
Statement of Case

13-17 Montpelier Street

Prepared by:

Savills

On behalf of:

Monte London Limited

Application References:

APPEAL A: 20/07400/FULL

APPEAL B: 21/01285/FULL and 21/01286/LBC

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1. Introduction

- 1.1. This full Statement of Case ("SoC") has been prepared by Savills on behalf of Monte London Limited ("Appellant") in relation to the development at 13-17 Montpelier Street, London, SW7 1HQ ("Site").
- 1.2. The Site comprises a Grade II listed, three storey building (four including lower ground level) located on the corner of Montpelier Street and Montpelier Place. The Site is situated within the administrative boundary of Westminster City Council, is within the Knightsbridge Conservation Area and lies in the Central Activities Zone (but outside the Core CAZ).
- 1.3. Originally, six different applications for planning permission and listed building consent were made to Westminster City Council ('the Council') between 2020 and 2021 relating to three different schemes. This Statement of Case is in respect only of Application 1 and Application 3, described further below.
- 1.4. Application 1: Planning and Listed Building Consent applications (LPA refs: 20/07400/FULL & 20/07401/LBC) were made in November 2020 for: *"Use of first and second floor level as two self-contained residential flat (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, shopfront alterations to nos. 13 and 15, new retractable awnings, lowering of front basement vaults and internal alterations in connection with the continued use of the restaurant at lower ground and ground floor level."*
- 1.5. Application 2: Planning and Listed Building Consent applications (LPA refs: 21/01233/FULL & 21/01234/LBC) were made in March 2021 for: *"Use of first and second floor level as two self-contained residential flats (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and at main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level."*
- 1.6. Application 3: Planning and Listed Building Consent applications (LPA refs: 21/01285/FULL & 21/01286/LBC) were made in March 2021 for: *"Use of first and second floor level as three self-contained residential flats (Class C3), infill extension at rear first floor level to Montpelier Place elevation, creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level."*
- 1.7. *This Statement of Case relates to two applications submitted by the Appellant (application 1 and 3 referred to below) in relation to the Site. The first application 1 or 'Appeal A' is in respect of planning application reference 20/07400/FULL submitted to the Council on 19 November 2020.*

- 1.8. The second, application 3 or 'Appeal B' is in respect of planning application reference 21/01285/FULL and listed building application reference 21/01286/LBC submitted to the Council on 19 November 2020.
- 1.9. Please refer to **Appendix 1** for the decision notices relating to 'Application 1' and 'Application 3'. Both of these applications went to Planning Committee simultaneously, alongside a third planning and listed building application 'Application 2', which does not form part of this appeal.
- 1.10. In the Officer's report (see **Appendix 2**) to the Members of the Council's Planning Committee ("Council Members"). Officers recommended Application 1 (along with the listed building consent for the same proposal) for approval subject to conditions. The Application was heard by the Council's Planning Committee on 22 June 2021 and whilst minutes were silent on the listed building consent for Application 1 (ref: 20/07401/LBC), consent was granted on 20 July 2021. The Committee resolved to refuse planning permission for Application 1 with the decision notice issued on 20 July 2021 ("Decision Notice").
- 1.11. There is one reason for refusal set out in the Decision Notice as follows:
- "1. The development would intensify the existing restaurant use, causing late-night activity and disturbance in this part of the city and would harm the character and function of the area and neighbouring residential amenity, contrary to Policies 7 and 16 of the City Plan 2019 - 2040 (April 2021) and KBR14 and KBR15 of the Knightsbridge Neighbourhood Plan (December 2018). The first reason for refusal relates to considerations concerning the loss of the existing building and its contribution to the Conservation Area and also the impact of the demolition of the building on the character and appearance of the conservation area." Referred to as ("Reason for Refusal").*
- 1.12. Both planning and listed building consents (refs: 21/01285/FULL and 21/01286/LBC) in respect of 'Application 3' were resolved to be refused at committee on 22 June 2021, with decision notices issued on 20 July 2021. There were two reasons for refusal on the planning permission (ref: 21/01285/FULL) for Application 3 as follows:
- "1. Because of its position, form, bulk and appearance the first-floor extension would harm the architectural and historic interest (significance) of these grade II listed buildings. It would also fail to maintain or improve (preserve or enhance) the character and appearance of the Knightsbridge Conservation Area. This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and the advice set out in our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings. It would also fail to meet policies KBR1 of the Knightsbridge Neighbourhood Plan (2018).*
- 2 The development would intensify the existing restaurant use, causing late-night activity and disturbance in this part of the city and would harm the character and function of the area and neighbouring residential amenity, contrary to Policies 7 and 16 of the City Plan 2019 - 2040 (April 2021) and KBR14 and KBR15 of the Knightsbridge Neighbourhood Plan (December 2018)."*
- 1.13. There was one reason for refusal on the listed building consent (ref: 21/01286/LBC) for 'Application 3' as follows:

“1. Because of its position, form, bulk and appearance the first-floor extension would harm the architectural and historic interest (significance) of these grade II listed buildings. It would also fail to maintain or improve (preserve or enhance) the character and appearance of the Knightsbridge Conservation Area. This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and the advice set out in our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings. It would also fail to meet policies KBR1 of the Knightsbridge Neighbourhood Plan (2018).”

- 1.14. This SoC sets out a full written statement of the Appellant's case for why its appeal should be allowed and planning permission should be granted for 'Appeal A' (alongside the already approved listed building consent for the same proposal) and planning and listed building consent should be granted for 'Appeal B'. Chapter 2 of this SoC provides contextual background as to the Site's history, surroundings and lawful use, and Chapter 3 briefly confirms which decisions are the subject of this appeal. Chapter 4 explains the planning history of the Site and Chapter 5 sets out the documents submitted with the applications. Chapter 6 considers relevant planning policies, including those referred to in the Council's reason for refusal and others which were considered. Finally, chapters 7, 8 and 9 set out agreed matters between the parties, the Appellant's case and other material considerations.
- 1.15. This SoC has been drafted in accordance with the guidance at Annexe J of the Planning Inspectorate's Procedural Guide for Planning Appeals in England (29 March 2021).

2. The Site and Surroundings

The Site

- 2.1. The site is a three storey (four including lower ground floor) building located on the corner of Montpelier Street and Montpelier Place. A plan of the Site can be found at **Appendix 3** of this SoC.
- 2.2. The building comprises three adjoining Georgian properties which were completed in 1831 (according to British History Online). The adjacent buildings nos. 19 and 21 followed in about 1839. They are similar in style, with rounded corners and prominent cement cornices.
- 2.3. The site area is approximately 310.6 sq.m and the existing building measures approximately 809.4 sq.m GIA in area. The existing restaurant area is 322 sq.m GIA with an additional 203 sq.m for the kitchen.
- 2.4. The site lies within the administrative boundary of Westminster City Council and is located within the Knightsbridge Conservation Area. In respect of other site designations, the site is also located within the Central Activities Zone (CAZ), but outside the Core CAZ.
- 2.5. The building is Grade II listed (and has been since 1972). The listing description is as follows:

“Row of houses. Early/mid C19. Yellow brick. Roofs not visible. Three storeys. Two windows wide each. Shops to ground floor. Upper floors with square headed windows, mainly sashed, with gauged heads. Iron balconies to first floor. Stucco cornices. Blind windows to return No 17.”
- 2.6. The building is accessed via its main entrance on Montpelier Street, with a secondary access on Montpelier Place.
- 2.7. The site is in a highly accessible location, situated 0.4 miles south-west of Knightsbridge London Underground station, whilst a number of bus routes serve the site running along Brompton Road. Consequently, the site benefits from a Public Transport Accessibility Level (PTAL) of 6a, where 6b is highest.

Surrounding Area

- 2.8. The surrounding area is relatively uniform, with 3 and 4 storey brick and rendered buildings. The western side of Montpelier Street (on which the site is located) is characterised by restaurant and retail uses at ground floor, with residential above. The eastern side of Montpelier Street (opposite the site) is characterised by 2-storey townhouses.
- 2.9. There are also larger scale buildings located in close proximity to the site, including a 5-storey residential apartment building of red brick building located opposite the site at number 14 Montpelier Place. Further to the south of the site (on Brompton Road) is a 7-storey building with retail at ground and offices above, whilst at the northern end of the street (on Montpelier Square) are 5 –storey townhouses.

Lawful Use

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- 2.10. Historically the site consisted of three separate properties with shops and commercial units at ground floor level and residential units on the upper floors.
 - 2.11. The site has been used as a restaurant for over 50 years. Most recently, the buildings were in use as a restaurant (known as Montpeliano) comprising kitchen and stores, customer and staff WCs, staff office and vaults at lower ground floor level, the main restaurant use at ground floor level and ancillary space at upper levels (first and second floors). The site is currently vacant.
 - 2.12. The March 2001 appeal decision confirms the lawful use of the building as a restaurant (at the time of the appeal, Class A3 use, now Class E use).
 - 2.13. The pre application advice (dated 16th September 2020) set out the following in respect of the use of the building: *“there is a restaurant (A3 use) and ancillary kitchen at the ground and lower ground floors, whilst the first floor is said to be ancillary space for the lower floors and the second floor informally used for residential purposes.”*
 - 2.14. Similarly, the officer’s report associated with ‘Application 1’ and ‘Application 3’ sets out that *“the site currently has a lawful restaurant use (planning use Class E) at lower ground and ground floor levels, with ancillary residential accommodation and storage space on the upper floors.”*
 - 2.15. In summary, all parties agree that 13-17 Montpelier Street is a long standing restaurant (previously use Class A3, now use Class E) and that the whole building is in this lawful use.

