



Department for Levelling Up,  
Housing & Communities

Peter Twemlow  
DP9 Limited  
100 Pall Mall  
London  
SW1Y 5NQ

Our ref: APP/K5030/W/20/3244984  
Your ref: 18/01213/FULEIA

11 November 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY BURY STREET PROPERTIES (LUXEMBOURG) S.A.R.L.  
LAND ADJACENT TO 20 BURY STREET, LONDON EC3A 5AX  
APPLICATION REF: 18/01213/FULEIA**

*This decision was made by the Minister of State for Housing on behalf of the Secretary of State, and signed on his behalf.*

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry which began on 3 November and closed in writing on 26 April 2020 into your client's appeal against the decision of the City of London Corporation (on Direction of the Mayor of London) to refuse your client's application for planning permission for demolition of existing building and structures and construction of a building to a height of 305.3m AOD for a mixed-use visitor attraction, including viewing areas [2,597sq.m GEA], an education/community facility [567sq.m GEA] (Sui Generis) and restaurant/bar use (Class A3/A4) [1,535sq.m GEA]; together with a retail unit at ground floor (Class A1); a new two- storey pavilion building [1,093sq.m GEA] (Sui Generis) comprising the principal visitor attraction entrance with retail at ground floor level (Class A1/A3) [11sq.m GEA] and a public roof garden; provision of ancillary cycle parking, servicing and plant and alterations to the public realm [Total Scheme Area: 17,441sq.m GEA] in accordance with application Ref 18/01213/FULEIA, dated 13 November 2018.
2. On 28 January 2020, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal should be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse planning 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 2017. Having taken account of the Inspector's comments at IR1.7, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Matters arising since the close of the inquiry**

6. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
7. On 10 August, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised National Planning Policy Framework ('the Framework'), which came into force on 20 July 2021. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 31 August and 8 September and have been taken into account by the Secretary of State in reaching this decision.
8. The Secretary of State is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

### **Policy and statutory considerations**

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the New London Plan (NLP) (2021) and the City of London Local Plan (LP) (2015). At the time of the inquiry, the previous London Plan was part of the Development Plan. The Secretary of State notes at IR 1.9 that the parties were invited to comment when the New London Plan was published. The Secretary of State considers that relevant development plan policies include those set out at IR 3.3 to 3.24.
11. Other material considerations which the Secretary of State has taken into account include the revised version of the National Planning Policy Framework ('the Framework'),

published in July 2021, and associated planning guidance ('the Guidance'), as well as Supplementary Planning Guidance and other materials listed at IR3.31 to 3.57. The Framework references within this letter have been amended from those in the IR to the revised Framework numbering where necessary.

12. 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*

13. The emerging plan comprises the Emerging City Plan (emerging LP), "City Plan 2036". The Secretary of State considers that the emerging policies of most relevance to this case include those set out at IR3.28 to 3.30.
14. 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 City Corporation consulted on the Proposed Submission Draft of the City Plan 2036 (Regulation 19 consultation) between 19 March 2021 and 10 May 2021. As at the date of this decision, the City Corporation had not published its response to the comments received, and there was no date set for the formal Examination of the Plan. Accordingly, like the Inspector at IR3.27, the Secretary of State affords limited weight to the policies of the emerging plan.

### **Main issues**

15. The Secretary of State agrees that the main issues are those set out by the Inspector at IR14.1.

### The effect of the proposals on the significance of designated heritage assets

### *Heritage assets*

16. The Secretary of State agrees at IR14.2 that the scheme would not cause any direct physical harm to any heritage asset, rather the disputes concern their settings. He further agrees at IR14.2 that the starting point for understanding the significance of the Tower of London (ToL) World Heritage Site (WHS) is the Statement of Outstanding Universal Value (SOUV), and that the key point is not whether some aspects would be left untouched, but the importance of what would be affected, that is the setting, to its

significance. He further agrees with the Inspector's approach to ToL as outlined in IR14.3.

17. Regarding the individual Listed Buildings (LBs) within the WHS, for the reasons given at IR14.3, the Secretary of State agrees with the Inspector's approach of considering some buildings separately.

#### *Approach to considering the setting of the ToL*

18. For the reasons set out in IR14.4-14.23, the Secretary of State agrees with the Inspector's analysis and conclusions on juxtaposition, future development of the Cluster and setting, and has adopted his approach on these matters.

#### *ToL WHS*

19. The Secretary of State agrees for the reasons given at IR14.24-14.25 that of the seven attributes that express the Outstanding Universal Value (OUV) of the ToL, those which are key for this appeal include those listed at IR14.25. He further agrees for the reasons given at IR14.26 that the OUV of the WHS, and the special interest of the White Tower are vulnerable to development that would overshadow or distract from its dominance.

#### *View 10A*

20. The Secretary of State has carefully considered the Inspector's assessment of View 10A at IR14.27-14.32. For the reasons given there, he agrees with the Inspector at IR14.28 that on the walk across Tower Bridge, the Tulip would appear to move right the way through the airspace behind the White Tower and this would be highly apparent and intrusive to the viewer. He further agrees at IR14.29 that the open sky around the White Tower would be severely affected by the Tulip; the extent to which its height and location would detract from the ToL would be significant; and it would disrupt the sensitive balance between the City and the WHS. He further agrees at IR14.31 that the Tulip would seriously detract from the OUV of the WHS, and the significance of the White Tower in particular, and result in more than moderate impact; and that in the context of the enormous importance of the ToL WHS, its significance as a whole would not be drained away but the contribution provided by its setting would be much reduced. For the reasons given in IR14.32, the Secretary of State agrees with the Inspector that the weight that should be given to this level of harm in View 10A.1 alone should be very considerable. In the representation of 24 August submitted on behalf of the appellant, the argument is made that the scheme's public benefits demonstrably outweigh any specific alleged heritage harm. The Secretary of State addresses this issue in paragraph 58 of this letter.

#### *Views 25A.1-3*

21. The Secretary of State has carefully considered the Inspector's assessment of Views 25A.1-3 at IR14.33-14.43. For the reasons given there, the Secretary of State agrees with the Inspector that the Tulip would appear different and separate from the rest of the Cluster (IR14.35), that it would amount to a much greater distraction than any or possibly all of the existing Cluster and that it would bring the apex of the Cluster much closer to the White Tower (IR14.36). He agrees that the Tulip would appear to challenge for the dominance of the Cluster rather than seek to merge into it, and further agrees it would have a significant impact on the setting of the ToL when viewed from the South Bank (IR14.39). For the reasons given at IR14.38 and IR14.41 the Secretary of State, like the

Inspector, does not agree with the Appellant's argument that due to the design quality of the Tulip, consolidating the Cluster in views from the South Bank would amount to a heritage benefit, but considers that the important differences in height, position, form and materials of the Tulip mean that it would not appear as a consistent part of the Cluster. The Secretary of State considers that the degree of harm would be less than substantial in Framework terms, but much more than negligible, and of a lower order than the more than moderate impact on View 10A he has identified in paragraph 20 above.

#### *Cumulative harm*

22. For the reasons given at IR14.44, the Secretary of State agrees with the Inspector that in the absence of evidence that the existing and permitted schemes have or would cause harm, there is none to add to that which would be caused by the Tulip. He further agrees that there is therefore no assessment of cumulative harm to make, and that the harm that the Tulip would cause precludes any cumulative benefit.
23. For the reasons given at IR14.45-14.47, the Secretary of State agrees with the Inspector's approach and assessments regarding the White Tower, Ramparts to the Inner and Outer Wards, the Chapel of St Peter ad Vincula, Tower Green, and the Waterloo Block.
24. For the reasons given in IR18.48, the Secretary of State agrees with the Inspector's approach in dealing with the six heritage assets referred to in the reasons for refusal.

#### *Approach*

25. For the reasons given at IR14.49-14.56, in respect of other heritage assets the Secretary of State agrees with the Inspector's findings with regard to the articulation and scale of the harm to the settings of the church of St Botolph without Aldgate (Grade I), 10 Trinity Square (Grade II\*), and Trinity House. He similarly agrees that there would be no change to the contribution that setting makes to the significance of 38 St Mary Axe (Grade II) or the Church of St Helen's Bishopgate (Grade I), and that it would be unlikely that there would be any impact on the significance of Bevis Marks Synagogue (Grade I). He further agrees that the Tulip would either do little to impact their surroundings or do nothing to alter the contribution that their respective settings make to the significance of the heritage assets listed at IR14.56.
26. The Secretary of State agrees for the reasons given at IR14.57-14.59 with the Inspector's findings with regard to the articulation and scale of the harm that there would be to the ToL Conservation Area (CA) including St Katharine's Dock and Trinity Square Gardens, and to the character and appearance of the Trinity Square CA. He further agrees that St Helen's Place CA would be unharmed and there would be no harm to the Lloyds Avenue CA. He agrees for the reasons given at IR14.59 that there would be no heritage benefits to the settings of Holland House, Bury Court and Dixon House, nor from the ability to look down on the ToL.

#### *Conclusions on heritage*

27. For the reasons given at IR14.60-14.63, IR14.120-14.121 and in paragraph 20 above, the Secretary of State agrees with the Inspector that very considerable weight should be given to the less than substantial harm the scheme would cause to the contribution which setting makes to the attributes of OUV of the ToL WHS when seen from View 10A.1, and more widely when crossing Tower Bridge. He agrees that the Tulip would cause further

harm to the OUV of the WHS in Views 25A.1-3 and to the setting of individual LBs within the ToL; there would be additional harm to the settings of other designated heritage assets, notably the church of St Botolph without Aldgate, the ToL CA, and 10 Trinity Square, Trinity House and the Trinity Square CA (IR14.120). He further agrees that the harm in each instance would be less than substantial and that the weight in each case should be of a lower order than that related to View 10A, but should then be combined in the overall planning balance and assessment against the development plan as a whole (IR14.60). For the reasons set out in IR14.61, he further agrees that the protection of the WHS should be given the highest level of weight for any heritage asset. He agrees with the Inspector's conclusions on recently consented schemes at IR14.63.

28. For the reasons given at IR14.129-14.132, the Secretary of State agrees with the Inspector that the proposal would conflict with Policies D9 Criterion C1)d) & Criterion C1)e), HC1 and HC2 of the New London Plan. He similarly agrees and for the reasons given at IR14.135-14.136 the proposal conflicts with Policies CS7.3, CS12 and DM12.1 of the LP.

### Other harms

#### *Strategic views*

29. For the reasons given at IR14.64-14.65, the Secretary of State agrees with the Inspector that the harm to the setting of the Tower of London World Heritage Site would also cause considerable harm to Strategic Views 10A.1 and 25A.1-3. For the reasons given at IR.14.129 and IR14.133 the Secretary of State agrees the proposal would be in conflict with Policies D9 Criterion C1)a)i, HC3 and HC4 of the NLP and for the reasons given at IR14.136 fail to accord with Criteria 1 and 5 of Policy DM12.1 and Policy CS13 of the Local Plan.

#### *Plaza*

30. In respect of the plaza, for the reasons given at IR14.66-14.69, the Secretary of State agrees with the Inspector that both visually and functionally, there would be harm and benefit compared with the current arrangement. He agrees that the loss of public open space at ground level, and the intrusions into the plaza as a plinth to the Gherkin, would outweigh the increased public open space on the roof of the Pavilion, and additional seating in the Pocket Park, as well as the removal of the ramp and its retaining wall. For the reasons given at IR14.128, he agrees with the Inspector that the proposal would be contrary to Policy D8 of the NLP and for the reasons given at IR14.135 contrary to Policy CS7.3 of the LP and that overall, that the proposals for the plaza count against the scheme. He attaches limited weight to this harm.

#### *Office floorspace*

31. Like the Inspector, for the reasons given in IR14.70 and IR14.135, the Secretary of State concludes that the loss of office space conflicts with the requirement to protect office floorspace in Policy CS7.1 and therefore should be given negligible weight.

### Design

32. The Secretary of State has carefully considered the Inspector's findings in terms of the design of the scheme at IR14.71-14.106. Like the Inspector, he has considered the proposal against the six criteria set out in paragraph 130 of the Framework (paragraph 127 at the time of the IR). In reaching his conclusions, the Secretary of State has taken

into account the representations which were made following the reference back exercise in paragraph 7 above.

### *Function*

33. For the reasons given in IR14.72, the Secretary of State agrees that the scheme would function properly with regard to delivering a very high level viewing experience together with some exciting fairground-style additions. He further agrees with the Inspector's comments about the level of skill and effort which has been put into resolving the entrance and exit requirements in such a tight space and the quality of the detailing. However, he agrees with the Inspector's concerns that the number of visitors would need to be limited to prevent overcrowding at ground level. Overall, he agrees with the Inspector that the extent to which the design would overcome the constraints (of the site) and function well is a matter which should be given moderate weight (IR14.72).
34. For the reasons given in IR14.73, the Secretary of State agrees with the Inspector that little if any thought has been given to how the building would function over its extended lifetime. He notes that there are no plans for its re-use when it has served its purpose as a viewing tower, or for its demolition. He agrees that if the owner were disinclined with little incentive, it would leave either an unmaintained eyesore or a large public liability, and this counts heavily against its design quality.

### *Visually attractive*

35. The Secretary of State agrees with the Inspector, for the reasons given at IR14.74, that while the quality of the presentation materials is of an exceptional standard, achieving the highest architectural quality goes well beyond the level of detailing and presentation. While he recognises that the quality of the presentation materials has made it easier to appreciate how the scheme is designed and how it impacts on its surroundings, he considers that the quality of the presentation materials is not directly relevant to the quality of the design and does not carry weight in this matter.
36. The Secretary of State agrees with the Inspector that there is some comfort that the attention to detail would be followed through into the finished article (IR14.83). For the reasons given at IR14.75-14.83, he agrees with the Inspector that however carefully detailed, in terms of aesthetics the result would be visually compromised, being neither a continuous flowing object, as with the Gherkin, nor a structure of three distinct parts, as with the Monument (IR14.77). He also shares the Inspector's reservations about the finish to the concrete of the Tulip (IR14.78-14.79). In terms of symmetry, the Secretary of State agrees with the Inspector that while there have obviously been considerable effort and architectural dexterity employed in modelling the top of the building, the way the gondolas, slide and skywalk have been incorporated into the viewing areas has produced a compromised design that is neither a flamboyant expression nor a consistent elegance (IR14.81).
37. In terms of overall appearance, the Secretary of State, like the Inspector, finds too many compromises to amount to world class architecture. He considers that taking into account his conclusions in paragraphs 35-36 above and paragraph 46 below, the

proposal does not draw support from paragraph 126 of the Framework, which promotes the creation of ‘high quality, beautiful and sustainable buildings and places’.

*Sympathetic to local character and history*

38. For the reasons given at IR14.84 to 14.87, the Secretary of State agrees with the Inspector that the form and materials of the Tulip at its proposed height and location would be a poor and unsympathetic response to the historical context. He considers that this weighs very heavily against the quality of the design, and has reflected this in the very considerable weight attributed to the heritage harm.

*Strong sense of place*

39. The Secretary of State agrees with the Inspector, for the reasons given at IR14.88 to 14.90, that the base of the Tulip and the Pavilion would create distinctive spaces and the double height arches between the buttresses would be attractive and welcoming alongside the green wall. He further agrees that the sense of drama and expression of structural forces at the base of the Tulip would be striking, and that the Pavilion would be a bright new building with an exciting roof garden at high level. However, he also agrees that the space around the entrances might feel uncomfortable and shares the Inspector’s reservations about the treatment of the Pavilion’s street elevation and how the ground level functions would be achieved. Overall, he agrees with the Inspector’s conclusions that while the scheme would enhance detailed elements of the existing context it would do so at a cost to openness (IR14.90).

*Optimise the potential of the site*

40. For the reasons given at IR14.91, the Secretary of State agrees with the Inspector that while the scheme would develop this *windfall* site to the full, and considerable skill has gone into overcoming the functional requirements within such a tight site and turning these into attractively detailed elements, nevertheless, this would not overcome the loss of open space and part of the backdrop to the Gherkin.

*Inclusive and accessible*

41. The Secretary of State agrees with the Inspectors analysis at IR14.92, and with his conclusion at IR14.104 that while the scheme would be generally accessible to all, its inclusivity would be limited by the cost of the main attractions.

*The Brief*

42. The Secretary of State has considered the Inspector’s comments regarding the brief for the proposal at IR14.93 to 14.94. He agrees that the extent of heritage harm, and other shortcomings as a result of conforming to the brief, should preclude it being described as outstanding (IR14.94).

*Engagement and the London Review Panel (LRP)*

43. The Secretary of State notes that there is little evidence of how internal design reviews had shaped the outcome, that there was no independent review until after the application was reported to committee, and there is no information on the way heritage concerns played a part in choosing the location, materials, height, or shape and form of the Tulip (IR14.95-14.96). For the reasons given at IR14.97, the Secretary of State agrees with the Inspector that many of the criticisms articulated by the London Review Panel are valid and



the fact that these were largely ignored during the design process weighs against the scheme. The Secretary of State concludes that the proposal does not draw support from paragraphs 132-133 of the Framework (formerly paragraphs 128-129), and that this matter carries significant weight against the scheme.

### *Sustainability*

44. The Secretary of State has taken into account that the schemes would achieve a BREEAM rating of outstanding and acknowledges the enormous lengths to which F+P have gone to make the construction and operation of the scheme as environmentally responsible as possible (IR14.98). However, overall the Secretary of State agrees with the Inspector, for the reasons given at IR14.99 to 14.102, that the extensive measures that would be taken to minimise carbon emissions during construction would not outweigh the highly unsustainable concept of using vast quantities of reinforced concrete for the foundations and lift shaft to transport visitors to as high a level as possible to enjoy a view.

### *Design – other issues*

45. The Secretary of State agrees with the Inspector's conclusions in IR14.103.

### *Conclusions on Design*

46. For the reasons given at IR14.104-14.106, overall, the Secretary of State agrees with the Inspector that the approach would be a muddle of architectural ideas and would be compromised, and that the unresolved principles behind the design would mean that in many regards it would fall between two stools. He further agrees that the development would not amount to a design of outstanding quality, and that the quality of design would not be nearly high enough as to negate its harm to the settings of heritage assets (IR14.106).
47. The Secretary of State has gone on to consider these findings against the revised design policies in the Framework. He concludes that those design elements set out above which weigh against the scheme, both in terms of design process and outcome, have greater weight than the positive elements which have been identified. Overall, the Secretary of State agrees with the Inspector at IR14.106 that the proposal would not amount to a design of outstanding quality.
48. The Secretary of State, having also taken into account the revisions to the Framework and the parties' representations, further agrees with the Inspector that many aspects of the scheme would not amount to good design as expected by paragraphs 126 and 130 a) and c) of the Framework (formerly paragraphs 124 and 127), nor would it be the product of effective engagement throughout the process as envisaged by paragraphs 132-133 of the Framework (formerly paragraphs 128-129). The Secretary of State recognises that these findings are contrary to the representations made on 24 August on behalf of the appellant, however, for the reasons given above he agrees with the Inspector's assessment of the merits of the proposal. In particular, The Secretary of State considers that the revisions to the Framework make clear that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve (Framework paragraph 126) and he considers this emphasis on design quality to be an important material consideration in this case. Overall the Secretary of State agrees that the appeal scheme should not gain support from paragraph 134(b) of the Framework (formerly paragraph 131) (IR14.126). He further agrees for the reasons given at IR14.128, 14.129 and 14.134 that the proposals

would be contrary to Policies D4 Criterion D, D9 Criterion C1)c), and SI2 Criterion A. He further agrees that they should not gain support from SI2 Criterion F and would not promote a circular economy which is one of the aims of Policy SI 7 of the NLP. For the reasons given at IR14.135, the Secretary of State agrees with the inspector that there is conflict with Policies CS7.3, CS10 and DM10.1 of the LP, and that the proposals do not therefore gain support from paragraph 134(a) of the Framework.

49. The Secretary of State has further considered whether there is conflict with government guidance on design. In the light of his conclusions above, and for the same reasons, he considers that the proposal is not in accordance with aspects of the National Design Guide, in particular those elements of the Guide dealing with context and resources. He has taken into account the representation of 7 September made on behalf of the appellant which refers to the National Design Guide and the evidence submitted to the inquiry. However, as above, because of significance of the areas of conflict, and the resultant degree of harm, overall he considers that the proposal does not reflect government guidance on design. He considers that design as a whole carries significant weight against the proposal.

### Benefits

#### *Economic*

50. The Secretary of State has taken in account the economic benefits of the scheme and agrees with the Inspector at IR14.107 that the economic value of the scheme, in terms of investment and employment would be substantial.
51. The Secretary of State agrees with the Inspector for the reasons given at IR14.108, IR14.109 and IR14.146 that the economic benefits would be modest in relation to the City, and by comparison with the very tall office towers which fulfil the primary function of, and justification for, the Cluster.
52. Overall, the Secretary of State agrees with the Inspector at IR14.109 that the economic benefits, direct and indirect, are an important material consideration and that moderate weight should be given to these.

#### *Tourism*

53. The Secretary of State has taken into account the tourism benefits of the scheme and agrees with the Inspector for the reasons given at IR14.110 that the scheme would be consistent with policy concerning London's visitor infrastructure and the City's aspirations to enhance, add to, and diversify London's visitor attractions.
54. For the reasons given at IR14.111, IR14.114 and IR14.146, the Secretary of State agrees with the Inspector that in the context of the many other attractions in London and within the Cluster, weight to be attributed to any tourism benefits should be significantly reduced. As such, the Secretary of State considers the weight given to the tourism benefits is moderate.

#### *Education*

55. The Secretary of State has taken into account the education benefits of the scheme and agrees for the reasons given at IR14.115 that the education offer of enhanced school trips would be a further advantage of the scheme. He further agrees with the Inspector for the reasons given at IR14.116, IR14.118 and IR14.146 that the limitations to both school

visits and community groups, and the uncertainty of whether visits would be at the expense of other school trips, mean that the weight to the benefit should be significantly reduced (IR14.119).

56. Overall, for the reasons given at IR14.117 the Secretary of State agrees with the Inspector that the harm caused by the availability of adequate storage space within the education space is given negligible weight. Furthermore, agrees with the Inspector at IR14.119 that the benefits of the education facility should be given no more than moderate weight in the overall balance.

#### *Conclusions on benefits*

57. For the reasons given at IR14.127, 14.129, 14.130 and 14.133, the proposals would gain support from Policies SD4, D9 Criterion C2f) & Criterion D, S3, E10, HC5, and HC6 of the NLP. Overall, for the reasons given in IR14.107 to 14.119, the Secretary of State agrees with the Inspector at IR14.122 and 14.146 that taken together the economic, tourism and educational benefits should be given no more than moderate weight given the context of the considerable weight to the harm to the OUV of the ToL.

#### Heritage balance

58. The Secretary of State agrees with the Inspector's approach to the heritage balance as set out in IR14.120-14.125 and IR14.147. For the reasons given in these paragraphs, as well as paragraph 27 above, he agrees that the heritage harm would not be outweighed by the public benefits of the proposal, individually or together, and that the scheme would not provide the clear and convincing justification required by paragraph 200 of the Framework (formerly paragraph 194) (IR14.124). He therefore agrees that the heritage balance is firmly against the scheme (IR14.125).

#### Other matters

59. The Secretary of State agrees with the Inspector's conclusions on whether the proposal is in accordance with other policies, as set out at IR14.138-14.143.

#### **Planning conditions**

60. The Secretary of State has given consideration to the Inspector's analysis at IR12.1 to 12.6, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 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 56 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning obligations**

61. Having had regard to the Inspector's analysis at IR13.1 to 13.4, the planning obligation dated 17 December 2020, paragraph 57 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 IR13.3 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

## **Planning balance and overall conclusion**

62. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies D4 Criterion D, D8, DB9 Criterion C1)a)i, Criterion C1)c), Criterion C1)d), Criterion C1)e), HC1, HC2, HC3, HC4.C, SI2 Criteria A and F and SI 7 of the New London Plan nor in accordance with Policies CS7.3, CS10, DM10.1, CS12, DM12.1 Criterion 1 and 5, CS13.1 and 2, CS13 of the Local Plan and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
63. The material considerations weighing against the proposal include the less than substantial harm the scheme would cause to the contribution setting makes to the attributes of OUV of the ToL WHS, when seen from View 10A.1 and more widely when crossing Tower Bridge, and this carries very considerable weight. The further harm to the OUV of the WHS in Views 25A.1-3 and to the settings of individual Listed Buildings within the Tower of London adds further weight, as does harm to the settings of the church of St Botolph without Aldgate, the Tower of London Conservation Area, and to 10 Trinity Square, Trinity House and the Trinity Square Conservation Area. Overall, the design of the scheme does not draw support from the revised Framework and carries significant weight against the scheme.
64. Weighing in favour of the proposal are the economic, tourism and educational benefits of the proposal which each attract moderate weight in favour of the proposal.
65. In line with paragraph 202 of the Framework, the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of designated heritage assets is outweighed by the public benefits of the proposal. He has concluded that the heritage balance is firmly against the proposal.
66. 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 refusal of permission.
67. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

## **Formal decision**

68. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for demolition of existing building and structures and construction of a building to a height of 305.3m AOD for a mixed-use visitor attraction, including viewing areas [2,597sq.m GEA], an education/community facility [567sq.m GEA] (Sui Generis) and restaurant/bar use (Class A3/A4) [1,535sq.m GEA]; together with a retail unit at ground floor (Class A1); a new two- storey pavilion building [1,093sq.m GEA] (Sui Generis) comprising the principal visitor attraction entrance with retail at ground floor level (Class A1/A3) [11sq.m GEA] and a public roof garden; provision of ancillary cycle parking, servicing and plant and alterations to the public realm [Total Scheme Area: 17,441sq.m GEA] in accordance with application Ref 18/01213/FULEIA, dated 13 November 2018.

## **Right to challenge the decision**

69. 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.
70. A copy of this letter has been sent to The City of London Corporation and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Planning Casework Unit*

*This decision was made by the Minister of State for Housing on behalf of the Secretary of State, and signed on his behalf*

## **ANNEX A – SCHEDULE OF REPRESENTATIONS**

### **General representations**

<b>Party</b>	<b>Date</b>
J Ross	28 July
C Fine	26 September
N Horder	18 October
R Brackstone	19 October
A Mitchell	19 October

### **Representations received in response to the Secretary of State's letter of 10 August**

<b>Party</b>	<b>Date</b>
Historic England	23 August 2021
Bury Street Properties (Luxembourg) S.A.R.L.	24 August 2021
City of London Corporation	24 August 2021
Greater London Authority	3 September 2021

### **Representations received in response to the re-circulation of responses received to the Secretary of State's letter of 10 August**

<b>Party</b>	<b>Date</b>
Greater London Authority	3 September 2021
Bury Street Properties (Luxembourg) S.A.R.L.	7 September 2021



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

**by David Nicholson RIBA IHBC**

**an Inspector appointed by the Secretary of State**

**Date: 24 June 2021**

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**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**

**CITY OF LONDON CORPORATION (on Direction of THE MAYOR OF LONDON)**

**APPEAL BY BURY STREET PROPERTIES (LUXEMBOURG) S.A.R.L.**

Inquiry opened on 3 November 2020. Site visits on 20 September 2020, 24 March and 8 April 2021

Land adjacent to 20 Bury Street, London EC3A 5AX

File Ref: APP/K5030/W/20/3244984

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<sup>1</sup> Cover photomontage from Mr Harrison's proof of evidence



**List of abbreviations used in this Report**

3D	Three dimensional
AOD	Above Ordnance Datum (i.e. above mean sea level)
C	Century
CA	Conservation Area
CAZ	Central Activity Zone
(the) City	The City of London Corporation
LP	Local Plan
DAS	Design and access statement
DCMS	Department for Digital, Culture, Media and Sport
EIA	Environmental Impact Assessment
ES	Environmental Statement
F+P	Foster and Partners
GLA	Greater London Authority (the Mayor of London)
GPA	Good Practice Advice
HE	Historic England
HIA	Heritage Impact Assessment
HRP	Historic Royal Palaces
ICOMOS	International Council on Monuments and Sites
IQs	Inspector's Questions
LPA	Local Planning Authority
LRP	London Review Panel
LVMF	London View Management Framework
(the) Mayor	The Mayor of London (Greater London Authority)
NLP	New London Plan
NPPF	National Planning Policy Framework 2019
OR	Officer Report
OUV	Outstanding Universal Value
PoE	Proof of evidence
PPG	Planning Practice Guidance
PTAL	Public transport accessibility level
RfR	Reason for Refusal
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
ToL	Tower of London
TVBHA	Townscape, Visual and Built Heritage Assessment
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHC	World Heritage Committee (cf WH Centre, or WH Convention)
WHS	World Heritage Site
WHSMP	World Heritage Site Management Plan (for the Tower of London)
XiC	Examination in Chief
XX	Cross Examination

**Appeal Ref: APP/K5030/W/20/3244984**  
**Land adjacent to 20 Bury Street, London EC3A 5AX**

- The appeal is made under section 78 of the Town and Country Planning (T&CP) Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bury Street Properties (Luxembourg) S.a.r.l. against the decision of the City of London Corporation.
- The application Ref 18/01213/FULEIA, dated 13 November 2018, was refused by notice dated 19 July 2019.
- The agreed description<sup>2</sup> of the development proposed is:  
*Demolition of existing building and structures and construction of a building to a height of 305.3m AOD for a mixed-use visitor attraction, including viewing areas [2,597sq.m GEA], an education/community facility [567sq.m GEA] (Sui Generis) and restaurant/bar use (Class A3/A4) [1,535sq.m GEA]; together with a retail unit at ground floor (Class A1); a new two-storey pavilion building [1,093sq.m GEA] (Sui Generis) comprising the principal visitor attraction entrance with retail at ground floor level (Class A1/A3) [11sq.m GEA] and a public roof garden; provision of ancillary cycle parking, servicing and plant and alterations to the public realm. [Total Scheme Area: 17,441sq.m GEA].*

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**Summary of Recommendation: that the appeal should be dismissed.**

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**1. Procedural matters**

- 1.1 The application was made to the City of London Corporation (the City) as local planning authority (LPA). This followed a Direction by the Mayor of London (the Mayor)<sup>3</sup>. The appeal was made to the Secretary of State (SoS)<sup>4</sup> who decided that he would determine it himself<sup>5</sup>. The reason given was that the appeal relates to proposals for development of major importance having more than local significance.
- 1.2 A *virtual* pre-inquiry meeting was held on 15 September 2020<sup>6</sup>. The Inquiry sat *virtually* from 3 November to 18 December 2020. I held it open for accompanied site visits and written representations regarding late evidence<sup>7</sup>. The Inquiry was then closed in writing on 26 April 2021. As well as conducting accompanied site visits<sup>8</sup> on 24 March and 8 April 2021, I made an unaccompanied visit before the Inquiry on Sunday 20 September 2020, including to Butler's Wharf, to the east of Tower Bridge on the South Bank. On my March visit, I stayed on the South Bank until after dark in order to see the aircraft navigation lights on the existing towers.
- 1.3 A signed and dated Legal Agreement under Section 106 (s106) of the T&CP Act was submitted<sup>9</sup>; I deal with its contents and justification below.
- 1.4 A combined general Statement of Common Ground (SoCG) was agreed between the Appellant, the City, the Mayor (GLA) and Historic England (HE) appearing as a Rule 6 party<sup>10</sup>. A separate Heritage SoCG and a Benefits SoCG were agreed between these parties<sup>11</sup>.

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<sup>2</sup> Statement of Common Ground (SoCG) para 4.1 but see also Condition 2

<sup>3</sup> CD4-4. Under Article 6 of the T&CP (Mayor of London) Order 2008. The Mayor was subsequently a Rule 6 party at the Inquiry. I was told that this was very unusual: Green XiC and Hampson IC, who could think of no other examples

<sup>4</sup> Appeal form CD13-1

<sup>5</sup> By letter dated 28 January 2020

<sup>6</sup> CD12-5

<sup>7</sup> Including representations on the New London Plan

<sup>8</sup> See Site Visit Brochure at CD19B-48 for full details

<sup>9</sup> CDB19-43 made under s106 (as amended) and all enabling powers

<sup>10</sup> CD19B-26

<sup>11</sup> CD19B-27 and CD19B-28

- 1.5 One drawing was amended during the application process and it was subsequently agreed between the Appellant and the City that the documents listed in suggested Condition No.70 are those for which planning permission is sought<sup>12</sup>. The Appellant has named the tower the *Tulip* and referred to its shaft and head as the *stem* and *flower*. I have adopted this terminology.
- 1.6 Following the Mayor's Direction<sup>13</sup>, the application was refused for 6 reasons which became the Reasons for Refusal (RfR)<sup>14</sup>. They came under 6 headings: 1. Urban Design; 2. Historic Environment - Tower of London World Heritage Site (ToL WHS); 3. Historic Environment - Other heritage assets; 4. Strategic Views; 5. Pedestrian movement; and 6. Cycle parking. Following agreement to the terms and provisions in the s106 Agreement (see below), RfR 5 and RfR 6 were not pursued.
- 1.7 An Environmental Statement (ES)<sup>15</sup> was submitted dated November 2018 and taken into account by the City in reaching its resolution to approve the scheme<sup>16</sup>. There was no dispute at the Inquiry that this is adequate for determining the appeal and I am satisfied that it meets the information requirements of the relevant policy.
- 1.8 By the start of the Inquiry, an objection by the Sephardi Community was withdrawn<sup>17</sup>.

*Matters arising since the last sitting day of the Inquiry*

- 1.9 The New London Plan (NLP) was published on 2 March 2021. This was after all the evidence was heard and I invited the parties to comment. Their replies are listed as Core Documents (CDs)<sup>18</sup> and I have taken the NLP and the replies into account in reaching my recommendations<sup>19</sup>.
- 1.10 Further representations were received from R J Hoefling with regard to Meteorological Office data (see 11.7 below). The main parties were given an opportunity to comment on these, which they did by means of short email messages<sup>20</sup>.

## **2. The site and surroundings<sup>21</sup>**

- 2.1 The SoCG agreed by all four main parties<sup>22</sup> confirms the appeal site area as roughly 0.29 hectares covering 20 Bury Street and the area to the north and east of 30 St Mary Axe (affectionately known as the *Gherkin*). 20 Bury Street is a six storey building which provides 428m<sup>2</sup> of office space (in use as the management suite for the *Gherkin*), 352m<sup>2</sup> of retail floorspace (currently vacant) and plant. The appeal site includes part of the existing basement below the *Gherkin* and the servicing ramp to it from St Mary Axe running alongside Bury Court. The site has the highest possible Public Transport Access Level (PTAL) of 6b, with many bus stops, train and tube stations<sup>23</sup> located within walking distance. It is within London's Central Activities Zone (CAZ) and an Airport Safeguarding Area.

