

# A tangible sense of concern

In spite of the Prime Minister's claims of a war on motorists, London's roads are changing for the better, says Peter Murray

For the last decade, NLA's Active Travel Summits have exhibited a feeling of optimism that London's roads were changing for the better. In the past, NLA supported Mayor Johnson's Mini Holland programmes. We liked the idea of a walking and cycling commissioner as part of the Good Growth agenda and cheered when Will Norman took on that post on the election of Sadiq Khan.

High points in the Summits' programmes came with the Government's Gear Change and Active Travel Fund in 2020 to facilitate the rapid implementation of LTNs during the pandemic. Then, in 2022, the setting up of Active Travel England.

So far so good. But a sense of concern was tangible at this year's event in the aftermath of the Uxbridge by-election when the Prime Minister confirmed he had ordered a review into LTNs in England, saying he wanted to support people to "use their cars to do all the things that matter to them. I just want to make sure people know that I'm on their side in supporting them to use their cars to do all the things that matter to them."

Although Labour condemned the comments as "pure hypocrisy" for accelerating and funding LTNs before "denouncing" the policy, Keir Starmer seemed to blame ULEZ for the Tory win and urged Khan to "reflect" on the expansion. "We've got to look at the result. The mayor needs to reflect. And it's too early to say what should happen next."

Even Leo Murray of the climate action group Possible was in a sombre mood when he spoke to the Summit. He had proposed a fleet of lightweight autonomous electric shuttles to ferry people across Hammersmith Bridge, currently closed for repairs. Leo's solution would cost less than £10m, a twentieth of the cost of repairs, which are likely to take up to a decade to complete.

But Murray's plans were recently kiboshed by Hammersmith Leader Steve Cowan when he refused to support a grant application for further research into the proposal.

During question time, there was expected criticism from a local councillor in the audience of electric hire bikes and poor parking by users. Alice Pleasant, Lime's public affairs manager, lived up to her name, providing a polite but robust defence of the bikes' problems while announcing that improve-

ments to security were on their way to reduce the number of stolen bikes (recognisable by the clicking sound they make as they race by).

Perhaps the most positive part of the Summit was the presentation by Bruce McVean of the City of London on progress at Bank Junction, where wider pavements have improved conditions for pedestrians, and better-designed junctions have made cycling safer. All this in the face of robust criticism from the taxi lobby.

But such is the cut and trust of the politics that surround the radical changes that need to take place in our streets to make them healthier and more sustainable. I remember speaking to Mia Birk, who led Portland, Oregon's bicycle revolution in the 1990s. Mia said that progress sometimes faltered with political changes but then got back on track. Right now, Portland is going through a bad patch; as blogger Johnathan Maus writes, "Right now our traffic culture is so toxic and dysfunctional that it's erasing all of



Leo Murray proposed a fleet of lightweight autonomous electric shuttles to ferry people across Hammersmith Bridge

PBOT's (Portland Bureau of Transportation) infrastructure investments, overwhelming their educational campaigns, scaring away bike riders, and lowering the standards for behaviour on our streets."

But it's not all bad in London, as I said to the delegates at the end of the Summit: go out and see the improvements to Bank Junction, go up to Aldwych and see the fantastic pedestrianisation scheme and on down the Strand to Trafalgar Square, redesigned 20 years ago. It started a revolution of creating places for people, a change which will not be stopped, even if every now and then, weak politicians take backward steps. ■

Four years ago *The Standard* reported *Planning in London's* winning scheme by marine engineer Tim Beckett. "A temporary crossing that could be built in three months is being considered to ease the problems caused by the closure of Hammersmith bridge. London Mayor Sadiq Khan said the £5 million proposal - which could be started early next year - will be studied by Transport for London engineers facing a £120 million bill to reopen the Victorian bridge to vehicles."



# The brownfield bonus

Creating the right conditions for the redevelopment of brownfield urban sites has enormous potential, says Mike Hood

At the heart of great property development has to be inclusive growth. This should be the principle that guides all of us as we plan even the smallest intervention in our towns and cities. How are we creating the conditions in which people and their communities can thrive sustainably?

The greatest opportunity we have to do this is to re-purpose land that already has a track record – when one use ceases to deliver, we have to create another. In the mission to improve our great towns and cities, brownfield land in urban areas is our greatest asset.

Our own research, conducted by Development Economics, has found that where housing densities are increased in line with the government's proposed uplift in housing targets, it would be possible to deliver over 1.3 million new homes on brownfield land in the UK, with 385,000 of them in London. Our capital is a living case study of how urban brownfield development can be truly transformative – just look at the regeneration of Stratford, driven by the Olympic Park redevelopment, and the rejuvenation of King's Cross into a hugely popular mixed-use commercial, retail, leisure and residential destination.

The formula is relatively simple. Clear planning policy, rooted in a deep understanding of the community and consistently applied provides the basis on which sound investment decisions can be made

by those with an appetite to risk their capital.

But there is a problem here. Our planning system is currently a huge block on delivering these kinds of projects. It's both overburdensome and overburdened. We need to find ways of unblocking it. Innovative programmes like Public Practice and the Government's recent announcement of a Planning Skills Delivery Fund to increase the number and quality of planning officers in local authorities across the country will help.

