

Our Ref: 20168 LPA3 GC

Development Management,  
Planning and Place,  
Royal Borough of Kensington and Chelsea.

Via email to: [Laura.Fogarty@rbkc.gov.uk](mailto:Laura.Fogarty@rbkc.gov.uk)

F.A.O Laura Fogarty MRTPI, Principal Planning Officer, South Area

13<sup>th</sup> April 2023

Dear Ms. Fogarty,

**PP/23/00968 Demolition of existing building and redevelopment for new building up to four storeys and basement (Use Class E - commercial, business and service); roof terraces, landscaping works; installation of plant; and associated works. (MAJOR APPLICATION) at 81-103 (odd) King's Road, LONDON, SW3 4NX**

I write to **OBJECT** to the above planning application, on behalf of the Directors of the Board of Charles II Place Management (1991) Limited ('the Board of CIIP'), in relation to this neighbouring redevelopment. The Board of CIIP also own no. 51 Charles II Place. It is requested that the strong objections raised with regard to the impact of the proposal on the residents of Charles II Place (CIIP) are taken fully into consideration prior to determination of the application.

In summary, the Board of CIIP object to the planning application on the following grounds:

**The excessive height, scale, massing and bulk of the proposed building.** The proposal represents an overdevelopment of the site, failing to take account of the prevailing character of the area, and will visually dominate and have an unacceptable overbearing impact on the neighbouring CIIP houses.

**Adverse impact on daylight to a number of the CIIP houses.** The applicant confirms that 10 houses in CIIP will experience a reduction in daylight beyond the BRE guidelines. This is contrary to the requirement to ensure that good standards of daylight are achieved in existing properties affected by new development. The infringement of the guidelines is considered likely to be greater as the submitted assessment contains inaccuracies and lacks background information which brings its conclusions into question.

**Loss of privacy in neighbouring CIIP houses.** The proximity of the external terraces and the windows in the new development will overlook the neighbouring CIIP houses and create the feeling of being overlooked, counter to the requirement to ensure the reasonable visual privacy of the residents. This will adversely impact on the standards of amenity that residential occupiers should reasonably be expected to enjoy.

**Noise and disturbance to residents.** The proposed layout of the site, bringing the building and associated activity closer to CIIP and the introduction of a potentially wide range of uses and occupiers, has the potential to harm the reasonable enjoyment of the adjacent CIIP residents through increases in noise, disturbance, potentially odours and vibration. The applicant's noise assessment contains inaccuracies and is incomplete, as it references out of date standards, does not cover all potential noise sources and the measured background noise levels are unrepresentative of the existing background noise levels at CIIP.

**Impact on access to CIIP.** The CIIP Estate has rights of way across the application site, providing the only means of residents accessing their houses. Any scheme will clearly have a huge impact on the 51 houses comprising the Estate; this applies obviously not only to the owners of the houses but also in respect of services, deliveries, and of course emergency services. The free use of those rights is critical to the enjoyment and use of the CIIP houses. It is unclear from the submission how rights of access to CIIP will be impacted upon by the proposal. Any impact on CIIP's existing accesses would mean that the development proposals would be incapable of lawful implementation.

**Lack of information on which to determine the application.** Issues raised by officers at the pre-application stage do not appear to have been addressed in the submission, including the use of, and the potential for overlooking from, lower terraces to CIIP to the south and east and the demand for office accommodation. In addition, key information is lacking from the submission, e.g. there are no technical appendices accompanying the Daylight and Sunlight report to allow detailed scrutiny. The potential for noise from external terraces and open windows, the closer positioning of the servicing bay and car park access to CIIP does not appear to have been addressed, notwithstanding the significant implications for neighbours. Opportunity for further comment by interested parties when this information is provided should be facilitated.

It is submitted that, on the basis of the above grounds, the proposal is contrary to the development plan. Our considered assessment of the proposal has concluded that there are no material considerations to outweigh a decision other than in accordance with the development plan.

## **1. Background to the objection**

- 1.1 Charles II Place (CIIP) is a private residential estate, which directly abuts the application site to the south and east. It is a development of 51 houses built in 1989 and forms a quiet enclave behind the King's Road. It was designed to take account of, and to complement, the development of the adjacent M&S store, which was under construction at that time. In fact, vehicular and pedestrian access from CIIP is achieved across the M&S site/ the western part of the current application site. Due to the layout of CIIP, it is considered nearly half of the houses and their residents will be directly affected by the current proposals in terms of the adverse impact on daylight, outlook, sense of enclosure, overlooking, noise and disturbance from proposed uses and activities at the site. All residents will be affected by the potential impediment of the egress from the estate, by noise and vibration during the construction, and disturbance from the use of the finished development. Many of these houses sit at a lower ground level than the M&S site and, therefore, with the proposed scheme showing a materially taller and bulkier building and increased footprint closer to the CIIP properties, it is strongly submitted that this dilutes the synergy from when the overall development was built in 1989 and creates a squeezed and unacceptably dominating/unneighbourly relationship to the detriment of the CIIP properties and the occupiers' rights to enjoy their homes.
- 1.2 The concerns are set out in detail below. It is disappointing that on reviewing the submitted application, I am not able to recommend the scheme favourably to the Board of CIIP. It remains largely unaltered from the last iteration before the formal submission and does not address the concerns I made to the architect, Fred Pilbrow, which followed our joint site visit where he visited Charles II Place for the first time, and I visited the Pilbrow and Partners' scheme built at 127 Kensington High Street.

## **2. Objections to planning application PP/23/00968**

### **Planning Policy**

- 2.1 In this case the development plan consists of the adopted London Plan (2021) and the adopted Royal Borough of Kensington and Chelsea Local Plan (2019).
- 2.2 London Plan at Policy SD7 'Town centres: development principles and Development Plan Documents' confirms that development proposals should support efficient delivery and servicing in town centres including the provision of collection points for business deliveries in a way that minimises negative impacts on the environment, public realm, the safety of all road users, and the amenity of neighbouring residents. Policy D3 'Optimising site capacity through the design-led approach' under 'Form and Layout' confirms that development proposals should, inter alia, enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions and that development proposals should deliver appropriate outlook, privacy and amenity.'. The London Plan

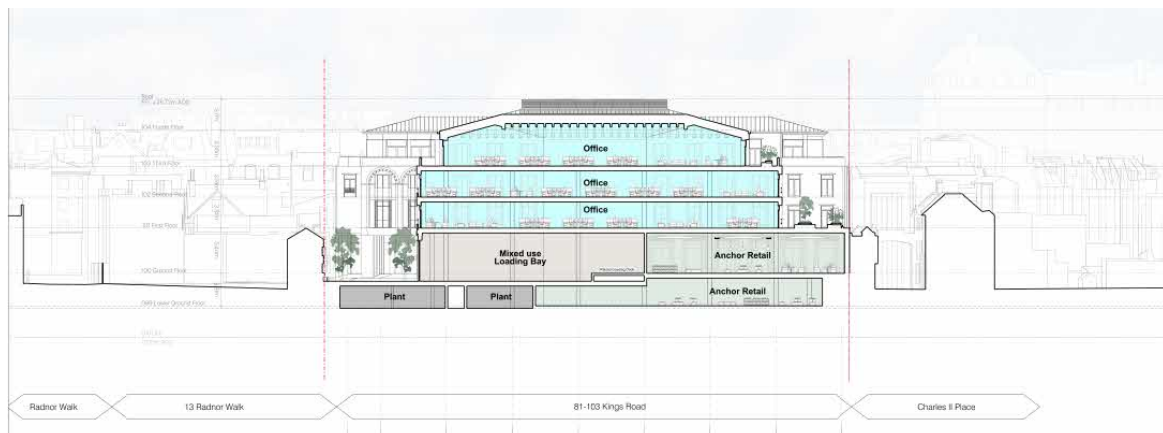
also includes Policy D13 'Agent of Change' which confirms that new noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts and that boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed. Policy D14 'Noise' requires development proposals to avoid significant adverse noise impacts on health and quality of life.

