

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 13 October 2020	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Marylebone High Street	
Subject of Report	Luxborough Tower, Luxborough Street, London, W1U 5BF		
Proposal	Redevelopment of existing play space to provide a new building comprising a flexible Class D1 (non-residential institutions) use at ground floor level, 14 x affordable house units (7 x 1-bed and 7 x 2-bed) on first to fifth floors with associated terraces/balconies (Class C3); associated access and other works including a subterranean rainwater harvesting tank; new plant, cycle parking, refuse storage and landscaping. Removal of existing boundary railings and brick wall base adjoining Paddington Street Gardens North and construction of new boundary wall. (COUNCIL'S OWN DEVELOPMENT).		
Agent	Stantec UK Limited		
On behalf of	Westminster City Council		
Registered Number	19/06451/COFUL	Date amended/ completed	25 August 2020
Date Application Received	15 August 2019		
Historic Building Grade	Unlisted		
Conservation Area	-		

1. RECOMMENDATION

1. Grant conditional permission subject to a s106 planning obligation to secure the following:
 - a) the provision of 14 intermediate affordable housing units
 - b) The provision of Lifetime car membership (minimum 25 years) in association with each of the proposed prior to first occupation .
 - c) A carbon offset contribution of £24,824 to address the shortfall in carbon savings.
 - d). Cost associated with the replacement of two street trees outside the site on Luxborough Street (5,000 per tree)
 - f) Highway works
 - e) S106 monitoring costs
2. If the s106 legal agreement has not been completed within 6 weeks then:
 - a) The Director of Pace Shaping and Town Planning shall consider whether the permission can be issued with additional conditions attached to secure the benefits listed above. If this is possible

and appropriate, the Director of Planning is authorised to determine and issue such a decision under Delegated Powers; however, if not

b) The Director of Place Shaping and Town Planning shall consider whether permission should be refused on the grounds that it has not proved possible to complete an agreement within an appropriate timescale, and that the proposals are unacceptable in the absence of the benefits that would have been secured; if so the Director of Planning is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.

2. SUMMARY

The application relates to the development of a play space in the grounds of Luxborough Tower which, although originally intended for use by Luxborough Tower residents, has a long history of use by the wider community, as acknowledged by the applicants. Permission was granted, in 2014, for the redevelopment of the site to provide a replacement public library and nine market flats. The Committee resolved that the benefits of providing a new library outweighed to the loss of the play space notwithstanding the absence of proposals to provide a replacement play facility. This permission has now expired and the library will be located on an alternative site. A hoarding was erected around the site following the approval of the library scheme and it has been unused since that time.

This application is for the redevelopment of the play space to provide 14 affordable housing units (7 x 1 bed and 7 x 2 bed) for intermediate rent and use as a nursery, creche, public hall or exhibition hall on part of the ground floor, with access to a rear courtyard space. Development Plan policies seek to protect existing open/recreational space and the redevelopment of existing social and community facilities will only be permitted if the existing facility is replaced, unless it has been demonstrated that it is surplus to requirements, in which case it should be replaced by an alternative social and community use for which there is a known need. No replacement play facility would be provided as part of the proposals.

While there is some support for the scheme, a considerable number of objections have been received, including an 800+ signatory petition presented to the Council prior to the submission of the application. Objections principally centre around the loss of open space and the redevelopment of the play space on the basis that the play space was a well-used by local children, that there are no alternative facilities in the area for older children and that there is a clear need for the provision of play facilities close to high, and expanding, residential concentrations. Other objections relate to the impact of the development upon the amenity of neighbouring residential properties; the height, bulk and detailed design of the new building, and its impact on the streetscape, and the impact of building works. The applicants acknowledge the policy presumption to protect the existing open space/play space but consider that the benefits of the scheme, in providing new affordable housing and an alternative social and community facility, outweigh the objections to the loss of the open space and play space.

The key issues in this case are;

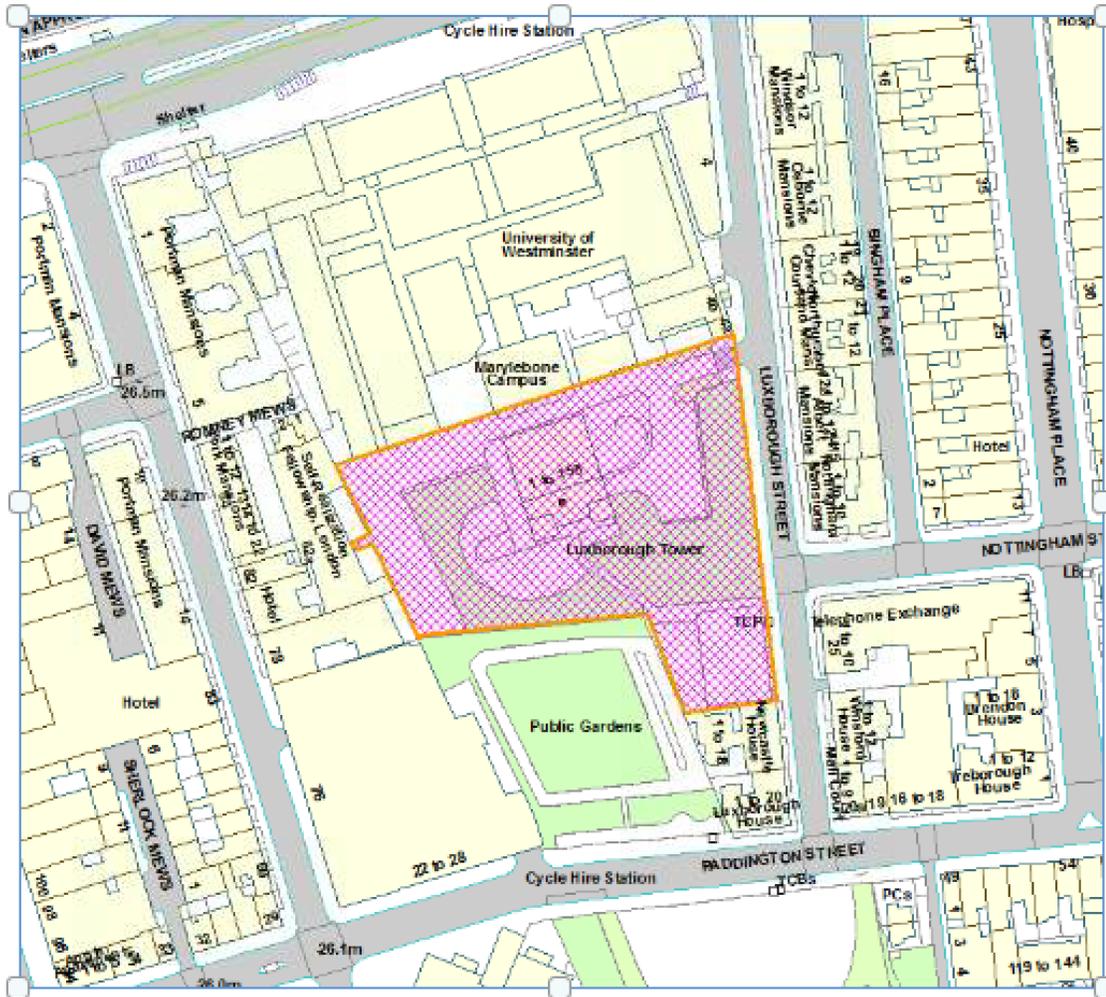
- The principle of redevelopment of the existing open space
- The acceptability of the loss of the existing play space, for which there is an apparent on-going need, in the absence of proposals to provide an equivalent replacement facility
- The acceptability of the proposed development in land use terms

- The impact of the development upon the amenities of neighbouring occupiers and local environmental quality
- The acceptability of the scheme in design and townscape terms
- The impact of the proposals upon adjacent trees
- The acceptability of the development in highways and parking terms.

Subject to conditions, the proposed building is considered acceptable in its townscape context and would have no material impact upon the amenity of neighbouring occupiers, local environmental quality or the character of the adjacent Paddington Street Gardens North. Conditions are proposed to safeguard retained trees and to secure replacement planting,

There is an acknowledged demand for new affordable housing for intermediate rent, and this part of the proposals is welcomed. Subject to conditions, the proposed social and community uses (nursery, creche, public hall or exhibition hall) are also considered acceptable in principle and the committee is requested to agree that the provision of one or more of these would be sufficient to outweigh the policy objections to the loss of existing play space, as both a community facility and as open space, in the absence of any linked proposals to re-provide the play facility.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

ORIGINAL SUBMISSION

HISTORIC ENGLAND (ARCHAEOLOGY)

No objection subject to archaeology conditions.

SPORT ENGLAND – LONDON REGION

Proposal does not fall within Sport England's remit. Consideration should be given to national and local planning policies and guidance with respect to the protection of sports facilities, the ability of existing facilities to accommodate increased demand arising from the development; demand for new improved facilities which should be secured as part of the development under local planning policies; impact on health.

MARYLEBONE ASSOCIATION

Support the development but consider building should be a storey taller to provide more flats and internal layouts re-configured to make the best use of views; pedestrian link should be created between Luxborough Street and Paddington Street Gardens North; access between the ground floor and PSGN; existing s106 funds should be used to improve the gardens.

THE ST MARYLEBONE SOCIETY

Objection: proposals contrary to national and local planning policy and local opinion; approved library scheme should not be considered a precedent for site development;

Play space for older children is lacking; existing space benefits from natural surveillance from the street and should be refurbished and linked to PSGN.; space boarded up for years when it could have been used.

Private day nurse is not community use for the majority of local people; no information as to how the space would be staffed/managed 'out of hours' and how this would be funded.

Infilling of the open space detriment to setting of Luxborough Tower and character of the area.

Unacceptable height and bulk; utilitarian design; unattractive ground floor street frontage; design and materials should relate to Luxborough Tower

Loss of daylight, sunlight and increased sense of enclosure to neighbouring properties,

No consideration of sustainable design including passive ventilation and solar gain; plant proposals unclear but should be resisted on environmental and noise grounds; plant should be conditioned to prevent noise disturbance; building footprint should be reduced to ensure site permeability for sustainable drainage.

Street trees should be replaced; unacceptable impact on adjacent trees; overshadowing of rear courtyard

Applicant's consultation flawed and conclusions of the submitted Statement of Community Involvement are incorrect and 'unfair'; development not informed by the majority of

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1

responses/local opinion; response to consultation exercise was limited; overriding local opinion is that the play space should be retained, as demonstrated by petitions submitted to the Council.

METROPOLITAN POLICE – DESIGNING OUT CRIME

No objection: recommendations regarding issues of design and security for the development.

AFFORDABLE HOUSING SUPPLY MANAGER

Provision of 100% intermediate housing is considered acceptable.

TREES

No objection to removal of street trees subject to suitable replacement planting.

Information required regarding trial pits/root systems of retained trees which would inform proposed specialist foundations and building design. If significant roots discovered development may be unacceptable even with specialist foundations.

Adverse impact on amenity value of retained trees due to extent of pruning; future pressure for extreme pruning/tree removal due to relationship between trees and rear courtyard.

ENVIRONMENTAL HEALTH

No objection on noise grounds subject to submission of supplementary acoustic report; recommend conditions to ensure adequate noise levels within the proposed and neighbouring flats; conditions relating to use of rear courtyard; controls on operation of emergency plant

Air quality report inadequate/incomplete; ventilation strategy and details of kitchen extract duct required

Land contamination report required

HIGHWAYS

Objection: increased pressure on on-street parking

WASTE PROJECT OFFICER

Objection: revised details of storage for waste and recyclable materials required

WCC ECONOMY TEAM

Request contribution payable under the Council's Inclusive Local Economy Policy. (Application is not of a type which triggers a contribution).

PARKS & GARDENS

Any response to be reported verbally

SPORT & LEISURE

Any response to be reported verbally

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 1036 Total No. of replies: 58

No. of objections: 42 (including objections from the 'Save Our Space' Committee (two letters); Newcastle House Freehold Ltd. and the Nottingham Mansions Management Ltd) and two letters from three objectors.

No. in support: 15; Neutral:1

Land Use

Play space

- Support redevelopment of the play space; is a derelict eyesore; never used effectively as a play space due its shape and the absence of lighting; focus for noise disturbance and anti-social behaviour
- Redundant land should be developed; good use of Council resources
- The requirement for a replacement public library was the previous justification for approving the development of the play space, the proposed development does not provide equivalent local benefits
- Loss of play space is contrary to national, regional and local planning policies which protect open space and contrary to local opinion expressed in petitions presented to the Council and to the Council's commitment to 'listen to local residents'.
- Play space was well used by all local children; No alternative kickabout space or after school hours/facilities for unstructured play;; only space where ball games are allowed; Council is ignoring its responsibilities to young people; loss of facility is detrimental to children's health and mental well-being.
- Large number of new flats/young families in the area; refurbished play area for younger children in PSGS is well used; space should be refurbished to provide a vital play space for older children to prevent future anti-social behaviour which is linked to a lack of opportunities for young people.
- Any redevelopment should be dependent upon the provision of an alternative, equivalent and adequately funded, facility prior to any playspace development..
- Site would not be an eyesore of it had been properly maintained
- Dispute that the space attracted anti-social behaviour
- Landscaping proposals for Luxborough Tower Gardens do not mitigate the development of the play space.

Housing

- Support proposals for new homes, including affordable housing
- Welcome provision of affordable housing but not at the expense of protected open space; ; do not accept that the Council is forced to develop the play space due to a shortage of housing land, it should purchase flats in Luxborough Tower and make them available for key workers, or look at housing opportunity areas in the London Plan and could collaborate to provide housing on these sites; site will be expensive to develop, and number of flats will not make a major contribution to the housing deficit
- No requirement for more housing; associated increase in activity; cumulative impact of large developments is detrimental to the amenity of the area

- Any restricted tenure could be subject to change and the flats would become used as general market housing.

Social and community use

- Support the use of the ground floor as a local service/community facility which would mitigate the loss of the play space; nursery is a much-needed local amenity as there are not enough spaces locally
- No comparison between the community benefits of a public library and the Class D1 use now proposed; no commitment that the space will be used as a nursery; it would be a private business not a Council-run nursery and the potential use of the space for commercial purposes does not justify the loss of the play space.
- No demand for more nurseries in the area; no evidence of a shortage of spaces
- If the playspace is to be redeveloped, the development should provide alternative facilities for young people, either a replacement play space, or a youth centre which would be more beneficial than the proposed use.
- Ground floor commercial use could remain empty in this difficult business climate and could be pressure to convert it to an alternative commercial use.

Amenity

- Loss of daylight and sunlight; submitted report inaccurate
- Increased sense of enclosure to neighbouring windows - building line should be stepped back to reduce impact on flats opposite
- Overlooking from new windows and balconies; balcony screening required
- Overshadowing/loss of light to neighbouring open spaces
- Additional noise disturbance; potential noise disturbance from non-residential use particularly in the evenings; extent of noise mitigation measures unclear
- Bin store placed directly opposite Winsford House
- Support for proposals if the applicant is required to proceed with landscaping /boundary works in Luxborough Tower Gardens although consider that scheme will adversely affect amenity of Luxborough Tower and its gardens (overshadowing of gardens, overlooking from new windows and balconies).
- Development would not adversely affect local amenity (including traffic, noise or pollution)

Design

- Development would make a 'dead' area more attractive; new building design is effective and appropriate in the context of the street
- Open space should be retained as was designed to counter-balance the height of Luxborough Tower; development is detrimental to the setting of Luxborough Tower and to the architectural unity of the area
- Overdevelopment of site; unacceptable height and bulk; building taller than approved library development; should not exceed the height of Newcastle House; canyonisation of narrow Luxborough Street
- Inferior building design

- Design of rear boundary wall should be better articulated, adverse impact on the setting of the gardens
- Full archaeological investigation required as site abuts a former burial ground and workhouse; development has the potential to disturb existing burials

Highways/Servicing

- Increased demand for on-street parking
- Increased traffic and associated pollution, potential pick up/drop offs for 34 children and associated deliveries
- Development inappropriate in Luxborough Street due to narrow width of pavements and carriageway; detrimental to safety of vulnerable people including children and the elderly.
- Additional stress on waste collection services

Sustainability

- Development must protect the environment including improving biodiversity, minimising waste and pollution, mitigating and adapting to climate change.

Trees/Biodiversity

- Loss of trees and shrubs in an area of poor air quality; adverse impact on retained trees; impact on air movement to the detriment of trees in the neighbouring park
- Should protect and enhance open space to improve the biodiversity of the area

Construction impact

- Impact of construction works including obstruction of Luxborough Street and access to neighbouring streets and access for emergency vehicles; temporary reduction of on-street parking space; cumulative impact of constant development in vicinity.
- Standard hours of building works should be imposed, ban on earlier unloading from construction vehicles

Other

- Drawings misleading – impact on neighbouring buildings unclear/not shown
- Inadequate consultation with Luxborough Tower residents (by the applicants and LTRA); LTRA does not represent the views of all residents
- Inadequate/flawed consultation by the applicants, conclusions of consultations misrepresented in the Statement of Community Involvement and based on limited responses, questions posed did not include a 'no development option' and other responses ignored; equal weight given to the 800 signature 'Save Our Space' petition and the small number of responses to the applicant's consultations
- Objections signed by several members of the same household only counted as one objection.
- As information in the Site Investigation Report obtained in contravention of the Party Wall Act (using mechanical diggers) its conclusions should be ignored.

- Impact on property values
- Conflict of interest in Council determining applications for its own developments.
- Comments on the acceptability of proposals to provide an alternative kickabout area in PSGS. (Officers are unaware of any such proposals and these do not form part of the current application).
- As a Council development, the scheme should demonstrate that it represents the best use of the land and 'stacks up financially'.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

RE-CONSULTATION

MARYLEBONE ASSOCIATION

Any response to be reported verbally

ST MARYLEBONE SOCIETY

Support scheme: benefits of scheme in providing affordable housing outweighs any harm; a community use is preferred over a commercial nursery which would exclude some local families

Basement should be provided as a bigger community space would be more attractive to potential occupiers.

Building design acceptable but entrances should be better defined; ground floor could be increased in height or finished in a different material to give more definition and a sense of hierarchy – even if overall building height increased. Window frames should be darker and roof treatment lighter; rear stepped approach provides appropriate response to PSGN; design of rear boundary wall is with acrylic windows and parapet treatment is incoherent and should be reconsidered.

Diesel generator unnecessary and inappropriate on environmental grounds; applicants should explore a 'greener' alternative

ENVIRONMENTAL SERVICES

Concern relating to location of generator flue; modelling in air quality report inadequate/ambiguous; consideration should be given to relocating the flue to roof level

BUILDING CONTROL

Request details of construction methodology statement for the rainwater harvesting tank

WASTE

Revised details acceptable and should be secured by condition

ADJOINING OWNERS/OCCUPIERS: No. consulted: 1036 No of replies: 42

Objections: 29 (including two letters from one objector); Support: 13 (including Luxborough Tower Residents' Association; 2 letters from one supporter and 3 letters from another supporter).

Supporters re-iterate previous comments and make the following additional comments:

- Space was sole enjoyment of Luxborough Tower residents and was used by trespassers; no demand for play space from Luxborough Tower Residents who are in favour of the development
- Welcome eco-friendly elements (rainwater harvesting, photovoltaic panels, green roofs)
- Concern re the need for a generator and its environmental impact.

Objectors re-iterate previous comments and make the following additional comments:

Land use

- Council should enforce against unauthorised use of existing flats to increase housing stock rather than building on play space
- Refurbished space could be used by local schools -with fees paying for its upkeep
- Concern re use of PSGN as extension to nursery – red line.
- D1 space should provide a community café/hall/youth centre as few community facilities in area
- Council should focus on more important issues (current situation) or e.g. maintaining libraries rather than providing new housing
- May be reduced demand for play space from Luxborough Tower residents but there is a demand from teenagers in neighbouring blocks; disputes between local children and Luxborough Tower residents about use of the play space are being reported as anti-social behaviour.
- Once developed space will not be replaced
- Value of Open Space highlighted by current need for social distancing

Design

- Not a 'friendly' community design, street facades unsympathetic
- Facades bland in context of detailing on neighbouring Victorian and Edwardian buildings
- Elevations peppered with 'service holes'
- Need to show any roof plant
- Rear building line should be set back from PSGN to safeguard historic burial ground
- Inappropriate boundary wall design; should replace original wall and railings
- Request that Parish Church/Diocese of London fully involved in discussions re design and construction of rear boundary wall and in preparation, design and delivery of scheme.

Amenity

- Rear part of the development should be omitted
- Daylight report includes inaccurate room designations; concern re the methodology for the daylight/sunlight analysis.

- Noise disturbance from generator to neighbouring flats, more information and further reconsultation required
- Noise and smell nuisance to neighbouring flats from the use of ground level cycle and refuse stores
- Nose and smell nuisance to PSGN from the operation of the plant and the kitchen extract duct.
- Assessments of impact of the development on only concerned with the proposed flats.
- Unclear how use of noise attenuation canopies will be enforced
- Plant details should be provided as part of the application not in supplementary reports.

Air quality

- Diesel generator inappropriate on nursery site and in a low emission zone; Council scheme should be an exemplar
- Query methodology of air quality assessment (exclusion of data from Marylebone Road monitoring station)

Sustainability

- Individual boilers unacceptable
- Undue reliance on artificial light

Trees

- No information showing outcome of tree root trial pits in Dec 2019

Basement excavation

- Basement development contrary to Council policy
- Size of required tank excavation and relationship with Newcastle House unclear
- Structural impact on Newcastle House
- Concerns re potential rupture/leak from tank

Other

- Application should not be determined without adequate consultation
- Boundary wall and railing removed without permission
- Works require the approval of the Diocese of London and should be agreed between the parties before permission is granted; permission should be granted for 4 years to facilitate the Faculty approval process; details of the development should be agreed by the Diocese of London; cost incurred by the Church as part of the approval process, or By the Council for the maintenance of PSGN should be secured under the s106 planning obligation,
- A Faculty (Approval) may need to be applied for before works commence.
- Provision of an alternative means of escape detracts from the public open space and the tranquillity of the former burial ground;
- Consultation letters not received

FINAL SUBMISSION

ENVIRONMENTAL SERVICES
No objection subject to conditions

ADJOINING OWNERS/OCCUPIERS NO. CONSULTED No consulted 17, No of replies: 13
(including 2 letters from one objector and one letter from Newcastle House Freehold Ltd)

Re-iteration of previous objections on land use, amenity and design grounds and impact on trees

Additional comments received on the following grounds:

Land use

- Need for a nursery not demonstrated; requirement for a nursery should be re-assessed due to remote working post-Covid 19

Amenity

- Proximity of diesel generator to nursery; query requirement for back-up power source; should explore less toxic/cleaner alternatives to a diesel generator.
- Further information required regarding noise/vibration mitigation for generator
- Proximity of boiler flues to neighbouring windows (noise and air pollution)
- Acoustic report does not assess impact on neighbouring properties; no assessment of ground-borne construction noise/vibration in relation to noise from the development or the building works
- Noise/air quality reports assume contractors will adhere to report recommendations
- Details of operation and retention of courtyard canopies required.
- Overlooking to Newcastle House amenity space

- Daylight/sunlight assessment does not address more onerous European Daylight Standards; should not compare impact of proposed scheme with library development.

Other

- Proximity of underground rainwater harvesting tank to Newcastle House and risk of structural damage and damage from leaks to neighbouring property; should be relocated to north side of site
- Boundary line between application site and Newcastle House not agreed (no party Wall Award); building appears to be on adjacent land and notice not served on adjoining owners.
- The playspace is public land and is not private space which is demised to the privately leased Luxborough Tower flats
- Lack of consultation

6. BACKGROUND INFORMATION

6.1 The Application Site

This application relates to a play space in the grounds of Luxborough Tower, which is a 1960s, 23 storey residential development (155 flats) on Luxborough Street, set within extensive grounds. The development also includes alterations to the western boundary between Luxborough Tower and the adjacent Paddington Street Gardens North (PSGN).

Luxborough Tower gardens are mainly laid to grass with mature trees. The south eastern corner of the gardens is occupied by a 'kickabout' area, providing a hard surface for ball games (approximately 321m²). This area was previously set behind a tall, chain link fence, providing visibility from the street, and was accessed from within Luxborough Tower Gardens. To the rear of the 'kickabout' area is a smaller area (approximately 185m²), which was enclosed by lower concrete walls and accessed via a separate gate within the Tower grounds. For the purposes of this report, these two areas are, together, referred to as 'the play space'.

Council records indicate that part of the play space provided swings etc for younger children, which were subsequently removed. Swings etc for younger children are now located in Paddington Street Gardens South (PSGS). Local residents have previously advised that the smaller space was used for playing ball games when the larger space was locked. The playing surfaces to both spaces have been in a state of disrepair for a number of years. Following the granting of planning permission in 2014 for the redevelopment of the site to provide flats and a public library, the play space was enclosed by a solid hoarding. Some site clearance works have taken place (in December 2019).

The area is characterised by a mixture of residential and commercial uses although there are significant residential concentrations in the immediate vicinity. Luxborough Tower is bounded by the University of Westminster to the north, and two residential blocks (Newcastle House and Luxborough House), to the south. The opposite side of Luxborough Street comprises residential mansion blocks (Nottingham Mansions and Winsford House) and a telephone exchange with flats above (25 Luxborough Street). The former Chiltern Street car park development, to the west of PSGN, known as 'The Chilterns', is now occupied and provides 60 flats. The former International House, on the south side of Paddington Street, has also been redeveloped and includes 55 new flats. There is extant permission for the redevelopment of the Moxon Street car park site to provide up to 79 flats.

