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By email to
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Dear Nick,

Westminster City Council response to the submission draft Fitzrovia West Neighbourhood Plan (Regulation 16)

Thank you for your formal submission of the draft Fitzrovia West Neighbourhood Plan and associated documents. Clearly an immense amount of time, effort and hard work has gone into the preparation of a neighbourhood plan that supports the community's ambitions for the Fitzrovia West Neighbourhood Area, and as such the council supports the submission of the Fitzrovia West Neighbourhood Plan and commends the work of the Neighbourhood Forum.

The Plan must meet the basic conditions set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004. This principle is also set out in Paragraph 37 of the National Planning Policy Framework (NPPF).

Whilst most of the Neighbourhood Plan's policies would meet the basic conditions in terms of principle, we believe further amendments are needed to many of them to ensure they are robust, effective and enforceable, thereby complying with national planning policy. This requirement is set out in Paragraph 16 of the NPPF, which states that plans should "contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals". Suggested amendments to ensure this is the case for all policies are set out in the Appendix attached to this letter.

Nevertheless, there remain some areas of concern for the council in terms of the principle or requirements of certain policies which do not meet the basic conditions, and would therefore need to be more fundamentally changed, namely:

- **Policy PR2 Housing Provision.** Whilst the Forum's ambitions to limit short-term holiday lettings and to ensure that new housing provision meets the needs of a diverse population align with the emerging City Plan policies, there is insufficient evidence to justify the need for the measures required by Clause H (i.e. that all new built housing be occupied as a "principal residence") in Fitzrovia West above the rest of Westminster. We consider this will be unenforceable and that there

would be a likely marginal impact if the policy was in place as it would only apply to new stock.

- **Policy B1 Small business units** and **Policy B2 Small retail units**. The requirement within these policies to provide smaller units within larger office and retail developments will likely be difficult to implement in practice, as it will unduly restrict development. These policy clauses (Clause 2 of B1 and Clause 3 of B2) should be rephrased to be less restrictive and allow more flexibility.

It must also be noted that the proposed policies will need to be reviewed to recognise the implication of the recent changes to the Use Classes Order published by the Government on 21 July 2020 and coming into effect on 1 September 2020¹.

We hope you consider our suggestions to be constructive, as the council wishes to continue working positively with the Fitzrovia West Neighbourhood Forum to ensure the Neighbourhood Plan is robust and enforceable whilst continuing to meet the aspirations of the local community.

Yours sincerely,

Michela Leoni

Michela Leoni

Policy Officer (Planning)

¹ <https://www.legislation.gov.uk/uksi/2020/757/contents/made>

Appendix: Westminster City Council’s comments on Reg 16 version of the Fitzrovia West Neighbourhood Plan

Policy Number/Section	Westminster City Council’s comments
<u>General drafting</u>	<ul style="list-style-type: none"> • The Neighbourhood Plan Area is defined throughout the plan in multiple ways (“Neighbourhood area”, “Designated area “, “Plan area” and “the area”). It would be helpful to streamline these for clarity and effectiveness. • We recommend you avoid repeating emerging City Plan and Intend to Publish London Plan policy in the proposed policy wording, to ensure clarity and effectiveness as together, the London Plan, City Plan and any made Neighbourhood Plan will form part of the Westminster’s Development Plan and will need to be read as a whole. Avoiding repetition and ensuring alignment with upper-tier strategic policies will help policy implementation. • When in the detailed comments to your plan we point to relevant emerging City Plan policies, please note we are referring to the latest iterations which are set out in document CORE_025_V3 ‘Revised Schedule of Modifications’ (June 2020) which is part of the City Plan Examination library¹. • It would be helpful to streamline the format of the sub-clauses within each policy so that they follow the same system (i.e. either a numbered list or an a, b, c type list). • A hyperlinked table of contents would be helpful to navigate the document. • Whenever evidence in support of the proposed policies is presented, year and source should be mentioned (footnotes are recommended, to keep the narrative in the main text flowing).
<u>Vision and Objectives</u>	<ul style="list-style-type: none"> • The objectives of the Fitzrovia West Neighbourhood Plan align with those of the emerging City Plan.
<u>Policy PR1: Promoting regeneration</u>	<ul style="list-style-type: none"> • While we broadly support the aims of the proposed urban design and conservation policy, the wording and arrangement are not clear and appears incomplete. There are no provisions for alterations to buildings which are not unlisted buildings of merit – except for their demolition. • Clause 1 supports proposals that preserve or enhance listed buildings. This is already covered by the design and heritage policies in the emerging City Plan, therefore it is not considered necessary to repeat. • Clause 2a includes instances where the original uses (or nearest equivalent) of unlisted buildings of merit should be preserved or reinstated. The clause in its current form is ineffective, particularly as it refers to ‘original uses’. This term does not relate to heritage protection and should be changed to ‘original building’, which has a legislative definition. The policy would be better without ‘significant’ as the definition of what is significant in this context is unclear. We recommend reviewing chapter 16 of the NPPF which sets out specific terms with regards to potential harm to heritage assets. It would be even clearer to just say that unlisted buildings of merit should be retained and

