

MARKS & SPENCER, 456-472 OXFORD STREET, LONDON

PCU/RTI/X5990/3296903

OPENING SUBMISSIONS BY SAVE BRITAIN'S HERITAGE

Introduction

1. Marks & Spencer Plc ("**M&S**") seek planning permission to demolish their existing store at 456-472 Oxford Street and build a new 10-storey building with a mixed use for retail, café/restaurant, offices, gym and pedestrian arcade.
2. SAVE Britain's Heritage ("**SAVE**") object to the planning application because of:
 - (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. SAVE wrote to the Secretary of State on 18 May 2022 requesting that he call the application in for his own determination under section 77 of the Town and Country Planning Act 1990 ("**the 1990 Act**") (AF9). The Secretary of State exercised his call-in power on 20 June 2022 (CD7.01).

SAVE

4. SAVE is a small independent charity whose purpose is to campaign to protect threatened historic buildings and encourage the sustainable re-use of buildings. They have been operating since 1975. Due to the high volume of requests for assistance in relation to planning applications and the charity's limited resources, they are only able to take on a small number of cases as major campaigns. They are highly selective about cases they are able to pursue at a public inquiry.

The effect of the proposals on the significance of heritage assets

5. Part of the existing M&S store proposed for demolition is Orchard House, which is a non-designated heritage asset. Demolition of Orchard House and the erection of the proposed new building will result in the total loss of the heritage asset, and it will be SAVE's case that this will also cause "*less than substantial*" harm to the significance of a number of designated heritage assets.
6. 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*": *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), at [55]. 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*": [49].
7. Orchard House was completed in 1930. It was extended to the north (23-24 Orchard Street 1968-1970) and west (Neale House 1986). It possesses "*considerable architectural and historic interest*" (AF PoE para. 4.8), both in its own right and equally importantly because of its relationship with Selfridge's, a grade II* listed building, immediately to its east. The positive contribution to the setting of Selfridge's, and the strong group value, owing to stylistic similarities, is recognised by Historic England in their comments on the planning application: AF2.
8. M&S will emphasise the unsuccessful attempt by the 20th Century Society to get the building listed, but as AF will explain, "*the failure to meet Historic England's exacting criteria does not mean that Orchard House is not of considerable heritage interest and heritage significance*": AF PoE para. 4.10.

9. Although not in a conservation area itself, Orchard House is in the setting of a number of listed buildings and conservation areas, all assessed of moderate/high or high significance by AF.
10. The significant impact of both the demolition and the new building will be considered in the evidence of AF to this inquiry.
11. SAVE will explain to the inquiry that the heritage impacts have been considerably underestimated by M&S, and are not outweighed by the public benefits of the scheme.

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

12. There is another very significant impact quite apart from the heritage harm. The initial upfront embodied carbon expenditure arising from the construction of the new building is nearly 40,000 metric tons of CO₂ (i.e. 40 million kilograms), the equivalent of driving a typical car 99,000,000 miles, "*further than the distance to the Sun*" (SS4, p.49). Added to this will be a further CO₂ cost from the demolition of the existing buildings, amounting to 1,860,797 kilograms (MA Appx 1).
13. Such a significant embodied carbon cost could have been avoided (and could still be avoided) if M&S seriously and creatively considered the option of refurbishing the buildings, as the evidence of SS will explain. A comprehensive retrofit of the buildings 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 scheme.

14. And yet, despite the “win / win” outcome of a deep retrofit, keeping the carbon cost as low as possible has never been an key objective or priority for M&S. Initial feasibility studies in 2018 focused on whether there was sufficient heritage merit in retaining the buildings, and on the objective of producing new retail and office space of the highest quality to try and counteract declining sales and a poor performance.
15. One can sympathise with M&S for wanting a brand new building and releasing the commercial value that this would bring. However, the decision to proceed with a new build – without considering a comprehensive retrofit option like that proposed by SS – was made in 2018 / early 2019 and it has never been revisited. Since then, climate legislation and regional and local planning policy has caught up with the terrifying reality of the global climate emergency.
16. The concentration of greenhouse gases (“GHGs”) has been rising steadily – and, with it, mean global temperatures – since the start of the Industrial Revolution. The most abundant GHG, accounting for at least two thirds of all GHGs, is CO₂ which is largely the product of burning fossil fuels. As the Divisional Court stated in *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240, at [559] (emphasis added):

