with good connectivity. There is “a limited floor to ceiling height in the food hall, it is full of people and there is a steep flight of stairs on the route”¹²³. The proposals for Granville Place cannot hope to compete with St Christopher’s Place. More important to achieve is the north-south linkage from Oxford Street to Granville Place, which a comprehensive refurbishment could readily do.

¹¹⁵ see below

¹¹⁶ (SS XIC Presentation [INQ32], p.26 & 36 and SS Rebuttal 3.4.1.1-4)

¹¹⁷ in XX

¹¹⁸ in XIC

¹¹⁹ (SS Rebuttal 3.2.6.1 & 3.2.11.1-3). As the written response to the Inspector’s question to SS on day 5 shows, there are other examples of buildings that have undergone retrofit development that faced similar challenges to the site.

¹²⁰ see SS XIC Presentation INQ32 p.22 photo

¹²¹ (albeit further design consideration could achieve it - SS Rebuttal 3.12.2.1)

¹²² in XIC (Presentation [INQ36] p.71-75)

¹²³ (AF XIC)

47. Many of the alleged obstacles said to be “*fundamental*” by M&S are not in fact problems at all, and are easily resolvable to achieve a scheme of high quality both in terms of retail and office space, and public realm improvements, sufficient to meet the requirements for the site in terms of transformation of Oxford Street, best use of the land in the International Centre and compliance with the spatial strategy. SS and AF cover them all comprehensively in their evidence¹²⁴: floor heights¹²⁵, differences in levels¹²⁶, inefficient core arrangement¹²⁷, services¹²⁸, blank windows to the exterior¹²⁹, identity and façade improvement¹³⁰, the loading bay¹³¹, retail frontage¹³², public realm¹³³, the colonnade and Orchard Street pavement width¹³⁴, and level access from the street¹³⁵.
48. In relation to the latter two points¹³⁶, (1) the existing 5.5m wide pavement outside Selfridges could be reduced to 3.5m, which, with the proposed road realignment and reduction to 3 lanes, would enable the required 3.5m on each side of the street (or even more if the road were reduced to 2 lanes in an effort to discourage traffic; (2) there are multiple existing entrances with level access, which is better than the Pantheon, and the steps to the entrance on the corner of Orchard and Oxford Street is a consequence of topography which will need to be handled equally in a new build. Selfridges’ interior is full of steps.
49. Although a comprehensive retrofit would inevitably have a higher embodied carbon cost than “*light touch*”, that cost would be very significantly below that of a new build. FP and SS agree that a scheme like this would involve the rationalisation of roughly a quarter of the floorplate of the existing building (mainly by core reconfiguration), but¹³⁷ that is still a “*significantly different*” embodied carbon impact compared with losing the whole fabric of the buildings and starting again (especially with carbon intensive multi-level basement excavation as proposed¹³⁸). He said “*you can’t really argue that point*” and indeed it was not challenged¹³⁹. As to operational efficiency, SS estimates that a comprehensive retrofit would achieve “*95%+*”¹⁴⁰, compared with

¹²⁴ FP has put in an overly long last-minute response to SS’s XIC Presentation (INQ45). M&S as the Applicant have the last word, but the Inspector should treat with caution new evidence from FP which (a) has not been subject to cross-examination, and (b) has not been responded to by SS

¹²⁵ (SS Rebuttal 3.2.3.1-4 and SS XIC Presentation [INQ32] p.13-22)

¹²⁶ (SS Rebuttal 3.2.12.1)

¹²⁷ (SS Rebuttal 3.3.4.1-3.3.4.2 and SS XIC Presentation [INQ32] p.23-25)

¹²⁸ (SS Rebuttal 3.6.3.1)

¹²⁹ (SS Rebuttal 3.8)

¹³⁰ (SS Rebuttal 3.9)

¹³¹ (SS Rebuttal 3.10 and XIC Presentation [INQ32] p.25)

¹³² (SS Rebuttal 3.11.13.2)

¹³³ (SS Rebuttal 3.12.2.1, SS XIC Presentation p.25 and AF XIC Presentation [INQ36] p.71-75)

