Ministry of Housing, Communities & Local Government

Our ref: APP/E5900/V/20/3245430 & APP/E5900/V/20/3245432

Ms Kelly Ryder
The Planning Lab
Somerset House
South Wing
London
WC2R 1LA

13 May 2021

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 – SECTION 12
APPLICATIONS MADE BY RAYCLIFF WHITECHAPEL LLP
THE BELL FOUNDRY, 32-34 WHITECHAPEL ROAD, 2 FIELDGATE STREET, AND LAND TO THE REAR, LONDON E1 1EW
APPLICATION REFS: PA/19/00008 & PA/19/00009

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 between 6 and 28 October 2020 into your client's applications for planning permission and for listed building consent for the part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works, in accordance with application ref: PA/19/00008 & PA/19/00009, dated 22 December 2018.

2. On 22 January 2020, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990 and section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990, that your client's applications be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the applications should be approved and that planning permission and listed building consent be granted.

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4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to grant planning permission and listed building consent, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State agrees with the Inspector for the reasons set out at IR1.9 and 12.2-12.9 that any grant of listed building consent should be on the basis of

> "Internal alterations and refurbishment of listed building and external alterations to listed building including roof replacement works and provision of new rainwater disposal system, insertion of new windows to blocked openings; raising roof of hayloft building; creation of new link building; demolition of vaulted chamber below the '1980s building'; and erection of hotel along Plumbers Row and Fieldgate Street."

Matters arising since the close of the inquiry

6. At the time of the Inquiry, the development plan included the 2016 version of the London Plan. The 2021 London Plan was adopted on 2 March. Relevant policies of the (then) emerging Plan were considered by the Inspector at the Inquiry. He concluded that Policy HC1: Heritage Conservation and Growth, the now current policy, did not pull in an identifiably different direction from the corresponding policies 7.4, 7.8, and 7.9 of the 2016 London Plan (IR5.25). The Secretary of State does not consider that the adoption of the new London Plan raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on the applications, and he is satisfied that no interests have thereby been prejudiced.

7. A list of representations which have been received since the inquiry is at Annex B. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

8. 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.

9. In this case the development plan consists of the Tower Hamlets Local Plan 2031: Managing Growth and Sharing Benefits; the Tower Hamlets 2031: Adopted Policies Map, both adopted in January 2020; and the London Plan (March 2021). The Secretary of State considers that relevant development plan policies include those set out at IR5.8, and also London Plan Policy HC1: Heritage Conservation and Growth.

10. 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'), as well as the documents referred to at IR5.26.

11. 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.

12. 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.

Main issues

Harmful elements of the proposals for the Listed Building

The Question of Use

13. For the reasons given at IR12.20-12.23, the Secretary of State agrees with the Inspector that the baseline for consideration of the proposals is a largely vacant Grade II* listed building that formerly housed traditional bell founding and associated operations (IR12.23). He further agrees, for the reasons given in IR12.24-12.29, that while the end of traditional bell making on the site has certainly caused some harm, that harm is very clearly less than substantial, and nothing whatsoever to do with the proposals at issue (12.26); and that there is no harmful impact as a result of the proposals in use terms (IR12.29).

Physical works to the listed building

14. For the reasons given at IR12.30-12.44, the Secretary of State agrees with the Inspector that the physical changes in the listed building, through the removal of historic fabric, and the introduction of contemporary features, will cause a degree of harm to the special architectural and historic interest of the listed building, and its significance (IR12.42). He further agrees that viewed in isolation, the harm caused to the significance of the designated heritage asset would be very much at the lower end of the scale of less than substantial (IR12.44).

The Conservation Area and the Setting of the Listed Building

The1980s building and the Hotel

15. The Secretary of State agrees with the Inspector for the reasons given at IR12.45-12.48 that the removal of the 1980s building would cause no harm to the character or appearance of the conservation area or the setting of the listed building, provided of course that what replaces it is appropriate in terms of its scale form and design (IR12.48).

16. In that regard, for the reasons given at IR12.49-12.53, the Secretary of State agrees with the Inspector that the proposed hotel would have an appropriate form that despite its height would sit comfortably against the Bell Foundry, that it would address the street in an appropriate manner, and that its detailed design is subtle and pleasingly understated (IR12.52). He further agrees that the inclusion of a gantry and a bell on the roof of the part of the hotel nearest to the junction with the Bell Foundry, seems an appropriate reference to the former use of the site (IR12.52) and that, overall, the proposed hotel would enhance

both the character and the appearance of the conservation area, and the setting of the Bell Foundry as a listed building (IR12.53).

Reinstating a Use in the Bell Foundry

17. The Secretary of State agrees with the Inspector at IR12.54 that bringing back activity to the building would enhance the character of the conservation area, and thereby its significance.

Heritage Benefits

18. For the reasons given above, the Secretary of State agrees with the Inspector at IR12.55 that the enhancement the proposals would bring to the character and the appearance of the conservation area, and the setting of the listed building, are significant heritage benefits. He concludes that this is a matter that attracts considerable importance and weight.

19. In respect of the listed building, the Secretary of State agrees with the Inspector for the reasons given at IR12.56-12.65 that the proposals would result in a series of benefits, including extensive repair and maintenance work which would go a long way towards securing the long-term future of the listed building (IR12.56-57). The proposal would reintroduce foundry operations into the building in areas where traditional bell founding used to take place(IR12.58-12.62), and the provision of free public access to large parts of the ground floor of the building would reveal the significance of the building to a much wider audience (IR12.63). The Secretary of State further agrees that the comprehensive nature of the proposals, and the roadmap for the immediate future, means that the building will not be at any great risk of future harm through incremental and/or cumulative changes (IR12.65). He considers that the benefits to the listed building carry great weight.

Other public benefits

20. For the reasons given in IR12.66-12.69, the Secretary of State agrees with the Inspector that the proposals would deliver other public benefits including significant economic benefits (IR12.67), the provision of a significant proportion of affordable workspace (IR12.68) and in the approach to providing employment for local people and apprentices (IR12.69). He considers that these benefits each attract moderate weight.

The approach to decision-making

21. The Secretary of State has carefully considered the Inspector's commentary on the approach to decision making set out at IR12.70-12.97. He agrees with the Inspector that the proposals would greatly enhance both the character and the appearance of the Whitechapel High Street Conservation Area, and considers that this is in line with London Plan Policy HC1, Local Plan Policy S.DH3 and the Framework.

22. For the reasons given at IR12.73, the Secretary of State agrees that the approach of an internal heritage balance is a perfectly legitimate one. On this basis, he agrees with the Inspector for the reasons given at IR12.74-12.75, that the heritage benefits that would be brought forward in relation to the listed building and its setting would far outweigh the limited harm that would be caused, there would be no harm caused to the special architectural and historic interest of the listed building, and its setting would be enhanced. He further agrees that there is no discord in relation to the requirements of the Planning

(Listed Buildings and Conservation Areas) Act 1990, and there is clear compliance with London Plan Policy HC1 and Local Plan Policy S.DH3.

23. The Secretary of State agrees with the Inspector at IR12.76-12.77 that the proposals would accord with the requirements of Framework paragraphs 184 and 193, and in this scenario, there is no need to consider Framework paragraphs 195 or 196 because considered in the round, the proposals cause no harm to the significance of the designated heritage asset affected. He further agrees that the issue of Optimum Viable Use and the presence of the alternative Re-Form proposals is a matter of limited consequence as the presence of an alternative scheme offers no justification to resist a proposal that is otherwise acceptable, and statute and policy compliant (IR12.77).

24. While he has not pursued the alternative approach to decision-making as set out by the Inspector in IR12.78-12.83, the Secretary of State agrees with the Inspector's assessment on this, and further agrees with the Inspector's analysis at IR12.84-97. He agrees with the Inspector that whichever route is taken, the harmful elements of the proposal in relation to their impact on the special architectural and historic interest of the listed building, and its significance as a designated heritage asset, are far outweighed by the benefits, in heritage and public terms. He further agrees that the proposals would enhance the setting of the listed building, and thereby its significance, and would enhance the character and appearance of the Whitechapel High Street Conservation Area (IR12.101).

Other matters

25. For the reasons given in IR12.98-12.100, the Secretary of State agrees with the Inspector that any 'technical' failure to accord with Local Plan Policy D.EMP3 does not weigh against the proposals overall.

Planning conditions

26. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.29, 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 and that the conditions set out at Annex A should form part of his decision.

Planning obligation

27. Having had regard to the Inspector's analysis at IR11.1-11.22, the planning obligation dated 4 December 2020, 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 that the obligations set out in each of the 12 Schedules comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State considers that the application is 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.

29. The proposals would enhance both the character and the appearance of the Whitechapel High Street Conservation Area, attracting considerable weight. The benefits to the listed building attract great weight. Economic benefits, the provision of a significant proportion of affordable workspace and providing employment for local people and apprentices each attract moderate weight.

30. The Secretary of State has taken into account that the physical changes in the listed building, through the removal of historic fabric, and the introduction of contemporary features, will cause a degree of harm to the special architectural and historic interest of the listed building, and its significance. Viewed in isolation, this harm would be very much at the lower end of the scale of less than substantial. Having carried out an internal heritage balance, the Secretary of State has concluded that overall, the proposals cause no harm to the significance of the heritage asset.

31. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission and listed building consent. The Secretary of State therefore concludes that planning permission and listed building consent should be granted.

Formal decision

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission subject to the conditions set out in Annex A of this decision letter for part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works at the Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW, in accordance with application ref: PA/19/00008, dated 22 December 2018.

33. He also grants listed building consent subject to the conditions set out in Annex A of this decision letter for internal alterations and refurbishment of listed building and external alterations to listed building including roof replacement works and provision of new rainwater disposal system, insertion of new windows to blocked openings; raising roof of hayloft building; creation of new link building; demolition of vaulted chamber below the '1980s building'; and erection of hotel along Plumbers Row and Fieldgate Street at the Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW, in accordance with application ref: PA/19/00009, dated 22 December 2018.

34. With the exception of the listed building consent (DL33), this letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision on planning permission 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. Challenges to the grant of listed building consent may be made under section 63 of the Planning (Listed Buildings And Conservation Areas) Act 1990.

36. A copy of this letter has been sent to the London Borough of Tower Hamlets and Re-Form Heritage, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf

ANNEX A – LIST OF CONDITIONS

Application A: APP/E5900/V/20/3245430

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Annex A1.

3) Any mechanical plant and equipment within the development shall be designed and maintained for the lifetime of the development so as not to exceed a level of 10db below the lowest measured background noise level (LA90, 15 minutes) as measured one metre from the nearest affected window of the nearest affected residential property. The plant and equipment shall not create an audible tonal noise nor cause perceptible vibration to be transmitted through the structure of the building.

4) No less than 73 cycle parking spaces shall be provided and distributed across the development as shown on approved drawings and as follows: 28 long-stay spaces to be provided prior to first occupation of the new development site; 45 short-stay spaces to be provided as follows: 6 spaces in new hotel/restaurant entrance and 22 spaces on the public footway of Fieldgate Street to be provided prior to first occupation of the new development site; and 17 spaces inside the historic foundry, next to the Fieldgate Street entrance, to be provided prior to first occupation of the historic foundry. These spaces shall be provided prior to the first occupation of each part of the development and thereafter be retained in operational condition and made available to the occupiers of the development. The cycle access lifts and changing facilities for cyclists shown on the approved drawings shall be provided prior to the first occupation of the respective part of the development and retained in operational condition for the lifetime of the development.

5) No music or other amplified sound shall be played within the premises or any associated external area so as to be audible 1 metre from the façade of any residential property neighbouring the site.

6) The rooftop pool and terrace hereby permitted shall be closed for business and not open to customers and members of the public outside the hours of: 07:00–23:00 Mondays to Saturdays and 08:00–22:00 on Sundays and Bank Holidays.

7) The A3 cafe hereby permitted in the historic foundry shall only be open for business to customers and members of the public between the hours of 08:00 and 19:00 on any day.

8) No change of use permitted development provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall apply to the historic foundry.

9) Unless otherwise specified by a s.61 consent granted under the Control of Pollution Act 1974, demolition, building, engineering or other operations associated with the construction of the development (including arrival, departure and loading and unloading of construction vehicles): a) Shall be carried out in accordance with the Tower Hamlets Code of Construction Practice b) Shall only be carried out within the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays. No works shall take place on Sundays and Public Holidays c) Any non-road mobile machinery (NRMM) used shall not exceed the emission standards set out in the Mayor of London's 'Control of Dust

and Emissions During Construction and Demolition' Supplementary Planning Guidance 2014 and be registered under the Greater London Authority NRMM scheme www.nrmm.london d) Ground-borne vibration shall not exceed 1.0 mm/s Peak Particle Velocity (PPV) at residential and 3.0mm/s PPV at commercial properties neighbouring the site e) Noise levels measured 1 metre from the façade of any occupied building neighbouring the site shall not exceed 75dB(A) at residential and commercial properties, and 65dB(A) at schools and hospitals (LAeq,T where T = 10 hours Monday to Friday and 5 hours for Saturday).

10) The provisions of the approved Waste Management Plan shall be maintained for the lifetime of the development. The waste storage, waste collection and waste servicing facilities shown on approved drawings shall be provided prior to the first occupation of the development and be maintained in an operational condition and made available to the occupiers of the development for the lifetime of the respective part of the development.

11) Development of the new development site (excluding works to the historic foundry) shall not begin until a contaminated land scheme has been submitted to the local planning authority and written approval has been granted for the scheme. The scheme shall be implemented as approved. The scheme will identify the extent of the contamination and the measures to be taken to avoid risk to the public, buildings and environment when the site is developed. Details of the scheme should include a) a risk assessment of the site; and b) proposals for any necessary remedial works to contain treat or remove any contamination.

12) Noise Impact Assessments shall be submitted to and approved in writing by the local planning authority as follows: i) pre-installation of plant in the historic foundry; and ii) post substructure works in the new development. The assessments must outline the potential sources of noise generation and what effect these may have on the wider area. The assessments should: a) rank the noisiest items of services/plant/equipment and associated activities; b) indicate their location on a plan; and c) specify the duration of the specific noises and the predicted noise level at the various noise sensitive properties. The assessment must also outline how any effects will be adequately mitigated within current noise standards.

13) No mechanical plant or equipment shall be operated within the site until a post installation verification report, including acoustic test results, has first been submitted to and approved in writing by the local planning authority confirming that the above maximum noise standard has been achieved and that the mitigation measures are robust.

14) Save for enabling works, no development shall be commenced on the relevant part of the site until a dust and emissions management plan has been submitted to and approved in writing by the local planning authority for: i) the historic foundry; and ii) the new development site. The dust management plan shall include the following details: (1) demonstrate compliance with the guidance found in the GLA Supplementary Planning Guidance: The Control of Dust and Emissions during Construction and Demolition https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/supplementary-planning-guidance/control-dust; (2) the dust management strategy must include a risk assessment of dust generation for each phase of the demolition and construction. The assessment and identified controls must include the principles of prevention, suppression and containment and follow the format detailed in the guidance above. The outcome of the assessment must be fully implemented for the duration of the construction and demolition phase of the proposed development and include dust monitoring where appropriate; (3) where the outcome of the risk assessment indicates that monitoring is necessary, a monitoring protocol including information on monitoring locations, frequency of data

collection and how the data will be reported to the local planning authority; (4) details of dust generating operations and the subsequent management and mitigation of dust demonstrating full best practicable means compliance and covering construction activities, materials storage, on and off site haul routes, operational control, demolition, and exhaust emissions; (5) where a breach of the dust trigger level may occur a response procedure should be detailed including measures to prevent repeat incidence; and (6) prior to the commencement of the development details of all plant and machinery to be used at the demolition and construction phases have been submitted to, and approved in writing by, the local planning authority. Evidence is required to meet Stage IIIA of EU Directive 97/68/ EC for both NOx and PM. All NRMM and plant to be used on the site of net power between 37kW and 560 kW shall have been registered at http://nrmm.london/. The plan shall be implemented as approved.

15) Prior to commencement (including any demolition works) of the respective part of the site comprising: i) the historic foundry; and ii) the new development site a Construction Environmental Management & Logistics Plan shall be submitted to and approved in writing by the local planning authority. The plan should be in line with TfL best practice: http://content.tfl.gov.uk/construction-logistics-plan-guidance-for-developers.pdf. The plans shall aim to minimise the amenity, environmental and road network impacts of the demolition and construction activities and include details of: (a) telephone, email and postal address of the site manager and details of complaints procedures for members of the public; (b) a Dust Management Strategy to minimise the emission of dust and dirt during construction including but not restricted to spraying of materials with water, wheel washing facilities, street cleaning and monitoring of dust emissions; (c) measures to maintain the site in a tidy condition in terms of disposal/storage of waste and storage of construction plant and materials; (d) a scheme for recycling/disposition of waste resulting from demolition and construction works; (e) ingress and egress to and from the site for vehicles; (f) proposed numbers and timing of vehicle movements through the day and the proposed access routes, delivery scheduling, use of holding areas, logistics and consolidation centres; (g) parking of vehicles for site operatives and visitors; (h) a Travel Plan for construction workers; (i) location and size of site offices, welfare and toilet facilities; (j) erection and maintenance of security hoardings including decorative displays and facilities for public viewing; (k) measures to ensure that pedestrian access past the site is safe and not obstructed; (l) measures to minimise risks to pedestrians and cyclists, including but not restricted to accreditation of the Fleet Operator Recognition Scheme (FORS) and use of banksmen for supervision of vehicular ingress and egress. The development shall not be carried out other than in accordance with the approved details.

16) (a) 10% of the hotel rooms approved herein shall be wheelchair accessible and shall be maintained and retained as such for the lifetime of the development. Details of this and an access strategy shall be submitted prior to commencement of superstructure works on the new development site (excluding works on the historic foundry); and (b) Any lifts shown on the approved drawings shall be installed and in an operational condition prior to the first occupation of the relevant access cores. The lifts shall be retained and maintained in an operational condition for the lifetime of the development.

17) No development shall take place until an Archaeological Written Scheme of Investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, which shall include a statement of significance and research objectives and the nomination of a competent person(s) or organisation(s) to undertake the agreed works. The WSI will contain details of the following elements: (a) a programme of Historic Buildings Recording for the rear of the site and its

underground elements, in advance of demolition; (b) a programme of archaeological site investigation and recording; (c) a programme of public education, outreach and interpretation both during and immediately after the archaeological investigation; and (d) a programme of documentary and archive research into the historic foundry. The WSI should be prepared and implemented by a suitably qualified professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London.

18) Prior to the commencement of any superstructure works on the new development site (excluding works on the historic Foundry), a surface water drainage scheme for the site based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include (but not be limited to): (1) the peak discharge rates and together with any associated control structures and their position; (2) safe management of critical storm water storage up to the 1:100 year event plus 40%; and (3) details of agreed adoption, monitoring and maintenance of the drainage and suds features. The development shall be carried out strictly in accordance with details so approved.

19) Prior to the commencement of any superstructure works on the new development site (excluding works on the historic foundry), full details of biodiversity enhancements shall be submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall include but not be limited to the following: (1) biodiverse roofs following the best practice guidance published by Buglife – details provided should include the location and total area of biodiverse roofs, substrate depth and type, planting including any vegetated mat or blanket (though sedum mats should be avoided if possible) and any additional habitats to be provided such as piles of stones or logs; and (2) nest boxes for appropriate bird species, including house sparrow –details should include number, locations and type of boxes. The agreed measures shall be implemented in full prior to the occupation of the new development.

20) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and 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 programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

21) Details of the proposed extract ventilation system (including the extraction hood, internal fan, flexible couplings, three-stage filtration [grease filters, pre-filters and activated carbon filters], height of the extract duct above eaves level and anti-vibration mountings shall be submitted to, and approved in writing by, the local planning authority prior to their installation in: (i) The historic foundry; and/or (ii) the new development. Particular consideration should be given to the height of the discharge points of kitchen extract air from the new development. The approved details shall be installed prior to the use of the relevant part of the premises and permanently retained as such thereafter.

22) Within six months of commencement of the new development, details of security measures shall be submitted to and approved in writing by the local planning authority. The development shall aim to achieve a Secured by Design accreditation, or alternatively achieve Secured by Design standards. The security measures shall be implemented in accordance with the approved details, completed prior to the first occupation of the new development site, and retained for the lifetime of the development.

23) No superstructure works for the new development site shall take place until samples and full particulars of all external facing materials to be used in its construction have been submitted to and approved in writing by the local planning authority. Details submitted pursuant to this condition shall include but are not restricted to: (a) samples and details of external cladding; details of external cladding, where relevant, shall include all types of brick or other cladding material to be used, details of bond, mortar and pointing for brick and details of joints, panel sizes and fixing method for other types of cladding; (b) samples and drawings of fenestration. Details of fenestration, where relevant, shall include reveals, sills and lintels. Drawings shall be at a scale of no less than 1:20; (c) drawings and details of entrances. Details of entrances, where relevant, shall include doors, reveals, canopies, signage, entry control, post boxes, CCTV, lighting and soffit finishes. Drawings shall be at a scale of no less than 1:20; (d) drawings and details of shopfronts. Details of shopfronts, where relevant, shall include doors, glazing, reveals, stall-risers, pilasters, fascias, awnings and signage zones or indicative signage. Drawings shall be at a scale of no less than 1:20; (e) samples and details of roofing; (f) details of any terraces and associated balustrades, soffits and drainage; (g) details of any external rainwater goods, flues, grilles, louvres and vents; (h) details of any external plant, plant enclosures and safety balustrades; and (i) details of the bell-themed structure. The development shall not be carried out other than in accordance with the approved details.

24) Occupation of the new development site hereby approved shall not begin until: (1) the remediation works approved by the local planning authority as part of the remediation strategy have been carried out in full. If during the remediation or development work new areas of contamination are encountered, which have not been previously identified, then the additional contamination should be fully assessed in accordance with condition [11 (iii-iv)] above and an adequate remediation scheme shall be submitted to and approved in writing by the local planning authority and fully implemented thereafter; and (2) a verification report, produced on completion of the remediation works to demonstrate effective implementation of the remediation strategy, has been submitted to and approved in writing by the local planning authority. The content of the report must comply with best practice guidance and should include, details of the remediation works carried out, results of verification sampling, testing and monitoring and all waste management documentation showing the classification of waste, its treatment, movement and/or disposal in order to demonstrate compliance with the approved remediation strategy.

25) (a) The new development site shall not be occupied until a Parking Management Strategy is submitted to and approved in writing by the local planning authority. The strategy shall govern the allocation of car parking spaces, including the wheelchair accessible spaces for the lifetime of the development. (b) The one on-site wheelchair accessible car parking spaces shown on the approved drawings (or in another location agreed with the local planning authority) shall be provided prior to the first occupation of the new development site and retained for its lifetime. (c) No less than one blue badge car parking spaces shall be provided with electric vehicle charging points. Passive provision for future provision of electric charging points shall be made for further one on-street car parking spaces. The charging points as well as passive provision shall be in place prior to the first occupation of the development and retained for its lifetime. (d) At no time shall any other external areas of the development save for those explicitly identified on the approved drawings be made available for parking of motor vehicles other than to facilitate essential maintenance works.

26) The relevant part of the development shall not be occupied until final Delivery and Servicing Plans have been implemented and are in operation for: (i) the historic foundry;

and (ii) the new development. The Delivery and Servicing Plans should be in accordance with details which have been submitted to and approved in writing by the local planning authority. The provisions of the approved plans, including the onsite servicing yard, shall be retained and maintained for the lifetime of the development. The Delivery and Servicing Plan and facilities shown on approved drawings shall be provided prior to the first occupation of the relevant part of the development and be maintained in an operational condition and made available to the occupiers of the building for the lifetime of the development.

27) The new development site shall not be occupied until a Scheme of Highway Improvement Works necessary to serve this development (being the closure of the existing access and reconstruction/resurfacing of the carriageway/footway) is implemented in accordance with details which have been submitted to and approved in writing by the local planning authority.

28) Prior to first occupation of the new development site, the developer shall submit to the local planning authority a post construction report, including as built calculations (SBEM) to demonstrate the Energy Strategy in CO2 emissions have been delivered on-site. The post construction report shall be approved in writing by the local planning authority and the energy efficiency and sustainability measures set out therein shall be completed prior to the first occupation of the new development site and retained for its lifetime.

29) Within six months of first occupation of the: a) new development site; and b) the historic foundry the developer shall provide the local planning authority with evidence of the final design stage certification, which shall be verified by the awarding body (Building Research Establishment) showing: (a) a minimum BREEAM 2014 NC rating of 'Excellent' for the new development site; and (b) a minimum BREEAM 2014 RFO rating of ‘very good’ for the historic foundry. The approved details of the sustainable design and construction measures shall thereafter be retained unless otherwise approved in writing by the local planning authority.

30) The area within the listed building shown on approved plans ref. PL_2601 (Proposed Ground Floor Plan) and ref. PL_2602 (Proposed First Floor Plan) as being in B2 use shall be used for the manufacture of bells and related components, art works or other founding activities and ancillary uses (including research, education, display and sales) only and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification),for no other purposes.

31) The area within the listed building shown on approved plan ref. PL_2601 (Proposed Ground Floor Plan) as being in A3 use, shall be used for the sale and consumption of food and beverages as well as ancillary events and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

32) The area within the listed building shown on approved plans ref. PL_2601 (Proposed Ground Floor Plan), ref. PL_2602 (Proposed First Floor Plan) and ref. PL_2603 rev C (Proposed Second Floor Plan) as being in B1 (creative workspace shop and artist studio space) shall be used for the manufacture and repair of goods and for artists’ workspace or other workspace akin to office use and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

33) The area within the new development site shown on approved plans ref PL_1202 rev D (Proposed Ground Floor Plan) and ref PL_1203 rev A (Proposed First Floor Plan) as being in office B1 use shall be occupied as an office / co-working space only and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

Application B: APP/E5900/V/20/3245430

1) The works authorised by this consent shall begin not later than three years from the date of this consent.

2) The works hereby permitted shall be carried out in accordance with the approved plans listed in Annex A2.

3) All new external and internal works and finishes and works of making good to the retained fabric, shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile, unless shown otherwise on the drawings or other documentation hereby approved, or required by any condition(s) attached to this consent.

4) The new facing brickwork shall match the existing brickwork adjacent in respect of colour, texture, face bond and pointing, unless shown otherwise on the drawings or other documentation hereby approved or required by any condition(s) attached to this consent.

5) No repointing of brickwork is authorised by this consent without prior approval of details. Proposals shall be submitted to and approved in writing by the Council as local planning authority before the work is begun, and the work shall be carried out in accordance with such approved proposals.

6) Within six months of commencement of works to the historic foundry, details of security measures shall be submitted to and approved in writing by the local planning authority. The security measures shall be implemented in accordance with the approved details, completed prior to the first occupation of the historic foundry, and retained thereafter.

7) Details of the hereby approved flue serving the electric induction furnace shall be submitted to and approved in writing by the local planning authority prior to installation. The flue shall be located within the original furnace chimney to the rear of the foundry. The flue shall provide for an unobstructed upwards venting of the flue gases and a mechanism to prevent rainwater entering the flue is acceptable providing it does not prevent the upward venting of the flue gas. The final design of the flue shall be presented to and approved in writing by the local planning authority before works start on site.

8) Precautions shall be taken to secure and protect the interior and exterior features against accidental loss or damage, or theft during the building work. Details such as hoardings, security measures, weather proofing etc. shall be submitted to and approved in writing by the local planning authority prior to commencement, and the relevant work carried out in accordance with such approval. No such features shall be disturbed or removed temporarily or permanently except as indicated on the approved drawings or with prior approval in writing of the local planning authority.

9) Detailed method statements of the structural work prepared by a suitably qualified and experienced heritage construction/renovation professional and shall be submitted to and

approved in writing by the local planning authority prior to the commencement of works. The work shall be carried out in accordance with such approved details.

10) The position, type and method of installation of all new and relocated services and related fixtures (for the avoidance of doubt including communications and information technology servicing), shall be specified in advance of these being installed, and the prior approval of the local planning authority shall be obtained wherever these installations are to be visible, or where ducts or other methods of concealment are proposed. Any works carried out shall be in accordance with such approval.

11) No works shall take place until samples and full particulars of all external and internal facing materials to be used in the refurbishment of the Historic Foundry have been submitted to and approved in writing by the local planning Authority. Details submitted pursuant to this condition shall include but are not restricted to: (a) detailed method statements for all internal and external works including works of making good, prepared by a suitably qualified and experienced heritage construction/renovation professional; (b) details and samples of all internal works of any new or replacement fabric, including new openings, staircase, lift etc. Drawings shall be at a scale of no less than 1:5; (c) samples and details of external cladding. Details and sample panels of external cladding, where relevant, shall include all types of brick or other cladding material to be used, details of bond, mortar and pointing for brick and details of joints, panel sizes and fixing method for other types of cladding; (d) samples and drawings of fenestration. Details of fenestration, where relevant, shall include reveals, sills and lintels. Drawings shall be at a scale of no less than 1:5; (e) drawings and details of entrances. Details of entrances, where relevant, shall include doors, reveals, canopies, signage, entry control, post boxes, CCTV, lighting and soffit finishes. Drawings shall be at a scale of no less than 1:5; (f) drawings and details of shopfronts. Details of shopfronts, where relevant, shall include doors, glazing, reveals, stallrisers, pilasters, fascias, awnings and signage zones or indicative signage. Drawings shall be at a scale of no less than 1:5; (g) samples and details of roofing; (h) details of any balconies, terraces or winter gardens and associated balustrades, soffits and drainage; (j) details of any external rainwater goods, flues, grilles, louvres and vents; (k) details of any external plant, plant enclosures and safety balustrades; and (l) details of the bell-themed structure. The works shall not be carried out other than in accordance with the approved details.

12) No cleaning of masonry, other than a gentle surface clean using a nebulous water spray, is authorised by this consent without prior approval of details by the local planning authority. Full details shall be submitted to and approved by the local planning authority before any such work is begun and the work shall be carried out in accordance with such approved proposals.

Annex A1: Approved Plans – Application A: APP/E5900/V/20/3245430

PL_0000 Existing Location Plan – 31/44 Architects

PL_0001 Existing Site Plan - 31/44 Architects

PL_0002 Existing Basement Plan - 31/44 Architects

PL_0003 Existing Ground Floor Plan - 31/44 Architects

PL_0004 Existing First Floor Plan - 31/44 Architects

PL_0005 Existing Second Floor Plan - 31/44 Architects

PL_0006 Existing Third Floor Plan - 31/44 Architects

PL_0007 Existing Roof Plan - 31/44 Architects

PL_0100 Existing North Elevation - 31/44 Architects

PL_0101 Existing East Elevation - 31/44 Architects

PL_0102 Existing South Elevation - 31/44 Architects

PL_0103 Existing West Elevation - 31/44 Architects

PL_0200 Existing Section AA - 31/44 Architects

PL_0201 Existing Section BB - 31/44 Architects

PL_0300 Proposed Location Plan - 31/44 Architects

PL_0301 Proposed Site Plan - 31/44 Architects

PL_0302 Proposed Sub-Basement Plan rev A - 31/44 Architects

PL_0303 Proposed Basement Plan rev B - 31/44 Architects

PL_0304 Proposed Ground Floor Plan rev D - 31/44 Architects

PL_0305 Proposed First Floor Plan rev A - 31/44 Architects

PL_0306 Proposed Second Floor Plan rev A - 31/44 Architects

PL_0307 Proposed Third Floor Plan rev A - 31/44 Architects

PL_0308 Proposed Fourth Floor Plan rev A - 31/44 Architects

PL_0309 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_0311 Proposed Roof Plan rev A - 31/44 Architects

PL_0312 Proposed Bicycle Parking - Ground Floor rev B - 31/44 Architects

PL_0313 Proposed Bicycle Parking - Sub-Basement rev A - 31/44 Architects

PL_0314 Proximity of exhaust to nearby windows rev A - 31/44 Architects

PL_0315 Proposed Unattended Public Access - Ground Floor rev A - 31/44 Architects

PL_0316 Proposed Unattended Public Access - First Floor rev A - 31/44 Architects

PL_0400 Proposed North Elevation rev A - 31/44 Architects

PL_0401 Proposed East Elevation rev C - 31/44 Architects

PL_0402 Proposed South Elevation rev A - 31/44 Architects

PL_0403 Proposed West Elevation rev C - 31/44 Architects

PL_0500 Proposed Section AA rev A - 31/44 Architects

PL_0501 Proposed Section BB rev A - 31/44 Architects

PL_1000 Existing Basement Plan - 31/44 Architects

PL_1001 Existing Ground Floor Plan - 31/44 Architects

PL_1002 Existing Roof Plan - 31/44 Architects

PL_1100 Demolition Basement Plan - 31/44 Architects

PL_1101 Demolition Ground Floor Plan - 31/44 Architects

PL_1102 Demolition Roof Plan - 31/44 Architects

PL_1200 Proposed Sub-Basement Plan rev A - 31/44 Architects

PL_1201 Proposed Basement Plan rev B - 31/44 Architects

PL_1202 Proposed Ground Floor Plan rev D - 31/44 Architects

PL_1203 Proposed First Floor Plan rev A - 31/44 Architects

PL_1204 Proposed Second Floor Plan rev A - 31/44 Architects

PL_1205 Proposed Third Floor Plan rev A - 31/44 Architects

PL_1206 Proposed Fourth Floor Plan rev A - 31/44 Architects

PL_1207 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_1209 Proposed Roof Plan rev A - 31/44 Architects

PL_1300 Proposed Elevation Plumbers Row Block(East) (1.1) rev C - 31/44 Architects

PL_1301 Proposed Elevation Plumbers Row Block(North) (2.2) rev A - 31/44 Architects

PL_1302 Proposed Elevation Courtyard Building(North) (3.3) rev A - 31/44 Architects

PL_1303 Proposed Elevation Courtyard Building(East) (4.4) rev C - 31/44 Architects

PL_1304 Proposed Elevation Courtyard Building(South) (5.5) rev B - 31/44 Architects

PL_1305 Proposed Elevation Plumbers Row Block(West) (6.6) rev C - 31/44 Architects

PL_1306 Proposed Elevation Plumbers Row Block(South) (7.7) rev A - 31/44 Architects

PL_1400 Proposed Section AA rev A - 31/44 Architects

PL_1401 Proposed Section BB rev C - 31/44 Architects

PL_1402 Proposed Section CC rev B - 31/44 Architects

PL_1403 Proposed Section DD rev A - 31/44 Architects

PL_1404 Proposed Section EE rev A - 31/44 Architects

PL_1500 Proposed Strip Elevation 01 (Mulberry St. corner) - 31/44 Architects

PL_1501 Proposed Strip Elevation 02 (Fieldgate St. - Plumbers Row) - 31/44 Architects

PL_1502 Proposed Strip Elevation 03 (Rear Building) - 31/44 Architects

PL_1503 Proposed Strip Elevation 04 (Top Floors) - 31/44 Architects

PL_1600 Overhang Diagram Sections - 31/44 Architects

PL_2000 Existing Basement Plan - 31/44 Architects

PL_2001 Existing Ground Floor Plan - 31/44 Architects

PL_2002 Existing First Floor Plan - 31/44 Architects

PL_2003 Existing Second Floor Plan - 31/44 Architects

PL_2004 Existing Third Floor Plan - 31/44 Architects

PL_2005 Existing Roof Plan - 31/44 Architects

PL_2100 Existing Elevation Whitechapel Rd. (North) - 31/44 Architects

PL_2101 Existing Elevation Fieldgate St (East) - 31/44 Architects

PL_2200 Existing Section AA - 31/44 Architects

PL_2201 Existing Section BB - 31/44 Architects

PL_2202 Existing Section CC - 31/44 Architects

PL_2203 Existing Section DD - 31/44 Architects

PL_2204 Existing Section EE - 31/44 Architects

PL_2205 Existing Section FF - 31/44 Architects

PL_2206 Existing Section GG - 31/44 Architects

PL_2207 Existing Section HH - 31/44 Architects

PL_2208 Existing Section JJ - 31/44 Architects

PL_2300 Demolition Basement Plan - 31/44 Architects

PL_2301 Demolition Ground Floor Plan - 31/44 Architects

PL_2302 Demolition First Floor Plan - 31/44 Architects

PL_2303 Demolition Second Floor Plan - 31/44 Architects

PL_2304 Demolition Third Floor Plan - 31/44 Architects

PL_2305 Demolition Roof Plan - 31/44 Architects

PL_2400 Demolition Elevation Whitechapel Rd. (North) - 31/44 Architects

PL_2401 Demolition Elevation Fieldgate St. (East) - 31/44 Architects

PL_2500 Demolition Section AA - 31/44 Architects

PL_2501 Demolition Section BB - 31/44 Architects

PL_2502 Demolition Section CC - 31/44 Architects

PL_2503 Demolition Section DD - 31/44 Architects

PL_2504 Demolition Section EE - 31/44 Architects

PL_2505 Demolition Section FF - 31/44 Architects

PL_2506 Demolition Section GG - 31/44 Architects

PL_2507 Demolition Section HH - 31/44 Architects

PL_2508 Demolition Section JJ - 31/44 Architects

PL_2600 Proposed Basement Plan - 31/44 Architects

PL_2601 Proposed Ground Floor Plan - 31/44 Architects

PL_2602 Proposed First Floor Plan - 31/44 Architects

PL_2603 Proposed Second Floor Plan rev C - 31/44 Architects

PL_2604 Proposed Third Floor Plan rev C - 31/44 Architects

PL_2605 Proposed Roof Plan rev C - 31/44 Architects

PL_2606 Proposed Unattended Public Access - Ground Floor - 31/44 Architects

PL_2700 Proposed Elevation Whitechapel Rd. (North) - 31/44 Architects

PL_2701 Proposed Elevation Fieldgate St. (East) - 31/44 Architects

PL_2800 Proposed Section AA rev A - 31/44 Architects

PL_2801 Proposed Section BB - 31/44 Architects

PL_2802 Proposed Section CC rev A - 31/44 Architects

PL_2803 Proposed Section DD rev C - 31/44 Architects

PL_2804 Proposed Section EE rev A - 31/44 Architects

PL_2805 Proposed Section FF - 31/44 Architects

PL_2806 Proposed Section GG rev C - 31/44 Architects

PL_2807 Proposed Section HH - 31/44 Architects

PL_2808 Proposed Section JJ - 31/44 Architects

PL_2900 Proposed Screen to Foundry Workshop - 31/44 Architects

PL_2901 Proposed Mezzanine, Plans, Elevation, Section - 31/44 Architects

PL_2902 Proposed Old Foundry Entrance, Plans, Elevation, Section, RCP - 31/44 Architects

PL_2903 Proposed Pit Intervention, Plans, Elevation, Section - 31/44 Architects

PL_2904 Proposed Doorway Linking Foundry Spaces - 31/44 Architects

PL_2905 Proposed Link Block, Ground Floor Plan - 31/44 Architects

PL_2906 Proposed Link Block, First Floor Plan - 31/44 Architects

PL_2907 Proposed Link Block, Second Floor Plan - 31/44 Architects

PL_2908 Proposed Link Block, Section AA - 31/44 Architects

PL_2909 Proposed Link Block, Section BB - 31/44 Architects

PL_2910 Proposed Link Block, Fieldgate St. Elevation - 31/44 Architects

PL_2911 Proposed Link Block, Courtyard Elevation - 31/44 Architects

Diagram Foundry Plans - 31/44 Architects

Diagram Foundry Elevations - 31/44 Architects

WBFSK10 Ground Floor as Existing - Malcolm Fryer Architects

WBFSK06 Ground Floor as Proposed - Malcolm Fryer Architects

WBFSKEXR01 Roof Glazing RL24 Section Detail as Existing - Malcolm Fryer Architects

WBFSKEXR02 Section Detail as Existing - Malcolm Fryer Architects

WBFSKFL01 Foundry Floor Section as Existing - Malcolm Fryer Architects

WBFSKFL02 Foundry Floor Section as Proposed - Malcolm Fryer Architects

WBFSKPRR01 Rooflight RL24 Detail Section as Proposed - Malcolm Fryer Architects

WBFSKPRR02 Section Detail as Proposed - Malcolm Fryer Architects

WBFSKR01 Detail Section as Proposed Malcolm Fryer Architects

SOW Whitechapel Bell Foundry Schedule of Repair Works - Malcolm Fryer Architects

Annex A2: Approved Plans – Application B: APP/E5900/V/20/3245434

PL_0000 Existing Location Plan - 31/44 Architects

PL_0001 Existing Site Plan - 31/44 Architects

PL_0002 Existing Basement Plan - 31/44 Architects

PL_0003 Existing Ground Floor Plan - 31/44 Architects

PL_0004 Existing First Floor Plan - 31/44 Architects

PL_0005 Existing Second Floor Plan - 31/44 Architects

PL_0006 Existing Third Floor Plan - 31/44 Architects

PL_0007 Existing Roof Plan - 31/44 Architects

PL_0100 Existing North Elevation - 31/44 Architects

PL_0101 Existing East Elevation - 31/44 Architects

PL_0102 Existing South Elevation - 31/44 Architects

PL_0103 Existing West Elevation - 31/44 Architects

PL_0200 Existing Section AA - 31/44 Architects

PL_0201 Existing Section BB - 31/44 Architects

PL_0300 Proposed Location Plan - 31/44 Architects

PL_0301 Proposed Site Plan - 31/44 Architects

PL_0302 Proposed Sub-Basement Plan rev A - 31/44 Architects

PL_0303 Proposed Basement Plan rev B - 31/44 Architects

PL_0304 Proposed Ground Floor Plan rev D - 31/44 Architects

PL_0305 Proposed First Floor Plan rev A - 31/44 Architects

PL_0306 Proposed Second Floor Plan rev A - 31/44 Architects

PL_0307 Proposed Third Floor Plan rev A - 31/44 Architects

PL_0308 Proposed Fourth Floor Plan rev A - 31/44 Architects

PL_0309 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_0311 Proposed Roof Plan rev A - 31/44 Architects

