



Ministry of Housing,
Communities &
Local Government

Mrs Louise Samuel
Linklaters LLP
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London
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Our ref: APP/F5540/W/17/3180962
and APP/F5540/Z/17/3173208

19 July 2019

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) (ENGLAND)
REGULATIONS 2007 – REGULATION 17
APPEALS MADE BY STARBONES LTD
LAND AT CHISWICK ROUNDABOUT, JUNCTION OF GUNNERSBURY AVENUE AND
GREAT WEST ROAD, LONDON, W4
APPEAL REFS: APP/F5540/W/3180962 AND APP/F5540/Z/17/3173208**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who held a public local inquiry on dates between 12 June 2018 and 6 July 2018 into your client's appeals against the decisions of the London Borough of Hounslow to (i) refuse planning permission for a mixed use building of one part 32 storey and one part 25 storeys comprising up to 327 residential units, office and retail/restaurant uses, basement car and bicycle parking, residential amenities, hard and soft landscaping and advertising consent with all necessary ancillary and enabling works in accordance with application ref: 00505/EY/P18 and (ii) refuse to grant advertising consent for 3x digital billboards, application ref: 00505/EY/AD22. Both applications were dated 11 December 2015 and amended in October 2016.
2. On 17 October 2017, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and that planning permission and advertising consent be granted.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and disagrees with his recommendation. He has decided to dismiss the appeals and to refuse planning permission and advertising consent. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR1.6, and at IR12.1 – 12.5, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal

Procedural matters

6. The Secretary of State notes at IR1.2 – 1.5 that the original applications were amended in October 2016, that the amended applications were refused by the Council in February 2017, and that these formed the basis of consideration at the Inquiry. The Secretary of State has therefore, considered the applications as amended, with the full descriptions as above. However, the Secretary of State does not consider that this raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Matters arising since the close of the inquiry

7. Following the closure of the Inquiry, the Secretary of State has received further correspondence. The Secretary of State is satisfied that the issues raised in this correspondence do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
8. The Secretary of State notes the publication of the Housing Delivery Test: 2018 measurement and the Government Response to the Technical Consultation on updates to national planning policy and guidance on 19 February 2019, but does not consider that these raise any issues that affect his decision or that would necessitate additional referrals back to parties. Local Housing Need is not applicable to this case given the development plan is less than five years old, and it was common ground at Inquiry that the Council could demonstrate a five year housing land supply.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the London Plan (LP) Consolidated with Alterations since 2011 (2016) and the Hounslow Local Plan 2015 (HLP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.1 – 4.20, and 4.24 – 4.32.
11. The Secretary of State has also had regard to other relevant policy documents as set out in IR4.33 – 4.44.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'). The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
14. In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

15. The Draft Replacement London Plan (DRLP) is currently undergoing its Examination in Public. Hearings have now been concluded and the Panel will shortly be considering suggested changes and evidence submitted, with a view to submitting a report to the Mayor of London in September 2019. The Secretary of State considers that the emerging policies of most relevance to this case include DRLP policy SD1, seeking to fully realise the growth and regeneration potential of Opportunity Areas and Figure 2.10 which identifies the possible provision of 7,500 new homes and 14,000 new jobs in the Great West Corridor Opportunity Area. The DRLP retains the principle that London is a single housing market and increased the Borough of Hounslow's housing target from 822 dwellings per annum to 2,182. DRLP Policy D6 seeks to optimise density and states that residential development that does not make the best use of the site should be refused.
16. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Draft Replacement London Plan is still at a relatively early stage, any objections are not yet fully resolved and its policies may still be subject to change, the Secretary of State considers that the DRLP policies carry limited weight.

Main issues

Accordance with the Development Plan

17. The site is identified in the HLP as part of the Great West Corridor which is identified as a potential outer London development centre. The Secretary of State agrees with the Inspector that the proposal is contrary to LP Policies 7.8 and 7.10 which seek to conserve the significance of heritage assets and to control developments in World Heritage Sites (WHS) and buffer zones. The Inspector considers at IR12.165 that the proposal would bring a massive uplift to the area around it and is in accord with LP Policies 7.1 and 7.4 and HLP Policies CC1 and CC2. While the Secretary of State recognises that public realm improvements and the publicly accessible elements of the scheme described at IR12.40 and 12.41 do offer some improvement to current conditions, in terms of accessibility and movement, he does not agree that this constitutes the massive uplift as described by the Inspector.
18. The Secretary of State agrees with the Inspector's consideration that the proposal would make efficient use of a brownfield site in compliance with HLP Policies SC1, SC2, SC3 and SC4. He finds that the proposal would not provide the levels of private and communal amenity space needed to comply with HLP Policy SC5, although, like the Inspector in IR12.17, he does not find this to be a telling departure. No harm is caused to Metropolitan Open Land, as required by HLP Policy GB1 and the Secretary of State agrees with the Inspector that the proposed advertisements would raise no significant issues, as required by HLP Policy CC5.
19. HLP Policy CC4 seeks to conserve and take opportunities to enhance the significance of heritage assets as a positive means of supporting an area's distinctive character and sense of history, and that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm will be weighed against the public benefits of the proposal. While the Inspector considers at IR 12.164 that the proposals accord with this policy, the Secretary of State disagrees with his finding that the public benefits of the proposals are sufficient to outweigh the harms to the designated heritage assets (set out in the planning balance and overall conclusion section below). He therefore disagrees with the Inspector and finds that the proposal does not comply with HLP Policy CC4.
20. The Secretary of State further agrees with the Inspector that in terms of design, the proposals do not conflict with LP Policy 7.6, and HLP Policy CC3. However, given his findings in terms of the harm to heritage assets, he disagrees with the Inspector that there is no conflict with LP Policy 7.7 concerning the impact of tall buildings proposed in sensitive locations such as conservation areas, listed buildings and their settings, and World Heritage Sites.
21. The Secretary of State agrees with the Inspector that the mix of uses in the scheme and the housing would comply with LP Policy 2.16, LP paragraphs 3.13 and 3.14A and that the housing would assist with meeting the requirements of LP Policies 3.3, 3.4 and 3.5 while the affordable housing would accord with LP Policies 3.8, 3.9, 3.11, 3.12 and 3.13.
22. Turning to emerging plans, the Great West Corridor Opportunity Area is identified in the DRLP as an area for 7,500 new homes and 14,000 new jobs and identifies the appeal

site as an appropriate location for a tall landmark building. The effective use of the site and mix of uses would comply with DRLP policies D6 and SD1.

23. As a result of the above, and taking account of the Inspector's reasons given in IR12.161-12.170, while the Secretary of State agrees with the Inspector that the proposals are contrary to LP Policies 7.8 and 7.10, he has also found, unlike the Inspector, that the proposals are also contrary to LP policy 7.7, HLP Policy CC4, and that there is also a minor departure from HLP policy SC5. Overall, the Secretary of State disagrees with the Inspector and finds that the proposals do not comply with the development plan when read as a whole.

Impact on the setting and significance of designated heritage assets

24. The Secretary of State has carefully considered the Inspector's assessment of the impact of the proposals on the setting and significance of designated heritage assets (IR12.47-12.150). The Secretary of State agrees with the Inspector that the proposed development would cause harm to the following :

- a. Strand on the Green Conservation Area plus its listed buildings
- b. Kew Green Conservation Area plus its listed buildings
- c. Gunnersbury Park Conservation area plus its listed buildings and Registered Park and Garden
- d. The Royal Botanic Gardens Kew World Heritage Site (WHS) plus its listed buildings

25. The proposed development is outside of the WHS buffer zone, and the range of impacts on the settings of the above heritage assets have been considered individually and in detail by the Inspector (IR12.47-12.150). The Secretary of State agrees with the Inspector's conclusions (IR12.136-12.150) that the harm caused to the heritage assets will be less than substantial and should be weighed against the benefits of the proposal. The Secretary of State has carried out that exercise in paragraphs 34 to 39 of this letter and has reached a different conclusion to the Inspector, and notes that the Inspector recognises at IR12.164 that differing conclusions might be made on this issue.

Five year housing land supply

26. The Secretary of State notes that the Council can demonstrate a five year housing land supply (IR12.152). The Secretary of State agrees with the Inspector that the housing and affordable housing the proposals would bring forward represent a benefit of the proposal.

Design

27. The Secretary of State notes that the Inspector considers the design to be sophisticated and considers that the quality of the architecture proposed represents a significant benefit (IR12.155-12.156). He has also considered the Inspector's assessment of the proposal at IR12.31 – 12.46. The Secretary of State agrees with the Inspector for the reasons given at IR12.31 – 12.37, that conclusions about impacts must be tempered in the light of the Council's plans for the site, the possibility of the Citadel being implemented, and what is and will be coming forward in the wider area as part of the Council's ambitions for the Great West Corridor.

28. The Secretary of State considers that the site has a strategic location, and he recognises the constraints and challenges associated with it. While he agrees with the Inspector at IR12.40 that the proposed design seeks to respond to those challenges in a positive way,

he does not find the proposal to be of such high quality as to be a brilliant response to its immediate context. He finds the scale and massing of the proposal to be such that the proposal does not relate to its immediate surrounding. While he recognises that attempts to minimise this impact have been taken with regard to glazing and fins, the building would still dominate the surrounding area. He considers the design to be a thoughtful attempt to respond to the challenges and opportunities of the site, but due to its scale, he disagrees with the Inspector at IR12.156 that it is a significant benefit of the scheme.

Amenity space and access

29. The Secretary of State has taken account of the Inspector's consideration of amenity space and access at IR12.14-12.17. The Secretary of State considers that the proposals would not provide the levels of private and communal amenity space that HLP Policy SC5 requires. While he has found this to be a limited departure from this policy, the Secretary of State also recognises that the on-site provision, supplemented by the relative proximity of Gunnersbury Park does reduce the weight to be attached to this conflict.

Other Issues

30. The Secretary of State has taken account of the Inspector's analysis of Air Quality (IR12.10-12.13), Daylight/Overlooking/Privacy (IR12.18), Accessibility (IR12.19-12.22), Highway Safety (IR12.23-12.27) and Living Conditions (IR12.28-12.30). The Secretary of State is satisfied that these issues would not give rise to significant harmful impacts and that the development is in a sustainable location.

Planning conditions

31. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.26, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal and refusing planning permission and advertising consent.

Planning obligations

32. Having had regard to the Inspector's analysis at IR11.27-11.40 of the planning obligation dated 19 July 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.40 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing the appeal and refusing planning permission and advertising consent.

Planning balance and overall conclusion

33. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policies 7.7, 7.8 and 7.10 of the development plan or with HLP Policies CC4 and, to a limited extent, SC5, and is not in accordance with the development plan overall. He has gone on to consider whether there are material

considerations which indicate that the proposal should be determined other than in accordance with the development plan.

34. The Secretary of State considers that the proposal would cause harm to the setting and therefore the significance of the World Heritage Site, Conservation Areas and listed buildings as listed above. The Secretary of State considers that this harm will be less than substantial, and he considers that this harm must attract great weight. He has gone on to consider whether the identified 'less than substantial' harm is outweighed by the public benefits of the proposal, as required by paragraph 196 of the Framework.
35. The Secretary of State considers that the provision of housing and affordable housing is a benefit in favour of the proposal. He also takes account of the fact that it is common ground between the parties that the Council can demonstrate a five year supply of housing land. While he notes the prospect of the housing requirement increasing significantly as a result of the emerging Draft Replacement London Plan, given that objections are not yet fully resolved and its policies are still subject to change, the Secretary of State considers that the DRLP policies carry limited weight at present. Accordingly, the Secretary of State attributes moderate weight to this benefit, in contrast to the Inspector's finding of significant benefit.
36. The Secretary of State considers that there are benefits to be provided through the creation of workspace, and in terms of supporting economic growth and productivity. However, he considers that it could be possible for an alternative scheme with lesser impacts on designated heritage assets to also provide benefits of this type. For example, the Citadel scheme, should it proceed, would offer benefits in terms of job provision, and would comply with the Council's emerging policy for this area. The Secretary of State therefore considers that these benefits attract only moderate weight in favour of the proposal. In respect of design, the Secretary of State disagrees with the Inspector that the design would be a significant benefit of the scheme, given his findings on scale and massing set out in paragraph 28 of this letter. Setting aside heritage impacts, the Secretary of State finds the design of the proposal to be broadly neutral in the planning balance, and does not consider that it carries weight as a benefit of the scheme.
37. The Secretary of State finds the impact of air quality, accessibility, living conditions, daylight / overlooking and highway safety to be broadly neutral in the planning balance. While he has found conflict with the development plan in terms of provision of amenity space, he attaches limited weight to this harm for the reasons given above.
38. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets is outweighed by the public benefits of the proposal. In accordance with the duty under section 66(1) of the LBCA Act the Secretary of State has had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess, and attributes great weight to the assets' conservation, as required by paragraph 193 of the Framework. The Secretary of State has also considered paragraph 194 of the Framework which provides that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. He does not consider that the required justification has been made out.
39. Overall, the Secretary of State disagrees with the Inspector at IR12.164, and finds that the moderate weight to be attached to the benefits of the appeal scheme in terms of housing provision, workspace provision and economic benefits, are not collectively

sufficient to outweigh the great weight attached to the identified 'less than substantial' harm to the significance of the above heritage assets. He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.

40. The Secretary of State concludes that the proposal is not in accordance with the development plan overall, and that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

Advertisement Consent

41. Given the Secretary of State's findings in relation to the refusal of planning permission, it follows that the appeal against the refusal of advertising consent must also be dismissed.

Formal decision

42. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a mixed use building of one part 32 storey and one part 25 storeys comprising up to 327 residential units, office and retail/restaurant uses, basement car and bicycle parking, residential amenities, hard and soft landscaping and advertising consent with all necessary ancillary and enabling works in accordance with application ref: 00505/EY/P18 and refuses advertising consent for 3x digital billboards, application ref: 00505/EY/AD22.

Right to challenge the decision

43. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

44. A copy of this letter has been sent to Hounslow Borough Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

General representations

Party	Date
Ruth Cadbury MP	18/09/2017
Zac Goldsmith MP	14/09/2017



Report to the Secretary of State for Housing, Communities and Local Government

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Date: 10 December 2018

The Town and Country Planning Act 1990

**The Town and Country Planning (Control of Advertisements) (England)
Regulations 2007**

Appeals by

Starbones Ltd

Against the decisions of

The Council of the London Borough of Hounslow

Inquiry Opened on 12 June 2018

Land at Chiswick Roundabout, Junction of Gunnersbury Avenue and Great West Road, London W4

File Refs: APP/F5540/W/17/3180962 & APP/F5540/Z/17/3173208

Appeal A: APP/F5540/W/17/3180962

Land at Chiswick Roundabout, Junction of Gunnersbury Avenue and Great West Road, London W4

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Starbones Ltd against the decision of the Council of the London Borough of Hounslow.
- The application Ref.00505/EY/P18, dated 11 December 2015, was refused by notice dated 9 February 2017.
- The development proposed was originally described as 'redevelopment of site to provide a mixed use building of one part ground plus 31 storeys and one part ground plus 24 storeys, comprising up to 320 residential units (Use Class C3), office (Use Class B1) and retail/restaurant uses (Use Class A1-A3), basement car and bicycle parking, residential amenities, hard and soft landscaping and advertisement consent with all necessary ancillary and enabling works'.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to the conditions set out in Annex C, and the completed Unilateral Undertaking.

Appeal B: APP/F5540/Z/17/3173208

Land at Chiswick Roundabout, Junction of Gunnersbury Avenue and Great West Road, London W4

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent for the display of an advertisement.
- The appeal is made by Starbones Ltd against the decision of the Council of the London Borough of Hounslow.
- The application Ref.00505/EY/AD22, dated 11 December 2015, was refused by notice dated 9 February 2017.
- The advertisement proposed was originally described as '4 x digital billboards'.

Summary of Recommendation: That the appeal be allowed and consent granted for the display of the advertisements, subject to the conditions set out in Annex C.

1. Procedural Matters

- 1.1 The Inquiry opened on 12 June 2018 and was closed on 6 July 2018 after a total of 15 sitting days. As well as the Council and the appellant, Historic England¹, the Royal Botanic Gardens Kew², and the Kew Society³, appeared as Rule 6 parties, and participated fully in proceedings. A number of third parties addressed, and took part in, the Inquiry too.
- 1.2 As set out above, applications for planning permission and advertisement consent were originally submitted in December 2015⁴. The proposals were subsequently amended in October 2016⁵.

¹ Referred to hereafter as HE

² Referred to hereafter as RBGK, or Kew Gardens

³ Referred to hereafter as KS

⁴ CDA.18 refers

⁵ CDA.24 refers and the application drawings can be found in A3 format in CDA.17

- 1.3 As a result, the description of development was changed to read: *redevelopment of site to provide a mixed use building of one part ground plus 31 storeys and one part ground plus 24 storeys, comprising up to 327 residential units (Use Class C3), office (Use Class B1) and retail/restaurant uses (Use Class A1-A3), basement car and bicycle parking, residential amenities, hard and soft landscaping and advertisement consent with all necessary ancillary and enabling works.* The application for advertisement consent was changed at the same time and dealt with on the basis that consent was sought for: *3 x digital billboards.*
- 1.4 The Council refused planning permission for the revised proposal by notice dated 9 February 2017⁶. This set out five reasons for refusal referring to, put simply, harm, including, in some cases, substantial harm, to a series of designated heritage assets; a detrimental impact on the character and appearance of the wider area as a result of a failure to attain the very highest standards of design required for a tall building; a lack of provision of affordable housing; insufficient on-site amenity space; and the lack of a completed Planning Obligation which would mitigate impacts on local infrastructure. Advertisement consent was refused on the same date⁷ because of the impact the advertisements would have on the character and appearance of the area, residential amenity, and the setting of nearby heritage assets.
- 1.5 Given that the Council made their decisions on the proposals as revised in October 2016, the Inquiry proceeded, and I have dealt with the proposals, on the same basis. The Secretary of State⁸ should make his decisions on the proposals, as revised.
- 1.6 As the proposal for which planning permission was sought constitutes EIA development, an Environmental Statement⁹ was submitted with the original application¹⁰. The ES was subsequently amended to reflect the October 2016 changes to the scheme¹¹ and some further information was provided voluntarily in the lead up to the Inquiry¹². No-one suggested that the ES, as amended, failed to meet the requirements of the relevant regulations¹³ and in my view, they were right not to do so. It clearly does.
- 1.7 In the lead up to the Inquiry, the appellant and the Council agreed a Statement of Common Ground on Affordable Housing¹⁴ which meant that the reason for refusal relating to this matter was not pursued by the Council. Affordable housing was addressed in evidence, nevertheless, and the matter was the subject of discussion in the Conditions and Obligations session. Also, the appellant and the Council helpfully agreed a general Statement of Common Ground¹⁵ which was handed up in the course of the Inquiry.

⁶ CDB.04

⁷ CDB.05

⁸ Referred to hereafter as SoS

⁹ Referred to hereafter as ES

¹⁰ CDA.09 to CDA.12 inclusive

¹¹ CDA.13 to CDA.16 inclusive makes up the ES Addendum

¹² APP/5

¹³ The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

¹⁴ CDI.02 – referred to hereafter as SoCGAH

¹⁵ INQ38 – referred to hereafter as SoCG

- 1.8 I carried out a series of unaccompanied site visits in the course of the Inquiry. In particular, I visited Kew Gardens on the afternoon of 19 June 2018. On a number of evenings, I took advantage of the long hours of daylight to take in the area around the appeal site itself, Kew Green, and Strand-on-the-Green, as well as other affected conservation areas referred to by the parties.
- 1.9 On 5 July 2018, I made an unaccompanied visit to Caxton Works, a completed Studio Egret West¹⁶ project in Canning Town, followed by an accompanied visit to the Studios of SEW, in Clerkenwell, and Clapham Library, another completed SEW project. I carried out an accompanied site visit on 17 July 2018 that took in a range of viewpoints in and around Chiswick, notably the conservation areas closest to the appeal site, the area around the appeal site, Gunnersbury Park, the cemetery, and the museum in the Large Mansion, Strand-on-the-Green and the views across to it from the south bank of the Thames, and Kew Green. I carried out another accompanied site visit on 10 August 2018 that took in a series of viewpoints in and around Kew Gardens¹⁷.
- 1.10 The Unilateral Undertaking was presented in draft, for discussion, at the Inquiry, alongside a CIL Compliance Schedule prepared by the Council¹⁸. I allowed 14 days after the close of the Inquiry for the submission of a completed version and this was duly received¹⁹. I deal with the contents below.
- 1.11 On 24 July 2018, shortly after the Inquiry closed, the revised National Planning Policy Framework²⁰ was published, replacing the previous version. I reverted to the main parties so that they could comment on how this affected the cases they presented to the Inquiry and have taken their submissions into account²¹.
- 1.12 During the Inquiry, I was made aware of an impending decision by the Mayor of London on a nearby scheme that includes tall buildings on what was referred to as the 'Citroen Site'. After the Inquiry had closed, it was brought to my attention that the Mayor had decided to permit the scheme subject to the completion of an Agreement under s.106, and, because of an objection from HE, amongst others, referral to the SoS. I asked the main parties to comment on this matter given its obvious bearing on the case²².
- 1.13 As one might expect, given the issues in play, there were references throughout the Inquiry to the decision of the High Court in *Bedford BC v SoS for Communities and Local Government* [2013] EWHC 2847 (Admin)²³ and of the Court of Appeal in *East Northamptonshire DC v SoS for Communities and Local Government and Barnwell Manor* [2014] EWCA Civ 137²⁴. Both related to appeal decisions involving the development of wind farms. The main parties were all clearly aware but it is important, I believe, to set out here for the SoS, that I was the Inspector involved in both cases.

¹⁶ Referred to hereafter as SEW

¹⁷ The routes taken, and some of the visuals produced to help can be found at INQ45

¹⁸ INQ34 and INQ34a

¹⁹ INQ46

²⁰ Referred to hereafter as the revised NPPF or revised Framework

²¹ INQ47

²² INQ48

²³ CDH.04 and referred to hereafter as *Bedford*

²⁴ CDH.05 and referred to hereafter as *Barnwell Manor*

- 1.14 The scheme has become known, colloquially, as the *Chiswick Curve* and this title is used at times in what follows.
- 1.15 Electronic versions of the Inquiry documentation can be found at: <http://www.hwa.uk.com/projects/land-at-chiswick-roundabout-public-inquiry/>. I would like to record my thanks to Helen Wilson, the Programme Officer, for her invaluable assistance before, during, and after the Inquiry, and also to the Brentford Free Church for providing such a hospitable venue.

2. The Site and Surroundings and the Proposals

- 2.1 As set out in the SoCG agreed between the appellant and the Council²⁵, the appeal site is 0.28 ha in area, within what is termed the Great West Corridor, and is bound by the Chiswick Roundabout where the North and South Circular Roads meet, to the south, Gunnersbury Avenue to the east, Larch Drive to the north, and the Great West Road, and the M4 motorway (on a raised viaduct) to the east. Immediately surrounding the appeal site is a mix of largely commercial development. Gunnersbury Park and the associated cemetery lie to the north, while the Kew Gardens is to the south, on the opposite side of the river. There are residential areas to the north-east, south, and east.
- 2.2 The proposed development (the subject of Appeal A) is a single building, divided into three separate volumes. The eastern element would be the largest, extending to 32 storeys, stepped back on the 19th and 29th floors to provide external terraces. The maximum height would be 120m AOD (around 105m from ground level). The proposal would include 327 homes from Level 06 upwards, with a mix ranging from studio to 4 bedroom units. From Level 02 to Level 05 would be 5,582 square metres of flexible office floor space, and there would be 487 square metres of retail/café floor space at ground and first floor levels. Two basement levels would accommodate, alongside service elements, parking for 82 cars, 17 motorcycles, and 548 bicycles.
- 2.3 The proposed advertisements (the subject of Appeal B) would comprise three digital advertising screens on the façade of the building. One (21.5m wide x 7.8m high, 15.6m above ground) would wrap around the western side of the building, the second (10m wide x 7.8m high, 7.8m above ground) would front the North Circular, while the third (10m wide x 7.8m high, 3.9m above ground) would overlook the Great West Road.

3. Planning History

- 3.1 The appeal site has an extensive planning history, set out in full in the SoCG²⁶. It is useful to pick out the September 2002 approval of the redevelopment of the site with a 13 storey office building, 59m high, under ref.00505/EY/P3²⁷, subsequently varied under ref.00505/EY/P5. It is agreed that this scheme was lawfully commenced. Also approved, under ref.00505/EY/P14, in December 2012, was the erection of a 52m high landmark office building, partly clad in LED mesh²⁸. This permission has expired.

²⁵ INQ38

²⁶ INQ38

²⁷ Referred to throughout this report as 'the Citadel'

²⁸ Known as 'the Octopus'

4. Planning Policy

- 4.1 The development plan for the area includes the London Plan Consolidated with Alterations since 2011 (2016)²⁹ and the Hounslow Local Plan 2015³⁰. The Council and the appellant have picked out all the salient policies in the SoCG³¹ but I summarise the most important policies below.
- 4.2 In general terms, the LP is the overall strategic plan for London, setting out a fully integrated economic, environmental, transport, and social framework for the development of the capital to 2036. New development is meant to reflect the principles set out in Chapter 7.
- 4.3 In that context, LP Policy 7.1 deals with lifetime neighbourhoods and sets out that development should be designed so that the layout, tenure and mix of uses interface with surrounding land and improve people's access to social and community infrastructure (including green spaces), and public transport, amongst other things. The design of new buildings and the spaces they create should help reinforce or enhance the character, legibility, permeability, and accessibility of the neighbourhood.
- 4.4 LP Policy 7.4 refers to local character and requires, of relevance here, a high quality design response that: has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion, and mass; is human in scale, ensuring buildings create a positive relationship with street level activity and people feel comfortable in their surroundings; allows existing buildings and structures that make a positive contribution to the character of a place to influence the future character of the area; and is informed by the surrounding historic environment.
- 4.5 LP Policy 7.6 covers architecture and requires buildings and structures to be of the highest architectural quality; be of a proportion, composition, scale and orientation that enhances, activates, and appropriately defines the public realm; comprise details and materials that complement, not necessarily replicate, the local architectural character; in the case of tall buildings especially, not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate; incorporate best practice in resource management and climate change mitigation and adaptation; provide high quality indoor and outdoor spaces and integrate well with the surrounding streets and open spaces; be adaptable to different activities and land uses, particularly at ground level; meet the principles of inclusive design; and optimise the potential of sites.
- 4.6 LP Policy 7.7 deals with the location and design of tall and large buildings. In strategic terms, these should be part of a plan-led approach to changing or developing an area by the identification of appropriate, sensitive and inappropriate locations. Tall and large buildings should not have an unacceptably harmful impact on their surroundings.

²⁹ CDC.04 and referred to hereafter as LP

³⁰ CDD.01 and referred to hereafter as HLP

³¹ INQ38

- 4.7 In more specific terms, tall and large buildings should generally be limited to sites in the Central Activity Zone, opportunity areas, areas of intensification, or town centres that have good access to public transport; only be considered in areas whose character would not be affected adversely by the scale, mass or bulk of a tall or large building; relate well to the form, proportion, composition, scale and character of surrounding buildings, urban grain and public realm (including landscape features), particularly at street level; individually or as a group, improve the legibility of an area, by emphasising a point of civic or visual significance where appropriate, and enhance the skyline and image of London; and incorporate the highest standards of architecture and materials, including sustainable design and construction practices.
- 4.8 Moreover, they should have ground floor activities that provide a positive relationship to the surrounding streets; contribute to improving the permeability of the site and wider area, where possible; incorporate publicly accessible areas on the upper floors, where appropriate; and make a significant contribution to local regeneration.
- 4.9 On top of that, tall buildings should not affect their surroundings adversely in terms of microclimate, wind turbulence, overshadowing, noise, reflected glare, aviation, navigation, or telecommunications interference and should not impact on local or strategic views adversely. The impact of tall buildings proposed in sensitive locations should be given particular consideration. Such areas might include conservation areas, listed buildings and their settings, registered historic parks and gardens, scheduled monuments, battlefields, the edge of the Green Belt or Metropolitan Open Land, any World Heritage Site³², or other areas designated as being sensitive or inappropriate for tall buildings.
- 4.10 LP Policy 7.8 refers to heritage assets and archaeology and states that development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.
- 4.11 The approach to the Capital's WHSs is set out in LP Policy 7.10. In general terms, development in WHSs, or their settings, including any buffer zones, should conserve, promote, make sustainable use of, and enhance their authenticity, integrity and significance, and Outstanding Universal Value³³. More specifically, development should not cause adverse impacts on WHSs or their settings (including any buffer zone). In particular, new development should not compromise a viewer's ability to appreciate OUV, integrity, authenticity, or significance. In considering planning applications, appropriate weight should be given to implementing the provisions of WHS Management Plans.
- 4.12 The Great West Corridor is identified in Table 2.1 of the LP as a potential outer London development centre, with a strategic function in the media sector of greater than sub regional importance. LP Policy 2.16 supports the development of such centres.

³² Referred to hereafter as WHS

³³ Referred to hereafter as OUV

- 4.13 In terms of housing, LP paragraph 3.13 makes it clear that London desperately needs more homes in order to promote opportunity and real choice for all Londoners, with a range of tenures that meets their diverse and changing needs, and at prices they can afford.
- 4.14 LP paragraph 3.13 continues that to achieve those aims, the Mayor is committed to taking effective steps to encourage the provision of new homes through policies in the LP (which deal with identifying housing need and capacity to help meet this) on the basis that they are of a high design quality, and supported by social infrastructure essential to a good quality of life.
- 4.15 The pressing need for more homes in London is further recognised in LP paragraph 3.14A which notes that to help boost significantly the supply of housing, the LP sets out the average annual minimum housing supply targets for each borough to 2025. Table 3.1 sets the figure for Hounslow at 822.
- 4.16 LP Policy 3.3 sets out that the Mayor will seek to ensure the housing need identified is met particularly through provision consistent with at least an annual average of 42,000 net additional homes across London. The policy also notes that this target will be reviewed by 2019/20 and periodically thereafter. I return to this matter below.
- 4.17 Optimising housing potential is dealt with in LP Policy 3.4. Taking into account local context and character, the design principles in LP Chapter 7, and public transport capacity, development should optimise housing outputs for the different types of location within the relevant density range shown in Table 3.2. Development proposals which compromise this policy should be resisted. Table 3.2 provides what is termed a sustainable residential quality density matrix for suburban, urban and central settings, using PTAL.
- 4.18 LP Policy 3.5 deals with housing quality and in simple terms requires all housing developments to be of the highest quality internally, externally, and in relation to their context and the wider environment.
- 4.19 Affordable housing is prioritised in the LP. LP Policy 3.8 says that there should be a choice of homes that people can afford while LP Policy 3.9 seeks mixed and balanced communities in terms of tenure and household income to aid social inclusion and avoid segregation by housing tenure. LP Policies 3.11 and 3.12 aim to secure the maximum reasonable amount of affordable housing, having regard to affordable housing targets, the need to encourage rather than restrain residential development, and site circumstances.
- 4.20 LP Policy 3.13 requires development of 10 or more dwellings to include affordable housing. and LP Policy 3.11 identifies an average of 17,000 additional affordable homes per annum as the strategic target. This equates to about 40% of all new dwellings.
- 4.21 The Draft Replacement LP was published for consultation in December 2017³⁴ and the examination is due to take place in the summer of 2019. While the Draft Replacement LP is at a relatively early stage in the process towards adoption, there are elements of it that demand attention.

³⁴ CDC.05 - referred to hereafter as DRLP

- 4.22 First of all, the DRLP identifies the Great West Corridor as a new Opportunity Area. DRLP Policy SD1 seeks to fully realise the growth and regeneration potential of such areas and Figure 2.10 identifies the possible provision of 7,500 new homes, and 14,000 new jobs in the Great West Corridor Opportunity Area.
- 4.23 The DRLP retains the principle that London is a single housing market but sets new targets for each borough, and requires boroughs to optimise delivery. For Hounslow, consistent with the DRLP approach across London, the target is increased from 822 dwellings per annum, to 2,182. DRLP Policy D6 seeks to optimise density and states that residential development that does not make the best use of a site should be refused.
- 4.24 Turning to the HLP, Policy IMP1 states that the Council will take a plan-led approach to all growth and development within the borough that is considered to be in accordance with the presumption in favour of sustainable development enshrined in the (former) NPPF. The Great West Corridor is covered by HLP Policy SV1 which says that the Council will progress a partial review to explore and identify the potential capacity for additional employment-led, mixed-use development along the corridor. Amongst other things, this review will identify sites suitable for tall buildings though it is noted that the proximity of heritage assets places limits on building heights. Furthermore, the policy supports designation as an Opportunity Area in the DRLP.
- 4.25 HLP Policy CC1 is clear that development proposals should have due regard to the Hounslow Urban Context and Character Study 2014³⁵ while HLP Policy CC2 states that the Council will retain, promote and support high quality urban design and architecture to create attractive, distinctive, and liveable places. To contribute to regeneration and growth, HLP Policy CC3 supports tall buildings that are of high quality in identified locations that accord with the principles of sustainable development. The policy lists twelve criteria which any such proposal would be expected to comply with.
- 4.26 Tall buildings will be expected to be sensitively located and be of a height and scale that is in proportion to their location and setting, and carefully relate and respond to the character of the surrounding area; be of the highest standards of architectural design, attractive, robust, and sustainable; be of a scale that reflects their relevance and hierarchical importance when located within a grouping or cluster of tall buildings; be designed to give full consideration to their form, massing, and silhouette, including any cumulative impacts, and the potential impact of this on the immediate and wider context; relate heights to widths of spaces to achieve comfortable proportions and provide a positive edge to the public realm and a human scale through the careful treatment of ground floors and lower levels; provide for a comfortable and pleasant microclimate which minimises wind vortices and overshadowing; provide for biodiversity within the building form and be sensitive to surrounding open spaces, including waterways, to ensure minimal impact; take opportunities to enhance the setting of surrounding heritage assets, the overall skyline, and views; carefully consider the façade and overall detailing to ensure visual interest, vertical and horizontal rhythms, an indication of how the building is

³⁵ CDD.07

inhabited, internal thermal comfort and the visual break-up of the building at varying scales; use materials and finishes that are robust, durable and of the highest quality, with facades providing innate interest, variety and function; incorporate innovative approaches to provide high quality, usable, private and communal amenity space where residential uses are proposed; and comply with the requirements of the Public Safety Zone.

- 4.27 The supporting text to Policy CC3 says that way-marking can come from distinctiveness rather than size, so tall buildings should be placed in suitable locations where access to public transport is good and they provide a relevant marker or focal point.
- 4.28 HLP Policy CC4 seeks to conserve and take opportunities to enhance the significance of heritage assets as a positive means of supporting an area's distinctive character and sense of history. Development proposals are expected to conserve and take opportunities to enhance any heritage asset and its setting in a manner appropriate to its significance; retain, conserve and reuse a heritage asset in a manner appropriate to its value and significance; demonstrate that substantial harm to or loss of a heritage asset is avoided, unless exceptional circumstances can be demonstrated, consistent with the (former) NPPF; demonstrate that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm will be outweighed by the public benefits of the proposal, including securing its optimum viable use; or have regard to any harm to, or loss of, the significance of a non-designated heritage asset, including both direct and indirect effects.
- 4.29 HLP Policy CC5 requires advertisements to respect their context and have regard to considerations of amenity and public safety.
- 4.30 In respect of Metropolitan Open Land³⁶, HLP Policy GB1 aims to protect and enhance its openness, quality and permanence, and expects development proposals near MOL to maintain openness, setting, and visual amenity.
- 4.31 HLP Policy SC1 is aimed at housing growth and sets out the Council's objective to maximise the supply of housing in the borough, in a manner consistent with the principles of sustainable development. The intention is to exceed the annualised completion target in the LP. In turn, HLP Policy SC2 seeks to maximise the provision of affordable housing with a borough-wide target of 40%. There is to be a mixture of 60% affordable/social rented and 40% intermediate tenures. In general terms, a mix of housing sizes and types, to address housing need, is sought by HLP Policy SC3. HLP Policy SC4 balances the need to make efficient use of land against the necessity for high quality design and accessibility.
- 4.32 HLP Policy SC5 looks to ensure that housing has suitable internal, and external, space requiring developments to be of the highest quality inside and out. In terms of external space, proposals are required to demonstrate how the benchmark external space standards set out in Figure SC 5.2 have been considered. Figure SC 5.2 says that communal external space should be provided at no less than 25 square metres for flats with up to 3 habitable

³⁶ Referred to hereafter as MOL

rooms, 30 square metres for up to 4, and 40 square metres for up to 5 habitable rooms, less a reduction for the area of private space provided for each flat. However, the policy also notes that in the case of flats and building conversions, the quantitative space requirements will be applied with regard to exceptional design considerations.

- 4.33 There are a number of other relevant policy documents. The Council published in October 2017, a preferred options consultation, on the Great West Corridor Local Plan Review³⁷. This document carries limited weight at this stage, in particular because it is based on the housing requirement set out in the HLP. Nevertheless, it is apposite to note that the GWCLPR confirms the longstanding need for regeneration, through residential and commercial development and identifies the appeal site as an appropriate location for a tall (that is 60-65m high) landmark building of exemplary design, in compliance with HLP Policy CC3, to act as a gateway marking the eastern end of the Great West Corridor.
- 4.34 While the document is the subject of significant objection, not least from the Brentford East Collective, a group that includes the appellant, this overall approach is underlined in the Draft Brentford East Planning and Design SPD³⁸ (October 2017). It states that: *There is the opportunity to mark entry points into the Great West Corridor.....this would apply to the vacant triangular site at Chiswick Roundabout at the intersection of the Great West Road with the North Circular Road.*
- 4.35 It continues: *A notable and outstanding building at this location could establish a prominent landmark on the A4 eastern approach, as well as emphasise this as a locally significant location. Height could be concentrated on the western side of the roundabout where there is an established context of larger scale buildings and away from the finer grain low-rise areas of Chiswick to the east. A tall building at Chiswick Roundabout would also be a significant landmark gateway to the Golden Mile featuring prominently in views from corridors approaching the junction and would be the last significant taller building before reaching the low-rise areas of Chiswick.*
- 4.36 Moreover: *Acceptable maximum heights for this gateway site have been determined based on iterative testing as part of the Brentford East Capacity Study with the objective of identifying the negligible adverse impact on the surrounding heritage setting and wider skyline and townscape impacts.*
- 4.37 Finally: *High quality, well designed development that does not exceed 60 metres in height is not considered to undermine the delicate and sensitive historic setting and skyline, such as the relationship between the water, buildings and sky above domestic scale housing in the riverine setting of the Strand-on-the Green³⁹.*
- 4.38 As outlined above, the principle of an Eastern Gateway Building (to the Great West Corridor) at a height up to 59m on the appeal site came from the Brentford East Capacity Study Final Report⁴⁰ of July 2017.

³⁷ CDD.04 – referred to hereafter as the GWCLPR

³⁸ CDD.05

³⁹ CDD.05 paragraphs 4.33 to 4.36

⁴⁰ CDD.06

- 4.39 There are a number of documents associated with the LP that warrant attention too. These include the Affordable Housing and Viability SPG 2017, the Housing SPG 2016, Accessible London SPG 2014, Character and Context SPG 2014, and Shaping Neighbourhoods Play and Informal Recreation SPG 2012⁴¹.
- 4.40 More directly relevant in this case is the World Heritage Sites SPG 2012⁴² which is intended to support LP Policy 7.10. Paragraph 4.1 notes that all of London's WHSs have complex and multi-layered settings and that part of the challenge in understanding the setting of a WHS is that it is not fixed and may change as the WHS and its surroundings evolve. This is especially the case in cities like London, whose dynamic nature means ever shifting patterns of uses and activity.
- 4.41 It goes on to say that Kew Gardens, some nine miles from central London, is the most self-contained of the four sites and its immediate surroundings are domestic. The village atmosphere of Kew Green with its church, and lofty Georgian houses, together with the Victorian villas and streets around the station provides an agreeable and low-key approach to the gardens. High rise development north of Kew at Brentford and along the A4 is the most tangible evidence of the Botanic Gardens' urban context⁴³.
- 4.42 The RBGK Management Plan⁴⁴ expands on that and deals with a number of other aspects and it is imperative too to understand and fully appreciate the UNESCO inscription⁴⁵ and the Statement of OUV for Kew Gardens⁴⁶.
- 4.43 There are HE documents that are of great assistance to the type of assessments required in this case. These include HE Advice Note 2 – Managing Significance in Decision-Taking in the Historic Environment 2015, HE Advice Note 3 – The Setting of Heritage Assets 2017, HE Advice Note 3 – Tall Buildings 2015 and HE Conservation Principles 2008⁴⁷.
- 4.44 The Thames Landscape Strategy Kew to Chelsea 2002⁴⁸ is also instructive as are the conservation area appraisals, prepared by the Council, relating to those affected by the proposals⁴⁹.
- 4.45 The Inquiry was heard when the March 2012 version of the Framework remained extant. However, as set out above, the revised Framework was published shortly after the Inquiry closed. In general terms, the main parties accept that the thrust of the revised Framework is similar to that of the preceding version and makes no significant difference to the cases they presented to the Inquiry⁵⁰. That said it is worth highlighting a few areas where there have been additions and/or changes.

⁴¹ CDC.06 to CDC.10 inclusive

⁴² CDC.11

⁴³ CDC.11 page 35

⁴⁴ CDF.10

⁴⁵ CDF.16

⁴⁶ CDF.17

⁴⁷ CDF.12 to CDF.15 inclusive

⁴⁸ CDF.11

⁴⁹ CDF.01 to CDF.09 inclusive

⁵⁰ INQ47

- 4.46 The revised Framework places yet more emphasis on meeting objectively assessed housing needs, including the unmet needs of other areas. Moreover, there is a new section 11 which focuses on making effective use of land, and achieving appropriate densities. Section 12 restates the importance of good design as a key aspect of sustainable development.
- 4.47 Most important, in the context of the issues before the Inquiry is section 16 which deals with conserving and enhancing the historic environment and makes some subtle changes to the previous text. It is worth rehearsing paragraphs 193 to 196⁵¹ in some detail.
- 4.48 Paragraph 193 sets out that: *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to significance.* Paragraph 194 continues: *Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of: a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional; b) assets of the highest significance, notably scheduled ancient monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*
- 4.49 Paragraph 195 goes on: *Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use.*
- 4.50 Finally, paragraph 196 says that: *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.*
- 4.51 There are elements of the Planning Practice Guidance⁵² that are of relevance too; these are dealt with in the text that follows rather than repeated here.
- 4.52 Attention has rightly been drawn to the provisions of the *Planning (Listed Buildings and Conservation Area) Act 1990*⁵³. It is accepted by all that the proposals will affect the settings of a number of listed buildings.

⁵¹ Which replaced the fasciculus represented by the previous paragraphs 131 to 134 (CDC.01)

⁵² Referred to hereafter as the PPG (CDC.02)

⁵³ Referred to hereafter as the Act

- 4.53 On that basis s.66(1) of the Act⁵⁴ is engaged. This requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 4.54 In what I regard as a significant departure from the judgment in *Barnwell Manor*, the Court of Appeal in *Jones v Mordue* [2015] EWCA Civ 1243⁵⁵ accepted that if the decision-maker followed the path set out in paragraphs 131 to 134 of the previous version of the Framework, then they can be said to have discharged their statutory duty under s.66(1) of the Act. There is no good reason to conclude other than that the same must apply to a decision-maker following paragraphs 193 to 196 of the revised Framework.
- 4.55 Finally, s.72(1) of the Act⁵⁶ says, in the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The site is not in a conservation area. While the proposal would undoubtedly affect the settings of a number of conservation areas, unlike s.66(1), s.72(1) does not seek to protect the settings of conservation areas. On that basis, the main parties agree that s.72(1) has no application in the cases at issue and that is correct.

5. The Case for the Council

- 5.1 The Council's case is fully set out in their Closing Statement to the Inquiry and in evidence⁵⁷. The evidence was put together, and the Closing Statement delivered, in the context of the previous version of the Framework. With the help of the Council's post-Inquiry submissions on the matter⁵⁸, I have updated the summary that follows to take account of the revised Framework. Nevertheless, the closing must be read carefully, alongside the evidence, to gain a full appreciation of the case presented, especially those aspects relating to case law. That summary can be presented under a series of headings.

Introduction

- 5.2 At the heart of the case is the need to protect some of the most important and cherished heritage assets in London, including the RBGK WHS, nine conservation areas, and a large number of listed buildings. In heritage terms HE and the local planning authority both delivered powerful evidence of the substantial harm that would be caused to two conservation areas, while RBGK did the same in relation to Kew Gardens.
- 5.3 Set against this is the push by the appellant for a single building, a block of flats with some office space below, that would damage forever, irreplaceable designated heritage assets in one of the great capital cities of the world.

⁵⁴ CDH.01

⁵⁵ Referred to hereafter as *Mordue*

⁵⁶ CDH.01

⁵⁷ INQ42 and LBH/1/A to LBH/8 inclusive

⁵⁸ INQ47

- 5.4 Nobody questions that the architect could have designed a building of acceptable scale mass and height if he had been asked to. However, his hands in this case have been tied: first, by a commercial developer unquestionably driven by the wish to secure as many flats as possible, especially those which would offer sought-after views over Kew Gardens, and other heritage assets; and second, by heritage advice that wrongly only took account of one designated heritage asset - the Palm House, when setting the height, and even then, it was only one particular view of the Palm House. The significance of the conservation areas of Strand-on-the-Green, and Kew Green, and of a series of other, important designated heritage assets, did not influence decisions on scale, mass, form and height, at all.
- 5.5 The appellant's heritage advice⁵⁹ stands alone. It is flatly at odds with the expert assessments of HE, UNESCO, ICOMOS, RBGK, the Greater London Authority, and the Council, acting on the advice its own consultants. The SoS is in the welcome position of being able to draw on a wide-range of expertise on heritage matters. The appellant's advisor disagrees with all of them.
- 5.6 The Council welcomes, and indeed seeks, a tall building on the appeal site - a building providing jobs, and perhaps homes, that would mark the eastern gateway to the Golden Mile. However, it must be a tall building that respects its context. That is why the Council are promoting policies that seek to secure a gateway building on the site, but at the more respectful height of 60m⁶⁰.
- 5.7 The Council's approach is a commendable and balanced one which unlike that of the appellant, considers the entire range of heritage assets that might be affected. It will avoid substantial harm to valued, and very long-standing, conservation areas, and avoid the RBGK WHS being put on the in-danger list. The real choice here is between the balanced and sensible approach of the Council, and others, and the extraordinary approach of the appellant.

Visual Representations

- 5.8 Put simply, in terms of mass, scale and height, the visualisations presented by the Council and RBGK⁶¹ are as close as one can get, on paper, to what would be seen, if the proposals were built out. The Council was the only party to present, as a witness, an expert on visualisations⁶². His expertise in the field is unquestionable, and this was accepted by the appellant⁶³.
- 5.9 On that basis, the visualisations presented on behalf of the Council and RBGK can be relied on as the most accurate visual representation of the proposals before the Inquiry. In the appellant's work, the use of a tilt-shift lens was inappropriate for most of the visualisations presented, as was the lack of any instruction to look at them with one eye closed, and locating the proposal off-centre in the image⁶⁴. These issues have been highlighted before⁶⁵.

⁵⁹ From Mr Coleman

⁶⁰ CDD.05 Pages 60 to 65

⁶¹ LBH/2/B4.2

⁶² Mr Spence

⁶³ Mr Coleman in x-e

⁶⁴ LBH/2/A Paragraphs 6.3, 5.19 and 5.52 refer

⁶⁵ LBH/6 Paragraph 53

Harm and the Presumption against Harmful Development

- 5.10 The Court of Appeal in *Barnwell Manor*⁶⁶ has set out that the statutory test in s.66(1) of the Act requires that considerable importance and weight be given to any harm identified to a listed building, or its setting. The Courts have held that there is a strong presumption against granting permission where there is such harm. The revised Framework applies the same approach to all designated heritage assets and on that basis, considerable importance and weight must be given to any harm found to the significance of designated heritage assets, and there should be a strong presumption against granting permission for development that would cause such harm. This position is accepted by the appellant⁶⁷.
- 5.11 That being the case, any harm to the significance of a conservation area, through an impact on its setting, must attract considerable importance and weight, and there must be a strong presumption against it. While s.72(1) has no application in this case, the workings of the revised Framework makes that a point of little import.

Substantial Harm

- 5.12 In order to apply paragraphs 193 to 196 of the revised Framework, it is necessary for a decision maker to form a view about whether the proposed development would cause harm to the significance of a designated heritage asset that is substantial, or less than substantial. Neither term is defined.
- 5.13 The approach of the Council is that the term substantial harm should be understood by reference to the PPG⁶⁸. This provides that: *In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.*
- 5.14 This guidance was applied quite simply in this case by the Council⁶⁹. For both Kew Green and Strand-on-the-Green Conservation Areas, the view was taken that the proposals at issue would seriously affect key elements of their significance; the village character of Kew Green when seen across the green, and the picturesque charm of Strand-on-the-Green, when viewed from the

⁶⁶ CDH.05

⁶⁷ Mr Coleman in x-e

⁶⁸ CDC.02 Paragraph: 017 Reference ID: 18a-017-20140306

⁶⁹ Through the oral evidence of Mr Grover and LBH/1/A in particular

opposite side of the River. On that basis, substantial harm would be caused to the significance of these conservation areas; a position supported at the Inquiry by HE.

- 5.15 The position of the Council is that PPG guidance is perfectly consistent with a proper reading of *Bedford*⁷⁰. The Government were clearly well aware of this case when they produced the PPG, so it would be bizarre to conclude that the guidance was inconsistent with the judgment.
- 5.16 The High Court in *Bedford* was considering whether an Inspector's formulation of the threshold for substantial harm was lawful, with particular regard to the Practice Guide which was in force at the time (2012). However, the Court was not deciding what substantial harm in the (previous version of the) NPPF meant. The judgment is clear that the (previous version of the) NPPF did not purport to quantify harm or explain what is meant by the adjective substantial. What the Judge did was to derive assistance from the Practice Guidance which was then extant. At paragraph 20 of the judgment, he said: *The Inspector drew some assistance from the Practice Guide, and....he was right to do so. Stopping there, the Judge clearly thought it correct for an Inspector to be guided by, and derive assistance from, an existing Practice Guide, when deciding how to interpret substantial harm. This is entirely consistent with the Council's position which is that the SoS should now be guided by the PPG.*
- 5.17 Even then the ratio of *Bedford* is to be found in paragraph 26 - the Judge's conclusion on what the Inspector had said at that time, with the Practice Guidance as it then stood: *Although Mr Cosgrove did not put his argument quite in this way, I have considered whether the formulation 'something approaching demolition or destruction' is putting the matter too high in any event. 'Substantial' and 'serious' may be regarded as interchangeable adjectives in this context, but does the phrase 'something approaching demolition or destruction' add a further layer of seriousness as it were? The answer in my judgment is that it may do, but it does not necessarily. All would depend on how the inspector interpreted and applied the adjectival phrase 'something approaching'. It is somewhat flexible in its import. I am not persuaded that the inspector erred in this respect.*
- 5.18 Thus what the judge was holding was that the Inspector, by using the formulation 'something approaching' had not unlawfully put the matter too high, because he was applying a flexible standard.
- 5.19 In paragraph 25, the Judge set out his understanding of what the Inspector had been looking for when applying a test of 'something approaching demolition or destruction'. The judge was not giving his own view of what 'substantial harm' meant: *Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.*

⁷⁰ CDH.04

- 5.20 It is notable that the Judge in this paragraph was considering both limbs of paragraph 133 of the previous version of the NPPF – total loss and substantial harm. In terms of physical harm, the Judge considered that ‘demolition or destruction’ was a case of ‘total loss’ and ‘substantial harm’ would occur if there was a lower level of impact namely ‘serious damage to the structure’. Applying the same approach to non-physical harm, ‘total loss’ equates to significance being ‘vitiating altogether’, and substantial harm would occur if significance was ‘very much reduced’.
- 5.21 Therefore the most that can be said is that in *Bedford* the Court confirmed that in the absence of any definition in the (previous version of the) NPPF, and in light of the Practice Guide as it then stood, it was not unlawful (in a case of non-physical harm) to reach a finding of substantial harm where significance would be ‘very much reduced’. Thus, if *Bedford* is interpreted sensibly, it fits perfectly well with current advice in the PPG, and in particular whether the adverse impact seriously affects a key element of its special interest.

Substantial Harm from an Impact on Setting

- 5.22 There is general agreement that harm to setting of a conservation area can amount to substantial harm. Paragraph 194 of the revised NPPF confirms that significance can be harmed or lost through alteration or destruction of a designated heritage asset or by development within its setting.
- 5.23 In a report to the SoS on a housing scheme at Razor’s Farm, Chineham⁷¹, the Inspector opined that: *it is difficult to envisage how an impact on setting.....could ever cause substantial harm*⁷². The SoS disagreed with that⁷³ and the basis for disagreement was accepted by the appellant⁷⁴. Indeed, the PPG says in the section on substantial harm that: *The harm may arise from works to the asset or from development in its setting*⁷⁵.

The Impact of the Proposals on Designated Heritage Assets

Kew Green

- 5.24 The Kew Green Conservation Area was designated as far back as 1969. The Conservation Area Appraisal⁷⁶ describes it as: *an area designated due to its character as an historic open space, the associated high quality of mostly C18th development and its superior riverside environment a visually cohesive area with an easily identifiable sense of place it has a definite village character*. It is, the appraisal continues: *a fine example of an historic green*.
- 5.25 A visually quiet, non-urban skyline is an integral part of that open village character – that is precisely why the appraisal identified as a problem and pressure development which: *may harm the balance of the river and landscape-dominated setting, and the obstruction or spoiling of views, skylines and landmarks*. It is that village character which is at the very heart of the

⁷¹ APP/3/D/6 – APP/H1705/A/13/2205929

⁷² APP/3/D/6 IR10.16 (I should add too that once again, I was the Inspector concerned)

⁷³ APP/4/C17 Paragraph 12

⁷⁴ Mr Coleman in x-e

⁷⁵ CDC.02 Paragraph: 017 Reference ID: 18a-017-20140306

⁷⁶ CDF.02

significance⁷⁷. The appellant agreed, describing it as: *a very beautiful green, with all the qualities that can be expected of an English village green*⁷⁸.