3. Development

- 3.1. The description of the proposed development under planning application ref: 20/07400/FULL ('Application 1') is as follows:

"Use of first and second floor level as two self-contained residential flats (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, shopfront alterations to nos. 13 and 15, new retractable awnings, lowering of front basement vaults and internal alterations in connection with the continued use of the restaurant at lower ground and ground floor level."

- 3.2. This application is being appealed under 'Appeal A'.

- 3.3. The description of the proposed development under planning and listed building application refs: 21/01285/FULL and 21/01286/LBC ('Application 3') is as follows:

"Use of first and second floor level as three self-contained residential flats (Class C3), infill extension at rear first floor level to Montpelier Place elevation, creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level."

- 3.4. This application is being appealed under 'Appeal B'.

- 3.5. The Appellant does not propose any amendments to either of the descriptions of development set out above. Application 1 and Application 3 remain unchanged from what was presented to the Council and Committee at application stage.

4. Planning History

Planning History

- 4.1. A review of the Council's online planning register has been undertaken, which has identified the following most recent and relevant applications attached to the site.
- 4.2. Most recently, as set out above, planning permission (refs: 20/07400/FULL & 21/01285/FULL) and listed building consent (ref: 21/01286/LBC) were refused at committee on 22nd June 2021. The listed building consent that accompanied planning permission (ref: 20/07400) was however approved. These three applications (2 x planning permission and 1 x listed building consent) form the basis of this appeal.
- 4.3. Planning and Listed Building Consent (15/11154/FULL and 15/11155/LBC) were granted on 2nd February 2016 for the conversion of the first and second floors to residential use (two x 2 bed flats) including internal alterations such as the removal and additions of partitions to suit the conversion and external alterations including; replacement of two French doors with sash windows to front elevation, alterations to fenestration to rear façade, opening of two blind windows, re-opening of blocked window at ground floor, new fire escape door to north façade and reinstatement of lost stucco cornice at roof level (the 2015 Scheme).
- 4.4. Prior to this, planning permission and listed building consent (ref. 15/07779/FULL and 15/07780/LBC) was refused in 2015 for the construction of a mansard roof on top of the main building, alterations to windows and doors and internal alterations in association with the use of the first, second and third floors as three flats. An appeal was subsequently submitted in respect of this refused application and dismissed in July 2016 on the basis that the proposed mansard was considered to have a detrimental effect on the architectural and historic significance of the listed building, as well as its setting within the Knightsbridge Conservation Area and that the planning benefits did not outweigh this harm.
- 4.5. On 22nd November 2010, the Council refused applications for planning permission and listed building consent for the retention of unauthorised external works comprising ventilation duct to flank elevation, shopfronts to Nos. 13 and 15 and wooden decking and railings to front lightwell for similar reasons (among others).
- 4.6. Listed building consent was granted in 2007 for the removal of the party wall between Nos. 13 and 15, along with other alterations, including the enlargement of the kitchen space (ref. 07/03301/LBC) (the 2007 Scheme).
- 4.7. In May 2000 planning permission (ref. PT/00/01306/FULL) was refused for the use of ground floor as a restaurant/bar (Class A3) forming an extension to the existing restaurant at 13-17 Montpelier Street and alterations to Montpelier Place elevation. The refusal was made on the grounds that an extension to the existing restaurant would result in a loss of amenity to residents in the vicinity by reason of increased pedestrian activity, late night noise, disturbance and traffic congestion.
- 4.8. In January 2001 planning permission (ref. 00/9663/FULL) was refused again for the same proposal. This application was then allowed at appeal (ref. 00/00213/TPREF) as part of an informal hearing in March 2001.

- 4.9. In addition to the above main planning history records, other minor applications such as external changes and removal of part of the party wall at lower ground floor level have been granted at the property.

Context and Background

- 4.10. The existing and lawful use of the site is restaurant use (previously Class A3, now Class E). This has been confirmed by the March 2001 appeal decision and June 2021 officer's report.
- 4.11. The 2007 scheme has been implemented, however the implementation process following works pursuant to the 2015 scheme is unclear. Current existing plans of the properties, and site photographs, indicate that there are areas where further works have been undertaken, which do not seem to be reflected in the Site's planning history. The property has considerable planning and listed building enforcement history, with several cases raised but all now closed. Application 1 sought planning and listed building consent for these 'unauthorised' works. Although listed building consent was granted, planning consent was not (Appeal A).
- 4.12. By way of background, a pre application submission was made on 20th June 2020 relating to all three applications and a pre application meeting was undertaken with the Council's planning and conservation officers on 10th August 2020.
- 4.13. Following this pre application engagement, a planning and listed building application for *"use of first and second floor level as two self-contained residential flats (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, shopfront alterations to nos. 13 and 15, new retractable awnings, lowering of front basement vaults and internal alterations in connection with the continued use of the restaurant at lower ground and ground floor level."* was submitted to the Council on 19th November 2020. Planning permission (ref: 20/07400/FULL) was refused and listed building consent (ref: 20/07401/LBC) was approved. The refused planning decision contained one reason for refusal relating to intensification of the restaurant resulting in harm to neighbouring amenity. This is Appeal A.
- 4.14. A virtual meeting was held on 28th January 2021 with key local stakeholders, Knightsbridge and Belgravia Ward Councillors and the Knightsbridge Association. All three Councillors for Knightsbridge and Belgravia attended the meeting (Councillor Anthony Devenish, Councillor Elizabeth Hitchcock and Councillor Rachael Robathan). Amongst those present, were attendees who were also senior members of the Steering Committee of the Knightsbridge Neighbourhood Forum.

- 4.15. A planning application and listed building application for “*Use of first and second floor level as three self-contained residential flats (Class C3), infill extension at rear first floor level to Montpelier Place elevation, creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level.*” Was submitted to the Council on 2 March 2021. Planning permission (ref: 21/01285/FULL) and Listed Building consent (ref: 21/01286/LBC) were both refused. The refused planning permission contained two reasons for refusal, the first relating to the harm the extension would cause to the host building and the conservation area and the second relating to the intensification of the restaurant use. The refused listed building consent contained one reason for refusal relating to the harm the extension would cause to the host building and the conservation area. This planning and listed building application are Appeal B.
- 4.16. The planning applications referred to above (Ref: 20/07400/FULL and 21/01285/FULL) and listed building consents (Ref: 20/07401/LBC and 21/01286/LBC) were presented at planning committee on 22nd June 2021 with an Officer recommendation for approval. Julia Asghar (Development Planning Officer at the Council) presented the schemes to committee. The Committee resolved to refuse planning application 20/07400/FULL (comprising Appeal A) on one ground relating to intensification of the restaurant. Additionally, the Committee resolved to refuse planning application 21/01285/FULL and listed building consent 21/01286 LBC (comprising Appeal B) on two grounds relating to intensification and design grounds. The members vote for refusal was not unanimous and one member of the committee (Councillor Guthrie McKie) voted in support of the application.

5. Documents Submitted with the Applications

5.1. The following documents were submitted as part of planning application (ref: PP/21/07400/FULL) – ‘Application 1’ and planning and listed building applications (refs: 21/01285/FULL and 21/01286/LBC) – ‘Application 3’:

- Community Infrastructure Levy form;
- Covering letter, prepared by Savills;
- Planning Statement, prepared by Savills;
- Heritage Statement, prepared by Turley Heritage;
- Site location plan, prepared by Rigby & Rigby;
- Existing and proposed plans, elevations and sections, prepared by Rigby & Rigby;
- Design and Access Statement, prepared by Rigby & Rigby (to include):
 - o Schedule of Proposed Works, prepared by Rigby and Rigby;
 - o Acoustic Report by Bickerdike Allen;
 - o Occupational waste management plan, prepared by WSPCC;
 - o Rot Survey and Schedule, prepared by Dryside; and
 - o Structural Information – Patress Requirements, prepared by David Smith Associates

5.2. Further documents were submitted to the Council during the course of the application process (on 16th February 2021) to reflect minor amendments to applications 1 and 3, which included the removal of the proposed car valet station and additional planters on the principal elevation, reduction in the proposed rooflight projections and raising of the parapet line to the north elevation of the rear first floor flat roof by 490mm.