“The increase in global temperature has resulted in (amongst other things) sea level change; a decline in glaciers, the Antarctic ice sheet and Arctic sea ice; alterations to various ecosystems; and in some areas a threat to food and water supplies. It is potentially catastrophic.”
17. If there is anyone in this room who does not find this completely frightening, then they are either not listening, or they do not understand it. It is not an understatement to say that the survival of the human race is at stake if we do not all play our part in addressing the climate emergency.
18. Article 2 of the Paris Agreement, ratified by the UK on 17 November 2016, seeks to strengthen the global response to climate change by holding the increase in

global average temperature to 2C above pre-industrial levels, and by pursuing efforts to limit that increase to 1.5C.

19. On 27 June 2019, section 1 of the Climate Change Act 2008 (“CCA”) was amended to require the UK Government to ensure that “the net UK carbon account” for 2050 is at least 100% lower than the baseline in 1990 for CO₂ and other GHGs. This is known as the “net zero” duty. It replaced the previous requirement for an 80% reduction.
20. On 12 December 2020, the UK committed to reducing national GHG emissions by 2030 by at least 68% compared to 1990 levels.
21. The CCA establishes a framework of successive carbon budgets by which the UK may progress towards meeting its 2050 net zero target. The sixth carbon budget (for the period 2033-2037) came into force on 24 June 2021. Although the UK has overachieved the first two carbon budgets and is on track to meet the third, the sixth carbon budget is the first to be based on the net zero target, and the first to include emissions from international aviation and shipping attributable to the UK. The sixth carbon budget is “*substantially more challenging than those previously set*”: *R (Friends of the Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) at [12].
22. A quarter of the UK’s total GHG emissions are attributable to the built environment. As the House of Commons Environmental Audit Committee explain in their report “Building to net zero: costing carbon in construction” (26 May 2022) (“**the EAC Report**”) (paras. 1-5), embodied emissions from the demolition and construction of buildings amounts to some 40 to 50 million tonnes of CO₂ annually, more than emissions from aviation and shipping combined. Significant carbon impacts will necessarily arise from the need to construct more homes to meet the national housing crisis. In the words of the EAC:

“Finding the appropriate balance between demolition and new building versus reuse and retrofitting of existing buildings is crucial to a built environment policy which delivers sustainable outcomes. ... Considerable emissions are involved in demolition and rebuilding of properties, especially when measured under a whole-life carbon approach: under this approach, it becomes more debatable whether the replacement of properties is a sustainable approach to take”.

23. As the EAC Report states at para. 72, “if the UK continues to drag its feet on embodied carbon, it will not meet net zero or its carbon budgets”.

24. In section 5 of the EAC Report, headed “Retrofit and reuse of existing buildings”, the committee state:

“The construction, demolition and excavation sector is responsible for 62% of the total waste generated in the UK. It is estimated that 80% of buildings currently standing will still be in use in 2050: if the UK is to meet its net zero goals, the majority of these will require retrofitting to become energy efficient” (para. 185).

“There is a clear policy imperative to reduce the consumption of resources in the building and construction sector, to reduce waste material arising from demolition and replacement of existing properties, and to prioritise work to reduce emissions attributable to the built environment” (para. 186).

“The evidence we received consistently recommended that retrofit and reuse be prioritised over new build in order to conserve resources, reduce waste, minimise embodied carbon emissions, and provide a cost-effective solution to delivering on housing demands.” (para. 187).

25. The UK Government’s own submission to the inquiry stated that it understood the importance of properly accounting for carbon, “*which is why we are promoting the benefits of reusing and retrofitting ahead of demolition*” (para. 189). The committee received written evidence which “*presented a broad consensus that retrofit and reuse of existing properties was substantially more effective at conserving carbon than demolition and new build, even when the new construction used lower carbon materials*”.

26. The EAC Report even includes the M&S scheme as a “*case study on demolition and retrofit*”, which “*brings the debate regarding the environmental credentials of new build versus retrofit into public focus*” (SS4, p.49).