¹ <https://www.westminster.gov.uk/cityplan2040>

refurbished.

Paragraph 5.9 says that demolition is only acceptable if there are structural problems. These days it is very rare that a building would be demolished because of its structural condition. Most buildings are capable of repair.

The policy would be clearer if it stated:

1. Proposals to be retain and refurbish unlisted buildings of merit will be supported.
2. Proposals to demolish unlisted buildings of merit will be resisted, unless there are exceptional circumstances to justify their loss.

- General protection against development causing harm to heritage assets (as detailed in clause 2b) is already provided by the design and heritage policies in the emerging City Plan, therefore it is not considered necessary to repeat this.
- Clause 2b does not read clearly or coherently. If a roof will cause harm to heritage assets it should be unacceptable, even if there are 'precedents' as each proposal should be judged on its own merits. Precedents would be unlikely to justify proposals which are harmful. This should state proposals will be supported where the additional floor will not cause harm to the building or the conservation area. Does the policy mean roof extensions are acceptable in the listed streets? We would suggest that there should be a separate policy or policy clause dealing with roof extensions, not just linked to unlisted buildings of merit, otherwise there is no policy dealing with roof extension on other buildings. In any case, this policy should conform with the City Plan, particularly Policy 41. Regard should also be had to the new Permitted Development Rights² for roof extensions (noting these will not apply in conservation areas or on listed buildings and only apply to buildings which date post 1948 to 2018). The exception in the area between Oxford Street and Eastcastle Street, and that part of Great Portland Street south of Margaret Street would also need to be supported by evidence.
- Clauses 2b and 2c are not specific to unlisted building of merit – they should apply to all buildings.
- Clause 3 applies to 'all other buildings' which means buildings which are not unlisted buildings of merit. Sometimes planning permission may be granted for the replacement of an unlisted building of merit but there is no policy to deal with this.
- Clause 3b is partly covered by the design and heritage policies in the emerging City Plan. While it may be helpful to retain this clause, it would be more effective if this applied to all developments (and not just for 'all other buildings').
- The wording of Clause 3d is ineffective. Emerging City Plan policy already requires affordable housing to be provided on site, while setting out provisions for exceptional circumstances where this is impractical or inappropriate. The London Plan already requires viability statements to be made public with planning applications

² <https://www.legislation.gov.uk/uksi/2020/755/article/1/made> and <http://www.legislation.gov.uk/uksi/2020/632/contents/made>