5.3. The documents which supported these amendments during the course of the application were as follows:

- Covering letter, prepared by Savills;
- Proposed amended plans and elevations, prepared by Rigby & Rigby; and
- Management Plan Scoping document, prepared by Rigby and Rigby

6. Planning Policy

Development Plan

6.1. For the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the following development plan documents are applicable to the appeal scheme:

- Westminster City Plan (April 2021);
- Knightsbridge Neighbourhood Plan (December 2018); and
- The London Plan (March 2021)

Material Considerations

6.2. The following Westminster City Council documents are relevant to the appeal schemes:

- Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings (July 1996)

6.3. The following national planning policy and guidance are applicable to the appeal scheme:

- National Planning Policy Framework (NPPF) (July 2021)
- Historic England Good Practice Guide: The Setting of Heritage Assets (2017)

Policies Referred to in Council's Reason for Refusal

6.4. The following policies were referred to in the Council's reasons for refusal:

Westminster City Plan (2021)

- Policy 7 – Managing Development for Westminster's People
- Policy 16 – Food, Drink and Entertainment

Knightsbridge Neighbourhood Plan (2018)

- KBR14 – Mitigating the Impact of Commercial Development
- KBR15 – Night Time and Early Morning Uses in or Adjacent to Residential Areas

Policies Considered by the Council

6.5. The following policies were not included in the Council's reasons for refusal but were taken into account by the Council in the consideration of the scheme:

Westminster City Plan (2021)

- Policy 1 – Westminster's Spatial Strategy

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- Policy 8 – Housing Delivery
 - Policy 10 – Housing for Specific Groups
 - Policy 12 – Housing Quality
 - Policy 24 – Sustainable Transport
 - Policy 25 – Walking and Cycling
 - Policy 27 - Parking
 - Policy 29 – Freight and Servicing
 - Policy 33 – Local Environmental Impacts
 - Policy 34 – Green Infrastructure
 - Policy 36 - Energy
 - Policy 37 – Waste Management
 - Policy 38 – Design Principles
 - Policy 39 – Westminster’s Heritage
 - Policy 40 – Townscape and Architecture

Knightsbridge Neighbourhood Plan (2018)

- KBR1 – Character Design and Materials
- KBR2 – Commercial Frontages, Signage and Lighting
- KBR8 - Advertising
- KBR9 – Roofscapes and Balconies
- KBR10 – Urban Greening
- KBR21 – Household and Commercial Waste Consolidation
- KBR27 – Enabling Active Travel
- KBR30 – Motor Vehicle Use
- KBR35 – Renewable Energy
- KBR36 – Retrofitting Historic Buildings for Energy Efficiency
- KBR37 – Natural Environment
- KBR40 – Healthy People

7. Agreed Matters

7.1. It is considered that the following matters are agreed between the Appellant and the Council:

- The current restaurant use is lawful and planning permission is not required for the continued use of the ground and lower ground floors as a restaurant use;
- No increase in floorspace is proposed to the restaurant use;
- No shisha smoking is proposed as part of the application;
- The proposed change of use of the upper floors to residential use is acceptable in land use terms;
- The unit mix (2 x 2 beds in 'Application 1' or 1 x 1 bed and 2 x 2 beds in 'Application 3') is considered acceptable in principle;
- The proposed residential units comply with the Nationally Described Space Standards are dual aspect, and receive good levels of daylight and overall are considered to have a high-quality living environment;
- The upper floors are in a poor state of repair due to water ingress from defected roofs;
- Proposals for the upper floors overall reflect the 2015 Scheme;
- The replacement of floor joists throughout the second floor is necessary in order to secure the structural integrity of the floor;
- The proposed plant at roof level are sufficiently concealed by the front and rear parapets to avoid causing visual harm;
- The proposed external alterations, by way of their design, siting and scale are not considered to negatively impact the neighbouring residential properties in terms of loss of light, overshadowing, sense of enclosure, overbearingness or light spill;
- The proposed terrace at rear first floor level will be largely concealed from street-level views by the proposed raised parapet wall to the Montpelier Place elevation and is acceptable;
- The designated heritage assets that would be affected by the scheme are the listed buildings at Nos.13-17 Montpelier Street and the Knightsbridge Conservation Area. There are no other designated or non-designated heritage assets required to be considered in terms of the impact of the proposals on their significance, where their setting would not change to any degree that would impact significance;

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- The principal of proposed internal and external changes to the listed buildings that form part of Appeal A are acceptable in heritage terms, including the impact on the conservation area, where listed building consent has been granted for these works; and
 - The proposals are not considered to be of a scale and nature that would warrant the submission of a construction management plan.

8. Appellant's Case

- 8.1. This chapter sets out the main matters upon which this appeal should be considered, and should be read in conjunction with the draft SoCG.

Reason for Refusal

- 8.2. The Council Members' reason for refusal in the Decision Notice in respect of application 1 or 'Appeal A' (ref: 20/07400/FULL) is as follows:

"1. The development would intensify the existing restaurant use, causing late-night activity and disturbance in this part of the city and would harm the character and function of the area and neighbouring residential amenity, contrary to Policies 7 and 16 of the City Plan 2019 - 2040 (April 2021) and KBR14 and KBR15 of the Knightsbridge Neighbourhood Plan (December 2018)."

- 8.3. The Council Members' reason for refusal in the Decision Notice in respect of application 2 or 'Appeal B' (refs: 21/01285/FULL and 21/01286/LBC) is as follows:

"1. Because of its position, form, bulk and appearance the first-floor extension would harm the architectural and historic interest (significance) of these grade II listed buildings. It would also fail to maintain or improve (preserve or enhance) the character and appearance of the Knightsbridge Conservation Area. This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and the advice set out in our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings. It would also fail to meet policies KBR1 of the Knightsbridge Neighbourhood Plan (2018).

2 The development would intensify the existing restaurant use, causing late-night activity and disturbance in this part of the city and would harm the character and function of the area and neighbouring residential amenity, contrary to Policies 7 and 16 of the City Plan 2019 - 2040 (April 2021) and KBR14 and KBR15 of the Knightsbridge Neighbourhood Plan (December 2018)."

N.B Reason for refusal 2 on applications (ref: 21/01285/FULL and 21/01286/LBC) is the same as reason for refusal 1 on application (ref: 20/07400/FULL).

Relevant Policies Cited by the Council

- 8.4. The Council considers the policies set out below to be relevant to both applications discussed above:
- 8.5. Council Members cited Policy 7 (Managing Development for Westminster's People) and 16 (Food, Drink and Entertainment) of the City Plan and Policy KBR14 (Mitigating the Impact of Commercial Development) and KBR15 (Night Time or Early Morning Uses in or Adjacent to Residential Areas) of the Knightsbridge Neighbourhood Plan, in support of this reason for refusal.
- 8.6. Policy 7 (Managing Development for Westminster's People) states the following:

"Development will be neighbourly by:

- A. Protecting and where appropriate enhancing amenity, by preventing unacceptable impacts in terms of daylight and sunlight, sense of enclosure, overshadowing, privacy and overlooking.*
- B. Protecting and where appropriate enhancing local environmental quality.*
- C. Protecting and positively responding to local character and the historic environment.*
- D. Not overburdening the capacity of local infrastructure.*
- E. Contributing to the greening of the city.*
- F. Improving sustainable transport infrastructure and highway conditions.*
- G. Making appropriate and effective waste management arrangements.”*

8.7. Policy 16 (Food, Drink and Entertainment) states the following:

“A. Proposals for food and drink and entertainment uses will be of a type and size appropriate to their location. The over-concentration of those uses will be further prevented where this could harm residential amenity, the vitality and character of the local area or the diversity that defines the role and function of the town centre. Applications for entertainment uses will need to demonstrate wider benefits for the local community, where appropriate...”

8.8. And goes on to set out:

SHISHA SMOKING F. The use of premises and outdoor areas for shisha smoking in exceptional circumstances may be permitted within the town centre hierarchy, provided any unacceptable impacts on public health and the amenity of the surrounding area (including residential properties, the pedestrian environment and the operational requirements of existing businesses in the vicinity) are adequately mitigated. Applicants will therefore be required to demonstrate how any negative impacts of the proposal can be mitigated through the implementation of a management plan for the premises.”

8.9. Policy KBR14 (Mitigating the Impact of Commercial Development) sets out that:

“The intensification of retail (Class A) or entertainment uses outside of the International Shopping Centre or Strategic Cultural Area must demonstrate no adverse impact on residential amenity. Where appropriate, mitigation measures that address the matters will be dealt with by way of planning conditions.”

8.10. Policy KBR15 (Night Time or Early Morning Uses in or Adjacent to Residential Areas) states that:

“A. New night-time entertainment and related uses should be directed to the International Shopping Centre to minimise impact on residential areas and demonstrate that individually and cumulatively there are no significant adverse effects on other uses that are sensitive to noise (including those adjoining the Knightsbridge Neighbourhood Area).

B. Proposals for new (including a change of use to) cafés and restaurants (Class A3), public houses, bars and other drinking establishments (Class A4) and hot food takeaways (Class A5) adjacent to residential areas must demonstrate that they will have no adverse impact on residential amenity.