- 5.26 The Council says that the proposal would seriously affect a key element of that significance. The various visual representations⁷⁹ depict a dramatic impact that would seriously undermine that village character in views across the green. The Chiswick Curve would be a highly intrusive, incongruous intervention. In terms of height, mass, and bulk, the tower would loom large, completely altering for the worse, the skyline beyond the green. It would cause substantial harm to the significance of the conservation area.
- 5.27 The appellant relies on two main points - the impact of the busy South Circular Road, and of the consented Brentford FC, and Citadel schemes. Neither provides the claimed justification. The presence of a busy road does not have any meaningful impact in views across the green, nor does it reduce or alter its significance, to the objective observer. Indeed, it makes the presence of an historic open space of village character all the more remarkable. The Brentford FC and the Citadel schemes are plainly not comparable. It is one thing being visible, but another to dominate the skyline; 48m is not the same as 109m.
- 5.28 The appellant in opening⁸⁰ acknowledged that Kew Green has a very particular character and appearance but rather than respecting that, the Chiswick Curve would impose itself in precisely the way SEW say can be avoided: *I am a tower. I've arrived, ba-boom, get out of my way*⁸¹. The appellant relies too on its claim to architectural quality but the cosmetic subtleties of the design would not be obvious in views over Kew Green. What would matter would be the damaging and discordant height, bulk, and mass, completely at odds with the village character of Kew Green.

Strand-on-the-Green

- 5.29 The Strand-on-the-Green Conservation Area was designated even earlier than Kew Green, in 1968. The Thames Landscape Strategy describes the river frontage as *one of the most important historic and architectural waterfronts between Kew and Chelsea*⁸². The description of the special interest in the Conservation Area Appraisal⁸³ is striking: *its use of and setting beside the water's edge, with fishermen's cottages, boat builders' sheds, public houses, maltings and larger and more elegant private houses added in the late 18th century ... The overall effect is one of picturesque charm, with a variety of individual buildings but of common interest and scale.*
- 5.30 The Conservation Area Appraisal identifies as a pressure a vulnerability to inappropriate changes on skyline from the Surrey side and towards Brentford. The appeal scheme would wound the conservation area exactly where the Appraisal says it is vulnerable. It is of little surprise that, in light of this

⁷⁷ Mr Grover e-in-c

⁷⁸ Mr Egret in x-e, a description that Mr Coleman agreed with in x-e

⁷⁹ LBH/2/B4.2 Viewpoints 10 and 11 in particular

⁸⁰ INQ3 Paragraph 68

⁸¹ APP/1/D Page 62

⁸² CDF.11 Paragraph 4.10

⁸³ CDF.01

vulnerability, the appraisal identified as a guiding principle that to give special consideration to the impact of taller buildings on that character⁸⁴.

- 5.31 The Council's analysis is measured and straightforward; the Chiswick Curve would appear in the important views from the south side of the river as: *a large, bulky and incongruous addition to an otherwise largely unbroken skyline of traditional buildings*⁸⁵. The key element of the significance of the conservation area is this frontage of (mainly) listed buildings on the waterfront, and the views of those from the south bank of the river. The Council says that the proposal would seriously affect this key element. This is obvious from the visual representation⁸⁶.
- 5.32 The appellant attempts to water down the impact with a series of arguments. That there might be some, more modest, visibility of the consented Citadel scheme in the same views is not disputed, but this scheme is simply not comparable to the height and mass proposed in the Chiswick Curve.
- 5.33 The appellant relies too on the 'architectural quality' point but this turns heritage policy on its head, failing to take account of the need to conserve significance. Linked to that, the appellant seeks to draw a relationship between the Chiswick Curve and the important Strand-on-the-Green frontage through colouration⁸⁷ but this argument is a sugar-coat. There may be a colourful reflection at a particular time of day, in particular weather conditions, and at a particular time of the year, but mass, scale and height do not change with the weather. In any event, the predominant colour of the building would be grey⁸⁸.
- 5.34 The other justification put forward revolves around the question of hierarchy; that the Chiswick Curve ought to be the tallest building in the skyline behind Strand-on-the-Green⁸⁹. While the appeal site is intended to house a marker at the eastern end of the Golden Mile, this landmark is intended to work in its immediate context, without dominating important views of Strand-on-the-Green, or indeed other designated heritage assets⁹⁰. The appellant's case confuses the two desires of the SPD emerging plan. These seek a landmark and hierarchy on the M4/A4, but lack of prominence from the heritage assets.
- 5.35 The difficulty was made manifest by the appellant⁹¹ when it was posited that in views towards Strand-on-the-Green, the Chiswick Curve would 'guide the eye upwards'. It would, in other words, draw the eye away from the important view that is central to the significance of the conservation area.
- 5.36 All things considered, the Council's conclusion that the proposal would cause substantial harm to the significance of the Strand-on-the-Green Conservation Area is sound – a key element of special interest would be seriously affected. This conclusion is fully supported by HE. Paragraph 195 of the revised Framework is engaged.

⁸⁴ CDF.01 Final Page, Last Section

⁸⁵ LBH/1/A Paragraph 5.67

⁸⁶ LBH/2/B4.2 Viewpoint 9

⁸⁷ APP/1/A1 Figure 8.10 Page 107

⁸⁸ As was pointed out by HE in x-e of Mr Egret

⁸⁹ Mr Egret in re-e

⁹⁰ CDD.05 Paragraph 4.38

⁹¹ Mr Egret e-in-c APP/1/E Page 123

- 5.37 What is more, the appellant accepted⁹², given the high sensitivity of the conservation area, and the high magnitude of change⁹³, that if the Chiswick Curve was considered to harm the significance of the Strand-on-the-Green Conservation Area, then in NPPF terms, the harm would be substantial.

Gunnersbury Park

- 5.38 The Gunnersbury Park Conservation Area is the closest conservation area to the appeal site. Its special interest is set out in the relevant Conservation Area Appraisal⁹⁴. It has three main elements - the Park itself; Kensington Cemetery; and the residential Garden Suburb Estate that dates from the 1920s.
- 5.39 In terms of the Park itself, the Grade II* listed Large Mansion, Orangery, and Temple, all sit within a designed landscape which is itself a Grade II* Registered Park and Garden. The Council outlined its conclusion that the Chiswick Curve would transform for the worse, important views within the Park, representing a major incongruous intrusion⁹⁵. That assessment is plainly supported by the relevant visual representations⁹⁶ whatever justification the appellant might offer⁹⁷.
- 5.40 The Chair of the Friends of Gunnersbury Park and Museum, addressed the Inquiry in the clearest of terms, pointing out that the Chiswick Curve would loom over the Park, confining and restricting the experience of visitors.
- 5.41 The Council describes the Cemetery as an important part of the conservation area, a tranquil and visually enclosed space and a place of quiet contemplation⁹⁸. The Council acknowledged that the proximity of the proposal to the Cemetery would mean that some of the architectural features of the Chiswick Curve would be read from it⁹⁹. Nevertheless, the impact of the proposal would be powerful, intrusive, incongruous and alien¹⁰⁰, a conclusion easily understood by reference to the relevant visual representation¹⁰¹. That there may be some degree of existing urban context within the setting of the Cemetery misses the point – nothing in that setting compares to the scale, height or impact of the Chiswick Curve.
- 5.42 The significance of the residential estate - a complete and relatively unspoilt example of a 1920's Garden Suburb Estate - would plainly be undermined by the proposal and again, this is readily borne out by the visual representations¹⁰². The Garden Suburb Estate is all about unspoilt 1920's suburbia, in whose setting the Chiswick Curve would be highly intrusive, incongruous, and alien¹⁰³.

⁹² Mr Coleman in x-e by HE

⁹³ CDA.11 Paragraph 8a.49

⁹⁴ CDF.04

⁹⁵ Mr Grover e-in-c

⁹⁶ LBH/2/B4.2 Viewpoints 1, 2 and 3

⁹⁷ APP/3/A Paragraph 9.21

⁹⁸ Mr Grover e-in-c

⁹⁹ Grover in x-e

¹⁰⁰ LBH/1/A

¹⁰¹ LBH/2/B4.2 Viewpoint 4

¹⁰² LBH/2/B4.2 Viewpoint 5

¹⁰³ LBH/1/A Paragraph 5.42

Kew Gardens

- 5.43 Kew Gardens is one of London's four WHSs. A WHS is the rarest form of designated heritage asset, so rare that its importance is international, not just national. Kew Gardens is home to forty-four listed buildings, four of which including the Orangery, and Kew Palace, are listed Grade I.
- 5.44 The significance of the WHS transcends national boundaries and the Council's position in relation to RBGK is, as a matter of fact, supported by the UN; UNESCO having written to the Department for Digital, Culture, Media and Sport in April 2018, and again in May 2018¹⁰⁴.
- 5.45 UNESCO sought the advice of ICOMOS, whose Technical Review¹⁰⁵ concluded that the Chiswick Curve would considerably harm the OUV of Kew Gardens. ICOMOS closed their report by making plain that visual integrity was a crucial element of Kew Gardens, and that visual integrity was threatened by the proposed development. In short, the proposed development would cause considerable harm to the OUV of Kew Gardens.
- 5.46 The UK government have made it crystal-clear in the PPG that the OUV of a WHS indicates its importance as a heritage asset of the highest significance to be taken into account by decision-makers¹⁰⁶. In paragraph 184 of the revised Framework, the Government draws attention to the international recognition of World Heritage Sites.
- 5.47 This position is hardly surprising given the language of Article 4 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) which identified the UK's duty as: *ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage.....It will do all it can to this end, to the utmost of its own resources.*
- 5.48 The Mayor has made plain that development should not cause adverse impacts on World Heritage Sites or their settings (including any buffer zone)¹⁰⁷. In particular, it should not compromise a viewer's ability to appreciate OUV, integrity, authenticity, or significance. As the GLA have pointed out¹⁰⁸, WHSs are places of OUV to the whole of humanity and the effect of development is a key strategic consideration.
- 5.49 The Statement of OUV¹⁰⁹ distils it into 5 attributes, as set out in the 2014 WHS Management Plan¹¹⁰, of which the most relevant are (i) a rich and diverse historic cultural landscape providing a palimpsest of landscape design; and (ii) an iconic architectural legacy.
- 5.50 The Council's evidence focuses on the Orangery, Kew Palace, and the Temple of Aeolus.

¹⁰⁴ RBG/3

¹⁰⁵ RBG/3a

¹⁰⁶ CDC.02 Paragraph 026 Reference ID:18a-026-20140306

¹⁰⁷ CDC.04 Policy 7.10

¹⁰⁸ CDG.01 Paragraphs 60 and 61

¹⁰⁹ CDF.17

¹¹⁰ CDF.10

- 5.51 The Orangery, a Grade I listed building, is the oldest surviving glasshouse in Kew Gardens, and is described as an iconic glasshouse in the WHS Management Plan¹¹¹. It is part of both the rich and diverse historic cultural landscape, and the iconic architectural legacy of Kew Gardens.
- 5.52 The relevant visual representations depict the impact of the Chiswick Curve on those attributes¹¹². The Chiswick Curve would rise above the Orangery as an arbitrary vertical element which would be a highly intrusive, incongruous and alien feature directly behind the Orangery, or slightly to the right¹¹³.
- 5.53 The Council explained in evidence¹¹⁴ that part of the significance of the Orangery is rooted in its setting within a designed landscape. The Great Lawn, across which the Orangery is seen, is an important open space - historically, at the time of inscription, and now.
- 5.54 The appellant argues that the Great Lawn was historically associated with the White House rather than the Orangery, but the White House was demolished in 1802, and in any event that historical claim is at odds with the illustrations produced by RBGK¹¹⁵.
- 5.55 The appellant's case in respect of the Orangery rests on four main contentions: that the Great Lawn is not great¹¹⁶; that the Haverfield Estate towers are already visible from the lawn; that the Citadel would also be visible in views of the Orangery; and that the Chiswick Curve is a building of outstanding design quality. Each of these contentions is flawed: the Great Lawn is obviously an important area of designed open space within the planned landscape of Kew Gardens; the presence of the Haverfield Estate towers do not justify other inappropriate developments; the Citadel would be so much more modest in height and mass so the impact is not really comparable; and the whole concept of design quality as a means of avoiding harmful impacts is misplaced.
- 5.56 Kew Palace is a Grade I listed building. It is a house of 17th century origin which has an intrinsic historical and visual relationship with the surrounding designed landscape.
- 5.57 The Council has described how setting contributes to the significance of Kew Palace and explained how the proposed tower would form a highly intrusive, incongruous and alien feature in that setting¹¹⁷. The analysis is supported by the Council's visual representations¹¹⁸. In terms of the view from the frontage of Kew Palace (Viewpoint 12), although this is an oblique relationship, the Chiswick Curve would be an intrusion into a view which presently does not reveal an urban environment. In the views from the upstairs windows (Viewpoint 13), the tower would be even more prominent, rising much higher than any other buildings in the skyline.

¹¹¹ CDF.10 Paragraph 3.9.20

¹¹² LBH/2/B4.2 Viewpoints 14 and 15

¹¹³ LBH/1/A Paragraph 5.23

¹¹⁴ Mr Grover e-in-c and x-e

¹¹⁵ RBG/2/C2 Appendix E

¹¹⁶ APP/3/A Paragraph 9.10

¹¹⁷ LBH/1/A Paragraph 5.26

¹¹⁸ LBH/2/B4.2 Viewpoints 12 and 13

- 5.58 In terms of the oblique view from the frontage, the appellant accepts that there are no other tall buildings readily visible in it, and that the garden setting of the Palace contributes to its significance¹¹⁹. The appellant's response is to say that visitors would see a beautiful building in the far distance. This stock answer is as unpersuasive here as everywhere else, because it pays no heed to the significance of Kew Palace. In any event, whatever the cosmetic treatment of the tower, what will resonate and be harmful will be its bulk, height, and mass. In respect of the view from the upper floors, the appellant identifies one substantive point; that the blinds are generally drawn in the upper floor windows¹²⁰. This is of no relevance at all. The view from the windows is integral to the issue of the setting, and significance.
- 5.59 The Temple of Aeolus is a Grade II listed building that dates from the 19th century. It is an open-sided classic rotunda, located on a raised mound, clearly designed to allow views in all directions - an important view being that across the Order Beds. The Chiswick Curve would form a highly intrusive, incongruous and alien feature in the setting, rising far above anything else in the skyline. This analysis is supported by the Council's visual representation¹²¹.
- 5.60 This viewpoint highlights two very pertinent points. The tower would be much more prominent than other features in the urban environment beyond the gardens and while the tower would be partially obscured by a tree, RBGK have given clear and persuasive evidence about the danger of relying on the screening effect of a tree. The appellant's argument that the Chiswick Curve would have a beneficial impact on this view¹²² lacks credibility. In reality, the building would not be seen as a sculptural object; it will be seen for what it is - a building, vastly bigger than anything else in that view.

Other Conservation Areas

- 5.61 Notwithstanding the general focus of the Inquiry on the assets dealt with above, there are other conservation areas that also merit consideration.
- 5.62 The Wellesley Road Conservation Area is based mainly on 19th century development. It has historical value as an early residential estate in Chiswick with surviving suburban townscape, and architectural detailing¹²³. The Chiswick Curve would be prominent in views out of the conservation area and would appear dominant and incongruous as an out-of-scale intrusion¹²⁴.
- 5.63 Thorney Hedge Conservation Area consists of a short length of ancient thoroughfare, and is an example of a relatively intact, small-scale, Victorian suburban estate¹²⁵. The Chiswick Curve would be clearly visible, and plainly at odds with the low-rise suburban estate¹²⁶, as demonstrated by the Council's visual representation¹²⁷.

¹¹⁹ APP/3/A Paragraph 9.15

¹²⁰ In x-e of Mr Croft

¹²¹ LBH/2/B4.2 Viewpoint 18

¹²² APP/3/E Paragraph 6.11

¹²³ LBH/1/A Paragraphs 5.72 to 5.76 and CDF.08

¹²⁴ LBH/1/A Paragraphs 5.77 to 5.82

¹²⁵ LBH/1/A Paragraphs 5.83 to 5.88 and CDF.07

¹²⁶ LBH/1/A Paragraphs 5.89 to 5.94

¹²⁷ LBH/2/B4.2 Viewpoint 6

- 5.64 The special interest of the Kew Bridge Conservation Area has been set out¹²⁸. Notwithstanding the impact of the permitted Brentford FC scheme, the Chiswick Curve would nonetheless remain particularly prominent and incongruous in views from Kew Bridge itself, and from the junction at the north end of the bridge.
- 5.65 Grove Park Conservation Area covers the first large Victorian housing estate in Chiswick. Its original character can still be readily appreciated¹²⁹. In terms of the impact of the Chiswick Curve on this conservation area, it is the impact in views from Chiswick Bridge that need to be emphasised¹³⁰ and this is reinforced by the relevant visual representation¹³¹.
- 5.66 Chiswick House Conservation Area includes Chiswick House and its grounds, which provide the primary elements of special interest¹³². The proposal would not be visible from the house or its immediate surroundings but it would be harmfully present in views along Staveley Road, a residential street that contributes to the special interest of the conservation area¹³³.

The Appellant's Case

- 5.67 At its heart, the appellant's case relies upon three assertions. The first, as the analysis of heritage impacts above demonstrates, is to treat design quality as an all-conquering, trump card.
- 5.68 The second approach is to pray in aid the supposed support of the GLA¹³⁴. It would be ridiculous to suggest (and the appellant does not attempt to do so in any serious way) that the GLA has greater expertise in heritage matters than HE, those presenting evidence on behalf of RBGK, or those acting, and who have acted, for the Council.
- 5.69 Fundamentally, the GLA did not regard this as a case where they would wish to take over jurisdiction¹³⁵, even after becoming aware that the Council had resolved to refuse planning permission¹³⁶. Their views should therefore be afforded little weight.
- 5.70 In any event, the GLA took the explicit view that harm would be caused to the significance of the Strand-on-the-Green Conservation Area, albeit in their view less than substantial harm. This is completely at odds with the position of the appellant¹³⁷. As to other affected heritage assets, the GLA simply say that their Officers do not agree with the range and extent of harm to heritage assets that would be caused by the proposed development¹³⁸. They do not seek to identify where the areas of disagreement arise, or to what extent.

¹²⁸ LBH/1/A Paragraphs 5.95 to 5.98 and CDF.09

¹²⁹ LBH/1/A Paragraphs 5.106 to 5.113 and CDF.06

¹³⁰ LBH/1/A Paragraph 5.115

¹³¹ LBH/2/B4.2 Viewpoint 8

¹³² LBH/1/A Paragraphs 5.119 to 5.123 and CDF.03

¹³³ LBH/1/A Paragraphs 5.126 to 5.128

¹³⁴ INQ3 Paragraph 22 for example

¹³⁵ Compare the approach on the Citroen Site INQ48

¹³⁶ CDG.02 Paragraph 60

¹³⁷ APP/3/A Paragraph 9.31

¹³⁸ CDG.02 Paragraph 31

- 5.71 The third component of the appellant's case is to identify where there are other large-scale buildings present in particular views. However, no other building, in any of the views focused on in this Inquiry, approaches the same level of dominance and intrusion that would be visited by the Chiswick Curve – not surprising when it is remembered that it would be the tallest building in West London. Furthermore, this core strand of the appellant's case flies in the face of HLP Policy CC3¹³⁹ - the tall building policy for the borough.
- 5.72 Whilst criterion (d) of HLP Policy CC3 seeks to avoid adverse impacts on the settings of, or views from, heritage assets, criterion (p) sets out the policy expectation that tall building development should take opportunities to enhance the setting of surrounding heritage assets, the overall skyline and views.
- 5.73 In particular the justification for the policy explicitly refers to the relevance of other tall buildings¹⁴⁰: *The borough has a number of tall buildings that do not positively contribute to the townscape and their existence should not be grounds for the provision of more.* HE Guidance on Tall Buildings¹⁴¹ makes a similar point. Despite all that, the appellant nevertheless attempts to rely on other tall buildings which do not positively contribute, such as the Haverfield Towers, and the BSI building.
- 5.74 The appellant's focus on other buildings in particular views is flawed in two further respects. Firstly, the appellant insists on including in their analysis buildings that do not have planning permission, notably the Citroen site. That is not a helpful approach. Secondly, the appellant draws comparison with the Citadel, which has an implemented permission on the appeal site, but at 59m, would be less than half the height of the appeal scheme. The impacts on heritage assets, in particular, would be far less significant as a result.

An Inappropriate Design Response to its Context

- 5.75 A central part of the Council's case is that fundamental elements of the design are bad. The building would have the wrong scale, mass, and form and would not respond appropriately to its context. These characteristics are central to any informed consideration of design.
- 5.76 This is set out in a number of policy documents. The revised Framework is very clear in paragraph 125 that design policies should be grounded on an understanding and evaluation of an area's defining characteristics. LP Policy 7.7¹⁴² tells us that tall and large buildings should not adversely affect the character of an area by virtue of scale, mass and bulk, and that new development should be sympathetic to heritage assets in terms of form and scale. HLP Policy CC3¹⁴³ maintains that the height, scale, and massing of a building must relate to the surrounding character.
- 5.77 Context clearly matters and this is reflected in the design chapter (12) of the revised NPPF. The design of a building, particularly in a context such as that at

¹³⁹ CDD.01 Page 136

¹⁴⁰ CDD.01 Paragraph 6.11

¹⁴¹ CDF.14 Paragraph 4.6

¹⁴² CDC.04

¹⁴³ CDD.01

issue here, cannot be treated in isolation. Para 131 of the revised NPPF sets out that in determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, *so long as they fit in with the overall form and layout of their surroundings* (emphasis added).

- 5.78 The Government is also clear that design does not operate as a trump card where harm is caused to heritage assets. Paragraph 127 of the revised NPPF is clear that there needs to be sympathy for local character and history, including the surrounding built environment and landscape setting. This makes the very point repeated by the Council, HE and RBGK; if the development would cause harm to the significance of heritage assets, a developer cannot simply say 'but we've got a really good architect and look at his design'. A building cannot be high quality design if it does not respond appropriately to its historic context.
- 5.79 The Council made it very clear why, when considered properly in its context, the proposal is badly designed: *The proposed development would be of dominant scale and form, and would appear as an overpowering mass, protruding into the skyline, unrelated to any other existing or planned building. The two related concepts of scale and form are taken together as the excessive height and bulk of the proposed design clearly derives from the attempt to fit such a large amount of accommodation onto the relatively small appeal site*¹⁴⁴.
- 5.80 Further, the Council explained that Kew Green and Strand-on-the-Green had not been used to control the height, mass and scale of the building. Therefore, although: *the Appellant's DAS describes the proposal as a 'bespoke design-led response', it would seem to me that the proposal is in fact a development-led response that seeks to accommodate an excessive amount of accommodation on a relatively small site*¹⁴⁵. It was made clear that if a proposal fails policy in terms of scale, mass, and height, then the design cannot be high quality, because these factors are such fundamental ingredients of design¹⁴⁶. Moreover: *the inelegance of the design relates to its proposed bulk and mass.....in many views the two protruding towers would merge into one, forming a single ungainly bulk*¹⁴⁷.
- 5.81 Design cannot be treated as if context is an irrelevant or marginal issue. While the appeal site is part of the Golden Mile, there are very important heritage assets to consider too. A design whose mass, bulk, scale and height is not properly informed by that historic context cannot qualify as good design.

The proposal could and would cause harm to the significance of heritage assets

- 5.82 Notwithstanding the case advanced on behalf of the appellant, it is common ground that the Chiswick Curve could, and would, cause harm to the significance of heritage assets. The appellant accepts¹⁴⁸ that if the proposal

¹⁴⁴ LBH/1/A Paragraph 6.3

¹⁴⁵ LBH/1/A Paragraph 6.6

¹⁴⁶ Mr Grover e-in-c

¹⁴⁷ LBH/1/A Paragraph 6.8

¹⁴⁸ APP/3/A Paragraph 7.6

was juxtaposed with the Palm House, from one particular viewpoint in Kew Gardens, there would be an adverse impact on the attributes of OUV of the WHS, most specifically the iconic architectural legacy including the Palm House, the Temperate House, and modern additions such as the Princess of Wales Conservatory. The decision to avoid such an impact on the Palm House by limiting the height of the proposal was one taken as part of the design process. This is despite the claim that the design has similar qualities to those of the Palm House¹⁴⁹.

- 5.83 If it is accepted that the Chiswick Curve could cause harm to the significance of heritage assets in this way, there is no good reason to suggest that it could not have similar harmful impacts on the significance of other heritage assets, notably the Strand-on-the Green, Kew Green, and Gunnersbury Park Conservation Areas.

The origins of that height, scale and mass

- 5.84 The design of a building starts with the brief. It is frankly astonishing that nowhere in the DAS or the DAS Addendum, or in the architect's evidence¹⁵⁰, was this set out. This omission was rendered all the more extraordinary by the lack of any mention in the architect's presentation. When pressed, the architect initially gave the impression that he had simply been given *carte blanche* and claimed to have been told: *We have a site, please look at it creatively to find a good building*¹⁵¹. That this was the limit of the brief is simply implausible. This is especially so when we know that the brief was responsible for the favoured solution for the site being dropped. The initial concept was three defined volumes¹⁵². However, this proposal yielded a lower number of apartments per core¹⁵³.
- 5.85 So, the initial concept was compromised by the clients' desire for more flats. They wanted to 'maximise the potential opportunities' and in particular of flats with views to Kew Gardens¹⁵⁴. The clients were aware that flats higher up are more desirable and valuable¹⁵⁵. It is inconceivable that an experienced and commercially-driven developer would not seek to maximise returns. The appellant was asked to disclose the brief to the Inquiry but it never appeared.

Do the people involved guarantee good design?

- 5.86 The appellant's suggestion is that the people involved should instil confidence in the quality of the design. This must be approached with caution however. Both the Strata¹⁵⁶ and VTI Victoria¹⁵⁷ have been cited by the appellant, but both are acknowledged to have been disasters, once built. Both are past

¹⁴⁹ APP/3/A Paragraph 7.6

¹⁵⁰ CDA.01 and CDA.02, APP/1/A1 and APP/1/A2

¹⁵¹ Mr Egret in x-e

¹⁵² CDA.01 Page 64

¹⁵³ CDA.01 Page 65

¹⁵⁴ CDA.01 Pages 62 and 64

¹⁵⁵ APP/4/D Appendix 2

¹⁵⁶ APP/3/C1 Page A14

¹⁵⁷ APP/3/C1 Page A16

winners of the Carbuncle Cup. There are other members of the appellant's team who have form for supporting schemes that went on to win this award¹⁵⁸.

- 5.87 This so-called 'independent' review of the design is worthless when one considers that the author was part of the Brentford East Collective¹⁵⁹ alongside Galliard Homes (the major part of Starbones, the appellant), Citydesigner and DP9¹⁶⁰. Nevertheless, this review is of little or no assistance because it pays little or no attention to the impact of the proposal on the significance of designated heritage assets.

The design evolution failed to take into account most heritage assets

- 5.88 This is obvious when we go back to the more contemporaneous document describing the design evolution.
- 5.89 The appellant has not volunteered any underlying methodology, and has not disclosed the visuals upon which design conclusions were apparently based between July and October 2015. Instead, it was revealed to the Inquiry that the methodology applied amounted to an opinion expressed by the appellant's heritage consultant, based (it was eventually discovered) on a feeling, that the only designated heritage asset to which the Chiswick Curve should show any deference was the Palm House¹⁶¹.
- 5.90 The rationale for treating the Palm House as a driver to limit height, ignoring other very valuable heritage assets, is deeply flawed. A key component of the appellant's case is that the quality of the Chiswick Curve is such that it would enhance views, but that does not square with the acceptance by the appellant that it could be harmful if seen in the setting of the Palm House.
- 5.91 It is instructive to explore the basis on which the Palm House was distinguished in this way. It was suggested with reference to the three points identified by the architect in relation to the Palm House that the Orangery is also an architectural icon, it also sits within a landscape setting, and it also embodies a synergetic and harmonious relationship between architecture and landscape¹⁶². There is therefore no logical basis on which to distinguish the Palm House from the Orangery. The appellant's heritage consultant took a different tack, saying that he 'had a feeling' when he saw the Palm House, that it should be treated differently¹⁶³. This all seems rather arbitrary.

Using negative rather than positive features to inform design

- 5.92 Having largely ignored the various conservation areas in evolving the design of the proposals, the appellant has used much less attractive features to affect the design. The architect has pointed to the design influence of the motorway, viaduct, and roundabout, describing¹⁶⁴ the M4 as an 'object of beauty, from an emotional point of view'.

¹⁵⁸ Mr Finch gave evidence on behalf of CABE in support of the 'Walkie-Talkie'

¹⁵⁹ APP/4/C7

¹⁶⁰ The appellant's heritage and planning consultants respectively

¹⁶¹ Mr Coleman in x-e

¹⁶² Mr Egret x-e by RBGK with reference to APP/1/A1 Paragraph 9.2.22

¹⁶³ Mr Coleman in x-e by RBGK

¹⁶⁴ Mr Egret e-in-c

- 5.93 The influence which the surrounding transport infrastructure has had on the design and height of the building was not shielded away from¹⁶⁵. However, the elevated section of the motorway was compellingly described by local people as a monument of shuddering ugliness. It is extraordinary that the hub of the local traffic system was a greater influence on height than the surrounding designated heritage assets. It was explained that a building at the appeal site needs to have significant scale because of the presence of the M4¹⁶⁶. That may be so, but it does not explain why the site needs a building 32 storeys high in order to relate to the motorway beneath it, or why a 60m building was not of sufficient scale to respond properly to the surrounding infrastructure.
- 5.94 The Council have been alive to the need to respond to the gateway nature of the appeal site but their considered and reasonable approach is to promote a landmark building in the region of 60m high¹⁶⁷. That would be a sufficient response to A4/M4 corridor and would not cause unacceptable harm to surrounding heritage assets.

The Fallback Comparison

- 5.95 The appellant wrongly suggests that the Chiswick Curve would be an improvement over the fallback position. It was suggested that there was at least a realistic prospect of the Citadel being built, at some point, and that it was viable, and deliverable¹⁶⁸. Even if all that is correct, and there must be doubts, what is lacking is any demonstration that the Chiswick Curve would offer a better solution for the site than the Citadel. Its design may divide opinion, but at a height of 59m, it would function as a landmark, without dominating the setting of heritage assets. It would hardly rise above the tree line in Kew Gardens, or Gunnersbury Park, or the frontage to Kew Green.
- 5.96 For those reasons, the Citadel would respond better to the Council's emerging policy for the area¹⁶⁹ and the quest for jobs-led regeneration in HLP Policy SV1¹⁷⁰. The appellant's position is self-serving.

Other Options

- 5.97 The appellant suggests that if planning permission is refused for the Chiswick Curve, then the Citadel will be implemented. That stretches credulity for a number of reasons. Firstly, having put it to the Inquiry that the Citadel is an example of poor design, it hardly says much for the appellant's claimed commitment to good design.
- 5.98 Second, the issues raised by the appellant around viability are based on one paragraph of one letter, attached to rebuttal evidence¹⁷¹. This is no basis for an assertion that nothing else would be viable on the site because the economics of a lower building on the site have not been explored.

¹⁶⁵ APP/1/A1 Paragraph 8.2.8 is instructive in this regard

¹⁶⁶ Mr Egret re-e

¹⁶⁷ CDD.04 - CDD.06

¹⁶⁸ APP/4/D Paragraph 3 and Mr Goddard x-e

¹⁶⁹ CDD.04 - CDD.06

¹⁷⁰ CDD.01 Page 20

¹⁷¹ APP/4/D Appendix 2

Conditions preventing dumbing down

- 5.99 The conditions designed to prevent dilution of the design post-permission cannot make an unacceptable proposal acceptable. The condition that seeks to retain SEW for the construction phase is one that makes the Council nervous because it appears not to have been used before. In relation to the condition requiring further details, if these are so important, then they should have been provided at the outset.

Conclusion on Design

- 5.100 Absolutely key aspects of the design in this case have failed. The scale, mass and height of the proposal do not respond adequately to context and important heritage assets, in particular. Materials would be discordant.

The Council's reasonable and balanced approach

- 5.101 The Council has been open about the suitability of the appeal site for a landmark building. However, way-marking is not just about size and height; it can also come from distinctiveness, as set out in the supporting text to HLP Policy CC3¹⁷². The appellant seeks to present a binary choice between the Chiswick Curve and the Citadel¹⁷³ but there is nothing to substantiate that.
- 5.102 The Capacity Study¹⁷⁴ demonstrates that the Council was not plucking a height for the site arbitrarily. A sound methodology was applied which took specific account of heritage considerations. The study recognised the opportunity for a special gateway building to mark the eastern entry point into the Golden Mile, and then tested a series of heights at the location concluding that 59m was an appropriate height above which there would be a significantly harmful impact on the setting of heritage assets¹⁷⁵. The findings of the Capacity Study were carried through into Draft SPD published in October 2017¹⁷⁶. Thus the Council can be seen to have taken a wholly reasonable and measured approach to the development of Brentford East and the Golden Mile.
- 5.103 There can be no doubt that if the appeal is allowed, a coach and horses will have been driven through this emerging policy. The appellant claimed that no precedent would be set¹⁷⁷ but that is simply unrealistic.

Amenity Space

- 5.104 A lack of amenity space is a classic symptom of overdevelopment and the issue arises in this case in terms of communal amenity space. HLP Policy SC5¹⁷⁸ provides 'benchmark' standards for the provision of communal external space. The policy states that a set-off reduction should apply for the areas of private space.

¹⁷² CDD.01 Paragraph 6.10

¹⁷³ Mr Egret in-c

¹⁷⁴ CDD.06

¹⁷⁵ CDD.06 Page 83

¹⁷⁶ CDD.05

¹⁷⁷ Mr Goddard e-in-c

¹⁷⁸ CDD.01

- 5.105 The benchmark based on the HLP Policy SC5 formula is 8440 square metres, before setting off private space. The scheme would provide 2378 square metres of private space. The minimum figure after setting off private space is 6062 square metres, therefore. The scheme would provide 1385 square metres of communal amenity space. On that overall basis, the deficit is 4677 square metres¹⁷⁹.
- 5.106 Although the appellant argues that these are benchmarks rather than inflexible requirements, it is important to remember three matters. First HLP Policy SC5 expresses these as minima. Moreover, the policy justification¹⁸⁰ says that new housing should provide the highest quality of internal and external space to meet the demands of everyday life for the occupants. These standards draw on established policy sources¹⁸¹.
- 5.107 The appellant put forward a number of points. The first is the proximity of the site to Gunnersbury Park. However, as the Council has shown¹⁸², the walk to the park would be very hostile and the GLA agrees¹⁸³. The works to the surrounding highway network to be agreed with TfL through the Unilateral Undertaking will make no significant difference to that.
- 5.108 Second, the appellant attempts to rely on the quality of the space that is to be provided but this cannot compensate for providing barely 20% of the minimum provision which is expected in policy. In terms of other examples where a shortfall is said to have been accepted, none come anywhere near what is promulgated in this case.
- 5.109 The suggestion that the standards are outdated because they began life in a 1997 SPG is meaningless when it is remembered that HLP Policy SC5 was examined by a Government-appointed Planning Inspector in 2015, who was plainly satisfied that the policy was sound.
- 5.110 The shortfall in amenity space is simply unacceptable and contrary to policy.

Benefits Claimed by Appellant

- 5.111 All mixed use employment and residential developments will bring benefits in terms of providing homes and jobs. In terms of the latter, it is suggested that up to 420 jobs would be provided in the commercial elements of the scheme but this needs to be viewed in the context of the lack of any evidence that these would be new jobs, rather than existing jobs relocated. Moreover, it is obvious that being predominantly an office scheme, the Citadel would provide five times more jobs. Jobs would also be provided in the construction process but these would inevitably be temporary.
- 5.112 The provision of new homes, including affordable homes, should always be treated as a benefit. However, there are a number of matters to be borne in mind when deciding how much weight to attach to that benefit.

¹⁷⁹ LBH/3/A Paragraphs 6.44 to 6.53

¹⁸⁰ CDD.01 Paragraph 5.18

¹⁸¹ CDD.01 Paragraph 5.19

¹⁸² LBH/3/A Paragraphs 6.59 to 6.71

¹⁸³ CDG.01 Paragraph 107

- 5.113 Firstly, it is agreed that the Council is able to demonstrate a 5 year supply of housing¹⁸⁴. Moreover, the Council has an excellent track record in terms of housing delivery having delivered 4243 units in the last 5 years against a target of 3054¹⁸⁵. As of March 2018, the Council can demonstrate 10.6 years of housing supply¹⁸⁶. The appellant looks to muddy the water by pointing to figures ventilated in the DRLP¹⁸⁷ but this is not likely to go to examination until 2020¹⁸⁸.
- 5.114 Finally, while the scheme would provide affordable housing, the 'intermediate' proportion would be available to households with incomes of up to £70,000. This is far above the mean household income in the Borough of £36,000 and so is at the very upper end of the 'affordable' range¹⁸⁹.
- 5.115 Public realm improvements are acknowledged and welcomed but as the Council has observed¹⁹⁰ these would be required from any development of the site, and largely benefit the development itself. The public viewing terrace would be a benefit to the public but limited in weight by virtue of access being limited to a less than public-spirited 10 days per year¹⁹¹. The atrium space at ground floor level, also relied upon by the appellant as a public benefit, is in reality unlikely to draw public visitors¹⁹².
- 5.116 It is acknowledged that the proposal would regenerate the site. However, other sites are already propelling regeneration of the area and the appeal site could be regenerated without causing harm to the significance of heritage assets¹⁹³.

The Advertisements

- 5.117 Although there is a temporary extant consent¹⁹⁴ which permits advertisements 16m wide x 4m high, set at 12m above ground level, the proposed advertisements would be materially different both in terms of size and their position above ground level.
- 5.118 The harm which the scale and position of the illuminated advertisements would cause is multi-faceted. Screen 1 which would wrap around the west-facing corner of the building would be unduly prominent and visible from the cemetery, within the Gunnersbury Park Conservation Area, and given the illumination, the advertisements would be particularly apparent in the darker winter months. The advertisement would also intrude harmfully into the Wellesley Road Conservation Area¹⁹⁵.

¹⁸⁴ INQ38 Paragraph 8.18

¹⁸⁵ LBH/8 Paragraph 2.10

¹⁸⁶ LBH/3/A Paragraph 7.32 and LBH/8 Paragraph 2.24

¹⁸⁷ CDC.05

¹⁸⁸ Mr Baker e-in-c

¹⁸⁹ LBH/3/A Paragraph 7.29

¹⁹⁰ LBH/3/A Paragraph 7.21

¹⁹¹ LBH/3/A Paragraph 7.23

¹⁹² LBH/3/A Paragraph 7.25

¹⁹³ LBH/3/A Paragraph 7.7

¹⁹⁴ APP/4/C3

¹⁹⁵ LBH/1/A Paragraph 5.131

- 5.119 Visualisations have revealed that Screen 1 would be visible in views of the Strand-on-the-Green river frontage from the Surrey side of the river. This would be intrusive, particularly at night. Screen 3 would intrude harmfully into the setting of the Gunnersbury Park Conservation Area in the views from Gunnersbury Avenue.
- 5.120 The Council has, in addition, identified particular residential properties whose outlook would be harmed by the scale of these illuminated adverts, namely 525-527 Chiswick High Road, 4-6 Surrey Crescent, and 2 Clarence Road¹⁹⁶.
- 5.121 These large-scale, illuminated advertisements would commercialise and debase the aesthetic intentions of the design, clashing with the elevational treatment¹⁹⁷. It is difficult to imagine that the incorporation of large-scale advertisements would have sat comfortably with the architect's aspirations.
- 5.122 Put simply, the advertisements would be harmful to amenity and as a result, consent should be refused.

Balance and Conclusions

- 5.123 In accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, Appeal A is to be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development is contrary to the development plan, read as a whole and the material considerations arising do not outweigh the conflict with the plan. Planning permission should therefore be refused.
- 5.124 The Council has clearly set out the obvious conflict with heritage policies¹⁹⁸. Bearing in mind the language of these policies, and the level of harm that would be caused, it would be impossible to conclude other than that the proposal would conflict with the development plan as a whole. A failure to accord with development plan policies dealing with design, and the provision of amenity space, must be factored in too.
- 5.125 The revised Framework is a material consideration, obviously. This makes clear in paragraph 184 that heritage assets are an irreplaceable resource. Paragraph 193 sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Moreover, paragraph 194 says that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. The Courts have made it very clear that if harm would be caused to the significance of a designated heritage asset, there is a strong presumption against any grant of permission.
- 5.126 It is the Council's case that the development would result in substantial harm to the significance of designated heritage assets. In which case, the revised Framework sets out in paragraph 195 that consent should be refused unless it can be demonstrated that the substantial harm is necessary to achieve

¹⁹⁶ LBH/3/A Paragraph 6.26

¹⁹⁷ LBH/1/A Paragraphs 6.26 and 6.29

¹⁹⁸ LBH/3/A Paragraph 8.12

substantial public benefits that outweigh that harm. In this case, the public benefits are not substantial and they do not outweigh the substantial harm that would be caused. Neither would it be necessary to cause that substantial harm in order to achieve the benefits. There are readily available alternatives (for example The Citadel) that would deliver similar benefits, with nothing like the same level of harm.

- 5.127 Even if the conclusion was reached that the level of harm is less than substantial, this still must be given great weight and the presumption against consent still operates. The harm should be weighed against the public benefits (as per paragraph 196 of the revised Framework), and that harm, to a wide-ranging swathe of London's heritage environment, including some of the most important heritage assets in the country, would still overwhelmingly outweigh the benefits.
- 5.128 The proposed development is contrary to the development plan, and that conflict is not outweighed by material considerations. The preservation of London's heritage should prevail, and both Appeal A and Appeal B should be dismissed.

6 The Case for Historic England

- 6.1 This is set out in full in opening and closing statements to the Inquiry and in evidence¹⁹⁹. Helpfully, after the Inquiry closed, HE provided a revised closing statement, updated to take account of the revised Framework²⁰⁰. What follows is a summary of the case presented in closing, and it is imperative that the closing is read and considered carefully alongside the evidence, to gain a proper appreciation of the case presented, and in particular, those aspects relating to case law.
- 6.2 HE is the lead body for the heritage sector and the Government's principal adviser on the historic environment. HE rarely sees the need to intervene in a public inquiry. On this occasion it does, given the widespread and extensive harmful impact the scheme would have on very important historic sites.

The Decision-Making Framework

- 6.3 The decision making framework relevant here is outlined straightforwardly in the revised Framework and associated PPG. Account should be taken of the desirability of sustaining and enhancing the significance of all heritage assets²⁰¹. WHSs, Registered Parks and Gardens, listed buildings, and conservation areas are all designated heritage assets²⁰².
- 6.4 Significance is the asset's value 'because of its heritage interest', including from its setting²⁰³. The interest will be identified by the purpose of designation, any explanation of interest at the time of designation, and in non-WHS cases, an evaluation of the interest in the light of the purpose of designation. The interest in a WHS derives from the OUV which has been

¹⁹⁹ INQ5, INQ39, HE/1/A, HE/1/B, HE/1/C and HE/1/C1

²⁰⁰ INQ47

²⁰¹ Revised Framework Paragraph 185

²⁰² Revised Framework Annex 2: Glossary

²⁰³ Revised Framework Annex 2: Glossary

identified. The PPG provides a considerable amount of advice on WHSs. Advice on assessing significance and the role of setting in that is given in the PPG²⁰⁴ and by HE²⁰⁵.

- 6.5 Great weight is to be given to conserving the significance of all designated heritage assets, with greater weight to more important assets. Any harm or loss, including harm caused by an effect on setting, should require clear and convincing justification²⁰⁶. Any harm to a listed building or its setting gives rise to a strong presumption against the grant of planning permission²⁰⁷. Development within the setting of a designated heritage asset may cause harm to its significance²⁰⁸. Harm caused by the effect of a development on the setting of a designated heritage asset may be substantial harm²⁰⁹ or less than substantial harm.
- 6.6 Substantial harm is a policy test to be applied in the light of the revised Framework and the PPG. The PPG says that it is a high test, so it may not arise in many cases. Giving the example of works to a listed building, the PPG advises that to constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed²¹⁰. This is a reasonable approach to apply more generally. The recognition in the PPG that wind turbines and large scale solar farms may cause substantial harm by reason of their impact on the setting of a heritage asset²¹¹ is also a steer as to the level of impacts which might cause such harm.
- 6.7 The relevant PPG paragraphs set out that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines (or large scale solar farms) on such assets. Depending on their scale, design and prominence, a wind turbine (or large scale solar farm) within the setting of a heritage asset may cause substantial harm to the significance of that asset.
- 6.8 The Courts have not analysed the meaning of 'substantial harm' as it now applies given the advice in the PPG. The previous PPS5 Practice Guidance did not contain the text that now pertains in the PPG, or anything like it.
- 6.9 Taking the caselaw in order of seniority, the Court of Appeal quashed an Inspector's decision that harm was not substantial in *Barnwell Manor*²¹². This related to the test of substantial harm in Planning Policy Statement 5.
- 6.10 In *Bedford*²¹³ the previous version of the Framework was considered explicitly in the light of the PPS5 Practice Guidance. The Judge's approach was that

²⁰⁴ CDC.02 Paragraph 007 Ref. ID:18a-008, 009, 013, 019, 035

²⁰⁵ CDF12 and CDF13 in particular

²⁰⁶ Revised Framework Paragraph 193

²⁰⁷ *Barnwell Manor* and s.66(1) of the Act

²⁰⁸ Revised Framework Paragraph 193

²⁰⁹ *Barnwell Manor* and PPG Paragraph 019 Ref. ID: 5-019-20140306

²¹⁰ CDC.02 Paragraph 017 Ref. ID: 18a-017-20140306.

²¹¹ PPG Paragraph 019 Ref. ID: 5-019-20140306 and 013 Ref. ID: 5-013020150327

²¹² CDH.05

²¹³ CDH.04

substantial harm was such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced²¹⁴. The latter is closer to identifying the threshold between substantial and less than substantial harm. It is a lesser impact than vitiated, or very much or all drained away, and the latter expressions were not seen in *Bedford* as marking the boundary.

- 6.11 Several points arise on *Bedford*. Firstly the PPG has given some explanation of what substantial harm is. That was not available to the Inspector or the Court in *Bedford*. As set out, substantial harm is a 'high test', but not a 'very high test'. One way of considering it is whether the adverse impact 'seriously affects a key element of' the designated heritage asset's interest which led to its designation.
- 6.12 That might overlap with, but is more precise than, very much reduced and is certainly a lower level of impact than the 'drained away', 'vitiating' or 'something approaching' expressions in *Bedford*. It is the meaning of the revised Framework as explained by the PPG which has to be applied.
- 6.13 Substantial harm has to be construed in accordance with *Barnwell Manor* (which as a Court of Appeal case takes precedence over *Bedford*). The Judge criticised the error in relying on the ability to distinguish between old and modern works in the Inspector's analysis. The Court of Appeal also proceeded on the basis that an Inspector could lawfully have concluded that the impact of turbines a mile or more away in that case was substantial harm²¹⁵.
- 6.14 The language of *Bedford* is imprecise. Even trying to apply a concept of 'very much reduced' begs the question of how much reduced and the significance of what is at the start of the exercise and what remains. The Courts frequently warn against interpreting judicial comments as if they are statues; the danger is that excessive precision and importance is applied to words which a Judge came up with in a particular set of circumstances.
- 6.15 It is better therefore to apply an imprecise expression in policy than an imprecise expression used by a Judge when trying to explain the policy, let alone an imprecise expression used by a Judge in trying to explain a previous iteration of the policy. With the PPG, Government guidance on substantial harm is now clearer than the language used by the Court in *Bedford* and can be applied as it stands.
- 6.16 *Bedford* has not been considered by the Courts in any citeable judgment. The Courts have accepted, without query, findings of substantial harm to the significance of designated heritage assets caused by effects to their settings in *Whitby v Secretary of State for Transport* and *Forest of Dean v Secretary of State for Communities and Local Government*, and in the SoS decision on Smithfield Market²¹⁶.

²¹⁴ CDH.04 Paragraph 25

²¹⁵ The developer's appeal would have been allowed otherwise on the basis that any error by the Inspector could not have led to a different decision. The High Court had expressly concluded the decision might have been different without the errors.

²¹⁶ INQ11-INQ13 Referred to hereafter as *Whitby*

- 6.17 By paragraph 195 of the revised Framework, proposals leading to substantial harm to any designated heritage asset shall be refused unless: (a) the substantial harm is necessary to achieve substantial public benefits that outweigh that harm; or (b) four criteria in that paragraph are satisfied (these are not applicable in the present case). Substantial public benefits in paragraph 195 are a narrower category than public benefits as referred to in paragraph 196 of the revised Framework. The public benefits themselves must be substantial, not that there are a substantial amount of public benefits.
- 6.18 For the harm or loss to be necessary to achieve the substantial public benefits, it must not be possible to achieve those benefits without causing that harm. The former PPS5 Practice Guidance said in paragraph 91: *For the loss to be necessary there will be no other reasonable means of delivering similar public benefits, for example through different design or development of an appropriate alternative site.* This was applied in *Whitby* where the consideration was whether the impact was necessary, looked at in terms of whether there is a reasonable alternative. That advice is not repeated in the PPG but is a reasonable approach to take.
- 6.19 In opening the appellant said this provision required, by reference to *Whitby*, 'no reasonable alternative to the achievement of substantial benefit'²¹⁷. Necessary in this situation does not relate to the need in planning terms for the benefit, but an inability to achieve the public benefits arising from the scheme without causing the harm.
- 6.20 In addition, substantial harm to a World Heritage Site, Grade I and II* listed buildings and registered parks and gardens, should be wholly exceptional while substantial harm to a Grade II listed building has to be exceptional²¹⁸.
- 6.21 Paragraph 196 of the revised Framework says that less than substantial harm is to be weighed against *public* benefits of the proposal but following *Barnwell Manor*, less than substantial harm does not amount to a less than substantial objection to a development. It has to be applied with the considerable weight required by paragraph 193.
- 6.22 As an aside, the statutory duty in s.72 of the Act in respect of conservation areas only applies 'In the exercise, with respect to any buildings or other land in a conservation area, of any functions'. Since the SoS's functions are exercised with respect to land outside any conservation area, s.72 does not apply in the present case. However it has been recognised since at least PPG15²¹⁹ that development outside a conservation area may affect it, a position which continues in the revised Framework.

The Evidence and its Testing

- 6.23 The inquiry has been blessed (or cursed) with detailed proofs on the heritage issues. The expert witnesses for the Council and the Rule 6 parties faced no

²¹⁷ INQ3 Paragraph 99

²¹⁸ Revised Framework Paragraph 194

²¹⁹ PPG15, Paragraph 4.14: The desirability of preserving or enhancing the area should also, in the Secretary of State's view, be a material consideration in the planning authority's handling of development proposals which are outside the conservation area but would affect its setting, or views into or out of the area.

serious challenge to their views on the existence of harm, and the extent of harm. Several points need to be made on the expert witnesses for the appellant.

- 6.24 In respect of the appellant's 'independent' design evidence²²⁰, the gentleman concerned has been part of the appellant's design team since at least summer 2017. He is included in the consultants identified as part of the Brentford East Collective in their Public Realm Strategy²²¹, and in their letterhead²²². He wrote a paper for the Collective on the draft SPD which was submitted with their representations on that document and summarised for a page in DP9's representations for the Collective²²³. In these overall circumstances the evidence presented is not 'independent'.
- 6.25 This 'independent' evidence, and the related evidence on heritage matters, relies on the professional opinions and previous experience of the proponents. However not everything they support is architectural gold. There is reference to previous support for Strata, VTI Victoria (an office scheme designed by PLP and now known as Nova Victoria)²²⁴. These schemes won the Carbuncle Cup in 2010 and 2017 respectively. The Carbuncle Cup is awarded by *Building Design* magazine to the ugliest building completed in the UK in the previous 12 months.
- 6.26 The appellant's heritage witness conceded that the PLP scheme was 'a disaster' but excused his support for both schemes by saying that the failures were due to changes in the detailing after planning permission was granted²²⁵. That is unconvincing in the light of the criticisms made by *Building Design* of the PLP scheme which ranged well beyond details like the size of fins, calling the scheme crass, over-scaled and a hideous mess²²⁶. The author of the 'independent' evidence supported 20 Fenchurch Street (the 'Walkie-Talkie') which won the Carbuncle Cup in 2015. Their opinions can be horribly fallible.

Harm in the Present Case

- 6.27 HE's concern is the harm that the scheme would cause to the significance of designated heritage assets comprising: the RBGK WHS; the Gunnersbury Park Registered Park and Garden and the Gunnersbury Cemetery (which lie within the Gunnersbury Park Conservation Area); Kew Green Conservation Area; and Strand-on-the-Green Conservation Area, along with listed buildings within them. The significance of these assets is not in dispute.
- 6.28 As far as the contentions in this appeal are concerned, The Council and the Rule 6 parties have carefully based their heritage cases on the impact of the Chiswick Curve on the identified significance of the designated heritage assets. They have not taken a position at the application, or appeal stages, of assuming that the visibility of a new building in the background of a heritage

²²⁰ Delivered by Mr Finch

²²¹ APP/1/C Pages 20-22 and APP/1/A1 Page 74 'the Collective got to work with their design teams'.

²²² APP/4/C7

²²³ APP/4/C7 Appendix 1, 5th page.

²²⁴ APP/3/C1 Pages A14 and A16.

²²⁵ Mr Coleman x-e

²²⁶ INQ27

asset must be harmful²²⁷. The care of their positions is illustrated by HE's initial response in February 2016²²⁸. This mischaracterisation is illustrative of the appellant's inability to answer their critics. They have to claim the complaint is something which it is not, because they cannot address what it is.

- 6.29 In terms of the relevance of design to heritage effects, context is critical. An otherwise good design might still cause heritage harm, as the revised Framework recognises at paragraph 131. There is of course a variety of meanings attached to design. Looked at holistically, a scheme which harms designated heritage assets is not good design. Similarly if the height and mass causes harm, it is not good design. That the architect may have done something extremely well with a brief which required a certain height or quantum of development may be a tribute to their skill, but does not mean that that it is a good building in its context.
- 6.30 As the appellant's THVIA acknowledges even a well-designed building has the potential to unacceptably dominate or be incongruous²²⁹. Moreover, policy requires tall buildings to be of an exemplary quality. That does not excuse any heritage harm that follows. It is also worth remembering that any height limits in Council policy²³⁰ are based on exemplary schemes. If a height limit is established, the quality of a design cannot be an excuse for breaching it, as quality has already been taken into account in setting that limit.
- 6.31 The appellant's initial position was that the Chiswick Curve would benefit the interest of the designated heritage assets where it would be visible. The THVIA and THVIA Addendum repeatedly express that view, as does their heritage evidence²³¹. That position is, and always was, ludicrous. The Chiswick Curve has no relation to the historic or architectural interest of the assets or the OUV of Kew Gardens. Even if it was a beautiful piece of architecture in its own right, any benefit of seeing it could not enhance the significance of designated heritage assets.
- 6.32 The appellant accepted that the significance of the assets would not be benefited by the Chiswick Curve²³². Consequently the appellant's case on heritage impacts has completely collapsed. Whether the impact of the Chiswick Curve is harmful or neutral, and the extent of harm, is considered below.