PL_0312 Proposed Bicycle Parking - Ground Floor rev B - 31/44 Architects

PL_0313 Proposed Bicycle Parking - Sub-Basement rev A - 31/44 Architects

PL_0314 Proximity of exhaust to nearby windows rev A - 31/44 Architects

PL_0315 Proposed Unattended Public Access - Ground Floor rev A - 31/44 Architects

PL_0316 Proposed Unattended Public Access - First Floor rev A - 31/44 Architects

PL_0400 Proposed North Elevation rev A - 31/44 Architects

PL_0401 Proposed East Elevation rev C - 31/44 Architects

PL_0402 Proposed South Elevation rev A - 31/44 Architects

PL_0403 Proposed West Elevation rev C - 31/44 Architects

PL_0500 Proposed Section AA rev A - 31/44 Architects

PL_0501 Proposed Section BB rev A - 31/44 Architects

PL_1000 Existing Basement Plan - 31/44 Architects

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PL_1100 Demolition Basement Plan - 31/44 Architects

PL_1101 Demolition Ground Floor Plan - 31/44 Architects

PL_1102 Demolition Roof Plan - 31/44 Architects

PL_1200 Proposed Sub-Basement Plan rev A - 31/44 Architects

PL_1201 Proposed Basement Plan rev B - 31/44 Architects

PL_1202 Proposed Ground Floor Plan rev D - 31/44 Architects

PL_1203 Proposed First Floor Plan rev A - 31/44 Architects

PL_1204 Proposed Second Floor Plan rev A - 31/44 Architects

PL_1205 Proposed Third Floor Plan rev A - 31/44 Architects

PL_1206 Proposed Fourth Floor Plan rev A - 31/44 Architects

PL_1207 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_1209 Proposed Roof Plan rev A - 31/44 Architects

PL_1300 Proposed Elevation Plumbers Row Block (East) (1.1) rev C - 31/44 Architects

PL_1301 Proposed Elevation Plumbers Row Block (North) (2.2) rev A - 31/44 Architects

PL_1302 Proposed Elevation Courtyard Building (North) (3.3) rev A - 31/44 Architects

PL_1303 Proposed Elevation Courtyard Building (East) (4.4) rev C - 31/44 Architects

PL_1304 Proposed Elevation Courtyard Building (South) (5.5) rev B - 31/44 Architects

PL_1305 Proposed Elevation Plumbers Row Block (West) (6.6) rev C - 31/44 Architects

PL_1306 Proposed Elevation Plumbers Row Block (South) (7.7) rev A - 31/44 Architects

PL_1400 Proposed Section AA rev A - 31/44 Architects

PL_1401 Proposed Section BB rev C - 31/44 Architects

PL_1402 Proposed Section CC rev B - 31/44 Architects

PL_1403 Proposed Section DD rev A - 31/44 Architects

PL_1404 Proposed Section EE rev A - 31/44 Architects

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PL_2004 Existing Third Floor Plan - 31/44 Architects

PL_2005 Existing Roof Plan - 31/44 Architects

PL_2100 Existing Elevation Whitechapel Rd. (North) - 31/44 Architects

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PL_2201 Existing Section BB - 31/44 Architects

PL_2202 Existing Section CC - 31/44 Architects

PL_2203 Existing Section DD - 31/44 Architects

PL_2204 Existing Section EE - 31/44 Architects

PL_2205 Existing Section FF - 31/44 Architects

PL_2206 Existing Section GG - 31/44 Architects

PL_2207 Existing Section HH - 31/44 Architects

PL_2208 Existing Section JJ - 31/44 Architects

PL_2300 Demolition Basement Plan - 31/44 Architects

PL_2301 Demolition Ground Floor Plan - 31/44 Architects

PL_2302 Demolition First Floor Plan - 31/44 Architects

PL_2303 Demolition Second Floor Plan - 31/44 Architects

PL_2304 Demolition Third Floor Plan - 31/44 Architects

PL_2305 Demolition Roof Plan - 31/44 Architects

PL_2400 Demolition Elevation Whitechapel Rd. (North) - 31/44 Architects

PL_2401 Demolition Elevation Fieldgate St. (East) - 31/44 Architects

PL_2500 Demolition Section AA - 31/44 Architects

PL_2501 Demolition Section BB - 31/44 Architects

PL_2502 Demolition Section CC - 31/44 Architects

PL_2503 Demolition Section DD - 31/44 Architects

PL_2504 Demolition Section EE - 31/44 Architects

PL_2505 Demolition Section FF - 31/44 Architects

PL_2506 Demolition Section GG - 31/44 Architects

PL_2507 Demolition Section HH - 31/44 Architects

PL_2508 Demolition Section JJ - 31/44 Architects

PL_2600 Proposed Basement Plan - 31/44 Architects

PL_2601 Proposed Ground Floor Plan - 31/44 Architects

PL_2602 Proposed First Floor Plan - 31/44 Architects

PL_2603 Proposed Second Floor Plan rev C - 31/44 Architects

PL_2604 Proposed Third Floor Plan rev C - 31/44 Architects

PL_2605 Proposed Roof Plan rev C - 31/44 Architects

PL_2606 Proposed Unattended Public Access - Ground Floor - 31/44 Architects

PL_2700 Proposed Elevation Whitechapel Rd. (North) - 31/44 Architects

PL_2701 Proposed Elevation Fieldgate St. (East) - 31/44 Architects

PL_2800 Proposed Section AA rev A - 31/44 Architects

PL_2801 Proposed Section BB - 31/44 Architects

PL_2802 Proposed Section CC rev A - 31/44 Architects

PL_2803 Proposed Section DD rev C - 31/44 Architects

PL_2804 Proposed Section EE rev A - 31/44 Architects

PL_2805 Proposed Section FF - 31/44 Architects

PL_2806 Proposed Section GG rev C - 31/44 Architects

PL_2807 Proposed Section HH - 31/44 Architects

PL_2808 Proposed Section JJ - 31/44 Architects

PL_2900 Proposed Screen to Foundry Workshop - 31/44 Architects

PL_2901 Proposed Mezzanine, Plans, Elevation, Section - 31/44 Architects

PL_2902 Proposed Old Foundry Entrance, Plans, Elevation, Section, RCP - 31/44 Architects

PL_2903 Proposed Pit Intervention, Plans, Elevation, Section - 31/44 Architects

PL_2904 Proposed Doorway Linking Foundry Spaces - 31/44 Architects

PL_2905 Proposed Link Block, Ground Floor Plan - 31/44 Architects

PL_2906 Proposed Link Block, First Floor Plan - 31/44 Architects

PL_2907 Proposed Link Block, Second Floor Plan - 31/44 Architects

PL_2908 Proposed Link Block, Section AA - 31/44 Architects

PL_2909 Proposed Link Block, Section BB - 31/44 Architects

PL_2910 Proposed Link Block, Fieldgate St. Elevation - 31/44 Architects

PL_2911 Proposed Link Block, Courtyard Elevation - 31/44 Architects

Diagram Foundry Plans - 31/44 Architects

Diagram Foundry Elevations - 31/44 Architects

WBFSK10 Ground Floor as Existing - Malcolm Fryer Architects

WBFSK06 Ground Floor as Proposed - Malcolm Fryer Architects

WBFSKEXR01 Roof Glazing RL24 Section Detail as Existing - Malcolm Fryer Architects

WBFSKEXR02 Section Detail as Existing - Malcolm Fryer Architects

WBFSKFL01 Foundry Floor Section as Existing - Malcolm Fryer Architects

WBFSKFL02 Foundry Floor Section as Proposed - Malcolm Fryer Architects

WBFSKPRR01 Rooflight RL24 Detail Section as Proposed - Malcolm Fryer Architects

WBFSKPRR02 Section Detail as Proposed - Malcolm Fryer Architects

WBFSKR01 Detail Section as Proposed - Malcolm Fryer Architects

SOW Whitechapel Bell Foundry Schedule of Repair Works - Malcolm Fryer Architects

Annex B – Schedule of Representations

General representations

Party	Date
S Clarke	22/03/21
H Lavender	08/04/21

The Planning Inspectorate

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 for Housing, Communities and Local Government

Date 20 January 2021

The Town & Country Planning Act 1990

The Planning (Listed Buildings and Conservation Areas) Act 1990

Applications by

Raycliff Whitechapel LLP

Inquiry Opened on 6 October 2020

The Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW

File Refs: APP/E5900/V/20/3245430 & APP/E5900/V/20/3245432

File A: APP/E5900/V/20/3245430
The Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 22 January 2020.
- The application is made by Raycliff Whitechapel LLP to the Council of the London Borough of Tower Hamlets.
- The application Ref.PA/19/00008 is dated 22 December 2018.
- The development proposed is described as: part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works.
- On the information available at the time of making the direction, the Secretary of State particularly wished to be informed about the following matters for the purpose of his consideration of the application: any conflict with the policies contained within section 16 of the National Planning Policy Framework 2019 'Conserving and Enhancing the Historic Environment'; any conflict with the London Borough of Tower Hamlets Core Strategy 2010, the Tower Hamlets Managing Development Document 2013 and the London Plan 2016; and any other matters which the Inspector considers to be relevant.

Summary of Recommendation: The application be approved.

File B: APP/E5900/V/20/3245432
The Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW

- The application was called in for decision by the Secretary of State by a direction, made under section 12 of the Planning (Listed Buildings and Conservation Areas) Act 1990, on 22 January 2020.
- The application is made by Raycliff Whitechapel LLP to the Council of the London Borough of Tower Hamlets.
- The application Ref.PA/19/00009 is dated 22 December 2018.
- The works proposed are described as: part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works.
- On the information available at the time of making the direction, the Secretary of State particularly wished to be informed about the following matters for the purpose of his consideration of the application: any conflict with the policies contained within section 16 of the National Planning Policy Framework 2019 'Conserving and Enhancing the Historic Environment'; any conflict with the London Borough of Tower Hamlets Core Strategy 2010, the Tower Hamlets Managing Development Document 2013 and the London Plan 2016; and any other matters which the Inspector considers to be relevant.

Summary of Recommendation: The application be approved.

1. Preliminary Matters

1.1 Owing to the ongoing pandemic, the Inquiry was run on a virtual basis. It opened on 6 October and closed on 28 October after a total of 9 sitting days. The proceedings were not live-streamed, but PINS' Teams platform allowed all those who wished to participate and/or observe to do so.

1.2 I am obliged to all parties for the flexibility shown throughout and would wish to record my particular thanks to Elizabeth Humphrey, my Case officer at PINS, for organising the event in such an efficient way that I was able to concentrate on the evidence in much the same way as I would have done in a 'normal' Inquiry.

1.3 I move on to the background to the applications at issue below but would record here that the main parties to the Inquiry were the applicant - Raycliff Whitechapel LLP[1]; the local planning authority - the Council of the London Borough of Tower Hamlets[2]; both in support of the proposals; and in opposition; Re-Form Heritage, a Rule 6(6) Party[3].

1.4 Day 8 of the Inquiry (27 October 2020) was set aside for interested parties to make submissions to the Inquiry and a number did so. There was a significant volume of representation in relation to the applications when they were before the Council, and more representations on the applications when jurisdiction changed. These can all be found in the bundle of material from PINS that accompanies this report.

1.5 The Core Documents, the main parties' evidence, and Inquiry Documents can be found at: https://towerhamlets.app.box.com/s/xueey8pardx3pm9hd6kf0ana6gw17kzi. I am most grateful to the Council for their assistance in setting up and maintaining an Inquiry library.

1.6 As agreed before the Inquiry opened[4], I carried out an accompanied site visit to the Bell Foundry, and its surroundings on the morning of 7 October 2020. That afternoon, I took in the AB Fine Art Foundry in Bow, also on an accompanied basis. It was agreed at the Inquiry that I should also visit the Middleport Pottery in Burslem, Stoke-on-Trent. I did that, on an accompanied basis, on 30th October 2020[5].

1.7 Most helpfully, the applicant, the Council, and Re-Form worked up a Statement of Common Ground[6] in advance of the Inquiry. This proved most useful in identifying the areas of agreement, and dispute, and I make reference to it in various places.

1.8 A draft Agreement under s.106 of the principal Act was placed before the Inquiry[7] and was the subject of discussion on the penultimate day of

[1] Referred to hereafter as the applicant
[2] Referred to hereafter as the Council
[3] Referred to hereafter as Re-Form
[4] At the initial Case Management Conference
[5] The itinerary can be found at ID13
[6] Referred to hereafter as SoCG – it can be found at CD1.1
[7] ID12

proceedings. I allowed time after the Inquiry closed for the document to be completed and gave Re-Form the opportunity to comment on that document and then for the Council and the applicant to make observations on what Re-Form had said[8].

1.9 As a consequence of the applications for planning permission and listed building consent being made on the same application form, the descriptions of development and works are the same. I have represented them in that way in the headers above. However, it is plain that not all parts of the development requiring planning permission are, in fact, works requiring listed building consent. I made this point to the parties during the Inquiry[9] and am grateful for the responses (that are dealt with in my conclusions below).

1.10 In a similar vein, in advance of, and during, the Inquiry, I set out my thoughts on the correct approach to balancing any harm against any public benefits in casework involving the historic environment[10], bearing in mind the conclusions of recent Court cases[11]. I am very grateful for the assistance given and return to this important matter in my conclusions below.

2. The Site and Surroundings

2.1 As set out in the SoCG[12], the application site is in Whitechapel, part of the London Borough of Tower Hamlets. It is bounded by Whitechapel Road to the north, Fieldgate Street and Plumbers Row to the east, and Mulberry Street to the south. To the west of the site are offices (and ground floor retail units) at 24-30 and 20-22 Whitechapel Road. The car park and servicing area serving Cityside House and the Qbic Hotel lie to the immediate west and south of the site with the arrangement of buildings forming an enclosed space to the rear.

2.2 The entry in the statutory list[13] provides a great deal of information about the Whitechapel (or what it terms the Church) Bell Foundry. It suffices to set out here that it is a Grade II* listed building. However, the situation is complicated, to a degree, by the fact that parts of the overall foundry site are specifically excluded from the listing[14].

2.3 Put simply, the application site has three main elements. Firstly, there is the front range (including 32 and 34 Whitechapel Road and 2 Fieldgate Street). Secondly, behind that front range, lie the courtyard and old stables and thirdly, beyond those, are the old foundry and former cottages. Together, these elements comprise the Grade II* listed building.

2.4 Beyond that lies what has been termed the 1980s building. This building is specifically excluded from the listing. Beyond and adjacent to the 1980s building are two areas of car park and hardstanding which were not part of the Whitechapel Bell Foundry but are parcels of land that have been assembled by the applicant.

[8] ID27
[9] ID10
[10] ID1 is my initial note alongside the responses to it and ID10
[11] CD8.9, CD8.10, CD8.14 and CD8.15 are the most apposite
[12] CD1.1
[13] CD9.12
[14] Pursuant to s.1(5A) of the Planning (Listed Buildings and Conservation Areas) Act 1990

2.5 As recorded in the SoCG[15], the lawful planning use of the existing buildings is Class B2 (General Industrial). The former office, living accommodation, storage, shop and display spaces, that formed parts of the Whitechapel Bell Foundry, are ancillary uses. The car park and hardstanding is a sui generis use ancillary to a mix of uses in neighbouring properties.

2.6 The site and its surroundings are part of the Whitechapel High Street Conservation Area. The wider local area is home to a number of small and larger businesses, offices, flexible work-spaces, retail and food/drink establishments. There are also residential blocks, some of which (like the Curve opposite the site on Fieldgate Street) are home to students. There are hotels in the vicinity as well as other leisure and arts uses. The East London Mosque lies to the east of the application site.

2.7 The general character of the area is of medium rise buildings (3-6 storeys) with some taller buildings (up to 8-9 storeys) in the immediate context. The (normally) busy Whitechapel Road is a major thoroughfare that runs immediately past the site.

3. Planning History

3.1 This is set out in full in the SoCG[16] and there is nothing specific in the various applications recorded that needs to be highlighted. However, it is worth setting out, in brief, the manner in which the applications at issue progressed.

3.2 These parallel applications for planning permission and listed building consent were validated by the Council on 2 January 2019[17] and consulted upon. Changes were subsequently made to the proposals[18] and further consultation took place. Following a positive recommendation from Officers, Members of the Council's Development Committee resolved to grant permission and consent on 14 November 2019[19]. The final draft Agreement under s.106 was then agreed, signed, and returned to the Council by the applicant.

3.3 On 2 December 2019, the Secretary of State issued a holding direction, before the Agreement under s.106 had been sealed, and the applications were then 'called in' by the Secretary of State on 22 January 2020.

4. The Proposals

4.1 In simple terms, there are two main components of the proposals that can loosely be classified as the listed building and the new building. In terms of the listed building itself, it would play host to a modern foundry, interpretation spaces, a café and events space, workspaces and workshops. The proposed uses and improved circulation are intended to allow the maximum number of people to access and experience the building.

4.2 The new building would be home to a hotel, with 103 bedrooms, a restaurant, a bar, and a roof-top terrace and pool, and a workspace at ground floor level.

[15] CD1.1
[16] CD1.1
[17] CD3.1 - CD3.10
[18] CD4.1 – CD 4.8
[19] CD5.1 – CD5.7

4.3 The ground floor across both the listed building and the new building would be open to the public, with the foundry, interpretation spaces and the café in the historic building, the restaurant bar and hotel reception in the new building. The main entrance to the buildings would be common to both.

4.4 The proposed uses are comprehensively covered in the Proposed Uses Addendum document[20] and Appendix 1 of the SoCG[21] gives details of the distribution of uses around the different building elements.

4.5 The applicant says that the works to the listed building are conservation-led and focused on those necessary to repair and protect the listed building and secure its long-term use. Works are principally related to improving internal access and circulation alongside other repair and maintenance work.

4.6 The main external alteration to the listed building relates to the installation of a structurally independent stair and lift in the old stables/hayloft which requires the old stables/hayloft to be raised in height. This will facilitate access to the upper floors of the building for all.

4.7 Other alterations include the repair and adaptation of the roof across the listed building while retaining its original profile. The existing (evidently failing) guttering and rainwater systems would be replaced. Windows would be refurbished and existing, unsuitable secondary glazing replaced. The exterior of the front range and the return on Fieldgate Street is to be lightly refurbished with some repair work attended to. The double entrance on to Fieldgate Street will be opened up as referred to above.

4.8 Internally, a foundry will be reinstated with a glazed screen separating it from the café so that patrons might observe founding taking place. No substantive redecoration is proposed to the old foundry spaces. A new doorway is proposed to link the foundry to the former tuning room and a modern mezzanine structure in what was the carpenter's loft will be replaced with a new, structurally independent mezzanine, aligned with adjacent floor levels to provide an education space. This will require a new doorway to be installed to permit access (at present the space can only be reached by stepladder).

4.9 The interior of the front range will receive a light-touch refurbishment, with the majority of existing finishes retained. Essential services are scheduled to be upgraded with fire protection measures. Detracting modern services will be removed. Some structural repairs and strengthening measures to floors and walls will be necessary, in some places.

4.10 The idea is that all existing, redundant services will be removed with new services concealed in voids in the front range and exposed at ceiling level in the foundry areas. Ventilation will be natural – no cooking would take place in the listed building so there would be no need for mechanical ventilation and/or extraction. The location of the flue serving the proposed electric furnace will be within the existing chimney stack.

4.11 In terms of the new building element, the 1980s building, and the vaults beneath, would be removed to accommodate the hotel.

[20] CD4.1
[21] CD1.1

4.12 Utilising currently vacant areas alongside the 1980s building, this will create a new urban block. A new, double height lightweight steel and glazed linked building will be inserted between the new building and the listed building to form the main entrance and reception area of the hotel. This will allow the original external wall of the foundry to be exposed once again.

5. Planning Policy

5.1 The development plan for the area includes the London Plan (Consolidated with Alterations since 2011) of March 2016[22], the Tower Hamlets Local Plan 2031: Managing Growth and Sharing Benefits adopted in January 2020[23], and alongside that, the Tower Hamlets 2031: Adopted Policies Map of even date[24].

5.2 The SoCG[25] sets out in detail all the policies that have some relevance but given the issues involved, consideration of whether the proposals comply, or not, with the development plan revolves around a few, particular policies in the London Plan, and the Local Plan.

5.3 In terms of the London Plan, Policy 7.4[26] deals with local character. In strategic terms, development should have regard to the form, function and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. It should improve an area's visual or physical connection with natural features. In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character for the future function of the area.

5.4 As far as planning decisions are concerned, Policy 7.4 says that buildings streets and open spaces should provide 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; contributes to a positive relationship between the urban structure and natural landscape features, including the underlying landform and topography of an area; is human in scale, ensuring buildings create a positive relationship with street level activity and people feel comfortable with 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 historic environment.

5.5 London Plan Policy 7.8[27] addresses heritage assets and archaeology. Strategically, London's heritage assets and historic environment should be identified, so that the desirability of sustaining and enhancing their significance, and of utilising their positive role in place shaping can be taken into account. Further, development should incorporate measures that identify, record, interpret, protect, and where appropriate, present the site's archaeology.

5.6 To inform planning decisions, development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate.

[22] CD6.1 - referred to hereafter as the London Plan
[23] CD6.2 – referred to hereafter as the Local Plan
[24] CD6.3
[25] CD1.1
[26] CD6.1 Page 288
[27] CD6.1 Page 295

Development affecting heritage assets and their settings should conserve their significance by being sympathetic to their form, scale, materials and architectural detail. New development should make provision for the protection of archaeological resources, landscapes and significant memorials. The physical assets should, where possible, be made available to the public on-site. Where the archaeological asset or memorial cannot be preserved or managed on-site, provision must be made for the investigation, understanding, recording, dissemination and archiving of that asset.

5.7 London Plan Policy 7.9[28] is concerned with heritage-led regeneration. As a general strategy, regeneration schemes should identify and make use of heritage assets and reinforce the qualities that make them significant so they can help stimulate environmental, economic and community regeneration. This includes buildings, landscape features, views, the Blue Ribbon Network and public realm. In the context of planning decisions, the significance of heritage assets should be assessed when development is proposed, and schemes designed so that the heritage significance is recognised both in their own right and as catalysts for regeneration. Wherever possible heritage assets (including buildings at risk) should be repaired, restored and put to a suitable and viable use that is consistent with their conservation and the establishment and maintenance of sustainable communities and economic vitality.

5.8 Local Plan Policy S.DH3[29] deals with heritage and the historic environment and is necessarily wide in its range. Of relevance to the matters at issue in this case, proposals must preserve, or where appropriate, enhance the borough's designated heritage assets in a manner appropriate to their significance as key and distinctive elements. Proposals to alter, extend or change the use of a heritage asset or proposals that would affect the setting of a heritage asset will only be permitted where: they safeguard the significance of the heritage asset, including its setting, character, fabric or identity; they are appropriate in terms of design, height, scale, form, detailing and materials in their local context; they enhance or better reveal the significance of assets or their settings; they preserve strategic and locally important views and landmarks; and in the case of a change of use from a use for which the building was originally designed, a thorough assessment of the practicability of retaining its existing use has been carried out outlining the wider public benefits of the proposed alternative use.

5.9 The policy goes on to set out that substantial harm or the total loss of significance of a designated heritage asset will only be supported in limited circumstances. These are a repeat of those set out in paragraph 195 of the National Planning Policy Framework[30] – these are set out in full, below.

5.10 To continue, alterations, extensions or changes of use, or development in the vicinity of listed buildings will be expected to have no adverse impact on those elements which contribute to their special architectural or historic interest, or their settings. Significant weight will be given to the protection and enhancement of the borough's conservation areas, including their settings. Development within a conservation area will be expected to preserve, or where

[28] CD6.1 Page 298
[29] CD6.2 Pages 49-50
[30] Referred to hereafter as the Framework

appropriate enhance those elements which contribute to their special character or appearance. Planning applications should explore opportunities from new development within conservation areas and their settings to enhance or better reveal their significance.

5.11 Moreover, applications affecting the significance of archaeology will be required to provide sufficient information to demonstrate how the proposal would contribute to the asset's conservation. Where the development includes, or has the potential to include, heritage assets with archaeological interest, an appropriate desk-based assessment and, where necessary, field evaluation, will be required. Where harm can be fully justified, archaeological excavation and/or recording as appropriate, followed by analysis and publication of the results, will be required.

5.12 The Framework is of course a material consideration of particular importance. While I note the overall objective to achieve sustainable development, Section 6 which talks of the need to build a strong, competitive economy, and Section 12 which seeks to achieve well-designed places, it is Section 16 which deals with the historic environment that is the most important aspect here, and in particular, paragraphs 193 to 196.

5.13 It is worth setting those out in some detail. Paragraph 193 tells us 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 its significance.

5.14 Paragraph 194 continues setting out 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. Substantial harm to or loss of: a) Grade II listed buildings, or Grade II Registered Parks and 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.

5.15 Paragraph 195 says that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities[31] 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 d) the harm or loss is outweighed by the benefit of bringing the site back into use.

[31] And I take that to apply equally to the Secretary of State or those acting on her/his behalf

5.16 Finally (for my purposes), paragraph 196 explains 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[32].

5.17 In many ways, this approach mirrors the statutory provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990[33]. S.66(1) of the Act says 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. S.16(2) of the Act takes a similar approach to the consideration of whether to grant listed building consent for works.

5.18 In relation to conservation areas, s.72(1) of the Act sets out that in the exercise, with respect to any buildings or other land in a conservation area of any powers under or by virtue of any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

5.19 There has been much activity in the Courts in recent times on the application of these provisions of the Act[34] but on my reading this has been settled by the Court of Appeal in *Mordue v SoS for Communities and Local Government and Others* [2015] EWCA Civ 1243[35]. The conclusion in this case was (and I put it very simply) that so long as the decision-maker properly follows the line set out in the Framework, then she/he can be said to have discharged the statutory duties imposed by the Act. Of course, that case was concerned with the previous version of the Framework, but the same principles surely apply to the February 2019 version now extant.

5.20 There is material in Planning Practice Guidance[36] that is of relevance, particularly in the section that advises on the Historic Environment. I highlight this, where necessary, in my conclusions below.

5.21 Turning back to the Local Plan, there is reference too, to some employment policies. In summary, Local Plan Policy S.EMP1[37] is permissive of development which supports, protects, and enhances the role and function of the borough's designated employment locations and maximises the provision of employment floorspace in line with a range of principles. The appeal site lies within the Central Activities Zone (Zone C/Tertiary Area) and the Whitechapel Local Employment Location[38]. The policy identifies opportunities for significant provision of offices and other strategic uses as part of employment-led, or mixed-use schemes in the Central Activities Zone. Local Employment Locations

[32] Referred to hereafter as OVU
[33] Referred to hereafter as the Act
[34] CD8.5 is the *Barnwell Manor* judgment but there are other examples too
[35] CD8.3
[36] Referred to hereafter as PPG
[37] CD6.2 Pages 96 and 97
[38] CD1.1 SoCG Page 13 refers

are identified as areas of high accessibility that provide, or could provide, significant capacity for employment accommodation meeting secondary, local, or specialist employment needs, and to support the needs of start-ups, small-to-medium enterprises, grow-on space and creative and digital industries.

5.22 The policy goes on to support proposals that provide opportunities to maximise and deliver investment and job creation in the borough through a range of measures. It also supports proposals that provide opportunities to promote the creation of a sustainable, diverse and balanced economy.

5.23 Local Plan Policy D.EMP2[39] is concerned with new employment space which it supports in designated employment locations and otherwise directs to town centres and along major transport routes. Within major commercial and mixed-use development schemes, at least 10% of new employment floorspace should be affordable in nature.

5.24 The loss of employment space falls under the ambit of Local Plan Policy D.EMP3[40]. In Local Employment Locations, development should not result in the net loss of viable employment floorspace except where they: (a) provide evidence of active marketing over a continuous period of at least 24 months at a reasonable market rent which accords with indicative figures; or (b) provide robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition; reasonable options for restoring the site to employment use are unviable; and that the benefits of alternative use would outweigh the benefits of employment use. Proposals involving the loss or reduction of employment floorspace within Local Employment Locations must also demonstrate that alternative employment uses would not be viable and the loss of employment floorspace would not compromise the operation and viability of the wider Local Employment Location.

5.25 As far as emerging policy is concerned, the Draft New London Plan, Intend to Publish Version of December 2019[41] is of relevance. The question of the weight to be attached does not arise as Policy HC1: Heritage Conservation and Growth, the policy therein that corresponds to London Plan Policies 7.4, 7.8, and 7.9 rehearsed above, does not pull in an identifiably different direction.

5.26 As set out in the SoCG[42] there is a range of Supplementary Planning Documents, and other documents that are of some relevance to the case. The most important of these can be found amongst the Core Documents[43].

6 The Case for the Applicant

6.1 This is set out in full in opening and closing statements to the Inquiry and in evidence[44]. What follows is a summary of the case as presented in closing, but the applicant's evidence should be read in full in order to appreciate it properly.

[39] CD6.2 Page 102
[40] CD6.2 Page 104
[41] CD7.1
[42] CD1.1 Pages 17-18
[43] CD9 – Other Documents
[44] ID2, ID27 and CD10.1 – CD10.21

Introduction

6.2 The proposals include the restoration of a foundry, for the casting of bells and art works, as well as a hotel, creative industries and café. Those proposals emerged after a lengthy period during which the applicant took advice from architects, heritage, building conservation, and planning specialists, engaged in significant pre-application discussions with Historic England[45] and the Council, and undertook a public consultation process described in the Statement of Community Involvement[46].

6.3 An important feature of the application scheme is the repair and refurbishment of the existing listed building with only a "light touch" approach to the proposed interventions. The works focus on restoring historic elements and other necessary and minor change directed to areas that are least significant or that have been most altered[47].

6.4 The application proposals[48] will enable an important vacant and deteriorating Grade II* listed building to be brought back into a beneficial use. This includes a suitable range of uses that have been devised to complement its existing layout, condition and appearance. A significant proportion of daily, free public access is to be made available to the historic spaces. This will enable new generations to experience and learn from the historical association with its famous, former use, thereby better revealing the character and significance of the building.

6.5 Important aspects of the historic significance will be restored, through the reintroduction of viable bell and art founding, the deliverability of which has not been seriously (if at all) challenged, alongside other creative workshops and workspaces that continue the site's long-term association with the culture of production. The restoration of foundry work will embrace new technologies[49]– this is not the exclusive preserve of Re-Form. As is agreed in the SoCG[50] the proposals will generate approximately 185 FTE jobs of which 40 will be in the listed building and planning obligations are agreed that will secure access to jobs from the local area (rightly a concern of many of those making representations).

6.6 For reasons best known to themselves, Re-Form appeared to wish to focus in evidence on early suggestions for the site described in the SCI and not on those that actually emerged from the design, conservation and consultation process. Typically, Re-Form's closing, mischaracterises the proposals which were developed after acquisition by Raycliff, being led by advice on the sensitivity of the heritage asset. To criticise the applicant for responding to expert advice is perverse, and to suggest that the inclusion of relevant obligations in the s.106 agreement (wholly consistent with the Proposed Uses

[45] Referred to hereafter as HE
[46] Referred to hereafter as SCI (CD3.7)
[47] As explained in the evidence of Mr Burges, Mr Fryar and Dr Filmer-Sankey
[48] Which should be taken to include the proposed conditions and the Agreement under s.106
[49] As Mr Westley explains
[50] CD1.1

Addendum submitted in support of the application[51]) was an example of opportunism is untenable.

6.7 Re-Form are trying to hold on to a version of the proposals (rather than those actually advanced) which they find it far easier to criticise. What is before the Secretary of State is the scheme that is the subject of the current applications, which emerged as a result of careful heritage assessment, condition survey and expert advice, together with consultation with the Council and HE.

6.8 Further, the purpose of the Inquiry is not to determine a theoretical idea for the Bell Foundry advanced by Re-Form which is not the subject of an application, and is in any event unrealistic and unviable even on the *Bramshill* basis[52] (see below), but whether the application scheme is acceptable and will, looked at in totality, preserve and enhance the listed building as the applicant, Council and HE consider will be the case. This is not a test case for industrial listed buildings, for which there are many examples, although that it not to suggest the Bell Foundry is not important.

6.9 A number of points have become clear. First, all are agreed that proposals need to come forward for Bell Foundry to ensure its long-term preservation for future generations.

6.10 Second, the applicant's proposals for the Bell Foundry have significant heritage and other public benefits which have the support not only of the Council but also HE. The works to the listed building (both repair works and works to make it possible to operate the proposed uses) must be completed before the hotel can be occupied[53].

6.11 Third, there are no design or other objections to the hotel itself, whether in terms of the setting of the listed building or the character or appearance of the conservation area[54]. The only issue arises indirectly from Re-Form's claim of a loss of historic bell founding use through the proposed demolition of the unlisted 1980s Building which forms part of the site for the proposed hotel.

6.12 Fourth, there is no coherent case, or evidence, which questions the viability or delivery of the application proposals. Re-Form agreed that they were not advancing such a case[55]. The applicant[56] has explained why the scheme is viable.

6.13 Fifth, there seems little doubt that it is not possible to reinstate a single use, bell foundry like that operating at the premises until 2017. The evidence about the fragile state of the bell foundry market is not challenged nor is it seriously contestable. Evidence has been provided[57] which gives a clear industry view on the state of the market and also with respect to the overhyped, and

[51] CD4.1
[52] CD8.14
[53] ID28 Schedule 11
[54] Agreed in the SoCG (CD1.1)
[55] Mr Clarke accepted this point in x-e and also accepted that he was not qualified to give evidence on this matter
[56] Through the evidence of Mr Brierley
[57] By Mr Westley, and in written form by Mr Hughes, and Mr Wilby of UK Bell Foundries Ltd (the latter is within the 3P submissions)

fundamentally naïve, aspirations of Factum with regard to the international bell market, one-off commissions, and the use of the building for the casting of larger bells[58].

6.14 Sixth, Re-Form submit that there is preferable idea for the Bell Foundry which is represented in its material, for which they have been campaigning since before the application was finally formulated and submitted much of which is predicated on notions of what the applicant proposes which are either out of date or not a fair representation. The application does not propose to site the hotel in the listed building, nor was this part of even the first consultation in June 2018, nor does it propose to demolish the listed building in order to build a hotel. Its approach to the earlier consultation suggestions, superseded by September 2018, shows an unwillingness to let go of an approach which make its campaign easier to run, and which is more in line with its public propaganda.

6.15 Seventh, Re-Form's approach to necessary works and costs lacks an independent or verifiable basis, the only evidence being short written costings prepared by two Re-Form trustees who cannot be regarded as independent given Re-Form's campaigning approach in this case. They have not given evidence which makes their lack of independence much more critical to whether their evidence can be given any real weight. Re-Form's campaigning propaganda has neither fairly represented the application proposals nor, indeed, Re-Form's own case. The former has been unfairly and inaccurately described by Re-Form and the latter exaggerated and spurious. The applicant's approach to works and costs has been subject to oral evidence[59], and by evidence from the Council[60], and therefore has the support of verifiable independent experts who were present and questioned. They maintained their position and Re-Form has not adduced comparable independent evidence to contradict it.

6.16 Eighth, the counter-proposals advanced by Re-Form are impractical, lack credibility and lack a sufficient evidential basis even on the footing that it is only an "idea" at present and would take 2-3 years to be fully worked up into a proposal. Indeed, although Re-Form made it clear that it was produced to support its position at this Inquiry, the dismissive attitude[61] to their own business plan was revealing. This attitude, set against the contention, over-pressed by Re-Form witnesses, that it is the *use* that it is critical to be preserved at the Bell Foundry, is surprising since[62] the business must at least "wash its face". It was also made it clear[63] that Re-Form could not subsidise Factum's business.

6.17 Ninth, this attitude may not ultimately be that surprising given the departure from written evidence[64] regarding the casting of 1.5 tonne bells, amplified at a

[58] Mr Lowe's oral evidence being contradicted by Mr Taylor for example
[59] Through Mr Burges, Mr Fryar and Mr Brierley
[60] From Mr Hodgen
[61] Shown by Mr Lowe in evidence
[62] And this was made clear by Mr Lowe though his evidence did veer on this point
[63] By Mr Clarke
[64] Mr Lowe in-c

late stage[65], that would require substantial sand deliveries and storage, removal of sand for recycling, plus a 1 tonne furnace, and scrubbers to deal with that scale of furnace, an electricity supply to drive that melting capacity[66], simply not considered or costed in the business estimates[67] despite the allegedly "cautious and prudent estimate" claimed by Factum's CFO[68]. It seems highly likely[69] that planning permission and listed building consent would be required (given the proposed ventilation system and scrubbers) if not an environmental permit for the scale of furnaces proposed. This also was not assumed to be the case by Re-Form.

6.18 The applicant has shown[70] that reviving a bell foundry at the premises or using the information presented in Re-Form's business case, the Re-Form idea, are not financially viable – and it is predicated on Re-Form acquiring the building. It is neither viable nor realistic and cannot, even in their current state, be regarded showing that the application is not Optimum Viable Use[71] (to the extent that is relevant). The risk of refusal of the applications at issue is that it will throw the future of the Bell Foundry into doubt in favour of pursuing an idea that lacks credibility and which, even after the years of campaigning will take some 2-3 years to formulate and presumably longer to deliver - even if Raycliff were willing to sell immediately following a refusal and Re-Form were able to purchase the site and obtain the relevant permission and consents.

6.19 Finally, despite the vocal objections, influenced to some extent by Re-Form's misleading campaigning material which has not sought to grapple fairly or accurately with the actual case but to pursue its own objective, it should not be forgotten how much support has been expressed by local people, businesses and elected Council Members for the application scheme and for the jobs and business it will bring to the local area, alongside preserving the listed building itself.

6.20 This application provides the best and only deliverable means to secure and guarantee the future of the Bell Foundry, to secure the reintroduction of bell founding (albeit not as it was before 2017) together with other foundry and related creative uses and to deliver the benefits of public access and employment to local people. Although references have been made to the reintroduction of B2 use as tokenistic, it is agreed in the SoCG[72] that there is a net reduction of 252 sqm in B class floorspace and it is acceptable.

Closure of the Whitechapel Bell Foundry in 2017 & the UK Bell Market

[65] By Mr Taylor's revised statement (ID21)
[66] Which would most likely require a new sub-station – see CD10.4 Paragraphs 6.13-6.14 and CD10.1 Paragraph 8.22
[67] See CD13.7 Appendix 1 which did anticipate a ventilation system but for 550 kg melting capacity.
[68] CD13.7 Appendix 2 Paragraph 2.1
[69] On the basis of the evidence of Mr Lowe and Mr Taylor
[70] Through the evidence Mr Brierley
[71] Referred to hereafter as OVU
[72] CD1.1

6.21 A sad but undisputable truth is that the UK bell market is only a shadow of its former self. As has been explained[73], the business was forced to close as a bell foundry, and the building was sold in 2016[74]. It was agreed[75] that no criticism can be made of this. Continuing the bell founding business on site became progressively unsustainable[76].

6.22 The single use bell foundry which had existed at the Bell Foundry ceased to operate from the listed building in 2017 and it is common ground amongst those experienced in the bell founding industry that it is no longer feasible to cast large (tower) bells on site, notwithstanding the historic connections of the Whitechapel Bell Foundry with famous bells such as the Liberty Bell and Big Ben. The question remains, over three years after closure, is what foundry-based use and supporting uses can be reintroduced to the site in a manner best in keeping with the historic significance of the listed building and which will viably secure its long term future. According to Re-Form, the issue turns on the significance of the use but the applicant, the Council and HE have approached the issue from the broader perspective of fabric, the various aspects of its significance to its historic use, and the historic use within that context.

6.23 What is clear[77] is that sadly the bell casting market is very small and that demand has significantly reduced over many years[78]. One issue, ignored by Re-Form is that a Central London location is not an advantage.

6.24 Although Re-Form[79] made extravagant claims about their ability to draw on regular (even annual) large commissions and the international market there was a failure to provide a single piece of evidence demonstrating even a general expression of interest from potential foreign sources of business. It might be thought that obtaining and providing general expressions of interest, without commitment, would be easy currency but Re-Form was unable to put a single coin on the table. It is notable that Re-Form has no direct experience in founding or in the bell founding industry or business. While they appear to have found some well-known artists to produce art bells from which a series can be cast, they have not produced any evidence of a market for such expensive items, not for the international interest he claimed, or even interest for "regular" bells. This issue is further addressed below.

6.25 However, the applicant, who can call on such experience[80] reaches very different conclusions.

Viability of the Application Proposals

6.26 The applicant has explained the viability of the application proposals[81] and this has not been challenged by Re-Form or anyone else. The evidence is

[73] By Mr Hughes in a written submission (CD10.13 Appendix 2)
[74] The sale was completed in 2017
[75] By Mr Clarke in x-e
[76] CD10.13 Appendix 2 Sections 5, 6 and 7
[77] From the evidence of Mr Westley, Mr Hughes and Mr Wilby
[78] See in particular CD10.4 Paragraphs 3.1 – 3.14 and CD10.13 Appendix 2 Paragraph 6.5
[79] Through Mr Lowe
[80] Through Mr Westley (CD10.4 Paragraphs 7.2-7.3) and Mr Hughes (CD10.13 Appendix 2) supported by Mr Wilby

consistent with the normal process for establishing viability of hotel development for planning purposes.