C. In residential areas, renewal or change of use proposals for retail and commercial activity (Classes A1, A2, B1c, B2 and B8) or the intensification of existing such uses will only be supported if: they will have no significant adverse impact on residential amenity; and there is a condition attached to the permission prohibiting their operation between 11pm and 7am on Monday to Saturday inclusive and before 7.30am and after 10.30pm on Sunday.

D. This policy is not applicable to changes of use permissible under the General Permitted Development Order”

8.11. In addition to the policies set out above, the following policies are relevant to ‘Application 3’

Policy 38 sets out design principles, requiring exemplary standards of high quality, sustainable and inclusive urban design and architecture.

Policy 39 relates to Westminster’s heritage and how it will be valued, and that development should optimise the positive role of the historic environment. Parts G, H and K and M specifically relate to Listed Buildings and Conservation Areas.

Policy 40 relates to townscape and architecture and sets out that development should be sensitively designed having regard to the prevailing scale, height, character, building lines, plot widths, architectural quality and degree of uniformity in the surrounding townscape. Part D concerns alterations and extensions and requires that alterations and extensions respect the character of the existing and adjoining buildings, avoid adverse visual and amenity impacts and will not obscure important architectural features or disrupt any uniformity, patterns, rhythms or groupings of buildings and spaces that contribute positively to Westminster’s distinctive townscape.

Appellant's Assessment

8.12. The submitted applications made it clear that the proposals do not relate to a change of use of the existing restaurant at lower ground and ground floors, but instead to the continued use of the restaurant for its lawful use.

8.13. In terms of the lawful use of the building, the lower ground floor and ground floor use is restaurant (Class E (b) (formerly Class A3) use. The lawful use of the Site has been a restaurant for over 20 years and is evidentially supported by the 2001 Planning Appeal (ref: 00/00213/TPREF) and statements made by planning officers in the report to Committee.

8.14. While the Site is currently vacant the existing use right of the Site has not been lost, nor does the Council allege this to be the case. However, for the sake of clarity and the Council's position that Appeal A and Appeal B amount to intensification of use, the context of this is considered in detail.

- 8.15. The circumstances in which existing use rights are capable of being lost, is based on the position as summarised by Christopher Lockhart Mummery QC sitting as a Deputy High Court Judge in *Panton & Farmer v SoSE* (1999) 78 P. & C.R. 86 at 193 that:

*"Further, in accordance with long established principles, such an accrued planning use right could only be lost in one of three ways, by operation of law. First by abandonment, second by the formation of a new planning unit, and third, by way of a **material change of use** (whether by way of implementation of a further planning permission, **or otherwise**): Pioneer Aggregates Limited v. Secretary of State [1985] A.C. 132".* Emphasis added

- 8.16. Each of the three ways is considered as follows:

Abandonment

- 8.17. An established use right accrued at least by 2001 and there has been no material change of that use since that right accrued. The possibility of abandonment of an established use right arises under case law. In *Hartley v HMHLG* (1970) 1 QB 413, Lord Denning found that if a building or land remains "unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use has been abandoned then the Tribunal may hold it to have been abandoned".

- 8.18. In *The Trustees of Castell-y-Mynach Estate v Taff-Ely* (1985) JPL 40, the High Court established four criteria for assessing whether a use had been abandoned. These are:

- The physical condition of the property.
- The period of non-use.
- Whether or not there has been any other use.
- The intention of the parties.

- 8.19. In *Hughes v SSETRE & South Holland DC* (2000) JPL 826, the Court of Appeal confirmed that the test established under *Hartley* requires consideration of what might objectively be considered to be the owner's intentions, rather than the subjective intention of a particular owner. The test to be applied was the view of "a reasonable man with knowledge of all of the circumstances".

- 8.20. As can be seen from the planning history above, the Site has since before 2001 been occupied for restaurant purposes and applications made in respect of the Site since then confirm the position, including Applications 1 and 3 and the 2007 Scheme. Therefore no question of abandonment arises.

Formation of a new planning unit

- 8.21. The phrase "formation of a new planning unit" can only be understood by reference to the line of authorities that Mr Lockhart Mummery QC was summarising in *Panton*. Those authorities¹ make it clear that the threshold at which existing use rights are lost is not a mere change to the planning unit, but requires change in the character of the land so fundamental as to open a new chapter in the planning history. Reviewing the authorities, Lord Scarman said in *Newbury* (from 617):

"In every case the permitted development which has been held to begin a new planning history has been operational in character: i.e., it altered the physical nature of the land by building, mining, or other engineering works".

- 8.22. Oliver L.J. giving the majority opinion in *Jennings Motors Ltd* explains the parallel evolution of case law on the planning unit, involving both the determination of a physical extent of land, and also use of the same term in the very different temporal sense by reference to the planning history of land. The physical planning unit is examined when considering whether a change of use has occurred, and was considered in *Burdle v. Secretary of State for the Environment* [1972] 1 W.L.R. 1207. However *Burdle* has never been cited in any of the parallel line of cases on formation of a new planning unit (save in passing in the extract below).

- 8.23. In *Jennings Motors Limited* Oliver L.J. said at 556 (emphasis added):

"Speaking for myself, I have some sympathy with Mr. Brown's suggestion that "planning unit" has become perhaps a slightly confusing expression, combining, as it does, concepts both of geography and history. It is used in the temporal sense of a separate and distinct period of planning history with its own beginning and end relating to a given area of land, and it is used to distinguish and isolate the geographical area of land the history of which, for a given purpose, has to be studied. Nevertheless it is, I think, a convenient phrase, and there is an extremely helpful general test contained in the judgment of Bridge J. in Burdle v. Secretary of State for the Environment [1972] 1 W.L.R. 1207, 1212-1213. "

and at 557:

"In my view the authorities show not that a new building, per se, has to be equated with a new planning unit but that it is one of the factors—it may in many cases be a conclusive factor—to be taken into account in considering whether there has taken place in relation to the particular land under consideration a change of so radical a nature as to constitute a "break in the planning history" or a "new planning unit" (the expressions are used interchangeably)."

- 8.24. In the passage from *Panton* quoted at paragraph 8.15 above Mr Lockhart Mummery QC lists "formation of a new planning unit" as one of the ways in which existing use rights might be lost, by direct reference to *Pioneer Aggregates*, it is clear that he does so in the sense of a new planning unit so significantly different to what existed before as to begin a fresh chapter in the planning history of the site. Adopting the majority formulation in *Jennings Motors Ltd* that is to say "a change of so radical a nature as to constitute a 'break in the planning history' or a 'new planning unit'" or as Lord Scarman put it in *Pioneer Aggregates* where "the character of the planning unit has been altered by the physical fact of the new development". It is a high threshold, sufficient to subdue the "hardy beasts with a great capacity for survival" acknowledged in *Pioneer Aggregates*.

Material Change of Use

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- 8.25. The existing lawful use right for the Site is and remains as restaurant use. The Applications do not seek consent for the continuing existing lawful use of the Site for restaurant use. They do, however, seek consent for a change of use for part of the Site from restaurant use to C3 use. A change of use of part of the Site does not amount to a material change of use for the remaining part where no change of use is proposed.

Intensification

- 8.26. The Council's position appears to be that reducing the amount of floorspace for restaurant use to accommodate the C3 residential units results in an intensification of restaurant use which would cause material harm sufficient to warrant refusal of the Applications. This is simply wrong for a number of reasons.
- 8.27. The Court of Appeal decision upheld the decision of Ouseley J. in Hertfordshire CC v Secretary of State for Communities and Local Government wherein it was held that the impact of an increase in the amount of a use could not in itself amount to a material change of use if there was no change in the actual character of the use.
- 8.28. Notwithstanding the Appellant's position that matters relating to the existing and continuing lawful use of the site as a restaurant are irrelevant to the determination of Appeal A and Appeal B, the Council's failure to consider the existing character of the use frustrates the ability to ascertain whether any impact at all would arise.
- 8.29. The lawful use of the Site as a restaurant must continue to comply with any existing planning conditions and obligations which regulate its use. At present the entire Site is capable of being used as a restaurant, including the ancillary floorspace on the upper floors. There are no planning conditions or obligations that restrict the number of customers or covers for the restaurant. The Premises Licence (Appendix 7) was transferred over to the Appellant in April 2020 and allows them to operate from the Site in accordance with the licencing hours and restrictions. The Premises Licence does not contain any restriction on the number of covers or customers.
- 8.30. In the absence of such restrictions, the Appellant commissioned a fire escape capacity review by Elementa Consulting, a specialist fire engineering company. This was commissioned to understand if any fire restrictions would place an inherent limit on the number of customers which the Site could accommodate at any given time. This letter is attached as Appendix 6 and confirms that the existing Site can accommodate 240 people and this could be increased by simply reversing the door swings.
- 8.31. It is illogical for the Council to refuse Application 1 and Application 2 on the misguided logic and application of planning policy and law that doing so somehow protects the local community from adverse impacts arising. In reality, there already exists a lawful use of the Site which has both physical and lawful capacity to be used to a fuller extent than what would otherwise be permissible if Appeal A and Appeal B were granted.
- 8.32. Notwithstanding that the Applications do not seek consent for restaurant use, the continuing use of the restaurant or any part thereof, as a matter of law, would not result in a change to the actual character of that use.