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<sup>12</sup> Condition 70 CD19B-26 and attached schedule below

<sup>13</sup> CD4-4 pp1-2.

<sup>14</sup> CD3-9

<sup>15</sup> CD1-10 to CD1-15

<sup>16</sup> CD14-2 para 1.3

<sup>17</sup> CD19C-18

<sup>18</sup> CD19B-46 CD19C-24 CD19D23-28 and 30 CD19E-10

<sup>19</sup> Bearing in mind the Judgment in CD10-15 *Nottingham County Council and Broxtowe Borough Council v The Secretary of State for the Environment, Transport and the Regions and Rjb Mining (UK) Limited* [1999] P.L.C.R. 340

<sup>20</sup> Received 26 April 2021: no comment from the Mayor, the City or Historic England. The Appellant made a short reply to the effect that it would not be filing any detailed review, its witnesses had not had a chance to comment, that this would be no different to other tall buildings, and that it does not undermine the purpose or public benefit.

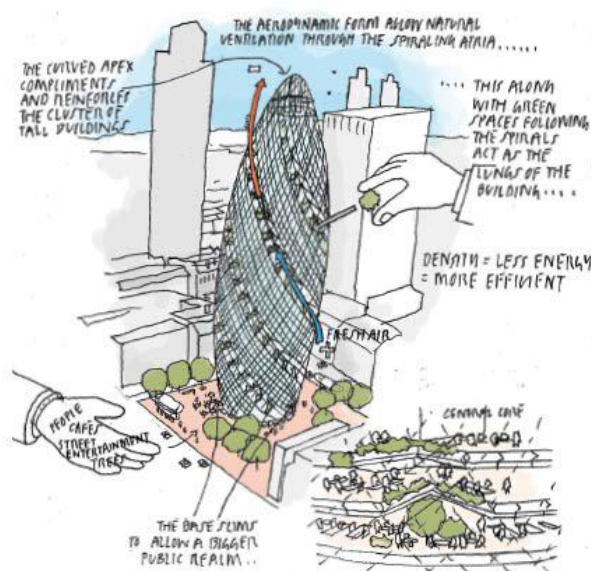
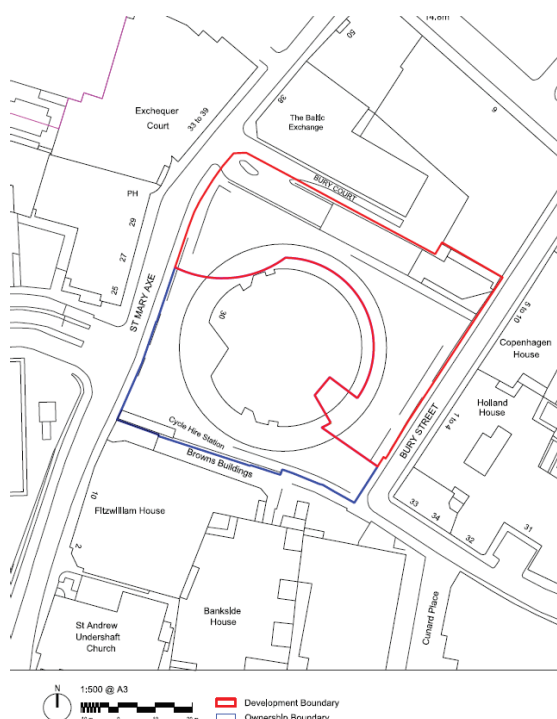
<sup>21</sup> See CD1-9 ES non-technical summary Fig2 p2

<sup>22</sup> CD19B-26

<sup>23</sup> including Liverpool Street, Fenchurch Street, Cannon Street, London Bridge Bank, Monument and Aldgate

2.2 The built history of the area dates back to the Roman era<sup>24</sup>. In medieval times, the annual Maypole festival gave rise to the name of Shaft Alley and hence the church of St Andrew Undershaft. The Alley has now disappeared but the Maypole survives<sup>25</sup>. A 16<sup>th</sup> century (C16) manor house on the appeal site was replaced in the 1700's by a square with 18 houses which gradually began to be used as offices and banks. In the C20, the square up to Bury Street was developed with the Baltic and London Shipping Exchanges. Following an IRA bomb attack in 1992, the Baltic Exchange was eventually cleared and the site developed with the *Gherkin*.

### Public realm



26 The Tullip | Proof of Evidence of Robert Harrison

27

2.3 The circular plan of the *Gherkin* leaves four roughly triangular areas in each corner of the square which connect as public open space<sup>28</sup>. This area, referred to as a plaza, contains bench seating, tree planters, ramps and steps<sup>29</sup>. Prior to the pandemic, these were used for sculpture exhibitions, a weekly food market<sup>30</sup>, consuming food from the *Gherkin* and other cafes, wandering about, or just quiet reflection. A slimmer base to the *Gherkin* allowed a bigger public realm<sup>31</sup>. It has been identified as one of only a few civic spaces in the Cluster<sup>32</sup>, a group of tall buildings with the greatest density of businesses and jobs (see s4 below)<sup>33</sup>. There are a number of existing and permitted viewing galleries<sup>34</sup> within the Cluster and the wider City.

<sup>24</sup> Harrison Proof of evidence (PoE) CD13-8 paras 3.4.1-3.5.12 and TVBHA CD1-11 paras 5.1-5.10

<sup>25</sup> As I saw on the far side of The Leadenhall building adjoining No.140 Leadenhall Street

<sup>26</sup> Site location plan ES Vol 3 CD1-10 p8

<sup>27</sup> Harrison p107. Also at Adams Fig 1 CD19D-11

<sup>28</sup> See sketch plan in Harrison CD13-8 p107

<sup>29</sup> See plan in SoCG CD19B-26 Appendix D which usefully illustrates the existing features

<sup>30</sup> permitted in 2004. Green para 10.14 and 10.90

<sup>31</sup> CD 19B-18 Appendix B and sketch (above): *the base slims to allow a bigger public realm*

<sup>32</sup> CD8-7 p22-23 and p42

<sup>33</sup> See CD1-9 ES non-technical summary Fig4 p8, planning history below and full list in CD1-10 Table 2.2 p2.7-2.11

<sup>34</sup> See e.g. [CD11-64] (22 Bishopsgate OR at paras 102, 104, 119 and 124); [CD11-59] (1 Undershaft OR at paras 101, 104 and 117-118) and [CD11-62] (100 Leadenhall OR at paras 106-107 and 110) and the images and descriptions in [CD19C-14].

## Heritage

### Tower of London World Heritage Site (ToL WHS)

- 2.4 First and foremost amongst the built heritage relevant to this appeal is the ToL WHS. This is with the London Borough of Tower Hamlets (LBTH). The oldest and most important building within the ToL WHS is the C11 Norman keep, known as the White Tower (so called as it was painted white in 1240<sup>35</sup>). Its distinctive silhouette, with its towers capped by ogee-shaped roofs (added in 1532 to replace pyramidal or conical roofs<sup>36</sup>) are prominent in many views. Pevsner considered the White Tower itself *is the most important work of military architecture in England, equally important for the two great periods of improved defence, the ages of William the Conqueror and of Henry III and Edward I*<sup>37</sup>. The White Tower epitomises the consequences of the last military conquest of England while the concentric defences, of walls punctuated by towers around the Inner and Outer Wards, including the famous *Traitor's Gate* from the River, date mostly from the late C13 to early C14<sup>38</sup>. Encircling these is a moat, now dry, with a stone bridge replacing what was once a drawbridge between the Byward and Middle Towers<sup>39</sup>. The Chapel of St Peter ad Vincula dates from c.1520 with substantial restoration in 1876-7<sup>40</sup>. The Grade II listed C19 Waterloo Block (or Barracks) was built to house soldiers<sup>41</sup>. Each year the ToL receives 60,000 school visits, 20,000 of them on specially designed *taught sessions*<sup>42</sup>.
- 2.5 The ToL was inscribed as a WHS in 1988 having been found to meet two of the selection criteria<sup>43</sup> namely:
- (ii) *to exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;*
  - (iv) *to be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;*
- 2.6 The Outstanding Universal Value (OUV) of the ToL WHS is set out in the Statement of OUV (SOUV) as agreed by the World Heritage Committee (WHC) in 2013<sup>44</sup>.

<sup>35</sup> CD16-6 p6 *The White Tower* internal p140

<sup>36</sup> Ibid p8/internal p163

<sup>37</sup> CD16-6 p9 *The Buildings of England. London. Vol One. Nicholas Pevsner*

<sup>38</sup> See list descriptions at CD11-20 to CD11-28

<sup>39</sup> CD8-23 para 2.1.3 and illustration at p xlv

<sup>40</sup> CD11-20. Its significance lies in its rarity as an early 16<sup>th</sup> century chapel, its development over time, its associations with Royalty and aristocracy, and the intimacy of its immediate surroundings.

<sup>41</sup> CD11-28. Its significance lies in its castellated Gothic Revival style with Domestic Tudor details, its purpose to accommodate nearly 1,000 soldiers and its imposing silhouette.

<sup>42</sup> 2005/6 figure CD15-6A para 7

<sup>43</sup> CD8-18 Operational Guidelines for the Implementation of the World Heritage Convention 2008, paragraph 77. CD8-33 Operational Guidelines for the Implementation of the World Heritage Convention 2019, paragraph 77

<sup>44</sup> At CD11-39, CD8-23 pp35-39 and CD11-38 s2. The Brief Synthesis, worth studying in full, reads:

*The Tower of London, founded by William the Conqueror in 1066 has Outstanding Universal Value for the following cultural qualities:*

*Its landmark siting, for both protection and control of the City of London: As the gateway to the capital, the Tower was in effect the gateway to the new Norman kingdom. Sited strategically at a bend in the River Thames, it has been a crucial demarcation point between the power of the developing City of London, and the power of the monarchy. It had the dual role of providing protection for the City through its defensive structure and the provision of a garrison, and of also controlling the citizens by the same means. The Tower literally 'towered' over its surroundings until the 19th century.*

*As a symbol of Norman power: The Tower of London was built as a demonstration of Norman power. The Tower represents more than any other structure the far-reaching significance of the mid 11th-century Norman Conquest of England, for the impact it had on fostering closer ties with Europe, on English language and culture and in creating one of the most powerful monarchies in Europe. The Tower has an iconic role as reflecting the last military conquest of England.*



International recognition of WHSs, and their OUV, is enshrined in the National Planning Policy Framework (NPPF)<sup>45</sup>. The historical development of the ToL is set out in the WHS Management Plan (WHSMP)<sup>46</sup>, as are its *attributes* of OUV<sup>47</sup>. These are:

- *An internationally famous monument*, whose key components are: the iconic White Tower; its distinctive silhouette as seen from the south bank; the concentric defences; its close relationship with the Thames; the Wharf and Traitor's Gate; its historic traditions, including the Yeomen and the ravens;
- *Landmark siting*, including its strategic relationship with, and key views of the Tower up, down, across and from the river, its skyline (silhouette) as seen from the river and from across the river;
- *Symbol of Norman power*, including the fabric of the White Tower;
- *Physical dominance [of the White Tower]*, towering over its surroundings until the 19<sup>th</sup> century, and its silhouette against clear sky;
- *Concentric defences* including its gates, towers and bulwarks, earthworks, the moat and its retaining walls;
- *Surviving medieval remains* including the Chapel of St Peter ad Vincula; and
- *Physical [historical] associative evidence* from its remains.

2.7 As explained in the World Heritage Centre Resource Manual on Preparing World Heritage Nominations, attributes are aspects of a property which are associated with or express the OUV. A range of types of attribute which might convey OUV are identified; that range of types includes *location and setting*<sup>48</sup>. The ICOMOS Guidance advises that any heritage impact assessment should focus on OUV and the attributes that convey

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*As an outstanding example of late 11th-century innovative Norman military architecture: As the most complete survival of an 11th-century fortress palace remaining in Europe, the White Tower, and its later 13th and 14th century additions, belong to a series of edifices which were at the cutting edge of military building technology internationally. They represent the apogee of a type of sophisticated castle design, which originated in Normandy and spread through Norman lands to England and Wales.*

*As a model example of a Medieval fortress palace which evolved from the 11th to 16th centuries: The additions of Henry III and Edward I, and particularly the highly innovative development of the palace within the fortress, made the Tower into one of the most innovative and influential castle sites in Europe in the 13th and early 14th centuries, and much of their work survives. Palace buildings were added to the royal complex right up until the 16th century, although few now stand above ground. The survival of palace buildings at the Tower allows a rare glimpse into the life of a medieval monarch within their fortress walls. The Tower of London is a rare survival of a continuously developing ensemble of royal buildings, evolving from the 11th to the 16th centuries, and as such has great significance nationally and internationally.*

*For its association with State institutions: The continuous use of the Tower by successive monarchs fostered the development of several major State Institutions. These incorporated such fundamental roles as the nation's defence, its records, and its coinage. From the late 13th century, the Tower was a major repository for official documents, and precious goods owned by the Crown. The presence of the Crown Jewels, kept at the Tower since the 17th century, are a reminder of the fortress's role as a repository for the Royal Wardrobe.*

*As the setting for key historical events in European history: The Tower has been the setting for some of the most momentous events in European and British History. Its role as a stage upon which history is enacted is one of the key elements which have contributed towards the Tower's status as an iconic structure. Arguably the most important building of the Norman Conquest, the White Tower symbolised the might and longevity of the new order. The imprisonments in the Tower, of Edward V and his younger brother in the 15th century, and then in the 16th century of four English queens, three of them executed on Tower Green – Anne Boleyn, Catherine Howard and Jane Grey – with only Elizabeth I escaping, shaped English history. The Tower also helped shape the Reformation in England, as both Catholic and Protestant prisoners (those that survived) recorded their experiences and helped define the Tower as a place of torture and execution.*

*Criterion (ii): A monument symbolic of royal power since the time of William the Conqueror, the Tower of London served as an outstanding model throughout the kingdom from the end of the 11th century. Like it, many keeps were built in stone: e.g. Colchester, Rochester, Hedingham, Norwich, or Carisbrooke Castle on the Isle of Wight.*

*Criterion (iv): The White Tower is the example par excellence of the royal Norman castle in the late 11th century. The ensemble of the Tower of London is a major reference for the history of medieval military architecture.*

<sup>45</sup> CD6-1 para 184

<sup>46</sup> CD8-23 Appendix A p i-xx

<sup>47</sup> Ibid p41-51 Section 3.4

<sup>48</sup> CD11-47 pp31-32, and Operational Guidelines 2019 CD8-33 para 82 - list of attributes by which authenticity may be conveyed

OUV<sup>49</sup>, and a conclusion reached on the overall impact of the proposals on individual attributes and on the whole WH property<sup>50</sup>.

- 2.8 The justification for Inscription reads: *The [ToL] was first built by William the Conqueror for the purpose of protecting and controlling the city. Of the present buildings the White Tower survives largely intact from the Norman period, and architecture of almost all the styles which have flourished in England since may be found within the walls. The Tower has in the past been a fortress, a palaces [sic] and a prison, and has housed the Royal Mint, the Public Records and (for a short time) the Royal Observatory. It was for centuries the arsenal for small arms, the predecessor of the existing Royal Armouries, and, as one of the strongest fortresses in the land, has from early times guarded the Crown Jewels. The Tower today is the key to British history for many thousands of visitors who come every year from all over the world to see the buildings, the Royal Armouries and the Crown Jewels and the museum collections, to relive the past and enjoy the pageantry of the present. But at the same time it is still a fortress, a royal palace, and the home of a community of some 150 hardworking people. As such it epitomises all that is best in World Heritage. UNESCO criteria: 5a) II, IV, VI*<sup>51</sup>.
- 2.9 The appeal site itself is not within a conservation area (CA). There are several CAs nearby notably the LBTH's ToL CA and the Trinity Square CA, also the St Helen's Place, Bishopsgate, Lloyds Avenue, and Trinity Square CAs<sup>52</sup>.
- 2.10 The **ToL CA**<sup>53</sup> covers the WHS, St Katherine's Dock, Trinity Square Gardens, the forecourt to the old Royal Mint, and the northern half of Tower Bridge<sup>54</sup>. St Katherine's Dock was one of the first sets of enclosed docks to be built at the beginning of the C19. Trinity Square Gardens, also designated as a London Square and protected by the Act of 1931<sup>55</sup>, was laid out as open space at the end of the C18. It is an exception to the busy spaces between the City and the fortress, *where the peaceful sunken memorial garden offers a valuable refuge from the surroundings*<sup>56</sup>. Overall, the ToL CA has a complex pattern of overlapping developments over two thousand years. *The [ToL] itself is by far the most significant site, due to its symbolic, historic and architectural value. The White Tower remains the focal point of the western part of the CA. The eastern part of the CA around St. Katharine's Dock has undergone significant changes since the closure of the docks and the character of buildings and spaces are more varied*<sup>57</sup>.
- 2.11 The small **Trinity Square CA**<sup>58</sup> includes Trinity House, 10 Trinity Square, the Grade I listed St Olave's Church, Seething Gardens and unlisted buildings to the south of Muscovy Street. Its heritage significance is mainly derived from the intact group of mostly early C20 buildings with a distinctive Imperial character unified by the use of Portland stone with many decorated and Classical details<sup>59</sup>, including the maritime group of 10 Trinity Square and Trinity House. Trinity Square, which is within The ToL

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<sup>49</sup> CD8-13 paragraph 2-1-7, and Appendix 4 paragraph 7

<sup>50</sup> CD8-13 Appendix 4 paragraph 7

<sup>51</sup> See Justification for Inscription – CD8-23 Appendix E p xxxviii

<sup>52</sup> CD11-40, CD8-28, CD8-30 and CD11-5

<sup>53</sup> CD11-44 LBTH's ToL CA Character Appraisal and Management Guidelines (2008) map on p3

<sup>54</sup> See CD11-44 pp3-4

<sup>55</sup> London Squares Preservation Act 1931. See CD11-44 p18

<sup>56</sup> CD11-44 p13 and 18

<sup>57</sup> Ibid p7

<sup>58</sup> CD19B-28 para 2.10

<sup>59</sup> CD11-5 p6

CA in LBTH, is excluded from the CA but is a complementary element of its immediate setting<sup>60</sup>. Other nearby CAs include those of **St Helen's Place** and **Lloyds Avenue**.

### Other heritage assets

- 2.12 The history and significance of other relevant heritage assets was not agreed. As well as the ToL (covered by RfR2), RfR3 alleges harm to five listed buildings (LBs). These are: St Boltoph's Church without Aldgate (Grade I); Bevis Marks Synagogue (Grade I); Church of St Helen's Bishopsgate (Grade I); 10 Trinity Square (Grade II\*); and 38 St Mary Axe (Grade II)<sup>61</sup>. There are a number of other LBs within the vicinity<sup>62</sup> including the nearby Holland House, listed at Grade II\*, with its attractive faience<sup>63</sup>. The Mayor and HE considered that there were additional relevant assets which should also be considered<sup>64</sup>. These are all listed in the Heritage SoCG including summary assessments of significance<sup>65</sup>, contribution of setting, impact on setting, and areas of disagreement<sup>66</sup>. The existing buildings on the appeal site are not listed.
- 2.13 The present church of **St Botolph without Aldgate**, listed at Grade I, stands some way to the east of the appeal site. It was built in 1741-44, to the designs of George Dance the Elder (1695-1768). It has exceptional historic and architectural interest for its association with this notable C18 architect, who also designed the Mansion House and was City of London Surveyor from 1735-1768. The layout of the church is orientated north-south to face down Minories, with its *West Tower* to the south, and illustrates the decline in the importance attached to church orientation after the C15. Views looking north, terminated by the south elevation of the church and its tower from Minories, and from the east towards the *Gherkin* are particularly significant<sup>67</sup>.
- 2.14 Immediately north of the site, **Bevis Marks Synagogue**, also Grade I, is the oldest surviving English synagogue which has been in continuous use since 1701. It has significant associative and historic interest, and communal value to the Jewish community. It survived both world wars unscathed; it was badly damaged by the IRA bomb of 1992 but is otherwise largely as originally built. The list description notes that the *little altered state is of exceptional historic interest*. The wider setting includes a number of office towers, visible from the courtyard. My site visit did not include access to within it or the courtyard.
- 2.15 Just to the west of the *Gherkin*, the **Church of St Helen's Bishopsgate**, Grade I, dates from the C13 with alterations and additions from the C14-20. It is notable for having survived both the Great Fire and the Blitz; however, it was seriously damaged in the IRA bombing, and subsequently repaired. The church has exceptional historic and architectural interest as one of the few medieval buildings in the City of London to have survived. To the north are a collection of fine grained Victorian, Edwardian and more recent buildings near the church and within the St Helen's Place CA, which were typical of the church's wider setting until the later C20<sup>68</sup>. The setting is otherwise characterised by the tall buildings of the City's Eastern Cluster.
- 2.16 The former Port of London Authority Building at **10 Trinity Square** is listed at Grade II\*. Designed in 1912, it is built in a heavy classical Beaux-Arts style but rebuilt after the war. It is now a designated a City Landmark in the Protected Views

<sup>60</sup> CD19B-28 Appendix B

<sup>61</sup> CD19B-28 Supplementary SoCG on Heritage and Views p4 para 2.7.

<sup>62</sup> Ibid Appendix A Parts 1 and 2

<sup>63</sup> CD19B-35 para 5.2

<sup>64</sup> Ibid. See table identifying other potentially relevant assets in Appendix X

<sup>65</sup> The following summaries are based on CD19B-28 Appendix B, agreed between the Appellant and the City only

<sup>66</sup> CD19B-28 paras 2.7 to 2.11 and Appendices X and Y

<sup>67</sup> See View 54 in Site Visit Guide CD19B-48

<sup>68</sup> CD19B-28 Appendix B



Supplementary Planning Document (SPD)<sup>69</sup>. With Trinity House it forms a pair of maritime headquarters buildings seen together in significant views across Trinity Square. The Grade I listed WWI memorial by Lutyens added to by a Grade II\* listed WII memorial, also contribute to the historic significance of the mercantile group<sup>70</sup>. The close setting of 10 Trinity Square to the north, east and west is generally mid-rise and commercial but varied in age and quality. The City's Eastern Cluster forms part of the wider setting.

- 2.17 As above, the former Grade II\* listed Baltic Exchange at 24-28 St Mary Axe was damaged by the 1992 bomb and what remained was demolished in 1998 for the construction of the *Gherkin*. The Baltic Exchange subsequently moved next door to the Grade II listed **No.38 St Mary Axe**. This 1922 design, by the RIBA Gold Medal awarded architect Sir Edwin Cooper, is a fine inter-war example of a simple classical revival style. It is now part of a contrasting modern setting of mid-rise to very tall commercial buildings including the *Gherkin*.
- 2.18 Also considered relevant by the Mayor and HE, the Grade I listed two storey **Trinity House** dates from 1793-6. This is the headquarters of its venerable Corporation, responsible for the safety of shipping from 1566, and later for all lighthouses and navigation buoys in England. The neo-classical style building was designed by English architect and engineer Samuel Wyatt (1737-1807), brother of James Wyatt. It faces Trinity Square Gardens which was laid out by Samuel Wyatt in 1797 as a setting for Trinity House. The most significant views are those looking at Trinity House from the edge of Trinity Square<sup>71</sup>.
- 2.19 Several other LBs were considered relevant by the Mayor but not HE, including **St Andrew Undershaft church, Tower Bridge, Holland House** and **St. Ethelburga's church**. Assessments of their significance is provided in the Heritage SoCG and the Mayor's evidence<sup>72</sup>.
- 2.20 The *Townscape and Visual and Built Heritage Impact Assessment*<sup>73</sup> (TVBHA) identified and assessed all of the relevant Strategic Views<sup>74</sup>. The Mayor and HE considered that additional views are relevant<sup>75</sup>. All parties agreed on the strategic views that should be considered<sup>76</sup>.

### 3. Planning policy

- 3.1 Relevant policy and guidance, including the development plan at the time of the Inquiry, emerging policy, supplementary planning guidance (SPG) planning advice, frameworks, strategies and guidance notes is listed in the SoCG<sup>77</sup>.

#### *The Development Plan*

- 3.2 The New London Plan (NLP) was published on 2 March 2021<sup>78</sup> and so the development plan now includes the NLP and the City of London Local Plan (LP)<sup>79</sup>. Statute requires

<sup>69</sup> CD8-26. See below

<sup>70</sup> CD19B-28 Appendix B

<sup>71</sup> CD19B-28 Appendix Y p26

<sup>72</sup> Ibid. See also Barker-Mills CD15-5 pp46-47 and photographs in CD15-6

<sup>73</sup> CD1-11 ES vol 2

<sup>74</sup> As defined in the London View Management Framework (LVMF) – see also s3: Policy - The full list of those assessed is at Part 1 of Appendix C to the SoCG heritage

<sup>75</sup> See Appendix 3 of Prof. Tavernor's Proof of Evidence, Appendix RT3A, CD 13-19

<sup>76</sup> CD19B-28 Heritage SoCG Paragraphs 2.14 to 2.20 and Appendix C

<sup>77</sup> SoCG CD19B-26 pp12-21

<sup>78</sup> CD19D-27

<sup>79</sup> CD6-4 adopted in January 2015

that, in the event of conflict within the development plan, *the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan*<sup>80</sup>. Although the NLP replaces the previous London Plan, most of the relevant policies of the Intend to Publish version<sup>81</sup> referred to at the Inquiry are largely unchanged. In a few areas the changes are significant, but for this appeal, the main difference is the weight that can now be given to these policies.

### The New London Plan (NLP) policies

- 3.3 Criterion **A** to Policy **SD4**<sup>82</sup> for the CAZ aims to promote and enhance its unique international, national and London-wide roles, based on an agglomeration and rich mix of strategic functions and local uses, while **B** aims to support and enhance the nationally and internationally significant office functions of the CAZ. Criteria **E, G and H** support tourism, cultural activities and attractiveness to visitors. Policy **D1** considers London's character areas and how to plan for growth. Policy **D3** expects all development to *make the best use of land by following a design led approach that optimises the capacity of sites*. Supporting paragraph 3.3.10 expects **circular economy principles** to be taken into account at the start of the design process, including: designing for longevity, adaptability or flexibility, disassembly, and using systems, elements or materials that can be re-used and recycled.
- 3.4 In delivering good design, Criterion **D** to NLP Policy **D4**<sup>83</sup> expects the design of proposals, especially tall buildings, to be *thoroughly scrutinised including the use of the design review process to assess and inform design options early in the planning process*. The public realm expectations in Policy **D8**<sup>84</sup> include: **A** *encourage and explore opportunities to create new public realm where appropriate*; **D** *an understanding of how the public realm in an area functions and creates a sense of place during different times ... and demonstrate an understanding of how people use the public realm, and the types, location and relationship between public spaces in an area*; **F** *ensure ... that there is a mutually supportive relationship between the space, surrounding buildings and their uses, so the public realm enhances the amenity and function of buildings and the design of buildings contributes to a vibrant public realm*; and at criterion **I** *incorporate green infrastructure*.
- 3.5 Policy **D9**<sup>85</sup> for Tall Buildings expects, at **B1-3**), that *Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, ...; that these should be identified on maps ...; and that Tall buildings should only be developed in locations that are identified as suitable in Development Plans*. Criterion **C1)a)** addresses the visual impacts of views from different distances, with **C1)a)i** requiring *attention to be paid to the design of the top of the building*; and **C1)a)iii** that *the base should have a direct relationship with the street, maintaining the pedestrian scale, character and vitality of the street*. **C1)c)** expects that *architectural quality and materials should be of an exemplary standard to ensure that the appearance and architectural integrity of the building is maintained through its lifespan*. **C1)d)** reads that: *proposals should take account of, and avoid harm to, the significance of London's heritage assets and their settings. Proposals resulting in harm will require clear and convincing justification demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. The buildings should positively contribute to the character of the area*; and at **C1)e)** that *buildings in the setting of a*

<sup>80</sup> PCPA 2004 s.38(5) as amended

<sup>81</sup> CD7-1

<sup>82</sup> CD19D-27 p72

<sup>83</sup> Ibid p123

<sup>84</sup> Ibid p143-5

<sup>85</sup> Ibid p148

*[WHS] must preserve, and not harm, the [OUV] of the [WHS], and the ability to appreciate it.*

- 3.6 Criterion **D9.C2)** looks at functional impact and notes at **f)** that: *jobs, services, facilities and economic activity that will be provided by the development and the regeneration potential this might provide should inform the design so it maximises the benefits these could bring to the area, and maximises the role of the development as a catalyst for further change in the area.* Policy **D9.C4)** requires cumulative impacts to be considered; **D9.D** expects: *Free to enter publicly-accessible areas to be incorporated into tall buildings where appropriate ....*
- 3.7 Policy **S3**<sup>86</sup> deals with Education and childcare facilities. While referring to the allocation of sufficient sites for schools, colleges and universities, supporting paragraph **5.3.1** also makes the general observation that good quality education and training are vital for supporting people into sustainable employment, which is also essential to London's continued economic success.
- 3.8 Policy for Visitor infrastructure is in **E10**<sup>87</sup>. Criterion **A** aims to strengthen London's visitor economy and associated employment by enhancing and extending its attractions; **E10B** adds that *the special characteristics of major clusters of visitor attractions and heritage assets and the diversity of cultural infrastructure in all parts of London should be conserved, enhanced and promoted.*
- 3.9 Heritage conservation and growth Policy **HC1.C**<sup>88</sup> expects: *Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. The cumulative impacts of incremental change from development on heritage assets and their settings should also be actively managed. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.*
- 3.10 Policy **HC2**<sup>89</sup> deals exclusively with WHSs. **HC2.A** expects that *Boroughs with [WHS]s, and those that are neighbours to authorities with [WHS]s, should include policies ... that conserve, promote, actively protect and interpret the [OUV] of [WHS]s, which includes the authenticity and integrity of their attributes and their management.* **HC2.B** reads: *Development proposals in [WHS]s and their settings, ... 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.* **HC2.C** requires Heritage Impact Assessments where the settings of WHSs might be affected, while Policy **HC2.D** adds that *... when considering planning applications, appropriate weight should be given to implementing the provisions of the [WHSMP].*
- 3.11 Supporting paragraph 7.2.1 explains that: *In ratifying the World Heritage Convention, the UK Government has made a commitment to **protecting, conserving, presenting and transmitting to future generations the Outstanding Universal Value of World Heritage Sites** and to protecting and conserving their settings* (note that the **bold** type appears in the NLP). With regard to their settings, paragraph 7.2.3 adds that: *The consideration of **views** is part of understanding potential impacts on*

<sup>86</sup> Ibid p246

<sup>87</sup> Ibid p306

<sup>88</sup> Ibid p312

<sup>89</sup> Ibid p320

*the setting of the [WHS]s. Many views to and from [WHS]s are covered, in part, by the London Views Management Framework.*

- 3.12 The draft Panel Report<sup>90</sup> highlights the extent to which the NLP marks a shift in policy on heritage in general and WHSs in particular. By reference to the requirement in Policy HC1 for *a clear understanding of London's historic environment*, the Report notes that: *Policy HC1 builds on the design-led approach ... to ensure that the significance of heritage assets informs change.* The panel specifically referred to the fact that *Policy HC2 actively responds to the findings of the [ICOMOS] Mission Report<sup>91</sup>* (see below). For these reasons, the Panel found that *a bespoke policy in this Plan is justified.* As a result, Policy HC2 for WHSs now refers to *the authenticity and integrity of their attributes* and requires that WHSMPs should not just be used to inform plan making, but that *appropriate weight should be given to implementing [their] provisions.*
- 3.13 Strategic and Local Views are covered by Policy **HC3**<sup>92</sup> with Protected Vistas covered by Criterion **C**. **HC3D** aims to *identify and protect aspects of views that contribute to a viewer's ability to recognise and appreciate a [WHS]'s authenticity, integrity, and attributes of [OUV]. This includes the identification of Protected Silhouettes of key features in a [WHS].*
- 3.14 Policy **HC4**<sup>93</sup> addresses the London View Management Framework (LVMF). The preceding **Table 7.1** lists Designated Strategic views including View 10: Tower Bridge and View 25: The Queen's Walk to the ToL. Policy **HC4.A** expects that proposals should *preserve and, where possible, enhance viewers' ability to recognise and to appreciate Strategically-Important Landmarks in these views and, ... protect the silhouette of landmark elements of [WHS]s as seen from designated viewing places.* Criterion **B** expects that *Development in the ... background of a designated view should not be intrusive, unsightly or prominent to the detriment of the view.* **HC4.C** adds protection from external illumination and adds that *Where a silhouette of a [WHS] is identified ... as prominent in a designated view, and well-preserved within its setting with clear sky behind, it should not be altered by new development appearing in its background.* **Criteria D1-3)** expect that London Panoramas, River Prospects, and Townscape and Linear Views should be managed so that development fits with the prevailing pattern, juxtaposition can be appreciated, and the ability to see specific buildings is preserved.
- 3.15 Policy **HC5**: Supporting London's culture and creative industries supports *the continued growth and evolution of London's diverse cultural facilities and creative industries.* It expects this to be done through development plans and proposals, and Creative Enterprise Zones in Local Plans. Policy **HC6** extends this support to the night-time economy through development plans, town centre strategies and planning decisions.
- 3.16 Sustainable Infrastructure Policy **SI 2A**<sup>94</sup> expects *major development to be net zero-carbon by reducing greenhouse gas emissions in operation and minimising both annual and peak energy demand in accordance with an energy hierarchy.* **2B** expects *a detailed energy strategy to demonstrate how the zero-carbon target will be met ...* **2C** requires a minimum of 35% on-site reduction beyond the Building Regulations and **2D** that Boroughs establish a carbon offset fund. **2E** expects major development

<sup>90</sup> CD7-4 p71 para 327

<sup>91</sup> Ibid para 330 referring to the *International Council on Monuments and Sites/International Centre for the Study of the Preservation and Restoration of Cultural Property Mission Report*

<sup>92</sup> CD19D-27 p323

<sup>93</sup> Ibid p330

<sup>94</sup> Ibid p380

proposals to calculate and minimise carbon emissions from any other part of the development, including plant or equipment, that are not covered by Building Regulations, i.e. unregulated emissions. **SI 2F** expects schemes referable to the Mayor to *calculate whole life-cycle carbon emissions through a nationally recognised Whole Life-Cycle Carbon Assessment and demonstrate actions taken to reduce life-cycle carbon emissions*. Supporting paragraph 9.2.1 expects a **whole life-cycle approach** to carbon impact, including unregulated emissions, embodied emissions and those associated with dismantling, demolition and eventual material disposal.