Luxborough Tower is located outside of, but adjacent to, the Portman Estate Conservation Area which boundary is at the rear of the play space and includes PSGN, and opposite the Harley Street Conservation Area. The site lies within the wider Marylebone and Fitzrovia CAZ and within the Marylebone Village Archaeological Priority Area and a Surface Water Flood Risk Hotspot.

6.2 Relevant History

The University and Luxborough Tower sites were once occupied by the St Marylebone Workhouse, later re-named Luxborough Lodge. In the mid 18th century, the play space appears to have been occupied by terraced housing, which may have been used as staff housing associated with the workhouse. Following bomb damage, this terrace of buildings was demolished and a new three storey residential block built in 1948 alongside Newcastle House. This block was demolished in the 1960s as part of the Luxborough Tower/University development on Marylebone Road.

1968: Permission granted for the redevelopment of the site to provide flats, an educational facility and a play space.

6.2.86: Permission granted for the use of the private play area as 14 parking bays for use by residents of Luxborough Tower. Not implemented.

At the time, the play space comprised a football practice court and infants' swings. The officer's report states that the use of the space was restricted to residents of Luxborough Tower, with an upper age limit of 13 years. Permission was granted on the grounds that there was no demand for the play space from the, mainly elderly, residents of the block and that the area was not deficient in play space.

In January 2012, three separate applications were submitted for:

- the redevelopment of the kickabout area for residential use (19 units),
- works to enclose the undercroft of Luxborough Tower to create a gym (Class D2) and
- the provision of a multi-use games area to the rear of Luxborough Tower gardens

Objections were received to these applications concerning the loss of the play space; the lack of demand for a gym; the provision of a smaller play space in a more secluded location, and associated amenity and security concerns and practical considerations around the management and supervision of the replacement play facility, including from the Crime Prevention Design Advisor. The applications were withdrawn in November 2012.

26.3.2014 Permission granted for the redevelopment of the existing play space to provide a library on two basements and part ground floor and nine market flats above (1x1 bedroom, 5x2 bedroom and 3x3 bedroom units), pedestrian access, cycle storage and associated landscaping works. Removal of the existing boundary railings and brick base wall between Paddington Street Gardens North and the Luxborough Tower play space (Council's own development) (13/08401/COFUL). Not implemented. Expired.

The permission was granted subject to a s106 planning obligation (Unilateral Undertaking) agreement to secure:

- i) a financial contribution of £247,000 to the City Council's affordable housing fund to be paid on commencement of development;
- ii) a parking mitigation payment of £9,000 to be paid on first occupation of the flats;
- iii) lifetime car club membership (20 years) for occupants of the proposed flats;
- iv) highway works;
- v) the provision of a permanent scheme of public art and .
- vii) S106 monitoring costs

26.03.2014 Permission granted for the demolition of boundary railings and brick base wall between Paddington Street Gardens North and the Luxborough Tower site play space (13/08402/COCAC).

In granting permission, the Planning Sub-Committee resolved that:

“a) the planning benefits associated with the provision of a replacement public library on this site are sufficient to outweigh policy objections to the redevelopment of an existing open space/play space without providing a replacement play facility.

b) the proposal to make a financial contribution to the City Council's affordable housing fund in lieu of on-site affordable housing provision is acceptable in this case”.

The approved scheme was designed to provide a permanent site for Marylebone Library, formerly located in Council House, Marylebone Road. A Cabinet Report dated 11 July 2012 confirmed Luxborough Street as the chosen location for the replacement library. Since the occupation of Council House by the London Business School, a series of temporary permissions has been granted for the temporary relocation of the library, which is currently located at 9-11 New Cavendish Street. However, the decision regarding the library replacement has been re-visited and most recent discussions involve its relocation to an alternative site.

24.06.2014 Permission granted for alterations to the existing Luxborough Tower garden area, including new entrance, new walkway, new gates and railings. Relocation of parking spaces, new entrance canopy to Luxborough Towers, timber screens within undercroft to the rear for bicycles, bins, motorcycles (14/02841/COFUL). Expired. Not Implemented

4.11.2019 Permission granted for alterations to Luxborough Tower Gardens with new planting, hard and soft landscaping including reconfiguration of existing car park, and realignment of existing southern walkway. Erection of new railings, gates and entrance canopy along the Luxborough Street boundary and new entrance canopy to Luxborough Tower (10/06619/COFUL).

7. THE PROPOSALS

The current application has been submitted by the Council's Housing Department. It involves the redevelopment of the play space to provide a new building on ground and five upper floors comprising a nursery, creche, public hall or exhibition hall (Class D1)) at ground level, with a rear courtyard space, and 14 flats (7 x 1 bed and 7 x 2 bed) on the upper floors with private terraces/balconies. All proposed units would provide affordable housing (for intermediate rent).

As the application was submitted prior to 1 September 2020 when the Town and Country Planning (Use Classes) (Amendment order) (England) Regulations Order, (which puts the proposed uses into two separate uses classes (Class E Business and Class F1 Learning and Non-residential institutions), the legislation requires the application to be determined in accordance with the previous regulations where all of the uses proposed fall within Class D1 (Non-residential institutions).

The development would incorporate, green roofs and photovoltaic panels, cycle parking for the residential and Class D1 uses, refuse storage and new plant. It is also proposed to replace the boundary wall and railings (recently removed) between the rear of the play space and PSGN incorporating an emergency access to the gardens. No off-street parking is proposed for the development

The application has been revised, initially to provide additional information (Statement of Community Involvement and a Site Investigation Report) and, more recently, to clarify proposals relating to the safeguarding of adjacent trees/building foundations; to provide further details of a subterranean rainwater harvesting/attenuation tank; to clarify the extent/nature of plant proposals,; to correct the submitted daylight/sunlight assessment and, most recently, to include an emergency (diesel) generator.

The original draft Heads of Terms relating to proposed planning obligations included an unspecified financial contribution towards the provision of alternative play facilities. This offer does not meet City

Plan policy requirements for land use packages and, as there is no proposed scheme for the provision of replacement play facilities, the offer was withdrawn on officers' advice.

8. DETAILED CONSIDERATIONS

8.1 Land Use

8.1.1 Existing play space

The existing play space was built as part of the Luxborough Tower development for use by residents of the block. In submitting the 2013 library application, the (then) applicants (CityWest Homes) advised that the play space was "locked and managed by CityWest (Homes)" but acknowledged that the space had a history of use by others (non-residents of Luxborough Tower) on an "informal basis". Many of the consultation responses received from local residents attested to the use of the play space by all local children and this view was also endorsed by the Local Community Police Sergeant. In these circumstances, notwithstanding its original use, the play space was considered to be a wider community facility. This approach was accepted by the applicants at that time and was the basis on which the previous application was assessed by officers and considered by the Planning Committee.

In submitting the current application, the applicants have confirmed that the "play space was previously used as a multi-use play space for the exclusive use of residents of Luxborough Tower, although it was also used by non-residents on an informal basis". However, they now contend that the space is "...part of the same planning unit as Luxborough Tower and is ancillary to that C3 residential use". To accept this argument would mean that no playspace provided within any housing development or estate, public or private, would have any protection in planning terms from redevelopment, and it is therefore not accepted. While the play space has been unused/inaccessible since the library application was approved (due to the erection of robust site hoarding) it is considered there has been no material change in circumstances since the previous application was approved granted to justify assessing the current application in a different way, and therefore it is to be considered against the relevant policies relating to loss of community space and open space.

8.1.1.i Policy context/related reports

UDP Policy SOC 1 seeks to protect existing community facilities (the definition of these includes recreation facilities, playgrounds and sports pitches) and requires that where proposals involve the redevelopment of existing community facilities, adequate replacement facilities are provided. Where the facility is surplus to the needs of the existing provider, any new development should include an alternative community facility which should be provided on the same site. Where a scheme fails to deliver adequate replacement facilities, planning permission will be refused.

Policy S34 of the City Plan, seeks to protect all social and community floorspace (including external space), except where existing provision is being reconfigured, upgraded or relocated in order to improve services and meet identified needs, as part of a published strategy by a local service provider. In all such cases, the Council will need to be satisfied that the overall level of social and community provision is improved and that there is no demand for an alternative social and

community use for that floorspace. In those cases where the Council accepts a loss or reduction of social and community floorspace, the priority replacement use will be residential.

Under City Plan Policy S35, the Council will seek to address existing public open space deficiencies, including active play space deficiency, and current and future open space needs by protecting all open spaces and their quality, heritage and ecological value, tranquillity and amenity. The policy seeks to mitigate additional pressures on open space by securing new improved public open space in new developments, space for children's active play and by seeking public access to private spaces. Contributions will also be secured to improve the quality and accessibility of local public open spaces and to deliver new open spaces from under-used land.

UDP Policy ENV 15 states that permission will not be granted for development on public or private open space of amenity, recreational or nature conservation value unless the development is essential and ancillary to maintaining or enhancing that land as valuable open space.

The City Council's Open Space Strategy SPD (2007) aims both to improve the quality, management, accessibility and use of parks and other open spaces in the city and to provide new facilities where there are deficits in provision. The Strategy acknowledges the contribution of open spaces and sports and recreational facilities to the residential environment and recognises the need to provide these spaces to tackle the growing problem of child obesity.

The area in the immediate vicinity of, and including, the application site is not designated as an area deficient in open space. The SPD identifies the Luxborough Street play space/open space as one that is "not publicly accessible". However, it is likely that this designation was made purely on the basis that the space was in the grounds of a residential development, rather than with any knowledge of its use. Nevertheless, even though it is designated as a space that is "not publicly accessible", it is protected by virtue of being an open space.

Westminster's Draft Open Space and Biodiversity Strategy (July 2018) also recognises the importance of Open Space in the promotion of general health and well-being. The document confirms that the Council is "...conscious of an overall lack of play space provision in Westminster, with a particular shortage of facilities geared towards older children".

Westminster's "Play Strategy" (2005) states that "wherever children choose to play, it is essential that they are safe and have access to play opportunities and equipment which promotes their healthy development...". This Strategy notes that recreational provision for older children and teenagers is limited and that an increase in provision for these groups is urgently required. It also accepts that improved facilities for older children benefit the wider community, in reducing loitering. This document was 'refreshed' (2007-2010) and includes commitments to provide accessible play opportunities to promote health and keep children safe.

The Council's (CityWest Homes') own consultation: Westminster Housing Strategy 2007-2012 acknowledges that children want the opportunity to play close to their own homes. The 2007 Overview and Scrutiny Committee Report on Housing identified nine sites, including Luxborough Street, for possible development for social housing or for the development of market housing schemes, where the proceeds of sale would be ploughed back into providing social housing on existing estates. One of the criteria for potential development was that the site was disused. This report references the Housing Commission Housing Strategy document which asserts "Where possible, development should look to deliver other facilities that meet broader local needs such as

child care, training space, health facilities, improved community play and sports facilities,... detailed local consultation should take place...the Council should safeguard and improve play space”.

London Plan Policy 2.18 aims to protect, promote, expand and manage the extent and quality of, and access to, London’s green infrastructure with a view to securing benefits including, but not limited to building a sense of place and providing social benefits that promote individual and community health and well-being.

London Plan policy 7.18 states that the loss of open spaces must be resisted unless equivalent or better-quality provision is made within the local catchment area. The replacement of one type of open space with another is unacceptable unless an up to date needs assessment shows that this would be appropriate. Similarly, Policy G4 of the Draft London Plan protects local green and open spaces and states that their loss should be resisted in areas of deficiency and where losses are proposed outside areas of deficiency, equivalent or better provision should be made within the local catchment area unless an up-to-date needs assessment demonstrates that this is unnecessary.

Draft London Plan Policy GG3 seeks to promote more active and healthy lifestyles for all Londoners to improve both mental and physical health and requires the potential impact of development proposals in the health and wellbeing of communities to be assessed.

Draft London Plan Policy S4, which relates to development proposals for scheme that are likely to be used by children and young people, seeks to prevent the net loss of play provision unless it can be demonstrated that there will be no on-going or future demand. Policy S5 requires boroughs to secure sites for a range of sports and recreation facilities. The supporting text to these policies highlights the need for children to be able to access opportunities for play and to be ‘independently mobile’ within their neighbourhood. It acknowledges that the threat of busy roads and traffic will sometimes limit opportunities for play and comments that the provision of play spaces should not be severed from the community by physical barriers, such as main roads. It states that play spaces should be overlooked to allow for a level of informal community supervision and to foster a sense of safety and security.

Additionally, NPPF para. 97 states that existing open space/land used for sport should not be built on unless it has been assessed as surplus to requirements or replaced by space which is equivalent in quantity or quality or the development is for an alternative sport/recreation facility.

A petition “To not proceed with any proposal to build on the Luxborough Tower playground, immediately adjacent to Luxborough Street W1, because it is listed as a Protected Open Space in the Council’s City Plan” was presented to Full Council in January 2019 by Councillor Karen Scarborough.

A Cabinet Report, dated 25 February 2019, considers this petition, noting that it contained 778 signatures. (Objectors to the current application contend that additional signatures were submitted (total 840) but that these were not reported to the as they were not submitted on-line). This Cabinet Report notes the designation of the play space in the 2007 Open Space Strategy and refers to the protection afforded to it by City Plan policies. It also cites the alternative provision of open space and play space in PSGN and PSGS. It accepts that ‘there is a history of the site being used, informally, by the wider community’ but concludes that ‘...on balance,the potential benefits of the scheme, notably the delivery of new homes including affordable homes, may substantially outweigh the policy conflict with regards to protecting open space’. The report includes a commitment to continuing

consultations with local residents and stakeholders as part of the project development, including proposals for a community use.

The Cabinet resolution noted the submitted petition and acknowledged the concerns of local residents. It also acknowledged the need to consider development opportunities on 'currently an under-utilised space' and the potential to provide new affordable housing. It supports the continued investigation into a provision of community space as part of the development and welcomes the commitment to further engagement with the local community and ward members.

8.1.1.ii Loss of the play space

The Marylebone Association supports the principle of the development. The St Marylebone Society, whilst originally objecting to the development of the play space, now considers that the benefits of the scheme outweigh any potential harm. Some respondents are in favour of the redevelopment of the play space, considering it to be an 'derelict eyesore'. They contend that it has never been used effectively as a play space due to its shape and the absence of lighting. They also comment the site has been a focus for anti-social behaviour and consider that the 'redundant' land should be redeveloped to make the best use of Council resources.

However, a greater number of objections has been received on the grounds that the proposals have been submitted in the face of considerable local opposition, as demonstrated by the petition submitted to the Council in January 2019 (and previously in 2018). Objectors consider that the submitted Statement of Community Involvement does not give adequate weight to these petitions and that the current proposals are at odds with the commitment within the Council's "New dawn for planning" (agreed by Cabinet on 25 October 2018) which includes an undertaking that planning decisions will be more closely related to residents' views. However, the Council, as local planning authority, is required to consider the application, as submitted, against planning policy and any other material planning considerations. In assessing the scheme, it is not the role of planning officers to re-visit the decision-making process behind the selection of the site for development.

Objections have been received on the grounds that:

- The loss of the play space /open space is contrary to the Council's adopted planning policies, the London Plan and national planning policies which recognise the need to protect open space/play space and to prevent its redevelopment. On the basis that there has been no change in policy direction since the decision was taken to protect the play space they contend that the Council has a 'legal and moral' duty to protect the play space in accordance with these policies as no acceptable justification has been provided for a departure from them.
- Proposals to carry out landscaping works to Luxborough Tower gardens do not mitigate the loss of the play space.
- The play space has a long history of use by local children/teenagers (residents and non-residents of Luxborough Tower), which brought vibrancy to the area. There is a 'dearth of amenities' for local children and the needs of young people are continually ignored. The kickabout cage is the only facility in the locality for 'unstructured' play/ball games which provides a safe environment for older children/teenagers who are excluded from other play areas due to age restrictions, or because ball games are prohibited. The spaces cited by the applicants cannot be considered as alternatives to the existing play space.

- The provision of play space in built up areas is a necessity and vital to children's physical and mental health. There is likely to be even more demand for the space given that permission has recently been granted for significant numbers of new flats and bringing young families/children to the area. The refurbished play area in PSGS is well used and a similar play space is needed for older children. Although there may be a reduced demand for the play space from Luxborough Tower residents there is increased from neighbouring developments.

(A development including 60 flats on the site of the former Chiltern Street car park has been completed and the 16 affordable housing units have now been occupied. This development provides 21 family-sized apartments, including 7 affordable housing units. The former International House, on the south side of Paddington Street, has recently been redeveloped and includes 55 new flats (17 family-sized units). Permission has also been granted for a development including up to 79 flats (28 family-sized units) on the Moxon Street car park site and sufficient work has been undertaken to have implemented this development).

- The boarding up of the site (since 2014) shows that the Council does not take its obligations to young people seriously. The space should be restored and e.g. local schools charged to use it to finance its upkeep. The space would not be an eyesore if it had been properly maintained by the Council. This is a missed opportunity to create a properly constructed, well maintained, recreation space, which benefits from natural surveillance from the street. The Covid 19 pandemic has demonstrated the value of access to outside space. This is not the time to lose this irreplaceable facility. The Council must plan to make adequate provision for outside space/play space. As it is difficult to find space for alternative facilities, the existing play space should be returned to its lawful use.
- There is no evidence that the existing space is a focus for anti-social behaviour. Clashes with local children regarding the 'unauthorised' use of the space have been reported as anti-social behaviour. The submitted comments from the Metropolitan Police show that after 'other theft' (non-cycle theft), anti-social behaviour is by far the highest crime type in the Marylebone area. This is likely to be as a result of the lack of facilities provided for young people. The play space was previously supervised, including by off-duty police officers, which minimised any potential trouble in the area.
- The applicants have not demonstrated that the play space is surplus to requirements as required by NPPF para 97. Demand for the play space is demonstrated by the petitions presented to the Council. Any permission for the redevelopment of the play space should be dependent upon the provision of an equivalent facility, of equal size, which should be provided prior to any development on the application site and adequately funded.
- In approving the library development, the Committee recognised the policy presumption to protect the existing space and to mitigate its loss. The approved library would have provided a genuine community benefit and does not set a precedent for the approval of the current proposals which do not deliver equivalent community benefits.

Sport England (London Region) do not wish to comment on the specific proposals, confirming that the proposal does not fall within their remit (either statutory or non-statutory). However, they have highlighted the requirements of the NPPF and the need to have regard to any local policies relating to the protection of playing pitches and built sports facilities. As new housing will generate additional

demand for sports facilities, they consider that the capacity of existing sports facilities should be assessed and consideration given to the requirement to provide any new or replacement facilities, which should be secured and delivered in accordance with approved local policies to provide social infrastructure. They have also referred to Section 8 of the NPPF and other planning guidance which promotes the creation of healthy and safe communities. (One local resident is concerned that whilst the application documents refer to Sport England's comments in relation to the library scheme, these have not been provided. However, as Sport England has since commented on the current proposals, this omission is not considered prejudicial to the consideration of this application).

APPLICANT'S CASE

In support of the current application, the applicants have provided a (partial) summary of the previous case made (by CityWest Homes) in support of the library development, detailed in the submitted extract from the previous committee report:

- “ • Until the play space was provided (in the early 1970s) as part of the Luxborough Tower/ Polytechnic development, this part of the site was developed land. On this basis, the erection of a building on the land should be considered acceptable in principle, subject to other Plan policies.
- The loss of the play space has been the subject of various discussions/Council reports over the past few years when it has been concluded that the redevelopment of the Luxborough Street site would not be detrimental to the provision of open space and sports provision in the area.
- Officers have previously advised that any proposals to redevelop the land should be accompanied by an application to provide a replacement facility. If it can be demonstrated that the play space is surplus to the needs of the provider, or to the needs of any other community organisations in the area, it should be replaced by an alternative community facility, which is needed. Plans for the site have evolved to include a replacement library with nine flats above. UDP Policy SOC 7 recognises the role that libraries play in acting as a focal point for community activities.
- The use of the existing play space, primarily as a kickabout area, is of limited value as a community facility. The space is not marked out to enable different games to be played and provides no fixtures e.g. football goals or basketball hoops. The space has a detrimental impact on the appearance of the street. (The applicant's submission does not consider whether, by enhancing the facilities provided, or making improvements to the appearance of the space, its value as a community facility could be increased or whether an improved facility could be provided on an alternative site in the vicinity)”

In looking at alternative open space provision in the area, the applicants have now undertaken a study of the site and a review of the local area's accessibility to public open space based upon the 2007 Westminster Open Space Assessment (OSA) and the 2018 Draft Strategy for Open Spaces and Biodiversity (SOSB), and make the following points:

- The application site is identified within the 2007 OSA as a 'kickabout area on a housing estate which is not publicly accessible', with the space being identified as an open space with private access on accompanying plans.

- The draft 2018 SOSB does not identify the Luxborough kickabout space as a protected open space, although it is acknowledged that this is probably due to the 2014 permission for the site redevelopment.
- The site is not in an area of public open space deficiency or play space deficiency or in a priority area for additional play space or informal play space.
- The site lies in the centre of Marylebone within a short walking distance from large public open spaces. Paddington Street Gardens North and South lie within 2 - 3 minutes walking distance and provide easy access to attractive and well used public parks and children's play spaces. The nearest public kickabout area and multipurpose courts are located in Regent's Park and within the Bayswater Forum area, both are 'accessible', being within a 20-minute walk from the application site.
- The proposals retain an area of private outdoor play space as part of the proposed Class D1 community facility; private amenity space is provided for each of the proposed flats and landscaping enhancements are also proposed within Luxborough Tower Gardens.

Analysis and conclusion on loss of the playspace

No evidence has been provided to demonstrate that the play space is surplus to local requirements, although it is accepted that the space has been inaccessible since a new site hoarding was erected in 2014. It is acknowledged that the site is in close proximity to PSGN and PSGS. However, while the latter provides a variety of play equipment, its use is limited to (supervised) use by children of up to 11 years of age and there are no facilities for older children. Local bye-laws prevent the playing of ball games either in this garden or in the more tranquil PSGN, which is the site of a former burial ground. It is not considered that either of these spaces presents an alternative to the 'kickabout' space. The nearest comparable facilities are the Regent's Park Multi Use Games Areas (approximately 18 minutes walk away) and facilities at Paddington Recreation Ground. This is far from ideal, both in terms of distance from the application site and for the safety of younger children who wish to play ball games, contrary to the supporting text to Draft London Plan policies, as detailed above.

The applicants have since acknowledged that the neighbouring gardens do not provide an 'exact alternative' to the Luxborough play space. However, they advise that '...they have heard from residents that those using the Luxborough site ranged from primary school age up to secondary school, therefore some of that group could use play equipment in Paddington Street Gardens South. With regards to Open Space they '...do feel that these spaces could account for alternative provision and just demonstrate the point about the site not being in an area deficient in open space or play space'.

Whilst there have been informal discussions between officers, Ward Councillors and the applicants regarding the potential 'out of hours' use of existing facilities in a local school, the applicants have confirmed that this has not been progressed due to concerns regarding security and management of these 'out of hours' facilities. Although some objectors have referred to the potential provision of replacement play facilities in PSGS (and consider that these would be inappropriate for a variety of reasons) officers are unaware of any such proposals, which would in any event require separate planning permission. On officers' advice, a proposed (unspecified) financial contribution towards the provision of alternative play facilities has been withdrawn, as this would not comply with legislation relating to s106 contributions which have to relate to a specific and deliverable project.

In the absence of a replacement facility the loss of the playspace is contrary to adopted planning policies and therefore if planning permission is to be granted, it has to be justified by other policies or material considerations. In approving the previous library development, the Committee considered that the loss of the play space should be balanced against the wider community benefits resulting from the construction of a purpose-built replacement library, and that the provision of this vital community facility outweighed the policy objections to its loss. With regard to the current application, the officers' view is that the proposed replacement community facility together with the affordable housing provision would also be sufficient to overcome policy objection to the playspace loss.

8.1.2 Proposed Class D1 uses

Background

The proposals include the provision of 271 sqm (GIA) of Class D1 floorspace at ground floor level, with a courtyard space to the rear. The proposed D1 uses would be nursery, creche, public hall or exhibition hall which the applicants advise will meet local demands, but the most likely use would be a nursery or creche, and the public hall or exhibition hall provides a fallback position.

In considering an application for the relocation of a day nursery to 5 Duke's Mews (approved July 2018) officers were advised of the difficulties experienced by the nursery operator in securing alternative premises. The major property estates had advised that there was no allocation of floorspace for nursery use in Marylebone and no suitable commercial space. Officers were also advised, by the local amenity society, that four nurseries had closed in Marylebone in the preceding 18 months, making a total of five closures in two years, as private landlords could command greater rents from alternative Class D1 uses. At that time, the Council's Property Group also confirmed that the potential relocation of the Marylebone library to Seymour Leisure Centre would result in the loss of a nursery on that site. This nursery has since relocated to Lisson Grove. The Bi-Borough Strategic Lead on Childcare and early Education services Lead on Childcare and Early Education Services has confirmed ' Whilst I am not aware of any recent nursery closures in Marylebone, we anticipate that some nurseries may be closing down in the spring term (January – March 2021) due to COVID-19, so it is possible that there will be more demand for childcare places across Westminster'.

