

## Insights

# THIS IS NOT JUST ANY CASE ON DEMOLITION... THIS IS THE M&S CASE ON DEMOLITION

Aug 10, 2023

## SUMMARY

The refusal of M&S's plans to demolish and rebuild their flagship store on Oxford Street by the Secretary of State for Levelling Up, Housing and Communities (Michael Gove) has attracted much attention because of the wider implications of this case and the questions it raises for developers promoting similar demolition and rebuild schemes. It also highlights how the lack of policy clarity and guidance, particularly around how alternatives should be assessed and considered, makes it difficult for developers to have confidence in how they should formulate applications for similar schemes.

M&S proposed to demolish Orchard House and two other interconnecting buildings that comprise its flagship store on Oxford Street near to Selfridges and to construct a highly sustainable mixed use nine storey development (Use Class E) in its place. The proposal had received support from the local planning authority, Westminster City Council and the planning inspector at the call-in inquiry. However, it was ultimately refused by Gove principally because the heritage impacts would not be outweighed by the public benefits, but the decision was also influenced by concerns about the project's carbon footprint and the failure to make use of existing resources.

## HERITAGE

Although the development site is not in a conservation area nor is a listed building, the impact of the proposed demolition on the designated heritage assets in the surrounding area, and in particular the significance of Selfridges was given 'very great weight' in the planning balance. Gove also attached significant weight to the loss of Orchard House partly because it is a prominent non-designated heritage asset that contributes positively to the setting of Selfridges and holds significant value in its own right and context.

## ALTERNATIVES

The consideration of alternatives was also a prominent consideration. Gaps and limitations in the evidence were identified which made it difficult for clear conclusions to be drawn on this matter and the weight to be given to this issue.

Gove was unconvinced that M&S had properly considered alternatives to demolition (although 16 alternatives had been considered none of which M&S considered viable). In his view, there was not sufficient evidence for him to conclude whether M&S had demonstrated that refurbishment would be undeliverable or not viable and there had not been an appropriately thorough exploration of alternatives to demolition. This contrasts with the Inspector, who *had* concluded there was no viable and deliverable alternative and, in doing so, had used and discounted Save Britain's Heritage's alternative refurbishment scheme presented in evidence. The Inspector also referred to meeting minutes which showed that details of the scheme had been reviewed and developed in consultation with WCC and the GLA who were both supporting of the proposal.

It is not clear what evidence Gove would have considered sufficient to show that refurbishment was not a deliverable or appropriate alternative in order to justify the demolition or how the evidence that was provided, along with evidence put forward by other parties to the inquiry, should have been analysed and assessed by the inspector, which Gove had said was lacking in relation to the retrofitting of existing buildings. The inconsistent way this issue was examined and considered highlights the lack of guidance and policy in this area which makes it difficult for applicant's to know how they should formulate similar applications.

## SUSTAINABILITY

The proposal had a number of high sustainability credentials (including use of the latest techniques for energy efficiency, delivering a building that could achieve a rating of BREEAM Outstanding, optimisation of site capacity and carbon offset payments secured via s106 agreement to deliver carbon reductions).

However, a substantial amount of carbon would go into construction and because Gove considered there had not been an appropriately thorough exploration of alternatives to demolition, and because of the impact on designated heritage assets, he held it was not the right approach at this location.

When considered against the relevant London Plan policies and the NPPF, the extent of embodied carbon was found to weigh heavily against the scheme and the proposal failed in part to support the transition to a low carbon future. Overall he found the scheme was in conflict with the London Plan policies on greenhouse gasses, energy, reducing waste and supporting the circular economy and would fail to encourage the reuse of the existing resources, including the conversion of existing buildings as required by the NPPF.

## COMMENT

Ultimately, planning is a political process and this decision is another example of that proposition as Gove may well have been influenced by the local political dynamics, given the site is in a Conservative parliamentary seat and against the background that a general election could happen at any time within the next 18 months.

Although the principle reason for refusal was based on the subjective area of design and the impact on an adjoining conservation area and buildings, the decision also highlights how the embedded carbon implications of demolition are becoming an increasingly important policy consideration.

Whilst the reasons for the refusal have been carefully framed and highlight the unique and specific circumstances of the case, which it stresses are unlikely to be replicated, the decision is being seen as a landmark and it will inevitably be referred to in the consideration of future demolition and rebuild schemes. Whether it will make it harder to demolish buildings, particularly in London, is arguable as the case clearly turned on its specific facts.

Perhaps more importantly, the decision reminds applicants that the onus lies on them to justify demolition and to demonstrate that refurbishment is not a deliverable or appropriate alternative and it reinforces the high evidential threshold that will be applied by decision makers. However, it also highlights some confusion about where this threshold lies and the evidential requirements to meet it, mainly because there is an absence of clear guidance and policy in this area. This makes it difficult for developers to have confidence that the methods and considerations used in design evolution and formulation of their plans will result in a robust application that will meet the threshold. But it seems the bar to justify demolition and redevelopment has moved a significant notch upwards.

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Suzan Altinpinar contributed to this insight

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