



Ministry of Housing,
Communities &
Local Government

Mr Tom Horne
DP9 Limited
100 Pall Mall
London
SW1Y 5NQ

Our ref: APP/F5540/V/19/3226900
Your ref: 00607/T/P1

31 March 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY BLUESCAPE LIMITED
LAND AT 40 & 40A HIGH STREET, BRENTFORD, LONDON, TW8 0DS
APPLICATION REF: 00607/T/P1**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Michael Boniface MSc MRTPI who held a public local inquiry on 6-9, 13-16 and 22 October 2020 into your client's application for planning permission for demolition of the existing office building and Arts Centre to provide 193 new dwellings within buildings of part 6, part 7 storeys (Class C3), with ancillary ground floor retail/café, hard and soft landscaping, revised vehicular access and all necessary enabling and ancillary works, application reference 00607/T/P1, dated 4 August 2017.
2. On 15 April 2019, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application 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 appeal be approved.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to grant permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR7, the Secretary of State is satisfied that overall the material provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Ministry of Housing, Communities & Local Government
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Matters arising since the close of the inquiry

6. The London Plan was adopted on 2nd March 2021. The policies from the previous London Plan set out in IR15-20 have therefore been superseded.
7. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this publication to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email 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 recently adopted London Plan (2021) and the Hounslow Local Plan (HLP) (2015). The Secretary of State considers that relevant development plan policies include those set out at IR21-26 and those adopted in the London Plan (2021) as set out at IR37-40.
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'), and documents referred to at IR30-36.
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.

Emerging plan

12. The emerging Development Plan documents comprise of the West of Borough Local Plan, the Great West Corridor Local Plan and Hounslow Site Allocations (IR41). The site remains as an emerging site allocation under the emerging plan (Site 110 – Albany Riverside).
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The emerging Development Plan documents that form part of the Local Plan review are at an early stage. For the reasons given at IR41 the Secretary of State considers that policies in the emerging documents carry limited weight.

Main issues

Site allocation

14. The Secretary of State notes (IR487) that Local Plan policies IMP2 and TC2 allocate the site for redevelopment.

Tall buildings

15. The Secretary of State has considered the new London Plan's (2021) provisions on tall buildings. He concludes that as the Hounslow Local Plan defines this as an area with some suitability for tall buildings (IR490), the proposal would not conflict with part B of Policy D9.

Impacts on heritage assets

16. The Secretary of State has given careful consideration to the Inspector's analysis of heritage issues at IR451-476. He agrees, for the reasons given at IR453 that there would be no direct harm to designated heritage assets; any harm would arise from the impact of the development on the significance derived from their settings. For the reasons given at IR454-464 he agrees with the Inspector that the appeal proposal would have an effect on the setting of Kew Gardens as a whole and also the setting of designated heritage assets within it (IR464).
17. For the reasons given at IR465-466 he agrees that the effect of the scheme in the setting of the Palace would be very minor (IR466).
18. For the reasons given at IR467-468 he agrees with the Inspector that the development would not alter the Palace's relationship with the river or the spacious and verdant setting that provides an interlude from urban Brentford. He further agrees that the effect on significance from the increased scale of the proposed buildings within its setting would be minor (IR468).
19. He further agrees (IR469) that the proposed development would not harm the setting or the significance of the Grade I listed Kew Palace flats and Grade II listed Kew Cottages in any way.
20. He concludes for the reasons given above that the extent of the change to setting of the Royal Botanic Gardens would be minor, and that the harm to the significance of the assets would be approaching moderate on the 'less than substantial' scale. He concludes, for the reasons set out at IR471 and IR475, that the cumulative harms, when taken together with the direct harm, should be assessed as moderate on the 'less than substantial' scale (IR471).
21. The Secretary of State has had regard to the impacts on the setting and significance of the Kew Green Conservation Area (CA). For the reasons given at IR472-473 and IR475 he agrees with the Inspector that the development would diminish the semi-rural character evident in this part of the Conservation Area to some extent but the effect on its significance could not be described as more than slight, even taking into account the cumulative effects (IR473).
22. For the reasons given at IR495, the Secretary of State considers that taking the assets together, the overall harm to significance would be moderate on the 'less than substantial' scale. He agrees that this harm must attract great weight. Paragraph 196 of the Framework states 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. His conclusions on this test are set out below. The Secretary of State agrees with the Inspector that there would be conflict with London

Plan (2021) policies HC1 and HC2 (IR492). HLP CC4 (IR490) requires a balance between harm to designated heritage assets and public benefits.

Other harm

23. For the reasons given (IR477) the Secretary of State agrees with the Inspector that living conditions at Lighterage Court/Kew Reach would not be unacceptably harmed, but that the impact on neighbouring residents attracts slight negative weight.
24. He agrees with the Inspector that there no other harmful impacts that could not be suitably mitigated by way of conditions and obligations (IR478).

Housing

25. The Secretary of State notes at IR479 that the Council has a strong housing land supply position and that no on-site affordable housing would be provided but the scheme would facilitate redevelopment of the Brentford Police Station site where 60 affordable units would be delivered, along with a further 45 market units. He has taken into account that the proposed 20% affordable housing provision across the two sites is only half of the current strategic 40% policy target for the Borough and less still against the 50% London-wide target. However, he notes that after independent assessment it is agreed by the Council to be the maximum viable amount; the level of provision would also be subject to potential uplift through a review mechanism. He agrees with the Inspector's conclusions at IR479 that housing provision overall should be afforded significant weight.

Arts Centre

26. For the reasons given at IR480, the Secretary of State agrees that the delivery of this costly community asset in line with strategic policy priorities of the Council should be given substantial weight.

Design & Public Realm

27. The Secretary of State has considered the Inspector's reasoning at IR481 and agrees for the reasons given that the proposed development and public realm improvements would undoubtedly be an improvement in townscape terms, and this matter should attract significant weight.

Other benefits of the proposals

28. The Secretary of State further agrees that some economic benefits would arise from the development through construction jobs; permanent new jobs at the site and retained permanent; and indirect economic uplift in the community. He agrees these, particularly the short-term benefits add little to the other benefits already identified and carry little additional weight (IR482).

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR446-447, 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 B should form part of his decision.

Planning obligations

30. Having had regard to the Inspector's analysis at IR448, the planning obligation dated 29 October 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 in IR448 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

31. The Secretary of State considers that although there is conflict with London Plan policies HC1 and HC2, taking into account his conclusions on the heritage balance at paragraph 34 below, the proposal is in accordance with the development plan taken as a whole. 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.

32. In line with paragraph 193 of the Framework and s.66(1) of the Act the Secretary of State gives great weight to the heritage harms he has identified. He gives further slight weight to the impact on residents of Lighterage Court/Kew Reach.

33. Against this he weighs the provision of housing, including affordable housing, which he considers carry significant weight in favour of the scheme. He considers that the public realm improvements carry significant weight and the provision of an Arts Centre adds substantial weight. Economic benefits add a little weight.

34. The Secretary of State agrees with the Inspector at IR485 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the Kew Green Conservation Area and to the highly significant heritage assets at the WHS. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal, whether the harms to the Conservation Area and WHS are considered individually or cumulatively.

35. 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.

36. The Secretary of State therefore concludes that planning permission be granted.

Formal decision

37. 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 B of this decision letter for the demolition of the existing office building and Arts Centre to provide 193 new dwellings within buildings of part 6, part 7 storeys (Class C3), with ancillary ground floor retail/café, hard and soft landscaping, revised vehicular access and all necessary enabling and ancillary works, application reference 00607/T/P1, dated 4 August 2017.

38. 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

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. A copy of this letter has been sent to London Borough of Hounslow, Historic England and Historic Royal Palaces, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

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

Annex A Schedule of Representations

Annex B List of conditions

Annex A Schedule of Representations

General representations

Party	Date
Lord Gardiner of Kimble	12 March 2021
BDP Pitmans on behalf of Historic England	11 March 2021

Annex B List of Conditions

1) The development hereby permitted shall begin not later than 5 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: A233-A-(00)-P100, A233-A-(01)-P100, A233A-(00)-P200, A233-A-(01)-P200, A233-A-(01)-P102, A233-A-(01)-P110, A233-A-(01)-P113, A233-A-A-(01)-P202, A233-AB-(01)-P203, A233-A-Z(01)-P301, A233-A-A-(01)-P302, A233-A-B-(01)-P303, A233-A-C-(01)P304, A233-A-C-(01)-P305, PL1617.GA.100, PL1617.GA.200, PL1617.GA.300.

3) No development shall take place until a Construction MPlan (CMP)/Construction Logistics Plan (CLP) have been submitted and approved by the Local Planning Authority. The CLP shall cover as a minimum:

i) a site plan (showing the areas set out below);

ii) confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused;

iii) provision for the parking of vehicles of site operatives and visitors; iv) provisions for loading, unloading and storage of plant and materials within the site; v) details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements;

vi) details of vehicle routeing from the site to the wider strategic road network;

vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

viii) provision of wheel washing facilities at the site exit and a commitment to sweep adjacent roads when required and at the reasonable request of the Council;

ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;

x) measures to ensure the safety of all users of the public highway especially cyclists and pedestrians in the vicinity of the site and especially at the access;

xi) commitment to liaise with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts;

xii) avoidance of network and school peak hours for deliveries and details of a booking system to avoid vehicles waiting on the public highway;

xiii) all necessary traffic orders and other permissions required to allow safe access to the site to be secured and implemented prior to commencement of construction;

xiv) details of the construction programme and a schedule of traffic movements. All construction and demolition works shall be undertaken in accordance with the approved CMP and CLP.

4) No demolition or construction work shall take place on the site except between the hours of 8am to 6pm on Mondays to Friday and 8am to 4pm on Saturdays and not at all on Sundays and Public Holidays.

5) Prior to the commencement of development, a construction travel plan shall be submitted to and approved in writing by the Local Planning Authority in order to minimise reliance on private car use by all contractors and construction staff. Such a plan shall include details of measures to encourage sustainable travel to the site and to minimise site workers parking on nearby public highways.

6) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until details and samples of all facing materials are submitted to and approved in writing by the Local Planning Authority. The samples and details shall include:

i) brick (including brick and mortar on-site sample panel min. 2m x 2m);

ii) cladding materials (including system specifications/details and on-site samples) (where relevant);

iii) window treatment (including sections/reveals and on-site sample);

iv) all privacy measures, (including obscure glazing details, privacy screens etc.); and

v) any other materials/details to be used. The development shall then be carried out in accordance with the approved details and maintained as such thereafter.

7) Notwithstanding the details shown on the drawings hereby agreed, no residential unit in Block A shall be occupied until drawings at 1:10 scale of the directional glass and balustrades to be installed on the western elevation of Block A (for flats 4 and 5 on each floor in Block A) hereby approved are submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall be retained and maintained for the duration of the use.

8) Prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out as approved. The detailed landscaping scheme shall include:

i) soft planting: including any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species, sizes, numbers/densities and sections of landscaped areas;

ii) a 'Tree Planting Statement' providing full details, locations, specifications and construction methods for all purpose; iii) built tree pits and associated above ground features, including specifications for tree protection and a stated volume of suitable growing medium to facilitate and promote the healthy development of the proposed trees, ensuring each tree has a soil volume equivalent of 0.6 times its canopy area at maturity;

- iv) hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible paving, furniture, steps, refuse disposal points and if applicable synthetic surfaces for both ground level and roof terrace level (where relevant);
- v) details of (and phasing programme for) the delivery of the River Walk as part of the construction of the development;
- vi) fences and walls and any other boundary treatments; - visitor cycle parking spaces (in the form of Sheffield stands);
- vii) any play spaces and play equipment (equivalent to the provision of 109sqm but aiming for 272sqm);
- viii) any signage (Legible London) and information boards;
- ix) brown (biodiversity) roofs/green walls (where relevant);
- x) any CCTV equipment;
- xi) an external lighting strategy; and
- xii) any other landscaping feature(s) forming part of the scheme.

The submission shall include a management programme for the lifetime of the development, which shall include: long term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas, and details of any temporary landscaping (including boundary treatment) to be provided and management thereof. All landscaping comprised in the approved details shall be carried out during the first planting and seeding seasons following completion of construction works. Any trees or shrubs planted (including any such replacements) which die within three years from the date of planting shall be replaced in the next planting season with the same species, and of comparable maturity. The development shall be carried out strictly in accordance with the details so approved (including the River Walk delivery programme) and shall be maintained in accordance with the approved management programme.

9) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until a scheme of acoustic insulation and any other necessary means of ventilation provided, taking into consideration the recommendations of the Noise and Vibration chapter in the Environmental Statement, is submitted to and approved by the Local Planning Authority. Such a scheme shall include details of measures to ensure the residential accommodation does not exceed the 'good' limits contained in BS8233. The details shall include material specification and predicted performance of the materials proposed. Any works that form part of such a scheme shall be completed as approved before any part of the development is first occupied.

Prior to the development being occupied, sound insulation test reports demonstrating compliance with the scheme approved under this condition, shall be submitted to and approved in writing by the Local Planning Authority.

10) Each residential unit shall meet M4(2) Building Regulations as shown on the hereby approved plans.

11) A minimum 10% 'Wheelchair User Dwellings' built to Building Regulations M4(3) standard shall be provided as identified on the approved plans.

12) No part of the development shall be occupied until the waste and recycling facilities for the residential element of the development, as shown on the approved plans, have been provided and made available for use by residents. Such facilities shall remain throughout the lifetime of the development and shall be used for no other purposes.

13) Notwithstanding the details shown on the approved plans, prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), details of the waste and recycling storage facilities for the commercial use at the ground floor shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the waste and recycling facilities thereby approved have been provided and thereafter such facilities shall be retained throughout the lifetime of the development and shall be used for no other purposes. No refuse or recycling waste bins shall be stored on the public highway.

14) Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10dB below the background noise levels when measured from the nearest sensitive receptors. Plant shall be set in from the roof boundaries by a minimum of 2m. No further fans, louvres, ducts or other external plant shall be installed without the written prior approval of the Local Planning Authority.

15) Notwithstanding the details shown on the approved plans, prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), full details (including manufacturers' specifications) of cycle parking facilities (with the provision of Sheffield stands and the reduction of individual cycle stores to include no more than 50 cycles) shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall conform to current guidance such as the TfL London Cycling Design Standards in design and layout as at the date of permission and be fully implemented and made available for use before the first occupation of the development and thereafter retained for use at all times without obstruction.

16) Prior to the first occupation of the development, the parking, loading and turning spaces as set out in the approved plans, shall be constructed and made available for use. These shall include a minimum 20% 'active' Electric Vehicle Charging spaces and 20% 'passive' Electric Vehicle Charging spaces. The parking, loading and turning spaces shall then be retained as such and shall not be used for any other purposes thereafter. No loading or unloading shall occur on the public highway.

17) Pedestrian visibility splays as shown on the approved plans either side of the vehicular access on the High Street shall be provided prior to first occupation of the development and maintained as such thereafter with nothing over 600mm in height within the visibility splays..

18) The development hereby permitted shall not commence (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any

contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) until a finalised roof plan showing the proposed location of the solar PV panels has been submitted to and approved in writing by the Local planning Authority to show that the development will be constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions. The development shall be implemented in accordance with the approved Energy Strategy and shall not commence above ground until full Design Stage calculations under the Standard Assessment Procedure have been submitted to and approved in writing by the Local planning Authority to show that the development will be constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions, and achieves a minimum 35% reduction in emissions on Part L Building Regulations. Prior to first occupation of the building(s) evidence (e.g. photographs, installation contracts and As-Built certificates under the Standard Assessment Procedure) should be submitted to the Local Planning Authority and approved in writing to show that the development has been constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions, and achieves a 35% reduction in emissions on Part L Building Regulations. Upon final commencement of operation of the solar PV panels, suitable devices for the monitoring of the solar PV panels shall have been installed, and the monitored data shall be submitted automatically to a monitoring web-platform at daily intervals for a period of three years from the point of full operation.

19) Prior to first occupation of the building(s), evidence should be submitted to the Local Planning Authority and approved in writing to show that the development has made sufficient provisions to enable the connection to a district heating network in the future.

20) Prior to commencement of works above ground level, evidence shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the internal water consumption of the development will not exceed 105 litres/person/day in line with The Water Efficiency Calculator for new dwellings from the Department of Communities and Local Government. Prior to first occupation of the building(s) evidence (schedule of fittings and manufactures literature) should be submitted to the Local Planning Authority and approved in writing to show that the development has been constructed in accordance with the approved internal water use calculations.

21) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until details have been submitted to and approved by the Local Planning Authority which show that:

i) At least three of the key elements of the building envelope (external walls, windows roof, upper floor slabs, internal walls, floor finishes/coverings) are to achieve a rating of A+ to D in the Building Research Establishment (BRE) The Green Guide of specification.

ii) At least 50% of timber and timber products are to be sourced from accredited Forest Stewardship Council (FSC) or Programme for the Endorsement of Forestry Certification (PEFC) scheme.

iii) Detail measures taken to avoid construction or insulation materials which will release toxins into the internal and external environment, including those that deplete stratospheric ozone. The development shall not be occupied until evidence (e.g. photographs and copies of installation contracts) has been submitted to the Local Planning Authority to demonstrate

that the development has been carried out in accordance with these requirements and it has been approved in writing.

22) Prior to commencement of works (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), final detailed drainage designs (including drawings) of the proposed drainage scheme (taking into consideration the information in the approved documents and the following correspondence emails 14th December 2017) shall be submitted to and approved in writing by the Local Planning Authority. These details shall specifically provide evidence of the connection to the Thames Water Sewer Network and confirmation that the Environment Agency accepts the discharge in the River Thames at an uncontrolled rate.

23) Prior to occupation, evidence that the drainage system has been built as per the final detailed drainage designs (approved in condition 22) through the submission of photographs and copies of installation contracts, and written confirmation that the drainage features will be managed as per the detailed maintenance plan for the lifetime of the development, shall be submitted to and approved in writing by the Local Planning Authority.

24) Before the development hereby permitted commences, except demolition:

i) Details of an intrusive site investigation are required in addition to the phase 1 desk study previously submitted. These details shall be submitted to, and approved in writing by, the Local Planning Authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.

ii) If required, a scheme for decontamination of the site shall be submitted to the Local Planning Authority, for written approval. The scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied. During the course of the development:

iii) The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in writing to the Local Planning Authority for approval before any work on that aspect of development continues. Before the development is first brought into use:

iv) The agreed scheme for decontamination referred to in clauses ii) and iii) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the Local Planning Authority for approval.

25) Prior to the installation of the CHP plant, an Air Quality Neutral Assessments for the building, shall be submitted to and approved in writing by the Local Planning Authority. Such assessments shall be undertaken against the benchmarks established in the Air Quality chapter in the Environmental Statement and the Sustainable Design & Construction SPG, ensuring that any boilers installed are Ultra Low Emission (<40mgNOx/kWh).

26) Prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any

other adverse ground conditions; erection of any temporary means of enclosure and land raising), a Biodiversity Enhancement Strategy, incorporating the recommendations of the Ecological Assessment Report by Peter Brett Associates dated July 2017 and the incorporation of at least 2 bird boxes, 2 bat boxes and 1 log pile, shall be submitted to and approved in writing by the Local Planning Authority. The approved Biodiversity Enhancement Strategy shall be implemented prior to any building within that phase being first occupied. Any enhancement measures shall be maintained throughout the lifetime of the development or in accordance with the strategy set out in the Landscape MPlan.

27) Prior to the commencement of development, a scheme for the protection of the retained trees, in accordance with BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a) A plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area of every tree on site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.
- b) A schedule of tree works for all the retained trees, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All the tree work shall be carried out in accordance with BS3998:2010 – Tree Work - Recommendations.
- c) The details and positions (shown on plan at paragraph (a) above) of the Tree Protection Barriers, identified separately where required for different phases of construction work. The Tree Protection Barriers must be erected prior to each phase of construction commencing and remain in place, undamaged, for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.
- d) The details and positions of any underground service runs shall be shown on the plan required at paragraph (a). The erection of fencing for the protection of any retained tree or hedge shall be carried out in complete accordance with BS5837:2012, before any equipment, machinery, or materials are brought onto the site for the purposes of development or other operations. The fencing shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made without the written approval of the Local Planning Authority.

28) No demolition or development shall take place until a stage 1 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, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works. If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include: A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works B.

The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

29) Prior to any part of the development being occupied, the provision of riparian lifesaving equipment shall be provided along the river's edge to a standard recommended in the 1991 Hayes Report on the Inquiry into River Safety. The lifesaving equipment shall be kept in good working order and made available for use at all times.

30) Prior to the commencement of development, a scheme for river wall maintenance and improvement works shall be submitted to and approved in writing by the Local Planning Authority. Flood defences are to be commensurate with the lifetime of the development circa 100 years. The development shall then only proceed in accordance with the approved scheme and shall be maintained as such thereafter.



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

by **Michael Boniface MSc MRTPI**

an Inspector appointed by the Secretary of State

Date 4 January 2021

SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY BLUESCAPE LIMITED

Inquiry held on 6-9, 13-16 and 22 October 2020. Site visit held on 23 October 2020

40 & 40A High Street, Brentford, London, TW8 0DS

File Ref: APP/F5540/V/19/3226900

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ABBREVIATIONS USED IN THIS REPORT

AH	Affordable housing
AN	Advice Note (HE)
AVR	Accurate Visual Representation
BZ	Buffer Zone (to a WHS)
CA	Conservation Area
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
EIA	Environmental Impact Assessment
EiC	Examination in Chief
EiP	Examination in Public
ES	Environmental Statement
Framework	National Planning Policy Framework
GLA	Greater London Authority (the Mayor of London)
GPA	Good Practice Advice (in Planning)
GWC	Great West Corridor
HE	Historic England
ICOMOS	International Council on Monuments and Sites
IPLP	Intend to Publish version of the London Plan
LB&CA Act	Listed Buildings and Conservation Areas Act
LBH	London Borough of Hounslow
LPA	Local Planning Authority
LPR	Local Plan Review
MPlan	WHS Management Plan (for Kew Gardens)
OUV	Outstanding Universal Value
P&CP Act	Planning and Compulsory Purchase Act 2004
PPG	Planning Practice Guidance
PTAL	Public transport accessibility level
RBGK	Royal Botanic Gardens Kew
RPG	Registered Park and Garden
RX	Re-examination
s106	Section 106 of the T&CP Act
SoCG	Statement of Common Ground
SoS	Secretary of State (for Housing, Communities and Local Government)
SOUV	Statement of OUV
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
T&CP Act	Town and Country Planning Act 1990
TfL	Transport for London
THVIA	Townscape, Heritage and Visual Impact Assessment
UNESCO	United Nations Educational, Scientific and Cultural Organization
XX	cross-examination
WHS	World Heritage Site
WHS SPG	<i>London's World Heritage Sites – Guidance on Settings</i> Mayor of London Supplementary Planning Guidance (SPG) 2012

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- 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 15 April 2019.
- The application is made by Bluescape Limited to the Council of the London Borough of Hounslow.
- The application Ref: 00607/T/P1 is dated 4 August 2017.
- The development proposed is demolition of the existing office building and Arts Centre to provide 193 new dwellings within buildings of part 6, part 7 storeys (Class C3), with ancillary ground floor retail/café, hard and soft landscaping, revised vehicular access and all necessary enabling and ancillary works.
- The reason given for making the direction was that the Secretary of State has considered his policy on calling in planning applications and concluded, in his opinion, that the application should be called-in.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
 - a) The extent to which the proposed development is consistent with the Government policies for delivering a sufficient supply of homes (NPPF Chapter 5);
 - b) The extent to which the proposed development is consistent with the Government policies for building a strong, competitive economy (NPPF Chapter 6);
 - c) The extent to which the proposed development is consistent with the Government policies for conserving and enhancing the historic environment (NPPF Chapter 16);
 - d) The extent to which the proposed development is consistent with the development plan for the area including any emerging plan;
 - e) and any other matters the Inspector considers relevant.

Summary of Recommendation: that the application be approved.

Procedural Matters

1. The application was made to the London Borough of Hounslow (LBH), which resolved to grant planning permission on 8 February 2018, subject to referring the matter to the Mayor of London¹. The Mayor of London confirmed in a letter dated 15 October 2018 that he did not wish to take over the application and was content for the Council to determine the case. The application was subsequently called-in by the Secretary of State (SoS) for determination in a direction dated 15 April 2019.
2. A pre-Inquiry meeting took place on 7 January 2020, the outcome of which was set out in an Inspector's Note². In addition, a Case Management Conference was held on 7 August 2020 and subsequently summarised in a Note³.
3. The Inquiry sat between 6 October and 22 October 2020. It was held as a virtual event (using videoconferencing) in light of the ongoing pandemic. As well as an accompanied site visit on 23 October 2020, I visited the site and surroundings on an unaccompanied basis on 20 February 2020 so as to gain an appreciation of relevant views during the winter months, when trees were not in leaf.
4. Prior to the Inquiry, I agreed to the applicant's request to make use of virtual reality headsets. These allowed 360-degree panoramic views of the proposed

¹ In accordance with the Town & Country Planning (Mayor of London) Order 2008

² Core Document (CD) F1

³ CD F5

development in its context using the Accurate Visual Representations (AVR) before the Inquiry. These were used by the main parties and me during the accompanied site visit.

5. A Statement of Common Ground (SoCG) (March 2020)⁴ was agreed between the applicant and the Council and subsequently updated by way of an Addendum (October 2020)⁵. A Heritage SoCG (April 2020)⁶ was agreed between the applicant, Council, Historic Royal Palaces (HRP) and Royal Botanic Gardens Kew (RBGK). A separate Heritage SoCG (April 2020)⁷ was signed by the applicant, Council and Historic England (HE). Further topic specific SoCG's were agreed between the applicant and the Council in relation to transport⁸ and viability⁹.
6. Drawings were amended during the application process and it was common ground that the documents submitted with the application, and its amendments prior to the SoS call-in, are those for which planning permission is sought¹⁰.
7. It was agreed that the Environmental Statement (ES) (August 2017)¹¹ is legally compliant and adequate for determining the application¹². However, RBGK and HRP considered that the Townscape, Heritage and Visual Impact Assessment (THVIA) and ES did not meet the information requirements of the relevant policy and guidance because: they do not take account of established methods for assessing the harm to the setting of a World Heritage Site (WHS); they were flawed in their approach to cumulative assessment; they did not take proper account of Supplementary Planning Guidance (SPG) or Planning Practice Guidance (PPG) in assessing cumulative impacts, and did not set out any review of reasonable alternatives that have been considered. The applicant subsequently supplemented this information with a Heritage Impact Assessment (2020)¹³. Taken together, I am satisfied that sufficient information has been provided to meet the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011¹⁴ and to assess the environmental impact of the proposal.
8. The SoS has recently considered two other applications for tall buildings in Hounslow and in the setting of the RBGK. The Citroen site¹⁵ involved a mixed-use development of 441 residential units along with a range of commercial uses within buildings of 12, 13, 16, 17 and 18 storeys and was granted planning permission. The Chiswick Curve¹⁶ comprised a mixed-use development involving 327 residential units in buildings of 25 and 32 storeys but was refused. These decisions were referenced extensively throughout the Inquiry. Whilst this

⁴ CD F2

⁵ CD F15

⁶ CD F3

⁷ CD F4

⁸ CD F6

⁹ Supplementary Proof of Tom Horne, Appendix A

¹⁰ CD F2, paras. 3.2 & 4.4

¹¹ CD C13-C16

¹² CD F3, para. 25 and CD F2, para. 4.2

¹³ Proof of Robert Tavernor, Appendix RT2

¹⁴ Applicable under transitional provisions

¹⁵ CD A26

¹⁶ CD A21

application is to be considered on its own merits, there are notable parallels between the schemes given that some of the same heritage assets are involved.

9. The Council has resolved to grant planning permission for redevelopment of the former Brentford Police Station site, also referred to as the 'Half Acre site'. This scheme would be linked to the current application via planning obligations as it is intended to be the location for the re-provided Watermans Arts Centre and the affordable housing associated with the current scheme¹⁷.

The Site and Surroundings

10. The approximately 0.63 ha site is located between Brentford High Street to the north and the River Thames to the south. Watermans Park is to the east, whilst Lighterage Court stands directly to the west, a residential block rising to 6 storeys. A two-storey office building known as Max Factor House currently exists on the site, along with the Watermans Arts Centre. The town centre and surrounding area accommodates a range of commercial and residential buildings.
11. Across the Thames is the London Borough of Richmond with Kew Gardens and Kew Green, both of which are designated as Conservation Areas (CAs). Kew Gardens is also a Grade I Registered Park and Garden (RPG) and, was inscribed as a World Heritage Site (WHS) in 2003. The WHS has roughly the same boundaries as the RPG and the CA. It contains many listed buildings including Kew Palace (also a Scheduled Ancient Monument), the Orangery, the tall Pagoda, and others at Grade I. The WHS's Buffer Zone (BZ) incorporates Kew Green and extends to the Brentford side of the Thames, abutting the site.
12. There are many other listed buildings within the WHS, including the Grade I listed Kew Palace Flats (also known as the Royal Kitchens) and Grade II listed Kew Cottages, both of which stand close to Kew Palace. Of the many historic structures within the Gardens, Kew Palace survives while the White House has been demolished. The Great Lawn and lake are much smaller than when designed by Chambers and redesigned by Burton (and others) as part of the 18th and 19th Century landscapes. Kew Green CA was designated in 1969, has since been extended, and contains 38 listed buildings, four of which are listed at Grade II*.
13. The site is within an Archaeological Priority Area; an Air Quality Management Area; an area of Industrial History/Contamination; and the Thames Policy Area, for which the site is designated as being suitable for mixed use development. Waterman's Park is an area of Local Open Space. The site lies partially within Flood Zones 2 and 3a, although an existing flood defence wall exists along the length of the application site.

Planning Policy

14. The relevant policy and guidance, including Supplementary Planning Guidance (SPG) and emerging policy, is listed in the SoCG¹⁸. The development plan, so far

¹⁷ CD F2, paras. 8.3 & 9.2 and Proof of Tom Horne, App. A

¹⁸ CD F2, Section 7

as it is relevant to the application, comprises the London Plan (2016) (London Plan)¹⁹ and the Hounslow Local Plan (2015) (HLP)²⁰.

London Plan (London Plan)

15. Of particular relevance, London Plan Policy 7.4 expects development to have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings; and sets criteria for planning decisions to achieve the aim that it would provide a high quality design response.
16. London Plan Policy 7.6 demands that architecture should make a positive contribution to a coherent public realm, streetscape and wider cityscape; that it should incorporate the highest quality materials and design appropriate to its context. It also sets criteria for planning decisions to ensure that buildings and structures should be of the highest architectural quality which includes being of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm. Further, development should comprise details and materials that complement, not necessarily replicate, the local architectural character and should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate – this is particularly important for tall buildings.
17. London Plan Policy 7.7 sets the strategic context for tall and large buildings, which should be part of a plan-led approach to changing or developing an area by the identification of appropriate, sensitive and inappropriate locations. It requires that such buildings should not have an unacceptably harmful impact on their surroundings. Policy 7.7E expects that the impact of tall buildings in sensitive locations should be given particular consideration. Such areas might include CAs, listed buildings and their settings, RPGs, and WHSs.
18. For planning decisions, and with specific reference to listed buildings, RPGs, CAs, and WHSs, London Plan Policy 7.8 makes plain that development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.
19. London Plan Policy 7.10A establishes that development in WHSs and their settings, including any BZs, should conserve, promote, make sustainable use of and enhance their authenticity, integrity and significance and Outstanding Universal Value (OUV). It notes that the Mayor has published SPG on London's WHSs – Guidance on Settings to help relevant stakeholders define the setting of WHSs. Policy 7.10B for planning decisions sets out that development should not cause adverse impacts on WHSs or their settings, it should not compromise a viewer's ability to appreciate its OUV, integrity, authenticity or significance. When considering planning applications, appropriate weight should be given to implementing the provisions of the WHS Management Plan (MPlan).
20. Housing requirements in general are covered in London Plan Policies 3.3-3.5. Affordable housing (AH) is covered in London Plan Policies 3.8-3.13 which define

¹⁹ CD B18

²⁰ CD B4

the term, set targets, and expect the maximum reasonable amount of affordable housing to be sought when negotiating on individual schemes while acknowledging that negotiations should take account of development viability.

Hounslow Local Plan (HLP)

21. HLP Policy CC1 recognises the context and varied character of the borough's places and seeks to ensure that all new development conserves and takes opportunities to enhance their special qualities and heritage. Policy CC2 aims to retain, promote and support high quality urban design and architecture to create attractive, distinctive, and liveable places.
22. To contribute to regeneration and growth, HLP Policy CC3 supports tall buildings of high quality in identified locations which accord with the principles of sustainable development. At (c) this supports a limited number of tall buildings in Brentford town centre, ensuring they do not have a significant adverse impact on the setting of, or views from heritage assets including the Kew Gardens WHS, and that they respect and respond to special townscape and heritage value. It sets criteria including that tall buildings should be of the highest architectural design and standards; and take opportunities to enhance the setting of surrounding heritage assets, the overall skyline and views. Criterion (f) does not allow existing tall buildings which are in inappropriate locations to be a justification for new ones; (l) expects tall proposals to be designed to give full consideration to its form, massing and silhouette, including any cumulative impacts, and the potential impact of this on the immediate and wider context.
23. Heritage is dealt with in Policy CC4 which expects development proposals to conserve and take opportunities to enhance any heritage asset and its setting, in a manner appropriate to its significance, and, where less than substantial harm will result to the significance of a designated heritage asset, that is to be balanced against the public benefits of the proposal. It requires developments to conserve and enhance CAs and the OUV of Kew Gardens WHS its BZ and its setting, including views to and from the site.
24. HLP Policy SC1 aims to maximise housing supply consistent with the principles of sustainable development. Policy SC2 aims to maximise the provision of affordable mixed tenure housing on development sites and sets a strategic target that 40% of additional housing delivered across the borough between 2015 and 2030 should be affordable. HLP Policy SC3 seeks to address housing need through a mix of housing sizes and types while Policy SC4 balances the need to make efficient use of land against the necessity for high quality design and accessibility.
25. Policy IMP2 sets out the approach to delivering site allocations so as to contribute towards sustainable growth and supporting infrastructure. The site allocations in the Local Plan are said to be the key delivery mechanism for achieving the identified housing, employment, retail and infrastructure needs set out in the Local Plan. The appeal site is allocated as Site 11 Brentford – Albany Riverside, anticipated to deliver a mixed-use development on a floorspace ratio of 50:50 residential to non-residential, reflecting the need to re-provide the strategically important Arts Centre. Site allocation 15 – Brentford Police Station, is identified for a mixed-use scheme comprising education, residential and retail.

26. Policy TC2 actively promotes the relocation of Waterman's Arts Centre into Brentford town centre stating that a town centre location would be more suitable.

Statutory Duty

27. Section 66 of the Planning (Listed Buildings and CAs) Act 1990 places a duty on the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to 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. The Courts have found that considerable importance and weight should be given to the desirability of preserving the setting of listed buildings.

National Planning Policy Framework (the Framework)

28. Section 16 of the Framework deals with heritage matters. In interpreting policy, the Judgment in Bedford²¹ established that substantial harm (as considered at Para. 195 of the Framework) requires that: very much if not all of the significance of the asset was drained away so that 'one was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced'.

Planning Practice Guidance (PPG)

29. PPG refers, amongst other things, to protecting a WHS and its setting from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect and notes that relevant policies in MPlans need to be taken into account in determining relevant planning applications²².