This experience suggests that there could be a potential demand for a new nursery in the area and that the redevelopment of the application site, if acceptable in principle, could provide an opportunity to introduce a new nursery in close proximity to play facilities and open space.

UDP policy SOC 1 and S34 encourage the provision of new social and community facilities throughout Westminster where these are easily accessible and the use would not raise amenity concerns. The definition of social and community does not make a distinction between public and private facilities e.g. an NHS doctors' surgery as opposed to a private health clinic. UDP policy SOC2 requires new childcare facilities to be large enough to cope with expected demand, to provide play space and kitchen facilities and access for wheelchair users and pushchairs.

Draft London Plan policy S3, recommends that such facilities should be in accessible locations, with good public transport accessibility and access by walking and cycling and next located next to parks or green spaces, where possible. London Plan Policy 3.16 supports proposals which provide high quality social infrastructure and policy 3.18 supports proposals for childcare facilities to help meet

the needs of a growing and changing population. With regard to community uses, the NPPF (para. 8) states that planning should deliver accessible services that reflect current and future needs and support communities' health, social and cultural well-being.

No information has been provided regarding the proposed creche, exhibition hall or public hall uses. Details within the application are based upon a nursery use on the ground floor. The applicants have advised that the indicative layout is informed by discussions with the Council's Children's Services Team. The nursery, which provides a kitchen, buggy park and staff cycle storage, would accommodate 36 children (based on 8 x under 2 years, 12 x 2 years and 16 x 3 years+). This level of provision would require 8 members of staff. The rear courtyard would provide facilities for outdoor learning and play. Emergency access would be provided to PGSN. The drawings include indicative proposals for retractable awnings over the rear courtyard to ameliorate potential noise disturbance.

The St Marylebone Society consider that the development should be revised to include a basement as a larger space would be more attractive to potential occupiers. Their preference is for a community use rather than a private nursery which, would exclude some local families.

There is some support the use of the ground floor for as a social/community facility among local residents, including for a nursery, on the basis that there is a shortage of nursery places in the area and that that this could mitigate the loss of the play space. Others have expressed a preference for alternative uses e.g. a community café or facilities for young people e.g. a youth centre on the basis that this would be more beneficial to the well-being of local teenagers than the uses proposed. Objectors contend that there is no evidence of a shortage of nursery places in the area and have questioned whether the applicants have undertaken any assessment of the likely demand, particularly post Covid-19, when more people are likely to work from home. However, this assumes that people working from home would be able to look after young children at the same time.

In response, the applicants have supplied a copy of a report (Knight Frank 29 March 2019) which they commissioned to review the demand for different Class D1 uses in the Marylebone area. The report includes details of sixteen planning approvals (granted since February 2016) for Class D1 uses within a mile radius of the site. Of these, two involved the relocation of existing nurseries, one was for a change of use of a nursery to a community hall and the remainder largely involved new medical uses, extensions to existing education facilities or new Class D1 uses for specific tenants, or were for significantly larger units or on sites in unsuitable locations or buildings for nursery use e.g. Oxford Street. The report identifies over 30 other developments involving the provision of Class D1 floorspace which were for medical use or secondary/tertiary education purposes or on sites unsuited to nursery use.

Insofar as the demand for nurseries is concerned, the report states:

"We have reviewed the existing nursery provision within Marylebone and although 22 providers have been identified, the nursery offering within half a mile of the site provides only 142 (of >1,000) nursery places. Furthermore, the existing provision, based on Ofsted data, is at full capacity (101%), compared to a London-wide average of circa 80%. This suggests that there is more competition for nursery places within Marylebone than other locations within London. On this basis we therefore, consider that there would be demand for additional D1 space from nursery providers within Marylebone. This opinion is supported by recent comments made by local associations in relation to an application for D1 nursery space, which noted that there is insufficient supply of nursery spaces within Marylebone."

Given the apparently constrained supply of good quality Class D1 space (excluding medical floorspace) and the location of the premises, in close to residential concentrations and in good proximity to transport links, and on the understanding that the applicants do not wish to market the premises for medical use), the report concludes that the proposed ground floor unit would 'generate a reasonable level of interest if publicly marketed' for a community or educational use. In these circumstances, it is considered that the applicants have demonstrated although it is accepted that this report was written before the pandemic.

Objectors consider that there is no comparison between the approved public library, operated by the local authority, and the uses now proposed. Some have objected to the provision of a private day nursery, on the basis that this would not be used by, or be affordable to, the majority of local people. Others are concerned that there is no commitment even to the use as a nursery, or to its operation as a Council-run nursery. On this basis, many objectors contend that the proposals would not provide a genuine community use and that use of the D1 unit by a commercial operator cannot justify the loss of the play space.

However, as previously stated, the relevant planning policies make no distinction between public and private community uses and therefore the fact that any new nursery could be privately-run is not a material consideration in this case. With regard to the use being of 'local' benefit, it is entirely reasonable to assume that, to a greater or lesser degree, a nursery established in this location would be a local facility. Similarly, a creche, public hall or exhibition hall, even if privately-run, would be community facilities and would, in all probability, be 'local' uses, either partly or wholly.

One local resident is concerned that the ground floor space could remain empty in this difficult business climate and that there could be pressure to convert it to an alternative, commercial, use in the future. Although these concerns are understood, the potential lack of need/demand for a proposed use would not ordinarily be an obstacle to granting planning permission, and any proposal in the future to use this floorspace for an alternative purpose would be considered against the relevant policies applicable at that time.

Impact of the proposed Class D1 uses

City Plan policy S32 requires development to minimise and contain noise and vibration. Policy ENV 7 deals specifically with controlling noise from plant and internal activity. Developers will be required to demonstrate that the scheme will be designed and operated so that any noise emitted by plant and machinery and from internal activities, including noise from amplified or unamplified music and human voices, will meet acceptable standards in relation to the nearest noise sensitive properties. UDP policies ENV 6 deals with the issue of noise pollution and require new developments to include design features and operational measures to minimise and contain noise in order to protect noise sensitive properties including the transmission of audible noise or perceptible vibration through the fabric of the building to adjoining properties. A noise and vibration assessment report is required where development or change of use could affect noise sensitive properties. When granting planning permission, conditions may be applied to restrict noise emissions, the transmission of noise or perceptible vibration and the hours of operation and to require the implementation of acoustic measures prior to the commencement of the use.

Local residents have expressed concern that any proposed ground floor uses should not adversely affect the amenity of neighbouring occupiers, particularly in the evenings. The submitted acoustic report includes recommendations about the design of the separating structure between the community space and the proposed flats. Objections have been received on the ground that the

submitted reports assess the impact of the proposals on the amenity of the proposed flats rather than on neighbouring properties, particularly Newcastle House. However, should the proposed uses be considered acceptable, conditions would be imposed to control the impact of noise from within the development to upper floor flats and the neighbouring property.

The Design and Access Statement suggests that the nursery would operate between 0700 and 1900 hours, presumably on weekdays only, and that site servicing would take place during these hours or before 0700 hours, although the window for early morning servicing is not specified. There would appear to be no operational reason why deliveries could not take place at a later hour e.g. between 0800 and 1900 hours, in order to safeguard neighbours' amenities and these later servicing hours could be secured by condition. Should a non-nursery use come forward, the applicants propose that the prospective tenant would submit a detailed ground floor layout for approval. However, given the limited operational details provided, it is considered that any planning permission should be the subject of a condition requiring the submission of an Operational Management Plan prior to the commencement of any use, or any subsequent change to any of the approved alternative uses. The OMP should provide sufficient operational details to demonstrate that the use would not adversely affect the amenity of adjoining residents or local environmental quality (e.g. hours of use, nature of activities, capacity, servicing/delivery hours etc). Any subsequent occupier would need to re-apply to discharge this condition if their operational requirements differed from those of the previous occupants

The lawful use of the site is as a play space, which one resident of Newcastle House has described as 'noisy' but bringing a welcome vibrancy to the area. The pattern of use of the courtyard is likely to be different from that under the lawful use. The revised drawings include indicative details of rear courtyard canopies which are intended to ameliorate potential noise disturbance from the use of the rear courtyard. The potential noise attenuation offered by these courtyard canopies is assessed within the noise report and is discussed in section 8.7 below.

With appropriate conditions to restrict the proposed Class D1 use to those uses applied for, it is not considered that this aspect of the scheme would have material adverse impact upon the amenity of neighbouring occupiers, local environmental quality or the character and function of the area. Subject to the acceptability of the redevelopment of the play space, the proposed ground floor uses(s) are therefore acceptable in land use and amenity terms. Their impact in highways/parking terms is discussed in Section 8.4 below.

8.1.3 New residential accommodation

New residential development is encouraged under Policies H3 of the UDP and S14 of the City Plan. The proposal includes 870 sqm (GIA) of new residential floorspace, providing 14 new flats (7 x 1 bed and 7 x 2 bed) with balconies. All of the units would be for intermediate rent and managed by the City Council. The applicants have advised that the proposed tenure has been informed by discussions with the City Council's Affordable Housing Supply Manager.

Whilst some respondents support proposals for new homes, including affordable housing, many consider that this should not be at the expense of protected open space. Other contend that there is no demand for more housing in the area, given that large numbers of new flats have recently been built, or consider that the cumulative impact of the proposed scheme and recent housing developments would, by bringing additional people and increased activity to the area, be detrimental to local amenity.

Objectors have questioned whether the Council should be focusing on other issues at this time (addressing the impact of Covid 19 or maintaining libraries), rather than building more housing; consider that the applicant should look at housing opportunity areas identified in the London Plan (perhaps in collaboration with other partner); should purchase existing flats in Luxborough Tower and make them available for key workers, or should enforce against the unauthorised use of existing flats as short-term-lets rather than developing the play space. They contend that the housing will be expensive to develop on this, relatively small, site and that the number of flats provided will not make a major contribution to the housing deficit. While these comments are noted, the City Council, as Local Planning Authority, is required to consider the application, as submitted.

City Plan policy S14 requires residential developments to optimise the number of units provided. The approved library development provided nine market units within slightly less residential floorspace. The increased number of flats is welcomed and, given the building constraints, and flat sizes, the development is considered to comply with the policy requirements. The Marylebone Association consider that the proposed building should be increased in height to provide more flats. However, the building height, which is already the subject of neighbour objections, is considered to be the maximum acceptable in townscape terms, whilst extending the proposal rearwards is likely to materially affect the amenity of those neighbouring flats.

The applicants have made the following points in support of their proposal:

- Draft London Plan policy H2A introduces a presumption in favour of residential developments of up to 25 units on small brownfield sites up to 2,500 sqm. Such proposals should be approved unless the development would give rise to demonstrable unacceptable harm which outweighs the benefits.
- The NPPF (para. 59) states that planning system should support the Government's objective of increasing the supply of homes and addressing the housing needs of specific groups, including those who require affordable housing. Para. 68 recognises the contribution of small sites in meeting housing requirements and requires local planning authorities to give great weight to the benefits of providing homes on suitable sites within existing settlements.
- The scheme will increase the total number of units provided, when compared with the approved library development.
- As the lawful use of the application site is for purposes ancillary to the existing residential use of Luxborough Tower (Class C3), the development accords with relevant land use policies

As set out elsewhere in this report, officers do not agree with the applicant's view concerning the lawful use of the play space, and do not consider this to be a 'brownfield' site. However, the provision of new affordable housing, is welcomed in principle and complies with local, regional and national planning policies.

Whilst there has been a considerable amount of new residential development in the vicinity of the site, given the need for the Council to meet regional and national housing targets, it is imperative that every appropriate opportunity is taken to provide new housing, especially when it is for affordable housing purposes, as discussed below.

8.1.3.i Affordable Housing and housing tenure

Policy 3.11 of the London Plan (2016) requires, all agencies, including local authorities to strive to maximise affordable housing provision, setting targets for the provision of affordable homes over the term of the Plan.

UDP policy H4 requires certain developments, including those providing 10 or more new dwellings, to include an appropriate form of on-site affordable housing, based on unit numbers. Where more than 30% affordable housing is proposed, the tenure mix should be guided by housing needs assessments to ensure that development meets identified housing needs.

City Plan policy S15 requires residential developments to provide an appropriate mix of units in terms of size, type and affordable housing provision to contribute towards meeting Westminster's housing needs and to create mixed communities. Policy S16 sets out the Council's objective that more than 30% of new homes should provide affordable housing, although with an increasing population, the Council's ambition is to exceed this 30% target. Proposals for housing development of 10 or more, units or over 1,000sqm of residential floorspace, will be expected to provide a proportion of floorspace, rather than of unit numbers, as affordable housing. No specific guidance is given on the tenure of any affordable provision, but the supporting text advises that the Council relies on the London Plan (2016) which details a 60 (social and affordable rent):40 (intermediate rent or sale) split. The Housing Supply Manager has advised that Westminster currently has a list of over 4,400 households waiting for intermediate housing opportunities.

The Mayor's Affordable Housing and Viability SPG (2017) SPG seeks to maintain flexibility in affordable housing provision, to meet local needs, while ensuring the delivery of the preferred affordable housing tenures. It requires at least 30 % of new units to be for low cost rent (social rent or affordable rent), with London Affordable Rent being the default level of rent, and at least 30% to provide intermediate housing, with London Living Rent and/ or shared ownership being the assumed default tenures. The tenure of the remaining 40% can be determined by the LPA taking account of the relevant Local Plan policy.

Policy 9 of the Draft City Plan (2019) states that 60% of affordable housing provision should be 'intermediate' affordable housing for rent and sale, with 40% for social and affordable rent. Whilst this draft policy currently has little weight, it indicates the Council's 'direction of travel'. This approach is supported by 'The Westminster Housing Market Analysis (June 2019) prepared by WCC and Wessex Economics which confirms that, in terms of affordable housing, there is a greater demand for intermediate housing (56%) than for social housing (44%).

All of the proposed flats would provide intermediate homes for rent (provided at a cost at least 20% below market rents), managed by the City Council. The applicant has confirmed that they will target a range of income groups so maximise housing opportunities. The Council's Housing Supply Manager supports the provision of 100% housing for intermediate rent and has confirmed that a range of rents would be charged on the flats to reflect the varying incomes of households registered for intermediate housing. These rents will range from Westminster's lower quartile and median rents through to London Living Rents (LLR), which is the rent cap applied by the GLA to intermediate rents depending upon ward location and the size of property.

Whilst some respondents welcome new housing on the site, objectors consider that more affordable housing could be secured by providing the housing on cheaper land. Other respondents are concerned that any restricted housing tenure may not be permanent as policies may be subject to

future change and the flats could become used as part of the general housing stock. However, since the land is already in the Council's ownership, the question of acquisition does not apply, and ultimately ownership matters are controlled by Right to Buy legislation

8.1.3.ii Residential mix

City Plan policy S15 requires residential developments to provide an appropriate mix of units in terms of size, type and tenure. Under UDP Policy H5, at least 33% of units within new residential developments should be family-sized, providing three or more bedrooms. Unlike the approved scheme, the current proposal does not include any family-sized housing. The supporting text to policy H5 states that the policy may be applied flexibly e.g. in very busy locations. Given the largely residential character of Luxborough Street, it could not be argued that the site is not suitable for the provision of family housing but it would not be possible to increase the height and bulk of the new building to incorporate larger units, or to provide these within the current building envelope without reducing the overall unit numbers. However, the main justification for non-family sized units in this case is that the Council's Housing Supply Manger who has confirmed that the overwhelming majority of those on the waiting list for intermediate accommodation require smaller flats: 82% of households require 1-bedroom units, 12% require 2-bedroom units and just 6% require 3 or 4-bedroom units. In view of this demand profile, it is considered that an exception to the usual requirements under UDP policy H5 for family-sized (3 bed or more) can be justified in this instance.

8.1.3.ii Standard of accommodation

All flats would meet London Plan minimum space standards. (The seven 1B/2P units would measure between 51 and 55 sqm, the two 2B/3P units would measure 61 sqm and the five 2B/4P units would measure between 73 and 81sqm). All units would include some private amenity space. The new flats would be accessed via a lift and stair core.

The Marylebone Association considers that flat layouts should be re-configured so that the principal living areas enjoy the best aspect and views. However, many of the living areas/ balconies would enjoy views over Luxborough Tower Gardens and PSGN. Given the site constraints and the number of units it is accepted that not all living areas can enjoy garden views and, as the existing layouts are considered acceptable, it is not considered that it would be reasonable to require the applicants to re-plan the accommodation.

The flats will be provided with natural and mechanical ventilation. The St Marylebone Society, originally objected to the provision of new plant, including on environmental grounds. However, in busy central areas with high ambient noise levels it is usual for new housing developments to provide mechanical ventilation so ensure that units could be adequately ventilated should residents choose to keep their windows closed to ameliorate potential noise disturbance and air pollution. In these circumstances, the objection to the principle of mechanical ventilation cannot be supported.

The submitted acoustic report demonstrates that the development would achieve acceptable internal noise levels in relation to external noise sources, due to the acoustic properties of the building fabric and double glazing. Subject to the separating floor between the ground floor use and the first floor flat being constructed in accordance with the submitted specifications, it is considered that the proposed flats would achieve acceptable internal noise levels from within the development. This would be dealt with by condition.

An objection has been received on the ground that internal lighting levels to the new flats are poor and that future occupants would be overly reliant upon artificial light. The submitted daylight and sunlight report includes an assessment of the level of daylight received to the proposed flats (Average Daylight Factor). The BRE guidance recommends an ADF value of 2% for kitchens (12.5sqm or larger), 1.5% for living rooms and 1% for bedrooms. Where a room is in multiple use e.g. a living/kitchen/dining room, the guidance states that the higher standard (2%) should apply to the entire space.

The ADF assessment shows that, 8 of the 14 proposed living/kitchen dining rooms would achieve values of between 1.21 and 1.92 and 3 of the 21 bedrooms would achieve values of between 0.81 and 0.92. The rooms on the first floor, rooms on the boundary with Newcastle House and rooms with balconies are least likely to achieve to recommended values but it is acknowledged that the daylight levels within the principal living areas would be higher if the space occupied by the balconies was included within the ADF assessment. However, similar values were achieved under the approved scheme and, given the site constraints, and the benefits of providing private amenity space it is, again, considered that internal daylight levels are satisfactory and that the units would provide a good standard of accommodation for future occupants.

Land Use Conclusion

In approving the previous library scheme, the Committee resolved that the benefits of providing a replacement library outweighed the policy presumption to protect the play space/open space. The committee did not consider that the provision of market housing added any weight to these considerations. However, the current scheme provides affordable housing which, given the extreme need, which has recognised public benefits and can give added weight to the overall benefits of the proposed uses. Therefore, it is considered that the affordable housing when coupled with the proposed social and community uses (nursery, creche, public hall or exhibition hall), but in particular a nursery use do, on balance provide sufficient benefits to justify agreeing to the loss of the play space/open space in this instance.

8.2 Design/townscape

8.2.1 Loss of the open space/setting of Luxborough Tower/relationship with Paddington Street Gardens North (PSGN)

Under Policy S35 in the City Plan, the Council will seek to address existing public open space deficiencies, by protecting all open spaces and their quality, heritage, ecological value, tranquillity and amenity

UDP Policy DES 12 states that permission will only be granted for proposals adjacent to open spaces including parks, which safeguard their appearance, wider setting and ecological value, preserve their historic integrity and protect views in and out of these spaces and will not project above existing tree or building lines. In addition, permission will not be granted for development on or under parks, landscaped spaces and public or private gardens where the open spaces form an important element in the townscape, part of a planned estate or street layout; are characteristic features of conservation areas; provide the setting of a listed building or are of significant ecological value.

Supporters of the scheme consider that the development would make a 'dead' space more attractive and would improve the appearance of Luxborough Street. However, objections have been received

on the grounds that the open space was designed to counter-balance the height of Luxborough Tower and that the development of the site would be contrary to these original design principles, would adversely affect the open aspect in views from Luxborough Tower and would be detrimental to the architectural unity of the area. Similar objections were received in relation to the previous scheme.

One respondent, whilst objecting to the development in principle, considers that this is a missed opportunity to link a refurbished play space with PSGN to provide an enhanced, cross-generational facility. The Marylebone Association also believes that the proposals should be redesigned, perhaps to incorporate a colonnade, to improve links between Paddington Street and Luxborough Street, via PSGN, and that the formation of this link would address existing problems with anti-social behaviour within the gardens. The Association reports their discussions with the applicants who advised that creation of a link would take away valuable floorspace which would compromise the viability/attractiveness of the ground floor unit to prospective tenants. The applicants also contend that the creation of a narrow walkway or colonnade could raise its own security problems and would also create additional management responsibilities around the locking/opening of the park gates. However, the amenity society considers that that economic arguments surrounding the potential use of the ground floor accommodation should not override the public benefits associated with the creation of a new access route.

The Marylebone Association believes that the rear boundary wall (approximately 3m tall) should be reduced in height to create less of a barrier between the proposed ground floor use and PSGN. They consider that there should be full access between the ground floor accommodation and the park, particularly given the potential use as a children's nursery. Others have expressed concern about the height and design of the boundary wall and its impact on the setting of the gardens (see below). One local resident is concerned about the potential use of PSGN as extension to nursery and has pointed to the fact that the site plan includes an area of the adjacent gardens. Other respondent has commented that that the approval of landscaping works to Luxborough Tower gardens impacts on PSGN as an alternative means of escape has had to be provided across the gardens and that this detracts from the public open space and the tranquillity of the former burial ground.

The approved landscaping works are confined to Luxborough Tower Gardens, which does not have physical links to PSGN. The requirement for a rear means of escape results from the fact that the application site would be fully developed to optimise the available floorspace. It is noted that the approved library scheme also included a rear access onto PSGN. As a means of escape, the boundary wall access currently proposed would only be used in case of emergency and this could be controlled by condition. It is proposed to provide a short 'path' leading from the emergency access door into the gardens and, as stated, would only be used in a real emergency or for fire drills. This path would not require any structural interventions as it comprises a synthetic surface made of a bound rubber mulch that sits on top of the soil, so as not to damage any tree roots. The surface will let air and water through but provides a stable surface for very occasional use. In any event, this element of the scheme does not constitute development and would not require planning permission in its own right if it were to be laid down later.

It is not considered that the ,very infrequent, use of this doorway would adversely affect the amenity of the adjacent park. The site boundary wall has been designed by the applicants to protect the character of the adjacent gardens, with the boundary wall providing site security. Consequently, the height of the boundary wall, and the use of the rear access door for emergency purposes, is considered acceptable.

The play space has historically been developed land – from the eighteenth century until the 1970s. The proposals would reinstate the historic plot boundary of the site. While the development would enclose some park views and some views from Luxborough Tower, it will reflect the height of adjacent buildings. As the gardens to Luxborough Tower are extensive, it is not considered that the development of the play space would adversely affect the tower’s setting or the ecological value of the wider site.

Although suggestions to provide a new access route are noted, the applicants have not included a link through the site, for the reasons set out above, and officers have a duty to consider the acceptability of the scheme as submitted. Should the redevelopment of the play space be considered acceptable in principle, it is accepted that there is a requirement to optimise the floorspace within the development. As the library development was approved in the light of similar objections, it is not considered reasonable to require the applicants to redesign the current scheme to include an accessway. Furthermore, creation of a new access route would lead to a requirement for additional security measures and reduce the amount of space available for the social and community use.

In promoting links between the site and PSGN, the Marylebone Association has referred to the potential use of s106 funding secured as part of the redevelopment of the former Chiltern Street car park, however the entirety of that contribution (£257,000 - contribution for works within the vicinity of the car park site) was ringfenced for Marylebone Low Emission Neighbourhood Public Realm Improvements in July 2019.

Height and bulk

The Marylebone Association’s view is that the building height should be increased to provide more flats. The St Marylebone Society also believes that the height of the ground floor could be increased, to improve the sense of building hierarchy, even if that means that the building is taller, provided that it is stepped down towards PSGN to provide an acceptable relationship with the adjacent gardens. The approved library scheme incorporated a corner ‘tower’ to signal the civic use of the building. The current proposal includes an entire floor of accommodation at that level, set back from the front building line, and an objection has been received that the approved corner tower should not be considered to set a precedent for this additional floor. Most objectors consider the proposed building to be too tall and contend that it should not extend above the height of the neighbouring buildings (rather than the chimneys) at Newcastle House and Luxborough House. Objectors consider that building would result in the ‘canyonisation’ of Luxborough Street and some have requested that the building height is stepped back from third floor level to reduce the impact of the building in relation to the street and the buildings opposite.

One objector has requested that the drawings should show all roof plant. All roof level additions, including ducting and photovoltaic panels have been shown on revised drawings. The scheme includes a ‘Mansafe’ lanyard system to the flats roofs rather than safety balustrades,

Detailed design

The facades would be finished in brick, with a metal clad roof storey and metal windows. The two building entrances would be defined by canopies.

Whilst some respondents consider that the proposed building design is 'effective' and appropriate in the context of the street, others consider it to be 'inferior', 'bland' in the context of the detailed facades of neighbouring Victorian and Edwardian buildings, that it is not a 'friendly' community design and detracts from the street scene. The St Marylebone Society now considers the detailed design to be reasonably sympathetic in townscape terms and that the use of brick is appropriate. Nevertheless, they believe that the building entrances could be better defined and that, in addition to the increase height, detailed above, the ground floor could be finished in a different material/different brick to improve the building definition and hierarchy. They have also made some suggestions regarding the colour of window frames (darker) and the colour of metal cladding to the topmost storey (lighter).