Council Officer's Assessment

- 8.33. Section 7, paragraph 4 of the Officer's report to committee states that *"The lower ground and ground floor of the building will remain in use as a restaurant as per the existing situation."*

- 8.34. Section 8.1, paragraph 13 goes on to set out that *“The proposed floorplans show a dining space and ancillary bar at ground floor level with approximately 115 covers, with an additional 10 covers in an outdoor seating area to Montpelier Street (as was the former case) and a private dining room with 15 covers at lower ground floor level. No increase is proposed to the gross internal floor area and the applicant states that there will be a capacity of up to 139 covers, which is the same as the former capacity of Montpeliano’s.”*
- 8.35. Section 8.1, paragraph 15 states that *“In response to the objections received, the applicant has submitted an interim operational management scoping document. The scoping document details that the restaurant would have a formal fine-dining atmosphere and would operate a booking system by reservation only in order to ensure capacity is not exceeded and there would be no queuing on the street. No shisha smoking or nightclub/lounge-style seating would be offered. The bar area would be used to accommodate guests who arrive early and are waiting to be seated.”*
- 8.36. Section 8.1, paragraph 16 sets out that *“Overall, it is considered that the day-to-day operation and activity level of the restaurant as submitted would be such that it would not be materially different to how the former restaurant has operated in terms of floor area, layout, capacity and dining experience. The proposals are considered to be a refurbishment/upgrade to modernise the restaurant use, in line with Policy 1 of the City Plan.”*
- 8.37. Section 8.1, paragraph 17 goes on to state that *“However, given the significant number of objections received relating to this matter, the applicant has agreed to the imposition of a condition requiring the submission of a full operational management plan that would provide greater detail and assurances as to how the restaurant would mitigate any negative impacts on residential amenity.”*

Main Matters

- 8.38. There are two main matters where there is a disagreement with the Council. The first is in respect of the intensification of the restaurant and the second is in respect of the harm the first-floor extension would cause to the host building and the Conservation Area.

Main Matter 1: Intensification of the Restaurant

- 8.39. Turning first to the disagreement regarding the intensification of the restaurant, this disagreement is twofold. Firstly, there is a disagreement about the principle of intensification of the restaurant, given it is an existing lawful use and therefore does not require planning permission. Secondly, there is a disagreement on the facts associated with the existing and proposed restaurant use and in particular the operation of the proposed restaurant.
- 8.40. In respect of the principle of intensification of the restaurant, the key point is that the restaurant already exists. 13-17 Montpelier Street is in lawful Class A3 use (now Class E) and has previously operated as a restaurant in this location with an ancillary bar for many years (it is our understanding that Montpeliano opened in this location in 1974). As set out earlier in this planning statement, all parties agree that 13-17 Montpelier Street is a long standing restaurant and that the whole building is in lawful use as a restaurant. The proposals do not seek to change the restaurant use of the lower ground and ground floors of the building.

- 8.41. The number of covers that were in use as part of the previous restaurant Montpeliano was 139 covers internally and 10 covers externally (total 149 covers). Please refer to **Appendix 4** for the existing plans showing the existing number of covers that were available for use in the previous restaurant. The proposed restaurant will have 129 covers internally and 10 covers externally (total 139 covers). In addition, an affidavit has been provided by the owner of the previous restaurant (Montpeliano) confirming that the total number of internal covers was 139 with 10 covers externally (refer to **Appendix 5** for affidavit).
- 8.42. The restaurant will operate under the terms of the existing license. There is nothing within the license which restricts the number of covers. Therefore, under the terms of the license the building could lawfully have an increased number of covers than the previous restaurant use and an increased number of covers than that which is proposed (129 internally with 10 covers externally).
- 8.43. In respect of fire regulations, a letter has been provided by the fire consultant Elementa Consulting (see **Appendix 6**), which sets out that the total number of covers permissible, according to the fire escape capacity is 460. The letter goes on to set out that “*assuming the largest exit is discounted due to a fire, this leaves a capacity of 180 on GF, and 60 on upper floor*” – therefore a total of 240 covers. This is of course well above the number of internal covers, which existed in the previous restaurant (139) and the number of internal covers now proposed (129). Despite this, the proposals do not seek to increase the number of covers within the premises.
- 8.44. As a change of use from the lawful restaurant use at ground and lower ground floors is not proposed, only listed building consent is required to cover the physical works required to repair the building, (which has become extremely dilapidated over time), in order to bring it into a suitable condition for continued restaurant use. The only change of use proposed, is at upper floors (first and second floors) where existing ancillary restaurant space is proposed to change to residential.
- 8.45. Despite the Applications not seeking restaurant use, in view of concerns raised by the Council and objectors that the proposals would result in the intensification of use, the Appellant agreed to the imposition of a condition requiring the submission of a full operational management plan that would provide more detail and assurances as to how the restaurant would mitigate any negative impacts on residential amenity. The condition set out the following:

“Prior to the occupation of the restaurant, you must apply to us for approval of a detailed operational management plan to show how the restaurant, staff and customers will be managed, including booking arrangements and how you will prevent customers who are leaving the building from causing nuisance for people in the area, including people who live in nearby buildings. You must not start the restaurant use until we have approved in writing what you have sent us. You must then carry out the measures included in the approved management plan at all times that the restaurant is in use.

Reason: To make sure that the use will not cause nuisance for people in the area. This is as set out Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R05GC)”

8.46. The imposition of a condition seeking to restrict the operational use of the appeal site as a restaurant suggests a misunderstanding of the nature of the Application and of the applicable law. The view that the proposed works will enable a significant intensification of the use of the site is speculation and is not supported by any evidence. However, and more importantly, even if intensification were to result from the approval of the Applications, that would not be development for which planning permission is required. It is certainly not development for which planning permission is sought in the Applications.

8.47. The appeal site's existing use falls within a class of uses prescribed in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (the "Use Classes Order"). It is Class E use. Article 3(1) of the Use Classes Order states that:

"Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land."

8.48. It is well established that the effect of article 3(1) is that no amount of intensification, however major, can comprise development for which planning permission is required, provided the use remains one that falls within the same use class. It is not reasonable to require further submissions or imposition of a planning condition in respect of the Site's existing lawful use.

8.49. In respect of the facts associated with the existing and proposed restaurant use, the total number of covers is not increasing from the previous restaurant (in fact it is reducing by 10 covers internally from 139 to 129 internally and 10 covers externally). The area used for the previous Montpeliano restaurant covers was 29 sq.m at first floor (12 covers) and 254.1 sq.m at ground floor level for the remaining 127 covers internally, therefore the total internal restaurant area as existing is 283.1 sq.m. The proposed restaurant area to be used for covers is 242.9 sq.m, therefore is slightly reduced from the existing floorspace, however the proposed number of covers is 10 fewer than the existing internally and therefore the proposed floorspace quantum is broadly the same as existing.

8.50. The proposal is for a fine dining restaurant (Class E), with a high quality menu. There will be a bar area within the restaurant, as there is in the majority of restaurants in London and as there was in the previous restaurant (which will be the same size as the bar that was operational at the previous Montpeliano restaurant). The bar will be used for the purpose of serving drinks to guests who are dining in the restaurant only. The previous restaurant also had a bar, so this is the same as the previous restaurant use. There will not be shisha smoking associated with the restaurant use.

8.51. The Council's reason for refusal references policies KBR14 and KBR15 from the Knightsbridge Neighbourhood Plan (2018). Policy KBR14 (Mitigating the impact of commercial development) part A sets out that:

"A. Non-residential development (all use classes excluding Class C) should be directed to the International Shopping Centre, and where consistent with Policy KBR25, the Strategic Cultural Area."

8.52. This policy relates to **new** non-residential development, not non-residential uses that already **exist** outside of the strategic cultural area, such as the restaurant use at 13-17 Montpelier Street. Therefore part A of policy KBR14 does not apply to the proposals.

- 8.53. Part B of KBR14 relates to “*Commercial development within the International Shopping Centre.*” The site is located outside of the International Shopping Centre and therefore this policy does not apply.
- 8.54. Part C of KBR14 sets out that:
- “C. The intensification of retail (Class A) or entertainment uses outside of the International Shopping Centre or Strategic Cultural Area must demonstrate no adverse impact on residential amenity. Where appropriate, mitigation measures that address the matters will be dealt with by way of planning conditions.”*
- 8.55. The proposals do not relate to a Class A or entertainment use, therefore this part of the policy is not applicable.
- 8.56. Turning to policy KRB15 (Night time and early morning uses in or adjacent to residential areas) part A details that:
- “New night-time entertainment and related uses should be directed to the International Shopping Centre to minimise impact on residential areas and demonstrate that individually and cumulatively there are no significant adverse effects on other uses that are sensitive to noise (including those adjoining the Knightsbridge Neighbourhood Area).”*
- 8.57. Similarly, part B of policy KRB15 sets out that:
- “Proposals for new (including a change of use to) cafés and restaurants (Class A3), public houses, bars and other drinking establishments (Class A4) and hot food takeaways (Class A5) adjacent to residential areas must demonstrate that they will have no adverse impact on residential amenity.”*
- 8.58. In respect of part A and part B set out above, again, the key word in these policies (highlighted above) is **‘new’**. There is an existing lawful restaurant use at the property and therefore this cannot be considered to be a new entertainment use. As set out above, there is no change of use proposed at lower ground and ground floors in connection with the restaurant, nor is there any intensification of the current lawful restaurant use, with both the number of covers and floorspace in which restaurant customers can sit, remaining as existing. In any event, as set out above even if there was an intensification of the restaurant use, planning permission would not be required as there is already an established lawful use for a restaurant.
- 8.59. In respect of the impact of the restaurant use on the proposed residential units at first and second floors, the Council agree that “*the principle of residential accommodation is considered acceptable*” as confirmed in the pre application advice letter. Indeed, historically the site consisted of three separate properties with shops and commercial units at ground floor level and residential units on the upper floors, so commercial uses and residential uses were historically operating concurrently at this site. Restaurants with residential above are a common feature in Westminster and restaurants are a valued part of residential communities.