¹³⁴ (SS Rebuttal 3.11.13.2 and AF XIC Presentation [INQ36] p68-70)

¹³⁵ (AF XIC Presentation [INQ36] p.30-34)

¹³⁶ As AF explained in XIC

¹³⁷ as SS explained in XIC (Presentation [INQ32] p.36)

¹³⁸ See the evidence to the inquiry of Julia Barfield INQ5

¹³⁹ in XX

¹⁴⁰ (SS XIC Presentation INQ32, p.34)

100% for the new build, given that some of the comprehensive retrofit will be new floorspace and the existing space can be subject to significant improvements (e.g. double glazing, insulation). In terms of waste, refurbishment easily out-performs a new build, circa 9,000 sqm compared to 35,000 sqm¹⁴¹. All of that waste needs removing from the site, and then a vast quantity of building materials needs to be brought to the site, all generating carbon emissions and huge interference to the locality¹⁴².

50. The evidence of SS, which involves a considered and creative approach to sustainable refurbishment, goes far beyond a mere assertion that there “*might be a refurbishment option which might bring some of the benefits of the application scheme*”¹⁴³. He is the only person at this inquiry to have actually undertaken a robust exploration of retention options as required by guidance. He has presented a clear case for an effective refurbishment scheme that would meet the requirements for the site.
51. FP and CG’s viability concerns regarding a comprehensive retrofit are difficult to believe given the prime location of this site, and the oral evidence of Mr Keith Howard¹⁴⁴ that retailers (and offices) would be queueing up to be next door to Selfridges on Oxford Street in a well-refurbished building¹⁴⁵. In any case, there is no evidence to suggest any viability appraisal of a reasonable refurbishment alternative by M&S. One aspect of “*fully exploring*” and “*robustly exploring*” opportunities to retain the existing building (as required by guidance¹⁴⁶) is to assess the viability and deliverability of a reasonable refurbishment option, and that responsibility falls upon the applicant rather than anyone else (especially not SS or SAVE, a small charity with limited resources objecting to the scheme)¹⁴⁷. It is difficult to understand how a scheme for refurbishment could be robustly explored by the applicant without undertaking any kind of viability appraisal.
52. Although M&S say they have sought to consider the market reaction to refurbishment by obtaining advice from Knight Frank, SS is right that property agents and other advisers will only consider schemes they have been asked to consider, and they have never seen a comprehensive refurbishment scheme of the kind suggested by SS¹⁴⁸. Knight Frank’s expertise is not in actually

¹⁴¹ (SS XIC Presentation INQ32 p.36)

¹⁴² See AF XIC Presentation [INQ36] p.66-67

¹⁴³ (M&S Opening, para. 19)

¹⁴⁴ INQ11

¹⁴⁵ See also SS XIC Presentation INQ32 at p.20, concerning the rental rates for the refurbished 101 New Cavendish Street, in a worse location, dense columns, and lower floor to ceiling heights.

¹⁴⁶ See below

¹⁴⁷ As SS said in REX

¹⁴⁸ The Inspector is invited to place no weight on the 11th hour evidence from Knight Frank [INQ43] which has not been subject to cross-examination and is a defensive effort (from property agents with no architectural refurbishment expertise like SS) to retrospectively prop up M&S’s decision to proceed with a new build. It is a regrettable attempt to plug a significant hole in the report they submitted as evidence (see CG Appendices). It is

considering refurbishment alternatives themselves, but advising on the market for alternatives proposed to them. It is clear¹⁴⁹ from the Knight Frank report¹⁵⁰ that the refurbishment option they considered was not a deep retrofit as per SS's suggestion, because it was (for example) still assuming retention of the existing core configuration. Leslie Jones Architects¹⁵¹ only considered what was set out in the DAS, which has already been shown to have been limited to light touch and façade retention.