- 3.17 The aims of Policy **SI 7A** include to reduce waste, increase re-use and recycling by promoting a circular economy, encouraging reuse of materials, achieve 95% reuse/recycling/recovery of construction and demolition. Criterion **B** requires referable applications to submit a Circular Economy Statement to demonstrate: *1) how all materials arising from demolition and remediation works will be re-used and/or recycled 2) how the proposal's design and construction will reduce material demands and enable building materials, components and products to be disassembled and re-used at the end of their useful life ....* Supporting paragraph 9.7.1 explains that *Waste is defined as anything that is discarded. A **circular economy** is one where materials are retained in use at their highest value for as long as possible and are then re-used or recycled, leaving a minimum of residual waste.*

#### **City of London Local Plan (LP)<sup>95</sup>**

- 3.18 The City of London LP dates from January 2015. Its focus, through policies **CS1** and **DM1.1** is to supply and protect office floorspace. Of particular relevance, LP Core Strategic Policy **CS7** sets 7 criteria to ensure that the Eastern Cluster can accommodate a significant growth in office floorspace and employment. These include: **1.** Increasing the provision of sustainable, energy-efficient, attractive, high quality office floorspace; **2.** Promoting the Eastern Cluster as a location for inward investment; **3.** Delivering tall buildings on appropriate sites that enhance the overall appearance of the cluster on the skyline, and the relationship with the space around them at ground level, while adhering to the principles of sustainable design, conservation of heritage assets and their settings and taking account of their effect on the wider London skyline and protected views; **5.** Enhancing streets, spaces, and the public realm for pedestrians, providing new open and public spaces where feasible. Figure G<sup>96</sup> broadly illustrates the area of the Eastern Cluster, which includes the appeal site, while paragraph 3.7.1 and Table 2.3 expect that the majority of new office space will be built here.
- 3.19 Design Policy **CS10** promotes a high standard of design and sustainable buildings, streets and spaces, having regard to their surroundings and the historic and local character of the City and creating an inclusive and attractive environment, by amongst other things: **1.** Ensuring that the bulk, height, scale, massing, quality of materials and detailed design of buildings are appropriate to the character of the City and the setting; **2.** Encouraging design solutions that make effective use of limited land resources; **6.** Delivering improvement in the environment, amenities and enjoyment of open spaces ... in accordance with public realm enhancement strategies.
- 3.20 Development Management Policy **DM 10.1** requires all developments to be of a high standard of design and to avoid harm to the townscape and public realm, by ensuring criteria are met including that:
- the bulk and massing of schemes are appropriate in relation to their surroundings and have due regard to the general scale, height, building lines, character, historic

<sup>95</sup> Full version at CD19H-2

<sup>96</sup> CD19H-2 p72



interest and significance, urban grain and materials of the locality;  
 • all development is of a high standard of design and architectural detail.

- 3.21 Policy **CS12** aims to conserve or enhance the significance of the City's heritage assets and their settings, and provide an attractive environment for the City's communities and visitors, by: **1.** Safeguarding the City's LBs and their settings, while allowing appropriate adaptation and new uses; **2.** Preserving and enhancing the distinctive character and appearance of the City's conservation areas, while allowing sympathetic development within them; **5.** Preserving and, where appropriate, seeking to enhance the OUV, architectural and historic significance, authenticity and integrity of the ToL WHS and its local setting.
- 3.22 Criterion **1** in Policy **DM 12.1**, on managing change affecting all heritage assets and spaces, is: *To sustain and enhance heritage assets, their settings and significance*. It also resists the loss of routes and spaces that contribute to the character and historic interest of the City, and requires development to respect the significance, character, scale and amenities of surrounding heritage assets and spaces and their settings. Criterion **4** requires development to *respect the significance, character, scale and amenities of surrounding heritage assets and spaces and their settings*.
- 3.23 Policy **CS13** sets criteria to protect and enhance significant City and London views of important buildings, townscape and skylines, making a substantial contribution to protecting the overall heritage of the City's landmarks, by: **1.** *Implementing the Mayor's [LVMF] SPG to manage designated views of strategically important landmarks ... the [ToL], river prospects, townscape views and linear views.* **3.** *Securing an appropriate setting of and backdrop to the [ToL WHS], which adjoins the City, so ensuring its OUV, taking account of the [ToL WHSMP] (2007).*
- 3.24 Tall Buildings Policy **CS14** allows tall buildings of world class architecture and sustainable and accessible design in suitable locations and to ensure that they take full account of the character of their surroundings, enhance the skyline and provide a high quality public realm at ground level, by: **1.** Permitting tall buildings on suitable sites within the City's Eastern Cluster; **3.** Elsewhere in the City, permitting proposals for tall buildings only on those sites which are considered suitable having regard to: the potential effect on the City skyline; the character and amenity of their surroundings, including the relationship with existing tall buildings; the significance of heritage assets and their settings; and the effect on historic skyline features; and **4.** Ensuring that tall building proposals do not adversely affect the operation of London's airports.

#### *Other Statutory duties*

- 3.25 Sections 66 and 72 of the Planning (LBs and CAs) Act 1990 place duties on the decision maker with regard to LBs and their settings and to CAs. The Courts have found that *considerable importance and weight* should be given to the *desirability of preserving the setting of [LBs]* in any balancing exercise with material considerations which do not have this status<sup>97</sup>. See also *Mordue* below.

#### *Government policy*

- 3.26 The NPPF was first published on 27 March 2012 and updated on 24 July 2018 and 19 February 2019. This sets out the government's planning policies for England and how these are expected to be applied. Planning Practice Guidance (PPG)<sup>98</sup> is published

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<sup>97</sup> As interpreted by the Courts in *CD J02 East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2014] EWCACiv 137

<sup>98</sup> CDC 02

online and regularly updated. The latest relevant update was on 1 October 2019. The PPG<sup>99</sup> indicates that applicants for planning permission may find it helpful to use the approach set out in the 2011 ICOMOS Guidance<sup>100</sup> and in the HE advice<sup>101</sup>.

### *Emerging policy*

- 3.27 With the publication of the NLP, the most significant emerging policy is now the Emerging City Plan (emerging LP)<sup>102</sup>. On 24 November 2020 the City's Planning & Transportation Committee reported that it had considered and agreed a schedule of further changes to the LP<sup>103</sup>. It anticipated that the LP will be formally submitted for examination prior to the summer recess, with formal examination hearings expected in autumn 2021 and adoption programmed for early 2022. Accordingly, its policies should be given limited weight at this stage.
- 3.28 Section 3 of the emerging LP sets out the Vision, Strategic Objectives and Spatial Strategy<sup>104</sup>. Of particular relevance to the Vision, paragraph 3.4.4<sup>105</sup> expects *Office and employment growth will be successfully accommodated by a cluster of dynamic, attractive, sustainably designed and appropriately scaled tall buildings, providing an iconic view of the City and enhancing its role as a global hub for innovation in finance, professional services, commerce and culture. Complementary retail, leisure, cultural and educational facilities will support the City's primary business function, principally through animating ground floor spaces. Table 1<sup>106</sup> shows the scale of the projected growth in the main land uses in the City over the period 2016 to 2036, of which the majority, some 2m m<sup>2</sup>, would be offices, other uses being retailing, housing and hotels.*
- 3.29 The aim of Policy S6<sup>107</sup> for Culture, Visitors and the Night-Time Economy is that *the City's communities will be able to access a range of arts, heritage and cultural experiences. The City's cultural offer is an integral element of the Square Mile, alongside the business City<sup>108</sup>. The City Corporation has prepared Visitor and Cultural Strategies that promote the City as a high-quality visitor destination with an emphasis on world-class cultural facilities. It is estimated there are approximately 21.5m business and leisure visits a year to the City and this is expected to grow<sup>109</sup>.*
- 3.30 Policy S12(2) encourages *Tall buildings of world class architecture and sustainable and accessible design ..., having regard to:*
- *the potential effect on the City skyline, the wider London skyline and historic skyline features*
  - *the character and amenity of their surroundings, including the relationship with existing tall buildings*
  - *the impact on the significance of heritage assets and their immediate and wider settings*
  - *the provision of a high-quality public realm at street level ....*
- Under S12(4) New tall buildings will be required to enhance permeability and provide the maximum feasible amount of open space at street level and incorporate areas of publicly accessible open space or other facilities within the building and its curtilage,*

<sup>99</sup> CD19B-5 para 35 Reference ID: 18a-035-20190723

<sup>100</sup> CD8-13: *Guidance on Heritage Impact Assessments for Cultural World Heritage Properties* January 2011

<sup>101</sup> CD8-4 The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)

<sup>102</sup> CD19H-3

<sup>103</sup> CD19C-13

<sup>104</sup> Ibid p13

<sup>105</sup> Ibid p17

<sup>106</sup> Ibid para 3.5.3 to the Spatial Strategy

<sup>107</sup> Ibid p75

<sup>108</sup> Ibid para 5.3.2

<sup>109</sup> Ibid para 5.3.3

*including at upper levels, available at no charge. Paragraph 6.5.11 expects that The City Corporation will use 3D digital modelling technology to visually assess the impact of tall buildings on the local, City-wide and London-wide townscape and skyline.*

#### Supplementary Planning Guidance (SPG)

- 3.31 Relevant SPG is listed in the SoCG<sup>110</sup>. The Mayor's *London's World Heritage Sites – Guidance on Settings SPG*, 2012 (the **Settings SPG**)<sup>111</sup> advises that: *[t]he 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 [OUV]*<sup>112</sup>. It notes that: *UNESCO guidance and advice from [HE] encourage the definition of attributes which give a more detailed expression of the [WHS]'s [OUV]*<sup>113</sup>. It continues: *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 [WHS]s have a very high significance value, therefore even minor changes can have a significant effect and their impacts will require close scrutiny*<sup>114</sup>. With regard to cumulative impacts, it advises that these should be considered, noting that they *can have a significant impact on the setting of a [WHS]* and that: *There should also be recognition that previous permissions for similar developments do not necessarily represent acceptability of impacts on setting.*
- 3.32 The **LVMF SPG** 2012<sup>115</sup> refers to key views including those from Tower Bridge – View 10A, and from Queen's Walk on the South Bank – Views 25A.1-3. It notes for View 10A that *the character of the upstream views is derived from the significant depth and width of the view, that the location enables the fine detail and the layers of history of the [ToL] to be readily understood. This understanding and appreciation is enhanced by the free sky space around the White Tower. Where it has been compromised its visual dominance has been devalued, and [The] middle ground includes the varied elements of the City, rising behind the Tower*<sup>116</sup>. The SPG specifically refers to the WHS, its OUV and the WHSMP. From The Queen's Walk, it finds that Views 25A.1-3 *provide good views of the [ToL], and the relatively clear background setting of the White Tower, in particular.* It notes that the *juxtaposition of the [WHS] with the modern city is the central characteristic of this view* adding that *The White Tower generally stands free of background development, but other elements of the Tower complex have a backdrop of development*<sup>117</sup>.

#### Other Documents

- 3.33 The **Protected Views SPD** (2012) addresses a number of such views. Those concerning the ToL WHS and its setting tend to duplicate those referred to in the settings and LVMF SPG, including the characteristic juxtaposition of the WHS and the modern City in Views 25A.1-3. It also identifies a number of City Landmarks<sup>118</sup> including 10 Trinity Square and St Botolph Aldgate.
- 3.34 The ToL Local **Settings Study**<sup>119</sup> 2010 looked at the context and inscription, OUV and setting. To the extent that it is relevant to proposals outside its immediate

<sup>110</sup> CD19B-26 s7 pp20-21

<sup>111</sup> CD8-16

<sup>112</sup> Ibid para. 1.3

<sup>113</sup> Ibid para 2.21

<sup>114</sup> Ibid 5.34

<sup>115</sup> CD8-14

<sup>116</sup> Ibid para 181-2 p99

<sup>117</sup> Ibid para 413 p215

<sup>118</sup> CD8-26 Fig10

<sup>119</sup> CD8-22



environment, it has been largely overtaken by the WHSMP. Its views include several which I saw within the ToL.

### Conservation Areas

- 3.35 The significance of the two most relevant CAs is set out above. The **ToL CA** Character Appraisals and Management Guidelines<sup>120</sup>, which help to identify that significance, note that the ToL WHSMP provides a detailed account of the Tower's history and significance and refers readers to it for more information. The 2014 Character Summary & Management Strategy SPD for **Trinity Square CA**<sup>121</sup> is similarly helpful but also relies on policy at that time which has been largely updated, albeit incorporating much of the same content.

### Best practice documents

- 3.36 HE has published extensive guidance on the historic environment including Good Practice Advice (GPA) in Planning Notes. **GPA2 Managing Significance in Decision-Taking in the Historic Environment**<sup>122</sup> notes that: *The cumulative impact of incremental small-scale changes may have as great an effect on the significance of a heritage asset as a larger scale change. Where the significance ... has been compromised in the past by unsympathetic development to the asset itself or its setting, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset in order to accord with NPPF policies*<sup>123</sup>.
- 3.37 HE's **GPA3: The Setting of Heritage Assets**<sup>124</sup> 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. It continues: Setting is not itself a heritage asset, nor a heritage designation, ... . Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. ... Settings of heritage assets change over time. Understanding this history of change will help to determine how further development within the asset's setting is likely to affect the contribution made by setting to the significance of the heritage asset. Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term. Settings may also have suffered negative impact from inappropriate past developments and may be enhanced by the removal of the inappropriate structure(s)*<sup>125</sup>.
- 3.38 Its **GPA4 Tall Buildings** says: *Each building will need to be considered on its merits, and its cumulative impact assessed*<sup>126</sup>, and that *[c]areful 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 cluster. It states that Where a proposal is promoted as part of a cluster a successful design will have a positive relationship within the cluster; the altered impact of a cluster itself needs to be considered. The*

<sup>120</sup> CD11-44

<sup>121</sup> CD11-5 p27

<sup>122</sup> CD8-3

<sup>123</sup> Ibid par 28

<sup>124</sup> CD8-4 Part 1 p2 & 4

<sup>125</sup> Ibid para 9 p4

<sup>126</sup> CD 8-6 para 3.8 p6. See also the checklist on p8 and para 5.5

*use of modelling and visual aids is recommended to fully assess a proposal's impact on the surrounding area*<sup>127</sup>.

*WHS Management Plan (WHSMP)*<sup>128</sup>

- 3.39 The **WHSMP** was prepared through relevant consultation and submitted to the World Heritage Centre by the Department for Digital, Culture, Media and Sport (DCMS) on 26 April 2016<sup>129</sup>. It superseded that of 2007<sup>130</sup>. As above, taking account of a WHSMP is enshrined in policy and it should be given weight accordingly. The significance of the WHS is the ToL SOUV which was adopted in 2013 by the WHC<sup>131</sup>. The Foreword identifies the *greatest challenge to the [WHS], however, remains the impact on its setting of development and tall buildings*. Relevant policy includes that: *The most significant challenges to the property lie in managing the environs of the [ToL] so as to protect its [OUV] and setting. At a strategic level, these challenges are recognised in the London Plan and ... emerging Local Plans. These documents set out a strategic framework of policies aimed at conserving, protecting and enhancing the [OUV] of the Tower and its setting. The challenges are also identified in the [WHSMP], which defines the local setting of the Tower and key views within and from it. Objectives in the Plan to address the challenges are being implemented ... , although pressures remain significant, particularly in the wider setting*. It also sets out an explanation of attributes of OUV<sup>132</sup>.
- 3.40 It was common ground between all the main parties that the starting point<sup>133</sup> for understanding the significance of the ToL WHS is the SOUV, agreed at the 37<sup>th</sup> session of the WHC in June 2013<sup>134</sup>, and its seven attributes<sup>135</sup>. The United Nations Educational, Scientific and Cultural Organization (UNESCO)'s Operational Guidelines<sup>136</sup> refer to *attributes*, which are the features or relationships that convey the OUV of a WHS, as identified in the SOUV. The brief synthesis<sup>137</sup> comprises (i) a summary of factual information and (ii) a summary of qualities. The first sets out the geographical and historical context and the main features; the second should present to decision-makers and the general public the potential OUV that needs to be sustained, and should also include a summary of the attributes that convey its potential OUV, and need to be protected, managed and monitored. Protection and management<sup>138</sup> should include the necessary mechanisms, management systems and/or management plans that will protect and conserve the attributes that carry OUV.
- 3.41 With regard to the wider setting, the WHSMP notes that: *A relationship between the Tower and the 'eastern cluster' of tall buildings ... has been established for almost half a century. The proposed intensification of the City's 'eastern cluster' is established planning policy. In long views ... from the south and east, the Tower and the eastern cluster are seen ... as separate elements ..., but the distinguishing sky-space between them is diminishing*<sup>139</sup>. It continues: ... *'The Shard', nearly 1 km to the south-west of the Tower, was approved following a public inquiry in 2003. The reasons for approval included distance from the Tower, the (generally accepted) quality of the design, and*

<sup>127</sup> Ibid para 4.6

<sup>128</sup> CD 8-23

<sup>129</sup> CD16-5 App. 26 and CD8-23 p4 and App. C

<sup>130</sup> CD8-23 p10 para 1.3.5

<sup>131</sup> CD8-23 p35-39

<sup>132</sup> Ibid p40 Section 3.3

<sup>133</sup> Heritage SoCG CD12-2 para 1.2 (c) and 2.12

<sup>134</sup> CD8-23 p35.

<sup>135</sup> Listed in WHSMP CD8-23 pp41-45 para 3.4. See also CD8-16 Guidance on Settings SPG p.19, paras 3.8-9

<sup>136</sup> UNESCO Operational Guidelines (2019) paras 1-3 (CD8-33)

<sup>137</sup> CD8-33 Annex 5 para 3.1a

<sup>138</sup> Ibid para 3.1.e

<sup>139</sup> CD8-23 para 7.3.18

*the prior existence of a group of undistinguished tall buildings on the site<sup>140</sup>. It can be judged in 2016 as a completed building; a slender form, drawing the eye upwards, whose elegance and reflective surface goes some way to mitigating the effects of its size and proximity to the WHS. Nevertheless, it creates a visual distraction in many important views of the Tower, especially from Tower Green and the White Tower.*

#### *Policy regarding the Eastern or City Cluster*

- 3.42 The evolution of policy towards London's WHSs and its reference to juxtaposition had begun by the first London Plan in 2004<sup>141</sup>. This was strengthened following concern<sup>142</sup> that led to a *joint UNESCO-ICOMOS Reactive Monitoring Mission* to the Tower in 2006<sup>143</sup>. Following receipt of the 2006 *Mission Report*<sup>144</sup> the WHC noted: *concern that proposed new developments around the [ToL] ... appeared not to respect the significance of the World Heritage properties, their settings, and related vistas*<sup>145</sup>. It continued: *the planned construction of the 216m Minerva Tower could be considered a direct threat, as the building site was located in the eastern side of the City and therefore with a significant impact on the visual background of the [ToL]*<sup>146</sup>.
- 3.43 To remedy this concern, and avoid contemplating eventual deletion from the list<sup>147</sup>, *The mission concluded that the property would meet criteria for Danger Listing (according to Paragraphs 178-182 of the Operational Guidelines) if either a statutory protection for the iconic view from the South Bank towards the Tower, which is key to the conservation of the visual integrity of the Tower, has not been established by the time the [WHC] meets for its 31st session, or the [WHSMP], ... has not been finalized by the time the [WHC] meets for its 31st session.*
- 3.44 While there is no direct statutory protection for WHSs, or the view from the South Bank, a WHSMP for the ToL was adopted in 2007 and the 2008 version of the London Plan made reference to the WHSMP. Policy on this was further strengthened in 2011 by the Mayor<sup>148</sup>. WHSs and Views in the LVMF are now both protected by the NLP (see above). The NPPF, amended in July 2018, now includes explicit reference to the importance of the OUV of WHSs and that this classification forms part of their significance and should be taken into account in all relevant decision-making.
- 3.45 The WHC recommended that the GLA *should adopt a policy of concentration of tall buildings in the City, thereby limiting the impact on the [ToL]'s surrounding urban landscape and statutory protection for the iconic view from the South Bank*<sup>149</sup>. It: *urge[d] the State Party to vigorously apply the concept of clustering of tall buildings so that they do not impact adversely on the [OUV] of London [WHS]s*<sup>150</sup>. While noting recent policy improvements, the 2017 *Mission* recommended that *policy and guidance materials should be written in as concrete a manner as possible*<sup>151</sup>. The Panel Report into the NLP also took the *Mission Report* into account<sup>152</sup>. It explains that Policy HC2

<sup>140</sup> Ibid para 7.3.19 quoting the conclusions of Inspector Gray (paras 16.59-87), supported by the SoS

<sup>141</sup> CD16-4 English appendix B1/05 p38 and Appendix B2/51: The supporting text to the heritage policies emphasised that the Mayor wished to promote modern architecture and urban design, stressing the juxtaposition of building types as an underlying guide to managing London's historic environment, while tall buildings were encouraged elsewhere in the Plan.

<sup>142</sup> CD16-5 p59: two proposed projects, the *Minerva Tower* and *London Bridge Tower (the Shards of Glass)*

<sup>143</sup> See WHSMP CD8-23 p74 para 6.3.7 and English, Appendices Part 2, pdf p.65 [CD16-5].

<sup>144</sup> CD16-5 App B2/35 State of Conservation Report 2007

<sup>145</sup> Ibid p67

<sup>146</sup> Ibid p68 second para 2

<sup>147</sup> Ibid p69

<sup>148</sup> Now Prime Minister, Boris Johnson

<sup>149</sup> Ibid p68 recommendation b)

<sup>150</sup> CD16-5 App 35 page 69 Point 4.

<sup>151</sup> CD16-4 p40 para5 and f/n 73 referring to CD11-19

<sup>152</sup> CD7-4 para 330 p72

actively responds to the findings of the *Mission Report*, concluding that *the current Plan had not been totally effective in preventing negative impacts on the [OUV] of London's WHS ...*<sup>153</sup>.

- 3.46 The City of London Corporation Committee Report on *Eastern Cluster 3-D Computer Modelling*<sup>154</sup> advised Members that *the Dept of the Built Environment [was] undertaking three-dimensional (3D) computer modelling of the City's eastern cluster to understand better the effect of existing planning policies for that area and its relationship to its environs and other parts of the City. The work was in its early stages and was not intended to make new policy but to provide insights upon the effect of current planning policy and to provide confidence that the cluster can evolve while taking full account of key protected views and the wider setting of the ToL WHS. The City confirmed*<sup>155</sup> that *1 Undershaft* was envisaged to be the tallest in the Cluster and that if the *Tulip* was permitted, the aspiration to step up to *1 Undershaft* would fall away<sup>156</sup>.



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- 3.47 Although referred to as a *jelly mould model*, the currently curated form of the Cluster was not available to the Inquiry<sup>158</sup> but is commented on in the Officer's Report<sup>159</sup>. Others did put forward indications of how the model might work, either at 45° as indicated by the Mayor<sup>160</sup>, or with a slightly more curved profile stepping down from *1 Undershaft* to the White Tower as the Historic Royal Palaces (HRP) representations

<sup>153</sup> CD16-6A - 2011

<sup>154</sup> CD19E-4, dated 24 April 2016

<sup>155</sup> Richards IC, by reference to the Report at CD3-4 para 91

<sup>156</sup> Richards in XX Phillpot

<sup>157</sup> Adams Figure 55 p85

<sup>158</sup> Confirmed by the City to Inspector's Questions (IQs)

<sup>159</sup> CD3-4 para 91: *Through this 3D modelling initiative, the City is aspiring to develop a cluster of towers that step up in height from all directions towards 1 Undershaft, which was envisaged to be the tallest tower in the future cluster. This was informed by the complex amalgamation of key views of the Tower of London, ... . The Tulip's substantial height at this location in the cluster is at odds with this aspirational future shape and form of the City cluster.*

<sup>160</sup> Adams CD15-3 Figure 55, para 5.5.10 – this form was not refuted by the Mayor



to the *100 Leadenhall* application<sup>161</sup>. A further description in the Officer's Report<sup>162</sup> refers to LVMF View 10A.1 (from Tower Bridge). The City explained that this is not policy, but a tool for assessment and to help understand the way that the Cluster might evolve if proposals were permitted, although compliance with the model would be an indication that a scheme might comply with policy.

#### Other relevant documents

- 3.48 The plaza around the Gherkin is one of very few open spaces in the Cluster and one of two identified as a Principal public space in the **City Cluster Vision**<sup>163</sup>. At the moment, it is relatively uncluttered, in line with Aim 3: Simpler, more spacious and less cluttered streets and spaces to the **City Public Realm SPD**<sup>164</sup>.
- 3.49 The attraction of additional visitors is consistent with the Mayor's documents: **A Tourism Vision for London**<sup>165</sup>, **Take A Closer Look: Cultural Tourism In London**<sup>166</sup>, **From good night to great night: A Vision For London As A 24-Hour City**<sup>167</sup>, and with the City's **Visitor Destination Strategy** to develop the City as a vibrant, attractive and welcoming destination for all<sup>168</sup>.
- 3.50 The City's **London Recharged: Our Vision for London in 2025**<sup>169</sup> accepts that the COVID-19 outbreak has proven a huge test to the City and is part of *work ongoing across London to make sure we emerge from this period better than before*. It focuses on financial and professional services and the fast-growing technical (tech) sector and examines *how the City of London, ... can evolve and remain one of the best places in the world to do business*<sup>170</sup>. It notes that *COVID-19 lockdowns turbo-charged the widespread transition to digital, as tech became essential to helping people stay connected and work remotely. The significant increase in home working has accelerated adoption of teleworking, ... and e-commerce. Zoom reached 13 million users in April, up from 659 thousand in January 2020*<sup>171</sup>. *... Attitudes towards the use of tech and artificial intelligence (AI) in city services has also changed, with 30% of UK residents feeling more positive about these applications since the pandemic began*<sup>172</sup>. It notes that: *While it remains uncertain what the long-term impacts will be, a few takeaways are clear. The era of flexible working that was ushered in with COVID-19 is likely here to stay. Nearly 47% of employed UK adults [in London] were working from home at the height of the first wave of the pandemic*<sup>173</sup>, *and many expect this will not change. 86% of respondents in one survey expected that their businesses would adopt at least a partial work from home policy in the long term*<sup>174</sup>.

<sup>161</sup> CD11-66 HRP response February 2018 Appendices C and D p1213-4 (internal p165-6)

<sup>162</sup> CD3-4 para 116: *From [View 10A], the consented cluster of towers gradually step downwards from the centre at 1 Undershaft in a deferential manner towards the Tower. This profile has been carefully negotiated through numerous planning decisions to mediate between the significant height of the City towers and the more modest height and setting of the [ToL] thereby avoiding an abrupt vertical cliff edge to the Tower. In addition, there is an aspiration for the cluster of towers to read as a single coherent group to ensure a legible and clear relationship between the City cluster as an entity and the Tower of London as a separate landmark to the east.*

<sup>163</sup> CD8-7 p42: the other space being St Helens Square, see also pp25, 41 and 43. Note also p9 which illustrates the proposed Pavilion

<sup>164</sup> CD8-8 p18

<sup>165</sup> CD11-1, 2017 by London and Partners, the Mayor's official promotional agency. Also Hampson CD14-3 para 8.8

<sup>166</sup> CD8-1

<sup>167</sup> CD8-2

<sup>168</sup> 2019-2023 CD8-9 para 2.4 and page 33

<sup>169</sup> CD11-85

<sup>170</sup> Ibid p4

<sup>171</sup> Ibid p15: Ofcom, "Online Nation" Report

<sup>172</sup> Ibid p15: Oliver Wyman Forum City Mobility Survey June 2020

<sup>173</sup> Ibid p23: ONS, April 2020

<sup>174</sup> Ibid: TFL, "Office and Workspace Survey," July 2020

## Case law

- 3.51 Judgments of particular relevance are listed in the Heritage SoCG<sup>175</sup>. Notably: *Barnwell*<sup>176</sup> established that *decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise*; *Bedford* established that *substantial harm* (as referred to in NPPF§195) requires that: *very much if not all of the significance of the asset was drained away so that the significance of a heritage asset would be vitiated or very much reduced*<sup>177</sup>. *Mordue* determined<sup>178</sup> that working through NPPF§134 (as was – now NPPF§§192-196) corresponds with the duty in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CA Act). In *Hall* it was concluded that there are only three categories of harm, *substantial harm*, *less than substantial harm* and *no harm*, and that even harm which may be limited or negligible goes to weight under NPPF§193<sup>179</sup>.
- 3.52 *Shimbles*<sup>180</sup> concluded that the NPPFs division of harm into *substantial* or *less than substantial* was adequate for the weighted balancing exercise and that decision-makers were not obliged to place harm to the significance of a heritage asset, or its setting, somewhere on a *spectrum* in order to give the necessary great weight to its conservation. Nevertheless, the PPG<sup>181</sup> advises that: *Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated*. *Palmer* established that *where proposed development would affect a listed building or its settings in different ways, some positive and some negative, the decision maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting*<sup>182</sup>. The Judge in *Forge Field*<sup>183</sup> found that *a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable*.
- 3.53 Most recently, *Bramshill*<sup>184</sup> confirmed that giving considerable weight to harm to the significance of a LB, as one must<sup>185</sup>, *does not mean that (in the heritage balance) the weight to be given to the desirability of preserving the building or its setting is uniform; it will depend, among other things, on the extent of the assessed harm and the heritage value of the asset in question*. That is, the amount of weight to be given to the conservation of the asset in a particular case is left to the decision maker as a matter of planning judgement on the facts of the case bearing in mind the observations about considerable importance and weight in *Barnwell Manor*.

## Relevant previous decisions

- 3.54 Following the *Chiswick Curve Inquiry*, the SoS dismissed the 32 storey 120m above ordnance datum (AOD) scheme. He *disagreed with the Inspector's finding that the public benefits of the proposal were sufficient to outweigh the harm to the heritage*

<sup>175</sup> CD19B-28 para 6.1 (a)-(l)

<sup>176</sup> CD10-1 *Barnwell v East Northamptonshire District Council* [2014] EWCA Civ 137 para 29

<sup>177</sup> CD10-2 *Bedford BC v SSCLG* [2013] EWHC 2847 (Admin) at [25]

<sup>178</sup> CD10-5 *Jones v Mordue* [2015] EWCA Civ 1243; [2016] 1 WLR 2682 para 28

<sup>179</sup> CD10-9 *R (J Hall & Company Limited) v City of Bradford Metropolitan DC and Co-Operative Group Ltd* [2019] para 34

<sup>180</sup> CD10-11 *R (Shimbles) v City of Bradford Metropolitan District Council* [2018] EWHC195 (Admin)

<sup>181</sup> CD6-2 PPG ID: 18a-018-20190723 - *How can the possibility of harm to a heritage asset be assessed?*

<sup>182</sup> CD10-10 *R (Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 at para 29

<sup>183</sup> CD10-8 para 49. See also para 23 in *Barnwell*

<sup>184</sup> CD10-4 *City and Country Bramshill v. Secretary of State* [2021] EWCA Civ 320 at paragraph 73-75

<sup>185</sup> *Barnwell Manor Wind Energy v. Secretary of State* [2014] EWCA Civ 137 at paragraph 29; CD10-1, *R (Forge Field) v. Sevenoaks DC* [2014] EWHC 1895 (Admin) at paragraph 55 (CD10-8), and *Palmer* (CD10-10) at paragraph 5.

assets and overruled his recommendation. In Court<sup>186</sup>, the Judge upheld the SoS's decision and found that *Whilst he should give due consideration to the Inspector's planning judgments, because of the Inspector's knowledge of the issues raised during the Inquiry, and his planning expertise, the [SoS] is not required to follow them, especially when, as in this appeal, the Inspector has expressed subjective opinions about a proposal's design and appearance which he himself recognised others may disagree with.*

- 3.55 In the *Citroen* appeal, the Inspector<sup>187</sup> found that: *The harm to the settings of designated heritage assets also counts against the quality of the design. ... the distinction between the brief and the architects' input is of little relevance and what matters is the quality of the final design, including its impact on the settings of designated heritage assets.*
- 3.56 In the *97 Cromwell Road* decision<sup>188</sup>, the Mayor found that *less than substantial harm at the lower end of the scale would be outweighed by the public benefits ..., namely improved and modern visitor accommodation that would deliver London-wide economic benefits, but also: genuinely affordable rented housing units and a public garden square and replace ... an 'eyesore' ... with a building of high quality architecture ....*
- 3.57 The SoS's decision in *Anglia Square* in Norwich<sup>189</sup> went against the Inspector's recommendation and found that harm to settings at the upper end of *less than substantial* would outweigh public benefits.

## 4 Planning history

- 4.1 The site's planning history is as set out in the Planning Statement, submitted with the Application, which in turn refers to the TVBHA<sup>190</sup>. In 1992 the Baltic Exchange was heavily damaged by an IRA bomb. After early thoughts of restoration were abandoned, the empty plot became available. Early proposals for a *Millennium Tower* were dropped and, after the site was purchased by Swiss Re, designs started on what is now the *Gherkin* (see below). The plaza area around the Gherkin has accommodated several temporary installations of sculptures over the years and there are planning permissions for these and for the use of the plaza for a weekly open-air market.
- 4.2 Nearby, St Paul's Cathedral dominated the London skyline until after WWII. City commerce began to exert itself in the 1960s with the 28 storey CGU Tower (later renamed the *Aviva Tower*) in 1969. The 27 storey London Stock Exchange Building at 125 Old Broad Street followed in 1970. The 47-storey *Tower 42* was completed in 1980 and was the tallest building in London for a decade. Since then, the City has grown with tall late C20 and early C21 buildings between St Paul's and the ToL<sup>191</sup>. There was no dispute that, under the guidance of the City planners<sup>192</sup> the Cluster has transformed the City's fortunes, together with its skyline.
- 4.3 Within the City, there has been longstanding support for an *iconic high profile cluster of tall buildings in this part of the city* including the *Heron Tower* and later developments<sup>193</sup>. The list of consented schemes which was included in the TVBHA's

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<sup>186</sup> CD10-14 *Starbones Ltd v SoS HCLG & Ors* [2020] EWHC 526

<sup>187</sup> Me. See CD9-3 and CD9-4 particularly para 15.57

<sup>188</sup> CD19C-17 Report para 302

<sup>189</sup> CD19E-5

<sup>190</sup> CD1-19 p12: See Volume 2 of the ES (CD1-11) and in the DAS (CD1-6).