6.27 Although questions were raised about the hotel market[82], it will be noted that the hotel market evidence had been updated[83]. The applicant made it clear[84] that the way in which that market operates, means that the lead time for the hotel would not generate issues even given the current situation with the pandemic and that, if permitted, work would start immediately and these have already been factored into the updated advice as to anticipated demand and delivery over the next 5 years. Hotels look to the longer term and at what the market will be when occupancy is established, not at the market at commencement of development. Hotels do not look for 80% occupancy at opening. It was confirmed[85] that the current effect of the pandemic on the market would not prevent building from starting now.

6.28 It was further confirmed[86] that Raycliff is a venture capitalist and it is very used to raising funds. By contrast, Re-Form have produced no evidence to show how an approach, like that at Middleport Pottery, would work in a post-pandemic situation. In any event, it must surely be preferable for the works to the listed building to carried out without the need to have recourse to public or charitable funds, even assuming them to be available.

Approach to Harm and Heritage Assets

6.29 With reference to the Inspector's Note[87], arising from the fact that planning applications and listed building consent applications are combined into one form, it should be noted that listed building consent is only required in order to prevent a breach of s.7 of the Act (and an offence under s.9) which prohibits only the carrying out of *works* without consent. S.8 of the Act underlines the scope of any listed building consent in terms of works. S.10 which makes provision for regulations governing the making of applications also does so in terms of works.

6.30 Changes of use may be relevant when considering applications for consent for works which will bring about such changes, but they are not properly the subject of applications for listed building consent.

6.31 There is no control over change of use as such of a listed building through the listed building consent regime and the provisions of the Use Classes Order and the GDPO make that clear. For example, use of the Bell Foundry could be changed permanently from B2 to B1 without the need for consent[88]. The changes of use referred to should therefore be excluded from any grant of listed building consent.

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[81] Through the evidence of Mr Brierley
[82] With Mr Brierley in x-e
[83] CD10.10 Appendix 12
[84] Through Mr Brierley
[85] By Mr Brierley
[86] By Mr Brierley
[87] ID10
[88] Dr Barker-Mills did not appear to have considered this in arriving at his conclusions about substantial harm

6.32 The only elements of the new building works proposed which require consent are the works of, and associated with, demolition of the 1980s building to the extent that they effect the fabric of the listed building; and the new works to the extent that they alter the fabric of the listed building (for example by creating a physical attachment to it or new doors/openings).

6.33 It was made clear in *Jones v. Mordue* [2016] 1 WLR 2682[89] that following the paragraphs in the Framework on heritage (in that case the 2012 version) would mean that the decision-maker had complied with the statutory duty in relation to s.66(1) of the Act. The same must be true of s.72(1) that addresses the duty in relation to conservation areas.

6.34 Since the grant of listed building consent will depend on the acceptance of the application scheme, the applicant is content that both the planning and listed building consent applications should be approached in the same way, though strictly the legislative requirements for listed building consent are found in s.16(2) of the Act rather than s.66 (1) (which applies only to planning applications) though they nonetheless require the decision maker to approach the issue in much the same way.

6.35 Since an almost identical legal duty is imposed, and the balancing of harm and benefits is clearly material to the "special regard" duty, the applicant is content for the Inspector and the Secretary of State to apply the same approach as under the Framework (even though that applies only to plan-making and planning applications) to the application for listed building consent. That approach will have to be applied in order to grant planning permission in any event.

6.36 In that event, although for reasons already set out[90], the applicant considers that the position adopted by many parties does not acknowledge the Court of Appeal's approach in *R (Palmer) v Herefordshire Council* [2017] 1 WLR 411[91], and since it should not lead to a different conclusion, the applicant is content to adopt the approach preferred by HE, the Council, and Re-Form. In other words, the weighing of the harm and public (including heritage) benefits should take place within the application of (it is submitted) paragraph 196 of the Framework and need not be undertaken before concluding whether or not there is overall harm.

6.37 The issue of benefits, both heritage and non-heritage are considered by a number of witnesses, all of whom reach the same conclusion on harm, and the weighing of benefits against harm[92].

6.38 Regardless of whether the proposals amount to OVU, the benefits outweigh the less than substantial harm caused by the light touch approach to interventions to the listed building. This is common ground not only with the Council but also

[89] CD8.3 Paragraph 28
[90] ID2 Paragraphs 35 - 40
[91] CD8.15 Paragraph 29
[92] Dr Filmer Sankey (CD10.7 Paragraphs 5.3-5.11, 5.19, and 5.26-5.31), Mr Westley (CD10.4 Section 5), Ms Ryder (CD10.12 Paragraphs 8.42-8.46, CD10.21 Paragraphs 2.1-2.12 and Appendix 1) and Mr Froneman (CD11.3 Paragraphs 4.68-4.90 and 6.20-6.34)

HE who have engaged in discussions about the application and the future of the Bell Foundry for several years.

6.39 Contrary to Re-Form's approach to paragraph 196 of the Framework[93], which is difficult to follow, it is clear that OVU only comes into national policy as one of the benefits that *may* count towards outweighing any harm. Whilst the applicant says that the proposals are the OVU, nonetheless it is also submitted that the benefits outweigh the harm, regardless of OVU[94]. Strictly, therefore, it does not matter whether or not the proposals are OVU since the benefits including heritage benefits that contribute to the preservation of the listed building, should be accorded considerable weight.

6.40 However, in this context, and when considering benefits, it is important to note that the statutory weight should also be applied not only to the harm but also to the benefits since the statutory duties under both s.16(2) and 66(1) of the Act are directed to "*desirability of* ***preserving*** *the building or its setting or any features of special architectural or historic interest*". If the Inspector and Secretary of State find that some or all of the works have a beneficial effect in *preserving* the listed building then the statutory weight should apply to them since they will be preserving the building, its setting, or features or special or historic interest. Indeed, to the extent that the hotel has a positive effect on the character or appearance of the conservation area, then that positive effect must be given significant weight as a result of the application of s.72(1) of the Act. It is agreed in the SoCG[95] that no issue arises with the design of the hotel or its impact, and that it respects the conservation area and the setting of the listed building and that the 1980s Building is not of historic or architectural interest, is not listed, and does not positively contribute to the conservation area.

6.41 In bringing many substantial heritage benefits to the Bell Foundry, the applicant can also set up a historic archive, courtesy of the Hughes Family, and display artefacts from the site[96]. This cannot be achieved by Re-Form. The use of modern foundry techniques, 3D imaging and so on are not, contrary to the impression created[97], the sole preserve of the Re-Form proposals, but are already in use by the Westley Group[98]. Even an acoustic archive of bells is not new[99].

6.42 Although it may be thought that sufficient interest and commitment has already been shown, the participation of the Westley Group and AB Fine Art Foundry are secured by the proposed Agreement under s.106 (see Schedule 6 Part 2)[100] to which they are signatories. The 10 year period provides a sufficient guarantee of establishing the new modern foundry with appropriate provision. Schedule 6 Part 2 makes clear combining paragraphs 2 and 5 that

[93] Expressed by Mr Butterworth
[94] The Council and HE agree with that
[95] CD1.1 Paragraphs 7 and 8
[96] CD10.13 Appendix 2 Paragraphs 9.3, 10.2, and 10.11; CD4.1 Pages 45-50; draft condition 17; and Paragraph 1.4 of Schedule 10 to the Agreement under s.106
[97] By Mr Lowe in evidence
[98] As Mr Westley explained
[99] CD10.21 Appendix 2 Paragraph 3.6 (Mr Hughes' rebuttal statement)
[100] ID28

there is a guaranteed 10 year period that is not dependent on the lease. The lease provides an interest in the Bell Foundry for the operators, so that they can perform the obligation in paragraph 2 and should it turn out that they could not continue, they have to be replaced by new operators to whom paragraph 2 will apply. Suggestions from Re-Form about the lease are nothing more than a kite flown at the last moment, given the absence of any evidence on this matter from them[101].

6.43 Re-Form's case appears to be predicated on them leasing a building for a use the extent and nature of which appears guaranteed to run at a loss – not merely viable. Re-Form has similar provisions in the Middleport Pottery lease in the event that the business does not continue on site, though the terms were not disclosed[102]. The heads of terms attached to the Re-Form Strategic Plan[103] are now outdated and so far as could be ascertained[104], it is no longer proposed for there to be a 99 year lease. However, nothing was said about what was proposed. They clearly had not thought about what might happen should the idea they put forward not succeed although the proposition that their proposal was simply to secure a new London base for Factum was quickly disclaimed[105].

6.44 It is striking that Re-Form seek to raise these issues in closing having said absolutely nothing during the Obligations session, nor challenged the Westley Group's commitment in evidence. Should the issues raised have any traction, then the Secretary of State can come back to the parties for a revised Agreement under s.106, with a minded to grant decision.

The Role of OVU

6.45 It is not correct that it is *necessary* for the applicant to demonstrate that the proposals are the OVU or that it must be shown that there are no options for the retention of the former bell foundry use[106]. Paragraph 196 is very clear in its wording: 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.

6.46 It follows that the demonstration of OVU here is not required since it is possible for the public benefits to outweigh the harm identified without needing to consider OVU, as we submit is the present case[107]. That is not to say the Re-Form idea is not a material consideration; but it should not be given any significant weight. Reliance on *Bramshill* [2019] EWHC 3437 (Admin) needs to proceed with caution, given the outstanding appeal, but

[101] ID24 Paragraph 88
[102] Mr Clarke in x-e
[103] CD13.11 Appendix D
[104] From Mr Lowe and Mr Clarke in x-e
[105] By Mr Lowe in x-e
[106] As alleged by Mr Butterworth
[107] As Mr Filmer-Sankey explained in x-e: "*the significance of OVU increases with the amount of harm - here the harm is so small therefore OVU is one of the benefits – on the scale of harm, it is very, very minor*"

taking it at face value it was not a case where extra delay for reconsidering the scheme for the heritage assets was of concern[108].

6.47 The Re-Form proposals would not be OVU and their attempt to promote them as such would be damaging to the listed building and its significance. This would not be a case where the Re-Form idea, even as an idea yet to be fully worked up, would be less viable, but one which would not be realistic or viable. It can be discounted on the evidence, even as a potential idea.

6.48 The applicant has proceeded throughout with detailed advice from expert bell founders which was prudent given the difficulties experienced by the Whitechapel Bell Foundry and in the bell founding industry generally. The applicant has explained[109] how the proposals at issue are viable in stark contrast to what has been put forward by Re-Form. The counter-proposals appear incomplete, unviable and only partially thought through. They lack credible detail or funding.

6.49 It has become clear that Re-Form's idea is little more than campaigning rhetoric. It is lacking in credibility and on their own terms, seems unlikely to lead to the reinstatement of the historic bell foundry use.

6.50 Their proposals[110] are for an art foundry with a naïve and ill-thought out expectation of significant business for bell founding based on assertions of attracting buyers for expensive art bells, international business, and regular one-off commissions. Factum Foundation (and Factum Arte), not only lacks bell foundry experience (bar participation in a few projects to reproduce historic bells), but will have to buy in skill[111]. They have never run a bell founding business, have no experience in the bell founding industry, and do not even have their own foundry – sub-contracting founding to others.

6.51 Indeed, it seems that subcontracting to Pangolin in Gloucestershire, is planned which shows the limitations on what is suggested for the premises. Whilst a colourful and expansive description of Factum's activities was presented, these points were accepted[112]. The underlying message was clear – Re-Form's case rested on a partner that would be moving into an area and an industry with which it has no direct connection or experience. This is a striking anomaly given the extent of the emphasis placed by Re-Form on the preservation of the Bell Foundry and its historic bell foundry use in particular.

6.52 Re-Form was also unable to answer the questions as to works, Phase 2, and clearly considered the business plan to be a pointless exercise[113]. Having claimed that Factum would run a "long term commercially viable plan"[114], they seemed unable to provide a consistent notion of viability (having earlier said

[108] CD8.14 Paragraph 88 and in the light of *Gibson* (CD8.6) which was dealing with the former PPS5 and the accompanying guide rather than the extant Framework and PPG
[109] Through Mr Brierley
[110] As described by Mr Lowe
[111] From Nigel Taylor who has undertaken consultancy work for the Westley Group
[112] Mr Lowe in x-e
[113] Mr Lowe in x-e
[114] CD13.6 Paragraph 2.5

that a business must at least break even), still less "commercial" viability and at times seemed to contemplate running at a loss[115].

6.53 In contrast, at Middleport there was an existing pottery business (albeit on the verge of insolvency) which was enabled to continue through Re-Form's intervention though it is unclear how viable this will be in the longer term. Provision has been made in its lease in case of business failure[116].

6.54 It became clear just how tissue thin the claims for future bell-making commissions were since not a single letter or email with an expression of interest, let alone anything firmer, could be provided[117].

6.55 Re-Form was not able to explain what Phase 2 would comprise and therefore it cannot be known what the total impact of its works will be to the listed building. Re-Form had not considered properly whether planning permission and/or listed building consent would be required to provide for its 'idea', and the expansion beyond the written evidence[118] (e.g. casting larger 1.5 tonne bells and bringing in additional furnace capacity for it[119]) was not considered in terms of impact, costs or feasibility. It simply cannot be known therefore that the Re-Form proposals in total would be OVU even on its own case.

6.56 The art casting of bells was emphasised along with studios for the study and public obtaining of information as to the acoustic properties of historic bells[120], digital archives, which would be accessible to the public, and 3D scanning and printing. Although this was all claimed to be ancillary to a "bell foundry" or "something like it" in fact it appears to be significantly independent from the proposed foundry and appears to be very close to the B1 uses that the applicant proposes.

6.57 Contrast, starkly, the evidence of the applicant[121] which demonstrate the difficult and shrinking bell market, despite the use of modern innovative techniques by the Westley Group which Re-Form fail to appreciate is not their sole preserve[122]. The international market was not the treasure trove described by Re-Form[123], but was parochial and equally experiencing much reduced business[124].

The Approach to Heritage Issues

6.58 For the reasons set out in the application documents, the evidence given by the applicant and the Council, and in the view of HE, the proposals will cause some less than substantial harm to the significance of the listed building (and at the lower end of the scale) which, whilst afforded considerable weight, will be outweighed by the many public benefits of the scheme, including very

[115] Though Mr Clarke was clear that Re-Form could not subsidise the foundry operation
[116] As confirmed by Mr Clarke x-e
[117] Mr Lowe in x-e
[118] By Mr Lowe in-c and x-e
[119] Forcefully underlined by Nigel Taylor's late statement (ID21)
[120] Emphasised by Mr Lowe but not a new concept – CD10.21 Appendix 2 Paragraph 3.6
[121] From Mr Westley and Mr Hughes (unchallenged)
[122] CD10.20 Section 4.
[123] By Mr Lowe in particular
[124] CD10.20 Paragraphs 2.3-2.7 and Mr Westley in-c

weighty heritage benefits. The position with regard to the conservation area is that the proposals will enhance it. Even if, as Re-Form alleges[125], there is less than substantial harm to the significance of the conservation area, this will likewise be outweighed by the public benefits.

6.59 It is agreed by the Council and Re-Form that no issue arises in terms of the proposed hotel – the design and materials of the proposed new building is of a high standard and of a form that respects the setting of the listed building and the surrounding conservation area[126].

6.60 It is further agreed by both the Council and Re-From that the design of the hotel is acceptable and the proposed building is of an appropriate scale, height, mass, bulk and form. It *appropriately responds to its neighbours* through the careful articulation of its elevation and the stepping of the building's profile; provides sufficient access to the site in terms of layout; r*espects and positively responds to its context*, townscape, landscape and public realm; and *is of the highest design quality* and proposes suitable materials[127].

6.61 Moreover, it is also agreed that the 1980s building at the rear of the site is *not of architectural or historic interest*. It is not listed or curtilage listed and *not a positive contributor to the Conservation Area*; and the proposals *do not adversely affect the setting of other identified listed buildings* in the area[128].

6.62 It was notable that Re-Form gave evidence[129] that was inconsistent with the SoCG in contending that the loss of bell foundry use was the main harm to the listed building, indeed creating substantial harm, and added to this that the loss of the foundry use of the unlisted 1980s Building was also harmful to the conservation area and the significance of the listed building. Re-Form[130] could not explain why the reservation in the SoCG[131] neither refers to the 1980s building or the alleged impact of its loss on the conservation area.

6.63 Subsequent attempts[132] to avoid the implications of what had been agreed in the SoCG were not credible. Re-Form must have known what their case was when the SoCG was signed[133].

Harm to Heritage Assets

6.64 Re-Form maintain that the proposals will cause substantial harm in terms of the Framework, primarily because of the proposed uses, though even a brief review shows that this case falls nowhere near the Framework concept of substantial harm to, or *total loss of significance* of, the listed building. That is a high test[134].

[125] Through Dr Barker-Mills
[126] CD1.1 Section 7 Design/Townscape Paragraph 2
[127] CD1.1 Section 8 Design/Townscape Paragraph 1
[128] CD1.1 Section 7
[129] Through Dr Barker-Mills and Mr Butterworth
[130] Dr Barker-Mills and Mr Butterworth in x-e
[131] CD1.1 Section 9
[132] By Mr Butterworth in x-e
[133] By Mr Butterworth
[134] Accepted by Dr Barker-Mills in x-e

6.65 On the contrary, the proposals have adopted a conservation-led approach to the listed building. The fabric of the listed building would be preserved and enhanced through repairs and light touch interventions to secure its long-term future. Much of the significance of the listed building arises from the associations that arise with respect to the fabric of the listed building, its layout, and the remaining equipment.

6.66 The main rebuilding work is to the stable block that had to be rebuilt in the 1960s following bomb damage during WW2[135]. While of course it remains part of the listing, it has to be considered in terms of its significance as it stands. The reintroduction of B2 foundry use with other complementary employment uses (through the formation of creative workspace) and public access will allow better understanding and appreciation of the listed building. The approach is not tokenistic as Re-Form claims and is consistent with preserving the significance of the building. Indeed, a large proportion of the uses proposed by Re-Form do not themselves involve bell casting.

6.67 The legibility and plan form points emphasised by Re-Form are incorrect - the significance of the foundry and its layout is not compromised by the proposals, nor the conditions allocating the permitted uses. The legibility has been explained[136], and is supported by HE, and can be seen from the plans. The Heritage Statement properly considers significance[137].

6.68 Development of an unlisted element of the site (the 1980s Building) and other land for a use which will enable the funds to be generated to repair, preserve and enhance the listed building for the future.

6.69 There are many benefits, both heritage and non-heritage[138]. The downgrading of the public benefits by Re-Form is a blinkered approach which stems from its unrealistic and unfeasible approach to its future acquisition and operation by them. Whilst criticism is directed at public access, public spaces and the café facility, it is noted that similar features are promoted at Middleport Pottery[139].

6.70 The applicant has set out[140] that there would be a low level of harm, less than substantial, that is outweighed by the heritage improvements identified. The Council and HE agree with that assessment[141].

6.71 Consistent with a line taken with others, the view that the applicant's proposals dictated the approach to heritage and significance was rejected[142]. Indeed, given the proposals only reached their final form in September 2018 and were not submitted until December 2018, it seems difficult to understand how Re-Form could regard this as a likely approach. It is consistent with Re-Form's approach[143] which focussed not on the September 2018 revised

[135] See CD10.7 Paragraphs 5.3-5.5; CD10.1 Paragraphs 4.9-4.12 and 9.4-9.7, and the Condition Report CD10.2 Appendix A) Paragraph 8.4
[136] By Mr Burges and Dr Filmer-Sankey
[137] CD3.2 Paragraph 3.3.1 in particular
[138] CD10.12 Paragraphs 8.42-8.46 and CD1.1 Section 9.1 Paragraphs 7 and 8
[139] CD9.40 Pages 6-11
[140] CD10.7 Paragraphs 5.18-5.19, CD10.17 Paragraphs 2.1-2.2, and CD3.2 Section 4.2
[141] CD11.3 Section 4 and Paragraphs 6.20-6.34 and CD12.1
[142] By Dr Filmer- Sankey
[143] To the x-e of Dr Filmer-Sankey

proposals which reflected more closely the application scheme, but the June 2018 consultation which was changed significantly following further consultation and advice. It seems to show that Re-Form is unable to move past its initial views and to consider the proposals as they now stand on their merits.

6.72 The point was made[144] that "*we were brought in on the very, very clear understanding that the benefits and harm to the listed building were of critical importance*" and "*the scheme evolved as a better understanding* [was gained] *of the possibility of undertaking a foundry use*". Moreover, there was input from the Westley Group and AB Fine Art Foundry and that it was "*not unusual for a proposal of this sensitivity to evolve*".

6.73 It was further explained[145] that to keep a listed building in the use for which it was designed is not always the best way to conserve it and the need to manage change was referred to. Indeed, Re-Form recognise that there is a need for a new chapter for the foundry, but one that respects and responds to its unique heritage and cultural value.

6.74 The proposal to site a café and interpretation/education space in part of the former foundry generated considerable debate. If, however, the proposals do not cause substantial harm, a matter dealt with below, it is difficult to see that this adds anything further. It is not part of the hotel, but part of the proposals for public access, education and interpretation[146] - and the space is flexible so could be used for events in connection with the foundry. The glazed screen offering views into the foundry would allow members of the public to understand better the processes of casting in safety. The grille covering the casting pit where the Liberty Bell was cast would still allow it to be seen, with appropriate lighting. The benefits of public access were underplayed by Re-Form[147]

6.75 Public access and its importance to the greater understanding of heritage assets is widely understood and accepted and the facilities at Middleport, with a heritage trail, shops and café illustrate that. It also provides some income which can assist in supporting the listed building.

6.76 Re-Form's case is predicated on the proposals causing substantial harm to the significance of the listed building thereby engaging paragraph 195 of the Framework; something the applicant, the Council and HE all reject.

Substantial Harm

6.77 Re-Form advance the view[148] that, while the physical works proposed give rise to less than substantial harm (though claimed to be higher up the spectrum than others consider to be the case), the substantial harm that will be caused by the proposals arises from the loss of the use of the building as it was,

[144] By Dr Filmer-Sankey in x-e
[145] By Dr Filmer-Sankey
[146] Like the café at the Middleport Pottery
[147] Though Mr Lowe maintained (e-in-c) that he wanted people to come to the building and "*celebrate the presence of the site"*
[148] Through Dr Barker-Mills and Mr Butterworth

namely as a bell foundry. Re-Form agreed[149] that the works proposed to the listed building, and the loss of the 1980s Building and the vaults beneath it, amounted to less than substantial harm.

6.78 There are several fundamental flaws in this argument. Neither the proposals nor Re-Form's idea for the building propose to reintroduce a bell foundry as it was, or for that matter, a single, industrial use. That was lost when the Whitechapel Bell Foundry closed in 2017. If there was substantial harm, it was caused by that closure. The applicant's proposals seek to ameliorate that impact. It was accepted[150] that the Re-Form position on substantial harm was variously "difficult" and "singular".

6.79 The list description[151] underlines the fact that the rarity in the Whitechapel Bell Foundry lay in its historic industrial single use as a bell foundry, together with the building fabric that reflected it. That actual use ceased in 2017.

6.80 Re-Form seemed to accept[152] that given the harm had already arisen on closure, the proposals were seeking to mitigate that harm and their case was centred on whether the applicant or Re-Form were proposing better mitigation of that harm. If that is the correct analysis, it destroys the contention that the proposals will cause substantial harm since that has already occurred and what is proposed is mitigation of that harm. That may involve the reinstatement of a foundry but the state of the bell market in any event makes it impossible to recreate the historic use.

6.81 Paragraph 195 of the Framework and the PPG[153] do not give examples of substantial harm arising from changes of use[154], and this makes it all the more difficult to show that here.

6.82 Re-Form had clearly not considered the implications for this analysis of a) the fact that the use of the Whitechapel Bell Foundry could have been changed without the need for planning permission; or b) that listed building consent was not required for a change of use. Both factors suggest that a change of use is not central to the core meaning of substantial harm. Indeed, paragraph 195 of the Framework appears much more closely related to the potential for harm to be caused to the fabric of the building.

6.83 The evidence from the applicant, the Council and HE reject the characterisation of the proposals as causing substantial harm to the significance of the listed building. Clear reasons are given for the conclusion that less than substantial harm would be caused. This is the correct approach.

6.84 If Re-Form's "difficult" and "singular" approach to harm is rejected, the bulk of their case collapses given that it is almost wholly predicated upon it. Moreover, OVU, under paragraph 196 of the Framework, does not assist them since it is not a necessary component of the public benefit balancing exercise and, in any event, the proposals at issue represent the OVU.

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[149] Dr Barker-Mills in x-e
[150] By Dr Barker-Mills in x-e
[151] CD9.12
[152] Dr Barker-Mills in x-e
[153] Reference ID: 18a-018-20190723
[154] A point acknowledged by Dr Barker-Mills in x-e

Works to be Undertaken and their Costs

6.85 An important area of difference between the applicant, the Council and HE on the one hand, and Re-Form on the other, are the works required to be undertaken to the building to ensure its repair and future survival. All are agreed that a light-touch approach is preferable.

6.86 The state of the building has been the subject of extensive study and the preparation of a detailed condition survey and schedule of repair works[155]. An exhaustive condition survey of the building began in early 2017, so the building could be considered when it was still in operation, to ensure that the team involved could understand as much as possible about the construction evolution and condition of the historic fabric and propose repair solutions which were robust, but optimised the retention of historic fabric and preserved and revealed the significance of the heritage asset.

6.87 Considerable time was spent on site, including several days with specialist conservation structural engineers and timber decay specialists. The original condition survey report was prepared in April to August 2017 to assist consideration of the proposals and updated earlier this year. The applicant[156] has unrivalled knowledge of the condition of the building.

6.88 Before the works were finalised, there was extensive consultation with HE and conservation officers at the Council and a Structural Survey[157] was submitted for the proposed works, built on the detailed study of the building and its condition. It is fair to say that the level of investigative work and consultation carried out by the applicant was extraordinarily high and well-executed.

6.89 The investigation and study by the applicant stands to be contrasted with the failure of Re-Form to visit the building until after exchange of evidence, despite the passage of time since the application was submitted (both before and after lockdown in March 2020) and the absence of any detailed study to consider condition and the works required as a result of that study. Very little analysis has been provided[158] and nothing at all for Phase 2. It may be that provides some explanation for the lack of detail in the Re-Form idea, after several years of campaigning, their limitation to an initial phase only, and the complete uncertainty of what other works are proposed and when they would be carried out. This is critical given the pressing need to undertake works to preserve the long-term future of the building.

6.90 Attempts by Re-Form[159] to suggest that the overall approach had been dictated by proposals from the applicant were rejected and instead it was explained that the applicant had insisted that the issues of historic significance and historical research were undertaken before design work was begun.

6.91 Further, it was stated[160] that right from the start the applicant was aware of the heritage asset and issues of compatibility with hotel use, and a hotel use in

[155] CD10.2 Appendix A (updated April 2020) and CD10.18
[156] Through Mr Fryar
[157] CD3.6
[158] CD13.7 Appendix 5 Pages 82-83 but these are light on detail
[159] In the x-e of Mr Fryar
[160] By Mr Fryar in x-e

the listed building was quickly ruled out. The questions put on behalf of Re-Form reflected a failure to understand that the evolution of the application proposals through 2017-18 was an iterative process. The advice, throughout, was to do the right thing by the historic building, even if that conflicted, at times, with the applicant's intentions.

6.92 Input from other professionals, include historic building specialists, while considering what works to advise for services and M&E was described[161] and the general principle followed was that "*good conservation is significance led*".

6.93 It was further explained that the procurement of the works to the listed building would be separate from the construction of the hotel and that "*the client wants us to get on with the works* [to the LB] *as soon as possible*". The importance of public access was emphasised alongside the shortcomings in that regard of the existing building. Some of the works do more than simply repair but are to make the building an operable one – which might be thought to be essential in bringing it back into viable use. Although it was accepted[162] that the listed building was not on the Buildings at Risk Register[163], it was pointed out that the at risk team was watching it carefully.

6.94 As to costs, it was outlined that a specialist quantity surveyor was used and that the rates adopted by Arcadis were not appropriate and that AECOM had been commissioned to see where in terms of costs the project sat. In fact, with a unique building such as this, the complexity of the individual building has to be considered. Indeed, AECOM's additional commentary response[164] makes it clear that the authors have extensive experience of listed buildings. Although the use of rates is a blunt instrument, AECOM were clear in their response as to where the comparative position lay[165].

6.95 Considerable concern was expressed about the Re-Form approach to works, and any delay which might be caused, and it pointed out[166] that, in terms of preparation, the works by the applicant were at late Stage 3/early Stage 4 and achievable within 6 months to a year. Whilst it was not suggested[167] that there was current "*risk to life and limb*" the works were urgent and delay risked deterioration in the listed building - "*that's where the urgency arises*" – "*you will struggle to find a conservation architect or surveyor that would disagree with me that there is a need to address* [works] *urgently*" – "*the deterioration is accelerating*".

6.96 Questioning about elements of the scheme, such as the fire system, on behalf of Re-Form, revealed a lack of understanding of the complexities of even a light touch approach in response to the significance of fabric since there will be a duty of care to occupiers of the building. It was said[168] that the arrangements in place for the building guardians were "*very temporary*", and

[161] By Mr Fryar
[162] By Mr Fryar
[163] This would be unlikely where there are live proposals for works of repair
[164] CD10.19 Appendix 1
[165] As explained by Mr Fryar
[166] By Mr Fryar
[167] By Mr Fryar
[168] By Mr Fryar

discrepancies in fire safety have to be dealt with – "*the fire issues are substantial*". When asked about Re-Form's initial phase of works, it was pointed out that there was no evidence to support its case for other costs, nor was there anything in the business plan. While all listed buildings are ongoing projects the question is how the initial approach to works is chosen[169] – "*talking about the initial investment to bring it back to health – Re-Form has deeply unrealistic costs*" and it would have been helpful to "*understand how the next phases were supposed to work*". While a comparison with Middleport Pottery was attempted, it will not have gone unobserved just how little detailed information about that project is available[170] and that it is not a useful comparator for reasons given already.

6.97 Whilst Re-Form accepts that some works needed to be done, it claims (with minimal explanation) that far fewer works are needed and at much lesser cost. £5-£10m is referred to for "Phase 2" but it remains wholly obscure as to what this may include, or how the figure has been reached. Like much of Re-Form's case, it appears to be little more than an uninformed guess of a piece consistent with its limited efforts to visit the site and gain information.

6.98 The applicant[171] has by far the greatest experience, and detailed knowledge, of the state of repair of the building and what is needed to secure its future survival. A remarkably detailed and carefully set out condition survey and schedule of repair works has been produced[172], following significant work on site. AECOM, using that material, have costed the works needed to bring the building into good repair and secure its long-term survival

6.99 These costings have been independently considered by the Council. While the precise extent of the AECOM figures was not agreed, it was accepted that AECOM's approach was "fair, reasonable and logical" and the costs for the necessary works to be £6,022,674[173], not far short of the AECOM figure.

6.100 The only evidence open to testing on the condition of the building and the costs of works has been provided by the applicant and the Council. Re-Form's case on costings is based on perfunctory written material from Arcadis[174]. This was not able to be tested at the Inquiry. Their time spent at the building was at best short (as indeed was the time spent by Re-Form's heritage witness[175]) and they provide nothing to reasonably contradict the assessment provided by the applicant.

6.101 In any event Re-Forms latest figures are inconsistent with earlier costings produced by Arcadis, without explanation[176]. Moreover, the costings presented are standard figures more appropriate for modern B1 premises rather than an idiosyncratic and unique listed building. While AECOM agreed that there may

[169] Points made by Mr Fryar
[170] Evidenced by the x-e of Mr Clarke
[171] And Mr Fryar in particular
[172] CD10.2 Appendix 1
[173] CD11.8 Paragraphs 6.1 and 6.2
[174] CD13.7 Appendix 5 Pages 82-83.
[175] About 2 hours with no other visits (other than walking past) in the last 20-30 years
[176] CD10.19 deals

be some scope for phasing[177], works cannot be deferred to the extent envisaged by Re-Form. These works would become essential within 3 years in any event, and if they are not carried out straight away, provision would need to be made in the Business Plan for them.

6.102 On top of that, the Arcadis commentators are both Re-Form Trustees and have a duty to the trust which means their limited evidence (strongly disputed as it is) cannot be regarded as independent and should not, therefore, be given significant weight.

6.103 The whole premise of Re-Form's criticism of the proposals, and the underpinning for its own approach, that only relatively modest works need be undertaken before a working foundry can begin on site, therefore lacks any sound basis and should be rejected – especially in the light of the vague and distant Phase 2, and concerns about delays in carrying out works leading to further deterioration in the building. The level of costs necessary to bring the building into reasonable condition and secure its long-term future should be approached more carefully and responsibly, and the only proposals advanced that do this are those of the applicant.

6.104 Instead of campaigning on the basis of misleading claims and contentions as to a viable future bell foundry use that it cannot demonstrate, and putting at risk the current deliverable proposals, Re-Form ought to be applauding and supporting the applicant in its approach to undertake the extensive work to protect and preserve the listed building – work which will bring the building back into use in a manner which preserves its character and historic significance for future generations[178]. We suggest that HE's reasoned support, after careful consideration and consultation, should light the way for the Secretary of State's decision

The Development Plan

6.105 The policies of significance to the determination of this application are primarily the heritage policies, and to a lesser extent the employment policies, although the latter do not[179] give rise to any significant issues.

6.106 The applicant and the Council consider that there is compliance with the development plan. In any event, even if there were some degree of conflict, it would be outweighed by the benefits generated by the application proposals, together with other material considerations. These have been accorded reduced weight by Re-Form for reasons that do not stand scrutiny. Clearly those and other benefits should be given substantial weight (as HE accepts) and it is submitted they outweigh the harm and any potential breach of the development plan[180].

6.107 The application proposal is the best scheme in heritage terms, and no OVU is present in any alternative.

Heritage Policies

[177] CD10.19 Appendix 1
[178] And which must be completed before the Hotel can be occupied
[179] Even on Mr Butterworth's contorted view
[180] CD10.21 Appendix 1 offers a useful summary of the benefits

6.108 The primary policies engaged here are London Plan Policies 7.8 and 7.9[181] and Local Plan Policy S.DH3[182]. These should be approached sensibly, in the light of what they seek to achieve, and without taking a legalistic approach.

6.109 There is no objection to the design or impact of the proposed hotel either in terms of its impact on the conservation area or the setting of the listed building[183]. The only point that appears now to be raised by Re-Form is the loss of the use of the 1980s Building as part of the use of former bell foundry, and the less than substantial harm caused by the loss of the vaults beneath it.

6.110 To a large extent, the outcome with regard to the policies will mirror the outcome of the application of the heritage policies of the Framework, in which context they were adopted. The primary issues which arise are: (1) whether there would be substantial harm – this is dealt with above in relation to the application of the Framework and there is no need to address this further here; and (2) If the harm is less than substantial, whether there has been a failure to market or consider OVU?

6.111 In this regard, Re-Form[184] had failed to consider the content or application of the policies in cases of less than substantial harm and, were reluctant to let go of the point about marketing, even though it could not be clearer that it applies only in cases of substantial harm (mirroring paragraph 195 of the Framework). It was asserted, first, in the case of Local Plan Policy S.DH3 (2) and (3) that it was implicit in the text, and secondly, that it was also implicit in London Plan Policy 7.8.

6.112 This approach was flawed since it is plain that where the policies require marketing they state it clearly and it cannot credibly be maintained that although it is explicitly referred to in Local Plan Policy S.DH3(4) in the context of substantial harm, it nonetheless also has to be implied in earlier sub-paragraphs in the same policy where it deals with less than substantial harm.

6.113 For Local Plan Policy S.DH3(3) the key factors are set out as (a)-(c) and do not include marketing. In terms of London Plan Policies 7.8 and 7.9, the same points can be made. There is no requirement for marketing therein.

6.114 Re-Form's assessment of these policies and their application should be rejected. The approach adopted risks making the policies inconsistent with paragraphs 195 and 196 of the Framework since marketing is only an issue under paragraph 195(b), and not at all under paragraph 196. As has already been pointed out in the context of submissions on substantial harm, the reason for marketing is to ensure that the building and its significance are not totally or substantially harmed because a viable use cannot be found for it. There is no suggestion that the listed building cannot be used, or indeed used viably, in the applicant's proposals.

[181] CD6.1
[182] CD6.2
[183] CD1.1 Sections 7 and 8
[184] Through Mr Butterworth

6.115 Applying the policies as they appear, without the legalistic approach repeatedly deprecated by the Courts, there is no breach of the development plan caused by a lack of marketing.

Employment Policies

6.116 The SoCG[185] provides a number of important points of agreement between the applicant, the Council and Re-Form. It therefore might have been reasonably expected that Re-Form would agree that there was no conflict with the development plan in respect of employment policies. However, in evidence Re-Form[186] seemed to adopt positions that were difficult to reconcile with agreements expressed in the SoCG.

6.117 For the reasons set out in the applicant's and the Council's planning evidence[187], the SoCG should be adhered to. There is no breach of the employment policies in the development plan. In any event, the agreed generation of new jobs is not only a benefit of weight, but it significantly outstrips the previous employment and active use of floorspace on site[188].

Re-Form's Own Ideas for the Building

6.118 By their own approach, the Re-Form notions for the building fail on their own terms if any either of the following is determined: (1) the proposals do not cause substantial harm in terms of the loss of single use bell-foundry, since this is the foundation of the Re-Form heritage assessment; and (2) the Re-Form suggestion is not viable[189].

6.119 Whilst it is acknowledged that Re-Form has not presented fully-worked up counter-proposals equivalent to an application, nor is it required to do so[190], it is nonetheless relevant that in support of its own views of the future for the building, it has been vigorously promoting its own alternative since before 'Saved by the Bell'[191] was published in 2018. Whilst it was said that it would take 2-3 years to work up a scheme, this was surprising given the claims made by Re-Form about their idea and the claim that they had worked up a business plan[192]. Even as an "idea", it is submitted that the Re-Form case is not one that can be relied upon as a valid criticism of the applications or as one that could be considered deliverable if the applications were refused. Re-Form has advanced sufficient information to see its idea for what it is – naïve, ill-thought out, and unviable.

[185] CD1.1 Section 8 under Employment Land Use
[186] Through Mr Butterworth
[187] CD10.12 and CD11.1
[188] CD10.21 Appendix 2 Paragraph 3.3 sets out that only 25% of the building was in active use as a foundry
[189] Dr Barker-Mills agreed in x-e that a proposal that cannot deliver a viable use should be rejected
[190] As held in *Bramshill* (CD8.14)
[191] CD9.34
[192] As claimed in CD13.6 by Mr Lowe

6.120 Although different versions of Re-Form's strategic plan for the building have been produced[193], and no explanation about whether any parts were out of date, it was explained[194] that the Heads of Terms set out in the Strategic Plan 2020-2023[195] were superseded, though by what was not clear. No new version was produced. The Project Phoenix Proposal[196], although the £5-10m Phase 2 remains[197], clearly cannot be relied upon for costs e.g. £50,000 for equipment had increased to £500,000 by the Strategic Plan and that is for only one 50kg furnace[198]. The applicant's estimate of £2-4m is the only realistic estimate and Re-Form said there would be furnaces of 500kg and 50kg[199], but that would fall c. 1 tonne short of the melting capacity required to cast the Elizabeth Bell that was also mentioned.

6.121 Although Re-Form claims that it sought to offer a "fair market price" for the building in 2017, it is clear that its approach has been presented in an unduly favourable light. Despite earlier suggestions that the Hughes Family had not acted responsibly, it was accepted[200] that they did nothing wrong in selling the site given the circumstances of the business and the bell founding business overall. The contract to sell the building was exchanged in November 2016, months before Re-Form's approach.

6.122 Re-Form[201] did not make a specific financial offer to the Hughes family. Indeed, the first sum offered, despite the period in excess of 3 years from the first approach, was the offer of £4m made in the months running up to the Inquiry, in the summer of 2020. This appears to have been tactical and no reason is given why that offer could not have been made some years ago.

6.123 It was clear that Re-Form[202] did not act in a manner calculated to win the trust of the Hughes family. Indeed, having sought and promised confidentiality in writing, he immediately broke his promise and wrote to the Times, indicating he had had discussions with Mr Hughes[203]. His own email makes it clear that his behaviour was not what might be expected from a senior member a responsible heritage organisation and the email from his fellow trustee[204], shows that he was somewhat surprised. It was accepted[205] that when discussing writing the Times letter with fellow trustees he had not mentioned the confidentiality promised to Mr Hughes. Mr Hughes' reaction is one that might have been expected and it is little surprise that Re-Form made no

[193] In addition to the Business Plan in CD13.7 Appendix 1, there is the Project Phoenix Proposal (CD13.10 Appendix A) and the Strategic Plan 2020-2023 (CD13.11 Appendix D)
[194] By Mr Clarke in x-e
[195]CD13.11 Appendix D
[196] CD13.10 Appendix A
[197] CD13.10 Appendix A Page 14 - "to upgrade the foundry for future generations"
[198] Mr Lowe explained that 2 were proposed plus a kiln and that large capacity might be brought in on occasions, though how and at what cost was wholly unclear.
[199] Mr Lowe in x-e
[200] Mr Clarke in x-e
[201] Through Mr Clarke
[202] Through Mr Clarke
[203] Mr Clarke attaches the correspondence and his letter in CD13.10 Appendix A H.1.1-H.1.3 and T.1.
[204] CD13.10 Appendix A H.1.1.
[205] By Mr Clarke in x-e

progress with the Hughes Family (in any event bound by contract) having begun the relationship by acting in such an unprofessional and cavalier fashion. The apology[206] came rather late in the day.