Harm and Design in the Present Case

- 6.33 Ultimately there is an overall theme to all of the heritage impacts. The significance of the designated heritage assets involves high quality and often exceptional buildings in landscapes which are either designed (at Kew Gardens and Gunnersbury Park) or have evolved (Kew Green, Strand-on-the-Green) to have very special qualities. They are overlain with immense historic interest

²²⁷ APP/3/A Paragraph 7.20

²²⁸ CDE.04. Pages 8-9 and 11 were addressed in x-e of Mr Coleman.

²²⁹ CDA.11 THVIA Paragraph 2.45 and accepted by Mr Coleman in x-e

²³⁰ In CDD.04 to CDD.06 for example

²³¹ For example CDA11 THVIA Page 30, Paragraph 8A.8 (Gunnersbury Park CA), Page 37, Paragraph 8A.50 (Strand-on-the-Green), Page 45, Paragraph 8A.98 (Kew Green), Orangery (Gunnersbury Park), Page 52, Paragraph 8B.15, Orangery (Kew Gardens) Page 55, Paragraph 8B.43

²³² Coleman x-e

and have inter-relationships as part of the Arcadian Thames which can be described as: *peaceful relaxed surroundings, at one with nature and free to be inspired with art and poetry*²³³.

- 6.34 Any view is as a whole of and the totality of what is seen. The settings of these assets benefit immensely from clear skylines and the absence of competing elements, particularly those which are modern or urban. That exclusion is not total. Some views are presently entirely uninterrupted. Others are affected, and the harm caused to Kew Gardens by the Haverfield Towers was referred to by UNESCO when inscribing the WHS.
- 6.35 That there is already some harmful interference in some of the views highlighted is not an excuse for causing more harm, either to those views, or to other, presently unharmed, views. Even less is it an excuse for interfering with those views through the introduction of a building, considerably taller than anything which presently exists or intrudes.
- 6.36 The appellant's case rests heavily on recent or future change. The harmful nature of these schemes has been asserted, and often undisputed, but they do not provide an excuse for yet more harm. But even if they did, the buildings involved would be much lower than the Chiswick Curve. A collection of lower buildings (Brentford FC [permission granted] 61m AOD; Albany [resolution to approve] 8 storeys; Citroen [resolution to refuse by Council but Mayor minded to approve, subject to agreement on Obligations and subject to call-in by SoS] 70.7m AOD; Capital Interchange Way [refused] 78.7m AOD) does not assist the promotion of a 120m AOD tower.
- 6.37 Views are often kinetic and changing. In some of those views, in particular that of Strand-on-the-Green from the Surrey side of the Thames, the Chiswick Curve would be ever present. In others, it would break through at times but that maintains the intrusion. The pedestrian's experience of the Chiswick Curve at times, whether longstanding views, or glimpses, will affect the appreciation of the whole walk.
- 6.38 The appeal scheme would intrude into key views which are entirely or largely unspoilt: the views of the Orangeries at Kew Gardens and Gunnersbury Park; the view from the Gunnersbury Park temple; the tranquillity of Gunnersbury Cemetery; the unspoilt lines of buildings at Kew Green, and Strand-on-the-Green. In all cases a large, tall, lump would be imposing itself, wholly alien to the historic, architectural and cultural interest of these areas. It would dominate particular important views. It would detract from the appreciation of these areas, and of certain listed buildings, including Grade I and II* listed buildings, within them.
- 6.39 It is the sheer scale of the building and its relationship to those designated heritage assets that would cause the harm. The problem is not the detailed design of the 32 storey tower block, but that it is a 32 storey tower block. Even if the design is seen as attractive in its own right, it would be harmful to the historic views and special interest of the affected heritage assets. The building is simply in the wrong place.

²³³ HE/1/A Page 39 Paragraph 6.2.7 and agreed by Mr Coleman in x-e

- 6.40 The detailed design of the building would not diminish that harmful impact. The predominant surface of the Chiswick Curve is glass, and the building itself would not be transparent. Its predominant appearance would be grey in colour. Splitting the building into a cluster will not alter the volume of material which intrudes, and in views from the south, the towers would not be separated. The curvature of the building does not take away from its size. Coloured fins are proposed. Some of these will be seen edge on, others from the side but they will be details viewed at a distance. The first reaction of a viewer from the Surrey side of the river overlooking Strand-on-the-Green conservation area would be that the Chiswick Curve is a large grey building, not that its fins have the colours of the buildings by the river.

Marker

- 6.41 The Chiswick Curve is promoted as a marker, or a landmark. Emerging policy²³⁴ does encourage a landmark building on the appeal site, marking the gateway to the Golden Mile.
- 6.42 However the affected designated heritage assets do not need a marker for the location of the appeal site, the Golden Mile, or even to 'celebrate' the junction of the M4 with the North and South Circular Roads. In any event, a marker building does not need to be 109 metres high²³⁵. A marker is designed to attract and to draw attention. From the designated heritage assets, or viewed in association with them, it would be a distraction, and thereby harmful.

Kew Gardens

- 6.43 RBGK has a landscape of international renown, created from its history as a Royal residence and its past, present and future as one of the greatest botanic gardens in the world and a popular place for the public to visit. With a considerable degree of success it has kept the sight of urban London at bay.
- 6.44 In addition to its inscription as a World Heritage Site in 2003, it is a Grade I Registered Park and Garden, a conservation area, and the home of 44 listed buildings²³⁶. Its significance has been explained in evidence by HE²³⁷ and by RBGK. Two of the inscribed attributes of OUV would be directly affected by this scheme: the 'rich and diverse historic cultural landscape providing a palimpsest of landscape design'; and its 'iconic architectural legacy'.
- 6.45 The development would appear prominently within the setting of the Grade I listed Orangery²³⁸. It would create an antagonistic contrast, with the Chiswick Curve competing for attention amongst the carefully designed garden surroundings²³⁹. The Chiswick Curve would distract and obscure the significance of the WHS, altering the character of the gardens from an historic royal retreat, towards that of an urbanised park²⁴⁰.

²³⁴ CDD.04 to CDD.06

²³⁵ Accepted by Mr Egret in x-e

²³⁶ HE/1/A Page 37, Paragraph 6.2.1

²³⁷ HE/1/A Pages 37-43, Paragraphs 6.2.1-6.2.18

²³⁸ LBH/2/B4.2 Viewpoints 14 and 15 CDA.11 View 16

²³⁹ HE/1/A Pages 45-46, Paragraphs 6.2.24-6.2.26

²⁴⁰ HE/1/A Page 46, Paragraph 6.2.29

- 6.46 It is the substantial height of the proposal which would cause these adverse visual impacts in the heart of the WHS²⁴¹.
- 6.47 There was a considerable amount of effort by the appellant to distract with debates about strategic and identified key views. Kew Gardens is an inward looking WHS. Unlike the exercises in governmental power at Westminster, and the Tower of London, or the connections with the River Thames at Greenwich, RBGK is usually not intending to share views. Whilst there are some designed views in Kew Gardens that extend beyond the botanical gardens (for example the Syon Vista), the views shared by Kew Gardens are intended to evoke Arcadia, and to provide a break from urbanity.
- 6.48 The qualities of RBGK gives rise to many valuable views. One which is of particular concern is the view of the front of the Grade I Orangery, which is part of Kew's iconic architectural legacy. Views of outstanding listed buildings from the direction in which they were meant to be seen do not need putting on a map to have the highest significance.
- 6.49 There was much focus on the part of the appellant on pre-1802 views of the Orangery. However it is apparent from the contemporary drawings that it was visible from the Great Lawn with the White House. The appellant's witnesses made a series of bad and inaccurate points on those images, erroneously believing that they showed the Orangery turned through 90°, and confusing a famous 'Swan' boat with an oversized drawing of a live swan²⁴².
- 6.50 The appeal scheme will cause less than substantial, but nonetheless serious, harm to the significance of the RBGK WHS, and the setting and thereby the significance, of Grade I listed Orangery, the Grade I Registered Park and Garden, and the conservation area²⁴³.

The Gunnersbury Park Conservation Area

- 6.51 HE is concerned with two parts of the Gunnersbury Park Conservation Area: the Park itself; and Gunnersbury Cemetery. The Park is a garden designed to connect with an Arcadian landscape, and not a city environment. Its significance has been set out²⁴⁴. It is a designed landscape, with buildings, lakes and follies²⁴⁵. The Park is now a successful public garden and has been the subject of recent very considerable public investment (around £33.5 million) for heritage and recreational purposes²⁴⁶.
- 6.52 There would be two particularly significant impacts. The first would be on the views from the mansions, terrace, and lawn including over the Orangery. The Chiswick Curve would be the first tall building visible from the lawn²⁴⁷. It would intrude dramatically into that view. The importance of this view has been enhanced by recent works, clearing some of the trees, and reconstructing half of the horseshoe lake, which has allowed a greater appreciation of the

²⁴¹ HE/1/A Page 47, Paragraph 6.2.31

²⁴² INQ24 refers

²⁴³ HE/1/A Page 50, Paragraph 6.2.39

²⁴⁴ HE/1/A Pages 51-58, Paragraphs 6.3.1-6.3.8 Agreed by Mr Coleman in x-e

²⁴⁵ CDA.15 THVIA Addendum, Page 25.

²⁴⁶ HE/1/A Page 55, Paragraph 6.3.11

²⁴⁷ CDA.15 THVIA Addendum Page 25, Paragraph 5.4

Orangery²⁴⁸. The views from the round pond, in particular around the Temple are hugely important and would be significantly harmed by the Chiswick Curve²⁴⁹. On that basis, the proposal would cause less than substantial harm to the significance of the Gunnersbury Park Conservation Area.

Gunnersbury Cemetery

6.53 The significance of the cemetery has been set out²⁵⁰. Whilst the cemetery is already affected by tall buildings, the Chiswick Curve would have an overwhelming visual presence, not least in the planned view southwards towards the chapel²⁵¹. The cemetery has particular communal value to the Polish community as the site of the Katyn Memorial. It will though retain its character as a purpose built cemetery and so the harm would be less than substantial²⁵².

Kew Green

6.54 Kew Green was designated as a conservation area in 1969, is part of the WHS buffer zone, and contains 38 listed buildings, four at Grade II*²⁵³. It is a quintessential village green²⁵⁴, and a rare survivor in London²⁵⁵. It is enhanced by being lined with listed buildings, which reflect the status of the area, and its Royal connections²⁵⁶.

6.55 The Chiswick Curve would disrupt the historic low scale of the skyline above the buildings fronting the Green. The currently harmonious combination of foreground open space, and a background of traditionally scaled buildings and trees, would be encroached upon by the conspicuous height and form of modern development²⁵⁷. The materials and detailing would not be readily appreciable but the solidity of the building will be visually arresting²⁵⁸, dominating the historic low scale of the skyline from the western and eastern part of the green²⁵⁹.

6.56 The setting of the conservation area is integral to its significance and would be fundamentally undermined by visually imposing the modern city onto a village green setting that has remained largely unaffected. This would cause substantial harm to the significance of the conservation area²⁶⁰.

6.57 Kew Gardens and Kew Green are part of the Arcadian Thames, but nowhere is more so than Strand-on-the-Green with its buildings facing over the river, many of which have done so for more than two centuries.

²⁴⁸ LBH/2/B4.2 Viewpoint 3 gives an impression of this as does CDA.11 View 3 Page 89

²⁴⁹ LBH/2/B4.2 Viewpoint 2 and CDA.11 View 2 (Page 85)

²⁵⁰ HE/1/A Pages 58-59, Paragraphs 6.3.19-6.3.21.

²⁵¹ CDA.11 View 4 Page 91

²⁵² HE/1/A Page 68, Paragraph 6.3.49.

²⁵³ HE/1/A Page 69, Paragraph 6.4.1

²⁵⁴ Acknowledged in CDA.11 THVIA Page 45 and by Mr Egret in x-e

²⁵⁵ HE/1/A Page 75, Paragraph 6.4.18

²⁵⁶ HE/1/A Page 71, Paragraph 6.4.7

²⁵⁷ HE/1/A Page 75 Paragraph 6.4.18

²⁵⁸ HE/1/A Page 76, Paragraph 6.4.19

²⁵⁹ HE/1/A Page 77, Paragraph 6.4.23 LBH/2/B4.2 View 11 CDA.11 Views 21 and 34

²⁶⁰ HE/1/A Page 79, Paragraph 6.4.28

Strand-on-the-Green

- 6.58 Strand-on-the-Green was designated as a conservation area in 1968, and was the first in the London Borough of Hounslow. It contains 23 listed heritage assets, many of these covering several addresses, including the Grade II* listed Zoffany House²⁶¹. According to the Thames Landscape Strategy, it is one of only three reaches of the River Thames, within London, that feature a continual thread of fine-grained traditional buildings with their faces towards the river²⁶².
- 6.59 It is best experienced and understood when walking along the south bank of the Thames²⁶³. In discussing the contribution of setting to the significance of Strand-on-the-Green conservation area, the THVIA said: *visually the river remains a key element in the significance of the conservation area as a whole, particularly in views from the south side of the Thames looking north*²⁶⁴.
- 6.60 The appellant envisages an 'invisible line' showing a line of buildings along the Golden Mile which curved steeply up at the Chiswick Curve as viewed from the south side of the river. It was said that this would guide the eye upwards and there was an acceptance that, in turn, the eye would be guided away from the Strand on-the-Green frontage²⁶⁵.
- 6.61 The Chiswick Curve would have an extreme degree of prominence, dominance and conspicuousness, appearing more than twice the size of the Strand-on-the-Green buildings²⁶⁶. The size, form and materials of the development would draw attention away from the conservation area²⁶⁷. The relaxed, village-like form of the settlement would be encroached upon by a domineering, urbanising structure quite alien to the riverine surroundings²⁶⁸. It will be completely out of scale even with the consented impacts²⁶⁹. It would cause substantial harm to the setting and thereby the significance of the conservation area and less than substantial harm to the setting and thereby the significance of the listed buildings within it²⁷⁰.
- 6.62 The appellant's heritage witness did not accept that there would be harm to the Strand-on-the-Green Conservation Area but accepted that if there was such harm then it would be substantial harm²⁷¹. That agreement was unequivocal, unhurried, informed and checked by the Inspector. The conclusion followed from application of the appellant's sensitivity/change/impact matrix. In the case of the Strand-on-the-Green Conservation Area, the THVIA says that 'high' sensitivity of the conservation area and its setting and high magnitude of change, give 'rise to a major

²⁶¹ HE/1/A Page 80, Paragraph 6.5.1

²⁶² CDF.11 and HE/1/A Page 86, Paragraph 6.5.18

²⁶³ HE/1/A Page 92, Paragraph 6.5.36 and Page 93, Paragraph 6.5.37.

²⁶⁴ CDA11 Page 37

²⁶⁵ APP/1/E Slide 123 of the presentation Mr Egret in-c and in x-e.

²⁶⁶ HE/1/A Page 89, Paragraph 6.5.26 LBH/2/B4.2 Viewpoint 9 CDA.11 View 12

²⁶⁷ HE/1/A Page 90, Paragraph 6.5.27

²⁶⁸ HE/1/A Page 90, Paragraph 6.5.29

²⁶⁹ HE/1/A Page 91, Paragraph 6.5.30

²⁷⁰ HE/1/A Page 94, Paragraph 6.5.39

²⁷¹ Mr Coleman x-e

effect²⁷². These are the highest categories of sensitivity, magnitude of change and significance of effect in the THVIA matrix²⁷³.

Conclusion on Impacts

- 6.63 In terms of the Kew Green and the Strand-on-the-Green Conservation Areas, HE considers that the harm to their significance would be substantial. The harm to the significance of the WHS, the Gunnersbury Park Registered Park and Gardens, and the conservation areas which include them, would be less than substantial, as would the harm to the setting, and thereby the significance of listed buildings.

Alternatives and Necessity

- 6.64 On the basis that the scheme would cause heritage harm, the SoS will need to consider whether the harm is necessary. Necessity, in the sense of absence of an alternative means to achieve the requisite public benefits in a less harmful way, is explicitly required by paragraph 195 of the revised Framework. It is implicitly required in paragraphs 194 and 194 since there cannot be a clear and convincing justification if the harm could be avoided²⁷⁴.
- 6.65 The appellant's consideration of alternatives has been inadequate. They have not considered any possible schemes which are lower than the planning application scheme²⁷⁵. They simply started with a 140 metre high (42 storey) scheme in November 2014²⁷⁶. This was then redesigned at a lower height by SEW and the height further reduced because of concerns about the Palm House. At some point there had been a reduction in height because of the impact on conservation areas, but the appellant is unclear as to when or how. Other views were not addressed at all, including of other listed buildings at Kew Gardens.
- 6.66 It is accepted that a lower building could be designed but that designing a 60m high building was not the brief²⁷⁷. There is no policy requirement for a 109 metre building on the appeal site. Indeed the emerging policies²⁷⁸ discuss height limits of no more than 65 metres, even with the appeal site being home to a landmark or marker building. No explanation was given in the ES for failing to look at a new building lower than the application scheme and no real explanation has emerged since.
- 6.67 An even greater lack of clarity hangs over the development or design brief from the client. Under the heading 'design brief' the ES says that SEW and the Project Team were provided with a development brief by the client²⁷⁹. Others denied the existence of a brief²⁸⁰. The absence of any instructions from the

²⁷² CDA11 THVIA Page 37, Paragraph 8A.49

²⁷³ CDA11 THVIA Page 4, Paragraph 2.42.

²⁷⁴ See *R (East Meon Forge and Cricket Ground Protection Association) v East Hampshire District Council* [2014] EWHC 3543 (Admin)

²⁷⁵ CDA.10 Chapter 3; CDA.14 Chapter 3; Mr Coleman in x-e

²⁷⁶ CDG01, Paragraph 21

²⁷⁷ Mr Egret x-e

²⁷⁸ CDD.04 to CDD.06

²⁷⁹ Mr Egret seemed to recall it in x-e and agreed that it could be provided to the Inquiry

²⁸⁰ Mr Coleman in x-e

Client as to what they wanted is implausible. The reasonable conclusion to draw is that the Client was looking for a very tall building and did not want consideration of anything lower than the application scheme.

- 6.68 There is a severe shortage of evidence on the viability of any smaller scheme. The only schemes assessed by the appellant are the Citadel, and the Octopus, which are said not to be commercially viable and so were excluded from being reasonable alternatives for EIA purposes²⁸¹. The appellant asserts that a reduction in the scale of the development would be likely to result in an unviable proposition and further stasis and dereliction on the site²⁸². However, there is no assessment of that. Consequently there is no design, policy or viability reason which leads to a conclusion that no building lower than 109 metres could be constructed on the site.

The Citadel – planning history but no fall-back

- 6.69 The Citadel planning permission was granted in 2002. Whilst the permission has been implemented there is no prospect that it will be built out. The ES says that neither the Citadel nor the Octopus are suitable or reasonable alternatives for the appeal site for commercial viability reasons²⁸³. The point is made again in the ES Addendum²⁸⁴.
- 6.70 The appellant's planning witness accepted that this was a statement that the Citadel was not viable²⁸⁵ but subsequently tried to assert that this just meant that it was less commercially viable than the Chiswick Curve²⁸⁶. That, however, is inconsistent with the language of the ES (which talks of reasonable not better alternatives) and the context (which is what alternatives are looked at rather than any thought by the appellant to be better). It was further asserted²⁸⁷ that the Client had confirmed that in the event of a refusal of planning permission for the Chiswick Curve, they would proceed with the Citadel. Again though, this is inconsistent with the underlying evidence.
- 6.71 A fall-back position involves a real prospect of that fall-back being relied upon if the scheme at issue is refused. It would be immaterial and irrational to take into account the prospect of something happening if it will not happen. Provided that it might happen, the weight to be attached to that prospect is for the decision maker, taking into account what the chances are of it occurring and the consequences if it happens²⁸⁸.
- 6.72 As the developer and landowner says that it is not a viable and so not an alternative for EIA purposes, there is no real prospect of it happening. It is therefore not capable of being material as a fall-back; it is not possible to take into account the prospect of something happening when it will not happen.

²⁸¹ CDA 10 Paragraph 3.11

²⁸² APP/4/A Paragraph 13.4

²⁸³ CDA10 Paragraph 3.11

²⁸⁴ CDA14 Paragraph 3.11

²⁸⁵ Goddard x-e

²⁸⁶ Goddard re-e

²⁸⁷ Goddard re-e

²⁸⁸ See *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [2018] JPL 176 at paragraph 27

- 6.73 The 2002 permission for the Citadel is part of the planning history of the appeal site. However, a bad decision taken some time ago is no good reason to make another such decision.
- 6.74 From the Council's Report to Committee on the application²⁸⁹, it can be seen that the approval was granted in the face of a strong objection from English Heritage²⁹⁰. It was not appreciated at the time that the Citadel would be visible from parts of Kew Gardens, and in particular in views from the Great Lawn in front of the Orangery. On that basis, harmful impacts on Kew Gardens and the Grade I listed Orangery were not assessed.
- 6.75 On top of that, Kew Gardens has been inscribed as a WHS since the grant of planning permission for the Citadel. Finally, the appellant's evidence is that the Citadel causes harm to the Kew Gardens heritage designations²⁹¹ and the Strand-on-the-Green Conservation Area²⁹².

The Planning Balance

- 6.76 HE leaves the planning balance to the SoS, but it is useful to consider some aspects of the evidence. Substantial harm to the significance of designated heritage assets has been a major issue on this application at least since HE responded to the consultation in February 2016 and it is part of the reasons for refusal. It was incumbent on the appellant to say how the planning balance should be exercised if the SoS found that there was substantial harm. The appellant's statement of case²⁹³ and written evidence failed to deal with the point at all²⁹⁴.
- 6.77 The appellant's planning witness talked about paragraphs 133 and 134 of the (previous version of the) Framework and benefits but failed to reach a conclusion in the event of substantial harm. It was asserted that in the event of a finding that there would be substantial harm, then the balance would still fall in favour of the proposals²⁹⁵. However, that was hopelessly late and incoherent. There was no attempt to distinguish substantial public benefits from public benefits or to address necessity. Since all of the expert witnesses who consider that there is substantial harm are applying it as a high test in accordance with the revised Framework, and the PPG²⁹⁶, the appellant fails to address what the substantial public benefits are, and the application of the balance if that level of harm is found.
- 6.78 If it is accepted that there is substantial harm to the significance of the WHS, the Kew Gardens Grade I Registered Park and Garden, or Grade I or II* listed buildings, as RBGK suggests, then there must also be wholly exceptional circumstances to justify approving the scheme.

²⁸⁹ APP/4/C2

²⁹⁰ HE/1/A Page 8, Paragraph 4.3

²⁹¹ Mr Coleman in x-e

²⁹² CDA15 THVIA Addendum Page 19, Paragraph 4.4

²⁹³ CDE.01

²⁹⁴ Mr Goddard in x-e

²⁹⁵ Mr Goddard in-c and x-e

²⁹⁶ HE/1/A Paragraph 5.2.20; LBH/1/A Paragraphs 3.43 and 3.64

- 6.79 We leave whether there is a clear and convincing case that public benefits outweigh the harm which has been caused to the other parties. However the SoS needs to be confident that the requirements of the revised Framework have been satisfied and that there is clear and convincing justification that, in so far as heritage assets are irreplaceable, the substantial harm which would arise from this development to the Strand-on-the-Green and Kew Green Conservation Areas is necessary, and that there are substantial public benefits arising from this scheme which would outweigh that substantial harm.

The Advertisement Appeal

- 6.80 HE make no representations on the merits of the advertising appeal, although note that it will fall if the planning application is dismissed as there will be literally nowhere to put the advertising panels.

7 The Case for the Royal Botanical Gardens Kew

- 7.1 This is set out in full in opening and closing statements to the Inquiry and in evidence²⁹⁷. Helpfully, after the Inquiry closed, RBGK provided an update, to take account of the revised Framework²⁹⁸.
- 7.2 What follows is a summary of the case presented in closing, and it is imperative that the closing is read and considered carefully, alongside the evidence, to gain a proper appreciation of the case presented, and in particular, those aspects relating to case law.

Introduction

- 7.3 Kew Gardens is a world-renowned botanical garden. It was established in 1759, has developed through centuries of scientific and cultural evolution, and is now also a global scientific institute. It is also the site of a designed landscape of international significance with contributions by most of the major landscape designers of the eighteenth century including Bridgeman, Kent and 'Capability' Brown. This landscape was later redesigned in the nineteenth century by Hooker, Nesfield and Burton, to create the most famous example of a Victorian botanic garden.
- 7.4 Kew Gardens is also the site of a very important collection of buildings, including a large number of listed buildings, six listed at Grade I, of all periods of architecture from the sixteenth century onwards, including Kew Palace, a number of important garden buildings from the eighteenth century, and the most significant collection of glasshouses worldwide, including the Orangery, the Palm House and the recently restored and re-opened Temperate House.
- 7.5 It was Kew Gardens' unique combination of its scientific, and in particular botanical and ecological, importance, its highly influential landscape design, and its outstanding collection of historic buildings and other architectural features that led to its inscription as a WHS in 2003.
- 7.6 The fact is that the RBGK only objects to planning applications when its interests would be adversely affected. It has done so in this case only because

²⁹⁷ INQ4, INQ40, RBG/1/A to RBG/3 inclusive

²⁹⁸ INQ47

of genuine concern as to the harm that would result to the WHS if Appeal A is allowed. RBGK say that the appeal proposal is: *a tipping-point beyond which further development would result in substantial harm to the OUV, authenticity and integrity of the World Heritage Site*²⁹⁹. For the appellant in opening³⁰⁰ to seek to dismiss these concerns as: *overblown, inappropriate and irresponsible* is risible and betrays a fundamental lack of appreciation of the OUV of Kew Gardens, as a WHS.

- 7.7 Throughout, RBGK's objection to the appeal proposal has been based on harm to the OUV of the WHS, and in particular the rich and diverse historic cultural landscape, and iconic architectural legacy³⁰¹. That stance has been supported by the Council, and HE. RBGK's objection is to Appeal A. No case is made in relation to the linked Appeal B because these advertisements would not be visible from Kew Gardens. But of course, if Appeal A is refused, as RBGK says it should be, then Appeal B must also be refused.
- 7.8 RBGK's case is largely confined to the effect of the proposal on the setting and thereby the significance of heritage assets. Given the obvious overlap, submissions need to be made on the design issue too.

Preliminary Matters

- 7.9 Before considering in detail the heritage impacts, there are a number of preliminary matters to be dealt with.
- 7.10 The first is the support for RBGK's objections by others and the weight to be given to these views. The decision to actively participate and to oppose the appeal at Inquiry has been endorsed by the World Heritage Site Steering Group³⁰² (the Steering Group). This brings together various bodies to ensure that the Kew World Heritage Site is considered as part of wider decision-making. The refusal of planning permission has also been very recently supported by the UNESCO World Heritage Centre in Paris. The Centre supports the World Heritage Committee.
- 7.11 Thus, in a letter to DCMS dated 28 May 2018, the Director of the World Heritage Centre, confirmed their support for the refusal of planning permission for the appeal proposal because of: *the adverse effect of the proposal to the World Heritage property and to the significance of the Kew Green*³⁰³.
- 7.12 Moreover, and importantly, the refusal of planning permission has also been strongly supported by a recent technical review undertaken by ICOMOS³⁰⁴. This technical review needs careful consideration and should be afforded considerable weight by the SoS.
- 7.13 RBGK also draws resolve not just from the support for refusal of the appeal proposal by these important international bodies, but also from the strong

²⁹⁹ CDC.11 Paragraph 5.31

³⁰⁰ INQ3 Paragraph 91

³⁰¹ CDE.07

³⁰² RBG/1/A Section 7 and Williams e-in-c

³⁰³ RBG/3

³⁰⁴ RBG/3a

opposition to this appeal from others³⁰⁵ including HE, the Council, the London Borough of Richmond, and Historic Royal Palaces.

- 7.14 The views of the Mayor have been relied upon by the appellant to a significant extent with the suggestion that the Mayoral Team has found no unacceptable harm to Kew Gardens as a result of the proposal at issue. However, there is in fact no evidence that anyone with any expertise in heritage matters within the Mayoral team assessed the appeal proposal. Indeed documents submitted by the Council show that at the time of the GLA's involvement with the appeal proposal it had one part-time (1 day a week) heritage adviser but he did not consider the appeal proposal³⁰⁶.
- 7.15 More importantly it is impossible to know what the final view reached by the Mayoral team on any harm to Kew WHS and its other heritage assets such as the Orangery actually was. In the Stage I report there does appear to be a suggestion that the proposed development will not affect the OUV of the Kew WHS³⁰⁷. This view was based on the TVIA and did not have the benefit of the rather more detailed assessment of the OUV contained in the TVIA addendum³⁰⁸. Ultimately, the Stage I report concludes: *Given the importance of preserving the OUV of the WHS, GLA officers would welcome further detailed discussion around the selection of the submitted views in order to be satisfied that the assessment is complete and thorough*³⁰⁹.
- 7.16 In the Stage II report it is noted³¹⁰ that the Council concluded that there was harm caused by the appeal proposal, including less than substantial harm to the setting of the WHS, and substantial harm to Kew Green and Strand-on-the-Green Conservation Areas. The report then baldly states: *GLA officers do not agree with the range and extent of harm to heritage assets that would be caused by the proposed development. Whilst harm to Strand-on-the-Green is noted, this is mitigated by securing the highest quality and standard of design, so that harm is considered to be less than substantial.* This final conclusion is highly unsatisfactory. It leaves wholly unclear what conclusion the Mayor has actually reached about whether there is in his view any harm, and if so how much harm, to the WHS, and indeed to other heritage assets located within and adjoining the WHS.
- 7.17 In this context, the weight the SoS should attach to the views of the Mayoral team, whoever they are and whatever their expertise, or lack of it, must be very limited.

Accurate Visual Representations

- 7.18 AVRs are, of course, only an aid an assessment and give an indication of how a development may appear in a single static view. They are only ever part of the assessment.

³⁰⁵ RBG/2/A Paragraph 2.2.6

³⁰⁶ INQ20 and 21 It was Mr Dunn's evidence on behalf of HE that the Mayor currently has no specialist in-house heritage expertise and it was looking for advice from HE to fill this gap.

³⁰⁷ CDG.01 Paragraphs 60- 61

³⁰⁸ CDA.15 was not produced until October 2016, long after the Stage I report.

³⁰⁹ CDG.01 Paragraph 61

³¹⁰ CDG.02 Paragraphs 29-31

- 7.19 Jointly, with the Council, RBGK commissioned additional AVRs, and the Council called the producer of those AVRs as a witness to consider, amongst other things, the accuracy of the viewpoints in the TVIA and addendum TVIA³¹¹. The expertise of that witness is accepted by the appellant³¹² and the AVRs he produced are undoubtedly useful in judging the impacts of the appeal proposal.
- 7.20 While these AVRs do not show a rendered version of the Chiswick Curve this does not in any way detract from their usefulness in relation to judging the impact of the proposal on Kew Gardens. The principal purpose of the viewpoints produced is to allow an understanding of the height, scale and massing of the appeal proposal, not its detailed finish³¹³. In any event, little, if any, of the detailing would be readily appreciable from Kew Gardens. Moreover, the appellant accepts that rendering such detailing is not in any event a precise science; there is a strong element of artistic judgement³¹⁴.
- 7.21 Whatever criticisms were made of these additional AVRs, the fact remains that in reaching conclusions on heritage impacts, RBGK's evidence has considered all the AVRs, produced by all parties to the Inquiry.

The Principle of a Tall Building on the Appeal Site

- 7.22 The mantra that the principle of a tall building on the appeal site has been accepted needs careful consideration.
- 7.23 Much is made by the appellant of the Citadel, which benefits from an extant planning permission. It is certainly true that the Citadel if built would be very much visible from certain heritage assets such as, for example, Kew Green. But the fact is that because it would only be 59m tall, it would be a lot less visible from Kew Green than the appeal proposal³¹⁵.
- 7.24 As regards the impact of the Citadel on Kew Gardens, there are a number of key points that need to be made³¹⁶. First, the Citadel was granted permission prior to Kew Gardens being inscribed as a WHS. Potential impacts on Kew Gardens appear to have been overlooked. The only credible explanation for this is that it was just not appreciated by anyone that there was even the possibility of any impacts on Kew Gardens or heritage assets within it³¹⁷. A planning mistake like that should not be used to justify an even bigger mistake.
- 7.25 At 59m, the Citadel would be a tall building. That it would be defined as a tall building does not though provide any sort of justification for a far, far taller building. The fact that the Council has found to be acceptable a building that is 59m high, self-evidently does not mean that it is in some way bound to also find to be acceptable a building that is 109m high. It would be far taller than a number of existing buildings which already have an adverse effect on the setting of the Kew World Heritage Site, e.g. Vantage West (62m AOD); the BSI

³¹¹ Mr Spence

³¹² Mr Coleman x-e

³¹³ Mr Spence e-in-c

³¹⁴ Mr Coleman x-e

³¹⁵ LBH/2/B4.2 Viewpoint 11

³¹⁶ All accepted by Mr Coleman in x-e

³¹⁷ APP/4/C2 Paragraphs 8.15 and 8.16

Building (71.3m AOD); the Haverfield Estate towers (72m AOD); and the Kew Eye (102.1m AOD).

- 7.26 On top of that, it cannot be forgotten that the draft East Brentford SPD seeks to limit the heights of any building on the appeal site to 60m³¹⁸. This limitation is based on, amongst other things, limiting (but not avoiding) impacts on Kew Gardens³¹⁹. The draft SPD and its supporting documentation is well-reasoned in setting this limitation.
- 7.27 The appellant's arguments on the principle of a tall building on the appeal site are of limited utility, therefore.

Is this about an aversion by RBGK to Modernity?

- 7.28 RBGK's objection is not motivated by an aversion to modernity. There are a number of notable modern buildings and structures in Kew Gardens, including the Alpine House, the Princess of Wales Conservatory, and the Hive. Any attempt though to rely on these structures and buildings to justify the Chiswick Curve is fallacious.
- 7.29 The Alpine House and Princess of Wales Conservatory are part of a long-tradition of glasshouses in Kew, and the Hive part of the tradition of follies. All of these were designed to fit within the landscape of Kew Gardens. There cannot be any valid comparison to the impact of a vast 32-storey tower on the Chiswick Roundabout invading multiple views of the gardens.

Kew Gardens Heritage Designations and their Importance

- 7.30 Kew Gardens is washed over by and contains a number of heritage designations of the highest significance³²⁰. It is a WHS and a Grade I Registered Historic Park and Garden. It contains over 40 individual listed buildings and structures, including 6 Grade I listed buildings and 5 at Grade II*, and a Scheduled Ancient Monument. Because these assets are all of the highest significance, any harm to their significance must be accorded the greatest weight³²¹.

World Heritage Site

- 7.31 The inscription of Kew Gardens as a WHS in 2003 places international obligations on the UK Government under the terms of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (the Convention) and its supporting Operational Guidelines³²². Thus, the Convention by Article 4 imposes a strongly worded obligation to ensure the *protection, conservation, preservation and transmission to future generations of WHSs* and requires that a state which has ratified the Convention *will do all it can to this end, to the utmost of its resources*³²³.

³¹⁸ CDD.05 Paragraph 4.36 (and footnote 1) and 4.38

³¹⁹ CDD.05 Pages 12, 18 and 26–27 and CDD.06 Pages 5, 7, 13, 31, 51, 63–65, 76, 78, 80 & 83 and Mr Goddard's x-e

³²⁰ Accepted by Mr Coleman in x-e

³²¹ In accordance with Paragraph 194 of the revised Framework

³²² RBG/2/A Paragraphs 3.3.1 and 3.3.2

³²³ RBG/2/A Paragraph 3.3.2

- 7.32 The Operational Guidelines, at paragraph 96³²⁴, remind State Parties that: *Protection and management of World Heritage properties should ensure that their OUV, including the conditions of integrity and/or authenticity at the time of inscription, are sustained or enhanced over time.*
- 7.33 The protection of WHSs in international law goes beyond the boundaries of the site itself. Thus the Operational Guidelines indicate the need for *[a]n integrated approach to planning and management* and make clear this approach goes beyond any designated buffer zone to *the broader setting* of a site, emphasising that this involves consideration of the *natural and built environment, land use patterns and visual relationships*³²⁵.
- 7.34 The Operational Guidelines defines OUV as: *cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole*³²⁶.
- 7.35 This text also begins to give voice to the level of importance that must be attached to WHSs, and the weight that must be given to any harm to the significance of such sites. They transcend national boundaries and are of common importance for present and future generations of all humanity. This is echoed in the PPG³²⁷. Indeed, as already noted in paragraph 194 of the revised Framework, a WHS is a designated heritage asset of the highest significance. The WHS designation is the most significant, and rarest, heritage designation there is.

OUV

- 7.36 The PPG records that: *The Outstanding Universal Value of a World Heritage Site, set out in a Statement of Outstanding Universal Value, indicates its importance as a heritage asset of the highest significance...*³²⁸.
- 7.37 LP Policy 7.10³²⁹ states that *development in World Heritage Sites and their settings, including any buffer zones, should conserve, promote, make sustainable use of and enhance their authenticity, integrity and significance and Outstanding Universal Value* and goes on to state that *Development should not cause adverse impacts on World Heritage Sites or their settings (including any buffer zone). In particular, it should not compromise a viewer's ability to appreciate its Outstanding Universal Value, integrity, authenticity or significance.*
- 7.38 After 2005, UNESCO required all WHSs to produce a Statement of Outstanding Universal Value (SOUV), with an accompanying Statement of Integrity and, for cultural sites, a Statement of Authenticity, along with a description of Protection and Management Requirements. The retrospective SOUV for Kew

³²⁴ RBG/2/A Paragraph 3.4.9

³²⁵ RBG/2/A Paragraphs 3.4.12 and 3.4.13

³²⁶ RBG/2/A Paragraph 3.4.6 and also CDA.11 THVIA Paragraph 8C.1 and Mr Coleman in XX

³²⁷ CDC.02 Paragraph 028 Reference ID: 18a-028-20140306

³²⁸ CDC.02 Paragraph 026 Reference ID: 18a-026-20140306

³²⁹ CDC.04

Gardens was submitted by the UK Government to UNESCO following consideration and was adopted in 2010³³⁰.

- 7.39 There has in some of the appellant's documentation been an attempt to suggest that OUV of Kew Gardens is invested more prominently in the value of its horticulture and its tree collections, rather than its designed layout, which has been compromised³³¹. This view is just wrong and borne out by even the most cursory reading of the SOUV for Kew Gardens³³², which records that the criteria under which Kew Gardens was inscribed.
- 7.40 It is, of course, accepted that part of the OUV of Kew Gardens does indeed arise from what the appellant refers to as: *the value of its horticulture and its tree collections*. But the OUV is also very much invested in its designed landscape and its buildings.
- 7.41 Paragraph 184 of the revised Framework clarifies that WHSs are recognised internationally for their OUV and that this forms part of their significance and should be taken into account in considering development proposals.
- 7.42 Moreover, setting is of key importance to the OUV of a WHS. Thus the Mayor's London's World Heritage Sites – Guidance on Settings SPG, 2012³³³, CDC.11 makes clear that: *The setting of a World Heritage Site is recognised as fundamentally contributing to the appreciation of a World Heritage Site's Outstanding Universal Value and changes to it can impact greatly, both adversely and beneficially, on the ability to appreciate its Outstanding Universal Value*.
- 7.43 Setting is absolutely critical to the OUV of Kew Gardens, as can be seen above the SOUV expresses the concern, highly pertinent to this appeal, that: *Development outside this Buffer Zone may threaten the setting of the property*³³⁴. The importance of setting is further emphasised in the Management Plan³³⁵.

The Management Plan

- 7.44 There appears to be no dispute as to the importance of the Management Plan to the issues on this appeal. The purpose of a Management Plan, as explained in the Mayoral SPG³³⁶, is to set out objectives and action plans for implementation based on conserving each site's OUV, authenticity and integrity and to define attributes which give a more detailed expression of the World Heritage Sites' OUV.
- 7.45 The Management Plan is critical to this appeal in three main ways. First, it clearly indicates that in terms of the OUV of Kew Gardens and the attributes that make this up considerable attention is given to the landscape and broader

³³⁰ CDF.17

³³¹ CDC.15 Paragraph 2.33 for example

³³² CDF.17

³³³ CDC.11 Paragraph 1.3

³³⁴ CDF.17

³³⁵ CDF.10

³³⁶ CDC.11 Paragraphs 2.20 and 2.21

- setting³³⁷. Second: it provides detailed information that assists in understanding what the setting of the Kew WHS is made up of. Third: it makes clear that the intrusion of development outside of the WHS and its buffer zone, in the form of existing and possible future tall buildings north of the River, is a major threat to the setting of the WHS and hence to its OUV and significance.
- 7.46 The threat posed by tall development north of the River to the setting, OUV and significance of the WHS is reflected in other documents produced by ICOMOS. It is specifically recorded in the SOUV as a threat to the integrity of the Kew WHS. The concern in this regard pre-dated inscription. Thus the ICOMOS site evaluation³³⁸ recorded that: *The ICOMOS mission took the view that the overall aspect of six 22-storey tower blocks (Haverfield Estate) at Brentford on the opposite bank of the Thames, opposite the gardens and outside the buffer zone, seriously diminished the visual experience at Kew at several points in the gardens (emphasis added).*
- 7.47 These themes are also emphasised in the very recent ICOMOS technical review of the appeal proposal³³⁹.
- 7.48 There are two further points to be made at this stage. First, a failure to provide effective management and protection can lead to a WHS being placed on the List of World Heritage in Danger and potentially de-listed. Other WHSs threatened by development outside of their boundaries are currently on the In-Danger list and consequently threatened with de-listing, including the Liverpool Maritime Mercantile City WHS. Second, at Liverpool ICOMOS have taken the position that what is needed is the adoption of planning policy limiting the heights of buildings in order to protect the WHS³⁴⁰.
- 7.49 This is, of course, an issue that the Council is rightly seeking to address through its draft SPD³⁴¹ and which would limit the height of buildings east of the Great West Corridor, including on the appeal site, in order to seek to reduce (but not avoid) impact on Kew Gardens, amongst other heritage assets. The Brentford East Capacity Study Final Report³⁴² thus records: *Given the world importance of The Royal Botanic Gardens, it is unacceptable that tall or over-scaled developments should continue to invade the setting through a process of accretion following 'one off' decisions. This process could result ultimately in the marked degradation of this World Heritage Site. A strategic judgement, informed by a robust Brentford East Framework Study, would assist in an effective consideration of future proposed developments. The setting of the World Heritage Site demands that proposed change must be viewed in a broader and more holistic manner.*
- 7.50 Allowing this appeal would lead to a further, and significant, invasion of the setting *through a process of accretion following 'one off' decisions*³⁴³ and would result in *the marked degradation of this World Heritage Site*. This is not a

³³⁷ RBG/2/C2 Appendix G

³³⁸ CDF.19

³³⁹ RBG/3a

³⁴⁰ Mr Croft e-in-c

³⁴¹ CDD.05

³⁴² CDD.06

³⁴³ Mr Coleman in x-e accepted this.

prematurity point in the technical sense, rather it is a plea to dismiss this appeal and thereby prevent further degradation of the setting of Kew WHS, through one-off decisions, and allow the issue of the height of buildings in Brentford to be determined via policy, whether it be the draft SPD, or the Local Plan Review.

The Setting of the Kew WHS

- 7.51 It is crucial to understand what the setting of Kew Gardens is in order to understand the threats to this setting and the impact that this will have on its OUV and thereby its significance. There are a number of points to be made.
- 7.52 It is clear is that the setting of the Kew WHS is very different from the other three London sites. These are far more urban. Two of them are truly city centre locations, and Greenwich is very close to Canary Wharf. All three have a long history of being embedded in the dense urban fabric of central London. Kew is totally different. Thus the Mayoral SPG records³⁴⁴ that Kew Gardens is: *some nine miles from central London, that it: is the most self-contained of the four sites and that: its immediate surroundings are domestic.*
- 7.53 This context can be seen by looking at a plan of the WHS and its buffer zone. To the east and south-east, Kew Gardens is bounded by low-rise domestic scale built form. To the south lies open land in the form of the Old Deer Park. To the west lies the Thames and beyond it, Syon Park. The immediate environs to the north are domestic in scale, with the village atmosphere of Kew Green. It is only north of the Thames that there are unwelcome and negative impacts as a result of the visibility of some tall buildings³⁴⁵.
- 7.54 The elements that make up the setting of the Kew WHS include (but are not limited to) views across, into and out of the site, both those identified in the Management Plan³⁴⁶ and others, such as views of the Orangery across what remains of the Great Lawn; the backdrop to key views and vistas including the Syon Vista, Broad Walk, Cedar Vista, Pagoda Vista, and other internal views such as the views over the open lawns in the Entrance Zone which reflect the historic Great Lawn; the visual and physical relationships westwards over and to the River Thames and wider Arcadian landscape beyond, including the designed relationships with Syon Park³⁴⁷; the backdrop to views of and from architectural icons on the site including the Palm House, Temperate House, Princess of Wales Conservatory, Kew Palace and the Orangery, as well as the backdrop to views of and from the numerous historic garden buildings, follies and so forth on the site; the creation of a sense of enclosure and separation from the wider world created by the walls and boundary planting and supported by the largely unbroken skyline³⁴⁸; and the domesticity and village feel of Kew Green³⁴⁹.

³⁴⁴ CDC.11 Page 35

³⁴⁵ RBG/2/C1 Appendix A

³⁴⁶ CDF.10 Page 95

³⁴⁷ CDF.10 Paragraph 12.2.11

³⁴⁸ RBG/2/A Paragraph 5.7.5

³⁴⁹ RBG/2/A Paragraphs 5.7.10 – 5.7.11

- 7.55 The appellant's case has focused on views but as the Mayoral SPG makes clear³⁵⁰, setting is not solely defined by views into and out of a WHS; it can also be defined by other physical and experiential elements. These all affect the ability to experience the qualities of the place and appreciate its significance.
- 7.56 The modern experience of Kew Gardens is of a safe haven in this busy city; a place to escape and walk alone or to spend time with family and friends. This reflects historic design intents to separate Kew Gardens from the wider world. The high walls and decorative gateways that puncture the walls, and the enclosing nature of the trees, all contribute to this feeling of retreat and escape into a world apart. This sense of being a 'world apart' is rooted in Kew Gardens' historic design ethos and purpose³⁵¹.
- 7.57 There are, as part of the setting of the WHS, existing features that break into the skyline outside the garden's boundaries and are (regrettably) highly noticeable. These infringe on the experience of immersion in the verdant landscape of Kew Gardens and impact (adversely) on the ability to understand and experience its design intent.
- 7.58 These features are all tall buildings north of the Thames which are almost universally recognised as having a very negative impact on the heritage designations that overlay Kew Gardens. Chief among these are the six Haverfield Towers on the Haverfield Estate; the 16-storey building on the former Thames Water site on Kew Bridge Road known as the Hyperion; the so-called 'Kew Eye'; the BSI building; and the Vantage West building³⁵².
- 7.59 There is an important point to make here. These existing buildings are indeed part of the setting of Kew Gardens but it is almost indisputable that they have a negative impact whenever they are viewed from within the WHS. They provide what the Mayoral SPG³⁵³ calls the: *most tangible evidence of the Botanic Gardens' urban context*. But there is nothing positive or beneficial about this. What is clear is that the impact is negative – it detracts from the setting and the OUV of Kew WHS. That this is so is plain from the SOUV, the Management Plan, the 2003 ICOMOS site evaluation, the 2014 periodic report, and the ICOMOS technical review of the appeal proposal. These existing tall urban intrusions detract from Kew Gardens' significance.
- 7.60 Today when visiting Kew Gardens, one is struck by the jarring and highly detrimental impact that views of existing tall buildings have. This reaction to existing tall buildings such as the Haverfield Towers and the Kew Eye is not as a result of these being poorly designed, although they undoubtedly are, it is as a result of their visibility. It is because they protrude arbitrarily above the defined tree line within the visual envelope of the WHS and appear on major vistas and key views across and of Kew Gardens.

³⁵⁰ CDC.11 Paragraph 4.3

³⁵¹ RBG/2/A Paragraph 5.6.4

³⁵² RBG/2/C1 Appendix D Photos 1–4, 6–16 and 18–20.

³⁵³ CDC.11

- 7.61 The fact is that increased visibility of new tall buildings from Kew Gardens is *per se* harmful. It is damaging to the OUV, and the attributes that contribute to it.
- 7.62 The appellant refers to LP paragraph 7.34³⁵⁴, which is supporting text to Policy 7.10, where it is said there is a need for a managed balance between: *protecting the elements of the World Heritage Sites that make them of Outstanding Universal Value and allowing the surrounding land to continue to change*. There are two answers to this. First, part of Kew Gardens' OUV, different from the other London WHSs, is its nature as an escape and the absence of urban intrusion; and second RBGK is not against all development, indeed it supports economic and social regeneration in Hounslow and in no way is it anti-development; it opposes very few schemes. It just wants development to respond to, respect and safeguard the OUV of the WHS. The appeal proposal does not do this.
- 7.63 Of course, it is possible to grant permission notwithstanding harm to the significance of heritage assets so long as the relevant (and stringent) policy tests in the revised Framework are met. Similarly, while the fact that there would be harm may mean policies in the development plan are breached that does not mean refusal is mandatory. There is still s.38(6) to be applied.
- 7.64 That is why the appellant is quite wrong to characterise the RBGK's case as being an *embargo*, a *ban* or a *cordon sanitaire*. What RBGK argue is that the proper starting point for decision-making in this case is that the addition of a further tall building into the visual envelope of Kew Gardens would be harmful to the setting and OUV, and hence the significance, of the WHS.
- 7.65 Finally, in this regard it is worth recalling that the Management Plan³⁵⁵ says that the existence of the Haverfield Towers: *increase pressure for further tall buildings in their vicinity* and goes on to record that: *developers have argued that the presence of tall buildings is a particular feature of the locality and hence feel that further tall buildings would be in keeping with the character of the area*. That very argument has regrettably formed a key plank of the appellant's arguments on this appeal. It is deeply flawed and runs contrary to the HLP. This provides in Policy CC3(f) that it will not allow existing tall buildings to be a justification for the provision of new ones.
- 7.66 Indeed, the appellant's arguments run counter not just to Policy CC3(f) but also a number of other key policies that both emphasise the importance of, and require the assessment of, the cumulative impact of development in the setting of a WHS. This was demonstrated in evidence³⁵⁶ when attention was drawn to the officer report for Brentford FC development saying that the proposed development was only visible in: *a fraction of the landscape and architectural features at Kew Gardens*. It was then pointed out that the same formula was repeated for the Citroen site, Capital Interchange Way, and Watermans. Repeating that formula in case after case means that more and more of Kew Gardens will suffer from visual intrusion.

³⁵⁴ CDC.04

³⁵⁵ CDF.10 Paragraph 8.3

³⁵⁶ By Mr Goddard

Cumulative Harm – The Policy Context

- 7.67 HLP Policy CC3(f) has already been noted but there are a number of other policy and guidance documents that need to be considered. First, the assessment of the cumulative impact of development is, of course, relevant when considering the setting of any designated heritage asset. Thus, HE's Guidance on Setting says that: *when assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change.* Further, it is said that: *where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset*³⁵⁷.
- 7.68 Second, the importance of cumulative assessment is even greater in relation to WHSs. The PPG specifically endorses this, saying that there is a need for local planning authorities both in respect of Plan making and development control to be: *protecting a World Heritage Site from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect*³⁵⁸. This is referred to in the Management Plan³⁵⁹.
- 7.69 Third, the Mayoral SPG highlights the importance of assessing cumulative impacts³⁶⁰. It states that: *The cumulative effect of separate impacts should also be considered. These are impacts that result from incremental changes caused by past, present or potential developments with planning permission that cumulatively with the proposed development can have a significant impact on the setting of a World Heritage Site.* The potential cumulative impact of the proposed changes should therefore be assessed to consider whether proposed developments will increase the likelihood of other similar developments occurring and any consequences of that. There should also be recognition that previous permissions for similar developments do not necessarily represent acceptability of impacts on setting: *as the cumulative effect is different for each new proposal and there may be a tipping-point beyond which further development would result in substantial harm to the OUV, authenticity and integrity of the World Heritage Site.*
- 7.70 Fourth, appeal decisions have also recognised both the extraordinary value of World Heritage Sites and the particular need to address cumulative impacts³⁶¹.
- 7.71 Fifth, a consideration of the cumulative impact is also especially important in the context of tall buildings. Thus, HE's Advice Note 4 on tall buildings says: *each building will need to be considered on its merits, and its cumulative impact assessed.* The checklist it sets down requires a cumulative assessment. Importantly, it also says: *careful assessment of any cumulative impacts in relation to other existing tall buildings and concurrent proposals will also be needed to fully understand the merits of the proposal. The existence of a built*

³⁵⁷ CDF.13 Pages 2 and 4

³⁵⁸ CDC.02 Paragraph 032 Ref. ID: 2a-032-20140306

³⁵⁹ CDF.10 Paragraph 4.2.6

³⁶⁰ CDC.11 Paragraph 5.31

³⁶¹ RBG/2/A Paragraph 5.8.25

*or permitted tall building does not of itself justify a cluster or additions to a cluster*³⁶².