53. The inquiry has heard that M&S is struggling financially, and there is no wonder that they are pursuing what would be the most valuable scheme for them. Although a retrofit might not be of such high development value as the new build, (a) the private commercial value to M&S is not a factor to be given much if any weight by the Inspector, and (b) there is nothing to suggest that a comprehensive retrofit could not achieve a very significant uplift in value for M&S (as well as reputational kudos for pursuing a market-leading sustainable retrofit consistent with their Plan A commitments).
54. The Inspector should also not be swayed by M&S's threat to leave Orchard House altogether if planning permission is refused. As said in Opening, this is not the constructive attitude of a retailer dedicated to sustainability, heritage conservation and the future success of Oxford Street. It is of a piece with M&S's dismissive approach to any form of refurbishment. There is also no guarantee even with the new build that they would remain in occupation¹⁵².
55. To repeat SAVE's Opening, this is not a case where overriding the initial embodied carbon cost is justified because the buildings in question are causing significant heritage harm or structurally unsound. There is no fundamental structural, façade deterioration or safety reason why these buildings should be demolished¹⁵³. They are fully viable carbon assets and positively contribute to the setting of designated assets (alongside Orchard House being a NDHA in its own right). The sustainability and heritage cases in support of retention intertwine. As HE¹⁵⁴ noted, "*the proposals potentially represent a missed opportunity to retain the best parts of the existing building, through its reuse and adaptation. This could enable a more sustainable form of development (as promoted by the NPPF), with the positive elements of Selfridges' setting being*

no surprise that Knight Frank and other advisers wish to promote a scheme that will be the most commercially valuable for their clients, and undermine any alternative.

¹⁴⁹ As SS explained in REX

¹⁵⁰ (CD10.4, p.209, paras. 10.33-10.36)

¹⁵¹ (CD10.4, p.159)

¹⁵² Absent a personal condition which all parties consider to be inappropriate.

¹⁵³ As FP accepted in XX, in agreement with SS,

¹⁵⁴ (CD4.4)

preserved. Such a solution might also be more sustainable in an environmental sense ...". SAVE could not improve on how it is put in WCC's Historic Environment Background Paper¹⁵⁵:

"... the re-use of historic buildings can also help in the fight against climate change. Demolishing buildings uses a considerable amount of energy, combined with the energy costs of producing new materials, transporting them to site and constructing a replacement building. A sustainable future will need to find ways to reuse and regenerate our existing building stock and this is particularly important for Westminster. With 80% of the building stock we will have in 2050 already here today, our older buildings will play an important role in our ability to function effectively in the future and deliver our housing and employment needs."

Policy conflict

56. It is important for the Inspector to understand how SAVE considers there to be a breach of development plan policy in relation to this issue, because SAVE's interpretation of the policies has been consistently misunderstood by M&S.
57. SAVE's case is attacked as wrongly interpreting policy, for example as imposing an "*embargo on demolition*"¹⁵⁶ or as requiring an applicant to "*rule out*" retention¹⁵⁷, or as requiring retention even where the building is not suitable for the requirements of the site or making the best use of land¹⁵⁸. This is not SAVE's position.
58. M&S is also wrong to say that SAVE does not understand the distinction between policy and guidance. SAVE correctly uses the supporting text to a policy as an aid to the interpretation of that policy, and uses guidance produced in respect of a policy as an aid to the application of that policy¹⁵⁹. M&S themselves advocate that "*the purpose of the guidance is to assist the GLA [or now the Inspector] to form its expert judgment as to whether the provisions of the Plan have been complied with*"¹⁶⁰. CG agreed¹⁶¹ that: (1) the guidance informs the decision-maker how to assess an application under the relevant policy, and decide whether policy has been complied with; (2) although a breach of guidance is not itself a breach of policy, it can be relevant to the consideration of whether a policy has been breached.

LP Policy D3 "Optimising site capacity through the design-led approach"

59. Policy D3 provides that "*all development must make the best use of land by following a design-led approach that optimises the capacity of sites ... Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site*". The "*design-led*

¹⁵⁵ (INQ23, p.4.27)

¹⁵⁶ (CG PoE para. 8.4)

¹⁵⁷ (M&S Opening 17 and 77)

¹⁵⁸ (M&S Opening 82) (see also CG Rebuttal para. 6.6, M&S Opening at 15, 74 and 78)

¹⁵⁹ an approach which CG rightly endorsed in XX

¹⁶⁰ CG agreed with MA (Rebuttal, para. 14)

¹⁶¹ in XX

approach” requires “*consideration of design options to determine the most appropriate form of development*”, which involves considering what “*best delivers the requirements set out in Part D*”. Part D refers to a number of requirements, including for development to “*aim for high sustainability standards (with reference to the policies within London Plan Chapters 8 and 9) and take into account the principles of the circular economy*”.