Local residents have expressed concern that the development does not present an active or attractive street frontage, with bin stores etc. at ground floor level. The ground floor facade comprises separate entrances to the flats and the ground floor unit and also doors to the refuse and cycle stores. Given the need to create the optimum amount of useable floorspace the scheme does not include access to the rear of the site, and the rear courtyard which provides external space for the Class D1 use could not reasonably house the refuse and cycle storage for the flats. Additionally, there is no rear access to the site, which backs on to PSGN. In these circumstances, whilst not ideal, there is no alternative location for the cycle stores and refuse stores. Similar ground floor arrangements were approved under the library scheme.

One objector has expressed concern that revised drawings show the building facades to be 'peppered with service holes'. Another has objected to the impact of the unacceptable 'glass frontage'. The façade design incorporates the necessary vents required to serve the ventilation system. These are small interventions and can be designed to suit the appearance of the building through careful choice of their detailed design and materials, which may be dealt with by condition. The extent of glazing is acceptable and at ground level it is detailed to suit the proposed use.

The Marylebone Association believes the rear site boundary wall to be too tall and the St Marylebone Society considers that its design, which incorporates low coloured-acrylic panels and a metal leaf design to the parapet is 'incoherent' and inappropriate. The Rector of St Marylebone Parish Church, also considers that the appearance of the rear boundary wall is 'heavy' and that it should be better articulated to improve its impact upon the setting of the gardens. (They have asked to be fully involved in any future discussions regarding the design of the wall, its foundations and the design, preparation and delivery of the development). Objectors have referred to the removal of the original boundary wall and railing, considering that these should be replaced. The objections to the detailed design of the wall are considered sustainable in heritage asset terms and may be dealt with by amending condition.

The key legislative requirements in respect to designated heritage assets are as follows:

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Section 72 of the same Act requires that "In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

Whilst there is no statutory duty to take account of effect on the setting of a conservation area, Policy DES 9 (F) in the UDP requires that where development will have a visibly adverse effect upon a conservation area's recognised special character or appearance, including intrusiveness with respect to any recognised and recorded familiar local views into, out of, within or across the area, it will not be permitted.

Furthermore Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

The site is on the west side of Luxborough Street towards its southern end and, although not in a conservation area, the opposite side of the street is in the Harley Street Conservation Area and, to the rear, is the Portman Estate Conservation Area. The site is in the Marylebone Area of Special Archaeological Priority. Paddington Street Gardens North are to the west of the site and the grounds of Luxborough Tower adjoin the site to the north.

On the far side of PSGN are the rear facades of properties in Chiltern Street, a portion of which is a recent mixed use redevelopment of a former car park. The rear of No.78 Chiltern Street is also visible, and this is a grade II listed building.

At present, the site is an open area of playscape and has been in this form since the early 1970s. It is now fenced-off and inaccessible. Previously, it was occupied by a row of terraced houses. The historic buildings in the street are predominantly to be found on the east side and are a mix of designs making attractive use of brick, stone, and painted metalwork. The adjoining building to the south of the site is similarly designed. In contrast, the University of Westminster buildings and Luxborough Tower are white-finished, overtly modern, and of an entirely different, greater, scale.

Although the site is boarded-up, its open aspect is important and allows views to and from Paddington Street Gardens North, which is in the Portman Estate Conservation Area. The conservation area audit identifies local views including some in Paddington Street Gardens North (paragraph 3.53 and figure 5), as well as the importance of boundary walls (paragraph 3.55). These two factors are important when considering some to the objections to the proposed development.

The design of the rear boundary wall, which incorporates decorative cresting and apertures with translucent, coloured, infill panels, requires modification to address objections received to its design. It is incongruous and would, because of its detailed design (mainly the coloured panels), cause harm to the setting of the Portman Estate Conservation Area and detract from local views contrary to UDP policies DES 9 and DES 12. However, the harm is less than substantial in NPPF terms and may be remedied by an amending condition which will allow time for the applicant to address the objections in a way that will ensure the wall's appearance is suitable and maintains the setting of the Portman Estate Conservation Area.

As before, the development will block views to and from Paddington Street Gardens North contrary to UDP policy DES 12. However, in principle, the historic pattern of development in the area would be reinforced though reintroduction of a building on this site, which is a benefit in heritage asset terms and meets the requirements of UDP policy DES 9. Therefore, while the view is lost, the

setting of the adjoining conservation area is enhanced. The overall effect is acceptable in heritage asset terms.

In all other urban design and heritage asset respects, the proposal responds appropriately to its surroundings by incorporating characteristic features such as the orderly grouping of the windows and the use of orange-red brick for the facades. The basic form of the building is similar to that of neighbouring residential blocks both within and outside the adjacent conservation areas.

While the height and bulk of the proposed development is greater than the previously approved development (there is an additional storey set back from the street and north facades at roof level and slightly larger projecting sections at the rear), in principle, there is no objection to the increased height despite it making the development one storey higher than the existing building to the south. The parapet line of the development follows that of the adjoining building and the set-back top floor is a clearly subordinate a recessive feature appropriate in its context. Furthermore, the brickwork facades suit the historic character and appearance of the surrounding area.

The proposed rear façade has several tiers and multiple balconies which are carefully integrated in to the design. The side (north façade) steps down in height with emphasis given to the front section which has recessed balconies and a set-back metal-clad top floor. The lower, rear, section is simpler and steps down to the single-storey boundary wall.

Objections to the scheme on the basis of its height and detailed design are varied and sometimes contradictory, particularly as regards its height. Nevertheless, noting its context, the appearance of the proposal is acceptable in its current form subject to amending the detailed design of the rear boundary wall.

As such, the proposal is considered acceptable, it accords with City Plan policies S25 and S28 and UDP policies DES 1, DES 4, DES 9, DES 10, and DES 12; and therefore, a recommendation to grant conditional permission would be compliant with the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

8.2.2 Impact on trees/replacement planting

Policy ENV 16 states that all trees in conservation areas (PSGN is within the Portman Estate Conservation Area) will be safeguarded unless dangerous to public safety or, in rare circumstances, when felling is required as part of a replanting programme. In addition, permission will be refused for development likely to result in loss or damage to any tree which makes a significant contribution to the ecology, character or appearance of an area. Planting of new or replacement trees may be required as a condition of a planning permission. Policy S38 of the City Plan also seeks to protect and enhance biodiversity throughout the borough.

Trees on Council-owned property are normally managed by Council officers and there is an assumption that they will be managed appropriately, and that statutory protection is not required. On non-Council-owned properties outside conservation areas, where a tree is deemed worthy of protection, the City Council would normally make a Tree Preservation Order. On Council owned sites, it is currently considered more appropriate to enter into negotiations regarding the potential removal or pruning of any Council owned tree, that might be contentious, rather than seeking statutory protection.

Original objections from the St Marylebone Society, and objections from local residents relate to the removal of trees and shrubs, the impact of development within the Root Protection Area (RPA) of adjacent trees in Luxborough Tower Gardens and PSGN and the extent of canopy reduction. Objectors consider that the trees should not be cut back to facilitate the development but that the scheme should be redesigned to safeguard the existing trees. One respondent expressed concern that the tree canopies were incorrectly shown and that the trees would overshadow the rear courtyard. The Council's Arboricultural Officer has not expressed any concern about the accuracy of the submitted drawings

The scheme proposes the removal of two small trees (T1 Chanticleer pear and T2 crab apple) on the pavement outside the site and an Elder tree (T36) in the rear play space. The St Marylebone Society has requested that these street trees be replaced and the submitted plans show two replacement street trees. The Council's Arboricultural Officers has raised no objection to this aspect of the scheme subject to suitable replacement planting. The replacement street trees will be of the same species and of similar size and maturity to those being removed.

The development also involves construction within the Root Protection Areas of three retained London plane trees beyond the play space boundary, T4 in Luxborough Tower Gardens and T15 and T17 in PSGN, within the adjacent conservation area.

The Arboricultural Manager objected to the library application on the grounds that the excavation of basements beneath Luxborough Tower Gardens would result in the removal of (T4) which is a 'very fine' London Plane tree with a long life expectancy and the potential to increase in size significantly. This tree was considered to make a significant contribution to the appearance and amenity of the area, and to the particular amenities of the residents of Luxborough Tower. However, the Committee accepted that suggested revisions to the building plan would result in an unacceptable loss of library space and, consequently, the removal of the tree was considered acceptable in those particular circumstances.

This matter is similarly approached in the current application. The potential loss of this London Plane tree is undesirable but may be inevitable if the building plot is to be maximised to achieve the optimum development on the site for social and community and affordable housing purposes.

The development also requires construction within the canopies of T4 (if it can be retained), T5 and T17. The AIA recommends that these trees are pruned back from the site by 6m, 3m and 5m respectively. The Council's Arboricultural officer considers that the substantial pruning of T4 and T17 (both mature trees with a high amenity value and a long-expected lifespan) will leave the trees with unbalanced crowns. Even following the proposed pruning, these trees would have an uncomfortable relationship with the new building. The AIA acknowledges that regular pruning would be required but concludes that this potential inconvenience should be balanced against the benefits of providing a verdant outlook and screening.

Therefore, the benefits of the scheme are considered to outweigh objections to the impact on these trees, the Arboricultural Officer has recommended that pre-commencement conditions are imposed to secure tree protection measures and details of an audit system for arboricultural site supervision. The replacement of the street trees, which are small specimens, would be secured as part of any future legal agreement. (£5,000 per tree).

The scheme includes living roofs at various levels. These are welcomed and would increase the site's contribution to the biodiversity of the area. Should the proposals be considered acceptable,

conditions would be imposed to require the roofs to be provided and to require the submission of details of their construction, planting and maintenance regime.

The submitted plans include landscaping proposals for the development, including within the rear courtyards and in Luxborough Tower Gardens (replacement planting in the location of the proposed site construction access)..

One respondent has commented that landscaping proposals for Luxborough Tower Gardens (which have been separately approved) would not compensate for the loss of the play space, whilst another supports the proposed development on the basis that the landscaping works are carried out, particularly the installation of taller railings to improve site security. However, the approved landscaping proposals are entirely separate from the current proposals and the acceptability, or not, of the current scheme cannot be determined on the basis that this will guarantee the implementation of the landscaping proposals.

Archaeology

The play space forms part of a Tier II site within the Marylebone Village Archaeological Priority Area. The land was formerly occupied by the eighteenth-century Marylebone Workhouse with its chapel, infirmary and burial ground. In these circumstances, the Rector of Marylebone Parish Church has requested that a full archaeological investigation is undertaken and that the applicants enter into full discussions with the Diocese of London. Others have requested that the rear building line be set back from the park boundary to avoid disturbance of the historic burial ground.

A desk-based historic environment assessment was submitted with a previous application in 2013 and it has been updated to support the current application. The assessment confirms that the development could impact upon late eighteenth/early nineteenth century human remains associated with the Paddington Street North Burial Ground along the western boundary of the site. Structural remains of the former workhouse including building foundations and other buried deep-cut structures may also be present with eighteenth century terraced housing and outbuildings in the central and eastern parts of the site. Site investigations, to establish the ground conditions, appear to support this conclusion.

Historic England (Archaeology) have assessed the report and consider that the archaeological interest of the site could be adequately protected by the imposition of pre-commencement conditions requiring the submission of a Written Scheme of Investigation, and the subsequent recording and publication of any findings, and details of a programme of public engagement.

The applicants are aware that, since the proposed works and archaeological investigations may disturb human remains, a burial licence should be obtained, in advance, from the Ministry of Justice and further permissions may also need to be sought from the Chancellor of the Diocesan Authorities.

8.3 Amenity

Policy ENV 13 of the UDP states that the City Council will normally resist proposals which result in a material loss of amenity to neighbouring occupiers including as a result of a loss of daylight or sunlight; an increase in the sense of enclosure to neighbouring windows, overlooking or unacceptable overshadowing, particularly on gardens or on adjoining buildings. The supporting text

states that where lighting levels already fall below BRE guidelines, any further loss may be considered unacceptable. Policy S29 in the City Plan states that proposals which result in an unacceptable material loss of residential amenity will be resisted and requires development to aim to improve the residential environment.

8.3.1 Daylight and Sunlight

The application is supported by a Daylight/Sunlight Report which is based upon the Building Research Establishment (BRE) guidelines. The report also includes a comparison of the impact of the approved and proposed schemes. The BRE guidelines are intended to apply to habitable rooms where daylight is required including living rooms, kitchen/diners and bedrooms, although principal living rooms are afforded a greater degree of protection than bedrooms. Small kitchens, rather than kitchen/diners, are not considered to be habitable rooms.

The original daylight/sunlight report, which was updated/correct to address inaccuracies in the original, includes assessment of the impact of the scheme upon the level of daylight and sunlight to Newcastle House, Luxborough Tower, the Telephone Exchange (25 Luxborough Street), Winsford House and Nottingham Mansions.

Objectors consider the report's assumption to be 'premature' on the basis that the UK may ultimately decide to adopt the new standards based on the new European daylighting standards. However, at present, Westminster's development plan policies refer to the BRE guidance and, in common with all applications currently being determined by the City Council, it is considered appropriate refer to the BRE guidance in assessing the current proposals.

Objectors have also expressed concern about statement within the daylight/sunlight report which suggest that further information might be required to properly assess the impact of the development upon neighbouring properties. Such caveats are standard in daylight and sunlight assessments where daylight consultants invariably do not obtain access to neighbouring properties and are reliant on building plans, where available, or assumption about the building layouts. Following a site visit, and with the assistance of the Chairman of Newcastle House Freehold Ltd., officers provided the applicants with details of the layouts of neighbouring flats. Where the updated report contains any errors regarding room designations, these have been corrected in the assessment set out below. In these circumstances, it is considered that the revised daylight/sunlight assessment, in addition to information obtained during on-site inspections, has provided officers with a suitable basis on which to assess the likely impact of the proposed development.

The submitted report provides a comparison of the impact of the current proposals and the approved library development upon the neighbouring properties. Objectors consider, as the permission for the library development has expired, it should not be taken into account. While the main assessments related to a comparison of the 'as existing' and 'as proposed' situation, a comparison with the approved scheme is also relevant insofar as it confirms what level of reductions the Council had previously considered acceptable.

The height and bulk of the building is informed by the proximity of neighbouring residential properties, particularly Newcastle House, immediately adjacent. The form of the new building is similar to that approved in 2014, with the rear building stepping up from the boundary with Newcastle House (one storey) towards Luxborough Tower Gardens (3 storeys). The most significant

change is to the main roof where a full fifth floor of accommodation is now proposed, whereas the approved library scheme included a tower as a feature only on the corner at this level.

8.3.1.i Daylight

Under BRE guidelines the principle method used for calculating daylight is Vertical Sky Component (VSC), which is a general test for potential daylight to a building (measuring the light available on the outside plane of a window). If the VSC, or skylight, is greater than 27%, enough light should still be reaching the window of the existing building. Where, as a result of the development, this figure is below 27% and less than 0.8 (or 20%) of its former value, then the reduction in light to that room will be noticeable.

In the case of a bay window, the central window facing directly outwards is taken as the main window. If a room has two or more windows of equal size, the average VSC reduction will be considered.

The No-Sky Line test (NSL) assesses the distribution of daylight within individual rooms. The BRE guidelines states that where a significant proportion of the working plane (which can receive direct skylight) lies beyond the NSL, the distribution of daylight within the room will seem poor and supplementary electric lighting will be required. The British Standard suggests that a significant area would be more than 20%. However, it is acknowledged that if an existing building contains single aspect rooms, which are particularly deep, then a greater movement of the NSL line may be unavoidable.

Objections have been received on the grounds that the proposals would result in an unacceptable loss of light to neighbouring flats including Newcastle House and flats on the opposite side of Luxborough Street. One objector considers that the rear part of the development should be omitted in order to safeguard the amenity of the neighbouring building.

Newcastle House

Newcastle House is a residential building located immediately to the south of the play space. There are flats in the main building (basement, ground and first to fourth floors) and within a rear wing (lower ground, upper ground and first to third floors). The two blocks are joined by a corridor/stair link. There are three west-facing windows to the rear of the main block. The southernmost windows serve bathrooms. The central windows appear to serve small (non-habitable) kitchens (less than 12.5 sqm) which, on the lower floors, are obstructed by the height and proximity of the rear block. The northernmost windows serve bedrooms or a study in the case of the basement flat (Flat 2).

The northern façade of the rear block contains two windows on all floors, which overlook the play space. On the second to fourth floors, there are dormers, each containing a pair of windows, set within a steeply raking roof. For the purposes of this assessment, the pairs of dormer windows, which are of an equivalent size, are considered as a single window with a reported average value. The easternmost windows light kitchen which, on the lower floors, are served by secondary lightwell windows which face the rear of the front block (some of which appear to be blocked up internally). The westernmost windows serve either living rooms or bedrooms. There are also secondary, west-facing windows to these rooms, with unobstructed views over PSGN.

Objections have been received on the grounds that the proposals would result in a material loss of daylight to flats within that property, principally flats 2, 4, 7, 10 and 12A. There will be some impact on Newcastle House due to its proximity to the application site, the location and orientation of its windows and the fact that the application site has been undeveloped for 50 years. The report, which also assesses the impact on all kitchens, shows that any reductions in VSC to rear windows in the front block would be well within VSC targets, with a maximum loss of 12% in the case of the ground floor windows (Flat 6) (from 5.97 to 5.24% to the kitchen and from 15.99 to 14.07 % to the bedroom). Reductions to other kitchens and bedroom/studies range between 1 and 7%.

The impact on windows within the rear block is more significant for the reasons outlined above. The lower ground floor flat (Flat 4) would experience an 86% reduction in VSC to the kitchen lightwell window (from 1.78 to 0.25%) and a 36% loss the principal kitchen window (12.98 to 8.36%). The living room window would see a 31% reduction (from 14.49 to 10.03%) although the secondary window to this room would be unaffected, receiving a VSC of 17.9%.

The kitchen lightwell window to the upper ground floor flat (Flat 7) would experience a VSC reduction of 85% (from 2.65 to 0.4%) and the main kitchen window would see a reduction of 46% (from 26.59 to 14.28%). The adjacent window, which is assessed as a bedroom, would see a 37% loss (from 27.37 to 17.33%) although the secondary west facing window would be unaffected (26.78%).

The first floor flat (Flat 10) would see a 73% loss to the kitchen lightwell window (from 2.72 to 0.75%) and an average reduction of 40.5% to the main kitchen window, with a retained average value of 16.4%. The adjacent bedroom windows would see an average loss of 28.5% with a retained value of 20.5%. The west facing window would be unaffected with values exceeding the BRE target (at 28.27%).

At second floor level (Flat 12a), there would be an average 31% reduction in VSC to the kitchen windows, which would retain an average value of 19.28% (from 27.8%). There would be an average reduction of 21% to the living room windows, although one window would achieve the 20% target, and the windows would retain an average VSC value of 23.5%. The west facing living room window would be unaffected (29.72%).

Any losses to the third floor kitchen window (Flat 16) would be below 20% and a VSC value of 23.6% would be retained. All windows to the adjacent living room would either meet or exceed the BRE target.

The NSL assessment shows that daylight distribution within neighbouring rooms will be largely unaffected. Of the 22 rooms tested (including kitchens), 13 rooms would experience no change. Losses within nine other rooms would be well below 20% with the exception of the small (non-habitable) kitchen to the lower ground floor flat in the rear block (Flat 4) which would see a 30% reduction, with 64%(6.11 sqm) of the room area receiving direct skylight compared to the 91% (8.81 sqm) existing.

A comparison of the current proposals and the previous scheme shows that of the 36 windows tested, 11 would see no change or some improvement over approved VSC values. Of the 25 windows where there are additional losses, these are most significant in the case of the secondary kitchen lightwell windows to flats in the rear block, where there are additional losses of between 23 and 25%. However, the existing VSC values to these windows, which serve non-habitable rooms, are already severely compromised and it is not considered that these additional losses would be

noticeable. In all other cases, the reductions are between 1 and 10% beyond the approved values . As detailed above, the retained VSC values are considered acceptable.

Again, comparison with the approved NSL values shows that most rooms would see either slight improvements or no change compared with the approved library development. However, in the rear block, the kitchen to the upper ground floor flat (Flat 7), the kitchen and bedroom room to the first floor flat (Flat 10), the kitchen and living room to the second floor flat (Flat 12a) would see slight additional losses of between 1 and 4% beyond the approved values.

The occupants of Newcastle House have benefitted, in terms of the amount of light received to their flats in recent years, from the fact that the application site was cleared of development in the 1970s. The applicant's approach, where the proposed development seeks to mirror the form of the neighbouring property, incorporating a main block and a rear extension, is considered appropriate and the rear block is confined to three floors. The losses to the lower floor lightwell windows are disproportionately high as the windows currently receive very low levels of natural light because of their relationship with the front block. While there are reductions in north facing windows, which exceed the 20% BRE target , the retained daylight values to the principal habitable rooms are considered reasonable and are typical in a built-up central location. Consequently, it is considered that the impact of the proposals upon levels of light to the Newcastle House flats would not be so serious as to justify a recommendation for refusal.

Luxborough Tower

Because of the distance between the proposed building and Luxborough Tower, the impact upon flats within the tower is limited. The report assesses the impact on south facing windows on the first to eighth floors where the maximum loss would be 4% to a ground floor living room window. All windows tested would continue to receive good levels of natural light. When compared with the approved scheme, 12 of the 32 windows tested would see reduced VSC values, but these losses are limited to 1%.

As with the approved scheme, the NSL analysis shows that there will be no losses to the rooms tested.

Telephone Exchange (25 Luxborough Street)

There are three windows to the flats on each of the third to fifth floors of the Telephone Exchange building which is located on the east side of Luxborough Street, facing the development site. The approved plans show that the southernmost of these windows serve a communal stair and that the other windows each serve bedrooms. (The report designates one of the third floor bedrooms as a study). The two third floor windows would see a maximum VSC reduction of 13% but would retain VSC values of over 26%. Losses at fourth floor level would be limited to 2%, with retained values of over 24%. There is no analysis of the impact on the fifth floor rooms, but given the retained values for the lower floors, the relative building heights and the distance between them, it is not considered that daylight levels to fifth floor windows would be materially affected.

When compared with the approved scheme the VSC analysis shows a slight improvement to one bedroom window and modest reductions of between 1 and 6%, to the remainder.

The NSL assessment shows that there would be no loss of visible sky to any of the rooms tested and no additional losses when compared with the approved scheme.

Winsford House

Winsford House, opposite the site comprises flats leading from either side of a central entrance. The occupant of Flat 11 has expressed concern about levels of light to the buildings opposite the site. The VSC analysis shows that the flats on the north side of the entrance would be most significantly affected. The bedroom and living room to the basement flat (Flat 1) are each served by a pair of windows. The (northernmost) living room windows would average a VSC reduction of 46.5%, with an average retained value of 7.03% (from 13.15%). The adjacent bedroom windows would average a 31% VSC reduction, an average retained VSC value of 6.92% (from 9.98%).

At ground floor and above, rooms are served by two bay windows, where the impact on the central window within the bay is assessed. The ground floor living room (Flat 3) would see a 30% reduction in VSC (from 19.24 to 13.54%), while the reduction to the bedroom would be below 20%. Similarly, the first floor flat (Flat 5) would see a 22% VSC reduction to the living room window (from 22.16 to 17.30%) with losses to the bedroom being below the 20% threshold.

All other losses to bedroom and living room windows on the second and third floors (Flats 7 and 9) would be below 20%. Any losses to windows serving flats on the south side of the central entrance (Flats 2 to 10) are well below the 20% threshold.

A comparison with the approved scheme shows that of the 56 windows tested, there would be no additional reductions in VSC to 33 windows, with some improvements. In the case of the remaining windows, there would be some losses of between 1 and 4 %. These changes are not significant.

The NSL assessment shows the most significant impact is on living rooms and bedrooms to the northernmost flats. The basement flat (Flat 1) would see losses of 68 and 50% to the living room and bedroom respectively. The ground floor flat (Flat 3) would see losses of 52 and 39% to these same rooms and the first floor flat (Flat 5) would see losses of 39 and 26%. In all other cases, there is either no loss or losses are well below 20%.

When compared with the approved scheme, there would be some additional reductions in NSL to 10 rooms (living room and bedrooms) to flats on the basement to second floors (Flat 1, 2 3 5 and 7). However, these additional losses, generally at 5 % or less, but between 7 and 13% in the case of three living rooms, are not significant in terms over the proportion of area within each room with access to visible sky.

However, both assessments demonstrate that losses on the lower floors result from the fact that the application site is currently undeveloped. If the principle of development of the play space is considered acceptable, and as the height and bulk of the new building is considered acceptable in townscape terms, the impact on levels of light to the lower floors of Winsford House could be considered acceptable.

Nottingham Mansions

Nottingham Mansions is located on the east side of Luxborough Street and has frontages on Luxborough Street and Nottingham Street. The daylight assessment shows that the worst affected windows are one (of three) living room windows to a first floor flat (Flat 3), which would see a 24% reduction in VSC (from 3.10 to 2.35%) and two (of three) living room windows to an adjacent ground floor flat (Flat 4) which would see losses of 89% (from 1.02 to 0.12%) and 24% (from 1.11 to 0.83%).). However, light to all of these windows is already severely restricted as they are set beneath architectural canopies. Consequently, the percentage reductions are disproportionately high. Any losses to the remaining windows serving these rooms would be well below 20% although, again, the retained values are very poor. Given the existing situation, it is not considered that the loss of light would have a material impact on the occupants' amenity. Any other VSC reductions to windows in this building are well below 20% and generally between 1 and generally below 4%.