- 2.3 The Royal Borough of Kensington and Chelsea Local Plan requires proposals to respond to the local context (Policy CL1 'Context and Character') and resist buildings which are significantly taller than the existing townscape, other than in exceptionally rare circumstances, where the development has a wholly positive impact on the character and quality of the townscape (Policy CL12 'Building Heights'). The accompanying text to Policy CL12 refers to the relatively modest and consistent height of buildings within Kensington and Chelsea, reflecting the primarily residential character of the Borough.
- 2.4 Policy CL5 'Living Conditions' (which is proposed to be 'saved' in its entirety as Policy CD8 in the New Local Plan Review) states that the Council requires all development to ensure good living conditions for occupants of existing and neighbouring buildings. Applicants should take into account the prevailing characteristics of the area. In respect of daylight and sunlight, the policy requires that good standards are achieved in existing properties and where they are already substandard, that there should be no material worsening of the conditions. The policy also requires that there is reasonable visual privacy for occupants of affected existing properties; that there is no harmful increase in the sense of enclosure to existing buildings and spaces, neighbouring gardens, balconies and terraces; and that the reasonable enjoyment of the use of buildings, gardens and other spaces should not be harmed due to increases in, inter alia, traffic, servicing, parking, noise, disturbance, odours, or vibration.
- 2.5 Chapter 15 of the Local Plan relates specifically to Sloane Square and King's Road and confirms the Council's overarching aims in the area include maintaining King's Road's distinctive character and protecting the amenity of the surrounding area.
- 2.6 Policy CE6 'Noise and Vibration' confirms that the Council will carefully control the impact of noise and vibration generating sources which affect amenity both during the construction and operational phases of development. The Council will require new noise and vibration sensitive developments to mitigate and protect occupiers against existing sources of noise and vibration.
- 2.7 It is submitted that the proposal does not accord with the provisions of the development plan. The specific objections to the proposal are set out below.

## Detailed Grounds of Objection

### The height, scale, bulk and massing of the proposed building

- 2.8 Policies CL1, CL5 and CL12 of the Local Plan state that the Council will require applicants to take into account the prevailing characteristics of the area and context of an application site, and Policy CV15 'Vision for Sloane Square/King's Road in 2028', paragraph 15.3 Principles ('Overarching Aims'), includes the desire to maintain King's Road's distinctive character in the face of a changing retail environment and a changing local catchment by supporting the function of the two town centres. Policy D3 of the London Plan 'Optimising site capacity through the design-led approach' requires development proposals to enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions; and to respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character.



*Extract from Drawing 'GA Proposed Section. Section A-A'*

- 2.9 The submitted section drawing above is helpful in showing the site's context within largely domestically scaled properties – the larger elevation shown in the background behind the section of the new building is the front section of the new building onto King's Road. The marked difference in the scale of the CIIP houses (RHS) and buildings in Radnor Walk (LHS) to the proposed building is clear. The scale of the 2-storey no. 51 CIIP (to the immediate right of the new building in the above section), when compared to the proposal, is particularly noticeable in this plan.
- 2.10 The visuals, studies and plans set out in the 'Heritage, Townscape and Visual Impact Assessment', and the 'Design and Access Statement' simply confirm that the scale, height and bulk of the proposed building is too great for the site and its context. Whilst acknowledged as an improvement on the refused Benoy scheme in some respects, the submitted scheme is still out of character and an overdevelopment of the application

site, for many reasons and most notably given the scale of buildings in the flanking Conservation Areas and Listed Buildings, and the neighbouring residential buildings. It also introduces other unacceptable issues as set out elsewhere in this objection.

- 2.11 The proposed building will be materially larger than most others on the King's Road. The referenced examples of other schemes are not considered comparable to the current proposal in terms of siting, scale, height or context and do not set a precedent for allowing the proposal.
- 2.12 The character of the application site and CIIP is one of a close but respectful interrelationship; CIIP has been designed to minimise the potential detrimental impact on residential amenity, e.g., the inclusion of blank elevations towards the M&S and essentially single aspect houses backing onto Smith Street. The current application imbalances this relationship, showing an overdevelopment of the site exhibited by the new building's substantial height, scale and massing, proximity to the flanking houses, and consequent adverse impact on residential amenity should the development be allowed as proposed. The position, height, scale and massing of the building will visually dominate the neighbouring CIIP houses and this part of the King's Road street scene.
- 2.13 The proposal is therefore contrary to Policies CL1, CL5, CL12 and CV15 of the Local Plan and Policy D3 of the London Plan.

#### Impact on daylight to the CIIP properties

- 2.14 Planning policy confirms that the Council will require all development to ensure good living conditions for occupants of new, existing and neighbouring buildings. Policy CL5(b) 'Living Conditions' that good standards of daylight and sunlight should be achieved in existing properties affected by new development; and where they are already substandard, that there should be no material worsening of the conditions. The associated text (paragraph 22.3.37) confirms that 'Issues of daylight and sunlight are most likely to occur where the amount of adjoining habitable accommodation is limited, or situated within the lower floors of buildings with openings on to lightwells. Mathematical calculation to assess daylighting and sunlighting may be an inappropriate measure in these situations; on-site judgment will often be necessary.'
- 2.15 The proposed development will significantly increase the proximity and bulk of the built form next to the CIIP houses, including enclosing the current gap with the M&S building. The developer's own Daylight & Sunlight Report, prepared by GIA Surveyors, confirms that 10 houses which will experience a reduction in daylight beyond the Building Research Establishment (BRE) guidelines. What this means in practice is that good standards of daylight received by the houses at CIIP will not be achievable, which is contrary to policy.
- 2.16 Notwithstanding the submitted Report's clear conclusion of the impact of the proposal on the neighbouring CIIP houses, there are also serious concerns over the apparent



inaccuracies and missing information in the Report which bring into question its conclusions.

2.17 The applicant's Report quotes the Building Research Establishment Guidelines (BR209, 2022) which confirm at paragraph 4.2 that it is intended for use in rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms (underlining my emphasis). However, the report then incorrectly states in relation to the impact on daylight to a number of the CIIP houses that kitchens smaller than 13sq.m are not considered a habitable room in the RBKC Local Plan. This is an incorrect interpretation of prevailing planning policy. Policy clearly states that the room size criteria relate purely to density calculations and not in any other respect. The 'Glossary' to the adopted Local Plan is clear in its definition –

***“Habitable room.** For planning purposes a habitable room is usually defined as any room used or intended to be used for sleeping, cooking, living or eating purposes. Enclosed spaces such as bath or toilet facilities, service rooms, corridors, laundries, hallways, utility rooms or similar spaces are excluded from this definition.”*

2.18 This has been confirmed in planning appeal decisions, which agree that RBKC policy includes kitchens as habitable rooms and that only for the purposes of density calculations are kitchens of less than 13sq.m discounted. The ground floor kitchens in CIIP are set at a lower level than the ground floor of the new building which compounds the impact. Incorrectly assessing the impact of the proposal on this basis implies that the applicant's own assessment of the impact on Daylight and Sunlight cannot be relied upon.