<sup>191</sup> TVBHA CD1-11 para 5.9

<sup>192</sup> Including the City's two witnesses

<sup>193</sup> CD9-9 & CD9-10; and CD 11-66 generally

cumulative assessment were agreed with the City at the application stage<sup>194</sup>. These were also considered as part of the Heritage Impact Assessment (HIA) on the OUV of the Tower of London<sup>195</sup>. Of the 13 potentially relevant cumulative schemes, it was common ground that there are six that warrant particular further consideration given their height, proximity to the application site and the greater visual interaction with the proposals<sup>196</sup>.

4.4 The International Council on Monuments and Sites (**ICOMOS**) was consulted on 14 December 2018<sup>197</sup>. Its Advisory Body commented, amongst other matters, that:

4.4.1 Greater London is unique, with its four World Heritage properties, which *face significant and gradually stronger challenges to the protection and maintenance of their integrity, especially in terms of visual impact*;

4.4.2 the SOUV of the ToL *already mention threats and challenges created by massive urban development in the very close vicinity of the World Heritage property and the possible negative visual impact of this process, if continued, on the property's integrity*;

4.4.3 not only would the development be an additional element, but it would go *beyond the already-stretched boundaries*, with a height of more than 305m, *with its extremely strong and extravagant shaping that is diametrically opposite to the traditional-historic appearance of the Tower ensemble*. These qualities would the make *Tulip* more predominant, *diminishing the Tower's landmark siting and visual dominance on the edge of the River Thames*;

4.4.4 the *organic* form of the *Tulip* would not help as: *it strengthens the accent of the new from one side and, in spite of its "floral character", it is not only a "high-tech" building but also has a rather strong industrial architecture appearance*.

4.5 While not classifying its architectural values, it concluded that: *the proposed development project ... is not compatible with the preservation of the integrity of the World Heritage property of the [ToL]*, and advised:

4.5.1 abandoning the *Tulip* development project;

4.5.2 adopting a stricter and more appropriate evaluation of proposed constructions that could have an impact on World Heritage properties, giving priority to the preservation of OUV, in line with previous *mission* recommendations.

4.6 The Inquiry was told that the scheme was subject to considerable peer review within Foster and Partners (F+P) although no details were provided. It was considered by the **London Review Panel (LRP)**<sup>198</sup> which made unfavourable comments and concluded that: *The panel is unable to support The Tulip because it does not think it represents world class architecture, it lacks sufficient quality and quantity of public open space, and its social and environmental sustainability do not match the ambition of its height and impact on London's skyline*.

4.7 The LRP noted what it described as a mute concrete shaft, the assessment that the *Tulip* would cause *less than substantial* harm to the ToL WHS, and that this creates a requirement that the *Tulip* should demonstrate benefits that outweigh this harm. The Panel did not assess the proposed benefits but suggested a funded education and social value programme and commented that all other visitors to the *Tulip* would pay for

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<sup>194</sup> CD1-11 These are set out at page 28 of the TVBHA and total 13 schemes.

<sup>195</sup> CD19B-28 Heritage SoCG 8.15, to which 50 Fenchurch Street was added since the application stage

<sup>196</sup> Ibid para 8.17-8.18

<sup>197</sup> CD11-18

<sup>198</sup> CD4-2 Reviewed on 16 April 2019



access to the viewing platforms, which undermines the social value argument for such a tall building.

- 4.8 The LRP thought a building of this height should be at least carbon neutral and that the demolition of the existing building completed in 2003 represented a significant cost in terms of embodied carbon. It acknowledged that it may be a successful response to the functions of its brief. The panel also felt that a building of this size and impact should be carbon neutral, and that the education strategy should be more ambitious, if this is a core justification for the height of the building. Overall, panel members felt that whilst the building may be a successful response to the functions of its brief – this has not resulted in the world class architecture that would be required to justify its prominence.

*History of applications for tall towers in London*<sup>199</sup>

### **The Gherkin**

- 4.9 The history of the site<sup>200</sup> for the 180m tall *Gherkin* records much of the including that the IRA bomb explosion made the previous Baltic Exchange building structurally unsafe. Proposals incorporating the reinstated Exchange Hall were permitted but not progressed as its integration *into a new development has proven to be unviable* and a tenant could not be found<sup>201</sup>. English Heritage (EH) as was, did not favour a scheme that might be more *replication than reconstruction* and would be *no more than acceptable*. It felt that it *would be reasonable to encourage a whole new building*<sup>202</sup>. This was followed by the *Millennium Tower*, an ambitious F+P proposal in 1996 for a self-contained vertical town on the site. However, this proved too radical and was abandoned in 1998. The *Gherkin* Report made reference to the WHS, and that the close location merited careful assessment, but focussed far more on the remains of the previous LB, adding that *the site was considered to be free of normal planning and conservation restrictions ... This was an important consideration ...*<sup>203</sup>. It referred to policy on the historic environment in PPG15, superseded in 2010. The *Gherkin* was permitted in 2000, completed in 2004, has proved be a building of extraordinarily high quality and was awarded the Stirling Prize<sup>204</sup>.

### **Heron Tower**

- 4.10 The application for *Heron Tower* (106-126 Bishopsgate, or 110 Bishopsgate) was called-in by the SoS and an Inquiry held in 2001<sup>205</sup>. In his Report, the Inspector identified the London skyline as *diverse and dynamic*, compared with other *certain European cities where the central areas have effectively become museums*<sup>206</sup>. He noted that in views from the South Bank, Potters Field (now behind City Hall) and Tower Bridge the tower would be largely screened by Swiss Re (the *Gherkin*)<sup>207</sup>. He found it very significant that neither EH (as was) nor HRP objected.

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<sup>199</sup> Images of many of these are at Richards pp49-52

<sup>200</sup> See Planning Report CD19B-34

<sup>201</sup> In 1999. Ibid para 4.12

<sup>202</sup> Ibid para 5.17 p11

<sup>203</sup> Ibid para 4.11 p7

<sup>204</sup> CD3-4 para 226

<sup>205</sup> At which Mr Russell Harris of Counsel, Mr Neil Cameron of Counsel, and Professor Robert Tavernor appeared

<sup>206</sup> CD9-10 para 15.10

<sup>207</sup> Ibid paras 15.54-15.58

## ***Shards of Glass***

- 4.11 In his 2003 Report on the *Shards of Glass*<sup>208</sup>, the Inspector accepted that *a potentially harmful impact can be mitigated by good design*. While acknowledging that *setting of a listed building is a concept that requires consideration irrespective of the availability or popularity of views*, he looked at five areas in and around the ToL looking in a generally southern direction (towards the site for the *Shards*). He concluded that *no material harm to the setting of the [ToL] would arise if the proposed [Shards] were built*. He identified that the Southwark UDP had no specific policy to protect the ToL or its setting, and the ToL WHSMP was still in draft<sup>209</sup>. The Decision predated the *Settings* and *LVMF* SPGs and, as the *Shards of Glass* stands on the South Bank, the Inspector's focus was in the opposite direction for which there are far fewer public views of the ToL with the *Shards* in the background, and certainly none to compare with that from the South Bank.

## ***Walkie-Talkie***

- 4.12 No.20 Fenchurch Street was subject to an Inquiry in 2007<sup>210</sup> and later became known as the *Walkie-Talkie*. It is outside the Cluster. HRP considered that the *additional impact on the [ToL] would be limited* while EH found that the impacts on the ToL acceptable with *no impact on the iconic view from the south-west*. Amongst other considerations, was the removal of a particularly unsightly building<sup>211</sup> and the provision of a skygarden, in consultation with Kew Gardens, as well as vast areas of new office floors.

## ***The Scalpel***

- 4.13 The 38 storey, 206m AOD tower at Nos.52-54 Lime Street (the *Scalpel*) stands to the southwest of the appeal site, tapers to a point and, from the South Bank, is closely aligned with *1 Undershaft*. The GLA concluded that the scheme would be *of a high design quality that will make a positive addition to London's skyline*<sup>212</sup>. EH acknowledged that the Eastern Cluster is, in principal, an appropriate location for tall buildings in the City but raised concerns in relation to the setting of the ToL WHS identifying *an impact on the setting of ... the [ToL] and the contribution that a clear sky makes to the appreciation of [its] significance. Our main concern is the relationship with the [ToL] WHS, as the ... Tower will be seen from within the Inner Ward*. Acknowledging that *the City's Eastern Cluster can already be seen beyond the walls of the Tower* it found that *adding additional bulk and scale to the consented tower at Nos. 22-24 Bishopsgate, will cause an additional degree of harm to the setting of the Tower. This harm may be exacerbated in future as the Eastern Cluster expands and develops unless particular care is taken*.
- 4.14 The City's Report concluded that it would support the City's objectives as the leading international financial and business centre, with an increase in high quality floorspace. On Public Realm, it found that *a new triangular open space ... will result in a significant enhancement to the townscape, ...* The GLA found that: *The setting of the Grade I listed Lloyd's building will be improved ... and the sloping profile of the proposal will reveal more of its form than is currently visible ....* With regard to St Andrew Undershaft church<sup>213</sup>, the Report continues: *However, the relationship of*

<sup>208</sup> IR at CD9-5

<sup>209</sup> Ibid pp119-120 paras 16.61 and 16.63

<sup>210</sup> CD9-8

<sup>211</sup> See image at Appellant's closing CD19B-45 p38

<sup>212</sup> 2012 Stage 1 Report CD11-66 pp 442-452 especially p451 para 60

<sup>213</sup> CD11-66 p385 para 73

*modestly scaled LBs and churches when seen against the backdrop of the City's prominent tall buildings is characteristic of this part of the City. This contrast in scale already exists in its relationship with 30 St Mary Axe, 122 Leadenhall Street and the Aviva Tower. Regarding Queen's Walk, it found: From these assessment points the proposal would relate satisfactorily with the Eastern Cluster of tall buildings. The proposed tower would appear sufficiently separated from the [ToL WHS] so as not to harm its setting.*

## **Twentytwo**

- 4.15 Known as *Twentytwo*, the 61 storey office scheme at 22 Bishopsgate stands on the site of the previously approved, and implemented, 10m taller *Pinnacle* to the west of *1 Undershaft* (see below). The 2015 City Report<sup>214</sup> noted that *it would be the tallest in the City and the focal point of the Eastern Cluster, and would provide a significant increase in flexible office accommodation, supporting the strategic objective ... to promote the City as the leading international financial and business centre.* The Mayor supported the scheme in strategic planning terms. With regard to the ToL, the Report noted that: *The principal focus of [Views 25A 1-3] is the strategic landmark of the [ToL] on the eastern side of the view. The proposed building would appear as a prominent feature on the skyline on the western periphery of the cluster of towers [where it] would reinforce and consolidate the profile of the cluster. This is an appropriate and sympathetic relationship to the Tower of London. At no point in the three Assessment viewpoints would the proposed tower appear directly over the Tower of London and its curtain walls.*
- 4.16 The GLA<sup>215</sup> found that: *Guidance within the Mayor's LVMF SPG and the [ToL WHSMP] acknowledges that the juxtaposition between the Tower and the City cluster is a key characteristic of these views, and a relationship that may be seen as positive. Accordingly, GLA officers conclude that the proposal would reinforce the positive characteristics of the existing setting to the [ToL], and would not compromise the ability to appreciate the [OUV] of this [WHS] ... . This exciting juxtaposition between old and new (a defining and positive characteristic of the City of London) is representative of the response of the scheme to designated heritage assets more generally.*

## **1 Undershaft**

- 4.17 The 72 storey, 304.9m AOD proposal for *1 Undershaft* was permitted in 2019 but has yet to commence. When completed, it will become the tallest tower in the City's Eastern Cluster replacing the 28 storey *Aviva Tower*<sup>216</sup>. The 2016 GLA Stage 1 report<sup>217</sup>, refers to the Mayor LVMF SPG and the WHSMP and repeats the phraseology used for *Twentytwo* referring to the characteristic juxtaposition and how this may be seen as positive<sup>218</sup>. The word *exciting*, previously used, was dropped. It adds that: *The surrounding area is characterised by a juxtaposition of modern tall buildings and low rise historic buildings*<sup>219</sup>. With regard to the ToL WHS, its assessment found no impact on the clear sky space around the White Tower of the Tower of London, with the proposed building featuring amongst various other tall buildings within the eastern cluster. When viewed from outside City Hall (Views 25A.1-3) the City Report found

<sup>214</sup> CD11-64 Planning and Transportation Committee Summary

<sup>215</sup> 2015 Stage 1 report CD11-64 Appendix p6 para 28-29

<sup>216</sup> CD11-66 pp603-605

<sup>217</sup> Ibid pp785-802, 22 March 2016

<sup>218</sup> Ibid paras 38-41

<sup>219</sup> Ibid para 8

that: *At no point in the three Assessment viewpoints would the proposed tower appear directly over the Tower of London and its curtain walls*<sup>220</sup>.

- 4.18 HE was consulted at pre-application stage<sup>221</sup>, noted that the City intended the tower to be the apex of the Cluster and felt that *There is townscape merit in ... shaping the Eastern Cluster so that it has a visible apex from which other tall buildings recede*. Of the nearby churches, it accepted that *... their settings have long been characterised by the contrast in scale between the low medieval churches and the very tall modern buildings behind and around them*. It noted that *At ground floor level, in contrast to the impermeable footprint of the existing building, the new design ... will ... increase permeability and create sight lines between the medieval churches of St Helen and St Andrew Undershaft*. *All of this will have a significant positive impact on the settings of these grade I LBs ..., and could clearly result in a heritage benefit*.

### **100 Leadenhall**

- 4.19 The 56 storey (263.4m AOD) building for 100 Leadenhall was permitted in March 2019. This will have daily access to a 892m<sup>2</sup> viewing gallery at 247m AOD<sup>222</sup>. The GLA Report repeats 1 Undershaft reference to the *surrounding area*<sup>223</sup>. It again refers to juxtaposition using almost identical wording to that in the *Twentytwo* and 1 Undershaft Reports<sup>224</sup>. It noted that *the proposal would not impact on the clear sky space around the White Tower ....* HE commented that *Any harm caused to London's heritage by the existing Eastern Cluster will not be increased by the proposal and urged the City to ensure that the impact of the proposals on the [ToL] is in line with ICOMOS guidance*. If built, 100 Leadenhall would largely conceal views of the Gherkin and Heron Tower from the South Bank. The Report to the City noted *The height and massing of the proposed tower is not considered to fundamentally conflict and is largely in line with the initial findings of the 3D model in terms of the relationship with the [ToL WHS]*<sup>225</sup>.

### **Gotham City**

- 4.20 At 170m AOD, the 34 storey proposals for 40 Leadenhall Street would be due south of the appeal site. HE had reservations regarding the impact above the Chapel within the ToL, but acknowledged *that the Eastern Cluster is, in principle, an appropriate area for tall buildings in the City, and that therefore the proposed location ... within the cluster accords with policy, and that Its location within the Eastern Cluster and its height relative to existing and consented nearby towers means that, ... it does not have a detrimental impact on the Mayor's strategic views set out in the [LVMF]*<sup>226</sup>. The City found that: *... the proposed tower would be seen as an integral part of the Eastern Cluster ... which is a distinctive and accepted townscape feature in the wider setting of the [WHS]. The proposed tower would not appear as an incongruous or isolated feature on the skyline*.

<sup>220</sup> Ibid p628 para 138

<sup>221</sup> Ibid pp809-813

<sup>222</sup> between 10am - 6pm Mon – Sun. CD19B-41, Table p1: School visits, charities and community groups allowed to visit viewing gallery free of charge (CD11-50 - Viewing gallery management plan, para 4.4)

<sup>223</sup> 2018 GLA Stage 1 report CD11-55 para 7

<sup>224</sup> Ibid 40-41

<sup>225</sup> Committee Report CD11-66 p1087 para 185

<sup>226</sup> CD11-66 p524 EH pre-application advice

## **6-8 Bishopsgate**

- 4.21 The 51 storeys 6-8 Bishopsgate will rise to 220 metres AOD<sup>227</sup>. The GLA found that from LVMF Point 25A.1 - *The Queen's Walk to City Hall shows the building appearing to the left of the Leadenhall building obscuring Tower 42, located well to the left (west) of the WHS and has a minor impact as it consolidates the distinctive and evolving tall building cluster with a new high quality addition*<sup>228</sup>.

## **50 Fenchurch Street**

- 4.22 At 35 storeys, 50 Fenchurch Street will reach 149.6m AOD. Here, HE balanced some harm to the ToL with heritage benefits to the tower of All Hallows Staining and Lambe's Chapel Crypt. It found *in the most important views for understanding and appreciating the OUV, notably from the Queen's Walk (LVMF view 25A.1-3) and from the North Bastion of Tower Bridge (LVMF view 10A.1), the impacts will be neutral. This is because the new tall building will be seen as part of, and against the backdrop of, the established City Cluster, and will not act as either a distracting presence or affect the relative status of the Tower and the City*<sup>229</sup>.

## **Other towers**

- 4.23 122 Leadenhall Street (aka the *Cheesegrater*) opened in 2014<sup>230</sup> having replaced an unattractive 1960s development. Although tall and very nearby, it stands well to the left of the *Gherkin*, in front of *Twentytwo* and the site for *1 Undershaft* in key views. It was not identified in evidence as particularly relevant. Other towers in the Cluster include *40 Leadenhall Street*, *The Willis Building*, *100 Bishopsgate* *150 B/gate*, *1 Heron Plaza* and *55 Gracechurch* but are of limited relevance.

## **Unbuilt schemes**

- 4.24 As above, the proposals for *Millennium Tower* did not proceed.
- 4.25 The abortive 204m high *Minerva Tower* was proposed for a site to the east of the appeal site, behind the church of St Botolph. In assessing the impact on this church, the 2004 Committee Report<sup>231</sup> noted that *The proposed building, which is greatly higher than the existing buildings, is intended to provide a neutral back-drop to this view, effectively blocking existing views of Petticoat Tower which currently intrudes into this view. The 1999 consented proposal whilst significantly lower, in a similar way sought to provide a back-drop to this view. [EH] are of the view that this scheme provides a more suitable scheme than the consented scheme because of its greater architectural qualities and because the setting of the Church will be enhanced greatly by the proposed works to be undertaken, as part of the Section 106 Agreement, to the realignment of the Churchyard, its repaving and new railings*<sup>232</sup>.
- 4.26 However, together with HRP, ICOMOS and other bodies, EH still objected to the scheme. It's concern was *the impact it would have on the setting of the [ToL WHS]. The proposed new 50 storey building would be clearly visible behind the White Tower in views from the middle of Tower Bridge and from the plaque on the north bastions. Also that if approved, this development would move the focal point of the cluster of*

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<sup>227</sup> CD11-66 p931

<sup>228</sup> CD11-66 p1041 paras 39-40

<sup>229</sup> CD11-66 p1240

<sup>230</sup> Harrison CD13-8 s3.5 p110

<sup>231</sup> CD11-51

<sup>232</sup> Ibid para 7.60-7.61



*existing tall buildings significantly eastwards, and enlarge the cluster which is currently undefined*<sup>233</sup>.

- 4.27 The *Pinnacle* scheme was implemented but then halted. Its site is now being developed for *Twentytwo*.
- 4.28 The City submitted a summary of *Development Schemes in the Eastern/City cluster Oct 2018 – Nov 2020 - Approved, Under Consideration and Under Construction* including several between the *Gherkin* and the *Walkie-Talkie*<sup>234</sup>. Also a scheme for a 48 storey 198m AOD office development for 31 Bury Street, just east of the *Gherkin*.

#### *Viewing galleries/Education facilities*

- 4.29 It has been City policy for some time to require tall buildings to provide viewing galleries and, more recently, associated educational facilities. The City submitted details, with images, of those provided or planned since 2006, including<sup>235</sup>:
- *Walkie-Talkie* - Viewing gallery, enclosed roof garden and south facing terrace (the *Skygarden*),
  - *Twentytwo* - Elevated viewing gallery (yet to open) with views to the south, east and west,
  - *1 Undershaft* - 360° viewing gallery/exhibition space. The scheme would include educational facilities with access 7 days a week<sup>236</sup>, potentially curated by the Museum of London with school rooms and auditorium,
  - *6-8 Bishopsgate & 150 Leadenhall Street* - Elevated viewing gallery in a cantilevered box with views to the west and south (Under Construction)
  - *100 Leadenhall Street* - 360° viewing gallery looking at the Tower of London, the City cluster and views eastwards.

## **5 The proposals**<sup>237</sup>

*To fully assess the scheme and the quality of presentation, I particularly commend to the SoS the architects' visual evidence*<sup>238</sup>, *the models*<sup>239</sup>, *the VR goggles, the file of moving images*<sup>240</sup>, *and the 3D printed model in its Perspex case (noting that this is all one colour).*

#### *Description*

- 5.1 The site clearance would include No.20 Bury Street, the ramp and retaining wall, with the three column Swiss Re symbol at its entrance, and various planters and other street furniture on the north-eastern side of the *Gherkin* plaza<sup>241</sup>. The scheme would divide in 3 main elements: the *Tulip* itself, with its base, *stem* and *flower*<sup>242</sup>, partly on the site of 20 Bury Street and adjoining areas of the plaza alongside Bury Street; the

<sup>233</sup> CD11-51 paras 5.6-5.19

<sup>234</sup> See CD19C-11

<sup>235</sup> CD19C-14

<sup>236</sup> CD19B-41, Table p1: 1,300m<sup>2</sup> Free publicly accessible enclosed space available for school/community visits within wider public offer; 203m<sup>2</sup> dedicated classroom/learning space; classroom at 293.5m AOD; Access to the learning space (2 classrooms) to be open between 10am - 6pm (Mon - Wed); 10am - 8pm (Thurs and Fri); 10am - 5pm (Sat) and 10am - 4pm (Sun) (CD11-69 - S106, Schedule 8 paragraph 1); Booking arrangements for the Learning Space also be made to fulfil the aim of ensuring the learning floorspace can be used as fully as reasonable possible. At least 35 spaces at any one time shall be available exclusively for advance booking by schools and educational community groups (CD11-69)

<sup>237</sup> View from the south shown on the front cover

<sup>238</sup> Illustrated in s5 p246 onwards of Harrison's PoE CD13-8

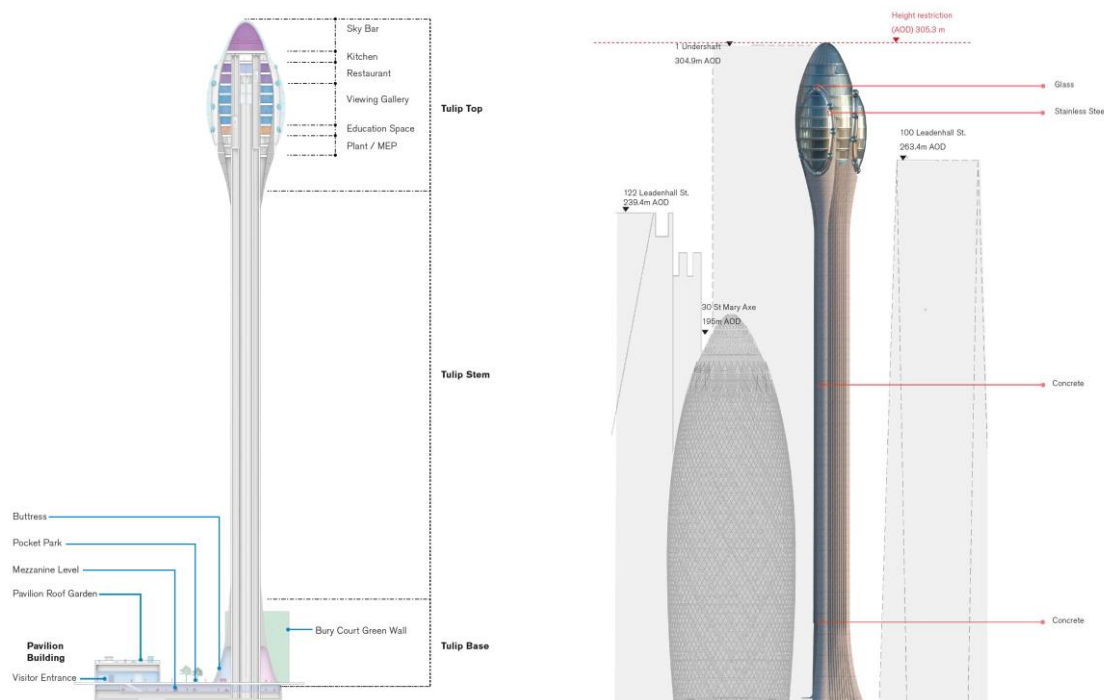
<sup>239</sup> Ibid and oral evidence with the models 5 November 2020

<sup>240</sup> MP4 file containing CD13-9, CD13-11, CD13-12, CD13-13, CD13-17 and CD13-18

<sup>241</sup> See Demolition site plan at CD1-66, DAS at CD1-6 p8 and plan of bench removal at CD19B-18

<sup>242</sup> See elevations at CD1-29 to 1-32 and CD1-53 to 1-57

*Pavilion* of curved glazing fronting onto St Mary Axe<sup>243</sup>; and an area of formalised seating, referred to as a *Pocket Park*, between the two. The *Tulip* would rise to a height of 305.3m AOD (over 1,000 feet), roughly the same height as the *Shards of Glass* and the proposals for *1 Undershaft*. Its *stem* would be over 14m in diameter and in places its 12 storey top would expand to over double the width of its stem.



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- 5.2 The visitor attractions at the top of the *Tulip* would include gondola rides, spiral stairs and slides and a sky walk with a view directly down through a glass floor, as well as a bar and restaurant. The gondolas would be in three groups at the top of the structural *spoons*, one slightly smaller than the other two, which would hold the top floors in place and support oriel windows containing different functions. As a result, the *Tulip* would not share the near radial symmetry of the *Gherkin*, but have a broadly circular but directional plan form, and there would be axial symmetry towards the *Gherkin* and Whitechapel Road. From other angles, the top would appear asymmetrical due to the effect of the *spoons* and gondola rides<sup>245</sup>. I was able to gain some sense of the proposed experience by moving around the models. I also saw the spectacular views of London from the top of the *Gherkin*. Those from the *Tulip* would be significantly higher.
- 5.3 The *Pavilion*<sup>246</sup> would be the main arrival point with escalators down to the basement mezzanine where it would connect to the lifts to go up the *Tulip*. Following negotiations with the City, visitor numbers at any one time would be limited by ticketing. The *Pavilion* would embrace several uses, including the entrance turnstiles to the escalators and service vehicle lifts on the ground floor; cycle storage, plant and security on the first floor; and a roof garden on the top. It would also include a roof terrace from which one could see the *Gherkin*, the *Tulip*, and St Mary Axe and beyond. The entrance to the

<sup>243</sup> CD1-63

<sup>244</sup> See Environmental Statement (ES) - Non-Technical Summary CD1-9 p15 and 17

<sup>245</sup> Ibid p15 and 17

<sup>246</sup> CD1-9 ES p13



ramp would be replaced by that of the vehicle lifts while the ramp itself would be replaced by the *Pocket Park* and elements of the *Tulip* and *Pavilion* either side<sup>247</sup>. To a degree, the scheme would restore the street line along Bury Court. The *Pocket Park* would provide an area of seating and a new setting for the memorial to those who died in the IRA bombing. It would also reinstate the hostile vehicle mitigation.

- 5.4 At ground level, the plaza would be extended by the removal of the vehicular ramp and 20 Bury Street, but reduced again to the north and east by the footprints of the *Tulip* and *Pavilion*. The Mayor calculated the difference<sup>248</sup> as a net reduction of 88m<sup>2</sup> out of an existing area of 2,102m<sup>2</sup>. The sculpture exhibitions, and weekly food market would cease. The drawings at the end of the SoCG<sup>249</sup> usefully illustrate the relative positions of the existing and proposed features on the site including the extent of bench seating and planters before and after.



- 5.5 The lowest occupied level within the *flower* at the top of the *Tulip*, Level 3 at a height of 255.25m AOD<sup>251</sup>, would be a floor given over to a facility for education and community uses. This would compare with the top of the *100 Leadenhall* proposals at 263.4m AOD<sup>252</sup>. The details of this facility were negotiated with the City (see s13 below) including a dedicated floor and specified times when school parties and certain community groups would get priority. The s106 Agreement would offer a guarantee that at least 40,000 London school children would be able to enjoy a free educational experience every year, albeit at a lower height than for paying visitors. The Appellant's witness<sup>253</sup> gave a detailed explanation of what might be possible. Further information was provided during the Inquiry regarding the extent of Level 3 storage to facilitate flexible use of the space<sup>254</sup>. Contrary to early assertions, the guarantee of 40,000 visits

<sup>247</sup> Compare CD1-34 with CD1-65 – see also Adams s5

<sup>248</sup> Adams Figs 33-35 pp50-51

<sup>249</sup> CD19B-26

<sup>250</sup> Adams Figs 33 and 34

<sup>251</sup> East elevation CD1-54

<sup>252</sup> ES CD1-9 p17; CD11-61.

<sup>253</sup> Wright, a Doctor in Education with a research interest in the relationship between schools and their communities, a Senior Associate at an education consultancy, and an Affiliate member of the RIBA, recognising her professional interest in architecture and its place in education. She was appointed after the original start date for the Inquiry and not amongst the 30+ consultants listed – see CD1-6 para 1.3 p9

<sup>254</sup> See CD19B-31 and CD19D-15

would not be enough for every London school child<sup>255</sup>. The Appellant canvassed the extent of interest from London teachers and education stakeholders<sup>256</sup>. When asked whether or not such school visits would be in addition to, or in lieu of, other visits she could only say that with the proposal in place the selection of where to visit was complicated and would be a matter for, and up to, individual schools<sup>257</sup>.

## Design

- 5.6 The design has been led by F+P, with a team of consultants<sup>258</sup>, and steps would be put in place to ensure all reasonable efforts were made to retain their services up to completion (see s106 below). F+P has a formidable international reputation<sup>259</sup>. A wealth of high quality visual material was provided<sup>260</sup> with the Inquiry documents including the scheme drawings (by which the construction could be controlled) and other illustrative material. Full details were included to show, as far as possible, the efforts that were made to ensure accuracy. I saw no fewer than four models on my site visits plus a 3D print of the scheme<sup>261</sup> in the context of this part of London. I was told that the model of the base and *stem* was F+P's largest ever scale model and this is F+P's most important project this year.
- 5.7 The *stem* of the new construction would be made of reinforced concrete (as would underground works). This would be extended into the concrete *spoons* supporting the *flower*. These would be largely covered by the steel mechanisms to the three sets of gondolas while the rest of the *flower* would be mostly glazed. The presentation material highlights the proposed quality of fair-faced concrete to the *stem*<sup>262</sup>, the reflective nature of the glazing and the lower level *green* finishes (planting on the roof of the *Pavilion*, in the *Pocket Park* and to the green walls to the *Pavilion* and adjoining Bury Street which could be controlled by the conditions).
- 5.8 The TVBHA looked at the LVMF views. For View 10A.1 it found *Existing: Sensitivity to change: generally high; very high for the view of the White Tower. Proposed: Magnitude of change: major. Significance of Likely Effect: very major, adverse. Cumulative: Significance of Likely Cumulative Effect: very major, adverse.* For each of the views from Queen's Walk (25A.1-3) it found *Magnitude of change: major. Significance of Likely Effect: major beneficial effects*<sup>263</sup>. The impact of the *Tulip* on the airspace behind the White Tower can be seen in the video<sup>264</sup> between 2:28 and 2:47 minutes. Note that due to the height of the camera, the braced steel girders of the suspension structure obscure some of this even though I saw that the girders are generally above eye level<sup>265</sup>.
- 5.9 The Heritage SoCG sets out areas of agreement and disagreement, including tables of what the four main parties saw as relevant assets<sup>266</sup> and identification of impact and

<sup>255</sup> See Hampson's PoE CD14-3 para 8.51, corrected in her oral evidence IC. She accepted, in XX by Phillpot, that this might be less than half and that this was a prominent claim to members in the original report to committee

<sup>256</sup> In February 2019 the Applicant organised a roundtable discussion with London schools to seek their views on the education facilities and its operational management. 74 schools within 3 miles of the site were contacted; 12 teachers or representatives attended. See CD 2-2

<sup>257</sup> In answer to IQs

<sup>258</sup> CD1-6 para 1.3 p9

<sup>259</sup> See Harrison proof CD13-8 s2 pp19-63

<sup>260</sup> As I saw. Also described by Richards to IQs as the most accomplished presentation package he'd ever dealt with

<sup>261</sup> Forwarded to the SoS

<sup>262</sup> See also replies to IQs at CD19B-22 and CD19B-44

<sup>263</sup> CD1-11 p90 and pp111-117

<sup>264</sup> CD13-18 Tavernor - 10A\_Tower\_Bridge-2020

<sup>265</sup> See also sequence of photos in CD19D-9 especially 8-12

<sup>266</sup> CD19B-28 Appendix X

harm<sup>267</sup>. The Committee Report<sup>268</sup> assessed the *two views within the [LVMF] which are key in assessing the Tulip's impact on the [WHS], Tower Bridge (10A) and City Hall (25A)*. It noted that from 10A.1, *the proposal will appear as a highly prominent landmark on the skyline because it appears removed from the compact cluster of tall buildings and due to its substantial height and distinct form*<sup>269</sup>. From 25A.1-3, it found *The proposal by virtue of its height and eye-catching appearance would appear as a prominent and striking feature on the skyline on the eastern side of the cluster of towers*. It went on to find harm in one view but not the other.

- 5.10 Earlier concerns from the City's Public Realm Group Manager, around the capacity for pedestrian movement<sup>270</sup>, how this would be managed, and public access to the roof garden, were resolved prior to the Inquiry and would be controlled through the s106 Agreement<sup>271</sup>. The City therefore stated that its criticisms have now been addressed and RfR5<sup>272</sup> was not defended. Objections with regard to cycle parking, set out in RfR6, were also agreed together with benefits to long stay cycle parking, with removal of 16 parking spaces and consolidation of deliveries.