8.60. In respect of mitigation of any impacts from the operation of the restaurant use on the residential units above, policy ENV 6 of the UDP requires that noise sensitive receptors are protected from any noise generated by developments, and as such, developments should demonstrate as reasonably practical that they will be designed to prevent transmission of audible noise. An acoustic report was submitted with the planning application to demonstrate that the future occupiers of the new residential units would be protected from any noise generated by the restaurant below. The noise mitigation measures suggested by the report to protect the residential units from both the restaurant noise below as well as noise between the residential units themselves were as follows:

- Sound insulation of internal walls and floors with performance tested partitions;
- Control of reverberation in communal corridors through the use of absorptive materials in ceilings and walls;
- Improvement of the acoustic properties of the structural timber floor separating the restaurant and proposed residential units; and
- Sound insulation of front doors to residential units

8.61. The applicant is willing to accept conditions relation to a supplementary acoustic assessment and the protection of residential occupiers from noise as per those proposed by the Council (see pages 316-317 of the committee report at **Appendix 2**).

8.62. The Council's reason for refusal also references policies 7 and 16 of the City Plan (April 2021). Westminster City Plan Policy 7: Managing Development for Westminster's People sets out that:

"Development will be neighbourly by:

A. Protecting and where appropriate enhancing amenity, by preventing unacceptable impacts in terms of daylight and sunlight, sense of enclosure, overshadowing, privacy and overlooking.

B. Protecting and where appropriate enhancing local environmental quality.

C. Protecting and positively responding to local character and the historic environment.

D. Not overburdening the capacity of local infrastructure.

E. Contributing to the greening of the city.

F. Improving sustainable transport infrastructure and highway conditions.

G. Making appropriate and effective waste management arrangements.

8.63. In response to policy 7 part A, the proposals will not have an impact on daylight and sunlight, sense of enclosure, overshadowing, privacy or overlooking. The daylight and sunlight levels receivable by the restaurant at ground and lower ground floors will not be worsened when compared to the existing situation.

- 8.64. In response to part B of the policy, it is important to first understand what is meant by 'local environmental quality'. The glossary within the City Plan sets out that *"polluted air, excessive smells, noise and strong vibrations are examples of environmental impacts that have an adverse impact on quality of life and health and well-being."* As set out above, the restaurant use at lower ground and ground floors already exists and has done for nearly 50 years, therefore any polluted air, smells, noise or vibrations that were associated with the previous restaurant use already took place at this site. The proposals will not worsen any of these local environmental matters nor will they have an adverse impact on the quality of life or health and well-being of surrounding neighbours. The size of the kitchen remains as per the existing, with new flues proposed to be installed which will be more efficient at reducing odours, noise and vibration from the kitchen than the existing very outdated flues and equipment.
- 8.65. In response to part C, very minimal external amendments are proposed as part of 'Application 1' and the council did not raise any concern that the external amendments had a detrimental impact on local character or the conservation area. Indeed the Council's express acceptance of the works and their impact are conclusively evidenced by its grant of listed building consent for the work to be carried out.
- 8.66. Turning to part D of the policy, the proposal includes the provision of two new residential units plus a restaurant of the same scale as the previous restaurant on site (Montpeliano). The addition of a very small number of new residential units (two) in a residential area under 'Application 1' and three under 'Application 3', in a location with a very high PTAL of 6a is not considered to cause any pressure on transport services or on any other types of service such as schools, doctors surgeries etc.
- 8.67. In response to part E, the proposals include planting on the terraces associated with the residential use.
- 8.68. In response to part F, the proposals are not of a scale to require improvements to transport infrastructure. The proposed scheme is car free and cycle storage for four bikes (in accordance with London Plan Policy 6.9) has been provided at ground floor level in a secure vertical hanging store at the base of the residential access stair as well as cycle storage for 2 bikes associated with the restaurant use, which are not required as part of the lawful use but are sought nevertheless.
- 8.69. Finally, turning to part G, a bin store has been provided in the proposed scheme for use by occupiers of the proposed residential units. The residential bin store is located off of Montpelier Place and shall have a louvered door. This bin store provides adequate storage for waste for the residential use, according to requirements set out in Policy ENV12 and Policy S44 of the Westminster City Plan. Residential waste will be collected in accordance with the Council's servicing strategy. Commercial waste is to be stored in a sealed, refrigerated room with wheelie bins within the basement vault. Commercial waste will be lifted to the pavement on a scissor lift, placed directly outside the sealed bin and recycling store. The scissor lift shall take the rubbish from the lower ground floor level to the pavement level. The commercial waste shall be put out in the designated slot from the Council. This will be out of hours so as not to interrupt consumers and shall be within the designated one hour slot. This revised commercial waste strategy is not required as part of the application as the existing restaurant use already exists however this is an improved arrangement to the current arrangement and is therefore sought.

8.70. Given that there is a residential use proposed above the restaurant, the Council suggested some conditions to restrict the level at which music can be played within the restaurant, which the applicant agreed to prior to committee. The closest residential occupiers to the restaurant will be the occupiers of the new proposed flats. Therefore it is in the best interest of the developer to ensure that any impacts of the restaurant on the amenity of those occupiers is reduced as far as possible and that a sustainable and high quality living environment is created for those residents and also existing residents in the vicinity.

8.71. Westminster City Plan Policy 16: Food Drink and Entertainment, sets out that:

“Proposals for food and drink and entertainment uses will be of a type and size appropriate to their location. The over-concentration of those uses will be further prevented where this could harm residential amenity, the vitality and character of the local area or the diversity that defines the role and function of the town centre.”

8.72. In response to this part of the policy, the existing restaurant is not changing in size or number of covers and therefore the assessment of whether it is of a type and size appropriate to its location is not applicable, as it already exists. Turning to the next part of the policy, it is clear that there is not an overconcentration of similar restaurant uses in the area, there are no other restaurants in the immediate vicinity of the site.

8.73. Policy 16 also goes on to set out that:

“The use of premises and outdoor areas for shisha smoking in exceptional circumstances may be permitted within the town centre hierarchy, provided any unacceptable impacts on public health and the amenity of the surrounding area (including residential properties, the pedestrian environment and the operational requirements of existing businesses in the vicinity) are adequately mitigated.”

8.74. As previously confirmed shisha smoking does not form part of the proposal and will not take place at this premises.

8.75. In summary, as set out above, the appellant does not consider that policies KBR14 and KBR15 of the Knightsbridge Neighbourhood Plan (2018) apply to the proposals given that their purpose is to manage new non-residential development outside of the strategic cultural area, or commercial development within the International Shopping Area neither of which apply to the subject site. In any event, if the policies did apply and intensification were to result from the approval of the Applications, that would not be development for which planning permission is required, in accordance with Article 3(1) of the Planning (Use Classes) Order 1987.

Main Matter 2: Impact of the First-Floor Extension on the Listed Building and the Conservation Area

8.76. Turning next to the second main matter associated with applications (ref: 21/01285/FULL and 21/01286/LBC) only, in respect of the alleged harm that the first-floor extension would cause to the significance of the host Listed Building and also that of the surrounding Conservation Area.