Where the system is functioning effectively, with good co-ordination between local and regional leadership, even more could be done with sub-regional frameworks, local delivery partnerships and locally-led development corporations (as in the Olympic Park).

Where there is not a well-functioning local framework of governance with vision and bravery to unlock opportunities for all then we should be considering greater intervention from government to accelerate opportunities through our existing support networks like Homes England, all supported by a better-defined brownfield-first approach in the NPPF.

There is no shortage of institutional capital in the market looking for the opportunities that brownfield development offers - capital that is quite prepared to take well-managed risk. But it's become all too common for capital providers to see too much risk in large brownfield regeneration schemes, looking to the public sector to invest upfront in infrastructure funding as a pre-condition to development. But, of course, there's only so much public money to go around.

Whilst there will always be a role for public funding or guarantees to enable brownfield development, we should not be relying on these to solve all our problems. Rather we should be looking at ways in which we can create the circumstances where institutional capital can invest from inception. Could we lower risk by making planning more predictable and providing incentives for long term ownership commitment through the taxation system? Could we create a process where the ability to pay for community benefits in a scheme could be stretched over a longer term and not linked to implementation of planning?

Mike Hood is CEO at LandsecU+I and CEO of Landsec's urban, mixed-use regeneration arm



The best kind of capital is that which looks to the long term – great places don't happen overnight. Investors who understand that long term partnership creates truly sustainable value will share in the benefits.

The only way we can create a step change in the system is to work together as an industry. Recently we joined forces with British Land to publish a paper on how we can change the planning system to help make brownfield urban regeneration more successful. We came up with a number of practical recommendations for policymakers - low-hanging fruit that can be delivered quickly and without significant taxpayer funding.

First, we think that brownfield urban regeneration should be defined as its own category in the National Planning Policy Framework (NPPF). At the moment, all previously developed land is lumped in under one definition and treated the same regardless of how suitable it is for development.

This approach fails to take into account that some forms of brownfield development are inherently more complex than others – particularly those sites, like our own at Mayfield in Manchester, that have strong existing connections with local transport infrastructure and are consequently best placed to house new communities and deliver economic growth.

Introducing the new definition for brownfield urban regeneration will help unlock the potential of these sites. Government and local authorities will be able to focus on brownfield urban sites specifically and exclude more contentious sites that aren't connected to urban infrastructure.

We are currently re-developing the O2 Centre on Finchley Road in the London Borough of Camden. A great location, but the space is currently poorly used: there is an ageing shopping centre at



Our proposals to increase economic growth by delivering more homes and jobs on large scale urban sites through reform of the planning system are summarised below. A number of these recommendations are applicable to the planning system as a whole – but: all of them are designed with the primary view of what would facilitate brownfield urban regeneration most effectively.

## Our roadmap to unlocking brownfield urban regeneration

We believe that the following seven principles should be used to guide future reforms to the planning system and in so doing unlock investment and growth across the country.

- Define and focus on brownfield urban regeneration
- Secure quick wins and pilot new ways of working in progressive authorities
- Resource the system effectively and reduce complexity and duplication to improve performance
- Encourage proportionate decision-making to ensure that planning decisions are taken at the appropriate level with the appropriate level of expertise
- Enable development on brownfield land through national planning policy
- Create better tax incentives to encourage investment in infrastructure and remediation.
- Put communities at the heart of development

risk of decline and a huge car park next to it. Our masterplan will transform the centre and its surrounding land into a new and inclusive place that works better for the community, delivering 1,800 new homes (35% affordable), two new public parks and 180,000 sq ft of new commercial space.

The site is surrounded by no fewer than five rail/underground stations and has plenty of local bus stops, meaning that all the transport infrastructure will continue to operate within capacity, even with a large addition of residents and workers.

To make all this work better, we need to develop richer partnerships with the communities where we're building. In Camden, we've done a great deal of consultation and the feedback we got meant we could deliver a scheme that directly responds to the priorities of the people who live and work there.

Sometimes, though, the current planning system gets in the way. Its complexity deters people from engaging in the process. Here, everyone loses. It undermines the mutual trust that is needed to shape successful places that are supported and championed by local people. We think a fast-track planning system to prioritise applications where developers commit to and deliver a properly inclusive programme of community consultation could help.

If we work together, we can deliver a virtuous circle. Long-term investment from companies like ours delivers value for everyone, makes good on promises to communities and builds trust. This means lower risk with community support and strong partnerships based on trust, which in turn encourages further long-term low risk capital investment. We have seen this happen before in places where we have built. In many other towns and cities, we can see the opposite - low trust, high risk, no institutional investment - no inclusive growth.

Creating the right conditions for the redevelopment of brownfield urban sites has enormous potential to deliver places that are successful for those who live and work in them, and for our shareholders who risk their capital to fund them.

When we make good places, everyone wins. You can read the full report *More growth, more homes, more jobs*. here:

<https://tinyurl.com/37wjrtpc>

## Appendix - Investigating the opportunity of brownfield urban regeneration

In 2019, U+I (now part of Landsec) commissioned Development Economics to research the ability of brownfield land in urban areas to accommodate housing and jobs growth. The study examined the brownfield land register in a number of urban areas to estimate its ability to accommodate housing and employment land need. The conservative assumptions based on 2019 figures are captured in the data tables below.