When compared with the approved scheme, the VSC analysis shows that 57 of the 62 windows tested would experience no additional losses, or slight improvements. Of the five windows where values are less, these are between 1 and 3%, with a maximum of 9% in the case of one of the already compromised dining room windows to Flat 4, where the retained values would reduce from 0.91% to 0.83%.

The NSL assessment that there would be no loss of visible sky other than in the case of a dining room to a ground floor flat on the Nottingham Street frontage (Flat 4), where this loss is limited to 4%, and that there are no reductions in NSL beyond those previously approved.

The Chilterns

The report also assesses the impact on new flats on the lower floors of 'The Chilterns' (the development on the site of the former Chiltern Street car park) on the west side of Paddington Street Gardens North. There would be a maximum reduction in VSC of 10% to one ground floor living room window. Any other losses are between 1 and 4%.

When compared with the approved scheme, of the 28 windows tested three windows would see losses of 1% over approved VSC values and 1 window would see an additional loss of 3%.

The NSL assessment also shows a limited impact. Five of the 21 rooms tested (on basement to first floors) would see losses of between 1 and 10%, and the remainder would be unaffected. When compared with the approved scheme, one basement bedroom and a first floor living room would see additional loss of 4 and 2% respectively and the impact on these flats would not be significant.

In conclusion, although it is acknowledged that the scheme would result in material losses of daylight to some neighbouring properties, this is largely as a consequence of the fact that the site is currently undeveloped or that existing daylight values are already compromised due to the location of the windows. As the height and bulk of the proposed building is considered acceptable in townscape terms, and as the retained daylight values are considered reasonable in these circumstances, it is not considered that the impact on daylight levels could justify a recommendation for refusal.

8.3.1.ii Sunlight

The St Marylebone Society has objected to the application on the grounds that it would result in a loss of sunlight to neighbouring properties and objections have been received from the occupants of Newcastle House, 25 Luxborough Street and Winsford House

BRE guidelines state that access to sunlight should be checked for all neighbouring main living (habitable) rooms which have a window facing within 90 degrees of due south. The BRE guidance acknowledges that kitchens and bedrooms are of less importance, but states that in the case of these rooms care should be taken 'not to block too much sun'.

If the tested window receives more than one quarter of annual probable sunlight hours (25%), including at least 5% of annual probable winter sun, then the room should still receive enough sunlight. Any reduction in sunlight below this level should be kept to a minimum. If available sunlight hours are both less than the amount given and less than 0.8 (20%) of their former value, either over the whole year or just during the winter months, and the total reduction in annual sunlight hours is more than 4%, then the level of sunlight received may be adversely affected.

Newcastle House

Due to the orientation of windows in Newcastle House, only those west-facing windows overlooking PSGN (to the main block and the rear block) require a sunlight assessment under the BRE guidelines. However, because of their relationship with the proposed building, none of those windows would see any reduction in the levels of annual or winter on sunlight received. Compared with the approved scheme, there would be a slight improvement in winter sunlight to the bedroom to Flat 6, where the occupier has objected to a loss of sunlight.

Telephone Exchange

Although there would be some reduction in annual sunlight to third floor windows, and a slight reduction in annual and winter sunlight when compared with the approved scheme, all windows would continue to receive annual and winter sunlight far exceeding the BRE targets.

Luxborough Tower

The submitted report indicates that there would be a minor impact on annual and winter sun to a limited number of windows (maximum 6%). There are additional losses of annual and winter sun in the case of two windows, when compared with the approved scheme, but that all windows tested would continue to achieve annual and winter sunlight levels far exceeding BRE targets.

Winsford House

Although there would be a reduction in annual sunlight to some of the northernmost flats, most losses would be within acceptable parameters. However, the living room windows to a lower ground floor flat would experience annual sunlight losses of 37% (from 16 to 10%) and a 71% loss of winter sun (from 7 to 2%). Additionally, one of the two bedroom windows would see a 33% reduction in annual sunlight (from 3 to 2%). There would be no impact on winter sunlight. Whilst the impact on these windows is undoubtedly significant, any development on the application site is likely to have a similar effect. In these circumstances, it is not considered that the impact on sunlight levels could reasonably form the basis of a recommendation for refusal.

Any other reductions in annual sunlight to Winsford House flats would be well below 20% and many windows would continue to receive sunlight levels far exceeding the BRE target. There would be no loss of winter sun.

Compared with the approved scheme there would be no additional impact on annual or winter sunlight values, with the exception of living room windows to a third floor flat (Flat 9), where there is an additional reduction of 5% beyond approved annual sunlight values but these windows would still achieve values far exceeding BRE targets.

Nottingham Mansions

Nottingham Mansions has frontages on Luxborough Street and Nottingham Street and those windows on the corner of the building and on the Nottingham Street return have the potential to be most affected. In most cases, where there are reductions in annual and winter sunlight levels, these are well below well below 20%. However, one basement flat (Flat 1B) would see a 50% loss of winter sun to the bedroom window and both kitchen windows and a 33% loss to one of three living room windows . In all cases, the winter sunlight value would be below the 5% target. However, the corresponding annual sunlight reductions are all at 4% or below, or the window would continue to exceed annual sunlight targets, and these losses are therefore acceptable.

Similarly, Flat 3 (ground floor) would see a 33% loss of winter sun to one of two kitchen windows (from 3 to 2%), with the second kitchen window continuing to exceed the winter and annual sunlight targets. In this case, the annual sunlight loss would be below 4% and the room would continue to be well sunlit. One of three living room windows to the same flat would see a 25% reduction in annual sunlight (from 4 to 3%) and a 33% loss of winter sun (from 3 to 2%). However, the overall loss of annual sunlight is below 4% and other windows to the same room would be unaffected.

Flat 4, also at ground level, would see a 50% reduction in annual and winter sunlight to one of three dining rooms windows (from 2 to 1%) and a total loss of winter sun (from 1%) and 50% loss of annual sunlight (from 2 to 1%) to a second window. The third window would be unaffected. As sunlight to these windows is already severely restricted, and as the annual sunlight losses are below 4%, it is not considered that there would be a material impact on the amenity of this room.

A first floor flat (Flat 6) would also see a 33% reduction in winter sunlight (from 3 to 2%) to one of two bedroom windows. However annual sunlight values would far exceed BRE targets, (from 43%). The second bedroom window is unaffected.

Compared with the approved scheme, 50 of the 53 windows tested would see either no change or slight improvements to annual sunlight levels. Where there are slight losses, these windows continue to achieve values far exceed BRE targets for winter sun with the exception of one, of three, living room windows which would see an additional 20% reduction (from 5 to 4%) where the two remaining windows would experience no additional loss and the overall annual sunlight level far exceed BRE targets

The Chilterns

The report shows that most rear windows do not face within 90 degrees of due south and do not require a sunlight analysis. As under the approved scheme, windows which do require testing would not see any reduction in annual or winter sun.

In conclusion, while there are some significant numerical reductions in daylight and sunlight levels, these largely result from the fact that application site is undeveloped. Should the development of the play space be considered acceptable in principle, the height, bulk and form of the proposed building, which reflects that of its neighbour, would be considered appropriate in townscape terms. Consequently, it is not considered that the impact of the new building on levels of light received to adjacent properties could justify a recommendation for refusal on amenity grounds.

8.3.2 Overshadowing

An objection has been received on the grounds that the proposals would result in unacceptable overshadowing to neighbouring open spaces. BRE guidance for overshadowing of relates to private gardens and terraces and public amenity spaces rather than streets and pavements adjacent to proposed development. The guidance states that, to appear adequately sunlit throughout the year, at least half of a garden or amenity area should receive at least two hours of sunlight on 21 March. If, as a result of new development an existing garden or amenity space does not satisfy that test, and the area which can receive two hours of sunlight on 21 March is more than 0.8 times its former value, the loss of sunlight is likely to be noticeable. The report includes overshadowing diagrams which demonstrate that both Luxborough Tower Gardens and the rear yard to Newcastle House will meet this test.

8.3.3 Loss of privacy

Residents of Newcastle House and Nottingham Mansions consider that there would be an unacceptable loss of privacy to neighbouring properties due to overlooking from windows and new balconies.

Overlooking from windows

The relationship between the proposed building and properties on the opposite side of Luxborough Street reflects that of existing developments to the south of the site. Although there is clearly potential for some increased overlooking, given that there is currently no building on the application site, it is not considered that the impact would be so significant as to justify a recommendation for refusal or that it would be reasonable to require the building line to be set back on the upper floors to minimise any potential impact, as suggested by a residents of Nottingham Mansions. Window openings on the northern façade have been kept to a minimum in order to ameliorate potential overlooking to Luxborough Tower gardens.

The three storey rear block is progressively stepped back from the site boundary. Windows in the southern façade including a projecting bathroom window at first floor level, which is angled to face away from the neighbouring windows and is likely to be obscure glazed. Two south-facing windows are proposed at second floor level. One serves a corridor. The second is one, of three, windows to a living/kitchen dining room and is located at the room's entrance. Given the distance from neighbouring windows in Newcastle House, a minimum distance of approximately 18.5m, it is not considered that there would be a material impact upon the amenity of the neighbouring flats.

Overlooking (and noise disturbance) from balconies

UDP policy H10 encourages the provision of outside amenity space in new housing developments, where possible. Recessed balconies are proposed on the northern façade at first to fourth floor levels. Objectors consider that these balconies would facilitate overlooking to flats in Nottingham Mansions, on the opposite side of Luxborough Street, and have requested that screening be provided to their eastern edge to ameliorate this potential loss of privacy. However, these balconies (approximately 1.6m deep and 5m wide) are screened by the building structure which encloses them. Given the distance between the proposed building and Nottingham Mansions and as most direct views are towards Luxborough Tower gardens, and are screened by trees, it is not considered that there would be a material loss of privacy to Nottingham Mansions or that any additional screening would be required.

Balconies are also shown to the rear (western) façade, towards to the north of the site. These are recessed at first and second floor level and screened by the building structure. Additional, projecting, balconies (approximately 1.75m deep x 4.5m wide) are proposed on the third to fifth floors. These balconies are set a minimum distance of 19m (approximately) from north facing windows to the rear of Newcastle House, the distance being greater where the upper floors of the neighbouring building are raked back. Further, recessed, first to fifth floor balconies (1.6 deep by 4m wide). These incorporate a brick pier on the southern edge to obscure views into neighbouring windows,

Objections have received from a first floor flat in Newcastle House (front block) on the ground of overlooking to that property and to the rear courtyard seating area. Other objectors have queried why the rear projecting balconies do not include any form of screening. Given the design and relationship of these balconies with neighbouring windows it is not considered that they would afford any direct views into west facing windows at the rear of Newcastle House. While the projecting balconies would allow some views towards north facing windows, given the relative distance between the outer edges of the balconies and these windows, and as most direct views would be towards PSGN, it is not considered that the impact upon the amenity of these flats would be so significant as to justify a recommendation for refusal. Additionally, the provision of screening to these balconies is likely to make them appear more bulky/solid in views from the neighbouring property and from PSGN, which would be unwelcome in townscape terms.

Given the relatively small size of these domestic terraces, it is not considered that their use is likely to give rise to unacceptable noise disturbance.

The external space at the rear of Newcastle House runs between the front and rear blocks and around the site perimeter, on two levels. The largest area is adjacent to the rear boundary. It is considered that any potential overlooking of this space from new windows or balconies would have no material impact upon the amenity of the neighbouring building. One respondent has expressed concern about potential overlooking to Luxborough Tower gardens and to flats on the lower floors of the Tower but has written in support of the scheme subject on the basis that the applicant undertakes the approved landscaping works to Luxborough Tower gardens prior to any development of the play space. These gardens are already overlooked from the upper floors of many neighbouring properties but given the elation ship of the proposed development to the Tower and gardens, it is not considered that there would be any significant increase in the potential for overlooking to the gardens or direct views into neighbouring flats. As discussed elsewhere, consideration of the play space development is not dependent upon the implementation of the landscaping scheme.

The submitted plans show access points to the first and second floor roof. This access is for maintenance purposes only and a condition could be imposed to prevent their other than for maintenance purposes or in an emergency. .

8.3.4 Sense of Enclosure

Initial objections were received from the St Marylebone Society and from residents of Newcastle House, Nottingham Mansions and Winsford House on the grounds that the scheme would result in an unacceptable increase in the sense of enclosure with neighbouring windows. Residents of Nottingham Mansions have requested that the building is stepped back from the main building line at third floor level and above to address their concerns in this regard.

If the redevelopment of the play space site is considered acceptable in principle, a building of the height and bulk proposed would be an appropriate response in townscape terms. The erection of a new building on the site will give rise to some increased sense of enclosure to windows on the opposite side of the street but the buildings would have a similar relationship as exists between building to the south of the site. Consequently, it is not considered reasonable to require the building line to be stepped back, particularly as this does not reflect the building form on the neighbouring sites.

The proposed building is stepped back from the Newcastle House boundary on the upper floors. This reflects the form of Newcastle House, where there are five floors at the rear, and is designed to minimise the impact on the neighbouring flats as far as possible. This reflects the approach undertaken in the approved library development. Views, in particular from north-facing windows, currently provide unobstructed views towards Luxborough Tower gardens and the erection of any new building would obviously interrupt these views and result in some increased sense of enclosure to neighbouring windows. However, living rooms and bedrooms benefit from a second window overlooking PSGN, which will be unaffected. In these circumstances, it is not considered that any increase in the sense of enclosure to neighbouring windows could justify a recommendation for refusal on amenity grounds.

In conclusion, if the development of the play space is considered acceptable in principle, it is considered that the proposed building would have no material impact upon the amenity of neighbouring residential properties and the application complies with policies ENV13 of the UDP and S29 of the City Plan.

8.4. Highways/Parking/Servicing

Cycle Parking

The scheme includes 24 cycle spaces for the flats and 6 for the ground floor accommodation (on the basis of a nursery use with 8 staff and 36 children). This level of provision complies with London Plan standards and could be secured by condition.

Trip Generation/Travel Plan

The nature of the proposal will increase the number of trips associated with the site as visitors arrive and leave. The majority of these trips will be visitors/users of the nursery use. If the nurse

retains a local focus, it is expected the majority of users would arrive on foot. It is considered that these additional trips would not have a detrimental impact on the operation of the highways network, provided that the nursery use operates as set out in the planning submission documents, and that further operational details are provided for the alternative uses prior to their occupation. A condition is also recommended to limit the ground floor use to those Class E and F1 uses applied for, as different uses falling within those same use classes could result in a much higher level of trips rates and a corresponding adverse impact on the operation of the highway network, if uncontrolled. Given that the catchment area for the proposed nursery/creche use may include non-local users a condition is recommended requiring the submission of a Travel Plan for both staff and users as these uses would have the greatest potential impact on the operation of the highway network. This could be secured by condition.

Parking

No car parking is provided for the proposed use within the development site. Objections have been received on the grounds that the development would have an unacceptable impact on on-street parking demand.

The site is within a Control Parking Zone which means anyone who does drive to the site will be subject to those controls. The impact of the proposed development on parking levels will be minimal and consistent with TRANS21 and TRANS22.

Additionally, no parking is proposed in conjunction with the proposed flats. The impacts of high parking demand are well known and include drivers being forced to circulate around an area seeking empty spaces which causes unnecessary congestion, environmental pollution and noise disturbance; drivers being tempted to park in dangerous or inconvenient locations, such as close to junctions or on pedestrian crossing points and drivers being forced to park some distance from their homes causing inconvenience and more serious problems for elderly or disabled residents.

Policy TRANS23 details an 80% on-street car park occupancy threshold above which the provision of additional vehicles to the on-street parking environment will result in an unacceptable level of parking deficiency. The addition of even one additional residential unit is likely to have a significantly adverse impact on parking levels in the area and this may lead to a reduction in road safety and operation. The evidence of the Council's most recent night time parking survey (2018) indicates that parking occupancy of ResPark bays within a 200 metre radius of the site is 82%. As TRANS23 includes all legal parking spaces (e.g. Single Yellow Line, Metered Bays, P&D, Shared Use), with the addition of Single Yellow Line availability, the stress level reduces to 47%. The most recent daytime parking survey (2018) details an 80% parking occupancy of ResPark bays within a 200 metre radius of the site. TRANS23 includes all legal parking spaces. However, during the daytime, the only legal on-street spaces for permit holders are Residential Bays and Shared Use Bays.

Lifetime car club membership is considered the strongest mechanism that is likely to reduce car ownership of the future residential occupiers to ameliorate on-street parking stress. The applicant has indicated that this is to be provided. Should the scheme be considered acceptable, this could be secured by way of a s106 planning obligation.

Servicing

UDP policy TRANS 20 and S42 of the City Plan City Plan Require development proposals to demonstrate that site servicing can be managed to minimise adverse impacts upon the operation of the highway. No off-street servicing is provided for the proposed development. The site is located within a Controlled Parking Zone, which means that locations single yellow lines in the vicinity allow loading and unloading to occur. The Controlled Parking Zone in this location operates 0830 to 1830, Monday to Saturday, with Resident Bays protected 0830 to 2030 Monday to Sunday.

The largest regular service vehicle expected to be associated with the proposed development in this location is the refuse collection vehicle. This will service this property in a similar fashion to nearby properties. Objections have been received on the grounds that the development would put unacceptable pressure on existing waste collection services. However, it is not considered that the level of waste generated by the new flats, which are not family-sized units, would have a significant impact on local services.

Objectors consider that a development of this type and nature is unacceptable due to the narrow width of the pavements and carriageway in Luxborough Street and that increased traffic and deliveries, including the potential pick up/drop off of nursery children and associated nursery deliveries, would be detrimental to highway safety and the safety of pedestrians including children and the elderly. While the proposed ground floor use will generate some servicing movements, given the likely limited servicing requirements of a unit of this size, and the nature of the proposed uses, on-street servicing is unlikely to have any material impact on the safe operation of the highway.

Highway clearance

The existing railings constitute the highway boundary. The scheme includes canopies to the two building entrances. These provide sufficient clearance is provided to allow for the passage of pedestrians and sufficient clearance for vehicles on the roadway. This highway clearance could be secured by condition.

On-Street Changes

The proposal requires removal/relocation of a pavement utility cabinets which, the applicant has advised, is redundant. These cabinets are not controlled/owned by the Council or Highway Authority and the applicant will need to make any arrangements for the removal/relocation of any cabinets with the cabinet owner. The relocation of any cabinets may require separate approval.

The submitted planning statement details a proposal to 'refresh' the pavement outside of the site, although no further details are provided. The reinstatement of the highway would form part of the s106 planning obligation. Any replacement highway surface would need to meet the requirements of the Westminster Way and be approved by the Highway Authority. A piecemeal approach to the replacement of any paving, which would create a patchwork of styles/surfaces would not be acceptable.

8.5 Economic considerations

Any economic benefits generated by the proposals are welcomed.

8.6 Access

London Plan Policy 3.8 requires 90% of new dwellings to be wheelchair accessible and adaptable (Building Regulation requirement M4 (2)) and 10% to providing housing for wheelchair users (Building Regulation requirement M4 (3)). All flats are wheelchair accessible but as the nursery would occupy the ground floor, the scheme does not provide any ground floor flats. Given the site constraints, the mixed-use nature of the development and the requirement to provide a social and community use, this level of provision is considered acceptable.

The ground floor unit is fully accessible.

8.7 Other UDP/Westminster Policy Considerations

Noise

City Plan policy S32 requires development to minimise and contain noise and vibration and to secure improvements to Westminster's sound environment, including the protection of open spaces of particular value for their relative tranquillity. Policy ENV 7 deals specifically with controlling noise from plant and internal activity. Developers will be required to demonstrate that the scheme will be designed and operated so that any noise emitted by plant and machinery and from internal activities, including noise from amplified or unamplified music and human voices, will meet acceptable standards in relation to the nearest noise sensitive properties. Policy ENV6 requires developments to be designed to minimise the impact from potential noise disturbance arising from the use.

The original application was supported by an acoustic report which includes an assessment of background noise levels, and the impact of construction noise and noise from the development. However, the report confirms that details of proposals for external plant had not been provided by the applicants and, consequently, recommends the use of conditions to require full details of the plant proposals to be approved prior to the occupation of the development. The applicants have since submitted a Technical Note which deals with the issue of the proposed generator and provides clarification of other points raised by officers.

Noise from within the development

The acoustic reports include an assessment of the impact of the proposed ground floor use upon the amenity of the proposed flats. On the basis of construction details within the acoustic report, it is considered that the flats on the upper floors would achieve acceptable internal noise standards. A condition is recommended to deal with noise levels, generated from within the development, in relation to the proposed flats and neighbouring properties and to restrict the hours of operation of the ground floor use.

Use of the courtyard/canopies

The ground floor use would provide benefit from access to a rear courtyard. The application includes indicative proposals to provide a courtyard canopy (canopies) to mitigate potential noise nuisance. The canopies (projecting between 2.2 and 3.6m. from the face of the building) are shown on the application drawings. The impact of the courtyard use was considered in the initial acoustic report, which recommended the installation of a permanent retractable awning. The Technical Note further

considers a worst case scenario of 25 children playing in the courtyard at the same time. One objector has queried how the use of the canopies could be guaranteed and what measures would be employed if, for example, the canopies were inoperable/broken

The acoustic report assesses the impact of the courtyard use on residential balconies within the development. At between 55-60 db LAeqT, these levels would slightly exceed existing daytime ambient noise levels (between 53 and 59dBA) and the British Standard design criteria for external amenity spaces (50-55dBA). Predicted noise levels at neighbouring windows are below existing ambient noise levels. Council noise policies do not apply to the noise impact on external amenity spaces. However, to avoid the worst case scenario, the Council's Environmental Services Officer recommends that controls over the hours of use of the courtyard, in the early morning or late evening, or restrictions on the numbers using the courtyard be considered. The courtyard would not be used outside of the proposed nursery opening times (07.00 to 19.00 hours). Conditions are recommended to require design details of the awnings together Operational Management Plans. It will be in the interests of the operator to ensure that the awnings are appropriately maintained as, if they fail, the nursery would be prevented from using the space by planning condition

The Council's Environmental Services Officer has also recommended a condition requiring the 'courtyard canopies to be manufactured from materials with a minimum sound reduction value (Rw) of 16dB and to be installed so that the areas labelled 'retractable canopy above' on the plans, can be covered at all times when the rear courtyard space is in use. The acoustic report includes details of a PVC awning, which would meet this specification and would reduce noise levels at all sensitive receptors below the lowest recorded background sound level.

Additionally, a condition is recommended to require the submission of Operational Management Plans, including details of the hours of use, management of courtyard/use of the awnings in association with the alternative uses proposed. Subject to these conditions, given existing ambient noise levels and in the context of the lawful use of the site as a kickabout space, it is not considered that the use of the rear courtyard would have a material impact on the amenity of proposed or neighbouring residential properties.

Plant noise

Objections were originally received on the basis that the plant proposals for the development were unclear. The drawings were subsequently updated to clarify the extent of the plant which include, a system of mechanical ventilation with heat recovery, served by small air intake and extract grilles on the building facades, and an internally routed kitchen extract duct for the proposed ground floor use, which discharges at main roof level. The application was subsequently amended to include proposals for a diesel generator. This would be located in the nursery tank room. The discharge point of the generator flue has been relocated (previously on the ground floor roof within the rear courtyard) to the main roof, towards the centre of the site. The generator would be tested on a weekly basis.

Following the clarification of the extent of plant proposals, objections have been received on the grounds of potential nuisance from plant noise and vibration. Objectors consider that full details of all new plant should be provided as part of the application rather than in supplementary reports. Additionally, objectors are concerned that noise reports consider the impact on the noise environment/vibration within the proposed development rather than in neighbouring properties are concerned with the impact of air borne noise, particularly from the generator, rather than ground

borne noise and vibration. One respondent considers that further information should be submitted with respect to proposed noise and vibration attenuation measures for the generator, including the specification of generator isolation mountings and additional modelling. They also contend that a non-diesel generator would have the potential to operate more quietly and result in less vibration than a diesel generator. One resident of Newcastle House is concerned about potential noise and vibration from the ground floor boiler room and boiler flues on the front façade, close to neighbouring windows.

The application confirms that the generator would be acoustically attenuated and fitted with silencers and isolation mounts to keep structure borne vibration and sound transmission to a minimum. Although these attenuation measures are designed to safeguard the amenity of the proposed flats, they would also safeguard the amenity of neighbouring flats, particularly as the tank room, in which the generator would be located, is set back from the site boundary and does not share a party wall with the neighbouring building. Additionally, the report confirms that the proposed generator would comply with standard noise conditions relating to the operation of emergency plant. A further condition is recommended to control the hours and duration of generator testing.

The report concludes that the operation of the proposed kitchen extract duct, which would only operate during daytime hours, would satisfy standard noise conditions, at 1m from the nearest noise sensitive property, which would be flats within the development. Standard noise conditions require new plant, on buildings in this location, to operate at 10db below background noise level at a point 1m from the nearest noise sensitive window. This is likely to be windows within the development itself and, if noise levels are satisfied in relation to the proposed flats, the development would satisfy these conditions in relation to windows in neighbouring properties.