Supplementary Planning Guidance (SPG)

30. The Mayor's London's World Heritage Sites – Guidance on Settings SPG (2012) (WHS SPG)²³ advises that: the setting of a WHS is recognised as fundamentally contributing to the appreciation of a WHS's OUV and changes to it can impact greatly, both adversely and beneficially, on the ability to appreciate its OUV²⁴. The SPG also highlights the importance of cumulative impacts and that there may be a tipping-point²⁵. It adds that: The magnitude of impact on an attribute of OUV or on other heritage assets is a function of the significance of the attribute of OUV or other heritage asset and the scale of change. Attributes of OUV of WHSs have a very high significance value, therefore even minor changes can have a significant effect and their impacts will require close scrutiny²⁶.

Other Documents

31. Historic England (HE) has published extensive guidance on the historic environment including Managing Significance in Decision-Taking in the Historic Environment²⁷ and Good Practice Advice in Planning (GPA) Note 3 on The Setting

²¹ CD A22(c) - Bedford Borough Council v SoS [2013] EWHC 2847 (admin)

²² CD A24, PPG Refs: 18a-032-20190723 & 18a-034-20190723

²³ CD B5

²⁴ CD B5, para. 1.3

²⁵ CD B5, para. 5.31

²⁶ CD B5, para. 5.34

²⁷ CD A7

- of Heritage Assets²⁸. The latter states when assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change and, under Cumulative change, that where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset.
32. HE's Advice Note (AN) 4: Tall Buildings²⁹ says: Each building will need to be considered on its merits, and its cumulative impact assessed³⁰, and that careful assessment of any cumulative impacts in relation to other existing tall buildings and concurrent proposals will also be needed. The existence of a built or permitted tall building does not of itself justify a cluster or additions to a cluster³¹. It reiterates the need for a clear and convincing justification for any harm and adds: This may involve the examination of alternative designs or schemes that may be more sustainable because they can deliver public benefits alongside the positive improvement in the local environment; and if a tall building is harmful to the historic environment, then without a careful examination of the worth of any public benefits that the proposed tall building is said to deliver and of the alternative means of delivering them, the planning authority is unlikely to find clear and convincing justification for the cumulative harm³².
33. The RBGK CA was designated in 1991. Its appraisal³³ has been largely superseded by the WHS designation. The Kew Gardens WHS MPlan (2020) (MPlan) is recently adopted³⁴. As set out in the PPG (above) it should be taken into account in this decision. It expands on the contribution setting makes to the OUV of the WHS³⁵ and adds that the use of trees as screening cannot be relied upon in the long term to protect against inappropriate external development³⁶.
34. Kew Green CA was designated in 1969. Its appraisal³⁷ notes that this was due to its character as an historic open space, the associated high quality of mostly C18th development and its superior riverside environment. The Green constitutes a fine example of an historic Green and is surrounded by large 18th and 19th century houses, many of which are listed.
35. The Kew Gardens Statement of OUV (SOUV)³⁸ notes that the 44 listed buildings are monuments 'of the past' and reflect the stylistic expressions of various periods. They retain their authenticity in terms of design, materials and functions. Of the attributes of Kew Gardens WHS's OUV, the two that would be

²⁸ CD A5

²⁹ CD A6

³⁰ CD A6, para. 3.8

³¹ CD A6, para. 4.6

³² CD A6, para. 5.5

³³ CD B13

³⁴ CD A25

³⁵ Section 3.3

³⁶ Section 9.3.2

³⁷ CD B10

³⁸ CD A8

affected by the proposal are: the rich and diverse historic cultural landscape providing a palimpsest of landscape design; and the iconic architectural legacy³⁹.

36. The International Council on Monuments and Sites (ICOMOS) undertook a technical review of the appeal proposal, concluding that the present character of the Thames is of low buildings of 2/3 storeys on the north bank, screened by trees, mainly willows, on the aits (islands). The apartment towers proposed would overtop these trees by several storeys. The towers would be located nearly opposite Kew Palace, and would be visible from there, its garden and, from further back, a wider area of the World Heritage property. Although the proposed development would not be located on land within the strict limits of the buffer zone, the adverse visual impact on the World Heritage property and its riverine setting would nevertheless be considerable in terms of how it supports OUV. The proposed design of the towers would clash in style and materials with other buildings inside and outside the World Heritage property and would be incompatible with the character of the landscape gardens, and thus be an eyesore, negating Criterion (iv). ICOMOS considers that the current development cannot be supported.

Emerging Policy

37. The Intend to Publish London Plan (December 2019) (IPLP)⁴⁰ is delayed but is at an advanced stage, having been considered at an Examination in Public (EiP) and subject to a Panel report. That it is a material consideration of some weight. With the SoS's most recent letter, he has set out Directions for certain policies⁴¹. It follows that other policies, which include heritage policies, are unlikely to be altered.
38. Of particular relevance, IPLP Policy D9, for Tall Buildings, reads at C1)d) that: ... Proposals resulting in harm will require clear and convincing justification demonstrating that alternatives have been explored...⁴². Policy D9C4) includes the importance of considering cumulative impacts.
39. IPLP Policy H4 sets out specific measures to achieve its strategic target of 50% of all new homes delivered across London to be genuinely affordable. IPLP Policy HC1C expects development to conserve the significance of heritage assets and their settings, including the active management of the cumulative impacts of incremental change. Several policies support the principle of building a strong, competitive economy, notably Policy GG5, and of making the best use of land Policy GG2. None of these policies is subject to the Direction.
40. Policy HC2B of the IPLP expects development proposals in WHSs and their settings, including any BZs, should conserve, promote and enhance their OUV, including the authenticity, integrity and significance of their attributes, and support their management and protection. In particular, they should not compromise the ability to appreciate their OUV, or the authenticity and integrity of their attributes. Policy HC2D adds that when considering planning applications,

³⁹ CD A25, P.24

⁴⁰ CD B16

⁴¹ CD B20

⁴² CD B16, p150

appropriate weight should be given to implementing the provisions of the WHS MPlan.

41. The Council has recently consulted on emerging policy in the West of Borough Local Plan, the Great West Corridor Local Plan and Hounslow Site Allocations. The appeal site remains amongst the emerging site allocations, as site 110 – Albany Riverside but as a residential allocation for a minimum of 150 dwellings. These documents are at a relatively early stage of preparation and are yet to be examined by the Secretary of State. The applicant and the Council agree that they currently attract only limited weight⁴³.

Planning History

42. Prior approval was obtained for a change of use of the Max Factor building from B1a office to C3 residential use (22 units) on 24 June 2014 (reference 00607/M/PA1) and on 6 June 2017 (00607/M/PA2).
43. There is no recent planning history for the Waterman's Arts Centre that is of relevance to the current application.

The Proposals

44. The application for full planning permission proposes the redevelopment of the site to provide 193 flats with 272sqm (GIA) retail (A1, A3 and A4) space at ground floor alongside new landscaping, including provision of a new riverside walkway.
45. The development would be arranged as five blocks with a maximum height of eight storeys over a basement/lower ground floor level. The five blocks would be set back from the High Street to allow for additional landscaping and the widening of the existing footpath along the frontage of the site. They would be positioned in a staggered arrangement such that some blocks step forward of others to create a varied building line which is reflected on the riverside frontage. The two end blocks would be seven storeys in height on the High Street frontage with the three blocks in the middle being eight storeys. From the river these would appear as eight and nine storey buildings given the change in levels across the site from the High Street to the river frontage.
46. Each of the five blocks would have its own entrance and core fronting onto the High Street. At basement/lower ground floor level would be the car park with cycle and refuse/recycling stores and other plant with the retail space which would front onto the river and Waterman's Park, as well as private landscaped gardens for residents which would be raised above the new public riverside walk.

Agreed Matters

Common ground between the applicant and the Council⁴⁴

47. The ES is compliant with the requirements of the Regulations. Appropriate mitigation measures are recommended in the draft conditions where significantly adverse effects have been identified in the ES.

⁴³ CF F2, para.7.2

⁴⁴ CD F2, F6 and F15

48. The site is suitable and allocated for mixed-use redevelopment.
49. The principle of new residential development at the site is entirely appropriate and accords with the Local Plan Policy SC1 (Housing Growth), the Site Allocation and London Plan policies 3.3 (Increasing London's Housing Supply) and 3.4 (Optimising Housing Potential).
50. The redevelopment of this brownfield site in a highly sustainable location would deliver much needed housing, whilst simultaneously supporting sustainable intensification and enhanced vibrancy and vitality of this District Centre and the wider regeneration objectives for the area.
51. Local Plan policy TC2 (Ensuring the Future Viability of Town Centres) actively promotes the relocation of Waterman's Arts Centre into Brentford town centre stating that a town centre location would be more suitable.
52. The Section 106 obligations (s.106) for the BPS Site secure the delivery of the Arts Centre at the BPS Site. The BPS Site is not within the Brentford Town Centre boundary but is immediately adjacent and is located on the main north-south connection between Brentford station and the High Street. Consequently, it has an excellent public transport accessibility level and is located close to a range of transport modes as well as other services. As such, it is an appropriate location for a new culture and leisure facility, in accordance with Policy CI4 and policy CI1 (Providing and Protecting Community Facilities).
53. The new, purpose-built facility would include a theatre, cinema, café, bar, restaurant and studio / gallery space and provide a 25% uplift in floorspace compared to the existing Waterman's Arts Centre. This would provide the potential for the arts centre to operate more efficiently and thereby be more financially self-sufficient in the event that Council funding were to be withdrawn.
54. There is a significant housing need across London. Local Plan Policy SC1 requires that a minimum of 12,330 additional dwellings are completed during the period 2015 to 2030. This equates to 822 dwellings per annum (dpa); and the draft New London Plan target for Hounslow was 2,182 dpa, though the Inspector's report following examination of the plan recommends this be lowered to 1,782 dpa and the Intend to Publish version adopts this figure.
55. The London Plan Panel Report did not disagree with the Mayor's identified housing need of 66,000 homes a year. It recommends a reduced figure of 52,000 homes per year only on the basis of overly optimistic reliance on small sites. The Intend to Publish London Plan (4.1.8) also states that the above target is a minimum baseline.
56. The Council has a deliverable five-year housing land supply that will address the new requirement of the Intend to Publish London Plan (as well as the current Hounslow Local Plan).
57. No affordable housing would be provided at the Site under the Proposals. However, the proposals are linked to the re-development of the former Brentford Police Station site at Half Acre (BPS Site) by the s.106 in Annex C. This would allow the higher sales values achievable at the site to cross-subsidise the delivery of 60 affordable homes at the BPS Site (in line with the Site 11 allocation policy).

58. The s.106 would secure 20% of the accommodation as affordable housing across the two sites. BPS Surveyors conducted a rigorous independent review of the viability assessment submitted by the applicant on behalf of the Council and the GLA and found that this is the maximum reasonable level of affordable housing provision. This exercise has been updated and BPS continue to agree that the affordable housing provision is above the maximum reasonable amount on a current day basis.
59. The s.106 includes an early viability review (intended to incentivise swift housing delivery) and late viability review mechanisms (in order to upwardly reappraise the maximum level of affordable housing based on actual costs and values). This is in accordance with the Council's Local Plan Policy SC2 and the Mayor's Affordable Housing and Viability SPG.
60. When assessed with the proposals for the BPS Site, in light of the effect of the s.106 which links the two schemes, the proposals would make a significant contribution towards affordable housing delivery in the borough that would continue to be the maximum reasonable level.
61. The proposal is of high design quality and: would allow for views through the site; provide good natural light and a multi-aspect outlook for all future residents; its multi-faceted design would help to break up the overall mass and add interest; and the new publicly accessible riverside walk represents a significant improvement beyond the current, convoluted and unpleasant route along the river. The proposals represent an improvement from the existing, unimposing and uninspiring building that currently marks this approach to Brentford town centre
62. It is recognised that in order to achieve the level of accommodation required to generate the necessary revenue to deliver the new arts centre the height and overall massing of the building would be required to be greater than its general surroundings.
63. A contemporary palette of materials is proposed for the façade treatment of the building which would provide a high-quality finish that would: help to accentuate the different blocks and blend with the setting of Kew Palace on the opposing side of the river; include detailing that helps provide interest and mark important elements of the building; work to break up the scale and mass of the new building but also gives a sense of identity and legibility; ensure consistency of appearance and uniformity that responds to the local vernacular.
64. The proposed landscaping would help to define the spaces to the front of the buildings, create routes to entrances and help to delineate between public and private spaces through different surface treatments and would help to soften the appearance of the development, in particular when viewed from the public footpath along the riverside.
65. The applicant's THVIA considered the impact of the proposals on the heritage significance of heritage assets in the area within the vicinity of the site from agreed viewpoints. All of the key views were considered and those selected were considered to be the most sensitive.

66. The proposals would not harm the setting and / or significance of the Kew Bridge Conservation Area, the Grand Union Canal & Boston Manor Conservation Area, the St Paul's Conservation Area or other listed buildings.
67. The Brentford Former Police Station detracts from the Royal Botanic Gardens Kew World Heritage Site. It is a negative element of the setting of Kew Palace, St Pauls CA, The Butts CA, Grand Union Canal and Boston Manor CA, Kew Gardens CA and Kew Green CA by virtue of its overtly poor architectural quality. In particular, it is a low quality 'podium and tower building' which has a poor relationship to the surrounding streets. This is because of its reductive (functional) panel construction, the blank north and south elevations, its generic a-contextual form, the lack of clear street frontage and the poorly resolved 'left over' space surrounding the building. These issues are exacerbated by the poor condition of the building and that the building is vacant and currently boarded up.
68. The removal of the Brentford Former Police Station would be a heritage benefit to the Royal Botanic Gardens Kew World Heritage Site, the setting of Kew Palace, St Pauls CA, The Butts CA, Grand Union Canal and Boston Manor CA, Kew Gardens CA and Kew Green CA.
69. The appeal proposal would make a neutral contribution to the significance of the St Paul's Brentford CA, Grand Union CA and the Kew Bridge CA as part of their setting.
70. The redevelopment proposals at the BPS site would not cause harm to any heritage assets. There is a heritage benefit from the associated BPS Site scheme (LPA ref: 00540/A/P6) where "...the proposal would overall enhance the conservation area, introducing a high quality new building in place of an existing building that represents an intrusion into the character and appearance of the St Paul's Conservation Area".
71. The Scheme's proposed density is 306 units/hectare (or 870 habitable rooms/hectare). The Site falls between the 'Urban' and 'Central' area types under London Plan Policy 3.4 (which seeks to ensure that new housing developments optimise the use of land relative to the density matrix). The 'Urban' range is considered to be that most appropriate for the site. The site's public transport accessibility is PTAL3. The recommended density of 45-170 homes/hectare (or 200-450 habitable rooms per hectare) is therefore applicable using the Policy 3.4 matrix.
72. The draft New London Plan removes the density matrix but (DRLP Policy D6) seeks to optimise density and states that residential development that does not make the best use of the site should be refused. The scheme density is within the optimal range and therefore acceptable on the basis of either the existing or the emerging London Plan; in accordance with Local Plan Policy SC4 (Scale and Design of New Housing Development) given the context and character of the site and its setting; and accords with the optimal use of the site for the purposes of the Local Plan and para.123 of the Framework.
73. The housing mix would help contribute towards an identified borough housing shortage and result in a balanced, sustainable community, which would be in keeping with its context where there is already a range of accommodation in the area.

74. All of the units either meet or exceed the minimum space standards prescribed in the London Plan and the Local Plan.
75. A satisfactory level of daylight and sunlight would generally be received by a significant majority of the new dwellings and would be broadly compliant with the BRE guidance taking into account the need to provide private amenity space, the layout and form of the development. The development would not unacceptably harm neighbours' living conditions.
76. The scheme has been designed to ensure residents benefit from an appropriate outlook, in particular through the siting and layout of the individual blocks and their interrelationship. There is an adequate separation distance between the blocks. The Housing SPG and DRLP requirements are all met in this regard.
77. The site is close to the town centre and to Waterman's Park, the proposal would deliver high quality spaces and there would be an overprovision of private amenity space. The provision of communal amenity space is therefore acceptable for Policy SC5 purposes.
78. The details for acoustic protection for internal areas could be secured by condition to ensure that the relevant standards are achieved at the detailed design/construction stage.
79. The proposals comply with the London Plan and Local Plan Policy CC2.
80. The principle of the waste and recycling strategy for the development is acceptable and in accordance with the relevant Development Plan policies. Compliance in this regard can be secured by condition.
81. Whilst there would be a noticeable impact in terms of daylight and sunlight at a limited number of neighbouring properties, given the urban context of this site and the scale of surrounding development, the impact is not considered to be excessive and would not be unusual for the redevelopment of a site of this scale. In addition, the impact in terms of overshadowing of adjacent amenity areas is negligible. The proposals are therefore broadly in accordance with Local Plan Policy CC2 and the impacts are not considered unreasonable.
82. The proposals would not create undue overlooking of existing adjacent habitable rooms at Lighterage Court/Kew Reach. In any event, any such affects could be mitigated through an alternative fenestration design on this flank which would not affect the general appearance and cohesion of the development as a whole.
83. The proposals are not anticipated to have a significant impact on neighbouring residents in terms of noise and disturbance and the proposals is in accordance with Local Plan Policy EQ5 (Noise).
84. The number of vehicle movements associated with the site would be likely to fall given the reduction in the size of the car park, whilst the number of visitors would be likely to reduce. Comings and goings to/from the site would be of a more residential nature, as opposed to the current situation with the arts centre attracting more visitors at evenings and weekends. The café use would be located at the opposing end of the site to the neighbouring dwellings and, as such, would not impact upon the amenity of residents.

85. The improvements to the riverside walkway would be likely to result in increased footfall along the river frontage, and thereby around the adjacent developments, but this is considered to be a significant benefit of the scheme as it would be likely to increase natural surveillance.
86. The site has a Public Transport Accessibility Level (PTAL) of 3. This indicates that a moderate provision of public transport is available and reflect its proximity to a number of high frequency bus routes with short connections to a wider range of public transport nodes.
87. The proposals are acceptable in highways safety terms and would not prejudice the safety of pedestrians or other road users. Nor would it result in a severe impact on the local road network subject to appropriate conditions and planning obligations. There is no predicted increase in peak hour traffic movements over the existing use. Consequently, it is not considered that the proposal would result in any increases in traffic in the vicinity of the site.
88. The existing two-way vehicular access would be relocated to the west of its current position. Pedestrian access would be separate to the vehicular access and each block would have a main entrance fronting the High Street. The access arrangements are considered acceptable. Appropriate delivery and servicing arrangements would be secured by the s.106.
89. There would be 44 parking spaces provided in the proposed basement car park. This equates to 0.23 spaces per dwelling and complies with London Plan parking standards. Ten of these spaces would be designated as Blue Badge parking, which is deemed adequate. The parking impact is considered to be acceptable and would not have a significant impact on the availability of on-street car parking in the surrounding area or result in significant parking stress for existing residents.
90. A total of 320 cycle parking spaces are to be provided in the basement car park and a further 9 short-stay cycle stands. This accords with London Plan parking standards and is therefore considered to be acceptable.
91. Compliant provision of Electric Vehicle Charging Points would be secured by condition and full details of the traffic light access to the car park would be set out in the Car Parking MPlan. There are two car club parking bays in close proximity to the site and the s.106 includes a commitment to provide free car club membership for each property. These measures combined would help promote sustainable modes of transport. A travel plan would also be secured by the s.106.
92. The proposals include provision of a new riverside walk. This would link with the existing Thames Path to the east and west of the site and thereby provide a continuous, level route from Brentford to Kew Bridge. The path has been generously designed, being 2.5m wide at its narrowest point to allow a wide range of users access to the riverside. Public access to the riverside walkway would be secured in perpetuity by the s.106.
93. The Council's sustainability consultants (Low Carbon Europe) have reviewed the submitted sustainability information and have confirmed that the strategy is acceptable and represents the best approach to CO2 emission reductions. It is

- therefore considered that the proposed energy strategy would be acceptable and would comply with the policies of the London Plan and adopted Local Plan.
94. Any potential archaeological impact of the proposals could be mitigated through the implementation of an appropriate mitigation strategy as part of an archaeological condition. Consequently, it is considered that with this safeguarding condition, the proposal would not have a detrimental impact on archaeology and would be in accordance with the Local Plan, London Plan and the Framework.
95. The southern part of the site is located in Flood Zone 3 (High Probability) whilst the central/northern part of the site is located in Flood Zone 1 (Low Probability). The area is defended by the River Thames Tidal Defences which are maintained to the statutory defence level of 5.94 metres AOD. The residential development platform would be set at a level of 7 metres AOD, which is significantly above all reference flood levels and above the recommended future defence levels to 2100. The majority of the site is at 'Very Low' risk of flooding from surface water sources. Subject to the imposition of conditions to secure the detailed design of the proposed drainage strategy and a suitable maintenance plan, the proposals would comply with the relevant Local Plan Policy EQ3 and London Plan policies Policy 5.12 regarding flooding and surface water management.
96. The proposals comply with policy 5.21 (Contaminated Land) of the London Plan and policy EQ8 (Contamination) of the Local Plan subject to the imposition of an appropriate condition.
97. It is considered that the proposed development would be acceptable in respect of potential impacts on air quality and would be in broad compliance with the Framework, the London Plan and local policies, subject to safeguarding conditions.
98. There would be a reduction in vehicle movements at the site, as a result of the reduced car parking on site, and any additional noise from traffic associated with the development is likely to be negligible given the existing background noise environment. Any potential for additional noise sources from external plant associated with the development could be addressed by conditions.
99. The site supports little or no resources of ecological value and, subject to the imposition of appropriate safeguarding conditions, it is considered that there would be no impact on designated areas in the vicinity of the site.
100. The proposals include the removal of four trees (one Category C and three Category U) to facilitate the development. Replacement trees would be provided to mitigate the loss of these trees.
101. Through the s.106, the delivery of the proposal would achieve the removal of the vacant and increasingly derelict Brentford Police Station and its replacement with a new building which would make a significant contribution to the wider regeneration of Brentford Town Centre.
102. The following benefits of the Proposals taken as a whole deserve very significant weight: the delivery of a new, purpose built and bespoke Arts Centre adjacent to the town centre, tailored to the requirements and the needs of the current Arts Centre operator and close to public transport links. The new Arts Centre would be slightly larger in area terms and would be modern and efficient,

as should be expected of a contemporary Arts Centre. It would be located along a highly visible route that would further add to and strengthen Brentford's offer; redevelopment of the site and re-use of previously developed land that is presently underutilised and has buildings of low townscape value, with the creation of better quality buildings and landscaping (including the creation of new public realm and enhanced Thames Path with disabled access); delivery of new housing in the borough, including the affordable housing at the related Brentford Police Station site subsidised by the scheme.

103. The scheme is in accordance with the adopted development plan when viewed as a whole.

Common ground between the applicant, the Council and Historic England⁴⁵

104. The application site itself does not contain any designated or formally identified non-designated heritage assets, it does not contain any statutory listed buildings and does not fall within the designated boundaries of a conservation area. The site abuts, on the southern site boundary, the River Thames and abuts but falls outside the buffer zone of Royal Botanic Gardens, Kew WHS (RBG Kew WHS). The site falls within the setting of (and views to and from) a number of heritage assets including the WHS, listed buildings, conservation areas and a registered park and garden of historic interest.
105. The development proposal at the application site, has the potential to affect the understanding and appreciation of the significance of each of the following designated heritage assets as a result of change to the existing character of the site as part of their settings: Royal Botanic Gardens, Kew – A World Heritage Site (RBGK WHS), conservation area and grade I listed Registered Park and Garden; Kew Palace – a grade I listed building and scheduled monument; Kew Palace Flats – a grade I listed building; and Kew Green Conservation Area.
106. Kew Cottages are grade II listed buildings forming part of a group including Kew Palace and Kew Palace Flats, however, there is no further impact to the setting of these assets beyond those already identified in relation to other assets.
107. The direct visual impacts on the other heritage assets set out in the 2017 THVIA submitted by the applicant in support of the planning application are not disputed and are not listed here. This statement does not preclude consideration of cumulative setting impacts on the Gardens as a whole.
108. The key views in relation to the RBG Kew WHS are those of and from the Grade I listed Kew Palace (being Views 16-21 within the submitted THVIA (August 2017)). The key views in relation to the visual impact of the application site on the RBG Kew WHS Buffer Zone and Kew Green Conservation Area are Views 11-15 within the submitted THVIA.
109. The SoS is required to give considerable importance and weight to the desirability of preserving the special interest and settings of listed buildings or any features of special architectural or historic interest which they possess (under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990). Preservation means not harming the interest in the building, as opposed to keeping it utterly unchanged. Case law has established that if the policy

⁴⁵ CD F4

approach set out in the Framework concerning the consideration of heritage impacts is followed then the statutory duty will have been fulfilled.

110. World Heritage Sites are of the highest significance and, as set out in Paragraph 193 of the Framework, “[...great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)”, that is, the conservation of their significance, that being their OUV, and the setting of the WHS.
111. The Framework states at Paragraph 194 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.
112. There is no statutory duty relating to the setting of conservation areas, therefore section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act is not engaged. There is no statutory duty relating to the special historic interest or setting of registered parks and gardens. However, paragraph 194 of the Framework is engaged in relation to development within the setting of a conservation area, or within the setting of a registered park or garden.
113. The submitted 2017 ES, which includes the THVIA (and its view and assessment methodologies) is adequate for the determination of the application. The parties agree that the THVIA (August 2017) met and continues to meet the information requirement of the ES regulations.

Common ground between the applicant, the Council, HRP and RBGK⁴⁶

114. The application site does not contain any designated or formally identified non-designated heritage assets; does not contain any statutory listed buildings and does not fall within the designated boundaries of a conservation area; abuts, on the southern site boundary, the River Thames and abuts but falls outside the buffer zone of Royal Botanic Gardens, Kew WHS (RBG Kew WHS); falls within the setting of (and views to and from) the RBG Kew WHS, a number of listed buildings, conservation areas and a registered park and garden of historic interest.
115. The development proposals have the potential to affect the significance of the following designated heritage assets arising from change to the existing character of the site as part of their settings: Royal Botanic Gardens, Kew – A World Heritage Site (RBGK WHS), conservation area and grade I listed Registered Park and Garden; Kew Palace – a grade I listed building and scheduled monument; Kew Palace Flats – a grade I listed building; Kew Cottages – a grade II listed building; and Kew Green Conservation Area.
116. The key views in relation to the visual impact of the proposed development on the RBG Kew WHS are those of and from the Grade I listed Kew Palace which are illustrated by, but not limited to, Views 16-21 within the submitted THVIA (August 2017), which include general views from the Great Lawn area in the WHS.

⁴⁶ CD F3

117. The key views in relation to the visual impact of the proposed development on the RBG Kew WHS Buffer Zone and Kew Green Conservation Area are illustrated by, but not limited to, Views 11-15 within the submitted THVIA.
118. The SoS is required to give considerable importance and weight to the desirability of preserving the special interest and settings of listed buildings or any features of special architectural or historic interest which they possess (under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990). Preservation means not harming the interest in the building, as opposed to keeping it utterly unchanged. Case law has established that the statutory duty can have been fulfilled if the approach set out in the Framework and development plan policies concerning the consideration of heritage impacts has been followed.
119. WHS are designated heritage assets of the highest significance and, as set out in Paragraph 193 of the Framework, “[...great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)”, including the contribution made to their significance, their OUV, by their setting, and our ability to appreciate that OUV.
120. The Framework states at Paragraph 194 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”.
121. There is no statutory duty relating to the special historic interest or setting of registered historic parks and gardens within the Planning (Listed Buildings and Conservation Areas) Act 1990). However, as a designated heritage asset, Framework Paragraphs 194-196 are engaged in relation to development in, or in the setting of, a registered park or garden.
122. There is no statutory duty relating to the setting of conservation areas within the Planning (Listed Buildings and Conservation Areas) Act 1990) and, therefore section 72(1) of the said Act is not engaged. However, adverse or beneficial impacts upon conservation areas, including from development outside those areas, are material considerations in the decision-making process.
123. The parties agree that the new World Heritage Site MPlan is a material consideration.
124. The development proposals would not cause substantial harm to the significance of designated heritage assets, including their setting, for the purposes of the Framework.
125. Public benefits will accrue from the application scheme.
126. The existing building forming Waterman’s Arts Centre and Max Factor House on the site is of poor quality.
127. The submitted 2017 ES, which includes the THVIA (and its view and assessment methodologies) is adequate for the determination of the application, meet the information requirements of the ES regulations and the ES is agreed to be legally compliant.
128. The BPS scheme does not harm any heritage assets.

The Case for the Applicant

The case for the Applicant, largely as expressed in closing submissions

129. The proposal before the SoS provides a unique opportunity to deliver a very substantial part of the sustainable spatial strategy for the London Borough of Hounslow. It unlocks the significant potential of two of the Borough's strategic allocations, delivers the strengthening and extending of the role of a failing town centre and provides a strategically important and much enhanced cultural hub and home for the area's greatest cultural strategic asset.
130. It repairs and regenerates a gateway to Brentford in line with an allocation which clearly calls for comprehensive and transformative change at a location which at present offers little to the public in terms of townscape or historical significance. The proposed development would help to complete a missing link in the nationally important Thames Path. It is difficult to conceive of a more comprehensive or weighty package of delivery on the strategic aims and objectives of the development plan.
131. In addition to that Borough wide vehicle of development plan delivery must be added the very substantial London-wide addition of the provision of nearly 300 new homes (including more than the reasonable maximum provision of affordable housing) an addition which, by itself and alone, should attract very substantial weight.
132. The weight to be given to the package of public benefits in this case means that there is a clear and convincing case for the grant of planning permission.
133. The three years since the application was lodged have only seen the case for delivery strengthen significantly. Brentford continues to fail to serve its district centre function, a sustainability harm of the first order. The Watermans Art Centre has been left to decay making it even less usable and two strategic regeneration sites remain underused and/or vacant. Furthermore, the Covid pandemic creates a pressing need for economic, cultural and regenerative change even more compelling.
134. The London Plan recognises the importance of a strong and sustainable hierarchy of town centres to the proper planning of the capital. They are identified as the sustainable core locations for activity and cultural vitality and viability, they are the hubs of connectivity and mixed use which are to be developed and enhanced.⁴⁷ The London Plan sets out a hierarchy of town centres to be sustained and enhanced. Brentford is specifically identified as having the need for, and physical and public transport capacity to accommodate, growth.
135. In the Local Plan, the first objective is Supporting our Town Centres⁴⁸. One of the main elements of such support is identified as the creation of new cultural and leisure facilities. To this end, the spatial strategy key diagram identifies Brentford Town Centre (as well as the application site) as a location to which policies that encourage significant growth investment and regeneration apply.

⁴⁷ London Plan Policy 2.15 CD B18

⁴⁸ P30, CD B4

136. At present the HLP accurately identifies Brentford as struggling to fulfil its District Centre role and requiring regeneration. Policy TC4 is clear that the cultural and entertainment offer is limited and dispersed with its greatest asset, Watermans Arts Centre, being located outside the town centre boundary. Local Plan Policies TC1 and TC2 therefore seek to ensure that the vitality and viability of Brentford Town Centre is supported by promoting the development of additional retail, service business and cultural and leisure uses that would enhance its function.
137. Policy IMP2 and its text make it clear that the site allocations contained in the Local Plan are the key delivery mechanism of the Plan. We are told that *"It is therefore crucial to the delivery of sustainable development throughout the plan period that developments deliver the allocated uses"*. The plan also provides that support in principle will be given to proposals which accord with the identified site allocation and which have regard to the context, constraints and other provisions of the respective site allocations.
138. Strategic Allocation Site 11 identifies the Watermans Arts Centre as Brentford's greatest asset and its potential contribution as being of strategic importance. It allocates the underused application site for residential development and re-provision of the Arts Centre either on-site or within Brentford Town Centre. The allocation and the HLP read as a whole make it clear that *"a town centre location would be more suitable and would leave this site available for residential...while supporting the regeneration of Brentford Town Centre."* The allocation actively requires transformative change through, among other things, the optimisation of delivery of residential uses. This is not a site which the planning system has identified as one appropriate for or so sensitive as to require a maintenance of the status quo.
139. The development plan strategy therefore identifies a need to enhance Brentford and, in particular, to drive the relocation of its greatest asset in support of the town centre first strategy if possible. The application site and its development provide the only realistic means of achieving that aim and the HLP and the allocation recognises that fact. In addition, the HLP recognises the independent and freestanding need to regenerate the application site itself. The site's appearance is poor, unwelcoming and fails to make the most of its Thameside location.
140. The BPS site is also a strategic allocation site. Were it not for its previous institutional police use it would likely have been included within the defined town centre. Its allocation for retail and residential uses reflects that fact, as does its relationship with the other elements of the town centre, such as the main railway station and the other facilities. It is a large underused, vacant site in clear need of regeneration. It was earmarked in part for an educational use but that need has now been met and the site is no longer needed for such uses. This is made clear in the Report to Committee on the BPS site⁴⁹.
141. It is accurately described as an ideal site for a new cultural hub which would support, promote and enhance the operation of Brentford Town Centre. The Theatres Trust, in particular, recognise its functional and locational advantages for such a use. Importantly however, the site is not allocated or reserved for

⁴⁹ CD D2

- such a use. There is no such site allocated or safeguarded for a relocation. Moreover, the site is clearly a valuable town centre development site in its own right. It is available as a donor site now only as a result of the present coincidence of control of both sites. There is no guarantee that such a situation would pertain going forward in the event of a refusal of permission in this case. Indeed, in the absence of this permission, the development plan assumes its delivery for other purposes. The site thus offers now, in the words of the Theatres Trust, a once in a generation and truly unique moment of opportunity.
142. The weight to be given to delivery of the strategy for Brentford can only be enhanced by the fact that there is no alternative route to achieving the same confluence of benefits. There are no alternative town centre sites which even come close to being appropriate to house the new arts centre. All of the allocation sites have been considered and ruled out and the Council themselves indicate that there is otherwise no alternative site upon which the provision can be made. Even further weight should now be given to the benefit of the town centre economic activity that would be generated during and in the lead of the economic crises brought about by COVID.
143. The existing Watermans Arts Centre is a valued, busy, worthy and underused resource. It houses many great productions, community projects and initiatives. However, the building is a poor building of its time and is in the wrong place for the most sustainable of strategies. The building's ability to serve its purpose and to be a sustainable home to the Arts Centre had been rapidly declining even as at the date of the allocation which reflects the requirement to do something with this site.
144. There is no future for the existing building. The policy allocation requires relocation of the arts centre to the town centre or at the very least, its re-provision on the existing site as part of an optimised mixed-use development that can pay for it. Allowing the existing building, with its many drawbacks and risks, to remain on the site would be contrary to the provisions of the HLP and its strategy. The site would deteriorate with no guarantee of a lease being renewed, the site and overall area would not be regenerated and the potential to deliver the town centre preference would have been lost.
145. Since the allocation in 2015, the Arts Centre's position has (as anticipated) badly deteriorated. The auditorium and the cinema, two main elements of the income generating facilities at the site, simply cannot be used together. The external balcony is unsafe and has been permanently closed, there are leaks and health and safety issues and no funds to deal with them.
146. The proposed replacement Arts Centre would be a modern, state of the art, turn-key venue in the right location which is to be let by the Council at a guaranteed pepper-corn rent for at least 25 years. It would be capable of serving generations of Hounslow residents (and wider). It is a public benefit by itself, of the highest order and should be given significant weight.
147. If permission is refused, the quality of the existing offer of the Arts Centre would continue to decline. There is a realistic prospect of a landowner simply opting to develop the Max Factor units under the existing prior approval, which given their location would likely be very desirable and very profitable. As a result,

there is a very significant degree of risk as to the future existence of the Arts Centre in anything like its present form⁵⁰.