2.19 The applicant's Report also references planning policies which have been superseded, e.g. it refers to the draft London Plan of 2020. The applicant's Planning Statement, prepared by DP9, at paragraph 7.12 incorrectly references out of date national planning policy in relation to daylight and sunlight. It refers to a superseded version of the National Planning Policy Framework (NPPF) and incorrectly quotes the guidance in former Paragraph 123. It is clear that neither the current nor the previous NPPF stated that authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, unless in an area where there is an existing or anticipated shortage of land for meeting identified housing needs, and when considering applications for housing (underlining my emphasis). None of these situations are relevant to the current scheme. The submitted Planning Statement and the Daylight and Sunlight Report are therefore at best incorrect and at worst misleading.

2.20 In addition, the submitted Daylight and Sunlight Report does not include the full technical appendices, so neither the Council nor a third party can possibly review or corroborate the findings. In addition, No Sky Line (NSL) drawings have not been provided and the Report states that floor plans have not been obtained for all of the neighbouring properties and therefore there may be inaccuracies with some of the NSL results, where notional room layouts have been used. The assumptions made about

the house layouts should be requested. In summary therefore, the full technical daylight and sunlight results, the NSL drawings, the assumptions made about the CIIP house layouts, and a reassessment of the impact on daylight based on the kitchens as habitable rooms should be requested from the applicants.

- 2.21 In summary, the proposed development will materially worsen the levels of daylight to beyond the BRE guidelines, contrary to Policy CL5 of the Local Plan. The Board reserve the right to make further detailed comments on the impact of daylight and sunlight to the CIIP houses when full information to enable a proper assessment is available.

#### Impact on outlook and sense of enclosure to the CIIP houses

- 2.22 Policy CL5 of the adopted Development Plan confirms that to ensure good living conditions for occupants of, inter alia, existing and neighbouring buildings that the Council will require that there is no harmful increase in the sense of enclosure to existing buildings and spaces, neighbouring gardens, balconies and terraces. The accompanying text (paragraph 22.3.40) confirms that an overbearing or over-dominant sense of enclosure can significantly reduce the quality of living conditions both inside and outside and that the impact on the sense of enclosure, is dependent on on-site judgment.
- 2.23 There will clearly be an impact on outlook/ an increased sense of enclosure of the houses at CIIP arising from the proposal. This is obviously more of a subjective assessment than a technical assessment of, e.g. daylight, sunlight etc., and Officers acknowledged this potential impact at the pre-application stage, e.g. Pre-App 1 referenced the "...substantial massing being introduced at the upper levels where currently the existing building is relatively low. This would potentially increase the sense of enclosure experienced from these properties to the south and 1 to 4 Charles II Place."
- 2.24 It is noted that the excessive bulk and scale of the new scheme is often assessed in the submission against the refused Benoy scheme, which is a disingenuous and misleading assessment, as the reference point for the assessment of the current application is the change from the existing development. The new proposal will clearly have a greater impact on neighbouring properties, rising to 4 storeys plus roof where the existing development is mainly just 2 storeys in height and largely single storey where this adjoins CIIP.





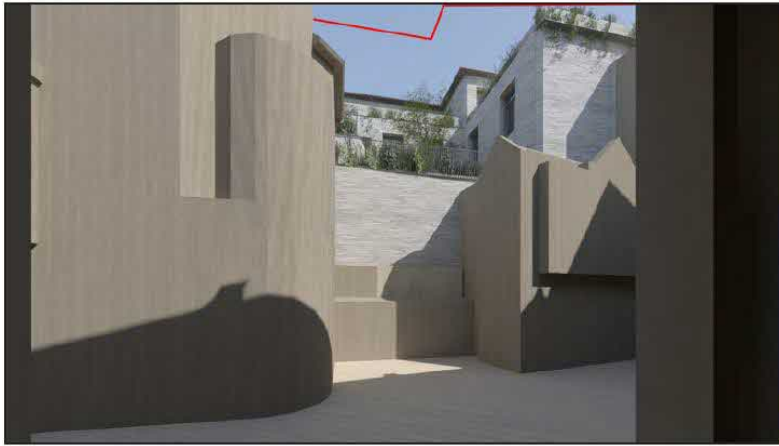
Massing comparison between the existing building, the rejected scheme outline and the proposal viewed from the Eastern edge of the site

*Extract from Design and Access Statement showing comparison between the existing building (in blue) and the proposed building (in green)*



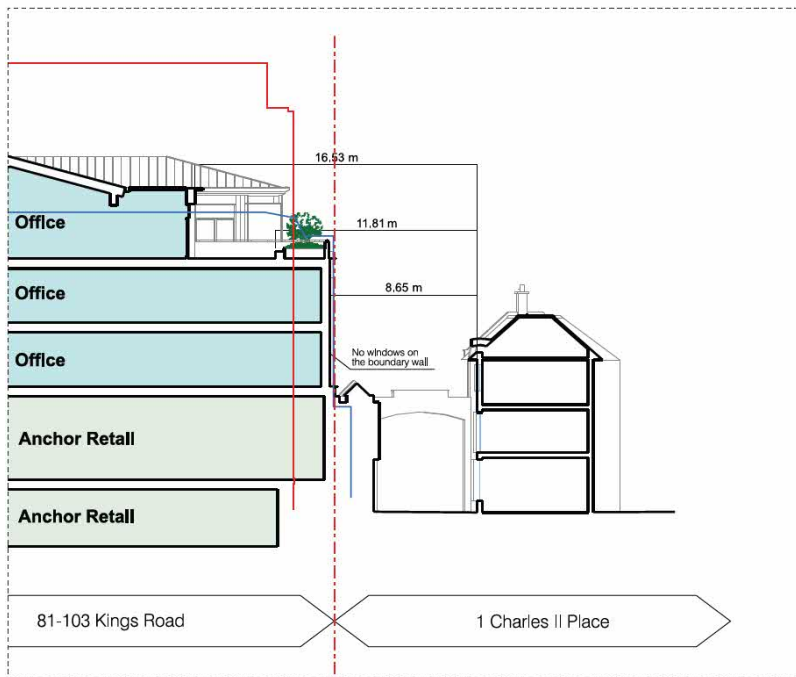
*Photograph taken from ground level in front of the houses at 1-3 CIIP, showing the current outlook. Note the facing windows of 51 CIIP close to the boundary with the development site*

2.25 The built development to the front of the houses at 1-3 CIIP proposes a change from the existing maximum 2-storey development - where the existing ground floor of the M&S is set away from the houses and the existing first floor set a further 5m back (as shown in the above photograph) – to a 4 storey development built on that eastern boundary, set back at first floor level by only approx. 3.5m, with upper floors rising up to a 4 storeys plus roof with a staggered building line, including external terraces. The scale and proximity of the proposal is shown in the visual overleaf (the red line representing the refused Benoy scheme).