27. In recognition of the global climate emergency and in order to enable the construction industry to meaningfully contribute to complying with the “net zero” obligation in section 1 of the CCA, the London Plan 2021 (“LP”) and the Westminster City Plan 2021 (“WCP”) contain crucial policies, supported by supplemental guidance, directed at promoting the Circular Economy, minimising GHG emissions and the effects of climate change, and prioritising the re-use and retrofit of existing buildings over their demolition.
28. While the adoption of such policies by the Mayor of London and Westminster City Council (“WCC”) is laudable, they have been misapplied in this case. This scheme presented an ideal opportunity to showcase what these policies could achieve, and that opportunity has been missed by the Mayor and WCC.
29. SAVE will in due course invite the Inspector to recommend to the Secretary of State that this scheme is not consistent with the UK’s transition to a carbon neutral economy, and not compliant with relevant sustainability policies.

Planning balance

30. One could readily understand the temptation to override the initial embodied carbon cost if the buildings in question were causing significant heritage harm or structurally unsound. But the existing buildings in this case are respectively 92, 49 and 42 years old. There is no fundamental structural, façade deterioration or safety reason why these buildings should be demolished. They are fully viable carbon assets. Furthermore, quite apart from causing heritage harm, Orchard House is itself a non-designated heritage asset that would be totally lost if demolished. It also contributes to the significance of designated heritage assets, most notably Selfridge’s.
31. SAVE does not dispute that there is much to like about the scheme, especially the operational energy efficiency credentials of the new build. However, there is

no reason why a perfectly feasible refurbishment cannot be undertaken and still achieve the legitimate objectives of increasing energy efficiency, improving the retail space, public realm enhancements and introducing high quality offices. And all of this can be realised without the huge embodied carbon cost of the proposed scheme.

32. Despite claiming that sustainability is at the core of their brand and committing to being a net zero business by 2040 (SS15), M&S have dismissed the creative refurbishment alternative to such an extent that they have made a threat to the Secretary of State to leave Orchard House altogether if they do not get their way. This is not the constructive attitude of a retailer dedicated to sustainability, heritage conservation and the future success of Oxford Street.
33. SAVE's submission will be that there is a compelling case against knocking these buildings down. Added to this, the new building as proposed will harm the significance of designated heritage assets, including Selfridge's next door.
34. In relation to the policies of the LP and WCP, SAVE will give evidence that the scheme does not comply with the following policies:
 - (1) **LP policy D3** – the most appropriate form of development is a comprehensive refurbishment rather than demolition and new-build, and the development fails to respond to the existing character of a place and utilise the heritage assets that contribute towards the local character.
 - (2) **LP policy HC1** – the scheme harms rather than conserves the significance of heritage assets.
 - (3) **LP policy SI2** – M&S has not adequately demonstrated by reference to their whole life carbon assessment that, as required by London Plan Guidance which informs how to assess an application under policy SI2, the retention of existing built structures for reuse and retrofit has been “prioritised” and

“fully explored” before considering substantial demolition. M&S have failed to demonstrate that the benefits of demolition would “clearly outweigh” the benefits of retaining the existing buildings.

- (4) **LP policy SI7** – the scheme does not promote a more circular economy and minimise waste because, as required by London Plan Guidance which informs how to assess an application under policy SI7, it does not “prioritise” and “robustly explore” the re-use of the existing buildings in a comprehensive retrofit scheme.
- (5) **WCP policy 36** – the scheme does not minimise the effects of climate change by utilising every opportunity to reduce emissions, and has failed to properly consider a proposal for sensitive refurbishment and retrofitting of energy measures.
- (6) **WCP policy 38** – the scheme does not optimise resource efficiency through refurbishment rather than demolition and re-build, and does not have regard to the character and appearance of the existing area, adjacent buildings and heritage assets.
- (7) **WCP policy 39** – the scheme does not secure “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”. It does not ensure heritage assets and their settings are conserved and enhanced in a manner appropriate to their significance. It does not maintain the unique character of Westminster’s heritage assets or enhance their settings, and does not preserve or enhance the character and appearance of Westminster’s conservation areas. It also does not conserve the non-designated heritage asset of Orchard House.

- (8) **WCP policy 40** – The development is not sensitively designed, having regard to the surrounding townscape.
35. Although there are many ways in which the scheme complies with development plan policies, the conflicts identified above are so significant that the Inspector will be 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.
36. Applying the balance in para. 202 of the National Planning Policy Framework (“NPPF”), the less than substantial harm to multiple heritage assets is not outweighed by the scheme’s public benefits. There is also the total loss of Orchard House which must be weighed into the planning balance under NPPF para. 203.
37. The scheme also breaches NPPF para. 152, under which 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

38. The Inspector will in due course be asked to recommend to the Secretary of State that the application be refused.

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