148. The existing buildings on the site lack architectural good manners, they turn their back on the park and remarkably, in large part, to the River. They provide a hostile and perplexing element of a river path high up and going nowhere. The office building of 2/3 storeys with its multiple dead ends and left-over spaces must qualify as one of Hounslow's worst pieces of design. As a Gateway to Brentford High Street along one of the main out of London arterials, the appearance of the site and its buildings is extremely poor.
149. In contrast, the proposal produces architectural solutions of very high quality. The architect has modulated the nature of the massing and used colour subtly. This ensures that the building would remain wholly subservient to Kew Palace in the very few views where there would be any inter-visibility.
150. Extensive pre-application discussions were undertaken, and a myriad of design iterations and efforts were made to accommodate change at this allocation site in order to balance the delivery of benefits with the nature of impact on historic significance. However, any meaningful loss of volume would render the proposal wholly undeliverable on the agreed financial evidence.
151. Neither HE nor any of the other heritage bodies even begin to consider any systematic assessment of quality of architecture as part of their assessment of impact. Assessments of impact depend to a very large degree on the assessment of the quality of the building being assessed. A poor-quality building in the round is likely to have a different impact from a well-designed building.
152. The local planning authority design officers describe the proposals as very high quality. The Greater London Authority (GLA) design team also praise the high quality placemaking on display and find that the objectives of the London Plan, which require exemplary architecture, are met. The applicant's heritage witness analyses the proposal in depth and also concludes that it is of the highest quality. His evidence on such matters was considered carefully and, on this element, remained completely unchallenged.
153. The proposals would make a valuable contribution to the riverside experience in this area with the creation of a usable and attractive river walk, the creation of new vistas of the Thames from the High Street and a cohesive riverside townscape quarter that would benefit from natural surveillance. The proposal responds to a strategic requirement for all riverine authorities to enhance, upgrade and complete the Thames Path, which is a walking route of national importance. It secures public access to the route in perpetuity. Where there is visibility beyond the aits, the scheme would undoubtedly better reveal elements of Kew Gardens for walkers on this stretch of the Middlesex bank.
154. London is in a housing crisis and should be treated as one housing market. That housing market is completely failing to meet the Objectively Assessed Need (OAN) for housing in the capital by tens of thousands of homes a year. Even authorities which on the face of it have five-year housing land supply (like

⁵⁰ Baker and Horne commented in chief and in answer to Inspector's questions

- Hounslow), are failing to meet the OAN for their area because the HLP targets failed to reflect the assessed need.
155. The SoS has taken the step of intervening in the London Plan to seek to ensure massively increased delivery⁵¹.
156. When a planning system fails to meet the needs of its population for housing, it fails in perhaps its most fundamental duty. Such failures are socially divisive, they separate families (children can't afford to live in the communities in which they grew up), they engender unsustainable travel patterns, produce local labour shortages and unfair markets and more. The ability of a capital city to produce sufficient housing is central. There is an acute housing shortage right across London including those boroughs which claim a five year housing land supply⁵².
157. For these reasons the contribution of these proposals on two allocated sites which are integral parts of the housing land supply should be given substantial weight. The housing crisis is worse for affordable housing. The crises in delivery are more profound and affect the poorest and most vulnerable. As a result, the provision or facilitation of affordable housing provision should be weighed even more heavily in any balance.
158. The weight to the housing benefits provided and the economic activity that comes with that is also enhanced given the present state of the economy and the recession caused by the pandemic.
159. The determinative question in relation to heritage impact in this case is whether there is any heritage harm and, if so, whether it is outweighed by the largely unchallenged public benefits of the proposal. It is at heart a simple exercise of planning judgment applying the principles set down in the Framework.
160. It is important, given the operation of the Framework, that substantial harm is given its proper meaning in all of its contexts. It is settled ground at this Inquiry that the public benefit needed to outweigh any harm will depend upon the nature and extent of the harm. The more significant the harm (if any) the more significant will be the public benefit required, and conversely, the less substantial the harm, the less substantial will be the public benefit needed to outweigh it.
161. In this case all parties accept that substantial harm is not caused and that this is not a case where there is substantial harm or total loss of significance. This must be borne in mind when seeking to characterise the actual impact in the less than substantial harm category.
162. Harm is a continuum. The sub-categories of harm identified in the Framework are substantial harm (or total loss of significance) and less than substantial harm. Both sub-categories are part of the same continuum, but substantial harm gives rise to a separate test. Where less than substantial harm arises, it is necessary to consider where within a wide-ranging spectrum the harm falls.

⁵¹ CD B20

⁵² See Citroen Decision, CD A26

163. The Courts have defined substantial harm in the context of its use in the Framework in the case of Bedford⁵³. It is common ground that the meaning of the words in development plans and the Framework are matters of law and not judgment. This Inquiry is bound by that ruling.
164. It is also accepted in the Bedford case, that part of the judgment which binds us is that when identifying substantial harm "*one was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.*" To put it another way, substantial harm would be caused if "*very much if not all of the significance of the asset was drained away*". This is a deliberately high test which the PPG tells us will not be likely to be reached very often. The PPG and the Court are thus consistent and if it were otherwise then the Court would prevail anyway⁵⁴. Bedford must be applied.
165. In order to understand whether harm alleged is close to, or anywhere close to substantial harm, the Bedford meaning of substantial harm is still the only one that can be used as the relevant benchmark. This is particularly important in cases where a specific allegation seeks, as here, to identify harm higher up the spectrum of less than substantial harm, making it close to or closer to substantial harm. To put it another way, you have to understand how much less than substantial your allegation of harm is to understand where you are on the spectrum of less than substantial harm, especially at the higher end.
166. Further the approach requires a consideration of both the extent of significance which would be drained away by the impact of the proposal and a consideration of how this weighs against the significance of the asset as a whole and what has not been drained away. Otherwise, it would be impossible to judge whether or not very much if not all of the significance has been drained away or close or anywhere close to it. It would be impossible to judge whether you were anywhere towards the entire significance of the asset being vitiated or very much reduced.
167. An assertion that setting is important to an asset does not translate into a proposition that all elements of setting are important nor crucially that all elements of setting are of equal importance. That would be contrary to policy in the Framework which reminds us in relation to WHS in particular that not all elements necessarily contribute to significance. It follows that not all elements (including elements of setting) contribute equally either.
168. Second and critically, it is also inappropriate, applying Bedford, to overstate the potential harm that is truly in scope to be drained from an asset by reference to an impact on part of a setting only. Put simply, none of the assets relevant to a consideration of impact in this case rely on the relevant elements of their setting for much if not all of their significance or anywhere remotely approaching that.
169. One might theoretically be able to construct limited setting impacts which are capable of giving rise to substantial harm or close or anywhere close to such harm. But here in Kew, it cannot be the case that any impact to setting, (even

⁵³ CD A22

⁵⁴ See conclusions in Chiswick Curve, Chapter 12 IR, CD A21

where setting might be important) automatically translates into an impact at the high or upper end of less than substantial harm. This is particularly the case where so much, indeed the vast majority of the relevant assets' significance lies in their intrinsic fabric and surroundings.

170. Of course, if harm is found, then the weight to the harm found should not be reduced just because it affects one part of a large WHS and in assessing the weight to be given to the harm, it is that which is lost which falls to be weighed as part of any balance. But, prior to that exercise, there needs to be a proper and proportionate judgment as to whether there is harm, which sub-category it falls into and, in cases such as this, then a judgment as to how much less than substantial any harm is in the less than substantial category, applying Bedford and having regard to the extent of significance drained away (and by necessary implication retained) by the proposal.
171. It is truly unusual to have a decision which grapples with most of the same issues which are at large in the circumstances of the present case, albeit from a different location and a location with no inter-visibility of impact⁵⁵. In these circumstances, the decision maker is obliged by law to pay careful attention to both the method by which the Citroen decision was made and to the conclusions that were reached in relation to the main controversial issues there. Every case falls to be determined on its own merits but there is a public interest in consistency of decision making and of consistency of approach to similar issues and contexts. It is also the case that as a matter of law decisions of the SoS are potentially important material considerations and the more recent and more relevant they are, the more material they become.
172. On any fair, objective, and balanced approach, if the degree of erosion to significance of the Orangery and the WHS is slight and the impact thus moderate in Citroen, then the position can only conceivably and markedly be less than that in this Great Lawn context in relation to the current application. This is because:
- i) The application proposal is only seen at all from a very limited part of the Great Lawn and only then in the depths of winter. Both these factors were important in the Inspector's conclusions in Citroen: they should be important factors here too. But importantly the visibility of the proposals in summer and in winter are much reduced in comparison to the Citroen building.
 - ii) It is wrong to assert that the Citroen impact was limited to just one viewpoint. Viewpoint 30 was chosen as a representative view. It is clear from a simple examination of view 30 (and from any site visit with view 30 in mind⁵⁶) that the nature and scope of the visibility of the much taller building would, as the Inspector pointed out, be wider than just a single view.
 - iii) The Citroen building is very tall and rises directly above the roofscape of the Orangery: a point which was highlighted as particularly unfortunate by HE at the time of the last Inquiry. Six or Seven storeys of the tall building which itself was found to be not of high architectural quality rise immediately above the Palladian and ordered façade.

⁵⁵ Citroen and the Chiswick Curve

⁵⁶ Tavernor rebuttal, p4

- iv) In contrast, in all views of the proposed development the building sits deliberately well below Kew Palace. It sits considerably below the parapet and roof levels of the Palace and does not challenge its dominance: a dominance in the view which is possibly as robust and sturdy as any in the country as a result of its red brickwork which is regularly and ostentatiously lime washed (in brick red lime from Rose of Jericho) to ensure its presence is maintained.
- v) The proposed building is clearly read where seen at all as subservient to Kew Palace and as part of the Brentford Riverside on the opposite side of the Thames.
- vi) It has been designed with the involvement of the Council's conservation team to be a recessive building in these views. Its tonal qualities and the breaking down of its impacts by careful articulation and faceting would all add to this recessive character in contrast to the red, bold and limewashed Palace. Particular attention was taken by the Council to understand that such qualities could be seen and understood from the viewpoints at issue (Distance view 16: 218m, view 18: 136m, view 19: 119m).
- vii) In addition to being well below the parapet the proposed development would also sit well off to the left of Kew Palace in all views from the Great Lawn. This emphasises the absence of dominance referred to above and also the clear lack of direct visual relationship with the Palace.
- viii) In view 16, the proposal would not be appreciated at all in summer and in winter would be seen well to the left of the Kew Eye. It would not compete with the Palace in any meaningful way.
- ix) In view 17 and 18, the proposal would not be seen and would cause no harm but as Mr Baker reminded us⁵⁷, in view 18, Lighterage Court (which was granted permission following an appeal in which the Inspector found its position acceptable) is already seen on the Middlesex bank of the Thames, along with other elements of Brentford beyond, immediately adjacent to Kew Palace and at the same apparent height as the proposal in view 19. Lighterage Court (and the other buildings) form part of the urban backdrop of Brentford and is not identified as a detractor in any relevant document⁵⁸. Neither does HE assert here, or elsewhere, that it causes harm. Its allegation of a high end of less than substantial harm by reason of a setting impact in this case is as a result, simply unsustainable.
- x) As a matter of fact, in these views, Kew Palace did not historically stand in splendid isolation from other buildings at all. In fact, there were once a variety of buildings to the west of the Palace to house servants". These were an essential part of the royal occupation and were only removed in the C20th when the Palace fell vacant and the royals had long gone⁵⁹. Those subservient buildings sat lower than the Palace but were physically attached and clearly formed part of its

⁵⁷ CD 29, section 7, para. 7.181

⁵⁸ See Detractors at D12, CD A25)

⁵⁹ See Tavernor proof at 3.54 and Fig 3-27 and document (ID6) provided by Mr Drury dated 1880 for images

character to the west. It was their removal in the C20th which opened up the potential for views from the Great Lawn towards Brentford, particularly in View 18.

- xi) None of these Great Lawn Views of the Palace are historic designed views in the way contended by HE in relation to the view of the Orangery. It is true that the revealing of the Palace by the removal of the truly planned White House and its later unfinished crenelated castle has in an accidental manner revealed Kew Palace and its relationship with the Great Lawn, just as the removal of the servants quarters and the stables has in part revealed parts of the Middlesex Bank.
- xii) But for the reasons outlined above, this accidental, non-designed relationship is not harmed by the proposal at all. Kew Palace was not built to be part of the Gardens nor was it designed to be seen in isolation from any other buildings as part of any great landscape plan by Chambers or any of the other great landscape designers who have helped develop the Gardens. Its present relationship with the Great Lawn and its evolution by the removal of the servants' quarters can still be fully appreciated.

173. Because of the matters referred to above, the applicant's heritage witness identifies that the impact of the proposal on the listed building and on the WHS is overall left unharmed. He finds no meaningful loss of significance overall or harm to OUV. He identifies one fleeting negative impact in one view (view 19) in one season, compares it to an existing view where Brentford can, following the demolition of the servants quarters, also be seen (View 18) and then concludes there is no overall loss of significance for the assets as a whole.
174. Alternatively, he says, and for the same broad reasons, that if there is some harm in this context, it cannot reasonably be anything than at the lower end of less than substantial. All of the relevant assets intrinsic significance is wholly left untouched, as are almost all aspects of its setting. Additionally, the setting that is altered to a limited degree in winter is little or no different to that part of the setting that already exists and characterises the existing relationship between Lighterage Court, urban Brentford and the Gardens. Whatever view one takes on this issue, it is clear that public benefits would outweigh any harm.
175. The part of the setting comprising the appeal site, does not form part of a designated asset at all. It is not unlike other parts of the area outside the Gardens but which have been included within a Conservation Area.
176. The site falls outside the WHS Buffer Zone boundary. This is not unimportant to a consideration of its impact on significance. The Buffer Zone is not a meaningless object or designation. It is there for a purpose. According to the Operational Guidelines (OG)⁶⁰, a buffer zone is an area surrounding the nominated property which *"should include the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection. The area should be determined in each case through appropriate mechanisms"*. No

⁶⁰ CD A17

- alteration to the Buffer Zone was thought appropriate through the new MPlan process and none is planned nor envisaged.
177. In this case, the Buffer Zone has been very carefully drawn deliberately to exclude the Middlesex Bank of the Thames at Brentford. On the other hand, the Buffer Zone has been deliberately drawn to include all of Syon Park across the River to the West of the Gardens and the whole of the Old Deer Park on the Surrey side to the south⁶¹.
178. Paras 1.1-1.2 of the MPlan reflect the advice of the OG and explains that the Buffer Zone has been specifically drawn to encompass those areas with strong historical relationships to the Gardens (Old Deer Park, Syon Park and Kew Green), some locations which are important to the protection of significant views (e.g Syon Park) and areas that have a bearing on the character and setting of the gardens (the River Thames and its islands between Ferry Gate and Kew Bridge and approaches to the Gardens from the East. The exclusion of the application site and the rest of the Brentford Middlesex Bank is therefore not only deliberate but also reflects the fact that it does not share these characteristics.
179. All of this is relevant to a consideration of how much historic significance resides in this part of the setting and is therefore truly in scope to be harmed by development of the allocated site. None of this means that development at this location is not theoretically capable of causing harm. But it does very significantly affect the weight to be given to a setting impact if the setting serves none of these functions in a meaningful way.
180. The existing modern configuration and use of the Middlesex Bank of the Thames at the location of this proposed development does not form an important part of the historic setting of the Dutch House or the WHS. It adds little significance to the present Kew Palace or the WHS. It is, as all of the evidence establishes, a modern invention wrought by the planners of the 1970s. It has left us with a low slung poorly designed building of no merit and a rather featureless park of municipal design.
181. Brentford is a thriving riverine urban settlement and would, on all of the evidence, have been in existence well before the Dutch House. Indeed, Brentford as a busy settlement pre-dates Roman times and the foundation of even London itself. It is the river and the riverbanks which, along with the High Street, were the focus of the built environment on the busy Middlesex Bank. At all material times it was a thriving urban settlement which owed its livelihood, and its urbanity to the Thames and to the coaching trade. At all material times it and the application site would have been apparent from Kew above and beyond the likely yearly pollarded withies on the aits.
182. In terms of scale, use and occupation all the evidence suggests that the historic character of this bank of the Thames would have been busy, extensive, and highly visible. The Prospect⁶², an early painting of the riverbanks and buildings beyond, is just a snapshot in time. But it is notoriously accurate along the entire length of the Thames and shows here the full extent of the Brentford frontage built up in the early C19th. From beyond the withied aits, Brentford is a

⁶¹ See plan at p6 ManPlan, CD 25)

⁶² Kathy Clark, Appendix 2

- mature settlement, many streets deep and developed densely almost all the way from where Lighterage Court is now to Kew Bridge. The Prospect illustrates even then, buildings of discernibly different ages, a depth of industry, mills and basketries as well as very substantial breweries, inns, houses, lodgings and other buildings. It is not bucolic rurality. It is not pastoral, it is not even semi-rural and nor would it have been for centuries before.
183. Much of west London's town gas was produced in Brentford from the late C17th through to the C20th this, along with other industry and boatyards on the entire bank of the Thames, made for very non-bucolic relationships across the Thames. The gas works were huge, wide ranging and unmissable. However, they were authentic from an historic point of view. They carried on the relationship between urban Brentford which would have existed for centuries.
184. The Dutch House was built where it was not because of the bucolic and picturesque Brentford on the Middlesex Bank but because its location gave access to the other Royal Estates hereabout to which it was thought politically important to be close. It is not surprising therefore, insofar as there was a relationship with what lay north, that the point of emphasis and relationship with the River was the place of arrival and departure. A tight avenue of trees framed the view to and from the house to the river. The relationship with Brentford beyond the aits was not a key or planned part of the setting and nor in truth did it ever become one. That is why the Buffer Zone deliberately excludes it while at the same time including the aits and huge tract of the Middlesex Bank further West.
185. In addition, the functional relationship with the Thames, much less the opposite bank beyond the aits, significantly reduced very early on. The embankment of the Thames would have made transport and arrival by boat impossible and by the time of the Prospect at the very least, Kew Palace was clearly functionally separated by a sturdy wall, a wall which remains in place today, now fortified by security paraphernalia. There was a reduced relationship with the river and no meaningful relationship with the area beyond the aits.
186. The appeal site's present state is the least authentic part of any relationship with this Middlesex bank of the Thames beyond the aits. It is not redolent of its past or evoking memories of what the Princesses might have seen in any meaningful way at all; rather, it is a very short term departure from Brentford's long and busy relationship with the north bank of the Thames with the site now underdeveloped but allocated for a strategic development. Indeed, strategic development which is required to optimise housing delivery and effect a transformative alteration to the area overall. In fact, Brentford's existence across the entire bank facing Kew Palace would have been its authentic setting.
187. As the MPlan points out, there are two River Thames characters at play here. *"The WHS intersects with the Thames along its western and northern edges and has quite a different relationship with the river in these two distinct areas. To the north and northwest of Kew's riverbanks, the urban development of Brentford is close by on the other side of the River. To the west, views open out to the trees, grassland, natural beaches and historic buildings of Syon House."*⁶³ The area in and around Brentford is very different in character to the Syon House or Old Deer Park Thames which is truly Arcadian in terms of design, form and its history.

⁶³ CD A25, D8(v), p129

188. None of the views over Brentford are identified in the historic formal or designated views and vistas⁶⁴; this is consistent with the site and the entire Middlesex Bank being excluded from the Buffer Zone too. It is true that the views from the upper stories of Kew Palace are included in the Views Out⁶⁵. However, that is merely a factual explanation of where views out can be gained and the briefest of examinations establishes that these are not meant to be historic or necessarily important to setting.
189. It is stretching credibility to argue that the site now, or ever, forms a very important and highly sensitive element of the historic setting of Kew Palace or the Gardens. By any reasonable measure, this element of the setting accounts for very little of the massive significance of the Palace and hence the OUV of the Gardens. It follows that the degree of significance of the Palace or the WHS even in scope to be impacted by this proposal is not large, such that even disagreements about the extent of impact cannot conceivably give rise to anything close to substantial harm to the assets as a whole. It is contended that no harm would result at all.
190. It is wrong as a matter of principle simply to say impacts which are not at the higher end of less than substantial harm can somehow be added together to create a higher category or sub-category of harm. That is not how the system works. What is necessary is an overall consideration of the harm (if any) and the significance that is drained away and then, in cases such as this, an indication of how much less than substantial that less than substantial harm is on the scale.
191. In the context of the nature, scale and geographic extent of the other detractors in this case, any additional cumulative impact can only ever on the facts of this case be negligible or minimal. There can be no reason, consistent with the approach adopted in Citroen to refuse the application based on cumulative impact with other identified detractors or with the recently permitted Citroen proposal itself.
192. The Kew Palace Flats and Cottages featured less prominently in the case advanced at this Inquiry. Their significance is completely untouched by the proposed development of an allocated site on the other bank of the Thames. Wider setting plays very little, if any, part in their significance or an understanding of their overall role. The appeal site plays effectively no role in their significance. The development cannot drain any meaningful significance from these assets. Whatever the reasonably analysed level of impact is here it cannot come close to reaching levels of harm which should put the delivery of the public benefits of this proposal at risk. The same must be said for the impact on the Kew Green Conservation Area.
193. Even with the Council's finding of mid-level harm, the only bodies to date with the statutory remit or expertise to determine the Framework paragraph 196 balance have clearly and unambiguously concluded, (while fully understanding the weight to be given to such matters) that the unique basket of public benefits associated with this proposal outweighs that harm and should result in a grant of planning permission. There is no evidence in this case that seriously seeks to challenge the existence of, or the weight to be given to, the individual public

⁶⁴ CD A25, Figure 4: Historic or designated views or vistas.

⁶⁵ CD A25, Figure 5

benefits identified, including the delivery of key components of the overall development strategy for the whole of Brentford.

194. If a proposal leaves a designated heritage asset unharmed, and otherwise complies with the development plan, then it should be granted planning permission without delay. On the applicant's case, that is the position which should be adopted by the SoS in this case.
195. Even if there is a finding of heritage harm, then the Framework deliberately ensures that the existence of public benefits which outweigh less than substantial harms are capable of constituting the clear and convincing justification needed to allow permission to be granted having regard to the statutory tests and caselaw.
196. In this case the relevant development plan policy relating to heritage matters contains the same balancing provision as national policy. Thus, if harm is found, but public benefits on a consideration of the evidence outweigh that harm, then the proposal (all other things being equal) fully complies with the development plan as well as with national guidance.
197. In this case, an extraordinary package of public benefits is available and at this moment in time alone. They include fewer but of the same broad order of new homes that swung the public benefit in favour of grant in the Citroen case. However, they are added to by wider public benefits which render the important housing gains small in comparison. These include but are not limited to the delivery of a key element of a town centre first spatial strategy. This supports a new Arts Centre and Cultural Hub to replace one which is at best at serious risk, the regeneration of the gateway to Brentford with architecture of the highest order in line with its allocation and the delivery of housing and a missing part of the strategic Thames path. The Framework was designed to deliver and not to thwart this type of contribution.

The Case for the Council

The case for the Council, largely as expressed in closing submissions

198. As an authority who operate in a part of London rich in heritage assets, LBH has long recognised that growth and the historic environment are compatible. Were this not the case, this part of London would simply stagnate.
199. LBH has also long recognised that there can be no prohibition on harm to the historic environment⁶⁶, by acknowledging as a matter of policy that where a development will lead to less than substantial harm to the significance of a designated heritage asset, the harm is to be weighed against the public benefits of the proposal. This reflects the position of the government as set out in the Framework, namely that harm must be weighed against benefits⁶⁷.
200. Even where heritage assets are those of the highest significance such as World Heritage Sites⁶⁸, there are times when that harm will be outweighed by public

⁶⁶ Policy CC4(I) at CD.B4

⁶⁷ NPPF paras 195 and 196 at CD.A1

⁶⁸ NPPF para 184 at CD.A1

- benefits – the recommendation of the Inspector and the decision of the SoS in the Citroen case⁶⁹ is the most recent and obvious example of this.
201. The proposed development in the current case falls within the meaning of ‘tall buildings’, but unlike both the Chiswick Curve and Citroen schemes the application scheme does not propose towers. The buildings proposed in this case rise to a relatively modest 8 storeys, somewhat lower than the 32 storey tower proposed at the Chiswick roundabout and the (up to) 18 storey towers at the Citroen site. Nonetheless, like those proposals, the application scheme will have an impact on Kew Gardens.
202. The scheme, which fronts on to Brentford High Street, and backs on to the River Thames, would provide 193 dwellings with ancillary retail/café use, but is in effect tied to the scheme for the redevelopment of the BPS site, also known as Half Acre. The Arts Centre at the application site would be relocated to Half Acre which would also provide a further 105 new dwellings. Across the two sites, there would be a provision of 20% affordable homes, which it is accepted represents (or exceeds) the maximum viable amount. The dated and out-of-centre Watermans Arts Centre would be replaced by a new and exciting cultural hub in the town centre, a key strategic objective for the borough.
203. In this case, the moderate level of harm to the significance of heritage assets would be outweighed by a compelling range of public benefits. This proposal constitutes a key ingredient for the regeneration of Brentford.
204. The statutory test for determination requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. Accordance with the development plan means the development plan considered as a whole. It has long been recognised by the courts⁷⁰ that different policies can pull in different directions, and the correct approach does not require the decision-maker to ensure that the development complies with each and every one of them.
205. In this case, the proposed scheme is compliant with the development plan as a whole, and the statutory presumption in favour of the development plan applies. There are no material considerations (including the Framework) which justify a departure from the development plan.
206. A most fundamental proposition in the planning system is that the system should be genuinely plan-led⁷¹.
207. Policy SC1 in the HLP sets out the Council’s policy commitment to maximise the supply of housing in the borough to meet housing need, and this sits alongside the equivalent London Plan policy 3.3.
208. LBH are committed in policy to supporting the borough’s town centres, including Brentford, which is recognised as a district centre⁷², noting in the text to Policy TC2 that Brentford town centre underperforms and requires

⁶⁹ CD.A26

⁷⁰ See, for example, *Corbett v Cornwall Council* [2020] EWCA Civ 508

⁷¹ NPPF para 15 at CD.A1

⁷² TC1(a) of Hounslow Local Plan at CD.B4

regeneration⁷³. Thus, this policy itself promotes the regeneration of Brentford, including an improvement in the cultural provision⁷⁴ and in specific policy terms: *"Promoting the relocation of Watermans Arts Centre into Brentford town centre"*⁷⁵.

209. Policy TC4 encourages proposals that contribute to the vitality and viability of the town centre⁷⁶, and the explanatory text to the policy again explicitly refers to the Arts Centre in the context of Brentford: *"The leisure, cultural and entertainment offer is also limited and dispersed, with its greatest asset, Watermans Arts Centre, being located outside the town centre boundary"*⁷⁷.
210. LBH's town centre policies are to be read alongside the policies for Community Infrastructure, which set out the policy expectation to locate new community facilities within or on the edge of town centres⁷⁸. In respect of culture and leisure facilities specifically, they seek to support the improvement and upgrade of existing facilities⁷⁹ and to allocate sites to deliver new facilities, where necessary, to more appropriate locations⁸⁰.
211. The policies for the implementation of LBH's strategy, in particular Policy IMP2, treat the use of allocations as a key delivery mechanism for delivering the strategy, and the development plan identifies the application site as an allocated site (Site 11)⁸¹. The allocation is for a mixed use described as *"Residential and re-provision of the Arts Centre either on-site or within Brentford Town Centre. The site should be developed comprehensively in order to optimise the residential capacity of the site as a whole. This will help achieve regeneration of the overall area and avoid the sterilisation of individual elements of the site"*. The justification for the allocation identified the strategic importance of Watermans Arts Centre and that a town centre location would be more suitable.
212. It is noted that although the emerging allocations carry limited weight at this stage having yet to undergo examination, the application site allocation is carried over into proposed Site 110⁸², which identifies a minimum quantum of 150 residential units, that the impacts on the Kew WHS need to be addressed at the application stage (as they are being assessed as part of this application), and that the height should enhance the character of the area (which the Council planning witness confirmed the proposal would do, since the proposal would enhance the character of the area local to the site⁸³) whilst optimising density. The BPS site is identified in the proposed allocations for a mixed use, including residential and an arts centre. Thus, the proposal is consistent with adopted and emerging allocations.

⁷³ Text at p66 TC2 at CD.B4

⁷⁴ TC2(b) at CD.B4

⁷⁵ TC2 'Supporting facts' at p67 of CD.B4

⁷⁶ TC4(f) at p71 of CD.B4

⁷⁷ Supporting facts to TC4 at CD.B4

⁷⁸ Policy CI1(e) at CD.B4

⁷⁹ Policy CI4(b) at CD.B4

⁸⁰ Policy CI4(c) at CD.B4

⁸¹ Site 11 at CD.B4

⁸² SB Supplementary Proof at Appendix C

⁸³ SB EiC

213. In addition to the key policies of the HLP in respect of town centres and cultural facilities, the relevant London Plan policies carry the same thrust. Thus, the Town Centre Policy 2.15⁸⁴ is clear that decisions should sustain and enhance the vitality and viability of town centres, whilst Policy 4.7 sets out that new cultural facilities should be directed towards town centres⁸⁵.
214. LBH's heritage policy is provided at policy CC4, which whilst recognising the importance of conservation and enhancement of heritage assets, incorporates into local policy the national policy requirement for less than substantial harm to be weighed against the public benefits of the proposal⁸⁶. In a London Plan context, although 7.8 and 7.10 do not incorporate a balancing exercise, the tall buildings Policy 7.7 does require a balancing (at E). It is clear from the approach of the Inspector at the Citroen appeal that looked at as a whole, the heritage policies in the development plan require a balancing exercise to be carried out⁸⁷, and this approach was clearly and explicitly followed by the SoS⁸⁸. In short, the heritage policies of the development plan looked at overall require a balancing exercise to be carried out against public benefits, even if a proposal is in conflict with individual policies which do not incorporate that balance.
215. In respect of the emerging London Plan, LBH take the view that the emerging heritage policies are undiluted by the SoS's intervention relating to housing numbers, and these policies can be given significant weight at this stage⁸⁹. Whilst IPLP⁹⁰ policies HC1 and HC2 do not incorporate a balance (and so in this case would be conflicted as they were at Citroen⁹¹), Policy D9C(d) does incorporate a balance, a point emphasised by the Citroen Inspector⁹².
216. The application scheme is consistent with and supported by the policies of both Hounslow and London. It is noted that the Mayor, advised of LBH's resolution to grant permission, explicitly declined to intervene and expressed his strong support for the proposed mixed use and for the re-provision of a larger Arts Centre in a town centre location⁹³.
217. The relevant development plan policies which support the scheme are reflected in the government's national planning policies, which clearly articulate the government's position that the supply of homes requires significant boosting⁹⁴. Further, that significant weight should be placed on the need to support economic growth⁹⁵, that planning policies and decisions should support the role that town centres play at the heart of communities by taking a positive approach to their growth⁹⁶, that planning policies and decisions should plan positively for the

⁸⁴ London Plan Policy 2.15 at CD.B18

⁸⁵ London Plan Policy 4.7 at CD.B18

⁸⁶ CC4(l) at CD.B4

⁸⁷ Citroen report A26 at 15.84 – 15.87

⁸⁸ Citroen decision A26 paras 29-32

⁸⁹ SB Proof 5.67

⁹⁰ Intend to Publish version of London Plan CD.B16

⁹¹ Citroen report CD.A26 at 15.89

⁹² Citroen report CD.A26 at 3.29

⁹³ GLA Stage 2 Report CD.C31

⁹⁴ NPPF CD.A1 at para 59

⁹⁵ NPPF CD.A1 at para 80

⁹⁶ NPPF CD.A1 at para 85

- provision and use of cultural facilities and delivering strategies for cultural well-being⁹⁷, that planning policies and decisions should promote an effective use of land⁹⁸ and that where proposals would result in harm to the significance of heritage assets the harm should be weighed against the public benefits⁹⁹.
218. The significance of the following heritage assets would be harmed in this case: Kew Palace, and thereby Kew WHS, Kew Gardens CA, and Kew RPG; and Kew Green CA. LBH do not accept the allegation by HE that Kew Palace Flats (Royal Kitchens) and/or Cottages would also be harmed.
219. Heritage assets are an irreplaceable resource and World Heritage Sites are recognised to be of Outstanding Universal Value¹⁰⁰.
220. Kew Gardens was inscribed into the World Heritage List by UNESCO in 2003, and a retrospective Statement of OUV was adopted by UNESCO in 2010¹⁰¹. In respect of the international obligations arising, HRP acknowledged¹⁰² that *"the Government's duty of care under the World Heritage Convention, including cognisance of the ICOMOS HIA guidance, can indeed be met through the operation of the NPPF"*.
221. When assessing harm in a heritage context, what matters is harm to the significance of the asset (or, in the case of a WHS, harm to the OUV), which means the value of a heritage asset to this and future generations because of its heritage interest¹⁰³.
222. Within the Gardens, Kew Palace is a Grade I listed building, a red brick mansion built in 1631 which became a royal residence in 1728, although the role of the palace in royal life declined after 1818¹⁰⁴. The 2020 Kew Gardens MPlan describes the Palace as *"an imposing and highly significant royal building [...] which forms part of the experience of the Gardens as well as being key to understanding its history"*¹⁰⁵. It was described by the Chiswick Curve Inspector as *"one of the most important parts of the iconic architectural legacy of the gardens and a fundamental constituent of the designed landscape"*¹⁰⁶. The relevant attributes of the OUV are a rich and diverse historic cultural landscape providing a palimpsest of landscape design; and an iconic architectural legacy.
223. This proposal would cause no direct harm to Kew Palace (or any other heritage asset): the fabric would be untouched. Any harm would arise by harm to the setting of the Palace. It is important to remember that setting is not itself a heritage asset. Its importance lies in what it contributes to the significance of the relevant heritage asset or the ability to appreciate that significance.