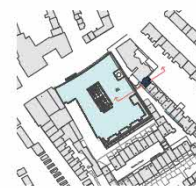


View from 3 Charles II Place- ground floor window- PLANNING PROPOSAL (previous rejected scheme shown in outline).

*Extract from the Design and Access Statement showing the new building from 3 CIIP. The facing wall shows the proposed edge of an external terrace. No. 51 CIIP is the two-storey building on the right-hand side of the visual.*

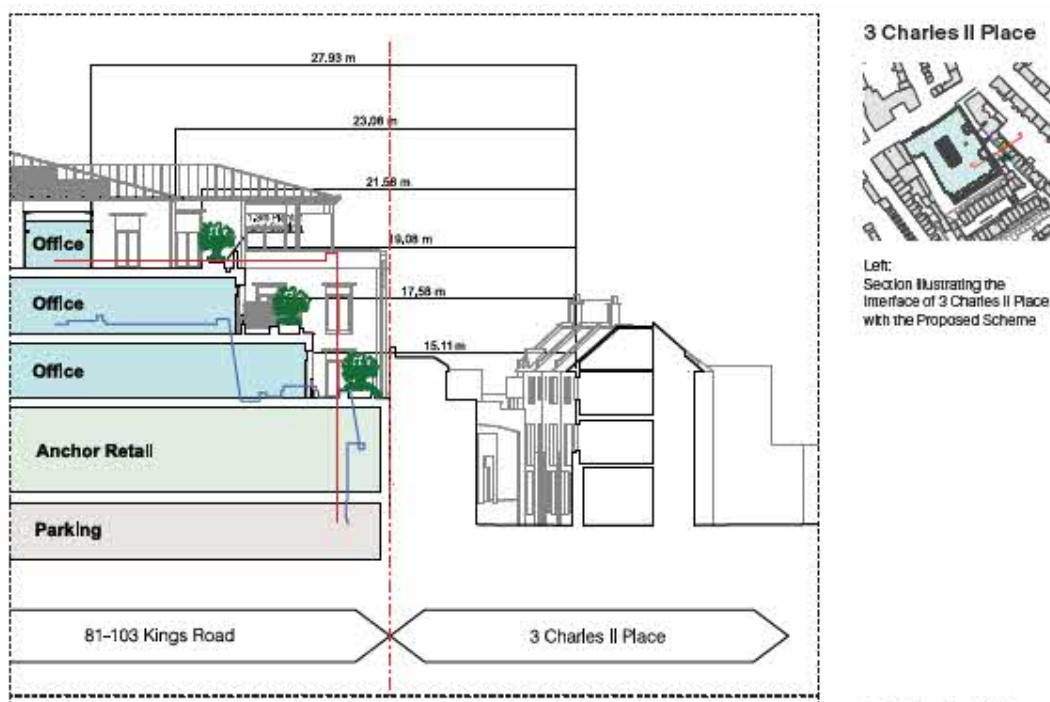


1 Charles II Place



Left: Section illustrating the interface of 1 Charles II Place with the Proposed Scheme

*Extract from Design and Access Statement showing an 8.65m distance between the front of the house at no. 1 CIIP to the proposed 3 storey flank wall which will face onto it.*



*Extract from Design and Access Statement showing the close relationship of the proposed building to the house at 3 CIIP*

2.26 There will be a fundamental change to the outlook and sense of enclosure to these houses. The proposal will materially and significantly worsen the residential amenity of the occupiers of these properties, in terms of creating an increased sense of enclosure and significant loss of outlook, which will be all the more marked due to the essentially single aspect nature of these dwellings, meaning the outlook from their west facing windows is all the more important to their occupiers.



*Photograph showing the rear of the houses at nos. 36-46 CIIP, looking onto the mansard roofs of M&S. Note the relative ground levels between the sites.*

2.27 In the case of the houses to the south/ rear of the building (36-46 CIIP) these houses are set below the ground floor level of the application site and whilst the proposed ground floor of the new building will be set slightly further back from these properties compared to the existing building, the new building will step up quickly from this, replacing 2 storeys (with a large set-back to the first floor) with 4 storeys of terracing on a shallower set back.



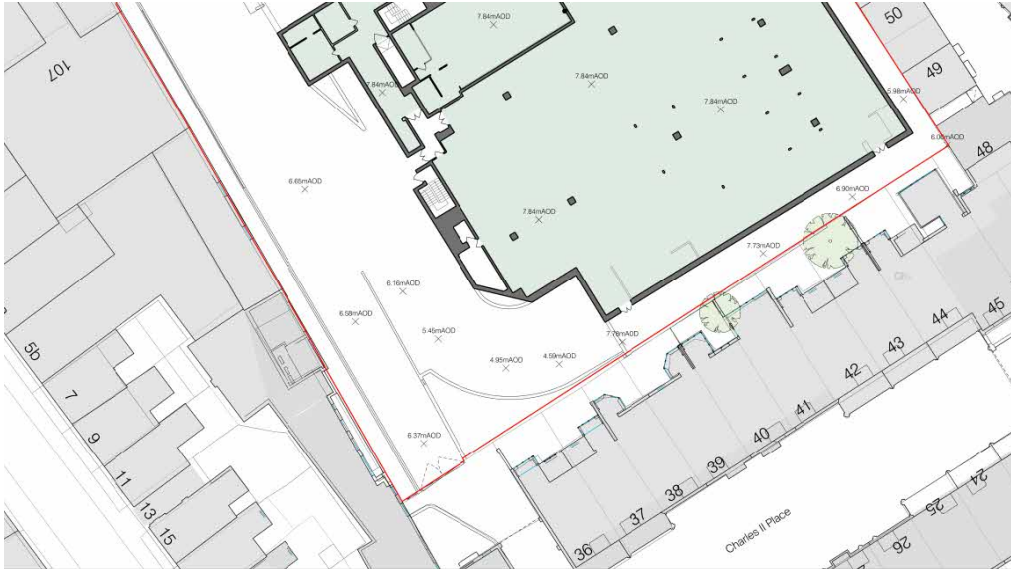
*Extract from Drawing Section BB showing the comparative scale of the CIIP houses (LHS) compared to the new building*

2.28 The proposal also extends the built development on the application site closer to the west and east boundaries, enclosing parts of the currently visually 'open' areas of the site. Houses such as 36 & 37 CIIP currently have a relatively open aspect facing onto the site as they sit behind a cut away part of the M&S building, where the car park access slopes down. The house at no. 38 CIIP benefits from the set back and staggered building line of the existing building.