6.124 In Project Phoenix (June 2017)[207] the sum shown for the building was not a fair market price but only a nominal £1. Re-Form[208] was wholly unable to explain why this sum was inserted when it was fully expected that they would have to pay more – the fair market price. If Re-Form was entering into genuine discussions to purchase the building, they might be expected to have had some broad idea of the figure of what it was prepared/able to offer but there was none[209].

6.125 These factors, and the terms of the 'Saved by the Bell' and the addendum[210], demonstrate that this was no more than a tactical, campaigning stance – propaganda if you will - and at no stage did (or could) Re-Form produce evidence to back up the assertion continually made[211] that a "long term commercially viable plan" existed. While it was accepted[212] that a "detailed 3 year business plan" had been referred to in the 2020 Strategic Plan[213], and had been prepared, it has never been made available[214]. The inference is clear, Re-Form could not make good on its propaganda and in so doing was misleading those to whom its campaign was directed and as some of the statements to the Inquiry show, continues to mislead. Indeed, when the poor state of the business plan is examined, the earlier version must have been no more than unsupported aspiration. The Secretary of State should therefore be aware that to the extent that Re-Form's campaign was a factor that led him to call in the proposals, it was based on unsupported and unsupportable claims.

6.126 However, the applicant submits there are major issues with the expertise, reality and viability of the Re-Form proposals and criticisms in this area have already been made above. They now seek to re-characterise the approach attempting to rely on a so-called "profitability profile" but this avoids the clear conclusions drawn from analysis of the reality of the proposals. If this is an art world proposal, it underlines the fact that what is proposed is not a bell foundry of the character criticised as being lost, but an art foundry with ancillary aspects that do not differ in substance (and indeed are less beneficial since they would not provide affordable workspaces) from the application.

6.127 In this context it can be seen that key aspects of the Re-Form Statement of Case were spurious[215] given a proper understanding of the approach to the Hughes family, the lack of any business case other than at a very high level, an incorrectly costed Strategic Plan, and the lack of relevant expertise.

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[206] Delivered by Mr Clarke in x-e
[207] CD13.10 Appendix A P.1 – published only a few months after the discussion with Mr Hughes
[208] Through Mr Clarke
[209] Mr Clarke denied he had any idea in x-e
[210] CD9.34 and CD9.35
[211] By Mr Lowe
[212] By Mr Clarke
[213] CD13.11 Appendix D Page 3
[214] And Mr Clarke refused to do so in x-e
[215] CD1.5 paragraphs 3.4-3.6

6.128 In particular, despite the late production of a business case[216] to show at least there was some reality to the claims that Re-Form had been making since its interest in the site began, there was limited knowledge of it, a number of hands had contributed to it, and it appears largely to have been put together by Factum's Chief Financial Officer[217] who was not called to give evidence and so could not be questioned on the many areas of disagreement highlighted.

6.129 Factum, unlike Re-Form, is a commercial organisation, and could not be subsidised in its operations by Re-Form[218]. Indeed, although views veered in a number of directions[219], from breaking even to not caring about business cases, the written evidence is clear[220] that the Re-Form proposal is considered by them to be commercially viable, in the long term.

6.130 As noted above, Factum advanced the business case, largely as a result of an exercise carried out without any supporting material as to sources of information by, Factum's CFO[221] – who was not called to given evidence in support her assumptions. She claimed[222]: *The funding is based on the unique nature of the project that will convince national and international donors. It is anticipated that the future capital cost of the project will be met by a combination of private fundraising and public sector grants. The funders are divided in public government, trust and foundations, individuals, corporate and corporate foundations, loans and different local funding channels. But what is more important is this Business Plan shows that it is a profitable business that can run itself in time, based on solid figures and Factum Arte's expertise of almost 20 years*.

6.131 However, as noted, Factum does not run a foundry, does not itself have experience of casting bells (other than limited reproduction of historic bells which were cast by others) or of running a bell foundry business. Those experts supporting the applicant[223] have that expertise, and their views directly contradict those of Re-Form.

6.132 Re-Form's counter-proposals are not OVU for the simple reason that they are not viable and are unlikely to be so in the future. Re-Form also does not have the expertise nor viable plans to implement them or operate on site. They do not represent a sound alternative (or even a potential alternative) to preserving this important listed building in contrast to the applicant's proposals. Indeed, as they are unviable, they do not amount to an alternative in any event.

6.133 The issue of works and costing has already been dealt with and here Re-Form's approach has significantly underestimated what is needed to put the building in good repair and to make it operable (possibly due to lack of detailed consideration or knowledge of the listed building). Whilst it may not

[216] By Mr Lowe
[217] Referred to hereafter as CFO
[218] Something made clear by Mr Clarke
[219] Mr Lowe in x-e
[220] CD13.6 Paragraphs 2.5, 3.1, 4.5, and 4.6
[221] Ms Victoria Matatagui
[222] CD13.7 Appendix 3 Paragraph 2.1
[223] Mr Westley, Mr Hughes and Mr Wilby

be on the Buildings at Risk Register, nor was there (yet) risk to life and limb, that approach by Re-Form missed the point. The applicant[224] provided very clear evidence that substantial work needed to be done urgently to prevent further deterioration where there has already been a delay of 12 months when the applicant was gearing up to start work once permission was granted (see above).

6.134 The applicant[225] undertook a number of exercises to test the viability of the Re-Form proposals, including considering their own business case. On any basis, it is not considered that the Re-Form proposals demonstrate a viable case. Although it was pointed out by Re-Form[226], that charitable funding represents a different model, this did not resolve the issues with Re-Form's business plan for a number of reasons.

6.135 First, the Re-Form approach was predicated on much lower works and costs assumptions than have been assessed and presented by the applicant and the Council. Second, the Re-Form business plan was said to demonstrate commercial viability and Re-Form as a charity was not able to subsidise the business operations at the building.

6.136 Third, the email[227] which was cut and pasted verbatim[228] into the Business Plan[229] followed the broad outline of the applicant's approach in assessing existing asset value (EUV) but when properly considered did not support viability. Fourth, The Middleport model has difficulties, as noted above. Fifth, The Business Plan with its four year cashflow and income/expenditure assumptions are seriously flawed[230], including for these reasons: the cashflows do not purport to show a profit for at least part, yet do not carry forward losses or debt or explain how they are to be provided for in subsequent years. If this is done[231], the overall assessment is that a loss is made. The sources of the assumptions made as to business and income cannot be seen or tested and further expenditure after 5-10 years is not taken into account.

6.137 It assumes Re-Form is able to acquire the building and fund the acquisition, though its assumption as to £4m is not accepted in any event and Re-Form has ignored the "marriage value" in the 1980s Building[232] when associated with the remainder of the hotel site.

6.138 The assumptions as to regular annual large one-off commissions are unsafe as has been explained[233]. The assumptions as to international business are also unsafe and have nothing to support them. The outsourcing of bell founding to Pangolin generates a loss

[224] Through Mr Fryar
[225] Through Mr Brierley
[226] In evidence and in the x-e of Mr Brierley
[227] CD13.10 V.1.1
[228] Other than the important qualification
[229] CD13.7 Appendix 1 Pages 38-39
[230] CD10.19 Section 4 Paragraphs 4.16 - 4.38
[231] As Mr Brierley pointed out
[232] That is the enhanced value that element of the site has given the existing hotel permission
[233] By Mr Westley but see also CD10.21 Appendix 2 Paragraphs 4.11, 4.12 and 5.2.

6.139 With regard to "*the ability for the heritage asset to continue a sustainable use in perpetuity*" it is expected to see an analysis from acquisition to full maintenance and sustainability of the business[234] having regard to advice in the PPG[235].

6.140 The Re-Form idea, if allowed to influence a refusal of permission and consent, would be much more likely to compromise the future of the building. Re-Form has not even engaged in serious discussions with the Council[236]. The danger is that, lacking in credibility as the idea is, it will put at risk the application proposals in return for a half-baked idea which is no more a single use bell-foundry that what is proposed in the application – nor can it be. With a building needing immediate attention in a manner which is sympathetic to its unique character and significance, it is not good enough that Re-Form thinks it might be able to make something work in time. It has had long enough to devise its proposals and is still unable to provide a shred of independent evidence of viability.

6.141 A viable use for the building, that best preserves its significance can be achieved - not through Re-Form's ill-thought out plans, but through the application - as the Council and HE agree.

Conclusion

6.142 To conclude, the application proposals: (1) are the result of lengthy and careful advice, including from experts in heritage assets, and consultation including with the Council and HE which support the scheme; (2) follow a conservation-led approach which seek to secure the future of the building in a manner that best maintains its historic significance; (3) are deliverable and viable, and will not need to call on public or charitable funds for their achievement; (4) includes, as all agree, a hotel of the highest quality of design that appropriately responds to its neighbours and respects and positively responds to its context, townscape, landscape and public realm; (5) while leading to a low level of less than substantial harm, brings forward substantial heritage benefits (also to be given considerable weight) that easily outweigh the harm without considering the other public benefits that will arise; (6) provide the OVU for the building (if this needs to be considered); (7) enhance the conservation area and have no adverse effect on the setting of any other listed building; (8) comply with the development plan as a whole, create jobs and creative workspaces for local people and businesses, and to the extent that it may (contrary to that) be found there is some harm, it will be outweighed by other material considerations including the many significant benefits identified and agreed; and (9) are the only proposals that will be able to deliver the same benefits in a reasonable period of time, and in a manner which best secures the long-term future of the building in the public interest.

6.143 In final conclusion, it is submitted that planning permission and listed building consent should be granted for the proposals.

7 The Case for the Council

[234] As Mr Brierley outlined in evidence
[235] Reference ID: 18a-015-20190723.
[236] Mr Clarke describing pre-application discussions as a "silly way" of getting to the Council

7.1 This is set out in full in opening and closing statements to the Inquiry and in evidence[237]. What follows is based on the Council's case as presented in closing, but the evidence presented by the Council should be considered in full, in order to gain a proper appreciation of the case presented.

Preliminary Matters

7.2 The proceedings are concerned with applications made by Raycliff Whitechapel LLP, that seek planning permission and listed building consent for a scheme to bring forward development and works at premises in Whitechapel. The premises include an area of hardstanding, a modern industrial building, and a Grade II* listed building fronting Whitechapel Road and Fieldgate Street, located within the Whitechapel High Street Conservation Area.

7.3 The Inquiry has been held as a consequence of the Secretary of State having called in the applications for his own determination in circumstances where the Council had considered the merits of the proposals and resolved to grant permission and consent. Throughout the proceedings, the Council has continued to support the proposals, and having heard all the evidence, maintains that position.

7.4 Support for the proposals comes from HE, the statutory body charged with responsibility for the nation's historic environment. HE has been involved with the development of the scheme since its inception, and its input has shaped the proposals. It remains strongly supportive of the scheme and its representative at the Inquiry not only provided a detailed statement of evidence, but also attended proceedings so that the Inspector (and others) were able to put questions, testing HE's position.

7.5 The only main party to the Inquiry to speak in opposition to the proposals has been Re-Form. Suffice it to say at this point, that Re-Form disagree with the applicant, Council, and HE as to the impact the proposals would have on the listed building, and argue that the applications should be dismissed in the expectation that they will then be able to bring forward their own proposal.

7.6 Re-Form do not currently own the listed building, nor do they claim to have any arrangement with the existing owner which might give reason to think that they might be able to acquire it. In addition, there are no planning or listed building consent applications existing (or pending) for any Re-Form 'scheme'; indeed, there have not even been pre-application discussions. In fact, notwithstanding they have been three years in the making, Re-Form's scheme remains an "*idea*", which the Inquiry has been told will take "*two or three years*" to develop into substantive proposals capable of implementation[238]. Nevertheless, the Inspector and Secretary of State are urged by Re-Form to reject the applications, and the substantive proposals which they contain, in favour of the idea Re-Form will ultimately develop.

7.7 In summarising what it regards as the salient matters before the Inquiry, it is respectfully submitted that any reasonable, objective and informed analysis

[237] ID3, ID 26 and CD11.1 – CD11.9
[238] Terms used by Counsel for Re-Form to describe their proposals

must lead to the conclusion that planning permission and listed building consent should be granted for the proposals.

7.8 Before turning to those matters, there are three matters of process/law, raised by the Inspector that need to be addressed.

Matters of Process/Law

The Application of Section 16 of the Framework

7.9 The first issue relates to the matter raised by the Inspector in advance of the Inquiry[239] raising a question as to the correct approach to be adopted when applying national policy as set out in Section 16 of the Framework. The Council set out its position in respect of this matter in Opening[240], and it is not proposed to reiterate that analysis in full. For present purposes it is sufficient to make the following observations.

7.10 First, whilst the issue raised by the Inspector is significant as a matter of procedure, in this case, it ultimately has no substantive bearing on the outcome of the applications. That is because both a 'free-standing assessment' of the heritage impacts of the proposals (without undertaking the type of assessment envisaged by paragraph 196 of the Framework) and a paragraph 196 assessment lead to the same conclusion, namely that permission and consent should be granted.

7.11 Second, and in light of the fact that the proposals would result in some degree of less than substantial harm to the listed building, the Council considers that the correct approach is that paragraph 196 should be engaged, and that the type of assessment for which that paragraph provides should be undertaken. The Council notes that this is also the position adopted by HE. Such approach is consistent with the analysis of Ouseley J at paragraph 68 of his decision in *Safe Rottingdean Ltd v Brighton and Hove CC* [2019] EWHC 2632 (Admin)[241] and the analysis of Dove J at paragraph 34 of his decision in *R (Kay) v Secretary of State* [2020] EWHC 2292 (Admin)[242].

7.12 Third, and finally, whilst the Paragraph 196 assessment is one that compares 'heritage harm' to the full range of public benefits (as opposed to only those benefits which comprise 'heritage benefits') that does not mean that it is unhelpful or wrong to conduct – as an informative to the Paragraph 196 assessment – a 'heritage specific balance'. The 'net' heritage position is clearly a highly relevant input to a decision-maker looking to undertake a paragraph 196 assessment (or indeed a planning balance more generally). Indeed, the legitimacy of such a 'net' heritage analysis was expressly endorsed by the Court of Appeal in *R (Palmer) v Herefordshire Council* [2017] 1 WLR 411[243].

The Requirement for Listed Building Consent

[239] ID1
[240] ID3 Paragraphs 19-22
[241] CD8.9
[242] CD8.10
[243] CD8.15

7.13 In a subsequent note, issued during the Inquiry[244], the Inspector raised two issues. The first of these is concerned with the extent to which the proposals do in fact require listed building consent. In this regard the Inspector notes the requirement in Section 7 of the Act that listed building consent is required for: '*…any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest….'* before querying whether listed building consent is required for any aspect of the proposals save: *'Internal alterations and refurbishment of listed building and external alterations to listed building to raise roof of hayloft building and create new link building'*.

7.14 The Council's position in this regard is that the scope of works is materially narrower than the extent of development comprised in the description of the overall proposals. Firstly, as is readily apparent from the wording of s.7 of the Act (and indeed subsequent sections), no listed building consent is required in respect of any 'use' or 'change of use' (the only relevance would be in circumstances where such change of use necessitated *works*). Secondly, the works to construct the hotel element of the scheme are not (save as noted below) works to the listed building at all. Thirdly, it is only those elements of the proposals which affect the physical fabric of the listed building, that fall within the terms of Section 7 and require listed building consent.

7.15 The Council has considered the Inspector's wording, and respectfully suggests that any trimmed back description of works the subject of the application for listed building consent, would need to extend slightly beyond that proposed. In this regard, the Council suggests the following wording: *"Internal alterations and refurbishment of listed building and external alterations to listed building* ***including roof replacement works and provision of new rainwater disposal system, insertion of new windows to blocked openings, raising*** *roof of hayloft building****, creation of*** *new link building****, and demolition of subsurface brick structures underneath the '1980s building' located to the south****"*.

Matters Relevant to Determination of an Application for Listed Building Consent

7.16 The second issue raised in the Inspector's Note[245] relates to the approach to be adopted when determining applications for listed building consent. In this regard whilst the Inspector notes that determination of a planning application is governed by provisions including Section 38(6) of the Planning and Compulsory Purchase Act 2004, in which context the Framework is obviously a significant material consideration, a query is raised as to whether the position of the Framework is the same in the context of applications for listed building consent.

7.17 The Council's position is that the key statutory provision, and the primary consideration in determining applications for listed building consent, must be Section 16(2) of the Act. However, in undertaking such a determination regard should be had to material considerations and the policies of the development plan and the Framework would fall to be considered as such (notwithstanding

[244] ID10
[245] ID10

that the relevant text in Section 16 of the Framework is concerned with plan-making and decision-taking in respect of planning applications).

7.18 Section 16(2), whilst directing that special regard be had to '*…the desirability of preserving the building or its setting or any features of special architectural or historic interest…*' when determining applications for listed building consent, does not dictate how other considerations should be treated. Thus in circumstances where development would result in works that were partly harmful but partly beneficial to a listed building, there is no reason why the same approach should not be adopted as in the determination of planning applications (as set out in Paragraph 196 of the Framework).

7.19 On this basis it is the Council's position that, in light of the near identical statutory duties imposed on decision-makers within the context of planning and listed building consent applications (s.66(1) and s.16(2) of the Act), the Inspector and Secretary of State should adopt the same approach in determining the application for listed building consent, as they adopt in determining the application for planning permission.

Summary Context

The Listed Building

7.20 The former Whitechapel Bell Foundry consists of the listed building and the modern extension immediately to the south of it. That extension is an industrial unit, constructed in the 1980s, and excluded from the listing. The historic building is, as all agree, a heritage asset of the highest significance. However, it has suffered from decades of under-investment and is now in a vulnerable condition; previous owners doubtless did the best that they were able but did not have the resource to do more than 'patch' the premises.

7.21 The building is not included in the Heritage at Risk Register maintained by HE, but the unchallenged evidence before the Inquiry is that urgent works have been undertaken to secure its immediate condition, and that the integrity of the building remains at issue. In particular, the building is no longer watertight, and the roof requires extensive repairs. The electricity and other services to the building are inadequate and require extensive overhaul.

7.22 The listed building has been the subject of an extensive and detailed condition survey, undertaken by Malcolm Fryer Architects[246].

7.23 That survey is relied upon not only by the applicant and those supporting the proposals, but also by Re-Form. Indeed, it transpired during the Inquiry that none of the witnesses called by Re-Form had spent more than 2 hours in the building in the last 30 years[247]. Thus, the condition of the listed building, as identified by the applicant, is unchallenged.

7.24 A fundamental consideration for both the Council and HE in supporting the proposals, is that they will deliver the investment in its fabric that the listed building needs. That the scheme *would* result in repairs and refurbishment being undertaken *now*, as opposed other notional proposals, which *might*

[246] CD10.2 Appendix 1
[247] Dr Barker-Mills in x-e

result in investment at some *indeterminate* point in the future, is a powerful factor. The extent of investment necessary simply to restore the listed building in an appropriately sensitive fashion, on the applicant's case, runs to some £6.6 million[248]. The Council has undertaken detailed analysis of these costings, and its own figure runs instead to some £6 million[249]. However, on any view, the extent of investment needed to restore the building is substantial.

7.25 In this context the Council notes that in opposing the proposals, Re-Form have sought to query the extent of the works proposed, and the costings identified in respect of them. With respect, such criticisms on the part of Re-Form are entirely lacking in credibility. In this regard, not only have Re-Form spent no material time on the premises, but their evidence in respect of this issue is tainted and inadequate.

7.26 Insofar as it comprises a criticism of the scope of the works that AECOM have costed for the applicant, that evidence is 'given' by Mr Harris of Arcadis, and his colleague Manuel Belle. Their assessment is apparently to the effect that the extent of works costed by AECOM is unnecessarily extensive. However, both Mr Harris and his colleague, as board trustees of Re-Form, have duties and obligations to secure particular outcomes for the charity. As such they are evidently and necessarily conflicted. Theirs is simply not an impartial assessment. Further, whilst much was said about his experience and profile, Re-Form elected not to call Mr Harris to give evidence to the Inquiry. As such, there has been no opportunity to 'test' his position; instead he has simply sat on the sidelines, able to level criticism without ever having to justify himself. No weight can be attached to this element of his evidence.

7.27 The other aspect of Re-Form's case on this issue is apparently that insofar as the scope of the works may be justified, the costings are overstated. Here their position is even weaker. The main focus of Mr Harris' (written) criticism was the need for the works costed by AECOM; his position being that his own cheaper, less extensive programme of works, would be sufficient. However, insofar as there was criticism that costings for particular works were overstated, that evidence was again not tested at the Inquiry. This is significant, in circumstances where the Inquiry *has* heard oral evidence from an expert witness speaking to the *accuracy* of the AECOM costings. The Council[250] has verified those AECOM costings.

7.28 The Council has assessed each and every input to the 'minimal costings' approach produced by the applicant[251] and his assessment is that £6 million is a robust figure. That figure is unimpeachable because it was not subject to any material challenge at the Inquiry. The simple truth is that Re-Form were not in a position to challenge the Council's (or the applicant's) evidence on this matter, because they had no material evidence of their own to set against it.

7.29 Thus, the unequivocal evidential position before the Inquiry, is that the works necessary to restore the listed building in a sympathetic manner, befitting its status as an important heritage asset, would cost over £6 million.

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[248] CD10.10 Appendix 5a
[249] CD11.6 Paragraph 6.2
[250] Through the evidence of Mr Dedman CD11.8 – CD11.9
[251] CD10.10 Appendix 5a

The Proposals

7.30 The Inquiry has heard much evidence about the proposals, their extent and their nature. Contrary to what the Minister for Housing Mr Christopher Pincher MP said earlier this summer when he told the House of Commons that the Council '*wanted to demolish [the listed building] and build a luxury boutique hotel',* the scheme before the Inquiry will not result in the demolition of the listed building; on the contrary, it will preserve it. Further, the listed building will not be put into hotel use.

7.31 The proposals can be summarised in terms that are agreed between all the main parties to the Inquiry. That is to say, the proposals would deliver a hotel on a site where such use is appropriate, in a new building that is of the highest design quality, which would respect both the setting of the listed building and the character of the conservation area, in place of a building constructed in the 1980s which makes no positive contribution to the conservation area, or the setting of the listed building[252].

7.32 Crucially, the proposals would also fund and enable the restoration and repair of the listed building, in a manner that would secure its long-term future. This objective, one of vital significance, would be secured together with a basket of other benefits – some heritage related, others more 'orthodox' planning gain. Significantly, the listed building would see the re-introduction of a foundry, providing a material and substantive link to the bell founding activity carried on at the premises for centuries before. The foundry would provide for the casting of hand bells, together with other works of art, whilst other spaces within the building would be available for creative arts industries sympathetic to the building's history, at affordable rates.

7.33 In addition, public access to the wonderful collection of spaces that comprise the listed building would be secured, with café facilities incorporated sensitively adjacent to the reinstated foundry area.

7.34 That the proposals will secure these outcomes, if permitted, cannot materially be disputed. In fact, all that really is disputed – and of the main parties, it is only Re-Form that dispute it – is: the appropriate weight to attach to the benefits which the proposals would secure; and the extent of harm which the proposals would cause along the way. Both matters are addressed in what follows.

7.35 However, there are two further points to note in this context regarding delivery of these benefits. The first is that the Council observes that Re-Form have apparently – and very belatedly – sought to put into question the viability of the proposals, apparently suggesting that the identified benefits may not be delivered. However, this suggestion is not advanced in any intelligible form, and is not a matter that need detain the Inspector or Secretary of State. Notably, it formed no part of the argument put by Re-Form in either its Statement of Case, or its Summary of Case. The matter was not raised at all until proofs of evidence were exchanged, and even then it comprised no more than an assertion[253], without any meaningful analysis to underpin it. In fact, it

[252] CD1.1 (SoCG) Sections 7 and 8.
[253] In the evidence of Mr Clarke CD13.9-13.13

was accepted[254] that Re-Form was not in a position to challenge the viability of the proposals.

7.36 The second point to note is that Re-Form have been at pains to suggest that the benefits promised by the applicant – in particular the re-introduction of the foundry and the participation of the Westley Group and AB Fine Art Foundry - are uncertain because they are unsecured, so that the Inspector and/or Secretary of State should afford them minimal, if any, weight. That proposition is also unsound. The effect of the Legal Agreement[255] (to which both the Westley Group and AB Fine Art Foundry are signatories) and the suite of conditions safeguarding uses within the listed building, provides the decision-maker with all necessary certainty that the proposals will indeed deliver what they say. In particular, conditions, as re-drafted[256], identify expressly those areas for use as foundry and creative workspaces and preclude their use for anything else without the permission of the Council having first been secured.

7.37 Thus, there is no reason to view the proposals as anything other than what they appear on their face. They represent a carefully considered development, sensitively designed and realistic in its aspiration; a real and tangible next chapter in the life of this very special corner of East London.

Matters at Issue

7.38 Notwithstanding the length of the Inquiry, and the extent of evidence which has been heard, the scope of the matters between the parties is relatively narrow. The following paragraphs address the areas of dispute in turn.

Employment Issues

7.39 Notwithstanding some points made in oral evidence, there are in fact *no* employment related issues – policy or otherwise – which tell against the proposals. Indeed, the only employment related output of the scheme would be a *positive* one. In this regard, it is common ground that whilst the business of the former Whitechapel Bell Foundry at it is peak employed only some 24 staff, the proposals would generate some 185 jobs at the application site, including 40 Class B jobs within the listed building[257]. On any sensible assessment, this is a material benefit which speaks in favour of the scheme.

7.40 The only policy consideration raised as telling against the proposals was Local Plan Policy D.EMP3 in respect of which Re-Form[258] claimed to have identified a breach of policy. Whilst it was not maintained that it would justify refusal of the applications[259], it was nevertheless contended that the breach of policy existed. In this regard, a failure to market the property within the context of Paragraph 2a of Policy D.EMP3 was highlighted.

7.41 The basis on which this position was maintained was unclear. In this regard the Council notes the following: insofar as it was contended that there was a

[254] By Mr Clarke in x-e
[255] ID28
[256] ID14
[257] CD 1.1 (SoCG) Page 29
[258] Through the evidence of Mr Butterworth CD13.1-CD13.2 and CD13.13-CD13.14
[259] Accepted by Mr Butterworth in x-e

breach, it was conceded[260] that any breach was only 'technical' (as opposed to substantive) and thus, did not appear to attract any material weight; and perhaps more unhappily in credibility terms, this position was fundamentally and directly in conflict with that endorsed in the SoCG[261]. In that document, it is expressly stated that '*The applicant's proposals are in compliance with Local Plan… D.EMP3: Loss of employment space*'[262].

7.42 This agreed compliance having been expressly raised with the applicant's and Council's witnesses[263], and no questions having been put to them by Re-Form, it was frankly, entirely unreasonable for Re-Form to seek to resile from its concession in the SoCG[264]. The truth of the matter is that the nature of the listed building is such that there was no requirement that the building be marketed[265].

7.43 The proposals are compliant with all relevant employment policy considerations, as agreed in the SoCG, and will deliver a substantial increase in employment provision at the application site.

Heritage Issues

7.44 The heritage issues in respect of the proposals fall into two categories, firstly those bearing on the conservation area, and secondly those bearing on the listed building.

The Conservation Area

7.45 It is the position of the applicant and the Council that the proposals will have a beneficial impact on the conservation area. They will result in the restoration and refurbishment of a Grade II* listed building, whilst introducing a new structure (the hotel) on land immediately to the south of it. The proposed use of that new structure is one that is acceptable, whilst in terms of its appearance, the building is one which would respect the conservation area; indeed as already noted its design is of the highest quality.

7.46 The position of HE, as the statutory body responsible for the nation's historic environment, is substantively the same. HE confirmed[266] that the proposed development would have a positive impact, consistent with his written evidence to the effect that the proposals '*…would enhance the character and appearance of this part of the Conservation Area*'[267].

7.47 Re-Form confirmed[268] that if the proposals would have a positive impact on the conservation area, as the other parties to the Inquiry maintained, then that would be a consideration which must attract '*considerable weight and*

[260] By Mr Butterworth in x-e
[261] CD1.1 The SoCG was signed by Mr Butterworth himself
[262] CD1.1 (SoCG) Page 28
[263] Ms Ryder and Mr Westmoreland in-c
[264] Through the oral evidence of Mr Butterworth
[265] Paragraph 2b of Policy D.EMP3 (CD6.2 Page 104), concerned with the unsuitability of premises for continuing employment use due to their condition.
[266] Through Mr Dunn who appeared at the Inquiry (CD 12.1)
[267] CD12.1 Paragraph 6.3.4
[268] Through Dr Barker Mills in x-e

importance' in the planning balance. Given the confused basis on which Re-Form approached the balancing exercise in evidence[269], it is useful for this matter to be clarified; all agree that a benefit to the conservation area should attract this substantial weighting.

7.48 The glitch in Re-Form's evidence on this matter lies in their view[270] that the proposals would actually result in harm to the conservation area, as opposed to benefit. In particular their position in respect of the 1980's building is surprising having regard to the fact that in the SoCG, into which Re-Form's relevant witness had input[271], the position of all parties (*including* Re-Form) is expressly stated in the following terms[272]: '*The 1980s building at the rear of the site is not of architectural or historic interest. It is not listed or curtilage listed and not a positive contributor to the Conservation Area*'.

7.49 It was argued[273] that the position in respect of the 1980s building in the SoCG had been misconstrued because the harm caused would be the result of the loss of the bell-founding use/activity in that building.

7.50 The various flaws in this contention were explored exhaustively during the Inquiry and are not set out here in any length. Suffice it so say that Re-Form's position on this matter is untenable for two reasons. First, the proposals will not cause the cessation of bell-founding in the 1980s building - bell-founding operations ceased in 2017 as a result of viability considerations. Second, the relevant Paragraph in Section 8 of the SoCG, to which Re-Form assented, is entitled '*Heritage/**Use***' (emphasis added). Thus, the issue of the proposed use was four-square before Re-Form when it agreed that there would be no adverse impact on the conservation area caused by the loss of the 1980s building. This is quite apart from the fact that the building was never, ever used as a foundry. Instead it was built as, and used as, a frame workshop.

7.51 The true position as regards the use issue more broadly, is as identified by HE. That is, that the '*…extraordinary continuity of use was severed in 2017 when Whitechapel Bell Foundry Ltd ceased operating from the site*'[274]. There is no longer any bell-making activity carried on in the listed building, and there was no statutory means by which it could have been protected even whilst still operational (the legislation viewed it simply as a Class B2 use). The proposals represent a positive step forward, in that they will secure the re-introduction of foundry activity, including bell-founding, into the listed building. That also represents a material benefit in heritage terms, and an enhancement to the character of the conservation area.

The Listed Building

7.52 The Council[275] recognised that there would be limited heritage disbenefits resulting from the proposals. In particular, the extent to which it would be

[269] Through Mr Butterworth
[270] Expressed by Dr Barker-Mills
[271] Dr B-M confirmed as much in x-e
[272] CD1.1 Page 28
[273] By Dr Barker-Mills in x-e
[274] CD12.1 Paragraph 6.1.5
[275] Through the evidence of Mr Froneman CD11.3-CD11.5

necessary to interfere with historic fabric and the plan form[276] of the listed building in certain, limited instances, was carefully noted. However, the analysis went on to identify extensive and very material heritage benefits which would be secured. The comprehensive and robust analysis carried out by and on behalf of the Council[277] is commended and it is not necessary to rehearse the content here – undisturbed as it was by testing at the Inquiry.

7.53 Instead, the Council notes the following, contextual matters. First, it is important to record that there is near unanimity of position amongst all heritage professionals who have assessed the proposals. Not only in the Council's analysis for the Inquiry, but also the Council's Conservation Officer, the applicant's work[278] and HE[279] *all* take the view that the proposals would cause a degree of harm to the heritage significance of the listed building which sits at the lower end of the 'less than substantial' spectrum (as per paragraph 196 of the Framework); and that the heritage benefits are such that there would be a 'net benefit' in heritage terms. The *only* outlier is Re-Form, who allege[280] not just a greater level of harm, but instead 'substantial harm' as set out in paragraph 195 of the Framework.

7.54 Second, Re-From[281] showed no concern about the fact that all other heritage experts, including HE, take a view that is diametrically opposed to their position, but the reality is that they should be. This is because the crux of their '*singular*' position[282] is that a finding of 'substantial harm' is justified on account of the fact that the proposals would cause the loss of the bell-founding use, which has previously operated in the listed building for centuries. That position is, however, fundamentally misconceived.

7.55 First, it is misconceived because the proposals would not cause the cessation of that use; rather the use ceased in 2017, as a consequence of the commercial realities in the bell-founding market, and the unsuitability of the building for large scale industrial activity.

7.56 Second, it is misconceived because the heritage significance of the listed building has in very large part *survived* the cessation of that use. This is a matter noted in particular by HE who correctly state '*Although the bell making activities which formerly contributed so much to the character of the site were halted, the legacy of more than three centuries of historic former use remains legible in the layout and fabric of the listed building (particularly within the Old Foundry). The historic interest of the site therefore remains exceptionally high despite the loss of actual bell foundry activity*'[283].

7.57 Importantly, Re-Form was unable to point to any policy support for this approach as regards 'the use' of the listed building in either the Framework or the PPG. This is unsurprising, given that relevant heritage legislation does not

[276] See for example CD11.3 Paragraph 4.56
[277] By Mr Froneman
[278] By Dr Filmer-Sankey
[279] Through the input of Mr Dunn
[280] Through Dr Barker-Mills
[281] Dr Barker-Mills in x-e
[282] Dr Barker-Mills' term
[283] CD12.1 Paragraph 6.1.5

engage to protect or preserve a particular 'use' in the present case. As such Re-Form's gambit is one that sets them apart not only from other heritage professionals, but also outside the guidance to which the Secretary of State must have regard when reaching his decision.

7.58 Re-Form's position was further undermined by the revelation[284] that whilst happy to commend the Re-Form 'idea' as being materially superior to the proposals in heritage terms, the witness[285] had only a limited understanding of what that 'idea' actually entailed. Time and again, when pressed for an understanding of what was actually involved in delivering Re-Form's concept, the line that '*I may be wrong*', directing that the position should be clarified with other witnesses, was fallen back on. If the knowledge and/or understanding of the Re-Form 'idea' is so lacking, on what possible basis could its supposed superiority over the proposals at issue be spoken to?

7.59 At the heart of the analysis is the simple fact that there is a heritage asset of the highest significance, which is very badly in need of investment. The proposals would deliver that investment and secure the long-term future of the listed building for what is *remarkably* little heritage cost, as HE have rightly noted. Alongside the repairs, and the securing of the listed building's future, the proposals would also secure real, meaningful public access to the building, and the opportunity to enhance the public's understanding and interpretation of it and its spaces. In addition, it would see the re-introduction of foundry activity – and bell-founding in particular. Every single one of these matters is an important heritage benefit.

7.60 Turning aside for a moment from the listed building, the proposals would also deliver a new hotel, a building of highest quality design, in place of a modern, utilitarian industrial building, thereby enhancing the character and appearance of the conservation area. Again, this is a material heritage benefit.

7.61 The truth is that in heritage terms, the proposals represent a net beneficial position, as identified by the Council, the applicant, and HE[286]. The heritage benefits materially outweigh the harms that would be caused.

7.62 The only other matter which the Council needs to touch upon in this context, is that of OVU. It is necessary to do this, in light of the erroneous suggestions made by Re-Form in respect of this issue.

7.63 In this regard, it will be recalled that Re-Form[287] asserted that it was incumbent on the applicant to 'prove' that the proposals represent the OVU for the listed building. Further, it is asserted that in so doing the applicant must also prove that there is no material prospect of Re-Form's 'idea' coming to fruition. Quite simply, neither of these propositions is correct.

7.64 The guidance relating to the concept of OVU is set out in the Framework and PPG. This guidance provides no support whatsoever for Re-Form's contentions. Rather, that guidance states simply that in the context of development which

[284] Dr Barker-Mills in x-e by Mr Elvin QC
[285] Dr Barker-Mills
[286] CD12.1 Paragraph 8.1
[287] Through Mr Butterworth and Dr Barker-Mills

would result in less than substantial harm to the significance of a heritage asset, one benefit which may potentially be prayed in support of a case seeking to outweigh the 'considerable weight and importance' attaching to that harm, is the fact that the proposed development represents OVU.

7.65 Thus it can be noted that there is no requirement that a promoter of development, where that development would cause less than substantial harm, demonstrate that it represents OVU; if the 'heritage benefits' delivered by a development (excluding OVU) outweigh the 'heritage harm' caused by that development, then the issue of OVU does not fall to be considered at all[288]; and if, as the applicant, Council and HE all contend, the proposals do represent OVU, then that is a matter which would weigh in favour of the applications being approved.

7.66 That is the full extent to which the concept of OVU engages in these proceedings

Re-Form

7.67 Before turning to the judgement and balancing exercise before the Inspector and Secretary of State, it is necessary to turn briefly to the 'idea' which Re-Form has put before the Inquiry. As already noted, in contending that the applications should be refused, Re-form argue that its 'idea' would comprise a superior way forward for the listed building, and indeed would represent its OVU. As set out already, the issue of OVU is not one that actually arises for consideration but, given the assertion, it is convenient to consider the merits of the 'idea' in the first instance, through the prism of OVU.

The 'Idea' as OVU

7.68 It is contended by Re-Form that its 'idea' for the application site represents the OVU. It does not. In order to take a position on Re-form's 'idea' in the context of OVU, the Inspector and Secretary of State would need to reach conclusions as to: (a) its viability; and (b) the extent of harm it would cause to the significance of the heritage assets affected, and in particular the listed building[289].

7.69 In terms of viability, it is not possible to reach any positive conclusion as to the viability of the Re-From 'idea'. No meaningful viability evidence was provided to the Inquiry from Re-Form. The unchallenged evidence of the Council[290] was that 'Business Plan I' (the 'Strategic Plan March 2020-March 2023')[291] was not a business plan at all. Indeed, it was agreed[292] that the document contained no projections of any kind; no revenue forecasts, and no anticipated costs.

7.70 In terms of Re-Form's Business Plan II[293], the position was no better. This version did include some projections, but the 'business mind' behind the

[288] A point conceded by Mr Butterworth and Dr Barker-Mills in x-e
[289] Points accepted by Mr Butterworth in x-e
[290] Delivered by Mr Hodgen in-c
[291] CD13.11 Appendix D
[292] By Mr Clarke in x-e
[293] CD13.7 Appendix 1

numbers was not the witness, but one of his associates[294]. The witness was incapable of providing any defence or explanation of the financial modelling in the plan, and perhaps the most telling evidence given[295], was that business plans are 'worthless'. Thus the evidential platform on which Re-Form's claims of viability are based was disowned.

7.71 In terms of the plan, the content was inaccurate and without foundation. In this regard, in terms of the projections of revenue, claims were made[296] about various 'expressions of interest' in relation to commissions for Year 1 of the four year plan (notably, for example in relation to 'medium bells', it was not claimed that there were any such expressions of interest for *later* years, notwithstanding that the plan assumes that revenue will *double* within two years), but Re-Form confirmed[297] that they would not provide any of those expressions of interest to the Inquiry. Thus, the Inquiry has no documentary evidence whatsoever about any of the predicted commissions.

7.72 There were general assertions as to 'markets opening up' in regions as diverse as China, India, the Middle East, Russia, Southern Europe, Africa and South America. However, again there was no evidence on which the Inquiry can place material reliance; just assertions[298]. That is not enough. It is not enough to point to the fact that there are Christian communities in Syria, and that smart houses in China have bells. What is necessary is to demonstrate that – for example – individuals in China can realistically be expected to buy bells from London, as opposed to – for example – China (which of course has a bell-making tradition of its own extending over many centuries).

7.73 The second point is that the numbers in the plan simply do not add up. Quite apart from the fact that (as noted above) the projections assume extremely optimistic revenue streams without any evidential justification for such assumptions, Years 1-4 show a loss of more than £400,000[299]. Further, the projections are simply not intelligible. In this regard, the Council pointed out[300] peculiarities such as the fact that although revenue was anticipated to increase 64% between Year 1 and Year 2, direct costs were anticipated to increase by only 7% in that same period. The Inquiry was told that this would be explained by Re-Form's witnesses, but no explanation was forthcoming. The Inquiry doesn't know why this is the case.

7.74 The upshot is that there is no material basis on which it could reasonably be concluded that Re-Form's 'idea' represents a viable proposition. Interesting perhaps, and entertaining perhaps, but simply not viable.

7.75 As far as harm to significance is concerned, the position of Re-Form is similarly flawed. There is simply not enough detail provided in respect of the 'idea', for the Inquiry to understand what harm would result were it ever to be implemented.

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[294] Ms Matatagui rather than Mr Lowe
[295] Mr Lowe in answer to a question from Mr Elvin QC
[296] By Mr Lowe
[297] Through Mr Lowe
[298] By Mr Lowe
[299] CD13.7 Appendix 1 Page 35
[300] Mr Hodgen in-c

7.76 It was confirmed[301] that '*initial information*' was being put forward about Phase 1 of the 'idea' but nothing at all about Phase 2[302]. The Council observed[303] that the Inquiry simply does not know the extent of the impacts that the 'idea' would have, if and when fully worked up into a scheme capable of implementation.

7.77 That is, in essence, all there is to be said on this topic. In the absence of sufficient detail on the 'idea' to be able to conduct any type of meaningful comparison between it and the proposals, in terms of heritage impact, there can be no question of reaching any conclusion as to the 'idea' comprising OVU.