⁹⁷ NPPF CD.A1 at para 92

⁹⁸ NPPF CD.A1 at para 117

⁹⁹ NPPF CD.A1 at paras 195 and 196

¹⁰⁰ NPPF para 184 at CD.A1

¹⁰¹ CD.A8

¹⁰² HRP Closing at para 18

¹⁰³ Glossary to NPPF, CD.A1

¹⁰⁴ Croft Proof 5.7.2 and 5.7.3

¹⁰⁵ WHS MPlan 2020-2025 at Appendix D9

¹⁰⁶ Chiswick Curve report para 12.110 at CD.A21

224. LBH have always been clear that although the application site is not within the buffer zone for the WHS, it is within the setting of the Palace and thereby the WHS. The NPPF defines the setting of a heritage asset as: *"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral"*¹⁰⁷.
225. The position of LBH is that setting contributes to the OUV and significance, allowing the appreciation of a royal retreat in a designed landscape¹⁰⁸. As to the setting of Kew Palace specifically, the evidence of LBH is that it makes an important contribution to the significance because it allows the Palace to be seen through the same lens as earlier patrons and connect the building to its royal past, appreciated in its arcadian setting within the designed landscape¹⁰⁹.
226. The key views for an assessment of the impact are agreed between the applicant, LBH and HE to be Viewpoints 16-21¹¹⁰ within the submitted THVIA¹¹¹. In views towards the Palace from the Great Lawn (Viewpoints 16 and 19 particularly), there would be very limited summer views and a more exposed view during winter. Although LBH take the view that in views from the Great Lawn the ability to appreciate the significance of the Palace and two of the attributes of OUV would be harmed, this would be tempered by the appearance of the development as lower than, subservient to, and set off to the side of, the Palace.
227. Whilst of course every scheme must be assessed on its own merits, the Council's heritage witness drew a clear distinction between the harm in this case and the harm in the Citroen case, where that scheme rose prominently immediately above the roofline of the Orangery, with around six storeys in view above the Grade I Orangery.
228. In addition to harm caused in views towards the Palace, it is important also to consider views from the rear of the Palace towards the proposed buildings. The Committee Report referred to the proposed development as *"a wall"* this was not carried through into written evidence and in oral evidence the Council's heritage witness explained that that description was too *"harsh"* as it failed to acknowledge the articulation of the buildings.
229. The Council's heritage witness explained that, particularly in winter views from Viewpoint 20, there would be harm to the riverside environment of the Palace which contributes to the Arcadian setting. However, once again the level of harm would be tempered. First, because *"some Arcadian parts of the Thames are more Arcadian than others"*, and no party suggested that this part of the Thames was prime arcadia. Second, because views of the river from the Palace itself are not possible from ground level. Third, because views from the upper floors of the Palace are across a 1969 garden. Fourth, because the riverside environment

¹⁰⁷ Glossary to NPPF, CD.A1

¹⁰⁸ SL Proof at 4.12

¹⁰⁹ SL Proof at 4.42

¹¹⁰ SOCG para 8 at CD.F4

¹¹¹ CD.C14

- cannot be divorced from the historic and current relationship with the other side of the river. The opposite side is the home of urban Brentford.
230. This is evident in the historic Roque map¹¹² in 1741 and in the Samuel Leigh panorama¹¹³ of 1824, the year which also marked the arrival of the gasworks on the Middlesex bank, which remained until 1927. The Council's heritage witness was unequivocal¹¹⁴ that the view historically and today from the rear of Kew Palace was towards urban Brentford, and Historic England's heritage witness agreed¹¹⁵ that the Leigh panorama depicted "*busy thriving industrial Brentford*".
231. It has always been LBH's case that the setting (and significance) of the Palace (and thereby the WHS) in views from the rear would be harmed, but the harm has to be measured.
232. The Council's heritage witness incorporated cumulative harm into her assessment, having regard in particular to the principal detractors, most notably the Kew Eye and the Haverfield Towers. In reaching her conclusions, she made clear in written evidence that her overall assessment of cumulative impact did not change to any significant degree as a result of the Citroen scheme¹¹⁶.
233. Substantial harm, in the language of the Framework, is a high test and will not often arise¹¹⁷, and the courts have provided clear guidance in the Bedford¹¹⁸ judgement. The consequences of Bedford are twofold. First, it guides the decision-maker in distinguishing between substantial harm and less than substantial harm. But second, on a spectrum of less than substantial harm, it is at least capable of assisting the decision-maker in deciding whether or not the level of harm is at the upper register of less than substantial harm. To put it another way, it enables the decision-maker to ask "*does the proposal come close to very much if not all of the significance of the asset being drained away?*"
234. The Council's heritage witness, calibrated the harm to Kew Palace and the OUV of Kew as falling in the middle bracket of less than substantial harm¹¹⁹. Having heard an exchange in oral evidence during XX of HE¹²⁰ as to the meaning of moderate (which HE accepted to mean middle or average), the Council's heritage witness clarified in her oral evidence¹²¹ that her "middle bracket" can be treated as interchangeable with the term "moderate". In XX¹²² she indicated that this might stretch to a little more than moderate but clarified that this still left her "*very comfortably in the middle bracket*"¹²³. She was very clear that her conclusion was compatible and consistent with the conclusion of the Inspector in the Citroen case.

¹¹² HE Appendix 1.2

¹¹³ HE Appendix 2.2

¹¹⁴ SL EIC

¹¹⁵ KC XX by applicant

¹¹⁶ SL Supplementary Proof at 2.6

¹¹⁷ PPG 18a-018-20190723

¹¹⁸ CD.A22

¹¹⁹ SL Proof at 6.2

¹²⁰ KC XX by applicant

¹²¹ SL EIC

¹²² SL XX by HE

¹²³ SL Re-ex

235. The Kew Palace Flats (or Royal Kitchens) were originally built as an ancillary building to the White House, which was demolished in the nineteenth century. Indeed, it is notable that the WHS MPlan refers to the "White House kitchen"¹²⁴. The Royal Kitchens were not built as a landmark (notwithstanding their Grade I listing); not built to serve Kew Palace; not designed to be seen as part of a designed landscape. The listing for the kitchens does not refer to any group value with the Palace (or vice versa) and they are not listed as a group.
236. The principal significance of the Royal Kitchens lies in its architectural interest as a rare surviving eighteenth century royal kitchen and its historical interest as the only surviving building from the White House complex¹²⁵.
237. The setting makes only a limited contribution to the significance of the kitchens. HE argue that the setting allows the connection to the Palace to be appreciated but in reality the kitchens and the Palace are not read together in any of the viewpoints taken from different points around the Great Lawn. Since the contribution of the setting is limited, the presence of modern buildings in the background setting would not harm the significance. As a matter of note, in the key viewpoints looking towards the Palace from various parts of the Great Lawn, the Kew Palace Flats are barely noticeable.
238. The Grade II listed Kew Cottages receive no mention in the MPlan, little information is available as to their significance, and their significance such as it is would not be harmed by the proposed development visible in the background¹²⁶.
239. The BPS site is visible within Kew Gardens including in oblique views towards the Palace. It is a 20th century building of little architectural quality¹²⁷. If the BPS scheme was formally consented and built out, the police station would be demolished, and it is not thought that its replacement would be visible from Kew Gardens. It is appropriate, therefore, to see the removal of the police station as a heritage benefit, albeit of modest weight¹²⁸. LBH consider that there would be additional (albeit low level) heritage benefit caused by the removal of the police station for both the St Pauls and the Butts conservation areas¹²⁹.
240. Kew Green CA was designated in 1969, and encompasses Kew Green and the buildings surrounding it, some mainly residential streets to the east and a portion of the Thames to the west of Kew Bridge to the end of Brentford ait¹³⁰. There is no doubt that the primary significance of the CA is the Green itself as "*a fine example of a historic Green*"¹³¹. It is "*a charming space, bounded by a pleasing variety of buildings, a lot of which are listed [...] One is conscious of what lies beyond that enclosing frontage, but it is very much subservient*"¹³².

¹²⁴ WHS MPlan CD.A25 at 3.2.2

¹²⁵ SL Proof at 4.60

¹²⁶ SL Proof at 4.67

¹²⁷ SL Proof at 5.2

¹²⁸ SL Proof at 5.3

¹²⁹ SL Supplementary Proof at 6.1

¹³⁰ SL Proof at 4.68

¹³¹ Conservation Area Statement CD.B10

¹³² Citroen report CD.A26 at 12.59 and 12.62

241. The application scheme would not be visible in any views towards or from the Green. It is a point of agreement between all parties in this case that the Green will be entirely unaffected.
242. The Conservation Area Statement goes on to identify the riverside environment in the CA as "*a foil to the Green and is a semi-rural peaceful area*". Notwithstanding any rurality, much of the more developed Brentford can be seen from this portion of the river¹³³ and the setting plays a less prominent role than the setting to the Green itself. Although the riverside environment is of "*secondary importance*"¹³⁴ to the CA, the proposal would have some impact on the semi-rural character and LBH characterise the harm as "*minor*"¹³⁵ at the "*lower end*"¹³⁶ of the spectrum for less than substantial harm. The primary significance of the CA – the Green itself – would be entirely unharmed.
243. The harm to the significance of heritage assets has to be weighed against public benefits. Public benefits mean anything that delivers economic, social, or environmental objectives as described in the Framework¹³⁷.
244. The principal public benefits to be weighed in the scales in his case are: the provision of housing; the re-provision of the Arts Centre; the improvements in public realm; and economic benefits.
245. Just a few weeks ago, the SoS gave substantial weight to the benefits of housing¹³⁸. In this case LBH give the provision of housing significant weight¹³⁹ but, although the application scheme will produce fewer units of housing (overall and the affordable element) than Citroen, accept that the weight can also properly be described as substantial in this case¹⁴⁰.
246. Measured against current requirements (annualised at 822 dwellings), LBH have a healthy five year housing supply (approximately 12 years¹⁴¹). Measured against the IPLP requirement (annualised at 1782 dwellings per annum), LBH are also able to demonstrate that they have a 5 year supply (including buffer). Both of these statements are agreed by the applicant¹⁴².
247. At the Citroen Inquiry LBH were able to demonstrate the same position and the SoS did not reduce the weight to the provision of housing below substantial. LBH accept that notwithstanding their own locally strong position, they cannot isolate themselves from the London-wide position, and the shortage of housing across London is well-publicised¹⁴³.

¹³³ SL Proof at 4.78

¹³⁴ SL Proof at 4.82

¹³⁵ SL Proof 4.80

¹³⁶ SL Proof 6.2

¹³⁷ PPG 18a-020-2019073

¹³⁸ Citroen decision CD.A26 at para 21

¹³⁹ SB Proof 7.20

¹⁴⁰ SB Supplementary Proof 2.2

¹⁴¹ SB Proof 7.16 and Appendix 1

¹⁴² Addendum SoCG CD.F15

¹⁴³ SB Supplementary Proof 2.1

248. Furthermore, LBH acknowledge that, since the Citroen inquiry, there have been two events the effect of which is to add weight¹⁴⁴ to the provision of housing. First, the intervention of the SoS in the emerging London Plan and the issues identified in the letter from the SoS to the Mayor in March 2020¹⁴⁵, which indicate that the housing requirement across London is likely to increase beyond the IPLP figures. Second, the onset of economic crisis arising out of the pandemic.
249. In respect of affordable housing, LBH has a record of performing well compared to most London boroughs, although even LBH have been delivering below their strategic target¹⁴⁶. The 20% provision of affordable housing (60 homes) – taking this scheme and the interdependent BPS scheme together – is accepted to be the maximum amount viable and is also a significant public benefit¹⁴⁷. The s.106 planning agreement provides for a Viability Review mechanism – however, this can only review ‘upwards’¹⁴⁸.
250. The relocation of the Arts Centre in Brentford is a key strategic objective for LBH. The current site of the Arts Centre is located a considerable distance from the town centre and from the transport hub of the town centre. The proposed location at the BPS site is central, and well-located for Brentford Railway Station¹⁴⁹ (it is of no surprise to see that whilst the application site has a PTAL rating of 3, BPS has a rating of 4)¹⁵⁰. The new location will encourage passing trade (which is identified as commercially important) whereas at present there is almost none¹⁵¹, and will have geographic/locational synergy with other new residential developments which form part of Brentford’s regeneration¹⁵².
251. It is not just that the BPS location is better. Whilst the Arts Centre is a dated and inefficient facility, the proposed Arts Centre would be a state-of-the-art facility. It would be in keeping with the regeneration of Brentford. It would be a much-admired cultural hub. There would be two cinemas, a 250 seat theatre, gallery space, studios, dressing rooms, a restaurant and a bar¹⁵³. The deed between the applicant and LBH will ensure that the fit-out specification is agreed with LBH and the fit-out cost alone would be almost £2m. It would provide Brentford and its community with a high-quality cultural focal point.
252. The opportunity that this application presents (alongside the BPS scheme) to re-provide the Arts Centre in the right location is properly described as “*unique*”¹⁵⁴. There are no alternative options for a new Arts Centre and the future of the existing Arts Centre is uncertain (the existing lease expires in 2024)¹⁵⁵. Were permission to be refused by the SoS in this case, that would frustrate a key

¹⁴⁴ SB EIC

¹⁴⁵ Letter SoS to Mayor CD.B20

¹⁴⁶ SB Proof 7.22

¹⁴⁷ SB Proof 7.22

¹⁴⁸ ID10

¹⁴⁹ SB Proof 7.25

¹⁵⁰ Horne App D, Volterra Report at 4.34

¹⁵¹ Horne App D, Volterra Report at 4.26

¹⁵² Horne App D, Volterra Report at 4.13 – 4.16

¹⁵³ SB Proof 7.26

¹⁵⁴ SB EIC

¹⁵⁵ SB in response to questions from the Inspector and in Re-ex

- strategic objective for Brentford. It would create an obvious missing link in the regeneration of this important part of West London.
253. To the rear of the application site runs the Thames Path, an important part of a national network of pedestrian routes. However, this section of the path is poor and inadequate, a convoluted route lacking legibility, and which is vandalised, does not allow disabled access, and is not perceived as safe¹⁵⁶. The Council's planning witness described this as a missing link in the Thames Path.
254. The proposed new section of river path would be legible, wider, lit and overlooked, and of high quality¹⁵⁷. It would transform this section of the Thames Path. That would be a significant public benefit.
255. LBH have identified three relevant economic benefits, aside from the provision of housing and the provision of the Arts Centre. These are¹⁵⁸: construction jobs; permanent new jobs at site and retained permanent jobs; indirect economic uplift in the community. The Council's planning witness originally intended to give these some, but limited weight. However, in the light of the major economic downturn in 2020 as a result of the pandemic, the weight that should be given to these benefits should increase¹⁵⁹.
256. There is no viable alternative to deliver a similar package of benefits¹⁶⁰. None of the objectors have called any evidence to argue to the contrary. LBH instructed independent viability consultants who agreed with the conclusion that any significant reduction in quantum was undeliverable¹⁶¹.
257. The absence of viable, less harmful, alternatives to produce similar benefits operates in the balance in two ways. First, unlike at Citroen, it means that the existence of a possible less harmful alternative is not a factor weighing in the overall balance as a material consideration against the application. Second, as a matter of logic, it must add overall weight to the benefits package since those benefits cannot be delivered from any alternative scheme¹⁶².
258. In respect of daylight¹⁶³, whilst a very small minority of rooms at the Lighterage Court/Kew Reach development would have a reduced level of daylight, the assessment has to consider the position against BRE Guidance which provides technical guidance not only as to whether the reduction is acceptable based on hard data, but also distinguishes between different types of room, allows for urban context, and enables account to be taken of whether the affected property is a good or bad neighbour (a good neighbour would stand a reasonable distance from the boundary). The Council's planning witness explained that in this context Lighterage Court/Kew Reach is not considered a good neighbour¹⁶⁴. By reference to BRE Guidance, assessment demonstrated that in terms of daylight the proposal would not have a significant adverse impact on

¹⁵⁶ See images of the route at Horne Proof, Images 11.1 – 11.3

¹⁵⁷ SB Proof 7.38 – 7.40

¹⁵⁸ SB Proof 7.37

¹⁵⁹ SB Proof 7.37

¹⁶⁰ SB Proof 7.44

¹⁶¹ Horne Supplementary Proof App A

¹⁶² A point made by TH in oral evidence

¹⁶³ Committee Report CD.C31 at 7.160 – 7.168

¹⁶⁴ SB EIC

- neighbouring residential amenity, with the impact articulated as “*negligible to minor*”¹⁶⁵. It was agreed between the applicant and LBH that the impacts are therefore acceptable¹⁶⁶.
259. In respect of sunlight¹⁶⁷, once again a very small number of rooms at Lighterage Court/Kew Reach would be affected but these would be bedrooms and BRE Guidance identifies bedrooms (and kitchens) as less important. Once again, there would not be a significant adverse impact on neighbouring residential amenity and again the impact was articulated as “*negligible to minor*”¹⁶⁸. It was agreed between the applicant and LBH that these impacts are therefore acceptable¹⁶⁹. Overshadowing impacts were characterised as negligible¹⁷⁰.
260. In respect of overlooking¹⁷¹, without mitigation there would be adverse impact to a small number of flats at Lighterage Court/Kew Reach where habitable rooms have been positioned on the boundary (once again, as a ‘bad neighbour’). However, LBH are wholly satisfied that the matter can be properly and successfully mitigated¹⁷² by condition relating to Flats 4 and 5 on each floor facing Lighterage Court, and are satisfied with the condition proposed to address the matter¹⁷³.
261. The public benefits would outweigh the harm to the significance of heritage assets. In those circumstances, the heritage balance which is incorporated into the development plan would weigh in favour of the benefits, ensuring that the heritage policies of the development plan, looked at overall, are not conflicted. The proposal is consistent with (i.e. accords with) the policies of the development plan as a whole.
262. LBH are conscious of the s.66 statutory duty which arises in respect of listed buildings. However, by working carefully through the historic environment sections of the Framework, that statutory duty will have been complied with¹⁷⁴.
263. The conservation of designated heritage assets must be given great weight¹⁷⁵. However, the public benefits which will be generated by this scheme provide a clear and convincing justification for the harm which would arise.
264. In response to the matters raised by the SoS in calling this application in for his determination: the proposed development is consistent with the government’s policies for delivering a sufficient number of homes and building a strong, competitive economy; and for the historic environment, including the balance between harm to the significance of heritage assets and public benefits. The

¹⁶⁵ Committee Report CD.C31 at 7.177

¹⁶⁶ SOCG CD.F2 at 13.1.1

¹⁶⁷ Committee Report CD.C31 at 7.169 – 7.174

¹⁶⁸ Committee Report CD.C31 at 7.177

¹⁶⁹ SOCG CD.F2 at 13.1.1

¹⁷⁰ Committee Report CD.C31 at 7.177 and SOCG CD.F2 at 13.1.1

¹⁷¹ Committee Report CD.F2 at 7.180 to 7.185

¹⁷² SB explained in EiC and in the conditions session of the Inquiry that he had misunderstood 13.2.1 of the SOCG CD.F2, and that LBH was satisfied a condition could secure suitable measures to avoid unacceptable overlooking

¹⁷³ ID13

¹⁷⁴ Mordue CD.A22

¹⁷⁵ NPPF para 193, CD.A1

proposed development is consistent with the development plan for the area including emerging policy.

The Case for Historic England (HE)

The case for HE, largely as expressed in closing submissions

265. Historic England rarely sees the need to become involved in public inquiries. But after giving evidence at two recently, to express its disquiet about tall building proposals in the setting of the Royal Botanic Gardens at Kew, it has been necessary to do so again here, to explain its serious and intensifying concerns about yet another harmful scheme.
266. HE is the lead body for the heritage sector and the Government's principal advisor on the historic environment. As a statutory consultee and with its specialist role, its views should be given considerable weight and only departed from for cogent and compelling reasons¹⁷⁶. Nothing close to such reasons has been given in this case. In particular, the claim by the applicant, that no harm whatsoever would arise from this scheme, is inherently implausible. It has been based on a flawed understanding of how setting contributes to the remarkable significance of the Gardens and Kew Palace, as well as a confused approach to the assessment of harm, which have led to untenable judgments about the effect of this scheme on places that are special to our national culture and recognised, throughout the world, for their exceptional value.
267. These submissions provide the advice of HE to the SoS primarily in relation to issue (c) in the call-in letter¹⁷⁷: the extent to which the proposed development is consistent with Government policies for conserving and enhancing the historic environment. They also comment later on issue (d): the extent to which the proposed development is consistent with the development plan for the area including any emerging plan¹⁷⁸. In so doing, HE leaves the tasks of weighing the benefits of the scheme and reaching an overall judgment on compliance with the development plan, to the independent judgment of the Inspector and the Secretary of State. But in this case, there can be no doubt that this scheme would cause considerable harm to heritage significance of not just a national, but international, register and should be accorded very significant weight.
268. Kew Gardens is replete with heritage designations which fall for consideration in this case. It is a World Heritage Site and an Historic Park and Garden, registered at Grade I. It includes the Royal Botanic Gardens Kew Conservation Area, as well as a small part of the Kew Green Conservation Area¹⁷⁹. It contains 56 listed buildings, six including Kew Palace (and the Royal Kitchens) of Grade I¹⁸⁰. Kew Palace is also a Scheduled Monument.

¹⁷⁶ See *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin) at [72]; see too *Steer v. SSCLG and Catesby Estates* [2017] EWHC 1456 (Admin) at [52].

¹⁷⁷ CD A34

¹⁷⁸ CD C34

¹⁷⁹ See the plans at Croft Appendix A (WHS and buffer zone) and Appendix B (Registered Historic Park and Garden) and Royal Botanic Gardens, Kew Conservation Area and Kew Green Conservation Area). See too the explanation at Clark, 6.2.1-5/32-3.

¹⁸⁰ Croft 5.4.5/17

269. Many of these designations overlap, but for present purposes there is no dispute that due to its status, the assessment of the scheme on the World Heritage Site can be folded into the other designations which cover the Gardens, albeit that Kew Green Conservation Area can be considered separately given its broader extent outside the boundaries of the site. The significance of Kew Palace is inextricably linked with that of the Gardens, but requires discrete consideration given its status as a building of remarkable value in its own right. The Royal Kitchens also merit distinct treatment.
270. The starting point for any determination of heritage issues is a full and accurate understanding of significance. It is easy enough to say that Kew is a World Heritage Site; but more important to grasp what this should mean for the planning system and for proposals which fail to respect this designation. Policy and guidance confirm that as a WHS, Kew is unquestionably of the highest possible heritage significance¹⁸¹. Inscription by UNESCO, secured though international obligations voluntarily accepted by the UK, articulates its status as the rarest and most valuable of heritage assets, not just nationally but globally.
271. In the language of the World Heritage Convention and its Operational Guidelines, Kew is *"unique and irreplaceable" cultural heritage, "so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity"*¹⁸². Its permanent protection is *"of the highest importance for the international community as a whole"*¹⁸³. In signing up to the Convention the UK has committed itself to doing *"all it can", "to the utmost of its resources"* to protect and conserve the heritage which is the subject of the inscription¹⁸⁴. It is common ground that these are important and emphatic duties¹⁸⁵ which are relevant to the application of Framework policy, in particular the weight to be given to the conservation of heritage significance where any planning balance is required¹⁸⁶. It is crucial therefore not to lose sight of just how important a WHS is. It sits at the very top of the tree, globally.
272. As the first words of the Statement of Outstanding Universal Value describe, the Gardens at Kew are *"set amongst a series of parks and estates along the River Thames' south-western reaches"*, a series from Hampton to Kew which bears witness to the royal influence on our landscape and its gardens, set away from the urbanised world of the city. The Thames threaded its way through the emergence of historic royal and noble estates in this part of the capital, and at Kew its sense of open space and movement away from the city provided an attractive and functional backdrop to the life of the royal family¹⁸⁷.
273. The location of Kew on the Thames, and the royal connection, are therefore key to a full understanding of Kew as a *"historic landscape garden...illustrating significant periods in garden design from the 18th to the 20th centuries,"* where the *"landscape design of [the] Gardens, their buildings and plant collections*

¹⁸¹ NPPF, CDA1, 184, 194b; PPG, CDA24, 26

¹⁸² CDA16 p. 1; CD17 49/20

¹⁸³ CD17 49/20

¹⁸⁴ Article 4 of the Convention, CDA16 p. 3

¹⁸⁵ Tavernor xx. See too the Kew MPlan, CD A25 1.4/9: "significant obligation"

¹⁸⁶ Tavernor xx. See too NPPF 2/4 which states that planning decisions "must reflect international obligations"

¹⁸⁷ See Clark, 6.22-40/40-47

combine to form a unique testimony to developments in garden art and botanical science". Identified elements of the eighteenth and nineteenth century layers "convey the history of the Gardens' development from royal retreat to national botanical and horticultural garden"¹⁸⁸.

274. The OUV of Kew is illuminated through attributes that are articulated in its MPlan. Of particular relevance to this case are, first, its *"rich and diverse historical landscape providing a palimpsest of landscape design", "reaching from royal pleasure ground roots",* key features of which include a *"strongly enclosed sense of 'otherworldliness'",* its *"relationship with the river Thames"* and the *"ability for visitors to roam freely across the landscape",* including *"personalised experiences of the gardens, landscape features and iconic buildings contained within"¹⁸⁹.*
275. The open space of the Great Lawn survives from a larger lawn dating from the mid-eighteenth century, which was a central feature of William Chambers' landscape design for Princess Augusta. It was key to creating the experience of a pastoral escape from the city, whilst anchoring the landscape to the domestic focus of the royal household from which the Gardens have sprung. Today its sense of open space can still be appreciated, punctuated by architecturally significant buildings including Kew Palace, backed by trees and sky. Here the rich composition of views from the Great Lawn crucially preserves the experience of designed landscape that is vital to the Gardens' historical and creative origins. As the royal patrons and their designers intended, the Lawn still evinces that sense of beautiful, skilfully tended nature as the dominant visual experience, where visitors can still feel that they have escaped into a verdant world away from urban life.
276. The second relevant attribute is Kew's *"iconic architectural legacy".* Kew is *"home to a unique and distinguished architectural heritage, including some of Britain's most iconic buildings"¹⁹⁰.* Its *"history as an 18th century royal retreat alongside and linked to the river Thames has left a rich architectural legacy"* and the property *"contains a striking collection of royal palaces and ancillary buildings, with the White House kitchen [also known as the Royal Kitchens] and Kew Palace standing as key survivors"¹⁹¹.*
277. These attributes have not been disputed. They are particularly concentrated in the northern part of the Gardens that is affected by the proposals, where Kew Palace overlooks the river and serves as a focal point in views from the Great Lawn. Kew Palace is therefore key to the significance of Kew as a WHS and is of remarkable value in its own right.
278. Completed in 1631, Kew Palace is the oldest and one of the most prominent buildings on the site¹⁹². It is of exceptional historical and architectural importance, and is accorded the highest significance as a matter of domestic legal and policy protection, alongside its contribution to the WHS. It is a landmark within Kew, central to telling the story of royalty here, their journey

¹⁸⁸ CD A8

¹⁸⁹ CDA25 pp. 6-7

¹⁹⁰ CDA25 p. 26, rh column

¹⁹¹ CDA25 p. 26, rh column

¹⁹² CD A25 p. 15

along the Thames and their influence on the design intent of the evolving Gardens. It was a home for the royal family, who instigated and patronised the development of the Gardens in their earliest days and most prolific periods of change. It represents their historical source as a private retreat next to the river. It makes a "*direct contribution*" to the OUV of Kew¹⁹³, which is characterised by the "*site's royal connections, time depth and historic landscape development including Kew Palace.*" It is a fundamental aspect of the iconic architectural legacy under the second attribute¹⁹⁴.

279. The connection between the Palace and landscape of Kew has changed since the origins of the botanic garden in the 1750s, however a clear relationship with the Great Lawn has existed for over 200 years, after the White House (which faced the Lawn as the principal dwelling) was demolished in 1802. By the end of the 19th century the Lawn had been deliberately extended to the entrance of the Palace¹⁹⁵, which took its place as a focal point in views and has been maintained as such to the present day. The Palace thus helps draw together an understanding of the rich and diverse historic landscape of the Gardens.
280. The Palace has always been regarded as intimately associated with the significance of Kew. It was mentioned in the ICOMOS site evaluation¹⁹⁶. It can be linked directly to the SOUV and the "*history of the Gardens; development from a royal retreat and pleasure garden*"¹⁹⁷. The Chiswick Curve Inspector rightly concluded that "*the buildings that provide Kew Gardens' iconic architectural legacy are an important constituent of the palimpsest of landscape design. It seems to me then that any harm caused to the setting of these listed buildings would thereby harm the significance of that building, but also that of the designed landscape*"¹⁹⁸. The Citroen Inspector took the same view: "*The Orangery, together with Kew Palace, the White House and the Great Lawn were all part of a landscape which was designed as a piece, albeit over a period of years and subsequently radically modified. Any harm to the setting of the Orangery would also harm what remains of that landscape*"¹⁹⁹. It is obvious that this last conclusion applies with the same force to Kew Palace.
281. There is no evidence therefore, in inscription documents, previous decisions or the MPlan, to suggest that Kew Palace makes anything but a direct and substantial contribution to the significance of Kew. As the historical evidence confirms²⁰⁰, Kew Palace played a central role in the domestic and dynastic history of the Georgian royal families. The first botanic gardens owe their history to their presence here and as such the Palace enjoys incredibly rich historical associations with the Gardens through the royals who developed them.
282. The Royal Kitchens, also listed as Grade I, were originally built in the 1730s to serve the White House but came to be seen in close conjunction with the Palace in views from the Great Lawn. They house rare surviving kitchen interiors from

¹⁹³ CDA25 p. 30 under viii; see too p. 134

¹⁹⁴ CDA25, 3.2.2/26

¹⁹⁵ See Clark Appendix 1.5

¹⁹⁶ CDA19 pp. 107, 109, 110, 111

¹⁹⁷ CDA8 first para

¹⁹⁸ CDA21 12.110/139

¹⁹⁹ CDA26 15.8/104

²⁰⁰ See Clark 6.2.8/35 et seq; statement of Lee Prosser at Drury Appendix 3

the Georgian period and with the Palace, they convey the superlative architectural legacy of the Gardens and enrich the understanding of the site as a former royal residence.

283. Kew Green Conservation Area includes a small riverside portion of Kew Gardens, taking in a riverside path that curves around the northern edge of the WHS, as well as a large portion of its buffer zone, extending into the Thames and including Brentford ait. Its position on the river, dominated by the waterway and the trees on the ait, is integral to its historical development and its semi-rural character, and is recognised by the Conservation Area Appraisal as a “*superior riverside environment*” which acts as a “*foil*” for the Green itself²⁰¹.
284. The level of protection accorded to the setting of a WHS such as Kew is very high. As the MPlan recognises²⁰², the obligation under the Convention to protect OUV includes the management of change outside the site where this might affect the OUV of a property. The Operational Guidelines²⁰³ emphasise that “*maintenance of all aspects of their OUV...goes beyond the boundary to include... the broader setting*”.
285. This is reflected in planning policy which confirms that proposals in the setting of a WHS should preserve OUV just as any proposals which might have a direct effect on the fabric of the site itself. The IPLP requires that proposals in the setting of a WHS should preserve its OUV²⁰⁴. The PPG²⁰⁵ requires that policies should protect a WHS and its setting from inappropriate development, with no distinction drawn between them. It is common ground²⁰⁶ therefore that the protection of OUV and significance extends just as strongly to setting as to the WHS itself. Policy does not distinguish between a WHS and its setting in the high levels of protection it affords to OUV.
286. Secondly, the clear policy of protection is not restricted to the buffer zone as part of the setting of a WHS. There is no dispute that the setting only includes and is not determined by the buffer zone²⁰⁷. It is not even necessary for a WHS to have one²⁰⁸. The WHS SPG in London confirms that buffer zones may differ from settings, “*which may be much more extensive and a more useful mechanism for protection and management*”²⁰⁹. It is common ground that policies designed to conserve OUV, as well as the OG, apply as strictly to the wider setting as they do to any buffer zone²¹⁰, such that the protection of significance is undiminished in cases where development is proposed outside that zone²¹¹.

²⁰¹ CD B10

²⁰² CDA25 1.4/9

²⁰³ CDA27 112/32

²⁰⁴ See too intend to publish London Plan CDB16 325/6 policy HC2

²⁰⁵ CDA24 32

²⁰⁶ Tavernor xx

²⁰⁷ Tavernor xx. See too See CDA24, PPG 26, 31, 32, 33

²⁰⁸ CDA25 1.2/8

²⁰⁹ CDB5 3.19/26

²¹⁰ See CDB18 policy 7.10; Operational Guidelines CDA17 112/32; CDA24, PPG 32

²¹¹ Tavernor xx

287. Applying these principles to the present case, there is no credible basis for any suggestion that the location of the proposal outside, but on the edge of the buffer zone, undermines the sensitivity of the wider setting or the case that harm would arise from development there.
288. Here, the buffer zone specifically includes the Thames and its islands, moving north from Syon to the area immediately opposite Kew Palace²¹². This area is plainly regarded as either "*important to the protection of significant views*" or as having "*a bearing on the character and setting of the Gardens*"²¹³. The potential for development on the edge of this area to harm this character and setting, and therefore its contribution to OUV, is obvious.
289. As the applicant agreed, it would be wrong then to assume that only the important aspects of setting are those lying within the buffer zone; or that the potential for harm was necessarily reduced by locating development outside it²¹⁴. The MPlan itself confirms that the buffer zone does not incorporate all land that relates to the setting from where change could affect the OUV of the site²¹⁵.
290. The major contribution of setting to the significance of Kew is recognised in strategic policy. The IPLP²¹⁶ and the WHS SPG, specifically published to guide development in the settings of the London WHSs²¹⁷, both recognise that the context for each of the four London WHSs is markedly different and that the "*qualities*" and "*ambience of each are conditioned by the character of their surroundings*"²¹⁸. The WHS SPG describes Kew as uniquely self-contained²¹⁹, "*nine miles from central London*"²²⁰, a place to escape from the city²²¹. In this way the "*setting of a WHS is recognised as fundamentally contributing to the appreciation of a WHS's OUV*" and "*changes to it can impact greatly...on the ability to appreciate OUV*"²²². The applicant rightly accepted that this applies to Kew²²³. Development in Brentford is understood to "*prompt closer scrutiny of its form and appearance*"²²⁴.
291. The important contribution of setting is recognised in the SOUV of Kew itself. It identifies at the outset the setting of the historic landscape garden on the Thames. When addressing the integrity of the property itself, it specifically warns that "*development outside the buffer zone may threaten the setting of the Property*"²²⁵. The applicant accepted that here both government and the World Heritage Committee were clearly endorsing the importance of setting in the protection of the overall integrity of Kew as a WHS²²⁶.

²¹² CDA25 1.2/8

²¹³ CDA25 1.2/8

²¹⁴ Tavernor xx

²¹⁵ CDA25 D6 p. 113

²¹⁶ CD B16

²¹⁷ CD B5

²¹⁸ CDB16 7.2.2/326; CDB5 4.9/34

²¹⁹ CDB5 p. 35

²²⁰ CDB5 p. 35

²²¹ CDB5 p. 59

²²² CDB5 1.3/4

²²³ Tavernor xx. See too the Thames Landscape Strategy, CDB3 4.12.35/361

²²⁴ CDB5 p. 43

²²⁵ CDA8

²²⁶ Tavernor xx

292. The contribution of setting has been highlighted by ICOMOS, the expert advisory body to the World Heritage Committee under the Convention. In their technical review of the Chiswick Curve proposals, setting was emphasised as a “*key element*” given that Kew is “*tightly linked to its location and to the River Thames*”; it is “*especially important*”, a “*main concern in the conservation of the property*”²²⁷. Setting played a “*crucial role...in the overall significance of the property*”²²⁸.
293. Their response to this scheme made similar points, emphasising in particular how the riverside location of the property was “*crucial to its OUV*”²²⁹. They in fact recommended an urgent review of the buffer zone, on the grounds that when it was devised in 2003, “*the possibility of high-rise development of the type proposed was not envisaged*”, it being “*presumed that full attention would be given to minimising these vulnerabilities*” as stressed in the SOUV²³⁰. Their original site evaluation emphasised how the Haverfield Towers in Brentford “*seriously diminished the visual experience of Kew*” at several points in the gardens, a concern which clearly applied to views from the Great Lawn and is consistent with the view that setting makes a substantial contribution to OUV²³¹.
294. As the applicant accepted, ICOMOS has therefore time and time again emphasised the highly significant contribution that the wider setting makes to the OUV of Kew²³². An attempt to wave this away because they have, as it was put, an “*axe to grind*,”²³³ displays scant regard for both their acknowledged expertise and their status within the international regime to which the UK voluntarily committed itself when signing the Convention. As the Council agreed²³⁴, their views are an important material consideration which should be given substantial weight in this case.
295. The SOUV aside, the periodic report of government from 2014²³⁵ refers consistently to development outside buffer zones causing harm specifically to OUV, by way of “*significant*” and “*increasing*” negative effects arising from housing and commercial development. This can only sensibly be taken to reflect a recognition of the importance of setting to the SOUV of Kew, as the applicant agreed²³⁶. That contribution is patently seen as significant. The fact that this document was followed by the Framework and other guidance makes no difference at all to that assessment.
296. There is a recently adopted MPlan. The applicant concedes that this is “*all we have*” to define the setting of Kew²³⁷. It demonstrates conclusively the substantial contribution to significance made by that setting.

