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Dear Sirs

King's Cross

Thank you for your letter of 18 October. We had attempted to address the concerns our letter of 29th September that you had raised and are disappointed that you feel that we did not so adequately.

The Council notes the suggestion that judicial review can be avoided by the submission of amended development proposals. As you will appreciate this is not within the control of the Council. The Council must consider the planning, conservation and listed building applications as they stand and whether they can properly be determined. Our advice to the Council is that the applications are properly made, are supported by a compliant environmental statement, that the applications contain sufficient information for the likely significant environmental effects to be properly considered, for the other impacts (for example on listed buildings and conservation areas) to be properly assessed and for the applications to be lawfully determined.

Preliminary points

- (a) The proposed report to the Committee in November will make Members entirely aware of their statutory obligations in relation to the development plan. While the primary reason for referring the applications to the Committee relates to the finalisation of the planning agreement (as required by the 9th March resolution) the Committee will be asked to do so within the context of the decision of the 9th March, the changed development plan and having taking account of other material considerations.
- (b) For the avoidance of doubt please note that the Council does not accept that the adoption of the RUDP necessarily means that there is now a "*material departure from the development plan*". In relation to the issue you raise on affordable housing policy KC4 it is important to note that the policy remains unchanged from the version adopted in 2003 and which already formed part of the development plan at the March Committee. As you will also appreciate all policies of the development plan need to be considered and the Committee will be reminded of the broad range of policies relevant to King's Cross in order to decide whether there is a departure and, if so, whether any such departure is material.

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- (c) Again, for the avoidance of doubt, our letter of 29th September did not suggest that the adoption of the RUDP was merely a changed "material consideration". In fact, we indicated that the Committee would be reminded that the RUDP had been adopted and that it now forms part of the development plan.

Affordable Housing

- (d) As indicated in our letter of 29th September the Committee will be provided with complete and accurate information about the levels of affordable housing that the King's Cross development will provide. This will be based on the March Report which fully and fairly set out the different ways of calculating the relevant percentages. Our view is that, despite the mistake in the written note quoting the policy requirement for social rented as 30% (rather than the 35% to be provided), Committee were well aware from the Report of the policy position.
- (e) As you will note from the March Report only 12 of the units of affordable housing previously on site were social rented units so your calculations suggesting that the social rented percentage is 26.2% are incorrect.
- (f) It is for the Committee to make a judgment as to the extent to which the proposals are inconsistent with affordable housing policy targets and, if so, the weight to attach to that, in the context of the broad range of other considerations relating to the King's Cross development.

The heritage and conservation issues

- (g) The Council does not agree with your contention about their ability to determine the applications. The Committee *could* and *did* make a properly informed decision as to the effect of the proposals on the character and appearance of the area. It *could* and *did* make a properly informed decision in relation to the justification for the demolition of listed buildings and buildings within the conservation area. It did so having taken account of the Committee Report, the proposed conditions and aware of the consequences. It was aware that listed buildings and buildings in conservation areas would be demolished without the completion of the development being certain.
- (h) We assume that you have reviewed all of the material comprised in the applications. As you will have seen it provided a significant level of information about the proposed approach to design and external appearance and the effects on listed buildings and the conservation area. The information provided, and their own analysis, allowed the Council to make a properly informed decision after consultation with English Heritage.
- (i) You will, of course, already have seen the proposed draft conditions attached to the March Committee Report. You will already have seen (we assume) the emerging planning agreement which has been registered on the local land charges register. These documents contain controls to ensure that the detailed design and external appearance of the buildings is of an appropriate standard and set out measures for protecting the gas holders. As you will see, and as was explained in the March Committee Report, the proposed framework ensures that the resulting development will be of an appropriate quality.
- (j) We do not believe that the proposed arrangements lead to an "*impermissible flexibility*" in the proposals.

Environmental impact assessment

- (k) As noted above, we believe that the development proposals as submitted (and as proposed to be regulated under the proposed planning conditions and planning agreement) were sufficiently defined for the applicant to be able to undertake a full and proper environmental assessment in accordance with the relevant Regulations and produce an environmental statement, again in accordance with the relevant Regulations. The approach adopted in relation to "worst case" assessments is clear in the environmental statement and provides an appropriate way of assessing the likely significant

environmental effects. In fact, the application materials and environmental statement were of an unusually high quality.