### Sustainability

- 5.11 The Appellant submitted a raft of documents with evidence on sustainability<sup>273</sup>, including the Design and access statement (DAS), an Energy Statement<sup>274</sup>, the ES, and a Sustainability Statement<sup>275</sup>. The SoCG confirms agreement that the proposed development has been designed to achieve a 42.04% reduction in carbon emissions over Part L (2013) of the Building Regulations which would exceed the policy requirement for a 35% reduction<sup>276</sup>. A s106 obligation would secure carbon offsetting if a minimum 35% reduction is not achieved, a payment that would increase now that the NLP has been published. The architect advised that F+P had tried to be the most environmentally responsible that it could be<sup>277</sup>.
- 5.12 The Building Research Establishment Environmental Assessment Method (BREEAM) pre-assessment indicates that the scheme would achieve an *Excellent* rating. The Appellant subsequently agreed to amend this to achieve a rating of 89.0% or *Outstanding*<sup>278</sup>, and this could be required by a condition. This would be much higher than for most developments, but lower than the score of 99.1% for F+P's award winning design for *Bloomberg*.

### Concrete

- 5.13 The Appellant's Sustainability Statement<sup>279</sup> explains that its intention would be a *holistic approach* to a number of *key sustainability themes*, including *energy and carbon*<sup>280</sup>. It sets out its *Sustainability aspiration* such that its *environmentally sensitive design and its small physical footprint are reflected in its minimised resource*

<sup>267</sup> Ibid Appendix Y

<sup>268</sup> CD3-4 para 113 dated 2 April 2019committee

<sup>269</sup> Ibid paras 115-116

<sup>270</sup> Paragraph 1 of CD11-52

<sup>271</sup> Section 106 agreement Schedule 9: CD19B-24. The s106 would limit the number of visitors to 1.2m, an estimated 100,000 of which would not otherwise visit London

<sup>272</sup> CD3-9

<sup>273</sup> Benefits SoCG CD19B-17 para 1.4(e)

<sup>274</sup> CD1-8

<sup>275</sup> CD1-20

<sup>276</sup> SoCG CD19B-26 p27 para 10.17 and CD19B-27 p7 para 2.6

<sup>277</sup> Harrison to IQs Tuesday 10 November 2020

<sup>278</sup> CD19B-17 p2. As is apparent from the list at, few buildings are designed to achieve such a high target ranking

<sup>279</sup> CD1-20

<sup>280</sup> Ibid p16 para 1.4

use<sup>281</sup>. Further evidence<sup>282</sup> explained that the material choice was a key part of the design process and that concrete would reduce embodied energy by 31% compared with steel. F+P is a member of the Low Carbon Concrete Group of the Green Construction Board. This group establishes guidance to achieve low carbon concrete through the industry<sup>283</sup>. The details of how the 31% reduction was calculated, or indeed whether steel construction was feasible, was not submitted as these would be *subject to further design stages and optimisation*<sup>284</sup>.

- 5.14 Information on the life-cycle assessment for the building<sup>285</sup> was limited. The Appellant explained that *Potential disassembly of the Tulip has been considered, in particular for the purposes of our BREEAM assessment. However, there are no proposals to disassemble the building after it has been constructed. The Tulip can be taken down in the reverse manner to how it was constructed, with components being recycled. The concrete stem can be cut down either by diamond saw-cutting or wire saw-cutting to reduce dust and vibration*<sup>286</sup>.
- 5.15 Further information on the use of concrete, the quality of its finish, and potential for cleaning, was provided. The finish to the concrete would be in two tones, one for the bulk of the stem, another for the buttresses. The Appellant gave examples<sup>287</sup> of concrete in its work and submitted a *Further note on Concrete*<sup>288</sup> with more detail on the external examples and to explain that the *stem* would be designed to minimise staining and that there would be regular cleaning *with a stiff brush using a mild alkaline detergent*<sup>289</sup>. A suggested cleaning condition<sup>290</sup> would ensure its ongoing cleaning and maintenance.
- 5.16 Finally, the further note explained that: *The work at Battersea Power Station illustrates the use of concrete with a pronounced vertical rib. It is not of direct relevance to this case in terms of the cleaning regime because the stacks are painted with a fully opaque pigment that completely masks the concrete surface with a colour to match its previous form. As a coal fired electricity station, the concrete towers (which have been replaced) would have been very regularly painted because of the nature of the particulates from the smoke they gave off*<sup>291</sup> thus making it clear that the previous use of the photograph of the power station in a note regarding the cleaning of fair-faced concrete<sup>292</sup> was not intended to mislead the Inquiry.

### Public benefits

- 5.17 The extent of public benefit put forward by the Appellant is listed in the SoCG, amplified in the Benefits SoCG<sup>293</sup>. However, the significance of those benefits, and the weight to be attached to them, was not agreed. Socio-economics was scoped into the Environmental Statement (ES) and found to be **Minor Beneficial**<sup>294</sup>. The operational economic benefits would flow from the estimates of visitor numbers.

<sup>281</sup> Ibid p17 para 1.5

<sup>282</sup> CD13-8 Harrison s5.17 p256

<sup>283</sup> CD19B-17 p5

<sup>284</sup> Ibid p5

<sup>285</sup> In response to IQs

<sup>286</sup> CD19B-17 p6

<sup>287</sup> CDB-22

<sup>288</sup> CD19B-44 dated 18 December 2020, the final sitting day of the Inquiry, following my query a week earlier

<sup>289</sup> Ibid para 22

<sup>290</sup> CD19C-22 Condition 46 Draft conditions schedule – 17 December 2020

<sup>291</sup> CD19B-44 para 36

<sup>292</sup> Photo in CDB-22 p19

<sup>293</sup> CD19B-7 p30-32 and CD19B-27

<sup>294</sup> ES non-technical para 76 p21 CD1-9

## Tourism

- 5.18 The tourism benefits would be proportional to the number of visitors. These would be capped by controlling the number of ticket sales and so could be agreed at 1.2m, subject to the provisions of the s106 Agreement<sup>295</sup>. Nor was it contested that over 100,000 of these would not have otherwise visited London<sup>296</sup>. There are no alternative locations for the scheme or other proposals for the site. If the appeal is dismissed, the opportunity will be lost but it was not suggested that London would decline as a result. Some of the benefits of increased tourism are reflected in its contribution to the economy.

## Economic

- 5.19 Evidence on the economic benefits was provided from three sources: an Economic and Social Benefits Statement<sup>297</sup>; the ES<sup>298</sup>; and a Deloitte Economic Impact Assessment<sup>299</sup>. Current indications, based on 2 estimates, were that the proposed development would cost more than £260m to construct, with £477m a realistic upper figure<sup>300</sup>. The construction cost was estimated to peak in year 6 of a 7 year programme<sup>301</sup>. It was common ground<sup>302</sup> that the construction phase would create 760 jobs and contribute approximately £30m to Gross Added Value (GVA) per annum (pa). The operational phase would create 46-64 direct on-site jobs. The off-site expenditure was anticipated to be around £80-160m<sup>303</sup>. There would be further advantages to the evening and weekend economy. These benefits would be achieved on what is partly a *windfall* site (that is, it has little other development potential) and, other than the loss of 27 jobs at 20 Bury Street, the GVA would not be achieved at the expense of office development.
- 5.20 By contrast, in 2016 the City contributed £49.2 billion to the UK economy which represented around 12% of Greater London's total contribution (i.e. £408.5 billion) that year. There are around 8 million m<sup>2</sup> of employment floorspace in the City of London, which in total generate around £1.54 billion in business rates revenue each year. In the *Walkie-Talkie* Report, the Inspector found that even an addition of over 90,000m<sup>2</sup> of office space would only be a slight benefit and would not over-ride harm to heritage assets<sup>304</sup>.
- 5.21 The architect told me the order in which he saw the benefits: the enhancement of the image of London, the City itself, and the public realm, including architectural benefits; the setting from along Queen's Walk and appearance in relation to the WHS; economic benefits - but they would be lower down the list; and then the education and community benefit<sup>305</sup>.

## Education

- 5.22 The education, community and social benefits were also agreed<sup>306</sup>. They are set out under Planning Obligations (below). The position in the s106 agreement followed

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<sup>295</sup> It would attract a similar number of visitors as the Royal Academy and a greater number than London Zoo, or the Houses of Parliament - See Hampson Ap.1 CD14-3

<sup>296</sup> Benefits SOCG para 2.4(a) and (b): CD19B-15

<sup>297</sup> November 2018 CD1-7

<sup>298</sup> CD1-10 Chapter 6

<sup>299</sup> CD2-1

<sup>300</sup> CD19B-30. 11 December 2020

<sup>301</sup> Environmental Impact Assessment (EIA) CD2-1 p16

<sup>302</sup> Benefits Statement of Common Ground (SoCG) CD19B-27 para 2.2. See also EIA CD2-1

<sup>303</sup> CD1-7 p23

<sup>304</sup> CD9-8 para 9.6.2

<sup>305</sup> Harrison to IQs. Answers reported verbatim in Annex 2 to the Appellant's closings

<sup>306</sup> CD19B-27 refs at 1.4(b) and para 2.3



detailed negotiations: the City would have liked more, the Appellant would have preferred to have provided less<sup>307</sup>. In short, there would be flexible space on level 3 of the 12 levels for three classrooms to be available, free of charge, to no fewer than 40,000 state school children pa during school hours. It would be available for free at some other times for education and community groups and as part of *Open House London*. The extent to which schools would be likely to take advantage of this offer, in addition to other trips or in lieu of them, was uncertain<sup>308</sup>.

- 5.23 The original images of the view from the education resource on Level 03, showing areas of London including the *Shards of Glass*, were queried by HE who argued that this would probably be obscured by *100 Leadenhall*. This was re-examined outside the Inquiry and further views that were agreed to be more accurate were submitted<sup>309</sup>.

## 6 The case for the Applicant<sup>310</sup>

*The gist of its case was as follows. See the full closings for all details, references, images and video links.*

- 6.1 We said in opening that rarely, perhaps only once or twice in a generation, does any City have the opportunity, in the form of a piece of architecture, truly to make a statement about itself, about its people, and about the future it plans. The *Tulip* now provides such an opportunity. It would bring a new and exciting use to the heart of the City in a way which would strengthen and diversify its economy, enhance its cultural offer, and open up the City to others in a way not seen before.
- 6.2 It would do all of these things in a deliberate and profoundly sustainable way. Located on a brownfield, *windfall* site at one of the most accessible parts of the capital: a site which is presently used essentially as an outdated HGV ramp and for back of house offices and plant, the *Tulip* has had sustainability and the efficient use of resources (including more efficient use of the estate) at its core from its inception.
- 6.3 Its ambition, quality, scale, and form would appropriately symbolise and epitomise a new start, a new spring for the City of London: more diverse, more inclusive, more democratic, and less mysterious. A City still open for business but now also visibly and demonstrably open to all.
- 6.4 Development Plans are not the places ordinarily to look for poetry. But sometimes it is there. The original London Plan urged its designers where appropriate to *inspire, excite and delight*. The present Plan loses some of the poetry but still urges designers to ensure that London is a city that produces modern architecture that *delights the senses*<sup>311</sup>. The Plan also reminds decision-makers that new development should help *residents and visitors understand where a place has come from, where it is now and where it is going*<sup>312</sup>.
- 6.5 Both references could have been written specifically with the *Tulip* in mind. For the *Tulip* will engage and delight the senses more than any other Cluster building. It will also represent another layer of the rich history of London: this time saying much more

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<sup>307</sup> See the reluctance to consider longer hours and the difficulty over bookings, both of which seem to me to be geared towards maximising private bookings where allowable within the letter of the Agreement

<sup>308</sup> Wright to IQs

<sup>309</sup> Compare images in Harrison p204 with English Fig70 CD16-3 and later submission at CD19B-25

<sup>310</sup> During the course of the adjournment, J Safra Esq very sadly passed away. The retired founder of the Company, he led a remarkable and philanthropic life and he will be greatly missed. The conduct of this project remains with his eldest son and members of the management team.

<sup>311</sup> Para 7.1, London Plan CD 19H-1

<sup>312</sup> Para 7.13 London Plan CD 19H-1

than *here lies financial power and strength*. It will tell of a new widened role for the City, a role which is inclusive, diverse and sustainable. A City which is prepared to make the most of its brownfield spaces and hugely efficient public transport provisions to invite the world in.

- 6.6 Further, the *Tulip* represents, at a difficult and risk laden time, an opportunity to establish in the eyes of the world and those who would invest here, the confidence which the Government and the planning system has in the City of London as part of a thriving mercantile Global City.
- 6.7 The F+P building would be bold, elegant and have a gentle gracefulness of form: high, exciting and exuberant of use, but which also maintains its essential architectural calmness, authority and authenticity. It would speak the same language as its Stirling prize-winning sibling<sup>313</sup> and as a result, and for anyone that has an eye to see, would say unambiguously *I am of London*. That shouldn't be a surprise: it has been created by a practice and a process which understands this special part of the City, its needs and constraints better than any other. 30 St Mary Axe speaks for itself. It is a work of genius.
- 6.8 Foster's is also the eye, the hand and the practice which has delivered Wembley stadium, the British Museum Great Court and the Millennium Bridge. Like many of us in this great city, Lord Foster was born elsewhere but has brought his talents and practice to London and made it his home. His buildings, including this one, are *Londoners* too.
- 6.9 The narrative which has driven the support for this proposal can be crystallised into 8 simple propositions which we set out in Opening and which we now revisit.

**One:** *The City of London's economic and spatial importance to London's role as a Global City and to the UK as a whole is now profound.*

- 6.10 This proposition cannot be gainsaid. That does not mean that it is not important: it is fundamental. The modern spatial evolution of the City is the driver of London's World City status. Its contribution to the UK economy is unique. The role of the Cluster in transforming the City's fortunes is now well understood. It, and its individual elements, especially 30 St Mary Axe, are symbols of the wider City and icons of its success. The skyline also symbolises the City's openness to change and to business in a more philosophical sense. The newness and dynamism of the architecture reflects the ability of the City and the place to move quickly and to drive change where necessary. Things happen here. And we all in the UK benefit mightily from that. Also now well understood are the threats to the City's pre-eminence as the world's financial capital city. The City needs to remain dynamic and healthy or the economy as a whole will suffer. Those with Ministerial responsibility for this decision won't need reminding of the importance of the City or of the national need to ensure its continued success.
- 6.11 Overseeing the growth of the Cluster and the spatial expression of the City as the World's foremost financial hub up until now has been the City planning department. Its constancy and the skills it has employed means that it is the most experienced planning department in Europe at dealing with tall buildings and their impacts on context and heritage assets. It has worked closely, critically and constructively with the best architectural houses in the world. The suggestion that it simply and mechanistically supports any tall building proposal is demonstrably ludicrous. It turns away scores of potential tall buildings at pre-application stage when it considers them inappropriate.

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<sup>313</sup> The *Gherkin*



6.12 As a result, the Department has delivered architectural quality of the highest order. It has been driven by talented officers with experience and knowledge. The SoS should bear its expertise, consistency and track record of delivery in mind when weighing evidence on the image of the City as a place and on the quality of architecture in this case. The City is, for now, a profound contributor to London, its image and our mercantile place in the world. It contributes economically in a prodigious way. And mirroring that contribution it has also produced an international quality financial skyline of dynamism and authenticity. The spatial imperative is to ensure that that skyline now remains relevant in difficult and changing times.

**Two:** *There is a pressing need to maintain the City's position as the world's leading international financial and professional services centre by ensuring it operates more flexibly and diversely, is more resilient to change and meets the needs of its employees and population.*

6.13 The CoL recognises that it cannot sustain itself solely as a place for offices. The City's workers no longer finish work and commute home. They place value on out of work experience, culture and a 24/7 way of existing. They are the lifeblood of a commercial city. The City wants to transform its public realm and physical infrastructure to make it more open, distinct, welcoming and culturally vibrant<sup>314</sup>. It must do so to ensure that the most talented workers want to work in the City, and not in its rival centres around the world.

6.14 In addition, the City needs to broaden its economic base, to contribute more to the *rich mix* that puts the centre of London at the centre of the UK and makes it a World City. The City, and in particular the Cluster, offers little at the weekends and in holiday periods. It is an obvious and unsustainable waste of potential economic and cultural activity and of the most impressive public transport in the whole of western Europe. The inevitable **past** focus of the City on the delivery of world class office functions has resulted in something of an unbalanced, wasteful and, overall, less resilient economic profile.

6.15 And the Corporation is onto this, now seeking to make the most of its position in the CAZ, to increase massively the number of non-office visits to the City and to increase its cultural and tourist offer overall, including the creation of a strategic cultural area of international standing<sup>315</sup>. The aim is to alter the reality and the perception of the City as a closed financial district. The need to do this has never been greater: Brexit and COVID-19 present new challenges to the City's world leading status, with the prospect of structural economic change creating uncertainty and risk.

**Three:** *The City needs to become more open, diverse, accessible and democratic.*

6.16 For many within London, and the wider world, the City's contribution to the wealth of all of us is not properly appreciated. Neither is the City seen as truly accessible as a place of employment to many of London's diverse communities<sup>316</sup>. The emerging City Plan recognises this. Consistent with the national policy to encourage diversity and equality of opportunity, it is now a strategic aim to foster a flourishing and fair society. Part of that aim is to educate Londoners about the City but also to develop the skills of its residents and those of other boroughs who might otherwise not consider a career here. There is no doubt that such interventions are needed to support the City and London as a whole.

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<sup>314</sup> City of London Cultural Strategy 2018-22 p 11 [CD 19B-20]

<sup>315</sup> See Emerging Plan CD 19H-3: 3.4.4; 3.5.1; 5.3.2-3; 5.3.5-6; Strategic Policy S6

<sup>316</sup> See Cultural Strategy CD 19B-20 at p 4 *et seq*

- 6.17 The City is committed to securing equality of opportunity, accessibility and involvement *so that people from across London's diverse communities will have the chance to benefit from the many facilities and opportunities the City offers*. As a result, the role of education is enhanced in the new City spatial strategy with encouragement for new high quality places for learning and a recognition that the City needs to *speak to* a wider, younger and more diverse audience. Similarly, the City needs to do more to be a place where tourists and visitors come. London's role as a global visitor destination is well established but, as the Mayor recognises, it cannot stand still. London's pre-eminent status as a global tourism destination is under pressure<sup>317</sup>.
- 6.18 The City itself contributes to that globally significant tourism market, but in isolated ways. It boasts one of London's top attractions (St Paul's) and is adjacent to another (the ToL). But it lacks the destinations of the West End and Southbank that draw visitors in to stay in the area. The need for more and better attractions, for London as a whole, is not in fact in dispute at this Inquiry<sup>318</sup>. The Mayor's real gripe – *why here?* – is answered by the need to diversify the City, and by the scheme's sustainable, *windfall* nature.

**Four:** *The Tulip self-evidently meets these functional needs at an appropriate location. It is common ground that (1) the uses proposed and (2) a very tall building are both in principle appropriate in the Cluster.*

- 6.19 The *Tulip* lies on a *windfall* site in the Cluster where it is agreed that a very tall building is appropriate in principle. It is common ground that a tourist attraction and cultural facility is an acceptable use here too: an important point particularly when considering the *character* case<sup>319</sup>. In assessing compliance with the development plan as a whole, much weight must be given to the fact that the proposed use and form are both in principle acceptable, and encouraged, in this location. The *Tulip* would be a busy, and unique world class tourist attraction. Nothing has seriously challenged that. There is no dispute on its draw, a result of careful market analysis<sup>320</sup>. 1.2 million people each year will come to the *Tulip*.
- 6.20 The viewing gallery proposed is unique; the gondolas particularly so. The kinetic viewing experience, so well-loved at the London Eye, would be delivered at twice the height. The 360° views, and the multiple levels connected by spiral stairs and slides will make this a truly special place to visit. And there will be spaces to drink and eat through a high-quality restaurant and bar offer reminiscent of the dome of the Gherkin but far higher and in a place of leisure rather than a place of work<sup>321</sup>.
- 6.21 Of the more than a million people who will come to St Mary Axe because of the *Tulip*, over 100,000 of them will be coming to London as a whole solely because of the *Tulip*. They will come to London rather than New York, or Paris. The dismissiveness of the Mayor towards that remarkable additionality is myopic and flat contrary to his existing and emerging development plan.
- 6.22 Through these visitors, the *Tulip* will have a significant economic impact in its own right and will substantially enhance the prospects for ancillary and service industries in the City which, at the moment, are obviously too dependent on office monoculture. The figures for economic benefit are not in dispute<sup>322</sup>. Like any economic modelling

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<sup>317</sup> Mr Rusby's evidence

<sup>318</sup> as Mr Green accepted

<sup>319</sup> Of Ms Adams

<sup>320</sup> Confirmed by Mr Rusby and made good by a comprehensive market testing exercise

<sup>321</sup> Mr Rusby is expertly qualified and experienced to speak to the quality of the offer.

<sup>322</sup> CD 19B-15

they depend upon forecasts, but on any view the *Tulip* can deliver tens of millions of pounds of economic benefits each year. As a tourist attraction, the proposal would bring animation, life and vitality to the days when the City is silent. It would make better use of the incredible levels of public transport which are chronically underused. In very basic planning terms this is an ideal proposition: making best use of the most sustainable of sites.

- 6.23 In addition, it would enhance and form a central part of the City's new aim to make itself a more rounded space for its hundreds of thousands of employees. Compared with the benefits of the food stalls<sup>323</sup>, as a place for workers to socialise and for new connections to be made, but in a different and far more meaningful form, the *Tulip* will deliver much more both at ground level and high in the sky.
- 6.24 The Pavilion, the restaurants and bars, the new public area all speak to a change in the way the City sees its spaces. The proposal would invite people to linger after work and at other times, to socialise, to cluster and to produce the interaction that is the lifeblood of a dynamic creative city life. There would be areas of compression and release, animated places to sit in and share. A busy, active place will be created, and the Appellant does not shy away from that proposition.
- 6.25 In addition, the building will welcome into the heart of the City tens of thousands of London's children and students. The Inspector and the SoS will find no difficulty in dismissing the disparaging approach adopted by the Mayor to this provision. It will give young Londoners a place which has the capacity to inspire and engage. There is always one school trip we remember. This would be it<sup>324</sup>.



- 6.26 The education provision is the product of good engagement in the planning system. It has emerged through discussions with the Mayor's team and the City's planners. It has been carefully designed as a self-contained storey of the building. The Appellant has started to articulate how best it can be used<sup>325</sup>. The result is a proposition<sup>326</sup>, that will be truly special. It will be facilitated by teachers paid for by the owner, making best use of technology and grounding the visit in the school curriculum with learning

<sup>323</sup> 1 day a week for 2 hours

<sup>324</sup> The evidence of Dr Sharon Wright

<sup>325</sup> By engaging Dr Wright. She is exceptionally well qualified to assist the Inquiry on this issue. She is an educationalist with a long pedigree in advising on the design of learning spaces (including the DfE). She has explained that there is no metric for measuring the educative potential of a space, and that comparisons of floor areas are unlikely to assist. The real question is how the space can and will be used. And her evidence on that is that the *Tulip* will provide a unique learning experience, delivering benefits at a London-wide level. Her view is corroborated by every teacher and educationalist who has commented on the proposals, from the initial roundtable event through to the expert endorsements before this Inquiry. See also CD 13-22 p1ff.

<sup>326</sup> Outlined in the Education and Community Management Plan (see s106) and explained in Dr Wright's evidence

before and after. Most of all it will have a brilliant view of London, including the excitement of the Cluster.

- 6.27 Whilst the Mayor makes the arguments on the education space as a means to an end, he cannot genuinely seek to cast shade on the benefits of this space. The Mayor in truth strongly supports measures to improve educational attainment and social mobility<sup>327</sup>, and the undisputed expert evidence is that this space will serve that function. And wonderfully. The benefits from the third floor will not stop at the end of the school day but continue through a commitment to make the space available, free of charge, to older schoolchildren and wider community groups. It will be a lasting legacy for London. As such it will be the literal and functional window into the work of the City and its place in London. It will invite people into the heart of the financial district's cluster in a new and deliberate way, demystifying and democratising the City and meeting the functional needs identified above and encapsulated in the adopted and emerging plans.

**Five:** *And it meets those needs in the form of a building which in and of itself encapsulates, symbolises and embodies the new more diverse open and democratic nature of the City.*

- 6.28 The proposal would **not** look like an office building and nor should it. It would be a visitor attraction, cultural and learning space, community facility and place for City workers to relax and enjoy, which in principle is accepted as appropriate and beneficial in the Cluster. Its physical nature and scale would reflect its use and more. It would signal that the City is changing and becoming more open, diverse and welcoming. Just as the Cluster signalled the willingness of the City to react to the office needs of the markets. Not only would the building meet the functional needs of the City: it would express them clearly and understandably in architectural form. Its function would be immediately understood and appreciated. It would again symbolise that City has the wherewithal to act, achieve and to deliver on those ambitions even in difficult times.
- 6.29 At this Inquiry the Mayor recognises the ability of a building to be a symbol, describing the *Gherkin* as a defiant and symbolic response to the impact of Irish nationalist terrorism in 1992. The *Gherkin* is of course that - and now very much more than that too. This F+P work is also a symbolic response. The *Tulip* is a visible response to the need for the City to shift its economic base, its ethos and its approach to its people. It symbolises a new start, a spring, and it does so with a *Tulip*: a symbol of hope, of renewal. And it is a response which simply cannot be provided elsewhere in the same way<sup>328</sup>. No one is seriously suggesting that it can. But the symbolism now goes further and deeper.
- 6.30 First, sustainability is at the core of the planning system and of the proposal. Its essence is the revitalisation and re-use of the *Gherkin* Estate. Its visible presence at the heart of the capital's underused transport network<sup>329</sup> would be a symbol that the City is open and accessible in a functional way but also in a transport way and sustainability way. The very materiality of the building reflects careful and correct choices about sustainability. Concrete was deliberately chosen for the *stem* specifically because of its sustainability credentials and embodied carbon advantages over other

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<sup>327</sup> Accepted by Mr Green in XX Turney. See for example Skills for Londoners [CD 13-22] pdf p 99ff

<sup>328</sup> The economics of the City mean that there will be no other City site forthcoming for such a powerfully symbolic but less profitable leisure/cultural use. This application represents a one-off opportunity to open the Cluster, to democratise the City by allowing new uses and people into its inner sanctum. The City rightly saw it that way.

<sup>329</sup> In the City at weekends

materials<sup>330</sup>. It also reflects the different, public and more civic use of the building (see below). The concrete *stem* houses lifts<sup>331</sup> to a bespoke public viewing and educational experience. In architectural, sustainability and in engineering and transport terms this is the only sensible choice at this location.

- 6.31 As a bespoke viewing/cultural and educational facility the choice of low energy glass is a proper material for the *flower*. Its clarity will be evident, the animation within too. But it will also be state of the art glass, from a sustainability point of view<sup>332</sup>. Therefore, in place of a street scale HGV ramp and a back of house building for outdated plant, a different and fundamentally important series of new uses would be added. Its form is a sustainable embodiment of its use, its location and the fact that it sustainably brings hundreds of thousands of people a year to the *Gherkin* Estate. Here is a site and an estate which truly gives *more bang for its buck* than any other simple office development.
- 6.32 Second, we now know that the UK is entering its deepest recession for generations. Of course, this case stands or falls on its merits and the grim facts of the pandemic and its aftermath shouldn't alter that fact. The economic impacts are an important material consideration in this case and the SoS has specifically been asked to be advised about them. It is therefore appropriate to note that the powerful economic and symbolic impact of this proposal, and the message of confidence in the City and its more rounded future, are bound to be given more weight in the likely circumstances of recession and the need for economic but also social and educational recovery.

**Six:** *It meets those needs in a F+P building which is also of the highest architectural quality.*

## Introduction

- 6.33 The written word alone is not adequate to describe this building's quality. We have therefore sought to explain and explore its architectural quality through larger scale models, highly accurate visual representations and moving images, including images from within the top of the building itself. We have ensured that this proposal has been submitted to a form and depth of scrutiny never before seen at a public inquiry of this nature<sup>333</sup>. And we are confident that the City's considered view of this building as of internationally high quality is an accurate one. That is not a surprising conclusion.
- 6.34 As above, this building has been produced by the same hand and process as the *Gherkin* whose site it shares. The Mayor asserts that the *Gherkin* is a building which shows clarity and technical dexterity, that it is a building of great architectural integrity; rigorous and lyrical<sup>334</sup>. These are correct assertions. The *Gherkin* is F+P's greatest achievement. He would do nothing to harm its importance or beauty or the strength of its legacy. And whenever a city or a nation has called upon F+P to produce

<sup>330</sup> See Harrison Proof [CD 13-8] section 5.17; Sustainability Statement [CD 1-20]; and Appellant's notes on BREEAM [CD 19B-17] and Sustainability [CD 19B-32] and XX Green by Turney. This proposal should not be turned away as a result of the evidence of two witnesses who prefaced every answer they gave on the issue with the caveat *I'm no expert on sustainability!*

<sup>331</sup> Themselves in this context a form of *public transport*. Most other Cluster buildings hide a concrete core also containing lifts.

<sup>332</sup> The final specification to be adjusted to be compatible with the highest and most sustainable technology available at the time of construction and with further building-integrated transparent PVs. It would be optimised to reduce the internal solar gains and thermal conduction, without compromising the daylighting and external views. Photovoltaic panels (PVs) are incorporated in the south facing glazing of the upper parts of the dome.

<sup>333</sup> And we have done so with the help of all parties at a time when physical presence at an inquiry has been impossible.

<sup>334</sup> CD 15-3 para 3.3.8



architecture of the highest order, symbolic of its ambitions and hopes, it has delivered.

- 6.35 Of course, neither of these facts removes the need for this proposal to undergo the most rigorous of scrutiny. And when close scrutiny is applied to F+P's body of work and then also to this building, it is immediately apparent the same very high quality and rigour that marks its best and most iconic work is at play here<sup>335</sup>. And that, in the circumstances of this case, the F+P process has resulted in a building of very high quality: a profoundly bold building which still maintains an underlying gracefulness.
- 6.36 The Inspector was careful to ask each of the relevant witnesses to identify what about the buildings underpinned their assessment of quality. The evidence<sup>336</sup> in support of the quality of the building was careful, considered, based in academic and practical architectural learning and was internally consistent. Their conclusions were not mealy mouthed or *on balance* but clear that this was architecture of the highest calibre. The Inspector took a careful note of their answers to his questions on this point. We rely on those answers<sup>337</sup>. On the other hand, neither the Mayor nor HE analyse the quality of the proposal in terms of its architecture in any systematic or policy driven way at all<sup>338</sup>.
- 6.37 The Mayor's analysis of the architectural quality of the building in context was shown to be not balanced, fair or accurate<sup>339</sup>. That means it ought to be treated with extreme caution. Further, in a unique context, where judgments on scale, appearance and juxtaposition on the skyline are likely to need expertise that reflects that context: his witness was in truth a novice. The suggestion that the building would better suit Nevada or an Eastern European totalitarian state was ill-judged, and cringeworthy<sup>340</sup>.
- 6.38 Aside from these assessments, the Inquiry has also had the benefit of others with profound expertise of development in the unique context of the City of London. There are carefully argued letters of support<sup>341</sup>.
- 6.39 The London Review Panel assessment of the proposal on the other hand was undertaken by a selected panel with no experience of the City or the City context at all. It is not a thorough or coherent piece of work. It is not evidence based. It is truly extraordinary that not a single member of that Panel was chosen to have their evidence tested in this forum by the Mayor. It is also notable that there is not even a single representation or letter from any one of the chosen Panel seeking to support their view at this inquiry. The Mayor deliberately chose to go outside the ranks of that Panel to support the reason for refusal based on their assessment.

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<sup>335</sup> But as Inspector Gray used to remark *a good architect doesn't guarantee you a good building, but a bad architect will never give you a good building. So, having a good architect whose completed buildings you can go and see and touch and appreciate is a good start.*

<sup>336</sup> of Harrison, Tavernor and Miele. Mr Richards also identified the building as being of *World Class* and then he explained why from the position of one who knows the Cluster better than any.

<sup>337</sup> Those relevant answers are transcribed in full in Annex 2

<sup>338</sup> Dr Barker-Mills and Mr English who rely instead on the evidence of Ms Adams, whose evidence was neither fair nor balanced

<sup>339</sup> As Ms Adams was driven to accept in XX

<sup>340</sup> CD 15-3, para 5.3.3.5

<sup>341</sup> CD 19F-3, CD 19F-4 and 19F-4A from Paul Finch (formerly head of CABE and editor of the Architectural Journal) who has given expert evidence in support of many of the exemplary tall buildings in the Cluster including at inquiry and whose assessment of the quality of the architecture is compelling, and from Peter Murray (founder director and curator of New London Architecture and its annual London Tall Building Survey) whose expertise and knowledge of the City and of tall buildings is clear, who is not an uncritical supporter of all tall buildings by any means, and who has visited the model space at the Gherkin and produced a visually annotated video in support of the proposals from his independent standpoint. His analysis of the beauty of the creation of city streets at the base of the building is especially insightful. See also full closing p20 for a link to the video.



## The Buildings, their elements and their context

### Introduction

- 6.40 The proposal would add two fine buildings and two open spaces of great quality to the City. In architectural terms, although the proposal is exuberant in terms of its use, it would be simple and elegant. The *Tulip* itself has an understandable tripartite structure, a clear base, middle and top. It has elegant proportions and a rational organisation of function with the viewing/cultural and learning space at the top held up and fed by the *stem* and grounded by the base which has a grandeur, but which actually touches the ground lightly. These are not complex or difficult relationships. Indeed, they are not novel concepts<sup>342</sup>; though the way they have been addressed here is innovative, sustainable and elegant.
- 6.41 The Pavilion building is a quiet masterpiece. The public realm is self-evidently enhanced. Of course, *we murder to dissect*<sup>343</sup> when examining buildings and building forms.

### The Flower

- 6.42 The building's form reflects its function but does not do so in a brash or naïve way. That is so of the building as a whole but is particularly evident in relation to the top of the building. It is as understandably F+P as Lord Foster's handwriting. And what he has produced is a building which derives from the City and its ambitions for itself. The *flower* element of the building is gently curvilinear and picks up the form and detailing of the upper parts of the Gherkin. The family resemblance is clear; both buildings speak the same language<sup>344</sup>. Also clear is the skill and dexterity employed in the modelling of the top of the building.
- 6.43 The *flower* is axially symmetrical as was explained carefully to the inspector<sup>345</sup>. Its main viewing gallery provides the axial frame to the west with the oriel windows placed on and around this axis in the other directions. This is a deliberate and important part of the entire *parti*. One can see it evolving organically through Lord Foster's early and more developed sketches of the proposal. It is a functional and structural move which as the contextual models make clear will, when seen, be immediately understandable and rational. The building (like the *Gherkin*) is designed in all dimensions and in all parts as a deliberately directional building.
- 6.44 Thus, the Gherkin has a circular plan form, but is in all other respects a profoundly directional and asymmetric building. Although circular in plan by floor, on its vertical axis there is no symmetry and in its all-important articulation and materiality, its visible form is wholly and deliberately asymmetric to reflect the different weather forces faced by the different parts of the structure.
- 6.45 This axial symmetry also allows the viewing gallery to *address* the main part of the Cluster to the west and in particular to give close up views of the Stirling Award-winning *Gherkin* from above. The view of the fine tracery of the roof structure of the top of that special building seen in combination with the Cluster (even virtually) alongside the balance of the Cluster can be seen to be breath-taking. This will be a view and a part of the City that will *delight the senses*.