²²⁷ CDA14

²²⁸ CDA14

²²⁹ CDA13, p. 3 under “Analysis”

²³⁰ p. 4

²³¹ CDA19

²³² Tavernor xx

²³³ Tavernor xx

²³⁴ Laird xx

²³⁵ CD A15, 2.1, 2.4, 5.1

²³⁶ Tavernor xx

²³⁷ Tavernor xx

297. There was no direct criticism of the MPlan's treatment of setting by any party to the inquiry. As the MPlan explains, the starting point for an assessment of setting is again the OUV of the property. Kew descends from the world of Georgian royalty, as a country retreat for relaxation and pleasure distant from the city²³⁸. It is agreed that the sense of "*enclosed otherworldliness*", which is identified as a key aspect of the contribution that setting makes to significance, "*underpins*" OUV²³⁹. Preserving integrity of this setting from external intrusions plays a "*fundamental role*" in supporting OUV²⁴⁰. The WHS has a "*very specific set of relationships with its setting*", "*which are an integral part of its design*"²⁴¹. The otherworldly character of Kew is "*directly dependent on the property's visual envelope being conserved and preserved, unpunctured by external features*"²⁴². The historic landscape design, the built architecture of the site "*and the experience of place that is derived from these are all central to the OUV of the WHS*"²⁴³. Overall, setting makes a "*direct and important contribution*" to the significance of Kew as an evolved designed landscape representing key periods in garden and royal history²⁴⁴. None of this was adequately recognised by the applicant.
298. The Chiswick Curve and Citroen decisions recognise, albeit in part, how setting is vital to the OUV of Kew.
299. The Plan expresses how setting contributes to OUV, in terms which have not been seriously disputed in this case. It explains that "*the gardens were first carved from the agricultural fields beyond Kew, a rural settlement on the banks of the Thames and an enclave of the royal court since Elizabethan times. Using the backdrop of this quiet rural retreat, the internationally influential Georgian landscape designers and architects who worked at both Richmond and Kew created magical worlds for their royal patrons, separated from the everyday world outside... When a part of the Gardens was thrown open to the public for the first time in 1841, the site still retained this element of privacy. In an increasingly urban and industrial environment, the secluded, rural aspect of the new Kew Gardens became a treasure to be prized*"²⁴⁵. The site "*retains its rural/pastoral aspect, actively supported by the Thames and the parkland to its west and south and by the relative lack of intrusion from the urban environment around it*"²⁴⁶. The root intent is to engender a feeling of escape into a world apart. Views of a largely unbroken skyline within an area of bounded open space, from what survives of the Great Lawn, lie at the heart of that experience, the spirit of the place.
300. Allied to the "*sense of enclosed otherworldliness*"²⁴⁷, the "*key ways*" in which setting supports and enhances OUV are summarised as follows²⁴⁸:

²³⁸ 2.7/19

²³⁹ 2.7/20, as cited by Tavernor at 4.27/67

²⁴⁰ 3.3/30, second column

²⁴¹ 3.3/30, second column

²⁴² 3.2.1/26

²⁴³ 3.3/30

²⁴⁴ 3.3/30

²⁴⁵ CDA25 2.7/19

²⁴⁶ CDA25 p. 113

²⁴⁷ CDA25 2.7/20

²⁴⁸ CDA25 3.3/30

- i) *“providing a largely unbroken skyline above the walls and boundary planting hence strengthening and maintaining the historic and continuing design intent of the WHS’s sense of being a world apart, separated from the wider, urban world outside...”*
- ii) *this largely unbroken skyline enables the visitor to appreciate and understand the design intentions of the landscape architects who worked there in the various phases of the gardens, as they progressed from royal retreat and pleasure garden, to... a unique botanic garden set within a historic designed landscape;*
- iii) *providing areas of openness and ‘big sky’, framing strong internal views across the bounded open space;*
- iv) *providing visual and physical relationships westwards over the River Thames and to the wider Arcadian landscape beyond, including the designed relationships with Syon Park, which enables modern visitors to appreciate the rus in urbe that Kew Gardens provides, and to see the landscape through a similar lens as the historic designers who worked there, and their royal patrons;*
- v) *providing the backdrop to key views and vistas including, amongst others, the Syon Vista, Broadwalk, Cedar Vista, Pagoda Vista, and other internal views such as the views over the open lawns in the Entrance Zone which reflect the historic Great Lawn;*
- vi) *providing the backdrop to views of and from architectural icons on the site including ... Kew Palace...”*

301. These central features of setting are agreed to be engaged by the current proposals²⁴⁹.

302. The MPlan itself confirms that views do not need to be appreciated along formal vistas or walks, or axial views to make an important contribution to setting. As the applicant now accepts²⁵⁰, the MPlan identifies views from the Great Lawn generally towards Kew Palace (and the Orangery) within the key aspects of setting²⁵¹, reflecting the intended nature of the Great Lawn as allowing open and kinetic²⁵² views across a wider area. The fact that Kew Palace is not the focal point for a specific and singularised view or vista does not render it unimportant, when the Lawn was not intended to perform that function. It is also agreed that there is nothing in the MPlan which seeks to downgrade the relative importance of views obtained from the Great Lawn²⁵³. In fact the specific reference to open views towards the Palace within the MPlan²⁵⁴ confirms the contribution that these views make to OUV, as the applicant itself recognised when treating viewpoints 16 and 19 from the Great Lawn as possessing “exceptional” value and a “very high” degree of sensitivity²⁵⁵. The MPlan

²⁴⁹ Tavernor xx

²⁵⁰ Tavernor xx

²⁵¹ See CDA25 p. 123 Figure 4

²⁵² See too CDA25 p. 126

²⁵³ Tavernor xx

²⁵⁴ See CDA25 p. 123 Figure 4

²⁵⁵ HIA (Tavernor Appendix 2) vp 16 p. 58;; vp 19 p. 70

highlights elsewhere the contribution made by setting by providing the backdrop to views of (and from) Kew Palace²⁵⁶.

303. Where the MPlan refers to the experience of “*big sky*”, this is not to be taken as simply meaning a sense of being aware of the sky above the head of the viewer. Read in its proper context, the experience is of “*bounded areas of openness*,”²⁵⁷ strong internal views in a tree-bounded area opening up into open sky without intervening buildings. Trees and sky, and the built architecture within the gardens, create the skyline, which is largely unbroken. Any buildings which contribute towards this experience are those within the site, not those of the city further beyond, which are marked out as intrusions that break the sense of enclosure within the Gardens.
304. When considering the relationship with the Thames, the applicant has tried to draw too much from the truism that Brentford has always been there while Kew has. This issue is considered more specifically in the context of Kew Palace below, but in general terms the statement that there has been a working settlement on the other side of the Thames says little about whether or how the wider riverine setting of the Gardens contributes to their significance.
305. There is no dispute that there have been buildings on the other side of the river for centuries, with some visibility from Kew. The gasworks were a significant intrusion when they were there²⁵⁸, the visual encroachment of which was resisted, not entirely successfully, through carefully placed planting along the western boundary of the Gardens²⁵⁹. When required, its purpose, both within the site and on the aits, was to “*manage the relationship with the Thames*” so as to “*maximise*” and “*conserve*” the atmosphere of the Gardens against an urban backdrop²⁶⁰. Thus, as the applicant accepted²⁶¹, there is no evidence to suggest that it has ever been part of the design intent of the Gardens to invite in views of Brentford. The gasworks in particular prompted Kew to take steps to reinforce its rural and otherworldly atmosphere, albeit that the river would still have been experienced through the gaps and trunks in the trees²⁶². The Victorian planting demonstrated how aspects of Brentford have been viewed, at times, as a negative influence, rather than something that was simply accepted as present on the other side of the river so as to cause no harm. As the applicant conceded, there is certainly no basis for treating such development in the setting of Kew as a justification for further harm now²⁶³.
306. As for Kew Palace in particular, as the MPlan acknowledges, it has a specific relationship with its riverine setting²⁶⁴, which is important not only for the Palace in its own right but the OUV of the WHS.

²⁵⁶ See p. 30 vi: and Figure 5 p. 126

²⁵⁷ CDA25 p. 128

²⁵⁸ See the explanation of the history in Drury 4.4.4-4.4.6/41

²⁵⁹ CDA25 p. 120 rh column. See too p. 129 which describes planting between 1862 and 1922 in particular

²⁶⁰ CDA25 p. 131

²⁶¹ Tavernor xx

²⁶² See Clark App. 2.3 p. 12

²⁶³ Tavernor xx

²⁶⁴ CDA25 p. 131 lh column

307. The Thames was an important part of the royals' lives, serving as a convenient and ceremonial form of transport from palace and city living to their countryside retreat²⁶⁵. The map evidence from the 18th century²⁶⁶ shows planting including an avenue of trees which confirms what the applicant agrees²⁶⁷ to have been a direct and open relationship with the Thames, with no sense of any strong screening through depth of planting²⁶⁸. This positive relationship with setting endured with sufficient strength to persuade George III to proceed with the construction of the Castellated Palace on the banks of the Thames to the west of Kew Palace between 1801-1811²⁶⁹. The Samuel Leigh panorama of 1824²⁷⁰ shows that by then the avenue had been removed, but there was (it is agreed)²⁷¹ still a clear visual relationship with the river, without any sense of strong screening of what lay beyond. The scale of development in Brentford had plainly not discouraged the royal family from taking on the property as a sanctuary from city life. Nor had it prevented it from being built - before its royal associations, the Dutch House reflected the taste and ambitions of a growing merchant class, located on the Thames near royal Tudor Palaces including Richmond. The elevation on to the river includes a centrepiece with balcony and loggia clearly showing the connection to the river. The views from its upper windows were designed to look out towards the river.
308. There was then an unquestionably strong visual and physical relationship between the Palace and the Thames in particular, which was not interrupted or damaged by development of any significant scale in Brentford, at least until the later expansion and aberration of the gasworks. This connection is agreed²⁷² to be important: it confirms the role of the river in delivering the royals to what they sought in the first place: a sense of countryside retreat. The applicant's original THVIA²⁷³ was therefore right to acknowledge that the Palace historically has had a strong association with the Thames. And none of the evidence shows that with the exception of the gasworks there were buildings of any substantial scale in views to the north. The Samuel Leigh panorama makes clear that the Bell Hotel was the tallest structure on the site as a four-storey building at best, viewed behind osier beds in the foreground. There was certainly no evidence of anything like the combined height and bulk of buildings that are now proposed²⁷⁴.
309. The important point, therefore, is not that Brentford was simply there, but that it did not detract from the strong relationship between the Palace, the river and the associated planting which attracted the royal family and underpinned the design intent of the emerging Gardens. Again, the applicant was wrong to imply that the historical existence of buildings on the other side of the river somehow opens the door to the proposed development. The truth is that there is nothing in

²⁶⁵ See Clark 6.2.24-6/41 and Appendix 2.1 p. 13

²⁶⁶ See Clark App. 1.2 p. 4; 1.4 p. 6

²⁶⁷ Tavernor xx

²⁶⁸ See too the Sandy painting at Clark App. 2.3

²⁶⁹ CDC14 4.115/46

²⁷⁰ Clark Appendix. 2.2 p. 11

²⁷¹ Tavernor xx

²⁷² Tavernor xx. See too the THVIA at CDC14 5.21/55

²⁷³ CDC14 5.2.21/55

²⁷⁴ Tavernor xx

the relationship between Palace and its wider setting which can serve as any justification for a scheme of this height and bulk.

310. The gasworks have been closed for nearly 60 years and the MPlan describes the setting of Kew Palace, in undisputed terms²⁷⁵, as making a direct contribution to significance²⁷⁶. No issue is taken with the description in the MPlan of key elements in the setting including: "*views of the river frontage*"; "*views from primary entrances to front and rear*"; "*the visual and physical relationship to Thames*"; and "*views from upper floor windows*"²⁷⁷. ICOMOS regards the riverine setting as "*considerable*"²⁷⁸. The applicant's Heritage Impact Assessment acknowledges views to the rear towards the Thames (including intended views from Palace windows)²⁷⁹, in particular viewpoints 20, 20A and 21, as contributing to significance as they place the Palace in its riverside setting²⁸⁰. Again these views are regarded as of "*exceptional*" value and "*very high*" sensitivity²⁸¹, by dint of what the THVIA earlier described as a "*semi-rural*" feel²⁸², with only "*low-set*" buildings in Brentford²⁸³.
311. This semi-rural, riverine feel is now agreed²⁸⁴ to be consistent with sense of a retreat from the city, and the historical connections with the Thames, both of which characterise a positive contribution to the setting of the Palace and Kew²⁸⁵. The absence of dominant large-scale development on the Brentford side allows for a sense of depth and openness in views across and beyond the river and the trees which shape the experience here, particularly in the summer months.
312. This is not to suggest that these views are historically intact and HE's case has never been that this scene has been pristinely preserved since the date of royal occupation. The MPlan does not claim that this stretch of the Thames has the same character as seen in views towards Syon Park²⁸⁶. But modern Brentford does not for the most part interfere (in this sense at least the site does not have a strong relationship with Kew); and the setting has recovered a sense of openness, towards trees and water which exert an influence that feels closer to the design intent of the Gardens and the experience which the royal family and others cherished in the first place. This sense of the place is not displaced by the creation of the modern gardens, or the embankment works, which still enable that connection between the Palace and its setting to be appreciated. The viewing platform from the Queen's Garden was raised to emphasise this relationship with the river²⁸⁷, not Brentford. It could never be understood to welcome in modern development from the north side of the river. There is no evidence that this was ever the purpose of placing it there.

²⁷⁵ Tavernor xx

²⁷⁶ CDA25 p. 20(viii); p. 137 rh column

²⁷⁷ See CDA25 p. 137. Emphasis added

²⁷⁸ CDA13

²⁷⁹ GPA3, section 9, bullet point 3, pp. 4-5 (CD A5)

²⁸⁰ 6.35/21 and CD B2 4.12.37/361-2

²⁸¹ HIA, pp. 74, 78, 82

²⁸² CDC14 4.106/45

²⁸³ HIA, Tavernor Appendix 2 p. 74

²⁸⁴ Tavernor xx

²⁸⁵ Tavernor xx

²⁸⁶ MP CDA25 p. 113 rh column

²⁸⁷ See Tavernor 3.24/33

313. The contribution of setting to the significance of Kew Palace (and with its OUV) does not end with its relationship with the Thames, as described above. The Palace lies not only on the river, but at the head of the Great Lawn. Views of the Palace from the south highlight the landmark role of the Palace, and the curving presence of the river gives the Gardens a breathing space which influences the sense of separation from the built environment beyond its boundary.
314. Again, there is no dispute with the overall contribution made by setting here, as described in the MPlan²⁸⁸. It provides a backdrop to views to the Palace as an architectural icon of the Gardens²⁸⁹ and: "*a key landmark in this area of gardens*"; "*key views from various locations to the east on the Great Lawn*"; "*views from primary entrances to front...*"; and "*memory of nearby demolished White House*".
315. The applicant agreed²⁹⁰ that: the Great Lawn was extended up to the front of the house, to make it the focal point of the area by the end of the 19th century²⁹¹; that the Palace has been a landmark of Kew for over 200 years; that it helps signal links with the royal family and their development of the gardens (the Great Lawn was part of the Gardens which was associated with Augusta, who was in turn closely associated with the Palace); that the Palace now faces the Great Lawn in a comparable way to the White House; and that although views from the Lawn may have changed since the 18th century, these took place just as changes to the Great Lawn itself occurred²⁹².
316. This evolution and layering of this relationship therefore goes hand in hand with the palimpsest of the historical landscape. The change is thus inherent in significance, rather than taking away from it. As the Chiswick Curve Inspector found, it is a fundamental part of the designed landscape and a constituent of the palimpsest of landscape design²⁹³. And as the Citroen Inspector concluded, it is part of a landscape that was designed as a piece²⁹⁴. Views towards it, in particular viewpoints 16 and 19, are in the end regarded by the applicant as just as "*exceptional*" and "*highly sensitive*" because of their relationship with the Palace as they are with the wider OUV of the site.
317. The setting of the Royal Kitchens is listed as one of the reasons for designation²⁹⁵. The building does not sit as a landmark but is visible in views from the south, including viewpoint 16, and makes a positive contribution to understanding the historical connection between the Gardens and their royal past, in particular the domestic focus of the royal household. The absence of development between the Royal Kitchens and the Palace allows space for that relationship to be appreciated. The backdrop of trees and open sky also enable the architectural qualities of the roofline to be understood. It should not be assumed that planting which can be seen in front of the Kitchens in views from the Lawn will offer a subsistent screen, so as to downplay the relationship with

²⁸⁸ Tavernor xx. See too Tavernor 3.60/52

²⁸⁹ CDA25 p. 30 vi

²⁹⁰ Tavernor xx

²⁹¹ See too Drury 4.5.1/50

²⁹² See CDA25 pp. 114 and 116

²⁹³ CD A21, 12.110/139; 12.100/137

²⁹⁴ CDA26 IR 15.8/104

²⁹⁵ CDA20b

the Palace or the overall contribution of the setting. As RBGK explain²⁹⁶, this vegetation provides only localised shielding between the Great Lawn and the service area around and beyond the Kitchens. It is actively managed in this context and is not intended to grow to a size which could help screen large-scale external development. The Council in particular, relies excessively on this screening to downplay the contribution made by setting, and the HE assessment of a moderate contribution is correct.

318. The setting of the Kew Green CA is crucial to its character. The river and the verdant landscape are the prevailing features of the experience, and although built form is perceptible in winter particularly it is by no means prominent in many views looking west along and across the river. Viewpoints 12 and 13 in the HIA both show that modern development in Brentford is nearby, but the towpath becomes more rural and secluded moving away from Kew Bridge towards the Palace; and the scale and grain of development limit any sense of imposition, particularly in the warmer parts of the year, when the tree screening gives the riverside area a natural, contained feel, with views opening up as you take the curve of the river, a great sweep of water and lush treeline behind²⁹⁷.
319. The position of HE is that the proposals would result in a high level of less than substantial harm. This was described by HE's heritage witness in other words as more than moderate, but not at the upper end of less than substantial. HE does not allege that Kew is at a tipping point into substantial harm, or that allowing the proposals would place Kew there. The judgment is medium in the cases of the Royal Kitchens near the Palace (given the lower significance attributable to their setting) and Kew Green conservation area (recognising that the designation also takes in the Green and other views along the river).
320. The context for the assessment of harm is that this application involves introducing development two-three times the size of existing buildings onto a site which could not sit much closer to what is a highly significant area, even for Kew, where its cultural landscape and iconic architecture strongly entwine. Its location, right on the river, around 230m from the edge of the WHS, places it in near proximity to the part of the Gardens with the most intense concentration of Grade I buildings and important open space enjoying open views towards the river.
321. There is no dispute in this case that the Bedford case represents the law on what is substantial harm in the terminology of the Framework. Such harm arises where the significance of a heritage asset would be "*vitiated or very much reduced*"²⁹⁸. But, the language of Bedford (including the concept of significance having drained away in cases of substantial harm) does not really help much with identifying where any less than substantial harm should be placed on the spectrum.
322. The basic approach is to test the effect of the proposal in terms of the harm it causes to significance. As the applicant ultimately accepted²⁹⁹, this involves a basic question of judgment which does not and should not require some form of

²⁹⁶ Croft 6.1.6/56

²⁹⁷ Clark 6.3.7-8/101

²⁹⁸ CDA22c at [25]

²⁹⁹ Tavernor xx

mathematical or mechanistic approach to assessment. Thus, as was also agreed³⁰⁰, there is nothing in policy or guidance to suggest that any analysis of harm should proceed by first working out discrete aspects of significance which are carved out from assessment, leaving others “at large” for consideration. As the Citroen Inspector concluded when addressing a similar tack taken by the applicant in that case, the important point is not what is left untouched but whether and how any development affects what is important³⁰¹. Assessing harm does not therefore involve an exercise where you start by identifying what is left alone (or not “drained away”), such that only a notional proportion of significance is residually capable of determining what extent of harm will arise.

323. There is a need to recognise that there may well be cases, such as Kew, where setting cannot conveniently be separated from the significance invested in the asset itself. As explained above, setting is integral to a proper understanding of what makes Kew special. The SOUV for Kew warns that development outside the buffer zone may threaten the setting and with it the overall integrity of the WHS³⁰². Care is required to avoid introducing an overly rigid binary distinction between setting and the asset itself, when in this case there is a symbiotic relationship between them.

324. Even if the judgment were reached that more significance did reside in the fabric of an asset, it is common ground³⁰³ that this does not dictate in any direct or mechanical way where on the spectrum of less than substantial harm a proposal should lie. In such cases, as the applicant accepted³⁰⁴, there is nothing to prevent the decision-maker reaching a judgment that proposals would cause more than a moderate level of harm.

325. In this context, the approach suggested by this and other applicants, should not be given any significant weight. Thus, (1) the absence of a direct impact on the physical asset cannot mean that harm is somehow placed towards the lower end of the spectrum; (2) in circumstances the OUV can be found from one or more of the identified criteria for inscription³⁰⁵, the fact that harm is not caused by reference to all of the criteria under which OUV has been identified does not mean that the harm should be qualified; (3) similarly, the fact that one important aspect of significance is affected but other aspects remain untouched should not be taken to lessen the weight given to any such harm; (4) harm should not be calibrated by reference to the extent of development as a proportion of the overall setting, for this does not necessarily reflect the significance of the effect and would in any event invite successive developments to claim their limited slices for themselves with no control over the extent of harm; (5) the fact that in an asset such as this WHS, there will be a number of views left unharmed does not mean that any harm should be assessed at the lower end of the spectrum. Again, this risks masking the true harm on important views that are affected.

326. As the applicant accepted, harm to significance may arise where new development reduces the extent to which relevant buildings predominate in the

³⁰⁰ Tavernor xx

³⁰¹ See CDA26 15.15

³⁰² CDA8

³⁰³ Tavernor xx

³⁰⁴ Tavernor xx

³⁰⁵ CD A17 77/25

view³⁰⁶; or where it distracts from or competes with a building which is the focus of a view³⁰⁷. Such harm does not only arise where the development appears atop the buildings in question³⁰⁸.

327. In the case of Kew, successive decisions of the Secretary of State (Chiswick Curve and Citroen) have proceeded on the basis that any intrusion of the city must be harmful to its OUV³⁰⁹. This position was plainly not reached simply by reference to the individual building in question but to a wider view on the importance of the otherworldly enclosed setting to the significance of Kew. This was not taken into account by the applicant in its assessment; and it was acknowledged that its position was inconsistent with the approach taken in these decisions³¹⁰.
328. There is no dispute that the cumulative effects of any harm arising from the scheme must be taken into account with existing harm which arises from development in the setting of Kew³¹¹. Not only approved, but existing, development should be taken into account as part of that process. Nor is there any dispute that any assessment should be carried out based on overall, compounded harm.
329. It is also common ground that in this case there are existing detractors which must be taken into account, in particular the Haverfield Towers and the Kew Eye. These buildings are regrettable intrusions that puncture the visual envelope of the Gardens in important views. The Haverfield Towers were identified in the ICOMOS site evaluation of 2003 as having "*seriously diminished the visual experience of Kew at several points in the gardens*"³¹². The applicant accepts that the Towers catch the eye of visitors and weaken the sense of enclosure of the Gardens in some views³¹³. These undeniably include relevant views from the Great Lawn and Kew Palace. The Kew Eye also causes what the applicant describes as a "*truly harmful*" impact in the axial view of the Palace from the Great Lawn³¹⁴; which can be seen in view 16. Detracting effects are also registered in views of the Kew Eye in views 20 and 20A, primarily in winter views. Where the proposals cause harm in these views, the overall assessment of compounded harm must take this into account.
330. The flaws in the applicant's work run deeper still. The HIA that was produced in evidence was specifically intended to incorporate the ICOMOS methodology³¹⁵ for the assessment of heritage impacts, which was not taken into account in the preparation of the THVIA³¹⁶. As the HIA recognises, that guidance has been

³⁰⁶ Tavernor xx

³⁰⁷ Tavernor xx; CDA21 12.116/140

³⁰⁸ Tavernor xx

³⁰⁹ CDA21 12.103-4/138 and then 12.108/139; see too CDA26 15.8/104

³¹⁰ Tavernor xx

³¹¹ Tavernor xx; Laird xx

³¹² CDA19 p. 109

³¹³ Proof 4.27/67. Cf CDA25 p. 76

³¹⁴ 4.30/69, referring to a photo on p. 65 to the left of the photo from the gazebo. See vp 20 and 20A in the HIA (existing) pp. 74, 76 and 78, 80.

³¹⁵ See CD A18

³¹⁶ Tavernor xx

translated into the WHS SPG and is obviously material³¹⁷. The HIA expressly and fundamentally relies on the ICOMOS guidance, which makes clear the need to concentrate the assessment on “*those attributes which give the property its OUV*”³¹⁸. Impacts and their significance are to be expressed by reference to those attributes³¹⁹. This exercise is carried out by combining the value of the heritage asset in question (itself determined by identifying attributes that convey OUV)³²⁰, with the scale of change, to give an overall judgment on the significance of effect, either adverse or beneficial³²¹. As the applicant accepts³²², each stage is based on considering the effect on the attributes of OUV, having regard to the value of the asset in question.

331. The HIA purported to apply the guidance³²³, accepting that “*an assessment of impact on a WHS should clearly focus on OUV and attributes that convey OUV*”³²⁴. It laid out a methodology which, as the applicant accepted³²⁵, rooted both the value of the asset and the effect on it in an assessment of significance, that is the attributes of OUV³²⁶. However, when considering the significance of those effects, the applicant introduced the concept of neutral effects³²⁷ which depended on whether the quality of the environment was diminished or enhanced. It was agreed that this approach has no place in the ICOMOS guidance³²⁸. The difficulty with it is that it appears to incorporate townscape rather than heritage considerations and when assessing heritage gives a methodological way out for impacts which the methodology otherwise roots in significance and can only realistically be regarded as adverse.
332. There was no dispute that when relevant viewpoints are considered, they should be treated as holding exceptional value³²⁹, having regard to the attributes of significance in this case. Similarly, the HIA accepts that there would be changes of up to major magnitude in these views according to a methodology which again is rooted in the attributes of OUV. But the suggestion that the effect in these views would be neutral bears no cogent or reasoned relationship to the attributes of OUV, which were elsewhere recognised to afford the views exceptional value and to which impacts were accepted to occur. These frailties are not restricted to the viewpoints. The overall assessment of impact on the key attributes of setting accepts, following the stated methodology, that effects on OUV would occur, but in fact then describes these (in the case of the relationship with the Thames) as having a beneficial effect³³⁰. None of the assessment

³¹⁷ See CDB19 at p. 9, 5.2/64 and Appendix 4/122

³¹⁸ CDA18 5-1/8

³¹⁹ See 5-4/8; 5-8/9; 5-10/10; and Appendix 3B pp. 16-7, 7/19

³²⁰ See Appendix 3A p. 14

³²¹ See the table at p. 9

³²² Tavernor xx

³²³ Tavernor Appendix 2 4.11/6; 4.19/9

³²⁴ 4.5/6

³²⁵ Tavernor xx

³²⁶ See Tables 4.1 and 4.2 on p. 7

³²⁷ See Table 4-4, brought into Table 4-3 as described at the top of p. 8

³²⁸ Tavernor xx

³²⁹ See views 16, 19, 20 and 20A in particular (pp. 58, 70, 74 and 78)

³³⁰ See eg 8.15/90

- viewpoints gives any clue as to how this judgment was reached³³¹; but in any event, as the applicant accepted, there was nothing at all in the analysis which reasoned out how any such judgment could possibly have been reached by reference to the attributes of OUV³³².
333. It is not sufficient to simply refer across to other written evidence, as the applicant's heritage witness did in XX, when the HIA was deliberately produced for the purpose of the Inquiry. It sets out judgments which, following the guidance, are plainly at odds with the conclusion that no harm whatsoever would be caused. These issues are far more than technical. Any finding that there would be a neutral or even beneficial effect on OUV has not been explained in a context where, in following the guidance, the assessment concedes changes in views which must be referable to the attributes of OUV - and can only sensibly be described as negative, as explained by HE in its own evidence³³³. The applicant was unable to articulate any way in which this proposal would transparently benefit the OUV. Reliance on what appear to be considerations simply of townscape quality, to place a gloss on what are in truth adverse impacts on attributes, mask the true and harmful effects of the scheme.
334. The applicant also conceded that it was influenced by the conclusions of the Chiswick Curve Inspector that "*the idea that Kew Gardens can be completely 'protected' from further visual intrusions of the city beyond is a battle that has been fought and lost*"³³⁴. RBGK and HRP may understandably regard the Gardens as under siege from tall building development, but on proper analysis the unhappy analogy drawn by the Inspector was misplaced and the MPlan is correct to take issue with it. He was clearly referring to policy intentions for tall buildings within the Great West Corridor, which is some distance from the application site.
335. As the Council conceded³³⁵, there is nothing in either adopted or emerging policy to suggest that further harm to the visual envelope of Kew is inevitable. Where there are already developments, existing and approved, which cause harm, these cannot, as the Citroen Inspector accepted, be used to justify further harm and should properly be treated as part of any cumulative assessment. It would be a mistake then to somehow calibrate the impact of this scheme by assuming that further harm is inevitably on its way.
336. There is no dispute of course that the development would avoid direct harm to the fabric of the place including its botanic collections; and it would leave some views and aspects of significance unharmed. HE is not alleging that a tipping point has been reached at which any further development would cause substantial harm to the OUV of Kew.
337. An objective and fair analysis of harm proceeds on a rigorous understanding of the significant and integral contribution made by setting to the significance of the

³³¹ Se vp 12-15 (12) pp. 42-3 (13) pp. 46-7 (14) pp. 50-1 (15) pp. 54-5 (16) 58-9; or (20) pp. 74-5, or (20A) 78-9

³³² Tavernor xx

³³³ That evidence explains how judgments were reached in the context of the ICOMOS guidance: see Clark at 6.2.141/89. The evidence includes criticism of the assessment in the original THVIA: see 6.2.156-170/93-7

³³⁴ CDA21 12.107/138

³³⁵ Baker xx

WHS and Kew Palace in particular. It recognises, as the SoS has previously, that development in the setting of Kew is a threat to its integrity³³⁶ and that *"if one accepts that part of Kew's significance as a designated heritage asset is its status as an escape from the city, then any intrusion by that city must be harmful"*³³⁷. It takes care to specifically relate impacts to the attributes of OUV or to significance. It proceeds on a correct reading of the MPlan as all that we have to explain the contribution that setting makes to the significance of Kew. And it does not assume that further harm to Kew from tall building development in its setting is somehow inevitable, so as to qualify any assessment of harm that might arise from this scheme.

338. These proposals would not relate well to their context; but would rather impose themselves onto it, and into it. They ignore the explicit warning issued by the SOUV about threats to Kew from development outside its buffer zone, which go to the integrity of the designated site. They would clearly disrupt the sense of enclosed otherworldliness that is vital to the setting of the Gardens. They would visually compete with Kew Palace, in what are agreed to be exceptional views from the Great Lawn. They would introduce a newly dominant urban influence, detracting from the riverine setting of the Palace and this area of the Gardens. The sheer height and breadth of the development, described as a *"massive wall"* by the Council³³⁸, would be particularly prominent in winter views.
339. The proposals would intrude into the crucial sense of bounded enclosure in the backdrop to the Great Lawn, harming the sense of an otherworldly escape from urban life that is integral to the OUV of the WHS.
340. As HE's witness explains in her evidence, views 16 and 19 (in both the THVIA and the HIA) are of particular relevance here, albeit that they do not represent the entire area of the Lawn from where the damaging effect of the proposals would be perceived. They are not specific formal views but, as explained above, they are identified as important in the MPlan, reflecting the wider importance of open views from the Great Lawn as part of an evolving relationship between the architecture of the site and its role in the designed landscape. Both views unmistakably convey the sense of enclosed otherworldliness that is crucial to OUV, as described in the MPlan, through the largely unbroken skyline which enables the visitor to appreciate and understand the design intentions of the landscape architects who worked there. They confirm the sense of strong internal views across the bounded open space, providing the backdrop to key views over what survives of the Great Lawn. They are accepted to be of exceptional value with a very high sensitivity to change³³⁹.
341. These views demonstrate a considerable increase in urban form introduced to the perimeter of the Great Lawn by the scheme. The buildings would read as a single large residential block, a hard mass overtopping the tree line in an area which is currently clear sky between the Palace and the Kitchens, bringing the urban world further into this semi-naturalistic landscape and weakening the atmosphere of otherworldliness and retreat. The ability to appreciate the design intentions and experience of the Gardens would be clearly diminished. This harm

³³⁶ CD A15: 2.1, 2.4, and p. 11

³³⁷ Chiswick Curve decision, CDA21 12.108/138

³³⁸ CDA29 7.96

³³⁹ See the IA at pp. 58, 70

would be experienced in kinetic views across the Lawn, including those which would arise between the axial view 16 and view 19, as well as other views to the west of each³⁴⁰.

342. The applicant accepts that there is a minor impact from view 19, but this is difficult to square with the moderate effect in view 16. As the applicant now concedes, the minor adverse impact is directly referable to key elements of how the setting of the WHS contributes to significance – impact on a largely unbroken skyline and the associated effects on the sense of boundedness and enclosure³⁴¹ - which indicates that in truth harm is being caused³⁴². The applicant provided no reasoned basis for any “*neutral*” effect on significance, resulting from a wider methodological flaw explained above. Rather than being integrated into the existing tree line, the extensive breadth of the scheme would appear above it in winter views; and in any event the effect is not simply about the question of height relative to the trees in the view. In view 19 the scheme would take up the entire width between Kew Palace and the tree in the left of the view, beyond the localised planting near the Kitchens. In view 16 the buildings would also take up a noticeable breadth of space and the suggestion that the Kew Eye provides a “*full stop*” obviously involves relying on acknowledged harm to calibrate downwards the impact of new development in this view. The conclusion that no harm arises is also inconsistent with the crystal-clear approach to intrusion taken by the Chiswick Curve and Citroen Inspectors.
343. The proposals would visually challenge and jar with Kew Palace in important views across the Great Lawn, causing harm to the iconic architectural legacy in its historic landscape setting.
344. The impact on Kew Palace in views from the south is also shown in views 16 and 19. Such views are of critical importance to both the OUV of the WHS and the significance of the Palace, as they confirm the historic relationship between Palace and the palimpsest of landscape design since the early 19th century, as well as allowing an appreciation of the Palace within the wider sense of otherworldliness and enclosure of the gardens. In the agreed terms of the MPlan, setting contributes here by providing the backdrop to “*key views*” from the Lawn of architectural icons on the site including Kew Palace as a key landmark in this area of gardens. Since the demolition of the White House, the Palace has taken its own comparable place in establishing for the visitor the domestic focus of the royal family and their association with the Gardens. It is now part of the designed landscape, as the Chiswick Curve and Citroen Inspectors understood. The applicant accepts that views 16 and 19 are also “*exceptional*” and “*highly sensitive*” because of their relationship with the Palace.
345. The scheme would introduce a clear sense of visual competition with the Palace, drawing the eye of the viewer, diminishing the appreciation of the Palace and detracting from its relationship with the wider historic landscape setting. The buildings would read as a hard backdrop, drawing the urban environment of London into the WHS, their close visibility, height, spread and form diverting

³⁴⁰ Clark eic

³⁴¹ Tavernor xx

³⁴² Tavernor xx

focus from the Palace and its connection to the carefully composed historic landscape.