7.78 The reality is that the 'idea' which Re-Form has advanced in the course of the Inquiry, does not assist the Inspector and/or the Secretary of State in any material sense. It represents, at most, a nebulous aspiration to which no material significance can be attached. Further, and as importantly, even if it were practical and viable (which it is not), it would not achieve any benefit over and above what the proposals themselves will deliver.

7.79 In this regard, the Inquiry can note that the founding of 'Tower Bells', which is what the listed building has become famous for over the centuries, is a chapter that has closed. There is no evidence to suggest that this represents a feasible option in the future, and indeed other evidence[304] is clearly and unequivocally to the effect that this is no longer possible. What comes next – whether the founding of hand bells and works of art, together with other creative art activities as proposed by the applicant, or the founding of bells and other art works, together with sound recording and data archive as envisaged by Re-Form – will be a new departure. The difference is that whilst the proposals represent an outcome that will actually be delivered, Re-form's 'idea' remains entirely that.

Engagement with the Council

7.80 Before turning away from Re-Form, and notwithstanding that the issue does not go directly to the merits of the applications, it is nevertheless necessary to address briefly the position which Re-Form put forward[305] in respect of the Council's conduct.

7.81 In this regard, various allegations were made in written evidence[306], including an assertion of 'negligence', concerning how the Council had engaged with Re-Form and its proposals. As already noted, such allegations had no bearing on the merits of the applications, but they were made nonetheless. Re-Form was invited to withdraw these allegations[307], and after some prevarication, did so. However, in answer to questions put by the Inspector, a 'watered down'

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[301] Dr Barker-Mills in x-e
[302] Guidance in the PPG [Paragraph: 015 Reference ID: 18a-015-20190723] specifically requires consideration be given to harm "*not just through necessary initial changes, but also as a result of […] likely future changes*"
[303] Mr Froneman went unchallenged in x-e on this point
[304] That of Nigel Taylor ID21
[305] Through the evidence of Mr Clarke
[306] That of Mr Clarke (CD13.9 and CD13.12) in particular
[307] Mr Clarke in x-e

version of the same was reintroduced[308]; in short that '*the Council could and should have done more*'.

7.82 Such criticism is roundly and robustly rejected. Indeed, the Council considers it is completely unacceptable for such allegations to be made in a public forum, in circumstances where the only party who could properly be described as being 'at fault', is Re-Form itself.

7.83 In this respect, Mr Clarke suggests that the Council '*should have done more*' to understand the Re-Form 'idea' before resolving to grant permission/consent for the proposals, in circumstances where by the time it reached a decision in respect of the applications, the Council had long been in receipt of both '*Saved by the Bell'*, and '*Saved by the Bell II'*. As such, to the extent those documents disclosed any intelligible proposal, the Council had already had them and considered them. To the extent those documents did not disclose such an intelligible proposal, the fault lies at Re-Form's door, not the Council's. This position is replicated by Re-Form's approach to demonstrating the viability of their 'idea'. In this it was asserted that at the time of the Council's resolution in respect of the applications, Council Officers were aware that Re-Form had a '*considered and viable business plan*'[309] for their 'idea'.

7.84 However, when pressed[310] it was accepted that in fact, the only business plan which was ever produced to the Council was 'Business Plan I' (the 'Strategic Plan March 2020-March 2023'[311]). This, was in fact '*not a business plan at all*'[312]. As already noted, the document had no projections of revenue, no costings; it was a slide presentation containing only high-level text, some of which had been cut and pasted from various websites[313]. Thus, contrary to what was asserted in his written evidence, Re-Form must accept that no meaningful demonstration that the 'idea' was viable was put before the Council.

7.85 Further, insofar as there remains any doubt as to where any fault lies in respect of Re-Form and its proposals, as the Inquiry has seen the Council *repeatedly* suggested that Re-Form engage with the Council in pre-application discussions so as to progress its 'idea'. Consultants acting for Re-Form *twice* said they would do so, but no engagement was forthcoming. In fact, in a real insight into their approach to, and understanding of, the development control process, came when the Inquiry was told[314] that it would have been '*silly*' to engage with the Council's planning department, before then refining the position to say that there were '*better ways*' to engage with the Council, such as through its '*economic department*'.

7.86 So, notwithstanding that the criticism of the Council's planning department, and its Officers, for not having more regard to Re-Form's proposal as a material reason to recommend rejection of the applicant's planning application,

[308] By Mr Clarke
[309] CD13.9 Paragraph 3.32
[310] Mr Clarke in x-e
[311] CD13.11 Appendix D
[312] As Mr Hodgen pointed out on behalf of the Council
[313] A point accepted by Mr Clarke
[314] By Mr Clarke

in favour of Re-Form's 'idea', Re-Form effectively accept that they had elected not to engage with it.

7.87 The upshot of all this is that, far from being ill-treated by '*negligent*' Council Officers as Re-Form sought to suggest, Re-Form have only themselves to blame, if they feel that insufficient attention was paid to them and their 'idea'. Invited by the body responsible for processing the applications to engage with them about their own proposal, they declined to do so. In particular they: declined to discuss the 'idea'; and declined to submit any materials or business plan which might have shown such an 'idea' to be viable.

7.88 It is very sad indeed that in these circumstances, Re-Form saw fit to criticise the Council and its Officers.

The Approach to Assessment and the Ultimate Balance

7.89 It is the Council's position that the route which both the Inspector (in making his recommendation) and the Secretary of State (in reaching his decision) must take, is clear and well-established.

7.90 The applications fall to be considered on their merits, in the context of the relevant statutory provisions and the relevant policy matrix (as contained both in the development plan and in national guidance).

7.91 The proposals would, as noted above, result in some degree of harm to the heritage significance of the listed building. Notwithstanding that the harm is firmly towards the lower end of the spectrum of 'less than substantial' harm, considerable weight and importance must be attached to it.

7.92 However, that harm is the sole consideration weighing materially against the proposals. Set counter to it, are a myriad of benefits which weigh in favour. Some of these benefits, such as the enhanced employment provision on site which would result, are benefits to which 'orthodox' positive weighting should attach. However, many of them are important heritage benefits to which – once again – considerable weight and importance should attach. These include (but are in no way limited to)[315] the enhancement of the conservation area; the securing of the long-term future of the listed building; and the repair and refurbishment of the listed building.

7.93 As regards the third and last of these issues, that is 'the repair and refurbishment of the listed building' which the proposals would deliver, it is nothing short of staggering that Re-Form should seek to argue that only "*very limited weight*" should attach to this consideration[316]. This blinkered and wholly erroneous approach renders his assessment of the planning judgement one which is entirely flawed, on which no material reliance can be placed. In addition however, it is – in truth – indicative of Re-Form's stance more generally. Whilst no doubt motivated by laudable intentions, Re-Form has advanced a case which is misguided, and which if successful would result in the stagnation and further deterioration/degradation of this wonderful heritage asset. The intervention by Re-Form in these proceedings has not materially advanced the evidential or legal base on which the applications fall to be

[315] As Dr Barker-Mills ultimately accepted in x-e
[316] Through evidence of Mr Butterworth

determined. Importantly, the Inquiry must be clear that Re-Form has not produced 'an alternative'; there is no 'rival scheme' or indeed anything remotely approaching one. Instead, there is only an 'idea'.

7.94 The critical issue at the heart of these proceedings is the heritage benefits that the proposals will deliver. In circumstances where the other 'heritage case' in favour of the proposals is so overwhelming, it is not necessary for a decision-maker to rely on the fact that the proposals represent the OVU for the application site and listed building; however, lest the Council's position be in any doubt – that is precisely what they are.

7.95 Further, where that heritage case is so comprehensive, it is not necessary either to rely upon other 'non-heritage' public benefits to justify grants of permission and listed building consent. However, the Inspector and/or Secretary of State should not lose sight of the fact that multiple such public benefits exist. The jobs that the proposals will deliver, and the affordable creative working spaces that will be provided are examples of real, tangible public benefits to which material weight should attach.

7.96 Accordingly, in closing, it is submitted that the public interest is firmly and most definitely served by grant of both planning permission and listed building consent. Such decision would be consistent with policy in both the development plan and in national guidance. It is on that basis that the Council respectfully asks that the Inspector recommend, and that the Secretary of State so determine, that the applications be approved.

8 The Case for Re-Form

8.1 This is set out in full in opening[317] and closing statements[318] to the Inquiry and in evidence[319]. What follows is a summary of the case presented in closing that was structured around the main issues I identified in advance of the Inquiry, but it is imperative that Re-Form's evidence is read in full in order to gain a full understanding of the case presented.

Introduction

8.2 The Whitechapel Bell Foundry, listed at Grade II*, is one of the country's most important industrial heritage assets. If the applications are approved, the Foundry will be seriously harmed.

8.3 It seems entirely appropriate that the Secretary of State has called-in the application, given that it represents a test case for the conservation of our industrial heritage. If the law and policy on heritage conservation are not to be diminished, these applications should be refused.

8.4 As the evidence at the Inquiry has shown, this is a proposal which sprang from commercial opportunism. The previous owners and operators of the Foundry sold it to a speculator without having carried out a thorough investigation of its potential future use for foundry purposes. That speculator sold it to Raycliff, a venture capital company, who conceived of the site as a hotel and associated

[317] ID4
[318] ID24 and ID25
[319] CD13.1 – CD13.14

uses. There is nothing objectionable in commercial opportunism itself – the problems come when sites are acquired with outcomes in mind which do not accord with the regulation of land use and heritage.

8.5 The headwinds of the planning system began to blow. Raycliff's response, a classic exercise in retro-fitting and *ex post facto* justification, is now constructed in this way: the Foundry use has gone (it is said); extensive work to the fabric of the listed building needs to be cross-subsidised by the hotel proposal (a large proportion of which is outside the Foundry site); that there is no other viable way to conserve the heritage asset; and therefore the benefits of the proposal – including a so-called 'Foundry', the parameters of which were still developing even in October 2020's s.106 re-drafts – are said to outweigh the harm. In recent times the Raycliff proposals have even been promoted on social media under the label 'Save the Bell Foundry'.

8.6 Saying things does not make them true, of course. The fundamental problem with the application – and why it is rightly a matter of significant public disapproval and keen interest from the Secretary of State – is that it would not conserve the heritage significance of the site. It would harm it, and much more significantly than Raycliff suggests. And in doing so, it would irreparably damage something of local and national value.

8.7 When a development scheme would cause harm to a Grade II* listed building, there is a strong presumption against granting permission.

8.8 Raycliff's case underestimates the harm, and over-values the benefits they say the scheme would bring and fails to rebut the strong presumption that the Courts have established.

8.9 By contrast, Re-Form's approach is that the Foundry should be used as a foundry, conserving the essential characteristics of the use, the spaces and character of the listed building. It is a serious proposition, conceived of and developed by a group (including Factum) which has a track record in conserving our industrial heritage as well as a vision for the future of the Foundry which completely outshines the expedient commercial re-development represented by the hotel-led Raycliff proposal. Its authenticity represents the right way to conserve this crucial part of our national heritage.

8.10 For reasons that are self-evident, Re-Form have not made a planning application and are dependent on the outcome of this application process. But the evidence shows that they are fully prepared to take the Foundry forward if the Secretary of State creates the opportunity for that to happen.

8.11 It is directly relevant to the question of heritage impact and conservation that there has been an extremely high level of opposition expressed locally to the proposal, including some 27,000 signatures to the petition that the Inspector and Secretary of State will have seen. The potential impact of the Raycliff proposals is deeply felt by local people, community leaders, artists and makers, and heritage and conservation experts alike. These submissions keep the main points in view at all times, and explain by reference to the evidence before the Secretary of State why the application should be refused.

Key Law and Policy

8.12 The **first** point is that once a heritage asset has been permanently harmed, something irrevocable has occurred.

8.13 That is one of the reasons why s.66(1) of the Act requires the Secretary of State to have *special regard* to the desirability of preserving the building (including any features of special architectural or historic interest it possesses).

8.14 In *Jones v Mordue*[320], the Court of Appeal effectively aligned the application of the relevant set of paragraphs in the Framework with the discharge of the statutory duty. That is partly because paragraph 184 of the Framework says (underlining added) that 'these assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.' For that reason, *considerable importance and weight* must be given to the policy objective of preserving (that is not harming[321]) the building and any features of special architectural and historic interest[322].

8.15 In terms of the Inspector's questions about the approach to the listed building consent provisions[323]: the restriction on works in section 7 of the Act bites on any works for the demolition of a listed building or alterations or extensions which would affect its character as a building of special interest. There are two stages to this analysis (i) whether works entail demolition, alteration or extension of the listed building; and (ii) whether they would affect its character. The question of whether the hotel is an extension to the listed building is a matter of fact and degree for the decision-maker, but the degree of connectivity and physical connection might well suggest that it is; as would the extended definition in s.1(5) of the Act which suggests that the hotel will fall within the scope of s.7 once constructed as an '*object or structure fixed to the building*'. Of course, listed building consent will still only be required if the construction of the hotel would affect the listed building's character as a building of special interest.

8.16 The requirements to have special regard in s.16(2) and s.66(1) are in identical terms and should, *prima facie*, be addressed in the same manner. In *Whitby v Secretary of State for Transport* [2015] EWHC 2804 (Admin)[324], reference was made to the decision of the Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire DC* [2015] 1 W.L.R. 45[325] and to the review of the case-law undertaken in the judgment and took the view that the principles discussed applied to the determination of an application for listed building consent under s.16[326]. While the Framework does not state that it is a material consideration in listed building consent decisions, the conclusions of the Court of Appeal in *Mordue* that what is now paragraphs 193-196 lay down

[320] CD8.3
[321] This fundamental point was clear as long ago as *South Lakeland DC v Secretary of State for the Environment* [1992] 2 AC 144 at 150A-G.
[322] CD8.3 paragraph 28
[323] ID1 and ID10
[324] CD8.4
[325] CD8.5
[326] CD8.4 Paragraph 49

an approach which corresponds with the duty in s.66(1), indicate that those paragraphs can also be applied to s.16(2).

8.17 This being the case, the answer to the Inspector's question as to how it should be applied to proposed works that are in part harmful, but in other parts beneficial[327], is as set out in *Kay v SSHCLG* [2020] EWHC 2292 (Admin)[328]. The decision-maker starts by establishing the extent and nature of the harm, leaving out any beneficial impact. They should then turn to weigh the harms against the public benefits of the proposal, including heritage benefits. Listed building consent should not be granted unless the scheme is, on balance, acceptable.

8.18 The **second** point is that if a proposal is found to cause harm to a designated asset, then there is a strong presumption against its authorisation[329].

8.19 The timeframe for consideration of these matters is therefore the very long term, and it is central to law and policy that decisions made now recognise the consequences of allowing harm.

8.20 The **third** point is that when undertaking any balancing exercise under paragraph 196 of the Framework, one should not assume it is a simple 'unweighted' balance to begin with, but is pre-weighted or 'tilted' towards conservation of the asset. This was made clear in *R(Leckhampton Green Land Action Group) v Tewkesbury BC*[330].

8.21 **Fourth**, the balancing exercise under paragraph 196 is triggered by a finding of harm; it should place all the heritage harm on the negative side of the tilted balance; then see if there are benefits (which might include heritage benefits) of sufficient weight to outweigh the weight to be given to the harms as per *Kay v SSHCLG*[331].

8.22 **Fifth**, the decision maker may find that one of the public benefits is that the application proposal is what the Framework calls OVU. The Courts have upheld the relevance of a thorough examination of possible less harmful alternatives to a development which causes harm in heritage terms. In *R(Gibson) v Waverley Borough Council* [2015] EWHC 3784[332], the Court said: *"I do not doubt the correctness of what was said by Lindblom J, as he then was, in the context of heritage harm in .. Forge Field Society v Sevenoaks when he said this: "if there is a need for development of the kind proposed, which in this case there was, but the development would cause harm to heritage assets, which in this case it would, the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption in favour of preservation. Indeed, the presumption itself implies the need for suitably rigorous assessment of potential alternatives."* and "*Whilst that observation was made in the context of harm to heritage assets and the need to consider*

[327] ID1
[328] CD 8.10
[329] *R(Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (not in the Core Documents)
[330] ID25
[331] CD8.10
[332] CD8.6 Paragraphs 69 and 70

alternative sites, I accept that there is a need to consider alternative, less harmful uses of the same site when evaluating a proposal that would cause harm to a heritage asset… However, the way in which that evaluation may be carried out will vary from case to case…".

8.23 In the more recent case of *City & Country Bramshill Limited v SSHCLG* [2019] EWHC 3437[333], those observations were developed. The Court referred to them, and then said this about the role of alternatives (my underlining): *"Accordingly, the possibility of alternative modes of development at the site of the heritage asset is of particular importance. I do not consider that a decision maker is only entitled to have regard to such a possibility in cases where a specific alternative development has been put forward in some detail or even in outline".*

8.24 So this case, an up to date authority, is clear that in the heritage context, it is not necessary to put forward a competing planning application, or to set out the approach in anything like the kind of detail that Re-Form has at this Inquiry; indeed, what has been done is clearly within the guidelines that the court in that case set down.

Raycliff's Application and its Case

The Genesis of the Proposal and its Legacy

8.25 Raycliff's case is that the proposals before the Secretary of State are 'heritage-led'. As the evidence shows, that is not really the case. What has happened is that the site was sold by the previous owners, flipped by the purchaser to Raycliff, and then its hotel scheme advanced.

8.26 The July 2018 consultation proposal – what Raycliff put into the public domain and sought views on – is a hotel with a café[334]. The hotel and café would in part occupy the listed building, and therefore work was underway[335] to assess what might need to be done. But the context was the proposals as they then stood - there was no suggestion even of a living museum at the time.

8.27 Raycliff say that it was just a first stab, and the scheme developed to respect the heritage asset, but it is important to reflect on the legacy of that initial concept. It has led to an obvious conflict within the Raycliff case. On the one hand, the case mounted is that the fabric repair has to be done all at once, and to the specification[336] costed by AECOM. But that is a function of the fact that this has always been a commercial scheme, which adopts a certain finish (so as not to detract from the high-end hotel scheme to which it is attached and to which it will physically form an adjunct).

8.28 Now a foundry space is promoted, but its size, location, specification, screening-off from the café, and so on, are still dictated by the hotel style concept that Raycliff started with. There is little value in telling the Secretary of State that a real foundry would cost more than Re-Form says, if you have costed the Raycliff scheme instead.

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[333] CD8.14 Paragraph 86
[334] See the analysis of this in the Re-Form Rebuttal Document CD13.13.
[335] By Mr Fryar
[336] Prepared by Mr Fryar

8.29 So the idea of a foundry as beneficial (indeed a major benefit[337]) is at odds with the rather bijoux way it has had to be drawn up. The design, or operational assessment, of a real foundry would not start from where Raycliff started, and it would not end up with the token space on which it now relies. The foundry space (and the associated Agreement under s.106, about which more below) tells you all you need to know about why the Raycliff proposal has never, and cannot ever, escape from its original misguided premise.

The Current Proposals – Compartmentalisation

8.30 What is actually now proposed? The hotel occupies separate land never owned by the Foundry's previous owner, and the Foundry's non-listed segment. On the listed building site, Raycliff propose what appears to be a separate mixed-use planning unit scheme involving B2, B1 and A3 uses[338].

8.31 However, the latest version of the relevant conditions[339] incorporates an attempt to 'fix' floorspace quanta and locations within the scheme by reference to the application drawings. It is said that this would allow the removal of permitted development rights to be effective.

8.32 Whether or not that would be the case, the latest conditions further underline the physical, legal and regulatory compartmentalisation of the Foundry site under the Raycliff proposals. Whilst Raycliff's evidence[340] was clear that in viability terms, the hotel pays for the works to the Foundry building, it is far less clear how it would be governed and controlled in practice. The foundry space, it appears, will be let to a third party; and so will the B1 areas. The café – well, that is unclear. It is not certain by any means on the evidence whether it would be operated with or by the hotel operator.

8.33 These are all matters which inform a judgement about the effect of the proposal on the character of the listed building.

The Foundry Space

8.34 The type of use suggested by Raycliff is addressed further below when considering the heritage evidence, but there is a very important preliminary point: it would be a grave error to interpret the Agreement under s.106 as providing for foundry use on the site for 10 years. It does nothing of the kind.

8.35 The s106 obligation to operate a foundry are with AB Fine Art Foundry and the Westley Group, but only for so long as they hold a lease; there is no provision which obliges the foundry use to be instituted, or instituted before the hotel opens, for instance. Schedule 6(2)(1) is a covenant not to occupy the foundry space until there is a lease for that area, not an enforceable covenant to occupy the foundry space.

8.36 There is no obligation to enter into a lease, which is the trigger for the 10 year occupancy covenant (Schedule 6(2)(2)). Clearly, whether AB Fine Art Foundry or the Westley Group in the end sign a lease is a commercial matter for them.

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[337] Dr Filmer-Sankey's Heritage Statement, CD 3.2. para 4.2.3 and confirmed in x-e
[338] Ms Ryder and Mr Westmoreland in x-e
[339] ID14
[340] Through Mr Brierley CD10.9 – CD10.11 and CD10.19

No lease exists at the moment, and we have not seen any draft lease which would allow the Secretary of State any confidence either that the parties will indeed sign a lease, or on what surrender or default terms. So, the 10 years is contingent on a lease, and there is no obligation to enter into one. The Agreement under s.106 is therefore useless.

8.37 This is important because the Agreement under s.106 does not bind any future operators of the foundry (as defined) unless they have a lease too.

8.38 It is also questionable whether there is any obligation to provide any aspect of the foundry equipment (especially when there may not be a lessee to use it). The s.106 definition of "Part 1 Works" (in relation to the foundry space) simply says "[Part 1 Works] means part retention of B2 land use ... within the are shown shaded blue on Plan 1". This is not a reference to doing anything new: the existing use, without any equipment or actual foundry activities as at today's date, is a B2 use. A definition which refers to retention of an existing land use does not indicate anything by way of re-fitting or kitting out. Plan 1 is just a definition of different areas.

8.39 Raycliff will no doubt say that this is what you would expect commercially at the moment; but if that is true, it shows what the commercial realities in fact are in relation to the foundry space. The Agreement under s.106 is just full of holes, with no party willing or able to commit to the establishment of a foundry space for any period of time despite the challenge on this point.

8.40 It is worth focusing again for a moment on the detail, bearing in mind that the Inquiry is being told that AB Fine Art Foundry and the Westley Group are tantamount to business partners or JV partners with Raycliff, supporting the grant of permission and then fully committed to operating the foundry. If that were so, why are they under no obligation whatever to do so? It can be noted that (1) ABFA and WG are parties only for the purposes of the obligations in Schedule 4 para 21.3 and Schedule 6 Part 2; (2) Schedule 4 para 21.3 is the one requiring them to provide one apprentice/trainee in the foundry; (3) Schedule 6 part 2 specifies the obligations about operating the foundry; (4) But there is no clarity about the relationship between AB Fine Art Foundry and the Westley Group; (5) They are not contractually bound by the s106 clause 20 duty to act in good faith and there is nothing in the s106 which states how obligations taken by more than one party are shared - severally, jointly, or jointly and severally; (6) The Heads of Terms seen so far shed no light on this and the fact that they are both stated as parties to the s106 suggests they haven't thought it through at all; and (7) Clause 8.3.2, and Schedule 2 part 6: AB Fine Art Foundry and the Westley Group and any future foundry operators are only bound by the relevant bits of the Agreement under s.106 for so long as they have a lease of the foundry - and if they don't then they are not bound. There would be no consequences in the s.106 for AB Fine Art Foundry, the Westley Group, or Raycliff.

8.41 In the light of these points, we would invite the Secretary of State (1) to find that no weight can be given to any suggestion that there is a guaranteed Raycliff foundry use for any period of time; and (2) to approach the Agreement under s.106 critically, because as a piece of evidence in its own right it demonstrates again that the foundry space is a token gesture, without any credible foundation. Despite the efforts to rope in support from the Westley

Group and AB Fine Art Foundry, they are not prepared to put their money where their mouth is. That is hugely significant in the context of this application.

The Main Issues affecting the Raycliff Case

8.42 Before turning to the main areas of disputed judgement, it is worth setting out and examining a few key propositions in the Raycliff case.

8.43 First is the proposition that the 'foundry use has gone'. This is a point taken up far too readily by the Council as well, and is in the end not sustainable. First, the use of the Grade II* building as a Bell Foundry has taken place since the 1740s, and B2 remains the lawful use. If Raycliff allowed it, the bell foundry could be re-fitted and used by Re-Form without the need for planning permission. So it has not ended for planning purposes.

8.44 Second, the departure of the Hughes company is not the same thing as the use of the building ending; indeed, temporary vacancy could not be the test for whether a heritage asset had lost its use – otherwise simple cessations would constantly be used to justify works in listed buildings. So, the use has not 'ceased' for heritage purposes.

8.45 Third, it is common sense that a historic use of a listed building has only been 'lost' when, for whatever reason, the use will not return[341].

8.46 Fourth, the argument espoused by Raycliff, the Council and (though the terms of this are interesting) HE, is that the historic use which has ceased is the more narrowly defined: 'large church bell foundry'. The Council[342] seemed to think this was as simple as pointing to the sign above the front door on Whitechapel Road. However, it is not – neither of the two most famous bells to be cast at the Whitechapel Bell Foundry were church bells (i.e. Big Ben or the Liberty Bell), and the business under the Hughes family had already gone through many market-driven changes over the years.

8.47 If this were the whole story as far as the historic use was concerned, then no weight should be given to the Raycliff foundry space, which is not fit for large bells or church bells. But apparently it will be of 'major benefit' in heritage terms.

8.48 The truth is that the use was as a bell foundry. Unless the position is that a foundry use which is centred on bells will never return to the site, it is wrong to say the use has been lost. On the evidence, it is plainly impossible to say that. The HE position[343] was notable for its superficiality – HE did not feel that they were 'in a position to second guess' what they were being told by Mr Hughes about the foundry use. It is very regrettable that HE simply took that position, even to the extent of appearing at the Inquiry, without properly engaging with the question of whether the Re-Form scheme showed otherwise[344].

[341] Accepted by Mr Dunn in x-e
[342] Through Mr Froneman
[343] As expressed by Mr Dunn
[344] Mr Dunn confirmed in x-e that he had not even read Mr Clarke or Mr Lowe's evidence

8.49 If the use has not been lost, then there are consequences – the return of such a use would obviously be the optimal use from a heritage perspective, and indeed, the closer a use was in terms of character to the use for bell founding, the more authentic and consistent with the conservation of significance. Given the gulf between what Raycliff have latterly suggested though not guaranteed, and the driving ideas in the Re-Form proposal, it is not surprising that Raycliff and its supporters are so keen on this fallaciously narrow approach to the historic use of the site.

8.50 Fifth is the idea that OVU is not a policy requirement. Raycliff is at pains to say that even if they do not persuade the Secretary of State that the proposals are the OVU, that merely removes one of their claimed benefits, rather than counts against them. That is clearly a bogus argument and contrary to the views of the court, as set out below. As the Council's own policy[345], and the cases on OVU make clear, the need to scrutinise potential alternatives in cases of heritage harm may mean that a powerful point against the grant of permission is thereby uncovered.

8.51 If one acknowledges that (1) the historic use has not gone for ever, (2) that it should be defined rather more widely than simply church bells, and (3) that failure to establish that there is no alternative OVU counts against an applicant, then the Raycliff case looks very different. It is the centrality of the harm that the scheme would cause that has led to the Raycliff case depending on such tendentious propositions.

Heritage

Significance

8.52 There is no doubt that as a Grade II* listed building, the Whitechapel Bell Foundry is a structure of the highest significance; paragraph 194 of the Framework defines it as such, along with a select subset including Grade I listed buildings and World Heritage Sites.

8.53 Paragraph 184 of the Framework tells us that heritage assets are irreplaceable and should be conserved 'in a manner appropriate to their significance'. It follows that conservation of assets of the highest significance imposes a particularly heavy burden.

8.54 It is the case that some parts of a listed building may not be as significant as others. However, the assessment of significance of the fabric in this case is questionable. First, the hayloft/former stables area is given a lower significance rating because it was re-constructed post war. However, it was re-built as part of the foundry use in the utilitarian industrial style following bomb damage. It is part of the evolution of the foundry[346].

8.55 The hayloft/stables area may be less significant than the Georgian front range or the moulding room – but that is relative. They are intact Georgian/Victorian structures in single use as part of a Grade II* listed building; the hayloft is a reconstructed part of that single use, also covered by the listing when it was

[345] Policy S.SDH3 (CD6.2 Page 49) requiring a "thorough assessment" of alternatives to the loss of use/harm
[346] A point accepted by Dr Filmer-Sankey in x-e

critically reviewed within the last 5 years. So, even if it is slightly less significant than the front range or moulding room, it is still of extremely high value in heritage terms. Raycliff think it neutral[347] but that is simply wrong.

8.56 That has never been fully faced up to by Raycliff or its advisers. Being realistic, if one is designing the kind of scheme that Raycliff intends for the site, with substantial public access, then a major intrusion of this kind is inevitable, and so some loss of high-value fabric is the cost. Others[348] also appeared to make the further assumption that damage here was 'probably inevitable' in any scheme for re-use of the building. That is not so – it depends on the use which is intended for it. A proper foundry would not need that degree of intrusion.

8.57 So, the significance of the hayloft/stables has been underestimated when bringing forward these proposals.

8.58 Second, there has been insufficient attention paid to the value of the internal layout of the listed building and the value it has evidentially and historically. The list description[349] speaks in terms of a "distinctive and cohesive complex of domestic and industrial buildings", and the way that the building's layout naturally reflects the day-to-day requirements of the process remains an important part of its significance.

8.59 The Council's position[350] was that in the absence of most of the equipment, the building could be "any industrial shed" –a view at odds with HE's assessment of the "extraordinarily atmospheric" interior of the listed building[351], which still speaks of its use and historic associations[352]. In a building whose layout, movement corridors and spaces all derive their character from the historic use, as HE sets out, this is a "major component of significance"[353].

8.60 The Heritage Statement[354] significance analysis does not assess the value of the layout at all, focussing exclusively on fabric, and assuming use to have ceased. By the time evidence was prepared[355], room had been made for the acknowledgement that there was "much of interest" in the way the "plan-form reflects its history of use as a bell foundry" – but there is no corresponding formal assessment of significance for heritage purposes.

8.61 So, the significance of the layout has also been underestimated.

8.62 Third, the issue of use again. No value is given to the use of the listed building in the Heritage Assessment on the basis it had ceased, indeed the cessation of founding is identified as having caused harm[356]. Now the Secretary of State is apparently asked to give significant weight to the "major benefit" of the Raycliff foundry space because it restores something akin to the historic use in

[347] CD10.7 Paragraph 5.3; and CD3.2 (Heritage Statement) Pages 78-81.
[348] Dr Filmer-Sankey and Mr Dunn of HE
[349] CD9.12
[350] As expressed by Mr Froneman in x-e
[351] CD12.1 Paragraph 6.1.4
[352] A view shared by Dr Barker-Mills
[353] CD12.1 Paragraph 6.1.44
[354] CD3.2 prepared by Dr Filmer-Sankey
[355] CD10.7 Paragraph 3.9
[356] CD10.7 Paragraph 6.3

part of the original space. The Achilles' heel in all this is the fact that it would be the Raycliff proposal which would cause permanent loss of the historic use, not the Hughes' business closing in 2017.

8.63 So, the intangible core of the building's significance is its inherent use for bell founding. If that is not dead and buried, then the Raycliff assessment of significance is completely flawed.

8.64 Fourth, the late discovery of foundry remains under part of the 1980s building is not to be overlooked. The Council consider them to be curtilage listed. They are part of the historic foundry, are well-preserved and make quite an impact when viewed. They tell of the historic use of the site and its evolution. They lay undiscovered when the applicant assessed heritage significance[357] and the scheme came forward; even now they are not accorded sufficient weight as part of the historic foundry.

Harm

8.65 The evidence has shown that in addition to under-estimating the significance of the assets in four important respects, the Heritage Statement[358] used an incorrect 'internal balance' approach to assessing the degree of harm that the Raycliff scheme would cause.

8.66 One can see this most clearly in the tabular summary of findings[359] - where, for instance, the foundry is said to suffer some harm[360], but due to heritage benefits the effect was "overall neutral". The result of this approach was to disguise the high degree of harm that the author actually accepted would be caused, masking it with judgements about off-setting benefits; this gave a misleadingly bland cast to his impact assessment submitted to and accepted by the Council.

8.67 In fact, the harm would be very substantial indeed. It would arise in three main ways: (1) harm to fabric; (2) harm to layout, evidence of process and legibility; and (3) harm to significance due to harmful change of character within it.

8.68 As to the fabric damage, there is a measure of agreement. There would be damage consisting in the partial demolition of walls in several places to punch new openings, and the demolition of the hayloft/stables to be replaced by access and galleries modelled on a "coaching inn typology". There would also be harm to the floors – they are to be replaced and the complete destruction of the vaults under the 1980s frame shop. It is also notable that the details for venting of any furnace used in the foundry space is something that will require further approval by condition.

8.69 Given that we are talking about a Grade II* listed building, unique in type in England, it is disconcerting to say the least to find Raycliff's assessment[361] is that the degree of harm caused by these works would be "very minor". Closer

[357] In the initial Heritage Statement (CD3.2)
[358] CD 3.2 see especially Pages 92ff.
[359] CD3.2 Page 92
[360] CD3.2 Page 94
[361] Through Dr Filmer-Sankey

inspection reveals that the assessment has gone wrong partly because of the erroneous ascription of lower significance to some aspects of the asset, and partly because the degree of impact has been under-assessed.

8.70 Firstly, the punching through of wall openings destroys original fabric and intrudes into the design and function of the spaces (it has to – it is aimed at making way for wholly new patterns of use and access). There is no discounting of the weight to be given to the harm here because of "inevitability" – there is no such inevitability if the use was as a foundry.

8.71 Secondly, the old stables total demolition (not just "rebuilding", as it is labelled[362]) would be very harmful indeed. It would cause the loss of a large historic foundry space and a significant volume of Grade II* listed fabric, and evidence of change over time (including the way the Foundry was affected by bombing in the War, itself a time-layering of some interest). For Raycliff, this would be "neutral" in its significance[363]. HE[364] recognised that the replacement would not be industrial in character – or of course, in fabric. The public access enabled in part by this harm goes into the benefits side of the equation, but into the harm side, surely, goes a significant item of negative impact. Raycliff[365] have from the very first assessment underestimated the degree of impact that this would have.

8.72 Much is made by Raycliff of the conservation approach to 'lightly brushing down the walls', as if the development stage will be a dreamy ballet of slow-moving curators delicately swishing around the interior of the building. Little mention is made of the fact that the floor of the historic foundry space is proposed to be ripped up entirely. It may be that such an intervention is in keeping with the kind of end-product Raycliff seeks, but it is obviously damaging to listed fabric and to character. Little if any assessment has been made of this harm. Similarly, the complete loss of the vaulted chamber is accorded very little weight as harm. There are more, serious, underestimates. The overall shying away from the degree of actual harm affects not just the evidence but overall planning judgements too[366].

8.73 Turning to layout, process and legibility, it is worth recalling the condition session and the new suite of conditions proposed[367], demarcating uses to discrete areas of the listed building. These should be coupled with the (still hazy) set of legal divisions to be set up within the building, and the physical changes that the scheme would impose.

8.74 At the moment, the foundry spaces are all part of one use. They flow into one another, with wide open, industrial spaces, shaped and adapted for specific purposes. That is why the site is so evocative even in the absence of some machinery.

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[362] CD10.7 Paragraph 5.3
[363] As expressed by Dr Filmer-Sankey
[364] Through Mr Dunn
[365] And Dr Filmer-Sankey in particular
[366] CD10.12 Paragraph 8.30 – "certainly no destruction or even major alterations proposed" and Ms Ryder in x-e
[367] ID14

8.75 By contrast, the Raycliff scheme will result in the compartmentalisation of the asset, chopping it up into a series of spaces and uses. Most will have no functional connection with the foundry use or indeed with each other. The café has nothing to do with the B1, or the foundry; its location within the building, and the extremely imposing division between it and the foundry space bears little relation to the layout or legibility of the foundry use. Similarly, the "tuning room" – in truth little more than a large display – is divorced from the foundry and would appear as a booth on a journey from café to courtyard.

8.76 The courtyard itself would have five accesses/egresses joining it. It is a small space and would no longer separate the front office/domestic range from the foundry floor – it would simply be an incident within a mixed-use building. A stack of (one notes, non-Church) bells would be a sorry substitute for the loss of the sense one gets now of the space.

8.77 The Georgian front range would be divided up between gift-shop style space and B1, and the sense of the relationship between the residential and industrial components of a single use would be lost.

8.78 None of this has really been grappled with by Raycliff; it was not assessed in the original Heritage Statement, nor covered in associated evidence[368].

8.79 The effect of the permanent loss of the foundry use and substitution of a different and incompatible scheme cannot be airbrushed away on the basis that the use has ceased.

8.80 The mix of uses proposed, particularly if they are as segmented and subdivided as apparently proposed, will erode the historic, architectural, and evidential aspects of significance. What will remain will no longer be a cohesive complex of foundry buildings but a former industrial building with at least two major non-foundry uses within it. HE had not perhaps grasped the essential problem with the very large café space proposed in making the analogy with the former Brewery tea room at Knowle. The contrast could not be clearer, in fact: whereas at Knowle the National Trust has sited the visitor facility in a subordinate building away from the Hall, the Raycliff proposals supplant the majority of the moulding room and open foundry space with the café. This is a very different kind of location, and degree of importance, within the asset than that can be seen at Middleport Pottery too.

8.81 The café will afford some views of some of the interior. It may allow glimpses of the casting pit (though there is no obligation to do this, and some question remains over the compatibility of the 50 covers proposed and the floorspace required to reveal the casting pit); but these views will be sadly lacking in character. Everything will need signage and interpretation to make sense of it, which is a sure sign that the character and meaning has been lost by the scheme in the first place.

8.82 As submitted earlier, no reliance ought to be placed on the foundry space in any event, given the failure of Raycliff, AB Fine Art Foundry and the Westley Group to tie themselves down to an enforceable obligation actually to put in and conduct founding of any kind. But even assuming the foundry space were

[368] By Dr Filmer-Sankey in the original Heritage Statement (CD3.2) or in evidence

to be provided, it will not look like the Richard Hamilton-esque montages in the Raycliff evidence. It will not feature bells of the size (mis)represented there; it will not be readily incorporated in the café visually but markedly cut off and subdivided from it, for safety reasons. The proposed glass partition is a very large structure and would itself change the character of the main moulding room space detrimentally.

8.83 As one moves around the former foundry in the Raycliff scheme, it will be difficult to appreciate the original use of the building, however many interpretation boards there might be. They would be gravestones for the foundry use, not windows onto it.

8.84 All these effects are bound to happen if you take a Grade II* foundry complex and change the uses as proposed. They go to the heart of the community objections to the Raycliff scheme, which repeatedly stress the loss of the use, and the connection between the community and the historic use. It may be sold as a "living museum", but that will not conserve the special role that the Whitechapel Bell Foundry has in local identity.

8.85 Nowhere in the Heritage Statement, or in the evidence of Raycliff, HE, or the Council is this faced up to. Instead, there are longer and longer denials of the relative importance of the uses and their interrelationship, and a greater and greater emphasis on the Raycliff substitute.

8.86 Against that background, it is not surprising that someone with Re-Form's witness' HE background[369] finds that the damage would amount to substantial harm. On the basis of *Bedford*[370], the significance of the asset would be "very much reduced". There is no point in saying that most of the structure will be retained; in addition to substantial fabric damage, the coherence and meaning of the complex will be lost. It is an entirely supportable view that this crosses the boundary between 'less than substantial' and 'substantial'. No case has been mounted by Raycliff that the paragraph 195 tests would be met.

8.87 But even if the harm lies in the less than substantial category, it is much higher than Raycliff's assessment[371] has indicated.

8.88 Re-Form would respectfully ask the Secretary of State to find that the harm would be either substantial or at the top end of less than substantial. The fact that it is a unique Grade II* listed building of the highest significance makes the presumption against granting permission an enormous challenge. And rightly so, given that the emphasis should be on conservation, not harm.

Benefits

Heritage Benefits other than OUV

8.89 The Raycliff scheme would lead to repair and making good to fabric in the listed building. This would clearly be a benefit to which significant weight should be given and Re-Form can see that one likely deliverable aspect of the

[369] Dr Barker-Mills
[370] *Bedford Borough Council v SoS for Communities and Local Government* [2013] EWHC 2847 (Admin) (not in the Core Documents)
[371] Prepared by Dr Filmer-Sankey

s.106 obligation is a certain degree of repair and refurbishment in the construction/re-development phase of the scheme. Repair of this kind would be consistent with conservation and benefit the asset in the medium to long term.

8.90 It is fair in addition to note that there has been no evidence advanced by Raycliff to say that there is any particular urgency about the repair work. We know that, by agreement with the Council, some urgent repairs have been undertaken since Raycliff purchased the building – a system exists which would allow specific items to be undertaken in that way without the need for an overall grant of planning permission or listed building consent[372]. This is not to detract from the accepted benefit of undertaking the identified work in the future, but just to caution against giving any additional weight due to a perceived need to undertake that work urgently.