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<sup>342</sup> They differ little from the ones Wren would have understood

<sup>343</sup> Wordsworth, *The Tables Turned*

<sup>344</sup> But as in many families: they do a different job

<sup>345</sup> By Mr Harrison

- 6.46 From the ground, where the main viewing gallery can be seen and appreciated, it will be well understood that it addresses the powerful body and mass of the Cluster to its West. It is of a scale and form and clarity that appropriately reflects this function. The oriel windows contain different functions and serve other purposes, and their location is on a viewing gallery also logical and understandable. In longer distant views, as the models and accurate visual representations make clear, the resultant form of the *flower* is not one that ever reads as uncomfortable or as irrational. The moving images are particularly relevant in this regard because movement allows the human brain to see and appreciate shape in 3D. That experience can also be replicated to a degree by moving around the context models<sup>346</sup>.
- 6.47 The absence of symmetry on all axes for a building experienced in the round (rather than only frontally) is in this context not disturbing or even potentially harmful in the real world, as the video of the model shows. Its top is a place to be experienced three-dimensionally as a celebration of the buildings and panorama that surround and define it<sup>347</sup>.

#### *The stem as architecture*

- 6.48 The *stem* of the building again reflects its function. It does not follow an office typology or materiality. It reflects in this respect the need to diversify uses and the symbolising of that change. The choice of material was (like the project as a whole) driven in the first instance by sustainability: concrete represents a fundamentally more sustainable material for the *stem* than any other.
- 6.49 The material also reflects the more public use of the building and picks up on the use of stone and cement in many of London and some of F+P's great public or quasi-public buildings. Cement is after all an ancient stone-based building material, used for public buildings since ancient times and more recently put to great effect by F+P in the Millennium Bridge, Duxford (listed as Grade II\* in the adjournment) and in the Jubilee Line stations at Canary Wharf.
- 6.50 Suggestions that the *stem* is not architecture or is mute are wildly wide of the mark. The *stem* speaks F+P. This is architecture of great quality and execution. F+P has produced their largest ever scale model to illustrate both the base and the *stem* of this building in detail which allows no hiding. It discloses that the criticism that the *stem* of this *Tulip* is bland, neutral non-architecture to be wholly and fundamentally mistaken. It is elegant and when read with the rest of the building or in part, proportional, purposeful, carefully articulated and honest.

#### *Impact on the Image of London and the Cluster*

- 6.51 The height of the proposal means that it will be seen across London. The London skyline is deliberately diverse and varied. As such it does not have one character which falls to be protected and is different from many European capitals<sup>348</sup>. That doesn't mean that the London skyline as a whole is insensitive to change. Hence the LVMF. This inquiry has been exploring it in a particularly narrow compass. That that is so is instructive in itself. The *Tulip* will be seen in and will engage the visual management Guidelines in many of the 27 LVMF images. No harm is alleged of any of these beyond V10A, and (more latterly) V25. And that is not surprising when that impact is explored in the round.

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<sup>346</sup> See also full closing p24 for a link to the video

<sup>347</sup> More than any other single issue, the assessment of the quality of the architecture of the top of the building in 3D across the City and beyond, requires an expert understanding of them in 3D and then also the locus in quo.

<sup>348</sup> See Neil Holt in Heron Tower [CD 9-10] para 15.10 p 101

6.52 Four things are very clear from such an exercise:

- a) The *Tulip* sits at the heart of the Cluster when explored in a three dimensional sense.
- b) It qualitatively adds to the Cluster in the views in which it appears.
- c) This constitutes a clear enhancement overall to the Image of London which is sought to be preserved by the LVMF.
- d) This ought to be a powerful material consideration when seen in the round.

6.53 The City has addressed in full the suggestions of an inconsistency with a *curation* of the Cluster. The reality is that the Mayor and HE's cases on the *jelly mould* is vastly overstated. That the City maps constraints in 3D to guide its analysis of tall building proposals is entirely appropriate. But to elevate a tool for assessment to the status of policy or akin to policy is misconceived. The modelling can only ever serve a purpose of an initial steer. It cannot dictate the outcome of an application which must be assessed on its merit and in detail - as this proposal has been. The modelling has not been consulted upon or formally adopted, because it is not policy or close to it. It cannot drive the outcome that the Mayor and HE suggest it should.

#### *The Base*

6.54 The base of the building is gently splayed to reflect its function and to house the entry to the restaurants and bars. It is transparent, articulated and adds great interest. The building touches the ground lightly. It is smaller in area than the *Gherkin* or the *Pavilion* and is very light in feel. The structural buttresses add a touch of drama and strength but the feel overall is not of a building that is in any way oppressive and the gentle curves of the building not only reflect and answer the curves of the *Gherkin* but they are welcoming and open in gesture. The building and the space around it are a powerfully better solution to the leftover corner than the existing 20 Bury Street and its place to park street cleaners<sup>349</sup>. The entire structure has a haptic, powerful but *want to go in* character about it, which is self-evident on the photograph.

#### *The Pavilion*

6.55 This is a building which repays attention. It masquerades as a background building. But it's much better than that. All of its responses to context are simple but when these responses are seen in the round, the building does many things very well indeed:

- a) It completes and restores the street line along Bury Court and St Mary Axe: a criticism of the impact of the *Gherkin* when first granted permission.
- b) It reflects and responds to the circular nature of the *Gherkin* in the way that the existing space/ street of ramp do not: it encloses the *Gherkin* where appropriate and then releases it, creating intimate moments and streets as opposed to spaces that bleed away.
- c) It provides a very well-designed large piece of public realm at roof level, easily accessed from the pocket park.
- d) It is visually very permeable and creates a light high quality enclosure to the area but also a marker to the wider area by the way it turns the corner onto St Mary Axe adjacent to the new Undershaft open space.

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<sup>349</sup> See Peter Murray's analysis of the creation of a City Street.

- e) It subtly functions as the service entrance to the whole estate and public entrance to the *Tulip*.
- f) It is also written in Foster's handwriting, self-evidently and self-assuredly.

#### *Public realm*

- 6.56 The one oft stated and unmissable criticism of the *Gherkin* Estate relates to its public realm at ground level. The creation of its, then required, large *street* of vehicle ramp and associated ill-defined space onto St Mary Axe, its separating and hiding wall and the general lack of structure of its wider open space mean that its immediate setting is not as attractive as other City buildings such as F+P's Willis Building or as attractive or as animated as originally intended<sup>350</sup>.
- 6.57 The proposal allows this to be addressed. The very ugly, visually and physically disruptive ramp and wall along the entirety of the eastern facade are removed. Their loss is a clear and obvious structural benefit of the proposal which unaccountably has been mislaid by critics of the scheme<sup>351</sup>.
- 6.58 In its place will be provided a Pavilion of high quality and permeability which will be a much better companion to the Gherkin than *Ramp Street*. Its entire rooftop will be given over to public realm, again of high quality with unrivalled views of the Gherkin, the *Tulip* and the Cluster beyond and around.
- 6.59 Providing public realm flexibly and innovatively in this way is now recognised as sensible and appropriate. Suggestions that the space so provided in this case should *not count* towards public realm provision are both incorrect and inconsistent with up-to-date policy. The proposals also allow for the public realm as a whole to be better defined, for a pocket park to be created which provides a much more fitting place for the plaque remembering those who perished in the IRA bomb.
- 6.60 Overall, the public realm is quantitatively enlarged and qualitatively transformed for the better as a result of these proposals. And yes, there will be more people in the plaza, many more. It will be a vital and vibrant place 7 days a week, 365 days a year: a lively place, a place for all.
- 6.61 Against this clear and demonstrable enhancement, the unbalanced criticisms of the scheme's public realm appeared small minded and embarrassing<sup>352</sup>. When these criticisms are set against the deliberate failure of the Mayor to even consider the benefits of the loss of the ramp, its walls, 20 Bury Street and the underused areas of the square space that surround it, the Mayor's analysis is shown to be a partial and unreliable critique.

#### *Conclusion*

- 6.62 This is world class sustainable architecture born of context.

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<sup>350</sup> See Proof of Evidence of Mr Harrison re the proposed pavilion [CD 13-8] p 286

<sup>351</sup> Especially Ms Adams who could give no reason at all for such an unfair approach

<sup>352</sup> Loss of restaurant seating: no evidence of insufficiency and areas secured in new s106.

Loss of 6 or so seats outside the coffee shop: replaced by capacity for scores of benches in a well maintained and close by park, or the upper floor area of the Pavilion.

Loss of the 8 stall max, 2 hour food market: a consequence of the redesign of the public realm, but perfectly capable of being replicated elsewhere.

Too busy, too vibrant: but not enough to sustain even a pedestrian comfort reason for refusal. The model shows the square with the maximum number of potential visitors at the peak of the peak as opposed to the remarkably unscientific and unturned to Figures in Ms Adams' proof.

Ability to house sculpture: unaffected for the entire southern half of the estate and decisively outweighed by the creation of a new cultural draw for over a million visitors.

**Seven:** *Concerns about the nature and extent of heritage harm in this case have been significantly overstated. Applying the correct approach to assessment of harm, there is no harm which is substantial, which is close to substantial harm or which comes anywhere close to substantial harm.*

### **Introduction and approach in summary**

- 6.63 The planning system protects heritage assets. The nature of that protection is now encapsulated in the NPPF and a decision maker who covers the relevant paragraphs will have accurately and appropriately discharged the duties placed on them by statute, convention and policy. Annex 3 sets out a route map of the steps while our opening<sup>353</sup> contained a summary of the correct approach to the issue of where on the spectrum of *less than substantial* harm an impact lies.
- 6.64 Suffice it to say that in order to judge whether there is substantial harm in any case, *Bedford* must be applied. But also, to understand whether harm alleged is close to, or anywhere close to or approaching the upper end of *less than substantial* harm, the *Bedford* meaning of substantial harm, adopted by the SoS, is still the only relevant benchmark. Otherwise the decision-maker cannot properly calibrate where on the spectrum of potential harm impact lies. Any harm to heritage assets must be given considerable weight and importance, but that cannot and does not mean that all harm must be weighed equally. There is a need for discernment, realism and proportion. Otherwise, the balance in NPPF§196 cannot properly be operated.

### **That approach applied in the present case. The nature of impact**

- 6.65 In this case, there is no allegation of direct impact on any heritage asset. The site does not sit within any Conservation Area. The proposal would not harm the fabric or huge intrinsic significance of any designated asset. All relevant impacts are setting impacts and are experienced in views (and often distant views). A correct understanding of the unique context of the City of London and relevant policy is necessary to identify the nature of the impact.
- 6.66 A series of sub-propositions was canvassed<sup>354</sup> on behalf of the Mayor. They are the building blocks of any reasonable assessment of the impact of a tall building in the Eastern Cluster of the City of London. The accuracy of each of them was rightly accepted. They reflect the unique physical, functional and policy position of the City. These sub-propositions are not novel or controversial. They reflect the way that the planning system has operated in the Capital in the last 20 years<sup>355</sup>.

### **The Sub-Propositions**

*I In principle support for a dynamic and growing cluster of tall buildings in an identified part of the City of London is a formal and longstanding element of Development Planning in London.*

- 6.67 This is an agreed position. The appropriateness of that plan-led approach of local authorities to identify areas suitable in principle for tall buildings has been underscored by the SoS's most recent direction in relation to the emerging London Plan<sup>356</sup>. The Development Plan reflects not only the appropriateness of the cluster of very tall buildings but indicates that they should be *attractive and sustainably designed*, that they should contribute to the City's *iconic image* and ensure that the

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<sup>353</sup> Annex 1, para 108-116

<sup>354</sup> with Dr Barker-Mills

<sup>355</sup> See CD 1-66

<sup>356</sup> See the most recent direction re Tall Buildings

City retains its position as a place with an image which is *attractive to significant high profile global investment*<sup>357</sup>.

6.68 The emerging plan maintains that support identifying the planned cluster as *iconic attractive dynamic moving and changing*<sup>358</sup>. And the planned scale of the growing tall buildings Cluster needs also to be understood. The Cluster is planned to grow significantly during the period of the extant plan and beyond. The Cluster has not come close to reaching its final form<sup>359</sup>.

6.69 The support for an iconic high profile cluster of tall buildings is longstanding having been supported by successive plans and EiP Inspectors since before 2002 and reflected in many City, Mayoral and SoS decisions including very recent ones<sup>360</sup>.<sup>59</sup>

*II The location of the planned Cluster gives rise to an inevitable intervisibility between very tall buildings, an iconic and growing cluster and the WHS.*

6.70 This is an inevitable spatial consequence of the first proposition. It is best understood by looking at the scale model of the area. From that model, two things become immediately apparent in a way which 2-dimensional photography does not allow. The first is that the Cluster sits a significant distance beyond the main vantage points of the WHS. One immediately understands the position adopted by previous inspectors<sup>361</sup> as to the importance of the space around the Tower and also the ability of the human eye to appreciate the distance to the Cluster buildings beyond.

6.71 The second is that the spatial geography of the area means that the iconic, high profile and growing Cluster will inevitably be seen (and has been planned to be seen) in the setting of the WHS when seen from the south east and from within the WHS itself. From the Queen's Walk, Tower Bridge, the Inner Ward and the ramparts of the Tower, there will be views of an iconic high profile City Cluster. Without such views, there can be no Cluster much-less a quickly growing and dynamic Cluster. The intervisibility of the Cluster in the setting is therefore as much planned as the Cluster itself.

*III The visibility of an iconic high profile City Cluster and its components is not therefore in principle unacceptable and can take place without harm to the WHS.*

6.72 This is reflected in the development plan and the grants of planning permission for many of the City Cluster buildings. Policy CS7 of the City Plan and its reasoned justification at 3.7.3 acknowledge that the Cluster will be visible from, inter alia, the WHS and proceeds on the basis that such visibility does not as a matter of principle cause harm to heritage significance. This is entirely consistent with the position of the WHC's insistence that the City and the UK should *vigorously apply the concept of clustering of tall buildings so that they do not impact adversely on the OUV of London World Heritage sites*<sup>362</sup>.

6.73 At the time of this encouragement (2007), the Cluster policy was in place and being acted upon, and the intervisibility between the planned Cluster and parts of the setting of the WHS would have been obvious. The conclusion drawn by the World Heritage Committee, by the development plan system and the development control decisions was and remains that the visible intervisibility or juxtaposition of the Cluster

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<sup>357</sup> Adopted City Plan CD19 H-2 para 1 p9 para 2.1, 2.3 and 2.7 p22 and p34

<sup>358</sup> Emerging Plan CD 19 H-3 para 2.4.4

<sup>359</sup> See Adopted Plan CD 19 H-2 at p33 et seq. especially para 3.7.1 and emerging plan CD 19-H3 at paras 3.5.3

<sup>360</sup> See Heron Tower CD 9-9 and CD 9-10; and CD 11-66 generally

<sup>361</sup> e.g. Inspector Gray in the Shard at CD 9-5 at para 16.68-78

<sup>362</sup> See CD 16.5 Tab 35 page 69 Point 4



and the setting of the world heritage site including views from within was not in principle unacceptable or harmful.

*IV Indeed such visibility and juxtaposition with the iconic Cluster are in principle, in heritage and townscape terms, seen by the planning system and planning policy as beneficial because of the unique nature of the City and its relationship to the Tower.*

- 6.74 This sub-proposition is also now an agreed one as on the undisputed facts it must be. However, there is an in-principle difference of approach between the two sides on the issue of impact and harm in this case<sup>363</sup>. The fact is that positive juxtaposition had been (and now remained) the policy of the planning system and of the Mayor for more than a decade<sup>364</sup>.
- 6.75 The Mayor<sup>365</sup> confirmed that the juxtaposition of the Cluster and the WHS were to be seen in principle as positives in heritage and townscape terms, as reported in the many Mayoral reports, and that this position had not changed. It was also accepted for HE that this sub-proposition represented the true position and it was not suggested that HE formally took a contrary view.
- 6.76 HE was a little less clear about the ability of modern city buildings to play a role in enhancing the significance of the WHS as an asset. HE did not understand how that would be possible arguing that *You have to look to the asset and protect what it has*. That position of looking solely to the asset and failing to appreciate the benefits of the juxtaposition with the iconic Cluster explains very much of HE's analysis which stepped significantly beyond the consistent position of HE throughout in this case.
- 6.77 That position is wrong, and the planning system is right. The WHS has a setting. It is wide and unique. It is mostly appreciated in views of, over and from the Tower as a whole. In most respects it is not a setting that resembles that when the asset was constructed. Rather, in terms of the HE setting guidance, it represents a setting which has changed. The document recognises in terms that *settings which have changed may also enhance significance for example where townscape character has been shaped by cycles of change...* The building of Tower Bridge is a good example of such change: change which has the ability to impact on significance outside of the asset itself but in its setting.
- 6.78 The relationship between the City and the WHS in views of and from the Tower is also relevant to and forms part of its significance. Historically the Tower both protected and threatened the proximate City. It was a political, spatial and visual relationship which ebbed and flowed over time. That ebb and flow<sup>366</sup> and an understanding of it forms an important part of the way setting contributes to the character of the asset.
- 6.79 In the post war period, the City struggled to remove itself from the consequences of austerity. It grew but in a mediocre way and its townscape was bland, ugly and uninspiring. There can be no doubt but that this harmed the setting of the great Norman Tower. It, the pinnacle of Norman power, was juxtaposed with mediocrity and drabness.

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<sup>363</sup> It was not expected that a different position would be taken in closing, but in reality it has been advanced at para 70 [of the Mayor's closing]. That is not the Mayor's position. HPQC is in effect asking you to say that the Mayor was wrong to find benefit in heritage terms to the relevant assets from the consented Cluster. HPQC is now replaying the error that his witness fell into, as to which there was not a shred of evidence.

<sup>364</sup> Mr Green was invited to, and then obliged formally to, withdraw that suggestion (following the intervention of the Inspector and a cooling off) and to concede that any view to the contrary was not formal policy. Rather, it was instead his own non-expert and confused position

<sup>365</sup> HPQC with the Deputy Head of Planning at the GLA

<sup>366</sup> HE Guidance on setting CD 8-4 page 4

- 6.80 The historic significance of the relationship between the Tower as a symbol of Norman Power and a once great mercantile City as expressed in the key views of the Tower was affected. The planning system saw the opportunity to improve the status of the City and to create in place of the drabness a dynamic iconic and expanding Cluster of extremely well-designed tall buildings in the setting of the WHS. This represents a deliberate planning of a new cycle of change. A change of the type which HE's documents say can enhance significance.
- 6.81 The potential for juxtaposition of historic importance by enhancement specifically in relation to the Cluster was recognised by the Inspector for the *Shards of Glass*<sup>367</sup>: *In my opinion the Tower's historic character and importance are enhanced by the visitor being able to recognise that the City has evolved and expanded and no longer needs the protection once provided (or the control once exerted) by the Tower. In other words, the vibrant 21st Century nature of the City adds to rather than detracts from an appreciation of the **historic character** of the Tower.*
- 6.82 That is how the planning system has and now still correctly and formally views the impact of the growing cluster on the WHS: as a positive in heritage and in townscape terms. We have already seen that the City Plan identifies the Cluster as iconic, attractive and distinctive and that it can coexist without causing harm to the Tower.
- 6.83 In the guidance on the remaining axial *iconic* view (see below) the juxtaposition of the WHS with the modern city is identified as *the central characteristic of this view*. The relevant elements are described as landmark elements and include Heron Tower and the Gherkin. It is clear beyond chance that in this important view which *embodies most of the OUV of the Tower* the juxtaposition of the best of the old and the best of the new is seen as a positive and *the main characteristic of the protected view*. This concept of the positive nature of the juxtaposition of the WHS and Cluster is also recognised in almost all of the City and Mayoral decisions on the relevant Cluster buildings<sup>368</sup>.
- 6.84 This is important because such decisions almost all post-date the Mayoral SPG which includes the most up-to-date (2012) policy on cumulative impact. Thus, the planning system has formally identified the individual and the cumulative impacts of the cluster on the WHS as in principle and in practice to be positives.

*V The proposal lies within the Cluster, indeed the Mayor asserts it lies within its heart where the support in principle for tall buildings is not limited to office buildings.*

- 6.85 This proposition was also agreed. Planning policy puts the application site within the Cluster. Its position should be judged by reference to the viewing point. From the south, the building appears towards the eastern edge of the Cluster. But, as the model shows, the Cluster is about spatial disposition, function and distance as well as two-dimensional analysis from one view.

*VI There is no policy constraint at all requiring the consolidation of the existing Cluster only to take place by way of new office buildings. Indeed, the reverse is true*<sup>369</sup>.

*VII The existence of the planned and growing Cluster within the setting of the WHS has resulted in a framework of policies better to manage the relationship between the two to avoid or to limit harm.*

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<sup>367</sup> As referred to in the Report by Inspector Gray CD 9.6. Now more usually described in the singular.

<sup>368</sup> CD 11-66 e.g. at p.175 (para 40); p. 185 (para 28); p.446 (para 25)

<sup>369</sup> See CD 19-H2 page 24 and Objective 3; and accepted by Dr B-M in XX Harris QC

- 6.86 This too was not a controversial proposition. It was further agreed that the suite of policies now in place represented the full and appropriate response to the previously expressed concerns of the WHC, and that if the proposal was judged against this suite of policies and material considerations then that would represent a stern test of acceptability in accordance with the requirements of national government and convention duties<sup>370</sup>.

*VIII Protection of the significance embodied in LVMF View 25 is a particular and essential part of that Guidance.*



- 6.87 When the WHC urged the UK and the City of London to *vigorously apply the concept of clustering tall buildings*<sup>371</sup> it also considered the advice of the Joint Mission to London which recommended the statutory protection of the iconic view from the Queen's Walk. This view was identified as iconic because it represented the last unobstructed visual axis and **was key to the conservation of the visual integrity of the Tower**. Indeed, the Mission had urged that in the absence of the protection of this view and the OUV that was embodied in it, then the Tower might qualify for *Danger Listing* but that statutory protection of the iconic view and the provision of a management plan *could be considered the benchmarks for a potential removal of the property from the List of World Heritage in Danger*. The importance of the view to OUV is now reflected in the suite of documents which provide *appropriate and adequate protection* and reflect the duties of the Convention.
- 6.88 This view is protected by the London Plan and its LVMF by a geometric cone of protection and qualitative management guidelines (see below). It is the only view so protected and the only one ever identified as needing such protection by the WHC. It is also where the full width of the gap between the Cluster and the [White] Tower is most readily apparent. Elsewhere the inevitable intervisibility and visual overlap is more at play. This is the only LVMF view referred to in the WHSMP<sup>372</sup>.
- 6.89 The ToL Setting Study makes it clear that the View 25 views *exemplify many of the cultural qualities that give the Tower its OUV*<sup>373</sup>. It too sets tests for its protection. The Queen's Walk view is rightly identified as iconic, of central importance and as being the *home* for much of the setting significance of the WHS. Of course, the significance of the [White] Tower ranges much wider than its setting or even this part of its setting and all of that intrinsic setting is untouched by the proposal, 730m away.

*IX If the significance embodied in view 25 is left unharmed or enhanced as a result of the proposal that is a very powerful material consideration.*

<sup>370</sup> XX English the matrix of policies includes the NPPF, the PPG, the London Plan, the NLP, the SPG on WHS, The Management Plan, the Setting Guidance. Critical given the WHC concerns have all now been met.

<sup>371</sup> CD 16-5 tab 35 p69

<sup>372</sup> CD 8-23

<sup>373</sup> CD 8-22 Including its landmark siting on the River Thames, its role as a symbol of Norman power (represented in this view by the dominance of the White Tower) as an outstanding survival of Norman keep architecture in England and as the model example of a medieval fortress palace.

- 6.90 HE struggled with this proposition but on reflection accepted that it would be significant. As the proof<sup>374</sup>, the LVMF guidance has been framed to illustrate and to protect the OUV in each view<sup>375</sup>. If View 25, the iconic view invested with or embodying much of the OUV is left unharmed, then it follows that a key part of the significance attributable to the setting of the Tower **is simply not in scope to be drained away**<sup>376</sup> in determining whether harm (if any) is at the upper end of less than substantial or towards substantial harm.
- 6.91 If View 25, the iconic view central to the visual integrity of the OUV is left unharmed, then the assertions that we are close to very much if not all of the significance of the asset being drained away do not stand up. It is that realisation which has led to a fundamental shift in HE's stance. The evidence is clear and not contested. Prior to its Rule 6 Statement, HE did not claim or allege any harm at all to View 25. That includes a series of pre-application meetings, the consideration by case officers and the LAC, and the HE CEO at the City committee in April 2019.
- 6.92 It is inconceivable that if there had been a hint of meaningful harm to the *iconic* view that such an allegation would not be voiced. If there was thought to have been harm to the significance achieved via the iconic view, then that would have been raised. The importance of View 25 was clearly understood and stated in the documents but no harm to it is alleged at all. The Mayor's finding of harm<sup>377</sup> in this view was inevitably coloured by his inability to notice the difference between his own private view as a non-heritage expert and the Mayor's clear (and continued) policy.
- 6.93 If the setting and significance of the ToL in View 25 is enhanced as a result of this proposal, then that too would be a powerful material consideration. It would be entirely consistent with the in-principle policy position, as applied in the many cluster buildings to date; and would need, as a matter of law, to be given significant weight and importance in the overall balance. An enhancement of the *iconic* view of the WHS would be of profound importance.
- X. *The significance embodied in View 25 is on a proper consideration of the tests and the evidence left unharmed: in fact, it would be enhanced.*
- 6.94 View 25 is a townscape view. Its operative policy is in the NLP which has been strengthened in the protection it gives WHS consistent with WHC guidance. NLP Policy HC4 requires that Townscape Views *should be managed so that the ability to see specific buildings or groups of buildings in conjunction with the surrounding environment...is preserved*. That generic test would be met by the proposal. The ability to see and understand the specific buildings protected would be unimpaired.
- 6.95 The LVMF guidance would also be met. This provides that development in the background should relate positively to the ToL. For the reasons set out above the relationship created on the skyline and with the cluster would be positive. *From all assessment points, [25A1-3] the [WHS] should continue to dominate its surroundings*<sup>378</sup>. There are two clues to the meaning of this guidance. First the LVMF requirement to continue to dominate; second that it should dominate its surroundings. The proposal would pass that test as it would not affect the WHS dominance but be read as a distant Cluster building of great quality.

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<sup>374</sup> Dr Barker-Mills Para 9.19 and 9.44

<sup>375</sup> Dr Miele who drafted the guidance also gave evidence that the views and particularly this one had been amended specifically to address the WHC concerns expressed back in 2009

<sup>376</sup> Using the phrase from *Bedford*

<sup>377</sup> By Mr Green

<sup>378</sup> CD8-14 p24

- 6.96 The Settings Guidance test<sup>379</sup> which requires the Tower to be seen to lie on the edge of the City, not *lost* in the City, would also be passed. This underscores the LVMF test as its overall aim is *ensuring that the Tower is the dominant building from within the local setting* (which does not include the Cluster at all). When the View 25 triptych is looked at overall, none of the tests set for its protection would be breached.
- 6.97 Instead, the addition of a powerfully accomplished building would consolidate the iconic Cluster. As the distance from viewer to object is fairly constant in all 3 View 25 views, parallax is less obvious and the proposal would never come close to reducing the continuing dominance of the Tower over its surroundings (see video of dynamic views from View 25). In principle, this addition is capable of enhancing the setting, adding another positive layer to both the townscape and the relationship between the City and the Tower, enhancing the Cluster, and contributing to the juxtaposition of the best of the old and the new which is the key feature of this part of the view. This enhancement would be a significant and historical benefit of the proposal.

*XI. Impact on the significance embodied in View 10A1 falls to be seen in context and in the context of Bedford. There is no realistic prospect of anywhere close to substantial harm in this particular context.*

- 6.98 Views 10A1 and View 10 in the Setting Study are both bridge views, not LVMF Townscape views, of a much wider River Prospect. They are not iconic in the same sense as the Queens Walk view, are not protected geometrically nor identified by WHC as requiring such protection. They are kinetically experienced and, unlike other LVMF views, can ONLY be experienced by someone who has reached them kinetically and on foot. This is important as, for those travelling from the south, the relationship between the Cluster and the ToL in general, and the White Tower in particular, will be clear and understandable. Because the viewer is walking towards both the asset and the proposal at an angle, then the great distance between the asset and the Cluster will be apparent due to parallax<sup>380</sup>.
- 6.99 The human eye and brain have evolved to see and understand distance in this precise context: it is a hugely sophisticated tool. The way in which the Cluster and the White Tower alter their position across the bridge has two consequences. The Cluster will be seen and understood as the distant object it is, considerably beyond the multi-layered WHS in the foreground. The relationship between the City and the WHS will alter quickly and the Cluster will move behind the Tower: a relationship which is planned, accepted, appropriate and beneficial in context. That gradual relationship is a function of the location of the bridge, the route taken over it, and the positions of the Cluster and the Tower. It means that small adjustments in where you stand would allow you to experience and understand the relationships in different ways, but there would be no confusion as to the relative positions of the main elements.
- 6.100 Travelling south, away from the City, those who choose to turn around will understand as they move onto the bridge that the City sits right behind the Tower creating a juxtaposition of the old and the new that no party identifies as harmful. It is an inevitable intervisibility and the effect of parallax means that the planned Cluster removes itself from the White Tower and long before the end of the bridge the full separation of the City and the Tower is seen.
- 6.101 This is the context for the Management Guidance for this view. This advises that proposals *should not compromise a viewer's ability to appreciate the OUV of the WHS*. It then considers how such compromise might occur. *Development should not breach*

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<sup>379</sup> CD8-22

<sup>380</sup> For link to dynamic videos of views see full closing



*the skyline of the four towers of the White Tower or its castellations. Some visual separation should be retained between the upper parts of the White Tower and the emerging cluster of tall buildings in the background.*

- 6.102 Those detailed examples of how harm might be caused do not apply here. The skyline of the four towers is not breached or close to it. In addition, some visual separation between the upper parts of the White Tower would be retained. The proposal lies on the same line as the Heron Tower and would not close the width of the gap between the Cluster and the White Tower. The harmful interventions envisaged by the LVMF do not arise.
- 6.103 The Appellant has acknowledged<sup>381</sup> some limited harm to the OUV and the significance of the WHS in View 10A1 from the building's height and form. The harm is slight however because looking at the relevant tests to be applied:
- a. Some visual separation is maintained;
  - b. There is no breach of the skyline of the 4 towers;
  - c. The separation will be seen and understood in 3 dimensions and it will be apparent that the Cluster is nearly 1 km away;
  - d. Visual separation can be extended simply by moving a very short distance to the south if coming from the north and cannot be unseen if coming from the south;
  - e. Further, the iconic view will at least be left unharmed, and in their clear opinion enhanced resulting overall in a beneficial position.

### Overall conclusion on harm

- 6.104 Neither the position of the Mayor, that harm to the WHS lies **at** the upper end of less than substantial harm from setting impacts to the Tower of London, nor the HE view that the setting impacts on WHS and would be **approaching, (but not at), the upper end of less than substantial harm** are credible. Both rely on mistaken, unsubstantiated and, in the case of HE, new allegations to this high level of harm. The positions taken by the City and the Appellant are more proportionate and in line with the NPPF.

### The issue of cumulative harm

- 6.105 The approach taken to cumulative harm by the Mayor and HE was elusive. That is because they recognised the truth of the proposition that the juxtaposition of the growing cluster of tall buildings AND its consequent impacts were seen in principle as benefits by the planning system. Eventually, HE revealed that its position was that *in views to the south, the WHS was vulnerable to further impact and that in the inner ward there was risk of cumulative harm.*
- 6.106 The approach to be taken to cumulative harm to heritage assets and WHSs in London taken in *Citroen* is correct. That is, to make the assessment of the impact of the proposal on relevant assets and their existing settings first, then that existing harmful buildings should not be used as justifications for further harm, and finally a consideration of whether there is any additional harm from accumulation, especially with other harmful buildings. Regarding *vulnerability* of views from the south, that can be dealt with entirely by the statutory assessment. The relationship between the Cluster and the WHS is accepted in principle to be **beneficial** and in fact none of the cluster buildings individually has been found by the planning system to cause any such harm.

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<sup>381</sup> Miele Proof CD 13-7 at 8.18-19 and 18.9 at Tavernor proof CD 13-15 at 5.23



- 6.107 Further, that the SOUV indicates that tall buildings to the east of the City have caused erosion to the OUV of the WHS cannot be relied on as part of a cumulative harm case. That cannot and does not indicate buildings in the Cluster. First, WHC were actively and vigorously promoting the Cluster at the time. It was seen as a good for the WHS. Second, the only cluster buildings then were the *Gherkin*, *Heron* and *T42*. They are not identified as causing harm and were the beginnings of the suggested Cluster. The tall buildings referred to in the MP are One America Square and the Leonardo Hotel to the East of the City and hugely conspicuous within the four turrets of the White Tower. The only other hints of any harm from tall buildings in the MP relate to non-cluster buildings.
- 6.108 From the Inner Ward, the planning system has not identified any harm in principle from the Cluster. Indeed, it has almost always been identified as positive in heritage terms including to the inner ward and St Peter ad Vincula.
- 6.109 HE identified three buildings which it thought caused harm<sup>382</sup> both to views of the Inner Ward and to the setting of St Peter ad Vincula: Heron Plaza, the *Scalpel*, and unfinished 50 Fenchurch Street. However, the planning system has NOT found harm from these buildings, but rather benefit, and one of them has not even been built. The SoS should only find a harmful impact from these buildings if there is clear and convincing evidence that the planning system is incorrect. There is no such evidence and no analysis or evidence to suggest that the Mayor has altered his position, or any development plan or other relevant document identifying existing *detractors*<sup>383</sup>.
- 6.110 The SoS cannot and should not find that the planned Cluster buildings cause harm where the development plan and individual decisions have overwhelmingly found benefit. The proper question is: does the proposal cause harm to significance of any asset by reason of its impact on its existing *Cluster* setting? For the above reasons, including the careful evidence of the City, it would not. Even if the SoS found existing harm from the planned Cluster, any **additional** impact, given the visibility, scope size and presence of the Cluster would only be limited.