346. There is no credible case that the scheme “*neutrally*”³⁴³ avoids harm here. The effects are again clearly referable to the key elements of setting identified in the MPlan and are manifestly adverse. The applicant (and the Council) rely on the appearance of these buildings to the side of the Palace rather than directly over the roofline to temper any impacts. But it is agreed that harm through competition and distraction in the view is not only caused by development atop an important building in the view. And the claimed distinction with other tall buildings over the Orangery, on the grounds that their top and sides intervene in the skyline, does not stand up to scrutiny. The proposed buildings only neglect to present their sides in views because they take up the entire space between the treeline and either the Palace itself or other harmful development in the form of the regrettable Kew Eye. Neither their detailed design, nor the gaps between them³⁴⁴, would be readily discernible in these views, the dominant effect arising from their intrusive spread in the skyline.
347. The proposals would introduce a newly dominant and harmful urban development into the riverine setting of Kew Palace, in views north from the Palace.
348. Views 20, 20A and 21 are of particular relevance here, which demonstrate the setting as outlined above and the impact of the proposals as the viewer moves around the outside of, and within, the Palace. The scheme would cause harm by introducing a newly dominant urban influence into the riverine setting of the WHS, as perceived from both within and outside Kew Palace.
349. As HE’s witness explained, view 20 is an axial view from the centre of the river facade over the late twentieth century formal garden. Although the river itself is not visible in this view, the open space of the river, the trees lining the bank, and the trees of the ait, are all perceptible in this location. The Haverfield Estate towers are to the right of this view, and other lower and more distant modern buildings are partially visible in winter. Due to its sheer proximity, width and height, the proposals would be extremely dominant in this view in the winter months, creating a hard backdrop to the trees, diverting the eye from the relationship with the river and bringing the sense of the city much closer to the site than at present. In summer, despite a degree of containment offered by the trees, it would still be strongly perceptible across a broad area of the view.
350. In View 21, from the mound to the immediate north east of the Palace, the scheme would rise several storeys above the treeline across this view, reading as a solid wall of development. View 20A demonstrates the extremely high visibility of this development from within the Palace, when a greater portion would be visible above the treeline of the ait and riverbank. The development would replace the trees and the water as the dominant feature of these views.
351. These impacts would be considerable and harmful. The present visibility of Brentford is either considerably softened by planting or remains lower set in the views, a low-lying neutral influence which enables the viewer to appreciate the

³⁴³ HIA

³⁴⁴ Morris xx

riverine, semi-rural character of the scene in a form that is closer to the original design intent of the Gardens and the sense of rural retreat that attracted the royals here, without significant interruption from large-scale development. There remains a legible visual relationship between the Palace and the wider setting, deriving from the architecture of this elevation to the Palace, its historical links with the river and the intended views towards it from the upper floors. The interlude of the gasworks does not serve as a precedent for further harm and there is no evidence of buildings of the bulk now proposed ever having existed within the setting so as to contribute to heritage significance in a positive way. Neither the modern gardens nor the embankment materially weakens that relationship.

352. Again, the approach of the applicant to these views is entirely implausible. The conclusion that there would be benefit to the relationship within the Thames is wholly unsustainable. The HIA regards these views as exceptional and of very high sensitivity. It records what, on its own methodology, should be major impacts on the attributes of OUV in these views³⁴⁵. It is difficult to see how these could be beneficial, or even neutral when the identified effect is, as the applicant accepted³⁴⁶, patently referable to significance. It involves imposing a strikingly substantial form of new urban development which draws the eye from the relationship between the Palace and its semi-rural riverine setting. The very large, urban scale of the proposed development would introduce a sharp departure that shifted the focus in views out of the WHS, away from the waterway and the verdant features which surround it, towards assertive modern structures imposing themselves onto the tree-lined river, weakening the association of the Palace with the river as a visually appealing natural landscape which reflects the original design intent of the Gardens. The approach of the applicant implies that any building of architectural quality on the Brentford side of the river would be justified, simply because there is built development there, but this ignores the generally low-set nature of what is there and how it enables setting to make an important contribution to significance that these large-scale buildings would undermine.
353. The proposals would cause further harm, to the setting of the Royal Kitchens, by interrupting their relationship with the Palace and distracting from the appreciation of the architectural qualities of the building in its enclosed Garden setting.
354. View 19 shows that the scheme would intrude prominently into the gap between Kew Palace and the Kitchens, disrupting the ability for visitors to read the Kitchens as part of the domestic focus of the royals in this enclosed part of the Gardens. From other positions, including view 16, the scheme would directly back views of the chimneys, changing their relationship with the treeline and diminishing the ability to appreciate their form.
355. The proposals would result in compounded harm by exacerbating the effects of both existing and approved development in the setting of the WHS and Kew Palace.

³⁴⁵ See the judgments on moderate impacts under magnitude of change, which are then applied to the sensitivity assessment in Table 4-3 on p. 8

³⁴⁶ Tavernor xx

356. There is no debate about the relevance of cumulative harm; nor as explained above is there any dispute that both the Haverfield Towers and the Kew Eye would be detractors in the important views, the effect of which would be compounded by any harm resulting from the proposals.
357. If, in view 20, harm arises from the Haverfield Towers, there is no sense in any suggestion that the proposals would themselves avoid harm. The form of the Haverfield Towers is taller, and they are seen further away, but it is far-fetched to suggest that the viewer would distinguish them from the proposals and regard the latter as having no similarly adverse effect on the setting of the Palace. The Kew Eye has a much more limited effect, but is harmful nonetheless. The Kew Eye juxtaposes very poorly with the Palace in views 16 and 19 from the Great Lawn, and together with the scheme would exacerbate the sense of built form intruding into the skyline and enclosure of the Gardens.
358. The proposals would harm the significance of the Kew Green Conservation Area, by intruding into its semi-rural and river-dominated character.
359. The proposals would lie only around 60m from the border of the conservation area and rise up to three times the height of the present buildings on site along its width. They would impose themselves as noticeably the largest buildings on the riverside, as seen in views 12 and 13³⁴⁷, sitting close to the water and rising considerably above the tree line and open sky as a broad, bulky, block of new urban development. There would be a dwindling sense of visual escape from its introduction of a progressively forceful presence in views travelling along an extended portion of the riverside path. The buildings would markedly limit the experience of a tranquil landscape in this stretch of the river.
360. These impacts would not be perceptible from the Green itself. This appears to lie at the heart of the difference between HE and the Council in particular. But as the Council accepted³⁴⁸, there is nothing in the conservation area appraisal to suggest that the semi-rural riverside character of this part makes significantly less of a contribution to significance than the undoubted qualities of the Green. By causing harm to the riverside as a foil to the Green, the development would cause harm to the overall significance of the conservation area.
361. The proposals would cause a high level of less than substantial harm to the OUV of the WHS and the significance of Kew Palace, and a medium level of harm to the significance of the Royal Kitchens and the Kew Green Conservation Area.
362. Each case must of course be considered on its merits, but contrary to the suggestion of the applicant, the approach taken by HE here is broadly consistent with the assessment of the harm in the Citroen decision. There, the SoS placed impacts in views from the Great Lawn in the moderate category of less than substantial harm. The impacts plainly related to a different building, but the elements of setting that were affected – iconic architecture, views from the Great Lawn towards a largely unbroken skyline and a sense of otherworldliness and enclosure³⁴⁹ – are relevant here too. Although this scheme would appear to the side of the Palace, its four visible storeys would not be significantly lower than

³⁴⁷ HIA pp. 45 and 49

³⁴⁸ Laird xx

³⁴⁹ See CDA26 15.8-10/104

the six of the Citroen scheme, and importantly they would be much wider and appear at a much closer distance (Citroen is at c. 1.2km)³⁵⁰. To that harm must be added the separate source of considerable harm in views to the north of the Palace, from buildings which could not be much closer to a building of quite exceptional importance both to the Gardens and in its own right. Taking these two together, it is entirely reasonable, having regard to the Citroen decision, to consider that the harm is greater than moderate. When existing detractors are also taken into account on a cumulative basis, this confirms the view that the harm would be at a high level; and this is underscored by the further effects of the Citroen scheme.

363. The cumulative effect of the Citroen scheme itself must also be considered. This is not a question of the Citroen scheme (or others above the roofline of the Orangery) also being visible in important views identified in this case. Nor is there any neat mathematical formula to calculate how harm that was considered to arise in that case would accumulate with the harm that would be caused here. But as is now common ground, the kinetic experience of the Great Lawn³⁵¹ and its important open views towards the iconic architectural legacy at Kew means there will be an additive source of harm appreciable by visitors to the Gardens as they walk within a principal area of the Entrance Zone (visited by 2m visitors a year, with 300,000 visiting Kew Palace)³⁵². There is no dispute that, the overlay of important viewpoints of the respective schemes³⁵³ shows, there is available a kinetic series of views on a route across the Great Lawn³⁵⁴, including any journey between and near views 16 and 19, which will take in tall buildings progressively puncturing the visual envelope of the Gardens. The prospect of what the SoS regarded as the more than moderate harm being perceived on part of that journey, in views towards the Orangery, needs to be taken into account if it is concluded that harm would be caused by these proposals; harm which itself is justifiably pitched above moderate and should recognise the Kew Eye and Haverfield Towers as compounding factors in views of the scheme.
364. Despite suggestions in written evidence from the applicant, there is no basis for relying on planting to valorise the harm that would be caused by this scheme. Although the MPlan refers to further screening, RBGK have made it clear that its role and extent would be limited³⁵⁵ and the Plan itself cautions that "*use of trees as screening cannot be relied upon in the long term to protect against inappropriate external development which if not managed sensitively, will continue to erode the setting of the site*"³⁵⁶. Kew has previously explained why this is the case³⁵⁷ and this was accepted by the CC and Citroen Inspector's, as well as the SoS.
365. It would be wrong to place the onus on Kew to address the harmful consequences of development carried out away from the Gardens. As HE

³⁵⁰ Clark chief and see CDA26 IR p. 24 fn 128

³⁵¹ As foreshadowed in the example shown in green in Figure 8-1 of the HIA

³⁵² Drury 4.6.15/55

³⁵³ See Appendix 1.6a, which includes viewpoint 30 from Citroen with viewpoints 16 and 19 in this case

³⁵⁴ See a similar Broadly foreshadowed in a route Figure 8.1 of the HIA

³⁵⁵ See CDA26 10.30/95

³⁵⁶ CD A25 9.3.2/57

³⁵⁷ See CDA21 7.99/63

guidance confirms, planting is no substitute for development that is well designed, and well located³⁵⁸. No weight should therefore be given to any prospect of planting to screen the impacts from this scheme.

366. HE acknowledges that the harm it has identified must be placed in a balance with the claimed benefits of the scheme, the weighing of which it leaves to the judgment of the Inspector and the SoS, along with the assessment of whether the proposals comply with the development plan as a whole. HE's witness accepted that if the public benefits outweighed the harm then the proposals would comply with the development plan. But when reaching that judgment, it is necessary first to identify how harm feeds into the overall policy assessment.
367. These proposals would conflict with local and strategic policy designed to protect against harm to heritage assets, in particular WHSs. They would breach policies 7.8 and 7.10 of the published London Plan³⁵⁹, as well as policy CC3(i) and (p) and policy CC4 (d) and (i) of the Hounslow Local Plan³⁶⁰.
368. As the Council accepts³⁶¹, policy CC1 expects proposals to have regard to the Urban Context and Character Study and to respond to the wider context and history of the area. Although the Study places the site within a much wider area with "*some suitability*" for tall buildings, there is nothing in it which suggests that any particular site, including this one, will be suitable for tall buildings³⁶². Policy CC3 confirms³⁶³ that an assessment of a character area as having any degree of suitability for tall buildings should not be taken to imply that every location is suitable. There is nothing in the Study anyway which demonstrates even a cursory assessment of the extent to which tall buildings might be suitable in the setting of Kew Gardens³⁶⁴.
369. The Council accepts that the support for development under policy IMP2³⁶⁵ and Site Allocation 11³⁶⁶ is qualified by the need to have regard to the wider context, including Kew Gardens³⁶⁷. Thus, the policy requires comprehensive development to avoid the "*individual sterilisation of parts of the site,*" not to require or invite any particular scale of development. The stated need is to "*optimise*" not maximise residential development, which again confirms the need for any scheme to be appropriate in its setting³⁶⁸. As the Council agreed, the allocation does not assume or imply the acceptance of any level of harm to Kew Gardens or Kew Palace³⁶⁹. In any event, as the Council also agreed³⁷⁰, any support for redevelopment derived from the allocation must be read subject to the

³⁵⁸ GPA3, CDA5, 40/14

³⁵⁹ See CDB18 pp. 295 and 299

³⁶⁰ See CDB4 pp. 140-1

³⁶¹ Baker xx

³⁶² Baker xx

³⁶³ CDB4 p. 138

³⁶⁴ CDB4 p. 138

³⁶⁵ P. 228

³⁶⁶ P. 257

³⁶⁷ Baker xx

³⁶⁸ Baker xx

³⁶⁹ Baker xx

³⁷⁰ Baker xx

- application of other policies in the Plan, including those directed at the protection of the WHS and other heritage assets.
370. As for draft policy, the emerging Local Plan Review (LPR) is at an early stage and can only be given very limited weight. The draft allocation for the site³⁷¹ explicitly refers to the need for impacts on Kew to be assessed, thereby engaging heritage policies. In so far as other elements of the draft seek to reflect the support of the Council for the current scheme, they can be given little weight given that the proposals are now before the SoS.
371. The proposals would conflict with heritage policies D9(e), HC1 and HC2 of the IPLP, all of which should be given significant weight given that they are not covered by any direction issued by the SoS. This IPLP conspicuously gives discrete emphasis to the protection of WHSs, by way of what the Panel describes as an active response to ICOMOS concerns about preventing negative impacts on the OUV of London's WHSs. The supporting text to policy HC2 advises that the surrounding environment of WHSs must be carefully managed to ensure that OUV is protected whilst the wider area evolves. The purpose of the policy is therefore to ensure that in London, change from new development should only occur where harm to WHSs can be avoided. What the Panel described as bespoke policy for WHSs in London should be given substantial weight in this context. Policy also regards the MPlan as material and the scheme would conflict with its objective to avoid further harm to OUV³⁷².
372. To the extent that some policy in the development plan invites any harm to be weighed against public benefits, this can only import the same exercise as is required by the Framework.
373. HE does not conduct an overall assessment of those benefits. It is a matter ultimately for the SoS whether the harm caused by the height and bulk of this scheme is justified by the provision of housing (when there is a five-year supply), in large part to pay for an arts centre a short walk away (when there is an existing one on the site). However, the Inspector and the SoS should exercise great care and rigour when striking that balance.
374. The applicant accepted that if its approach to heritage harm is wrong, that is the end of its case on the weighing exercise³⁷³. It found no harm, or what would be at worst the lowest possible level of harm. Their conclusion on the balance depended on that judgment. If that judgment is misplaced, their claims about how the balance should be struck would also be misplaced. The Council resolved to approve the scheme on the basis of advice from officers that the harm would be limited³⁷⁴. That, it now accepts, underplayed the harm³⁷⁵. For the Mayor, the harm was sufficient to mean that he only supported the scheme, including the relocation of the arts centre, when an extra thirty affordable homes were

³⁷¹ Appended to Baker supplementary proof

³⁷² CDA25 13.4.1/35. See too the Thames Landscape Strategy which advises that regeneration schemes should "avoid visual intrusion into the massing of Brentford Waterfront. Prevent any further flat-roofed, high-rise buildings from intruding into the Brentford Waterfront massing": p. 369

³⁷³ Horne xx

³⁷⁴ CDC29 7.100

³⁷⁵ Laird xx

- provided³⁷⁶. But there is no explicit indication in the reports to him that the harm in views from Kew Palace was considered.
375. The identified harm to the heritage context of the scheme inevitably qualifies its claimed design quality³⁷⁷. This was the approach taken in the Citroen decision³⁷⁸ and it reflects the understanding in policy that exemplary design respects context, which must include heritage context. Here the harm caused by the height and bulk of the scheme would not be materially tempered by its architectural expression or by gaps in the buildings, which would not be apparent in mainly distant or oblique views.
376. HE does not consider that any heritage benefits would arise from the scheme or the associated redevelopment of the BPS site. The existing building there is over-scaled and detracts from the historic character of the St Paul's Brentford Conservation Area, but the massing of the new six-storey scheme would still be considerable, ranging across much of the site and obscuring views of the locally listed St Paul's Church, one of the focal points of the area, as well as crowding the Beehive pub next door, another locally listed building. There would be no material change to the assessment of harm resulting from the linked development of this scheme.
377. The overall harm must be weighed correctly in the balance. It is wholly insufficient to simply ask whether granting permission places Kew at the tipping point into substantial harm. That approach only operates effective control over harmful development when very much significance has already been lost, and would undermine the fundamental rationale for heritage policy.
378. The proper application of that policy (and section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990) means that where any harm is found, the decision maker is not entitled to give it such weight as he thinks fit; rather it must be given considerable weight³⁷⁹. The strong presumption against harm to the setting of a listed building remains³⁸⁰, and in policy terms any less than substantial harm cannot be treated as a less than substantial objection³⁸¹. As the Framework advises, great weight should be given to the asset's conservation; and the more important the asset, the greater the weight should be³⁸². This does not mean that the weight to accord to harm is uniform. It will depend not only on the extent of harm, as well as the heritage value of the asset in question³⁸³. But it must recognise that any harm is given considerable weight.
379. In this case Kew is laden with the rarest and most important designations. The proposals would cause a high degree of less than substantial harm to heritage significance of a national and international register and should be accorded very substantial weight. Planning permission should only be granted if the

³⁷⁶ See CDC27 and 31

³⁷⁷ See the conclusion of the Citroen Inspector at CDA26 15.58/114; see too DL 22/4

³⁷⁸ CDA26 15.58/114 and 22/4

³⁷⁹ See the East Northamptonshire case at CDA 22a at [22]

³⁸⁰ At [28]

³⁸¹ At [29]

³⁸² CDA1 193/55

³⁸³ See CDA22a at [28]

countervailing benefits can clearly and convincingly be demonstrated to be greater.

The Case for Historic Royal Palaces (HRP)

HRP was not represented by Counsel and did not seek to cross-examine witnesses for the other parties. Its case was put by Mr Drury, who produced the written evidence and was able to answer questions through cross-examination. What follows is the case for HRP, largely as expressed in closing submissions.

380. HRP is the independent charitable trust charged with the ongoing care and presentation of the unoccupied royal palaces, including Kew Palace. Its evidence to this inquiry has therefore been concerned primarily with the effect of the proposed development on the setting and significance of Kew Palace, in its context of the Royal Botanic Gardens, Kew (RBGK).
381. Kew Palace is a mercantile villa on the Thames, built of brick c1631 in the 'artisan mannerist' style, on the site of a yet earlier courtier lodging. Its subsequent inclusion as one of several residences in the royal landscapes at Kew, and its role in the evolving landscape of RBGK, contribute additional layers of significance. The exceptional national and international heritage significance of the house and the gardens have been acknowledged by all parties.
382. The Palace is a building of exceptional architectural and historic interest, an exemplar of its type with important associative historic interest from the royal occupation period. It is listed in grade I, the highest level of national significance, limited to the most significant 2.5% of English listed buildings.
383. The Palace is nested within the landscape of the Gardens, also designated at the highest national landscape level, but importantly inscribed on the World Heritage List for its OUV. The palace contributes strongly to the 'iconic architectural legacy' which is a key attribute of the OUV of the WHS.
384. It draws its landward setting from part of the Gardens' 'rich and diverse historic cultural landscape providing a palimpsest of landscape design', becoming the focus of the extended Great Lawn following the demolition of the White House in 1802. The effect is of a small-scale parkland setting, with glimpses of subsidiary surviving former royal buildings to the west.
385. The north front of the palace faced an open vista of and across the river, as a point of arrival, with the town of Brentford by 1631 long established on the opposite bank. This connection with the river as much as the land as a point of arrival was expressed in its design, the river front including a balcony over a loggia within the centrepiece. During the 18th century there was a short tree-lined avenue between house and river, flanked by trees along the riverbank, but with a substantial gap between the avenue and the house³⁸⁴. By 1829 the avenue had gone, and a wide gap in the riverbank trees opened up so that the whole façade was visible from the river³⁸⁵. The trees were 'stripped up' to filter rather than block light and views³⁸⁶.

³⁸⁴ Drury, Appendix 3, p22

³⁸⁵ Drury, Appendix 2, p3

³⁸⁶ This is particularly evident in the 1829 panorama. Drury, Appendix 2, p3

386. Brentford was never part of the celebrated 'Arcadian Thames' landscape of villas and their gardens in a rural landscape, but it was not incompatible with it. It gradually became so through the 1810s and 20s, as polluting industry developed in the Georgian town.
387. The Samuel Leigh 1829 panorama³⁸⁷ shows that the view northwards from the Palace over the Thames was to a Georgian town of houses, hotels, warehouses and so forth, up to about five domestic storeys. This was visually punctuated by a smock mill and chapel, but the skyline was already beginning to be pierced by industrial chimneys. The initial construction of the gas works in 1824 led to disaster. Its expansion in stages westward to embrace the proposed development site continued until 1927.
388. The gas works was a terrible blight on Kew Gardens and Kew Palace. Demolition of the gas works around 1965 led, by 1968, to designation of its site as public open space in the development plan. This opened the way for Watermans Park, including the Arts Centre, in the early 1980s. GLC planning policy imposed a three-storey limit on buildings in the riverside zone, including the development site. The area to the north was redeveloped with mid-rise housing, an urban scale compatible with the setting of the palace³⁸⁸, providing (with the development site itself), a neutral backdrop to views from the palace.
389. Two recent public inquiries, the Chiswick Curve and Citroen Garage, have concerned the effects of tall building proposals on RBGK. Both schemes, like existing intrusive elements affecting the setting of the Palace, particularly the Kew Eye, are much taller than the proposal before this inquiry, and 1km or more distant. The current proposal is different in nature, in absolute terms lower, but much closer, only 300m distant across the river.
390. It would also be different in effect. The eye distinguishes depth of field, as the Inspector in Citroen noted; perception at 300m distance is sharper and more intrusive than at 1.2km³⁸⁹. Rather than manifesting only as the disembodied top of a distant building, its three-dimensional form, its size and scale would be immediately evident from views from the north side of Kew Gardens and the Palace. Where and how the proposed development meets the ground would be evident to an observer from Kew, so its appearance in views of the south side of the Palace would subsequently be perceived as visible manifestations of parts of the massive, proximate whole. Its presence would be felt.
391. During this Inquiry, there has been much debate about the correct approach to assessment of harm to significance, below the level of 'substantial harm', an impact which it is common ground would not be caused by the proposal before this Inquiry. The categorisation of harm as 'substantial' or 'less than substantial' in the Framework has led logically to the concept of making a value judgement of where harm lies on a notional scale of 'less than substantial', from near zero at the bottom to just less than substantial at the top.
392. However, applied to a complex heritage asset of high significance, the effect of serious diminution of or even loss of one aspect of its significance, leaving

³⁸⁷ Drury, Appendix 2, p3

³⁸⁸ Drury, Proof, 4.4.6-14 & Appendix 2

³⁸⁹ Citroen (CD A26, IR6.41 and note 128)

several other attributes intact, would result in that loss ranking very low on a notional scale embracing all aspects of the asset's significance³⁹⁰. For an asset on the threshold of designation, the serious diminution of or loss of the equivalent aspect would occupy more of the scale of total significance, perhaps bringing it close to 'substantial'.

393. That would be a perverse outcome, making harm to particular strands or attributes of significance of the most important heritage assets appear to be of far less consequence than similar interventions in assets of more modest significance. But the factor absent from this notional calculation is the level of significance of the asset; as the Framework states: great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be)³⁹¹. It follows that greater weight should be given to the consequences of a similar impact on an asset of the very highest significance than on one of modest significance.
394. The ICOMOS Guidance on Heritage Impact Assessment³⁹², and the domesticated version which forms the WHS SPG³⁹³, like all formulaic approaches, is an aid to assessment, not a calculator. But it does factor the significance of the asset into the assessment. On the ICOMOS scale, the magnitude of the impact of the proposed development is moderate³⁹⁴, and the adverse impact on aspects of OUV are assessed as moderate to large. As the matrix in the written evidence of HRP shows³⁹⁵, the same effects if Kew Palace were to be merely of 'high significance' (in the WHS SPG, roughly equating to grade II listed buildings), rather than contributing to OUV, the effect would be assessed as slight to moderate.
395. Within the notional linear scale of harm, if harm to heritage significance is considered as falling on a common scale applicable to all heritage assets (which is the logic of the ICOMOS method), then negative impacts on the significance of assets of the very highest level will lie within a relatively narrow band towards the top of the scale.
396. By this means the ICOMOS guidance incorporating the significance of the asset from the outset, and the Framework bringing it separately and successively into the decision-maker's judgement, can be reconciled. The government's duty of care under the World Heritage Convention, including cognisance of the ICOMOS HIA Guidance, can indeed be met through the operation of the Framework³⁹⁶.
397. The impact of the proposed building would be greatest on views north from Kew Palace, over an open and expansive view over the river, particularly from the principal floor's northern high-status rooms illustrative of royal use, its axial balcony, by definition an intended viewpoint, and from the second floor rooms³⁹⁷.

³⁹⁰ As, in terms, Mr Harris put it to PD in XX

³⁹¹ NPPF, CD A1, para 184

³⁹² CD A18

³⁹³ CD B5

³⁹⁴ CD A18, p23

³⁹⁵ Drury, Proof, 6.1.3, p72

³⁹⁶ As noted in Citroen, IR 6.24, note 112

³⁹⁷ Drury, Proof, 4.4.16-19

398. Through the dominance and bulk of the new development, the Palace would feel insignificant rather than important. Development would diminish people's ability to appreciate its architectural and historic significance, and fundamentally change the relative openness of the view across river. The impact of this moderate change would be ICOMOS large adverse.
399. On the south side, the Palace is framed by and integrated with the boundary planting forming a composed backdrop to the north end of the Great Lawn and its walks. In views of the Palace from the Great Lawn it would, in winter, appear against a backdrop of brick building, rather than remain the unchallenged focus of the lawn setting³⁹⁸. The impact of this moderate change would be ICOMOS moderate adverse.
400. In summary, and informed by the evidence presented to the inquiry, in HRP's view the impact would translate into the moderate range on the Framework's notional scale of less than substantial harm, with views from the Palace northwards being above the median and views of it from the Great Lawn being below it.
401. HRP's concern is not with the principle of development of the site, nor with the proposed architectural expression of it, but its height and bulk. A development which returned to something inspired by the height and scale of the pre-gasworks townscape, not materially intruding in views from the south, of high architectural quality in its context, could represent an enhancement of the setting of the Palace.
402. The justification put forward for this scheme is essentially that the scale of development proposed, which would harm views from the WHS, on a site which generates substantial value at its higher levels from its views of the WHS, is compensated by it enabling, principally, the delivery of a replacement arts centre and a quantum of affordable housing on a town centre site (BPS site) linked by a S.106 agreement. The other benefits would substantially be expected of any redevelopment of the site.
403. HRP notes the further assurance that has been given in relation to the tenure of the Arts Centre to be secured under the s.106 agreement³⁹⁹. It is accepted that the scheme remains at the margins of viability⁴⁰⁰, so there is no realistic scope for reducing the volume of development if the benefits are to be delivered.
404. The proposition is thus to deliver two public benefits at the expense of a third, existing, public good. At best, the application site and the BPS site, taken together, have the potential to deliver only one of those benefits without harm, or perhaps even a benefit, to the third public good, being conservation of the historic environment.
405. It is, of course, for the SoS, informed by the Inspector's recommendations, to decide whether the harm that would be caused to exceptional heritage assets, which must attract great weight in the balancing exercise, is outweighed by the very different public benefits.

³⁹⁸ Drury, Proof, 4.5.1-3; particularly in View 19

³⁹⁹ CD C32, Schedule 7

⁴⁰⁰ Horne, Supplementary Proof, Appendix A

The Case for Royal Botanic Gardens Kew (RBGK)

The case was put in writing only and the author did not attend the Inquiry. As such, it is untested and must be considered on that basis. RBGK was not represented by Counsel, did not seek to test the evidence of the other parties and did not play an active role at the Inquiry. What follows is the case for RBGK, largely as expressed in written evidence.

406. The Royal Botanic Gardens, Kew WHS was inscribed onto the World Heritage List in 2003 under three relevant criteria:- Criterion (ii): Since the 18th century, the Botanic Gardens of Kew have been closely associated with scientific and economic exchanges established throughout the world in the field of botany, and this is reflected in the richness of its collections. The landscape and architectural features of the Gardens reflect considerable artistic influences both with regard to the European continent and to more distant regions; Criterion (iii): Kew Gardens have largely contributed to advances in many scientific disciplines, particularly botany and ecology; Criterion (iv): The landscape gardens and the edifices created by celebrated artists such as Charles Bridgeman, William Kent, Lancelot 'Capability' Brown and William Chambers reflect the beginning of movements which were to have international influence.
407. A retrospective Statement of OUV⁴⁰¹ for the RBGK was adopted in 2010. This places very considerable emphasis on the historic designed landscape and architectural legacy of the Gardens.
408. A series of five attributes have been identified that summarise and describe its OUV, these are:
- i) a rich and diverse historic cultural landscape providing a palimpsest of landscape design;
 - ii) an iconic architectural legacy;
 - iii) globally important preserved and living plant collections;
 - iv) a horticultural heritage of keynote species and collections;
 - v) key contributions to developments in plant science and plant taxonomy.

Attributes 1 and 2 are of particular relevance in this appeal.

409. The 2020-25 WHS MPlan⁴⁰² was adopted by the WHS Steering Group⁴⁰³ in April 2020. This plan supersedes and replaces all previous versions.
410. Attribute 1 states⁴⁰⁴ that: "*The Royal Botanic Gardens, Kew tells the national story of our historically changing relationships with plants, within the context of a multi-phase historic designed landscape. From internationally influential gardens by pre-eminent 18th-century designers for their royal clients; to royal interest in plants as a tool of empire, under George III and Joseph Banks; to the struggles of the Victorian Hookers to establish botany as a widely respected science with*

⁴⁰¹ CD A8

⁴⁰² CD A25

⁴⁰³ The WHS Steering Group includes the London Boroughs of Hounslow and Richmond upon Thames, Greater London Authority, Historic England, Historic Royal Palaces and Royal Botanic Gardens, Kew

⁴⁰⁴ See Para.3.2.1 of the ManPlan

economic power; to the modern organisation with international plant conservation at its core. Every phase of development has been accompanied by seminal landscape design by internationally renowned landscape architects, illustrating significant periods in garden design from the 18th to the 20th centuries. Always building on the pre-existing landscape, sometimes incorporating what went before; sometimes sweeping everything away in their path. The resulting rich and diverse cultural landscape tells a unique story with international relevance, a palimpsest of landscape design reaching from royal pleasure garden roots alongside the Arcadian Thames to modern botanic garden."

411. It identifies that key surviving physical features of the property's historic cultural landscape include: *"i) The Victorian garden lay-out designed as a collaboration between Sir William Hooker, William Nesfield and Decimus Burton, with its set-pieces around iconic buildings, and vistas and promenades stretching across the landscape; ii) Remaining aspects of William Chambers 'Anglo-Chinese' garden style, particularly the Great Pagoda; iv) Strongly enclosed sense of 'otherworldliness' within the high walls and tree shelterbelts; v) Its relationship with the River Thames, and in particular with surviving elements of the Arcadian landscapes of the Thames; vi) Ability for visitors to roam freely across the landscape to encounter set key views and to develop personalised experiences of the gardens, landscape features and iconic buildings contained within..."*
412. Importantly, Section 3.2.1 goes on to state that in relation to Integrity (a key aspect of OUV): *"The property's integrity is directly dependant on the historic designed landscape, its features and character, remaining intact within the site and its buffer zone, and being unimpacted by developments without. The 'otherworldly' character of Kew Gardens is directly dependant on the property's visual envelope being conserved and preserved, unpunctured by external features. Maintaining the relationship with the River Thames at key points within the landscape is also important to the integrity. The site's integrity is already impacted by some tall buildings and is at risk of being significantly diminished by the cumulative impact of further visual intrusions or degradation of its relationships to the Thames and environs."*⁴⁰⁵
413. Attribute 2 identifies the important contribution that the architectural heritage of the site makes to its OUV stating that: *"The Royal Botanic Gardens, Kew are home to a unique and distinguished architectural heritage, including some of Britain's most iconic buildings and the world's most iconic garden structures..."*.
414. The attribute clearly identifies that Kew Palace and the associated royal connections are an important element of this legacy: *"The property's history as an 18th century royal retreat alongside and linked to the River Thames has left a rich architectural legacy captured in its archaeology, in the documentary record and in notable instances, as buildings still standing in the landscape – including the Ruined Arch, Queen Charlotte's Cottage and several temples. The garden buildings on the site were at the nexus of the development of 18th century garden architecture, being inspired by, and in turn inspiring, garden structures across Britain and Europe. Alongside the garden follies and glasshouses, the property contains a striking collection of royal palaces and ancillary buildings, with the White House kitchen and Kew Palace standing as key survivors, whilst*

⁴⁰⁵ Page 26

the White House and the Castellated Palace both survive as archaeological deposits."

415. The Plan also identifies that the setting of these architectural assets, including Kew Palace, contributes to their Integrity and Authenticity, and hence the authenticity and integrity of the WHS, it notes that: "*The property contains a large number of historic buildings, which make a direct contribution to its integrity. This integrity is threatened by development outside the buffer zone, which may impact on the settings, and thus integrity, of individual buildings within the WHS*".
416. Given the overlay between the various heritage designations and the relationships between them, harm to the WHS would result in harm to one or both conservation areas and the registered park and garden; and visa-versa. Similarly, harm to listed buildings and their settings would harm, to differing degrees the OUV of the WHS.
417. In broad terms the character of the Gardens can be broken down into three high level areas: the Woodland Conservation Area to the southwest of the site; the main Victorian arboretum, where trees are formally organised by family; and the area around the Palm House and the original 1759 botanic garden, with the former gardens of historic properties along Kew Green.
418. The area around the Palm House, open lawns in front of Kew Palace and Orangery, and original 1759 Botanic Garden is a distinctive part of the site where views open up for the visitor to enjoy and there are expanses of lawns between the open paths.
419. The character of the formal arboretum and the woodland garden to the south, by contrast, is generally quite crowded with trees, plants structures and buildings, punctuated by strong views down the formal vistas.
420. This contrast of character between these two areas makes the sense of space and views available in the area of the Palm House, around the open lawns (formerly part of the Great Lawn) in front of Kew Palace and original botanic garden particularly noticeable and appreciable.
421. The Gardens are well-bounded to the north, south and east, while open views are still available across the Thames to the southwest of the gardens, to Syon Park. Historically, the western views were far more open along the length of the Thames beside the Richmond gardens, however, with time they have been screened to a large degree to try and mask industrial and housing developments across the river in Brentford.
422. The experience of the RBGK by the visitor is of a place of escape away from the busy urban landscape. This separation from the city reflects the fundamental historic design intent to separate Kew from the wider world. The high walls and decorative gateways that puncture the walls, and the enclosing nature of the trees are all central to this feeling of retreat and escape into a world apart; a separation that has been deliberately created and maintained over the centuries.
423. Consequently, features that break into the skyline over the Gardens' boundaries, or are visible through the boundaries of the site, are highly noticeable and infringe on the experience of immersion in this verdant landscape and our ability to understand and experience its design intent. This sense of

being a 'world apart' is rooted in the historic design ethos and purpose of the WHS.