Harm to the setting of the WHS

- 7.72 Any assessment of harm to the Kew WHS must include a cumulative assessment. This involves consideration of past, present or potential developments.
- 7.73 In terms of the current impact caused by past developments, it is necessary to consider the Haverfield Estate, 'Kew Eye' and the Hyperion. These tall buildings are visible from various locations in the WHS, including the Orangery and Great Lawn, the Broad Walk, and Kew Palace. These buildings are almost universally acknowledged as having a negative impact on the setting of the WHS³⁶³. There are other tall buildings, such as the BSI building, Chiswick Park, the Bull building and Vantage West which also intrude negatively (to varying degrees) into other views³⁶⁴.
- 7.74 The appellant sought to suggest that any impact from the Haverfield Estate could be wholly ignored because it was there when the WHS was inscribed³⁶⁵.
- 7.75 This is a really telling misunderstanding. The Mayoral SPG³⁶⁶ requires the assessment of cumulative effects to consider *past* development. There is no limitation expressed on only considering development post-inscription, and that must be especially so having regard to the fact that the harm caused by the Haverfield Estate was highlighted at the point of inscription.
- 7.76 In terms of other potential development much has been made by the appellant of the consented Brentford FC development and the proposed, but not yet consented, developments on the Citroen and Waterman's (Albany Riverside) sites.
- 7.77 As set out, the Brentford FC development has received permission and it will when constructed appear directly behind the Orangery in *some* albeit limited views. RBGK objected to the scheme principally on the basis of the impact it would have on the settings of Kew Green and the Palm House but those objections were overruled.
- 7.78 There can be no doubt that this development will be seen above and thereby have an impact on the setting of the Orangery. Moreover, there will be glimpsed views of the higher parts of it from elsewhere in Kew Gardens. The harm caused will not be as great as that which would be caused by the appeal proposal however because the Brentford FC development will be considerably lower, and less prominent.
- 7.79 The Mayor has resolved to grant planning permission for the development of the Citroen site³⁶⁷, subject to completion of a Planning Obligation and referral

³⁶² CDF.14 Paragraphs 3.8, 4.6 and 4.7

³⁶³ RBG/2/C1 Appendix D contains a series of photographs showing them

³⁶⁴ LBH/2/B4.2 Viewpoints 16 and 18

³⁶⁵ Mr Croft x-e and Mr Coleman re-e

³⁶⁶ CDC.11

³⁶⁷ INQ48

to the SoS. HE is pressing the SoS to call-in the application because of the impact it would have on the setting of the Kew WHS, amongst other things. If the scheme gains permission, and is built, it will add further cumulative harm.

- 7.80 The Waterman's site (Albany Riverside) has not been permitted yet. HE and RBGK have strongly objected to the scheme on the basis of the impact it would have on the WHS, and HE has sought its call-in³⁶⁸.
- 7.81 So there can be no question but that the WHS has already been significantly adversely affected by external development in the form of tall buildings north of the Thames. And more of the same is threatened by other proposals. The appeal proposal would worsen this situation in two key ways.
- 7.82 First, it would introduce significant new visual intrusion into areas of the WHS that currently retain their historically intended enclosed character for example the Order Beds, Grass Garden, Rockery, and views from and to Cambridge Cottage. The proposal would extend the impact of external development into new areas of the WHS, leaving less of the WHS with its historically intact setting and character³⁶⁹.
- 7.83 Second, it would significantly increase the cumulative impact of current development on the setting of key assets in the WHS, and on important areas of the WHS.
- 7.84 It would intensify the impact of external development on the setting and character of the still open former areas of the Great Lawn; it would significantly increase the impact of development on the setting of the Orangery; and would also worsen the impact of development on the setting of both Kew Palace, and the Palm House³⁷⁰.
- 7.85 In considering all these impacts there are a number of general points to be made. A number of the buildings and locations impacted are specifically mentioned in the Statement of OUV, including the Orangery, the Palm House, the Temperate House, and folly temples like the Temple of Aeolus and the Pagoda³⁷¹.
- 7.86 The appellant argues that there will only be a limited number of views of the appeal proposal from Kew Gardens³⁷². This cannot be accepted as being a remotely fair characterisation of the position.
- 7.87 In the Management Plan³⁷³ the Kew WHS is divided up into eight landscape character zones. There is no dispute that the appeal proposal would be visible in a number of locations within the Entrance, Riverside, North Eastern, and Palm House zones. The proposal would also be very clearly visible from the Pagoda. That is five out of the eight zones³⁷⁴. Linked to this is the repeatedly made point that there would be no impact on the sight lines and views

³⁶⁸ APP/4/C12 contains visualisations of the scheme

³⁶⁹ LBH/2/B4.2 Viewpoints 11 and 19-21 and APP/3/E Views 48-50

³⁷⁰ RBG/2/A Paragraphs 5.8.11 – 5.8.13 and LBH/2/B4.2 Viewpoints 12-17 in particular

³⁷¹ CDF.17

³⁷² APP/3/A Paragraphs 5.15 and 9.14

³⁷³ CDF.10

³⁷⁴ Accepted by Mr Coleman in x-e

identified in the Management Plan. That is not accepted to be either correct or material, for the reasons explored above.

- 7.88 At the heart of the appellant's case is the suggestion that such views as there would be within Kew Gardens of the appeal proposal would be beneficial, because of the design quality of what is proposed³⁷⁵.
- 7.89 This suggestion need not detain us long. Good design is required for all tall buildings (in policy terms) due to their size and wide potential impact. Good design is a minimum requirement. However good or bad the other aspects of design, it is the height, mass and bulk of the appeal proposal, and its strong visual presence, that is an issue for the setting, OUV and significance of the WHS. When considering impact on heritage assets, good design does *not* automatically equal benefit. Even if one accepted all the hyperbole from the appellant about the quality of the design, it must be the case that a building which is sculpturally beautiful, or of very great intrinsic design quality, might still be harmful because, for example, it is in the wrong place. It is difficult to see the appeal proposal as anything other than an extreme over-development of a site which manifests itself through its looming bulk, mass and height.
- 7.90 There is a fundamental contradiction that lies at the very heart of the appellant's case. It is said that the scheme is of such a high quality that it will be a delightful feature wherever it is viewed with one notable exception.
- 7.91 The appellant had a concern about one particular view in Kew Gardens³⁷⁶. This is described as: *the picturesque view of the Palm House in Kew Gardens, as the visitor turns the path from the Temperate House*. This is said to be: *of particular charm and the design team thought it inappropriate to see anything other than the Palm House surrounded by trees*. The view was taken that if: *a tall building were to be juxtaposed with these elements of the Palm House, then there would likely be in these particular circumstances, an adverse impact on the attributes of OUV of the WHS*. This we are told: *became a guide to the limit of height of the new proposal such that: the height has been consciously limited to respect the setting of an important view within the WHS*³⁷⁷.
- 7.92 There are a number of points that arise from this. The inherent contradiction that lies at the heart of the appellant's case is really quite striking. Thus it is said that the Chiswick Curve is of such design quality and so 'delightful' that it cannot be harmful when seen from anywhere, but it was nonetheless necessary in relation to one view from Kew Gardens to reduce the height of the building so that it could not be seen (or clearly seen).
- 7.93 This view³⁷⁸ was identified as uniquely important by the authors of the scheme before there had been any consultation with HE, or RBG Kew³⁷⁹. The reduction in height that was actually made, as a result of this concern for one particular view within Kew Gardens, was, however, minor. The height at the time these

³⁷⁵ APP/3/A Paragraph 10.7 and elsewhere

³⁷⁶ APP/3/A Paragraphs 7.6 and 7.27 and also CDA.01 Page 70 and APP/1/A1 Paragraphs 7.5.3-7.5.6 and 9.2.17 and 9.2.22 View 18 in CDA.11

³⁷⁷ APP/3/A Paragraph 6.27

³⁷⁸ CDA.11 View 18

³⁷⁹ Mr Egret in x-e

issues were being debated by the appellant's team was approximately 112m and it was reduced by 3m to 109m³⁸⁰. Nevertheless, the proposal might still be glimpsed through the treeline³⁸¹.

- 7.94 The limited visibility of the appeal proposal in this view would be because of the presence of one or two trees. Were any of those trees to be lost, the appeal proposal would be far more visible. It is agreed that, in this view, visibility would be harmful.
- 7.95 Despite the acknowledged importance of the Palm House, the appeal proposal will nonetheless be visible in a number of other views around it³⁸². This is accepted by the appellant, and the TVIA addendum refers to the appeal proposal being: *largely hidden behind trees* to the north of the Palm House³⁸³ but it is acknowledged that it would: *not be completely hidden*³⁸⁴.
- 7.96 It is quite clear that in terms of setting the height of the building as part of the design process, it was this view of the Palm House that was the sole driver.
- 7.97 The focus on this one view is said to be justified by this view: *being particularly significant* and: *of a different character from other heritage views*³⁸⁵ because: *it is one of three architectural icons at Kew Gardens WHS; it is within a landscaped setting that the Palm House partly depends on, and not an urban setting; and it embodies a synergetic and harmonious relationship between architecture and landscape*³⁸⁶. There is no disputing the importance of the Palm House to Kew Gardens but what appears to be a blinkered focus of this, and on one view across it, in the design process is difficult to justify when other buildings such as the Orangery, and the Temperate House, have been, in effect, ignored.
- 7.98 In a number of viewpoints the purported limited visibility of the appeal proposal is as the result of the presence of a small number of mature trees, indeed in some cases a single tree is what would limit the views.
- 7.99 This is important because it cannot be assumed, as the appellant has, that these trees will remain in place³⁸⁷. Reference is made to around 85 trees having had main branches removed and 30–40 whole trees removed last year, with the figures expected to be higher this year. While trees may be replanted when lost or removed, they are generally not replanted in the same location because of the complex root systems that are left behind when a tree is removed or because of the enduring presence of pests and diseases³⁸⁸. It would take many, many years to provide the screening of the appeal proposal that is currently provided by a small number of very mature trees³⁸⁹.

³⁸⁰ APP/1/A1 Paragraph 9.2.24

³⁸¹ CDA.11 Page 144 and accepted by Mr Coleman in x-e

³⁸² LBH/2/B4.2 Viewpoints 16 and 17, CDA.11 Views 17-20, and RBG/2/C1 Photographs 17, 18 and 20

³⁸³ CDA.15 Paragraph 7.11

³⁸⁴ APP/3/E Paragraph 6.2

³⁸⁵ APP/1/A1 Paragraph 9.2.22

³⁸⁶ APP/1/A1 Paragraph 7.5.5

³⁸⁷ INQ14 refers

³⁸⁸ Mr Williams e-in-c

³⁸⁹ Mr Williams e-in-c

- 7.100 In addition, the Atkins 2013 study emphasises the risks to heritage assets, including designed historic landscapes, from an increased risk of tree loss from climate change impacts, and the introduction of new pests and diseases³⁹⁰.
- 7.101 The appeal proposal relies on a small number of mature trees to reduce its impact in a number of important views. The appeal proposal if built will be a permanent feature, the existing trees which mitigate its impact in certain views will not be.
- 7.102 RBGK maintains that the appellant has not undertaken a proper cumulative assessment in relation to impacts on Kew WHS³⁹¹. It is clear that there are two key flaws with the approach taken in the TVIA and the TVIA addendum³⁹². First, the cumulative assessment of impact on the WHS³⁹³ only looks at the impact of the appeal proposal with the consented Brentford FC development. It does not contain any assessment of the cumulative impacts with past or present development as required by the Mayoral SPG³⁹⁴.
- 7.103 The appellant's approach³⁹⁵ is to treat any past development as part of the baseline. On that basis, that there is some urban context at Kew Gardens adds support to a case for more urbanity, in the form of the Chiswick Curve. Next time around, the Chiswick Curve will be a further part of the urban context and relied on to justify yet more development. That cannot be right and is directly contrary to the Mayoral SPG³⁹⁶.

Overall Assessment of Harm to the WHS

- 7.104 RBGK's case on this point³⁹⁷ is that in combination with other existing development, the proposed development would cause significant harm to the setting and the OUV of the WHS, resulting in it reaching a tipping point from less than substantial harm to substantial harm³⁹⁸. Focusing on the appeal proposal alone, and ignoring other existing and proposed development, it is accepted that the harm caused would be less than substantial, albeit in the upper half of less than substantial harm, and significant³⁹⁹. But, of course, in policy terms, it is clearly not correct to ignore other existing and potential harm in the assessment.
- 7.105 There are a number of reasons why RBGK's assessment of the level of harm should be preferred. First of all, RBGK has undertaken a thorough and detailed in-combination assessment of the impact of the proposal on the setting and the OUV of the WHS taking into account a wide range of factors (as required by the SPG and HE Guidance), beyond the mere consideration of a small number of defined viewpoints presented by the appellant.

³⁹⁰ INQ15 refers

³⁹¹ Mr Croft e-in-c and x-e

³⁹² CDA.11 and CDA.15

³⁹³ CDA.11, Page 70

³⁹⁴ CDC.11

³⁹⁵ Mr Coleman e-in-c and x-e

³⁹⁶ CDC.11

³⁹⁷ Presented through the evidence of Mr Croft (RBG/2/A, RBG/2/B, RBG/2/C1 and RBG/2/C2)

³⁹⁸ RBG/2/A Paragraph 2.3.2

³⁹⁹ In this regard the assessment of harm matches the assessment of others including Mr Grover (for the Council) and Mr Dunn (for HE)

- 7.106 On top of that, this evidence should be given great weight having regard to the considerable experience of the witness in relation to the management of WHSs, and also assessing and defining their settings and considerable experience in relation to the Kew WHS⁴⁰⁰. Moreover, these views are strongly supported by the conclusions of the ICOMOS technical review⁴⁰¹ which concluded that the appeal proposal: *would cause substantial harm to the World Heritage property, especially affecting its visual integrity.*

Registered Park and Garden

- 7.107 The whole of Kew Gardens is listed Grade I on the HE Register of Historic Parks and Gardens. The Council's evidence⁴⁰² is that: *much of the significance of the Grade I Registered Park and Garden at Kew derives from the high-quality landscape design, with its primary and secondary views, containing overlapping formal and informal elements. Whilst certain formal viewpoints within the designed landscape at Kew are clearly of particular value, the experience of this unique heritage asset is a kinetic one, which cannot be distilled to singular viewpoints.*
- 7.108 Under paragraph 194 of the revised Framework, a Grade I Registered Park and Garden is a heritage asset of the highest significance. Harm would be caused to the setting, and significance, of Kew Gardens as a Grade I Registered Park and Garden in the same ways as it would to the WHS.

Other Heritage Assets; the Listed Buildings and the SAM

- 7.109 There are a number of affected heritage assets within Kew Gardens the setting, and significance, of which would be adversely affected by the appeal proposal. Being listed buildings the settings are the subject of statutory⁴⁰³, as well as policy, protection.
- 7.110 The assets most affected are the Orangery, a Grade I listed building; Kew Palace, a Grade I listed building and SAM, the Palm House, a Grade I listed building; the Temple of Aeolus, a Grade II listed building; and Cambridge Cottage, a Grade II listed building.

The Orangery

- 7.111 In terms of background and history⁴⁰⁴, the importance of the Orangery, a Grade I listed building, is indisputable. It was constructed in the 1750s and designed by Sir William Chambers. It was an integral part of Augusta's Kew Gardens⁴⁰⁵ and stood on the northern edge of Frederick's Great Lawn. At the time of its construction the Orangery was the largest glasshouse in England and was designed and located to form a major architectural statement in

⁴⁰⁰ RBG/2/A Paragraphs 1.1.3, 1.1.4, 1.1.5 and 1.1.7

⁴⁰¹ RBG/3a

⁴⁰² LBH/1/A Paragraph 5.18

⁴⁰³ By dint of s.66(1) of the Act CDH.01

⁴⁰⁴ RBG/2/A Paragraphs 6.2.1 – 6.2.4

⁴⁰⁵ It was the principal architectural feature in this area of Augusta's gardens, RBG/2/A Paragraph 6.2.5.

Augusta's gardens; its location on the edge of the Great Lawn ensured that it was a highly visible and prominent feature in the landscape⁴⁰⁶.

- 7.112 In terms of its setting, the Orangery is a hugely important building in the landscape history of Kew. It was designed to be seen across the Great Lawn and Lake as a key designed architectural element in the landscape. Views of the Orangery across what remains of the Great Lawn are important, thus the December 2016 report attached to and forming part of RBGK's Statement of Case⁴⁰⁷ rightly refers to the importance of views of the Orangery despite these not being sight lines or vistas shown in the Management Plan⁴⁰⁸.
- 7.113 The appellant suggests that views that are now possible across what remains of the Great Lawn towards the Orangery are a relatively modern phenomenon as from the 1760s onwards a tree belt prevented views of the Orangery⁴⁰⁹. This view was rightly refuted by reference to the illustrations and historical maps⁴¹⁰.
- 7.114 The Orangery was later adopted by Decimus Burton in his geometric design as a key feature along the Broad Walk, drawing the eye down the walk (when coming from the Palm House) and providing a visual barrier to views from the Little Broad Walk until the junction with Main Broad Walk was reached from the entrance gates. It acts as a visual marker to the change of direction in the Broad Walk. Moreover, its current setting has retained important elements of its historic setting, including views of the Orangery over open areas of lawn from the southwest (which reflect its designed relationship with the Great Lawn), its screening function in relation to the Broad Walk, its prominence in the landscape, and the screening planting to the rear, that reinforces its prominence in the landscape⁴¹¹.
- 7.115 The Great Lawn is one of the last remaining open spaces in the gardens and the fact it is kept open is respectful of its historic nature as an open green space. It is important in the Entrance Zone, and well used by visitors. There are two main entrances in this zone and for those entering through Brentford Gate from the main car park, and heading towards the Orangery, the appeal proposal will be visible. There will also be views of the appeal proposal when entering and leaving via Elizabeth Gate and heading across Kew Green⁴¹².
- 7.116 There are existing detractors to the setting of the Orangery. The Haverfield Estate towers are highly intrusive elements, especially in views down the Broad Walk, and from the south⁴¹³. Regrettably, in certain views, the Brentford Stadium development will be harmfully visible behind the Orangery.
- 7.117 The Orangery's significance⁴¹⁴ resides in a number of aspects relating to its history, architectural form, relationship to the evolution of Kew Gardens, and

⁴⁰⁶ RBG/2/A Paragraph 6.2.2

⁴⁰⁷ CDE.06, Page 5 of the December 2016 document

⁴⁰⁸ CDF.10 Page 95

⁴⁰⁹ APP/1/A1 Paragraph 9.2.48 and Mr Egret in x-e

⁴¹⁰ RBG/2/C2 Appendix E and INQ24

⁴¹¹ RBG/2/A Paragraphs 6.2.5 – 6.2.6

⁴¹² Mr Williams e-in-c

⁴¹³ RBG/2/A Paragraphs 6.2.7 and 6.2.8

⁴¹⁴ RBG/2/A Paragraphs 6.2.9 – 6.2.14

its setting. In relation to the World Heritage Site, of which it forms an integral part, it is directly mentioned in the Statement of OUV⁴¹⁵ which sets out that: *elements of the 18th and 19th century layers including the Orangery ... convey the history of the Gardens' development from royal retreat and pleasure garden to national botanical and horticultural garden before becoming a modern institution of conservation ecology in the 20th century*; and it contributes to two of the criteria under which the site was inscribed⁴¹⁶. Historically it is of particular note for its relationships with Princess Augusta and Sir William Chambers, both key players in the development of Kew Gardens. It was also England's largest glass house at the time of its construction and represents a key phase in the development of horticulture in England. Throughout its history it has played key roles in the landscape design of Kew⁴¹⁷.

- 7.118 It is also an exceptionally well-detailed, classical garden building, an exemplar of its type from this period⁴¹⁸. The position of the Orangery in the designed landscape of the gardens as a key prominent feature in views across the former Great Lawn and along the Broad Walk, are key elements of its setting and significance.
- 7.119 The Orangery is described in the Management Plan as one of the key note buildings of the Entrance Zone⁴¹⁹; it is also described as one of the iconic architectural buildings in Kew Gardens⁴²⁰.
- 7.120 In terms of impact, the appeal proposal will appear in views in, around and behind the Orangery. As can be seen from the various visual representations⁴²¹, it will have the effect of: *challenging its prominence in the landscape and detracting from important views of the Orangery across the open lawn area that mark the surviving extent of the Great Lawn – these views are a very important aspect of the Orangery's setting and make a direct contribution to its significance*⁴²². The harm would be even greater if one tree were lost or reduced.
- 7.121 The proposed development would exacerbate existing impacts from the Haverfield Estate towers, and future impacts from the Brentford FC development, and, if permission is granted, the proposal on the Citroen site: *by placing development immediately over the Orangery in certain key views and by extending the visual intrusion of external modern development across a range of views*⁴²³. These changes would significantly challenge the prominence of the building in Kew Gardens designed landscape and seriously affect its setting and significance⁴²⁴.

⁴¹⁵ CDF.17

⁴¹⁶ CDF.16 Criteria (ii) and (iv)

⁴¹⁷ RBG/2/A Paragraph 6.2.12

⁴¹⁸ RBG/2/A Paragraphs 6.2.13 and 6.2.14

⁴¹⁹ CDF.10 Paragraph 3.5.3

⁴²⁰ CDF.10 Paragraph 3.9.20, and accepted by Mr Coleman in x-e

⁴²¹ LBH/2/B4.2 Viewpoints 14 and 15, CDA.11 View 16, CDA.15 Views 36 and 37, RBG/2/C1 Appendix D Photographs 3, 5, 8 and 9 and the appellant's moving studies

⁴²² RBG/2/A Paragraph 6.2.16

⁴²³ RBG/2/A Paragraph 6.2.18

⁴²⁴ RBG/2/A Paragraph 6.2.20

7.122 In conclusion: *the setting of Orangery makes a significant contribution to its significance; and its unchallenged prominence on the landscape is a key element of its significance. The development in conjunction with existing development would have very significant impact on the asset's setting and significance. The scale of change is severe and affects key aspects of its setting and significance. The harm is borderline less than substantial harm/substantial harm*⁴²⁵.

Kew Palace

7.123 Kew Palace is a 17th century square, red brick mansion. It is a Grade I listed Building and SAM. From 1729 to 1809 it was a Royal residence⁴²⁶. Kew Palace is a unique building, being the smallest of the Royal palaces surviving in the UK today. Kew Palace played a central role in the domestic and dynastic history of the Georgian Royal families, and it can be argued that the Kew side of the gardens, and thus the very first botanic gardens at Kew, owe their origins to the presence of the Royal family in Kew Palace⁴²⁷. Historic Royal Palaces are responsible for Kew Palace and have also objected to the appeal proposals⁴²⁸.

7.124 Kew Palace sits on its own at the north of the gardens. It has an open aspect on three sides, with unobstructed views to the river. There are formal gardens to the front and rear, specifically designed to complement the historic building. There are important views of the building from the lawns to the south-east and from the gardens to the north-west. The visual and physical relationship to the Thames is an important element of its history and setting⁴²⁹. Existing tall buildings north of the River, including the Haverfield Towers, and the 'Kew Eye', have had an adverse effect on the setting of Kew Palace.

7.125 There really cannot be any serious dispute as to the significance of Kew Palace: *Kew Palace is the earliest surviving element of the royal history of the Site and is an important and authentic building that with later structures conveys history of the Royal Botanic Gardens' development from Royal retreat and pleasure garden to national botanical and horticultural garden*⁴³⁰.

7.126 It is specifically referenced in the Statement of OUV⁴³¹ and contributes to criterion (ii) on the basis of which Kew Gardens was inscribed. Views from upper floors of the Palace have been identified in the WHS Management Plan as being of significance⁴³². Further, the Management Plan identifies Kew Palace as a key attribute contributing to: *the OUV of the WHS iconic architectural legacy*⁴³³. Kew Palace is a fine example of an early 17th century country house⁴³⁴. Kew Palace is central to the story of the development of both

⁴²⁵ RBG/2/A Paragraph 6.2.21

⁴²⁶ RBG/2/A Paragraphs 6.3.4 to 6.3.6

⁴²⁷ RBG/2/A Paragraph 6.3.13

⁴²⁸ RBG/1/A Paragraphs 5.1 – 5.6

⁴²⁹ RBG/2/A Paragraphs 6.3.9 – 6.3.11

⁴³⁰ RBG/2/A Paragraph 6.3.2

⁴³¹ CDF.17

⁴³² RBG/2/A Paragraph 6.3.11 and CDF.10 Paragraph 3.6.5 and Page 95

⁴³³ CDF.10 Paragraphs 3.8.3 and 3.9.28

⁴³⁴ RBG/2/A Paragraph 6.3.14

Richmond and Kew as Royal gardens; their subsequent unification under George III and their historical development as Kew Gardens⁴³⁵.

- 7.127 While the appeal proposals will not appear prominently in views of the building, there will be glimpses of it in tangential views along the front façade, and views from upper storey windows. These will be liable to distract from the appreciation of Kew Palace⁴³⁶. The setting of Kew Palace is already subject to a significant and highly regrettable degree of harm, in particular as a result of the 'Kew Eye' building in views from the northern elevation, and in some views of the building from the south; and the Haverfield Estate Towers in views of the building, and from the rear of the building. The proposed development would elevate the scale of harm, very slightly, by increasing the overall extent of visual intrusion by modern development, into views of and from the building⁴³⁷.
- 7.128 In conclusion, the proposed development would give rise to minor additional harm. The current level of harm is at the upper end of less than substantial and while further adding to this, cumulatively, the appeal proposal is not contended to tip the balance to substantial harm⁴³⁸.

The Palm House

- 7.129 The background and history of the Palm House is well documented and does not need to be extensively repeated here. It is a Grade I listed building and was designed by Richard Turner, with Decimus Burton the consulting architect. It is located beside the remodelled remains of Prince Frederick's early 18th century Great Lake at the southern end of his Great Lawn, next to his intended Mount Parnassus (now housing the Temple of Aeolus). Thus, the high-Victorian Palm House sits within the recognisable features of a high-Georgian landscape⁴³⁹. Its location was a point of considerable importance for the development of the Victorian Gardens⁴⁴⁰.
- 7.130 The setting of the Palm House has a number of important elements⁴⁴¹. These include its location in the heart of the Georgian Kew Gardens surrounded by surviving Georgian garden features, and its lynchpin position for the redesign of the Gardens by both Burton and later Nesfield. There are though detractors, including seasonal glimpsed views of the Haverfield Estate towers in northwards views from the south and south-east⁴⁴², views of the Vantage West building behind the Palm House in axial views along the Pagoda vista, and seasonal glimpses of the towers in views across the Palm House Pond⁴⁴³. The significance of the Palm House, as set out by RBGK, is agreed⁴⁴⁴.

⁴³⁵ RBG/2/A Paragraph 6.3.16

⁴³⁶ LBH/2/B4.2 Viewpoints 12 and 13 and CDA.11 Views 31 and 32

⁴³⁷ RBG/2/A Paragraph 6.3.19

⁴³⁸ RBG/2/A Paragraph 6.3.21

⁴³⁹ RBG/2/A Paragraph 6.4.3

⁴⁴⁰ RBG/2/A Paragraphs 6.4.4–6.4.6

⁴⁴¹ RBG/2/A Paragraphs 6.4.7–6.4.9

⁴⁴² RBG/2/C1 Appendix D Photographs 16 and 18

⁴⁴³ RBG/2/A Paragraph 6.4.10

⁴⁴⁴ RBG/2/A Paragraphs 6.4.11–6.4.14

- 7.131 The proposed development will encroach into the setting of the Palm House in some views from the south-west/west across the immediately associated designed landscape⁴⁴⁵. These are views that currently feature no intrusive development. There will be other glimpsed views of the appeal proposal as well⁴⁴⁶. The appellant suggests that the appeal proposal would be largely hidden behind trees in a number of views⁴⁴⁷ but it is very clear that it would not be entirely hidden⁴⁴⁸. The impact would be a particular issue in winter, which is important as Kew Gardens is visited and is popular all year around⁴⁴⁹. Seasonal considerations in relation to the impact of development on the setting of WHSs are also specifically addressed in the SPG⁴⁵⁰.
- 7.132 The loss or management of certain trees could substantially increase the impact⁴⁵¹. As noted above there is already in some views of the Palm House intrusion from the Haverfield Estate towers, the BSI building and Vantage West. There would be some additional impact from the Brentford FC development.
- 7.133 The appeal proposals would increase that impact, albeit only slightly. However, the overall level of visual intrusion would be very much more significant if certain trees were lost⁴⁵².
- 7.134 To conclude, with current tree cover, it is accepted that there would be harm, at the lower end of less than substantial harm. This is an important consideration though as the setting of the Palm House makes a very significant contribution to its significance.

The Temple of Aeolus

- 7.135 The Temple is a Grade II listed building. It sits on the Cumberland Mound, and is open to all sides. The mound was an integral part of Frederick's design begun in the 1750s, soon after Chambers' Temple of Aeolus was built on the mound. The area was then reinvented by Decimus Burton in 1845.
- 7.136 When Kew Gardens was inscribed onto the World Heritage List in 2003 the mound and the Temple were closed to the public. Works have been done since then to re-open these and thus: *the area is once again as Frederick, Augusta, Chambers and Burton intended – a mount from which to view the designed landscape, and a place to contemplate*⁴⁵³.
- 7.137 In terms of setting⁴⁵⁴, the mound and Temple were conceived to enable views out across a designed landscape and to enable views of the temple in that landscape – these are central aspects of its setting and significance. Its relationship to the landscape changed in around 1845 when the old temple

⁴⁴⁵ CDA.11 Views 17 and 18

⁴⁴⁶ RBG/2/C1 Appendix D Photograph 17

⁴⁴⁷ CDA.11 Paragraph 7.11

⁴⁴⁸ LBH/2/B4.2 Viewpoints 16 and 17

⁴⁴⁹ RBG/2/A Paragraphs 6.4.15 – 6.4.1

⁴⁵⁰ CDC.11 Implementation Point 8 Pages 50-51

⁴⁵¹ RBG/2/A Paragraph 6.4.19

⁴⁵² RBG/2/A Paragraphs 6.4.20 – 6.4.21

⁴⁵³ RBG/2/A Paragraphs 6.5.1 – 6.5.7

⁴⁵⁴ RBG/2/A Paragraphs 6.5.8 – 6.5.10

was replaced by the current structure, the trees were removed and the mound grassed – at around the same time the landscape to the north was transformed, later becoming the Order Beds.

- 7.138 The new Temple now provided an outlook to the south and west over the pond and Palm House and to the north over the later Order Beds: *it had been reimagined to form a publically [sic] accessible viewpoint from which to admire the full gamut of Kew's emerging Victorian splendour, while reflecting its Georgian past with a classical eye catcher design*⁴⁵⁵. Its current setting reflects this mid-19th century position with views out to the north and west linking to the Palm House and Order Beds. Once again the Temple is publicly accessible.
- 7.139 As for significance, the SOUV⁴⁵⁶ expressly mentions '*folly temples*' as an element which conveys the history of Kew Gardens' development from a Royal retreat to a national botanical and horticultural garden. The importance of folly temples is also emphasised in the Management Plan⁴⁵⁷. The Temple and mound are highly significant historical features directly related to the gardens designs of Frederick and Augusta, and later Decimus Burton⁴⁵⁸. Its role in the gardens has evolved over time with the transformation of the original 18th century garden into the later grand Burton design of today. Through this process, it has developed an important relationship with the Order Beds⁴⁵⁹.
- 7.140 The Temple was designed to provide views out over the designed landscape of the gardens, and that remains its function. The appeal proposals would feature clearly in the view, providing a distracting and negative element that draws the eye away from the axial relationship with the Order Beds. While the impact is somewhat lessened by the presence of a large evergreen tree, were this to be lost or reduced, the impact would very significantly increase⁴⁶⁰.
- 7.141 The BSI building, and some other taller development, already has an adverse impact on views from the Temple, as do glimpsed views of the Haverfield Estate towers. The appeal proposal would notably further increase the impact and detract from the intended views. The scale of visual intrusion would be notably increased⁴⁶¹.
- 7.142 Overall, the proposed development would adversely affect notable aspects of the Temple's setting and hence its significance. In conjunction with the BSI building, it would have a notable impact on northward views over the Order Beds. The harm would be far greater with the loss of a single tree. The harm is accepted to be less than substantial.

Cambridge Cottage

- 7.143 Cambridge Cottage is a Grade II listed, two-storey building, within the Kew Green Conservation Area.

⁴⁵⁵ RBG/2/A Paragraph 6.5.9

⁴⁵⁶ CDF.17

⁴⁵⁷ CDF.10 Paragraph 3.8.3

⁴⁵⁸ RBG/2/A Paragraphs 6.5.12 – 6.5.15

⁴⁵⁹ RBG/2/A Paragraph 6.5.16

⁴⁶⁰ RBG/2/A Paragraphs 6.5.17–6.5.19 and Paragraph 6.5.23, LBH/2/B4.2 Viewpoints 16-18, and CDA.15 View 35

⁴⁶¹ RBG/2/A Paragraph 6.5.20

- 7.144 There has been a building in this location since at least the seventeenth century. It was bought by George III in 1772 and the two young Princes, William and Edward, were lodged there. It remained a Royal residence for many years thereafter before it was turned over to Kew Gardens for use as a museum, and later an art gallery⁴⁶².
- 7.145 There are a number of aspects to the setting of the Cottage. The frontage looks over Kew Green. To the rear of the building, there is a close connection to Kew Gardens and Cambridge Cottage is an important historic building in this part of the gardens. It has its own bounded garden, which also forms an element of its setting⁴⁶³.
- 7.146 Cambridge Cottage is a notable 18th century town house with historical Royal connections. It has a strong historical relationship and association with Kew Green and Kew Gardens, and makes some contribution to the OUV of the World Heritage Site⁴⁶⁴.
- 7.147 There would be two main impacts on the setting of Cambridge Cottage. The first would be the presence of the Chiswick Curve in views out over Kew Green⁴⁶⁵ and its presence in views of Cambridge Cottage from within the gardens⁴⁶⁶.
- 7.148 The changes to the setting of the building caused by the proposed development would have a significant impact on the aesthetic and historic significance of Cambridge Cottage⁴⁶⁷. At present the only external development visible is two and half storey domestic scale development in Kew. The Chiswick Curve would be a step change to this⁴⁶⁸. The appeal proposal would significantly change the setting of Cambridge Cottage and very seriously harm its significance. The level of harm would be in the upper half of less than substantial harm⁴⁶⁹.

Conclusions on Listed Buildings

- 7.149 There would be harm of varying degrees to the setting and significance of a number of listed buildings within Kew Gardens namely the Orangery, Kew Palace, and the Palm House. All three of these are Grade I listed. These buildings being Grade I listed are heritage assets of the highest significance for the purposes of the Framework. There would also be harm to Grade II listed buildings, namely the Temple of Aeolus and Cambridge Cottage⁴⁷⁰.
- 7.150 The concern with the impact on the setting of the Grade I listed Orangery is especially acute. The scale of change would be severe and would affect key

⁴⁶² RBG/2/A Paragraphs 6.6.1 – 6.6.7

⁴⁶³ RBG/2/A Paragraphs 6.6.8 – 6.6.10

⁴⁶⁴ RBG/2/A Paragraphs 6.6.11 – 6.6.13

⁴⁶⁵ LBH/2/B4.2 Viewpoint 11

⁴⁶⁶ LBH/2/B4.2 Viewpoints 20 and 21

⁴⁶⁷ RBG/2/A Paragraphs 6.6.14 – 6.6.18

⁴⁶⁸ Accepted by Mr Coleman in x-e

⁴⁶⁹ RBG/2/A Paragraphs 6.6.19 – 6.6.20

⁴⁷⁰ The appeal proposal would also detract from the appreciation and setting of the Grade II listed 19th century statue 'The Sower' at the heart of the Grass Garden RBG/2/A Paragraph 5.8.4.

aspects of setting and significance. The level of harm would be on the boundary between less than substantial and substantial harm. The impact on the setting and significance of the Orangery is also a key issue for HE and the Council. The harm to the setting of the Orangery, and of other listed buildings, attracts the application of s.66 of the Act, and gives rise to a strong presumption against the grant of planning permission.

Conclusions on Conservation Areas

Kew Green

7.151 RBGK strongly supports the cases of the Council and HE that there would be substantial harm caused to the significance of the Kew Green Conservation Area as a result of the proposal. Kew Green is a hugely important part of the setting of Kew Gardens. Part of it falls within the defined WHS, and the remainder is within the designated buffer zone. That RBGK did not set out a detailed case on Kew Green does not mean that the impacts of the appeal proposal are regarded as being acceptable. It would be highly damaging to the setting and thereby the significance of the Kew Green Conservation Area.

Kew Gardens Conservation Area

- 7.152 There is little in the way of analysis of this in the appellant's documentation. Given the overlap with the WHS, it is inevitable that the focus will be on that rather than the conservation area but it is worth mentioning the Conservation Area Statement⁴⁷¹. The character section emphasises the international influence of Kew Gardens on: *the history of landscape and garden* and refers to Kew Gardens featuring: *the landscape designs of Charles Bridgeman, Capability Brown, William Chambers and William Westfield*. Moreover, it identifies under: *Problems and Pressures, development pressure which may harm the balance of the river and landscape-dominated setting, and the obstruction or spoiling of views, skylines and landmarks*. This is highly pertinent to the issues on this appeal⁴⁷².
- 7.153 The Statement under the heading: *Opportunities for Enhancement* refers to the Management Plan, the most relevant parts of which for this purpose being paragraphs 9.1.2 and Policy 3(h)⁴⁷³ which seek the removal or screening of intrusive features like the Haverfield Estate towers. This policy provides no support for the appeal proposal which seeks to add yet further visual intrusion.
- 7.154 The suggestion in the TVIA that the appeal proposal would have a minor beneficial⁴⁷⁴ impact on the conservation area is simply incredible; it is a wholly unsustainable position.

The Policy Context – Harm

7.155 There are a number of points to make in relation to the policy context for judging harm to the WHS, and the other designated heritage assets in Kew Gardens.

⁴⁷¹ RBG/2/C1 Appendix C

⁴⁷² Mr Coleman in x-e accepted the relevance of this point

⁴⁷³ CDF.10

⁴⁷⁴ CDA.11 Page 47

7.156 If one sets to one side (as one should) the wholly incredible suggestions of the appellant that the appeal proposal will cause no harm at all to any heritage assets because it: *is of such a high quality that it will be a delightful feature wherever it is viewed from* then the actual issues on this appeal are: (i) how to characterise the harm that would be caused in terms of the distinction in national policy between substantial and less than substantial harm; (ii) what weight should be given to any identified harm; and (iii) what the development plan policies say about such harm, and the outcome of this appeal.

Substantial v Less than Substantial Harm

7.157 First, there can be no question that the harm caused by the effect of a proposed development on the setting of a designated heritage asset might be substantial harm. The PPG⁴⁷⁵ confirms the position stating under the heading: *How to assess if there is substantial harm?* that: *The harm may arise from works to the asset or from development within the setting.* (emphasis added).

7.158 In addition, the PPG under the heading: *Planning for renewable and low carbon energy* advises that: *depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset*⁴⁷⁶.

7.159 Second, the PPG also says that *substantial harm is a high test, so that it may not arise in many cases*⁴⁷⁷. But, in the context of works to a listed building, the PPG goes on to advise that: *to constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.* This is a reasonable approach to apply more generally.

7.160 Third, in *Bedford*⁴⁷⁸, the Court said that: *in the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.* The conclusion of *Bedford* lies at the heart of the appellant's case on this appeal⁴⁷⁹. But, it is important that the judgment in *Bedford*, as with any judgment, should not be construed as though it were itself a statute, since judgments respond to the facts found and the submissions advanced in the particular case. This was a common warning given by Sullivan J⁴⁸⁰.

7.161 It is important to see how *Bedford* has since been applied. In the Razor's Farm appeal⁴⁸¹, the Inspector's Report said that given that the key question is whether the adverse effect seriously affects a key element of a listed building's

⁴⁷⁵ CDC.02 Paragraph 017 Ref. ID: 18a-017-20140306

⁴⁷⁶ CDC.02 Paragraph 013 Ref. ID: 5-013-20150327 and Paragraph 019 Ref. ID: 5-019-20140306

⁴⁷⁷ CDC.02 Paragraph 017 Ref. ID: 18a-017-20140306

⁴⁷⁸ CDH.04

⁴⁷⁹ INQ3 Paragraphs 87-90

⁴⁸⁰ It needs to be made clear here that if this matter were to end up before the Courts RBGK reserves its position to argue that *Bedford* is wrongly decided. The submissions made on this appeal though proceed, as they must, on the basis that *Bedford* was correctly decided. The debate at this stage is thus as to what *Bedford* actually decided and how it is has been applied.

⁴⁸¹ APP/3/D Appendix 6

special architectural or historic interest: *it is difficult to envisage how an impact on setting, rather than a physical impact on special architectural and historic interest could ever cause substantial harm* and indicated that this conclusion was consistent with *Bedford*⁴⁸². The Secretary of State rejected this. In the decision letter, he specifically indicated that he did not agree with this conclusion⁴⁸³.

- 7.162 Fourth, there are, moreover, plenty of examples of appeal decisions where decision-makers have concluded that substantial harm has been caused by development in the setting of a heritage asset⁴⁸⁴.

What weight should be given to any identified harms?

- 7.163 The revised Framework at paragraph 192 requires that account be taken of the desirability of sustaining and enhancing the significance of all heritage assets. Where a proposed development causes harm to the significance of a heritage asset it is not sustaining or enhancing. Moreover, when considering the impact of a proposed development paragraph 193 sets out that: *great weight should be given to the asset's conservation and the more important the asset, the greater that weight that should be*. WHSs, Grade I Registered Parks and Gardens, SAMs, and Grade I and II* listed buildings are all *heritage assets of the highest significance*. Thus, any harm caused to the significance of WHSs, Grade I Registered Parks and Gardens, SAMs and Grade I and II* listed buildings must be given significant weight.
- 7.164 Because heritage assets are irreplaceable paragraph 194 of the revised Framework says that: *any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification*. Any such harm to a designated heritage asset must be given: *considerable importance and weight* following the judgment in *Barnwell Manor*⁴⁸⁵.
- 7.165 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset: *this harm should be weighed against the public benefits of the proposal* (paragraph 196 of the revised Framework), but if one is concerned with designated heritage assets of the highest significance, having regard to the weight that must be given to any such harm, to begin to justify a grant of permission, there would need to be a good deal of public benefit to weigh in the scales against that harm.
- 7.166 Importantly, following the judgment in *Barnwell Manor*, less than substantial harm is not to be treated: *as a less than substantial objection to the grant of planning permission*⁴⁸⁶. As a result of s.66 of the Act⁴⁸⁷, any harm to a listed building or its setting gives rise to a strong presumption against the grant of planning permission.

⁴⁸² APP/3/D Appendix 6 IR Paragraph 10.16

⁴⁸³ APP/3/D Appendix 6 DL Paragraph 12

⁴⁸⁴ INQ11-13

⁴⁸⁵ CDH.05

⁴⁸⁶ CDH.05

⁴⁸⁷ CDH.01

- 7.167 Substantial harm to designated heritage assets of the highest significance: *should be wholly exceptional* (paragraph 194 of the revised Framework). This is surely meant to denote that where there is found to be substantial harm to a designated heritage asset of the highest significance, it will almost never be justified to grant permission. It will only be in the rarest of cases that this might be contemplated.
- 7.168 Where a proposed development will lead to substantial harm to the significance of a designated heritage asset, planning authorities should refuse consent: *unless it can be demonstrated that the substantial harm ... is necessary to achieve substantial public benefits that outweigh that harm or loss* (paragraph 195 of the revised Framework). Where there is substantial harm there is a need to show that this is necessary, and that requires there to be no reasonable alternative. There has been no consideration by the appellant of a scheme lower in height than the appeal proposal.
- 7.169 Assuming that the SoS considers there to be some harm to the setting and OUV of Kew WHS, it is plain that significant weight must be given to this having regard to the importance of the WHS.
- 7.170 If the SoS were to agree with RBGK's case that the appeal proposal would cause substantial harm to setting and to the OUV of the Kew WHS, and hence to its significance, then this appeal should be refused. There is nothing even bordering on: *wholly exceptional circumstances* and *substantial public benefits* such as to justify substantial harm to an asset of such importance.
- 7.171 Even if the conclusion is that there is less than substantial harm to both the significance of the WHS and other designated heritage assets in Kew Gardens, there still needs to be a clear and convincing justification for causing this harm to assets of the highest significance. RBGK has seen no such justification in the appellant's evidence. The difficulty is perhaps that the appellant refuses to accept that there is even any harm to weigh in the balance.

What the Development Plan policies say about such harm and the outcome of this appeal

- 7.172 The revised Framework and the PPG are, of course, material considerations on this appeal, and weighty ones. However, the starting point for the determination of this appeal, as with any other, is the development plan.
- 7.173 Assuming that the view taken by the SoS is that there is at least some harm caused by the proposal to the setting, and hence significance, of the WHS, and other heritage assets within Kew Gardens, then the proposal is contrary to the development plan⁴⁸⁸; and as a result it should be refused permission unless material considerations indicate otherwise.
- 7.174 First, under LP Policy 7.10: *development should not cause adverse impacts on World Heritage Sites or their settings*. A proposal that caused adverse impacts would be contrary to this policy. Moreover, the policy goes on to say that *in particular* a proposal should not compromise a viewer's ability to appreciate its OUV, integrity, authenticity or significance. It is not necessary to find this for there to be conflict with the policy but if it is so found in relation to the appeal

⁴⁸⁸ This was accepted by Mr Coleman in x-e

proposal, and it is RBGK's case that it should be, then the policy is further breached. There would also be conflict with LP Policy 7.7.

- 7.175 Second, the appeal proposal would not conserve and enhance the OUV of Kew WHS contrary to HLP Policy CC4(d)(i) and (j). As a result it could only be found to be in accordance with policy if the tests in HLP Policy CC4(k) or (l) were met. Which of these tests applies depends, of course, on the level of harm ultimately found, but it is submitted that these tests are not met and that the appeal proposal is in conflict with these relevant development plan policies. Further, as there would be: *a significant adverse impact on the setting of, or views, from Kew Gardens* there would also be a clear conflict with policy CC3(d).

Conclusions

- 7.176 The Secretary of State is asked to give the most careful and anxious consideration to the harm that this appeal proposal will most certainly cause to the OUV, and hence the significance, of the Kew WHS.
- 7.177 The appellant's case comes down to one point, namely that the: *scheme is of such a high quality that it will be a delightful feature wherever it is viewed from*⁴⁸⁹. This is just not credible. The evidence clearly demonstrates that the appeal proposal will cause harm to the OUV, and hence significance, of the Kew WHS. That harm is significant whether or not one classifies it as less than substantial or substantial harm in terms of the revised Framework. But to be clear RBGK's case is that the harm, cumulatively with other existing and consented development (let alone further as yet unconsented development), would be substantial. There is also harm to other important designated heritage assets within Kew Gardens. These harms must be given the greatest weight as Kew Gardens is overlain by and contains a number of heritage designations of the highest significance, as set out in paragraph 194 of the revised Framework.
- 7.178 The appeal proposal would cause significant harm to the setting and OUV of the Kew WHS, resulting in it reaching a tipping point from less than substantial harm to substantial harm. A grant of permission most certainly risks UNESCO placing the Kew World Heritage Site on the List of World Heritage in Danger, as they did at Liverpool in 2012, given both the threat posed by the development and the significant risk that its presence would encourage further similar developments in the setting of the WHS⁴⁹⁰. The Convention places very strong obligations on the UK Government in respect of WHSs, and it is through the planning system that these obligations are sought to be given effect to, as set out in the PPG⁴⁹¹. The SoS must have regard to these obligations in determining this appeal and must give weight to the views of the World Heritage Centre and ICOMOS, both of which strongly support refusal.
- 7.179 So we stand at a tipping-point beyond which further development of tall buildings visible from within Kew Gardens would result in substantial harm to the OUV, authenticity and integrity of the Kew WHS. If the appeal proposal is

⁴⁸⁹ CDD.03 Paragraph 2.7

⁴⁹⁰ RBG/2/A Paragraphs 3.2.22 and 8.1.10

⁴⁹¹ CDC.02 Paragraph 026 Ref. ID: 18a-026-20140306

granted permission the OUV of Kew Gardens will be forever diminished. Yet more tall buildings that visually intrude into the gardens will follow. The fear expressed by ICOMOS at the time of inscription, and which is also recognised in the Management Plan, of developers arguing that the presence of tall buildings is a particular feature of the locality, and hence that further tall buildings would be in keeping with the character of the area, will have materialised.

- 7.180 This appeal if allowed will have a significant and adverse impact on Kew Gardens. That this is so is agreed by the World Heritage Centre; ICOMOS; HE; the LBs of Richmond and Hounslow; and Historic Royal Palaces. It is also the universally held view of local amenity groups and residents. Only the appellant does not see this.
- 7.181 And so RBGK places this hugely important matter in the hands of the SoS. This appeal, whatever the result, will undoubtedly be seen by history as a key moment for the setting and significance of Kew Gardens. The visual experience at Kew Gardens has already been, in ICOMOS's words, seriously diminished by past planning decisions that seem wholly inexplicable to modern sensibilities. When visitors see these and other permitted intrusions (such as the Haverfield Estate) the reaction is: how did anyone ever come to take the view that it was acceptable to grant planning permission for these jarring and highly damaging intrusions into the visual envelope of something as important as the designed landscape of Kew Gardens?
- 7.182 The SoS is charged with deciding whether a further, far taller and highly intrusive building should now be permitted. It is RBGK's case that plainly it should not. The responsibility that now lies in the SoS's hands is a grave one. He is respectfully invited to dismiss Appeal A.

8 The Case for the Kew Society

Introduction

- 8.1 This is set out in full in opening and closing statements to the Inquiry and in evidence⁴⁹². After the Inquiry closed, further helpful submissions were made in relation to the revised Framework⁴⁹³. What follows is a summary, but the entirety of the KS evidence needs to be digested in order to fully appreciate the case presented. The KS made clear at the outset that in the interests of avoiding repetition, it would not be advancing a case in relation to design and heritage impacts, relying on others to do that. The views on these issues expressed by the Council, HE, RBGK, and others, are supported and endorsed by the KS. Instead, the KS has focused its case on issues around living conditions and other matters relating to both Appeals A and B.

Living Conditions

- 8.2 Evidence was presented by the KS about the impacts of traffic and consequent pollution⁴⁹⁴. None of that evidence has been challenged. No counter-evidence

⁴⁹² INQ9, INQ41 and TKS/1/A to TKS/1/D inclusive

⁴⁹³ INQ47

⁴⁹⁴ TKS/1/A and TKS/1/C

was produced by the appellant to suggest that prevailing exceedances of current air quality (AQ) standards are being meaningfully improved.

- 8.3 Further, we have evidenced⁴⁹⁵ that the Government has recently announced a change in Clean Air Policy and AQ standards which are now under DEFRA consultation. That new policy seeks to halve by 2025 the number of people living in locations where concentrations of particulate matter are above the World Health Organisation (WHO) limit of 10ug per cubic metre.
- 8.4 To grant permission for the Chiswick Curve, in the location proposed, would fly in the face of this emerging policy. The ES Update 2018⁴⁹⁶ estimates a PM2.5 concentration of 11.9 for 2016, and 11.2 for 2020, both above the WHO standard. Particulate matter PM2.5s are especially dangerous to health⁴⁹⁷ because they are small enough to pass through the walls of blood vessels in the lung after being inhaled, enter the blood stream, and reach other parts of the body.
- 8.5 The appellant suggests⁴⁹⁸ that residents living at Level 6 of the building, or above, would live outside areas of the worst pollution levels but this is to suggest that those residents can access their homes for work, school, shopping or leisure, without traversing ground level pavements and streets.
- 8.6 The appellant has also suggested⁴⁹⁹ that the KS had ignored the official reductions in emissions predicted by the Government, despite clear evident commitment to emissions reductions. There might well be evident commitment but there is no evidence to support a contention that reductions will actually occur.
- 8.7 There has been no reduction in pollution in London Borough of Hounslow (LBH) or London Borough of Richmond on Thames (LBRuT) since the EU compliance deadline for the UK in 2010. Almost all the sites in these boroughs which exceeded the annual mean NO2 and PM10 compliance levels in 2010, continued to exceed, at similar levels, in 2016, as reported in the 2017 Air Quality Action Plans published by LBH and LBRuT.
- 8.8 At a national level, in February 2018, the High Court ruled that the Government's 2017 plan to reduce NO2 levels to compliant levels at roadsides was unlawful, as it does not contain measures sufficient to ensure substantive compliance with the 2008 Directive. In response to this the Government published its Clean Air Strategy in May 2018 which still puts the burden of reducing emissions pollution onto local authorities, requiring them to carry out feasibility studies as to how they can reach compliance within the shortest possible time. None of this gives any credibility to the notion that reductions in emissions to compliant levels are going to happen by 2020.
- 8.9 The uptake of electric cars is still very low⁵⁰⁰. Whilst diesel car sales (the main polluters) have fallen in the last quarter from 45% of the total market to 35%,

⁴⁹⁵ TKS/1/D

⁴⁹⁶ APP/5 Appendix 3.1, Air Quality ES Addendum Technical Note Paragraph 2.16 Table 7.5

⁴⁹⁷ And particularly affect young people see INQ37

⁴⁹⁸ Through the evidence of Mr Goddard APP/4/A

⁴⁹⁹ APP/4/D

⁵⁰⁰ 1.9% of the total new car market in 2017

they still account for 1 in 3 new cars. Many new diesel cars purchased recently are still non-compliant with respect to emissions, despite new regulations and tougher tests. It seems unlikely that kerbside emissions are going to reduce markedly any time soon as a result of changes in purchase pattern.

- 8.10 The updated ES for Chiswick Curve indicates massive exceedance of annual mean NO₂ and short term NO₂ objectives at the automatic monitor at Gunnersbury Ave for 2016, and both exceedances are worse than in 2014⁵⁰¹.
- 8.11 The KS suggests that other proposed measures such as the Mayor's Ultra Low Emission Zone (ULEZ) with a boundary at the North/South Circular Road (which adjoins the site) was likely to lead to an increase in non-compliant vehicles on those roads as they avoid entering the ULEZ. The Cycle Superhighway9, as currently proposed, was highlighted as likely to increase slow-moving and jammed traffic at the Chiswick roundabout and feeder roads, increasing the already toxic air pollution. These suggestions were not questioned or criticised.
- 8.12 DRLP Policy SI1 was highlighted. This states that: *London's air quality should be significantly improved and exposure to poor air quality, especially for vulnerable people, should be reduced. Development proposals should not: (a) lead to further deterioration of existing poor air quality; (b) create any new areas that exceed air quality limits, or delay the date at which compliance will be achieved in areas that are currently in exceedance of legal limits; (c) reduce air quality benefits that result from the Mayor's or boroughs' activities to improve air quality; or (d) create unacceptable risk of high levels of exposure to poor air.* The appellant has produced no evidence that the Chiswick Curve proposal would comply with this draft policy. Moreover, paragraph 103 of the revised Framework makes reference to the need to reduce congestion and emissions, and improve air quality and public health and this is underlined in paragraphs 170, 171, 180, 181 and 183. The Chiswick Curve fails to comply with that approach.
- 8.13 In that context, the KS is quite clear that the appeal site is inappropriate for residential development unless and until very significant reductions in pollution levels have been achieved. Appeal A should be rejected for that reason alone.