To ensure that satisfactory plant noise levels can be achieved, conditions could be imposed to require the submission of a supplementary noise report demonstrating that plant conditions relating to plant noise will be satisfied. This is a standard approach for larger development when the finalisation of plant requirements comes later in the building programme process.

The owner of the northernmost basement flat at Newcastle House is concerned that the use of the ground level cycle store and waste stores would result in unacceptable noise and smell nuisance to that property. The waste store closest to the site boundary is for the flats. It would be enclosed by a solid door. The cycle store would be accessed via the main residential entrance, located towards the centre of the building frontage, and away from neighbouring windows. It is not considered that the use of these facilities, which were in the same locations in the approved library development, would result in material noise disturbance. However, a condition is recommended to ensure that flats in neighbouring properties achieve acceptable noise standards as a result of activity within the development, which would include the use of the waste and cycle stores.

Subject to appropriate conditions, it is not considered that objections relation to noise from within the development or plant noise could be supported and the application is considered to comply with the relevant UDP and City Plan policies.

Construction noise

The report includes various recommendations to minimise noise disturbance to neighbouring sensitive noise receptors during the course of construction including e.g. the erection of site

hoardings, the location of construction plant and measures to minimise the impact of construction traffic.

Objectors are concerned that the report does not include an assessment of the impact of ground borne construction noise and vibration and have referred to their experience of the excavation of trial pits on the site in this regard.

As a major development the applicants are required to undertake the building project in accordance with the Council's Code of Construction Practice and measures included in the Site Environmental Management Plan which would be approved under that process. Based on industry best practice, it is considered that noise and vibration from building works would be ameliorated as far as possible. A condition could also be imposed to restrict the hours of building works, which might be further limited under the CoCP or any future Party Wall Award.

Air Quality

The site is located in an Air Quality Management Area (AQMA) where concentrations of traffic related nitrogen dioxide (NO₂) and particulate matter (PM₁₀) are above national air quality targets. Given the site location, there is potential for the development to expose future occupants to elevated pollutant concentrations as well as to affect air quality in the area.

London Plan (policy 7.14 updated in 2017: 'Improving Air Quality') requires development proposals to minimise exposure to existing poor air quality, particularly within AQMAs, especially where the development is likely to be used by large number of people vulnerable to poor air quality, including children. Developments are required to include measures to ameliorate the potential impact and requires all major developments to be 'at least air quality neutral' and not to result in any greater deterioration of air quality. City Plan Policy S31 requires developments to minimise emissions from air pollution from both static and traffic generated sources. Developments that include uses that are more vulnerable to air pollution uses such as housing and educational uses, should seek to minimise the impact of poor air quality on future occupants through building design and the use of appropriate technology.

The original application was supported by an Air Quality Impact assessment to evaluate the impact of the proposed development, both during its construction and operational phases, upon air quality. The assessment considers dust from construction activities and emissions from the combustion of fossil fuels due to vehicular traffic, heating and power generation and any necessary mitigation measures to reduce the effect of these. The report has been revised to take account of amendments to the application, most notably the inclusion of an emergency generator, and to provide various clarifications required by the Council's Environmental Services Officer.

i) The development

The submission confirms that the development is air quality neutral for building and transport emissions assessed against the GLA's benchmarking assessment methodology.

The report considers the exposure of future occupants of the development to ambient air pollution levels. Although NO₂ (nitrogen dioxide) and PM₁₀ levels within the development are elevated, the predictions for these exposures in the opening year (2022) meet the air quality objectives, including within the rear courtyard.

NOx (nitrous oxide) levels are predicted to be elevated well into the early operation years of the building. The scheme includes rear air intakes at all levels, which is welcomed. Additional mitigation measures, such as mechanical ventilation with Nox filtration, could be considered to reduce exposure to the ground floor of the building but, as the report confirms that air quality objectives would be met, NOx filtration is not a formal requirement.

One objection has been received on the ground of potential nuisance to PSGN as a result of fumes from the kitchen extract duct. This roof level duct is sited some considerable distance from PSGN. Its use in association with the nursery, or similar use, is likely to be more akin to that of a domestic use rather than a commercial kitchen and is unlikely to give rise to any smell nuisance to neighbouring properties or amenity spaces. However, a condition is recommended requiring the approval of full details of the proposed kitchen extract, which would need to comply with noise standards and the Council's odour control guidelines relating to such systems.

The application has been revised to include proposals for a diesel-powered emergency generator located within the ground floor sprinkler room. The most recent revisions to the scheme show that the, internally routed, generator flue would discharge at main roof level, towards the centre of the site.

Objectors have queried why the development requires any form of Uninterruptable Power Supply (USP) as the development does not include a lift and a solar powered battery-operated system, or similar, is likely to sufficient power for lighting and alarms etc. On the basis that the generator is required to pump water to the sprinkler system, one objector considers that a roof level tank could be installed, although acknowledges that this might require the removal of the top storey. Additionally, if a back-up system is necessary, objectors have queried why the applicants have selected a diesel generator, with a potentially harmful impact on air quality, rather than an alternative, potentially 'cleaner' and less 'toxic' solution. Objectors consider that an alternative system would have a lesser impact on air quality, and a less frequent and potentially 'messy' and 'dangerous' maintenance regime, in a location where a large number of babies/small children could be present on the site, and in close proximity to the proposed and neighbouring flats. Objectors also consider that relocating the generator flue to roof level would not overcome concerns regarding air pollution as the fumes have the potential to dissipate over the whole area, including the nursery courtyard. One resident has commented that the diesel generator at 25 Luxborough street frequently blows out smoke which has caused the Fire Brigade to visit the site.

A separate Technical Note has been submitted to consider the issue of the impact of the operation of the diesel generator. This confirms that the generator is required to power the pump for the nursery sprinkler system in the event of the loss of mains power.

Given concerns from officers and objector about the impact of a diesel generator in this sensitive location, the applicants were asked to provide details of all alternatives considered and the reasons for them being dismissed. The Note confirms that:

- The potential for the provision of a secondary 'LV' supply was investigated with UKPN but there 'is no diverse electrical supply to the building and this option has been ruled out'.
- The provision of an *Uninterruptable Power System to the sprinkler pumps sufficient to enable the pumps to be operated for up to 3 hours could not be accommodated within the existing layouts, due to space requirements. The location of the UPS on the ground floor of

the building would require significant design changes and would reduce the amount of available nursery accommodation.

*A UPS provides emergency power but differs from a standby generator as it provides near instant protection from power failure by supplying a secondary energy source, usually stored in batteries. The run time is generally only a few minutes but sufficient to start an alternative stand by generator source).

- The only feasible location to site the UPS would be on the roof of the building, which would have a significant impact on its appearance, would result in the loss of the photovoltaic panels, and could affect levels of light received to neighbouring buildings.
- The relevant British Standard BS9999 (Fire Safety in the Design, Management and Use of Buildings (2017) recommends that UPS should not be used to support life safety equipment.
- Liquefied Petroleum Gas was discounted because the associated storage requirements would have needed to be accommodated within the external courtyard thereby compromising the available play space, which is already limited.

Consequently, the report concludes that 'Due to constrictions with space and access alongside the non-availability of a secondary utilities supply from an alternative power supply, this was the most suitable option available'. In these circumstances, the applicants contend that the diesel generator, which has a relatively small output (of 25 horsepower) compared to a diesel van (150 horsepower), is the most practical solution to ensure the uninterrupted provision of the required fire safety measures. Stand-by generators are generally required to power critical safety systems including lifts and fire protection systems.

Objections have been received on the grounds that the AQ assessment report is concerned with the impact of the development on future occupants of the development rather than with the impact on neighbouring occupiers. However, subject to conditions, given the location of the kitchen extract flue and the higher, central discharge point of the generator flue, as now proposed, it is considered that there would be no material impact on air quality at Newcastle House.

The report recommends various mitigation to ameliorate the impact of the development including the use of nitrogen dioxide filters in the building ventilation system. It also recommends additional filtration to the generator flue and the submission of an Operational Management Plan for the generator testing. However, subject to standards conditions controlling the timing, frequency and duration of generator testing it is not considered that an OMP would be required.

Any (non-traffic) operational impact associated with the ground floor use is unlikely to be significant. As no parking will be provided in association with the flats, the assessment includes a nominal assessment of two, two-way car movements associated with the flats and an assessment of up to 28 two-way car movements associated with a nursery use. The provision of cycle parking and car club membership is likely to minimise potential car use.

One Newcastle House resident has expressed concern that the report does not consider the impact of the boiler room and boiler vents on the front facade upon air quality (and air temperature at neighbouring windows). However, the revised AQ report confirms that emissions data for the boilers has been included within the calculation of building emissions. It is not considered that the operation of individual domestic boilers would have a material impact on air temperature.

There are eight AQ monitoring stations in Westminster, the nearest to the site being in Marylebone Road, approximately 150m from the site. One objector has queried why the AQ assessment excludes the automatic monitoring station in Marylebone Road and questions the usefulness of the report given this omission. However, as this is a kerbside monitoring station on a principal London thoroughfare and a more representative monitoring location was selected for the purposes of the assessment. The methodology adopted in the revised report is considered acceptable.

Subject to conditions, it is not considered that the revised scheme would have a material impact on occupants of the proposed flats, neighbouring residents or the amenity of neighbouring amenity spaces and objections on these grounds cannot be supported.

ii) Construction phase

Construction-related activity has the potential to generate emissions (dust, particulate matter (PM10) and nitrogen oxide (NO₂)). As no demolition is proposed, this would arise from earthworks, construction and construction plant and traffic. The AQ report identifies sensitive receptors in close proximity to the site which have the potential to be affected.

The assessment concludes that subject to the adoption of best practice during the construction phase, e.g. the use of water to suppress dust, the storage and management of building materials, a requirement for construction vehicles to switch off engines, the monitoring of adjacent sites etc. the impact of the construction phase upon air quality can be mitigated satisfactorily.

Objectors are concerned that measures to ameliorate the impact of the development on air quality assumes that the site contractors would adhere to the recommendations in the report and contend that this would impose an, unduly onerous, responsibility for site monitoring on Environmental Services Officers. However, as with all major developments, the impacts of construction works, including construction noise, vibration and dust generation, are monitored under the Council's Code of Construction Practice procedures. The mitigation measures detailed in the Air Quality report would be normally be controlled through the submission of a Site Environmental Management Plan (a requirement of the CoCP procedures). This system enables a liaison between the developers and local residents to resolve any particular issues arising from the works. The applicants have indicated their willingness to sign up to the CoCP, and the agreement of the SEMP would be secured under a pre-commencement condition.

Under the CoCP, the developer is also required to submit a further application (section 61) which will formally set noise and vibration limits for the construction works with a requirement for continuous monitoring of noise, vibration and dust. All CoCP sites in Westminster are required to carry out noisy work in two hours on, two hours off pattern to allow respite noisy work. As there is no building currently on the site the demolition phase will be very limited which will also significantly reduce the impact of ground borne noise and vibration from the site. An informative is also proposed relating to emissions standards from non-road mobile site machinery

Whilst it is acknowledged that building works would have an impact upon neighbours' amenity, the impact will be ameliorated as far as possible and permission could not reasonably be withheld on these grounds.

Refuse storage

Refuse and recycling facilities for the flats and ground floor unit would be provided at ground level on Luxborough Street. Objections have been received to the location of the bin store on the boundary with the neighbouring residential development.

Revised details of refuse and recycling arrangements have been submitted. The Council's Waste Project Officer has confirmed that the proposed arrangements area acceptable and these could be secured by condition. The residential bin store is in the same location as that approved under the library development and it is not considered that the use of this dedicated bin store, which complies with Council requirements, if properly maintained, is likely to give rise material noise or smell nuisance

Sustainability

City Plan Policy S28 requires development to reduce energy use and emissions that contribute to climate change and reduce, reuse or recycle resources including water, waste and aggregates. Additionally, policy S39 requires major development to be designed to link to existing heat and energy networks in the vicinity, except where the Council considers that it is not practical or viable to do so. Wherever it is not possible to link to any existing network, major developments will be required to provide sitewide decentralised energy generation that has the potential to be extended to serve other developments in the vicinity, except where it is considered impractical or unviable to do so. Policy S40 requires major development to maximise on-site renewable energy generation to achieve at least 20% reduction of carbon dioxide emissions, and where feasible towards zero carbon emissions, except where it is not practicable due to site constraints.

Policy 5.2 of the London Plan requires development proposals to make the greatest possible contribution to minimising carbon dioxide emissions in accordance with the energy hierarchy which requires developments to use less energy, supply energy efficiently and to use renewable energy. The policy requires all major development proposals to include an energy assessment which demonstrates how its CO2 reduction targets will be met by reducing energy demand, reducing CO2 emissions by energy efficient building design and further reducing CO2 emissions through decentralised energy and/or on-site renewable energy technologies where feasible.

The GLA's Guidance on Preparing Energy Assessments as Part of Planning Applications (October 2018) contains updated emissions reduction targets referencing current building regulations. It requires development proposals to i) demonstrate how the zero-carbon target for residential developments will be met, with at least a 35% on-site reduction beyond Part L 2013 and proposals for making up the shortfall to achieve zero carbon where required and ii) to demonstrate at least a 35% on-site reduction beyond Part L 2013 for non-residential development

The guidance clarifies that mixed-use developments must demonstrate this target has been achieved for domestic and non-domestic uses separately. The guidance also clarifies that the zero-carbon target will be adopted for non-residential development on publication of the new London Plan.

Some respondents have welcomed the incorporation of sustainability features including photovoltaic panels and rainwater harvesting measures. The St Marylebone Society originally objected to the application on the grounds that no consideration has been given to sustainable design, including the orientation of the development to minimise solar gain, although this is largely determined by site

constraints and the relationship of the proposed building to its neighbours. Objections have been received on the grounds that the scheme does not include a combined heating system for the flats, instead providing individual gas boilers for each unit to provide hot water and space heating. The Energy Statement confirms that the use of use of air source heat pumps (ASHP) was considered by that the applicants have recent experience of having to retrofit gas boilers in place of small scale ASHP units within affordable housing developments due to ongoing maintenance issues. Moreover, it advises that the applicant has experience of ASHPs causing noise issues in dense residential locations. Additionally, the provision of ASHPs on the roof of the building would reduce the viable area for the proposed photovoltaic panels. In these circumstances, and given the relatively small scale of the development, it is not considered that it would be either practical or viable to require the proposed heating system to be re-planned.

Additionally, given the internal daylight levels within the proposed flats, there was concern that future occupants would be unduly reliant upon the use of artificial light, although it is not considered that the reported internal daylight levels would have a significant impact on energy use.

The Energy Strategy Report which identifies a range of sustainable design measures which have been incorporated to reduce energy use, including the use of thermally efficient building fabric, double glazing and energy efficient heating, lighting and ventilation (heat recovery systems) systems. The building construction will employ high levels of thermal performance for the wall, floors windows and roofs. Green roofs will assist with solar control and heat loss. A separate Overheating Report details measures to prevent overheating, including an appropriate ratio of glazing to solid fabric in all occupied spaces, the provision of openable windows and mechanical ventilation, with heat recovery.

The report also and assesses the feasibility of incorporating on-site renewable energy generation technologies. However, due to existing site constraints, the report concludes that the proposed photovoltaic panels to the main roofs are the only feasible renewable energy generation technology which can be utilised.

The Energy Strategy concludes that the proposed development cannot achieve the London Plan target to reduce regulated CO2 emissions by 35% over Part L (2013) due to existing site constraints, principally the overshadowing of the lower roofs by adjacent trees which would prevent the installation of additional photovoltaic panels. The development would achieve a 14.5% reduction in CO2 emissions (with 10.2% savings from the use of renewables). The non-residential development achieves a 13.8% reduction against Part L2A minimum compliance, and the residential development achieves a 14.6% carbon emissions reduction against Part L1A compliance. In these circumstances, the applicants propose to make a carbon offset payment of £23,920 (assuming £60 per CO2/tonnes) to offset the shortfall against the London Plan zero-carbon target for residential development and £904 for non-residential development.

Given the above, it is considered that the development is acceptable in sustainability terms and the carbon offset payment would be secured by a s106 planning obligation.

Biodiversity

The application is accompanied by a biodiversity survey which concludes that the existing site is of little ecological significance. Policy S38 of the City Plan requires developments to maximize opportunities to extend and create new wildlife habitat. In these circumstances, the proposed introduction of green/living roofs on the first, second and third floor rear roofs. Access to the lower

roofs (for maintenance only will be provided from a door leading from the communal stair. Access to the third floor roof is via a ladder from the second floor roof , linked into the Mansafe system. The provision of green roofs is welcomed by supporters of the scheme. Details of their construction, planting and management of the living roofs of the landscaping of those parts of the site not covered by buildings, could be the subject of conditions.

It is also, to compensate for the loss of potential bird nesting habitat resulting from the scheme, proposed to provide a minimum of six bird nesting boxes (for suitable for a variety of different birds). Log piles, rope piles and a ladybird habitats are also shown on the application drawings. These biodiversity measures could be secured by condition.

Sustainable Urban Drainage

The applicants have stated that the development seeks to maximise the site area whilst achieving a suitable amount of external space for the proposed ground floor use(s). The St Marylebone Society considered that the building footprint should be reduced to improve the site's permeability, with particular reference to sustainable urban drainage (SUDS). Although they acknowledge that the site is currently covered in tarmac, they contend that, due to its state of disrepair, the building surface has achieved some permeability. However, it is noted that this surface could be replaced or repaired without the need for planning approval.

Policy 5.3 of the London Plan (2016) requires development to utilise sustainable urban drainage systems (SUDS) unless there are practical reasons for not doing so and developments should aim to achieve acceptable water run-off rates and to ensure that surface water run-off is properly managed. The application is supported by a drainage strategy report. This confirms that infiltration techniques, including the use of porous surfaces, is not appropriate in this location, where the site lies on clay. SUDS techniques are proposed including the installation of a rainwater harvesting tank beneath the ground floor slab (to store water for future use and for slow release to the main sewer) and three green roofs are proposed. Subject to these measures, which could be secured by condition, the report confirms that the development would meet the requirements of the London Plan. In these circumstances it is not considered that this objection could be supported.

Flood Risk

City Plan policy S30 states that highly vulnerable uses, or essential infrastructure and more vulnerable uses will not be permitted in high flood risk areas, other than in exceptional circumstances.

The application is supported by supported by Flood Risk Assessment. The site is located within a Surface Water Flood Risk Hotspot, as identified in the Council's SPD on basement development but no habitable accommodation is proposed at basement level. The scheme incorporates an underground rainwater harvesting tank together with several green roofs to ameliorate potential run-off from roofs. These measures are welcomed and would be secured by condition.

Site Investigation/Ground conditions

The submitted Site Investigation Report assesses ground conditions in the area and considers the removal of existing materials and the suitability of the land for its intended use. The report confirms that there are elevated concentrations of certain materials, including lead, and small amounts of asbestos. The report recommends that consultations should take place with the Council's Contaminated Land Team.

Given the proposed use of the site, the Council's Environmental Sciences Officer has recommended a pre-commencement condition requiring the submission of a contaminated land report.

Unexploded Ordnance

As the site is in an area which was subject to heavy WWII bombing an assessment of the threat from Unexploded Ordnance has also been prepared. This report defines the site as 'High Risk' but concludes that as the site underwent some post-war redevelopment, including the demolition of previous structures, it is likely that any UXO would have been discovered but that the potential remain for more deeply buried UXO to remain on the site. In these circumstances, the report recommends that information regarding this issue is contained within Site Management documentation with appropriate training for construction workers and further reports/investigations, as necessary. This issue could be dealt with by way of an Informative on any decision notice.

It is not considered that any of the matters examined with these reports raises issues which would constrain the development of the site or would have a material impact on residents' amenities or local environmental quality.

8.8 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Formal consultation on Westminster's City Plan 2019-2040 was carried out under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 between Wednesday 19 June 2019 and Wednesday 31 July 2019 and on the 19 November 2019 the plan was submitted to the Secretary of State for independent examination. In the case of a draft local plan that has been submitted to the Secretary of State for Examination in Public, under Regulation 22(3) of the Town and Country Planning Act (Local Planning) (England) Regulations 2012, having regard to the tests set out in para. 48 of the NPPF, it will generally attract very limited weight at this present time.

8.9 Neighbourhood Plans

Not relevant

8.10 London Plan

The development does not raise any strategic issues.

8.11 National Policy/Guidance Considerations

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

Further to the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the City Council cannot impose a pre-commencement condition (a condition which must be discharged before works can start on site) on a planning permission without the written agreement of the applicant, unless the applicant fails to provide a substantive response within a 10 day period following notification of the proposed condition, the reason for the condition and justification for the condition by the City Council.

During the course of this application a notice was served relating to the proposed imposition of a pre-commencement conditions regarding the construction methodology for the proposed rainwater tank, a contaminated land survey and details of tree protection measures. Historic England has requested a pre- commencement condition relating to the safeguarding of the site's archaeological interest.

The applicants have indicated their willingness to sign up to the Council's CoCP which involves the imposition of a pre-commencement condition on any permission to secure the applicant's adherence to City Council's Code of Construction Practice during the demolition/excavation and construction phases of the development.

8.12 Planning Obligations

On 6 April 2010 the Community Infrastructure Levy (CIL) Regulations came into force. These make it unlawful for a planning obligation to be taken into account as a reason for granting planning permission for a development, or any part of a development, whether there is a local CIL in operation or not, if the obligation does not meet all of the following three tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development;
- (c) fairly and reasonably related in scale and kind to the development.

The City Council introduced the Westminster CIL on 1 May 2016.

Policy S33 of the City Plan details the Council's aim to secure planning obligations and related benefits to mitigate the impact of all types of development

The draft 'Heads' of agreement are proposed to cover the following issues:

- a) The provision of 14 intermediate affordable housing units
- b) Lifetime car membership (minimum 25 years) for all proposed residential units prior to the occupation of the flats.
- c) A Carbon offset contribution £24,824 to offset the shortfall in carbon savings.
- d) Cost associated with the replacement of two street trees outside the site on Luxborough Street at a cost of £5,000 per tree
- f) Highway works
- e) S106 monitoring costs

The Council's CIL officer has estimated the CIL payment at :

Residential: Mayoral CIL2 £69,600.00, Westminster CIL £431,468.63

Non-residential use: Mayoral CIL2 £21,680.00, Westminster CIL £0.

As the C3 units will provide affordable housing, the developer/liable party can apply for affordable housing relief and the residential element of the development would not then be liable. In this case the development would be liable for the Mayoral CIL for the ground floor use only.

Should the scheme be considered acceptable, these proposed planning obligations are welcomed. However, as this is a Council's own development, and the City Council cannot enter into a S106 legal agreement with itself, it is proposed that the applicants sign a Unilateral Undertaking which would require the developer to deliver the proposed undertakings.

8.13 Environmental Impact

Given the nature and scale of the development, an Environmental Impact Assessment is not required.

8.14 Other Issues

Rainwater tank and potential structural impact/water damage

The application has been revised to provide details of the proposed subterranean rainwater harvesting tank beneath the building. Objections were initially received on the grounds that the degree of excavation necessary to accommodate the tank, and the relationship of the tank with Newcastle House was unclear. Drawings including the relevant dimensions have since been provided. These show a cylindrical tank, 8.2m long with a diameter of 1.8m, within a 300mm thick casing. The tank and casing would sit 3800mm below ground level and 2456mm inside the site boundary. When compared with the ground floor plan, the centreline of the tank would run along the junction of the refuse store and cycle store from the internal refuse store doors to the rear of the sprinkler room. The closest point of the tank casing (to the boundary) would line up with the centre of the of the (street) doors to the refuse store.

One objection has been received on the grounds that the provision of the tank is contrary to Council policies on basement development. These policies, which do not preclude basement development in principle, do not apply to basement development for non-habitable floorspace, as in this case.

Residents of Newcastle House have expressed concern that the tank location the potential to result in structural damage, including damage from leaks, to their property. They have queried why the tank could not be located on the northern site boundary, adjacent to Luxborough Tower gardens, where the potential for any impact is reduced.

In response, the applicants have advised that the proposed attenuation / RWH tank will be constructed in accordance with all legislative and regulatory requirements and best practice. They have emphasised that it is a common solution to the management of surface water drainage on constrained urban sites where the building takes up the site footprint. Insofar as the tank location is concerned, they have advised that:

- this takes account of the discharge point, internal layout and downpipe locations.
- underground coordination with other utility services across the site, indicated on the submitted drawings, has influenced the position of the tank.
- the tank location works with the substructure foundations. Any alternative position would clash with the ground beams for the proposed block.

- the proposed M&E equipment required (i.e. control panel, alarms etc) should be located close to the tank which is located directly below the plant room.
- the location of rainwater pipes and the manhole required below ground have directed the tank position as access hatches/covers to chambers should be positioned outside useable spaces, where possible, and the Thames Water discharge point is within the minimum distance for rising mains from the tank to the demarcation chamber.
- the proposed ground floor plan shows the plant room and bin store adjacent to Newcastle House and it is desirable to situate access hatches to a chamber in such areas rather than in 'useable' spaces, for maintenance purposes.