### The spectre of *Danger Listing*

- 6.111 The threat of *Danger* status being imposed was raised and it was said that the body that makes that decision is threatening it here. That was wrong. The true position is no such threat<sup>384</sup>.

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<sup>382</sup> Mr English

<sup>383</sup> This is not a Haverfield Towers case where the development plan, the management plan and other documents specifically identified specific buildings as detractors – see *Citroen* CD 9-4

<sup>384</sup> The key points are:

- a. ICOMOS, not the executive body, has objected to almost all of the tall buildings near WHS sites over the last 20 years. This includes Heron and the Gherkin. It has objected here too [CD11.18].
- b. Recent objections are based on the ICOMOS guidance note (reflected in the Mayoral SPG) which does not allow for design quality to be taken into account and pre-dates *Bedford* (accepted by Dr B-M in XX RHQC; also accepted by HE in Holocaust Inquiry). Its matrix doesn't work in an NPPF framework of harm. Design quality wasn't taken into account in this case either: though it was said to be very high.
- c. The WHC did warn the UK government about in danger status back in 2012 because it did not have a MP, hadn't protected the iconic view and did not have a buffer (see Mr English Appendix 2, Tab 35).
- d. The UK government, HRP, HE and all other stakeholders take the view that the WHC concerns have been met by the existing policy matrix and protection. So does the WHC and it doesn't press for a buffer given the contents of the Settings Guidance note (accepted Mr English XX RHQC).
- e. The WHC has not even considered it necessary to consider the WHS at all since 2012, and it is NOT saying that it is at threat (again accepted Mr English XX RHQC).

Which is why Dr Barker-Mills was so guarded in his response to you.

## Other heritage assets

- 6.112 The main points on other heritage assets raised in evidence are addressed in detailed responses in the table in Annex 4<sup>385</sup>. The approach that we have adopted to the impact of a tall building *at the heart of the Cluster* reflects that of the SoS, the Inspectorate and the City for decades. It reflects the fact that the City and the Cluster in particular necessarily presents juxtaposition between new (and tall) buildings and heritage assets. There would be no harm to any of these assets; there would be an improvement to Holland House, as a result of improving the experience of the public realm and opening up more views from the west; to Bury Court<sup>386</sup>, by removing the existing barrier and underground car park and opening up the courtyard to a new publicly accessible building; and to Dixon House<sup>387</sup> from an enhanced distant view.
- 6.113 While other cities in the UK have juxtapositions within them, nothing comes close to the nature, scale and number found in the City. Those juxtapositions are recognised as an essential part of its character and an existing element of the cityscape. National policy must be applied with this context in mind. There can be no *in principle* harm occasioned from mere juxtaposition: indeed, there is a major and planned benefit.
- Eight:** *On any realistic view of the nature and extent of harm in this case, the public benefits significantly outweigh any harm. Planning permission should be granted.*
- 6.114 The public benefits of the proposal are self-evident, weighty, and largely agreed in nature and quantum. They go to the heart of how the City seeks to see itself in spatial terms, and in defining its function.
- 6.115 First, the proposals deliver very substantial economic benefits. From a small *windfall* site, over a million visitors would be drawn to the City, bringing direct and indirect expenditure to a component of the capital's GDP which is under threat. These benefits must weigh heavily. That the Mayor gives these benefits limited weight goes to the credibility of his case. At no other planning appeal would the Mayor seek to reject a contribution of over £30m per year of *value added* from construction and operation alone.
- 6.116 Second, further economic benefits would be derived from the diversification of the City that will be caused directly and further stimulated by the *Tulip*. New places for the existing working population to enjoy, but also a draw for new visitors to come to the City.
- 6.117 Third, there would be profound social benefits. The proposals would contribute to the *rich mix* that defines central London, and then projects an image of openness and inclusivity. And through the education and community provision, the *Tulip* will speak directly to London's children, drawing them into the City. Such a benefit is hard to measure but must weigh heavily in any planning balance. The Mayor does not challenge the scale of the educational and economic benefits. He calls no expert evidence on them. His evidential silence discloses its hollowness. Worse still, the Mayor fails to recognise that the benefits of this proposal chime directly with his planning and wider policies: a point which weighs heavily in favour of the proposal.
- 6.118 Fourth, this proposal delivers a piece of world class architecture. That is a direct environmental benefit in itself. It is a building of the highest level of sustainability; taking up the smallest portion of previously developed land; greening and enlivening that parcel of land; building upwards honestly and with the smallest carbon footprint

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<sup>385</sup> To Appellant's closing CD19B-45

<sup>386</sup> 38 St Mary Axe CD19B-28 Heritage SoCG p4 para 2.7

<sup>387</sup> At 72-5 Fenchurch Street/1 Lloyds Avenue

possible; and delivering a building which through its lifetime will perform, by its BREEAM assessment, in an *Outstanding* way environmentally. This is all delivered in the heart of the City. It is the definition of sustainable development. The architecture is far more than sustainable design. It is beautiful in its own right, carefully conceived and would be brilliantly executed. It would create a symbol: of openness, inclusion and confidence in the City. The uses that this symbol contains bring economic, educational and community benefits that range beyond their direct functional impacts.

- 6.119 Fifth, the proposal will enhance the townscape including from LVMF View 25.A. That would be a benefit to London's townscape and a benefit in heritage terms, capable of outweighing such harm as is found to exist in View 10.A. Even if the Inspector finds that the *Tulip* would not bring about benefits in that view, the preservation of that iconic townscape view is a benefit of the proposal. On any realistic view of the potential for harm, such benefits comprehensively and overwhelmingly prevail.
- 6.120 The Mayor's balancing exercise is fundamentally wrong and was exposed as a *personal view* that the Eastern Cluster is harmful. But the difficulty is that he does not identify any existing or consented harm. The growth of the Cluster has the approval of his existing and emerging plan and so the personal opinion leads to too much weight to the *harm* side of the scales; his disparaging approach to the benefits disproportionately lightens the other side of the scales. His planning balance is fundamentally unreliable.
- 6.121 On the s 38(6) test, the proposed uses are not just consistent with but actively supported by relevant policies. The principle of a tall building is acceptable. There are no other development control objections. The only issue which arises is whether the proposal accords with the development plan by virtue of the limited harm identified to the Tower.
- 6.122 For the above reasons, that limited harm is decisively outweighed under NPPF paragraph 196 in discharging the heritage statutory duties. Once this has been resolved in favour of the public benefits, there is no realistic way in which a decision should frustrate that conclusion. There are three possible conclusions, all of which lead to a grant of permission.
- 6.123 First, that benefit to the setting of the Tower in View 25 would outweigh the limited harm to View 10, complying with the heritage policies of the development plan<sup>388</sup>.
- 6.124 Second, even if the heritage policies are breached, the proposal accords with the development as a whole because the breach is minor (at the lower end of *less than substantial* harm) and because everything else in the development plan points firmly towards a grant<sup>389</sup>.
- 6.125 Third, even if a breach of heritage policies is found and given such importance that the proposals do not accord with the development plan taken as a whole, then the positive resolution of the paragraph 196 balance, and the public benefits of the scheme, strongly and convincingly point towards a grant other than in accordance with the Plan<sup>390</sup>.
- 6.126 By contrast, there is no credible route to refusal.

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<sup>388</sup> See *Palmer* CD 10-10 and *Safe Rottingdean* CD 10-13 in Annex 3

<sup>389</sup> See Goddard Proof [CD 13-4], Part 7, not repeated in full here but the list is very long

<sup>390</sup> i.e., Mrs Hampson's and the City's analysis

## **7 The case for the City of London as Local Planning Authority (LPA)**

*Its closing submissions, with minor adjustments, are as follows.*

### **A. INTRODUCTION**

- 7.1 Over the centuries the City of London has made a major contribution to national life, as an economic powerhouse and as a centre of excellence in culture and heritage. The City has been able to make and continues to make such a significant contribution because it faces new challenges and opportunities with confidence, flexibility and forward thinking.
- 7.2 Over the last twenty years or so the City has acted as the guiding hand in the development of a Cluster of tall buildings at the forefront of architectural design which has created a dramatic and iconic symbol of London in the 21<sup>st</sup> century whilst delivering the floorspace necessary to maintain London as a World Financial and Business Centre. At the same time the City has conserved its cultural heritage and made it more accessible to a greater number of people.
- 7.3 The City is developing its cultural offer and seeks to make better use of the wide range of facilities available. To this end it is seeking to grow and develop a range of uses which encourage a diverse range of people to make use of the City, particularly at weekends and in evenings.
- 7.4 The City, with its combination of tradition and forward thinking has an excellent track record of seizing on good opportunities when they arise. Although the site for the *Gherkin* was created in tragic circumstances, after reflection, the City was able to seize the opportunity presented and to permit the *Gherkin* - now an acknowledged architectural masterpiece and icon for all London. Then, the City's approach was supported by English Heritage (as was). That was a bold move; the *Gherkin's* success has shown it to have been the right one.
- 7.5 The City<sup>391</sup> wishes to work with the Mayor to improve the quality of the environment and opportunities for all Londoners. The Mayor and the City have shared a common purpose in promoting the Cluster as a centre for business, supporting facilities and for architectural excellence. The development of the Cluster has enabled significant growth in office floorspace in a location which is highly accessible by public transport, whilst protecting strategic views and heritage assets. The Eastern Cluster area was identified with great care to ensure that LVMF strategic views, St Paul's Heights, views of the Monument and the settings of heritage assets were respected<sup>392</sup>.
- 7.6 In this case the City and the Mayor take different views on the application. As a result, the decision now falls to the SoS. The City requests that the SoS should pay particular attention to its views as local planning authority when considering the balancing exercise which is to be undertaken in this case.
- 7.7 The City's position in this case is different from the other parties. Unlike the Appellant, the City is not promoting a scheme with all the financial risk that brings. Unlike the Mayor the City is not defending reasons for refusal. Unlike HE, the City is not focussed on one issue. Once the Mayor had intervened the City could have bowed out and left it to other parties to fight their respective corners. The City decided to participate in the Inquiry so that the SoS would have the benefit of its considered view.
- 7.8 The City is in a position to make, and has made, a balanced judgement as to what is right in the public interest. It has taken great care in reaching that judgement, as is

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<sup>391</sup> As Mrs Hampson said in evidence

<sup>392</sup> See City Local Plan Figure L (Protected views) CD 19H-3 page 117

reflected in the Chief Planning Officer's report<sup>393</sup>. The City did not diminish the importance of heritage impacts - it gave great weight to them. Through its evidence<sup>394</sup>, it has carried out the most thorough analysis before the Inquiry, shared the unparalleled experience of considering planning applications in the Cluster and wider City, and carried out the balancing exercise. The attribution of weight to each factor is careful and measured. With those thoughts in mind, the submissions that follow should assist you and the SoS in deciding whether a new and exciting stage in the development of the City of London should be allowed to proceed.

7.9 The pre-Inquiry directions identified seven main issues. We adopt those as headings for these submissions but, following withdrawal of two reasons for refusal and the focus of discussion at the Inquiry, the central disputes that fall to be determined in this case are:

- a. The extent of harm to the significance of the ToL as a heritage asset (comprising the WHS, conservation area, scheduled monument and LBs);
- b. Whether harm would be caused to the significance of other LBs, conservation areas or non-designated heritage assets;
- c. Whether the public benefits of the proposal outweigh the *less than substantial* harm to the significance of designated heritage assets;
- d. Whether the planning balance comes down in favour of the scheme.

7.10 We come back to these issues at the end of these submissions.

## **B. CHARACTER AND APPEARANCE**

### ***The effect of the proposals on the character and appearance of the area with regard to urban design, townscape and architectural quality***

7.11 As the Mayor points out, the appeal site lies at the heart of the Eastern Cluster<sup>395</sup>. It is in a location which has been identified as being appropriate for tall buildings as part of an emerging Cluster. The Cluster has been curated by the City as a collection of dynamic, sometimes contrasting, and interesting buildings. The fact that the Cluster is now often used in images of London is a tribute to how effective that curation has been. Given the role played by the City's planning department in creating the Cluster, their views on the current proposal should command respect<sup>396</sup>.

7.12 *The Tulip* has been designed as a visitor attraction within a tall building Cluster. In that respect it is different to many examples of elevated viewing platform visitor attractions elsewhere in the world. To achieve its purpose, it has to be eye-catching and yet be seen as part of, and enhancing, the Cluster. *The Tulip* achieves those objectives by adopting a form for the top which has a close relationship with *The Gherkin*, using fluted concrete for the stem, and touching the ground with a structure which responds to the curve of the *Gherkin*. To state the obvious, *The Tulip* is not an office building, and does not adopt the same materials or form as adjacent office developments. The use of concrete reflects construction and function whilst expressing an organic elegance<sup>397</sup>. The concrete can be maintained as explained by the Appellant<sup>398</sup>.

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<sup>393</sup> to the Planning and Transportation Committee CD3-4

<sup>394</sup> Of Mr Richards and Mrs Hampson

<sup>395</sup> Adams PoE 5.5.1, CD15-3

<sup>396</sup> in particular Mr Richards' view that the proposal would enhance the cluster

<sup>397</sup> Richards PoE 7.9: CD14-4

<sup>398</sup> See note produced on 18<sup>th</sup> December 2020



- 7.13 The buttresses and glazed vaults at the base address the curve of the *Gherkin*. The glazing would provide visual vibrancy at ground level. The stem, comprised of three smooth ribs and the fluted recessed strakes, has a strong and dynamic vertical emphasis<sup>399</sup>. The asymmetrical nature of the top or *flower* held in place by the *spoons* adds interest to<sup>400</sup> the quality of the architecture. The delicate glass gondolas add another layer of interest.
- 7.14 In making their attack on the design, the Mayor relies on evidence<sup>401</sup> which takes a different view from his own on the issue of whether the juxtaposition of the Cluster and the Tower is positive, and on evidence<sup>402</sup> of someone who has no experience of working in the unique townscape<sup>403</sup> environment of the City of London. In contrast, the design has been drawn up by those who have great experience and understanding of the City and the Cluster and by the same hand (or team of hands) as the *Gherkin* which has been the subject of so much praise<sup>404</sup>. The design evolved in discussion with the City's equally experienced design team in a way which is consistent with NLP policy D4D<sup>405</sup>, which contemplates either design review or a local *borough* process of design review.
- 7.15 It is acknowledged that the quality of presentation has been exemplary with a high resolution of detail<sup>406</sup>. Much of the criticism of the design rests, in large part, on the argument that the *Tulip* fails, appropriately, to respond to context. These criticism and conclusions are based on a failure to appreciate the nature of the scheme, which to achieve its purpose, must be seen as part of the Cluster, and yet be different and distinctive from the office buildings. To take an example<sup>407</sup> the relationship with the area to the east of the City would be uncomfortable as a result of the *Tulip* appearing to be an observation tower.<sup>408</sup> The *Tulip* is a visitor attraction providing elevated views and would appear as such – that is not a legitimate criticism of the design. It would be a beacon welcoming people to the City.
- 7.16 Much Inquiry time has been spent on considering impact on public realm and examining the relevant policies and strategies. Those policies must be applied to the facts and judgements reached - in undertaking that process it is essential that you have a good understanding of the existing environment, and of the proposals. Whatever view is formed of the existing *plaza*, it is rather bleak, and the ramp giving access to the underground parking and servicing (and the walls associated with it) is a significant detracting feature.
- 7.17 As recognised in the City's OR on the *Gherkin* planning application the proposed *square* around the tower would have little or no visual cohesion in contrast with the circular tower<sup>409</sup> - the round peg in a square hole point. The arrangement also led to the loss of definition of the building line on St Mary Axe<sup>410</sup>, and the exposure of the south side of Bury Court<sup>411</sup>. The proposal addresses a number of those deficiencies in the existing arrangements. The pavilion would provide definition on St Mary Axe and in Bury Court whilst providing a curved response to the *Gherkin*. A similar

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<sup>399</sup> Richards PoE 7.10: CD14-4

<sup>400</sup> Tavernor XX by Inspector

<sup>401</sup> of Mr Green

<sup>402</sup> of Ms Adams

<sup>403</sup> CD19H-2 (Local Plan) paragraph 3.12.1

<sup>404</sup> See CD19B-23 for list of awards

<sup>405</sup> CD19D-27 page 123 (pdf page 137)

<sup>406</sup> Adams – to IQs

<sup>407</sup> Adams PoE 5.6.9 CD15-3

<sup>408</sup> Echoing an observation made by the London Review Panel – CD4-2 page 4

<sup>409</sup> CD11-84 paragraph 10.24

<sup>410</sup> CD11-84 paragraph 10.25

<sup>411</sup> CD11-84 10.50



relationship has been achieved at the foot of *Tower 42* and is worth visiting to appreciate. In recognition of the benefits the scheme would deliver it is included in the City Cluster Vision<sup>412</sup> as one of the examples of enhanced public realm.

- 7.18 The Mayor sought to make much of the fact that there would be a loss of some 88m<sup>2</sup> of public realm at ground level. It is the totality of the proposal which must be considered and 529m<sup>2</sup> would be gained in the roof garden<sup>413</sup>. The Mayor's own policies contemplate that public realm may be provided at an elevated level and yet the Mayor does not appear to give credit for it in this case. Although a great deal of time was spent considering public realm, unfortunately<sup>414</sup> the evidence was incomplete. Not only did it fail to take account of the benefits arising from removal of the existing ramp and associated walls, but also failed to take account of the benefits arising from restoration of the street frontage in St Mary Axe. In the circumstances the conclusions that she reached cannot be relied upon.
- 7.19 The Mayor sought to seize on the comments made by the City's Public Realm Group Manager in a consultation response submitted in February 2019<sup>415</sup>. It is right to say that the response contains criticisms of the scheme, but it is important to understand the basis for those criticisms and to appreciate that they were based on lack of information or lack of clarity, and that those deficiencies have now been addressed.
- a. The concern about capacity<sup>416</sup> and lack of visitor management strategy<sup>417</sup> has been addressed by the production of such a strategy which deals with capacity management<sup>418</sup>.
  - b. The concerns about pedestrian movement<sup>419</sup> have been addressed by the visitor management strategy and reason for refusal 5 has been withdrawn.
  - c. Clarity has now been provided on provision for public access to the roof garden. The system set out in the Section 106 agreement would ensure good access and proper management and a high quality environment<sup>420</sup>.
  - d. The routes would not be restricted to 3m width<sup>421</sup>.
  - e. A greater quantity of public seating would be provided than exists at present<sup>422</sup>.
  - f. The concern about *clutter*<sup>423</sup> in the public realm is addressed by the Section 106 agreement which allows for approval of areas for tables and chairs to serve the café and restaurant<sup>424</sup>.
  - g. There would be no coach drop off<sup>425</sup>.
- 7.20 The *Tulip*, with its familial relationship with the *Gherkin*, and set within the existing and evolving Cluster of distinctive towers would reinforce the character and legibility of the City Cluster as a distinct neighbourhood, and would enhance the appearance of the Cluster on the skyline. The *Tulip* would be part of the Cluster and yet sufficiently

<sup>412</sup> CD8-7 page 9

<sup>413</sup> SoCG paragraph 4.6: CD19B-7

<sup>414</sup> As Ms Adams accepted in XX by RHQC

<sup>415</sup> CD11-52

<sup>416</sup> Paragraph 1 of CD11-52

<sup>417</sup> CD11-52 paragraph 3

<sup>418</sup> Section 106 agreement Schedule 9: CD19B-24

<sup>419</sup> CD11-52 paragraphs 2-4

<sup>420</sup> CD19B-24 Schedule 8

<sup>421</sup> As suggested in paragraph 6 of CD11-52

<sup>422</sup> CD11-52 paragraph 10 expresses the concern. At present there is 210.5m of seating in the plaza. The development will result in a combined total of 246m of bench seating in the plaza and roof garden combined – CD19B-7 para 4.8

<sup>423</sup> CD11-52 paragraph 10

<sup>424</sup> CD19B-24 Schedule 2 paragraph 13.3

<sup>425</sup> CD11-52 paragraph 9. Section 106 Agreement Schedule 2 paragraph 15.6

distinctive in its design to signal a new phase in the development of the City, bringing in visitors and creating a new icon for the 21<sup>st</sup> century. The *Tulip* would be a potent expression of London's creative energy, constant change, architectural innovation, dynamism, and openness to new ideas<sup>426</sup>.

## HERITAGE

### ***The effect of the proposals on the significance of designated heritage assets derived from their settings***

7.21 In order to come to a conclusion on this main issue it is necessary to:

- a. Consider the approach to be taken when assessing the extent of harm to the significance of a designated heritage asset when applying the policy set out in paragraph NPPF§196.
- b. Consider the approach to be taken when assessing impact on the significance of a world heritage site.
- c. Assess the extent of harm to the significance of the ToL WHS.
- d. Consider whether harm would be caused to the significance of other heritage assets (i.e. heritage assets other than the ToL).

*Issues (a) and (b) are addressed in the Appendix to these submissions.*

### ***The extent of the harm to the significance of the ToL***

7.22 All parties are agreed that harm to the significance of the WHS would be caused as a result of impact arising in the view from the North Bastion of Tower Bridge (LVMF View 10A).

7.23 The main matters in dispute relate to:

- a. Whether the proposal would cause harm to significance of the WHS and associated LBs and to the ToL CA as a result of impact arising in views other than LVMF View 10A, in particular, the Inner Ward, The Queen's Walk (LVMF View 25A), and locations on Tower Bridge.
- b. The extent of the harm to the significance of the WHS, and where it lies on the range of *less than substantial* harm.

7.24 Before addressing those essential questions, there are preliminary issues.

#### Preliminary Issues

##### *The Mayor's Position*

7.25 When considering the Mayor's case on these issues it must be borne in mind that, when considering previous planning applications for tall buildings in the City Cluster, he has consistently expressed the view that the juxtaposition between the Tower and the City Cluster is a key characteristic of the views from The Queen's Walk and Tower Bridge, and a relationship that may be seen as positive<sup>427</sup>. Although the Mayor's

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<sup>426</sup> Richards Poe 7.48: CD14-4

<sup>427</sup> See for example GLA Stage 1 Report on 1, Undershaft CD11-54 paragraph 40. GLA Stage 1 Report on 100, Leadenhall Street CD11-55 paragraph 40

witness<sup>428</sup> disagrees with that view, it has been confirmed that it remains the view of the Mayor that the relationship between the Cluster and the Tower is positive<sup>429</sup>.

### *HE's Position*

7.26 HE, when responding to recent applications for tall buildings in the Cluster, such as 6-8 Bishopsgate<sup>430</sup>, and 1 Undershaft<sup>431</sup> have stated that they have no *in principle* objection to tall buildings in the Cluster and have expressed no objection on the basis of impact on the significance of the ToL WHS.

### *The Position of ICOMOS and the World Heritage Committee*

7.27 The ICOMOS *mission* report of 2007 considered whether the ToL would meet the criteria for Danger Listing, and concluded that it would if, either statutory protection for the iconic view from the South Bank towards the Tower was not established, or a management plan had not been finalised<sup>432</sup>. Both those steps were taken, in the form of the LVMF<sup>433</sup> and associated London Plan policy, and the Management Plan<sup>434</sup>. Since those steps were taken there has been no indication that the Tower has been considered by the WHC for Danger Listing.

### *3D Modelling*

7.28 During the course of the Inquiry reference has been made to the evolving 3D modelling work carried out by the City. The Mayor's witnesses sought to contend that the 3D modelling was a critical requirement of the plan-led approach set out in policy 7.7 (as was) of the London Plan<sup>435</sup>. The 3D modelling is a useful tool which can inform plan making and decision-taking, but its output does not form part of, or set, a policy requirement, in either the development plan or emerging development plan. Inconsistency with a modelled aspiration does not constitute inconsistency or non-compliance with the development plan or any other planning policy or emerging planning policy.

7.29 Evidence in chief<sup>436</sup> explained that:

- a. HE's draft Advice Note 4<sup>437</sup> gives 3D modelling as an example of a type of evidence that could be used to support plan-making. The City has used 3D modelling for that purpose, namely as evidence for plan-making.
- b. The report to the City's Planning and Transportation Committee in April 2016 states that 3D modelling work is not intended to make new policy but provides insights upon the effect of current planning policy and to inform future policy review<sup>438</sup>.
- c. When making representations on the draft London Plan the City explained to the Mayor that 3D modelling is used to inform local plan development proposals and to assess development proposals<sup>439</sup>.

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<sup>428</sup> Mr Green

<sup>429</sup> The position of the Mayor was confirmed by H Philpott QC on 3<sup>rd</sup> December 2020

<sup>430</sup> CD11-66 page 1047 (1049 in the pdf)

<sup>431</sup> CD11-66 page 809 (811 in the pdf)

<sup>432</sup> CD1-5 Appendix B2/35 page 69

<sup>433</sup> CD8-14

<sup>434</sup> CD8-23

<sup>435</sup> Green PoE 9.16 CD15-8, Adams PoE 5.5.4 CD15-3

<sup>436</sup> Mr Richards

<sup>437</sup> CD8-32 paragraph 3.3. Tall Buildings Historic England Advice Note 4 Second Edition: CONSULTATION DRAFT

<sup>438</sup> CD19E-4 Summary and paragraph 2

<sup>439</sup> CD7-8 paragraph 6(a)

- 7.30 As was made plain in evidence<sup>440</sup>, the evolving 3D modelling is used as a tool. The model and its outputs do not form part of the development plan and inconsistency with any particular form arrived at by a particular run of a model (the *jelly mould*) does not constitute or indicate a breach of planning policy. As Mr Richards explained such inconsistency acts as an *amber light*.
- 7.31 The suggestion that a breach of a modelled aspiration is inconsistent with the plan led approach is unfounded.
- a. The plan led approach for tall buildings is set out in NLP Policy D9B<sup>441</sup>.
  - b. Policy D9B sets out how to achieve the plan-led approach, namely *Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting the other requirements of the Plan*.
  - c. The City (in local plan policy CS14<sup>442</sup>) has identified which areas are appropriate and which parts of its area fall into the three categories. The Eastern Cluster, in which the application site lies, falls into the first category, where tall buildings on suitable sites are to be permitted.
- 7.32 The plan-led system relates to areas not three dimensional forms. The appeal site lies in the heart<sup>443</sup> of the area identified as being suitable for tall buildings, the Eastern Cluster. The proposal is entirely consistent with the plan-led approach contemplated by NLP policy D9B<sup>444</sup>.
- 7.33 The use of the modelling in this case demonstrates the *amber light* point made by Mr Richards. The City used the 3D modelling as a tool. The use of that tool indicated an inconsistency with the aspirational future shape of the Cluster<sup>445</sup>. That indication drew attention to the need for a detailed analysis of the effects of the proposed development. That detailed analysis led to the conclusion that (unlike in other recent applications for tall buildings in the Cluster) *The Tulip* would result in harm to the significance of the WHS. As a result, the public benefits of the proposal were weighed against that harm. That approach shows how the model is used as a tool. That use of the tool sets no adverse precedent<sup>446</sup>, it assists in ensuring that relevant policy is applied, and where appropriate a balancing exercise is undertaken. The outcome of any balancing exercise which is carried out depends on the particular facts of any given case and can set no precedent which would bind those undertaking such exercises in the future.

#### *The City's consideration of the extent of harm at the application stage*

- 7.34 At the application stage the City's officers advised members that the extent of harm was at the upper limits of *less than substantial* harm<sup>447</sup>. As explained in opening, that assessment has been reviewed and the conclusion reached that the *less than substantial* harm to the significance of the ToL WHS should properly be categorised as falling at the lower end of the spectrum<sup>448</sup>.

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<sup>440</sup> by Mr Richards

<sup>441</sup> CD19D-27 policy D9B on page 149 (160 in pdf), and paragraph 3.9.2 (on page 153, page 164 in pdf). Directions made on 10<sup>th</sup> December 2020 CD19D-20

<sup>442</sup> CD19H-3 page 120

<sup>443</sup> Adams PoE 5.5.1 CD15-3

<sup>444</sup> The reference in the supporting text to policy D9 (at paragraph 3.9.5) indicates that the Mayor will use 3D modelling to (inter alia) assess tall building proposals. The supporting text does not set out a requirement that a scheme should comply with any particular model.

<sup>445</sup> OR paragraph 91, CD3-4

<sup>446</sup> As suggested at paragraph 39 of the GLA closing

<sup>447</sup> CD3-4 paragraph 122

<sup>448</sup> CD19C-1 paragraphs 23-26 inclusive and by Mr Richards in evidence

7.35 The evidence<sup>449</sup> explained that the OR had placed reliance upon the matrix contained in the ICOMOS guidance<sup>450</sup>. That guidance makes plain that the matrix is an aid<sup>451</sup>, and that proposals should be tested against existing policy frameworks and the management plan<sup>452</sup>. The written and oral evidence tested the proposals against existing policy frameworks and the management plan. The approach is neither mathematical nor mechanical. A thorough assessment has been undertaken of the effect of the proposals on the attributes that convey OUV, on the components of each attribute, on integrity and authenticity, and assessed overall impact on significance. The approach follows the recommendations in the ICOMOS guidance. The assessment is more thorough and more complete than that undertaken by any other expert at this Inquiry and should be both commended and relied upon.

#### *Taking account of change in settings over time*

7.36 HE's guidance on settings includes a recognition that these change over time<sup>453</sup>. The relationship between the Tower and its setting is an example par excellence of such change over time. The architects of the White Tower and the military fortifications are unlikely even to have dreamed of the tall buildings of the Cluster. The changes have been substantial and spectacular. The City has seen dramatic change over the centuries, and especially over the last twenty years or so. That dramatic change is seen in the Cluster and its relationship with the Tower. That relationship is best appreciated in the views from the South Bank. The view was not available to the public in the early 20<sup>th</sup> century as warehouses lined the wharf<sup>454</sup>. It is now described in the management plan as *the most iconic view*<sup>455</sup>, an indication that the juxtaposition between the modern business City and the Tower is seen as positive.

#### *The approach to be taken when considering a multiplicity of designations*

7.37 The approach to the multiplicity of designations relating to the ToL when making a decision on the application should be<sup>456</sup>:

- a. it was not necessary to consider the scheduled monument separately;
- b. the CA appraisal did not provide any additional information;
- c. it was necessary to consider the LBs, e.g. the Waterloo Block.

7.38 The City<sup>457</sup> takes a similar approach. It has assessed impact on the OUV of the WHS, considered the local setting study, and then considered impact on the significance of individual LBs.

#### *Cumulative impact*

7.39 HE's Advice Note 4 gives specific advice on assessment of cumulative impacts. The impact of the proposal in the existing setting must first be considered; this would include any effects arising as a result of the relationship between existing and proposed, and the combined effects of existing and proposed<sup>458</sup>. Cumulative effects of the proposal and consented, but unbuilt, schemes must also be considered.

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<sup>449</sup> Of Mr Richards

<sup>450</sup> CD8-13 pages 9-10 (pp 15-16 in the pdf)

<sup>451</sup> CD8-13 paragraph 5-10

<sup>452</sup> CD8-13 paragraph 5-11

<sup>453</sup> CD8-4 page 4

<sup>454</sup> English PoE footnote 127 on page 43: CD16-3

<sup>455</sup> CD8-23 paragraph 7.3.22

<sup>456</sup> Dr Barker-Mills to IQs

<sup>457</sup> Through Mr Richards

<sup>458</sup> CD8-6 paragraph 4.6

7.40 As pointed out in the *Citroen* decision, existing harm should never be used to justify additional harm<sup>459</sup>. However, in this case, absent some wholly new assessment, the existing Cluster cannot be considered to cause harm. The Cluster has not been identified in any development plan or other policy document as causing harm. Indeed, the buildings consented over the last twenty years or so have (in almost all cases) been granted planning permission on the basis that they would cause no harm to the significance of heritage assets and that the juxtaposition between new and old is positive. In this case the cumulative impact with existing and consented buildings in the Cluster results in enhancement to the appearance of the Cluster<sup>460</sup>.

#### Impact on View 10A

7.41 A distinction must be drawn between proposals which breach the skyline behind the four towers of the White Tower and those which do not. That is a distinction considered by the Mayor in their response to the Heron Plaza application<sup>461</sup> and is also made in the LVMF<sup>462</sup>. *The Tulip* does not breach the skyline behind the White Tower. Although visual separation is reduced, it is maintained. As a result, the extent of harm does not lie anywhere near the top of the range.

#### Impact on other views from Tower Bridge

7.42 The City Cluster appears in the backdrop of the Tower as the viewer walks across the bridge, but does not do so in a way which diminishes the appreciation of the Tower or its OUV<sup>463</sup>. *The Tulip* would contribute to the diversity of forms and shapes in the Cluster and be read as part of it, and as such, would not cause harm to the ability to appreciate OUV or otherwise cause harm to significance.

#### Whether harm to the WHS would be caused as a result of impact in views from the ToL

7.43 The modern city is very apparent in views from within the Tower. When responding to previous applications the Mayor has taken the view that the ability to see buildings from the Inner Ward as part of the Cluster does not diminish the viewer's ability to appreciate OUV<sup>464</sup>. In relation to St Peter ad Vincula, the Mayor has taken the view that seeing buildings over the parapet as a distant and secondary component of the view does not diminish ability to appreciate OUV<sup>465</sup>. Similarly, HE did not raise an objection to *1 Undershaft*<sup>466</sup> proposal. When responding to the *100 Leadenhall Street* application, HE said that they considered that OUV would be marginally affected<sup>467</sup>.

7.44 The view taken for the City<sup>468</sup> is consistent with the approach taken by both the Mayor and HE in relation to previous applications. From the Inner Ward the visual impact would be minor and that such minor distraction would not in any material way undermine the viewer's appreciation of the living tradition of the Tower<sup>469</sup>. The sense of history dominates in the Inner Ward. The fact that the viewer is aware of the modern city beyond, does not undermine appreciation of that history and the rich

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<sup>459</sup> CD9-4 IR 15.29

<sup>460</sup> Richards PoE 7.95: CD14-4

<sup>461</sup> CD11-66 page 337 (pdf page 339) paragraph 47 of the GLA Stage 1 Report and in

<sup>462</sup> CD8-14 paragraph 186

<sup>463</sup> Richards PoE 9.207: CD14-4

<sup>464</sup> CD11-54 Stage 1 Report on 1, Undershaft paragraph 39, CD11-55 Stage 1 Report on 100, Leadenhall Street paragraph 39

<sup>465</sup> CD11-54 Stage 1 Report on 1, Undershaft paragraph 39

<sup>466</sup> CD11-66 page 809 (811 in pdf) this letter states that impact on views from the Inner Ward had not been considered. In the letter dated 17<sup>th</sup> February 2016 (CD11-66 page 816 (818 in pdf)) by which time images were available no further point is taken

<sup>467</sup> CD11-66 page 1241 (1243 in the pdf)

<sup>468</sup> by Mr Richards

<sup>469</sup> Richards PoE 9.235: CD14-4



urban grain of historic masonry<sup>470</sup>. As a result, no harm to significance would be caused and this analysis should be adopted.