*Outlook from ground floor kitchen window of the house at no. 38 CIIP.*



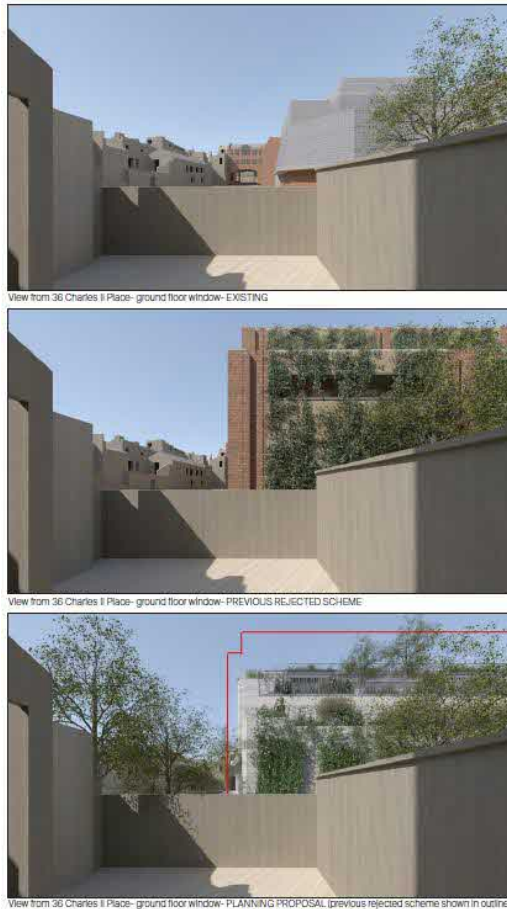


*Extract from the Existing Ground Floor Plan showing set back of the existing M&S building and car park ramp to basement to the rear of the houses at 36-38 CIIP. The servicing area is towards the front of the site, nearer to King's Road*

2.29 The set back will be replaced by a bank of 4 storey high terraces. The submitted visuals in the Design and Access Statement are somewhat misleading as a 2D representation does not provide a true reflection of distance, so the existing M&S building appears to be as close as the new building, which is not the case. The occupiers of these flanking houses will experience a material change to their outlook and a significant increase in enclosure to the rear of their properties and gardens.



*Extract from Proposed Ground Floor Plan, showing the new building only some 3 to 4 metres to the rear boundary with houses nos. 36-40 CIIP. This plan also shows the proximity of plant, generators and servicing to the CIIP houses.*



*Extract from Design and Access Statement showing changed outlook from the house at no. 36 CIIP*

2.30 In practice, on both the southern and eastern elevations of the development the proposed new building will introduce a taller and bulkier built form than currently exists, and the bulk of the new building will be significantly closer to the site boundaries, creating a harmful increase in the sense of enclosure and an overbearing and over-dominant impact to these houses and their gardens. The proposal is clearly contrary to Policy CL5 of the Local Plan and Policy D3 of the London Plan.

#### Loss of privacy in neighbouring houses

2.31 Policy CL5 states that the Council will require that there is reasonable privacy for occupants of existing properties affected by new development and paragraph 22.3.39 of the Local Plan confirms that terraces on roofs of main buildings or extensions can be visually intrusive and result in serious intrusion into the privacy and quiet enjoyment of the neighbouring residential properties. Policy D3 of the London Plan requires development proposals to deliver appropriate outlook, privacy and amenity. The proposed scheme clearly breaches these policies and will seriously impact on the privacy of the residents of CIIP and therefore the enjoyment of their houses.

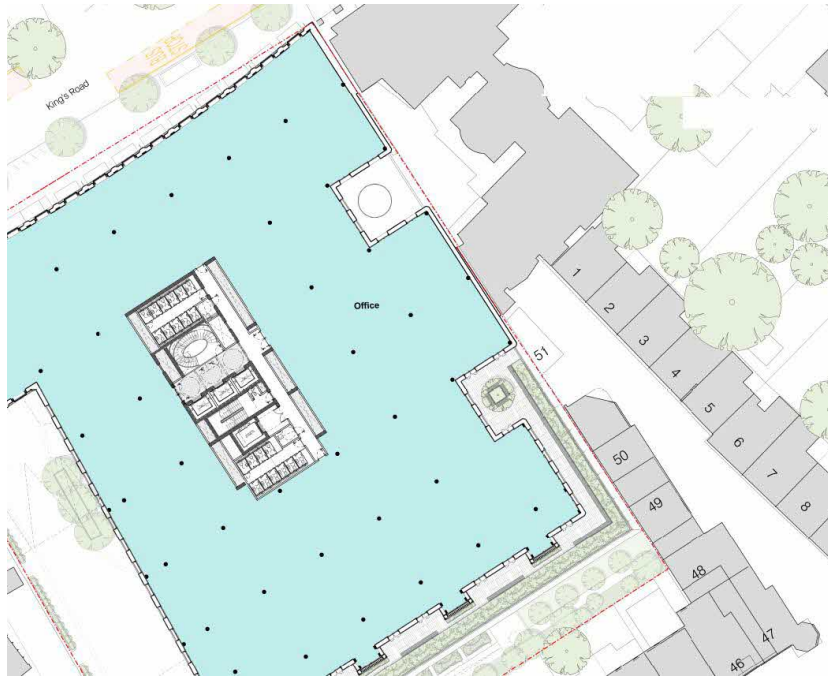


2.32 The new scheme includes a number of external terraces to the east and south elevation of the new building; they are an integral and significant part of the proposal. An external terrace is proposed to the 'gap' between 50 and 51 CIIP and will not only be immediately next to the side walls of houses at 49, 50 and 51, permitting views into the first floor windows of houses nos. 50 and 51, which are set at 90 degrees to the balcony, but it will also facilitate clear views into the houses opposite (1 – 4 CIIP) which lie only between 8.6m - 11 m from this terrace. This creates the potential for direct overlooking from this terrace into the windows of these houses.



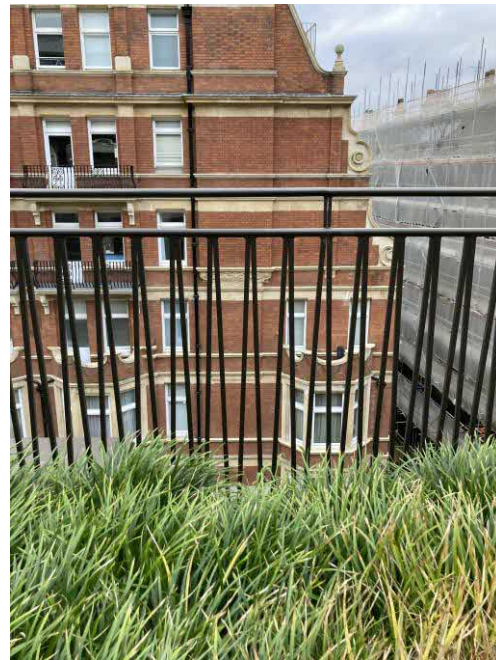
*Photograph showing existing separation between the eastern elevation of the M&S building and the houses at nos. 49-51 CIIP. This will be 'filled in' by the new proposal. The header of one of the first-floor windows in no. 51 CIIP is visible in the photograph.*

2.33 It is noted at the pre-application stage that the proximity and comparable height of the terraces to the windows on Charles II Place properties was raised as a concern (Pre-App 1) with officers commenting that 'Even with the section drawings provided and the planting buffer it would appear direct and close (e.g. around 11.5m to 12m) views would be possible. In their response to the pre-app in December 2022, officers stated 'I remain unconvinced that the planters and controls on hours of access would be sufficient to overcome this issue. You should further explore options here however, I remain of the opinion that this level of terrace [first floor] should be removed from the proposals.' Furthermore, the officer states 'You do not appear to have addressed my concerns about the terraces and windows to the east and the relationship with 1 to 3 Charles II Place. The distance is greater than the southern relationship however, my concerns set out previously remain and should be addressed in the submission through appropriate changes and/or mitigation.'