- 8.77. The reason for refusal states that the position, form, bulk and appearance of the first-floor extension would, in the opinion of the Council, harm the architectural and historic interests (i.e. heritage significance) of the Grade II listed buildings. It is also cited that such change would also fail to maintain or improve (i.e. preserve or enhance) the character and appearance of the Knightsbridge Conservation Area. Although not explicitly identified by the Council, we infer that any identified harm to the significance (special interest) of the listed buildings at 13-17 Montpelier Street and the significance (the character or appearance) of the Knightsbridge Conservation Area, would be identified as “less than substantial” for the purposes of the NPPF.
- 8.78. Further detail with regard to the built heritage assets impacts were set out in the supporting Heritage Statement prepared by Turley and submitted as supporting material at application stage. The Heritage Statement set out a proportionate baseline for analysis of built heritage asset impacts, including the particular significance of each of the identified designated heritage assets, and then assessed the effect of the application (now appeal) scheme on this significance. This accords with the requirements of paragraph 194-195 of the NPPF. It was the findings of the Heritage Statement that, overall, the proposed changes would sustain the significance of the listed building and the conservation area, and would also have the potential to deliver a significant number of enhancement, or “heritage benefits”, in conjunction. These findings will be reviewed and further refined and explained for the benefit of the Inspector, where relevant, in the Appellant’s full Heritage Appeal Statement, to be submitted as part of this appeal.
- 8.79. As found today, the first floor roof level is of modern construction with a series of irregular rooflights to the rear of all three of the former terraced townhouses. The fabric in this location is not of any heritage interest, and does not contribute positively to the character or appearance of the surrounding Conservation Area.
- 8.80. The form of the proposed infill element is proposed as a modest rendered elevation to Montpelier Place with traditional sash windows, set back from the road and visually subordinate to both Nos.13-17 Montpelier Street and adjacent terrace of properties to Montpelier Place. The setback from the development at ground floor level to Nos.13-17 Montpelier Street, and proposed increase in the parapet height here, ensures that this will read as an extension to the host building, and will not detract from the legibility of the historic core of development to either the host building or the adjoining terrace to Montpelier Place. In this way, the townscape gap would also be retained.
- 8.81. The infill extension is proposed to be accessed from the rear of No.17, where an existing window opening is proposed to be dropped; limiting the extent of the loss of existing fabric. There will, however, be some loss of historic fabric. The infill extension will abut part of No.13 Montpelier Street and the adjoining terraces to Montpelier Street. The extension will, however, step away from No.15 to form a terrace for use by the residential apartment at first floor. Although views of the rear elevation will be obscured from within the local street scene, these elevations are not considered to make a significant contribution to significance, relative to the more important front elevations. The elevations to Nos.15 and 17 will, however, remain appreciable from within the newly created terrace. Similarly, the side elevation to the adjoining terrace to Montpelier Place is a blank elevation with little visual interest and, therefore, the proposals will not detract from appreciation of this elevation. Overall, the proposals would sustain the significance of the listed building.

- 8.82. Turning next to the impact of the infill extension on the character and appearance of the conservation area. The single storey element to Nos.13-17 Montpelier Street appears somewhat at odds with the two-to-three storey development within the local street scene; where other such corner sites also have two or three storey infills (including that to the rear of No.19 Montpelier Place). The proposals will, therefore, form part of the established character within the conservation area and corner sites in particular. This would sustain the character and appearance of the conservation area.
- 8.83. The proposed infill extension is high quality and looks to reflect the architectural style of the host and surrounding buildings. The proposals also deliver public and heritage benefits (including the provision of one additional high quality residential unit) and would revitalise the use of this historic building and its contribution to the surrounding townscape.
- 8.84. The reason for refusal states that the proposed infill extension would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and the advice set out in the Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings, or policy KBR1 of the Knightsbridge Neighbourhood Plan (2018). Each of these policies have been addressed in turn below.
- 8.85. Policy 38 relates to design principles. With regard to design, the proposed infill development has had regard to the character and appearance of the existing area and the host building. The design has sought to respond to the building line of both the host building and adjacent buildings, with a setback at first floor level. The height of the development also ensures subservience to these other buildings, whilst reflecting the secondary character of other infill developments to corner sites within the surrounding area. The choice of materiality and detailed design also responds positively to this context.
- 8.86. With regard to the relevant aspects of Policy 39, the infill development is considered to sustain the significance of the listed building and the role of the building within the conservation area. The proposed infill development, and overall design approach, has been developed to ensure sensitive adaptation of the existing buildings, whilst also allowing the provision of an additional residential unit.
- 8.87. As previously identified, the development has been sensitively designed having regard to the prevailing scale, heights, characters, building lines, plot width, materials, and architectural quality; in accordance with Policy 40. It is noted that this corner site, as with other corner sites in the surrounding area, lacks the typical uniformity of the terraced developments and is a singular element within the streetscape. The single storey element to Nos.13-17 Montpelier Street appears somewhat at odds with the two-to-three storey development within the local street scene; where other such corner sites also have two or three storey infills (including that to the rear of No.19 Montpelier Place). The proposals will, therefore, form part of the established character within the conservation area and corner sites in particular, and also remain subservient to surrounding buildings through the proposed height of the extension and the setback building line. Elements of the host building that make a contribution to its significance will be conserved and, in some ways, enhanced by the proposed development and reuse of the building.

- 8.88. In line with Supplementary Planning Guidance relating to extensions to listed buildings, the proposed design of the infill extension would relate sensitively to the original building, in terms of scale and detail. There would be no loss of fabric or specific architectural or historic interest, or loss of garden / yard space. Given the lack of uniformity to corner sites within the area, and the lack of any uniformity of the existing single storey element with the wider area, the infill development would also not detract from the uniformity or integrity of a particular design.
- 8.89. In accordance with Policy KBR1, the proposals for the infill development are of a high quality that reflects the character of the wider conservation area. The proposals also look to restore or instate traditional features, including dentilled cornice at high level, and channelled stucco to the ground floor Montpelier Place elevation; this is in accordance with Policy KBR3.
- 8.90. It is our findings that the statutory duties with regard to the desirability of preserving the special interest and setting of listed buildings and the character and appearance of conservation areas would be satisfied (Planning Act – section 66(1) and 72(1)). Considerable importance and weight is to be given to these duties in making a planning judgment and any balancing of the impacts and merits of the proposed scheme.
- 8.91. Nonetheless, with regard to harm identified by the Council, any such “less than substantial harm” to the significance of the designated heritage assets could only reasonably be considered to be minor in magnitude (e.g. at the lower end of the scale of “less than substantial harm”); and such harm is clearly outweighed by the public benefits arising from the proposal, in light of the NPPF (paragraph 201). Identified heritage benefits, as part of the wider appeal scheme, include:
- Securing the long-term viable use of the listed building;
 - Securing the long-term conservation of the listed buildings through necessary structural repairs / interventions, with the use of traditional materials / techniques, including at roof level;
 - Replacement of non-original windows to the first floor of No.15;
 - Replacement of non-original railings to first floor windows of No.15;
 - Removal of non-original security bars to the second floor windows of No.15;
 - Removal of paintwork to No.13 to reveal the historic brickwork (subject to details);
 - Removal and rationalisation of plant;
 - Improvements to the glazing pattern and character of the rear elevations;
 - Extension of the high-level dentilled cornice or balustraded parapet across the side elevation to Montpelier Place;
 - The elevation to the existing rear extensions would also be stuccoed and channelled at ground floor level, referencing the detailing to the ground floor of properties to Montpelier Street;
 - Reinstatement of shutters, where lost, internally at first floor; and
 - The provision of 2no additional residential units (in Appeal A) and 3no. additional residential units (in Appeal B).

9. Other Material Considerations

9.1. The scheme brings with it other material considerations that should form part of the determination of this appeal. The proposed development will deliver social, economic, environmental and heritage benefits in line with the NPPF including:

Social

- New high quality dwellings, which will contribute to the City's housing stock (three units will be provided in application ref: 21/01285/FULL and ref: 21/01286/LBC and two units in application ref: 21/07400/FULL).

Economic

- The scheme will be liable for CIL payments in respect of both Borough and Mayoral CIL;
- The future residents of the dwellings will benefit the local economy through increased local spend;
- Creation of employment opportunities as follows:
 - Construction jobs – 50 FTE for 1 year including 25 FTE staff for the duration of the project
- The scheme will generate local authority ongoing revenues (Business Rates, Council tax)

Environmental

- The building will be upgraded to be more energy efficient and will be carefully enhanced providing benefit to the listed building and the wider conservation area. The energy efficiency measures proposed include:
 - Energy efficient lighting (i.e., LED or similar);
 - The use of mechanical heat recovery (MVHR) for fresh air ventilation serving the new residential units and kitchen extract to the restaurant;
 - Replacement of existing gas boilers with new high efficiency gas boilers;
 - Addition of 175mm insulation to the top of the main roof where there was none previously and addition of a minimum of 150mm of insulation at the first floor rear roof where there was previously less batt insulation of a poorer performance
 - Reduction in water usage by 25% (105 litres per person per day consumption) according to Building Regulations for new residential dwellings.

Heritage

- The proposals will, overall, sustain the significance of the listed building and the conservation area;
- The proposals will secure the conservation and continued beneficial use of the heritage asset through the retention and sensitive adaptation of the building;

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- The proposal will repair and protect from further damage the currently vacant and highly dilapidated building which has experienced water damage and deterioration over time; and
 - The proposed scheme will seek to reinstate the historic plan form where possible.

10. Conclusion

- 10.1. This Statement of Case has been prepared to accompany an appeal against the refusal of applications (refs: 21/07400/FULL – ‘Appeal A’ and 21/01285/FULL & 21/01286/LBC – ‘Appeal B’) relating to 13-17 Montpelier Street, London, SW7 1HQ. Permission was sought for the following:

Application 1:

Use of first and second floor level as two self-contained residential flats (Class C3), creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, shopfront alterations to nos. 13 and 15, new retractable awnings, lowering of front basement vaults and internal alterations in connection with the continued use of the restaurant at lower ground and ground floor level.