8.91 The point is relevant of course to the question of whether permission for the Raycliff scheme is justified in part by an urgent need to carry out repairs. Reference was made to 12 months to 2 years for urgent works[373], but the point was very generalised and urgent authorisation could always be sought. It was a perfectly reasonable choice for Raycliff to make in the context of a scheme like theirs – all at once and to a particular specification. That does not make it a failing of Re-Form's alternative that it might take several years to reach the same point. Nothing fatal will happen to the building in that timescale, and urgent repairs can be undertaken along the way.

8.92 Next, the question of increased public access is a little more nuanced. It is true that permitting the community to see and experience an asset like the Bell Foundry – and potentially thereby revealing more greatly the significance of the asset – is a recognised heritage benefit. In very general terms, therefore, the weight to this benefit ought to be commensurate with the importance of the asset being revealed.

8.93 However, in this case one cannot ask the question in the abstract. What would be revealed by public access, and would the significance of the asset be 'better revealed' by the public access? In answering that question, one must bear in mind it is not the asset as it currently stands that would be open, but the site as altered by the Raycliff scheme. Access to the café would give one the experience of sitting in a café within part of a former bell foundry, and one could glean certain things about the significance from interpretation (and some things if the foundry space were to be operational). But for the reasons set out, it would be an attenuated and much changed significance that would thereby be revealed. This diminishes the weight that ought to be placed on the idea of public access in this case, and on the interpretation strategy.

8.94 The other major heritage benefit relied on is the foundry space. Very little weight should be given to this because the evidence casts serious doubt as to whether any operator would take a lease on the foundry space. Indeed, the nature of the Agreement under s.106 is an unmistakeable contra-indication.

[372] A matter confirmed by Mr Fryar
[373] By Mr Fryar

8.95 Even if one assumes it to be put in place, the Raycliff foundry space would be of very little heritage benefit. Yes, it would occupy part of the moulding room area of the original foundry; and yes, it might involve casting of small bells amongst other artistic projects. A sense of the kind of activity once undertaken might be gained. The Inspector and the Secretary of State will be able to reach a view about how tokenistic and far removed from what originally took place the activity would be.

8.96 If one assumes (as we say the Secretary of State should not) that it comes into being, some limited weight should be given to it. In this case the Hughes family, Raycliff, and the Council have been asked to consider a proper foundry on the site in the alternative, and for various reasons they have not.

OVU Principles

8.97 Establishing that a scheme applied for represents the OVU requires the demonstration of viability of the scheme, and the ruling out of alternatives that are both better in heritage terms and viable. That is because one cannot say that heritage significance is conserved, if harm is caused, unless one also shows that there is no better way to deal with the asset. That is why this area of policy and practice is different from the general rule that one does not usually look at alternatives. In the first *Gibson* case the Court said[374]: *In my view, the result is that if one of the alternatives would secure the optimum viable use and another only a viable use not only does that have to be taken into account in determining an application but it provides a compelling basis for refusing permission for the non-optimum viable proposal. The principle in Trusthouse Forte… cannot be applied full blown in the context of heritage assets: although there may be alternative viable uses, for heritage assets the law elevates the optimum viable use when a proposal is being considered.*

8.98 If the Court is right that the Secretary of State is able to have regard to a range of different types of alternative proposals, some rather more detailed than others, then the criticism of Re-Form's position is misplaced. It is not incumbent upon a party seeking to show that there is a better way forward on a site like this to make a planning application for their alternative; nor is the decision maker disentitled from reaching judgements about whether that alternative would be better or worse, viable or not.

8.99 Re-Form's approach has been to submit a proportionate level of detail. It is obvious that a bell foundry use such as that it proposes would be preferable in heritage terms; equally clear that it has a very strong track record of being able to raise funds for the restoration and re-use of historic structures; and its business plan is sensible and realistic.

Heritage

8.100 Re-Form's proposal for the site is to re-use it all for bell founding and related artistic production. It would be strong where the Raycliff proposals are at their weakest.

[374] CD8.6 Paragraph 36

8.101 First, it would maintain the B2 foundry use throughout the entire building, with ancillary makers' spaces forming an integral part of the overall use. Second, there would be no need to mangle the plan form and layout by compartmentalisation, and no need for such extensive fabric intrusions, for instance, the rebuilding of the hayloft/stables in a different typology; there would be no need for the insertion of the hotel entrance or the (still uncertain) operational interface between the hotel and café areas. There is nothing to suggest[375] that the Re-Form scheme will change the character of the asset detrimentally or lead to overall harm (indeed such a proposition is inconsistent with the main point Raycliff makes that there is insufficient detail to tell). Third, in particular, the actual business of founding relatively large bells (as large as 1.5 t) could be carried out alongside the founding of medium sized and small bells, and bell-related activity (tuning, hanging and so on). The character of the spaces within the building would therefore not change, avoiding the harm which all parties associate with the loss of bell founding in the asset.

8.102 Raycliff and the Council point to the fact that the Re-Form proposals are not further advanced, but the Secretary of State is more than able to reach a view about whether the use proposed for the asset (i.e. foundry) is preferable in heritage terms for the Whitechapel Bell Foundry site.

8.103 The main questions raised as to the nature of the Re-Form and Factum proposed use as the London Bell Foundry can be dealt with in a straightforward way.

8.104 There is no doubt that Re-Form's track record, and the expertise they have already brought to bear on the site, would be adequate and fit for designing and carrying out the work necessary to re-open the site as a foundry. The calibre of those involved[376] should leave no room for doubt on that score.

8.105 Of course, at this stage there are things that need to be finalised: for instance whether the existing consented sub-station outside the site will be able to be used, or whether a new sub-station will need to be incorporated; and precisely where in the main spaces of the foundry different pieces of equipment will be located. But Raycliff have not pointed to anything which would be insuperable.

8.106 As to whether the London Bell Foundry would be authentic, or a continuation of the historic use, Raycliff is on a sticky wicket given the harmful changes that its scheme proposes. Hence the artificiality of the test they are seeking to apply – the founding of large 'tower' church bells. The Whitechapel Bell Foundry had itself diversified and one would expect a successful 21st century foundry to carry out the range of bell-related activity that Re-Form[377] describe in evidence.

8.107 In any event, the evidence shows that large bells, including no doubt some for church use, would be made at the London Bell Foundry, as well as tuning, repair and, very importantly, study and archiving of sound. The virtue of

[375] CD10.12 Paragraph 7.27ff and Ms Ryder in x-e
[376] Mr Harris, Purcell Miller Tritton, Dr Barker-Mills, and Mr Taylor
[377] Through Mr Lowe

keeping the foundry active across its entire area is that there is much greater flexibility than one finds in the Raycliff foundry room.

8.108 There is some ill-founded suggestion in some of the Raycliff evidence about the potential impacts of the Re-Form scheme on the fabric of the building. There is no basis for concerns about the structural effect of furnaces or 3D printing or scanning equipment on the building.

8.109 So it is not credible in the end to suggest that the Re-Form foundry use would not be more sensitive to the fabric of the listed building, to the layout and legibility of the site, or to the historic and evidential significance of the site, due to its continuation of foundry use. The whole point of the Re-Form idea is to save the bell foundry and that it what the alternative use here would do.

8.110 As to whether it is 'viable', the law and guidance again does not require the Secretary of State to have a fully worked-up business plan and detailed costings in order to judge this issue.

8.111 Dealing with the basic land ownership platform for the proposals, there are some key points in this case.

8.112 First, the site does not belong to Re-Form, and consequently there can be no *certainty* about the alternative use occurring. However, that position is inherent in the OVU policy in paragraph 196 of the Framework and the associated PPG guidance. In the majority of cases, the site or asset in question will be owned or controlled by the party making the planning application which is being tested. They will usually say that there is no prospect of them either doing the alternative use or disposing of the site to a third party.

8.113 However, as experience with the Hammersmith and Fulham town hall project[378] has shown shows, the parameters change if the application is refused on heritage grounds. In this case, if the conservation of the foundry is, as it should be, prioritised, then the Secretary of State's decision will re-set the position and open the door for further discussions in a changed environment[379].

8.114 It is also clear for the Secretary of State to see that Re-Form are a substantial and experienced body working in this field, with expertise over many years of fund-raising and phasing projects to get sites back on their feet. The fact that the funds for the initial works are not being provided by the venture capital market is not evidence that they are unavailable, and there is a reasonable prospect that they would be found.

8.115 Then there is the approach to the viability of the London Bell Foundry (both the capital expenditure and the business viability) to consider. There is a divergence of views about the capital costs. This turns in part on the assumptions made about the specification of the works[380]. As the Re-Form rebuttal work[381] shows, there are substantial areas of disagreement as to the

[378] CD8.8 - Mr Froneman was involved
[379] As noted by Mr Clarke
[380] Provided by Mr Fryar to AECOM (in the context of the Raycliff brief for the site)
[381] CD13.13

specification – for instance the much more expensive hidden servicing runs – which are not necessary here.

8.116 AECOM were not called to give evidence, and it is not explained why their costs are so high (beyond the basic point about a different set of specification assumptions). It is said that one cannot rely on 'rates' because each such project is different, but actually proper comparative expertise is important in gauging whether the sums costed are much too high. Arcadis[382] have many years of experience of comparable schemes, including for instance the refurbishment of Wilton's Music Hall. Mr Harris may be a trustee of Re-Form, but that should give the Secretary of State more, not less, confidence in his expertise. His duties as a trustee include giving appropriate advice to the Trust so that it can appropriately decide on disposal of its funds, and there is no evidential basis whatsoever for the suggestion that Mr Harris' view was to be given less weight due to his involvement as an expert trustee.

8.117 The Council[383] was not able to take matters much further forward. They simply reviewed the Raycliff specification[384] and made a fairly substantial discount from the AECOM costs. But no evidence of comparable schemes, or applicable rates from any data source, were provided and it was consequently impossible to test whether the views expressed were soundly based.

8.118 Turning to the viability of the Re-Form scheme and the foundry business, the Inquiry heard from a number of witnesses on the matter[385] but only one of them[386] had any experience of raising money and undertaking the kind of phased return to life of an asset like this. It was explained[387] that Raycliff's approach[388] to an investor Financial Viability Appraisal was not a suitable way to assess the viability of this project. In addition to being based on AECOM's costings, it comprises a different model – an 11% yield over 10 years with assumptions made about cost of finance and expected return over time to give a land value. That might well be the way that Raycliff would approach the issue of scheme viability, but it is alien to the kind of world that gave us the Middleport Pottery re-birth. It tells the Secretary of State literally nothing reliable about whether Re-Form will successfully re-animate foundry use on the site.

8.119 The Council and the applicant[389] critiqued the work presented by Re-Form on the business plan. It was suggested that there was no "business plan" and that things had much changed in some respects from the earlier strategic plan and *Saved by the Bell*. That is true for the reasons explained[390] – the business plan necessarily evolved over time.

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[382] And Mr Harris in particular
[383] Through Mr Dedman
[384] Prepared by Mr Fryar
[385] From Mr Lowe, Mr Clarke, Mr Brierley and Mr Hodgen
[386] Mr Clarke
[387] By Mr Clarke
[388] Through Mr Brierley
[389] Through Mr Hodgen and Mr Brierley
[390] By Mr Clarke and Mr Lowe

8.120 However, the Secretary of State will note the detail of the assessment of the market, revenue and costs in the Factum evidence; he will also see the stark contrast between it and the absence of any detail from Raycliff – there is no equivalent assessment of the AB Fine Art Foundry and Westley Group 'foundry' business, or an explanation of how the headline figures for hotel or B1 revenue are derived. Re-Form does not allege that the Raycliff scheme is not viable, because as their evidence[391] made clear, the whole thing is cross-subsidised by the hotel.

8.121 It is clearly unsafe to rely[392] on the figures or performance of the failing Hughes business as a guide to whether Factum would succeed, and it is also questionable whether much weight should be given to the views of Raycliff[393] about the market for Factum's version of the foundry. As for the Hughes business, we know that there was little evidence that they were capable of envisaging the kind of operation that Factum can put into the building. Mr Hughes sold the site to a speculator, and since he is not available for cross examination, precisely what was going on at that time has not been able to be investigated. But clearly, the decision effectively to wind up a long-standing family business turns on a number of factors; the offer of millions of pounds for the site perhaps not the least of them. Whatever the balance of considerations may have been, the Hughes company is not an indication of how successful a proprietor a contemporary art company, with the will and available expertise to re-set the foundry, and connections all over the world, would be.

8.122 As for the contributions to the Inquiry of the Westley Group, on behalf of Raycliff, these should be treated with caution. They would be a commercial competitor to any foundry which emerged through the Re-form approach and a key aspect of that evidence is the concern that a revived bell foundry on the Whitechapel site would provide a competitive challenge to existing foundries[394]. The Inspector and Secretary of State will of course reach their own view on the merits of competition, but it is clear that the Westley Group's involvement in the Raycliff Scheme is far from altruistic: they have a personal stake in the outcome, primarily in seeking to stymie a competitor. This reduces the weight which this evidence can be given.

8.123 The evidence of the Westley Group sought to question the viability of the Re-form approach, but it was clear that an assessment of the Re-form approach raises issues which are significantly outside of the witness' expertise[395]. The marketing strategy outlined on behalf of Re-Form[396] involves leveraging enthusiasm and contacts within the art world. This falls far from the core business of the Westley Group which is high integrity engineering for major defence contractors. While the conglomerate may now undertake some art founding itself, and have worked with other founders such as Pangolin, this is as a contractor rather than an artist led business.

[391] Presented by Mr Brierley
[392] As Mr Hodgen has done
[393] Expressed through Mr Westley
[394] CD10.20 Paragraphs 2.2 and 2.3 and ID23 and accepted by Mr Westley in x-e
[395] That of Mr Westley
[396] By Mr Lowe

8.124 It was also accepted[397] that they are not well placed to assess Re-Form's ability to raise money, and that there are real difficulties in trying to form an overly firm view on the position as it may be in 2-3 years' time. The practical limitations of the site are stressed[398] but it is clear that Re-Form has given detailed consideration to these issues[399].

8.125 It was suggested that the business plan was unreliable because it only stretched to 3 or 4 years, rather than 10 years. Again, that is to compare the apples of the institutional investor with the pears of the actual business. The reality is that businesses plan for the short term in the kind of detail provided[400]; they have necessarily less choate strategies for the years beyond that because things change and businesses have to adapt. A ten year spreadsheet is largely worthless beyond the first 3 or 4 years.

8.126 Re-Form[401] were questioned in detail about the 3-4 year plan. The reliance on UK and global markets for bells can be given weight – contacts are in place in many parts of the world and large commissions as well as smaller bells can reasonably be assumed; the profile of these commissions and revenue streams have been stepped in an appropriate way. The assumptions about costs, including in the early years outsourcing some of the large work to Pangolin, show the business sense of the plan. Had on-site founding of very large bell commissions in the first year or so been assumed, that would have been questionable. The rates and revenue assumptions for bells have been worked out with market input and they are reliable. Some local initiatives would be likely to be subsidized (i.e. at a loss)[402], but this would be part of the genuine way that the London Bell Foundry would integrate with the local community and its artistic community. The business would run at an overall loss over the four years studied, but with the profitability profile clearly indicative of the beginnings of a successful business. While losses in Y1 and Y2 would be significant, reflecting delay in locking in sales, the business would start to deliver a profit in Y3 increasing to a projected £101,000 in Y4[403].

8.127 In the end, of course Re-Form cannot say that it will *definitely* raise the money needed for Phase 1, or indeed, over time, for further works of repair rising to perhaps £10M. But there is a solid evidential base for judging that this particular Trust, with its track record and the level of commitment and expertise it has, will be able to achieve it. Factum cannot say that it will *definitely* achieve the levels of revenue in its business plan, over the period studied. But there is a solid evidential basis for judging that its dynamism, vision and current success as a business, will mean that the London Bell Foundry will succeed.

8.128 The point goes further. Judgements about the profitability of ventures aimed at securing a preferable use of a heritage asset cannot be tested against the yardstick of certainty. There will always be some doubt and risk. But as long

[397] By Mr Westley
[398] ID23
[399] As explored with Mr Lowe who consulted with Mr Taylor
[400] As Mr Clarke outlined
[401] Mr Lowe in particular
[402] Confirmed by Mr Lowe
[403] CD13.7 Appendix 1 Page 35

as the basic shape of the alternative use, and its business planning, is realistic, then that should suffice. One bears in mind that the relevance of an alternative does not depend on a scheme coming forward at all. The weight to be given to it should not be discounted simply because there are some unknowns and a degree of risk, at this stage.

8.129 Hence Re-Form's deep disappointment with the way its approach has been dealt with by important stakeholders in the planning process. It is deeply regrettable that HE took the view at a very early stage that it could not 'second guess' the proposition advanced by Mr Hughes, that bell founding would not occur again on the site for viability reasons. It is also unfortunate that in reviewing the position for this Inquiry, HE did not pay attention to the Re-Form evidence[404]. The weight to be given to their views in this particular case is much diminished as a result.

8.130 Similarly, the Council[405] were strangely reticent to say that they asked the Secretary of State to give weight to the fact that the Council supports the Raycliff scheme, but surely that is what the Council says. The trouble is that the Members resolved to support the Raycliff scheme having been told in terms that the Re-Form alternative was not a material consideration to which they should have regard at all[406]. The usual approach is to assume that the Members agreed with the recommendations of the Officers unless there is a contrary indication. There is none here.

8.131 So, whilst there was a degree of friction when Re-Form's view[407] about the way the Council had engaged was set out, the point comes down to what was actually taken into account - or not - by the democratically elected Members. Perhaps the Council still argues that the Re-Form alternative is not relevant. That view by the Council is certainly part of the reason for the Inquiry.

8.132 The other aspect to bear in mind here is the way the Council Officers consistently wished to deal with the Re-Form approach – for all sorts of reasons it was not appropriate for Re-Form to make a full alternative planning application for some sort of 'beauty parade' with the Raycliff application; that is not called for by the Framework or PPG.

8.133 A pre-application process is also not an ideal way to interest the Council in changing its approach to the best way forward on the site – that was a matter much better left to discussions with the Mayor and other senior regeneration officers, whose views could be taken into account by their planning colleagues[408].

8.134 It is quite clear that Planning Officers were seeking further information about the Re-Form proposals and no criticism is made of them for that; but the 'one size fits all' approach to planning proposals has plainly contributed to the outcome one finds in the Committee Report and that undermines the

[404] Of Mr Clarke and Mr Lowe
[405] Through Mr Westmoreland
[406] CD5.1 Paragraph 7.1.41: "not a relevant alternative".
[407] Expressed by Mr Clarke
[408] As Mr Clarke candidly put it

suggestion, should it be made, that the Secretary of State should be guided in his decision by the views of the Tower Hamlets' Members.

8.135 In conclusion on this point, the Re-Form and Factum alternative approach is (1) a relevant material consideration; (2) has been presented in an appropriate and proportionate way given the issue it goes to; (3) whilst inevitably subject to some indeterminacy and risk at this stage, is sufficiently credible to found a conclusion that the Raycliff scheme does not represent the OVU for the asset; and therefore (4) this is not a benefit that can legitimately be claimed by the applicant, and indeed the existence of a far preferable alternative use weighs heavily against the grant of permission.

Planning

Most Important Policies for this Application

8.136 The SoCG[409] shows that the application of most of the planning policies that are relevant is agreed. Re-Form submits that given the site is not allocated, the key policies are those relating to employment use and, much more importantly, heritage.

8.137 The Secretary of State will no doubt consider the relationship between the failure to market the site (a local policy requirement where a scheme would as here lead to diminution of employment floorspace) and the central issue of heritage. There is no doubt that the disposal of the property off-market in 2016/2017 is relevant to the question of whether the Council's policy for thoroughly assessing the potential to retain the foundry use throughout the building was or was not observed. But Re-Form go no further in relation to the question of marketing and the employment policy itself.

8.138 As Re-Form[410] made clear, it is accepted that the employment aspects of the Raycliff scheme for the heritage asset are benefits that are consistent with policy aims and should attract commensurate weight. They are the most important of the list of planning benefits arising from the scheme as a number of others ought to be seen as aspects of policy compliance rather than true planning benefits.

8.139 It is more difficult to say the same thing about the majority of the employment benefits claimed, which arise from the hotel. The Secretary of State will bear in mind that there is an extant hotel permission overlapping with the (non-listed) parts of the application site; it has not been suggested that would not come forward in the absence of the application scheme. So many of the hotel jobs and economic/tourism benefits would, it seems, arise in any event. That affects the weight to be given to them (or, if preferred, introduces another material consideration into the balance, namely the fact that there is an extant hotel scheme which would provide many of the same jobs).

Balancing Exercises and Conclusions

8.140 If the Secretary of State agrees that the degree of harm is such that it would comprise substantial harm, then as we understand it, Raycliff does not claim

[409] CD1.1
[410] Through Mr Butterworth

that the paragraph 195 tests would be met. There is no case to that effect advanced, and at that point the presumption against the grant of permission and consent would not be rebutted and the scheme should be refused.

8.141 If the view is taken that there would be a less than substantial degree of harm, Re-Form suggests it should be at the upper end of the scale. The benefits of the scheme are palpable, and in some cases (for example the heritage benefit of repair) should be given significant weight. However, the balance is not a straightforward one, and the harm would outweigh the benefits even without reference to the Re-Form alternative. When that alternative is taken into account, there is no question but that permission should be withheld. The strong presumption that the Courts identify would not be rebutted.

8.142 Schemes like this can never really escape their origins or the realities. The project got off on the wrong foot, with an entirely different concept for the hotel-led re-use of the asset. An enormous edifice of argument and evidence has now been constructed on those uncertain foundations, and the scheme and case run to promote it bears all the tell-tale signs of the problem. The Raycliff foundry is a wholly uncertain aspect of the scheme, sold as a "major benefit"[411]: that is because the permanent loss of founding on the site would cause serious harm. The changes to the site to make space for the café would cause real harm, including through the difficulties of integrating with a notional foundry space.

8.143 There is a much better alternative. It has been said in support of the Re-Form proposal[412] that the Foundry would be given a "second chance". Over the centuries, the Foundry has no doubt met many challenges and adapted. The regulatory power of the Act and the Framework, with supporting development plan policies, are now in place to prevent damage such as is now proposed from occurring.

8.144 The balance should therefore be struck under paragraph 196 of the Framework, sections 16(2) and 66(1) of the 1990 Act, and s.38(6) of the TCPA 1990, in favour of conservation. In a sense, it is an important up to date test case on the applicability of these provisions. The Secretary of State is requested thereby to make the space for the Re-Form alternative to come forward. It would be a genuinely exciting and valuable new chapter to a long and important story

9 Third Party Representations

9.1 There was a significant number of written representations made at application stage and again, in the course of the appeal. These can be found in the electronic material submitted alongside my report and should be considered carefully in order to give a sense of public feelings about the applications.

9.2 Having invited Historic England to attend earlier in proceedings, I set aside a day for third parties to address the Inquiry after the evidence of the main parties had been heard. Most, helpfully, provided speaking notes which I have

[411] See for instance CD3.2 (the Heritage Statement) Paragraph 4.2.3
[412] By Mr Taylor

attached as Inquiry Documents and refer to below in summarising what was said. These should be read to give the full flavour of the points made.

9.3 **Michael Alan Dunn** of **Historic England** attended at my request, spoke to the statement prepared on behalf of HE in advance of the Inquiry[413] and answered my questions and others put on behalf of Re-Form. In summary, it was outlined that HE has carefully considered the proposals at pre- and post-application stages and considers that they accord with national legislation and policy. Their assessment is that the low level of harm that would be caused is the minimum necessary to bring the buildings back into use; and that harm would be outweighed by heritage benefits the proposals would bring forward. HE is content for planning permission and listed building consent to be granted for the development and works, subject to appropriate conditions.

9.4 **Steve Rattey** of the Whitechapel Society stressed the significance of the Whitechapel Bell Foundry in terms of the building itself and the bells it produced and the importance of ensuring that their identity is protected[414].

9.5 **Sufia Alam** Maryam Centre Manager of the East London Mosque and London Muslim Centre spoke[415] against the proposals at issue on the basis that the Re-Form proposals offer a superior way forward in community terms.

9.6 **Elaine Cowley** a local resident spoke[416] in favour of the proposals welcoming the regenerative effect they would have on the area and opportunities they would create while providing public access to, and protecting, the listed building.

9.7 **Councillor Puru Miah** a Member of the Council (for Mile End), and local resident, expressed his opposition to the proposals, placing them in the context of the community, and the inequalities present in the Borough, and suggesting that bell founding should be preserved on the site as an opportunity for members of the community to sustain themselves in work. For that reason, it is suggested, the public interest is best served by the rejection of the proposals because they fail to offer those opportunities.

9.8 **Dr Michael Guida** a research associate and tutor at the University of Sussex, and local resident, conveyed his personal views[417] on the significance of the sonic environment, and bells especially, highlighting the cultural meaning of bells from the Whitechapel Foundry around the world, and the importance of maintaining the tradition; something the proposals would fail to do.

9.9 **Mickey O'Brien** a musician, composer, and weekly arts and culture radio-show host, explained[418] that the Re-Form proposal offers a far better way forward for the building in terms of the way it proposes to house a foundry, and offers learning opportunities for the community.

[413] CD12.1
[414] ID15
[415] ID16
[416] ID17
[417] ID18
[418] ID19

9.10 **Lewis Jones** Deputy Chair of the UK Musical Instrument Resource Network discussed[419] the significance of the building and the activities that took place on the site and expressed a strong view that the Re-From proposals offered a better outcome for the heritage value (both tangible and intangible) of the building than the proposals under consideration.

9.11 **Nigel Taylor** Bell Consultant and former employee of the Whitechapel Bell Foundry, having become its Tower Bell Production Manager, spoke to notes submitted[420] as a supplement to other submissions made in advance of the Inquiry. The differences between the two meant that it was proper to give the applicant the opportunity to respond to the new points made, which they did in the form of written submissions[421]. In summary, Mr Taylor outlined why, in his view, the Whitechapel Bell Foundry closed, events leading up to the closure, and what happened afterwards; explaining why the Re-Form proposals would provide a better future for the listed buildings than what the applicant has set out.

9.12 **Dan Cruickshank** a member of the Spitalfields Historic Buildings Trust, an author, and an honorary fellow of the RIBA, amongst other things, expressed opposition to the proposals[422], based on an assessment of the significance of the site and the proposals under consideration; preferring the more authentic and sympathetic approach adopted by Re-Form.

10 Conditions

10.1 Derived from the original Officers' reports to the relevant Council Committee, and the Council's draft decision notices comprehensive lists of conditions relating to the putative grants of planning permission and listed building consent have been included in the SoCG[423]. These conditions were discussed in the course of the Inquiry.

10.2 Subsequently, the Council and the applicant reflected further on conditions 30-33 which deal with the need to restrict permitted development rights for changes of use and produced alternatives to those included in the SoCG[424]. I deal with these in more detail below.

10.3 I have considered all these suggested conditions in the light of advice in paragraph 55 of the 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. Conditions that are required to be discharged before development commences should be avoided, unless there is clear justification. In this latter respect, I take the inclusion of pre-commencement conditions in a SoCG as a demonstration that the appellant is agreeable to them. Their inclusion was accepted without demur at the Inquiry.

[419] ID20
[420] ID21
[421] ID23
[422] ID22
[423] CD1.1 – Appendix 2 sets out the Council's draft decision notices
[424] ID14

10.4 I have made a number of minor changes to the suggested conditions, in my version of them in Annex 4 to this report, to make them more precise and consistent. I do not deal with those minor matters in detail in what follows but concentrate on the principles involved, and the tests of the Framework.

10.5 In relation to any grant of planning permission, a commencement condition would obviously be required (condition 1), as would a condition setting out the approved plans (condition 2). As one might expect on a complex proposal of this type, there are very many drawings. I have listed those that relate to any grant of planning permission in Annex 5 to this report. My reworded condition 2 refers specifically to this Annex.

10.6 A number of conditions are suggested to address noise from plant, amplified music, and foundry (and associated) equipment and its potential impacts on local residents (conditions 3, 5, 12 and 13). These are required to ensure that the living conditions of nearby residents are protected in line with the approach of Local Plan Policies D.ES9 and D.DH8.

10.7 For the same reasons, hours of operation of the rooftop pool and terrace (part of the proposed hotel) and the café need to be controlled. The opening and closing times suggested seem to me reasonable (conditions 6 and 7).

10.8 The construction process also has the potential to create noise and disturbance, vibration, dust and so forth which might have a negative impact on local residents' quality of life. Conditions are required to ensure the construction process is properly managed to avoid any undue impacts as required by Local Plan Policy D.DH8 (conditions 9, 14, 15 and 20).

10.9 Given that the hotel will include cooking facilities, serving its own operations, and the café, there is the potential too for local residents to be affected by odours. As a consequence, a condition is required to secure details of the extraction systems for the Council's approval, for them to be installed in accordance with the approved details prior to being brought into use, and properly maintained thereafter (condition 21). This necessity is underlined by the workings of Local Plan Policies D.ES2, D.DH8 and D.TC5.

10.10 Given the former uses of the site, there is obviously a need for a condition to address the potential for contamination and to secure remedial works to address any found through an appropriate risk assessment (condition 11). A further condition is necessary to ensure occupation does not take place until any remediation works are complete, and to address any unforeseen contamination that might be encountered in the course of the construction process (condition 24). All that is supported by London Plan Policies 5.21 and 5.22 and Local Plan Policy D.ES8.

10.11 The scheme includes some works to the highway relating to the closure of an existing access and some resurfacing. Bearing in mind the approach of Local Plan Policies S.TR1 and D.DH2, a condition is necessary to appropriately address these matters (condition 27). Linked to that, and taking account of London Plan Policies 6.9 and 6.13, and Local Plan Policies D.TR3, S.TR1, D.DH2, and D.TR2, matters around cycle parking, parking in general, and deliveries and servicing, also need to be resolved to the Council's satisfaction through the imposition of conditions (conditions 4, 25 and 26).

10.12 To ensure the design of the new building is properly realised, as London Plan Policies 7.1 to 7.6 and Local Plan Policy S.DH1 require, the Council needs to have control over various important aspects of the detailed resolution of the building like external materials, and the nature of various external elements. The list suggested is comprehensive (condition 23) but in my view it needs to be expanded to include details of the bell-themed structure.

10.13 Linked to that, it is reasonable to impose a condition to ensure the finished buildings are properly secured (condition 22) in accordance with 'Secured by Design', London Plan Policy 7.3 and Local Plan Policy S.DH1.

10.14 To accord with the environmental requirements of London Plan Policies 5.2, 5.3 and 5.15, and Local Plan Policies S.ES1 and D.ES7, it is reasonable to apply a condition requiring a demonstration that the Energy Strategy has been followed and the standards therein met (condition 28). For the same reasons, it is right to attach a condition which means the developer has to show that a BREEAM rating of 'excellent' has been attained for the new building, and 'very good' for the historic building.

10.15 Given the obvious interest of the site it is reasonable to apply a condition that secures an Archaeological Written Scheme of Investigation in line with HE Guidelines (condition 17).

10.16 Given the potential for flooding, the need to protect water quality, and in the interests of the environment generally, and as required by Local Plan Policies D.ES4 and D.ES5, it is imperative that surface water drainage from the new part of the development is designed in a way that is sustainable. As such, a condition is required to ensure a scheme is presented to the Council for its approval (condition 18).

10.17 The Council also has to have control over waste, as Local Plan Policies S.MW1 and D.MW3 set out. To that end a condition is necessary to secure a Waste Management Strategy and for that strategy to be implemented (condition 10).

10.18 Control also needs to be exerted over the extent to which the hotel rooms are accessible to all; a matter which is addressed in London Plan Policies 3.8 and 7.2 and Local Plan Policies S.H1, S.DH1 and D.H3 (condition 16).

10.19 Biodiversity enhancements are brought into focus by Local Plan Policies S.OWS1 and D.ES3. A condition is therefore necessary to ensure these are brought to fruition (condition 19).

10.20 The proposed uses in the historic building are a very important part of the scheme overall and it is right that the Council ought to retain control over them should planning permission be granted. Given the potential for changes of use to take place in the historic building, and indeed the hotel, without recourse to the Council, permitted development rights for changes of use from the areas proposed to be in Use Class B2, the café, the workshop and studio spaces, and the offices need to be restricted. Draft conditions were put forward in the SoCG (conditions 8 and 30-33 inclusive) but in relation to the latter group, I prefer the more effective versions arrived at during the Inquiry[425].

[425] ID14

10.21 In relation to any grant of listed building consent, there would be a need for a commencement condition (condition 1). Ordinarily, one would not attach a 'plans' condition to a grant of listed building consent because there is no scope to make minor material amendments as there is with a grant of planning permission. That said, this is a complex scheme and there is a multiplicity of drawings. In that context, and for the sake of certainty, I believe that there is value in a condition requiring the works to be carried out in accordance with the approved plans (condition 2). I have set these out in Annex 6 below and the suggested condition makes reference to that Annex.

10.22 Notwithstanding the level of detail that has already come forward. Conditions would be necessary to address certain 'grey areas'. The first of these relates to the means of 'making good' around alterations. A condition is required to ensure this matches adjacent work in relation to construction methods, materials, colour, texture and profile (condition 3). Secondly, where new brickwork is proposed, it is imperative that this matches the existing in terms of colour, texture, bond and pointing (condition 4).

10.23 It is also necessary to deal with pointing/repointing of brickwork. If this is done in a way that reflects the original, then it would not be a matter that required listed building consent. However, for completeness, a condition is necessary to ensure that the Council has control over the details of any re-pointing (condition 5). It is important to note in this context that any re-pointing that did not match the original could well be perceived as works that would require a separate grant of listed building consent. The suggested condition should not be regarded as a means to obviate the need for a separate application for any such consent.

10.24 It is suggested that a condition is required (condition 6) to deal with the need for details of security measures to be submitted for the approval of the Council. While I can appreciate that some measures not already shown on the plans and associated details might not require listed building consent, anything substantial would. The suggested condition can be included so long as it is understood that anything not already allowed for, that might affect the character of the building as one of special architectural or historic interest[426] might well need a separate grant of listed building consent. The condition is not a means of circumventing that requirement.

10.25 The intention is for the flue serving the new electric induction furnace to be located in the original foundry chimney. It is right that the Council has some control over the details of this (condition 7) but I am concerned about the provision in the condition for a potential alternative approach. That, it seems to me, offers the possibility for something that ought to be the subject of a fresh application for listed building consent to be authorised through a condition. That is at odds with the approach of s.7 of the Act and so that provision needs to be removed from the suggested condition.

10.26 Historic buildings are vulnerable to loss, damage and/or theft while building work is in progress. In that context, proper security precautions will need to be taken and it is necessary for the Council to have some control over this (condition 8). In a similar vein, the Council needs to have oversight of the

[426] Section 7 of the Act refers

structural works through the submission of detailed method statements (condition 9).

10.27 It is evident that services will need to be renewed in the listed building. There are indications in the documentation of how this will take place but nevertheless, details will need to be submitted to the Council for their approval (condition 10). I would reiterate though that this should not be used as a means to circumvent the need for any fresh grant of listed building consent where it might be required.

10.28 As set out in more detail below, I am of the view that the hotel element of the overall scheme requires listed building consent. In that context, it is necessary to repeat the condition that would be attached to any grant of planning permission securing details of important design elements to any grant of listed building consent (condition 11).

10.29 Finally, a condition is required (condition 12) to make clear that no cleaning of masonry is authorised by any grant of listed building consent beyond a gentle surface clean using a nebulous water spray (that is something that would not trigger a need for consent). Anything more invasive would in all probability constitute works requiring a separate grant of listed building consent.

11 The Obligation

11.1 As set out above, a draft version of an Agreement under s.106 was available for discussion at the Inquiry[427]. Like the discussion around conditions, this took place on a 'round table' basis. As set out above, I allowed time after the Inquiry closed for the Agreement under s.106 to be completed and a final version dated 4 December 2020[428], reached me on 9 December 2020. As agreed, I then gave Re-Form the opportunity to comment on the final version and then the final word on the matter to the applicant.

11.2 Reflecting the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010[429], the Framework tells us that planning obligations should only be sought where they meet three tests. First, the obligation must be necessary to make the development acceptable in planning terms; second, it must be directly related to the development; and third, it must be fairly and reasonably related in scale and kind to the development.

11.3 Reflective of that, clause 22.1 of the Agreement says that (subject to clause 22.2 that I deal with below) for the purposes of the CIL Regulations, the Parties to the Agreement affirm that the planning obligations contained in the Agreement meet those tests. However, clause 22.2 sets out that if any of the planning obligations contained in the Agreement are found by the Secretary of State (or myself as the appointed Inspector) not to comply with Regulation 122(2), they shall be cancelled and shall be deemed to be of no effect.

11.4 With that in mind, I have assessed each of the obligations in the Agreement against those tests and concluded on each. Given the terms of clause 22.2, it is imperative that the Secretary of State does likewise. I would add that I deal

[427] ID12
[428] ID28
[429] Referred to hereafter as the CIL Regulations

with the criticisms that were made of the Agreement and its likely operation in my conclusions below.

11.5 The principal signatories of the Agreement (that is those parties who have obligations therein) are Raycliff Whitechapel LLP (the applicant), A B Fine Art Foundry, the Westley Group Ltd., and the Council.

11.6 The first part of the Agreement is taken up with various procedural aspects which all appear reasonable. I would draw attention to the various definitions therein which are important in that they give meaning to the various obligations that follow. These obligations are set out in a series of schedules though Schedule 1 only contains a series of plans that inform what follows.

11.7 Schedule 2 deals with the Carbon Offsetting Contribution. This is a financial contribution payable to the Council by the applicant in lieu of any shortfall in the Carbon Emissions Target resulting from the development, calculated in accordance with the Carbon Offsetting Formula. It will amount to something in the region of £600,000 and will be directed to the Council's Carbon Offset Fund. This process is derived from the policy approach of the Local Plan and Policy D.ES7[430] in particular which reflect the targets for carbon emissions reduction set out in the London Plan. With that policy approach underpinning it, I am content that the Carbon Offsetting Contribution is 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.

11.8 Schedule 3 covers other Financial Contributions and provides for when these are to be paid. I deal with the actual contributions below but in terms of timing, the provisions are reasonable.

11.9 Schedule 4 covers various Employment Initiatives notably the Contractor Training Programme – an in-house training programme for Construction and Training Skills, and support, training and skills for local residents accessing job opportunities in the construction phase of the Part 2 works (that is the new build element of the proposals, put simply), or a financial contribution (the Construction Training Skills Contribution) if necessary. There is a policy basis in the Local Plan for this approach, and the potential for the proposals to increase employment and training opportunities is claimed as a benefit.

11.10 In that overall context, it is clear that the obligations in Schedule 4 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.

11.11 Schedule 5 is directed towards the Affordable Workspace Strategy. The provision of affordable workspace as a part of the proposals, and its retention for a reasonable period afterwards, is cited as a benefit of the proposals and again there is policy support in the Local Plan and the London Plan for the approach taken. As such, it is apparent that the obligations in Schedule 5 meet the relevant tests.

[430] CD6.2 Page 168

11.12 Schedule 6 is presented in two parts. Part 1 deals with what is termed Historic Foundry Public Access and requires the applicant to present to the Council for approval a Public Access Management Plan. This is intended to set out how the public can gain access to the Historic Foundry Public Access Area, and when that access can take place. Part 2 addresses the 'Foundry Operation' and the terms under which the 'Foundry Operators' will occupy and operate the 'Foundry' and commits them to doing so for a minimum period of ten years.

11.13 Public access to the building and the ability for visitors to see founding operations taking place are highlighted as significant heritage benefits of the proposals. I deal with the adequacy of what is proposed and the resulting weight that can be attached below, but for any weight to be attached to these benefits as part of the decision-making process, there must be a means of securing them. The provisions of Parts 1 and 2 of Schedule 6 are, therefore, 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.

11.14 Schedule 7 deals with the provision of a Travel Plan designed to reduce trips in motor vehicles by occupiers and users, and promote environmentally friendly means of transport, and its monitoring. There is clear policy support for this approach and as such I am satisfied that the commitments in Schedule 7, meet all the relevant tests.

11.15 Schedule 8 refers to the 'Highways Agreement' and the means by which the required 'Highway Works' are to be secured. These works are a relatively minor but nevertheless essential part of the overall proposals and cannot readily be secured by condition because an agreement pursuant to s.278 will be required.

11.16 Linked to that, Schedule 9 deals with the 'Car Parking Management Strategy' which is intended to deal primarily with the provision of a 'Blue Badge' parking space to serve the hotel. It is essential that the parking space is secured before the development is occupied and given that it may be provided on third party land, the matter needs to be addressed through an obligation rather than a condition.

11.17 As such, the obligations set out in Schedules 8 and 9 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.

11.18 Schedule 10 directs itself to the 'Community Plan' which is intended to provide an 'Interpretation Strategy' and an 'Education and Learning Strategy' related to the 'Historic Foundry Public Access Area'. The ability of the proposals to allow the workings of the building in the past, and future, to be better understood and appreciated are put forward as a major heritage benefit of the proposals. For weight to be attached to that benefit, there has to be a mechanism by which it can be secured. On that basis, the obligations in Schedule 10 accord with all the relevant tests.

11.19 Schedule 11 deals with the very important subject of 'Phasing'. In simple terms the applicant agrees that the hotel cannot be occupied until the 'Part 1 Works' (that is the works proposed to the listed building) have been

completed. Obviously there needs to be a means to ensure the necessary works to the listed building are carried out expeditiously and this provision would certainly achieve that. As such, the obligation set out in Schedule 11 is 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.