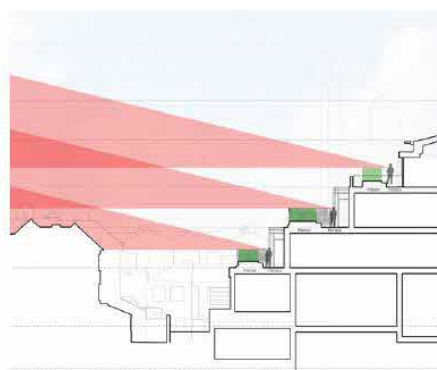


*Extract from Proposed First Floor Plan showing the opportunity for direct overlooking of the windows of a number of the houses at CIIP to the east and south, as well as demonstrating the proximity of the new building to the rear walls of 48-51 CIIP.*

- 2.34 The presence of the terraces and the efficacy of the planters to prevent overlooking was clearly an issue for the Council at the pre-application stage and the submitted proposal does not address this issue. The ‘generously planted planters’ will not offer proposed screening of the terraces from the neighbours’ planters or the neighbours’ houses from the terrace – in addition, there is an area adjacent to the back wall of the house at no. 51 CIIP where no landscaping is present.
- 2.35 At the architect’s request, I visited 127 Kensington High Street and saw planters in situ on that building. The visit confirmed by concerns that the planters certainly do not prevent overlooking – see the photos overleaf. Even were these planters densely planted with a more robust, taller and denser screen, relying on plants to prevent overlooking is problematic given that living things take time to grow and establish, will die, and do not always grow in the manner desired. They offer no protection against the passage of noise or light. In addition, they do not reduce the ‘feeling’ of being overlooked.



*Photographs showing the planters at 127 Kensington which face onto Kensington High Street and Wrights Lane at a busy commercial intersection. The windows to the flats opposite are visible despite the presence of planters.*



*Extract from the Design and Access Statement*

- 2.36 The submitted visuals to the rear elevation of the new building (in the Design & Access Statement) show a wholly inaccurate representation of the proposed measures to prevent overlooking. These show a solid block of planting which terrace users are unable to look through and can only look past either straight ahead or upwards – it is just not realistic! As observed at 127 Kensington, the planters will provide opportunities for overlooking of the CIIP houses and their rear gardens, as well as the potential for residents to ‘feel’ overlooked. This represents a significant change from the current position where there is no overlooking of any of the elevations of these houses or their gardens. The proposed change from the status quo compounds the unacceptable impact.

- 2.37 In terms of overlooking from windows, the supporting text to Policy CL5 states at 22.3.38 that 'When considering privacy, a distance of about 18 metres between opposite habitable rooms reduces inter-visibility to an acceptable degree to most people'. Whilst the context of the current proposal is office window to habitable room window, there is clearly potential for compromised privacy if windows in an office are less than 18m from windows to private dwellings. In this case, there will be less than the required distance, e.g. just over 15m is shown in relation to the windows in the house at 3 CIIP. This essentially single aspect house where the residents rely entirely on their western outlook is not currently overlooked from the application site and the proposal compares most unfavourably to the existing arrangement of 2 storeys, with the top storey set back, and no facing windows. The presence of a bank of windows close to the boundary with residential properties will adversely impact upon residents' privacy. The provision of window film will not overcome this unacceptable position.
- 2.38 The overlooking from both the terraces and the windows in the proposed scheme is unacceptable and the proposal is in clear breach of Policy CL5 of the Local Plan and Policy D3 of the London Plan, which require that there is reasonable visual privacy for occupants of existing properties affected by new development.

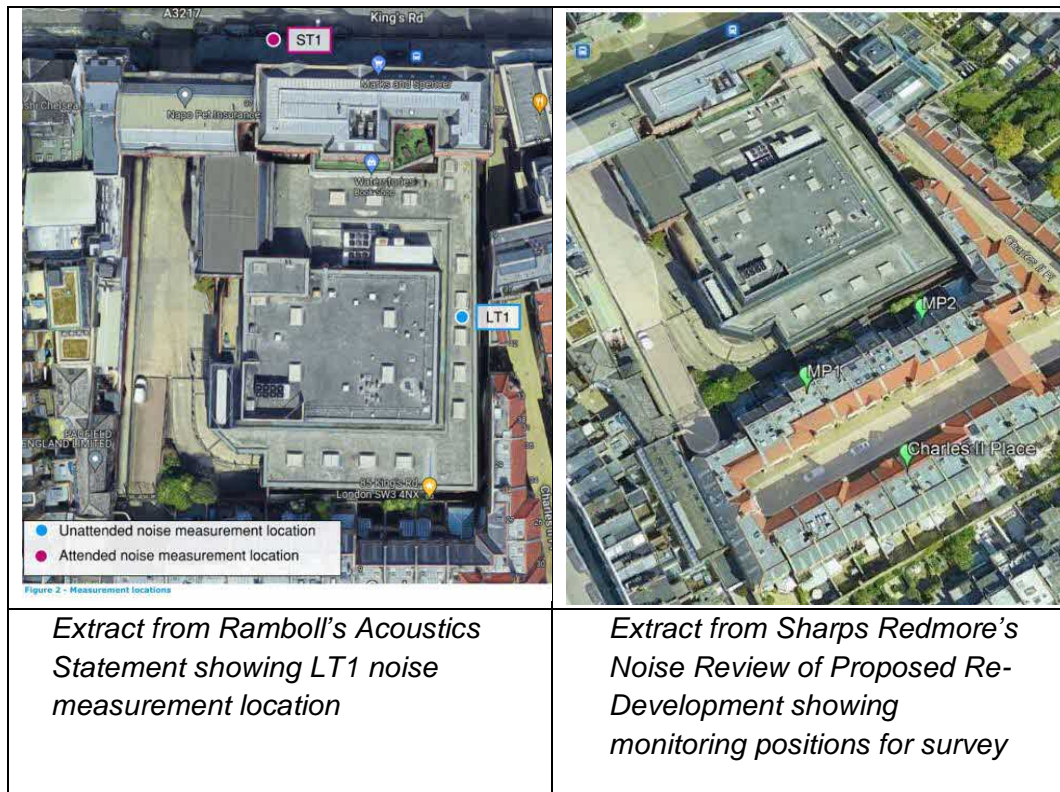
#### Noise and disturbance to residents

- 2.39 Policy CL5 confirms that the Council will require that all development ensures good living conditions for occupants of, inter alia, existing and neighbouring buildings; with the Council requiring that the reasonable enjoyment of the use of the buildings, gardens and other spaces is not harmed due to servicing, parking, noise and disturbance. The associated text at paragraph 22.3.41 confirms that the level and type of activity generated by development in its final form, as well as during construction, can affect the conditions of building users, through increased traffic, parking, noise, odours and vibrations in addition to impacts created by the development's physical structure which can have microclimatic effects. The anticipated level of activity as well as the effects on the local microclimate should be taken into consideration. Policy CE6 similarly confirms that the Council will carefully control the impact of noise and vibration generating sources which affect amenity both during the construction and operational phases of development and Policy SD7 of the London Plan requires that development proposals in town centres should minimise the negative impacts on, inter alia, the amenity of neighbouring residents.
- 2.40 Policy D13 'Agent of Change' of the London Plan requires, inter alia, that new noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses and that Boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed. The 'Agent of Change' principle places the responsibility for mitigating the impact of noise and other nuisances firmly

on the new development. Policy D14 'Noise' requires that development proposals should manage noise by, inter alia, avoiding significant adverse noise impacts on health and quality of life; reflecting the Agent of Change principle as set out in Policy D13; and it notes that the consideration of existing noise sensitivity within an area is important to minimise potential conflicts of uses or activities, and that through the application of the Agent of Change principle, existing land uses should not be unduly affected by the introduction of new noise-generating uses.