Area	PDL developed for Housing (Ha)	Publicly owned PDL developed for housing (Ha)	Housing units developed on PDL ('000s)	Housing units developed on publicly owned PDL ('000s)	Proportion of 2017-2030 housing requirement met on PDL land (%)	Proportion of 2017-2030 housing requirement met on publicly owned PDL land (%)
Greater London	3,083	1,047	197.8	70.6	25.3%	9.0%
Greater Manchester	1,615	638	54.2	21.4	28.2%	11.1%
West Midlands CA	1,786	574	63.8	21.1	40.5%	13.4%
Cambridge	77	36	4.1	1.9	96.3%	45.3%

Source: Development Economics estimates

Area	B1 Land for offices (ha)	B2 Land for industry (ha)	B8 Land for logistics (ha)	Overall employment land required (ha)	Average land required p.a. (ha)
London	94	68	244	411	29.4
Greater Manchester	37	66	128	231	16.5
West Midlands CA	23	66	61	149	10.6
Cambridge	3	1	2	6	0.4

## 6. Create better incentives to unlock urban regeneration

The potential benefits of brownfield urban regeneration are significant, but we need to face the reality of what it costs to deliver these schemes, if we are to unlock them and deliver the economic growth and public benefits local authorities expect.

### Recommendation:

- Creating tax incentives to invest in urban regeneration, modelled on Capital Allowances. The recent Budget confirmed tax incentives for investment in plant and machinery, as it is understood to drive growth. A similar model could be adopted for investment in local infrastructure and remediation of contaminated land to catalyse urban regeneration. This would make urban regeneration schemes more viable and maximise the potential benefits that can be realised for local authorities and communities.



ABOVE: A page from the report

BELOW: Case study from the report



Canada Water Dock

# Unresolved status of nutrient neutrality

The unresolved status of nutrient neutrality calls for urgent attention from policymakers and a swift resolution, says Lawrence Turner

The issue of nutrient neutrality has become a significant hurdle in the planning system, a problem which is generated primarily by agricultural processes and the regulation of water companies. While new housing development accounts for less than one per cent of the problem, it has been burdened with the responsibility to address this issue. The imposed requirements for mitigation phosphates and nitrates have hindered the granting of planning permission, leading to a shortage in housing supply.

This issue has also become highly political. The Government sells the solution as the removal of another EU-era rule and the continuation of Brexit; while environmental objectors conflate the issue, compounded by the public scrutiny that water companies are facing for their pollution practices. In this article, we will delve into the repercussions of the nutrient neutrality problem for the development industry and the unanswered questions surrounding its resolution.

It all began four years ago, when Natural England sent letters to several local planning authorities, stating that housing developments could not proceed if they did not implement mitigation for water neutrality. This requirement has caused numerous applications for housing development to become "stuck" in the system, leading to an estimated backlog of 150,000 homes. The industry has lobbied the Government for a resolution and sought to identify

practical solutions to the issue. Initially, this led to the introduction of nutrient credit schemes, whereby local authorities would identify and purchase land for mitigation for the planting of wetlands and sell "mitigation credits" to developers. What we found, was that this took local authorities a very long time to set up, and the few credit schemes that were running only provided a limited number of credits for sale.

In short this was not a success. Eventually, the Government rightly concluded that legislation was needed to remove the planning system from the problem – it is, after all, the responsibility of the water industry to regulate. This resulted in the proposed amendments to the Levelling Up and Regeneration Bill (LURB) in August 2023. However, while it was assumed these amendments would be supported, they were voted down by Labour peers in the House of Lords, leaving the Government out of time to resolve the issue before the next election.

There is a possibility that a new Bill addressing nutrient neutrality may be introduced during the King's speech on 7 November; however, there has not been an update from Government on this. Nonetheless, the limited time frame before the next general election may hinder the passing of any new Bill and subsequent enactment of secondary legislation. It also remains unclear how the Labour party would approach this problem if they were to form the next UK government, adding further uncertainty to the scenario.

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As it stands, no progress has been made, and the 150,000 homes stuck in planning limbo continue to linger. The cost of implementing mitigation measures is financially burdensome for developers, leading to further hesitancy in committing to these measures. Local planning authorities continue to require expensive mitigation which exacerbates the delay in housing delivery.

Furthermore, the uncertainty surrounding the potential scrapping of mitigation measures creates an unfavourable environment for developers. Moreover, the dilapidating trust in the system may only fall further if developers who have already paid for phosphate mitigation face the possibility of its elimination through subsequent legislation.

Unfortunately, the resolution of the nutrient neutrality problem may not occur until 2030 when the LURB imposes a new duty on water companies to upgrade wastewater treatment areas. In the meantime, the backlog of housing sites has meant that local authorities are finding it increasingly difficult to identify a short-term housing land supply, with many delivering less than the required five years. This prolonged timeline only exacerbates the housing crisis and our reliance on an appeal-based, rather than a plan-led system.