Other Matters

- 8.14 The KS asked for evidence to establish that the novel car stacker proposed for the basement car park of this combined residential/office building had adequate off-highway entry/exit waiting ramps to ensure that queues could not form on the public highway⁵⁰². Vehicles waiting to park on the highway would compound traffic delays and pollution. Nothing came forward.
- 8.15 Further, it was highlighted that the £2.73m capital cost of the equipment⁵⁰³ would likely require periodic replacement over the life of the building. Necessary regular stacker equipment maintenance (to ensure safe and reliable operation) would be a further operational cost. All such costs (of capital and

⁵⁰¹ APP/5 Table 7.3

⁵⁰² In x-e of Mr Egret

⁵⁰³ APP/4/C5

annual maintenance) would be for the occupiers' account, recoverable as part of an apportioned service charge.

- 8.16 The appellant's heritage witness⁵⁰⁴ was at pains to emphasise the critical importance of the high quality design of the Chiswick Curve, including the external fins, and their regular cleaning and maintenance. There is an obvious danger that such design features might fall victim to 'value engineering' when one considers such costs, or the cost of maintenance, and in particular, window cleaning, for a building of the scale proposed.
- 8.17 All parts of the community, and the design/construction industry in particular, are well aware of the Grenfell tragedy, which occurred in a high rise residential building. The KS introduced evidence to the Inquiry of a recent debate in the House of Commons linked to the publication of Dame Judith Hackitt's final report on related Building Regulations and Fire Safety⁵⁰⁵. It is clear from this evidence that the Government is planning changes to the regimes responsible for building safety during the construction, refurbishment and ongoing management of high-rise homes. Such change is unlikely to come without cost, whether or not (for example) sprinklers, or additional fire escapes, and precautions, might be required. Further costs would inevitably impact on residential development appraisals for the worse.
- 8.18 It was further highlighted during the parliamentary debate that some building developer/owners such as Bovis are pressing ahead, as the Government wishes, to cover existing building occupiers' interim fire safety measures and replacement cladding costs. Others, notably for this Inquiry including a 900 unit Galliard development at New Capital Quay in Greenwich, are not.
- 8.19 The appellant is quite clear that the development appraisal is on the margins of viability⁵⁰⁶. Although any developer will have his own private assessments, the appraisal report for the affordable housing calculation is an indicator of risks in the project. No provision is made for construction cost inflation between estimate and start on site. The developer's contingency for a project of this size, scale and complexity is slim at 2.5%. Borrowing costs appear to be shown at a constant 7% for a 54 month contract. The appellant has produced no evidence of having contractually fixed interest rates for the construction project. At a time when many anticipate interest rate rises, it is surprising that alternative assumptions appear not to be modelled.
- 8.20 Given the slim margins in the project acknowledged, the risks of it not proceeding or requiring very significant value engineering appear high at the outset, from the cost risks noted above, even before any possible downturn in the residential sales market is considered.
- 8.21 One option that the appellant might consider, if Appeal A was allowed, could be to offer the site for sale with planning permission. Galliard has, in recent times, sold major development projects in London. In such circumstances, it is unlikely a new owner of the Chiswick Curve site would proceed without significant design and cost review.

⁵⁰⁴ Mr Coleman in x-e

⁵⁰⁵ INQ31

⁵⁰⁶ APP/4/C5

The Planning Balance

- 8.22 The appellant seeks to emphasise the public benefits he alleges will flow if the Chiswick Curve were to be consented. At no time did the appellant⁵⁰⁷ seek to quantify or monetise the value in financial terms of the alleged benefits.
- 8.23 Improvements to highways claimed include proposals by the architect for the public realm around the roundabout. There is no evidence as to how any such improvements to public areas are to be sustained with long-term funding and there is the considerable risk that such finishes as are proposed would rapidly deteriorate in the traffic dominated, pollution ridden environment.
- 8.24 The contractual securing of periodic public access to the viewing gallery may not yet be completely resolved whilst the equivalent 'benefit' at the nearby 'Kew Eye' does not appear to have had many public takers, perhaps reflecting the suburban, rather than Central London location.
- 8.25 The claim of permeability through the site by use of the ground floor lobby as a benefit seems marginal, if users still have to make use of pedestrian crossing points at each end of Larch Drive.
- 8.26 The provision of workspace could provide for perhaps 415 employment opportunities. It is not clear how high the quality of the space might be, or how attractive the market will find it, given the mere 8 car parking spaces to be offered (a ratio of 1:487 square metres). This compares poorly with the nearby Chiswick Business Park where the ratio is 1:126. It should be noted that the claimed fall-back option of the Citadel includes 140 car parking spaces, a ratio of 1:141 and the potential for 1,900 employment opportunities.
- 8.27 A total of 327 quality new homes would be provided of which 116 would be affordable. The appellant does not dispute that Galliard has a successful specialist sales team for apartment sales in overseas markets such as Hong Kong (as they are of course perfectly entitled to do)⁵⁰⁸. High rise apartments with views of Kew Gardens might be expected to have a particular appeal to overseas buyers. However, in weighing the public benefits of the scheme, it could be argued that international sales might not bring the benefit in terms of meeting housing need that sales to a UK resident purchaser might.
- 8.28 The appellant claims that it would be providing a new building of the highest quality but opinions differ on what constitutes quality in design, and some would argue that, as with beauty, judgement is in the eye of the beholder. Certainly few residents of Kew can be found to be admiring of Chiswick Curve.
- 8.29 Although in 2015, many doubted the validity of the valuation of claimed public/community benefits proffered for the Brentford FC scheme, no financial evaluation at all of Chiswick Curve's total benefits has been advanced for the Chiswick Curve Appellant. It is not, of course, surprising that no dis-benefit evaluation has been attempted either.
- 8.30 It is remarkable that no thought has been given to the possible combined development of the contiguous large site owned by British Airways Pension

⁵⁰⁷ Mr Goddard in x-e

⁵⁰⁸ Mr Goddard in x-e

Fund and presently leased by B&Q (until early 2023)⁵⁰⁹. Slavishly perpetuating the two separate ownerships and road layouts settled in the 1980s when the possibility of combining the two freehold land interests has not been tested at all seems to be missing an opportunity.

Conclusion

- 8.31 For all the reasons set out above, the Kew Society believes that Appeal A should be dismissed.

Appeal B – the Advertisements

- 8.32 We have submitted to the Inquiry the evidence of recent academic research that links LED lighting to increased risks of prostate cancer and breast cancer seeking reassurance that there can be no adverse health impacts from the nature of the LED light sources in the present advertising proposals⁵¹⁰. There has been no response from the appellants.
- 8.33 Current digital advertising at Chiswick roundabout astride the M4⁵¹¹ is visible from the Thames towpath and north facing upper floors of residential and other property in Kew, particularly at night. Any advertisement consent granted in respect of Appeal B should ensure that such advertising is not visible from Kew itself, Kew Gardens, Kew Bridge, Kew Steam Museum, the Kew Green Conservation Area, and the River Thames.
- 8.34 HLP Policy CC5 seeks to ensure that advertisements do not adversely impact on the setting of heritage assets, the skyline, or the amenity of residential properties. All advertisements are encouraged to positively contribute to an area's character, and the amenity of residential areas. Generally, advertisements should be sensitive to their context, and well designed.
- 8.35 The skyline will be significantly and adversely impacted by proposals on the scale of those included as part of the Chiswick Curve. Direct upward and spill light from the panels will further contribute to general light pollution in the immediate area and wider West London. The Arcadian Thames is also at risk, together with Gunnersbury Park.
- 8.36 The proposed advertisements would have a significant adverse impact on nearby residents, such as those occupying the recent new dwellings on Chiswick Roundabout, existing dwellings on the east side of Chiswick High Road, and those under construction at 650 Chiswick High Road (Whetstone House). Living conditions in the housing that forms part of the Brentford FC scheme may also be prejudiced.
- 8.37 On this overall basis, there would be a failure to accord with HLP Policy CC5. As a consequence, Appeal B should be dismissed.
- 8.38 If the SoS is minded to grant advertisement consent, the KS would highlight their suggested amendments to the draft conditions⁵¹².

⁵⁰⁹ INQ16

⁵¹⁰ TKS/1/D Appendix 2

⁵¹¹ Granted on Appeal in 2012: APP/F5540/H/12/2169784

⁵¹² INQ33b

9 The Case for the Appellant

- 9.1 This is set out in full in opening and closing statements to the Inquiry and in evidence⁵¹³. Helpfully, after the Inquiry closed, the appellant updated their closing to take account of the revised Framework⁵¹⁴.
- 9.2 What follows is a summary of the case presented in closing, and subsequently revised, and it is imperative that the closing is read in full, and considered carefully, alongside the evidence, to gain a proper appreciation of the case presented, and in particular, those aspects relating to case law.

Introduction

- 9.3 The entrance to London from the west is in many ways the most tangible gateway into the capital. The elevated section of the M4 is the main route to the city from its main international airport. It 'drives' into the city at high level, on a structure of significant scale and presence. It takes the visitor out of the Green Belt, and into and towards the metropolitan global city beyond. It provides him/her with glimpses of what is to come.
- 9.4 This gateway site has the potential to announce the capital, and in many ways the country that it serves, as a thriving, vital, artistic and articulate place. The potential to mark that place, that moment, with a building of world class quality, by one of Europe's most lauded and talented of architects, is one that the planning system should not let slip. In this context, and at this location, Mr Egret's building will be immediately recognised as a work of architecture of immense, world-class, quality.
- 9.5 It would mark not only an important spatial place of international and national entry into London, but would mark also the confidence, independence and cultural élan of the society, and the system that created it. It would announce in a gesture at once bold and subtle that here is a society which is capable of producing a building which represents the best of the new. It will be a symbol of a diverse, sensitive, post-modern culture that has something of its own to add to the centuries of history upon which it is overlaid.
- 9.6 And the confidence and ability to foster, to see, understand and appreciate the best of the new is in no way inimical to the conservation of the best of the old. In a crowded island and in particular in its main city and engine of growth for the entire country, the spatial planning system has long recognised that seeing the best of the new, juxtaposed with the best of the old, is not harmful.
- 9.7 Those that oppose this development opposed with equal fervour developments which are now, in a wide range of contexts, universally recognised throughout the world as appropriate symbols of the capital city, and its spatial planning system. It is no coincidence when it comes to buildings of the highest quality that 'conservation' and 'conversation' are anagrams of each other. And it is also no coincidence that those who oppose the architect's work do so either from the standpoint of saying that any visibility of modern Britain is harmful, irrespective of quality, or without any coherent or informed analysis of the undoubted quality of the work.

⁵¹³ INQ3, INQ43, APP/1/A1 to APP/7

⁵¹⁴ INQ47

Architecture of the Highest Quality

Introduction

- 9.8 It is right to begin with the quality of the architect, and the quality of the architect's work at this location. And, given the importance of an understanding of the architectural quality that this proposal would bring to the area that should be the starting point for the decision-maker too.
- 9.9 The consistent view taken by the SoS, following the approach of their Inspectors, in cases of this type, often contrary to the position adopted by HE, is that a fair-minded assessment of impact on designated heritage assets cannot be essayed in the absence of a consideration of design quality. That approach should be adopted in this case too.

The Architect

- 9.10 Mr Egret is an architect of the first order. He is known and appreciated by other architects for his understanding of, and responses to, context.
- 9.11 The gentle way in which he reflected on the receipt of the Stirling Prize for the Peckham Library was characteristic of the man: *I suppose it reinforced a little bit my confidence in my own abilities*. Everyone in the architectural world knows that Mr Egret 'owned' that prize winning project. It is his Stirling Prize.
- 9.12 To see the building in operation and the genuine joy in knowledge that it transmits to its community is to begin to understand the ability of modern good quality architecture still to excite, inspire and delight. His other corpus of work also reflects this combination of joy, humility and absence of brashness. It is thoughtful, absent in assertiveness, gentle and artistic.

Contrasting Approaches to Quality

- 9.13 In the same way as with Peckham Library, the architect has understood and responded to the bespoke context of the appeal site to produce a building that is the very definition of contextual. From his earliest beautiful hand drawn sketches, right through to the final models giving expression to his ideas⁵¹⁵, Egret has understood and explained every last nuance of the locus in quo and his building's relationship to it. When such a proper assessment of the architecture of the Chiswick Curve is undertaken, its multi-layered qualities unfold gently and easily.
- 9.14 The SoS should understand the quality of architectural response and the thought and passion that has infected this project. A comparison between the care, attention and thought poured into this project by the architect, and the careless throw-away analysis of many who would criticise it, is obvious and apparent.

The Architect's Approach

- 9.15 The architect's understanding of the context of the Chiswick Curve, and the processes leading to the final design, have been described as exemplary⁵¹⁶.

⁵¹⁵ Explained through APP/1/A1 to APP/1/E inclusive

⁵¹⁶ By Mr Finch e-in-c

- 9.16 The author of the appellant's design review evidence⁵¹⁷ has probably presided over more, hugely important Design Review Panels than any other person. The shape of the best of modern day London reflects his life's work. As long-term Chairman of CABE and its design review panel, he knows and understands when a building has been well presented, and its context well understood. His systematic judgment on the process here and then the building which it produced should be given significant weight.
- 9.17 His involvement in a design review role led him to voice his keen support for the quality of the project and in particular its role in preparing an integrated movement solution and wider spatial strategy for the Brentford East area. The admiration for the project following his design review came first, his review of the wider strategies was clearly for him seen as no more than an extension of that review role.
- 9.18 The suggestion that Mr Paul Finch is not an independent witness but a hired gun whose evidence should be treated as unreliable could only be made by someone whose knowledge of the man, his work, his history and his utter professional integrity is severely faulty.
- 9.19 The architect's explanation and exposition of the various architectural partis which he mined from the context of the site cannot be done justice in words. But, even an examination just of his explanation of the derivation of the outer envelope of the building discloses deep understanding and care. It was careful and considered and yet, for those with an ear to hear, profoundly exciting at the same time⁵¹⁸.
- 9.20 Thus, the creation of a multi-formed composition of reduced and delicately designed volumes was from the beginning a response to near context, and reflected an understanding that in longer-distance views, there was a need for an articulated and sculptural response. The vertical height of the curve reflected the position of the building along the two hugely scaled infrastructure curves of the railway and motorway, the Council's own regeneration plans for Brentford East, and the design intention to avoid a juxtaposition of the architect's new glass 'house' with the delicate, filigree and ethereal beauty of the Palm House at Kew.
- 9.21 The chamfered approach to the way the building hits the ground offers a generous public realm and increases the length of the (remarkable for a tower) active street frontage. It also allows a differentiation and understanding of the residential floor-space from the commercial floor-space in this busy regeneration corridor.
- 9.22 Setbacks in the building create a deliberate 'stepping visual relationship' between the building volumes, breaking down the mass, and inviting the eye to read the building as a series of volumes of proportion. This approach again seeks to pick up the relevant requirement in the M4 corridor to act as a landmark building, while being respectful to wider landscape and heritage contexts by stepping and articulating the mass of the building.

⁵¹⁷ Mr Finch APP/2/A to APP/2/C

⁵¹⁸ Explained through APP/1/A1 to APP/1/E inclusive

- 9.23 A highly glazed façade allows the building to blend its appearance with its surroundings, as well as offering unparalleled views out of the building and natural light within. Vertical and horizontal fins, and a family of cladding types, break down, pixilate, or more accurately pointillate (in a Seurat and Signac sense), the appearance of the building both close to and in the distant views. This has the effect of maintaining, and even reducing, the human scale of the building, while deconstructing the rigid floor patterns, and repetitiveness of less well considered buildings.
- 9.24 A palette of earth-tone colours for the fins and cladding features means that when seen from a distance, the facades of the buildings are broken down, pointillated, but deliberately pick up, and are sympathetic to, the colours and forms of the foreground of the views, their trees, buildings and overall context. The fins are then gently twisted and manipulated better to reflect the curving shapes of the masses which will not read as shadowed blocks from close to or from distance. This twisting of fins reduces against the glazing as the building rises, meaning that the building is at its lightest and most glazed as it touches and dissolves into the sky, and at its most solid where in townscape terms that is most appropriate.
- 9.25 This is a building of the highest quality, born of its surroundings, with every design move thought through and justified. As in all things truly good, the thoughts which have produced this building are simple. The skill lies not in complexity but in an ability to see what will work and why. That is what the architect has done here.
- 9.26 This quality will be secured by the detailed plans, produced by SEW, along with the requirement to submit the key 'moves' of the architecture in a condition, and by the architect retention condition.

Other Approaches to Quality

- 9.27 The Mayor's material⁵¹⁹ needs to be considered cumulatively and fairly and not out of context. The SoS will be familiar with the conventions of the Stage One and Stage Two processes, and the need to read the two documents together.
- 9.28 The London Mayoral team is the most experienced team at dealing with the quality of and implications of tall buildings of any spatial development team in Europe. This expertise began with the formation by the Mayor of Lord Rogers' group, set up to encourage the highest quality of architecture in the capital, and has transposed itself into the design policies of the LP⁵²⁰ and its SPG⁵²¹.
- 9.29 LP Policy 7.7 in particular provides a comprehensive checklist against which tall buildings fall to be considered. It is designed to be a comprehensive and balanced development plan check-list against which the suitability of individual tall buildings can be considered. The proposal should be considered fairly, and fully, against its terms. It is of the greatest significance therefore that in these circumstances, the Mayoral team takes the view that the architect's proposal represents the architectural quality of the highest order.

⁵¹⁹ CDG.01 and CDG.02

⁵²⁰ CDC.04

⁵²¹ CDC.06 to CDC.11 inclusive

- 9.30 It reaches that conclusion following a thorough, well informed and systematic assessment of quality through the operation of the policies of its own Plan. And as the architect was clear⁵²², the assessment of quality was not one of blind or unthinking approbation. The Mayoral team immediately saw the compelling correctness in the overall approach of the proposal but worked with the design team in exactly the way suggested as appropriate by the (previous version of) the Framework, and the PPG, to understand, and to fully form an accurate assessment of, quality. This included making suggestions which the design team adopted and worked upon and also seeking further, better and more detailed particulars of the last detail of the facade treatment.
- 9.31 In all of the circumstances, the weight to be given to the identification by the Mayor of the fact that the proposal is of the highest architectural quality, and is consistent with policies which provide a clear and systematic approach to the consideration of tall buildings, should be given very significant weight.

The Council

- 9.32 The Council sought to demonstrate⁵²³ that it had taken a very clear and consistent approach to the alleged unacceptability of the proposal and its quality from the start. The formal pre-application position of the Council, supported by a series of meetings⁵²⁴, exposes a very different position.
- 9.33 The Council itself described the proposal as compelling, and of the highest quality design. It commented with approval that the architect had responded properly and accurately to the input from the Officers, and urged progress towards an application. It indicated that the breaking down of the massing of the development, and in particular, the way in which the pointillation of the buildings picked up the relevant foreground elements of the key views, was of great quality⁵²⁵. All facts that corporately, the Council appears to have forgotten.
- 9.34 At the time of the consideration of the application, rather than undertake a thorough and systematic assessment of design quality as part of its assessment of impact, the Council's Design and Heritage Consultants simply asserted that they did not accept that design quality was capable of avoiding or ameliorating potential harm to various heritage assets⁵²⁶.
- 9.35 The assessment of impact of the proposal upon those heritage assets is dealt with below but it is important to recognise that having originally described the proposal as compelling, the Council did not subsequently undertake anything like a thorough assessment of the architectural quality of the proposal, as it would be seen in the relevant views, or at all. The evidence on design presented by the Council⁵²⁷ does not do that either.
- 9.36 The relevant witness has been asked to undertake a task which is not a good fit with his qualifications or experience. That is not his fault. But his criticisms

⁵²² Mr Egret in-c

⁵²³ Mr Egret x-e

⁵²⁴ Mr Egret in-c

⁵²⁵ INQ23

⁵²⁶ LBH/4 and LBH/5

⁵²⁷ Mr Grover LBH/1/A to LBH/1/C

of the amount of active frontage, of the creation of a pedestrian experience of quality, and of the use and function of the publicly available atrium and mezzanine canteen and restaurant, all establish that in this respect he was working considerably beyond his brief.

- 9.37 The witness accepted⁵²⁸ that he has no professional architectural qualification or experience (beyond his first degree) and that he has had no experience of critiquing the operation, function, or form of tall buildings in the particular London (or indeed any other) context. By focusing on what he, incorrectly, asserted to be individual elements of deficiency, he failed to undertake a thorough systematic appraisal of architectural quality at all. All of his criticisms were comprehensively and compellingly dealt with by the architect in evidence⁵²⁹.

Historic England

- 9.38 HE made no assessment of architectural quality of the proposal at all. Their witness was remarkably frank about it⁵³⁰. He said it didn't pass the threshold whereby an assessment of architectural quality was appropriate. It hadn't reached the stage where quality had become a relevant consideration. That is a wholly inappropriate response.
- 9.39 When pressed on the issue of quality of the design and the way it would be seen, his considered opinion was that: *We have nothing against the design and understand the skill of Mr Egret.....this would probably be the best building in Nine Elms if it were to go there*⁵³¹. Rarely could a witness have disclosed such a fundamental misunderstanding of the role of context in the understanding of architectural quality. That was an absent hole in the centre of HE's analysis. In the absence of a thorough and proper assessment of quality, the assessment of harm is simply incomplete and unfair.
- 9.40 Indeed, it would almost appear as if HE has ceded all responsibility for the rational and systematic assessment of architectural quality to the judging panel of a trade newspaper which awards something it calls the Carbuncle Cup. It is only in that context that any analysis of quality of architecture appears to have been entertained.
- 9.41 This approach to architectural quality might even be funny were it not for the time, skill and attention that has been taken with this proposal, and were it not for the importance of this site and case to the spatial strategy of London.

RBGK

- 9.42 RBGK made no assessment of architectural quality at all on a proper reading of its evidence. And perhaps that is not surprising when the absolutist nature of the case it is now forced to promote is understood. Their witness⁵³² said that he really didn't need to look any further than height and mass to get the answer he needed.

⁵²⁸ Mr Grover in x-e

⁵²⁹ Mr Egret e-in-c

⁵³⁰ Mr Dunne x-e

⁵³¹ Mr Dunne x-e

⁵³² Mr Croft x-e

- 9.43 Of course, this is hardly surprising when the formal position now taken by RBGK, namely that the visibility of any new building within the Kew Gardens envelope is harmful, is understood. But, if that really was intended to be the case, then the witness would not even have had to look at height and mass.

Summary

- 9.44 The appellant's team, the independent reviewer, and the Mayoral team, are the only people even to seek to consider and to identify the architectural quality of the proposal in any systematic way, as required by policy.
- 9.45 There should be no difficulty in concluding that the Chiswick Curve is not only architecture of the highest quality, but that it represents the 'best of today'. If the scheme fails to attain that standard then that is the end of the matter. A tall building which is not of the highest architectural quality and integrity does not deserve to be built. But if it does attain, and indeed surpass, that standard, then that conclusion has a profound impact on the way in which this case then runs.
- 9.46 The failure of other parties even properly to engage in an assessment of quality not only means that the objections to the proposal's impact are at best partial and uninformed. It also means that the assessment of impact by HE is, again, fundamentally incomplete and inaccurate.

Impact of the Proposal on Heritage Assets

Introduction and Ground Rules

- 9.47 The Chiswick Curve would have no direct impact on any historic asset. It would sit well outside the WHS Buffer Zone upon which it would have no direct impact either. However, it would be visible from a number of heritage assets, and in views of, and over, other heritage assets. It will therefore, at most, have an indirect and mostly distant impact on the settings of heritage assets, by reason of its visibility.
- 9.48 It is the nature and effect of this visibility, as understood in the full spatial context of the heritage asset, which falls to be considered. When considering alleged harm to the significance of a designated heritage asset by reason of visibility in its setting, it is necessary to understand that Parliament has treated the settings of different categories of designated heritage assets, in different ways.

An unnecessary diversion: suggestion of inadequacy of Images for Assessment.

- 9.49 This application is an ES application for the purposes of the Regulations. The Council is statutorily bound to ensure that the ES is, amongst other things, fit to allow the impacts (including in cases like this, the visual impact) of the proposal reasonably to be considered, understood and judged.
- 9.50 If, at any time, it believes that the ES is not fit for purpose, or is misleading in any material way, it is under a duty to put that right. If it believes a methodology is incorrect, or incorrectly or inadequately explained, it has the continuing power and duty to require that to be rectified. It cannot simply arrive at an Inquiry and suggest that the ES, or important parts of it, are not fit for purpose, so the appeal should be dismissed.

- 9.51 In a case involving a tall building, the assessment of visual impact is undertaken through a TVIA⁵³³. In the present case, an ES was submitted along with a TVIA. It was consulted upon in the usual way, and a supplementary document⁵³⁴ was issued which dealt comprehensively with each and every concern raised by the Council. No other party raised any concerns with the adequacy of the images presented at this, or any other relevant, time.
- 9.52 Suffice to say here that when pressed on the matter⁵³⁵, it was confirmed that the Council were not alleging that the images presented by the applicant were in any way unfit for the purpose of understanding the visual impact of the proposal; the main function and requirement of an ES.
- 9.53 The applicant, now appellant, in this case, without any previous complaint or demur from the Council, has followed a now very well-trodden path in the presentation of its images and has followed the very best practice. If there was any issue with this approach it needed to be raised much earlier in the piece. However, the appellant draws significant comfort from the fact that the Inspector, who inherits the role of the Council, following receipt of the evidence, has not seen it necessary to issue a Regulation 22 request to ensure that the ES, in and of itself, is fit for purpose. It already is and always was.

The WHS as a Designated Heritage Asset

- 9.54 Kew Gardens is one of the capital city's four WHSs. It was inscribed in July 2003 and as such, and as inscribed, it is a designated heritage asset in its own right. As a WHS, Kew Gardens is a designated heritage asset of the highest significance. Its international importance must be recognised and given the fullest of appropriate weight.
- 9.55 But the designation of a WHS does not suspend the ordinary operation of the planning system, or require a decision-maker to slavishly accept allegations or propositions which simply cannot be supported on the evidence, or by a proper application of policy.
- 9.56 WHSs are special categories of designated heritage assets. The approach to impact upon a WHS as a designated heritage asset is thus necessarily a little different to and distinct from other heritage assets. It is important to understand exactly what it is that is inscribed, and how and why it is protected.
- 9.57 It is the OUV of the WHS as a whole, as found on inscription, and as set out in the Statement of OUV⁵³⁶ which primarily indicates its importance as a designated heritage asset. The PPG specifically states that it is this OUV, identified in the Statement, which should be taken in to account by the SoS in determining cases on appeal or call-in⁵³⁷.
- 9.58 The OUV of Kew Gardens so far as is relevant to these appeals comprises: (a) a rich and diverse historical landscape providing a palimpsest of landscape

⁵³³ CDA.11

⁵³⁴ CDA.15

⁵³⁵ Mr Spence x-e and in response to Inspector's questions

⁵³⁶ CDF.17

⁵³⁷ CDC.02 Paragraph 026 Ref. ID: 18a-026-20140306

design; and (b) an iconic architectural legacy. It is these features which were found to exist and to justify inscription as at June 2003 which constitute the significance of the designated heritage asset for the purposes of national guidance. It is these features and this significance which fall to be protected by the planning system.

- 9.59 It is worth quoting from the ICOMOS Guidance⁵³⁸ to understand what it is decision-makers are to seek to protect: In the case of World Heritage properties, their international significance is established as at the time of inscription and defined as their Outstanding Universal Value (OUV). State Parties undertake to retain and guard this OUV through protecting and conserving that attributes that convey OUV (all emphasis added).
- 9.60 It follows that it is the OUV as it is found and described at inscription which falls to be retained and guarded. There is no requirement on a decision-maker to require development to enhance OUV or to seek to create a different OUV to that which was crystallised at the date of inscription. That would run contrary to the way in which law and policy, in relation to heritage assets, operates.
- 9.61 Parliament has not thought it appropriate or necessary, specifically, to protect the setting of a WHS by legislation. The setting of a WHS does not fall to be protected for its own sake. Neither does it garner by itself any statutory protection at all. In these circumstances, the statutory provisions and presumptions that arise in relation to some heritage assets do not exist. It is therefore especially important to examine the nature and content of the policy guidance which is in play in relation to the settings of WHSs.
- 9.62 The revised Framework in paragraph 201, reflecting and consistent with the absence of a statutory protection for settings of Conservation Areas and WHSs makes it clear, that not all aspects of these assets' settings are of equal importance. It is critical therefore that decision-makers identify what is truly important as part of their decision-making duties.
- 9.63 Further guidance on protecting the setting of a WHS is contained in the PPG. It points out that the UNESCO Operational Guidelines seek protection of the important views and other areas or attributes that are functionally important as a support to the Property⁵³⁹. The identification of important views is deliberate and consistent with advice in paragraph 201 of the revised Framework. The PPG also makes it clear, again consistent with these Operational Guidelines and the revised NPPF, that not all aspects of a WHS setting are of equal importance, and that the setting of a WHS may be appropriately protected by 'the protection of specific views and viewpoints'.
- 9.64 The role of the Management Plan⁵⁴⁰ in this respect is to 'protect conserve and present the Site' and to identify how 'the OUV, authenticity and integrity is to be maintained'. Clearly this can include the identification, specification and protection of views important to the protection of OUV.

⁵³⁸ INQ32

⁵³⁹ CDC.02 Paragraph 026 Ref. ID: 18a-026-20140306

⁵⁴⁰ CDF.10

- 9.65 In the London specific context, the relevant development plan policy and SPG⁵⁴¹ re-enforces the fact that it is the maintenance and protection of the identified OUV of a site as a whole which is the essential focus of consideration for this category of designated heritage asset.
- 9.66 The LP makes it clear that all of the WHSs in London are embedded in the constantly evolving urban fabric of London⁵⁴². And that it is for decision makers to 'strike a balance between protecting OUV and allowing the surrounding land to continue to change and evolve as it has for centuries'. This is a clear recognition that in London, an essential part of the character of each of the WHSs, lies in the fact that they are inevitably understood and experienced as part of the London urban environment.
- 9.67 The need to protect identified and important viewpoints and vistas is for this reason, in London, yet more important. Development within the setting of the WHSs is specifically envisaged as being appropriate or acceptable, subject to appropriate quality and assessment. The identification of what are truly important views, in terms of the setting of the WHS is therefore all the more important.
- 9.68 In furtherance of this balanced and proportionate approach, LP Policy 7.11⁵⁴³ specifically states that the Mayor will: *identify and protect aspects of views that contribute to a viewer's ability to recognise and to appreciate a WHS's authenticity, integrity, significance and OUV*. And the relevant SPG⁵⁴⁴ requires that: *views into and out of and across World Heritage Sites should be identified in management plans DPDs and other relevant strategies and: development proposals should be assessed against the impact on identified strategic and local views*.
- 9.69 The approach to the wider setting of a WHS and development within it is therefore clear and it applies to the WHS at Kew. The decision-maker is required to follow it in the circumstances of this case. First, not all aspects of setting views of a WHS are of equal importance; where harm is alleged a judgment must be made which is fair and proportionate about the relevant significance of the view involved. Second, to assist in such an exercise, and to reflect the fact that the protection of all views from any impact is not appropriate, both the Operational Guidelines and the PPG indicate the nature and extent of protection of important views from unacceptable impact. Third, there is a requirement in London for such views to be specifically identified and for the impact of development on such views to be considered in accordance with the relevant policies.

The Identification and Protection of Important Views

- 9.70 The London View Management Framework⁵⁴⁵ has undergone significant and multiple consultation. It has identified a significant number of key views which contribute to a viewer's ability to recognise and to appreciate the authenticity,

⁵⁴¹ CDC.04 LP Policy 7.10 and CDC.11

⁵⁴² CDC.04 LP Page 299 Paragraph 7.34

⁵⁴³ CDC.04

⁵⁴⁴ CDC.11

⁵⁴⁵ APP/6a, 6b and 6c

integrity, significance and OUV of a WHS. It has where it has thought it necessary and appropriate specifically protected the identified settings of London's WHSs. If it was appropriate to have done this for Kew, it could have and would have.

- 9.71 Further the WHS Management and Landscape Plans for Kew Gardens⁵⁴⁶ have sought to reflect this, and its antecedent advice, by identifying important views and vistas. The whole purpose of identifying these views as important and as needing protection is to give a proportionate, objective assessment of that which is truly of importance to assist decision-makers when specific developments in the setting of a WHS are being considered. This is particularly the case in London, where the protection of WHSs from any visual impact is neither practical nor justified. The important views and vistas for Kew Gardens are dutifully identified in the Management Plan⁵⁴⁷. They replicate the similar views and vistas consistently identified in earlier iterations.
- 9.72 There has been a consistent consensus of opinion in relation to these views in the process leading to the Inquiry. Given the policy matrix set out above and the importance with which such views are invested in the UK and London context, all parties expressed (as they were clearly obliged to given the policy matrix) a judgment on the impact of the proposal on important views and vistas. All Rule 6 parties (including RBGK) expressing a view, accepted and asserted (at the least), that none of these views or vistas would be unacceptably harmed by the proposal. HE and the Council repeated and formally accepted this view in their written and oral evidence to the Inquiry.
- 9.73 RBGK also specifically identified the views and viewpoints in their written evidence and neither of their witnesses alleged any unacceptable harm to these identified views. The ensuing scramble to construct such a case in oral evidence, and to distance itself from its previous positions in this regard, was as instructive as it was unseemly. RBGK realised too late that, given the policy context identified above, it was a little exposed in the relevant harm to important and identified views department, particularly when it alone was alleging that the impact here would fall into the category of substantial harm, or total loss of significance.
- 9.74 It had two choices available to it: (a) to shift its position in relation to the important views and vistas identified in the Management Plan (and for decades earlier) to now allege breach of the policy where it had in reality previously asserted none; or (b) to ignore the policy and to allege that any infraction into the visual envelope of Kew at all was unacceptably harmful. It chose eventually to do both.
- 9.75 Their second witness⁵⁴⁸ chose to contradict their first⁵⁴⁹, and the balance of the heritage evidence, by alleging that the proposals did cause unacceptable harm to two views on the plan of important views and vistas after all. This shift in evidence does not bear scrutiny.

⁵⁴⁶ CDF.10

⁵⁴⁷ CDF.10 Page 95

⁵⁴⁸ Mr Croft e-in-c

⁵⁴⁹ Mr Williams

- 9.76 And then extraordinarily, RBGK sought to construct an argument that the generality of government policy and clear London Plan policy did not apply to the specific circumstances of London and that *any* intervention into the visual envelope of Kew Gardens would be contrary to policy, and harmful. Neither this proposition, nor anything even approaching it is to be found in RBGK's written evidence.
- 9.77 Given the clear and thorough way in which the other parties (including objectors) have established that visibility of a tall, or any, building does not necessarily equate to harm to the significance of Kew Gardens, this can be dismissed as a wholly inappropriate and impermissible reading of policy when seen in the round.
- 9.78 A proper reading of the Management Plan⁵⁵⁰ does not support a proposition that any further visibility of a building in the setting of Kew Gardens would be harmful. The document itself is very clear that it does not seek to set aside the wider and longstanding policy of protecting 'significant sightlines and vistas'. That is consistent with all levels of policy relating to WHSs, including the Operational Guidelines, the revised Framework, the PPG, the LP, and its daughter documents.
- 9.79 It is also noteworthy that RBGK appear to have given not a moment's thought to the implications of this new and wholly untenable proposition being followed through for their fellow inhabitants of London. The idea that visibility equates to harm to a WHS, already teetering on the edge of substantial harm, kills stone dead any realistic aspirations for the Golden Mile corridor, for urban regeneration, and for the well-being of the areas surrounding the site. The Council will certainly not be subscribing to this interpretation.
- 9.80 What RBGK is seeking is a policy which in effect requires no additional visibility of the world beyond Kew Gardens from within its confines. Any further visual intervention is by definition harmful, whatever it is, however well designed it is, and however unimportant and unidentified the view.

The Harm now alleged to Important Views and Vistas

- 9.81 In evidence, RBGK⁵⁵¹ was forced to construct an argument alleging unacceptable harm from two important viewpoints.
- 9.82 First, there was a suggestion that views from Kew Palace would be unacceptably harmed by the visibility of the Chiswick Curve from one of the uppermost, north-east facing windows.
- 9.83 It should be noted that HE takes no point at all on any of the impacts on Kew Palace, much less this limited one. And it is easy to see why. The view or vista that is protected in the Management Plan⁵⁵² is a 360 degree one. From the upper stories of Kew Palace, it is inevitable given its context, that one gets a full throated and fully legible understanding of the place of the Palace in modern London.

⁵⁵⁰ CDF.10 Page 95

⁵⁵¹ Mr Croft e-in-c

⁵⁵² CDF.10 Page 95

- 9.84 And even from the window to the back and side of the Palace where the Chiswick Curve would be visible from behind darkened curtains, the keyhole view will be one (which consistent with the other ignored views to the rear) that already reflects the existence of the M4 corridor and its buildings.
- 9.85 There is no duty on the developer to enhance these existing views; they are already part of the existing context of the World Heritage Site and its OUV. The question in relation to existing OUV is whether in these views and in this context, the Chiswick Curve truly compromises an ability to appreciate the OUV, integrity or significance of the World Heritage Site as a whole.
- 9.86 Clearly it does not. The existing windows give views of the M4 corridor. That won't change. Except this time, instead of the ability to see a modern city context of largely mediocre buildings, (including importantly, and potentially, the Citadel - clearly not a building of the highest architectural quality), what will be seen will be the top elements of a glasshouse of great quality and lightness of touch.
- 9.87 The detailed quality of the building, because of the lightness of its materials, the breaking-down and articulation of its mass and form, will even in this distant view of the city beyond Kew Palace, cause no harm. On the contrary, it will enhance an existing workaday experience of the city beyond. The view of the world class building from this old Royal Palace would be a delight. It would certainly be a vast improvement on the Citadel, which would clearly be visible in all of its glory, from this location.
- 9.88 On top of that, there are allegations of unacceptable harm to the views from the Pagoda. These are wholly unsustainable. The view from the Pagoda stretches over London for 40 miles in some directions. It is important that proportion and common sense apply in a consideration of allegations of harmful impact in such circumstances. There was not and never had been any suggestion that this important view or vista even needed to be modelled in the ES, given the distance between the Pagoda and the appeal site, much less that there would be unacceptable harm.
- 9.89 There would be no harm to the OUV of the WHS as a result of the presence of the Chiswick Curve in views from the Pagoda, and neither would the ability of viewers to appreciate OUV be undermined. If anything, a legible marker of the relationship of the WHS with the wider, already visible, City beyond, will reinforce its value. The Chiswick Curve would, from this vantage point, add interest and legibility. A high-quality expression of architecture marking a place of importance in the city would be appreciated and easily understood.
- 9.90 Suggestions that the proposal will harm the specially created important main vista of the Broadwalk are not sustainable from a geometric point of view. The planned and designed vistas, properly defined and delineated, would in no way be impacted upon by the proposal. Suggestions that non-vista views are harmed in an incidental sense are dealt with impacts on views other than the identified views and vistas below.
- 9.91 In conclusion, on the important issue of whether the specifically identified important views and vistas would be unacceptably harmed by the Chiswick Curve, the emphatic answer is that they would not.

Other Views (Not Identified on the Important Views and Vistas Plan)

- 9.92 The fact that specific views and vistas have been carefully identified for protection by the Management Plan following the overarching policy guidance does not mean that there is *carte blanche* in respect of the part of the WHS not covered by these identifications.
- 9.93 But it does mean that a proportionate and reasonable approach needs to be taken to an assessment of such views, and the contribution of such views to an understanding and appreciation of the OUV of the site, in the round. There will be a good reason why they have not been so identified in the context of a policy matrix requiring the important views to be managed. The appellant has taken a proportionate and evidence-based approach to the issue of other views. Indeed, one of the main parts of the architectural approach took as its starting point the need for an appropriate relationship between the Palm House and the Chiswick Curve.
- 9.94 Thus, the architectural team sought to avoid the immediate juxtaposition of the Chiswick Curve, a modern glasshouse curved and multi-formed, in the views of the light and delicate structures of the Palm House, as seen from the main walk from the Temperate House. An instinctive understanding of the judgment reached by townscape expert and architect is made very clear by a consideration of the form of the Palm House.
- 9.95 The particular form and quality of the Chiswick Curve as a light, ethereal, modern glasshouse, deliberately shares many characteristics with the Palm House; its curves, its light and filigree nature, the expression of natural colour in juxtaposition with glass, all speak a similar language. The architectural team, showing its proportionate, bespoke approach to the relationship between the building and its assets chose not directly to juxtapose the new glass house with the old.
- 9.96 HE accepts that any impact on the significance of the Palm House as a result of this design decision would be negligible. There would certainly be no harm to its setting as a listed building, and there can be no sustainable suggestion that this impact would have any meaningful impact on the OUV of the WHS as a whole. The other setting impacts of the Chiswick Curve on the WHS were no less fully considered⁵⁵³.
- 9.97 The impact of the Chiswick Curve upon the view from the old White House Great Lawn towards the Orangery⁵⁵⁴ was given much care and attention. Three things are to be remembered. First, this view is neither an historic nor a designed one. It is not surprising that it is not a specifically identified important view either. Indeed, properly considered, the view would have been the antitheses of what was in fact intended by the great architects and landscape architects.
- 9.98 The Orangery was specifically designed to be seen and appreciated as a classical construction, seen on axis from the symmetrically centred viewpoint of what the Kew Masterplan calls the Orangery Lawn. Deliberately and

⁵⁵³ The Temple of Aeolus and Cambridge Cottage are dealt with in the evidence of Mr Coleman

⁵⁵⁴ Not it should be noted identified on Page 95 of the Management Plan (CDF.10)

powerfully white its stucco commands the attention of the eye in the wider landscape. So, structured on its main axis was it that in order to achieve Palladian perfection, its functional ability to actually operate as an Orangery was secondary. The windows on the side elevations were remedial afterthoughts, added much later, when it was realised that the building, classically perfect when seen in elevation from its lawn, was not fit for its botanical purpose. And now, the side and rear elevations of the Orangery have been added to by modern glass and plastic fascia, reflecting its present (and unauthentic) use as a café/restaurant. These essential architectural facts are reflected in the landscape treatment of the Orangery.

- 9.99 The original tree belt separating the Orangery Lawn and the White House Lawn was clearly and demonstrably logical and deliberate. It reflects the understanding of the classical ordering and landscaping of the Orangery as a building and its deliberately different axial treatment. The same applies to the equally symmetrical and classical façade of the old White House building which commanded its lawn and would have been the focus of a deliberately closed and directed view along its axis.
- 9.100 The Orangery lawn afforded the key designed view of the classical building. The tree-belt directed that view. The tree belt served a similar, though less regimented function for the Great Lawn, which in turn did the same job for its great house. The tree belt thus separated the White House and its associated lawn from that of the functionally separate and often separately occupied Orangery and its lawn. The evidence from the Maps⁵⁵⁵, which were designed to be accurate for purposes of botanical and landscape garden exposition (and later with defined precision for OS purposes) reflect the architectural logic represented by the façade design. This is accepted by HE.
- 9.101 RBGK's assertion⁵⁵⁶ that the tree belt was insignificant and could be seen through is not supported by a jot of evidence. It is also architecturally incoherent. It is impossible to see how the image with the Swan Boat⁵⁵⁷ assists RBGK at all. It is taken from the other side of the lake which is not the kinetic and incidental view being considered. And it clearly shows significant planting separating the buildings in the location of the relevant view.
- 9.102 The views which exist today of the western elevations of the Orangery from the Great Lawn are neither historically planned, nor are they longstanding or functionally significant in architectural or landscape terms. HE correctly conceded this point⁵⁵⁸. Overall, it is very clear why this kinetic sequence is not anywhere identified as an important historic view.
- 9.103 Second, the planning system has granted planning permissions in relation to these views which must as a matter of law, be taken into account in assessing whether the visibility of the Chiswick Curve would harmfully affect the understanding and appreciation of the OUV of the WHS as a whole.

⁵⁵⁵ APP/3/C3 Page 25

⁵⁵⁶ Mr Croft in-c

⁵⁵⁷ INQ24

⁵⁵⁸ Mr Dunne x-e

- 9.104 The Council was clearly aware of the visibility of the Brentford FC proposals in these views. It indicated clearly⁵⁵⁹ that there would be visibility of the upper stories of the development but that the: *infractions are minor and are not considered significantly harmful, so they would not reduce the ability of visitors to appreciate the OUV integrity, authenticity of significance of the Gardens, thereby complying with policy 7.10 of the London Plan.*
- 9.105 No party, including those who were specifically and vehemently objecting to the proposal took the view that this view was so important that it needed to be checked or modelled and yet it would have been perfectly clear to anyone vaguely competent that the building would be visible in the vicinity of the views from the White House Great Lawn. It is instructive that HE, who played a very significant role in objecting, unsuccessfully, to the Brentford FC scheme, does not take this point.
- 9.106 Planning permission has actually been granted for the proposal. It is in the course of being implemented, and it will clearly be seen as a distant and understandable townscape presence. The suggestion that the Orangery will be seen in this non-identified view or vista, free from development, is simply unsustainable. It will not.
- 9.107 In addition, this view has been the subject of very recent consideration by the Mayoral team which is now formally the planning authority for the determination of the application on the Citroen Site. Having considered the impact on this view of the Orangery, it has decided that the impact is not of a magnitude that would prevent a grant of planning permission for the proposed development, given the benefits it would bring forward⁵⁶⁰. The impact of the Chiswick Curve would be even less worthy of a finding of a breach of LP Policy 7.10 of the London Plan.
- 9.108 Care has been taken to ensure that in this view, the building would be seen as a lightweight, translucent, well-articulated form which reaches for the sky in a play of forms and shapes in the distance; its materials and colour deliberately chosen so as not to challenge the overpowering white of the Orangery. For these reasons, the Chiswick Curve would be seen as a distant, separate object. But still an object of quality, and skill.
- 9.109 It is also relevant to note that in these views, there would be an impact from the Citadel, if it was built. Although not as tall as the Chiswick Curve, it would present itself in kinetic views of the Orangery. And the Citadel will not be a thing of great architectural quality. Neither is it anything other than self-assertive, and visually brash and reflective. There can be no reasonable doubt that the high-quality architecture of the Chiswick Curve would be a more welcome addition to these views than the Citadel. It would be a tragedy if the construction of the mediocre Citadel was the result of this Inquiry.
- 9.110 It is common ground between the appellant and the Council that this permission has been implemented, and the Citadel could be built out now at any time. It is also common ground between the appellant and the Council that there is at least a reasonable prospect of the Citadel building being built in

⁵⁵⁹ APP/4/C8

⁵⁶⁰ Though there is the potential for call-in by the SoS on the basis of the HE objection

the event that the appeals at issue are dismissed. Remarkably, HE has attempted to construct an argument that there was no reasonable prospect at all of the fall-back coming about. This is dealt with below.

- 9.111 Fifth, guided by HE and with the full support of the RBGK, a building of 60m-65m high on the appeal site (and thus significantly visible in these views) has been found to be specifically acceptable in the context of the Golden Mile. Such a building, it is said, would have negligible impacts on the relevant heritage assets⁵⁶¹. That conclusion was reached fully cognisant of the potential impact on the setting of the Orangery.
- 9.112 This shows that the Council and HE are content that the sight of a building on the appeal site, in this view of the Orangery is, as a matter of principle, acceptable, and can be achieved without unacceptable harm. If the SoS accepts the consensus that a tall building on the appeal site is acceptable, the issue is whether a building of the highest quality world class architecture is somehow unacceptable.
- 9.113 The answer is that it is not. If it is acceptable in heritage terms to see a tall building at this location, then to see a world class tall building which is at least in part world class because it has been designed specifically to be seen in these locations, would not be a harmful addition.
- 9.114 The ability to see and understand and appreciate the OUV of the WHS as a whole would not be compromised. The setting and thereby the significance of the Orangery would be left unharmed and compared to the Citadel, it would be enhanced.
- 9.115 Much was made of the oblique view of the Chiswick Curve that would be possible from the front of Kew Palace⁵⁶². The front façade is the most powerful, eye-catching, built object in Kew Gardens. Its solidity, exuberance, and colour, grab the attention in a very powerful way. On the approach to the main entrance, through the trees to the right, past the lamp posts, floodlights, security cameras, and other paraphernalia of more modern life, there would be a glimpsed, distant view of the Chiswick Curve.
- 9.116 Any view of the building from this location will display all of the qualities of the proposal described above. HE does not allege any harmful impact to the WHS, or the setting of Kew Palace as a result, and that is clearly correct. The significance of the affected assets would in no way be harmed by the limited appearance of the proposal in this view.

Trees

- 9.117 Concerns are expressed that the proposal would be visible from a large, mature, Botanic Garden. In that context, the potential for screening by trees must be a relevant consideration. The position adopted by the Council and HE is that the existence of trees in Kew Gardens must be taken into account unless there is a good evidential reason not to. RBGK identify potential views of the Chiswick Curve that are reliant on a small number of trees for screening but produce no evidence that any of those trees is in any way at risk.

⁵⁶¹ CDD.05 Paragraph 4.35

⁵⁶² LBH/2/B4.2 Viewpoint 12

- 9.118 More to the point, the Management Plan⁵⁶³ and the relevant SPG⁵⁶⁴ makes it perfectly clear that RBGK should be alive to the potential for screening what it believes to be harmful elements of impacts on its setting by prudent planning.
- 9.119 And in those very few views where trees provide efficient screening at the minute, it is perfectly apparent that if RBGK find the view of a world class building harmful simply because it is visible, then it has the potential, easily achieved, of simple, foreground planting.
- 9.120 For example, in relation to the view of the Orangery from the Great Lawn, RBGK complain that some views of the Chiswick Curve would be protected by a single foreground tree. True, but that tree is not particularly tall, it is a foreground tree, and there is no evidence at all that either it is at risk, or that it could not be supplemented by further appropriate foreground trees.
- 9.121 Much the same goes for potential views of the proposal from points near the Palm House. There is no evidence that the relevant tree belt is anything other than thriving. In any event, that tree belt could easily be bolstered.
- 9.122 The same goes for the keyhole view at the front of Kew Palace. If RBGK would prefer for that view of the Chiswick Curve to be closed off, then enhancing the very close border of shrubs and small trees, in which the security cameras, lights and burglar deterrents are already set, would assist.

The Issue of Cumulative Impact on Kew Gardens

- 9.123 For the first time, in oral evidence⁵⁶⁵, RBGK identified that the harmful impact of the proposal itself, upon the OUV of the WHS was less than substantial, and within that category, the harm to the WHS as a whole, was about half way along the continuum of less than substantial harm. It follows that in order for the impact of the proposal to be identified as substantial, it must be accumulated with other 'harmful impacts' on the OUV of the inscribed site, as at the date of inscription.
- 9.124 No other objecting party has taken this line of argument. That is because it is an unsustainable concept, and those that have responsibilities beyond this case have understood that it is the wrong approach.
- 9.125 The WHS inscription⁵⁶⁶ creates a very specific and particular form of designated heritage asset. The designation is the inscription, and it captures the OUV of the asset, as at the date of inscription. The duty, arising from a treaty obligation transposed into planning policy, is to preserve, protect and to maintain those values, as then inscribed.
- 9.126 There is no planning policy requirement for developers to enhance the OUV of a WHS as identified in the inscription, (though if they do, that is obviously a powerful material consideration in favour of a grant of permission), or to return it to a previous pre-inscription state or states. Moreover, all of the OUV

⁵⁶³ CDF.10

⁵⁶⁴ CDC.11

⁵⁶⁵ Mr Croft e-in-c

⁵⁶⁶ CDF.16

of the inscribed site exists notwithstanding the pre-existence of its more urban pre-transcription context, permissions, and emanations.

- 9.127 It further follows that in the particular circumstances of a WHS, impacts on the OUV as inscribed can only take place as a result of developments that take place post-inscription. And if it were otherwise, an illogical chaos would ensue.
- 9.128 In an idealised world, if the fullest understanding was what was sought of the landscape created in the 1700s, the industrial revolution would not have happened, the Brentford Standpipe Tower would not have 'intruded' into the pastoral views enjoyed by the Royal family and its circle, and the iconic architecture of the White House would not have been destroyed. Neither, in that idealised world, would the pressing need for post-war social housing in West London have arisen, and Kew Gardens today would not sit close to a regeneration corridor. If none of these things had happened, Kew Gardens would be a truly remarkable place.
- 9.129 But it is a nonsense to say that pre-inscription deviations from the time when George III was in residence, or indeed from any other pre-inscription time from the 1950s, 1850s and beyond, fall to be considered as 'impacts' on the OUV as at inscription in 2003, which is what the system protects. Thus, the Haverfield Towers form part of the inevitable context and setting of the WHS. They cannot, as a matter of fact, law, or judgment, have any impact on the OUV of the WHS, as inscribed.
- 9.130 In such circumstances, the generalised accumulation of the impact of the proposal, with historical events long past, in order to construct a level of harmful impact on the designated heritage asset for the purposes of paragraphs 195 or 196 of the revised Framework, is neither permissible nor rationally possible.
- 9.131 Thus, when the SPG that gives guidance on the settings of London's WHSs⁵⁶⁷, so heavily relied upon for this argument by RBGK, is looked at carefully in the light of this analysis, it is clear what it means. It advises decision-makers to have regard to cumulative impact on the OUV of an inscribed site. It cannot and does not have in mind pre-inscription developments going back generations, which are part of the context of the site as inscribed.
- 9.132 It requires consideration of the cumulative effect of separate impacts on the WHS as a designated asset, (including relevant past permissions) and on its OUV, as designated. It is very clear that the decision-maker is looking for the cumulative impact of changes to the defined and identified OUV. This is made clear both by the specific comments in relation to the context of Kew Gardens in the SPG itself, and in the comments of the Mayor mirroring these provisions, in the circumstances of this case⁵⁶⁸.
- 9.133 Identification and assessment of any harm to the OUV of inscribed designated heritage assets can only be logically affected by reference to the OUV identified at the point of designation. Otherwise, the task of the decision-maker would become impossible.

⁵⁶⁷ CDC.11

⁵⁶⁸ CDG.01 and CDG.02

9.134 That does not mean that the existence of the Haverfield Towers is to be ignored. But given that the entirety of the OUV of the WHS exists notwithstanding its presence, the main role of the estate is to provide tangible evidence of the urban context of Kew Gardens. That is exactly how the Mayor accurately analyses the position in the SPG, and in his dealings with applications relevant to Kew Gardens⁵⁶⁹.