Application 3:

Use of first and second floor level as three self-contained residential flats (Class C3), infill extension at rear first floor level to Montpelier Place elevation, creation of terrace at rear first floor level, opening up blind windows to Montpelier Place and internal alterations in connection with new residential use. Alterations including new openable rooflights on rear first floor flat roof, replacement of existing full height extract ductwork to rear, removal of existing and installation of new air condenser units on rear first floor flat roof and main roof level, in connection with the continued use of the restaurant at lower ground and ground floor level.

- 10.2. The applications were considered at the Council’s Planning Committee on 22nd June 2021, with the committee resolving to refuse planning permission for ‘Application 1’ (ref: 21/07400/FULL) (with the minutes remaining silent on corresponding listed building consent ref: 20/07401/LBC, which was granted subject to conditions on 20 July 2021) and resolving to refuse planning permission (ref: 21/01285/FULL) and corresponding listed building consent (ref: 21/01286/LBC) for ‘Application 3’.

- 10.3. In respect of ‘Application 1’ – ‘Appeal A’, the reason for refusal relating to ‘intensification’ of the restaurant use is not a valid reason for refusal because:

- 13-17 Montpelier Street is in existing restaurant use (previously Class A3, now Class E) and therefore planning permission is not required for the continued use of the restaurant by an alternative operator.

- The proposed number of covers (139 including 10 covers externally) is virtually the same as the number of covers under which the previous restaurant Montpeliano operated (albeit the previous restaurant had 10 additional covers internally), and substantially less than could be accommodated on the Site without planning permission or any conflict with the Premises Licence or Fire Safety. Therefore there is no 'intensification' of the restaurant proposed. The Council's view that the proposed works will enable a significant intensification of the use of the site is speculation and is not supported by any evidence.
- Even if intensification were to result from the approval of the Applications, that would not be development for which planning permission is required. It is well established that the effect of article 3(1) of the 'Town and Country Planning (Use Classes) Order 1987' is that no amount of intensification, however major, can comprise development for which planning permission is required, provided the use remains one that falls within the same use class. It is not reasonable to require further submissions or imposition of a planning condition in respect of the Site's existing lawful use.
- Knightsbridge Neighbourhood Plan (2018) policy KBR14 part A relates to new non-residential development, not non-residential uses that already exist outside of the strategic cultural area, such as the restaurant use at 13-17 Montpelier Street. Therefore part A of policy KBR14 does not apply to the proposals.
- Part B of KBR14 relates to "*Commercial development within the International Shopping Centre.*" The site is located outside of the International Shopping Centre and therefore this part of the policy does not apply.
- Part C of KBR14 relates to the intensification of retail (Class A) or entertainment uses. The proposals do not relate to a Class A or entertainment use, therefore this part of the policy is not applicable.
- Parts A and B of policy KRB15 relate to new night time and early morning uses including restaurants in or adjacent to residential areas. The key word in these policies is 'new'. There is an existing lawful restaurant use at the property and therefore this cannot be considered to be a new entertainment use. As set out above, there is no change of use proposed, nor is there any intensification of the current lawful restaurant use, with both the number of covers remaining as existing.

10.4. In respect of 'Application 3' - 'Appeal B', the above points apply in respect of reason for refusal 2 (intensification). In respect of reason for refusal 1, relating to the impact of the first floor infill extension on the host building and the character and appearance of the conservation area, this is not a valid reason for refusal. In respect of the harm identified by the Council with regard to the infill extension:

- In respect of the harm the infill extension would cause to the host building, as found today, the first floor roof level is of modern construction with a series of irregular rooflights to all three former townhouses. Therefore the fabric in this location is not of any heritage value.

- The setback from the development at ground floor level to Nos.13-17 Montpelier Street, and proposed increase in the parapet height here, ensures that the proposed infill extension will read as an extension to the host building, and will not detract from the legibility of the historic core of development to either the host building or the adjoining terrace to Montpelier Place. In this way, the townscape gap would also be retained.
- The single storey element to Nos.13-17 Montpelier Street appears somewhat at odds with the two-to-three storey development within the local street scene; where other such corner sites also have two or three storey infills (including that to the rear of No.19 Montpelier Place). The proposals will, therefore, form part of the established character within the conservation area and corner sites in particular. This element of the proposals would sustain the character and appearance of the conservation area.
- The proposed infill extension is high quality and looks to reflect the architectural style of the host and surrounding buildings.
- With regard to Policy 38, the proposed infill development has had regard to the character and appearance of the existing area and the host building. The design has sought to respond to the building line of both the host building and adjacent buildings, with a setback at first floor level. The height of the development also ensures subservience to these other buildings, whilst reflecting the secondary character of other infill developments to corner sites within the surrounding area. The choice of materiality and detailed design also responds positively to this context.
- With regard to the relevant aspects of Policy 39, the infill development is considered to the significance of the listed building and the role of the building within the conservation area. The proposed infill development, and overall design approach, has been developed to ensure sensitive adaptation of the existing buildings, whilst also allowing the provision of an additional residential unit.
- The development has been sensitively designed having regard to the prevailing scale, heights, characters, building lines, plot width, materials, and architectural quality; in accordance with Policy 40. It is noted that this corner site, as with other corner sites in the surrounding area, lacks the typical uniformity of the terraced developments and is a singular element within the streetscape. The single storey element to Nos.13-17 Montpelier Street appears somewhat at odds with the two-to-three storey development within the local street scene; where other such corner sites also have two or three storey infills (including that to the rear of No.19 Montpelier Place). The proposals will, therefore, form part of the established character within the conservation area and corner sites in particular, and also remain subservient to surrounding buildings through the proposed height of the extension and the setback building line. Elements of the host building that make a contribution to its significance will be conserved and, in some ways, enhanced by the proposed development and reuse of the building.

- The proposed design of the infill extension is in line with Supplementary Planning Guidance relating to extensions to listed buildings and would relate sensitively to the original building, in terms of scale and detail. There would be no loss of fabric or specific architectural or historic interest, or loss of garden / yard space. Given the lack of uniformity to corner sites within the area, and the lack of any uniformity of the existing single storey element with the wider area, the infill development would also not detract from the uniformity or integrity of a particular design.
- In accordance with Policy KBR1, the proposals for the infill development are of a high quality that reflects the character of the wider conservation area. The proposals also look to restore or instate traditional features, including dentilled cornice at high level, and channelled stucco to the ground floor Montpelier Place elevation in accordance with Policy KBR3.

10.5. In summary of the main points raised in this Statement of Case, 13-17 Montpelier Street is an existing restaurant use - indeed a restaurant has been here since 1974. No planning permission for a change of use is applied for, or needed, to continue using this property as a restaurant. The proposal will operate under the same operating hours and with more or less the same number of covers as the existing restaurant (139 in total which the officer's report also confirms). On these facts alone, this proposal simply cannot be described as "intensification". The Council state on page 296 of the committee report that the restaurant would not be materially different to the existing and that is also the applicant's firm position.

10.6. In the current climate, when the restaurant industry is struggling the proposals put forward in this statement of case are of upmost importance as they seek to breathe new life in to a failing listed building, for its lawful and long established use as a restaurant. In addition the proposals will enhance, make safe and restore a dilapidated and increasingly declining listed building. Finally, the proposals provide much needed new homes for Westminster, which is a borough facing increasing pressure to meet their large housing target.

10.7. The key benefits of the scheme are summarised below:

- The proposals will secure the conservation and continued beneficial use of the heritage asset through the retention and sensitive adaptation of the building (which is currently vacant and dilapidated);
- The proposed scheme will seek to reinstate the historic plan form where possible;
- The proposals provide new, high quality dwellings which will contribute to the City's housing stock;
- The future residents of the dwellings will benefit the local economy through increased local spend;
- The restaurant use will be liable for business rates;
- The scheme will be liable for CIL payments from borough and Mayoral CIL; and
- The building will be upgraded to be more energy efficient and will be carefully enhanced providing benefit to the listed building and the wider conservation area.

10.8. The Appellant reserves its position on costs.

Appendices

Appendix 1 – Decision Notices

Appendix 2 – Committee Report

Appendix 3 – Site Plan

Appendix 4 – Existing Covers Plan

Appendix 5 – Affidavit from previous restaurant owner

Appendix 6 – Letter from Elementa regarding fire escape capacities

Appendix 7 – Premises Licence

See *Prossor v Minister for Housing and Local Government* (1968) 67 L.G.R. 102 D.C. and (to a lesser extent) *Gray v Minister for Housing and Local Government* (1969) 68 L.G.R. 15 C.A.; *Petticoat Lane Rentals v SoSE* [1971] 1 W.L.R. 112; *Newbury v SoSE* [1981] A.C. 578; *Jennings Motors Ltd v SoSE* [1982] Q.B. 541; *Pioneer Aggregates Ltd v SoSE* [1985] A.C. 132

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