The nutrient neutrality issue has caused significant setbacks in the planning system, particularly concerning new housing development. The burden placed on developers to address this problem has impeded housing delivery. The recent rejection of amendments to the LURB has left us at square one, with no immediate solution in sight. The unresolved status of nutrient neutrality calls for urgent attention from policymakers and a swift resolution to ensure a consistent supply of affordable housing for the future. ■

**On-site (units)**

Potentially in full or combination



**Habitat creation or enhancement; landscaping or green infrastructure**

**Off-site (units)**



**New habitat creation or enhancement on land holdings or via habitat banks**

# BNG: One step closer, two months back

Simon Ricketts says the Government should ensure that remediating brownfield sites is not disincentivised by biodiversity net gain requirements.

Hey you, don't watch that, watch this. If it hadn't been for the pesky BBC piece at the beginning of the day, the Government's press statement Biodiversity Net Gain moves step closer with timetable set out (27 September 2023) would have been a terrific piece of spin.

The statement announced much awaited progress on the nuts and berries of biodiversity net gain (see eg my 2 October 2021 blog post Ecology By Numbers: Biodiversity Net Gain In The Environment Bill (and further back my 30 March 2019 blog post Biodiversity Net Gain: A Ladybird Guide).

How precisely will the complex regime introduced by the Environment Act 2021 be implemented in practice? There was good news in the statement:

"By the end of November, we will publish all guidance and the regulations including:

- the statutory biodiversity metric, critical for calculating the correct biodiversity gain
- the draft biodiversity gain plan template, which will help developers prepare for what they will need to complete during the planning application stages
- the Habitat Management and Monitoring Plan template, which will set out how the improved significant on-site and off-site habitats will be managed for the long term
- a package of Biodiversity Net Gain guidance that sets out further advice for landowners, developers, and Local Planning Authorities around their role and responsibilities in delivering mandatory Biodiversity Net Gain

These materials will ensure that developers and planning authorities have access to the necessary tools and information to effectively implement Biodiversity Net Gain in January 2024, ensuring they deliver the homes that the country needs while benefiting nature and local environments."

The awkward bit? We weren't just expecting the guidance and regulations, all much delayed, but November 2023 was to be when the regime was actually to be implemented! Whoops.

BNG for small sites had already been pushed back to April 2024 and BNG for nationally strategic infrastructure projects was always going to be later, but since 2019 DEFRA's position has been that the BNG

regime would come into effect two years after the Act received Royal Assent (9 November 2021). Whoops again.

Of course the work is difficult – it's a forbiddingly complex regime, quantifying biodiversity numerically and effectively creating a state-backed credits-trading system. But we all knew that – and said as much during the passage of the Bill. Back in my 2021 blog post I naively hoped that the delays in the Bill would allow progress to be made on much of this as the Bill progressed. What have the array of ministers that we have had in DEFRA and DLUHC since 2019 actually been doing?

It isn't just the Government that needs more time to complete its homework. The system relies on local government knowing what it is meant to be doing and being sufficiently resourced to cope with its new responsibilities. Earlier in the month, the RTPI was raising concerns on behalf of its members, RTPI publishes worrying new data ahead of Biodiversity Net Gain implementation deadline (7 September 2023):

- A "survey of our RTPI members found that:
  - 61 per cent of public sector planners cannot confirm they'll have dedicated BNG resource and ecological expertise in-house in place by November.
  - 79 per cent of public sector planners believe that BNG practice would be improved with confirmation of additional 'skills and staff'
  - 78 per cent of public sector planners believe that BNG practice would be improved with additional 'guidance, advice and support'
  - 54 per cent of planners across the public and private sector believe that BNG practice would be improved by giving 'case studies of best practice'"

Let's hope they are in a better position by January.

In another part of the forest, concerns as potential unintended consequences of the BNG regime were raised by the House of Lords Built Environment Committee in its 21 September 2023 report The impact of environmental regulations on development:

"Biodiversity net gain  
178. Liz Hart told the committee that the biodiversity net gain (BNG) requirement is "putting developers off brownfield sites". Remediation of a brown-

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From Simon's blog at [simoncity.com/author/simoncity/](https://simoncity.com/author/simoncity/) Personal views, et cetera



field site, such as removing contaminated soil, can have a negative impact on biodiversity irrespective of any benefits from the removal of contaminants. If the same BNG metric applies to greenfield and brownfield sites, there is no incentive to fund remediation: a developer risks making a substantial financial outlay to remediate a site only to result in potentially significant negative BNG with further investment then being required on mitigation. We heard that the development of brownfield sites may depend on larger developers building on greenfield land to create a surplus of BNG credits.

179. The Minister for Natural Environment and Land Use agreed that where remediation involved removing contaminated soil that was beneficial to wildlife it would have a negative impact on BNG. However, she suggested many brownfield sites have low biodiversity value or will be below the minimum threshold. The Wildlife Trust disagreed, suggesting this is often "far from reality" with brownfield sites commonly being successional habitats, home to a variety of rare species.

180. Brownfield development is a key government policy supported by the public and vital to delivering homes. The Government should ensure that remediating brownfield sites is not disincentivised by biodiversity net gain requirements. Local planning authorities should be able to moderate biodiversity net gain requirements for sites on their brownfield registers."

I have a sense that implementation of this regime is only going to be the start.