The Strand-on-the-Green Conservation Area

9.135 At the outset, it is important to be clear how statutory provisions apply. The Strand-on-the-Green Conservation Area contains listed buildings. The proposal would cause no direct harm to those listed buildings, or the conservation area, being situated outside its confines. All the embodied significance of the assets would be left intact. The setting of a conservation area is not protected by Statute, and s.72 of the Act⁵⁷⁰ is not engaged.

9.136 That said, an impact on the setting of a conservation area is capable of affecting the significance of the asset. That is because the significance of a heritage asset is also defined in part by its setting and its place in a spatial context. The ability to know and to understand that an asset exists and thrives in the heart of a global city is part of its essence, and part of its interest.

9.137 This is particularly true of Strand-on-the-Green (and Kew Green). The fact that these assets display features which are unusual, and contrast with the more modern emanations of the metropolis in which they live, is part of their historic, aesthetic and cultural interest.

9.138 Thus, the fact that Strand-on-the-Green and the buildings within it are already seen and understood as part of the wider city is part of its existing character, appearance, and significance. And, it also helps set the expectation for the future planning of the area and the implications that will have for the way in which the conservation area and its buildings will be seen.

9.139 The development plan for the area already identifies the Golden Mile as a significant corridor of growth, and an appropriate place for tall buildings and dense development. That future has already arrived in part with implementation of the Brentford FC permission.

9.140 The appeal site has consistently been identified as the only site upon which a tall, special, notable landmark building can and should be located. Such an expression is not limited to policy documents⁵⁷¹, but has also been the subject of two formal grants of planning permission, one of which, the Citadel, has been implemented and is ready to go.

9.141 As part of a study of the site by site capacity for tall buildings promised by the development plan, a strategy for this new layer of urbanity as seen from beyond the conservation area on the Surrey side of the Thames, has been constructed. It accepts that a tall building on the appeal site is appropriate⁵⁷².

⁵⁶⁹ CDG.01 in particular

⁵⁷⁰ CDH.01

⁵⁷¹ CDD.04 to CDD.06

⁵⁷² CDD.06 Page 85 onwards

- 9.142 Where no-one is arguing prematurity, this is the best evidence available to the SoS as to the considered view of the Council, and HE, on the principle of a tall building on the appeal site, and the potential impact of taller and denser layers of development on heritage assets. The considered position is that a tall building on the appeal site, visible from the Surrey side of the river, opposite the Strand-on-the-Green frontage, need not unacceptably harm the significance of the Strand-on-the-Green assets, and should consolidate the layer of townscape visible in the M4 corridor, by being the pre-eminent building in that hierarchy, with other elements lower in height⁵⁷³.
- 9.143 Once those parameters are understood, imposing arbitrary height restrictions, on buildings which are yet to be designed, and which will inevitably be seen in various important views, is planning by numbers of the worst kind. Once it is accepted that this new layer of urbanity would be appropriate, then how can the issue of impact accurately be essayed, without an understanding of the quality of what is proposed, and of how it relates to its context?
- 9.144 However, that is exactly what those framing the height restriction do. They posit an acceptable height, either based on the Citadel, or on a freestanding assessment of an amorphous, non-designed, computer generated form⁵⁷⁴. With respect, it is as if we have stepped back 25 years in building design and townscape planning. Further, the ability to craft a meaningful hierarchy in the corridor depends not only on height, but also again on design and quality. In this case, it is all too clear that framing a strategy based on heights of 43m and 60m is unlikely to give an appropriate articulation of skyline. If you want bland, then bland is what you will get.
- 9.145 The Chiswick Curve however fits the strategy⁵⁷⁵ for quality and articulation of the new layer of urbanity perfectly. It is true that the proposal would be visible, but the prominence of a building on the appeal site is accepted and understood to be appropriate. In views of Strand-on-the-Green from the south bank of the river, the Chiswick Curve would be noticeable and significantly so. That is in part its accepted function as part of the inevitable third layer of townscape in the corridor. But, because of the nature of its design and its separation beyond the riverside facades, it will always be seen as a distant object, of high quality design.
- 9.146 In addition, the path on the south bank of the river presents a linear, kinetic series of viewpoints. Given the impact of parallax, the proposal will be altering its position in relation to riverside facades as the viewer moves. The human brain sees and appreciates such distance effects, instinctively, evolutionarily and very clearly.
- 9.147 There will not be a static moment of 'confusion' here. The human eye and brain are far too clever for that and would appreciate that the Chiswick Curve is a distant object, beyond the foreground, which will still be appreciated and understood for what it is, in its wider context. Except that its wider context would include a building of great quality on a site which the planning system accepts should be marked.

⁵⁷³ CDD.06 Page 87

⁵⁷⁴ CDD.06 Page 76 onwards

⁵⁷⁵ As expressed in CDD.06 Page 87

- 9.148 And in this sense, the appellant's analysis⁵⁷⁶ can be clearly understood. The proposal would not harm the significance of the conservation area itself, and from the Surrey station, the view of the multi-layered Middlesex side will be enhanced. There will be a new feature in the townscape marking a new and planned for layer of urbanity along the corridor with a high-quality piece of architecture, setting the qualitative tone for that which is to follow.
- 9.149 If, however, a view is taken that some harm would be occasioned to the wider setting and thereby the significance of the conservation area as a result of the proposal, then the significance which would be retained within the designated asset and its wider setting, means that this could only ever be seen as less than substantial harm, properly understood. Further, wherever the degree of harm is struck, it would be much less than the harm that would be caused by the Citadel⁵⁷⁷.
- 9.150 In such circumstances, the public benefits of the proposal would easily outweigh the alleged harm and the proposal would be a significant enhancement on the consented and implemented permission in views from the Surrey side of the river, and generally.

Kew Green

- 9.151 Many of the same arguments can be made in relation to Kew Green which can therefore be dealt with more briefly. Suffice it to say that the conservation area is unique. It has many of the attributes of an archetypal village green. But an archetypal village green it is not, being bisected by the South Circular Road, one of London's major strategic routes.
- 9.152 The location of the conservation area in the vicinity of the M4 corridor is tangible. As the Council put it as part of its consideration of the Albany Waterside proposals⁵⁷⁸, visitors to Kew Green cannot avoid the fact that they are visiting a conservation area which sits in the heart of an urban area.
- 9.153 It is the very location of the conservation area itself, with its huge proportion of listed buildings, and their close relationship with the green, which forms the major constituent of the significance of the conservation area as a whole. In order to get there from anywhere else, the visitor has to pass through, and be conscious of, their spatial location in the wider city.
- 9.154 And that wider city is already significantly visible from the heart of the conservation area. From in front of St's Church, views of the development of the emerging corridor, and its less distinguished buildings, are already apparent.
- 9.155 Planning permission has been granted for the Brentford FC development, and it is in the process of being built. Its visibility will further accentuate the truth about the wider setting of this conservation area; namely that it is located hard against the urban fabric of the city, and that visibility of that city already forms part of its character.

⁵⁷⁶ Through the evidence of Mr Coleman

⁵⁷⁷ APP/3/C1 Appendix 10

⁵⁷⁸ APP/4/C12

- 9.156 The Chiswick Curve will be visible in certain views across the green⁵⁷⁹ but it would not be an unwelcome presence. In particular, the architect explained that although taller and further away than the buildings fronting the green, the scale of the proposal would not be greater. It has been deliberately and very carefully designed so that the scale of the parts of the building, do not read as larger than the component parts of the green.
- 9.157 There would be no harm to the setting or the significance of the conservation area as a result of being able to see another layer of the city beyond and in particular, where the building is of the quality of that proposed. As set out above, the Council and HE have found the principle of that acceptable⁵⁸⁰. The issue cannot be the acceptability or otherwise of that visibility, but the specific impact of that visibility. Again, the issue of the Citadel is relevant. Its mediocrity would be clearly visible in the same views across the green as the Chiswick Curve.
- 9.158 If there is to be identified harm here, it could only conceivably be characterised as less than substantial. Almost all of the key features of the conservation area would remain completely unaffected. The massive contributions of the fabric of the listed buildings would remain intact. Most views in and around the conservation area would remain untouched. The relationship between the handsome facades of the area, and the green, would not be disturbed. Moreover, it is accepted that visible elements of the wider city in the M4 corridor could be accommodated with negligible impact on the main heritage assets, including Kew Green⁵⁸¹.

Gunnersbury Park

- 9.159 Similar points arise in relation to this important agglomeration of designated heritage assets. Three views were concentrated upon but only two remain at issue⁵⁸²; it being accepted that over the wider playing field areas of the park⁵⁸³, the impact of the proposal is no longer really at large.
- 9.160 In terms of views of the proposal from the Cemetery⁵⁸⁴, there can be no doubt that this building of high quality and poise will have a beneficial impact. The Cemetery already has a close relationship with the M4. Buildings along the corridor already appear clear and distinct in views from the Cemetery. The Council's Capacity Study identifies the acceptability of an entire wall of M4 related development as the Council and HE's preferred approach⁵⁸⁵.
- 9.161 In these circumstances the elegant, incredibly well designed double façade facing the cemetery slightly off axis would be elegant and respectful⁵⁸⁶.
- 9.162 The views from the Large Mansion and associated areas characterises the different views of parties to the Inquiry most clearly. Gunnersbury Park is

⁵⁷⁹ CDA.11 View 21 and CDA.15 Views 39 to 42 inclusive

⁵⁸⁰ CDD.06

⁵⁸¹ CDD.06

⁵⁸² CDA.11 Views 2, 3 and 4

⁵⁸³ CDA.11 View 1

⁵⁸⁴ CDA.11 View 4

⁵⁸⁵ CDD.06 Page 81 View V3

⁵⁸⁶ CDA.11 View 4

undoubtedly an urban park. The ability to see the world beyond it already exists. Further the visitor cannot but fail to notice the nature of this urban location as part of his/her visit and the journey to the park. There is no illusion of being in an unspoiled, country park. Views from the Large Mansion and areas of the park around it, would not be harmed by the presence of what would be an attractive view of a building of great quality⁵⁸⁷.

Other Conservation Areas

9.163 The other conservation areas are dealt with in full by the appellant⁵⁸⁸ and there is no need to deal with them separately. Suffice to say that the juxtaposition of tall buildings, and adjacent residential Victorian and Edwardian estates, is nothing new. Conservation areas of this type share a strong pattern and grain that give them a well-defined and self-contained character and appearance. Seeing a well-designed tall building marking an important spatial location from within such a conservation area would have no harmful impact on setting, or significance.

Substantial harm to, or total loss of, significance, and less than substantial harm

9.164 On the present state of the law, the position in relation to the distinction between substantial harm to, or total destruction of, significance, and less than substantial harm, is very, very clear. Those who seek to make it more complex do so because it suits them. They are wrong. There is in law only one way forward and that is to follow *Bedford*.

9.165 Paragraph 194 of the revised Framework requires: *clear and convincing justification* for 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting)'. That clear and convincing justification is not a freestanding test; it is provided in the fasciculus of paragraphs that follow.

9.166 For substantial harm to or total loss of significance of a designated heritage asset, the relevant paragraph, and the relevant test, is contained in paragraph 195 of the revised Framework. If a proposal passes that test, then the clear and convincing justification will have been found to exist. For less than substantial harm, the appropriate test is set by paragraph 196 of the revised Framework. It is a different test.

9.167 The meaning of the policies in the revised Framework, because of the way in which they are produced, and are meant to be relied upon, is now accepted to be a matter of law. The meaning of the words in the document is ultimately, no longer a matter of reasonable interpretation, but a matter for the Courts⁵⁸⁹.

9.168 The words of the previous version of the Framework, and the revised version that now applies, properly construed, have one legal meaning and that meaning is a matter for the Courts and not for the decision-maker, or indeed anyone else.

⁵⁸⁷ CDA.11 Views 2 and 3

⁵⁸⁸ APP/3/A Paragraph 9.37 onwards

⁵⁸⁹ *Tesco v Dundee* [2012] UKSC 13 as applied to the (previous version of the) Framework in Paragraph 4 of *Hunston* INQ43

- 9.169 In the circumstances of this case, the relevant words in the revised Framework⁵⁹⁰ have been the subject of explicit consideration by the High Court. The Court has found in *Bedford*⁵⁹¹ that in terms of substantial harm: *one was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*. To put it another way, it requires that: *very much if not all of the significance of the asset was drained away*.
- 9.170 That is the ratio of *Bedford* and it is relevant to the circumstances of this case. The Court has identified as a matter of law what the relevant passages in the (previous version of the) Framework mean. It applies in the same way to the wording of the revised Framework. HE has never liked the decision but this appeal must proceed on the basis that *Bedford* is correctly decided.
- 9.171 Further, since the meaning of the words in the revised Framework is a matter of law, for the Courts alone, the meaning of those words cannot be altered by the wording of another inferior document such as the PPG. If the authors of the Framework want to change what the Courts have said about the meaning of the relevant parts of the Framework, then they need to revise those words. They have not done so in the revised Framework. In any event, the PPG does not appear to deviate from *Bedford*. It says that substantial harm is a high test⁵⁹². That is entirely consistent with harm that was so serious that significance was vitiated altogether or very much reduced. This is the high test that the Court has found these words to mean.
- 9.172 When the PPG goes on to advise that: *in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic impact* it does not and cannot lessen the meaning of substantial harm as established by the Court. In fact, because as an example, it is a direct impact specifically to a key element of the actual designated heritage asset and not to the statutorily unprotected setting of an asset, the example given is not a very helpful one.
- 9.173 It is agreed that it is theoretically possible for an impact on setting to equate to substantial harm to, or total destruction of significance, but to constitute substantial harm on the basis of *Bedford*, it would need to fall into the category of vitiation of significance altogether, or leaving the significance of the asset very much reduced.
- 9.174 The SoS in the Razor's Farm decision⁵⁹³ only took exception to the Inspector's assessment that it might be theoretically impossible for substantial harm to significance to arise as a result of an impact on setting.
- 9.175 However, the SoS accepted that the harm caused in that case would be less than substantial. There was no suggestion that *Bedford* was incorrect or deficient. Indeed, it was applied.

⁵⁹⁰ Which are little changed from the previous version

⁵⁹¹ CDH.04

⁵⁹² CDC.02 Paragraph 017 Ref.ID: 18a-017-20140306

⁵⁹³ APP/3/D Appendix 6

- 9.176 HE suggests that *Bedford* is not to be followed but that is wrong. It follows that HE has proceeded on a wholly inappropriate basis which has led to its conclusion that there would be substantial harm. It has adopted a much lower, and entirely relativistic, interpretation of the meaning of the words in the revised Framework. HE is giving the revised Framework the meaning it wants, and not the meaning given to it by the Courts. It follows that HE's conclusions on substantial harm are flawed. *Bedford* must be followed as good law.
- 9.177 What that requires in the present case, is that reflecting the dichotomy of tests contained in paragraphs 194 and 195 of the revised Framework, substantial harm should only be found where the very significance of the relevant designated heritage asset would be vitiated, or very much reduced. This involves a consideration of whether, post-development, it could be truly said that two of the richest conservation areas in London have had their significance vitiated or very much reduced, or that very much if not all of the significance of those assets has been drained away.
- 9.178 What that requires is consideration of the level of significance that these two conservation areas would retain in the event that permission was to be granted. If the Chiswick Curve was implemented, both of these conservation areas would continue to express all of the significance associated with that which can be found and understood in the conservation areas themselves. The significant numbers of listed buildings would continue to exhibit all of their special architectural and historic interest. The relationship of these buildings to the other parts of each conservation area would be untouched. The existence of a distant object in the background of some views would, even if considered harmful, leave the vast majority of the significance of these two conservation areas unharmed.
- 9.179 And if *Bedford* is right, and we must assume it is, then it is inconceivable that this proposal could cause substantial harm. That has been the appellant's case throughout. Any finding of harm could only conceivably be at the lower end of less than substantial.

The Citadel as a Fall-Back

- 9.180 The Council has correctly proceeded on the basis that the Citadel is an appropriate fall-back position for a disappointed landowner in the notional event that planning permission for the Chiswick Curve was refused. That assumption has also permeated the Council's case to the Inquiry trumpeting the fact that there was at the very least a reasonable prospect of the Citadel being completed. Indeed, its evidence⁵⁹⁴ expressly relies on the potential for the Citadel to be completed as a positive part of the Council's case.
- 9.181 The Inquiry proceeded on this basis until the late suggestion from HE that there was no legitimate fall-back position. The law on fall-back has recently been reconsidered and clarified by the Court of Appeal. In *Mansell*⁵⁹⁵, the Courts confirmed that for a fall-back to be required to be taken into account by a decision-maker as a material consideration the potential development does not have to be probable or indeed even likely; a possibility will suffice.

⁵⁹⁴ LBH/3/A

⁵⁹⁵ *Mansell v Tonbridge and Others* [2017] EWCA Civ 1314 INQ 43

- 9.182 In this case, a series of matters should be considered. There is a full planning permission that has been implemented by significant physical works. There has been considerable expenditure on discharging all of the pre-commencement conditions and payments have been made to the Council as a result of implementation. The design is firm, and its consequences well understood.
- 9.183 The appellant⁵⁹⁶ has sought direct evidence from the landowner as to his intentions in the event that planning permission for the scheme at issue is refused. In those circumstances, the position was very clear that in the absence of a better option, the Citadel was very likely to proceed. There is no evidence that contradicts this statement of intent.
- 9.184 In these circumstances, there must at least be a possibility of the Citadel being constructed by the landowner. The landowner is a legally and functionally different person from the developer here. The fact that the proposal did not meet the threshold of commercial viability in 2015 does not mean that there is no possibility of it being built now. The hugely expensive investment in implementation was specifically intended to keep that possibility alive into the future. The act of implementation by itself means that the possibility of the Citadel is alive in perpetuity.
- 9.185 Further, a proposition which was not seen as commercially viable in 2015 in the context of an application for the Chiswick Curve, is a wholly different concept if that option is not available as an alternative. Indeed, if the Chiswick Curve is refused, then the Citadel would be the best option for a landowner, given the policy matrix in place, and the fact that it would be exempt from CIL charges. Further, recent appeal decisions in relation to the acceptability of advertisements on the site, and along the corridor as a whole, mean that it is overwhelmingly likely that additional advertising on the Citadel site would also be likely to be granted. This would significantly boost commercial viability of the Citadel scheme.
- 9.186 Yet further, as the appellant has pointed out⁵⁹⁷, in the London context it is now usual for developers to proceed with developments which on the face of the appraisals do not meet the policy definition of a reasonable return. The risk-reward profile is such that developments which on an appraisal would appear to be unviable are proceeding. The Chiswick Curve is not commercially viable, on its face but no-one suggests that there is not a possibility of it being built.
- 9.187 In all of the circumstances, there is of course at least a possibility of the Citadel being built in the notional world where the Chiswick Curve has been refused permission. The Council does not argue otherwise. Indeed, it positively asserts that the Citadel is a preferable fall-back. That is a useful benchmark of the Council's ambitions.
- 9.188 The presence of the Citadel as a fall-back needs to be given significant weight. If the legacy of the Inquiry process was the loss of an architectural masterpiece, in favour of the mediocrity of the Citadel, that would be wholly regrettable.

⁵⁹⁶ Through Mr Goddard

⁵⁹⁷ Mr Goddard re-e

Amenity Space

- 9.189 The Council cited a separate reason for refusal on the basis that the proposal would provide inadequate amenity space. This approach is wrong-headed, and out of date. The policy relied upon by the Council is HLP Policy SC5. There are several layers of flexibility deliberately built into that policy in relation to external space standards. First, the policy does not require absolute compliance with the relevant (very old) standard; it simply requires them to be considered. The reason that the standard is not mandatory is that it is based on open outer-suburban character. The standards themselves are not inflexible but should be applied with regard to exceptional design considerations.
- 9.190 It follows that there can be no credible allegation of a breach of that policy. There is no policy requirement to provide a fixed numerical level of amenity space. The question is whether there is a harmful shortage of usable external amenity space.
- 9.191 There is no such shortage in this case. That is because the combination of what is being supplied on site, and the availability, very close by, of Gunnersbury Park, a very large resource of open space, soon to be substantially improved. So, the only remaining issue is the ability of residents to safely and appropriately get there.
- 9.192 The Council chose, in effect, to advance a highway objection⁵⁹⁸ when there is no such sustainable objection when TfL, the body which has the responsibility for pedestrian and cycle safety, comfort, and accessibility has no issue with the proposal at all. It considered that the proposal is safe, appropriately convenient and unobjectionable⁵⁹⁹.
- 9.193 Of course, this reflects the Council's own position about the ability of the appeal site to act as an appropriate stepping stone to Gunnersbury Park, for the entirety of the Brentford East development.
- 9.194 In short, there is no sustainable amenity space reason for refusal here.

Advertisement Consents

- 9.195 Advertisements are part of modern life. Some of the most creative minds begin their careers in advertising and as an art form, and a business, it is one of the most thriving of Britain's communities. London is the hub of the advertising world. The M4 elevated section has always been one of that world's showcases. Many of those who travelled from the west will remember the Lucozade advert as their first marker of arrival in the capital. Now, hugely innovative adverts mark its course. Some of the adverts are in fact whole showrooms which deliver the goods that they advertise on displays designed by top quality architects.
- 9.196 In all of these circumstances, the film strip advertisement elements of the proposal, are as much a part of its architectural being as are the fins, and the form and structure of the building. They would be a new, innovative and exciting addition to the Great West Corridor.

⁵⁹⁸ Through Mr Baker

⁵⁹⁹ CDJ.01 and CDJ.02

- 9.197 Of course, the ability of the Secretary of State to consider objections to the adverts is limited to public safety and amenity considerations. But the materiality of the adverts to the building as a whole goes much wider. The adverts add in an appropriate context, a very clear, vibrant and exciting component to the entry to London the world capital and capital of the advertising world.
- 9.198 They were integrally designed to be read with and to be part of the enjoyment of the building. They form part of its essence in the same way as anything else designed by the architect. There is no good reason to oppose them.

The Planning Balance

- 9.199 The planning balance in this case only arises in the event that there is some finding of harm to the significance of designated heritage assets. For the reasons set out above, the clear position of the appellant is that there would be no material harm to the significance of any heritage asset. If there is a finding of such harm, then it will need to be justified by clear and convincing justification in line with paragraph 194 of the revised Framework
- 9.200 For the reasons set out, the application of *Bedford* means that in the circumstances of this case, there can be no realistic prospect of a finding of substantial harm to the significance of any of the heritage assets involved. In the event that less than substantial harm was found, then that would need to be weighed against the public benefits of the proposal, as required by paragraph 196 of the revised Framework.
- 9.201 Unlike a paragraph 195 test, it is the benefits of the proposal before the Inquiry which fall to be balanced. There is no requirement in paragraph 196 for the decision maker to consider whether the benefits could only necessarily be brought about by the proposal. In other words, there is no explicit requirement to show that there are reasonable alternatives in paragraph 196.
- 9.202 The benefits brought about by this proposal are fully set out in the appellant's evidence⁶⁰⁰. All will need to be weighed in the balance, but some need to be highlighted.
- 9.203 First, is the potential to bring forward an outstanding piece of architecture, and an important feature of the skyline, at London's most important gateway. This would be a public benefit of massive proportion and the weight to be given to this strategic benefit must be very significant.
- 9.204 Alongside that, there is the contribution the proposal would bring in housing terms. In the context of London's housing crisis, the SoS will need no persuading of the significant weight to be given to the provision of over 320 residential units, and a more than policy compliant proportion of affordable housing.
- 9.205 The Council's suggestion that the weight to be attached to this matter is limited because the Borough's existing targets are being exceeded is unacceptable, and wrong. Those existing targets are minima and in any event, they pale in significance when compared to the emerging targets for the

⁶⁰⁰ APP/4/A

Borough, and London, in the draft LP. In the context of an emerging OAN for Hounslow of 2,182 homes per year, compared to an existing target of 822, the truth is that the Council is not coming close to making its proper contribution to the meeting of its own, or London's housing need. There can be no room for complacency. The failure of the planning system to provide sufficient homes for its population is a failure of the first order.

- 9.206 Suggestions that an office building on the appeal site, and in particular the Citadel, would bring the similar benefits are wholly incorrect. Any office development would not bring any of the huge benefits associated with the proposal's housing-led mixed use. It is interesting to note the Council's claims in this respect given that it has identified this very site as a housing site providing in excess of 300 units⁶⁰¹. Given that housing is simply not deliverable on the first 5/6 floors on the site, this would require a building significantly taller than the 60-65 metres envisaged.
- 9.207 Suggestions that a significantly lower mixed-use scheme might work cannot be supported given that the Council accepts that the proposal at issue is not commercially viable⁶⁰². A lower, mixed-use proposal would be even less viable, and this is confirmed in the appellant's evidence⁶⁰³.
- 9.208 There are other benefits set out too⁶⁰⁴ but these two alone are sufficient to outweigh any less than substantial harm to the significance of designated heritage assets that might be identified.
- 9.209 If a conclusion is reached that there would be substantial harm, and it is difficult to see how it could be, lawfully, then it follows that the relevant degree of substantial benefit to overcome the lower threshold level of harm must also be movable. It is impossible to judge in this relativistic world where any decision-maker setting aside *Bedford* would pitch substantial harm and so detailed submissions on this matter are impossible. However, it would be relevant to note the unique nature of this appeal site which is accepted to be the only site in this part of London which could provide an important spatial marker. The benefits of a world-class building at this location would be a substantial public benefit which could not reasonably be provided elsewhere.

Overall Conclusion

- 9.210 There is an opportunity here to make a difference; to grant permission for a scheme that will at once mark the country's commitment to quality and sensitivity which will act as a badge to our commitment to the best of the new. The SoS is urged to take that opportunity and allow the appeals.

10 Third Party Representations

- 10.1 The proposals generated significant interest at application and appeal stages, including an objection from the local MP, Ruth Cadbury⁶⁰⁵.

⁶⁰¹ LBH/8 Page 5

⁶⁰² APP/4/C6

⁶⁰³ APP/4/C5

⁶⁰⁴ APP/4/A

⁶⁰⁵ Copies of all correspondence can be found with the questionnaire and on the case file

- 10.2 Others made submissions to, and took part in, the Inquiry. What was said is summarised below but it is important to read the written submissions that contributors spoke to which were taken in as Inquiry documents.
- 10.3 **Richard Griffith**, Chair of the Strand on the Green Association objected to the proposal and in particular, to the detrimental impact it would have in historic views of the river frontage of the conservation area, from the south bank of the Thames⁶⁰⁶.
- 10.4 **Barbara Weiss** of the Skyline Campaign, an architect, led some strident criticism of various aspects of the proposal, most particularly in terms of overdevelopment of the site, inappropriate massing and scale, awkward angles and geometry in the design, and a total insensitivity to context⁶⁰⁷.
- 10.5 **Peter Eversden** of the London Forum raised a series of issues around the proposal relating to the unsuitability of the site for residential accommodation because of noise, air pollution and access, the unacceptably high density, the detrimental impact it would have on the character and appearance of the area, and notably on the settings of Gunnersbury Park and the associated Cemetery, Kew Green and the RBGK, and in terms of reflected glare⁶⁰⁸.
- 10.6 **Dennis Browne**, Chair of the Planning Consultative Committee of Brentford Community Council set out a series of detailed objections to the proposal centred around its height, and the amount of accommodation proposed, the design of the building, the failure to take proper account of the potential of a joint development with the adjoining B&Q site, and pollution. It was felt that the scheme should accord more closely with the principles laid down by LB Hounslow in the draft SPD⁶⁰⁹.
- 10.7 **Martin Case**, Vice Chair of Brentford Community Council submitted that the site is unsuitable for residential accommodation because of restricted accessibility, the lack of amenity space for occupiers, and air quality. Moreover, the design of the building is such that it would not provide proper living conditions for the occupiers because of overlooking⁶¹⁰.
- 10.8 **Marie Louise Rabouhans**, Chair of the West Chiswick & Gunnersbury Society backed the position of the Council and the Rule 6 Parties, and objected strongly to the proposals focusing especially on the impact on conservation areas closest to the appeal site, notwithstanding their proximity to the 'Golden Mile'. Set against that, the claimed benefits of the scheme are limited and questionable in terms of delivery⁶¹¹.
- 10.9 **Professor James Wisdom**, Chair of the Friends of Gunnersbury Park talked about the Park, and the associated Museum and raised serious concerns about the proposal in terms of the devaluation its strident, inescapable presence would bring to the visitor experience⁶¹².

⁶⁰⁶ More fully set out in SOGA/1, /1a, 1b, 1c, 1d and SOGA/2

⁶⁰⁷ More fully set out in SC/1, /1a and /1b

⁶⁰⁸ More fully set out in LF/1 and LF/2

⁶⁰⁹ More fully set out in BCC/1, /1a, /1b, and /1c

⁶¹⁰ More fully set out in BCC/2 and BCC/2a

⁶¹¹ More fully set out in WCGS/1, /2, /3 and INQ44

⁶¹² More fully set out in FGP/1, /1a, and /1b

- 10.10 **Pamela Mayorcas**, a local resident and a representative of the Chiswick High Road Action Group (CHRAG) noted that the proposed development would cause noise and traffic pollution, increase traffic congestion, put a massive strain on local services, and undermine the quality of life for those living and working in the area⁶¹³.
- 10.11 **Tim Mack**, a local resident, articulated concerns about the detrimental impact the proposal would have, being the wrong building in the wrong place.
- 10.12 **Ruth Mayorcas**, a local resident raised a number of concerns about the proposal, notably the inadequacy of the living conditions it would provide for residents, the issues tall buildings cause for those living near to them, the influence it would have on further development of the Golden Mile and accessibility for residents, especially cyclists⁶¹⁴.
- 10.13 **Joanna Biddulph**, a Local Councillor, expressed objections in relation to the size and design of the building, its visual impact, and effect on the character of the area, pollution, and accessibility. In simple terms, it was suggested that the proposal is in the wrong place and should be rejected⁶¹⁵.

11 Conditions and the Obligation

- 11.1 Lists of suggested conditions that ought to be applied in the event that Appeals A and B are allowed were arrived at and discussed between the main parties in the course of the Inquiry⁶¹⁶. These were the subject of a general discussion as part of the proceedings.
- 11.2 I have considered these suggested conditions in the light of advice in paragraph 55 of the revised Framework. This suggests that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Moreover, it is set out that conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. I have made minor alterations to the suggested conditions in the interests of clarity and precision and highlight below any significant departures.
- 11.3 In terms of Appeal A, there would obviously be a need for the standard commencement condition⁶¹⁷.
- 11.4 As will be evident from my conclusions, there would be a necessity to ensure that the high quality of design put forward by the appellant in the drawings, visualisations, and other supporting material, is carried through into the finished building, and the treatment of its immediate surroundings. There is inevitably a danger of the design quality being diluted in the interests of economics, or for other reasons and appropriate conditions would provide some safeguard against that.

⁶¹³ More fully set out in MAY/1

⁶¹⁴ INQ30 refers

⁶¹⁵ More fully set out in BID/1

⁶¹⁶ INQ33 includes the final iteration upon which my analysis, and my Annex C, is based

⁶¹⁷ Suggested Condition 1

- 11.5 It is suggested that a condition is imposed that requires the architects (SEW) to be retained as the lead architects, and landscape architects, throughout the construction of the development⁶¹⁸. I can see the superficial attraction in that but I fail to see how the retention of SEW in that way will serve to prevent decisions being taken by those that fund the project, and/or employ SEW, having an unfortunate impact on design quality. For that reason, I believe the condition would be ineffective, and therefore unnecessary, and I could not, in the light of advice about conditions in the revised NPPF, support its inclusion. The SoS might well take a different view, however, and in such a situation, the wording put forward in the draft is reasonable.
- 11.6 Far more effective, it seems to me, would be the condition requiring details, including samples, of important design elements to be submitted for the approval of the Council before development commences⁶¹⁹. This would allow proper control to be exerted over the detailed design of the building, at the correct stage in the process (that is before it starts on site). I note the suggestion that provision be included in the condition for the Council to consult with RBGK but that seems to me to be a matter for the Council to deal with as it sees fit. The Council would not be bound by the terms of a planning condition attached to a grant of planning permission. I was invited to add any further elements that I saw fit to and have done so in relation to the details of the advertisements (rather than attach those to Appeal B) and the 'winter gardens'.
- 11.7 In terms of the treatment of the immediate surroundings of the building, a similar condition relating to landscaping is required⁶²⁰. Given the point in time when landscaping works would take place, this does not need to be a pre-commencement condition.
- 11.8 Those conditions, along with the standard condition specifying that the development be carried out in accordance with the approved plans⁶²¹ ought to be sufficient to guard against any significant undermining of the architects' design intent. I deal with this further in my conclusions below but if the quality of the design is felt to be a contributing factor in a grant of planning permission, there is a duty on a Council to stand fast against post-permission attempts to water that quality down.
- 11.9 A range of conditions have been promulgated to manage the construction process⁶²². In the case of a building of this height, close to residential areas, it is clearly necessary to limit the hours when construction works can take place, allow the Council oversight of the piling process, compel the contractor(s) to work in accordance with a Construction Management and Logistics Plan, and to provide some protection in terms of ambient air quality and from dust. In terms of the piling condition, I have deleted the reference to consultation with Thames Water. If the Council feel it necessary to do so then that is a matter for them - they cannot be compelled to do so through a planning condition.

⁶¹⁸ Suggested Condition 2

⁶¹⁹ Suggested Condition 3

⁶²⁰ Suggested Condition 5

⁶²¹ Suggested Condition 4

⁶²² Suggested Conditions 7, 11, 18, 22 and 23

- 11.10 In relation to the play spaces proposed as part of the development, a condition is required to ensure these are provided before residential units are occupied and to ensure they are retained for their intended purpose thereafter⁶²³.
- 11.11 Given the nature of the proposed development, and its proximity to the M4 motorway, and other sources of noise, it is reasonable to apply a condition to secure mitigation and to ensure residents and other users of the building are not unduly affected by it⁶²⁴. For similar reasons, a condition is also required to secure measures to address issues around the potential impact of air quality on occupiers⁶²⁵.
- 11.12 A development of the scale proposed clearly has the potential to have a significant effect on water supply. In that context, a condition requiring an assessment of any such effect, proposals for increasing capacity in the system if necessary, and a stipulation that any such increase should have been implemented and completed⁶²⁶ before occupation is a necessary imposition. Again, I have deleted the reference in the suggested condition to a requirement for the Council to undertake consultation with Thames Water. It is axiomatic that this will need to take place but given that a condition is not binding on the Council, there is no need for it. Linked to that, a condition is required to secure the proper drainage of the development⁶²⁷.
- 11.13 In order to secure a socially inclusive development that accords with HLP Policy SC3 and LP Policies 3.5 (quality and design of housing developments) and 7.2 (creating an inclusive environment), it is reasonable to apply a condition requiring 10% of all dwellings to be suitable for wheelchair users and for 50% of those to be built to meet the needs of a wheelchair occupant⁶²⁸.
- 11.14 Given the history of the site, and its location, and bearing in mind the requirements of HLP Policy EQ8, a condition addressing issues around potential contamination is required⁶²⁹. LP Policy 5.2 and HLP Policy EQ1 justify a condition requiring the development to be built in accordance with the submitted Energy Statement, as amended, securing carbon dioxide emissions reductions of at least 33.8% against the Building Regulations⁶³⁰.
- 11.15 LP Policy 5.3 and HLP Policy EQ1 also underpin a condition that secures demonstration of a BREEAM 'Excellent' rating⁶³¹. A condition requiring the developer to show that materials have been specified that emanate from sustainable sources is a further requirement of LP Policy 5.3⁶³². A condition is necessary in order to address water usage, as referred to in LP Policy 5.15 and HLP Policy EQ2⁶³³.

⁶²³ Suggested Condition 6

⁶²⁴ Suggested Condition 8

⁶²⁵ Suggested Condition 9

⁶²⁶ Suggested Condition 10

⁶²⁷ Suggested Condition 12

⁶²⁸ Suggested Condition 13

⁶²⁹ Suggested Condition 14

⁶³⁰ Suggested Condition 15

⁶³¹ Suggested Condition 16

⁶³² Suggested Condition 18

⁶³³ Suggested Condition 17

- 11.16 Given the height of the building, and its location, it is reasonable to apply a condition securing a scheme for the mitigation of any impact on aircraft radar, in the interests of aviation safety. The condition promulgated⁶³⁴ refers to the need for agreement with the radar operator (NATS) but that seems to me unnecessary because the commitments in the condition can only operate between the appellant and the Council. I have adjusted the condition to suit.
- 11.17 On the basis of the scale and complexity of the building and its uses, a condition covering building and site management is needed⁶³⁵. For similar reasons, a condition allowing the Council preliminary oversight of a Delivery and Servicing Plan is required⁶³⁶ though elements of the suggested condition can be removed to avoid repetition.
- 11.18 In the interests of the safety of occupiers and visitors, a condition requiring demonstration that the Secured by Design requirements have been addressed⁶³⁷ is a reasonable imposition. For highway safety reasons, conditions are necessary to address the potential for solar glare, and wind, generated by the building, to have an adverse impact on motorists on the M4 motorway in particular⁶³⁸.
- 11.19 While I recognise the sensitivity of the subject, given recent tragic events not far away from the site, I do not agree that a condition to address fire safety⁶³⁹ is necessary. The construction of the building and the performance of materials in a fire, means of escape, and access for the emergency services in the event of a fire, are all matters already covered by the Building Regulations⁶⁴⁰. Repeating that coverage in a planning condition would serve no useful purpose.
- 11.20 The relative complexity of the parking arrangements means that it is necessary to apply conditions to secure details of car and cycle parking provision and implementation⁶⁴¹, and a Car Park Management Plan⁶⁴². Another is required to secure details of the 'Car Club' and its operation⁶⁴³.
- 11.21 There is the possibility that fumes, odours, and noise, from the commercial elements of the scheme might have an adverse impact on residential occupiers. A condition is required to address that possibility⁶⁴⁴.
- 11.22 Finally, road markings and/or signage will be required on Larch Drive to ensure that vehicular access to, and egress from, the building is effectively managed. This matter will need to be addressed through a condition⁶⁴⁵.

⁶³⁴ Suggested Condition 19

⁶³⁵ Suggested Condition 20

⁶³⁶ Suggested Condition 24

⁶³⁷ Suggested Condition 25

⁶³⁸ Suggested Conditions 26 and 27

⁶³⁹ Suggested Condition 28

⁶⁴⁰ Which may well have changed by the time construction takes place as a consequence of the conclusions of the Grenfell Inquiry

⁶⁴¹ Suggested Condition 30

⁶⁴² Suggested Condition 29

⁶⁴³ Suggested Condition 32

⁶⁴⁴ Suggested Condition 31

⁶⁴⁵ Suggested Condition 33

- 11.23 I approached the appellant after the Inquiry closed to obtain written confirmation that the pre-commencement conditions relating to the submission of details of important design elements, the Construction Management and Logistics Plan, the Air Quality and Dust Management Plan, and to deal with potential contamination, were acceptable. This confirmation was duly received⁶⁴⁶.
- 11.24 Advertisement consent can only be granted under the auspices of Appeal B, if Appeal A is allowed because the advertisements are integrated into the façade of the building. As a result, conditions would be required to tie the lifespan of the advertisements to that of the building, to ensure the safety of the displays, to secure proper maintenance, and to control the operation of the advertisements⁶⁴⁷.
- 11.25 The KS made some suggestions about the condition suggested to control operation⁶⁴⁸ but in the light of my conclusions below about the impact of the proposed advertisements on the living conditions of local residents, I do not consider the additional safeguard suggested necessary.
- 11.26 Bearing in mind the way the proposed advertisements are integrated into the architectural treatment of the building, and the fact that the advertisements cannot be implemented without the building, it would be more effective to require details of the architectural detailing of the advertisements⁶⁴⁹ through the relevant condition attached to the grant of planning permission. In a similar way, there is no need to set out the approved plans relating to the grant of advertisement consent⁶⁵⁰, because these plans would be part and parcel of the relevant condition attached to the grant of planning permission.
- 11.27 In terms of the Obligation, a draft⁶⁵¹ was the subject of discussion during the Inquiry and, as set out, a completed Unilateral Undertaking, dated 19 July 2018, was submitted after the Inquiry closed⁶⁵². As part of the Inquiry, I asked the Council to produce a CIL Compliance Schedule⁶⁵³ to assist in my analysis.
- 11.28 Mirroring the relevant CIL Regulations⁶⁵⁴, paragraph 56 of the revised NPPF says that planning obligations must only be sought where they are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
- 11.29 The completed Undertaking addresses a series of different matters. First, the owner covenants to provide at least 10 working days' notice to the Council of the date of commencement of the development, the date when the first B1 (office) is occupied, the date when the first affordable residential unit will be occupied, the date when the first open market unit will be occupied, and the

⁶⁴⁶ INQ49

⁶⁴⁷ Suggested Conditions 1, 3, 4 and 6

⁶⁴⁸ INQ33b – Condition 6 (but labelled as 7)

⁶⁴⁹ Suggested Condition 2

⁶⁵⁰ Suggested Condition 5

⁶⁵¹ INQ34

⁶⁵² INQ46

⁶⁵³ INQ34a

⁶⁵⁴ Regulation 122 of the Community Infrastructure Regulations 2010

date when half of the open market residential units have been occupied. On top of all that, the owner will confirm to the Council's monitoring officer, the date when the development is complete and ready for occupation. That all seems reasonable.

- 11.30 The second matter addressed relates to the Considerate Contractor Scheme which is detailed in Schedule 3 of the Undertaking. This is clearly a necessary imposition in order to minimise disruption and to keep local people informed of progress, amongst other things. The third element referred to is Construction Training which contains a series of provisions, or failing those, a financial contribution of £324,500. These are required to ensure that the proposal complies with LP Policies 2.2 and 4.12 and HLP Policy ED4. The ninth part relates to various employment initiatives and is justified for the same reasons.
- 11.31 Fourth is the prohibition on controlled parking permits for occupiers (save for those holding a disabled badge) which is a necessary safeguard given the impact the lack of such a provision might have on parking in the area, and car use by occupiers of the building.
- 11.32 The fifth schedule deals with the provision of affordable housing. This is needed in order to comply with LP Policies 3.8–3.13 and HLP Policy SC2 and to ensure delivery of an appropriate housing mix as part of the development. This is further explained in the SoCGAH⁶⁵⁵.
- 11.33 The sixth part secures Residential and Commercial Travel Plans as required by LP Policies 6.1-6.3, 6.7, and 6.11-6.13 and HLP Policies EC1 and EC2, and in order to minimise the use of the private car, amongst other things.
- 11.34 The seventh part, the Off-Site Public Realm Contribution, is £100,000 to be used towards improvements to the highways, open spaces, and landscaping in the immediate vicinity of the site. This is necessary to secure improvements to the local area presented as an important by-product of the scheme.
- 11.35 Eighth is the affordable workspace, included in order to ensure compliance with LP Policy 2.7 and HLP Policy ED1, and to deliver an appropriate mix of workspace.
- 11.36 The tenth covenant relates to highways matters. This is an imperative in the light of the temporary and permanent alterations to the highway that will be required as part of the proposal.
- 11.37 The carbon off set contribution of £12,500, the eleventh covenant, is necessary in order to comply with LP Policies 5.1-5.3 and HLP Policies EQ1 and EQ2, because the requirements of those policies relating to carbon reduction cannot be met on site.
- 11.38 The twelfth and last covenant is the Public Transport Contribution of £30,000. This is designed to mitigate the impact occupiers of the building will have on local infrastructure.
- 11.39 The completed Undertaking includes the provision that if the SoS concludes in his decision letter that any of the planning obligations set out are incompatible

⁶⁵⁵ CDI.02

with any one of the tests for planning obligations set out at Regulation 122 or 123 of the CIL Regulations 2010 and accordingly (or for any other reason as may be specified in the decision) attaches no weight to that obligation in determining the appeal, then the relevant obligation shall, from the date of the decision letter, cease to have effect.

- 11.40 In my view, and so that there is no doubt, all of the planning obligations included in the completed Unilateral Undertaking meet those tests, and can be given weight, in that they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

12 Inspector's Conclusions

Preliminary Matters

- 12.1 In this part of the report, I have used references thus [--] to cross-refer to previous, important paragraphs in the report, and in particular, the relevant part of the various parties' cases.
- 12.2 There is a need at the outset to deal with the strong criticisms made primarily by the Council about the appellant's visual representations that are contained in the ES, and in evidence. In response to my questions, the Council confirmed that it was not seeking to suggest that the ES was inadequate for the purposes of the relevant Regulations. In that case, it must follow that the degree to which the appellant's visualisations might be misleading cannot be significant.
- 12.3 I took the criticism to be a suggestion that the appellant's visual representations should be approached with caution. However, that is true of any visual representation. It is important to remember that illustrations of this type are only a guide for the eventual decision-maker; they are there to act as an aide-memoire, and to assist site visits.
- 12.4 I must also record, that if one is to approach the appellant's visual representations with caution because of the use of a tilt-shift lens, and the building not always being at the centre of the image, amongst other things, then the Council and RBGK's images must be treated with very great care too. The lack of detailed rendering, which means that many important attributes of the design, notably its transparency, colouration, as well as other devices intended to reduce the apparent scale of the building, are missing. This makes the building appear in the images as a solid, unadorned, grey mass which, in my view, tends to exaggerate its likely impact.
- 12.5 In short, it is my contention that care should be taken with both sets of visual representations. However, for the reasons set out, I found the appellant's to be of the greatest assistance. However, it is what I saw at my site visits, informed and aided by the parties' visual representations that forms the basis for my conclusions that follow. **[5.8-5.9, 7.18-7.21, and 9.49-9.53]**

The Main Issues and the Structure of these Conclusions

- 12.6 Having read and considered the evidence submitted in advance, I set out the main issues in relation to Appeal A in opening the Inquiry as: (1) the effect of the proposals on the character and appearance of the area (the design issue); (2) the effect of the proposals on the setting and thereby the significance of a

range of designated heritage assets (the heritage issue); (3) the acceptability or otherwise of the affordable housing provision (the affordable housing issue); (4) whether the proposal would provide reasonable living conditions for prospective occupiers in terms of access, amenity space, and air quality, in particular (the living conditions issue); (5) whether any other impacts can be successfully mitigated (the s.106 issue) and (6) any other matters including the impact on the living conditions of nearby residents (other matters). In terms of Appeal B, the main issue was set out as the impact of the advertisements proposed on amenity, and public safety.

- 12.7 In closing, the appellant suggested that in common with Inspector's reports and decisions on similar cases, one ought consider and conclude upon the question of design first, and then go on to consider other impacts and issues with the conclusion on design in mind. The appellant's heritage consultant followed this path in assessing the effect of the scheme on the setting and thereby the significance of designated heritage assets, and was strongly criticised for it. **[9.8-9.9]**
- 12.8 I have considered this matter with great care and must record that I have some difficulty with the idea that a conclusion can be formed about the design of a building, and in particular one that would be as visible over such a wide area as that at issue, without considering its wider impacts as part of that assessment. In other words, it is my view that the effect of this proposal on the setting and thereby the significance of designated heritage assets must form part of the overall consideration of design. Other aspects of the proposal like its relationship to the immediate context, the way it uses the site, the living conditions it would provide for residents of it, and its effect on others, must be considered as part of that overall analysis too. Put simply, it appears to me that a conclusion on the quality of the design can only be made when all these matters have been considered in the round.
- 12.9 On that basis, the main issues in Appeal A can be defined, and are best considered, as follows: (1) whether the proposal would provide reasonable living conditions for prospective occupiers in terms of air quality, amenity space, and accessibility, in particular; highway safety; and the effect of the proposal on the living conditions of nearby residents; (2) the building in its immediate context, in other words, its effect on the character and appearance of the local area; and (3) the building in its wider context, in other words, the effect of the proposals on the setting and thereby the significance of a range of designated heritage assets. That analysis needs to take place in the light of (4) any benefits the proposal might bring forward, including affordable housing, and whether any other impacts can be successfully mitigated. It is the balancing exercise that flows from (4) that allows a conclusion to be made about the overall quality of the design. Appeal B, and the impact of the proposed advertisements on amenity and public safety can be considered as part of (1), (2), (3) and (4) above.

Living Conditions for Prospective Occupiers and Nearby Residents

Air Quality

- 12.10 This is an issue of obvious importance. Conditions for residents within the confines of the building have been carefully considered, and the device of

directing living spaces to Level 6 and above would ensure that those residents would not be exposed to excessive levels of pollution when at home.

- 12.11 However, as the KS point out, when travelling to and from the building, those residents will be subject to very poor air quality, and some of the worst levels of pollution in London. The effect of that can have tragic consequences, particularly for children. Having said that, the Government has the matter in hand and efforts are being made to put in place a plan to improve air quality across the country. It seems to me that those efforts need to be made, and the plan needs to be developed, alongside the operation of the planning system.
- 12.12 I reach that conclusion because if the KS argument is taken to its logical conclusion, no new housing would be built in London, or indeed in many other places, until air quality is improved to what are regarded as acceptable levels. Given the level of improvement required, that might take many years. The stress placed in the LP, the DRLP, the HLP, and other policy documents, on the importance of new housing generally, and in the Great West Corridor in particular, makes the idea of an effective moratorium on its provision untenable.
- 12.13 To my mind, notwithstanding the terms of DRLP Policy SI1, and the references in the revised Framework, the proposal itself has done all it can through the design to address this matter, and the fact that air quality in the area is so poor, should not weigh significantly against the proposal. It is instructive to note that the Council has taken a similar approach to other developments in the area, and in taking forward proposals for the Great West Corridor. **[8.2-8.13, 10.5-10.7, and 10.12-10.13]**

Amenity Space and Access

- 12.14 The appellant acknowledges that the proposal would not provide the levels of private and communal amenity space that Figure SC 5.2, which informs HLP Policy SC5 would require. However, HLP Policy SC5 only requires the benchmark standards set out in Figure SC 5.2 to be considered. Moreover, the policy notes that in the case of flats and building conversions, the quantitative space requirements will be applied with regard to exceptional design considerations. That suggests to me that some leeway is allowed for high-density or -rise development.
- 12.15 It is clear to me that in the context of what is proposed, the appellant has given the benchmark standards the required consideration. In the first instance, as well as the provision of a private 'winter garden' in each apartment, internal and external communal play spaces for children are proposed at Level 5, which can be secured by condition, along with a roof garden (serving the office accommodation). There would be a communal roof garden for residents at Level 25, and a viewing terrace at Level 32. In that context, the design of the building itself has gone some way towards providing a resource for residents in terms of amenity space.
- 12.16 Aside from that, the appellant relies on the proximity of Gunnersbury Park. This is a wide expanse of public open space of exceptional quality which is set to be improved further. In both quantitative and qualitative terms, it would provide a wonderful opportunity for residents to experience the outdoors but

the question the Council raises about it is the route residents would need to take to get to it. I walked the route myself several times in the course of my site visits and while it is traffic dominated, and not particularly pleasant, it is relatively short, and not overly challenging. Moreover, there is scope for improvement as part of the overall proposals. When one considers the quality of what lies at the end of it, I do not believe the route would act as a significant disincentive to residents. Traffic dominated pedestrian routes to public open spaces in London are not, after all, uncommon.

- 12.17 With all those points in mind, it is my conclusion that residents of the proposal would enjoy reasonable access to amenity space. There would be no telling departure from HLP Policy SC5. Again it is instructive to note that the Council has taken a broadly similar approach in dealing with other developments in the area, for example at Albany Riverside⁶⁵⁶ and in the policy approach to the Great West Corridor. **[5.104-5.110, 9.189-9.194, 10.5-10.7, and 10.12]**

Daylighting/Overlooking/Privacy

- 12.18 Concern was raised about the aspect of some of the flats proposed, and the separation distances between them. While the level of exposure to direct sunlight would vary with orientation, the carefully considered layout means that all the flats would receive a more than reasonable level of daylight. The plan form has been arranged with no little skill too and where separation distances are at their tightest, circulation space has been used to avoid inter-visibility between habitable room windows⁶⁵⁷. **[10.7 and 10.12]**

Accessibility

- 12.19 A number of contributors raised issues about the accessibility of the building and the issues that would create for its residents, and for people already living in the area. I appreciate that the nearest rail and underground stations are very busy at certain times of the day but that is not unusual in the capital.
- 12.20 I do not consider that the additional residents the building would bring to the area would make that great a difference; a view shared by TfL⁶⁵⁸. Indeed, the identification of the Great West Corridor as an Opportunity Area in the DRLP will bring a lot of new housing to the area, and this is reflected in the GWCLPR and its associated documents. This will no doubt result in a need for improvements in infrastructure and it is instructive to note that the Public Transport Contribution in the completed Unilateral Undertaking is intended to mitigate any impacts the proposal would have in this respect.
- 12.21 Given the proximity of major arterial routes, the appeal site is not ideally placed to provide perfect access for pedestrians and cyclists. However, improvements to the network have been thought about as part of the design. The area around the base of the building would be carefully arranged to provide ease of access for those on foot or cyclists and there is ample scope through the Off-Site Public Realm Contribution in the completed Unilateral Undertaking to take those improvements beyond the appeal site, improving

⁶⁵⁶ APP/4/C8

⁶⁵⁷ APP/1/E Pages 134-135

⁶⁵⁸ CDJ.01 and CDJ.02

connectivity for other residents of the area too. That is particularly important given that the building would lie on a route that others might take to gain access to Gunnersbury Park, and transport interchanges, too.