60. The explanatory text for policy D3¹⁶² states:

“Figure 3.2 shows a hierarchy for building approaches which maximises use of existing materials. Diminishing returns are gained by moving through the hierarchy outwards, working through refurbishment and re-use through to the least preferable option of recycling materials produced by the building or demolition process. The best use of the land needs to be taken into consideration when deciding whether to retain existing buildings in a development”.

61. Figure 3.2 indicates that “*Retain, Refit and Refurbish*” are the priority options in the hierarchy of building approaches. Deciding on the best use of the land and the most appropriate form of development involves consideration of whether to refurbish or rebuild, and there will be cases where the best use of land and form of development is a refurbishment¹⁶³. As CG said¹⁶⁴ “*if retaining existing buildings would result in an important site not making best use of land then the requirements of D3 would not be met*”. The converse would also be true, namely that if refurbishment would be the best use of land, then policy D3 would be breached¹⁶⁵.

62. In view of their inadequate consideration of refurbishment options, M&S have failed to show that the scheme makes “*the best use of the land*” and is “*the most appropriate form of development*”. For the reasons set out in relation to policies SI2 and SI7, the development also does not deliver requirement D3(D)(13), which is to aim for high sustainability standards, taking into account the principles of the circular economy. This is the basis upon which the Inspector is invited to find a breach of policy D3.

LP Policy SI2 “Minimising greenhouse gas emissions”

63. Alongside the requirement for major development to be net zero carbon, part F of policy SI2 requires that “*development proposals referable to the Mayor should calculate whole-life cycle carbon emissions through a nationally recognised Whole-Life-Cycle Carbon Assessment and demonstrate actions taken to reduce life-cycle carbon emissions*”. This is explained in the

¹⁶² CD6.2 clause 3.3.12, p114

¹⁶³ CG accepted this in XX

¹⁶⁴ At CG Rebuttal para. 3.9

¹⁶⁵ CG accepted this in XX

supporting text at para. 9.2.11¹⁶⁶, which provides that information on what assessments should contain will be set out in guidance.

64. The guidance is the London Plan Guidance on Whole Life-Cycle Carbon Assessments (“LPG WLCA”) (March 2022)¹⁶⁷. As para. 1.1.1 states, “*this guidance explains how to prepare a Whole Life-Cycle Carbon (WLC) assessment in line with Policy SI 2 F of the London Plan 2021 using the WLC assessment template*”. At para. 1.1.2, “*this guidance explains how to calculate WLC emissions and the information that needs to be submitted to comply with the policy*”. Table 2.1 of the LPG WLCA¹⁶⁸ sets out the “WLC principles”, which are to “*inform the design of the development ... throughout the WLC assessment process*”. The first WLC principle is entitled “*reuse and retrofit of existing built structures*”. The principle requires that the retention of existing built structures for reuse and retrofit should be “*prioritised*” before considering substantial demolition. Principle 16, named the “*circular economy*” similarly focuses on the need to “*reuse and retrofit of existing buildings*”. Section 3 of the LPG WLCA requires that (emphasis added) “*options for retaining existing buildings and structures have been fully explored before considering substantial demolition, including incorporating the fabric of existing buildings into the new development*”¹⁶⁹). Para. 3.1.3 provides (emphasis added):

“If substantial demolition is proposed, applicants will need to demonstrate that the benefits of demolition would clearly outweigh the benefits of retaining the existing building or parts of the structure. Retention should be seen as the starting point; this will usually be the most sustainable option as it can make an immediate contribution toward the Mayoral objective of London becoming a zero carbon city by 2030, as well as reflecting the need to both move towards a low-carbon circular economy (set out in Good Growth objective GG6 – Increasing efficiency and resilience) and to push development up the waste and energy hierarchies (see Policy SI 2 – minimising greenhouse gas emissions; and Policy SI 7 – reducing waste and supporting the circular economy).”