In the meantime, even this relatively short two months' delay (assuming the latest commitment is met) sends another really poor signal as to (1) this Government's ability to deliver on its promises and (2) as to the lack of priority that it would appear to be giving to the environment. ■

# M&S mess

Simon Ricketts evaluates the Secretary of State's decision on M&S Oxford Street last July. Read also the recent discussion with Fred Pilbrow the architect at the London Planning & Development Forum

>>> I never thought I would live to see a chief executive of Marks and Spencer plc (Marks and Spencer plc) issue a statement such as this:

"After a two-year process where our proposals were supported at every stage, our investment in 2,000 jobs, building one of the most sustainable buildings in London, improving the public realm and creating a flagship store, is now effectively in the deep freeze. Today the Secretary of State has ignored his appointed expert David Nicholson who recommended approval of our scheme.

When 42 of the 269 shops on what should be our nation's premier shopping street sit vacant, disregarding the expert opinion and approval of the appointed planning inspector and playing to the gallery by kiboshing the only retail-led regeneration proposal is a short-sighted act of self-sabotage by the Secretary of State and its effects will be felt far beyond M&S and the West End. It is particularly galling given there are currently 17 approved and proceeding demolitions in Westminster and four on Oxford Street alone, making it unfathomable why M&S's proposal to redevelop an aged and labyrinthine site that has been twice denied listed status has been singled out for refusal.

The suggestion the decision is on the grounds of sustainability is nonsensical. With retrofit not an option – despite us reviewing sixteen different options – our proposed building would have ranked in the top 1% of the entire city's most sustainable buildings. It would have used less than a quarter of the energy of the existing structure, reduced water consumption by over half, and delivered a carbon payback within 11 years of construction. It is also completely at odds with the inquiry process where the analysis on sustainability, including from independent experts Arup, was accepted.

We cannot let Oxford Street be the victim of politics and a wilful disregard of the facts. At a time when vacancy rates on what should be the nation's premier shopping street are 13% higher than the average UK high street and Westminster Council is pleading for help in managing the growing proliferation of sweet shop racketeers, the Secretary of State has inexplicably taken an anti-business approach, choking off growth and denying Oxford Street thousands of new quality jobs, a better public realm and

what would be a modern, sustainable, flag-bearing M&S store.

There is no levelling up without a strong, growing Capital city, but the ripple effect extends well beyond Oxford Street. Towns and cities up and down the country will feel the full effects of this chilling decision, with decaying buildings and brownfield sites now destined to remain empty as developers retreat. The nation's fragile economic recovery needs Government to give confidence to sustainable regeneration and investment as well as following due process; in London and across the UK. Today the Secretary of State has signalled he is more interested in cheap shot headlines than facts and if it weren't so serious it would be laughable.

We have been clear from the outset that there is **Some of you will get very upset by this blog post I'm sure. But not as upset as Mr Machin is about Mr Gove**

no other viable scheme – so, after almost a century at Marble Arch, M&S is now left with no choice but to review its future position on Oxford Street on the whim of one man. It is utterly pathetic." (Stuart Machin, 20 July 2023)

I last wrote about this saga in my 23 April 2022 blog post *Does My Embodied Carbon Look Big In This?*

Let's remind ourselves of the route this application for planning permission has taken:

- Application submission: 2 July 2021
- Resolution to grant by Westminster City Council: 23 November 2021
- Confirmation by the Mayor that he would not intervene by directing refusal or recovering the application for his own determination: 7 March 2022
- U-turn by the Mayor – he would consider intervening after all
- Re-confirmation by the Mayor that he would not intervene by directing refusal or recovering the application for his own determination: 4 April 2022

- Call-in by the Secretary of State: 20 June 2022
- Inquiry held by inspector David Nicholson between 25 October and 4 November 2022
- Decision by the Secretary of State to refuse planning permission, contrary to inspector David Nicholson's recommendations: 20 July 2023 (David Nicholson's report having been delivered to the Secretary of State on 1 February 2023).

Throughout this process there has been ferocious opposition to the scheme by some prominent groups and individuals – with detailed representations made; lobbying at each stage, and commentary in the media and social media.

I have often criticised the process whereby the Secretary of State can call-in an application, or recover an appeal, for his own decision-making.

What is the point of local democracy? What is the point of a hugely expensive, lengthy, quasi-judicial process, and a 109 page report by one of our most experienced planning inspectors, when you arrive at this sort of outcome?

If Secretary of State didn't like the scheme when he called it in, and was going to refuse it in any event, why even the pretence of due process?

To dip into the decision. First point: of course it's written with an eye to being watertight against legal challenge, by way of making sure that the conclusions revolve around the degree of weight to be attached to specific material considerations and around ultimately subjective assessments as to harm and significance (albeit assessments made without the benefit of hearing the evidence, of accompanied site visits or the ability to ask questions of witnesses). Time will tell if that objective has been secured.

Given that some may think (I couldn't possibly comment) that this is how the Secretary of State reached his decision, I'm going to start with the overall conclusions (paragraph 51 onwards).

The first set of subjective conclusions (paragraph 51) are findings as to "overall conflict with development plan policies D3 and 38 which deal with design, and partial conflict with heritage policies HC1 and 39".

That enables him to take the position that the scheme is in conflict with the development plan overall. With the onus shifted, the question for him is accordingly "whether there are material considera-

tions which indicate that the proposal should be determined other than in line with the development plan."