11.20 The subject of Schedule 12 is the 'Code of Construction and Consultants'. Essentially, it ensures that the construction work is carried out in a way that respects neighbouring occupiers; protects (as far as possible) the environment; is safe for those on and off site; and provides a supportive and caring workplace. All that is laudable and a requirement of the Council's Code of Construction practice.

11.21 Importantly too, it obliges the owner to appoint and retain an architect and a heritage consultant for the duration of the works to the listed building. This supervisory role is an essential element in ensuring that works are carried out in an acceptable way.

11.22 On that basis, the obligations set out in Schedule 12 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

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 main parties' cases.

Introduction

12.2 As I have touched on above, it is imperative, at the outset, to properly define the descriptions of development, and works. I am content with the manner in which the development is described in the original application and any grant of planning permission can use *part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works* as the description of development.

12.3 However, as is clear from reference to s.7 of the Act which only refers to demolition, alteration, and/or extension, the listed building consent regime does not concern itself with use. As a consequence, the first part of the description of development that relates to the use of the building is not a necessary inclusion in the description of works.

12.4 Moreover, as the Council points out, the nature of the works and their extent has evolved from what was envisaged at the point when the applications were made, notably in relation to the vaulted chamber below the 1980s building.

12.5 While the list description is clear that the 1980s building is not to be considered as part of the listed building, having regard to s.1(5)(b) of the Act, the position in relation to the vaulted chamber is more ambiguous. In my view the vaulted chamber can reasonably be said to be *an object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948*. On that basis, its proposed removal would constitute works and as such, would need to be included in the description of works.

12.6 I raised the question too as to whether the hotel element of the proposals would require listed building consent[431]. On reflection, I have formed the view that it does, largely because the manner in which the ground floor café crosses over between new and old means that the hotel could reasonably be viewed as an extension of the listed building.

12.7 Moreover, I agree with the applicant that if planning permission and listed building consent are granted for the proposals, it is important that the development and works can proceed expeditiously, a matter I deal with below. In that context, it seems to me prudent to err on the side of caution on this

[431] ID10

matter to prevent any future delays caused by arguments about whether works taking place benefit from the proper consent.

12.8 On that overall basis, any grant of listed building consent should be on the basis of *Internal alterations and refurbishment of listed building and external alterations to listed building including roof replacement works and provision of new rainwater disposal system, insertion of new windows to blocked openings; raising roof of hayloft building; creation of new link building; demolition of vaulted chamber below the '1980s building'; and erection of hotel along Plumbers Row and Fieldgate Street*.

12.9 I have adopted these descriptions of development and works in my recommendations below. **[6.29-6.32, 7.13-7.15]**

The Main Issue

12.10 Having regard to the matters the Secretary of State particularly wished to be informed about the main issue to be considered in Appeals A and B is the effect of the proposals on the special architectural and historic interest (and/or significance) of the listed building (a designated heritage asset) and its setting, and, linked to that, their effect on the character or appearance (and/or significance) of the conservation area (another designated heritage asset).

12.11 There are some complications in how the decision-maker should properly approach that assessment because it is common ground that some aspects of the proposals would be harmful while others would be beneficial. I deal with this matter below.

12.12 There are also 'other matters' that need to be addressed, notably in terms of employment policy. I deal with those under a separate heading.

The Significance of the Designated Heritage Assets

12.13 As is evident from the foregoing, there are two designated heritage assets that would be affected by the proposals. The first is the Whitechapel Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street and workshops to the rear[432], a Grade II* listed building, and the second is the Whitechapel High Street Conservation Area.

12.14 There is a wealth of material before the Inquiry that is very well-researched, and presented, setting out the significance of the Bell Foundry[433]. It would be wrong of me to pretend that I could add anything useful to all that. It suffices to say that the Bell Foundry is a listed building of profound significance, in architectural, and historic, terms. That is reflected in its Grade II* status.

12.15 Similarly, the significance of the Whitechapel High Street Conservation Area has been well covered in the evidence and again there is nothing I wish to add to what is set out in the evidence and the appraisals[434]. **[2.1-2.7, 7.20-7.21,]**

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[432] The title of the list description – I have used Bell Foundry throughout and hereafter
[433] CD3.2; CD4.3; CD4.8; CD9.12; CD10.1-10.3; CD10.6-10.8; CD10.16; CD10.17; CD10.18; CD11.3-CD11.5; CD12.1; CD13.3-CD13.5; and CD13.13
[434] As above and CD9.6 and CD9.7

The Nature of the Proposals

12.16 I have already set out a summary of what the proposals entail and this is covered in the main parties' evidence too. **[4.1-4.12, 7.30-7.34, 8.25-8.33]**

12.17 What is important to highlight here is that all agree that there are elements of the proposals that would cause harm to the significance of the designated heritage assets affected, and others that would lead to benefits to significance (what have been termed heritage benefits).

12.18 There are obvious differences about which elements of the proposals would cause harm, and the extent of harm that would be caused[435]. Similarly, there are differences around the parts of the proposal that would bring forward heritage benefits, and the weight that should be attached to those benefits. Having regard to the approach of the Framework[436], there are also wider public benefits to be considered.

12.19 I make those points because they direct the way in which these conclusions should best be structured, but also feed into questions about the correct way to approach decision-making in such a situation. I deal first with the parts of the proposal that are accepted as, or said to be, harmful.

Harmful Elements of the Proposals for the Listed Building

The Question of Use

12.20 The central plank of the case advanced by Re-Form in relation to the extent of harm that the proposals would cause is concerned with the use of the building. Put very simply, the suggestion is that the end of traditional bell founding at the premises has caused, or will cause, substantial harm to its significance.

12.21 Of course, the end of traditional bell founding on the site, and by that I mean the business carried on by the Hughes family as part of a lineage that can be traced back for hundreds of years, is regrettable. Nevertheless, I have a series of difficulties with the proposition advanced by Re-Form.

12.22 First, there is the question of causation. Traditional bell founding on the site ended in 2017. The evidence shows that it ended for economic reasons mainly to do with a drop in demand for tower bells, and the difficulties, both operational and environmental, the business encountered in operating from a Central London address.

12.23 The proposals at issue came forward long after the Hughes family business had ceased operation on the site. On that basis it is clear to me that any harm caused to the significance of the Bell Foundry as a Grade II* listed building as a result of that cessation was not caused by the proposals under consideration. The baseline for consideration of the proposals is a largely vacant Grade II* listed building that formerly housed traditional bell founding and associated operations. It is not a situation where an operational traditional bell foundry is to be closed in order to be replaced by something else.

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[435] To the extent of whether the harm caused would be 'substantial' or 'less than substantial'
[436] In paragraphs 193-196

12.24 On top of that, while I accept that if traditional bell founding was still going on in the building, its special interest and significance would be greater than it is today, without those activities, the suggestion that the end of that use has caused substantial harm to its significance is to my mind hard to reconcile with what I saw during my site visit.

12.25 It is accepted that as the PPG sets out, 'substantial harm' is a high test and the Courts have held[437] that to attain that level: *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*. Or put another way, substantial harm would be caused if: *very much if not all of the significance of the asset was drained away*.

12.26 With that in mind, if Re-Form is right, and substantial harm has been caused by the end of traditional bell founding on the site, then a visit to the building now would be a sorry affair indeed. However, I saw a building richly steeped in architectural and historic interest. I do not seek to downplay the impact of the end of traditional bell making on the site; it has certainly caused some harm. However, that harm is very clearly less than substantial, and nothing whatsoever to do with the proposals at issue.

12.27 It might well be argued that allowing the proposals to go ahead would mean that traditional bell founding could never return. However, it seems to me unlikely in the extreme that an operation like that carried out for centuries on the site, by the Hughes family and their forerunners, could ever return to the site. The applicant's evidence shows that both the economic, the environmental, and the operational, challenges would be far too great.

12.28 It is informative to note, in this regard, that what Re-Form propose for the building, and I deal with this further below, is not a return to traditional bell founding of the type that used to take place on the site. In that sense, the charge that the proposals at issue would lead to the end of traditional bell founding on the site could just as easily be laid against the Re-Form proposals.

12.29 To summarise on this point, I accept that the end of traditional bell founding on the site has caused some harm to the special interest of the listed building, and its significance. However, it was the closure of the Hughes family business in 2017 that caused that harm, not the proposals at issue. The impact of the proposals in use terms needs to be judged against a building where traditional bell founding no longer takes place. I return to this matter below, but it suffices to say here that I find no harmful impact as a result of the proposals in use terms. **[6.21-6.23, 6.64, 6.77-6.84, 7.54-7.57, 8.43-8.51]**

Physical Works to the Listed Building

12.30 The proposals involve a number of interventions that affect the fabric of the listed building.

12.31 The approach taken by the applicant is based on minimising the degree of intervention, with the more intrusive changes directed towards areas of lower significance. As a guiding philosophy, that cannot sensibly be criticised.

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[437] *Bedford Borough Council v SoS for Communities and Local Government* [2013] EWHC 2847 (Admin)

12.32 The most significant interventions are linked to the provision of public access to the building and means of escape in case of fire. A new circulation core is proposed within the Old Stable which would require the rebuilding of much of that part of the building. However, much of the existing fabric in that part of the building dates from a rebuilding that took place in the 1960s in response to wartime bomb damage. This fabric is not without significance, representing as it does a layer in the history of the building, but it is not as significant as fabric dating from further back.

12.33 The proposed new courtyard elevation would include a contemporary glazed upper gallery above the rebuilt brick elevation at the lower levels but the exterior elevation to Fieldgate Street would not be very much different to what is in place at present. The simplicity of the existing structure would be altered on the courtyard side with the inclusion of what was termed a 'coaching inn typology'. I do not see anything intrinsically wrong with this approach because the result would be a simply conceived and detailed structure that would complement the utilitarian character of this part of the building.

12.34 Moreover, the 'coaching inn typology' offers an intelligent reference to the inn that apparently stood on the site before the existing buildings. It is not an arbitrary introduction, therefore.

12.35 Linked to the provision of public access around the building, and means of escape, is the adaptation of an existing brick wall to create a doorway between the foundry space and what was the turning room, and the creation of a new opening to allow easier access to a former storage mezzanine floor, which is currently only accessible by a steep ladder.

12.36 Also associated with the provision of better public access to the building is the need to provide toilet facilities. These are proposed to be housed in the rear part of the front range.

12.37 Reference has also been made to the potential removal of the ground floors in the foundry and workshop ranges. The Condition Survey[438] notes that these are all of fair-faced concrete slabs with pits and steel plate cover elements for the foundry equipment and bell casting processes. It is noted that many of the surfaces are uneven and have become heavily worn over the years. Moreover, many of the floor surfaces and substrates have been heavily contaminated by the founding processes and furnace fuel storage. The suggestion is that this situation should be remedied to meet current health and safety standards.

12.38 That is a rational approach, given that people would be working in those parts of the building, and visiting it. If existing floors are removed and replaced in whole or part to allow for levelling and decontamination then there would be a loss of historic fabric.

12.39 A further obvious intervention would be the provision of a glazed screen, of significant scale, between the proposed café area and the new foundry workspace in what was the original foundry area. This would subdivide the space and introduce a modern feature into a space that has a distinctly industrial character. That would cause a degree of harm to the special interest

[438] CD10.2 Page 36

of the listed building, and its significance. However, the glazed screen is designed in a simple, robust manner that reflects the character of the space it would subdivide. That would dilute the harm caused, to a degree.

12.40 As I have set out above, the vaulted chamber below the 1980s building has to be considered as forming part of the listed building. It appears to be a storage cellar, dating from the 19th Century, associated with the 'Back Foundry' that was demolished to make way for the 1980s building[439].

12.41 As a remnant of what formerly stood on the part of the site before the 1980s building, the vaulted chamber is not without special interest and significance. Its removal as part of the proposals would cause harm, therefore. However, that needs to be seen in a wider context – the 'Back Foundry' that it served is long gone so it is a somewhat isolated feature.

12.42 Bringing these points together, the physical changes to the listed building, through the removal of historic fabric, and the introduction of contemporary features, will cause a degree of harm to the special architectural and historic interest of the listed building, and its significance.

12.43 As I have outlined above, the threshold for substantial harm is a high one. Viewed in isolation, and I must stress that point because some of the harmful interventions are necessary to secure heritage benefits, something I come on to below, and there are matters to be dealt with about the correct approach to harm and benefits, the harm caused would clearly be less than substantial.

12.44 Moreover, as I have set out, the removal of historic fabric would be directed at areas of lower significance, and modern interventions would be designed in a complementary manner. As a result, it is my firm view that viewed in isolation (and again I must stress that point), the harm caused to the significance of the designated heritage asset would be very much at the lower end of the scale of less than substantial. **[6.65-6.68, 6.85-6.88, 7.52-7.53, 8.55-8.88]**

The Conservation Area and the Setting of the Listed Building

The 1980s Building

12.45 Notwithstanding what was agreed in the SoCG, there have been suggestions that while it is not to be considered as part of the listed building, the 1980s building reflects the manner in which the Bell Foundry has developed over time and as a result, it has some heritage value.

12.46 There is something in that point though it does need to be said that those responsible for compiling the statutory list clearly did not agree, otherwise they would not have specifically excluded it.

12.47 It is also fair to note that it is a utilitarian building, used as a framing workshop rather than for the manufacture of bells, that is, in my view, very much of its time. It sits very uncomfortably against the remainder of the Bell Foundry complex, in terms of its scale and form, but also in terms of what I regard as a most incongruous choice of brick. When one views the complex

[439] CD4.8 gives more detail

from Fieldgate Street and Plumbers Row, while clearly a part of it, the 1980s building is a jarring and unfortunate presence.

12.48 In that context, it seems to me that its removal would cause no harm to the character or appearance of the conservation area or the setting of the listed building, provided of course that what replaces it is appropriate in terms of its scale form and design. **[6.59-6.61, 7.48-7.51]**

The Hotel

12.49 There has been no substantive criticism of the hotel in terms of its scale, form, or design. The SoCG records that the design and materials of the new building are of a high standard that respects the setting of the listed building and the conservation area.

12.50 On my analysis, that is correct. The proposed hotel would reinstate a proper street frontage and accentuate the corner between Plumbers Row and Mulberry Street. It would broadly reflect the scale of surrounding buildings as well as the permitted Cityside Hotel proposals along Plumbers Row.

12.51 The hotel would connect to the listed building through the introduction of a lightweight two-storey canopy structure that would reveal, pleasingly, more of the corner of the Bell Foundry with its corbelled brickwork details. It would create an attractive opening from Plumbers Row that would lead into a double height courtyard entrance. The materials, a robust choice of brick, pre-cast concrete, and corrugated metal would give a nod to the industrial origins of what sits alongside.

12.52 With all that in mind, I consider that the proposed hotel would have an appropriate form that despite its height would sit comfortably against the Bell Foundry. It would address the street in an appropriate manner. Moreover, its detailed design is subtle and pleasingly understated. While it drew some criticism, the inclusion of a gantry and a bell on the roof of the part of the hotel nearest to the junction with the Bell Foundry, seems to me an appropriate reference to the former use of the site.

12.53 For those reasons, I conclude that the proposed hotel would enhance both the character and the appearance of the conservation area, and the setting of the Bell Foundry as a listed building. **[6.59-6.60, 7.45-7.47]**

Reinstating a Use in the Bell Foundry

12.54 It is correct in my view to observe too that the cessation of bell founding on the site has had a deleterious impact on the character, if not the appearance, of the conservation area. Bringing back activity to the building, and I deal with the details of that below, would enhance the character of the conservation area, and thereby its significance.

Heritage Benefits

12.55 Following on from what I have set out above, the enhancement the proposals would bring to the character and the appearance of the conservation area, and the setting of the listed building, are significant heritage benefits.

12.56 In terms of the listed building itself, the proposals would result in a series of benefits. First, and I believe foremost, they would bring forward extensive

repair and maintenance work. The Condition Survey[440] which is comprehensive and, in my view, a model of its kind, shows that the listed building is in dire need of attention in many areas but in particular relating to various roof areas and the means by which rainwater is disposed of. My site visit, while relatively brief, demonstrated the difficulties the building experiences in this regard.

12.57 As set out above, these works are secured through the Agreement under s.106 in that they must be completed before the hotel is occupied. This gives the applicant a clear incentive to carry out these works, and others associated with them, expeditiously. This would go a long way towards securing the long-term future of the listed building.

12.58 On top of that, the proposals would reintroduce foundry operations into the building in areas where traditional bell founding used to take place. This aspect of the proposal has drawn criticism from Re-Form, and others, and I appreciate that the foundry operations proposed would have little in common with the traditional bell founding that took place on the site up to the point when the Hughes family ended operations in 2017.

12.59 To my mind, that criticism rather misses the point. It is abundantly clear that traditional bell founding of that sort is not economically, environmentally, or operationally viable on the site. It is fair to observe too that what Re-Form propose is not traditional bell founding of the sort that used to take place in the building. While Re-Form held out the promise of it, they could not point to any particular commissions, or provide convincing evidence that there is potential for them, or previously unexplored markets that might bear fruit.

12.60 As things stand, the building is largely empty, and no activity of this sort has taken place in it for a relatively long period. Bringing back an operational foundry to the site has to be seen as a benefit in that context. Moreover, on the basis of what I saw during my site visit to the AB Fine Art Foundry, it would be an activity of great visual and technical interest.

12.61 The manner in which this would be secured under the terms of the Agreement under s.106 has been questioned but I see nothing doubtful about the way in which AB Fine Art Foundry Ltd and the Westley Group Ltd would be engaged through a lease on the spaces they would operate in. Furthermore, their willingness to enter into a 10 year lease suggests to me clear commitment on their part rather than tentativeness.

12.62 The proposals came under fire too because they did not, in their initial iterations, include any foundry activities. That much is true but to my mind, it is testament to the care and creativity that lies behind the proposals that when it became evident that it was possible to include a foundry as part of the proposals, they were amended to do so.

12.63 That leads on to the third main heritage benefit – the provision of free public access to large parts of the ground floor of the building. Coupled with the provision of interpretative material and the ability for visitors to see the features like the casting pit, and other bell-making equipment that would be

[440] CD10.2 Appendix A

returned to the site, this would reveal the significance of the building to a much wider audience.

12.64 Doubts were raised about the arrangement of the café which would allow views through the glazed screen I have referred to above, into the foundry. First of all, I cannot accept that the applicant would propose such a relationship if it could not be made safe. Second, and more importantly, founding is an activity of great interest and the ability to watch it, as a spectator, from a place of comfort, would give patrons a real insight into the sort of activities that once took place on the site. Again, this would better reveal the significance of the building.

12.65 Last, but by no means least, the comprehensive nature of the proposals, and the roadmap for the immediate future, means that the building will not be at any great risk of future harm through incremental and/or cumulative changes. **[6.41-6.44, 6.68-6.75, 6.85-6.93, 7.31-7.34, 8.34-8.41, 8.89-8.96]**

Other Public Benefits

12.66 I would make the observation first of all that the heritage benefits I have set out above are public benefits. However, I have dealt with them separately in order to properly inform the approach to decision-making that I turn to below. There are however a number of public benefits the proposals would bring forward that are not heritage benefits and it is important to set these out.

12.67 First of all, the proposals would lead to significant economic benefits in drawing visitors and new workers to the area. The proposals will bring into use over 7,000 square metres of commercial floorspace. Around 120 FTE jobs would be created by the hotel and restaurant uses, around 40 jobs in the listed building in the workshops, workspaces and the foundry, and approximately 25 jobs in the B1 floorspace on the new development site. This would provide a major uplift on the 24 jobs that the former Bell Foundry provided. There will of course be economic activity and jobs generated in the construction phase of the proposals.

12.68 On top of that, a significant proportion of the space in the listed building (45%) would be made available at below market rents with 80% at an affordable rent in line with GLA guidelines, and the remainder at the Council's affordable rent level. This affordable workspace is to be delivered for a minimum of 10 years through the Agreement under s.106. A quarter of the affordable workspace would be made available on a first refusal basis to local businesses.

12.69 There are public benefits too in the approach to providing employment for local people and apprentices secured through the Agreement under s.106. In a similar vein, the education and learning strategy would provide opportunities for school groups, and others to visit and learn.

The Approach to Decision-Making

12.70 It is useful to recap here what I set out as the main issue to be considered: the effect of the proposals on the special architectural and historic interest (and/or significance) of the listed building (a designated heritage asset) and its setting, and, linked to that, their effect on the character or appearance (and/or significance) of the conservation area (another designated heritage asset).

12.71 I can deal with the latter very simply. For the reasons set out above, the proposals would greatly enhance both the character and the appearance of the Whitechapel High Street Conservation Area.

12.72 Given that s.72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area, this is a matter that attracts considerable importance and weight. Furthermore, in this regard, the proposals accord with London Plan Policies 7.4, 7.8, and 7.9 and Local Plan Policy S.DH3. Moreover, there would be compliance with paragraph 184 of the Framework that requires heritage assets to be conserved in a manner appropriate to their significance, and paragraph 193 that requires great weight to be given to the conservation of heritage assets. **[5.1-5.20]**

12.73 The process with respect to the listed building is more complex and there are two, subtly different, routes to a decision. The first of these routes involves an internal heritage balance. I recognise that the High Court in *Bramshill* considered such an approach unlawful[441] but, with the greatest respect, the judgment is not altogether clear why the conclusion of the Court of Appeal in *Palmer* should be set aside[442]. That decision, of a higher Court, made plain that such an approach is a perfectly legitimate one.

12.74 On the basis of an internal heritage balance, I find that the heritage benefits that would be brought forward in relation to the listed building and its setting would far outweigh the limited harm that would be caused. Informing that conclusion, I would observe that any scheme for the re-use of the building is likely to result in some alterations to the fabric of the building, with associated loss of significance. I consider the scheme at issue to be very well considered in the way it deals with the changes necessary for effective re-use.

12.75 On that overall basis, there would be no harm caused to the special architectural and historic interest of the listed building, and its setting would be enhanced. There is no discord in relation to the requirements of the Act, therefore and clear compliance with London Plan Policies 7.8 and 7.9 and Local Plan Policy S.DH3.

12.76 In terms of the Framework, the significance of the designated heritage asset would be conserved, and the proposals would accord with the requirements of paragraphs 184 and 193. In this scenario, there is no need to consider paragraphs 195 or 196 because considered in the round, the proposals would cause no harm to the significance of the designated heritage asset affected.

12.77 Further, there is no good reason to consider OVU and the presence of the alternative Re-Form proposals is a matter of limited consequence. I reach this latter conclusion because the mere presence of an alternative scheme offers no justification to resist a proposal that is otherwise acceptable, and statute and policy compliant. Following this route to decisions on the applications, it is plain that planning permission and listed building consent should be granted for the development and works proposed. **[5.1-5.20]**

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[441] CD8.14 Paragraph 120
[442] CD8.15 Paragraph 29

12.78 In recognition of the lack of certainty in this area, I accept the submissions of the main parties and HE that, in the circumstances, the alternative route to a decision, through the mechanism of the Framework[443], ought to be explored.

12.79 In doing so, I have found that there would be some less than substantial harm, at the lower end of the scale, caused to the special interest, and significance, of the listed building as a consequence of the proposals. The workings of s.16(2) and 66(1) of the Act mean that this harm, albeit limited, must be accorded considerable importance and weight.

12.80 That conclusion directs me to paragraph 196 of the Framework which says that this harm must be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

12.81 In carrying out that balancing exercise, consistent with my conclusion above in the internal heritage balance scenario, notwithstanding the considerable importance and weight that the less than substantial harm identified must attract, it is far outweighed by the heritage, and other public, benefits the proposals would bring forward. As a result, the proposals accord with London Plan Policies 7.8 and 7.9 and Local Plan Policy S.DH3. In terms of the Framework, the balancing exercise in paragraph 196 is clearly in favour of the proposals. **[5.1-5.20]**

12.82 As for the Re-Form scheme and OVU, paragraph 196 of the Framework does not say that OVU *must* be considered as part of the balancing exercise. It goes no further than to suggest that it is something that might be considered in certain circumstances. In a situation where the heritage and other public benefits of the proposals so far outweigh the harm they would cause, it appears to me unnecessary. The alternative Re-Form proposals are not a particularly weighty factor.

12.83 Following the line of the Framework, I am firmly of the view that planning permission and listed building consent should be granted for the development and works proposed.

12.84 That brings me to the question of the relevance of the Re-Form proposals and OVU. For the Re-Form proposals to have any great traction, it seems to me that the balance between harm and benefits, whether that balance is an internal heritage balance, or carried out through the vehicle of paragraph 196[444] of the Framework, would need to be a much finer one.

12.85 I appreciate that the Secretary of State might consider that the harm that would be caused by the proposals at issue would perhaps be too great a price to pay for re-use of the building[445]. If so, the presence of the alternative Re-Form scheme would become a material consideration of much greater bearing, and OVU would be more relevant.

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[443] As set out in *Mordue* (CD8.3) though I would observe, as an aside, that the internal heritage balance approach does follow the line of the Framework on the basis that if heritage benefits are found to outweigh any harm to significance, the decision-maker need go no further than paragraph 193.
[444] I deal with the situation in relation to paragraph 195 of the Framework below
[445] Though of course, cogent reasons would have to be given for reaching that conclusion

12.86 OVU is not defined in the Framework but is referred to in the PPG[446]. Of particular relevance, paragraph 015 says: *If there is only one viable use, that use is the optimum viable use. If there is a range of alternative economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes. The optimum viable use may not necessarily be the most economically viable one. Nor need it be the original use. However, if from a conservation point of view there is no real difference between alternative economically viable uses, then the choice of use is a decision for the owner, subject of course to obtaining any necessary consents*.

12.87 It continues: *Harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused, and provided the harm is minimised*.

12.88 Paragraph 016 repeats paragraph 196 of the Framework but continues: *Where a heritage asset is capable of having a use, then securing its optimum viable use should be taken into account in assessing the benefits of a proposed development……..*.

12.89 On the basis of all that, the decision-maker would have to decide whether the Re-Form proposal is the OVU. The first step to consider is viability because for a proposal to be considered OVU, by definition, it must be viable.

12.90 I accept that the Re-Form approach is not one that conventional viability analysis suits given that it is not arranged, in an economic sense, on a commercial basis, being partly dependant on donations, grant funding, and the like. However, that does not remove the requirement to demonstrate viability.

12.91 To demonstrate that, Re-Form would have to present something based on a much firmer financial footing. I do not doubt for a moment that the proposal is well-intentioned and I appreciate and acknowledge their success at Middleport Pottery. However, as the applicant has pointed out, there is very little of substance in the material provided to show that works to the building (urgent or otherwise) could be financed, or that the enterprise that would be housed in the listed building could be sustained, in the longer term. There is also the question of how Re-Form might purchase the building to consider.

12.92 On top of that, even if the Re-Form scheme was considered to be viable, it would also have to be demonstrated that it is the scheme likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes. However, as the applicant has pointed out, the Re-Form proposal is somewhat sketchy, and lacking in detail. There are far too many uncertainties within it. As an example, the idea that a light touch could be taken in the early stages does not suggest to me that the inherent problems the building experiences in terms of water penetration in particular, have been properly grappled with. Further, there are issues around the capacity of the furnace proposed which may require an Environmental Permit and/or a new substation, not to mention a grant of listed building consent.

[446] Section 18a Paragraphs 015 and 016

12.93 As such, one cannot quantify the degree of harm the Re-Form scheme is likely to cause in the short, medium, or longer term. Given that one cannot quantify the harm the Re-Form scheme is likely to result in, then it cannot properly be concluded that the Re-Form scheme is the one likely to cause the least harm to the significance of the asset.

12.94 In that overall context, I cannot see how it can reasonably be concluded that the Re-Form scheme represents OVU.

12.95 By contrast, the applicant's scheme is demonstrably viable. Moreover, for the heritage and public benefits it will bring forward, the level of harm it will cause is, in my view, remarkably low. To my mind, if OVU is to be a factor, then the evidence before the Inquiry shows that it is the scheme at issue that is OVU, not the Re-Form scheme. That conclusion tilts the balancing exercises (both internal and through paragraph 196 of the Framework) even further in favour of the applicant's proposals.

12.96 It is important to observe that whether the approach to decision-making on this issue in relation to the impact on the listed building takes the internal heritage balance route, or is directed through the workings of the Framework, the conclusion I have reached is the same. However, the steps along the way are not the same. The second route allows for public benefits beyond heritage benefits to be brought in, and also raises the issue of OVU. For that reason, I would respectfully suggest that the Secretary of State considers both routes. **[6.33-6.57, 6.85-6.104, 6.105-6.117, 6.118-6.141, 7.16-7.19, 7.20-7.29,7.52-7.66, 7.67-7.79, 7.89-7.95, 8.12-8.24, 8.97-8.99, 8.100-8.135]**

12.97 As a final point on this issue, I have found that what harm would be caused to the significance of the listed building as a designated heritage asset would be less than substantial. If the Secretary of State disagrees with that conclusion and finds, like Re-Form, that substantial harm would be caused, then clear reasons would have to be given for that finding, and in particular why it is considered that the significance of the building would be vitiated altogether or very much reduced. If such a finding was made, then the Secretary of State would have to consider the proposal against the requirements of paragraph 195 of the Framework and draw conclusions accordingly. **[8.86, 8.140]**

Other Matters

12.98 There was some suggestion in the evidence brought forward by Re-Form that the proposals did not accord with Local Plan Policy D.EMP3. While there was no suggestion that this would justify a refusal of planning permission[447], it is a matter that needs to be addressed, albeit briefly.

12.99 The suggestion is that under clause 2a of this policy, the site should have been marketed. However, clause 2b suggests this is not necessary if there is a robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition. The evidence strongly suggests that it is not, at present. In any event, the scheme would result in a significant uplift in the number of jobs across the site, a matter I have dealt with above under public benefits.

[447] And it would not of course bear on the application for listed building consent

12.100 On that basis, any 'technical' failure to accord with Local Plan Policy D.EMP3 does not weigh against the proposals, overall. **[5.21-5.24, 6.116-6.117, 7.39-7.43, 8.137]**

Final Conclusion

12.101 Whichever route is taken, my conclusion is that the harmful elements of the proposal in relation to their impact on the special architectural and historic interest of the listed building, and its significance as a designated heritage asset, are far outweighed by the benefits, in heritage and public terms. The proposals would enhance the setting of the listed building, and thereby its significance, and would enhance the character and the appearance of the Whitechapel High Street Conservation Area.

12.102 As such, the proposals meet the requirements of s.16(2), 66(1) and 72(1) of the Act, accord with the development plan, read as a whole, and comply with the Framework, in particular Section 16 that deals with conserving and enhancing the historic environment. There are no material considerations of sufficient weight to justify anything other than granting planning permission and listed building consent for the proposals. **[6.142-6.143, 7.96, 8.136-8.144]**

13 Recommendations

Application A

13.1 I recommend that planning permission is granted for part retention of B2 land use (foundry) and internal alterations and refurbishment of listed building to provide new workshops/workspaces (B1 land use) and café (A3 land use) at ground floor; external alterations to listed building to raised roof of hayloft building and create a new link building; and demolition of unlisted 1980s building and wall to rear; erection of building along Plumbers Row and Fieldgate Street with hotel (C1 use) with ancillary members and guest uses in part 5, 6 and 7 storeys with 2 storeys of basement, with restaurant/bar (A3/4 uses) at ground and mezzanine level and additional workspace (B1 use) on ground and first floors; roof plant, pool, photovoltaics, waste storage, cycle parking, public realm improvements and associated works at the Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW, subject to the conditions set out in Annex 4 to this report.

Application B

13.2 I recommend that listed building consent is granted for internal alterations and refurbishment of listed building and external alterations to listed building including roof replacement works and provision of new rainwater disposal system, insertion of new windows to blocked openings; raising roof of hayloft building; creation of new link building; demolition of vaulted chamber below the '1980s building'; and erection of hotel along Plumbers Row and Fieldgate Street at the Bell Foundry, 32-34 Whitechapel Road, 2 Fieldgate Street, and land to the rear, London E1 1EW subject to the conditions set out in Annex 4 to this report.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE APPLICANT:

David Elvin QC	Instructed by Freeths
He called	William Burges BA(Hons) DipArch RIBA 31/44 Architects
	Tom Westley DL BSc (Eng) ARSM CEng FiCME FIMMM Chairman, Westley Group Ltd
	Malcolm Fryer BArch(Hons) RIBA ARB AABC Malcolm Fryer Architects
	William Patrick Filmer-Sankey MA DPhil FSA MCIfA Director, Alan Baxter Ltd
	James Brierley MA (Oxon) MRICS Partner, Gerald Eve LLP
	Kelly Ryder BA(Hons) DipTP MRTPI FRSA Principal Director, The Planning Lab

FOR THE COUNCIL:

Alexander Booth QC	Instructed by the Council of the London Borough of Tower Hamlets
He called	Gordon Hodgen MA (Cantab) FCA Director, Quantuma Advisory Ltd
	Andrew Dedman BSc(Hons) FRICS Managing Partner, Robinson Low Francis LLP
	Ignus Froneman B.Arch.Stud ACIfA IHBC Director, Cogent Heritage
	Simon Westmorland BA(Hons) MSc MRTPI Principal Planning Officer, London Borough of Tower Hamlets

FOR RE-FORM:

Rupert Warren QC and Matthew Dale-Harris of Counsel	Instructed by Re-Form Heritage
They called	Nigel Patrick Barker-Mills BA(Hons) PHD DipConsAA IHBC FSA
	Steven John Butterworth BA(Hons) BPI MRTPI Senior Director, Lichfields

	Adam Lowe MFA RDI Director and Founder, Factum Arte
	Stephen Clarke BFP FCA Trustee, Re-Form Heritage

INTERESTED PERSONS:

Michael Alan Dunn BA MA DipUD IHBC	Historic England
Steve Rattey	The Whitechapel Society
Sufia Alam	East London Mosque & London Muslim Centre
Elaine Cowley	Local Resident
Councillor Puru Miah	Local Resident and LBTH Council Member
Dr Michael Guida	Research Associate and Tutor in Cultural History at the University of Sussex and Local Resident
Mickey O'Brien	Musician and Composer
Lewis Jones	Deputy Chair, UK Musical Instrument Resource Network (MIRN)
Nigel Taylor	Bell Consultant and Ex-Employee of the Whitechapel Bell Foundry
Dan Cruickshank	Historian

Annex B: CORE DOCUMENTS

CD1	**Inquiry Core Documents**
CD1.1	Statement of Common Ground
CD1.2	Applicant's Statement of Case
CD1.3	Council's Statement of Case
CD1.4	Summary of Historic England Position
CD1.5	Rule 6 Party (Re-Form) Statement of Case
CD1.6	Rule 6 Party (Re-Form) Case Summary
CD2	**Draft Decision Notices and Draft S106**
CD2.1	Draft Decision Notice PA/19/00008
CD2.2	Draft Decision Notice PA/19/00009
CD2.3	Draft Section 106 Agreement
CD3	**Application Documents and Plans**
CD3.1	Design and Access Statement (Dec 2018) Parts 1-3
CD3.2	Heritage Statement (Dec 2018)
CD3.3	Planning Statement (Dec 2018)
CD3.4	Archaeological Desk Based Assessment (Dec 2018)
CD3.5	Viability Report (Dec 2018)
CD3.6	Structural Survey (Nov 2018)
CD3.7	Statement of Community Involvement (Dec 2018)
CD3.8	Drawings Schedule
CD3.9	Application Form and Certificates
CD3.10	Application Drawings
CD4	**Additional/Amended Reports or Plans (Post Validation)**
CD4.1	Proposed Uses Addendum (May 2019)
CD4.2	Addendum to Planning Statement (May 2019)
CD4.3	Addendum to Heritage Statement (May 2019)
CD4.4	Viability Addendum (May 2019)
CD4.5	Written Scheme of Investigation for an Archaeological Evaluation (Feb 2019)
CD4.6	Archaeological Evaluation Assessment Report (Sep 2019)
CD4.7	A Summary Note on the Archaeology of the Immediate Area

CD4.8	Notes on Vaulted Chamber (update) (Sep 2019)
CD5	**Committee Report**
CD5.1	Committee Report
CD5.2	Committee Report Appendix
CD5.3	Supplement Replacement Figures 10 & 11
CD5.4	Update Report, Development Report
CD5.5	Decision of Development Committee
CD5.6	Minutes of Development Committee
CD5.7	Case Officer Presentation to Committee
CD6	**The Development Plan**
CD6.1	London Plan 2016 (consolidated with alterations since 2011)
CD6.2	Tower Hamlets Local Plan 2031: Managing Growth and Sharing Benefits
CD6.3	Tower Hamlets Local Plan 2031: Adopted Policies Map
CD6.4	Previous Core Strategy (2010) and previous Managing Development Document (2012) (for reference only)
CD7	**Emerging Development Plan**
CD7.1	Draft New London Plan Intend to Publish Version (Dec 2019)
CD8	**Relevant Judgments**
CD8.1	*R (Mount Cook Land and another) v Westminster City Council* [2003] EWCA 1346
CD8.2	*Derbyshire Dales DC and Peak District NPA v SoS for Communities and Local Government and Another* [2009] EWHC 1729 (Admin)
CD8.3	*Mordue v SoS for Communities and Local Government and Others* [2015] EWCA Civ 1243
CD8.4	*Whitby v SoS for Transport, SoS for Communities and Local Government and National Rail Infrastructure Ltd* [2016] EWCA Civ 444
CD8.5	*East Northants DC and Others v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137
CD8.6	*R (Gibson) v Waverley BC and Others* [2015] EWHC 3784 (Admin)
CD8.7	Danetree House Appeal Decisions (3221697 and others)
CD8.8	Fulham Town Hall Appeal Decisions (3140593 & 3140594)
CD8.9	*Safe Rottingdean Ltd v Brighton and Hove City Council and Others* [2019] EWHC 2632 (Admin)

CD8.10	*R (Kay) v SoS for Housing Communities and Local Government and Another* [2020] EWHC 2292 (Admin)
CD8.11	Bramshill House Appeal Decisions #1 (3223849 & 3223851)
CD8.12	Red Lion Appeal Decision (3175535)
CD8.13	Bramshill House Appeal Decisions #2 (3172271 and others)
CD8.14	*City & Country Bramshill Ltd v SoS for Housing Communities and Local Government and Others* [2019] EWHC 3437 (Admin)
CD8.15	*R (Palmer v Herefordshire Council* [2016] EWCA Civ 1061
CD9	**Other Documents**
CD9.1	GLA Artists' Workspace Study (Sep 2014)
CD9.2	GLA 2018 Artists' Workspace Annual Data Note (Aug 2018)
CD9.3	GLA Cultural Infrastructure Plan (Mar 2019)
CD9.4	GLA City Fringe Opportunity Area Planning Framework (Dec 2015)
CD9.5	GLA Central Activities Zone SPG (Mar 2016)
CD9.6	Whitechapel High Street Conservation Area Appraisal (2007)
CD9.7	Whitechapel High Street Conservation Area Appraisal and Management Plan (Consultation Draft) (Feb 2019)
CD9.8	Aldgate Masterplan (2007)
CD9.9	LBTH Growth Sectors and SME Workspace Study (2016)
CD9.10	LBTH Employment Land Review (2017)
CD9.11	Planning Obligations SPD (September 2016)
CD9.12	List Entry (HE)
CD9.13	Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment (2008)
CD9.14	The Setting of Heritage Assets (HE) (2017)
CD9.15	GPA2 – Managing Significance in Decision-Taking in the Historic Environment (HE) (2015)
CD9.16	Making Changes to Heritage Assets (HE) (2016)
CD9.17	Listed Buildings and Curtilage (HE) (2018)
CD9.18	Managing Local Authority Heritage Assets (HE) (2017)
CD9.19	Conservation Area Appraisal, Designation and Management (HE) (2019)
CD9.20	Industrial Buildings Listing Selection Guide (HE) (2017)
CD9.21	CIL Charging Schedule (LBTH)

CD9.22 Principles of Selection for Listed Buildings (DCMS)

CD9.23 Correspondence from HE to LBTH (i) (ii) (iii) and (iv)

CD9.24 Letter from Freeths to NPCU (11 Nov 2019)

CD9.25 Letters referenced in Officer's Committee Report

CD9.26 Letters prepared by Alan Hughes

CD9.27 Letter from Musarc (Jun 2019)

CD9.28 Letter from Whitechapel Gallery (Apr 2019)

CD9.29 Letter from Knighton Estates Ltd (Jun 2019)

CD9.30 Letter from Andrew Gillett (Apr 2019)

CD9.31 SPAB Consultation Responses (Feb & Jun 2019)

CD9.32 Comments from Spitalfields Trust (May 2019)

CD9.33 Letter from East London Mosque (Mar 2019)

CD9.34 Saved by the Bell (Re-Form) (Jun 2018)

CD9.35 Saved by the Bell Addendum (Re-Form)

CD9.36 Emails and Letters from Re-From to LBTH (i) (ii) (iii) (iv) and (v)

CD9.37 Lichfields' Email to LBTH re EH Archaeological Advice (31 Oct 2019)

CD9.38 Change.org Petition (Re-Form)

CD9.39 Campaign Fact Book (Re-Form)

CD9.40 Financial Statement (March 2019) and Harpur Street Funding (Re-Form)

CD10 Applicant's Inquiry Evidence

CD10.1 William Burges' PoE

CD10.2 Appendices to William Burges' PoE

CD10.3 Summary of William Burges' PoE

CD10.4 Tom Westley's PoE

CD10.5 Appendices to Tom Westley's PoE

CD10.6 Summary of Tom Westley's PoE

CD10.7 William Filmer-Sankey's PoE

CD10.8 Summary of William Filmer-Sankey's PoE

CD10.9 James Brierley's PoE

CD10.10 Appendices to James Brierley's PoE

CD10.11 Summary of James Brierley's PoE

CD10.12 Kelly Ryder's PoE

CD10.13 Appendices to Kelly Ryder's PoE

CD10.14 Summary of Kelly Ryder's PoE

CD10.15 AECOM Stage 3 Cost Plan Check for Historic Foundry Buildings

CD10.16 William Burges' Rebuttal

CD10.17 William Filmer-Sankey's Rebuttal

CD10.18 Malcolm Fryer's Rebuttal

CD10.19 James Brierley's Rebuttal

CD10.20 Tom Westley's Rebuttal

CD10.21 Kelly Ryder's Rebuttal

CD11 Council's Inquiry Evidence

CD11.1 Simon Westmorland's PoE

CD11.2 Appendix to Simon Westmorland's PoE

CD11.3 Ignus Froneman's PoE

CD11.4 Appendices to Mr Froneman's PoE

CD11.5 Summary of Ignus Froneman's PoE

CD11.6 Gordon Hodgen's PoE

CD11.7 Appendices to Mr Hodgen's PoE

CD11.8 Andrew Dedman's Rebuttal

CD11.9 Appendices to Andrew Dedman's Rebuttal

CD12 Historic England's Inquiry Evidence

CD12.1 Statement of Michael Alan Dunn

CD13 Re-Form's Inquiry Evidence

CD13.1 Steven Butterworth's PoE

CD13.2 Summary of Steven Butterworth's PoE

CD13.3 Nigel Barker-Mills' PoE

CD13.4 Appendices to Nigel Barker-Mills' PoE

CD13.5 Summary of Nigel Barker-Mills' PoE

CD13.6 Adam Lowe's PoE

CD13.7 Appendices to Adam Lowe's PoE

CD13.8 Summary of Adam Lowe's PoE

CD13.9 Stephen Clarke's PoE

CD13.10 Appendices (Part 1) to Stephen Clarke's PoE

CD13.11 Appendices (Part 2) to Stephen Clarke's PoE

CD13.12 Summary of Stephen Clarke's PoE

CD13.13 Re-Form's Rebuttal

CD13.14 Appendices to Re-Form's Rebuttal

Annex 3: INQUIRY DOCUMENTS

ID1	Documentation relating to the Inspector's pre-Inquiry question about the approach to the heritage balance (including the initial query and the responses from Re-Form, the Council, the Applicant and HE)
ID2	Applicant's Opening Statement
ID3	Council's Opening Statement
ID4	Re-Form's Opening Statement
ID5	William Burges' Presentation
ID6	Details relating to Middleport Pottery
ID7	Bundle of Emails between Ms Gawne and Mr Clarke
ID8	Bundle of Information relating to Factum Arte
ID9	Bundle of Emails between Council and Re-Form
ID10	Inspector's Note about the extent of works and the correct approach to an application for listed building consent
ID11	Steven Butterworth's Correction to Summary
ID12	Draft Agreement under s.106
ID13	Itinerary for Visit to Middleport Pottery
ID14	Suggested Planning Conditions 30-33
ID15	Submission of Steve Rattey
ID16	Submission of Sufia Alam
ID17	Submission of Elaine Cowley
ID18	Submission of Dr Michael Guida
ID19	Submission of Mickey O'Brien
ID20	Submission of Lewis Jones
ID21	Submission of Nigel Taylor
ID22	Submission of Dan Cruickshank
ID23	Applicant's Response to the latest submissions of Nigel Taylor (ID21)
ID24	Re-Form's Closing Statement
ID25	*R (Leckhampton Green Land Action Group Ltd) v Tewkesbury BC and Others* [2017] EWHC 198 (Admin)
ID26	Council's Closing Statement
ID27	Applicant's Closing Statement
ID28	Signed Agreement under s.106 and associated commentary

Annex 4: SUGGESTED CONDITIONS

Application A: APP/E5900/V/20/3245430

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Annex 5.