- 12.22 I deal with motorists below but in terms of accessibility by other modes, I am content that the proposal would provide reasonable conditions for its residents and users, and the scheme has the potential to improve connectivity in the local area for others. TfL share that view⁶⁵⁹. **[10.5, 10.7, and 10.11-10.13]**

Highway Safety

- 12.23 The KS raised issues in this regard focused on the question of whether the car stacker proposed for the basement car park had adequate off-highway entry/exit waiting ramps to ensure that queues could not form on the public highway, compounding traffic delays and pollution.
- 12.24 Given the nature of the highway network around the appeal site, this is obviously a matter of concern. However, in relative terms, the proposal would not generate significant traffic movements; a point accepted by TfL⁶⁶⁰. Moreover, the way that vehicles would enter and leave the building has been carefully considered and subject to works to the highway that could be secured through a s.278 Agreement, this need not cause any significant issue. On top of that, conditions to secure details of car and cycle parking provision and implementation, and a Car Park Management Plan are proposed, alongside a Delivery and Servicing Plan. All this suggests to me that the operation of the parking areas in the basement levels of the building need cause no difficulties.
- 12.25 Conditions are also proposed to address the potential for solar glare, and wind, generated by the building, to have an adverse impact on motorists on the M4 motorway in particular. **[10.5]**
- 12.26 Subject to the imposition of suitable conditions, TfL made no suggestion that the advertisements proposed, which would be readily visible to users of the M4, would cause any issue in terms of highway safety. Given that other similarly visible advertisements have been permitted, and operated for some time, without any apparent issue, that must be right. The advertisements proposed in Appeal B should not be resisted in terms of public safety and they would comply with HLP Policy CC5 in this regard.
- 12.27 Taking all these points together, the proposal need cause no significant issues in terms of highway safety. **[8.14, 10.10, and 10.13]**

Living Conditions of Local Residents

- 12.28 In some ways, notably in terms of accessibility, and the impact on transport infrastructure, this matter has already been addressed above. In terms of its visual impact, the building would be sufficiently distant from existing residences to avoid anything untoward. The same is true of existing places of work⁶⁶¹. **[10.10-10.13]**

⁶⁵⁹ CDJ.01 and CDJ.02

⁶⁶⁰ CDJ.02

⁶⁶¹ APP/1/E Page 134

- 12.29 The elements of the proposal that have the greatest potential to undermine the living conditions of local residents are the advertisements. That said, advertisements addressing the M4 are an existing feature of the area and advertisements of that type have been permitted previously on the appeal site⁶⁶². With appropriate conditions to ensure the safety of the displays, to secure proper maintenance, and to control the operation of the advertisements, I do not consider that they would have any significant impact on the living conditions of local residents. **[5.117-5.122, 8.32-8.38, and 9.195-9.198]**
- 12.30 I note what the KS says about research that links LED lighting to increased risks of prostate cancer and breast cancer. However, as with air quality, I consider this to be a matter for wider consideration by Government rather than a reason to resist the advertisements proposed. **[8.32]**

Background

- 12.31 Before dealing with the second issue, namely the effect of the building proposed on the local, and wider, areas, it is imperative that the context for that analysis is properly set out.
- 12.32 The appeal site is at the end of the Great West Corridor, or Golden Mile, and the Council has identified it as an entry point to the area, that ought to be marked with a landmark building, of high-quality, around 60m in height. The principle of a tall building on the site is therefore well established. A building of that height on the appeal site would be widely visible.
- 12.33 Alongside that, in line with the DRLP, and the HLP, the Council has wider ambitions for the Great West Corridor, and the adjoining area. Manifestations of those ambitions are already coming forward, notably the Brentford FC development. The Mayor's positive attitude to the proposals for the Citroen site, which at around 70m AOD, as I understand the situation, are significantly taller than what the Council thinks is appropriate for the 'landmark' on the appeal site, is also reflective of what might well be coming forward.
- 12.34 On top of that, there is an implementable planning permission for a 60m tall building on the appeal site: the Citadel. Ms Weiss of the Skyline Campaign described it in evidence as terrible, in architectural terms, and it was criticised by others too. In my view, it fails to attain the level of architectural sophistication one ought to expect of a tall building, and it would be extremely unfortunate if it was progressed, especially when one takes into account the Council's current ambitions for the appeal site.
- 12.35 It was suggested that the Citadel can be discounted as a fall-back because it is not viable. It may well not be viable in a conventional sense but there are ways that it could be made viable through the addition of advertisements, for example. Moreover, in a London context, it is not unknown for buildings that are not viable at the onset of construction to be implemented in any event. It is clear that there has already been significant investment in the project, and there are strong reasons why it might come forward despite the economics - the Citadel would not require any payments under local, or Mayoral CIL, for

⁶⁶² APP/3/D Appendix 5 for example

example. It cannot be ruled out completely and the possibility of it coming forward is something that needs to be borne in mind.

- 12.36 In any event, whether the Citadel does or does not come forward is not the central point. There is a clear mandate in policy for a tall building on the site and it is reasonable to assume that one will manifest itself, in time. That building, alongside others in the Great West Corridor, under construction, or likely to come forward, will be visible from most of the areas the Council, and others, have expressed concern about.
- 12.37 The proposal at issue cannot reasonably be considered in isolation, therefore. Conclusions about impacts can be made, but they must be tempered in the light of what might come forward in the light of the Council's plans for the site itself, the possibility, and I put it no higher than that, of the Citadel being implemented, and what is and will be coming forward in the wider area as part of the Council's ambitions for the Great West Corridor. **[5.95-5.96, 6.69-6.75, 7.22-7.27, and 9.180-9.188]**

The Building and its Immediate Context

- 12.38 As the Council acknowledges, the appeal site is in a strategic location at the end of the Great West Corridor, and the Council has identified it as an entry point to the area, that ought to be marked with a landmark building. That is obviously the correct approach to the site.
- 12.39 Notwithstanding the opportunity the appeal site presents, it is located in a difficult place. Its proximity to the M4, and the Chiswick Roundabout, means that the area is very noisy, and air quality is a serious issue. The area is dominated by massive, functional pieces of infrastructure, notably the M4 flyover. For all those reasons, getting to it on foot, by cycle, or indeed by motor vehicle, from any direction, is not a particularly pleasant experience.
- 12.40 The first point to make about the proposal is the positive way it seeks to respond to those challenges. At ground level, it would present an open, live frontage to the south and south-east. Movement through the ground floor of the building would be possible and this would link the scheme to any proposal that was to come forward for the adjacent B&Q site.
- 12.41 Allied to that, improvements to the public realm, and especially the area under the flyover, would address some of the issues of getting to and from the site. Café and retail spaces at ground floor level, and a restaurant at first floor, open to the public as well as residents, alongside a double height atrium, would make it an attractive destination, opening up the area north of the flyover, and knitting it into the area to the south. Pulling back the footprint at ground floor level opens up space around the base of the building, and provides scope for circulation, and ample room for landscaping.
- 12.42 The inclusion of office space between second and fifth floor levels is a well thought out response to issues around air quality. The 'camber' in the elevation which reflects the different function of these floors before it disappears in the residential levels above is a clever device. The individual flats are generous in size, and well designed. The 'winter gardens' are a particularly nice touch, given the difficulties often experienced with balconies in tall buildings. They would, of course, have wonderful views.

- 12.43 As the building rises, it would morph into a multi-formed composition of different curved volumes, with a highly sophisticated glazing module, articulated by fins of different colour. I appreciate that this form has been arrived at largely as a means of addressing more distant views, a matter I will come on to, but close-up, it would give the building a dynamism that would make the approach by road along the M4, in either direction, a very exciting experience⁶⁶³. The advertisements, cleverly designed as an integral part of the building, would add to that. Visibility of the building in the local area would be similarly rewarding, and there can be no doubt that the Chiswick Curve would bring a real 'lift' to it, and set a high standard for what might follow in the Great West Corridor.
- 12.44 The height of the building would be well above what the Council sees as appropriate. However, the location of the site, adjacent to the massive structure of the M4 flyover, demands a strong response, and in a local context, I do not find that height inappropriate. It is relevant to note that in considering proposals on the Citroen site, which is not identified as a site for a tall building, or a landmark, in the Council's emerging policy for the Golden Mile, the Mayor favours buildings significantly higher than what the Council believes can provide a 'marker' on the appeal site, and head the hierarchy of high-rise buildings coming forward.
- 12.45 I have referred already to the sophistication in the glazing module, and the fins. As a reaction to more distant views, the idea of pixelating the facade, or the use of pointillism, is something I deal with below, but this lively treatment, replete with visual interest, would give the building a human scale, and make it a very attractive proposition close-up. The use of the fins to make the building more solid at the base, becoming more transparent, as it rises, would be more apparent at distance, but it is a skilfully composed device too.
- 12.46 The importance of context as the generator is obvious from a study of the architect's work. The skill, subtlety, and lightness of touch evident in projects, and completed works, that I was able to see for myself, at Clapham Library in particular, is present in the proposal, in abundance. On my analysis, the Chiswick Curve is a quite brilliant response to the difficult problems presented by the immediate context of the site. However, it is the impact of the scheme on the wider context that raises more concerns for those opposed to it. **[5.75-5.81, 5.84-5.94, 9.3-9.26, 10.4-10.6, 10.8, and 10.11-10.13]**

The Impact of the Proposals on the Setting and thereby the Significance of Designated Heritage Assets

- 12.47 In terms of the impact of the proposal on the wider context, consideration revolves around the impact it would have on the setting, and thereby the significance of a range of designated heritage assets. The sequence in which I deal with these does not denote the importance I attach to them. There is a clear pattern to the way the nature of the impact can best be articulated and that is best explained through the vehicle of the first group of designated heritage assets I turn to.

The Strand-on-the-Green Conservation Area (and the listed buildings within it)

⁶⁶³ This is amply demonstrated by the relevant 'Moving Study'

- 12.48 There is little I can usefully add to what the parties have said about the significance, status, and importance of the Strand-on-the Green Conservation Area, and the listed buildings it contains.
- 12.49 That said, the proposal would have no direct impact on the conservation area itself, or any of the listed buildings within it, and neither would it have any impact on many views out of the conservation area⁶⁶⁴. For example, the building would not impinge very much at all on the delightful riverside walk along the northern (Middlesex) bank of the Thames, which passes many listed buildings, and neither would it be readily visible from many of the streets and spaces within the conservation area.
- 12.50 The parties (correctly) focused on the impact the presence of the Chiswick Curve would have on the view of the conservation area, and the listed buildings fronting the river, including the Grade II* listed Zoffany House, from the path along the southern (Surrey) side of the Thames. From what I saw walking along the path, in either direction, despite the visual presence of other (taller) buildings beyond, the riverside frontage, and the listed buildings it contains, retains primacy in the view across the river. That primacy in these views is an important element of the contribution setting makes to the significance of the Strand-on-the-Green Conservation Area, and of the many listed buildings fronting the river.
- 12.51 The various visual representations demonstrate that the Chiswick Curve would introduce a new, tall, striking element into those views⁶⁶⁵. The architect fairly acknowledged that it would 'lift the eye' from the frontage. In doing so, it would compete with and distract from the frontage, thereby undermining its primacy in the view. That would have a harmful impact on the contribution setting makes to the significance of the Strand-on-the-Green Conservation Area, and of the many listed buildings fronting the river.
- 12.52 There are elements of the design that would act as a brake on the degree of competition and distraction the Chiswick Curve would bring. The interconnecting, largely glazed, forms would reduce the apparent bulk and mass of the building⁶⁶⁶, and use of pointillism in the glazed grid would act as a control that would bring the scale of the building closer to that of the buildings on the river frontage. The suggestion provoked some adverse reaction, but the referential use of colour in the fins that would adorn the facades of the building would provide a pleasing element of assimilation too. At the separation distance involved, the possibility that one of the advertisements might be visible from the footpath on the Surrey side of the Thames would have little or no adverse impact.
- 12.53 As I have set out, the proposal cannot be considered in the abstract. There is going to be another stratum of urban form visible above the important frontage to the river, and this is going to undermine the primacy of that frontage in views from the Surrey side. The architect addressed this point with the aid of two visuals⁶⁶⁷. The first shows what this stratum would look like with

⁶⁶⁴ Though CDA.11 View 9 Page 105 shows one such view

⁶⁶⁵ CDA.11 Views 12 and 12A and LBH/2/B4.2 Viewpoint 9

⁶⁶⁶ Which is why I regard the appellant's visual representations as more accurate

⁶⁶⁷ APP/1/E Page 123

the Brentford FC scheme, the scheme on the Citroen site, and the Citadel. There would be no sense of any planned approach to hierarchy and the same would be true if there was a different 60m tall building on the appeal site, and the height of the development on the Citroen site was reduced to something nearer the Brentford FC scheme.

- 12.54 By contrast, the second visual shows that the height and sophistication in the design of the Chiswick Curve would bring a proper sense that it is the main element in the composition of that new layer of urban form; the head of the hierarchy; and the marker at the end of the Great West Corridor.
- 12.55 The Council and the Mayor's policy approach means that there is going to be another stratum of urban development visible above, and in competition with, the important river frontage of the Strand-on-the-Green Conservation Area and the listed buildings that populate it, in views from the Surrey side. To my mind, if one accepts the inevitability of the harmful impact that would bring to the setting and thereby the significance of the conservation area and the listed buildings along the river frontage, as one must, then it would be far better for that stratum to be properly articulated, and designed, and for there to be a clear hierarchy, and a 'marker' on the appeal site.
- 12.56 In my view, whatever the Council's emerging policy says, this means that the 'marker' the Council wants to see on the appeal site, needs to be significantly higher than the other elements in the composition. In my judgment, the architect's visual representations referred to above show very clearly why that is so, as does consideration of the relevant diagram⁶⁶⁸ in the Council's Capacity Study, and the appellant's depiction of the Citadel in this view⁶⁶⁹.
- 12.57 In terms of the diagram in the Capacity Study, while I acknowledge that the buildings shown are in part illustrative, the lack of any discernible difference in status by reason of height makes the stratum look like a random collection of unrelated buildings. There would be no clear indication that the appeal site is an important 'marker'. I note the Council's point that the building on the appeal site could be designed to set itself apart, but without the added status that additional height would bring, I very much doubt that approach would achieve the desired effect.
- 12.58 All that said, for the reasons set out, the Chiswick Curve would cause some harm to the setting and thereby the significance of the Strand-on-the-Green Conservation Area, and the listed buildings on the river frontage. **[5.29-5.37, 6.58-6.62, 9.135-9.150, and 10.3]**

The Kew Green Conservation Area (and the listed buildings within it)

- 12.59 Again, the significance, and importance of the Kew Green Conservation Area, and the listed buildings it contains, needs little further elucidation. The green is a charming space, bounded by a pleasing variety of buildings, a lot of which are listed buildings, and an important reminder of the capital's development.
- 12.60 The proposal would have no direct impact on the conservation area, or the listed buildings within it. The proposal would not be visible in some views

⁶⁶⁸ CDD.06 Page 80 View V7

⁶⁶⁹ APP/3/C Pages A111 and A112

within the conservation area either. However, the proposal would impinge upon views to the north (roughly), across the green, from points to the south of the green, around St Anne's Church, the frontage of Cambridge Cottage, and from the main entrance to Kew Gardens. It is those views that the parties concentrated upon.

- 12.61 In a similar way to the Strand-on-the Green Conservation Area, what one takes from these views is that despite the visual presence of tall buildings north of the Thames, the sense of space, and the historic buildings, in the main, that enclose it, and sit within it (St Anne's Church), are the main elements in the view.
- 12.62 One is conscious of what lies beyond that enclosing frontage, and the green itself, but it is very much subservient. The extent to which that border and the green predominate over what lies beyond in these views is an important element of the contribution setting makes to the significance of the Kew Green Conservation Area, and the many listed buildings that bound it, and in the case of St Anne's Church, sit within it.
- 12.63 The visual representations show that the Chiswick Curve would emerge from behind that frontage in a conspicuous way⁶⁷⁰. Again, it would 'lift the eye' and in doing so, would reduce the extent to which the buildings providing the visual boundary to the green predominate over what lies beyond. There would be a degree of visual competition with St Anne's Church too. All that would have a harmful impact on the contribution setting makes to the significance of the Kew Green Conservation Area, and of the many listed buildings that provide the visual boundary, and sit within the confines of the green.
- 12.64 There are elements of the design that would assuage the impact. The apparent bulk and mass of the building would be reduced by the largely-glazed forms, and the pointillated glazed grid would bring the scale of the building closer to that of the buildings fronting the green, and make it subservient in scale to St Anne's Church. The proposal cannot be seen in isolation either. Council and Mayoral policy dictate that development in and adjacent to the Great West Corridor is going to be visible from Kew Green, including development on the appeal site, whether that is the Citadel, or something else 60m in height⁶⁷¹. In common with my analysis of the impact on the Strand-on-the-Green Conservation Area and the listed buildings within it above, it would be better, in my view, if this presence has the proper hierarchical discipline that the Chiswick Curve would bring⁶⁷².
- 12.65 All that said, the Chiswick Curve would cause some harm to the setting and thereby the significance of the Kew Green Conservation Area, and the listed buildings that front it, and that lie within the confines of the Green. **[5.24-5.28, 6.54-6.57, 7.151, 8.1, 9.151-9.158, and 10.5]**

Gunnersbury Park (and the designated heritage assets within it)

⁶⁷⁰ CDA.11 Views 21, 21A and 34, CDA.15 Views 39, 40, 41, and 42 and LBH/2/B4.2 Viewpoints 10 and 11

⁶⁷¹ LBH/2/B4.2 Viewpoint 11 Page 13 shows the Citadel

⁶⁷² CDD.06 Page 80 View V10 illustrates the point as does CDA.14 View 40 Page 53

- 12.66 There is nothing I can usefully add to the careful analysis of significance of the Gunnersbury Park Conservation Area that has been provided. The conservation area is wide in its compass and has three main elements. The first is the Gunnersbury or (New) Kensington Cemetery, to the south-east of the conservation area that bounds the M4 to the south, with the North Circular Road to the east.
- 12.67 The element of the conservation area to the east of the North Circular Road is made up of a 'Garden Suburb' estate of housing that dates from the 1920s. The remainder of the conservation area is the park itself, a Grade II* Registered Park and Garden that contains four Grade II* listed buildings, the Large Mansion, the Temple, the Orangery, and the East Stables.
- 12.68 Once again, there would be no direct impact on any of the designated heritage assets involved. The issue raised is about views of the proposal from various parts of the conservation area, and views of the proposal in concert with some of the listed buildings within it.
- 12.69 Dealing with the cemetery first, it has a formal layout with axes and vistas, and is of particular importance to the Polish community⁶⁷³. It is clearly a place of quiet contemplation and reflection and manages that despite the aural presence of very busy roads nearby, and the visual presence of existing tall buildings along the Great West Corridor. To my mind, that is because one's experience of the cemetery is generally contained, and views out of it contribute little or nothing to its significance.
- 12.70 Given the proximity of the appeal site to the cemetery, the proposal would be a prominent presence. However, it would not render the formal layout of the cemetery illegible, and would defer to it, being respectfully offset from one of the primary vistas. Moreover, the treatment of the glazed facades, along with the fins, would act as a strong control on the scale of the building. On my analysis, despite the visibility of one of the advertisements, this sensitivity in design means that ability to see the Chiswick Curve from the cemetery would not take away from the ability to appreciate it as a place of quiet contemplation and reflection⁶⁷⁴.
- 12.71 With those points in mind, and in the context of the cemetery's proximity to major roads, and existing development along the Great West Corridor, I do not consider that the proposal would have any harmful impact on the setting, or the significance, of the cemetery as part of the conservation area, overall.
- 12.72 On top of that, it must be appreciated that the Citadel, if implemented, would also be a prominent presence⁶⁷⁵. However, its design lacks sensitivity, or subtlety, or any obvious attempt to control its apparent scale. Indeed, aspects of its design, notably the glazing, seem to me to be conscious attempts to accentuate its scale. In my view, despite being significantly lower in height, it would be an intrusive, harmful presence in views out of the cemetery.

⁶⁷³ Given the presence of the Katyn Memorial and the tomb of General Bor-Komorowski

⁶⁷⁴ LBH/2/B4.2 Viewpoint 4 and CDA.11 View 4 Page 93

⁶⁷⁵ APP/3/C Page A109

- 12.73 It may well be that the Citadel never comes forward. However, the Council's intentions for the appeal site are clear and any 60m tall building that acted as a 'marker', in accordance with the Council's policy approach, would itself be a prominent presence. Careful design could ensure that its presence is as sensitive as that of the proposal at issue, but the point is that there is a strong likelihood of a tall building coming forward on the appeal site.
- 12.74 Moreover, it may well be that the Council's policy approach results in more tall buildings along the Great West Corridor, impinging on views out of the cemetery. As I have set out above, it is important to set out a legible hierarchy for that developing context. The height and design of the Chiswick Curve would allow that to be achieved.
- 12.75 My point is demonstrated by considering the relevant diagram in the Council's Capacity Study⁶⁷⁶. Again, I accept that the buildings shown are illustrative, and that the building on the appeal site could be handled differently in terms of external appearance. However, the lack of height robs the composition of any coherence – it appears as a random collection of buildings of similar height. The importance of the appeal site could only properly be marked if the building it contains is higher, and therefore obviously of greater status than the others.
- 12.76 The layout of the 'Garden Suburb' also exhibits a strong pattern, underlined by the pleasing uniformity in the design of the frontage to the dwellings. The proposal would be visible in views from within that layout, in particular in the vista along Princes Avenue⁶⁷⁷.
- 12.77 However, as set out, the scale of the building would be controlled by careful design, and at the separation distance involved, it would not, in my view, be a jarring presence. From within this part of the conservation area, the layout of the estate, and the uniformity of the frontages, would remain predominant notwithstanding any ability to see the proposal. One must keep in mind too, that the Citadel, or an alternative 60m high building, as favoured by Council policy, would also be visible from the estate.
- 12.78 On that overall basis, I do not consider that the visual presence of the Chiswick Curve, some distance away, would be intrusive. It would not have any harmful impact on the setting, or the significance, of the 'Garden Suburb' as part of the conservation area, overall.
- 12.79 The park itself is extensive with more formal areas around the Large Mansion, its attendant buildings, and stretches of water, but wide open spaces elsewhere. When within the park, one is generally, but not always, conscious of the urban areas beyond. In particular, in views to the south, existing tall buildings along the Great West Corridor are often apparent.
- 12.80 In terms of views to the south across the informal, wide open, spaces that make up much of the park⁶⁷⁸, the Chiswick Curve would fall into that existing pattern, despite its height, and would have no harmful impact. Indeed, given that new tall buildings are likely to come forward along the Great West

⁶⁷⁶ CDD.06 Page 81 View V3

⁶⁷⁷ LBH/2/B4.2 Viewpoint 5 and CDA.11 View 5 Page 95

⁶⁷⁸ LBH/2/B4.2 Viewpoint 1 and CDA.11 View 1 Page 83

Corridor, in accordance with prevailing policy objectives, the hierarchy that would be set up, as a result of the height and position of the proposal, at the eastern extreme of the tall buildings, marking an important point, would add some beneficial legibility and discipline to what emerges. Certainly it would be a much more pleasing presence in these views than the Citadel. Moreover, as set out above, in that its height would add legibility to the composition that will come forward, it would be far better than any 60m building that might result from the Council's policy.

- 12.81 For the same reasons, the proposal would have no adverse impact on the openness, setting and visual amenity of the MOL.
- 12.82 Given their more formal nature, around the Grade II* listed Large Mansion, its attendant buildings, also listed Grade II*, and attendant ponds, an integral feature of the Grade II* Registered Park and Garden, are rather more sensitive to change however.
- 12.83 Unlike the Citadel, or another 60m high building on the appeal site⁶⁷⁹, the Chiswick Curve would be present in views to the south, filtered through the trees, from the terrace at the front of the Large Mansion. Moreover, it would be readily visible above the trees, from upper floor windows of the building⁶⁸⁰, and from the lawn between the Large Mansion and the Orangery⁶⁸¹. These views, from the terrace in particular, articulate the relationship between the main house and its Grade II* listed Orangery, and the Horseshoe Pond.
- 12.84 In that it explains the relationship between these features, the view from the terrace, which is currently unaffected by tall buildings outside the park, is an important element of the contribution setting makes to the significance of the Large Mansion, the Orangery, and the Registered Park and Garden, as part of the wider conservation area.
- 12.85 The Chiswick Curve would be a new element into this view. Although it would appear as something quite distant⁶⁸², that is not part of the park, it would attract the eye, and undermine the existing degree of clarity that exists in appreciating the important relationship between the Large Mansion, the Orangery, and the Horseshoe Pond. For this reason, to my mind, the visual presence of the proposal would detract from the setting and thereby the significance of the Large Mansion, the Orangery, and the Registered Park and Garden, as part of the wider conservation area.
- 12.86 While the view across the Round Pond from in front of the Grade II* listed Temple is important in terms of the relationship between different elements in the park too, unlike that from the terrace in front of the Large Mansion, there are existing buildings along the Great West Corridor visible in it. The Chiswick Curve would be an additional element in this view but, in the context of what

⁶⁷⁹ I base this conclusion on an analysis of View 3, Page 89 of CDA.11

⁶⁸⁰ Depicted in LBH/2/B4.2 Viewpoint 3 – this visual representation does suggest that the Citadel, or another 60m high building on the appeal site would also be visible above the trees in this view

⁶⁸¹ CDA.11 View 33

⁶⁸² The appeal site is about 840m from the terrace of the Large Mansion, according to HE

is already visible, it would not appear incongruous⁶⁸³. The policy approach to the Great West Corridor means that other buildings will come forward that will be visible in this view too and in that emerging context, the hierarchical discipline the additional height of the Chiswick Curve would bring, that I have set out in some detail above, will be a clear benefit over the Citadel, or any other 60m building that might come forward on the appeal site.

- 12.87 To sum up, the visual presence of the Chiswick Curve, in views from the terrace at the front of the Large Mansion in particular, would cause harm to the setting, and thereby the significance, of the Large Mansion, the Orangery, and the Registered Park and Garden, as parts of the Gunnersbury Park Conservation Area. **[5.38-5.42, 6.51-6.53, 9.159-9.162, 10.5, and 10.9]**

Other Conservation Areas

- 12.88 The proposal would be visible from a number of other conservation areas too. Their significance has been helpfully set out by the Council.
- 12.89 Given the proximity of the Wellesley Road Conservation Area to the appeal site, the Chiswick Curve would be prominent in views towards it, from within the western part of the conservation area in particular⁶⁸⁴. However, in this part of the conservation area, one can hardly fail to be aware of the Chiswick Roundabout, the elevated section of the M4, and attendant visual and other impacts. Notwithstanding that, the disciplined terraces, and the regular layout, are readily appreciated. The Chiswick Curve and its advertisement screens would appear as something beyond the conservation area too and its visibility from within the conservation area would not undermine an appreciation of its significance in any way. While it would affect the setting of the conservation area, in my view, it would not harm the contribution that setting makes to its significance.
- 12.90 The proposal would be readily visible from points within the Thorney Hedge Conservation Area too⁶⁸⁵. One is already conscious of larger buildings, in the Chiswick Business Park to the east, and industrial buildings and the hotel to the west, when within the conservation area. None of that, from what I saw, takes away from the observer's ability to appreciate the significance of the attractive terraced layout of the housing, and the features of the individual dwellings. Again, while the visibility of the Chiswick Curve would affect the setting of the conservation area, it would not undermine the contribution that setting makes to its significance.
- 12.91 Views towards the appeal site from within the Kew Bridge Conservation Area, from Kew Bridge itself, and the junction at the north end of the bridge in particular, are going to take in a lot of new development, notably the Brentford FC scheme. In that context, the Chiswick Curve will not appear incongruous as a marker of an important site adjacent to the Chiswick Roundabout and the elevated section of the M4⁶⁸⁶. I take a similar view to its presence in some views within the Kew Bridge Steam Museum which contains a number of listed

⁶⁸³ LBH/2/B4.2 Viewpoint 2 and CDA.11 View 2 Page 87

⁶⁸⁴ CDA.11 View 7 Page 99 and View 8 Page 103

⁶⁸⁵ LBH/2/B4.2 Viewpoint 6

⁶⁸⁶ CDA.11 View 10 Page 111 and View 13 Page 125

buildings including the Standpipe Tower⁶⁸⁷. No harm would be caused to the setting or the significance of the conservation area, or any of these listed buildings as a result of the proposal.

- 12.92 The Grove Park Conservation Area lies along the river, on the same side as, and to the south-east of the Strand-on-the-Green Conservation Area. The Council highlights the harmful impact it says the proposal will have in views from Chiswick Bridge⁶⁸⁸. The Chiswick Curve would be prominent in this view across the conservation area but high-rise buildings are already present in these views, and more will be coming forward as a result of the prevailing policy background. A 60m high building on the appeal site would be readily visible as part of that, as would the Citadel, if implemented⁶⁸⁹. As I have explained above, the additional height of the Chiswick Curve would give some legibility and hierarchical discipline to what comes forward. In that context, while it would certainly affect the setting of the conservation area, it would not harm its significance.
- 12.93 The proposal would be visible from parts of the Chiswick House Conservation Area but not from Chiswick House or its grounds, which provide the primary elements of special interest⁶⁹⁰. With that in mind, and given the degree of separation involved, the ability to see the proposal in views along Staveley Road, would have no harmful impact on the setting or the significance of the conservation area.
- 12.94 To sum up, in terms of these conservation areas, the proposal would have no harmful impact on their setting, or their significance. **[5.61-5.66, 9.163, and 10.8]**

The Royal Botanic Gardens Kew

- 12.95 Last but by no means least, I turn to Kew Gardens. The significance of RBGK as a whole, and of the multiplicity of heritage assets it contains, has been properly set out, in some detail, by the parties. There are a few points that I need to make by means of introduction, nevertheless.
- 12.96 It is subject to a raft of designations. Kew Gardens was inscribed as a WHS by UNESCO in 2003, having already been identified as a Grade I Registered Park and Garden in 1987, and a conservation area in 1969. It is obviously a designated heritage asset of the very highest significance, for the purposes of the revised Framework. Kew Gardens is also home to many listed buildings, one of which (Kew Palace) is also a Scheduled Ancient Monument (SAM)⁶⁹¹. Many of those are designated heritage assets of the highest significance too.
- 12.97 In addressing the impact of the proposal on Kew Gardens, and elements of it, not all of these designated heritage assets were covered. The parties concentrated on a number of specific heritage assets to demonstrate their points and I intend to follow a similar path. At the head of that was the status of Kew Gardens as a WHS, and linked to that, because similar issues are

⁶⁸⁷ LBH/2/B4.2 Viewpoint 7, CDA.11 View 11 Page 115, and CDA.15 View 47 Page 71

⁶⁸⁸ LBH/2/B4.2 Viewpoint 8 and CDA.11 View 29 Page 181

⁶⁸⁹ LBH/2/B4.2 Viewpoint 8 (Citadel)

⁶⁹⁰ CDA.15 Views 43-45

⁶⁹¹ A full schedule can be found at HE/1/C Appendix 2.14

raised, a Registered Park and Garden, and conservation area. Below that, but no less important, a number of individual listed buildings were considered: Kew Palace (a Grade I listed building and SAM); the Orangery (Grade I); the Temple of Aeolus (Grade II); Cambridge Cottage (Grade II); the Palm House (Grade I); the Temperate House (Grade I); and the Pagoda (Grade I).

- 12.98 It is helpful at the outset to consider the five attributes of Kew Gardens WHS's OUV as set out by UNESCO⁶⁹²: a rich and diverse historic cultural landscape providing a palimpsest of landscape design; an iconic architectural legacy; globally important preserved and living plant collections; a horticultural heritage of keynote species and collections; and key contributions to developments in plant science and plant taxonomy. It is accepted that it is mainly the first two attributes that have the capacity to be affected by the proposal – the rich and diverse historic cultural landscape providing a palimpsest of landscape design, and the iconic architectural legacy.
- 12.99 It is important, at this stage, to carefully consider one's approach. There is no dispute that the proposal would be visible from various parts of Kew Gardens, often in conjunction with, or from, listed buildings. There can be no doubt therefore that the Chiswick Curve would have an effect on the setting of Kew Gardens as a whole, but also the settings of various designated heritage assets within it.
- 12.100 The buildings that provide Kew Gardens' iconic architectural legacy are an important constituent of the palimpsest of landscape design. It seems to me then that any harm caused to the setting of any of these listed buildings, would thereby harm the significance of that building, but also that of the designed landscape. Given that the buildings and the designed landscape are important aspects of OUV, the OUV of the WHS, and its significance would be harmed, as would the significance of the Registered Park and Garden, and the conservation area. General views of the proposal and cumulative issues need to be considered too and it is to those that I turn first.
- 12.101 HE says that the setting of Kew Gardens cannot be separated from the first three attributes of OUV. The experience of the designed and historic cultural landscape of Kew Gardens, the iconic architectural legacy, and the living plant collections, is revealed and enhanced by the ability to appreciate these qualities in a well preserved environment that still resonates with the sense of an Arcadian escape from the world of intense city living⁶⁹³.
- 12.102 The appeal site is not within the buffer zone of the WHS⁶⁹⁴. Also, it is fair to observe that the ability to see elements of the city beyond, like the tower blocks of the Haverfield Estate, or the so-called 'Kew Eye', and others, from within Kew Gardens, provides a reminder of what the observer is escaping from. Nevertheless, HE's statement neatly encapsulates the way in which the setting of Kew Gardens contributes to its significance.

⁶⁹² CDF.16 and CDF.17 refer

⁶⁹³ HE/1/A Paragraph 6.2.17

⁶⁹⁴ CDF.10 Figure 5 Page 34

- 12.103 The Chiswick Curve would not figure prominently, or at all, in the series of important sight lines and views set out in the Management Plan⁶⁹⁵. However, it would be visible from Kew Palace, and the Pagoda. Moreover, it would be readily visible from various places, particularly in the northern and eastern zones of Kew Gardens⁶⁹⁶. If one accepts, and I do, that the experience of the designed and historic cultural landscape of Kew Gardens, the iconic architectural legacy, and the living plant collections, is revealed and enhanced by the ability to appreciate these qualities in a well preserved environment that still resonates with the sense of an Arcadian escape from the world of intense city living, then the visibility of the Chiswick Curve, as part of the city beyond, would have something of a harmful impact on the setting of Kew Gardens, and as a result, the OUV of the WHS, and its significance and the significance of the Registered Park and Garden and the conservation area.
- 12.104 The quality of its design might act as something of a salve but it could not take that harmful impact away.
- 12.105 Policy 1d of the Management Plan says that development which would impact adversely on the WHS, its OUV, or its setting, should not be permitted but the analysis cannot be as simple as that.
- 12.106 As I have dwelt on above, the policies of the Council, and the Mayor, adopted and emerging, strongly favour the development of the Great West Corridor as an Opportunity Area, with tall buildings as an integral part of that approach. Given the heights the Council favours, 60m on the appeal site for example, or the height of the Citadel, those tall buildings are also going to be visible from within Kew Gardens. The view of the Mayor in relation to the proposal for the Citroen Garage (which has a height of around 73m AOD) shows what he is prepared to accept in the balance between benefits and harm to Kew Gardens.
- 12.107 In that overall context, the idea that Kew Gardens can be completely 'protected' from further visual intrusions of the city beyond is a battle that has been fought and lost. Granted, the Chiswick Curve would be higher and therefore more visible, but as I have set out above, in considering the impact on other designated heritage assets, there are aspects of its design, notably the interconnecting forms, the glazing, and the fins, that would act as controls on its scale. Moreover, in that it would set out a properly legible hierarchy for the new stratum of development along and around the Great West Corridor that is going to come forward, the additional height is not a significant drawback, in my view.
- 12.108 There was a good deal of debate about the cumulative impact of the proposal too. There is some force in the appellant's point that the situation at the date of inscription sets the baseline for consideration of cumulative impacts. However, it is made plain that elements such as the Haverfield Towers were seen, at the point of inscription, as significant detractors. If one accepts that part of Kew Gardens' significance as a designated heritage asset is its status as an escape from the city, then any intrusion by that city must be harmful. In

⁶⁹⁵ CDF.10 Figure 12 Page 95

⁶⁹⁶ CDF.10 Figure 11 Page 46

that sense, it is not irrational, in my view, to look back beyond the point of inscription even if that process has some out-turns that appear strange⁶⁹⁷.

- 12.109 That said, what this cumulative point issue goes to is the degree of harm that would be caused by the proposal, in revised Framework terms. I return to this matter in some detail below.
- 12.110 As set out, Kew Palace is a Grade I listed building and a SAM. It is one of the most important parts of the iconic architectural legacy of the gardens and it is a fundamental constituent of the designed landscape. The frontage of the building is particularly striking, in terms of its symmetry, and the vibrancy of its colour. It is unfortunate that the 'Kew Eye' and the Haverfield Towers appear prominent in some important axial views of the frontage. The Chiswick Curve would be very much on the periphery of those more distant axial views and what the parties have highlighted as potentially damaging are two particular views. The first is from points near to the frontage of Kew Palace⁶⁹⁸, and the second is the view out from north-east facing, upper floor windows⁶⁹⁹.
- 12.111 When one is near the frontage, its striking appearance makes it very difficult to focus on anything else. One of the benefits of being closer to the frontage is that one cannot see tall buildings to the north of the Thames beyond. In that light, the emergence of the Chiswick Curve from behind the trees to the right of the approach would not make for a happy juxtaposition. Its appearance would detract, to a degree, from the setting of Kew Palace, and its significance. Neither the Citadel nor any other 60m tall building on the appeal site would appear in these views.
- 12.112 Views from the north-east facing upper windows of Kew Palace already take in elements of the city beyond. However, the proposal would protrude much further above the tree line. It appears to me that this prominent presence would take something away from the setting and the significance of Kew Palace. However, it seems to me more than likely that the Citadel or another 60m tall building would also appear in these views, along with other developments along and around the Great West Corridor. In that context the benefits of the design of the building, and the hierarchy it would set up, that I have rehearsed at length above, would come into play.
- 12.113 In summary, the proposal would cause a degree of harm to the setting, and thereby the significance of Kew Palace, and as a consequence, the OUV of the WHS, and its significance, and the significance of the Registered Park and Garden, and the conservation area.
- 12.114 The Orangery is a Grade I listed building by the architect, William Chambers. Like Kew Palace, it is a very important part of Kew Garden's iconic architectural legacy, and it has a central place in the designed landscape. Befitting its classical language and symmetry, axial views are central to an understanding of the building in its landscape setting.

⁶⁹⁷ Such as that the Standpipe Tower, at the Kew Bridge Steam Museum, a listed building, is a detractor

⁶⁹⁸ CDA.11 View 32 and LBH/2/B4.2 Viewpoint 12

⁶⁹⁹ CDA.11 View 31 and LBH/2/B4.2 Viewpoint 13

- 12.115 Although they take in some of the unfortunate additions that have been made to the rear of the building, views towards the Orangery from and around the Broad Walk, across the Great Lawn, or what remains of its original conception, are essential to an understanding of the place of the Orangery in the designed landscape. As such, they are integral to the contribution setting makes to its significance.
- 12.116 The Chiswick Curve would be present in these views, sometimes in juxtaposition, sometimes emerging above the roof of the Orangery⁷⁰⁰, depending on the viewing position. It would distract from, and compete with, the Orangery as the focus of the view. This would be harmful to the setting and thereby the significance of the Orangery.
- 12.117 However, the policy approach to the Great West Corridor, and the area nearby, needs to be considered here. In terms of the latter, the visual representations show that the Brentford FC scheme, and the proposals for the Citroen site, will impinge on the Orangery in these views across the Great Lawn. Moreover, the Citadel or another 60m building on the appeal site is likely to as well. Against the background of this new stratum of development coming forward, the design subtleties of the building, and the hierarchical discipline it would set up, that I have covered above, would come to pass.
- 12.118 Nevertheless, the proposal would cause a degree of harm to the setting, and thereby the significance of the Orangery, and as a consequence, the OUV of the WHS, and its significance, and the significance of the Registered Park and Garden, and the conservation area.
- 12.119 The Temple of Aeolus is a Grade II listed building, an open, circular, classical composition, located atop a mound. It was clearly conceived as a building to look out over the gardens from, and as a building to be seen from the gardens. To the north of the Temple, separated by the Order Beds, lies Cambridge Cottage, a notable 18th Century townhouse with Royal connections and a Grade II listed building. It is part of the Kew Gardens complex but also fronts on to Kew Green. For reasons that will become clear, the impact on these two designated heritage assets can be dealt with together.
- 12.120 Views to the north from the Temple of Aeolus have the Order Beds and the rear of Cambridge Cottage in the foreground. The Chiswick Curve would be present in these views⁷⁰¹. It would also be visible above Cambridge Cottage from the Order Beds, from the Rockery, and from the Grass Garden⁷⁰², and from the front of Cambridge Cottage, over Kew Green⁷⁰³.
- 12.121 As far as the Temple of Aeolus is concerned, the view over the Order Beds already takes in the city beyond, and tall buildings are already prominent fixtures in that view. The Chiswick Curve would be an even more prominent feature. However, it is evident that the Citadel, or another 60m tall building on the appeal site, and other development in and around the Great West Corridor coming forward, will also be visible. In that it is a building sited so as to

⁷⁰⁰ CDA.11 View 16, CDA.15 View 36 and LBH/2/B4.2 Viewpoint 14

⁷⁰¹ CDA.11 View 35 and LBH/2/B4.2 Viewpoint 18

⁷⁰² LBH/2/B4.2 Viewpoints 19, 20 and 21

⁷⁰³ LBH/2/B4.2 Viewpoint 11

facilitate views outwards, I do not believe that the presence of the city, and tall buildings, beyond, are harmful to its setting or significance.

- 12.122 Cambridge Cottage is a different proposition. While relatively modest in height and design, the rear of the building provides a sense of enclosure to the Order Beds, the Rockery, and the Grass Garden. In views of the rear from those areas, and from the Temple of Aeolus, the Chiswick Curve would tower above it, and from some points, emerge above the roof.
- 12.123 In views from the Temple of Aeolus, the Citadel or another 60m tall building on the appeal site would have a similar effect so the design benefits of the proposal, and the hierarchy it would set up, would assist. However, it seems to me, from an analysis of the Council's viewpoints, that they would not be visible from the Order Beds, the Rockery, and the Grass Garden. From these locations, notwithstanding the subtleties in the design of the Chiswick Curve, the juxtaposition of forms would appear jarring and undermine the sense of enclosure Cambridge Cottage provides. That would harm its setting, and its significance, and by extension, the OUV of the WHS, and its significance, because Cambridge Cottage adds something to the iconic architectural legacy, and the significance of the Registered Park and Garden, and the conservation area. The impact of the proposal in views from the front of Cambridge Cottage, over Kew Green, would have a harmful impact on its setting, and thereby its significance too.
- 12.124 The Palm House is a Grade I listed glasshouse, and a central facet of the iconic architectural legacy of Kew Gardens, and a lynchpin of the designed landscape. There would be views of the Chiswick Curve, filtered through trees, from the rear of the Palm House, the front, near the main entrance, and from points around the formal pond its frontage addresses⁷⁰⁴.
- 12.125 In the approach towards the rear of the Palm House from the south-west and west, there are no existing manifestations of the city beyond. I recognise that this approach towards the Palm House, from the Temperate House, has been used to gauge the height of the building⁷⁰⁵, but even glimpses of the Chiswick Curve through the trees, on this approach, would appear anachronistic and harmful to the setting, and the significance of the Palm House. It appears to me that neither the Citadel, nor any other 60m building on the appeal site would appear in these views, and neither would other development in and around the Great West Corridor.
- 12.126 In other views of, and from the Palm House and the area around it, tall buildings in the city beyond, notably the Haverfield Towers, the BSI Building, and Vantage West, are unwelcome intrusions, particularly in the winter. The Chiswick Curve would add to the intrusion, and harm the setting, and the significance of the Palm House. Again, there might be some further intrusion in the pipeline as a result of the Brentford FC scheme, and the development on the Citroen site, if it is implemented in the form favoured by the Mayor. However, it appears to me from a study of the visuals that neither the Citadel

⁷⁰⁴ CDA.11 Views 17-20, and LBH/2/B4.2 Viewpoints 16 and 17

⁷⁰⁵ And I see nothing intrinsically wrong with the attempt by the Design Team to defer to the Palm House in these views notwithstanding the points taken about that approach

nor another 60m building on the site would be readily visible in these particular views.

- 12.127 Taking those points together, I consider that the proposal would have a harmful impact on the setting and thereby the significance of the Palm House, which would, in turn, cause harm to the OUV of the WHS, and its significance, and the significance of the Registered Park and Garden, and the conservation area.
- 12.128 The Pagoda is a Grade I listed building, designed by William Chambers, and recently re-opened to the public. It is a central part of the iconic architectural legacy of the gardens, and a fundamental constituent of the designed landscape. I was able to climb to the top in the course of my accompanied site visit. The view from the top, and from windows on the way up, is very wide in its compass and I was told that in good visibility, it can stretch very far indeed.
- 12.129 It is obvious that the Pagoda was designed to provide views out, well beyond the confines of the gardens. It is possible to see a lot of the city, and points west of London, from it. The ability to see the Chiswick Curve from the Pagoda would fit comfortably with that purpose. That ability would have no harmful impact on the setting or the significance of the Pagoda, and as a consequence, no harmful impact on the OUV of the WHS, or its significance, or the significance of the Registered Park and Garden, or the conservation area.
- 12.130 It is also necessary to address the issue of trees within Kew Gardens. Analysis of the various visual representations demonstrates that many views of the proposal would be filtered, or partly screened, by trees, and many potential views of the Chiswick Curve would be blocked entirely by trees. Obviously, it must be appreciated that the capacity of some trees to filter, partly screen, or block views will change with the seasons. Further, trees have a limited lifespan, they can be destroyed or damaged by high winds, amongst other things, and there are many reasons, including disease, why they sometimes need to be modified, or removed completely. It would be wrong, therefore, to rely on the presence of a tree, or trees, to justify an impact and I have not.
- 12.131 Notwithstanding that, the appellant makes a sound point about the ability of RBGK to manage, or plant trees. It is clear that the gardens are closely, and well, managed and if the march of development north of the Thames is something RBGK is concerned about, then they do have the ability in their planting and/or management plans, to do something about it.
- 12.132 To sum up in relation to Kew Gardens, the proposal would cause a degree of harm to the setting, and thereby the significance of Kew Palace, a Grade I listed building and SAM, the Orangery, a Grade I listed building, Cambridge Cottage, a Grade II listed building, and the Palm House, a Grade I listed building. These buildings are an integral part of the iconic architectural legacy of the gardens, and fundamental elements of the designed landscape. Alongside general visibility of the proposal, the harm caused to their settings, and significance feeds into harm to the OUV of the WHS, and its significance, the significance of the Registered Park and Garden, and the conservation area. To a degree, the proposal would compromise a viewer's ability to appreciate its OUV, integrity, authenticity, and significance. **[5.43-5.60, 6.43-6.50, 7.30-7.154, 8.1, 9.54-9.134, and 10.5]**

Conclusion on this Matter

- 12.133 Summing up, in the case of the setting and significance of a number of conservation areas, I have found no harmful impact. However, the proposal would cause harm to the setting and thereby the significance of the Strand-on-the Green Conservation Area, and the listed buildings within it, fronting the river, and the Kew Green Conservation Area, and the listed buildings in the northern frontage of the green, as well as St Anne's Church.
- 12.134 Moreover, the visual presence of the Chiswick Curve, in views from the terrace at the front of the Large Mansion in particular, would cause harm to the setting, and thereby the significance, of the Large Mansion, the Orangery, and the Registered Park and Garden, as parts of the Gunnersbury Park Conservation Area. Finally, the proposal would cause a degree of harm to the setting, and thereby the significance of Kew Palace, the Orangery, Cambridge Cottage, and the Palm House, and as a result of that, alongside general visibility from within the gardens, the OUV of the WHS, and its significance, the significance of the Registered Park and Garden, and the conservation area.
- 12.135 Many of these designated heritage assets affected are of the highest order of significance. Paragraph 193 of the revised Framework, and s.66 of the Act, mean that this finding must attract great weight, or considerable importance and weight, in any balancing exercise. It is the nature of that balancing exercise to which I now turn.

The Degree of Harm Caused

- 12.136 Given the approach of the revised Framework, the nature of the balancing exercise depends on whether that harm to significance is assessed as substantial, as suggested by the Council and HE in relation to the Strand-on-the Green and Kew Green Conservation Areas, and RBGK suggest in relation to cumulative harm to Kew Gardens, or less than substantial. This is a difficult and often contentious area and I specifically asked that the advocates address the question of calibrating less than substantial and substantial harm in closing, and I am very grateful for the assistance given.
- 12.137 I note what HE says about the judgment of the Court of Appeal in *Barnwell Manor* but whatever one now makes of that judgment, in the light of the same Court's conclusions in *Mordue*, as the appellant points out, it is of no assistance at all in assessing where the threshold between substantial and less than substantial harm lies. The High Court in *Bedford* addressed that question head on concluding that: *one was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*. To put it another way, substantial harm would be caused if: *very much if not all of the significance of the asset was drained away*.
- 12.138 Questions have been raised about the relationship between this conclusion and the way the matter is addressed in the PPG, and whether there is tension between the two. If there is tension, then I agree with the appellant that the conclusion of the Court is overriding. However, the PPG makes it plain that substantial harm is a high test and that seems to me to sit very comfortably with the conclusion in *Bedford*.

- 12.139 The Council and HE place reliance on the example given in the PPG which says: *in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.* Put simply, the Council and HE argue that the proposal would seriously affect the special interest of the Strand-on-the Green and Kew Green Conservation Areas and draw parallels with the advice in the PPG on that basis. However, I cannot agree with that approach.
- 12.140 The special architectural and historic interest of a listed building is embodied in the building itself, not its setting. Similarly, the special interest of a conservation area is contained in that area. This is borne out by s.69(1) of the Act which says: *Every local planning authority - (a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and (2) shall designate those areas as conservation areas.*
- 12.141 It seems to me that if one conceives of a parallel example to that given in the PPG in relation to listed buildings, then it would involve a physical change to the conservation area, such as the removal of an important building. Indeed, that example of where substantial harm might be caused to (the significance of) a conservation area is set out in the PPG⁷⁰⁶.
- 12.142 If one accepts that the special architectural or historic interest (as opposed to significance) of a listed building cannot be affected by development in its setting, then it must also be the case that the special interest (as opposed to significance) of a conservation area, which is a similarly intrinsic quality, would be unaffected by development in its setting. The example in the PPG cited by HE and the Council has no useful application here.
- 12.143 This leads on to a question that, as the parties point out, I have dealt with previously⁷⁰⁷. In reporting on the Razor's Farm appeal, having regard to the conclusions in *Bedford*, I said: *The PPG sets out that substantial harm is a high test and goes on to note that in terms of assessing proposals affecting listed buildings, the key question is whether the adverse impact seriously affects a key element of its special architectural and historic interest. If that is so, it is difficult to envisage how an impact on setting, rather than a physical impact on special architectural and historic interest could ever cause substantial harm.*
- 12.144 The SoS disagreed largely on the basis that the significance of a heritage asset derives not only from the asset's physical presence, but also from its setting. That conclusion of the SoS tallies with the suggestion in the PPG, where it deals with wind (and solar) energy, that: *depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.*
- 12.145 As a principle, I see no reason why the same advice could not be applied to a tall building like the proposal at issue. However, having regard to the conclusions in *Bedford*, notwithstanding questions of scale, design and prominence, substantial harm could only be caused if the heritage asset

⁷⁰⁶ Paragraph 018 Reference ID: 18a-018-20140306

⁷⁰⁷ In my report on the proposal at Razor's Farm APP/3/D Appendix 6 IR Paragraph 10.16

concerned derived most of its significance from its setting. It is difficult to see how very much if not all of the significance of the asset could be drained away otherwise. One can think of examples such as fortifications, eye-catchers or follies, or lighthouses, perhaps, where a good deal of the asset's significance would be contained in its setting. On that basis, the PPG is not wrong, in general terms.

- 12.146 However, no-one could reasonably argue that any of the designated heritage assets at issue in this case derive most of their significance from their setting. In all cases, by far the greatest part of their significance, and in the case of the WHS, its OUV, is held in their confines and/or fabric. What this means is that in the light of the conclusions in *Bedford*, the harm that I have identified can only reasonably be assessed as less than substantial.
- 12.147 As I have referred to above, points were made about cumulative impacts on Kew Gardens, and whether one should look at impacts since the date of inscription, or further back. In my view the point is largely academic because as the Statement of OUV sets out, much of the significance of Kew Gardens is tied up in the gardens and the buildings. Kew Gardens derives some significance from its setting but that is a small part of its significance, overall. In that context, even if RBGK is right, and one should look back further than the date of inscription to assess cumulative impacts, the harm caused by the proposal, along with all the other intrusions into the visual envelope, would still be less than substantial, and nowhere near the level of harm required to be deemed substantial.
- 12.148 Put simply, I do not see how the harm to significance that would be visited by the Chiswick Curve, alongside all the other harmful interventions going back in time, would be such that the significance of Kew Gardens was vitiated altogether, or very much reduced. All the intrinsic significance of Kew Gardens would be untouched. In that context, I see no good reason why the WHS might be put on the List of World Heritage Sites in Danger as a result of the proposal.
- 12.149 Taking those points together, and having regard to the status of some of the designated heritage assets involved, paragraph 193 of the revised Framework, and s.66 of the Act, mean that this (less than substantial) harm to significance must attract great weight, or considerable importance and weight, in any balancing exercise.
- 12.150 Importantly though, the balancing exercise required is that set out in paragraph 196 of the revised Framework. Of relevance here, this says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. With that in mind, it is necessary to address those benefits. **[5.10-5.23, 6.3-6.22, 7.155-7.171, and 9.164-9.179]**

Benefits

- 12.151 The appellant points to a wide range of benefits that the proposal would bring forward. The first notable benefit of the scheme is the provision of 327 new homes, 116 of which would be affordable, which is in excess of the maximum viable level of affordable housing.

- 12.152 The Council sought to downplay this by pointing to the fact that they have well in excess of a five year supply of deliverable housing sites. They may well have in relation to their current OAN, as enshrined in the HLP, but that OAN is going to rise significantly as a result of the DRLP. Moreover, it is not correct to look at the Council area alone, given that London is one Housing Market Area, and a Housing Market Area with extreme pressures, especially in terms of affordability. In that context, the housing the scheme would bring forward, and the affordable housing especially, is a benefit that must attract significant weight in the planning balance.
- 12.153 The proposal would bring forward a significant amount of high-quality workspace too. The Council, through their emerging policy, favour an office solution for the site and indeed, suggest that the Citadel would be a better prospect on the basis of the jobs it would bring to the area. However, they make the point that there is no guarantee that the new workspace in the proposal would bring new jobs; it might just feed the relocation of existing jobs. To my mind, the same argument could well be made about the Council's favoured use for the site. There are doubts too about whether this kind of solution would be viable, given the negative points made in relation to the viability of the Citadel.
- 12.154 In my view, the mix of high-quality new housing and workspace the scheme would bring forward is a much better solution for the site. I reach that conclusion in the light of Section 11 of the revised Framework and the encouragement therein to make effective use of land, and especially brownfield land. The mix of uses in the proposal certainly does that.
- 12.155 Of course, that does not come without environmental impacts, but the proposal, by reason of its sophisticated design, would bring a massive uplift to the local area, on a key gateway site deemed suitable for a 'marker', providing an active frontage, accessible ground and first floor uses, and environmental improvements to the area immediately surrounding the building.
- 12.156 It would act as a beacon, setting very high standards for other buildings coming forward in the Great West Corridor Opportunity Area. Viewed from further afield, it would cause some harm to the setting and thereby the significance of a range of designated heritage assets. However, the same would be true of the Citadel, or the 60m tall building the Council favours for the site. As I have set out, in these more distant views, the Chiswick Curve would create a legible hierarchy for the new stratum of development that will come forward in the Opportunity Area. I accept that others have a less favourable view about the qualities of the proposal but in my view, the provision of a work of architecture, of the quality proposed, represents a significant benefit.
- 12.157 Questions were also raised about the potential for 'value engineering' once planning permission is granted and I was given examples of projects where this has been an issue. Issues around viability, and the potential for changes in the Building Regulations in relation to tall buildings, make this a possibility. However, the solution is a very simple one – if attempts are made to dilute the quality of the proposal, then the whole balance of considerations would be changed because some of the benefits of the design would be lost. It is therefore possible for the Council to resist such changes.