The Council's Building Control Officer has requested details of the construction methodology for the basement excavation. The applicants have advised that detailed information regarding this part of the scheme is not yet available as the specific methodology for the construction of the attenuation tank will tie into the wider construction logistic plan and site arrangements, which will be which will be informed by the site contractor, who has yet to be appointed. In these circumstances, they have requested that the construction methodology for the attenuation tank is dealt with by way of a pre-commencement condition. They have emphasised that the development process would be would be fully monitored to identify any potential impacts on Newcastle House and that the applicant will also undertake separate negotiation and agreement, as required, on Party Wall matters and will liaise with Building Control Officers during the construction process.

Although residents' concerns about structural issues and potential leaks are noted, this is a well-established method of flood water attenuation, and there is no reason to believe that the tank is likely to fail. The applicants have provided detailed justification for siting the tank in the location proposed and its relocation would require the re-planning of the development, which may not be possible due to site constraints. In these circumstances, subject to the imposition of the recommended pre-commencement condition, it is not considered that permission could reasonably be withheld on these grounds. The proper legislative process for the acceptability of construction methodology is the Building Regulations, with which the proposals would also have to comply.

Construction Impact

Objections have been received on the grounds that construction works would have an adverse impact upon the amenity of neighbouring residents. Objectors are particularly concerned that construction traffic would obstruct Luxborough Street, that parking bays would be suspended and that construction activity would impede access to neighbouring properties and would obstruct access for emergency vehicles and would exacerbate problems which are already being experienced as a consequence of other developments in the area.. One resident has requested that the standard hours of building works should be imposed and that construction vehicles should not be permitted to unload before 08.00 hours.

Whilst these concerns are noted, permission could not reasonably be withheld on these grounds. However, in order to safeguard the amenities of local residents, it is recommended that standard conditions be imposed to limit the hours of construction and excavation works. As detailed above, the development process will also be subject to the Council's CoCP procedures. The applicants would also be encouraged to sign up to the Council's Considerate Constructors Scheme.

Crime and Security

City Plan paragraphs 2.13, 2.14, 2.57 and 5.19 and Westminster's Strategic Objectives (point 2) are concerned with crime and the fear of crime and its impact upon people's mental and physical health and the need to maintain and enhance the quality of life, health and well-being of Westminster's residential communities. To this end policy S29 requires new developments to secure a healthy and safe environment, including minimising opportunities for crime.

The Metropolitan Police Designing Out Crime Officer (DOCO) has discussed the proposals with the applicants and has raised no objection in principle but has made various recommendations regarding security and design measures, including amendments to the height and design of the boundary walls; the installation of CCTV, the provision of security lighting and provisions for emergency access. They have requested a condition requiring the applicants to obtain a 'Secured By Design Accreditation' prior to the occupation of the residential and ground floor use(s). Some of these suggested modifications may have a material impact upon the external appearance of the building and, consequently, it is considered more appropriate to deal with this issue by way of an Informative. The applicants will need to seek confirmation as to whether any changes to the scheme, arising out of future discussions with DOCO officers will require further planning approval.

Other issues

Statement of Community Involvement/Consultation Process

The applicants have submitted a Statement of Community Involvement which summarises the applicant's consultations with the local community prior to the submission of the current application.

This document, and the consultation process undertaken by the applicants, are the subject of comments/objections from residents who consider that the conclusions of the report are misleading; that the consultation process was flawed e.g. in terms of the questions posed; that the conclusions are based on very few responses conclusions and that the report's conclusions are based upon very few responses, from poorly attended meetings. Objectors feel that, conversely, the petition presented to Cabinet in January 2019 has been given little credence.

The applicants consider that the submitted SCI is a fair representation of the response to the consultation process. Whilst objectors' concerns are noted, and the existence of the petition and Cabinet's response to it are detailed elsewhere in this report, officers were not involved in the community consultation and have not been involved in the decision to submit the current application. This report, necessarily, considers the responses received to consultations following the receipt of the application and to additional consultations sent following the submission of additional information.

Objectors also consider that granting permission for the current scheme would be in direct contravention of the Council's stated objective to take the views of local residents into account when determining planning applications, set out in the Cabinet Report 'A New Dawn For Planning'.

Objections have also been received on the grounds that there has been inadequate consultation both by the applicants and the Luxborough Tower Residents' Association, with residents of Luxborough Tower. These concerns are noted however, the City Council as local planning authority is obliged to consider the application on its merits as submitted. Extensive consultations have been undertaken as part of the formal planning application process and local residents, including residents of Luxborough Tower, have had the opportunity to make their views known.

Other respondents are concerned that consultations letters have not been received. However, Council records show that over 1000 consultation and re-consultation letters have been sent to local residents. Further objections have been received on the ground that inadequate consultation has been undertaken in relation to the final submission. Again, records show that consultation letters were sent to all flats at Newcastle House which has windows adjacent and has the most potential to be affected by the latest changes to the scheme.

Counting of objections

Objectors are also concerned that objection letters signed by more than one member of the same household should be treated as more than one objection. It is unclear whether this comment relates to consultations undertaken by the applicant or in relation to the planning application. However, in reporting neighbour response to planning consultations, it has always been the Council's practice to list letters signed by more than one occupier as one objection. Where separate letters are submitted from occupants of the same property, these are reported as separate objections.

Conflict of interest

One objection has been received from a local resident who is concerned at the potential conflict raised by the City Council, as local planning authority, determining an application submitted by its own housing department. This is not an unusual situation where development sites are owned by local authorities. The scheme has been advertised both as a Council's own development, and there is no legal impediment to prevent consideration of this application in the usual way.

Misleading drawings/reports

One respondent considers that the submitted drawings are misleading and do not fully show the impact of the proposed development on neighbouring properties. However, it is considered that the submitted drawings enable a full assessment of the development and its likely impact on neighbouring properties.

One resident has commented that given the amendment dates on the revised drawings; they would not have been available to consultants producing the updated reports. However, other than proposals for the diesel generator and associated flue, the proposals have not changed significantly, and the current plant proposals are included in the revised reports and are consistent with the revised drawings.

Impact on property values

One objection has been received on the grounds that the development would adversely affect property values. This is not a material planning consideration and permission could not justifiably be withheld on these grounds.

Site boundary/site ownership/Party Wall Matters

An initial objection was received from a resident of Newcastle House on the grounds that as trial pits were excavated against the wall of the neighbouring building, using a mechanical digger, to provide information for inclusion within the Ground Conditions Report. As this mechanical excavation is not

permitted under the terms of the draft Party Wall Award, the objector considers that this information should be excluded. These concerns are noted; however, permission could not justifiably be refused on these grounds and all information submitted will be considered.

Further objections have now been received on the grounds that it has not been possible to determine the precise boundary between Luxborough Tower/the play space and Newcastle House with any certainty (with the Council's assumptions disputed by the freehold company for Newcastle House) and that, consequently, it has not been possible to agree a Party Wall Award. Objectors consider that the inability to conclude a Party Wall Agreement maybe as a result of the absence of any report on title. They advise that they have not had a response from the applicants to their enquiry as to whether the applicants commissioned a report on title or provided it to their architects and have requested that the applicants provide the m with a copy of this report.

Another objector contends that the play space is not a private space as it is owned by the City Council, which is a public body. They also believe that no part of the play space is demised to any of the privately leased flats.

In response, the applicants have confirmed that 'We have had a Report on Title done by Bevan Brittan and they have confirmed through a review of sample leases that they have a rights over the play space as it forms part of the estate. In addition, our legal team have confirmed that the space will have to be removed from the leases through a variation if the planning permission is granted, further reinforcing the fact that it is demised to leaseholders'.

The applicants contend that the terms of residents' leases confirm their view that the use of the play space is ancillary to the use of Luxborough Tower "with the original committee report for that development including the cost of the playspace per resident" However, whilst this historic use is acknowledged, as detailed elsewhere, it is considered that the subsequent use of the space by non-residents of Luxborough Tower means that the lawful use of the space has changed.

Objectors contend that the draft PWA identifies deficiencies in the application and plans which explains why the Party Wall negotiations cannot be concluded and that the deficiencies identified in this report go beyond issues that could be considered as reserved matters. On this basis, they contend either hat the application should not be determined or that its consideration should be delayed. A copy of this draft has been supplied by the objectors. It includes clauses relating to details of construction, the amelioration of nuisance, site monitoring, hours of work, work timetables, and specification and construction details of the rainwater harvesting tank. It also requires the applicants to provide evidence of the legal status of the existing boundary features with Newcastle House. However, there is no legal requirement for a Party Wall Award to be agreed prior to the granting of planning permission and the clauses contained within the draft award, particularly those relating to the status of the site boundary, are subject to agreement by the two parties.

Objections also contend that the application drawings show building construction on land which is outside of the council's ownership, which would require the applicants to serve notice on the owners of Newcastle House of their intention to submit the planning application. Such notice is required when a third party has a freehold interest in the development land or a leasehold interest with seven or more years remaining. The applicants have now also provided title plans for the application site which confirm that it is in the applicant's ownership. They have also confirmed that the wall adjoining Newcastle House is a party wall on basement to first and part second floors and that the remainder of the wall is not a party structure. They have confirmed that the latest plans correspond with these ownership details. A basement level slab which supports the pay wall is to be modified to

accommodate the foundations of the proposed development. These works will be covered by the Party Wall Award.

Party Wall matters lie beyond the scope of planning considerations and the objections detailed above would not prevent the application from being reported to the Planning Committee, or determined. If, ultimately, it becomes apparent that the proposed development is on land outside of the Council's ownership (and that notice should have been served on the owners of the neighbouring building), and that the development, if approved, cannot be built for any reason, the applicants will be required to make a fresh application for planning permission.

Comments received from the Rector of St Marylebone Parish Church suggests that PSGN is 'owned' by Church bodies and it is noted that the applicants have served notice of their intention to submit the planning application. However, investigations undertaken by the Council's legal department in relation to the preparation of the proposed s106 planning obligation, have confirmed that, PSGN is owned by the City Council. The applicants have also supplied full title plans for the site, which confirm that it is within the applicant's ownership. However, it is accepted that the Diocese of London may have other interests in the land beyond the scope of planning legislation and the applicants are in discussions on this with the Diocese of London.

Works to Paddington Street Gardens North

The Rector of St Marylebone Parish Church, and others, have advised that works in PSGN will require the approval of the Diocese of London. They consider that issues remain 'unresolved' with respect to physical boundaries and that any works should be agreed between parties, and all relevant approvals secured before the application is determined. They have requested that the life of any planning permission should be extended to 4 years to facilitate the Faculty approval process. They have also requested that a satisfactory design for the development be secured under reserved matters requiring full consultation with Church bodies to enable the assessment of the impact of both the design and the implementation of works on the consecrated land.

A request has been made that all costs associated with the involvement of the Church Faculty and parish Church in monitoring the development should be covered by the City Council, as developer, and secured as part of the s106. They have requested that the applicant undertake a mutually agreeable way of working with Diocese and Parish, which might include a charge on all land held by the council, which is consecrated land, to ensure that essential engagements with the relevant ecclesiastical authorities is undertaken in a timely and effective manner. Additionally, as future landscaping works and works to trees in PSGN could increase future maintenance costs they have requested that money should be secured as part of a s106 planning obligation to offset these additional costs to the Council.

These comments are noted. However, the recommended conditions including the requirement for the submission of reserved matters are set out in this report. Other than the submission of details relating to an amended design of the site boundary wall, it is not considered that reserved matters would have a direct impact on PSGN., although the Rector could be consulted when an application is submitted to discharge this condition, should the scheme be approved.

The applicants have been in discussion with the Rector and are fully aware of the Church//Diocese of London's requirements with regards to works in PSGN and the need to obtain Faculty approval. Consequently, it is not considered necessary, or reasonable, to require these matters to form part of

any s106 agreement or to secure finance for the purposes mentioned. The Council's Parks and Gardens Manager has not expressed any concerns about the future maintenance of PSGN or associated costs.

Should permission be granted, the applicants would have three years in which to implement the scheme, It is considered that this would provide ample time for Faculty approval to be secured and it is not considered necessary to grant permission for a longer period, which should only be done in exceptional circumstances. An extension to the life of any planning approval has not been requested by the applicants.

Unauthorised works

Several respondents have expressed concern that unauthorised works have taken place on the site (including the removal of the dwarf wall and railings on the boundary between the site and PSGN, the removal of goal posts and saplings and the partial demolition of a northern boundary wall) and that a new hoarding has been erected (in December 2019). There is no record of permission having been granted for the erection of this replacement hoarding. Permission would have been required as the erection of site hoarding only constitutes permitted development if the hoarding is associated with the implementation of a planning permission. Objectors have referred these matters to the Planning Enforcement Team. Although it is regrettable that works have been undertaken in advance of securing planning approval, it is not considered that permission could reasonably be withheld on these grounds.

Financial considerations

One objector has stated that as this is a Council development, the scheme should demonstrate that it represents the best use of the land and 'stacks up' financially at this present time. The decision as to the content of the application and financial considerations lie with the applicant. The City Council as local planning authority is required to assess the application, as submitted, in the context of local, regional and national planning policy and guidance and any other material planning considerations. Should the applicant ultimately decide not to proceed with the current scheme, if approved, for financial or other reasons, this would not prevent the determination of the application at this stage.

8.15 Conclusion

There is a policy presumption to protect the existing playspace/open space and its loss in this case would not normally be considered acceptable. The Committee previously considered that a replacement community facility in the form of a library could be considered sufficient justification to overcome that policy objection. In this case, no library is proposed and the replacement uses proposed to overcome the policy objection are a nursery (and/or creche/public hall/exhibition hall) plus the provision of 14 affordable housing units. The committee is requested to consider the officers' conclusions that these uses, and the development as a whole, is sufficient to justify the loss of the playspace/open space in this instance.

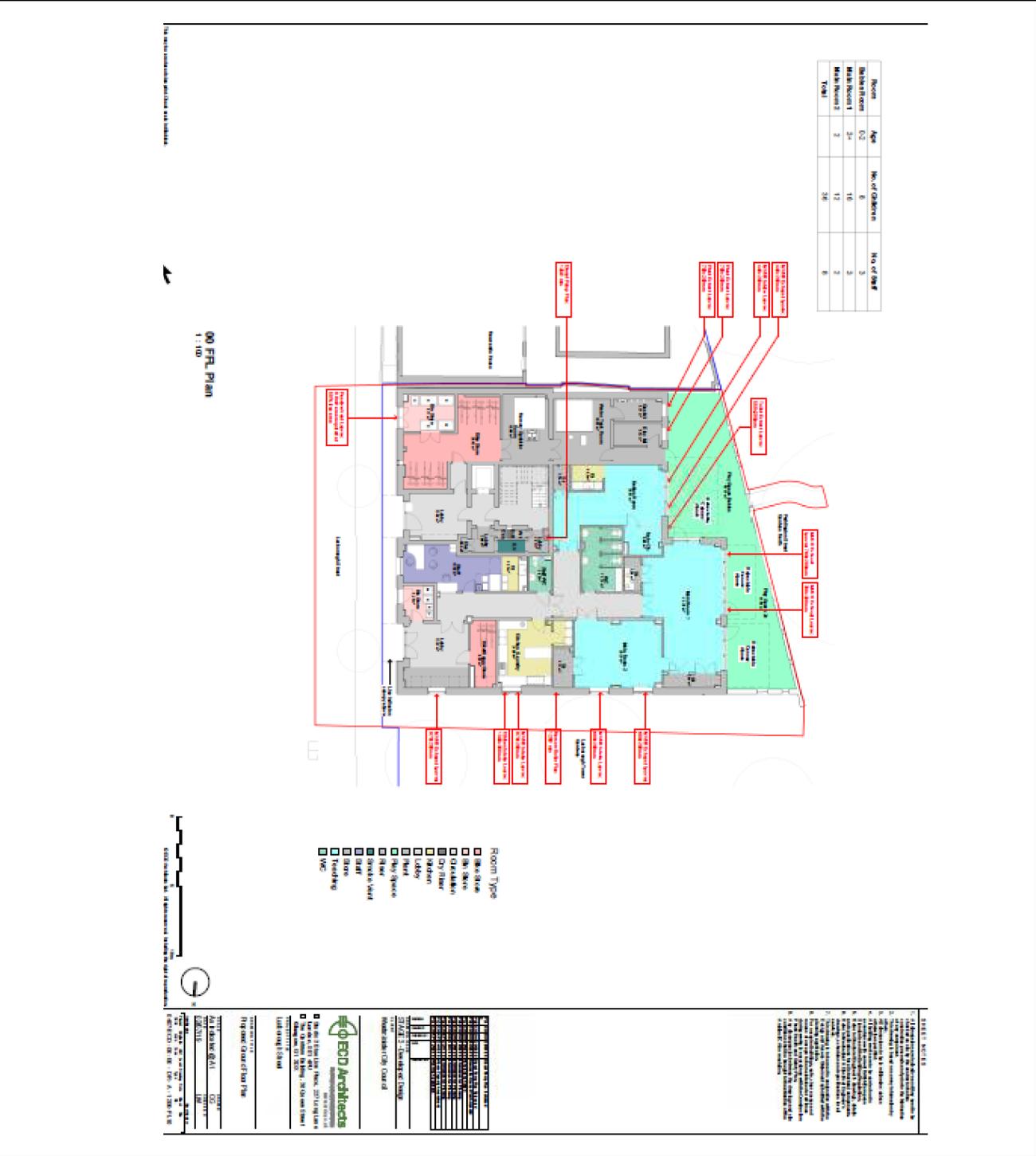
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

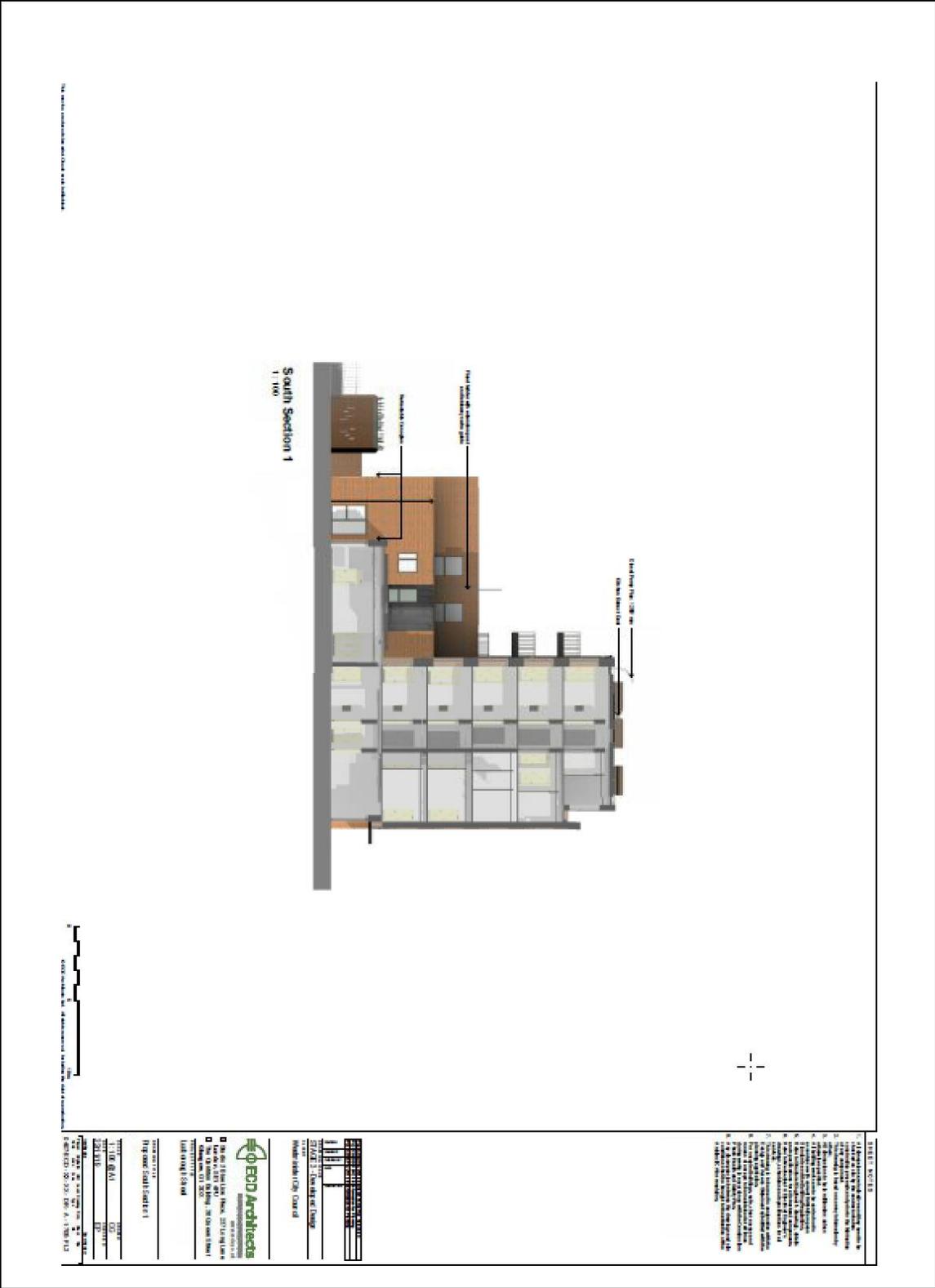
Item No.

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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER:SARA SPURRIER BY EMAIL AT sspurrier@westminster.gov.uk

7. KEY DRAWINGS





DRAFT DECISION LETTER

Address: Luxborough Towers, Luxborough Street, London, W1U 5BF,

Proposal: Redevelopment of existing play space to provide a new building comprising a flexible Class D1 (non-residential institutions) use at ground floor level, 14 x affordable house units (7 x 1-bed and 7 x 2-bed) on first to fifth floors with associated terraces/balconies (Class C3); associated access and other works including a subterranean rainwater harvesting tank; new plant, cycle parking, refuse storage and landscaping. Removal of existing boundary railings and brick wall base adjoining Paddington Street Gardens North and construction of new boundary wall. (COUNCIL'S OWN DEVELOPMENT).

Reference: 19/06451/COFUL

Plan Nos: 0407-ECD-00-00-DR-A-1051-PL1 (demolition site plan); 0407-ECD-00-00-DR-A-1100 PL4, 0407-ECD-00-00-DR-A-1200-PL10, 0407-ECD-00-01-DR-A-1201-PL10, 0407-ECD-00-ZZ-DR-A-1202-PL6, 0407-ECD-00-ZZ-DR-A-1204-PL6, 0407-ECD-00-06-DR-A-1206-PL7, 0407-ECD-00-XX-DR-A-1605-PL7, 0407-ECD-00-XX-DR-A-1606-PL8 £, 0407-ECD-XX-XX-DR-A-1705-PL3; 4148/ P11F, 12D, 14D; 4148/D01A; 0407/LON-V1-00-DR-C-8000 Rev P03, 0407/LON-V1-XX-DR-C-8200 Rev P02 (proposed),

Case Officer: Sara Spurrier

Direct Tel. No. 07866039795

Recommended Condition(s) and Reason(s)

1 The development hereby permitted shall be carried out in accordance with the drawings and documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

2 You must apply to us for approval of samples of the facing materials you will use, including glazing, and elevations and roof plans annotated to show where the materials are to be located. You must not start work on the relevant part of the development until we have approved in writing what you have sent us. You must then carry out the work using the approved materials. (C26BD)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

3 You must paint all new outside rainwater and soil pipes black and keep them that colour. (C26EA)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

4 You must not attach flues, ducts, soil stacks, soil vent pipes, or any other pipework other than rainwater pipes to the outside of the building unless they are shown on the approved drawings. (C26KA)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

5 You must not put structures such as canopies, fences, loggias, trellises or satellite or radio antennae on the roof terraces or balconies

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

6 You must apply to us for approval of a sample panel of brickwork which shows the colour, texture, face bond and pointing. You must not start work on this part of the development until we have approved what you have sent us. You must then carry out the work according to the approved sample. (C27DB)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

7 You must apply to us for approval of detailed drawings showing the following alteration(s) to the scheme:

i)) A revised design for the Paddington Street Gardens boundary wall which omits the coloured panels.

You must not start on this wall until we have approved what you have sent us. You must then carry out the work according to the approved drawings. You must then carry out the work according to the approved drawings. (C26UB)

Reason:

To ensure that the appearance of the wall is suitable and that it will maintain the setting of the neighbouring Portman Estate Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 9 (F) of our Unitary Development Plan that we adopted in January 2007.

8 You must apply to us for approval of detailed drawings of a scheme of public art for the Paddington Street Gardens North boundary wall cresting as detailed in the submitted Schedule of Materials (Revision B).

You must not start any work on this part of the development until we have approved what you have sent us. You must then carry out the work according to these approved drawings and fully implement the approved scheme of public art before anyone moves in to the development. You must thereafter maintain the approved scheme of public art and keep it on this site. You must not move or remove it.

Reason:

To secure the offer of public art and to make sure that the appearance of the building is suitable. This is as set out in DES 7 (A) of our Unitary Development Plan that we adopted in January 2007. (R26GC)

9 All vents in the external walls must be finished to match the colour of the surrounding brickwork and be maintained that colour.

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

10 No demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works. If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works

B. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. this part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

Reason:

To protect the archaeological heritage of the City of Westminster as set out in S25 of Westminster's City Plan (November 2016) and DES 11 of our Unitary Development Plan that we adopted in January 2007. (R32BC)

11 No development shall commence until details of an appropriate programme of public engagement have been submitted by the applicant and approved by the planning authority. The approved programme must be implemented in accordance with a timetable set out in the programme.