65. M&S point out that, at the time the application was submitted, the LPG WLCA was only in draft form¹⁷⁰. However, that does not assist M&S: (a) the Inspector must consider the application against the adopted guidance as it applies today; (b) in any event, the guidance expressly states¹⁷¹ that “*Applicants are encouraged to keep returning to the WLC principles throughout each stage of the WLC assessment so that they continue to inform the design of the development as it evolves*”.

¹⁶⁶ (CD6.2, p.346)

¹⁶⁷ (CD6.32)

¹⁶⁸ (p.4)

¹⁶⁹ (see e.g. for the planning application submission stage para. 3.2.2, Box 4, point 5 (CD6.32, p.26)

¹⁷⁰ MA Rebuttal para. 9

¹⁷¹ at para. 3.1.5 (CD6.32, p.25)

66. CG¹⁷² accepted that, if there were “*substantive*” breaches of the guidance, for example a failure to “*prioritise*” and “*fully explore*” options for retrofitting the existing buildings, and a failure to demonstrate that the benefits of demolition “*clearly outweigh*” the benefits of retaining the existing building, then the decision-maker could conclude that an “*appropriate*” WLC assessment has not been submitted to comply with the policy. That is SAVE’s case to the Inspector. It would be open to the Inspector to conclude a breach of policy SI2(F) due to the failure to submit an appropriate WLC assessment and “*demonstrate actions taken to reduce life-cycle carbon emissions*”¹⁷³.

LP Policy SI7 “Reducing waste and supporting the circular economy”

67. Part A of this policy provides that “*Resource conservation, waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal will be achieved by the Mayor, waste planning authorities and industry working in collaboration to: 1) promote a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible, 2) encourage waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products*”. Part B of the policy requires referable applications to “*promote circular economy outcomes and aim to be net-zero waste*”, and requires the submission of a “*Circular Economy Statement*”. Para. 9.7.1 of the supporting text explains what is meant by a “*circular economy*” and para. 9.7.3 explains that Mayoral guidance will be published on Circular Economy Statements.
68. The guidance is the London Plan Guidance on Circular Economy Statements (March 2022) (“LPG Circular Economy”)¹⁷⁴. Para. 1.1.3 provides that this document “*includes guidance on how ... prioritising the reuse and retrofit of existing structures ... can promote CE outcomes*”. “*Circular Economy design approaches*” are introduced in section 2.3, which includes the same “*hierarchy for building approaches*” that is found in the supporting text to policy D3 of the LP (see above). The use of existing materials must be “*maximised*”¹⁷⁵. Section 2.4 deals with “*Circular Economy design approaches for existing buildings*”. Figure 4 explains that, if there is an existing building on site, consideration should be given to whether it is “*technically feasible to retain the building(s) in whole or in part*”, and whether the “*existing building, or parts of the building [is] suited to the requirements for the site*”. If so, then retention and retrofit is the correct approach to take.

¹⁷² in XX

¹⁷³ (CD6.2, p.343)

¹⁷⁴ (CD6.30)

¹⁷⁵ see para 2.3.4

69. Para. 2.4.2 provides that “*retaining existing built structures totally or partially should be prioritised before considering substantial demolition*”. Para. 2.4.3 provides that (emphasis added) “*proposals that are further down the hierarchy will require more detailed and compelling justification*”. Para. 2.4.5 provides that (emphasis added) “*applications should robustly explore the options for retaining existing buildings (either wholly or in part)*”, and that “*applicants should set out how the options for retaining and reconstructing existing buildings have been explored and discounted*”.
70. For the reasons given above, M&S have failed to “*prioritise*” retention, and have not given the required “*detailed and compelling justification*” for demolition and re-build. There has been no “*robust exploration*” of options for retention. They have applied the decision tree to conclude that the existing buildings are not “*suited to the requirements for the site*” without adequately considering a deep retrofit scheme. SS has carefully set out (as explained above) how the existing buildings can, with a comprehensive refurbishment, be suited to the requirements for the site (which SS accepted¹⁷⁶ include optimisation, transformation of Oxford Street and compliance with the spatial strategy). CG accepted¹⁷⁷ that “*substantive*” guidance breaches, if found, would be relevant to deciding whether policy SI7 has been complied with. Those breaches should lead the Inspector, in applying policy SI7(A) & (B), to find a breach due to failure by the scheme to achieve acceptable “*resource conservation, waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal*” through (1) “*promoting a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible*”, and (2) “*encouraging waste minimisation and waste prevention through the reuse of materials and using fewer resources in the production and distribution of products*”.