	<p>in instances where exceptional reasons prevent on site delivery of affordable housing, therefore this policy clause is considered unnecessary and should be removed.</p> <ul style="list-style-type: none"> • Clause 3e – Currently unclear. Does this refer to mixed residential schemes? In any case would it not also make sense if this requirement was also applied to purely commercial or purely residential schemes? There also seems to be an overlapping with your proposed policy EN1, so these policies would benefit from consolidating. • Clause 3g – while some of this is covered by Policy 7 of the emerging City Plan which seeks to protect amenity and minimise adverse impact, this proposed policy is very restrictive and not in conformity with Policy 7 in the City Plan. We do not think this is necessary as already covered by the emerging City Plan. If it was to remain it should refer to unacceptable loss and increases or adverse impacts. • In the final paragraph, the clause saying “Applications will be supported where the scale and massing of adjoining buildings is respected” would link to Clause 3b (as per comment above), it looks a bit out of place here. What is said with regards to tall buildings is sufficiently covered by the design and heritage policies in the emerging City Plan.
<p><u>Policy PR2: Housing provision</u></p>	<ul style="list-style-type: none"> • Clause a – while the encouragement for new housing in the area is supported, the protection of existing housing is already provided by Policy 8 of the emerging City Plan – the clause in the neighbourhood plan is therefore unnecessary. • Clause b – the requirement for all new housing to not be single aspect if north facing may be difficult to achieve if balanced with the pressure to provide new homes. We therefore consider this clause should be removed or, if this is to be maintained, revised wording will be needed to allow for exceptions. The requirement to meet or exceed London Plan floorspace standard seems ineffective. • Clause c – it is unclear which standards it refers to. • Clause e – while we support this ambition, the clause does not go beyond what we say in our emerging City Plan Policy 11 and requirements set by the London Plan – it is therefore unnecessary. • Clause f – The policy clause is currently confusing in its form and requires clarification. It seems to aim to deal with two fundamentally different things: refuse storage and related facilities on the one hand and community meeting and storage space on the other. Is this an editing error? It would be unduly onerous on small scale developments if it is asking for both refuse storage and community space. Policy 38 in the emerging City Plan already sets the requirement for waste facilities in more detail. The proposed clause would not add anything to the City Plan policy and may create confusion in implementing this requirement. What is meant by ‘related facilities’ has also not been defined. The requirement for additional community space will need to be supported by evidence. Paragraph 18.4 of the City Plan makes it clear that new community infrastructure should only be provided where needed. • Clause g – while we support the principle of what this policy seeks to achieve for Fitzrovia West, parking is a strategic matter which is best dealt with by the council rather than at the micro-scale through neighbourhood

	<p>plans, where it will have a limited impact, especially as parking zone boundaries do not align with Neighbourhood Areas.</p> <ul style="list-style-type: none"> • Clause h – the ‘principal residence’ criteria raises some concerns as there is insufficient evidence that this particularly affects Fitzrovia West above the rest of Westminster to justify a different approach in this area. We consider this will be unenforceable and that there would be a likely marginal impact if the policy was in place as it would only apply to new stock. The aim to limit short term holiday lettings is however supported as it aligns with our City Plan policies. • Clause i – this does not do anything as this is already the regular process – it is therefore unnecessary.
<p><u>Policy PR3: Tourism, arts, culture and entertainment uses</u></p>	<ul style="list-style-type: none"> • Clause 1 – you will need to provide the rationale and evidence to support the 500sqm threshold in the policy justification. Also, the extent of “the area north to Mortimer Street in the Plan area” is not clear – we suggest you represent this on a map. The sentence saying “Cultural activities should be included to provide a balance for premises primarily for alcoholic consumption” is also unclear and would need to be redrafted, including replacing ‘activities’ with ‘uses’. This policy may need to be reviewed to reflect any impact of the recent changes to the Use Classes Order. • Clause 2 – this is more restrictive than the emerging City Plan policy approach to protecting A1 uses (Policy 15) therefore not in conformity. The protection against loss of residential is unnecessary as already covered by the emerging City Plan (Policy 8). • Clause 3 – The requirement to assess impacts appears to be a validation requirement only as there is no accompanying requirement to mitigate any adverse impact identified through this assessment, which renders the proposed policy ineffective. “Tourism and entertainment uses” would also need to be clearly defined (potentially through a glossary definition) to ensure the policy can be implemented. We consider that what this policy clause is seeking to achieve is already required for all developments by Policies 7 and 34 within the emerging City Plan, therefore it is not necessary to repeat. • Clause 4 – we support the requirements for developments to comply with the Agent of Change principle, however this is already covered by Policy D13 of the Intend to Publish London Plan. The emerging City Plan also clearly states the Agent of Change principle will be applied, therefore it is not considered necessary to repeat further. • Clause 5 – The proposed policy clause aligns with the aims of draft Policy 44D within the emerging City Plan and with Westminster’s two-metre ‘pedestrian clean zone’ approach. It would be helpful to reference this with the correct name for ease of reading when consulting the two documents alongside one another. As of A-boards, these are not competence of planning policy but fall within the remit of advertisement consent. This should be moved to the supporting text. • Paragraph 5.26 – public houses are already protected under those terms by Policy 17D of the emerging City Plan.