In favour of the proposal are (paragraph 52) "the advantages of concentrating development in such a highly accessible location, which attracts substantial weight; and the potential harm to the vitality and viability of the area which could follow from a refusal of permission, which attracts limited weight. The heritage benefits carry moderate weight, and the possibility of demolition attracts limited weight. The benefits to employment and regeneration through improved retail and office floorspace, and the benefits in terms of permeability and connectivity, safety and shopping experience and the public realm collectively carry significant weight." As long as properly reasoned, the weight to be attached to each consideration is for the decision maker.

Against the proposal (paragraph 53) "is the Secretary of State's finding that in terms of paragraph 152 of the Framework, the proposal would in part fail to support the transition to a low carbon future, and would overall fail to encourage the reuse of existing resources, including the conversion of existing buildings, which carries moderate weight. He has also found that harm arising from the embodied carbon carries moderate weight; and the future decarbonisation of the grid carries limited weight."

In terms of assessing the heritage impacts of the proposal "the Secretary of State has taken into account the requirements of s.66 of the LBCA Act and the provisions of the Framework. He has found that in terms of paragraph 202 of the Framework, the harm to the settings, and so the significance, of the designated heritage assets would fall into the 'less than substantial' category. In respect of Selfridges and the Stratford Place CA, he has found the harm would be at the upper end of that category; in respect of the Mayfair CA it would be in the middle of that category; and in respect of the Portman Estate CA it would be at the lower end of the category. Overall he has found that the harm to the settings of, and significance of the designated heritage assets carries very great weight. He has further considered paragraph 202 of the Framework and has found that the public benefits of the proposal do not outweigh the harm to the significance of the designated her-



itage assets. The Secretary of State considers that harm from the loss of the nondesignated heritage asset of Orchard House attracts substantial weight and has considered paragraph 203 of the Framework in coming to this decision. In respect of paragraph 189 of the Framework, the Secretary of State considers that the proposal would overall fail to conserve the heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. He considers that the possibility of an Oxford Street CA attracts limited weight."

So what did the scheme in was its design, its less than substantial harm to designated heritage assets which he gives "very great" weight, not outweighed by public benefits; harm from the loss of unlisted Orchard House which he gives substantial weight, and, in terms of climate change issues, the failure to support the transition to a low carbon future (moderate weight), failure to encourage the reuse of existing resources (moderate weight), harm arising from the embodied carbon (moderate weight) and future decarbonisation of the grid (limited weight).

Let's look in more detail at how the Secretary of State reached some of those conclusions.

## Design

His conclusion on non-compliance with policy D3 is said by him to follow from his conclusions on the impact on designated heritage assets (paragraph 43). Similarly policy 38 (paragraph 44). Aside from these conclusions, based on concerns as to heritage aspects, he reaches no conclusions on the design of the scheme.

## Heritage

So let's turn to heritage.

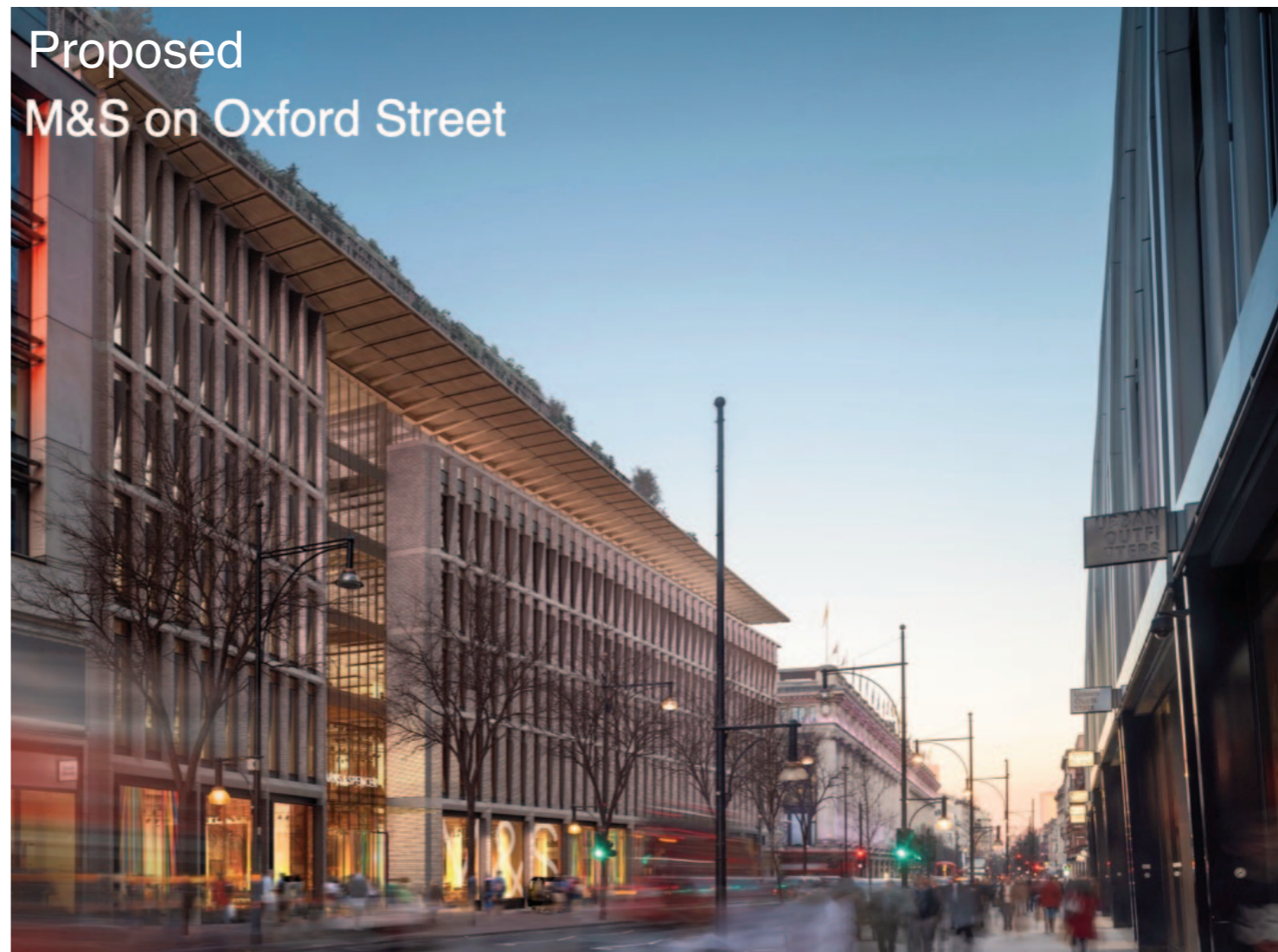
The Secretary of State agrees with the Inspector (paragraphs 12 to 15) as to the level of harm caused to designated heritage assets. However, he disagrees as to the weight to be given to any harm (paragraph 15): "Given the significance of Selfridges, and his conclusions in paragraphs 13-14 above, the Secretary of State considers that the harm to designated heritage assets in this case carries very great weight. He does not agree with the Inspector's assessment that the harm to the setting and so to the significance of Selfridges, including with the additional harm to the settings of the CAs, carries only moderate weight (IR.13.11 and IR13.78)."