- 12.158 There are other benefits in the proposal too. Like its predecessor, the revised Framework sets great store on building a strong, competitive economy. Paragraph 80 says that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs, and wider opportunities for development. There can be no doubt that a project of the scale of the Chiswick Curve would create significant economic activity, and employment, in the construction phase, and beyond.
- 12.159 In my view, these benefits are of great magnitude and must carry a good deal of weight in the planning balance. **[5.111-5.116, 6.79, 8.15-8.30, 9.202-9.207 and 10.8]**

Final Conclusion

- 12.160 As I have set out, the proposal would cause harm to the setting and thereby the significance of the Strand-on-the Green Conservation Area, and the listed buildings within it, fronting the river, and the Kew Green Conservation Area, and the listed buildings in the northern frontage of the green, as well as St Anne's Church. Moreover, the visual presence of the Chiswick Curve, in views from the terrace at the front of the Large Mansion in particular, would cause harm to the setting, and thereby the significance, of the Large Mansion, the Orangery, and the Registered Park and Garden, as parts of the Gunnersbury Park Conservation Area. Finally, the proposal would cause a degree of harm to the setting, and thereby the significance of Kew Palace, the Orangery, Cambridge Cottage, and the Palm House, and as a result of that, alongside general visibility from within the gardens, the OUV of the World Heritage Site, and its significance, the significance of the Registered Park and Garden, and the conservation area.
- 12.161 Paragraph 193 of the revised Framework, and s.66 of the Act, mean that this finding must attract great weight, or considerable importance and weight, in any balancing exercise. Moreover, it means that the proposal falls contrary to LP Policies 7.8 and 7.10. **[4.10-4.11, and 4.47-4.54]**
- 12.162 That cannot be the end of the matter though. If it was, then it is difficult to conceive of the Council and the Mayor's ambitions for the Great West Corridor coming to fruition because the proposals coming forward would have similar impacts on designated heritage assets. It is fair to observe too that these LP policies do not contain the facility to balance benefits against harm, in the way the revised Framework does.
- 12.163 Notwithstanding that great weight, or considerable importance and weight, must be attached to findings of harm to the significance of designated heritage assets, and especially those of the highest order, and the setting of listed buildings, and the strong presumption against any grant of planning permission in such circumstances, it is possible for other considerations to be even more weighty.
- 12.164 In London especially, decision-makers need to strike a balance between the protection of significance of designated heritage assets, and the OUV of WHSs, and the need to allow the surrounding land to change and evolve as it has for centuries. In this case, while I recognise that others, including the SoS may disagree, it is my view that the extensive public benefits the proposal would bring forward are more than sufficient to outweigh the less than substantial

harm that would be caused to the significance of the various designated heritage assets. As a consequence, the proposal accords with HLP Policy CC4. **[4.28]**

- 12.165 On top of that, it is my view that notwithstanding the harmful impact it would have on the significance of designated heritage assets, viewed in the round, the design of the proposal is of the highest architectural quality. I do not subscribe to the view that a proposal that causes harm to the setting and thereby the significance of a designated heritage asset cannot represent good design. The proposal would bring a massive uplift to the area immediately around it, in accordance with LP Policies 7.1 and 7.4, and HLP Policies CC1 and CC2 and notwithstanding some harmful impacts that I regard as tolerable, it would make very efficient use of a brownfield site, in accordance with DRLP Policy D6⁷⁰⁸. For the same reasons, there would be compliance with HLP Policies SC1, SC2, SC3, and SC4. There would be no harm caused to MOL as required by HLP Policy GB1 and the proposed advertisements would raise no significant issues in terms of amenity, or public safety, as required by HLP Policy CC5. On that overall basis, the proposal would accord with all the criteria set out in paragraph 127 of the revised Framework. **[4.3-4.4, 4.23, 4.25, 4.29-4.31]**
- 12.166 In terms of its wider impacts, by reason of its height, and more particularly its design, the proposal would bring a legible hierarchy to the new layer of urban development that will be coming forward in the Great West Corridor. In that respect, it would perform much better than the Citadel, or the Council's favoured approach to the site.
- 12.167 Put simply, the way this new layer of urban development will be perceived from, and in association with designated heritage assets, demands an approach that, like the proposal, has verve. I am afraid the Council's more compromising approach, enshrined in emerging policy, would result in a layer of development with little sense of differentiation. I note what is said about the ability of using design to set a 'marker' in the supporting text to Policy CC3, but this would be difficult to achieve when all tall buildings are expected to exhibit the highest standards of architectural design. **[4.27, and 4.33-4.38]**
- 12.168 For all these reasons, I am of the view that the proposal would accord with LP Policies 7.6 and 7.7 and HLP Policy CC3. Moreover, the mix of uses in the scheme, and the housing especially, would comply with LP Policy 2.16, LP paragraphs 3.13 and 3.14A, and the thrust of DRLP Policy SD1. The housing would assist in meeting the requirements of LP Policies 3.3, 3.4 and 3.5. The affordable housing element would accord with LP Policies 3.8, 3.9, 3.11, 3.12, and 3.13. **[4.5-4.6, 4.12-4.20, 4.22-4.26]**
- 12.169 As set out above, the individual homes would comply with HLP Policy SC5, and there would be no divergence from it in terms of access to suitable external space. **[4.32]**

⁷⁰⁸ And for this reason I have no issue with the failure of the appellant to disclose the project brief – given my conclusions about the balance between harm caused and public benefits, there would be no difficulty if the brief was to extract as much as possible from the site.

- 12.170 Taking all those points together, I am content that the proposals comply with the development plan, read as a whole. Moreover, the scheme is in compliance with the revised Framework. There are no other material considerations of sufficient weight to warrant a conclusion other than that planning permission should be granted for the proposal covered by Appeal A, and advertisement consent be granted under the auspices of Appeal B. **[5.123-5.128, 6.76-6.79, 7.163-7.182, 8.22-8.31, and 9.199-9.208]**
- 12.171 There is one additional matter that requires coverage. Notwithstanding the views I have expressed, it is of course open to the SoS to disagree with my conclusions about the level of harm that would be caused to the significance of the affected designated heritage assets.
- 12.172 If the SoS agrees with the Council, HE, and RBGK, and reasons that there would be substantial harm caused, and paragraph 195 of the Framework is brought into play, rather than paragraph 196, then the correct course would be to dismiss the appeals. That is because the failure of the appellant to deal fully with alternatives means that it would not have been demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm, as required by paragraph 195. **[5.125-5.128, 6.76-6.78, 7.163-7.171, and 9.209]**

13 Recommendations

Appeal A

- 13.1 I recommend that the appeal is allowed, and planning permission granted subject to the conditions in Annex C.

Appeal B

- 13.2 I recommend that the appeal is allowed and advertisement consent granted subject to the conditions in Annex C.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground QC

Instructed by the Council of the London Borough of Hounslow

He called

Michael Spence
BA(Hons) MLD CMLI REIA FRGS
MS Environmental

Philip Grover
BA(Hons) BTP DipArch(Cons) MRTPI IHBC
Director, Grover Lewis Associates Ltd

Shane Baker
BTP MRTPI
Manager of Strategic Projects,
London Borough of Hounslow

FOR HISTORIC ENGLAND:

Richard Harwood QC

Instructed by Historic England

He called

Michael Dunn
BA MA DipUD IHBC
Team Leader, HE London Region

FOR THE ROYAL BOTANIC GARDENS KEW:

James Maurici QC

Instructed by the Royal Botanic Gardens Kew

He called

Andrew Williams
MSc
Director of Estates and Capital Development
RBGK

Andrew Croft
BA MA
Director, Chris Blandford Associates

FOR THE KEW SOCIETY:

Martin Taylor MA FRICS

Instructed by the Kew Society

FOR THE APPELLANT:

Mr Russell Harris QC

Instructed by Starbones Ltd

He called

Christophe Egret
AA Dip RIBA Hon FRIAS
Co-Founding Director Studio Egret West

Richard Coleman
DipArch (Cant) ARB RIBA RIAI
Architecture, Heritage & Townscape Consultant

Paul Finch
OBE HonFRIBA

Chris Goddard
BA(Hons) BPL MRTPI MRICS
Board Director DP9

INTERESTED PERSONS:

Richard Griffiths

Chairman, Strand on the Green Association

Barbara Weiss RIBA

Skyline Campaign

Peter Eversden MBE

London Forum

Dennis Browne
AA Dip RIBA ARIAS
Dip Dist TP (Leeds)
MRTPI Rtd FRSA

Chairman, Planning Consultative Committee,
Brentford Community Council

Martin Case

Vice Chair Brentford Community Council

Marie Louise Rabouhans

Chairman, West Chiswick & Gunnersbury Society

Professor James Wisdom

Chair, Friends of Gunnersbury Park

Pamela Mayorcas

Local Resident and Representative of CHRAG

Tim Mack

Local Resident

Ruth Mayorcas

Local Resident

Joanna Biddulph

Local Councillor

Annex B: DOCUMENTS

CORE DOCUMENTS

CDA APPLICATION DOCUMENTS

CDA.01	Design and Access Statement, December 2015
CDA.02	Design and Access Statement Addendum, October 2016
CDA.03	Planning Statement, December 2015
CDA.04	Transport Assessment, December 2015
CDA.05	Residential Travel Plan, December 2015
CDA.06	Framework Workplace Travel Plan, December 2015
CDA.07	Sustainability Statement, December 2015
CDA.08	Energy Statement, December 2015
CDA.09	Environmental Statement Volume 1: Non-Technical Summary, December 2015
CDA.10	Environmental Statement Volume 2: Main Report, December 2015
CDA.11	Environmental Statement Volume 3: Townscape, Heritage and Visual Assessment, December 2015
CDA.12	Environmental Statement Volume 4: Appendices. December 2015
CDA.13	Environmental Statement Addendum Volume 1: Revised Non-Technical Summary, October 2016
CDA.14	Environmental Statement Addendum Volume 2: Revised Main Text and Figures, October 2016
CDA.15	Environmental Statement Addendum Volume 3: Addendum to Townscape, Built Heritage and Visual Impact Assessment, October 2016
CDA.16	Environmental Statement Addendum Volume 4: Technical Appendices, October 2016
CDA.17	A3 Application Drawings
CDA.18	Planning Application Forms and Schedules, December 2015
CDA.19	Preliminary Ecological Appraisal, December 2015
CDA.20	Statement of Community Involvement, December 2015
CDA.21	Office Report, December 2015
CDA.22	Archaeological Assessment, December 2015
CDA.23	Viability Statement, December 2015
CDA.24	Planning Application Forms and Schedules, October 2016

CDB COUNCIL DOCUMENTS

- CDB.01 Officer Report to the Council's Planning Committee 12 January 2017
- CDB.02 Addendum to Officer Report to the Council's Planning Committee 12 January 2017
- CDB.03 Response to Draft Planning Committee Report prepared by Appellant, January 2017 (*document incorrectly states 2016*)
- CDB.04 Planning Permission Decision Notice dated 9 February 2017
- CDB.05 Advertisement Consent Decision Notice dated 9 February 2017
- CDB.06 Planning Committee Minutes dated 12 January 2017

CDC NATIONAL AND REGIONAL PLANNING POLICY

- CDC.01 National Planning Policy Framework, March 2012
- CDC.02 Extracts from Planning Practice Guidance: 18a Conserving and Enhancing the Historic Environment; 18b Advertisements; and 26 Design
- CDC.03 Draft National Planning Policy Framework, March 2018
- CDC.04 London Plan Consolidated with Alterations since 2011, March 2016
- CDC.05 Consultation Draft London Plan, December 2017
- CDC.06 Homes for Londoners, Affordable Housing and Viability SPG, August 2017
- CDC.07 Housing SPG, March 2016 (updated August 2017)
- CDC.08 Accessible London SPG 2014
- CDC.09 Character and Context SPG 2014
- CDC.10 Shaping Neighbourhoods, Play and Informal Recreation SPG 2012
- CDC.11 London' World Heritage Sites – Guidance on Settings SPG 2012

CDD COUNCIL AND OTHER LOCAL PLANNING POLICY AND DOCUMENTS

- CDD.01 Hounslow Local Plan 2015
- CDD.02 Hounslow Planning Obligations and CIL SPD, November 2015
- CDD.03 Air Quality SPD March 2008
- CDD.04 Great West Corridor Local Plan Review Preferred Options Consultation, October 2017
- CDD.05 Draft Brentford East Planning and Design SPD, October 2017
- CDD.06 Brentford East Capacity Study Final Report
- CDD.07 Hounslow Context and Local Character Plan

CDD.08 Golden Mile Vision and Concept Masterplan

CDE STATEMENTS OF CASE AND CORRESPONDENCE OF R6 PARTIES

CDE.01 Appellant's Statement of Case (Planning Appeal)

CDE.01a Appellant's Statement of Case (Advertisement Appeal)

CDE.02 Council's Statement of Case

CDE.03 Historic England's Statement of Case

CDE.04 Historic England's Consultation Response of 17 February 2017

CDE.05 Historic England's Heritage Consultation Response

CDE.06 Royal Botanic Gardens Kew's Statement of Case

CDE.07 Letter from Royal Botanic Gardens Kew dated 14 September 2017 enclosing Letters from Royal Botanic Gardens Kew dated 9 February 2016, 15 November 2016, and 19 December 2017 appending Report dated December 2016

CDE.08 Kew Society's Statement of Case

CDE.09 Letter from Kew Society dated 4 February 2016

CDE.10 Letter from Kew Society dated 18 September 2017

CDF HERITAGE

CDF.01 Strand on the Green Conservation Area Appraisal

CDF.02 Kew Green Conservation Area Appraisal

CDF.03 Chiswick House Conservation Area Appraisal

CDF.04 Gunnersbury Park and Surrounding Area Conservation Area Appraisal

CDF.05 Kew Gardens Conservation Area Appraisal

CDF.06 Grove Park Conservation Area Appraisal

CDF.07 Thorney Hedge Conservation Area Appraisal

CDF.08 Wellesley Road Conservation Area Appraisal

CDF.09 Kew Bridge Conservation Area Appraisal

CDF.10 Royal Botanic Gardens Kew World Heritage Site Management Plan 2014

CDF.11 Thames Landscape Strategy Kew to Chelsea 2002

CDF.12 HE Advice Note 2 – Managing Significance in Decision-Taking in the Historic Environment, July 2015

CDF.13 HE Advice Note 3 – The Setting of Heritage Assets 2017

CDF.14 HE Advice Note 4 – Tall Buildings 2015

CDF.15 HE Conservation Principles April 2008

- CDF.16 UNESCO World Heritage Inscription for Kew Gardens
- CDF.17 Statement of OUV for Kew Gardens
- CDF.18 An Approach to Landscape Character Assessment, Natural England, October 2014
- CDF.19 ICOMOS Site Evaluation from March 2003
- CDG GLA DOCUMENTS**
- CDG.01 Stage I Report, 18 February 2016
- CDG.02 Stage II Letter and Report, 6 February 2017
- CDH LEGISLATION AND CASELAW**
- CDH.01 Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- CDH.02 Part 5 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No.1824)
- CDH.03 Regulation 76 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.571)
- CDH.04 *Bedford Borough Council v SoS for Communities and Local Government* [2013] EWHC 2847 (Admin)
- CDH.05 *East Northamptonshire District Council v SoS for Communities and Local Government and Barnwell Manor* [2014] EWCA Civ 137
- CDH.06 *R (Irving) v Mid Sussex DC* [2016] EWHC 1529 (Admin)
- CDH.07 Town and Country Planning (Local Planning) (England) Regulations 2012
- CDI STATEMENTS OF COMMON GROUND**
- CDI.01 Draft Statement of Common Ground, 21 July 2017
- CDI.02 Statement of Common Ground in relation to Affordable Housing agreed between LB Hounslow and the Appellant
- CDJ CORRESPONDENCE**
- CDJ.01 Letter from TfL dated 27 January 2016
- CDJ.02 Letter from TfL dated 23 March 2016

MAIN AND THIRD PARTIES' DOCUMENTS

LBH LONDON BOROUGH OF HOUNSLOW DOCUMENTS

LBH/1/A	Proof of Evidence and Appendices of Philip Grover
LBH/1/B	Summary Proof of Evidence of Philip Grover
LBH/1/C	Erratum to Proof of Evidence of Philip Grover
LBH/2/A	Proof of Evidence of Michael Spence
LBH/2/B1	Appendix 1 to Proof of Evidence of Michael Spence
LBH/2/B2	Appendix 2 to Proof of Evidence of Michael Spence
LBH/2/B3	Appendix 3 to Proof of Evidence of Michael Spence
LBH/2/B4.1	Appendix 4.1 to Proof of Evidence of Michael Spence
LBH/2/B4.2	Appendix 4.2 to Proof of Evidence of Michael Spence
LBH/2/B5.1	Appendix 5 Part 1 to Proof of Evidence of Michael Spence
LBH/2/B5.2	Appendix 5 Part 2 to Proof of Evidence of Michael Spence
LBH/2/B5.3	Appendix 5 Part 3 to Proof of Evidence of Michael Spence
LBH/2/B5.4	Appendix 5 Part 4 to Proof of Evidence of Michael Spence
LBH/2/B6	Appendix 6 to Proof of Evidence of Michael Spence
LBH/2/B7	Appendix 7 to Proof of Evidence of Michael Spence
LBH/3/A	Proof of Evidence of Shane Baker including Appendices 6-8
LBH/3/B	Summary Proof of Evidence of Shane Baker
LBH/3/C1	Appendix 1 to Proof of Evidence of Shane Baker
LBH/3/C2	Appendix 2 to Proof of Evidence of Shane Baker
LBH/3/C3	Appendix 3 to Proof of Evidence of Shane Baker
LBH/3/C4	Appendix 4 to Proof of Evidence of Shane Baker
LBH/3/C5.1	Appendix 5.1 to Proof of Evidence of Shane Baker
LBH/3/C5.2	Appendix 5.2 to Proof of Evidence of Shane Baker
LBH/3/C5.3	Appendix 5.3 to Proof of Evidence of Shane Baker
LBH/3/C5.4	Appendix 5.4 to Proof of Evidence of Shane Baker
LBH/3/C5.5	Appendix 5.5 to Proof of Evidence of Shane Baker
LBH/3/C6	Appendix 9 to Proof of Evidence of Shane Baker
LBH/3/D	Erratum to Proof of Evidence of Shane Baker

- LBH/4 Assessment of the Applicant's Heritage and Townscape Analysis (Final Draft) prepared for the London Borough of Hounslow by the Built Heritage Consultancy, 19 February 2016
- LBH/5 Assessment of the Applicant's Heritage and Townscape Analysis (Supplementary Report) prepared for the London Borough of Hounslow by the Built Heritage Consultancy, 9 December 2016
- LBH/6 Appeal Decision APP/G5180/W/16/3144248 - Former Dylon International Premises dated 2 August 2016
- LBH/7 Photography and Photomontage in LVIA
- LBH/8 Hounslow Local Plan AMR 2016/17

HE HISTORIC ENGLAND DOCUMENTS

- HE/1/A Proof of Evidence of Michael Dunn
- HE/1/B Summary Proof of Evidence of Michael Dunn
- HE/1/C Appendices to Proof of Evidence of Michael Dunn
- HE/1/C1 Map of Viewing Position

RBG ROYAL BOTANIC GARDENS KEW DOCUMENTS

- RBG/1/A Proof of Evidence of Andrew Williams
- RBG/1/B Summary Proof of Evidence of Andrew Williams
- RBG/1/C1 Appendix 1 to Proof of Evidence of Andrew Williams
- RBG/1/C2 Appendix 2 to Proof of Evidence of Andrew Williams
- RBG/1/C3 Appendix 3 to Proof of Evidence of Andrew Williams
- RBG/1/C4 Appendix 4 to Proof of Evidence of Andrew Williams
- RBG/1/C5.1 Appendix 5 Part 1 to Proof of Evidence of Andrew Williams
- RBG/1/C5.2 Appendix 5 Part 2 to Proof of Evidence of Andrew Williams
- RBG/2/A Proof of Evidence of Andrew Croft
- RBG/2/B Summary Proof of Evidence of Andrew Croft
- RBG/2/C1 Appendices Part 1 (A to D) to Proof of Evidence of Andrew Croft
- RBG/2/C2 Appendices Part 2 (E to L) to Proof of Evidence of Andrew Croft
- RBG/3 Revised Letter from the UNESCO World Heritage Centre dated 28 May 2018 (updated version of that found in Appendix C to the Proof of Evidence of Andrew Croft)
- RBG/3a ICOMOS Technical Review of the planning application dated May 2018

TKS THE KEW SOCIETY DOCUMENTS

- TKS/1/A Proof of Evidence of Martin Taylor

TKS/1/B	Summary Proof of Evidence of Martin Taylor
TKS/1/B	Appendices to Proof of Evidence of Martin Taylor
TKS/1/D	Further Appendices to Proof of Evidence of Martin Taylor
APP	APPELLANT DOCUMENTS
APP/1/A1	Proof of Evidence of Christophe Egret Part 1
APP/1/A2	Proof of Evidence of Christophe Egret Part 2
APP/1/B	Summary Proof of Evidence of Christophe Egret
APP/1/C	Appendices to Proof of Evidence of Christophe Egret (Volume 1)
APP/1/D	Framing Serendipity: An Approach to Evolving Places – SEW
APP/1/E	Presentation by Christophe Egret in Evidence in Chief
APP/2/A	Proof of Evidence of Paul Finch
APP/2/B	Appendices to Proof of Evidence of Paul Finch
APP/2/C	Presentation by Paul Finch in Evidence in Chief
APP/3/A	Proof of Evidence of Richard Coleman
APP/3/B	Summary Proof of Evidence of Richard Coleman
APP/3/C1	Appendices – Part 1 of Volume 1 to Proof of Evidence of Richard Coleman
APP/3/C2	Appendices – Part 2 of Volume 1 to Proof of Evidence of Richard Coleman
APP/3/C3	Appendices – Part 3 of Volume 1 to Proof of Evidence of Richard Coleman
APP/3/D	Appendices – Volume 2 to Proof of Evidence of Richard Coleman
APP/3/E	Rebuttal Proof of Evidence of Richard Coleman
APP/3/F	Errata to Rebuttal Proof of Evidence of Richard Coleman
APP/4/A	Proof of Evidence of Chris Goddard
APP/4/B	Summary Proof of Evidence of Chris Goddard
APP/4/C1	Appendix 1 to Proof of Evidence of Chris Goddard
APP/4/C2	Appendix 2 to Proof of Evidence of Chris Goddard
APP/4/C3	Appendix 3 to Proof of Evidence of Chris Goddard
APP/4/C4	Appendix 4 to Proof of Evidence of Chris Goddard
APP/4/C5	Appendix 5 to Proof of Evidence of Chris Goddard
APP/4/C6	Appendix 6 to Proof of Evidence of Chris Goddard

APP/4/C7	Appendix 7 to Proof of Evidence of Chris Goddard
APP/4/C8	Appendix 8 to Proof of Evidence of Chris Goddard
APP/4/C9	Appendix 9 to Proof of Evidence of Chris Goddard
APP/4/C10	Appendix 10 to Proof of Evidence of Chris Goddard
APP/4/C11	Appendix 11 to Proof of Evidence of Chris Goddard
APP/4/C12	Appendix 12 to Proof of Evidence of Chris Goddard
APP/4/C13	Appendix 13 to Proof of Evidence of Chris Goddard
APP/4/C14	Appendix 14 to Proof of Evidence of Chris Goddard
APP/4/C15	Appendix 15 to Proof of Evidence of Chris Goddard
APP/4/C16	Appendix 16 to Proof of Evidence of Chris Goddard
APP/4/C17	Appendix 17 to Proof of Evidence of Chris Goddard
APP/4/D	Rebuttal Proof of Evidence of Chris Goddard
APP/5	Environmental Statement Update 2018
APP/6a	London View Management Framework Part 1
APP/6b	London View Management Framework Part 2
APP/6c	London View Management Framework Part 3
APP/7	Appeal Decision APP/E5900/W/17/3171437 – Whitechapel Estate dated 21 February 2018

SOGA Strand on the Green Association Documents

SOGA/1	Proof of Evidence of Richard Griffith (Revised)
SOGA/1a	Notice of Planning Refusal
SOGA/1b	The Curve from Strand on the Green
SOGA/1c	Panoramic View
SOGA/1d	Strand on the Green Conservation Area
SOGA/2	Supplementary Proof of Evidence of Richard Griffith

LF LONDON FORUM DOCUMENTS

LF/1	Proof of Evidence of Peter Eversden
LF/2	Supplementary Proof of Evidence of Peter Eversden

SC SKYLINE CAMPAIGN DOCUMENTS

SC/1	Proof of Evidence of Barbara Weiss
SC/1a	Summary Proof of Evidence of Barbara Weiss
SC/1b	Images

BCC BRENTFORD COMMUNITY COUNCIL DOCUMENTS

- BCC/1 Proof of Evidence of Dennis Browne
- BCC/1a Letter from BCC to LB Hounslow dated 9 February 2016
- BCC/1b Letter from BCC to LB Hounslow dated 9 February 2016 (Advert)
- BCC/1c BCC Consultation Response to the Brentford East SPD dated 8 December 2017
- BCC/2 Proof of Evidence of Martin Case
- BCC/2a Note on Air Quality Ruling

WCGS WEST CHISWICK AND GUNNERSBURY SOCIETY DOCUMENTS

- WCGS/1 Introductory Notes
- WCGS/2 Speaking Notes
- WCGS/3 Chiswick Timeline – A History in Art and Maps

FGP FRIENDS OF GUNNERSBURY PARK AND MUSEUM DOCUMENTS

- FGP/1 Proof of Evidence of James Wisdom
- FGP/1a Appendices to Proof of Evidence of James Wisdom
- FGP/1b Gunnersbury Park Booklet

BID COUNCILLOR BIDDULPH DOCUMENTS

- BID/1 Statement of Councillor Biddulph

MAY PAMELA MAYORCAS DOCUMENTS

- MAY/1 Statement by Pamela Mayorcas

INQUIRY DOCUMENTS

- INQ1 Notes of Pre-Inquiry Meeting
- INQ2 Updated Bespoke Programme
- INQ3 Opening Submissions by the Appellant
- INQ4 Opening Submissions by the Royal Botanic Gardens Kew
- INQ5 Opening Submissions by Historic England
- INQ6 Chapter 8 of the GLVIA submitted by LB Hounslow
- INQ7 Draft Statement of Common Ground
- INQ8 Visuals of Portal Way submitted by Appellant
- INQ9 Opening Submissions of the Kew Society
- INQ10 Tower of London – Statement of OUV - submitted by HE
- INQ11 Whitby High Court Judgment submitted by HE
- INQ12 JPL Commentary on Whitby Court of Appeal Judgment submitted by HE
- INQ13 Forest of Dean High Court Judgment and ‘Smithfield’ appeal decision (APP/K5030/V/13/2205294) submitted by HE
- INQ14 Email dated 14 June 2014 from Tony Kirkham of Kew Gardens regarding arboricultural works, submitted by RBGK
- INQ15 Extracts from Atkins and HE Assessment of Heritage at Risk from Environmental Threat, submitted by RBGK
- INQ16 B&Q Site – Extract from the Land Registry Entry showing BA Pension Scheme as the Freeholder, submitted by the Kew Society
- INQ17 Link to the Videos provided in the Memory Stick in Volume 1 of the Appendices to Richard Coleman’s Proof of Evidence submitted by the Appellant
- INQ18 Letter dated 2 November 2017 from DCMS to the World Heritage Centre submitted by HE
- INQ19 Extract of Email Exchange between UNESCO and DCMS about Kew Gardens WHS, submitted by HE
- INQ20 Email dated 21 June 2018 from Edmund Bird to LB Hounslow about his role as Heritage Advisor at GLA, submitted by LB Hounslow
- INQ21 Email dated 21 June from Edmund Bird to LB Hounslow about Chiswick Curve, submitted by LB Hounslow
- INQ22 Email Exchange between Burges Salmon and Linklaters requesting additional verified viewpoints, submitted by RBGK
- INQ23 Letter dated 22 October from LB Hounslow regarding pre-application discussions submitted by the Appellant

- INQ24 Extract from The History of the Royal Botanic Gardens Kew by Ray Desmond (2nd Ed. 2007) showing the Swan Boat, submitted by RBGK
- INQ25 Preface to the Third Edition of the GLVIA, submitted by LB Hounslow
- INQ26 Extracts from the MSE Website, submitted by LB Hounslow
- INQ27 Carbuncle Cup 2017 Article, submitted by HE
- INQ28 Approximate Location of the Illustration in Appendix E to Mr Croft's PoE, submitted by RBGK
- INQ29 Extracts from Brentford Stadium TVIA, submitted by RBGK
- INQ30 Speaking Notes of Ruth Mayorcas
- INQ31 Building Regulations and Fire Safety, Hansard 17 May 2018, submitted by the Kew Society
- INQ32 ICOMOS Guidance, submitted by the Appellant
- INQ33 Bundle of Documents relating to Suggested Conditions
- INQ33a Suggested Condition on Architectural Detailing, submitted by RBGK
- INQ33b Comments on the Suggested Conditions, submitted by the Kew Society
- INQ34 Draft Obligation
- INQ34a S106 Obligation CIL Compliance Schedule, submitted by LB Hounslow
- INQ35 Extract from LB Richmond LP – Policies LP5 – Views and Vistas, and LP6 – Royal Botanic Gardens Kew WHS, and extract from Proposals Map, submitted by the Appellant
- INQ36 Article on UNESCO by Paul Finch, submitted by RBGK
- INQ37 BBC News Article – Illegal Levels of Air Pollution Linked to Child's Death, 3 July 2018, submitted by the Kew Society
- INQ38 Statement of Common Ground - LB Hounslow/Appellant
- INQ39 Closing Submissions of HE, with Authorities
- INQ40 Closing Submissions of RBGK, with Authorities
- INQ41 Closing Submissions of the Kew Society
- INQ42 Closing Submissions of the LB Hounslow, with Authority
- INQ43 Closing Submissions of the Appellant, with Authorities
- INQ44 Closing Submissions of West Chiswick and Gunnersbury Society
- INQ45 Site Visits Route and Visuals produced to assist
- INQ46 Completed Obligation (Submitted Post-Inquiry)
- INQ47 Post-Inquiry Submissions on Revised National Planning Policy Framework

- INQ48 Post-Inquiry Submissions on the Mayoral decision on the Citroen Site
- INQ49 Post-Inquiry correspondence with appellant on the subject of pre-commencement conditions

Annex C: CONDITIONS

APPEAL A

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) No development shall take place until details of the following design elements have been submitted to and approved in writing by the local planning authority:
 - (a) details and samples of all components of external cladding, panelling, horizontal and vertical fins (including colour, pattern, height, width and thickness), balconies, window framing and glazing, including any projecting window boxes, and 'winter gardens', comprising the external fenestration of the development;
 - (b) construction of a 1:1 scale mock-up of a section of an approved elevation to show the details in (a), as agreed by the local planning authority;
 - (c) details of the integration of façade window cleaning fixings and equipment, including the garaging thereof, plant, flues, fire escapes, lift overruns, and other roof level projections;
 - (d) details of the design and appearance of all ground floor internal and external street furniture, including the entrance canopy and support legs;
 - (e) details of the feature structural columns within the ground floor and communal amenity areas;
 - (f) details of escape doors and ground floor entrances and signage, including into the basement, cycle, and refuse lifts;
 - (g) details of ventilation, air conditioning, external plant and ductwork that would affect the external appearance of the building;
 - (h) details of all external lighting to be attached to the building, including anti-collision lights; and
 - (j) architectural details of the advertisements.Development shall be carried out in accordance with the approved details.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 0251_SEW_xx_1000: Site Plan; 0251_SEW_xx_1010 rev01: Oversailing Plan; 0251_SEW_xx_1096 rev01: Basement Level 02 Lower Plan/ 3rd Car Park Tier; 0251_SEW_xx_1097 rev 01: Basement Level 02 Lower Plan/ 2nd Car Park Tier; 0251_SEW_xx_1098 rev 01: Basement Level 02 Plan; 0251_SEW_xx_1099 rev 01: Basement Level 01 Plan; 0251_SEW_xx_1100 rev 01: Ground Floor Plan; 0251_SEW_xx_1101 rev 01: Level 01 Plan; 0251_SEW_xx_1102 rev 01: Level 02 Plan; 0251_SEW_xx_1103 rev 01: Level 03 Plan; 0251_SEW_xx_1104 rev 01: Level 04 Plan; 0251_SEW_xx_1105 rev 01: Level 05 Plan; 0251_SEW_xx_1106 rev 01: Level 06 Plan; 0251_SEW_xx_1107 rev 01: Level 07-09 Typical Plan; 0251_SEW_xx_1110 rev 01: Level 10-12 Typical Plan; 0251_SEW_xx_1113 rev 01: Level 13 Plan; 0251_SEW_xx_1114 rev 01: Level 14-16 Typical Plan; 0251_SEW_xx_1117 rev 01: Level 17-18 Typical Plan; 0251_SEW_xx_1119 rev 01: Level 19-24 Typical Plan; 0251_SEW_xx_1125 rev 01: Level 25 Plan; 0251_SEW_xx_1126 rev 01: Level 26-28 Typical Plan; 0251_SEW_xx_1129 rev 01: Level 29 Plan; 0251_SEW_xx_1130 rev 01: Level 30-31 Typical Plan; 0251_SEW_xx_1132 rev 01: Level 32 Plan; 0251_SEW_xx_1133: Level 33 (Roof) Plan; 0251_SEW_xx_1201 rev 01: South Section; 0251_SEW_xx_1202 rev 01: West Section; 0251_SEW_xx_1203 rev 01: East Section; 0251_SEW_xx_1204 rev 01: North Section; 0251_SEW_xx_1301 rev 01: South Elevation; 0251_SEW_xx_1302 rev 01: North Elevation; 0251_SEW_xx_1303 rev 01: East Elevation; 0251_SEW_xx_1304: West Elevation; 0251_SEW_xx_1310: Building Volume Components Axonometric View; 0251_SEW_xx_1312: East Building Volume Axonometric View Setting Out Points; 0251_SEW_xx_1313: East Building Volume Unrolled Elevation; 0251_SEW_xx_1314: Bridge Building

Volume Axonometric View Setting Out Points; 0251_SEW_xx_1315: Bridge Building Volume Unrolled Elevation; 0251_SEW_xx_1316: West Building Volume Axonometric View Setting Out Points; 0251_SEW_xx_1317: West Building Volume Unrolled Elevation; 0251_SEW_xx_1320: Unrolled Façade Detail East Building Volume E-A Levels 19-32 E-B Levels 19-32; 0251_SEW_xx_1321: Unrolled Façade Detail East Building Volume EA Levels 07-18 EB Levels 07-18; 0251_SEW_xx_1322: Unrolled Façade Detail East Building Volume EC Levels 19-29; 0251_SEW_xx_1323: Unrolled Façade Detail East Building Volume EC Levels 06-19; 0251_SEW_xx_1324: Unrolled Façade Detail East Building Volume E-D Levels 19-32; 0251_SEW_xx_0251_SEW_xx_1325: Unrolled Façade Detail East Building Volume E-D Levels 06-18; 0251_SEW_xx_1326: Unrolled Façade Detail East Building Volume ED Levels 00-05; 0251_SEW_xx_1327: Unrolled Façade Detail East Building Volume EC Levels 00-05; 0251_SEW_xx_1328: Unrolled Façade Detail East Building Volume EC Levels 06-19 Deep Fins Only; 0251_SEW_xx_1329: Unrolled Façade Detail East Building Volume EC Levels 00-05 Deep Fins Only; 0251_SEW_xx_1330: Unrolled Façade Detail Bridge Building Volume EA Levels 05-17 WD Levels 05-17; 0251_SEW_xx_1331: Unrolled Façade Detail Bridge Building Volume EA Levels 00-05 WC Levels 00-05; 0251_SEW_xx_1340: Unrolled Façade Detail West Building Volume WA Levels 06-13; 0251_SEW_xx_1341: Unrolled Façade Detail West Building Volume WA Levels 15-25; 0251_SEW_xx_1342: Unrolled Façade Detail West Building Volume WB WC WE Levels 05-13; 0251_SEW_xx_1343: Unrolled Façade Detail West Building Volume WB WD WE Levels 14-25; 0251_SEW_xx_1344: Unrolled Façade Detail West Building Volume WA Levels 00-05; 0251_SEW_xx_1345: Unrolled Façade Detail West Building Volume WB Levels 00-05; 0251_SEW_xx_7100 rev 01: Landscape General Arrangement Ground Floor Plan; 0251_SEW_xx_7102 rev 01: Level 5 Residential Amenity and Office Terrace; 0251_SEW_xx_7103: Level 25 Roof Garden; 0251_SEW_xx_7104: Landscape Level 32 Roof Garden; and 0251_SEW_xx_7105: Accessible Amenity Spaces.

- 4) Prior to the completion of the superstructure works (that is the structural frame), details of both hard and soft landscaping works shall be submitted to and approved in writing by the local planning authority. The detailed landscaping scheme shall include (a) soft planting which shall include any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species, sizes, numbers/densities and sections of landscaped areas; (b) a 'Tree Planting Statement' providing full details, locations, specifications and construction methods for any purpose-built tree pits and associated above ground features, including specifications for tree protection and a stated volume of suitable growing medium to facilitate and promote the healthy development of the trees, ensuring each tree has a soil volume of 0.6 times its canopy area at maturity; (c) hard landscaping, including ground surfaces, kerbs, edges, ridge and flexible paving, furniture, steps, refuse disposal points and, if applicable, synthetic surfaces for both ground level and roof terrace levels; (d) the ground floor atrium; (e) the communal and external amenity spaces; (f) any play spaces and play equipment; (g) any signage (Legible London) and information boards; (h) brown roofs and/or green walls where relevant; (i) any CCTV equipment; (j) an external lighting strategy; (k) any other landscaping feature that forms part of the scheme; (l) a management programme for the lifetime of the development which shall include details of long term design objectives, management responsibilities, and maintenance schedules for all hard

and soft landscape areas; and (m) details of any temporary landscaping, including boundary treatments and its management. All landscaping that forms part of the approved details shall be carried out in the first planting and seeding season following the completion of the construction works or in accordance with a programme first submitted to, and approved in writing by, the local planning authority. Any trees or shrubs planted (including any replacements) that die within three years from the date of planting shall be replaced in the next planting season with a replacement of the same species and degree of maturity. The landscaping works shall be carried out and maintained thereafter in the manner approved.

- 5) No demolition or construction work shall take place on the site except between the hours of 0800 and 1800 on Mondays to Fridays and 0800 to 1300 on Saturdays. No such work shall take place on Sundays or Public Holidays.
- 6) No piling work shall take place until a Piling Method Statement detailing the depth and type of piling to be undertaken, the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the timescale and programme of piling works have been submitted to and approved in writing by the local planning authority. Piling must be undertaken in accordance with the approved details.
- 7) No development shall take place until a Construction Management and Logistics Plan (CMLP) relating to the development, and complying with the latest TfL guidance, has been submitted to and approved in writing by the local planning authority. The CMLP shall include: (a) details of the number of on-site construction workers and the transport options and parking facilities for them; (b) the location of the site access and anticipated routes, number, frequency and size of construction vehicles entering/exiting the site each day and associated signage; construction vehicles shall not use nearby residential roads including Strand on the Green, Wellesley Road, and Green Dragon Lane; (c) delivery times and booking system (which is to be staggered to avoid morning and afternoon school-run peak periods; (d) details of noise and vibration mitigation measures and monitoring arrangements for noise and vibration by suitably qualified noise specialists; noise and vibration mitigation measures must accord with the Mayor's Best Practice Guidance; (e) details of site security, temporary lighting, and the erection and maintenance of security hoardings, including decorative displays and facilities for public viewing where appropriate; (f) secure, off-street loading and drop-off facilities; (g) provision and operation of wheel-washing facilities; (h) vehicle manoeuvring and turning, including swept path diagrams to demonstrate how construction vehicles will access the site and be able to turn into and emerge from the site in forward gear, and including details of any temporary vehicle access points; (i) details of controls, approvals and operations relating to the use and operation of cranes, piling rigs, scaffolding erection and dismantling and the erection and dismantling of any temporary cladding and any other site works that could affect the M4; (j) details of the locations for storage of building materials, plant, and construction debris, and of the Contractor's welfare facilities and offices; (k) procedures for on-site contractors to deal with complaints from the public; (l) consultation measures with regard to delivery times and necessary diversions to include cyclists, pedestrians and local schools; (m) details of any pedestrian and/or cyclist diversions; (n) confirmation that TfL's Fleet Operator Recognition Scheme

- (FORS), or similar, is in use; and (o) details of how prior to commencement of any construction work, all sensitive properties within 150m of the site will be notified in writing of the nature and likely duration of the works, and how enquiries and/or complaints from occupiers of those properties will be dealt with – details of how enquiries and/or complaints are to be dealt with shall also be prominently displayed around the site. Development shall be carried out in accordance with the approved CMLP.
- 8) No development shall take place until an Air Quality and Dust Management Plan (AQDMP) relating to the existing site and the construction of the proposed development that includes an Air Quality (Dust) Risk Assessment and accords with current guidance, and the Mayor's Control of Dust and Emissions during Construction and Demolition SPG (2014), and a scheme for air pollution mitigation during construction work, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) No residential unit shall be occupied until the areas shown as play space on the approved plans have been laid out in accordance with drawings 0251_xx_SEW_1105 rev 01 and 0251_xx_SEW_7102 rev 01 and any further details approved under condition 4. These play spaces shall be accessible to all residents of the development at all times and retained for their intended purpose for the life of the development.
- 10) (A) Prior to the commencement of the superstructure works, a scheme of acoustic insulation and any other necessary means of ventilation to be provided, according with the recommendations listed at paragraphs 10.85 to 10.88 of the Chiswick Curve Environmental Statement Volume 2 of December 2015, shall be submitted to and approved in writing by the local planning authority. Such a scheme shall include details of measures demonstrating internal noise levels in residential units do not exceed the levels in Table 4 of BS8233:2014 as given at paragraph 10.40 of the Chiswick Curve Environmental Statement Volume 2 of December 2015. The details shall include proposed material specifications and predicted performance. No residential unit shall be occupied until the works relating to that unit have been completed in accordance with the approved details. (B) Prior to any residential unit being occupied, measurement reports relating to at least two residential units on each of the 6th, 7th and 8th floors, demonstrating compliance with the scheme approved under (A) above shall be submitted to and approved in writing by the local planning authority. Noise tests shall be carried out taking account of worst case environmental conditions, such as easterly operations at Heathrow, peak-time traffic flows, wind speed and direction, and the presence of temperature inversion. (C) Prior to the first operation of any mechanical plant, details of any such plant, and any required mitigation measures, together with an acoustic report, demonstrating that the combined rating noise level from all mechanical plant associated with the development has a low impact at all nearby noise sensitive receptors, and to receptors within the development within the context of the existing sound environment according to the assessment methodology of BS4142:2014 shall be submitted to and approved in writing by the local planning authority. Operation of the plant shall take place in accordance with the approved details.
- 11) Prior to commencement of the superstructure works, a report including detailed information on the proposed mechanical ventilation system with Nitrogen Oxides filtration shall be submitted to and approved in writing by the local planning

authority. The report shall specify air intake locations and the design details and locations of windows to demonstrate that they avoid areas of Nitrogen Dioxide pollution (for example adjacent roads, such as the M4, A4 and A406). The whole system shall be designed to prevent summer overheating and minimise energy usage and to demonstrate that the internal air quality is satisfactory with the annual mean concentration of Nitrogen Dioxide not to exceed 40 micrograms per cubic metre. The approved details shall be fully implemented prior to the occupation of the development and retained and maintained thereafter. The maintenance and cleaning of the systems shall be undertaken regularly in accordance with manufacturer's specifications.

- 12) Before piling works are completed, a study setting out the impact of the proposal on the existing water supply infrastructure, including a determination of any new capacity required in the system, and a suitable connection point shall be submitted to and approved in writing by the local planning authority. Where new capacity is required, this shall be implemented and completed in accordance with the approved details before the development is first occupied.
- 13) Before piling works are completed, details of a drainage strategy incorporating a Sustainable Urban Drainage System (SuDS) shall have been submitted to and approved in writing by the local planning authority. Information demonstrating that the approved drainage strategy and system have been completed in accordance with the approved details shall have been submitted to and approved in writing by the local planning authority before occupation of any part of the development. No foul or surface water from the site shall be discharged into the public system until the drainage has been completed in accordance with the approved details. A maintenance plan for all water management features (including rainwater harvesting, ground level planters, and underground storage) shall be submitted to and approved in writing by the local planning authority before the development is first occupied. This maintenance plan shall detail maintenance activities and their frequency, demonstrating that the drainage system will be suitably managed for the lifetime of the development. Maintenance shall be carried out in accordance with the approved maintenance plan.
- 14) A minimum of 10% of all dwellings within the development shall be built to Building Regulations M4(3) standard, being suitable for wheelchair users, 50% of which shall be built to M4(3)(2)(b) standard, to meet the needs of a wheelchair bound occupant. These wheelchair user dwellings shall be completed and made available for occupation prior to the occupation of 50% of all the dwellings in the development.
- 15) Before the development hereby permitted commences: (a) a contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the local planning authority; should the Phase 1 report recommend that a Phase 2 site investigation is required, then this shall be carried out, and a Phase 2 report shall be submitted to and approved in writing by the local planning authority; the site shall be investigated by a suitably competent person in order to identify the extent and nature of any contamination; the report shall include a tiered risk assessment of the contamination based on the proposed end use of the site; and additional investigation may be required where it is deemed necessary; and (b) if required, a scheme for the decontamination of the site shall be submitted to and approved in writing by the local planning authority; the scheme shall account for any comments made by the local planning

authority before the development hereby permitted is first occupied. During the construction of the development: (c) the local planning authority shall be notified as soon as reasonably practicable if additional contamination is discovered during the course of construction; a suitably competent person shall assess the additional contamination and shall submit appropriate amendments to the scheme for decontamination in writing to the local planning authority, for their written approval, before any work on that aspect of the development continues. Prior to the first occupation of the development: (d) the agreed scheme for decontamination referred to in (b) and (c) above, including any amendments, shall be implemented in full, and a written validation (closure) report shall be submitted to and approved in writing by the local planning authority.

- 16) Before any part of the building is first occupied, details (in the form of, for example, photographs, installation contracts, and/or as-built certificates under the Standard Assessment Procedure) shall be submitted to and approved in writing by the local planning authority to show that the development has been built in accordance with the submitted Energy Statement (of December 2015 as amended by the Energy and Sustainability Statement Addendum of February 2016) and secures a carbon dioxide emissions reduction of 33.8%, or greater, against the Building Regulations Part L (2013) baseline.
- 17) Within 10 months of the occupation of any non-residential use over 500 square metres in area, the final BREEAM certificate demonstrating the achievement of the BREEAM 'Excellent' rating shall be submitted to the local planning authority.
- 18) Before any part of the building is first occupied, details (for example photographs and/or copies of installation contracts) shall be submitted to and approved in writing by the local planning authority to demonstrate that (a) at least three key elements of the building envelope (for example external walls, windows, roof, upper floor slabs, internal walls, floor finishes/coverings) have achieved a rating of A+ to D in the BRE Green Guide to Specification; (b) at least 50% of timber and timber products used have been sourced from accredited FSC or PEFC schemes; and (c) No construction or insulation materials have been used which will release toxins into the internal and/or external environment, including those that deplete stratospheric ozone.
- 19) Before any part of the building is first occupied, details (for example schedules of fittings and/or manufacturers' literature) shall be submitted to and approved in writing by the local planning authority to demonstrate that the development has been built to accord with the submitted, and approved, internal water use calculations.
- 20) The building approved herein shall not exceed a height of 10m above ground level on site until a Radar Mitigation Scheme (RMS), including a timetable for implementation, relative to the construction process, has been submitted to and approved in writing by the local planning authority. The RMS shall be implemented and subsequently operated in accordance with the approved details.
- 21) Before any part of the building is first occupied, a Management Strategy for the building and the site shall be submitted to and approved in writing by the local planning authority. This Management Strategy shall include: (a) details of security measures including the location of the security/concierge office, and CCTV; (b) details of procedures for receipt, management, and distribution of

- post, parcels, and supermarket and other deliveries to residential units; (c) different controlled areas of the development and those who will have access to each of the identified zones, including public access; (d) points of access and how access will be controlled; (e) confirmation of arrangements for disabled access; (f) refuse and recycling storage and collection for residential and commercial uses; (g) details of the management of the Public Viewing Gallery on the 32nd floor, and of the public access to be provided on 12 days of the year; and (h) measures and procedures to prevent and deal with anti-social behaviour and crime. The building and site shall be operated and managed in accordance with the approved Management Strategy.
- 22) All boilers serving the energy requirements of the development shall be of the ultra-low NO_x variety and (a) the Combined Heat and Power (CHP) plant must be designed so that it will operate with a minimum efflux velocity of 10m/s to allow for good initial dispersion of emissions; (b) the ultra-low NO_x boilers shall have emission rates below 40mg/kWh and a CHP unit with a very low emission rate of 95mg/Nm³; and (c) all stacks shall discharge vertically upwards and be unimpeded by any fixture on top of the stack such as rain cowls or the like.
- 23) No part of the development shall be occupied until a Delivery and Servicing Plan (DSP), prepared in accordance with the latest TfL guidance, has been submitted to and approved in writing by the local planning authority. The DSP shall cover (a) vehicle tracking – swept path diagrams for a refuse lorry and a 10m long rigid vehicle; (b) deliveries and collections (commercial and residential); (c) servicing trips (including maintenance); and (d) the methodology for monitoring and review of operations. The DSP shall be fully implemented in accordance with the approved details upon first occupation of any part of the development and the building and the site shall be managed in accordance with the DSP thereafter.
- 24) Prior to the completion of the superstructure works (that is the structural frame of the building), a statement shall be submitted to and approved in writing by the local planning authority demonstrating how Secured by Design requirements are to be achieved. The development shall be implemented in accordance with the approved details and these shall be completed before first occupation and retained as such thereafter.
- 25) Prior to commencement of the superstructure works, details of the design and selected materials of the external surfaces (windows and cladding) which should demonstrate that they will mitigate any potential adverse impact on motorists from solar glare shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.
- 26) Prior to the completion of the superstructure works (that is the structural frame of the building), details, including wind tunnel modelling, shall be submitted to and approved in writing by the local planning authority demonstrating that the building will have no adverse impact on users of the M4 motorway. The development shall be implemented in accordance with the approved details.
- 27) Prior to first occupation of the development, a Car Park Management Plan (CPMP) shall be submitted to and approved in writing by the local planning authority. The CPMP shall include details of: (a) the proposed allocation of and arrangements for the management of car parking spaces, including disabled persons' parking bays, serving the residential units; (b) arrangements for the

management and maintenance of the car stacking system, including operational procedures and queue management; and (c) the provision of electric vehicle charging points within the residential and commercial parking areas. The car parking shall be provided and managed in accordance with the approved CPMP for the lifetime of the development.

- 28) Prior to first occupation of the development, the car and cycle parking, loading and turning spaces, as set out in the approved plans, shall be constructed and made available for use. The parking arrangements shall include: (a) 2 car parking spaces dedicated for permanent use as 'Car Club' spaces; (b) 17 motor cycle spaces; (c) 72 residential car parking spaces; (d) 8 commercial car parking spaces; (e) 548 cycle parking spaces designed to meet London Cycle Design Standards (484 for the residential element, 62 for the commercial, and 2 for the retail/café). The car and cycle parking and loading spaces shall then be retained for their intended use thereafter.
- 29) Prior to the occupation of any retail (A3 Use Class) element of the development, a scheme for the control of noise, fumes, and odours, including details of sound attenuation measures for any plant, shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details, before the use of the relevant unit commences, and shall be retained and operated in accordance with the approved details thereafter.
- 30) Prior to the first occupation of the development, details of the 'Car Club' shall be submitted to and approved in writing by the local planning authority. The scheme shall include the location of two 'Car Club' spaces within the development, which shall be marked 'Car Club Parking Only', an indication of how the 'Car Club' will be managed and maintained in liaison with the chosen 'Car Club' operator, and details of how membership for occupiers of the residential units will be dealt with. The 'Car Club' shall be provided in accordance with the approved details.
- 31) Prior to first occupation of the development, details of road markings and/or signage related to the vehicular entrance off Larch Drive that restricts drivers gaining access to, and egress from, the site, other than through a left hand turn, shall be submitted to and approved in writing by the local planning authority. The markings and/or signage shall be completed in accordance with the approved details before any part of the development is first occupied, and retained in their approved format thereafter.

APPEAL B

- 1) The advertisement displays hereby approved shall endure for the lifetime of the building on which the advertisement displays are located.
- 2) No advertisement shall be sited or displayed so as to (a) endanger persons using any public highway, railway, waterway, dock, harbour, or aerodrome (civil or military); (b) obscure, or hinder, the ready interpretation of any traffic sign, railway signal, or aid to navigation by water or air; or (c) hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- 3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

- 4) All advertisements hereby approved shall be operated in accordance with the following controls at all times: (a) the intensity of the illumination of the advertisements permitted by this consent shall be no greater than 300cd/sqm between sunset and sunrise, and no greater than 600cd/sq/m between sunrise and sunset; (b) Any change in advertisement display shall be instantaneous; the interval between the display of each advertisement shall be 0.1 seconds or less and the complete display screen shall change without visual effects (including fading, swiping, or other animated transition methods) between each advertisement; and the display shall include a mechanism to freeze the image in the event of a malfunction; (c) the signs shall not display any moving, or apparently moving, images; and (d) the advertisements displayed on each panel shall not change more frequently than once every 10 seconds.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.