- 2.41 A 'Noise Review of Proposed Re-Development' report by Sharps Redmore is attached at Appendix 1 to this letter. It assesses the applicant's Acoustics Statement prepared by Ramboll, raising concerns over the reliability of the report and its conclusions.
- 2.42 The Sharps Redmore report contains a consideration of relevant planning policy and standards, the results of an environmental noise survey carried out in the vicinity of the site, and an assessment of the main potential noise sources. It reviews the applicant's Acoustics Statement and assesses noise from site activities such as mechanical services or plant on site which has the potential to impact off-site, service yard activity such as loading and unloading, construction noise and operational noise from commercial units.
- 2.43 Sharps Redmore undertook a long-term survey over 72 hours within private gardens of houses in CIIP to the rear of the proposal to provide existing day and night-time levels. Section 4 ('Assessment and Review') of their report provides the following observations: –
- 2.43.1 The applicant's report is essentially restricted to plant noise from the proposal and assesses the impact of that against a superseded standard. This may be an historical oversight, but RBKC would reasonably require an assessment undertaken using current guidance and standards and this should be requested.
- 2.43.2 No reference to service yard activities, such as sound from industrial and manufacturing processes, sound from fixed installations which comprise mechanical and electrical plant and equipment, and sound from the arrival and departure of goods vehicles and the unloading and loading of goods and materials, is found within the applicant's acoustic statement, as the earlier superseded standard has been incorrectly applied. The proposal brings activity much closer to the houses at CIIP, including the servicing area and turning space for delivery vehicles, as well as the car park access. At present, these features are closer to King's Road/ set away from CIIP. The lack of reference to these sources of noise is a significant omission in the submitted Acoustics Statement given the potential impact on the nearby residents.





2.43.3 The applicant's survey location was towards the King's Road, on the roof of the M&S with a line of sight to King's Road and located near to existing plant; this does not adequately represent the noise climate in the rear gardens and houses of CIIP. Sharps Redmore confirm that there is an arched access to CIIP off Kings Road and the survey location undertaken by the applicants would have been influenced by road traffic noise along Kings Road, providing higher ambient and background noise levels. The rear gardens of the properties on CIIP do not have line of sight to the King's Road and are reflective of the quietness and tranquillity of the estate. The survey undertaken by Sharps Redmore within the rear gardens of numbers 39 and 43 over a 72-hour period shows background levels significantly lower than those measured and used in the supporting noise document produced by the applicants. Subjectively, CIIP is surprisingly quiet for this part of London. CIIP is effectively screened on all sides from road traffic noise, and it is aircraft that is the most noticeable noise source.

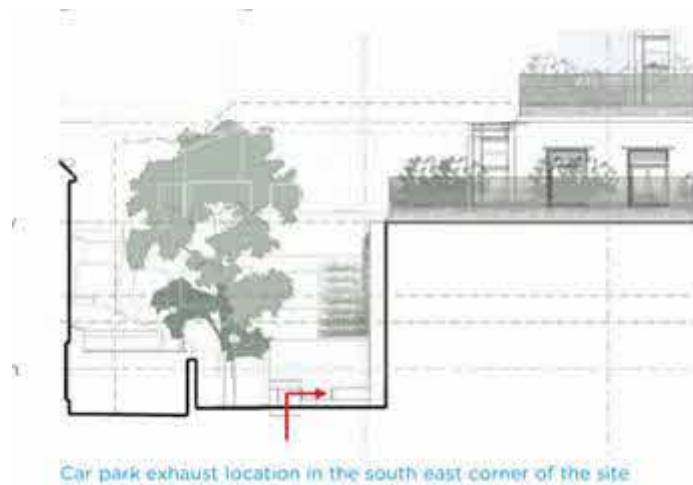
2.43.4 The unrepresentative location of the applicant's noise monitoring equipment means that noise impact from plant/deliveries would be greater than predicted in the supporting assessment, as activities/operations are compared to existing background levels. I raised my concerns over the location of the noise monitoring equipment with the architect prior to the submission of the planning application but this has clearly not been addressed. The applicant's Acoustics Statement considers the background levels to be much higher than the background levels at CIIP. In addition, no comparison is provided for service yard activity and goods vehicle movements. Maximum levels from lorry movements, such a door



slamming, trolley movements, tailgates, brakes etc are not discussed in the applicant's report. Sharps Redmore advise that it is often this maximum parameter that is most relevant in terms of sleep disturbance at night and relevant to the WHO guidelines.

- 2.43.5 In terms of construction/demolition noise; there is little reference within the application. The reference to a construction noise limit based on RBKC guidance of 70 dB LAeq 10 hour is incorrect, given the advice contained within BS 5228:2014 and the "ABC method" for noise limits this would be more appropriate as Category A given the existing low ambient noise levels at the CIIP Estate; this would be 65 dB LAeq 10 hour. This noise limit was previously accepted by the applicant's architect as the relevant noise level in my discussions with him but has not been carried through into the submission.
- 2.43.6 There is no consideration of the impact of vibration from demolition/construction. Given the proximity and absence of any existing vibration sources at CIIP this could be considerable and further information must be requested by RBKC.
- 2.43.7 The use of the external terraces has the potential to be disruptive and substantially more than the existing background levels at CIIP, particularly at night. It also introduces a new type of noise source. Mitigation proposals have not been provided for these noise sources. Sharps Redmore confirm that using landscaped planters as a form of mitigation will not provide any physical mitigation although they may provide some subjective reduction if the noise source cannot be seen (although note my comments on the efficacy of the planters above). The Sharps Redmore report confirms that any screening needs to be impervious and complete to provide a barrier effect.
- 2.44 In summary, therefore, the applicant's noise assessment contains inaccuracies and is incomplete, as it references out of date standards, does not cover all potential noise sources including vibration, construction/ demolition, noise from external terraces, service yard activity and goods vehicle movements – and the measured background noise levels are unrepresentative of the existing background noise levels at CIIP. Development plan policies relating to the Agent of Change principle require applicants to clearly demonstrate how noise and other nuisances will be mitigated and managed; this requirement has not been met in the submission.
- 2.45 It is clear from the Sharps Redmore report that the proposal will have a detrimental impact on the residential amenity of the occupiers of CIIP though increased noise, activity and vibration close to the habitable rooms of the CIIP dwellings. Furthermore, the suggested level of 70 decibels (LAeq, 10hr) set out in the submitted Construction Management Plan should be reduced to the daily limit of 65 decibels (LAeq, 10 hr) i.e. Category A as ambient noise levels are clearly low. It is also noted in the Ventilation Supply and Extract document that ventilation to the lower ground floor car park will be mechanically ventilated via a discharge louvre at ground floor in the garden area on the

southeast corner of the site. This appears to exit onto the CIIP properties to the south. This is not only an air quality concern but also a potential noise issue.