<p><u>Policy PR4: Leisure, sports and community infrastructure</u></p>	<ul style="list-style-type: none"> • Clause 1 – This is already covered by Policy 18 of the emerging City Plan which protects existing community infrastructure and facilities. The requirement to re-provide these uses within the plan area is not in conformity with Policy 18 which recognises that there may be instances where “the loss or relocation is necessary to enable service provision to be reconfigured, consolidated, upgraded, or delivered more effectively as part of a published strategy to improve services and meet identified needs”. This clause should be removed. • Clause 2 – This aligns with Policy 18C(2) of the emerging City Plan, which allows for the loss of facilities in the event of no demand for such use/an alternative community or social use. • Clause 3 – Support for this aim, which is covered by Policy 39C within the emerging City Plan.
<p><u>Policy B1: Small business units</u></p>	<ul style="list-style-type: none"> • Background stats at paragraph 6.3 should show which year this refers to. • Clause 1 supports redevelopment which involves re-provision of small business units. If this intends to deal with B1 units, it will not comply with City Plan Policy D3. It is currently not flexible enough. It would be beneficial to allow for commercial or community uses in the broader sense, also in light of the recent changes to the Use Classes Order. • Clause 2 requires provision of smaller units within larger B1 developments. While we support the principle of providing spaces for small businesses, we consider the size restrictions too restrictive. We are concerned that the policy will unduly constrain developers and landowners in providing flexible employment floorspace to attract investment and bring jobs into Fitzrovia and it would not promote sustainable development. We consider that Policy E2(D) of the Intend to Publish London Plan – which encourages a proportion of employment floorspace within larger developments to be capable of being flexible or small in size – would be sufficient to ensure a building is sufficiently flexible to accommodate a demand for smaller offices/workspaces. If your proposed policy B1 is to be maintained, this clause should be rephrased to be more encouraging and allow more flexibility. We recommend you also remove the specific requirement for “at least one business unit of less than 250smq per 1000smq”, replace “where possible” with “where it would meet an identifiable need” and be supported by a definition of small and independent business. • This policy will need to be reviewed in light of the recent changes to the Use Classes Order.
<p><u>Policy B2: Retail and related uses</u></p>	<ul style="list-style-type: none"> • Clause 1 – It is unnecessary to refer to the City Plan within the policy text. The condition on 18 month vacancy to allow for departure from an A1 use would not conform to the period set out in the emerging City Plan Policy 15D (12 months). We consider this is sufficiently covered by the City Plan therefore this clause is unnecessary. The focus on providing a vibrant and active street frontage is supported. • Clause 2 – the principle of protecting small retail units is supported and re-provision of small retail units may be possible, in instances where there is evidence of the value of the current function and character. • Clause 3 – requires the provision of at least 10% smaller retail units within larger retail developments. This policy clause will likely be difficult to implement in practice, as it will unduly restrict development. It should therefore be

	<p>rephrased to be more encouraging and allow more flexibility. We recommend you remove the specific requirement for “at least 10% of this space as small retail units” and replace “where possible” with “where it would meet an identifiable need”, and be supported by appropriate evidence. We also consider that it would be better if this was applied only in the identified CAZ Retail Clusters (otherwise it looks like it applies anywhere else other than in the Tottenham Court Road Opportunity Area and the West End International Shopping Centre) – this would better align with our emerging City Plan policies which direct larger retail developments within designated Town Centres.</p> <ul style="list-style-type: none"> • Clause 4 – “parades of shop units” are already protected as they are designated Town Centres, so it is unclear what protection this policy clause would add in practice. • Clause 5 – this clause allows more flexibility in terms of range of uses allowed in the West End International Centre than Policy 15B in the City Plan, particularly the residential element at upper floor levels which is not supported. This clause should be amended to ensure general conformity with the City Plan. • Clause 6 – this is already covered by Policies 15F and 7 in the City Plan, so it is unclear what protection this policy clause would add in practice. • This policy will need to be reviewed in light of the recent changes to the Use Classes Order.
<p><u>Policy GS1: Protecting and enhancing existing green and open spaces</u></p>	<ul style="list-style-type: none"> • The requirement to preserve existing trees and green features set out in paragraph 7.2 is broadly agreed in principle, but it should recognise that existing trees in a poor state will need to be removed (and replaced where possible). This should be in line with the WCC Tree in Public Realm SPD. • The ambition to protect and enhance existing green and open spaces aligns with City Plan objectives and is covered by Policy 35. • It would be helpful if the spaces mentioned in clause 2 of the policy were clearly identified on a map.
<p><u>Policy GS2: Creating new green and open spaces</u></p>	<ul style="list-style-type: none"> • Clause 1 broadly aligns with the requirements of emerging City Plan Policy 35 B and D, however 35B requires incorporation of greening measures “where possible”. The proposed neighbourhood plan policy needs to align with the emerging City Plan. • Clause 2 requires submission of a landscape plan as part of any development proposal. The policy should clarify which type of ‘development’ it refers to as the requirement for a landscape/planting plan will depend on what the development is. The policy wording in clause 2 should be amended to make clear this only applies to major schemes, as it seems to be suggested by the supporting text at paragraph 7.9. It is not appropriate to require a landscape plan for smaller schemes. • Clause 3 requires active support for the conversion of existing streets to provide further amenity space. While the proposals are broadly supported, the details of the proposed changes to the public realm (highlighted in figure 8 on page 38), will be subject to feasibility works, any management and maintenance costs and any proposed road closure/timed closure will be subject to traffic modelling/further studies to understand the impact on the