3) Any mechanical plant and equipment within the development shall be designed and maintained for the lifetime of the development so as not to exceed a level of 10db below the lowest measured background noise level (LA90, 15 minutes) as measured one metre from the nearest affected window of the nearest affected residential property. The plant and equipment shall not create an audible tonal noise nor cause perceptible vibration to be transmitted through the structure of the building.

4) No less than 73 cycle parking spaces shall be provided and distributed across the development as shown on approved drawings and as follows: 28 long-stay spaces to be provided prior to first occupation of the new development site; 45 short-stay spaces to be provided as follows: 6 spaces in new hotel/restaurant entrance and 22 spaces on the public footway of Fieldgate Street to be provided prior to first occupation of the new development site; and 17 spaces inside the historic foundry, next to the Fieldgate Street entrance, to be provided prior to first occupation of the historic foundry. These spaces shall be provided prior to the first occupation of each part of the development and thereafter be retained in operational condition and made available to the occupiers of the development. The cycle access lifts and changing facilities for cyclists shown on the approved drawings shall be provided prior to the first occupation of the respective part of the development and retained in operational condition for the lifetime of the development.

5) No music or other amplified sound shall be played within the premises or any associated external area so as to be audible 1 metre from the façade of any residential property neighbouring the site.

6) The rooftop pool and terrace hereby permitted shall be closed for business and not open to customers and members of the public outside the hours of: 07:00–23:00 Mondays to Saturdays and 08:00–22:00 on Sundays and Bank Holidays.

7) The A3 cafe hereby permitted in the historic foundry shall only be open for business to customers and members of the public between the hours of 08:00 and 19:00 on any day.

8) No change of use permitted development provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall apply to the historic foundry.

9) Unless otherwise specified by a s.61 consent granted under the Control of Pollution Act 1974, demolition, building, engineering or other operations associated with the construction of the development (including arrival, departure and loading and unloading of construction vehicles): a) Shall be carried out in accordance with the Tower

Hamlets Code of Construction Practice b) Shall only be carried out within the hours of 08:00 and 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays. No works shall take place on Sundays and Public Holidays c) Any non-road mobile machinery (NRMM) used shall not exceed the emission standards set out in the Mayor of London's 'Control of Dust and Emissions During Construction and Demolition' Supplementary Planning Guidance 2014 and be registered under the Greater London Authority NRMM scheme www.nrmm.london d) Ground-borne vibration shall not exceed 1.0 mm/s Peak Particle Velocity (PPV) at residential and 3.0mm/s PPV at commercial properties neighbouring the site e) Noise levels measured 1 metre from the façade of any occupied building neighbouring the site shall not exceed 75dB(A) at residential and commercial properties, and 65dB(A) at schools and hospitals (LAeq,T where T = 10 hours Monday to Friday and 5 hours for Saturday).

10) The provisions of the approved Waste Management Plan shall be maintained for the lifetime of the development. The waste storage, waste collection and waste servicing facilities shown on approved drawings shall be provided prior to the first occupation of the development and be maintained in an operational condition and made available to the occupiers of the development for the lifetime of the respective part of the development.

11) Development of the new development site (excluding works to the historic foundry) shall not begin until a contaminated land scheme has been submitted to the local planning authority and written approval has been granted for the scheme. The scheme shall be implemented as approved. The scheme will identify the extent of the contamination and the measures to be taken to avoid risk to the public, buildings and environment when the site is developed. Details of the scheme should include a) a risk assessment of the site; and b) proposals for any necessary remedial works to contain treat or remove any contamination.

12) Noise Impact Assessments shall be submitted to and approved in writing by the local planning authority as follows: i) pre-installation of plant in the historic foundry; and ii) post substructure works in the new development. The assessments must outline the potential sources of noise generation and what effect these may have on the wider area. The assessments should: a) rank the noisiest items of services/plant/equipment and associated activities; b) indicate their location on a plan; and c) specify the duration of the specific noises and the predicted noise level at the various noise sensitive properties. The assessment must also outline how any effects will be adequately mitigated within current noise standards.

13) No mechanical plant or equipment shall be operated within the site until a post installation verification report, including acoustic test results, has first been submitted to and approved in writing by the local planning authority confirming that the above maximum noise standard has been achieved and that the mitigation measures are robust.

14) Save for enabling works, no development shall be commenced on the relevant part of the site until a dust and emissions management plan has been submitted to and approved in writing by the local planning authority for: i) the historic foundry; and ii) the new development site. The dust management plan shall include the following details: (1) demonstrate

compliance with the guidance found in the GLA Supplementary Planning Guidance: The Control of Dust and Emissions during Construction and Demolition https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/supplementary-planning-guidance/control-dust; (2) the dust management strategy must include a risk assessment of dust generation for each phase of the demolition and construction. The assessment and identified controls must include the principles of prevention, suppression and containment and follow the format detailed in the guidance above. The outcome of the assessment must be fully implemented for the duration of the construction and demolition phase of the proposed development and include dust monitoring where appropriate; (3) where the outcome of the risk assessment indicates that monitoring is necessary, a monitoring protocol including information on monitoring locations, frequency of data collection and how the data will be reported to the local planning authority; (4) details of dust generating operations and the subsequent management and mitigation of dust demonstrating full best practicable means compliance and covering construction activities, materials storage, on and off site haul routes, operational control, demolition, and exhaust emissions; (5) where a breach of the dust trigger level may occur a response procedure should be detailed including measures to prevent repeat incidence; and (6) prior to the commencement of the development details of all plant and machinery to be used at the demolition and construction phases have been submitted to, and approved in writing by, the local planning authority. Evidence is required to meet Stage IIIA of EU Directive 97/68/ EC for both NOx and PM. All NRMM and plant to be used on the site of net power between 37kW and 560 kW shall have been registered at http://nrmm.london/. The plan shall be implemented as approved.

15) Prior to commencement (including any demolition works) of the respective part of the site comprising: i) the historic foundry; and ii) the new development site a Construction Environmental Management & Logistics Plan shall be submitted to and approved in writing by the local planning authority. The plan should be in line with TfL best practice: http://content.tfl.gov.uk/construction-logistics-plan-guidance-for-developers.pdf. The plans shall aim to minimise the amenity, environmental and road network impacts of the demolition and construction activities and include details of: (a) telephone, email and postal address of the site manager and details of complaints procedures for members of the public; (b) a Dust Management Strategy to minimise the emission of dust and dirt during construction including but not restricted to spraying of materials with water, wheel washing facilities, street cleaning and monitoring of dust emissions; (c) measures to maintain the site in a tidy condition in terms of disposal/storage of waste and storage of construction plant and materials; (d) a scheme for recycling/disposition of waste resulting from demolition and construction works; (e) ingress and egress to and from the site for vehicles; (f) proposed numbers and timing of vehicle movements through the day and the proposed access routes, delivery scheduling, use of holding areas, logistics and consolidation centres; (g) parking of vehicles for site operatives and visitors; (h) a Travel Plan for construction workers; (i) location and size of site offices, welfare and toilet facilities; (j) erection and maintenance of security hoardings including decorative displays and

facilities for public viewing; (k) measures to ensure that pedestrian access past the site is safe and not obstructed; (l) measures to minimise risks to pedestrians and cyclists, including but not restricted to accreditation of the Fleet Operator Recognition Scheme (FORS) and use of banksmen for supervision of vehicular ingress and egress. The development shall not be carried out other than in accordance with the approved details.

16) (a) 10% of the hotel rooms approved herein shall be wheelchair accessible and shall be maintained and retained as such for the lifetime of the development. Details of this and an access strategy shall be submitted prior to commencement of superstructure works on the new development site (excluding works on the historic foundry); and (b) Any lifts shown on the approved drawings shall be installed and in an operational condition prior to the first occupation of the relevant access cores. The lifts shall be retained and maintained in an operational condition for the lifetime of the development.

17) No development shall take place until an Archaeological Written Scheme of Investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, which shall include a statement of significance and research objectives and the nomination of a competent person(s) or organisation(s) to undertake the agreed works. The WSI will contain details of the following elements: (a) a programme of Historic Buildings Recording for the rear of the site and its underground elements, in advance of demolition; (b) a programme of archaeological site investigation and recording; (c) a programme of public education, outreach and interpretation both during and immediately after the archaeological investigation; and (d) a programme of documentary and archive research into the historic foundry. The WSI should be prepared and implemented by a suitably qualified professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London.

18) Prior to the commencement of any superstructure works on the new development site (excluding works on the historic Foundry), a surface water drainage scheme for the site based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the local planning authority. The scheme shall also include (but not be limited to): (1) the peak discharge rates and together with any associated control structures and their position; (2) safe management of critical storm water storage up to the 1:100 year event plus 40%; and (3) details of agreed adoption, monitoring and maintenance of the drainage and suds features. The development shall be carried out strictly in accordance with details so approved.

19) Prior to the commencement of any superstructure works on the new development site (excluding works on the historic foundry), full details of biodiversity enhancements shall be submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall include but not be limited to the following: (1) biodiverse roofs following the best practice guidance published by Buglife – details provided should include the

location and total area of biodiverse roofs, substrate depth and type, planting including any vegetated mat or blanket (though sedum mats should be avoided if possible) and any additional habitats to be provided such as piles of stones or logs; and (2) nest boxes for appropriate bird species, including house sparrow –details should include number, locations and type of boxes. The agreed measures shall be implemented in full prior to the occupation of the new development.

20) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and 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 programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

21) Details of the proposed extract ventilation system (including the extraction hood, internal fan, flexible couplings, three-stage filtration [grease filters, pre-filters and activated carbon filters], height of the extract duct above eaves level and anti-vibration mountings shall be submitted to, and approved in writing by, the local planning authority prior to their installation in: (i) The historic foundry; and/or (ii) the new development. Particular consideration should be given to the height of the discharge points of kitchen extract air from the new development. The approved details shall be installed prior to the use of the relevant part of the premises and permanently retained as such thereafter.

22) Within six months of commencement of the new development, details of security measures shall be submitted to and approved in writing by the local planning authority. The development shall aim to achieve a Secured by Design accreditation, or alternatively achieve Secured by Design standards. The security measures shall be implemented in accordance with the approved details, completed prior to the first occupation of the new development site, and retained for the lifetime of the development.

23) No superstructure works for the new development site shall take place until samples and full particulars of all external facing materials to be used in its construction have been submitted to and approved in writing by the local planning authority. Details submitted pursuant to this condition shall include but are not restricted to: (a) samples and details of external cladding; details of external cladding, where relevant, shall include all types of brick or other cladding material to be used, details of bond, mortar and pointing for brick and details of joints, panel sizes and fixing method for other types of cladding; (b) samples and drawings of fenestration. Details of fenestration, where relevant, shall include reveals, sills and lintels. Drawings shall be at a scale of no less than 1:20; (c) drawings and details of entrances. Details of entrances, where relevant, shall include doors, reveals, canopies, signage, entry control, post boxes, CCTV, lighting and soffit finishes. Drawings shall be at a scale of no less than 1:20; (d) drawings and details of shopfronts. Details of shopfronts, where relevant, shall include doors, glazing, reveals, stall-risers, pilasters, fascias, awnings and signage zones or indicative signage. Drawings shall be at a scale of no less than 1:20; (e) samples and details of roofing; (f) details of any terraces and associated

balustrades, soffits and drainage; (g) details of any external rainwater goods, flues, grilles, louvres and vents; (h) details of any external plant, plant enclosures and safety balustrades; and (i) details of the bell-themed structure. The development shall not be carried out other than in accordance with the approved details.

24) Occupation of the new development site hereby approved shall not begin until: (1) the remediation works approved by the local planning authority as part of the remediation strategy have been carried out in full. If during the remediation or development work new areas of contamination are encountered, which have not been previously identified, then the additional contamination should be fully assessed in accordance with condition [11 (iii-iv)] above and an adequate remediation scheme shall be submitted to and approved in writing by the local planning authority and fully implemented thereafter; and (2) a verification report, produced on completion of the remediation works to demonstrate effective implementation of the remediation strategy, has been submitted to and approved in writing by the local planning authority. The content of the report must comply with best practice guidance and should include, details of the remediation works carried out, results of verification sampling, testing and monitoring and all waste management documentation showing the classification of waste, its treatment, movement and/or disposal in order to demonstrate compliance with the approved remediation strategy.

25) (a) The new development site shall not be occupied until a Parking Management Strategy is submitted to and approved in writing by the local planning authority. The strategy shall govern the allocation of car parking spaces, including the wheelchair accessible spaces for the lifetime of the development. (b) The one on-site wheelchair accessible car parking spaces shown on the approved drawings (or in another location agreed with the local planning authority) shall be provided prior to the first occupation of the new development site and retained for its lifetime. (c) No less than one blue badge car parking spaces shall be provided with electric vehicle charging points. Passive provision for future provision of electric charging points shall be made for further one on-street car parking spaces. The charging points as well as passive provision shall be in place prior to the first occupation of the development and retained for its lifetime. (d) At no time shall any other external areas of the development save for those explicitly identified on the approved drawings be made available for parking of motor vehicles other than to facilitate essential maintenance works.

26) The relevant part of the development shall not be occupied until final Delivery and Servicing Plans have been implemented and are in operation for: (i) the historic foundry; and (ii) the new development. The Delivery and Servicing Plans should be in accordance with details which have been submitted to and approved in writing by the local planning authority. The provisions of the approved plans, including the onsite servicing yard, shall be retained and maintained for the lifetime of the development. The Delivery and Servicing Plan and facilities shown on approved drawings shall be provided prior to the first occupation of the relevant part of the development and be maintained in an operational condition and made available to the occupiers of the building for the lifetime of the development.

27) The new development site shall not be occupied until a Scheme of Highway Improvement Works necessary to serve this development (being the closure of the existing access and reconstruction/resurfacing of the carriageway/footway) is implemented in accordance with details which have been submitted to and approved in writing by the local planning authority.

28) Prior to first occupation of the new development site, the developer shall submit to the local planning authority a post construction report, including as built calculations (SBEM) to demonstrate the Energy Strategy in CO2 emissions have been delivered on-site. The post construction report shall be approved in writing by the local planning authority and the energy efficiency and sustainability measures set out therein shall be completed prior to the first occupation of the new development site and retained for its lifetime.

29) Within six months of first occupation of the: a) new development site; and b) the historic foundry the developer shall provide the local planning authority with evidence of the final design stage certification, which shall be verified by the awarding body (Building Research Establishment) showing: (a) a minimum BREEAM 2014 NC rating of 'Excellent' for the new development site; and (b) a minimum BREEAM 2014 RFO rating of 'very good' for the historic foundry. The approved details of the sustainable design and construction measures shall thereafter be retained unless otherwise approved in writing by the local planning authority.

30) The area within the listed building shown on approved plans ref. PL_2601 (Proposed Ground Floor Plan) and ref. PL_2602 (Proposed First Floor Plan) as being in B2 use shall be used for the manufacture of bells and related components, art works or other founding activities and ancillary uses (including research, education, display and sales) only and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification),for no other purposes.

31) The area within the listed building shown on approved plan ref. PL_2601 (Proposed Ground Floor Plan) as being in A3 use, shall be used for the sale and consumption of food and beverages as well as ancillary events and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

32) The area within the listed building shown on approved plans ref. PL_2601 (Proposed Ground Floor Plan), ref. PL_2602 (Proposed First Floor Plan) and ref. PL_2603 rev C (Proposed Second Floor Plan) as being in B1 (creative workspace shop and artist studio space) shall be used for the manufacture and repair of goods and for artists' workspace or other workspace akin to office use and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

33) The area within the new development site shown on approved plans ref PL_1202 rev D (Proposed Ground Floor Plan) and ref PL_1203 rev A (Proposed First Floor Plan) as being in office B1 use shall be occupied as an office / co-working space only and, notwithstanding the provisions of the

Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), for no other purposes.

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34) The works authorised by this consent shall begin not later than three years from the date of this consent.

35) The works hereby permitted shall be carried out in accordance with the approved plans listed in Annex 6.

36) All new external and internal works and finishes and works of making good to the retained fabric, shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile, unless shown otherwise on the drawings or other documentation hereby approved, or required by any condition(s) attached to this consent.

37) The new facing brickwork shall match the existing brickwork adjacent in respect of colour, texture, face bond and pointing, unless shown otherwise on the drawings or other documentation hereby approved or required by any condition(s) attached to this consent.

38) No repointing of brickwork is authorised by this consent without prior approval of details. Proposals shall be submitted to and approved in writing by the Council as local planning authority before the work is begun, and the work shall be carried out in accordance with such approved proposals.

39) Within six months of commencement of works to the historic foundry, details of security measures shall be submitted to and approved in writing by the local planning authority. The security measures shall be implemented in accordance with the approved details, completed prior to the first occupation of the historic foundry, and retained thereafter.

40) Details of the hereby approved flue serving the electric induction furnace shall be submitted to and approved in writing by the local planning authority prior to installation. The flue shall be located within the original furnace chimney to the rear of the foundry unless a better, alternative arrangement can be proposed. The flue shall provide for an unobstructed upwards venting of the flue gases and a mechanism to prevent rainwater entering the flue is acceptable providing it does not prevent the upward venting of the flue gas. The final design of the flue shall be presented to and approved in writing by the local planning authority before works start on site.

41) Precautions shall be taken to secure and protect the interior and exterior features against accidental loss or damage, or theft during the building work. Details such as hoardings, security measures, weather proofing etc. shall be submitted to and approved in writing by the local planning authority prior to commencement, and the relevant work carried out in accordance with such approval. No such features shall be disturbed or removed temporarily or permanently except as indicated on the approved drawings or with prior approval in writing of the local planning authority.

42) Detailed method statements of the structural work prepared by a suitably qualified and experienced heritage construction/renovation professional and shall be submitted to and approved in writing by the local planning

authority prior to the commencement of works. The work shall be carried out in accordance with such approved details.

43) The position, type and method of installation of all new and relocated services and related fixtures (for the avoidance of doubt including communications and information technology servicing), shall be specified in advance of these being installed, and the prior approval of the local planning authority shall be obtained wherever these installations are to be visible, or where ducts or other methods of concealment are proposed. Any works carried out shall be in accordance with such approval.

44) No works shall take place until samples and full particulars of all external and internal facing materials to be used in the refurbishment of the Historic Foundry have been submitted to and approved in writing by the local planning Authority. Details submitted pursuant to this condition shall include but are not restricted to: (a) detailed method statements for all internal and external works including works of making good, prepared by a suitably qualified and experienced heritage construction/renovation professional; (b) details and samples of all internal works of any new or replacement fabric, including new openings, staircase, lift etc. Drawings shall be at a scale of no less than 1:5; (c) samples and details of external cladding. Details and sample panels of external cladding, where relevant, shall include all types of brick or other cladding material to be used, details of bond, mortar and pointing for brick and details of joints, panel sizes and fixing method for other types of cladding; (d) samples and drawings of fenestration. Details of fenestration, where relevant, shall include reveals, sills and lintels. Drawings shall be at a scale of no less than 1:5; (e) drawings and details of entrances. Details of entrances, where relevant, shall include doors, reveals, canopies, signage, entry control, post boxes, CCTV, lighting and soffit finishes. Drawings shall be at a scale of no less than 1:5; (f) drawings and details of shopfronts. Details of shopfronts, where relevant, shall include doors, glazing, reveals, stallrisers, pilasters, fascias, awnings and signage zones or indicative signage. Drawings shall be at a scale of no less than 1:5; (g) samples and details of roofing; (h) details of any balconies, terraces or winter gardens and associated balustrades, soffits and drainage; (j) details of any external rainwater goods, flues, grilles, louvres and vents; (k) details of any external plant, plant enclosures and safety balustrades; and (l) details of the bell-themed structure. The works shall not be carried out other than in accordance with the approved details.

45) No cleaning of masonry, other than a gentle surface clean using a nebulous water spray, is authorised by this consent without prior approval of details by the local planning authority. Full details shall be submitted to and approved by the local planning authority before any such work is begun and the work shall be carried out in accordance with such approved proposals.

Annex 5: Approved Plans – Application A: APP/E5900/V/20/3245430

PL_0000 Existing Location Plan – 31/44 Architects
PL_0001 Existing Site Plan - 31/44 Architects
PL_0002 Existing Basement Plan - 31/44 Architects
PL_0003 Existing Ground Floor Plan - 31/44 Architects
PL_0004 Existing First Floor Plan - 31/44 Architects
PL_0005 Existing Second Floor Plan - 31/44 Architects
PL_0006 Existing Third Floor Plan - 31/44 Architects
PL_0007 Existing Roof Plan - 31/44 Architects
PL_0100 Existing North Elevation - 31/44 Architects
PL_0101 Existing East Elevation - 31/44 Architects
PL_0102 Existing South Elevation - 31/44 Architects
PL_0103 Existing West Elevation - 31/44 Architects
PL_0200 Existing Section AA - 31/44 Architects
PL_0201 Existing Section BB - 31/44 Architects
PL_0300 Proposed Location Plan - 31/44 Architects
PL_0301 Proposed Site Plan - 31/44 Architects
PL_0302 Proposed Sub-Basement Plan rev A - 31/44 Architects
PL_0303 Proposed Basement Plan rev B - 31/44 Architects
PL_0304 Proposed Ground Floor Plan rev D - 31/44 Architects
PL_0305 Proposed First Floor Plan rev A - 31/44 Architects
PL_0306 Proposed Second Floor Plan rev A - 31/44 Architects
PL_0307 Proposed Third Floor Plan rev A - 31/44 Architects
PL_0308 Proposed Fourth Floor Plan rev A - 31/44 Architects
PL_0309 Proposed Fifth Floor Plan rev A - 31/44 Architects
PL_0311 Proposed Roof Plan rev A - 31/44 Architects
PL_0312 Proposed Bicycle Parking - Ground Floor rev B - 31/44 Architects
PL_0313 Proposed Bicycle Parking - Sub-Basement rev A - 31/44 Architects
PL_0314 Proximity of exhaust to nearby windows rev A - 31/44 Architects
PL_0315 Proposed Unattended Public Access - Ground Floor rev A - 31/44 Architects
PL_0316 Proposed Unattended Public Access - First Floor rev A - 31/44 Architects
PL_0400 Proposed North Elevation rev A - 31/44 Architects
PL_0401 Proposed East Elevation rev C - 31/44 Architects
PL_0402 Proposed South Elevation rev A - 31/44 Architects
PL_0403 Proposed West Elevation rev C - 31/44 Architects
PL_0500 Proposed Section AA rev A - 31/44 Architects
PL_0501 Proposed Section BB rev A - 31/44 Architects
PL_1000 Existing Basement Plan - 31/44 Architects
PL_1001 Existing Ground Floor Plan - 31/44 Architects
PL_1002 Existing Roof Plan - 31/44 Architects
PL_1100 Demolition Basement Plan - 31/44 Architects
PL_1101 Demolition Ground Floor Plan - 31/44 Architects
PL_1102 Demolition Roof Plan - 31/44 Architects
PL_1200 Proposed Sub-Basement Plan rev A - 31/44 Architects
PL_1201 Proposed Basement Plan rev B - 31/44 Architects
PL_1202 Proposed Ground Floor Plan rev D - 31/44 Architects
PL_1203 Proposed First Floor Plan rev A - 31/44 Architects
PL_1204 Proposed Second Floor Plan rev A - 31/44 Architects
PL_1205 Proposed Third Floor Plan rev A - 31/44 Architects
PL_1206 Proposed Fourth Floor Plan rev A - 31/44 Architects
PL_1207 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_1209 Proposed Roof Plan rev A - 31/44 Architects
PL_1300 Proposed Elevation Plumbers Row Block(East) (1.1) rev C - 31/44 Architects
PL_1301 Proposed Elevation Plumbers Row Block(North) (2.2) rev A - 31/44 Architects
PL_1302 Proposed Elevation Courtyard Building(North) (3.3) rev A - 31/44 Architects
PL_1303 Proposed Elevation Courtyard Building(East) (4.4) rev C - 31/44 Architects
PL_1304 Proposed Elevation Courtyard Building(South) (5.5) rev B - 31/44 Architects
PL_1305 Proposed Elevation Plumbers Row Block(West) (6.6) rev C - 31/44 Architects
PL_1306 Proposed Elevation Plumbers Row Block(South) (7.7) rev A - 31/44 Architects
PL_1400 Proposed Section AA rev A - 31/44 Architects
PL_1401 Proposed Section BB rev C - 31/44 Architects
PL_1402 Proposed Section CC rev B - 31/44 Architects
PL_1403 Proposed Section DD rev A - 31/44 Architects
PL_1404 Proposed Section EE rev A - 31/44 Architects
PL_1500 Proposed Strip Elevation 01 (Mulberry St. corner) - 31/44 Architects
PL_1501 Proposed Strip Elevation 02 (Fieldgate St. - Plumbers Row) - 31/44 Architects
PL_1502 Proposed Strip Elevation 03 (Rear Building) - 31/44 Architects
PL_1503 Proposed Strip Elevation 04 (Top Floors) - 31/44 Architects
PL_1600 Overhang Diagram Sections - 31/44 Architects
PL_2000 Existing Basement Plan - 31/44 Architects
PL_2001 Existing Ground Floor Plan - 31/44 Architects
PL_2002 Existing First Floor Plan - 31/44 Architects
PL_2003 Existing Second Floor Plan - 31/44 Architects
PL_2004 Existing Third Floor Plan - 31/44 Architects
PL_2005 Existing Roof Plan - 31/44 Architects
PL_2100 Existing Elevation Whitechapel Rd. (North) - 31/44 Architects
PL_2101 Existing Elevation Fieldgate St (East) - 31/44 Architects
PL_2200 Existing Section AA - 31/44 Architects
PL_2201 Existing Section BB - 31/44 Architects
PL_2202 Existing Section CC - 31/44 Architects
PL_2203 Existing Section DD - 31/44 Architects
PL_2204 Existing Section EE - 31/44 Architects
PL_2205 Existing Section FF - 31/44 Architects
PL_2206 Existing Section GG - 31/44 Architects
PL_2207 Existing Section HH - 31/44 Architects
PL_2208 Existing Section JJ - 31/44 Architects
PL_2300 Demolition Basement Plan - 31/44 Architects
PL_2301 Demolition Ground Floor Plan - 31/44 Architects
PL_2302 Demolition First Floor Plan - 31/44 Architects
PL_2303 Demolition Second Floor Plan - 31/44 Architects
PL_2304 Demolition Third Floor Plan - 31/44 Architects
PL_2305 Demolition Roof Plan - 31/44 Architects
PL_2400 Demolition Elevation Whitechapel Rd. (North) - 31/44 Architects
PL_2401 Demolition Elevation Fieldgate St. (East) - 31/44 Architects
PL_2500 Demolition Section AA - 31/44 Architects
PL_2501 Demolition Section BB - 31/44 Architects
PL_2502 Demolition Section CC - 31/44 Architects
PL_2503 Demolition Section DD - 31/44 Architects
PL_2504 Demolition Section EE - 31/44 Architects

PL_2505 Demolition Section FF - 31/44 Architects
PL_2506 Demolition Section GG - 31/44 Architects
PL_2507 Demolition Section HH - 31/44 Architects
PL_2508 Demolition Section JJ - 31/44 Architects
PL_2600 Proposed Basement Plan - 31/44 Architects
PL_2601 Proposed Ground Floor Plan - 31/44 Architects
PL_2602 Proposed First Floor Plan - 31/44 Architects
PL_2603 Proposed Second Floor Plan rev C - 31/44 Architects
PL_2604 Proposed Third Floor Plan rev C - 31/44 Architects
PL_2605 Proposed Roof Plan rev C - 31/44 Architects
PL_2606 Proposed Unattended Public Access - Ground Floor - 31/44 Architects
PL_2700 Proposed Elevation Whitechapel Rd. (North) - 31/44 Architects
PL_2701 Proposed Elevation Fieldgate St. (East) - 31/44 Architects
PL_2800 Proposed Section AA rev A - 31/44 Architects
PL_2801 Proposed Section BB - 31/44 Architects
PL_2802 Proposed Section CC rev A - 31/44 Architects
PL_2803 Proposed Section DD rev C - 31/44 Architects
PL_2804 Proposed Section EE rev A - 31/44 Architects
PL_2805 Proposed Section FF - 31/44 Architects
PL_2806 Proposed Section GG rev C - 31/44 Architects
PL_2807 Proposed Section HH - 31/44 Architects
PL_2808 Proposed Section JJ - 31/44 Architects
PL_2900 Proposed Screen to Foundry Workshop - 31/44 Architects
PL_2901 Proposed Mezzanine, Plans, Elevation, Section - 31/44 Architects
PL_2902 Proposed Old Foundry Entrance, Plans, Elevation, Section, RCP - 31/44 Architects
PL_2903 Proposed Pit Intervention, Plans, Elevation, Section - 31/44 Architects
PL_2904 Proposed Doorway Linking Foundry Spaces - 31/44 Architects
PL_2905 Proposed Link Block, Ground Floor Plan - 31/44 Architects
PL_2906 Proposed Link Block, First Floor Plan - 31/44 Architects
PL_2907 Proposed Link Block, Second Floor Plan - 31/44 Architects
PL_2908 Proposed Link Block, Section AA - 31/44 Architects
PL_2909 Proposed Link Block, Section BB - 31/44 Architects
PL_2910 Proposed Link Block, Fieldgate St. Elevation - 31/44 Architects
PL_2911 Proposed Link Block, Courtyard Elevation - 31/44 Architects
Diagram Foundry Plans - 31/44 Architects
Diagram Foundry Elevations - 31/44 Architects
WBFSK10 Ground Floor as Existing - Malcolm Fryer Architects
WBFSK06 Ground Floor as Proposed - Malcolm Fryer Architects
WBFSKEXR01 Roof Glazing RL24 Section Detail as Existing - Malcolm Fryer Architects
WBFSKEXR02 Section Detail as Existing - Malcolm Fryer Architects
WBFSKFL01 Foundry Floor Section as Existing - Malcolm Fryer Architects
WBFSKFL02 Foundry Floor Section as Proposed - Malcolm Fryer Architects
WBFSKPRR01 Rooflight RL24 Detail Section as Proposed - Malcolm Fryer Architects
WBFSKPRR02 Section Detail as Proposed - Malcolm Fryer Architects
WBFSKR01 Detail Section as Proposed Malcolm Fryer Architects
SOW Whitechapel Bell Foundry Schedule of Repair Works - Malcolm Fryer Architects

Annex 6: Approved Plans – Application B: APP/E5900/V/20/3245434

PL_0000 Existing Location Plan - 31/44 Architects
PL_0001 Existing Site Plan - 31/44 Architects
PL_0002 Existing Basement Plan - 31/44 Architects
PL_0003 Existing Ground Floor Plan - 31/44 Architects
PL_0004 Existing First Floor Plan - 31/44 Architects
PL_0005 Existing Second Floor Plan - 31/44 Architects
PL_0006 Existing Third Floor Plan - 31/44 Architects
PL_0007 Existing Roof Plan - 31/44 Architects
PL_0100 Existing North Elevation - 31/44 Architects
PL_0101 Existing East Elevation - 31/44 Architects
PL_0102 Existing South Elevation - 31/44 Architects
PL_0103 Existing West Elevation - 31/44 Architects
PL_0200 Existing Section AA - 31/44 Architects
PL_0201 Existing Section BB - 31/44 Architects
PL_0300 Proposed Location Plan - 31/44 Architects
PL_0301 Proposed Site Plan - 31/44 Architects
PL_0302 Proposed Sub-Basement Plan rev A - 31/44 Architects
PL_0303 Proposed Basement Plan rev B - 31/44 Architects
PL_0304 Proposed Ground Floor Plan rev D - 31/44 Architects
PL_0305 Proposed First Floor Plan rev A - 31/44 Architects
PL_0306 Proposed Second Floor Plan rev A - 31/44 Architects
PL_0307 Proposed Third Floor Plan rev A - 31/44 Architects
PL_0308 Proposed Fourth Floor Plan rev A - 31/44 Architects
PL_0309 Proposed Fifth Floor Plan rev A - 31/44 Architects
PL_0311 Proposed Roof Plan rev A - 31/44 Architects
PL_0312 Proposed Bicycle Parking - Ground Floor rev B - 31/44 Architects
PL_0313 Proposed Bicycle Parking - Sub-Basement rev A - 31/44 Architects
PL_0314 Proximity of exhaust to nearby windows rev A - 31/44 Architects
PL_0315 Proposed Unattended Public Access - Ground Floor rev A - 31/44 Architects
PL_0316 Proposed Unattended Public Access - First Floor rev A - 31/44 Architects
PL_0400 Proposed North Elevation rev A - 31/44 Architects
PL_0401 Proposed East Elevation rev C - 31/44 Architects
PL_0402 Proposed South Elevation rev A - 31/44 Architects
PL_0403 Proposed West Elevation rev C - 31/44 Architects
PL_0500 Proposed Section AA rev A - 31/44 Architects
PL_0501 Proposed Section BB rev A - 31/44 Architects
PL_1000 Existing Basement Plan - 31/44 Architects
PL_1001 Existing Ground Floor Plan - 31/44 Architects
PL_1002 Existing Roof Plan - 31/44 Architects
PL_1100 Demolition Basement Plan - 31/44 Architects
PL_1101 Demolition Ground Floor Plan - 31/44 Architects
PL_1102 Demolition Roof Plan - 31/44 Architects
PL_1200 Proposed Sub-Basement Plan rev A - 31/44 Architects
PL_1201 Proposed Basement Plan rev B - 31/44 Architects
PL_1202 Proposed Ground Floor Plan rev D - 31/44 Architects
PL_1203 Proposed First Floor Plan rev A - 31/44 Architects
PL_1204 Proposed Second Floor Plan rev A - 31/44 Architects
PL_1205 Proposed Third Floor Plan rev A - 31/44 Architects
PL_1206 Proposed Fourth Floor Plan rev A - 31/44 Architects
PL_1207 Proposed Fifth Floor Plan rev A - 31/44 Architects

PL_1209 Proposed Roof Plan rev A - 31/44 Architects
PL_1300 Proposed Elevation Plumbers Row Block (East) (1.1) rev C - 31/44 Architects
PL_1301 Proposed Elevation Plumbers Row Block (North) (2.2) rev A - 31/44 Architects
PL_1302 Proposed Elevation Courtyard Building (North) (3.3) rev A - 31/44 Architects
PL_1303 Proposed Elevation Courtyard Building (East) (4.4) rev C - 31/44 Architects
PL_1304 Proposed Elevation Courtyard Building (South) (5.5) rev B - 31/44 Architects
PL_1305 Proposed Elevation Plumbers Row Block (West) (6.6) rev C - 31/44 Architects
PL_1306 Proposed Elevation Plumbers Row Block (South) (7.7) rev A - 31/44 Architects
PL_1400 Proposed Section AA rev A - 31/44 Architects
PL_1401 Proposed Section BB rev C - 31/44 Architects
PL_1402 Proposed Section CC rev B - 31/44 Architects
PL_1403 Proposed Section DD rev A - 31/44 Architects
PL_1404 Proposed Section EE rev A - 31/44 Architects
PL_1500 Proposed Strip Elevation 01 (Mulberry St. corner) - 31/44 Architects
PL_1501 Proposed Strip Elevation 02 (Fieldgate St. - Plumbers Row) - 31/44 Architects
PL_1502 Proposed Strip Elevation 03 (Rear Building) - 31/44 Architects
PL_1503 Proposed Strip Elevation 04 (Top Floors) - 31/44 Architects
PL_1600 Overhang Diagram Sections - 31/44 Architects
PL_2000 Existing Basement Plan - 31/44 Architects
PL_2001 Existing Ground Floor Plan - 31/44 Architects
PL_2002 Existing First Floor Plan - 31/44 Architects
PL_2003 Existing Second Floor Plan - 31/44 Architects
PL_2004 Existing Third Floor Plan - 31/44 Architects
PL_2005 Existing Roof Plan - 31/44 Architects
PL_2100 Existing Elevation Whitechapel Rd. (North) - 31/44 Architects
PL_2101 Existing Elevation Fieldgate St. (East) - 31/44 Architects
PL_2200 Existing Section AA - 31/44 Architects
PL_2201 Existing Section BB - 31/44 Architects
PL_2202 Existing Section CC - 31/44 Architects
PL_2203 Existing Section DD - 31/44 Architects
PL_2204 Existing Section EE - 31/44 Architects
PL_2205 Existing Section FF - 31/44 Architects
PL_2206 Existing Section GG - 31/44 Architects
PL_2207 Existing Section HH - 31/44 Architects
PL_2208 Existing Section JJ - 31/44 Architects
PL_2300 Demolition Basement Plan - 31/44 Architects
PL_2301 Demolition Ground Floor Plan - 31/44 Architects
PL_2302 Demolition First Floor Plan - 31/44 Architects
PL_2303 Demolition Second Floor Plan - 31/44 Architects
PL_2304 Demolition Third Floor Plan - 31/44 Architects
PL_2305 Demolition Roof Plan - 31/44 Architects
PL_2400 Demolition Elevation Whitechapel Rd. (North) - 31/44 Architects
PL_2401 Demolition Elevation Fieldgate St. (East) - 31/44 Architects
PL_2500 Demolition Section AA - 31/44 Architects
PL_2501 Demolition Section BB - 31/44 Architects

PL_2502 Demolition Section CC - 31/44 Architects
PL_2503 Demolition Section DD - 31/44 Architects
PL_2504 Demolition Section EE - 31/44 Architects
PL_2505 Demolition Section FF - 31/44 Architects
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PL_2507 Demolition Section HH - 31/44 Architects
PL_2508 Demolition Section JJ - 31/44 Architects
PL_2600 Proposed Basement Plan - 31/44 Architects
PL_2601 Proposed Ground Floor Plan - 31/44 Architects
PL_2602 Proposed First Floor Plan - 31/44 Architects
PL_2603 Proposed Second Floor Plan rev C - 31/44 Architects
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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.