WCP Policy 36

71. Policy 36A¹⁷⁸ requires applications to “*promote zero carbon development*” and “*minimise the effects of climate change*”. Para. 36.1 of the supporting text, which is an aid to the interpretation and application of the policy, states “*it is essential that developments utilise every opportunity to reduce emissions now to limit the extent of future climate change*”. Para. 36.2 states that support will be given to “*proposals that seek to sensitively refurbish or retrospectively improve the performance of current buildings to reduce their energy use ... Interventions to upgrade historic buildings will be undertaken sensitively in recognition of their heritage value*”. SAVE’s case is that the scheme has not utilised every opportunity to reduce emissions, and has failed to properly

¹⁷⁶ in XX and in his Rebuttal 3.1

¹⁷⁷ in XX

¹⁷⁸ (CD6.3, p.137)

consider a proposal for sensitive refurbishment and retrofitting of energy measures. It therefore does not “*promote zero carbon development*” and “*minimise the effects of climate change*”.

WCP Policy 38

72. Policy 38¹⁷⁹ sets out a number of “*design principles*”, requiring at A that “*new development will incorporate exemplary standards of high quality, sustainable and inclusive urban design and architecture befitting Westminster’s world-class status, environment and heritage ...*”. Under part D of the policy, headed “*sustainable design*”, “*development will enable the extended lifetime of buildings and spaces and respond to the likely risks and consequences of climate change by incorporating principles of sustainable design, including ... optimising resource ... efficiency*”. The Inspector should also read the supporting text to this policy at para. 38.11 as an aid to interpretation and application of the policy. Policy 38D is breached because the development does not adequately incorporate principles of sustainable design, including optimising resource efficiency, due to the inadequate consideration of deep retrofit.

WCP Policy 39

73. Policy 39 (CD6.3, p.148) provides at point B that “*development must optimise the positive role of the historic environment in Westminster’s townscape, economy and sustainability*”, which includes the need for securing (at (2)) “*the conservation and continued beneficial use of heritage assets through their retention and sensitive adaptation which will avoid harm to their significance, while allowing them to meet changing needs and mitigate and adapt to climate change*”. The Inspector should also read the supporting text to this policy at para. 39.3 as an aid to interpretation and application of the policy. Policy 39B is breached because the development does not optimise the positive role of the historic environment in Westminster’s sustainability. There has been a failure to retain and sensitively adapt the existing buildings, and there is inadequate mitigation against climate change due to the carbon emissions associated with demolition and a new building, as opposed to pursuing a deep retrofit scheme.

Planning balance

74. M&S has argued¹⁸⁰ that SAVE’s position on retrofit and heritage is contrary to LP and WCP principles of “*good growth*” and the “*best use of the land*”. But WCP policy 39B(3)¹⁸¹ requires heritage to be “*at the heart of place making and good growth*”¹⁸². Policy GG5 of the LP¹⁸³ recognises the role in growing a good economy by (1) under point F, promoting and supporting

¹⁷⁹ (CD6.3, p.146)

¹⁸⁰ (see e.g. CG Rebuttal paras. 2.3, 3.2 and 6.5)

¹⁸¹ (CD6.3 p.148)

¹⁸² (see also paras. 39.1 and 39.3 of the supporting text)

¹⁸³ (CD6.1, p.24)

London's rich heritage assets, and (2) under point H, "*recognising and promoting the benefits of a transition to a low carbon circular economy to strengthen London's economic success*". Policy GG6 similarly indicates the centrality of sustainability to the good growth agenda. CG accepted in XX that the "*best use of the land*" (as explained above in relation to policy D3) involves considerations of both heritage and sustainability, and that there is "*no policy steer*" in LP policies SD4, SD5 or SD8 in favour of demolition and re-build over refurbishment (the policies are instead "*neutral*" in that regard).

