

Alison Long
Planning Team South
Royal Borough of Kensington and Chelsea
Town Hall
Hornton Street
London W8 7NX

By email to: planning@rbkc.gov.uk

28 February 2016

Dear Ms Long

Unlawful for RBKC to approve planning application for redevelopment of K1, The Knightsbridge Estate (Ref: PP/16/00423)

I am writing on behalf of Clean Air in London (CAL) to respond to the consultation by the Royal Borough of Kensington and Chelsea on the planning application for the redevelopment of K1, Knightsbridge Estate (Ref: PP/16/00423) (the Application and the Proposed Development). See:

<http://tke-vision.co.uk/>

<https://www.rbkc.gov.uk/planning/searches/details.aspx?adv=0&simple=33-35+Brompton+road&simpleBatch=20&simSubmit=Search&id=PP/16/00423&cn=197584+DP9+100+Pall+Mall+London+&type=application&tab=tabs-planning-1>

CAL is a voluntary organisation which campaigns to achieve urgently and sustainably full compliance with World Health Organisation (WHO) guidelines for air quality throughout London and elsewhere. Further information about CAL can be found at <http://cleanair.london/>.

CAL is independent of any government funding, has cross party support and a large number of supporters, both individuals and organisations. CAL provides a channel for both public concern and expert opinion on air pollution. This submission provides both general and expert comments in response to the Application.

Traffic and buildings are a major cause of air pollution in London, which in turn causes thousands of premature deaths per year, and many thousands more illnesses, chronic illnesses and disabilities. For these reasons, building development impacts on air pollution.

In summary, it would be unlawful for RBKC to approve the planning application for the redevelopment of K1, The Knightsbridge Estate (Ref: PP/16/00423).

Millions of people living or working in Knightsbridge or visiting it are exposed to nitrogen dioxide (NO₂) concentrations that will ‘tend to be among the highest in the world’

You will be aware that the Proposed Development is in an extremely sensitive area that:

- i. is part of the London Plan’s Central Activities Zone (CAZ);
<https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-chapter-2-londons-places/policy-210>
- ii. is one of only two International Retail Centres in Greater London defined in the London Plan;
- iii. is part of an Air Quality Management Area (AQMA) for nitrogen dioxide (NO₂) and particulate matter (PM₁₀);
- iv. includes several ‘street canyons’ around the Proposed Development;
- v. was first in the UK to report a breach of the NO₂ hourly limit value by 8 January for the whole of 2016 (together with Putney High Street);
<http://cleanair.london/legal/breathtaking-breach-of-no2-annual-legal-limit-in-eight-days/>
- vi. has breached the NO₂ hourly and annual mean limit values every year since they entered into force (which have been in legislation since 1999 to be complied with by 1 January 2010). The Air Quality Assessment with the Application estimates NO₂ annual mean concentrations of 112 micrograms per cubic metre (µg/m³) by ‘Harvey Nichols Shop’ in 2014 i.e. nearly three times the legal limit and WHO guideline (paragraph 5.16 on page 23);
- vii. was identified by the Government as having one of the last 50 road links in the whole UK to still be exceeding the NO₂ annual mean value in 2030 i.e. at considerable risk of being the last place and so delaying compliance of the entire London zone and the UK as a whole from achieving compliance;
<http://www.howpollutedismyroad.org.uk/hotspots.php>
- viii. far exceeds WHO guidelines for human exposure to air pollution. The Air Quality Assessment estimates that NO₂ concentrations already substantially exceeding WHO guidelines would increase at and above ground floor level at neighbouring residential and other buildings (e.g. Table 13 on page 22);
- ix. experiences exceptionally high levels of air pollution from diesel vehicles and buildings; and
<http://cleanair.london/sources/carcinogenic-diesel-exhaust-disclosed-for-every-significant-road-in-london/>

- x. experiences exceptionally high volumes of vehicle and pedestrian traffic with commensurately high public exposure to air pollution.

These are extremely serious issues individually, never mind collectively.

Proposals breach Directive 2008/50/EC

Despite mentioning Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Directive) in the documents supporting the Application, the Air Quality Assessment does not appear to assess strict compliance against it. CAL makes five points.

1. First, the application includes an ‘Air Quality Assessment’ by Waterman Infrastructure & Environment Limited that seems to rely heavily on planning guidance by EPUK and IAQM that: is legally flawed (e.g. Table 8 on page 16); judges compliance partly or wholly relative to ‘objectives’ rather than ‘limit values’; and allows ‘professional judgement’ to weigh the importance of legal breaches in reaching an overall conclusion on compliance. Further, underlying data seems to be glossed over or completely omitted. For example:

Paragraph 3.10 (on page 10):

“Given the size of the Development (0.47 hectares of land) and the duration of the construction phase, in accordance with the IAQM guidance, it is considered that a quantitative assessment of the exhaust emissions from construction plant and traffic is not required, and a qualitative assessment is appropriate.”