	<p>neighbouring streets, including on access and servicing issues. The Neighbourhood Forum will need to work with WCC officers, and the proposals will need further appraisal and consultation (in line with what set out in paragraph 7.6). We consider the focus of this clause 3d on just residential parking is not justified. In line with our comment to your proposed Policy PR2 we consider this to be better dealt with at strategic level, therefore this clause should be removed.</p>
<p><u>Policy EN1: Promoting improved environmental sustainability and air quality</u></p>	<ul style="list-style-type: none"> • Support the principle of improving air quality however the requirement for all developments to be air quality positive is more onerous than strategic policies in the City Plan and London Plan and no evidence has been provided to justify a higher standard. Moreover, under this draft policy, developments will have to follow GLA Air Quality Positive guidance which is still emerging therefore it is currently unclear how the requirement for air quality positive developments will be implemented. It is also unclear what viability impact there will be, particularly on small developments as there is no viability evidence in support to this policy. The proposed policy is currently not in conformity with the strategic policies in the emerging City Plan and there is a risk that it will render smaller developments unviable. There is also no evidence that air quality is worse in Fitzrovia West than the rest of Westminster so there is no reason for a different approach in that part of the city, the policy should therefore be removed. • The graph showing PM10 sources in London (Figure 9 on page 42) would sit better close to paragraph 8.6 as it supports the narrative presented there.
<p><u>Policy EN2: Renewable energy</u></p>	<ul style="list-style-type: none"> • Clause 2 requires a comparison of energy usage between the existing development and the proposal scheme. This would only work and be a proportionate requirement on a like for like basis, so this is not appropriate as currently framed. It does not conform with emerging City Plan Policy 37 (clauses A and B) which sets higher standards for energy efficiency. Building Regulations set the basis for energy improvements and the London Plan has already lifted that baseline for larger developments. The example set as part of clause 2B is very specific and is in relation to district heating systems which is confusing as the first point is meant to be holistic. • Clause 3 – improvements to the wording are required to ensure a balance between energy improvements and harm to heritage assets. Adverse impact is too vague wording which is likely to be ineffective. We advise you to review chapter 16 of the NPPF, which sets out the tests of harm to heritage assets and uses specific wording in relation to that. There is also some overlapping between clause 2D and clause 3, so it might be worth consolidating. • Some update in supporting text at paragraph 8.5 needed as it looks dated (e.g. the ULEZ is now in place)

<p><u>Policy T1: Pedestrian movement and sustainable transport</u></p>	<ul style="list-style-type: none"> • While the proposal for a “super grid” is broadly supported, the details, size and locations will need to be subject to further feasibility works and studies/traffic modelling and be agreed with both Westminster and Camden. The proposal for traffic changes in the area shouldn’t be detrimental to nearby areas. • The list of “major highways” at paragraph 9.5 is missing some key routes for traffic, such as Mortimer Street/Goodge Street and Great Portland Street.
<p><u>Policy T2: Improving the distribution and delivery of goods to local businesses</u></p>	<ul style="list-style-type: none"> • We support the aims of this policy, which aligns with emerging City Plan Policy 30.
<p><u>Appendices</u></p>	<p>Appendix 5</p> <ul style="list-style-type: none"> • Reference to the approved Oxford Street District Place Shaping strategy should be made. https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=130&MId=4647