*Extract from the Ventilation Supply and Extract report - section showing location of car park exhaust facing towards the houses at 36-46 CIIP*

- 2.46 The concerns over noise are compounded by the unknown hours of operation of the building and its likely use, which could include offices, shops, restaurants, indoor sport, day nurseries, light industry etc. The provision of external terraces, an uncommon feature in offices, suggests that the design may be a precursor to repurposing the office space to other uses which might be expected to have outside areas, e.g. apartments, restaurants, children's nurseries etc. It is noted that the office space on the top floor has the appearance of a penthouse, with a private terrace accessed through full height glazed doors.
- 2.47 It is clear from the plans and visuals that the external terraces will be used for socialising and gatherings. They will be lit demonstrating the intention to use them at nighttime. It is considered that a combination of flexible Class E uses, the proximity of the terraces to the CIIP houses to the rear (south) and to the side (east), their open nature, and the potential opening of the building at all hours, has the potential to cause significant nuisance to CIIP residents.
- 2.48 Whilst a potential mechanism for controlling the use of the building could be considered, such as conditions restricting the future use of permitted development rights or changes of use under Class E, the National Planning Policy Framework is clear that "...planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so." (paragraph 54) and Planning Policy Guidance confirms that such restrictive conditions may not pass the test of reasonableness or necessity (see Paragraph: 017 Reference ID: 21a-017-20190723 Revision date: 23 07 2019).
- 2.49 Another potential avenue could be conditions restricting the use of the external terraces to certain hours, but again, this would not meet the tests of conditions as it is unlikely

that such a condition would be enforceable and if external terraces have been permitted on the building, whether it would be reasonable to restrict their use.

- 2.50 In addition, whilst there is currently an Article 4 Direction in place to prevent any change of use from Class E use to residential use, there is no guarantee that this Article 4 Direction will remain in perpetuity. In the first instance, it is noted that the geographical extent of the Article 4 Direction was reduced by the Secretary of State. In addition, as has been seen through the Covid pandemic, high demand for office space is not guaranteed. At the pre-application stage, the Quality Review Panel requested further evidence of current demand for additional office space in the Borough, but this request does not appear to have been addressed in any detail in the submission. The potential pressure for residential re-use is an entirely reasonable consideration at this stage.
- 2.51 The proposal is therefore contrary to Local Plan Policies CL5 and CE6 and London Plan Policies SD7, D13 and D14.

#### Impact on access to CIIP

- 2.52 CIIP is a development of 51 houses which enjoy rights of access across the application site, providing the only means of residents accessing their houses. These accesses are not only used by residents and the owners of the houses but also of course by others in respect of services, deliveries and emergency services. The free use of these rights is critical to the enjoyment and use of the CIIP houses.
- 2.53 It is noted that there is a 'Draft Construction Traffic Management Plan'. It is considered imperative that there is a 'final' Plan, due to the interrelationship with CIIP. Any impact on CIIP's existing access would mean that the development proposals would be incapable of lawful implementation, so it is important this issue is fully addressed prior to the determination of the application.
- 2.54 The free use of the rights of access to CIIP is critical to the enjoyment and use of the houses in the Estate and clear realistic details of how the development will operate in practice should be provided and agreed.

#### Other matters

- 2.55 It is noted that some statements in the Delivery and Servicing Management Plan (Nov 2022) are incorrect. Paragraph 2.5 states: "Baseline traffic - surveys indicate that residents informally use the access to Charles II Place located to the east of the site as entry to Charles II Place and use the site access to depart."
- 2.56 Please note that this access point is not informal but is the principal ingress to the site which has a one-way circulation.
- 2.57 Paragraph 3.1 of the same document states "The proposals seek planning permission

for the extension and conversion of the existing building to provide 3,998 sqm (GEA) of retail space and 10,097 sqm (GEA) of office space.” This is clearly incorrect (extension and conversion).

- 2.58 Clarification should be sought on the hours of deliveries – the submission suggests 6am until 8pm.
- 2.59 The various construction details are inconsistent in the submission, e.g. the draft Construction Management Plan states that the hours of construction will be as follows: “Monday to Friday 09:30 to 16:30 in line with RBKC requirements” whereas the Site Construction Management Plan states ‘Hard Demolition 9am-noon and 2pm – 5.30pm Mon to Friday’ with ‘Construction Generally 8am to 6pm Mon to Fri’. This should be clarified.

### **3. Conclusions**

- 3.1 To conclude, on behalf of the Board of CIIP, it is considered there are clear grounds on which to object to the substantial redevelopment scheme under PP/23/00968. The proposal: -

represents an overdevelopment of the site which is out of character with its context.

will cause significant adverse impact to the residential amenity of the occupiers of the houses on CIIP due to its height, scale, massing and bulk, and its proximity to their properties, resulting in loss of privacy, overshadowing, loss of daylight and an overbearing/over-dominant detrimental impact.

introduces buildings, servicing and general activity close to the boundary with the CIIP houses, with potential for the creation of nuisance and noise disturbance.

contains external terraces which will overlook the surrounding houses and gardens. The use of landscaped planters will not mitigate against overlooking, noise nuisance or light spillage to existing residents.

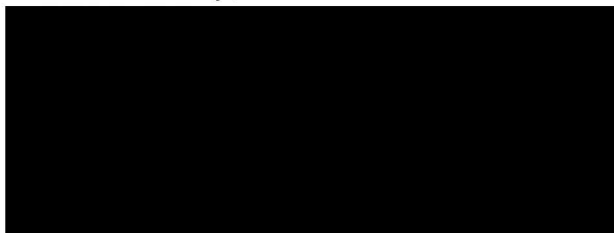
- 3.2 It is our firm submission that there are no apparent material considerations that outweigh the determination of the application other than in accordance with the development plan, with the conclusion that, the proposal is contrary to the provisions of the development plan and should be refused consent.
- 3.3 Furthermore the submitted application is lacking in detail and precision in a number of areas, including the: -

lack of section plans showing the relationship between the CIIP houses and the external terraces and windows.

- inadequacy of the submitted Acoustics Statement in terms of scope and establishing existing background noise levels.
  - lack of technical details relating to daylight and sunlight and the details of hours of construction and noise levels.
- 3.4 The Board of CIIP reserve the right to make further comments when this information is received. The opportunity for review should be provided to all interested parties and consultees.
- 3.5 The refused 2021 'Benoy' scheme (ref. 21/PP/21/01425) is not an appropriate benchmark against which to determine the acceptability or otherwise of the current proposal. It is noted that recurring reference and comparison is made throughout the submission to the refused scheme, although officers were clear at the pre-application stage that it is inappropriate. The refused scheme is not the yardstick for the new scheme, it must be treated as a standalone proposal with consideration given solely to the impact of the new proposal under PP/23/00968.
- 3.6 The Board of CIIP would welcome a meeting with officers, including the Council's Environmental Health Officer, to discuss these concerns.
- 3.7 The Board would also like to invite the Planning Committee to make a Committee Site Visit, as it is particularly helpful on site to appreciate the significant impact the proposal will have on the residential amenity of the close neighbours in CIIP. It will also provide an opportunity to witness the quiet character of the CIIP estate first hand.

I look forward to hearing from you.

Yours sincerely,



Encl.

**Appendix 1** Sharps Redmore report

***Copied to:***