Paragraph 5.11 (on page 20):

“At this stage, the number of [Heavy Duty Vehicles] HDVs associated with the Development is not known.”

Paragraph 5.14 (on page 24)

*“Using professional judgement, based on the severity of the impact and the concentrations predicted at the sensitive receptors it is considered that the effect of the Development on NO₂ concentrations would be **insignificant**.”*

In CAL’s carefully considered opinion, a conclusion or suggestion of ‘compliance’ with air quality laws is mistaken and the Proposed Development would have serious consequences if it proceeded in such a sensitive area.

2. Second, the requirements of Directive 2008/50/EC are absolute and cannot be waived by ‘professional judgement’ as the EPUK and IAQM guidance seems to imply. For example:
 - i. limit values must be met throughout each zone (save in three specifically excepted circumstances defined in Annex III(A)(2) of the Directive); and
 - ii. air quality must not be made even less compliant in areas where it is already in breach.

In CAL's view, the Consultants have misdirected themselves in law if they consider or suggest that the impact of the Proposed Development on air quality would be 'insignificant' and not breach Directive 2008/50/EC;

3. Third, the Proposed Development if approved may of itself delay compliance of the whole London zone and therefore the UK with one or both the NO₂ limit values;
4. Fourth, the Mayor of London's 'air quality neutral' guidance is flawed and in any way out of date and inadequate to ensure full compliance with Directive 2008/50/EC; and
5. Fifth, any suggestion that the Application could be approved but on the basis that related works would not commence until air quality was, and would remain, compliant with the Directive would, in present circumstances, be inconsistent with the duty of restraint in the last part of the Treaty on European Union (TEU) Article 4 (3).

The TEU can be seen here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>

Unless a robust, realisable and enforceable air quality plan is in place which can demonstrably ensure full compliance with the limit values by the time that demolition and construction works commence and remain so thereafter then the duty of cooperation under TEU Article 4 (3) requires RBKC (and the UK) to refrain from approving such a development.

CAL is attaching an authoritative legal opinion on this matter by Robert McCracken QC that forms part of this submission. Please note, in this context, that CAL considers any change in the 'significant figure' of air pollution concentrations is 'significant' for planning purposes e.g. 41 micrograms per cubic metre ($\mu\text{g}/\text{m}^3$) to 42 $\mu\text{g}/\text{m}^3$ or 40.1 $\mu\text{g}/\text{m}^3$ to 40.2 $\mu\text{g}/\text{m}^3$.

In CAL's considered opinion any decision to approve this Application would breach air quality laws unless at a minimum there is an existing robust, realisable and enforceable plan in place to ban diesel vehicles including cars around the development, including Brompton Road, Knightsbridge, Sloane Street and Basil Street before the demolition and construction works begin e.g. an ambitious ULEZ will cover the area by early 2018 and be tightened by early 2020.

Other issues

CAL is also concerned that:

- the application would introduce two gas-fired Combined Heat and Power plants and two gas-fired boilers into an area which already has exceptionally high building emissions;
- emissions at height seem to worsen at some locations including close to existing residential and office space.

These are serious issues.

Possible mitigation

Many mitigation and adaptation measures are needed to reduce NO₂ emissions and concentrations and protect public health in Knightsbridge. For example, these include:

- including Knightsbridge in a Clean Air Zone by early 2018 that bans pre-Euro 6 diesel and pre-Euro 4 petrol vehicles;
- tightening the Clean Air Zone by early 2020 so that it bans all diesel vehicles (perhaps excepting Euro 6 HDVs) and charges others through 'Emissions Based Road Charging';
- ensuring the highest technically feasible emission standards are adopted for non-road mobile machinery used within the Clean Air Zone;
- ensuring that buildings meet the highest technically feasible standards for energy and emissions or zero local and total emissions; and
- ensuring that buildings comply fully with UK and international standards for indoor air quality and WHO guidelines for human exposure to air pollution.

Please understand that development is not being constrained by air quality laws but rather by the foolish pursuit of diesel by each successive government since 1990 and the catastrophic failure of the technology such that many roads in central London will tend to have the highest concentrations of NO₂ in the world. See:

<http://www.londonair.org.uk/london/asp/news.asp?NewsId=OxfordStHighNO2&StartIndex=31>

If RBKC approves this Application it would be vulnerable to legal challenge in the UK courts and may cause or contribute to Knightsbridge being the last place in the UK (or Europe) to achieve full compliance with NO₂ limit values and thereby result in unlimited lump sum and daily fines being passed to RBKC by the Government under the Localism Act 2011 (estimated by the Mayor to be around £300 million per annum per pollutant). It may also cause or contribute to London failing to comply with UK and EU legal limits for fine particles (PM_{2.5}).

I would welcome the opportunity to discuss these issues with you and your colleagues or give oral evidence to the Planning Committee if invited to do so.

Yours sincerely

Simon Birkett
Founder and Director

Enc.

Legal opinion by Robert McCracken QC

Cc:

Councillor Nicholas Paget-Brown, Leader of RBKC