424. Kew Palace is a highly significant building, recognised by its status as a Grade I listed structure and scheduled monument. The 17th century house is a rare survival of its type, originally built by a Flemish merchant in 1631. The red brick mansion became a royal residence in 1728 when it was purchased by Queen Caroline the wife of George II, and remained in that use until c. 1895 (albeit intermittently in the 19th century) when it transferred to the Office of Public Works and its grounds were incorporated into the Royal Botanic Gardens.
425. The lease/purchase of the house by Queen Caroline in 1728 marked a key stage in the development of the WHS. Seeking a rural property, the Queen leased it for her daughters – providing a domestic scale escape from the City. It complemented the larger Richmond Lodge to the south across the emerging Richmond Gardens. The royal occupancy of the Richmond Gardens and Kew Palace led Prince Fredrick (Caroline's son) to lease the White House next door to Kew Palace and begin his and Princess Augusta's remarkable Kew Gardens, in direct competition with Richmond. After the unification of the Gardens, the Palace played a role in the daily life of the royal family when they were at Kew, but this declined after about 1818.
426. Kew Palace is now one of a small number of buildings in the WHS that directly reflects the early Royal patronage of the site; it is a key location for telling the story of royalty at Kew and a vital element of Kew's architectural legacy and story as a royal retreat (all aspects of OUV).
427. The Palace now overlooks open lawns to the front and has done so since the later part of the 19th century (following the demolition of the White House in c.1818 and the removal of associated Royal Mews buildings between c.1896 and 1913). This open aspect to its front is a notable element of its setting, as is the formal garden setting to the rear. These aspects enable us to appreciate the architectural form of the building as well as the evolution of the landscape it overlooks. The building also forms an element of the physical screening around the Gardens, helping to restrict views of Brentford from the Great Lawn.
428. In relationship to its setting and the wider WHS, Appendix D of the MPlan states that: "*Kew Palace is an imposing and highly significant historic building. It sits on its own at the north of the gardens, the buildings that were once attached to it having been demolished historically. It has an open aspect on three sides, with unobstructed views to the River Thames. Its historic boundaries and its historic physical separation from the Gardens have long been removed and it now forms part of the experience of the Gardens; as well as being key to understanding its history.*

There are a number of key elements to its setting, including:

- *Its highly prominent role as a key landmark in this area of the Gardens;*
- *Key views of its main frontage from the various locations to the east on the former Great Lawn and the location of the former White House;*
- *Views of its river frontage from the recreated gardens to the west and from the river itself;*

- *The formal gardens to the front and rear, specifically designed to complement the historic building;*
- *Views from its primary entrances on the east and west façades;*
- *Its visual and physical relationship to the River Thames;*
- *Views from upper floor windows which situate it in its wider landscape and highlight its relationship to the Gardens and the Thames;*
- *Key approaches to the building from the former Royal Kitchens, across the lawns to the east and from the Elizabeth Gates to the north; and*
- *The "memory" of the nearby demolished White House, and the desire to reconstruct it in the mind's eye in views of Kew Palace and in views from the Palace and grounds".*

The setting of Kew Palace has already been adversely affected by a number of modern developments, including the Kew Eye and Haverfield Estate Towers.

429. Section 3.3. of the MPlan provides a statement on the contribution the setting of the RBGK makes to its OUV, this states that: *"The historic landscape design, the built architecture of the site, and the experience of place that is derived from these, are all central to the OUV of the WHS. The Gardens are, with a few key exceptions (such as Syon Vista), an internally-oriented landscape, and preserving the integrity of this setting from external intrusions plays a fundamental role in supporting its OUV. The WHS has a very specific set of relationships with its setting, which are an integral part of its design, its experience and therefore of its OUV. In summary, the setting of the site contributes to the OUV of the WHS and our appreciation of the OUV by:*

- Providing a largely unbroken skyline above the walls and boundary planting hence strengthening and maintaining the historic and continuing design intent of the WHS's sense of being a world apart, separated from the wider, urban world outside (largely due to the broadly domestic scale and form of development around the WHS).*
- This largely unbroken skyline enables the visitor to appreciate and understand the design intentions of the landscape architects who worked there in the various phases of the gardens, as they progressed from royal retreat and pleasure garden, to national botanical and horticultural garden, to a modern institution of conservation and ecology – a unique botanic garden set within a historic designed landscape.*
- Providing areas of openness and 'big sky', framing strong internal views across the bounded open space.*
- Providing visual and physical relationships westwards over the River Thames and to the wider Arcadian landscape beyond, including the designed relationships with Syon Park, which enables modern visitors to appreciate the rus in urbe that Kew Gardens provides, and to see the landscape through a similar lens as the historic designers who worked there, and their royal patrons.*
- Providing the backdrop to key views and vistas including, amongst others, the Syon Vista, Broadwalk, Cedar Vista, Pagoda Vista, and*

other internal views such as the views over the open lawns in the Entrance Zone which reflect the historic Great Lawn.

- vi) Providing the backdrop to views of and from architectural icons on the site including the Palm House, Temperate House, Princess of Wales Conservatory, Kew Palace and the Orangery.*
- vii) Providing the backdrop to views of and from the numerous historic garden buildings, follies etc. on the site.*
- viii) The well-defined boundaries directly enable the conservation of the internationally significant living collections housed within.*

In these key ways, the setting of the WHS supports and enhances the OUV of the WHS, including its authenticity and integrity.

Additionally, within the WHS the design, management and control of development and planting in the Gardens makes a direct contribution to the setting and significance of key buildings, helping maintain the OUV of the WHS, including its authenticity and integrity.

Overall, the setting of the Royal Botanic Gardens, Kew WHS makes a direct and important contribution to its significance as an evolved designed landscape representing key periods in garden history and royal history. The setting of the site also makes a contribution to the setting of individual architectural icons within it and the setting of individual garden structures and temples. Much of this contribution comes from the current form and nature of the wider environs of the site and their limited visual intrusion into the site, although this contribution has and remains under threat due to existing tall buildings and other development proposals."

430. The proposed development would affect the setting of the WHS in the following key ways:

- It would visually intrude into the enclosed space of the Great Lawn, harming the WHS's sense of enclosure;
- It would compete with and challenge Kew Palace in important views across the Great Lawn, affecting both Kew Palace and the WHS, including visual relationships between the Palace and associated buildings;
- It would significantly harm the setting and significance of Kew Palace, a notable element of the site's OUV;
- It would significantly increase the dominance of urban development along this stretch of the River Thames, affecting the character and feel of the setting of the WHS; and
- It would notably increase the cumulative impact of existing external development on the OUV of the WHS, further harming the site's important sense of otherworldliness and separation from the urban form of Brentford.

431. All of these issues arise from the poorly considered design of the development in terms of its location, height and over-bearing mass – indeed the LBH Officer's report frequently refers to the "wall like" nature of the development's design.

432. The MPlan sets out the agreed approach to cumulative harm: "*The existing detractors around the WHS (as set out above) cause significant harm to the*

setting and OUV of the WHS. As established in national, London-wide and local planning policy (see Section 1.4) it is important that this existing harm is taken into account when determining proposed developments. Additional harm must be understood as being cumulative with existing harm. World Heritage Sites are designated heritage assets of the highest significance and great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Any harm should be given great weight in the planning balance and harmful developments should be resisted."

433. The potential impacts of the proposal have been scored using both the scoring mechanism recommended in the WHS SPG⁴⁰⁶ and the terminology of less than substantial harm and substantial harm utilised by the Framework. RBGK has identified where on the scale of harm an impact would lie, reflecting guidance in the PPG.
434. The proposed development on its own would result in a moderate⁴⁰⁷ adverse impact, resulting in a large adverse effect. Cumulatively, the proposed development adds to the existing significant impacts resulting in comprehensive changes to the setting of the WHS, i.e. a major adverse impact resulting in a very large adverse effect.
435. The proposed development would harm the OUV of the WHS. That harm would be less than substantial and just below midpoint of that scale. This reflects the fact that the development would harm key aspects of the setting of the WHS and the setting of key elements that contribute to its OUV i.e. Kew Palace.
436. Cumulatively, with existing/consented development, it would have a very significant impact on the WHS. The scale of impact resulting from existing/consented development and the proposed development is severe and affects important aspects of the WHS's setting and the setting of key assets within the WHS that make a direct contribution to its OUV. The overall cumulative level of harm to the OUV of the WHS would be at the upper end of less than substantial harm, given the pervasive impact of development on key aspects of the setting and historic design intent.
437. As an asset of the highest importance any harm to the RBGK WHS must be given the greatest weight in decision making. Given the scale of harm and the importance of the asset, the overall weight against this application is very significant. Any public benefits to outweigh this would need to be very considerable indeed. Additionally, the applicant needs to provide clear and convincing justification for the harm. RBGK does not consider it has done so.
438. In addition to the harm to the WHS, RBGK, HRP and HE have also identified that the proposed development would harm the setting and significance of the Grade I Listed Kew Palace. The harm is less than substantial, but it is still a significant impact that requires clear and convincing justification and significant weight in the planning balance. As a Grade I listed building the Palace is an asset of the highest significance (as identified in paragraph 194 (b) of the Framework). As set out in Framework paragraph 193, great weight must be given to this

⁴⁰⁶ CD B5

⁴⁰⁷ "Changes to setting of an historic building, such that it is significantly changed" – as defined in Appendix 3 of the London World Heritage Sites - Guidance on Settings SPG (CD B5)

harm. The development of the scheme would also result in a significant level of harm to the RBGK Conservation Area, the Grade I Registered Park and Garden, as well as a lower level of harm to the Kew Green Conservation Area.

439. RBGK's assessment and concerns are supported by the grave concerns expressed by ICOMOS in their review of the application⁴⁰⁸, by HE's objection and by HRP's objection.
440. As a result of these impacts on the WHS and Kew Palace the proposed development is in conflict with Policies CC3 (Tall buildings) and CC4 (Heritage) of the HLP; Policies 7.7 (Tall Buildings), 7.8 (Heritage Assets and Archaeology) and 7.10 (World Heritage Sites) of the current London Plan; Policy HC2 (World Heritage Sites) of the IPLP; the Framework; and the MPlan. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) is also engaged given the impacts on Grade I listed Kew Palace.

Interested Parties appearing at the Inquiry

*Elmer Postle*⁴⁰⁹

441. Mr Postle addressed the Inquiry as a local resident, occupying a houseboat moored close to the site at Lots Ait. It was said that the proposed development would result in the loss of a community facility with a river connection, to be replaced with a residential scheme. The river should be a valued and well used public amenity. Existing developments have led to a 'canyon' effect along the river. The existing Arts Centre, in its riverside location, is of considerable value as social infrastructure where people can meet and interact. The proposed flats are not likely to be occupied by local people, rather investors and temporary tenants - this does little for building communities. The proposal seeks to monetise its relationship with Kew Gardens but gives nothing back. The development should provide a new community asset/space that would benefit local people, particularly youths.

Written Representations

442. A number of written representations were made by interested parties and local groups, largely objecting to the proposed development. These are set out in the Council's Committee Report⁴¹⁰ and in the appellant's Representation Letters and Response Schedule⁴¹¹.
443. In summary, these raise concerns about the scale and height of the proposal and its impacts upon local character and appearance, including heritage assets; loss of the Arts Centre as a community asset that benefits from a riverside location; effects on infrastructure; effect on neighbours living conditions, with particular regard to light and overlooking; and highways and parking concerns.

⁴⁰⁸ see Section 2.3.2 and CD A13

⁴⁰⁹ See written submissions at ID8

⁴¹⁰ CD C29

⁴¹¹ CD F7

444. In addition, it is of note that objections were received from the London Borough of Richmond Upon Thames and ICOMOS⁴¹², each raising concerns about the heritage impacts of the proposal.
445. Some support was received from local residents, the Greater London Authority (GLA), Hounslow Chamber of Commerce and the Theatres Trust particularly in relation to the prospect of a new modern and fit for purpose Arts Centre.

Conditions

446. In advance of the Inquiry, the applicant and the Council agreed conditions that would be appropriate in the event that planning permission is granted and subsequently produced a final agreed version⁴¹³ following discussions during the event. Conditions must be necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects⁴¹⁴. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests. In the event that permission is granted, these should be imposed as set out in the attached Schedule. The wording in the Schedule is as agreed between the parties but for some very minor changes to improve their precision and ensure accuracy.
447. Planning permission for the development of the land may not be granted subject to a pre-commencement conditions without the written agreement of the applicant to the terms of the conditions⁴¹⁵. The applicant was asked to give this matter appropriate consideration and confirmed⁴¹⁶ agreement to the terms of the pre-commencement conditions.

Planning Obligations

448. A legal agreement⁴¹⁷, supported by a summary and explanation⁴¹⁸ for the various elements was submitted to the Inquiry, as was a Compliance Statement⁴¹⁹ covering how the agreement would accord with the Community Infrastructure Levy (CIL) Regulations 2010. My conclusions are based on an assessment in the light of the CIL Regulations and the Framework, which sets 3 tests⁴²⁰ for such obligations. The obligations include, but are not limited to, the provision of 20% AH; the replacement arts centre; riverside walkway access; carbon offset contribution; construction training; a travel plan; and highway works. Following discussions at the Inquiry, I am satisfied that the obligations in the agreement, all comply with the CIL Regulations and the Framework and I have given weight to them in my conclusions.

⁴¹² Not summarised in the Council's Committee Report but available at CD A13

⁴¹³ ID18

⁴¹⁴ Para.206 of the Framework

⁴¹⁵ Section 100ZA(5) of the T&CP Act 1990

⁴¹⁶ SoCG (CD F2) and CD F10

⁴¹⁷ Unsigned version at ID19 (signed and completed version in hard copy)

⁴¹⁸ See Tom Horne, Appendix A

⁴¹⁹ CD F9

⁴²⁰ CIL Regulation 122:(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

Inspector's Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the application site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

449. The matters on which the Secretary of State (SoS) particularly wished to be informed are set out in the bullet points at the top. Combined with other matters raised, I find that the main considerations in this application are:
- i) the effect of the proposals on the significance of designated heritage assets derived from their settings;
 - ii) any other harms which might affect the overall balance;
 - iii) the benefits of the scheme with particular regard to housing, affordable housing (AH) and re-provision of the Arts Centre;
 - iv) whether the public benefits of the proposals would outweigh any harm identified in the heritage balance;
 - v) Planning policy and the overall planning balance.
450. In short, the question is whether the proposed development would harm the significance of heritage assets and, if so, whether such harm would be outweighed by the public benefits of the scheme. The Framework provides for such a balancing exercise⁴²¹ and there is no disagreement between the parties that applying this policy approach will fulfil statutory requirements with regards to the protection of heritage assets. [109, 118]

Effect on heritage assets

451. The relevant designated heritage assets (as defined in the Framework) include the World Heritage Site (WHS) at Kew Gardens, which is also a Grade I Registered Park and Garden (RPG), its conservation area with roughly contiguous boundaries and the numerous listed buildings within, notably in this case the Grade I listed Kew Palace, which is also a Scheduled Ancient Monument (SAM), Grade I listed Kew Palace Flats (Royal Kitchens) and the Grade II listed Kew Cottages. In addition, the Kew Green Conservation Area. There was general agreement about the significance of the assets and the relevant policies from which any conflict might arise. [65-66, 104-106, 114-115]
452. The parties drew parallels between the current application and the Chiswick Curve (CC) and Citroen applications, referencing the Inspectors reports and the SoS decisions throughout the Inquiry. In those cases, both Inspectors set out that there is little that could usefully be added to the cases made by the parties with respect to the significance, status and importance of the heritage assets affected. These are matters that are now well rehearsed and the SoS will be familiar with them. As such, I adopt the same approach. [218-219, 222, 236-238, 240, 268-270, 278, 282-284, 382-383, 406]
453. There would be no direct harm to designated heritage assets. Rather, any harm would be from the impact of the development on the significance derived from their settings. No party alleges that the development would amount to

⁴²¹ Para. 196

substantial harm to heritage assets in the terms of the Framework but there was broad disagreement about the level of harm within the spectrum of 'less than substantial harm', if any harm occurs at all – it is the applicant's case that it would not. [174, 223, 336]

Royal Botanic Gardens Kew (Kew Gardens)

454. As set out above, Kew Gardens is subject to numerous designations and in terms of heritage value, it is of the very highest order. The Statement of Outstanding Universal Value (SOUV) emphasises the importance of the historic designed landscape and architectural legacy of the Gardens. Of the OUV's attributes, the two that are most relevant are: a rich and diverse historic cultural landscape providing a palimpsest of landscape design; and an iconic architectural legacy. [35, 222, 274-277, 383, 407-408]
455. The MPlan describes Kew Palace as "*an imposing and highly significant royal building [...] which forms part of the experience of the Gardens as well as being key to understanding its history*", it being part of a striking collection of royal palaces and ancillary buildings. There is no dispute between the parties that where the significance of Kew Palace or other listed buildings forming part of the iconic architectural legacy are harmed, it would also harm the OUV and the significance of the WHS, RPG and CA. [222, 415]
456. Kew Gardens is a predominantly inward facing and well contained landscape, with some exceptions such as the Syon Vista. It is this sense of enclosure that allows one to feel separated from the city and urban environment beyond, creates a sense of otherworldliness and illustrates how the gardens and palaces were used as a retreat for the Royals. The largely unbroken skyline, 'big sky' above and the arcadian backdrop are all key elements of setting that contribute to OUV, as well as the integrity and authenticity of the WHS. In his CC Decision, the SoS accepted in relation to Kew Gardens that "*any intrusion of [the] city must be harmful to its setting and its OUV*". Having regard to the attributes contributing to OUV, I find that statement to be equally applicable in this case. [272-277, 300, 337, 410-412, 429]
457. Kew Palace, together with the Orangery, the White House and the Great Lawn were all part of a landscape which was designed as a piece, albeit over a period of years and subsequently radically modified. The White House has long since been demolished but Kew Palace has taken its place at the head of what remains of the Great Lawn and has done so for over 200 years. Harm to the setting of Kew Palace would also harm what remains of this designed landscape composition. The importance of Kew Palace in its own right, and through its contribution to the OUV of the WHS is clear from the MPlan and highlighted by the parties. [275, 279-280, 315, 384]
458. In accordance with the Framework, great weight should be given to the conservation of designated heritage assets even where the harm would be less than substantial and any harm should require a clear and convincing justification. From the Courts' interpretation of s.66 of the Planning (Listed Buildings & Conservation Areas) Act, considerable importance and weight should be given to the desirability of preserving the setting of listed buildings in any balancing exercise with material considerations which do not have this status. [109, 118]

459. While great weight should be given to every asset's conservation, as Kew Palace and the WHS are amongst the most important of such assets, even greater weight should be given to any harm. This applies to the effect of proposals both on their significance and on the ability to appreciate that significance. [110, 119]
460. As above, the considerable importance and weight to the desirability of preservation, should tip the scales to produce an unequal balance in its favour. However, the SoS should still take account of the actual severity of any change, or scale of change as the WHS SPG puts it, and so the extent of impact, as well as the relevance to its significance, and the importance of the asset. The overall weight to be given to any harm, and the conflict with policy, should be a product of these factors. This approach largely reflects the assessment methodology set out by ICOMOS in its HIA Guidance and the WHS SPG which was broadly followed by all parties, though with some refinement by the applicant to take account of other factors considered relevant. This, perhaps, goes some way to explaining the significant divergence between the applicant and other parties in assessing harm. [330-331, 394-396]
461. The case of Bedford is helpful in establishing the threshold for substantial harm, which is not argued by any party in this case. It also assists a little in calibrating the potential level of less than substantial harm, but this is a broad spectrum. The status of the asset must have a bearing on any such assessment (the more important the asset, the greater the weight should be) as per the Framework and even small impacts can have large effects on significance in this context. The weight attached to harm should not be reduced because it only affects a small part of a large WHS. [163-170, 233, 321, 378, 391-393]
462. This proposition led to significant discussion about the amount of significance in scope to be drained away by the proposals. I cannot accept that because much of the significance of these invaluable heritage assets is unaffected, that should somehow lead to any harm impacting on one important aspect of significance being reduced. What is important here is the extent to which significance would be harmed through impacts on setting. This harm is not mitigated by leaving other elements of significance unharmed, though impacts should always be considered in their proper context and with a realistic view of the level of harm arising. [166-168, 322]
463. In assessing impact on significance, and for a much taller scheme, the CC Inspector found that: "*all the intrinsic significance of Kew Gardens would be untouched and that no-one could reasonably argue that any of the designated assets at issue in this case derive most of their significance from their setting*". The Citroen Inspector shared this view. I too adopt this position, albeit that it is principally Kew Palace at issue here and not the Orangery. That is not to say that setting, which extends beyond the WHS buffer zone, is not a very important element of significance for Kew Palace or OUV for Kew Gardens for the reasons set out and I consider it to be a weighty contributor to significance and OUV. [169, 174, 322, 325]
464. As in the CC and Citroen decisions, there is no dispute that the proposal would be visible from various parts of Kew Gardens, sometimes in conjunction with, or from, listed buildings. There can be no doubt therefore that the appeal proposal

- would have an effect on the setting of Kew Gardens as a whole, but also the setting of designated heritage assets within it.
465. The parties assessed the impacts of the proposal from a range of agreed viewpoints within Kew Gardens. Viewpoints 16 and 19 from the Great Lawn towards Kew Palace are of particular importance, though it must be remembered that the experience of the gardens is a kinetic one and that views of the proposed buildings would be visible from other positions. These views are not designed views within the landscape in contrast to the formal views and vistas identified in the MPlan but are highlighted as open views of the Palace which contribute to setting. [188, 302]
466. In contrast to the Citroen scheme, the proposed development would not appear directly atop of any heritage asset, instead appearing to the side of Kew Palace, largely obscured by the tree line, particularly in summer when the gardens are at their busiest. Whilst the proposal would involve somewhat lower buildings than in Citroen, they would be located much closer and would have a much broader form. They would become a noticeable intrusion to the informed viewer, bringing urban Brentford into view to a greater extent and diminishing the sense of containment from the Great Lawn. The proposed buildings would, however, appear lower than Kew Palace and whilst they would distract from the Palace to some extent, would appear distant and recessive. They would barely be visible from many parts of the Great Lawn and even where visible, would not compete with the striking façade of the Palace in any meaningful way so as to diminish its prominence from the Great Lawn. The overall effect of the scheme in the setting of the Palace would be very minor. [226, 316]
467. Viewpoints 20 and 20A are taken from the rear of the Palace, looking across the 20th Century garden towards the appeal site. The formal gardens are modern and are very different to the tree lined avenue leading to the river that was in place during the 18th Century when there would have been a functional relationship with the river for arrival at the Palace. Whilst this is so, the proximity of the Thames and the separation it provides between the Palace and urban Brentford are important aspects of its setting. [186-187, 229-230, 308, 347-352, 385-390, 397-398]
468. Urban Brentford is itself much changed from the 18th Century and is already visible from the rear of the Palace. The proposed buildings would become prominent in these views, albeit mitigated by tree screening to a certain extent in summer. They would introduce a larger scale of development to this part of Brentford and in proximity to the Palace. The fact that the proposed buildings are well designed and would utilise subtle colours, would do little to mitigate their size and scale in my view. That said, the buildings would be seen in the context of the existing town, which predates the Palace and has always been within its setting, including during royal occupation. This part of the Thames isn't, and never has been, comparable in character terms to the iconic arcadian stretch that is found in the vicinity of the Syon Vista. It is and was a working town with all that goes with it, including a large industrial gas works for some time. The development would not alter the Palace's relationship with the river or the spacious and verdant setting that provides an interlude from urban Brentford. The effect on significance from the increased scale of the proposed buildings within its setting would be minor. [182-184, 229, 351]

469. The Grade I listed Kew Palace Flats (the Royal Kitchens) were designed by William Kent and built in the 1730's to serve the White House. The building is important for its architectural quality and the survival of the kitchen interiors. The Grade II listed Kew Cottages date from around 1800 and are survivors of a once larger group of royal domestic buildings. Both buildings make a contribution to the understanding of the historical connection between the gardens and their royal past. This contribution is appreciated through their location within the gardens and proximity to the Palace and former White House, to which they would have been ancillary. It seems to me that any significance they possess in respect of setting is in this immediate context. Views of the buildings from the Great Lawn in conjunction with the remaining Palace are glimpsed at best and this relationship would not be diminished by development on the other side of the Thames. I do not consider that the proposed development would harm the setting or the significance of these assets in any way. [238, 282, 353, 361]
470. The impacts that I have identified should also take into account the importance of the heritage assets, being of the highest order. Listed buildings should be preserved for their own sake and the setting of Kew Palace is very important to the OUV of the WHS, albeit not the only aspect of its significance. I have given considerable importance and weight to the desirability of preserving the assets and having found that the overall extent of the change to setting would be minor, I consider the harm to significance would be approaching moderate having regard to the importance of the assets.
471. Having identified the harm arising from the proposals, an assessment of cumulative harm must also be factored in. From the viewpoints identified, the Kew Eye and the Haverfield Towers are noticeable detractors. Taken together, the effect of the change on the setting of the Palace would be increased. When having regard to the importance of the assets, the weight to the direct harm and the additional cumulative harm should be assessed as moderate. The cumulative harm from other intrusions to the WHS, not visible from the viewpoints relevant here but in the wider kinetic experience of the Great Lawn, including the Citroen scheme, add a little to this but do not take my assessment beyond moderate. [232, 328, 335, 356, 362-363, 412, 430, 432, 434-436]

Kew Green Conservation Area

472. The CA appraisal explains its designation as an historic open space, with high quality 18th Century development, a definite village character and a fine example of an historic Green. Unlike in the CC and Citroen decisions, the proposed development would not be visible at all from the Green itself. In this case, it is the part of the CA that extends beyond the Green and along the river from which the development would be seen. The CA includes a small riverside portion of Kew Gardens, taking in a riverside path that curves around the northern edge of the WHS, as well as a large portion of its buffer zone, extending into the Thames and including Brentford ait. Its position on the river, dominated by the waterway and the trees on the ait, contributes to its semi-rural character, and is recognised by the CA appraisal as a "*superior riverside environment*" which acts as a "*foil to the Green*". [192, 240-242, 283, 360]
473. The proposed development would be wholly outside of the CA but would be seen from it and within its setting. The proposed buildings would be much taller

than those existing on the site and noticeably larger in scale and mass. They would be seen with some prominence from the riverside path within the CA but clearly on the opposite side of the river, in the context of urban Brentford and other sizeable buildings. The development would diminish the semi-rural character evident in this part of the CA to some extent but the effect on its significance could not be described as more than slight, even taking into account the cumulative effects.

Heritage Balance

474. The Framework⁴²² requires a balancing exercise where less than substantial harm to the significance of a designated heritage asset has been identified. Where there is more than one instance of such harm, as here, these should be combined in a planning balance.
475. Less than substantial harm does not amount to a less than substantial objection. Taking account of the considerable importance and weight that should be given to the desirability of preserving the setting of listed buildings, I have found the overall weight to the harm to the significance of Kew Palace (and by extension to the OUV of the WHS) is approaching moderate. The weight to the harm to the significance of Kew Green CA is slight. The cumulative effect in each case adds a little to the harm but does not take my individual assessments beyond moderate and slight respectively, albeit in the upper extents.
476. I will go on to consider whether this harm is outweighed by public benefits in due course.

Other harm

477. The development would be located close to Lighterage Court/Kew Reach, a residential block adjacent to the site. The block is built up to the site boundary with numerous windows overlooking the application site such that the development would result in some loss of daylight and sunlight. In the majority of cases, these impacts would fall within the scope of the BRE Guidelines⁴²³ but there are some windows, predominantly serving bedrooms, that would see a noticeable effect. The Council assesses that the effects on neighbouring occupants would be no more than minor overall. Having regard to the urban context and the site's policy designation for redevelopment I am inclined to agree that living conditions would not be unacceptably harmed. Nevertheless, this is a matter that should be weighed in the balance and attracts negative weight, albeit limited. [75, 81, 258]
478. Other concerns were raised by interested parties, but these are addressed by the applicant and there are no other harmful impacts that could not be suitably mitigated by way of conditions and obligations. [442-443]

Benefits

479. The appeal proposal would deliver 193 market dwellings, an efficient use of the site and a significant benefit in the context of a national housing shortage and the particular demands of London's single housing market, notwithstanding

⁴²² Para.196

⁴²³ 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' 2011

Hounslow's strong housing land supply position. No affordable housing would be provided on site, but the scheme would facilitate redevelopment of the BPS site (being linked by planning obligation), where 60 affordable housing units would be delivered, along with a further 45 market units. The proposed 20% affordable housing provision across the two sites is only half of the current strategic 40% policy target for the Borough and less still against the 50% London-wide target. However, after independent assessment, it is agreed by the Council to be the maximum viable amount having regard to other factors, including the replacement Arts Centre. The level of provision would also be subject to potential uplift through a review mechanism. In this context, significant weight should be given to the benefits from housing provision overall. [9, 24, 57-60, 202, 249]

480. I heard that the existing Waterman's Art Centre is a well-used and important community facility which is valued by many, but also that it is in a poor and declining state of repair that jeopardises its ongoing utility. The existing lease on the building is due to expire in 2024 and its future is uncertain. The Council, through the HLP, identifies the Arts Centre as being of strategic importance in the necessary regeneration of the town centre. It is said to be the town's greatest cultural asset and both extant and emerging policy seek its re-provision, either on the existing site or an alternative site within the town centre. The BPS site, whilst being just outside the town centre boundary, is agreed to be a preferable location, close to town centre uses and public transport hubs. The development would facilitate re-provision of an Arts Centre (including a theatre, cinema, café, bar, restaurant and studio/gallery space) which is larger, purpose-built and 'state of the art'. The proposal is supported by the Theatres Trust. The delivery of this costly community asset in line with strategic policy priorities of the Council should be given substantial weight. [25, 53, 102, 126, 136, 138-149, 197, 208-212, 250-252, 445]
481. The proposed development has been designed to provide an entrance to the town. Its scale would provide something of a landmark, but it would be modulated into five blocks, some with spaces between that would allow views towards the Thames and mitigate the expanse of buildings from the High Street to some extent. The elevations would be well articulated with deep balconies and banding that would create texture and depth. Materials with a range of subtle colours would provide further variation and visual interest. Along with this, the existing convoluted and uninviting riverside path would be entirely remodelled to create an attractive riverside public space that would continue the Thames footpath network. The proposed development and public realm improvements would undoubtedly be an improvement in townscape terms, viewed from both the High Street and the River Thames, compared to the very poor design and appearance of the buildings on site at present. This matter should attract significant weight in the planning balance. [61-64, 149-153, 253-254]
482. Some economic benefits would arise from the development, for example, through construction jobs; permanent new jobs at site and retained permanent jobs; and indirect economic uplift in the community. These, particularly the short-term benefits, add little to the benefits that I have already identified. It was also argued that the economic effects of Coronavirus should add weight to the benefits so far as they assist the economy, but the medium to long-term impacts remain uncertain at present and little additional weight should be attached in my view. [142, 158, 255]

483. There was disagreement between the parties as to whether the redevelopment of the BPS site should also be considered a benefit to be weighed in the balance, both in townscape and heritage terms. The existing building, which includes a tall tower, is derelict, boarded-up and appears unkempt. Its replacement with a suitable alternative building would be beneficial to the character and appearance of the area but there are also potential issues regarding views of St Paul's Church, a locally listed building, and various conservation areas. To my mind, these are matters that are most appropriately dealt with in considering the application for redevelopment of that site and the Council has indeed done so in resolving to grant planning permission. These are not matters that are before the SoS in this application and none of the evidence in that case was tested at this Inquiry. The effects of the scheme, from what I heard, are peripheral to the main issues in this case such that they should be considered a neutral matter here. [67-68, 101, 239, 376]
484. Overall, the package of public benefits should attract substantial weight. There is no evidence in this case that there is an alternative to the appeal proposal that could deliver the same or even a similar level of public benefits. No suitable alternative sites have been identified that could accommodate the Arts Centre and no party argues that the current application could be modified, for example, to reduce its heritage impacts, whilst delivering the Arts Centre and other benefits. The application scheme, in its current form, is agreed to be only marginally viable. [5, 58, 142, 150, 202, 249, 252, 256-257, 403]

Conclusion on heritage balance

485. Having established the public benefits of the scheme, I now return to the heritage balancing exercise required by the Framework⁴²⁴. I have found the overall weight to the harm to the significance of Kew Palace (and by extension to the OUV of the WHS) should be assessed as approaching moderate; and the weight to the harm to Kew Green CA to be slight. The cumulative effect in each case adds a little to the harm but does not take my assessment beyond the upper echelons of moderate and slight respectively. In each instance, the substantial benefits of the scheme are sufficient to outweigh the heritage harm. This is an important material consideration.

Planning policy

486. The development plan forms the starting point for determination of this application. The relevant policies are set out above.
487. Policies IMP2 and TC2 of the HLP together allocate the site for redevelopment as part of a strategic policy approach to regenerate Brentford town centre and encourage re-provision of the Arts Centre as part of these objectives. The proposed residential use is supported by the site allocation when the Arts Centre would be provided elsewhere. Although the re-provision would not be within the town centre in this case, it would be on its edge. It would be delivered as part of another HLP site allocation and is supported by the Council as a preferable location for the Arts Centre compared with the existing site, which would be acceptable in policy terms. The proposed location outside of the town centre does not accord fully with the HLP but would deliver the regenerative benefits sought

⁴²⁴ Para.196

- and this should be weighed positively in the overall balance. [25-26, 137-138, 211, 369]
488. Overall, the housing policies in the development plan would offer broad support for the proposals. The housing and AH, together with making efficient use of a brownfield site would assist in meeting, and gain support from, the requirements of London Plan Policies 3.3-3.5 and 3.8-3.13 and HLP policies SC1, SC2, SC3, and SC4. [20, 24]
489. On account of the identified harm to designated heritage assets, including when assessed on a cumulative basis and notwithstanding that it would amount to less than substantial harm for the purposes of the Framework, the scheme would lead to conflict with London Plan Policies 7.8 and 7.10. Unlike the Framework, these policies do not require a heritage balancing exercise and this means that policy conflict is unavoidable where harm to heritage assets, of any magnitude, has been identified. [18-19, 214, 367, 440]
490. The proposal would improve the immediate character and appearance of the area and would constitute good design. As such, it receives the support of London Plan Policies 7.4 and 7.6 as well as HLP Policies CC1, CC2 and CC3. London Plan Policy 7.7 requires particular consideration of tall buildings close to heritage assets and so a balance is required. The site falls within a character area where some suitability for tall buildings exists. HLP Policy CC4 again requires a balance between harm to designated heritage assets and public benefits. [15-17, 21-23, 368]
491. There is some conflict with development plan policies, by virtue of heritage harm in the context of the London Plan. However, other heritage policies do incorporate the Framework's approach to balancing heritage harms against other public benefits. If the SoS agrees with my conclusion that the public benefits of the scheme outweigh the heritage harm, then it would accord with the development plan, taken as a whole. Alternatively, if a contrary conclusion is reached on heritage, then there would be a clear conflict with the development plan.
492. Emerging development plan policies are material considerations. Following the SoS's comments on the IPLP it is reasonable to assume that policies on which he has not commented are unlikely to change. The relevant heritage policies in the IPLP should therefore be given substantial weight, as in the Citroen case, though a little less weight than adopted policies. As with current London Plan policies 7.8 and 7.10, the scheme would not accord with IPLP policies HC1 and HC2, which do not require a heritage balancing exercise. On the other hand, Policy GG5 on a competitive economy, and Policy GG2 on making the best use of land, support the scheme. [37-40, 215, 371]
493. The site retains an allocation within the emerging Site Allocations Local Plan Review, as site 110 – Albany Riverside, for a minimum of 150 residential units. The document is yet to be examined and currently attracts limited weight, nevertheless, the scheme would be in accordance. [41]
494. In light of the conclusions above, the scheme would be consistent with the Framework's policies in respect of housing, the economy and the historic environment.