- (l) The Council's view, as reported in the March Report, is that there is adequate information about the design, size and scale of the development in order to be able to make a judgment about the likely significant environmental impacts. For example, the siting of the buildings is, effectively, fixed; the height of the buildings is settled within parameters; and a design approach is agreed. There are controls on demolition. Against this background it was possible, as the environmental statement outlines, to assess the effect on wind speeds in the area and to reach conclusions. Those conclusions, as indicated in the March Report, were taken into account in determining the applications.
- (m) As you will appreciate the Council considered whether it was satisfied that it understood the likely significant environmental and other effects of the development. It concluded, on the basis of the information provided, that it did.
- (n) Sections 4 and 9 of the Committee report make clear the approach to the assessment that took place in relation to heritage buildings. We advised on the drafting of those elements. In providing that advice we were, obviously, aware of the *Gloucester Blackfriars* case. In contrast to the *Blackfriars* case, we believe that the level of detail provided with the applications allowed an informed decision to be taken.
- (o) As you will appreciate the applications were referred to the Government Office for London on behalf of the Secretary of State. If there had been concerns about the nature of the application, the form or content of the assessment or the approach adopted the Secretary of State could have called in the applications for her own determination. The fact that she did not suggests that she was content in relation to the approach adopted.

Strategic environmental assessment

- (p) We had understood your letter of 8th September to raise a legal concern about whether the applications fell within the definition of a "plan or programme" for the purposes of Article 2(a) of the European Directive 2001/42/EC. As our letter made clear we do not think that that can be a correct interpretation of the SEA directive.
- (q) You ask, again, about the meaning of the phrase "masterplan strategy" in the RUDP. As indicated in our letter of 29th September we believe that the approach adopted to the determination of the applications is consistent with the approach in the policy and the relevant legal requirements. Indeed, we do not understand you to allege that it is not.
- (r) However, and for your assistance, the Council's view is that the proposed conditions and planning obligations, and the plans that will be approved as part of the permissions and consents (if permitted), together comprise a master plan strategy. Those documents will provide a framework for the subsequent consideration of additional details in relation to the land uses, the proposed buildings and other works.

Air quality

- (s) Thank you for clarifying your position in relation to air quality issues and the suggestion of additional measures that could be adopted (which suggestions formed, we understand, part of an earlier submission). As you will appreciate, the Council and the applicant have negotiated a whole series of measures which have air quality benefits. There will always be a debate between parties as to the proper level of benefits, and the Committee will need to consider whether the measures proposed in the conditions/agreement properly address the Council's commitments/obligations. For the avoidance of doubt we do not accept your implicit suggestion that it is necessary, for example, to lower further the number of car parking spaces and increase the level of green roofs in order for a permission to lawfully be granted.

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- (t) We do not accept that the March Report advised incorrectly in relation to air quality issues and, apart from reminding the Committee of the issues, will not be advising the Committee in the terms that you suggest. The Committee will be aware of the air quality action plan and directive requirements. They will need to take those obligations and commitments into account. As indicated in our letter of 29th September the Committee will be reminded of the policies on air quality and the effects of the development. The report will continue to draw a balanced conclusion that there is no material departure from the development plan. That judgment will, clearly, take account of the policies relating to air quality.

Blue Ribbon network

- (u) As previously indicated Members will be reminded of the development plan policies and other material considerations. The Blue Ribbon policies are one (and only one) of a number of policy considerations. They will be taken into account and considered accordingly.

Critical Mass

- (v) As indicated in our letter of 29th September we believe that if the applications and associated materials, and the Officers Report, are read in full the meaning of paragraph 5.5.4.2 is clear. As indicated in that paragraph, as part of the discussions with the applicant the Council accepted the proposition that at least 400,000 square metres of business space was required. As you will appreciate, any proper planning permission must limit the overall level of development on site, hence the imposition of 455,000 square metres as a limit.
- (w) As part of an overall balancing exercise, consideration was given to the levels of all uses within the development. In order to ensure that there is an adequate balance, conditions and obligations have been agreed which ensure that the different land uses are developed in tandem. This ensures that the development will, if built, deliver all elements of the schemes and effectively addresses the viability issue.

The ambiguity of resolutions

- (x) We note that you do not raise any further issue in relation to this concern. Please confirm that the point has been addressed to your satisfaction.

Further report

- (y) Officers are presently working on a Committee report. It will be made public in accordance with the Council's standard procedures. A copy of the report will be published as far in advance of the Committee meeting as possible. We confirm that the intention is that the officers will continue to recommend the approval of the proposals. Notwithstanding your letter, the recommendation to Committee will be that there are no changes in circumstance that would justify the Committee reaching a different view to that reached, after lengthy deliberation, on the 9th March.

Other applications

- (z) Thank you for drawing the *Purfleet* appeal decision to our attention. We acted for the Development Corporation opposing the scheme. We are aware of the nature of the appeal proposals which are, markedly, different in terms of quality and supporting material from those submitted at King's Cross. We do not think that you can properly compare the two schemes.

Yours faithfully

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