Reason:

To secure public interpretation and presentation of the site's archaeology in line with London Plan Policy 7.8.

12 Except for piling, excavation and demolition work, you must carry out any building work which

can be heard at the boundary of the site only:

- o between 08.00 and 18.00 Monday to Friday;
- o between 08.00 and 13.00 on Saturday; and
- o not at all on Sundays, bank holidays and public holidays.

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

- o between 08.00 and 18.00 Monday to Friday; and
- o not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

13 Pre Commencement Condition. Prior to the commencement of any:

- (a) Demolition, and/or
- (b) Earthworks/piling and/or
- (c) Construction

on site you must apply to us for our written approval of evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the council's Code of Construction Practice. Such evidence must take the form of the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the City Council as local planning authority has issued its written approval through submission of details prior to each stage of commencement. (C11CD)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

14 Pre Commencement Condition. You must apply to us for approval of a method statement explaining the measures you will take to protect the trees on and close to the site. The method statement shall include details of an auditable system of arboricultural site supervision and record keeping prepared by an arboricultural consultant who is registered with the Arboricultural Association, or who has the level of qualifications and experience needed to be registered. The details of such supervision must include:

- o identification of individual responsibilities and key personnel.
- o induction and personnel awareness of arboricultural matters.
- o supervision schedule, indicating frequency and methods of site visiting and record keeping
- o procedures for dealing with variations and incidents.

You must include a specification to send a written report to the tree officer within 5 days of each visit by the arboricultural consultant.

You must not start any demolition, site clearance or building work, and you must not take any equipment, machinery or materials for the development onto the site, until we have approved in writing what you have sent us. You must then adhere to the approved supervision schedule and carry put the work according to these approved details

Reason:

To make sure that the trees on the site are adequately protected during building works. This is

as set out in S38 of Westminster's City Plan (November 2016) and DES 1 (A), ENV 16 and ENV 17 of our Unitary Development Plan that we adopted in January 2007. (R31AC)

15 In undertaking the landscaping proposals you must not change the levels or undertake any excavation within the root protection area of any retained tree. All surfacing within the root protection areas, including any artificial grass, must be 'no-dig' and

Reason:

To protect the trees and the character and appearance of the site and the Portman Estate conservation area, by ensuring that the trees are not harmed by landscaping works or a lack of natural drainage, as set out in S25, S28 and S38 of Westminster's City Plan (November 2016) and ENV 16, ENV 17, DES 1 (A) and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007.

16 You must apply to us for approval of detailed drawings and a bio-diversity management plan in relation to the living roofs to include construction method, layout, species and maintenance regime.

You must not commence works on the relevant part of the development until we have approved what you have sent us. You must carry out this work according to the approved details and thereafter retain and maintain in accordance with the approved management plan.

Reason:

To protect and increase the biodiversity of the environment, as set out in S38 of Westminster's City Plan (November 2016) and ENV 17 of our Unitary Development Plan that we adopted in January 2007. (R43CB)

17 You must provide, maintain and retain the following bio-diversity features shown on drawing 4148/P11 Rev F, before you start to use any part of the development:
living roofs, rope coils, log pile, ladybird barn

You must not remove any of these features. (C43FA)

Reason:

To increase the biodiversity of the environment, as set out in S38 of Westminster's City Plan (November 2016) and ENV 17 of our Unitary Development Plan that we adopted in January 2007. (R43FB)

18 You must provide, maintain and retain the following energy efficiency measures and sustainability features before you start to use any part of the development, as set out in your application.

- i) photovoltaic panels
- ii) living roofs
- iii) rainwater harvesting tank

You must not remove any of these features. (C44AA)

Reason:

To make sure that the development provides the environmental sustainability features included in your application as set out in S28 or S40, or both, of Westminster's City Plan (November 2016). (R44AC)

19 Pre Commencement Condition. Prior to the commencement of any:

- (a) Demolition, and/or

(b) Earthworks/piling and/or

(c) Construction

on site you must apply to us for approval of a Construction Methodology Statement for the underground rainwater harvesting tank.

You must not start work on the development until we have approved what you have sent us and you must then undertake this part of the development in accordance with the approved Construction Methodology Statement.

Reason:

As requested by the applicants and to protect the party walls and structural integrity of the neighbouring building

20 Before anyone moves into the property, you must provide the separate stores for waste and materials for recycling shown on drawing number 0407-ECD-00-00-DR-A-1200-PL-10. You must clearly mark them and make them available at all times to everyone using the flats and the ground floor use.

No waste shall be stored on the public highway.

(C14FB)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

21 You must hang all doors or gates so that they do not open over or across the road or pavement. (C24AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

22 You must provide a minimum of 24 cycle storage spaces for the residential use and a minimum of 6 spaces for the ground floor use, as shown on the approved drawings, prior to occupation of the development. Thereafter the cycle spaces must be retained and the space used for no other purpose.

Reason:

To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2016 (R22FA)

23 In the event that the ground floor is occupied as a nursery or creche, prior to the commencement of the use, you must apply to us for approval of a Travel Plan. The Travel Plan must include details of:

- (a) A comprehensive survey of all users of the nursery/creche;
- (b) Details of local resident involvement in the adoption and implementation of the Travel Plan;
- (c) Targets set in the Plan to reduce car journeys to the nursery/creche;
- (d) Details of how the Travel Plan will be regularly monitored and amended, if necessary, if targets identified in the Plan are not being met over a period of 5 years from the date the date of the nursery/creche being occupied.

At the end of the first and third years of the life of any of the approved Travel Plans, where the same user remains in occupation, you must apply to us for approval of reports monitoring the effectiveness of the Travel Plan and setting out any changes you propose to make to the Plan to overcome any identified problems.

Reason:

In the interests of public safety, to avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2, TRANS 3 and TRANS 15 of our Unitary Development Plan that we adopted in January 2007. (R45AB)

24 Any structure over the highway must maintain a minimum 2.6m vertical clearance from the footway surface at all times and shall not extended closer than 1metre from the kerb edge; when within 1 metre of the kerb edge and over the carriageway, a minimum 5.3m vertical clearance must be maintained by any structure including building overhangs, canopies and awnings, signage, flags and public art.

Reason:

In the interests of public safety as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24BC)

25 You must only use the ground floor unit as a children's nursery, creche, exhibition hall or public hall. You must not use it for any other purpose, including any uses within Class E or Class F1 of the Town and Country Planning Use Classes Order 1987 as amended September 2020 or any equivalent class in any order that may replace it.

Reason:

To prevent use of the property for any unsuitable purpose, to safeguard the amenity of neighbouring residential properties and to ensure highway safety and safeguard the operation of the highway network as set out in S29, S32, S34 and S41 of Westminster's City Plan (November 2016) and SOC 1 (B), TRANS 1, TRANS 2, TRANS 14 and ENV6 of our Unitary Development Plan that we adopted in January 2007. (R10AC)

26 Prior to the occupation of the ground floor use you must apply to us for approval of a management plan including full details of the proposed use, including hours of use, premises capacity and servicing hours, and details of the use of the rear courtyard (hours of use and customer capacity and use and management of the courtyard canopies, including the use of the courtyard in the event of failure of the courtyard canopies) to show how you will prevent customers/visitors using the premises from causing nuisance for people in the area, including people who live in nearby buildings. You must not start the creche, public hall or exhibition hall use, or any subsequent use as a creche, public hall or exhibition hall, until we have approved what you have sent us. You must then carry out the measures included in the management plan at all times that the premises are in use.

Reason:

Because this is a residential neighbourhood, we need to prevent use of the property for any unsuitable purposes and to protect neighbouring residents from noise disturbance. This is as set out in S29, S32 and S34 of Westminster's City Plan (November 2016) and SOC 1 (B) and ENV6 of our Unitary Development Plan that we adopted in January 2007. (R10AC)

27 Visitors shall not be permitted within the nursery premises before 07.00 or after 19.00 hours on Monday to Friday only and the rear courtyard shall not be used in association with the nursery use before 08.00 or after 19.00 hours on these days.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S29, S32 and S34 of Westminster's City Plan (November 2016) and ENV 6 and SOC1 of our Unitary Development Plan that we adopted in January 2007.

28 All servicing for the nursery use hereby approved must take place between 0800 and 1900 hours on Monday to Friday only. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building. (C23DA)

Reason:

To protect neighbouring residents from noise nuisance, as set out in S29, S32 and S34 of Westminster's City Plan (November 2016) and ENV 6 and SOC1 of our Unitary Development Plan that we adopted in January 2007.

29 You must not use the ground, first or second floor roofs of the building for sitting out or for any other purpose other than for maintenance purposes or as a means of escape in case of emergency.

Reason:

To protect the privacy and environment of people in neighbouring properties, as set out in S29 of Westminster's City Plan (November 2016) and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21AC)

30 You may use the door in the rear site boundary wall (leading to Paddington Street Gardens North), shown on the drawings hereby approved, only in an emergency or for maintenance purposes. (C21FA)

Reason:

To ensure that the development will maintain the character of Paddington Street Gardens North and the neighbouring Portman Estate Conservation Area as set out in S34 of Westminster's City Plan (November 2016) and DES 1 and SOC 1 of our Unitary Development Plan that we adopted in January 2007.

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

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

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

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;

- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission. (R46AB)

32 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration. (R48AA)

33 The design and structure of the development shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason:

As set out in ENV6 (4) of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at sections 9.84 to 9.87, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the development from the intrusion of external noise. (R49AA)

34 The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason:

As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development. (R49BA)

35 (1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any premises.

(2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

(3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason:

As set out in S32 of Westminster's City Plan (November 2016) and ENV 7 (B) of our Unitary Development Plan that we adopted in January 2007. Emergency and auxiliary energy generation plant is generally noisy, so a maximum noise level is required to ensure that any disturbance caused by it is kept to a minimum and to ensure testing and other non-emergency use is carried out for limited periods during defined daytime weekday hours only, to prevent disturbance to residents and those working nearby. (R50AB)

36 You must apply to us for approval of detailed drawings and full specifications of the courtyard canopies before the ground floor use is occupied. The canopies must be constructed from materials with a minimum sound reduction value (Rw) of 16 dB. You must then carry out the work according to these approved details and specifications and the canopies must be installed prior to the commencement of the ground floor use(s) hereby approved and the courtyard must not be used in association with the ground floor use unless the courtyard canopy/canopies are fully deployed.

Reason:

Because this is a residential neighbourhood, we need to protect neighbouring residents from noise disturbance. This is as set out in S29, S32 and S34 of Westminster's City Plan (November 2016) and SOC 1 (B) and ENV6 of our Unitary Development Plan that we adopted in January 2007. (R10AC)

37 You must apply to us for approval of details of a supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in Condition(s) 31 and 35 of this permission. You must not start work on this part of the development until we have approved what you have sent us.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. (R51AB)

38 Pre Commencement Condition. You must carry out a detailed site investigation to find out if the building or land are contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated Land Guidance for Developers submitting planning applications' - produced by Westminster City Council in January 2018.

You must apply to us for approval of the following investigation reports. You must apply to us and receive our written approval for phases 1, 2 and 3 before any demolition or excavation work starts, and for phase 4 when the development has been completed but before it is occupied.

Phase 1: Desktop study - full site history and environmental information from the public

records.

Phase 2: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property.

Phase 3: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution.

Phase 4: Validation report - summarises the action you have taken during the development and what action you will take in the future, if appropriate.

(C18AA)

Reason:

To make sure that any contamination under the site is identified and treated so that it does not harm anyone who uses the site in the future. This is as set out in STRA 34 and ENV 8 of our Unitary Development Plan that we adopted in January 2007. (R18AA)

39 You must apply to us for approval of details of the ventilation system to get rid of cooking smells, including details of how it will be built and how it will look. You must not begin the use allowed by this permission until we have approved what you have sent us and you have carried out the work according to the approved details. (C14AB)

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

40 The plant/machinery hereby permitted in association with the ground floor use (excluding the emergency generator) shall not be operated except between 0700 and 23.00 hours daily.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R46CB)

Informative(s):

1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, neighbourhood plan (where relevant), supplementary planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.

2 This permission is governed by a Unilateral Undertaking from the applicant under Section 106 of the Town and Country Planning Act 1990. The Undertaking relates to the provision of affordable house; Lifetime car club membership; the replacement of trees on Luxborough Street; a carbon offset payment and s106 monitoring costs. (I55BA)

3 Under the Greater London Council (General Powers) Act 1973, as amended by the Deregulation Act 2015, you need planning permission to use residential premises as 'temporary sleeping accommodation' (i.e. where the accommodation is occupied by the same person or persons for less than 90 consecutive nights) unless the following two conditions are met:

1. The number of nights in any single calendar year in which the property is used to provide 'temporary sleeping accommodation' does not exceed 90 [ninety].

2. The person who provides the sleeping accommodation pays council tax in respect of the premises under Part 1 of the Local Government Finance Act 1992 (where more than one person provides the sleeping accommodation, at least one of those persons must pay council tax in respect of the premises).

This applies to both new and existing residential accommodation. Please see our website for more information: www.westminster.gov.uk/short-term-lets.

Also, under Section 5 of the Greater London Council (General Powers) Act 1984 you cannot use the property for any period as a time-share (that is, where any person is given a right to occupy all or part of a flat or house for a specified week, or other period, each year).

4 Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice and to apply online please visit www.westminster.gov.uk/suspensions-dispensations-and-skips.

5 You will need to re-apply for planning permission if another authority or council department asks you to make changes that will affect the outside appearance of the building or the purpose it is used for. (I23AA)

6 Under the Construction (Design and Management) Regulations 2015, clients, the CDM Coordinator, designers and contractors must plan, co-ordinate and manage health and safety throughout all stages of a building project. By law, designers must consider the following:

- * Hazards to safety must be avoided if it is reasonably practicable to do so or the risks of the hazard arising be reduced to a safe level if avoidance is not possible;
- * This not only relates to the building project itself but also to all aspects of the use of the completed building: any fixed workplaces (for example offices, shops, factories, schools etc) which are to be constructed must comply, in respect of their design and the materials used, with any requirements of the Workplace (Health, Safety and Welfare) Regulations 1992. At the design stage particular attention must be given to incorporate safe schemes for the methods of cleaning windows and for preventing falls during maintenance such as for any high level plant. Preparing a health and safety file is an important part of the regulations. This is a record of information for the client or person using the building, and tells them about the risks that have to be managed during future maintenance, repairs or renovation. For more information, visit the Health and Safety Executive website at www.hse.gov.uk/risk/index.htm. It is now possible for local authorities to prosecute any of the relevant parties with respect to non compliance with the CDM Regulations after the completion of a building project, particularly if such non compliance has resulted in a death or major injury.

7 Working at height remains one of the biggest causes of fatalities and major injuries. You should carefully consider the following.

- * Window cleaning - where possible, install windows that can be cleaned safely from within the building.
- * Internal atria - design these spaces so that glazing can be safely cleaned and maintained.
- * Lighting - ensure luminaires can be safely accessed for replacement.
- * Roof plant - provide safe access including walkways and roof edge protection where necessary (but these may need further planning permission).

More guidance can be found on the Health and Safety Executive website at www.hse.gov.uk/toolbox/height.htm

Note: Window cleaning cradles and tracking should blend in as much as possible with the appearance of the building when not in use. If you decide to use equipment not shown in your drawings which will affect the appearance of the building, you will need to apply separately for planning permission. (I80CB)

8 You must ensure that the environment within a workplace meets the minimum standard set out in the Workplace (Health, Safety and Welfare) Regulations 1992 with respect to lighting, heating and ventilation. Detailed information about these regulations can be found at www.hse.gov.uk/pubns/indg244.pdf. (I80DB)

9 The submitted Unexploded Ordnance Report confirms the possibility of unexploded ordnance on this site. You are reminded of the need to take appropriate safety measures with regard to construction works in this regard.

10 The development will require the removal and/or relocation of telecom equipment cabinets on Luxborough Street. You are reminded of the need to obtain the appropriate approvals for this.

11 Works affecting Paddington Street Gardens North will require the approval of the Church Faculty/Diocese of London. You are reminded of the need to obtain the appropriate approvals before undertaking any works requiring this authority.

12 Please email our Project Officer (Waste) at wasteplanning@westminster.gov.uk for advice about your arrangements for storing and collecting waste.

13 You must get planning permission for any tanks, equipment, lift motor rooms, railings or other additions to the property. (I21AA)

14 You are advised that the works are likely to require building regulations approval. Details in relation to Westminster Building Control services can be found on our website at www.westminster.gov.uk/contact-us-building-control

15 You will have to apply separately for a licence for any structure that overhangs the road or pavement. For more advice, please email Jeff Perkins at jperkins@westminster.gov.uk.

16 When carrying out building work you must take appropriate steps to reduce noise and prevent nuisance from dust. The planning permission for the development may include specific conditions relating to noise control, hours of work and consideration to minimising noise and vibration from construction should be given at planning application stage. You may wish to contact to our Environmental Sciences Team (email: environmentalsciences2@westminster.gov.uk) to make sure that you meet all the requirements before you draw up contracts for demolition and building work.

When a contractor is appointed they may also wish to make contact with the Environmental Sciences Team before starting work. The contractor can formally apply for consent for prior approval under Section 61, Control of Pollution Act 1974. Prior permission must be sought for all noisy demolition and construction activities outside of core hours on all sites. If no prior permission is sought where it is required the authority may serve a notice on the site/works setting conditions of permitted work (Section 60, Control of Pollution Act 1974). British Standard 5228:2014 'Code of practice for noise and vibration control on construction and open sites' has been recognised by Statutory Order as the accepted guidance for noise control during construction work.

An action in statutory nuisance can be brought by a member of the public even if the works are being carried out in accordance with a prior approval or a notice.

17 You are encouraged to join the nationally recognised Considerate Constructors Scheme. This

commits those sites registered with the Scheme to be considerate and good neighbours, as well as clean, respectful, safe, environmentally conscious, responsible and accountable. For more information please contact the Considerate Constructors Scheme directly on 0800 783 1423, siteenquiries@ccscheme.org.uk or visit www.ccscheme.org.uk.

18 With reference to condition 13 please refer to the Council's Code of Construction Practice at (www.westminster.gov.uk/code-construction-practice). You will be required to enter into an agreement with the Council appropriate to this scale of development and to pay the relevant fees prior to starting work.

Your completed and signed Checklist A (for Level 1 and Level 2 developments) or B (for basements) and all relevant accompanying documents outlined in Checklist A or B, e.g. the full Site Environmental Management Plan (Levels 1 and 2) or Construction Management Plan (basements), must be submitted to the City Council's Environmental Sciences team (environmentalsciences2@westminster.gov.uk) at least 40 days prior to commencement of works (which may include some pre-commencement works and demolition. The checklist must be countersigned by them before you apply to the local planning authority to discharge the above condition.

You are urged to give this your early attention as the relevant stages of demolition, earthworks/piling or construction cannot take place until the City Council as local planning authority has issued its written approval of each of the relevant parts, prior to each stage of commencement.

Where you change your plans after we have discharged the condition, you must re-apply and submit new details for consideration before you start work. Please note that where separate contractors are appointed for different phases of the project, you may apply to partially discharge the condition by clearly stating in your submission which phase of the works (i.e. (a) demolition, (b) excavation or (c) construction or a combination of these) the details relate to. However please note that the entire fee payable to the Environmental Sciences team must be paid on submission of the details relating to the relevant phase.

Appendix A must be signed and countersigned by Environmental Sciences prior to the submission of the approval of details of the above condition.

19 The construction manager should keep residents and others informed about unavoidable disturbance such as noise, dust and extended working hours, and disruption of traffic. Site neighbours should be given clear information well in advance, preferably in writing, for example by issuing regular bulletins about site progress.

20 The development for which planning permission has been granted has been identified as potentially liable for payment of both the Mayor of London and Westminster City Council's Community Infrastructure Levy (CIL). Further details on both Community Infrastructure Levies, including reliefs that may be available, can be found on the council's website at:

www.westminster.gov.uk/cil

Responsibility to pay the levy runs with the ownership of the land, unless another party has assumed liability. If you have not already you must submit an Assumption of Liability Form immediately. On receipt of this notice a CIL Liability Notice setting out the estimated CIL charges will be issued by the council as soon as practicable, to the landowner or the party that has assumed liability, with a copy to the planning applicant. You must also notify the Council before commencing development using a Commencement Form

CIL forms are available from the planning on the planning portal:

www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

Forms can be submitted to CIL@Westminster.gov.uk

Payment of the CIL charge is mandatory and there are strong enforcement powers and penalties for failure to pay, including Stop Notices, surcharges, late payment interest and prison terms.

21 Written schemes of investigation will need to be prepared and implemented by a suitably

qualified professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London. Condition 9 is exempt from deemed discharge under schedule 6 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

The archaeological fieldwork should comprise the following:

Evaluation

An archaeological field evaluation involves exploratory fieldwork to determine if significant remains are present on a site and if so to define their character, extent, quality and preservation. Field evaluation may involve one or more techniques depending on the nature of the site and its archaeological potential. It will normally include excavation of trial trenches. A field evaluation report will usually be used to inform a planning decision (pre-determination evaluation) but can also be required by condition to refine a mitigation strategy after permission has been granted.

A programme of trial trenching should be undertaken across the site. Any geotechnical investigations should be archaeologically monitored and used to help scope the location of the trenching. There is potential for former remains of the workhouse and the Paddington Street North burial ground. A burial licence may be required prior to these works and further advice should be sought.

Based upon the result of the evaluation, the scope of mitigation may include:

Excavation

Archaeological excavation is a structured investigation with defined research objectives which normally takes place as a condition of planning permission. It will involve the investigation and recording of an area of archaeological interest including the recovery of artefacts and environmental evidence. Once on-site works have been completed a 'post-excavation assessment' will be prepared followed by an appropriate level of further analysis, publication and archiving.

and/or

Preservation in-situ, which would apply to the burial ground

Where archaeological remains are to be preserved in-situ within a development there will normally be a requirement to provide details of how this will be achieved. Typically this would involve a design and methods statement for groundworks. Where particularly important or vulnerable features are to be preserved there may also be a requirement to monitor their condition and take remedial action in the event of decay.

possibly combined with

Watching Brief

A watching brief involves the proactive engagement with the development groundworks to permit investigation and recording of features of archaeological interest which are revealed. A suitable working method with contingency arrangements for significant discoveries will need to be agreed. The outcome will be a report and archive.

English Heritage Greater London Archaeology Standards Paper 5 provides guidance on popular dissemination and communication.

For further advice, please contact Diane Abrams, Archaeology Advisor, Greater London Archaeological Advisory Service

London and South East Region (diane.abrams@HistoricEngland.org.uk 0207 973 3732)

22 You are advised to contact the Metropolitan Police Service Designing Out Crime Officers (DOCOS) with a view to achieving a 'Secured By Design' accreditation for the development (docomailbox.nw@met.police.uk, Tel: 0208 733 3465). You should seek advice as to whether any changes to the scheme arising out of these discussions will require further planning approval.

23 Non-Road Mobile Machinery (NRMM)

The applicant is strongly encouraged to ensure that all non-road mobile machinery used during

the demolition and/or construction phase meet the appropriate emission standards for use in the Central Activity Zone. Further information can be found at the following link: <http://nrmm.london/nrmm>. The environmental sciences team can provide further information and can be contacted at: environmentalsciences2@westminster.gov.uk

24 Condition 38 refers to a publication 'Contaminated Land Guidance for Developers submitting planning applications' - produced by Westminster City Council in January 2018. You can get a copy of this document at www.westminster.gov.uk/contaminated-land. For further advice you can email Public Protection and Licensing at environmentalsciences2@westminster.gov.uk.

25 Asbestos is the largest single cause of work-related death. People most at risk are those working in the construction industry who may inadvertently disturb asbestos containing materials (ACM's). Where building work is planned it is essential that building owners or occupiers, who have relevant information about the location of ACM's, supply this information to the main contractor (or the co-ordinator if a CDM project) prior to work commencing. For more information, visit the Health and Safety Executive website at www.hse.gov.uk/asbestos/regulations.htm (I80AB)

26 Buildings must be provided with appropriate welfare facilities for staff who work in them and for visiting members of the public.

Detailed advice on the provision of sanitary conveniences, washing facilities and the provision of drinking water can be found in guidance attached to the Workplace (Health, Safety and Welfare) Regulations 1992. www.opsi.gov.uk/SI/si1992/Uksi_19923004_en_1.htm

The following are available from the British Standards Institute - see shop.bsigroup.com/:
BS 6465-1:2009: Sanitary installations. Code of practice for the design of sanitary facilities and scales of provision of sanitary and associated appliances
BS 6465-3:2009: Sanitary installations. Code of practice for the selection, installation and maintenance of sanitary and associated appliances. (I80HA)

27 You must register your food business with the Council, please use the following link: www.westminster.gov.uk/registration-food-business. Please email the Environmental Health Consultation Team (Regulatory Support Team 2) at ehconsultationteam@westminster.gov.uk for advice on meeting our standards on ventilation and other equipment. Under environmental health legislation we may ask you to carry out other work if your business causes noise, smells or other types of nuisance.

28 You are advised to permanently mark the plant/ machinery hereby approved with the details of this permission (including date decision and planning reference number). This will assist in future monitoring of the equipment by the City Council if and when complaints are received

Please note: the full text for informative can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.