Planning balance

495. As there is more than one instance of heritage harm, these should be combined in the planning balance. I have found less than substantial harm to both the Kew Green Conservation Area and to the highly significant heritage assets at the WHS. I have carried out the requisite balances individually above. Taking the assets together, the overall harm to significance would be moderate. My findings of harm, though moderate overall, are significant in the context of the heritage assets involved and engage paragraph 193 of the Framework, and s.66 of the Planning (Listed Buildings & Conservation Areas) Act, meaning that this harm must attract great weight, or considerable importance and weight, in any balancing exercise. The minor impacts on levels of light reaching neighbouring flats also weighs against the scheme.
496. These harms must be considered against the substantial benefits of the scheme, which primarily involve the delivery of new market and affordable housing, improvements to the character and appearance of the area, provision of a new Arts Centre and some economic benefits.
497. Overall, I find that this substantial package of benefits is sufficient to outweigh the harms and that the proposal is in accordance with the development plan taken as a whole.

Recommendation

498. I recommend that the application should be approved, and that planning permission is granted subject to the conditions contained in the attached Schedule and the planning obligations discussed above.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant of Counsel

He called:

Sophia Laird MA (Hons) Conservation Officer
MA

Shane Baker BTP MRTPI Head of Strategic Development and Delivery

FOR THE APPLICANT:

Russell Harris QC

He called:

Joe Morris BA (Hons) Director, Morris+Company
DipArch ARB RIBA

Robert Tavernor BA Townscape and Heritage Consultant, Tavernor
DipArch PhD RIBA Consulting Ltd

Tom Horne BSc (Hons) Director, DP9
MSc MRTPI

FOR HISTORIC ENGLAND:

Scott Lyness QC

He called:

Kathy Clark BA MA Inspector of Historic Buildings and Areas

FOR HISTORIC ROYAL PALACES:

Paul Drury FSA MRICS IHBC Drury McPherson Partnership

FOR ROYAL BOTANIC GARDENS KEW:

Georgina Darroch World Heritage Site Coordinator, RBGK

Andrew Croft BA MA Director, Chris Blandford Associates
(written evidence only)

INTERESTED PERSONS:

Elmer Postle Local resident

INQUIRY DOCUMENTS

ID1	Applicant opening submissions (submitted on 6 October 2020)
ID2	LBH opening submissions (submitted on 6 October 2020)
ID3	Historic England opening submissions (submitted on 6 October 2020)
ID4	HRP opening submissions (submitted on 6 October 2020)
ID5	Joe Morris (Morris+Company) pdf presentation (submitted on 6 October 2020)
ID6	Kew Palace and outbuildings image, 1880 (submitted on 7 October by HRP)
ID7	RBGK letter to Inspector regarding WHS MPlan consultation (submitted on 7 October by RBGK)
ID8	Elmer Postle written statement (submitted on 8 October 2020)
ID9	Historic Royal Palace note on response on the Kew WHS MPlan (submitted by HRP on 9 October 2020)
ID10	Dentons note regarding Section 106 Agreement viability review confirmation (submitted by the Applicant to PINs on 12 October 2020)
ID11	Statement from Watermans Arts Centre (February 2020) (submitted by the Applicant to PINs on 14 October 2020)
ID12	Agreed (between Applicant and LBH) suggested amendment to condition 8 (submitted by the Applicant on 15 October 2020)
ID13	Applicant suggested condition relating to overlooking (submitted by the Applicant on 15 October 2020)

CORE DOCUMENTS

A	Government policy and guidance
1.	NPPF (February 2019)
2.	DEFRA Noise Policy Statement for England (March 2010)
3.	BRE Site Layout Planning for Daylight and Sunlight – a guide to good practice (2011)
4.	RICS – Financial viability in Planning (August 2012)
5.	Historic England Advice Note 3 – The Setting of Heritage Assets (December 2017)
6.	Historic England Advice Note 4 – Tall Buildings (December 2015)

A	Government policy and guidance
7.	Historic England, Advice Note 2 - Managing Significance in Decision -Taking in the Historic Environment (March 2015)
8.	Statement of Outstanding Universal Value: Royal Botanic Gardens, Kew (29 June 2010)
9.	Royal Botanical Gardens, Kew – World Heritage Site MPlan (2014)
10.	Kew World Heritage Site MPlan 2019-2025 - Public Consultation
11.	Historic England Conservation Principles, Policies and Guidance (2008)
12.	Historic Environment Good Practice Advice in Planning: Note 12: Statements of Heritage Significance (October 2019)
13.	ICOMOS Technical Review – 40 and 40A High Street (Albany Riverside) development proposal (November 2018)
14.	ICOMOS Technical review – Planning application at Chiswick Roundabout, LB Hounslow (May 2018)
15.	UK Government World Heritage Site Report (2014)
16.	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
17.	UNESCO Operational Guidelines for the Implementation of the World Heritage Convention (July 2019)
18.	ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Properties (2011)
19.	ICOMOS Site Evaluation of Royal Botanic Gardens, Kew (March 2003)
20.	List entries for: a) Kew Palace b) Kew Palace Flats c) Kew Palace (Schedule Monument) d) Kew Gardens Registered Park and Garden e) Kew Gardens World Heritage Site f) 1 and 2 Kew Cottages
21.	Chiswick Curve Inspector's Report and SoS decision letter (APP/F5540/W/17/3180962 & APP/F5540/Z/17/3173208)
22.	Caselaw (a) Barnwell Manor [2014] EWCA Civ 137 (b) Mordue [2015] EWCA Civ 1243 (c) Bedford [2013] EWHC 2847 (admin)
23.	National Design Guide (October 2019)

A	Government policy and guidance
24.	NPPG extracts – Historic Environment
25.	Royal Botanic Gardens, Kew – World Heritage Site MPlan 2020-2025
26.	Citroen Garage Inspector's Report and SoS decision letter (APP/G6100/V/19/3226914)

B	Development Plan documents and LPA guidance
1.	Thames Landscape Strategy (1994)
2.	Thames Landscape Strategy Review (2012)
3.	LB Hounslow Urban Context and Character Study (August 2014)
4.	LB Hounslow Local Plan (adopted 15 September 2015)
5.	Mayoral Supplementary Planning Guidance London's World Heritage Sites: Guidance on Settings (March 2012)
6.	Mayoral Housing Supplementary Planning Guidance (March 2016)
7.	Mayoral Homes for Londoners Affordable Housing & Viability SPG (August 2017)
8.	LB Hounslow Great West Corridor Local Plan Review – Pre-Submission Regulation 19 Consultation (July 2019)
9.	Kew Bridge Conservation Area Appraisal (2018)
10.	Kew Green Conservation Area Appraisal (1988)
11.	Grand Union Canal & Boston Manor Conservation Area Appraisal (2018)
12.	St Paul's Brentford Conservation Area Appraisal (1989)
13.	Royal Botanic Gardens Conservation Area Appraisal (1991)
14.	LB Hounslow Planning Obligations and CIL SPD (2015)
15.	London Plan – Report of Examination in Public of the London Plan 2019 (8 October 2019)
16.	Draft London Plan – Intend to Publish version (December 2019)
17.	LB Richmond Local Plan (extracts) (July 2018)
18.	London Plan (March 2016)
19.	Mayoral Character and Context SPG (June 2014)
20.	Letter to Sadiq Khan from the Rt Hon Robert Jenrick, Secretary of State for Housing, Communities and Local Government (published 13 March 2020)

B	Development Plan documents and LPA guidance
21.	LB Hounslow Kew Green Conservation Area Study No.2 (March 1994)

C	Albany Riverside planning application documents (ref: P/2017/3372)
1.	Covering letter and application and CIL form (4 August 2017)
2.	A3 pack of application plans
3.	Design and Access Statement (August 2017)
4.	Landscape DAS (August 2017)
5.	Planning Statement (August 2017)
6.	Transport Assessment (July 2017)
7.	Stage 2 Fire Safety Strategy (August 2016)
8.	Financial Viability Assessment (August 2017)
9.	Energy & Sustainability Statement (August 2017)
10.	Statement of Community Involvement (August 2017)
11.	Ecological Assessment (August 2017)
12.	Arboricultural Impact Assessment (August 2017)
13.	Environmental Statement Vol 1: main report (August 2017)
14.	Environmental Statement Vol 2: Townscape, Built Heritage and Visual Impact Assessment (August 2017)
15.	Environmental Statement Vol 3: Appendices (parts 1 & 2) (August 2017)
16.	Environmental Statement Vol 4: Non-Technical Summary (August 2017)
17.	Financial Viability Assessment – Final Addendum (December 2017)
18.	Historic England representation (14 September 2017)
19.	Royal Botanical Gardens representation (20 September 2017)
20.	Internal Daylight Sunlight Report (June 2017)
21.	Response to Environment Agency (26 October 2017)
22.	Response to TfL comments (27 October 2017)
23.	Response to transport comments (30 October 2017)

C	Albany Riverside planning application documents (ref: P/2017/3372)
24.	Drainage technical note (3 November 2017)
25.	Response to Historic England and RBG Kew's letters on Albany Riverside (12 December 2017)
26.	Updated plans (submitted 18 December 2017)
27.	GLA Stage I Report (15 January 2018)
28.	Response to further transport comments (19 January 2018)
29.	LB Hounslow Planning Committee report, late and addendum report, and full addendum, and minutes (8 February 2018)
30.	Historic England letter to DCLG NPCU requesting application be called-in for SoS determination (15 February 2018)
31.	GLA Stage II Report (15 October 2018)
32.	Draft s106 agreement for Albany Riverside
33.	Draft decision notice (21 December 2018)
34.	MHCLG letter calling-in planning application (15 April 2019)
35.	Drury McPherson Partnership representation (on behalf of Historic Royal Palaces) (19 August 2016)
36.	Drury McPherson Partnership representation (on behalf of Historic Royal Palaces) (4 August 2017)
37.	Historic Royal Palaces representation (9 October 2017)
38.	Historic Royal Palaces letter to SoS HCLG requesting application be called-in for SoS determination (9 February 2018)
39.	Royal Botanic Gardens Kew letter to DP9 (Applicant's planning consultant) (22 August 2016)
40.	Historic England letter to DP9 (Applicant's planning consultant) with pre-application advice (18 August 2016)
41.	Historic England letter to DP9 (Applicant's planning consultant) with pre-application advice (7 October 2016)
D	Brentford Police Station planning application documents (ref: P/2017/3371)
1.	Design and Access Statement

D	Brentford Police Station planning application documents (ref: P/2017/3371)
2.	LB Hounslow Planning Committee Report, addendum, late addendum and minutes (8 February 2018)
3.	Draft s106 agreement
4.	Draft decision notice

E	Albany Riverside appeal documents
1.	Bluescape Ltd Statement of Case (October 2019)
2.	LB Hounslow Statement of Case (October 2019)
3.	Historic England Rule 6 Party Statement of Case (October 2019)
4.	Royal Botanical Gardens, Kew Rule 6 Party Statement of Case (October 2019)
5.	Historic Royal Palaces Rule 6 Party Statement of Case (October 2019)
6.	Third Party representations sent to PINs

F	Inquiry documents
1.	Pre-Inquiry meeting notes (9 January 2020)
2.	Statement of Common Ground on planning matters between LB Hounslow and Applicant (10 March 2020)
3.	Statement of Common Ground on Heritage matters agreed between LB Hounslow, Applicant and HRP/RBGK (9 April 2020)
4.	Statement of Common Ground on Heritage matters agreed between LB Hounslow, Applicant and Historic England (23 April 2020)
5.	Case Management conference notes (10 August 2020)
6.	Statement of Common Ground on Transport matters between LB Hounslow and Applicant (8 September 2020)
7.	Third party representations and responses schedule (9 September 2020)
8.	Final draft section 106 agreement with note of changes and title plan and register for the site (22 September 2020) and updated title and transfer document (25 September 2020)
9.	Albany Riverside - Community Infrastructure Levy Regulation 122 LBH & Applicant agreed compliance statement

F	Inquiry documents
10.	Agreed draft conditions with comparison to CD C33 and DP9 2 October letter confirming Applicant agreement to pre-commencement conditions (1 & 2 October)
11.	Citroen Inquiry document: Proof of Evidence of Mike Dunn on behalf of Historic England
12.	Citroen Inquiry document: Appendices to Proof of Evidence of Mike Dunn on behalf of Historic England
13.	Citroen Inquiry document: Proof of Evidence of Andrew Croft on behalf of RBGK
14.	Citroen Inquiry document: Appendices to Proof of Evidence of Andrew Croft on behalf of RBGK
15.	Addendum to Statement of Common Ground – Housing Land Supply – agreed between LBH and Applicant (5 October 2020)

LBH evidence submitted	
LBH1	Proof of Evidence with Appendices of Shane Baker
LBH2	Summary Proof of Evidence with Appendices of Shane Baker
LBH3	Proof of Evidence with Appendices of Sophia Laird
LBH4	Summary Proof of Evidence with Appendices of Sophia Laird
LBH5	Supplementary Proof of Evidence of Shane Baker
LBH6	Supplementary Proof of Evidence of Sophia Laird

Appellant evidence submitted	
APP1	Proof of Evidence of Tom Horne (DP9)
APP2	Appendices to Proof of Evidence of Tom Horne (DP9)
APP3	Proof of Evidence of Joe Morris (Morris+Company)
APP4	Appendices to Proof of Evidence of Joe Morris (Morris+Company)
APP5	Proof of Evidence with Appendices 1&3 of Robert Tavernor (Tavernor Consulting)
APP6	Summary Proof of Evidence of Robert Tavernor (Tavernor Consulting)
APP7	Appendix RT2 to Proof of Evidence of Robert Tavernor (Tavernor Consulting)
APP8	Supplementary Proof of Evidence of Tom Horne
APP9	Supplementary Proof of Evidence of Robert Tavernor

Appellant evidence submitted	
APP10	Additional Supplementary Proof of Evidence of Robert Tavernor with video clip (Tavernor Consulting)
APP11	ERRATA to Proof of Evidence of Robert Tavernor (Tavernor Consulting)

Historic England evidence submitted	
HE1	Summary Proof of Evidence of Kathy Clark
HE2	Proof of Evidence of Kathy Clark
HE3	Appendices to Proof of Evidence of Kathy Clark

Royal Botanical Gardens Kew evidence submitted	
RBGK1	Summary Proof of Evidence of Andrew Croft (Chris Blandford Associates)
RBGK2	Proof of Evidence of Andrew Croft (Chris Blandford Associates)
RBGK3	Appendices to Proof of Evidence of Andrew Croft (Chris Blandford Associates)

Historic Royal Palaces evidence submitted	
HRP1	Proof of Evidence of Paul Drury (Drury McPherson Partnership)
HRP2	Appendices 1-3 to Proof of Evidence of Paul Drury (Drury McPherson Partnership) and Appendix 4 to Proof of Evidence of Paul Drury (Drury McPherson Partnership)
HRP3	Summary Proof of Evidence of Paul Drury (Drury McPherson Partnership)

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 5 years from the date of this decision.
Reason: To accord with the provisions of Section 92(1) of the Town and Country Planning Act 1990.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A233-A-(00)-P100, A233-A-(01)-P100, A233-A-(00)-P200, A233-A-(01)-P200, A233-A-(01)-P102, A233-A-(01)-P110, A233-A-(01)-P113, A233-A-A-(01)-P202, A233-AB-(01)-P203, A233-A-Z-(01)-P301, A233-A-A-(01)-P302, A233-A-B-(01)-P303, A233-A-C-(01)-P304, A233-A-C-(01)-P305, PL1617.GA.100, PL1617.GA.200, PL1617.GA.300.
Reason: To ensure the development is carried out in accordance with the planning permission and to ensure that any development that is carried out is that which has been assessed.
- 3) No development shall take place until a Construction MPlan (CMP)/Construction Logistics Plan (CLP) have been submitted and approved by the Local Planning Authority. The CLP shall cover as a minimum:
 - i) a site plan (showing the areas set out below);
 - ii) confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused;
 - iii) provision for the parking of vehicles of site operatives and visitors;
 - iv) provisions for loading, unloading and storage of plant and materials within the site;
 - v) details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements;
 - vi) details of vehicle routing from the site to the wider strategic road network;
 - vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - viii) provision of wheel washing facilities at the site exit and a commitment to sweep adjacent roads when required and at the reasonable request of the Council;
 - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - x) measures to ensure the safety of all users of the public highway especially cyclists and pedestrians in the vicinity of the site and especially at the access;
 - xi) commitment to liaise with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts;
 - xii) avoidance of network and school peak hours for deliveries and details of a booking system to avoid vehicles waiting on the public highway;

- xiii) all necessary traffic orders and other permissions required to allow safe access to the site to be secured and implemented prior to commencement of construction;
- xiv) details of the construction programme and a schedule of traffic movements.

All construction and demolition works shall be undertaken in accordance with the approved CMP and CLP.

Reason: In order to protect the environmental quality of the surrounding area and to ensure that deliveries to the site during construction are managed effectively so as to minimise impact upon the road network and to safeguard the amenities of residential properties in the locality and in the interest of road safety, in accordance with Local Plan policies CC1, CC2, EQ5, EQ4, EQ6 and EC2 of the adopted Local Plan Policy and Policies 7.15, 7.14 and 5.3 of the London Plan. This condition needs to be pre-commencement because to assess these details at a later stage may prevent achievement of Local Plan requirements.

- 4) No demolition or construction work shall take place on the site except between the hours of 8am to 6pm on Mondays to Friday and 8am to 4pm on Saturdays and not at all on Sundays and Public Holidays.

Reason: In order to safeguard the amenities of adjoining residents and the amenities of the locality in accordance with Local Plan policies CC1, CC2 and EQ5 and Policies 7.15 (Reducing noise and enhancing soundscapes) and 5.3 (Sustainable design and construction) of the London Plan.

- 5) Prior to the commencement of development, a construction travel plan shall be submitted to and approved in writing by the Local Planning Authority in order to minimise reliance on private car use by all contractors and construction staff. Such a plan shall include details of measures to encourage sustainable travel to the site and to minimise site workers parking on nearby public highways.

Reason: In order to safeguard the amenities of residential properties in the locality and in the interest of road safety in accordance policies CC1, CC2, EQ5, EQ4, EQ6, EC2 and EC2 of the adopted Local Plan. This condition needs to be pre-commencement because to assess these details at a later stage may prevent achievement of Local Plan requirements.

- 6) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until details and samples of all facing materials are submitted to and approved in writing by the Local Planning Authority. The samples and details shall include:
 - i) brick (including brick and mortar on-site sample panel min. 2m x 2m);
 - ii) cladding materials (including system specifications/details and on-site samples) (where relevant);
 - iii) window treatment (including sections/reveals and on-site sample);
 - iv) all privacy measures, (including obscure glazing details, privacy screens etc.); and

- v) any other materials/details to be used.

The development shall then be carried out in accordance with the approved details and maintained as such thereafter.

Reason: In order to safeguard the visual amenity of the area and buildings in particular and to satisfy the requirements of policies CC1, CC2, CC3 and SC4 of the Local Plan and London Plan Policy 7.6.

- 7) Notwithstanding the details shown on the drawings hereby agreed, no residential unit in Block A shall be occupied until drawings at 1:10 scale of the directional glass and balustrades to be installed on the western elevation of Block A (for flats 4 and 5 on each floor in Block A) hereby approved are submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall be retained and maintained for the duration of the use.

Reason: In order to safeguard the visual amenity of the area and to protect neighbours living conditions in accordance with the requirements of policies CC1, CC2, CC3 and SC4 of the Local Plan and London Plan Policy 7.6.

- 8) Prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out as approved.

The detailed landscaping scheme shall include:

- i) soft planting: including any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species, sizes, numbers/densities and sections of landscaped areas;
- ii) a 'Tree Planting Statement' providing full details, locations, specifications and construction methods for all purpose;
- iii) built tree pits and associated above ground features, including specifications for tree protection and a stated volume of suitable growing medium to facilitate and promote the healthy development of the proposed trees, ensuring each tree has a soil volume equivalent of 0.6 times its canopy area at maturity;
- iv) hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible paving, furniture, steps, refuse disposal points and if applicable synthetic surfaces for both ground level and roof terrace level (where relevant);
- v) details of (and phasing programme for) the delivery of the River Walk as part of the construction of the development;
- vi) fences and walls and any other boundary treatments; - visitor cycle parking spaces (in the form of Sheffield stands);
- vii) any play spaces and play equipment (equivalent to the provision of 109sqm but aiming for 272sqm);
- viii) any signage (Legible London) and information boards;

- ix) brown (biodiversity) roofs/green walls (where relevant);
- x) any CCTV equipment;
- xi) an external lighting strategy; and
- xii) any other landscaping feature(s) forming part of the scheme.

The submission shall include a management programme for the lifetime of the development, which shall include: long term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas, and details of any temporary landscaping (including boundary treatment) to be provided and management thereof.

All landscaping comprised in the approved details shall be carried out during the first planting and seeding seasons following completion of construction works. Any trees or shrubs planted (including any such replacements) which die within three years from the date of planting shall be replaced in the next planting season with the same species, and of comparable maturity. The development shall be carried out strictly in accordance with the details so approved (including the River Walk delivery programme) and shall be maintained in accordance with the approved management programme.

Reason: To ensure a satisfactory appearance of the site and the adjacent the area, that the development will be accessible to all and in order that the Local Planning Authority may be satisfied that there will be ecological enhancements and as to the management of minor artefacts and structures, in accordance with Local Plan policies CC1, CC2 and GB7 and Policies 7.19, 5.3, 7.8 and 7.2 of the London Plan.

- 9) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until a scheme of acoustic insulation and any other necessary means of ventilation provided, taking into consideration the recommendations of the Noise and Vibration chapter in the Environmental Statement, is submitted to and approved by the Local Planning Authority. Such a scheme shall include details of measures to ensure the residential accommodation does not exceed the 'good' limits contained in BS8233. The details shall include material specification and predicted performance of the materials proposed. Any works that form part of such a scheme shall be completed as approved before any part of the development is first occupied.

Prior to the development being occupied, sound insulation test reports demonstrating compliance with the scheme approved under this condition, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure satisfactory environmental conditions for the occupiers of the proposed building in accordance with Local Plan Policy EQ5.

- 10) Each residential unit shall meet M4(2) Building Regulations as shown on the hereby approved plans.

Reason: To ensure a socially inclusive and sustainable development in accordance with Local Plan Policy SC5 and policies 3.5 (Quality and design

of housing developments) and 7.2 (Creating an inclusive environment) of the London Plan.

- 11) A minimum 10% 'Wheelchair User Dwellings' built to Building Regulations M4(3) standard shall be provided as identified on the approved plans.

Reason: To ensure a socially inclusive and sustainable development in accordance with Local Plan Policy SC3 and policies 3.5 (Quality and design of housing developments) and 7.2 (creating an inclusive environment) of the London Plan.

- 12) No part of the development shall be occupied until the waste and recycling facilities for the residential element of the development, as shown on the approved plans, have been provided and made available for use by residents. Such facilities shall remain throughout the lifetime of the development and shall be used for no other purposes.

Reason: To ensure that refuse can be properly stored and removed from the site as soon as the building is occupied in accordance with Local Plan Policies CC1, CC2 and EQ7.

- 13) Notwithstanding the details shown on the approved plans, prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), details of the waste and recycling storage facilities for the commercial use at the ground floor shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the waste and recycling facilities thereby approved have been provided and thereafter such facilities shall be retained throughout the lifetime of the development and shall be used for no other purposes. No refuse or recycling waste bins shall be stored on the public highway.

Reason: To ensure that refuse can be properly stored and removed from the site as soon as the building is occupied in accordance with Local Plan Policies CC1, CC2 and EQ7.

- 14) Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10dB below the background noise levels when measured from the nearest sensitive receptors. Plant shall be set in from the roof boundaries by a minimum of 2m. No further fans, louvres, ducts or other external plant shall be installed without the written prior approval of the Local Planning Authority.

Reason: To protect the amenities of existing and future residents and ensure that the development provides a high quality design in accordance with Local Plan policies CC1, CC2 and EQ5.

- 15) Notwithstanding the details shown on the approved plans, prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), full details (including manufacturers' specifications) of cycle parking facilities (with the

provision of Sheffield stands and the reduction of individual cycle stores to include no more than 50 cycles) shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall conform to current guidance such as the TfL London Cycling Design Standards in design and layout as at the date of permission and be fully implemented and made available for use before the first occupation of the development and thereafter retained for use at all times without obstruction.

Reason: To support sustainable transport objectives in accordance with adopted local plan policy EC2.

- 16) Prior to the first occupation of the development, the parking, loading and turning spaces as set out in the approved plans, shall be constructed and made available for use. These shall include a minimum 20% 'active' Electric Vehicle Charging spaces and 20% 'passive' Electric Vehicle Charging spaces. The parking, loading and turning spaces shall then be retained as such and shall not be used for any other purposes thereafter. No loading or unloading shall occur on the public highway.

Reason: In order to prevent obstruction and inconvenience to users of the adjacent highway and the premises, in the interests of road safety and in order to promote sustainable transport modes in accordance with policies CC1, CC2 and EC2 of the adopted Local Plan and London Plan Policy 6.13.

- 17) Pedestrian visibility splays as shown on the approved plans either side of the vehicular access on the High Street shall be provided prior to first occupation of the development and maintained as such thereafter with nothing over 600mm in height within the visibility splays.

Reason: In the interests of road safety in accordance with policies CC1, CC2 and EC2 of the adopted Local Plan.

- 18) The development hereby permitted shall not commence (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) until a finalised roof plan showing the proposed location of the solar PV panels has been submitted to and approved in writing by the Local planning Authority to show that the development will be constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions.

The development shall be implemented in accordance with the approved Energy Strategy and shall not commence above ground until full Design Stage calculations under the Standard Assessment Procedure have been submitted to and approved in writing by the Local planning Authority to show that the development will be constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions, and achieves a minimum 35% reduction in emissions on Part L Building Regulations.

Prior to first occupation of the building(s) evidence (e.g. photographs, installation contracts and As-Built certificates under the Standard Assessment Procedure) should be submitted to the Local Planning Authority

and approved in writing to show that the development has been constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions, and achieves a 35% reduction in emissions on Part L Building Regulations.

Upon final commencement of operation of the solar PV panels, suitable devices for the monitoring of the solar PV panels shall have been installed, and the monitored data shall be submitted automatically to a monitoring web-platform at daily intervals for a period of three years from the point of full operation.

Reason: To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance with London Plan Policy 5.2 and the London Borough of Hounslow Local Plan Policy EQ1.

- 19) Prior to first occupation of the building(s), evidence should be submitted to the Local Planning Authority and approved in writing to show that the development has made sufficient provisions to enable the connection to a district heating network in the future.

Reason: To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance with London Plan Policies 5.2 and 5.5 and the London Borough of Hounslow Local Plan Policy EQ1.

- 20) Prior to commencement of works above ground level, evidence shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the internal water consumption of the development will not exceed 105 litres/person/day in line with The Water Efficiency Calculator for new dwellings from the Department of Communities and Local Government.

Prior to first occupation of the building(s) evidence (schedule of fittings and manufactures literature) should be submitted to the Local Planning Authority and approved in writing to show that the development has been constructed in accordance with the approved internal water use calculations.

Reason: In order to protect and conserve water supplies and resources in accordance with London Plan Policy 5.15 and the London Borough of Hounslow Local Plan Policy EQ2.

- 21) No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until details have been submitted to and approved by the Local Planning Authority which show that:
- i) At least three of the key elements of the building envelope (external walls, windows roof, upper floor slabs, internal walls, floor finishes/coverings) are to achieve a rating of A+ to D in the Building Research Establishment (BRE) The Green Guide of specification.
 - ii) At least 50% of timber and timber products are to be sourced from accredited Forest Stewardship Council (FSC) or Programme for the Endorsement of Forestry Certification (PEFC) scheme.

- iii) Detail measures taken to avoid construction or insulation materials which will release toxins into the internal and external environment, including those that deplete stratospheric ozone.

The development shall not be occupied until evidence (e.g. photographs and copies of installation contracts) has been submitted to the Local Planning Authority to demonstrate that the development has been carried out in accordance with these requirements and it has been approved in writing.

Reason: In order to ensure the sustainable sourcing of materials in accordance with the London Plan Policy 5.3 and the Mayor of London's Sustainable Design and Construction SPG.

- 22) Prior to commencement of works (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), final detailed drainage designs (including drawings) of the proposed drainage scheme (taking into consideration the information in the approved documents and the following correspondence emails 14th December 2017) shall be submitted to and approved in writing by the Local Planning Authority. These details shall specifically provide evidence of the connection to the Thames Water Sewer Network and confirmation that the Environment Agency accepts the discharge in the River Thames at an uncontrolled rate.

Reason: To prevent the risk of flooding to and from the site in accordance with relevant policy requirements including but not limited to London Plan Policy 5.13, the Non-Statutory Technical Standards for Sustainable Drainage Systems and Hounslow Council's Local Plan Policy EQ3.

- 23) Prior to occupation, evidence that the drainage system has been built as per the final detailed drainage designs (approved in condition 22) through the submission of photographs and copies of installation contracts, and written confirmation that the drainage features will be managed as per the detailed maintenance plan for the lifetime of the development, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the methods to mitigate the risk of surface water flooding have been constructed as agreed and that the drainage system is suitably managed.

- 24) Before the development hereby permitted commences, except demolition:

- i) Details of an intrusive site investigation are required in addition to the phase 1 desk study previously submitted. These details shall be submitted to, and approved in writing by, the Local Planning Authority.

The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.

- ii) If required, a scheme for decontamination of the site shall be submitted to the Local Planning Authority, for written approval. The

scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied.

During the course of the development:

- iii) The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in writing to the Local Planning Authority for approval before any work on that aspect of development continues.

Before the development is first brought into use:

- iv) The agreed scheme for decontamination referred to in clauses ii) and iii) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the Local Planning Authority for approval.

Reason: Contamination is known or suspected on the site due to a former land use. The Local Planning Authority therefore wishes to ensure that the development can be implemented and occupied with adequate regard for public and environmental safety, and to satisfy the requirements of policy EQ8 of the adopted Local Plan.

- 25) Prior to the installation of the CHP plant, an Air Quality Neutral Assessments for the building, shall be submitted to and approved in writing by the Local Planning Authority. Such assessments shall be undertaken against the benchmarks established in the Air Quality chapter in the Environmental Statement and the Sustainable Design & Construction SPG, ensuring that any boilers installed are Ultra Low Emission (<40mgNO_x/kWh).

Reason: To ensure the development achieves air quality neutral status in accordance with Local Plan Policy EQ4 and the Sustainable Design and Construction SPG.

- 26) Prior to the commencement of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising), a Biodiversity Enhancement Strategy, incorporating the recommendations of the Ecological Assessment Report by Peter Brett Associates dated July 2017 and the incorporation of at least 2 bird boxes, 2 bat boxes and 1 log pile, shall be submitted to and approved in writing by the Local Planning Authority. The approved Biodiversity Enhancement Strategy shall be implemented prior to any building within that phase being first occupied. Any enhancement measures shall be maintained throughout the lifetime of the development or in accordance with the strategy set out in the Landscape MPlan.

Reason: To promote biodiversity and ecological enhancements to the site and surrounding area in accordance with Local Plan policies CC1, CC2 and GB7 and Policy 7.19 of the London Plan.

- 27) Prior to the commencement of development, a scheme for the protection of the retained trees, in accordance with BS5837:2012 shall be submitted to

and approved in writing by the Local Planning Authority. The scheme shall include:

a) A plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area of every tree on site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan.

b) A schedule of tree works for all the retained trees, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons.

All the tree work shall be carried out in accordance with BS3998:2010 – Tree Work - Recommendations.

c) The details and positions (shown on plan at paragraph (a) above) of the Tree Protection Barriers, identified separately where required for different phases of construction work. The Tree Protection Barriers must be erected prior to each phase of construction commencing and remain in place, undamaged, for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase.

d) The details and positions of any underground service runs shall be shown on the plan required at paragraph (a).

The erection of fencing for the protection of any retained tree or hedge shall be carried out in complete accordance with BS5837:2012, before any equipment, machinery, or materials are brought onto the site for the purposes of development or other operations. The fencing shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made without the written approval of the Local Planning Authority.

Reason: To enable the Local Planning Authority to ensure the retention of the maximum number of trees on the site and their protection from damage, in the interests of biodiversity and visual amenity area and to accord with policies CC1, CC2 and GB7 of the adopted Local Plan. This condition needs to be pre-commencement because to assess these details at a later stage may prevent achievement of Local Plan requirements.

- 28) No demolition or development shall take place until a stage 1 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, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works. If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within

the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works

B. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material.

This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

Reason: Heritage assets of archaeological interest may survive on the site. The planning authority wishes to secure the provision of appropriate archaeological investigation, including the publication of results, in accordance with adopted Local Plan Policy CC4. This condition needs to be pre-commencement because to assess these details at a later stage may prevent achievement of Local Plan requirements.

- 29) Prior to any part of the development being occupied, the provision of riparian lifesaving equipment shall be provided along the river's edge to a standard recommended in the 1991 Hayes Report on the Inquiry into River Safety. The lifesaving equipment shall be kept in good working order and made available for use at all times.

Reason: To ensure that the proposed development does not prejudice conditions of general safety.

- 30) Prior to the commencement of development, a scheme for river wall maintenance and improvement works shall be submitted to and approved in writing by the Local Planning Authority. Flood defences are to be commensurate with the lifetime of the development circa 100 years. The development shall then only proceed in accordance with the approved scheme and shall be maintained as such thereafter.

Reason: To protect the development from tidal flooding to ensure that the tidal defence wall is brought up to standard and minimise the risk of flooding. To show how access will be achieved to undertake inspections/maintenance/repairs/replacement and enhancement of the flood defence in future. This condition needs to be pre-commencement because to assess these details at a later stage may prevent achievement of Local Plan requirements.

END OF CONDITIONS



Ministry of Housing, Communities & Local Government

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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.