The Secretary of State agrees with Historic England rather than the inspector as to the significance of Orchard House as a non-designated heritage asset (paragraph 16) and considers that its loss attracts substantial weight. He recognises, some heritage benefits of the scheme, to which he ascribes moderate weight.

## Carbon

This is the area where we need to pay particularly careful attention.

First, to note that he reaches no concluded view on whether the redevelopment would over the life of the building use less carbon than any replacement: "the Secretary of State has also taken into account the applicant's argument that over the life of the building it would use less carbon than any refurbishment, which would have to rely on an inefficient building envelope (IR13.38). He agrees with the Inspector, for the reasons given in IR13.37 and IR13.39, that the understanding of WLC Assessments and the tools available for calculations are still developing, and therefore it is no surprise that there was disagreement over the lifetime carbon usage for the >>>



would in part fail to support the transition to a low carbon future, and would overall fail to encourage the reuse of existing resources, including the conversion of existing buildings. The Secretary of State considers that this carries moderate weight against the scheme.

46. The Secretary of State has also considered the Inspector's conclusion at IR13.99 that of the material considerations in this case, the extent of embodied energy weighs most heavily against the scheme. He has taken into account that a substantial amount of embodied carbon would go into construction. He has also taken into account at paragraph 21 above the sustainability credentials of the new building, and has further taken into account that the carbon offset payments secured via the s.106 Agreement would be used to deliver carbon reductions (albeit it has not been demonstrated that the carbon reductions would fully offset the embodied carbon arising from this proposal). Given his conclusions on these matters, he considers, unlike the Inspector at IR13.99, that in the particular circumstances of this case, the embodied carbon carries moderate weight."

Finally, a warning against treating this decision as too much of a precedent:

"47. The Secretary of State has considered the Inspector's comments at IR13.94 that there is a 'growing principle that reducing climate change should generally trump other matters'; and his comments at IR13.99 that as climate change policy is still developing, the Secretary of State is entitled to use his judgement to give this consideration greater weight than the Inspector has attributed to it. Policy in this area will continue to develop and in due course further changes may well be made to statute, policy or guidance. This decision letter sets out the Secretary of State's judgement on the weight which attaches to these matters in the circumstances of this particular case.

48. The Secretary of State has considered the Inspector's comment at IR13.95 that fear of precedent could be a material consideration of sufficient weight to justify dismissing the application. However, he is confident that any future decision-maker would pay attention to the whole decision and the detailed reasoning and not just to the outcome of the decision. In any event, the decision turns on its own very specific facts, including the relevant development plan policy matrix, the Inspector's report and the evidence which was before the inquiry, which are all

unlikely to be replicated in other cases."

Easy to say but of course there will be attempts to read across these findings to other projects.

My overall prediction? An important part of Oxford Street may well indeed become vacant or subjected to uses which will do nothing for this vulnerable commercial area – which is currently frankly a disgrace. A project has been first stalled, then killed, brought forward by one of the country's most respected companies, for reasons which aren't even based on any finding that demolition and rebuild will lead to greater release of carbon over the lifetime of the building than a hypothetical refurbishment of the existing building – and, in so far as they are heritage-based, on the one hand ascribe a surprising amount of weight to the moderate levels of harm arising and on the other ascribe little weight to the public benefits that would surely arise from a twenty first century flagship department store in Oxford Street.