75. For the reasons set out above (i.e. the heritage impacts and the effect of the proposals on the transition to a zero-carbon economy), the scheme does not comply with the following policies: LP policies D3, HC1, SI2 and SI7, and WCP policies 36, 38, 39 and 40. Although there are many ways in which the scheme complies with development plan policies, the conflicts identified are so significant that the Inspector is invited to conclude that the scheme fails to accord with the development plan taken as a whole, and no material considerations would justify a departure.
76. There is one alleged "*highly material consideration*"¹⁸⁴ which is in fact not a material consideration at all: the threatened demolition of Orchard House without planning permission for a new building. SAVE can only make sense of this threat as an apparent "fall-back" in the event that permission is refused for the scheme. For a fall-back to be a material consideration, there needs to be a "*real prospect*" of such fall-back development coming forward should planning permission be refused¹⁸⁵. CG accepted that M&S had no intention of undertaking demolition, but may sell the site to someone who would.
77. But the problem with the claimed fallback is two-fold: (1) there cannot be any evidence of a future intention to demolish because nothing is known about the identity of any future buyer, assuming M&S do sell the site); (2) even if a prior notice to demolish were given, it is known from draft condition 14¹⁸⁶ (which all parties agree is necessary to make the development acceptable) that WCC are concerned about having a vacant site due to the harm that would be caused to heritage assets¹⁸⁷. There is therefore a "*strong chance*"¹⁸⁸ that WCC would move to extend the CA boundary to cover Orchard House on account of it being a newly-threatened NDHA which makes a positive contribution to the setting of designated assets. WCC Councillor Jessica Toale¹⁸⁹ said there is a "*strong case*" for inclusion of Orchard House in the CA) and no

¹⁸⁴ (CG, XIC)

¹⁸⁵ see *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314, para. 27

¹⁸⁶ (INQ42)

¹⁸⁷ as AF explained in XIC,

¹⁸⁸ (AF XIC)

¹⁸⁹ (INQ10)

other Councillor has sought to gainsay that¹⁹⁰. The WCC Statement of Community Involvement¹⁹¹ only provides that WCC “*may*” consult on proposals for CA extensions, not that they must. Where there is an urgent threat of demolition, WCC would not permit any delay for consultation.

78. Another consideration which is not at this stage material is WCC’s Reg. 18 statement¹⁹², which proposes a new policy on retrofit. No weight can be given to it at this early stage¹⁹³. Even if it were material, such a policy is not needed, in light of the existing policies, but helpfully shows a clear direction of travel in strengthening further WCC’s ambition to prioritise retrofit.
79. Applying the balance in NPPF para. 202, the Inspector is invited to accept the evidence of AF, for the reasons he gives, that the less than substantial harm¹⁹⁴ to multiple heritage assets is not outweighed by the scheme’s public benefits (many of which – as SS and AF demonstrate – could be achieved without the heritage harm, through a sustainable comprehensive retrofit scheme, in support of the CAZ and International Centre). There is also the total loss of Orchard House which must be weighed into the planning balance under NPPF para. 203. The scheme also breaches NPPF para. 152: the planning system should support the transition to a low carbon future by encouraging “*the reuse of existing resources, including the conversion of existing buildings*”.

Conclusion

80. The Inspector is invited to recommend to the Secretary of State that the application be refused.

MATTHEW FRASER
Landmark Chambers
180 Fleet Street, London
4 November 2022

¹⁹⁰ as AF noted in XX

¹⁹¹ (INQ41 p.28)

¹⁹² (raised in REX of CG)

¹⁹³ CG in REX

¹⁹⁴ Even if calibrated to the level of less than substantial harm suggested by HE rather than AF: AF REX.