Some of you will get very upset by this blog post I'm sure. But not as upset as Mr Machin is about Mr Gove. ■

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>>> proposals and, more particularly, for a refurbishment." (paragraph 21).

That might be seen as surprising given that surely it is the core issue.

It was said by some that redevelopment should be delayed until the grid is decarbonised, when "the extent of embodied energy, particularly from manufacturing materials, and from vehicle emissions would be much lower or eliminated. He agrees that the proposed development now would result in far more carbon emissions than after the UK has achieved a net-zero grid (IR13.99), because a fully renewably sourced electricity grid should allow most construction vehicles, and the manufacture of concrete, steel and other materials, to be undertaken using renewable energy rather than fossil fuels (IR13.40)." However, he recognised that would not be a practical general principle: "An assessment of the weight to give to the fact that development now will give rise to far more carbon emissions than in the future with a net-zero grid depends on the facts of the case and the planning policy context. Evidence has been put before the Secretary of State that the existing store is currently assessed as failing (IR13.71), and M&S has stated that it will not continue to occupy and trade from the store for very much longer if permission is refused (IR13.46). The Secretary of State has also concluded that the development is supported by some current and up to date development plan policies which aim to support the regeneration and economic development of the area (paragraph 26 below). Overall he considers that this matter carries limited weight against the proposal." (paragraph 22)

Strangely, although possibly because of the lack of empirical evidence on the point at the inquiry, he gives no weight to any possible reduction in pressure for development elsewhere (paragraph 23).

Paragraph 24 is important:

"The Secretary of State agrees with the Inspector at IR13.43 that there should generally be a strong presumption in favour of repurposing and reusing buildings, as reflected in paragraph 152 of the Framework. In the circumstances of the present case, where the buildings in question are structurally sound and are in a location with the highest accessibility levels, he considers that a strong reason would

be needed to justify demolition and rebuilding. However, he agrees that much must depend on the circumstances of the case, including how important it is that the use of the site should be optimised, and what alternatives are realistically available. Like the Inspector, the Secretary of State has gone on to consider whether there is a reasonable prospect of an alternative scheme going ahead."

The Secretary of State's position as to the prospect of an alternative scheme going ahead is vital to his overall decision:

"31. The Secretary of State considers that given the Inspector could not draw clear conclusions on this matter, and its importance in the determination of this application, a degree of caution ought to be exercised in drawing overall conclusions from the evidence, and considering the weight to be given to this issue. He finds the applicant's evidence much less persuasive than the Inspector appears to have done in light of the gaps and limitations identified by the Inspector. He does not consider it appropriate to draw such firm and robust conclusions about this issue as the Inspector does (IR13.70- 13.75 and IR13.97). The Secretary of State is not persuaded that it is safe to draw the same conclusion reached by the Inspector, namely that 'there is no viable and deliverable alternative' (IR13.74), which leads to the Inspector's overall conclusion that 'there is unlikely to be a meaningful refurbishment of the buildings' (IR13.97).

32. Overall, the Secretary of State concludes that the evidence before him is not sufficient to allow a conclusion as to whether there is or is not a viable and deliverable alternative, as there is not sufficient evidence to judge which is more likely. The Secretary of State also does not consider that there has been an appropriately thorough exploration of alternatives to demolition. He does not consider that the applicant has demonstrated that refurbishment would not be deliverable or viable and nor has the applicant satisfied the Secretary of State that options for retaining the buildings have been fully explored, or that there is compelling justification for demolition and rebuilding.

33. The Secretary of State notes that M&S has stated that it will not continue to occupy and trade from the store for very much longer if permission is

refused (IR13.46). Whether or not M&S leave the store following the Secretary of State's decision is a commercial decision for the company. However, taking into account the locational advantages of the site, the Secretary of State does not agree with the Inspector at IR13.75 that redevelopment is the only realistic option to avoid a vacant and/or underused site. He considers that there is potential for some harm to the vitality and viability of Oxford Street as suggested by the Inspector at IR13.46-47 and IR13.74. However, he does not agree with the Inspector that harm would be caused to the wider West End beyond Oxford Street (IR13.46) as he considers that this overstates the scale of the impact. He also does not agree with the Inspector's conclusion that the harm would be substantial. The Secretary of State considers that potential harm to the vitality and viability of Oxford Street could arise from a refusal of permission but, unlike the Inspector, he considers that the extent of any such harm would be limited. He attributes limited weight to this possibility."

Time will tell if he is right.

I find his conclusion on the carbon which would go into construction materials unfathomable given that he failed to reach a conclusion on whether the new building would use less carbon than refurbishment of the existing building (paragraph 21 quoted earlier above):

"45. In respect of paragraph 152 of the Framework, the Secretary of State agrees that a substantial amount of carbon would go into construction (IR13.32), and that this would impede the UK's transition to a zero-carbon economy (IR13.87). He has found that there has not been an appropriately thorough exploration of alternatives to demolition (paragraph 32 above). He has also taken into account that the carbon impacts would be to an extent mitigated by the carbon offset payments secured via the s.106 Agreement, which would be used to deliver carbon reductions (albeit it has not been demonstrated that the carbon reductions would fully offset the embodied carbon arising from this proposal). He has also taken into account the sustainability credentials of the new building (paragraph 21 above). Overall he concludes that in terms of paragraph 152 of the Framework, the proposal