Whether harm to the WHS would be caused as a result of impact in views from The Queen's Walk

7.45 In September 2018, when HE's London Advisory Committee considered the application and raised an objection, they did not do so on the ground that adverse impact would arise in View 25A<sup>471</sup>. HE submitted a consultation response in December 2018 – again they did not raise an objection based on impact in View 25A<sup>472</sup>. Similarly, when the Chief Executive of HE took the unusual step of appearing at the meeting of the City's Planning and Transportation Committee when they considered the *Tulip* planning application, he did not raise a concern relating to View 25A<sup>473</sup>.

7.46 In the iconic view from the South Bank the attributes and components of OUV would be left intact and undiminished<sup>474</sup>. The *Tulip* would be sited a generous distance away from the Tower. The protected silhouette and protected vista are unaffected. The *Tulip* would be seen as part of, and would add interest to, the Cluster of tall buildings. The Tower would remain centre stage and continue to dominate its immediate surroundings as it does at present.

The extent of the *less than substantial* harm to the significance of the WHS

7.47 The proponents' witnesses<sup>475</sup> all place the extent of harm at the lower end of the spectrum of *less than substantial* harm. HE puts the harm at between moderate and the upper end of the range<sup>476</sup>. The Mayor<sup>477</sup> places the harm to the significance of the WHS at the upper end of less than substantial<sup>478</sup>. Those assessments are based upon a consideration of the impacts *globally*<sup>479</sup>. Both objecting parties consider that harm would be caused to significance as a result of impact in views from The Queen's Walk and from within the Tower (in particular The Inner Ward) and in the case of HE, from Tower Wharf<sup>480</sup>.

7.48 It may be thought that the differences between the opposing witnesses can be explained by the fact that the Mayor and HE consider that harm to the significance of the Tower arises as a result of impact in views from a number of different viewpoints in which different aspects of the attributes of OUV are affected. A significant difference between the parties arises in relation to the effect on significance arising as a result of impact in the view from The Queen's Walk. This is the view which ICOMOS<sup>481</sup> describes as *iconic*<sup>482</sup>, and the Management Plan as the *most iconic* view<sup>483</sup>. If the City's evidence and submissions are accepted, that no harm to significance arises as a result of impact in the view from The Queen's Walk, the conclusions reached by the Mayor and HE cannot be upheld as to the extent of harm arrived at in their *global* assessment, as a significant contributor to the extent of harm would have to be omitted.

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<sup>470</sup> See Richards PoE 9.245: CD14-4

<sup>471</sup> CD5-3

<sup>472</sup> CD5-4

<sup>473</sup> English XX

<sup>474</sup> Richards PoE 8.350 CD14-4

<sup>475</sup> Mr Richards, Professor Tavernor and Dr Miele

<sup>476</sup> English XX 4<sup>th</sup> December 2020

<sup>477</sup> Through Dr Barker-Mills

<sup>478</sup> Barker-Mills PoE 9.41: CD 15-5

<sup>479</sup> English PoE paragraph 7.78: CD16-3

<sup>480</sup> English PoE paragraphs 7.37, 7.43, 7.54. CD16-3

<sup>481</sup> CD16-5 Appendix B/35 page 68

<sup>482</sup> CD8-23 paragraph 3.4.3, 4<sup>th</sup> bullet point, and 7.3.22

<sup>483</sup> CD8-23 paragraph 7.3.22

- 7.49 Another explanation for a difference in conclusion between the opposing witnesses would be a difference in the approach to the assessment. As an example, the City<sup>484</sup> follows the ICOMOS Guidance and assesses impact on each attribute which conveys OUV and on the components which contribute to each attribute, and on integrity and authenticity. In contrast the Mayor by-passes these and considers a basket of selected components relating to different attributes, as opposed to considering an attribute and the components which contribute to it. When asked why<sup>485</sup>, it was said that a reference to a document to support his position would be provided – none has been forthcoming<sup>486</sup>. It is important to consider each attribute in turn in a systematic way as the WHSMP sets out the way in which each attribute is expressed. For example, when an attribute is expressed in location and setting it is so stated in the WHSMP. As might be expected, the attributes *landmark siting*<sup>487</sup> and *physical dominance*<sup>488</sup> are expressed in location and setting, whereas other attributes are not so expressed.
- 7.50 If a different view is taken on impact in a particular view, for example on the view from The Queen's Walk, the assessment of extent of harm to the significance of the WHS would change. It cannot be said the harm caused by the presence of *The Tulip* in views from Tower Bridge is approaching substantial. Although three attributes which convey OUV would be adversely affected<sup>489</sup>, the internationally famous monument would still be seen as separate from the Cluster, its landmark siting appreciated and enjoyed, and physical dominance maintained (if diminished in one view). Those effects do not destroy or very much reduce significance, or drain it away. Far from it.
- 7.51 Even if it was concluded that there was some additional adverse impact arising in views from within the ToL, from Tower Wharf, or when viewed on a walk across Tower Bridge, any harm to significance could not begin to be said to very much reduce or vitiate significance. Any harm is far away from being substantial. Any assessment must place the extent of harm at the lower end of the spectrum of *less than substantial* harm.

#### Other heritage assets

- 7.52 The City relies upon careful analysis of the impact on setting and significance of all the relevant LBs, conservation areas, and non-designated heritage assets<sup>490</sup>. The juxtaposition between old and new has long been recognised as a characteristic of the City and is embedded in the approach taken in the Local Plan. That relationship has been recognised as one of the City's strengths by inspectors and the SoS<sup>491</sup>. As noted by the Inspector at 20 Fenchurch Street, English Heritage generally shared that view. HE confirmed that continued to be its view subject to consideration of the facts of each case<sup>492</sup>. The consistent view taken by the Mayor when considering planning applications in the City is that the juxtaposition of old and new is a defining and positive characteristic and that no harm to heritage significance is caused as a result of such juxtaposition<sup>493</sup>.

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<sup>484</sup> Mr Richards

<sup>485</sup> Dr Barker-Mills in cross-examination

<sup>486</sup> By email dated 10<sup>th</sup> December 2020 sent to the programme officer, the GLA stated that Dr Barker-Mills was unable to find such a reference: CD19D-21

<sup>487</sup> CD8-23 paragraph 3.4.5

<sup>488</sup> CD8-23 paragraph 3.4.11

<sup>489</sup> Richards PoE 9.160: CD14-4

<sup>490</sup> Richards PoE pages 226-284: CD14-4

<sup>491</sup> CD9-8 IR on 20 Fenchurch Street, paragraph 9.4.6, the Secretary of Statement agreed with the inspector at DL15 CD9-7. Heron Tower – IR 15.70-71 CD9-10; the Secretary of State agreed with IR 15.71 at DL15,CD9-9

<sup>492</sup> English XX

<sup>493</sup> E.g. Stage 1 report on 100 Leadenhall Street paragraph 41: CD11-55

7.53 Given that background, and given the position taken by both the Mayor and HE on other applications in the Cluster, it is somewhat surprising that both the Mayor and HE take points in relation to individual LBs based upon the juxtaposition between new and old. HE's witness<sup>494</sup> made plain that he, personally, takes a different view to the Mayor – that difference is illustrated by his consideration of the impact on the setting and significance of St Andrew, Undershaft:

- a. the Mayor considered that no harm to significance would arise as a result of development of 100 Leadenhall Street - that building would prevent the upper parts of the tower of the church (the pinnacles) from being seen against clear sky in views from the west on Leadenhall Street<sup>495</sup>;
- b. the Mayor's officers did not express the view that *The Tulip* would cause harm to the significance of St Andrew, Undershaft<sup>496</sup>;
- c. the Mayor<sup>497</sup> relies on its view that *The Tulip* would cause harm to the significance of St Andrew, Undershaft.

7.54 HE<sup>498</sup> departs from their general acceptance of the principle that the juxtaposition between old and new is one of the City's strengths. HE's case on this issue is limited to two buildings (St Botolph, Aldgate and Trinity House). Take Trinity House as an example:

- a. in views from Trinity Square the modern city appears behind LBs including 10 Trinity Square and Trinity House<sup>499</sup>;
- b. HE did not object to the *100 Leadenhall Street*<sup>500</sup> and *1 Undershaft*<sup>501</sup> planning applications on the ground that the buildings proposed would appear in the background in views from Trinity Square including in views of Trinity House<sup>502</sup>;
- c. HE now argue that a building in the background (*The Tulip*) would distract from heritage values<sup>503</sup>;
- d. It must be appreciated that the image relied upon<sup>504</sup> shows a 2-dimensional view from Trinity Square Gardens. The viewer would see the image for a moment as s/he walks along and would appreciate that the top of the *Tulip* is seen at a distance. It is difficult to see how the impact in that view can be said to harm significance;
- e. Such fleeting, glimpsed and oblique views would cause no harm to the significance of Trinity House<sup>505</sup>.

7.55 Both the Mayor and HE argue that harm would be caused to the significance of St Botolph, Aldgate:

- a. The setting of the church is heavily influenced by the presence of modern tall buildings;

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<sup>494</sup> English

<sup>495</sup> For an image see CD1-11 page 195

<sup>496</sup> CD4-1 Stage 1 Report paragraphs 61-63

<sup>497</sup> Dr Barker-Mills

<sup>498</sup> Mr English

<sup>499</sup> For a cumulative image see CD16-4 page 101

<sup>500</sup> CD11-66 page 1059 (1061 in pdf), City OR summary of HE's consultation response at paragraph 26

<sup>501</sup> HE response on 1, Undershaft CD11-66 pp 809-816 (pdf 811-818)

<sup>502</sup> For view see RT3A page 170: CD13-19

<sup>503</sup> English PoE 7.82: CD16-3

<sup>504</sup> Tavernor Appendix RT3A: CD13-19 page 166

<sup>505</sup> Richards PoE 10.177-178 (CD14-4)

- b. The main contributor to significance, being the views of the church on the approach along Minorities, would remain, on the whole, unaffected. Similarly, the views in the approach from the west and north would be unaffected<sup>506</sup>;
- c. The relationship between the church and the *stem* of *The Tulip* as shown in the image in the TVBHA<sup>507</sup> would be transient and fleeting in a view where the modern city is very much in view. It would be another example of a positive relationship or *exciting frisson* as put by Mr Richards<sup>508</sup>. As a result no harm to significance or setting would be caused.

7.56 The conclusion to be reached in relation to *other* heritage assets is that as with many existing buildings in the Cluster, in the case of *The Tulip* the relationship between new and old would be positive. Such a conclusion would be consistent with the approach taken by the SoS when called upon to decide other cases for tall buildings in the City<sup>509</sup>.

## D. Strategic Views

### ***The effect of the proposals on strategic views***

7.57 There are two strategic views to be considered: View 10A (the River Prospect from the upstream side of Tower Bridge at the North Bastion) and View 25A (Townscape View: the Queen's Walk to ToL). Guidance on the management of those views is found in the LVMF. This advises that development in the background of the views should not compromise a viewer's ability to appreciate the OUV of the WHS<sup>510</sup>. Impact on ability to appreciate OUV is considered in section C above and not repeated here.

#### View 10A

7.58 From viewpoint 10A the Cluster of modern towers is seen to the left of the White Tower. The relationship between the City and the Tower is recognised as being a feature of this view, as is the fact that the Cluster of tall buildings in the City would be consolidated over time<sup>511</sup>. *The Tulip* would add another dynamic quality to that evolving Cluster<sup>512</sup> and would sit comfortably with the other existing and consented towers<sup>513</sup>.

7.59 Specific guidance in relation to development in the background<sup>514</sup> is as follows:

- a. Development should not breach the skyline of the four towers of the White Tower or its castellations;
- b. Some visual separation should be retained between the upper parts of the White Tower and the emerging Cluster.

7.60 *The Tulip* would not rise behind, or appear to touch, the White Tower and the express guidance in the LVMF SPG paragraph 184 would be adhered to. However, the proposal

<sup>506</sup> Richards PoE 10.59: CD14-4

<sup>507</sup> CD1-11 page 189

<sup>508</sup> Richards PoE 10.61: CD14-4

<sup>509</sup> 20, Fenchurch Street CD9-7, and Heron Tower CD9-9

<sup>510</sup> View 10A – paragraph 186 of CD8-14 on page 101 (page 109 in the pdf). View 25A paragraph 414 of the LVMF CD8-14 page 215 (page 223 in the pdf)

<sup>511</sup> CD8-14 paragraph 187 page 101 (page 109 in the pdf).

<sup>512</sup> Richards PoE 8.258 CD14-4

<sup>513</sup> Richards PoE 8.353: CD14-4

<sup>514</sup> CD8-14 page 101 (page 109 in the pdf)

would to a degree appear to dominate the White Tower contrary to the guidance given in the LVMF SPG paragraph 183<sup>515</sup>. The extent of the breach of the guidance is limited.

### View 25A

- 7.61 There is a significant dispute between the parties as to whether the visual management guidance for View 25A is adhered to. The juxtaposition of the WHS with the modern city is said to be a central characteristic of this view<sup>516</sup>. The guidance in paragraph 418 of the LVMF must be read as relating to existing dominance and therefore to the particular views in which the Tower does at present dominate - i.e. the immediate surroundings<sup>517</sup>. The *Tulip* would not affect the protected silhouette and the guidance in paragraph 420 of the LVMF is complied with<sup>518</sup>. The protected vista would be unaffected<sup>519</sup>. The *Tulip's* design quality lives up to the expectations set out in LVMF paragraph 414.
- 7.62 As is abundantly clear from the triptych image<sup>520</sup>, the *Tulip*, whether considered against the existing Cluster or considered cumulatively with the consented schemes, would read as part of the City Cluster set apart from the Tower. It is seen well to the left of 10 Trinity Square<sup>521</sup>, seen as the marker of the transition in scale between the existing Cluster and the western edge of the WHS<sup>522</sup>. The concrete *stem* is read alongside the Cluster and the *flower* is an exciting addition to it. It would not dominate the WHS - paragraph 415 of the LVMF is complied with. There would be no breach of the LVMF visual management guidelines for View 25A. In this *iconic* view the image of London would be improved<sup>523</sup>.

## **E. Other Harm**

### ***Any other harms which might affect the overall balance with particular regard to pedestrian movement and safety***

- 7.63 Reasons for refusal 5 and 6 are no longer in dispute. As far as transport issues are concerned, it is now agreed that the following transport benefits arise<sup>524</sup>:
- a. An increase in long-stay cycle parking spaces for the *Gherkin*, together with associated shower and locker facilities.
  - b. The removal of 16 existing general car parking spaces at the *Gherkin*.
  - c. Consolidation of deliveries, and time restrictions on servicing trips, to *The Tulip* and the *Gherkin*
- 7.64 To the extent that it is said that the loss of 428 m<sup>2</sup> of office floorspace is harmful, that loss must be considered to be negligible in relation to the total office floorspace in the City's area<sup>525</sup>. In any event as there are no strong economic reasons why the loss would be inappropriate there is no breach of the policy which seeks to protect office accommodation (DM1.1 in the Local Plan<sup>526</sup>). There is no material *any other harm* to

<sup>515</sup> CD8-14 page 100, Richards PoE 8.262

<sup>516</sup> LVMF paragraph 411, CD8-14

<sup>517</sup> Richards PoE 8.21 and 8.22 CD14-4

<sup>518</sup> Richards PoE 8.47 CD14-4

<sup>519</sup> Richards PoE 8.56 CD14-4

<sup>520</sup> Harrison PoE pp 296-297 CD13-8

<sup>521</sup> Also known as the Port of London Authority Building

<sup>522</sup> Barker-Mills PoE paragraph 9.7: CD15-5 – referring in turn to *TVBHA photos 08; 08N;18;19;20;24; 30;33. NPBM Appendix 2 Photos 1;2;3;5;8;9;12;24*

<sup>523</sup> Richards PoE 8.387 CD14-4

<sup>524</sup> Benefits SOCG paragraph 2.6(c) to (e): CD19B-15

<sup>525</sup> Hampson PoE 9.3- 9,305,000m<sup>2</sup> gross as of 31.03.20 CD14-3

<sup>526</sup> CD6-4 page 34

consider.

## F. Benefits

### ***The benefits of the scheme, including but not limited to its quality, attractiveness to visitors, educational and community opportunities, investment and employment***

- 7.65 The City considers that the proposal would bring forward very significant benefits. Although those benefits can and should be listed, analysed and weight attributed to them, it is important to step back and consider the overall beneficial impact of the scheme. To a large extent the benefits are the product of the design. By introducing an innovative, sustainable and outstanding building of iconic value, London's visitor attractions and economic base would be enhanced. By encouraging 1.2m visitors to come into the heart of the Cluster each year, many more people would be introduced to the delights of the City, and would make effective use of its facilities particularly at times when much of the office City has gone home. The City's aspirations to provide a 7 day a week offer encouraging a diverse range of people to benefit from all the City has to offer would be advanced.
- 7.66 The agreed benefits are set out in the Benefits SoCG<sup>527</sup>. The dispute turns in large part on the weight to be attributed to those benefits. This section not only refers to the benefits but the weight to be given to them. It may be said that the weight to be given to benefits is better dealt with under the next main issue, on heritage balance, however, in order to avoid duplication, the benefits and the weight to be attributed to them are dealt with in the same section.

#### The City's Analysis

- 7.67 The City is uniquely well placed to attribute weight to the benefit of locating a major visitor attraction in the heart of the Square Mile. Given the City's long record in guiding the evolution of its area as a global hub for innovation in financial and professional services, commerce and culture<sup>528</sup> its views on the weight to be given to benefits of the visitor attraction should command respect.
- 7.68 A model approach has been taken to the balancing exercise<sup>529</sup>. This identifies the benefits, and explains the basis upon which weight is attributed to each of them. These submissions rely on, but do not repeat this evidence. They draw attention to the following points.
- 7.69 Design:
- a. As demonstrated by the way that its progenitor, the *Gherkin*, has become a symbol of London, the provision of a new iconic building of accomplished design would bring similar benefit;
  - b. The SoS has indicated (at NPPF§131) that substantial weight should be given to outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings;
  - i. The proposal is both outstanding and innovative (it would only have to fall within one of those two categories for the purposes of applying the policy). It introduces

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<sup>527</sup> CD19B-15 section 2

<sup>528</sup> Draft local plan paragraph 3.2.7, 3.4.4, 3.4.8: CD19H-3

<sup>529</sup> Mrs Hampson's proof of evidence CD14-3 section 8



a new design to the Cluster in terms both of use and of form, whilst maintaining a familial relationship with the *Gherkin*;

- ii. It promotes a high level of sustainability – a target rating of BREEAM outstanding<sup>530</sup> would be secured by condition<sup>531</sup>;
  - iii. By enhancing the Cluster (for the reasons explained by Mr Richards in his written<sup>532</sup> and oral evidence) it would both help raise the standard of design and fit in with the overall form and layout of the surroundings.
- c. There can be no doubt that the great weight referred to in NPPF paragraph 131 applies to this scheme.

7.70 Tourism: The essential figures are agreed, namely the estimate that 1.2 million people would visit *The Tulip* each year, of which 101,000 would not otherwise have visited London<sup>533</sup>.

- a. At 1.2m visitors a year *The Tulip* would attract a similar number of visitors as the Royal Academy and a greater number than London Zoo, or the Houses of Parliament<sup>534</sup>;
- b. The attraction of additional visitors is fully consistent with the London and Partners vision<sup>535</sup> and with the City's own Visitor Destination Strategy to develop the City as a vibrant, attractive and welcoming destination for all<sup>536</sup>;
- c. Given the number of visitors attracted and consistency with the relevant strategies, to give the tourism benefits anything other than substantial weight would be bordering on irrational.

7.71 The economic benefits flow from the estimates of visitor numbers. Those numbers are agreed, and the following economic benefits are also agreed:

- a. GVA: Construction phase: £30m p.a.<sup>537</sup>; Operational Phase £32.55m p.a.<sup>538</sup>
- b. Jobs: Construction: an average of 760 FTE jobs per annum<sup>539</sup>; Operation: 463<sup>540</sup>-609<sup>541</sup> jobs p.a.
- c. Deloitte also estimate the additional economic value which can be attributed to icon value, increased green space/public realm, education and agglomeration, at £110m GVA over a twenty year period<sup>542</sup>.
- d. Those economic benefits can be achieved by using a site which is not suitable for other purposes such as the provision of offices – it has been described as a *windfall*. As a result, those jobs and that GVA is not achieved at the expense of an office or similar development.

<sup>530</sup> As is apparent from the list at CD19B-17 page 2, few buildings are designed to achieve such a target ranking

<sup>531</sup> Benefits SOCG 2.6(f): CD19B-15, Conditions Schedule CD19C-21 conditions 28 and 44

<sup>532</sup> Richards PoE paragraph 7.95: CD14-4

<sup>533</sup> Benefits SOCG 2.4(a) and (b): CD19B-15

<sup>534</sup> See Hampson Ap.1 CD14-3

<sup>535</sup> CD11-1, and Hampson PoE paragraph 8.8: CD14-3

<sup>536</sup> CD8-9 page 33

<sup>537</sup> Benefits SOCG 2.2(b): CD19B-15, total construction cost is estimated at between £260m-£477m – CD19B-30

<sup>538</sup> Benefits SOCG 2.2(j): CD19B-15

<sup>539</sup> Benefits SOCG 2.2(a): CD19B-15

<sup>540</sup> Benefits SOCG 2.2(c) + 2.2(e) + 2.2(h) CD19B-15. (46+385+32)

<sup>541</sup> Benefits SOCG 2.2(c) + 2.2(e) + 2.2(h) CD19B-15. (64+385+160)

<sup>542</sup> Hampson PoE 8.32: CD14-3, Deloitte CD2-1 section 7

- e. The numbers themselves and the fact that this gain is not achieved at any material cost (the small quantum of office floorspace in Bury House is not material in this context) indicate that these benefits should be given substantial weight.

7.72 Education and community (as secured by the section 106 agreement):

- a. A 523m<sup>2</sup> flexible learning space would be provided.
- b. That facility would be available free of charge to no fewer than 40,000 children at state schools in London annually<sup>543</sup>. The 40,000 figure would not allow every child in London to visit once in their school lifetime<sup>544</sup>, however 40,000 visits p.a. is a very significant number. Each one represents a school trip to remember and to inspire. Each child would have an opportunity to come to the heart of a global financial centre and look out over their city, whilst learning about London's geography and history, along with the focus on STEAM<sup>545</sup> subjects.
- c. Each child would benefit from a school trip of which memories would be made, when they would travel into the heart of the Square Mile. It is to be hoped that their eyes would be opened to the opportunities that the City offers and may consider it is a place where if they wish, one day, they too would work<sup>546</sup>.
- d. The space would be available for community use between 3pm and 7pm on weekdays throughout the year with priority booking slots for groups of young adults in Key Stages 4 and 5 in London schools between 3pm and 5pm<sup>547</sup>. The space can be used for a range of uses including careers fairs, taster events, skills development workshops, mentor and mentee groups, and celebration events<sup>548</sup>.

7.73 The educational and community offer is wide ranging and very many London school children would derive benefit from it. It should be accorded substantial weight<sup>549</sup>.

7.74 The parties agree that the consolidated delivery arrangements, by reducing the number and time of movements, would improve upon the current arrangements<sup>550</sup>. Those arrangements would benefit the public at large by removing movements at peak times. That is a clear benefit of the scheme and the City takes the view that it should be given moderate weight<sup>551</sup>. Similarly, the provision of additional long-stay cycle parking spaces for the *Gherkin* along with associated facilities (showers and lockers) should attract moderate weight<sup>552</sup>.

7.75 The roof top garden would not only provide an increase in the amount of public space, but would provide it in the form of a place of respite allowing workers and visitors to spend a few moments away from the busy City environment and enjoy the green space. The roof garden along with other improvements such as the pocket park, and removal of the ramp and associated walls, result in an overall benefit to the public realm which should attract moderate weight<sup>553</sup>.

7.76 The contribution towards affordable housing and the CIL payments are also benefits to be taken into account. The sustainability benefits are agreed<sup>554</sup>. The sustainability

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<sup>543</sup> Paragraph 6 of Schedule 7 to the section 106 agreement: CD19B-24

<sup>544</sup> As stated in Mrs Hampson's PoE at paragraph 8.51 CD14-3, but corrected in her oral evidence in chief

<sup>545</sup> Science, technology, engineering, arts and maths.

<sup>546</sup> Hampson PoE 8.51: CD14-3

<sup>547</sup> Section 106 agreement, Schedule 2 paragraph 16.5, and Schedule 7 paragraph 3.2: CD19B-24

<sup>548</sup> Section 106 agreement Schedule 7, paragraph 3.2: CD19B-24

<sup>549</sup> Hampson PoE 8.67: CD14-3

<sup>550</sup> Transport SOCG 3.13: CD19B-6

<sup>551</sup> Hampson PoE 8.68 CD14-3

<sup>552</sup> Hampson PoE 8.69: CD14-3

<sup>553</sup> Hampson PoE 8.70: CD14-3

<sup>554</sup> Benefits SOCG CD19B-15 paragraph 2.6

credentials of the *Tulip* are reflected in the target BREEAM score of 89% which would achieve a rating of *outstanding*<sup>555</sup>. The relevant policies, including SI 2 in the NLP are complied with<sup>556</sup>. Overall, the cumulative benefits are significant and wide-ranging<sup>557</sup>.

### The Mayor's Analysis

- 7.77 The Mayor seeks to attribute weight to benefits<sup>558</sup>. Little reliance can be placed upon the Mayor's attribution of weight. They have not undertaken their own analysis of the main economic and tourism benefits, and their approach lacks consistency.
- 7.78 The following are examples of that inconsistency of approach in relation to the Mayor's consideration of this case:
- a. In the Stage 1 report it was said that the benefits of the scheme were restricted to the educational floorspace<sup>559</sup>;
  - b. By stage 2 it was acknowledged that the proposal would deliver economic benefits arising from increased visitor numbers, and contributions to affordable housing and local skills and job training<sup>560</sup>;
  - c. The evidence expressed the view that a paid for viewing gallery was not a public benefit and should be given no weight<sup>561</sup>;
  - d. The Mayor then agreed a benefits statement of common ground in which it was agreed that the extensive benefits set out at section 2 would be delivered<sup>562</sup>. The agreed list includes economic, education community and social, tourism public realm, sustainability, and other benefits;
  - e. The position changed again in oral evidence<sup>563</sup>. It was said that although previously thought that a paid for viewing gallery was not a public benefit, some limited weight had been given to the economic benefits flowing from it, and that some limited weight should be given to tourism benefits;
  - f. The loss of a one day a week lunchtime street market of up to 8 stalls<sup>564</sup> was regarded as giving rise to *an important adverse economic effect*<sup>565</sup> whereas a visitor attraction which would give rise to 1.2 million visits and 463-609 jobs p.a. gives rise to negligible economic impacts<sup>566</sup>.
- 7.79 The Mayor's approach is also inconsistent with the approach taken in his policy statements and when dealing with other planning applications. As examples:
- a. NLP Policy E10A states that London's visitor economy and associated employment should be strengthened by enhancing and extending its attractions. Its attribution of weight does not reflect that statement of support;
  - b. In the Foreword to *A Tourism Vision for London* the Mayor describes the benefits that visitors bring to London as *huge*<sup>567</sup>. Despite the fact that the Mayor agrees

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<sup>555</sup> CD19B-17 page 2

<sup>556</sup> CD19B-32 paragraphs 1-4

<sup>557</sup> Hampson PoE 10.26 CD14-3

<sup>558</sup> Mr Green

<sup>559</sup> CD4-1 paragraph 68

<sup>560</sup> CD4-3 paragraphs 149 and 150

<sup>561</sup> Mr Green CD15-8 paragraph 10.136

<sup>562</sup> CD19B-15, see also the Main SOCG CD19B-7 paragraph 10.32

<sup>563</sup> Of Mr Green

<sup>564</sup> CD11-75 paragraph 2 of the OR

<sup>565</sup> Green PoE 10.95: CD15-8. In Mr Green's world (informed by his visits to street markets when taking a lunch break from his work at City Hall)

<sup>566</sup> Green PoE 10.80: CD15-8

<sup>567</sup> CD11-1 page 5 (page 3 in the pdf)

that the scheme would attract an estimated 1.2m visitors year of which 101,000 would not otherwise have come to London, no weight is attributed to tourism benefits directly, and only *very minor*<sup>568</sup> weight to the economic benefits;

- c. The Mayor issued a direction that he should determine the 97 *Cromwell Road* planning application because a hotel and serviced accommodation scheme would have a significant effect on London Plan policy relating to visitor infrastructure<sup>569</sup>. In that case he weighed public benefits against heritage harm. In doing so he gave significant weight to the provision (*inter alia*) of improved and modern visitor accommodation<sup>570</sup>.

7.80 The Mayor sought to justify his position by arguing that planning policies direct cultural facilities in the City to the Culture Mile and not to the Eastern Cluster. This contention<sup>571</sup> is misplaced:

- a. As accepted in evidence, the definition of culture and cultural facilities in the City's policies is broad and inclusive<sup>572</sup>;
- b. Draft LP Policy S6 sets out the City's policy on culture, visitors and the night-time economy. The City plans to enhance its contribution to London's world-class cultural offer by (*inter alia*) providing, supporting, encouraging access to, and further developing a wide range of cultural facilities across the City. A vibrant night-time economy is to be enabled<sup>573</sup>;
- c. The specific policy for the City Cluster (S21) contemplates improving access to leisure and cultural facilities<sup>574</sup>;
- d. As stated in the draft local plan<sup>575</sup> the City's Cultural Strategy highlights that commerce and culture thrive side by side - this scheme is a visible demonstration of that with the *Tulip* and the *Gherkin* sitting together;
- e. The Cultural Strategy makes plain that the Culture Mile is to act as a catalyst for change across the rest of the Square Mile<sup>576</sup> and that it would activate a similar cultural transformation for the entire Square Mile<sup>577</sup>.

7.81 The City's most recent policy statements in response to the pandemic, in *London Recharged*, place even greater emphasis on the need to encourage more visitors to the City. The aspiration is to achieve a 50% increase in weekend and evening visitors<sup>578</sup>. The *Tulip* can make a significant contribution to meeting that aspiration. In addition, the Mayor<sup>579</sup> considers the provision of a visitor attraction in this location would be complementary to the promotion of the City as a nationally important location for globally-oriented financial and business services, and to accord with the wider policy aspirations for the CAZ<sup>580</sup>. It is clear that, based as it is on inconsistency

<sup>568</sup> Green PoE 10.105: CD15-8

<sup>569</sup> CD19C-17 paragraph 28

<sup>570</sup> CD19C-17 paragraph 302

<sup>571</sup> Of Mr Green

<sup>572</sup> Emerging Local Plan paragraph 5.3.6 makes reference to the Cultural Strategy and states *The Strategy embraces a definition of culture that is broad and inclusive; it recognises that culture exists both in the buildings and heritage of the City's institutions and in the streets and informal spaces in between.* CD19H-3

<sup>573</sup> Policy S6 1<sup>st</sup> bullet point on page 75 and 6<sup>th</sup> bullet point on page 76 of CD19H-3

<sup>574</sup> CD19H-3 page 180, policy S21(8)

<sup>575</sup> CD19H-3 paragraph 5.3.6

<sup>576</sup> CD19B-20 page 9

<sup>577</sup> CD19B-20 page 14

<sup>578</sup> CD11-85 section 5.3 on page 57 (page 29 in the pdf)

<sup>579</sup> if not Mr Green

<sup>580</sup> CD4-1 paragraph 19. GLA Stage 1 Report. In XX Mr Green said he disagreed with the Mayor on that point.

and misunderstanding of the policy approach, the approach<sup>581</sup> to attribution of weight to the tourism benefits cannot be accepted.

- 7.82 The Mayor sought to reduce the weight to be attributed to economic benefits by referring to the assessment in the Socio-Economics chapter of the ES<sup>582</sup>. If one compares the economic activity generated by a single visitor attraction development with total output for a city the size of London, one is bound to come up with a small percentage, and therefore (for the purposes of an ES) no *significant* effect. Although such an approach is appropriate when undertaking an ES, the descriptors of effect used in an ES do not reflect the very real economic advantage derived by each of the people benefiting from the creation of a new job, and do not reflect the benefits to be gained by diversifying the City's economic base. In the Cromwell Road case, the Mayor's officers<sup>583</sup> considered the delivery of an additional 243 full-time jobs as one of the significant public benefits of the scheme<sup>584</sup>. To say<sup>585</sup> that the economic benefits (including 463-605 jobs) can be considered negligible – it is a wholly inconsistent approach.
- 7.83 The Mayor<sup>586</sup> attributes moderate weight to the education facilities provided. His justification for reducing weight to moderate is, in part, that other facilities are available. He also seeks to reduce the weight to be given to the education facilities on the ground that the planning policies do not identify a need for such a facility. If one could only attribute weight to a facility when need for it was identified in a plan drawn up some time ago before the concept now proposed was even conceived, society would lose out on many innovative schemes such as this, which bring obvious benefits to which substantial weight should be given. The fact that there are other existing and proposed elevated viewing opportunities nearby should not be relied upon to diminish the weight given to the educational and community benefits.
- 7.84 In addition, the education offer can be distinguished from that available in other buildings. Indeed, in almost all those other cases (*1 Undershaft* is an exception) no dedicated educational provision is proposed<sup>587</sup>. An educational visit to the *Tulip* is not limited to the opportunity to enjoy a visit to, and views from, an iconic building, there would be pre- and post-visit educational provision provided by dedicated educational facilitators<sup>588</sup>. A full explanation of the educational benefits on offer was given<sup>589</sup>. A similar approach was taken about storage space in the educational area<sup>590</sup>.
- 7.85 In any event, the argument is rather like telling a child that s/he should move on from the shop selling the best quality, most delicious and eye catching ice cream as that ice cream is of only moderate value as you can get an ice lolly next door. The child visiting the *Tulip* would truly experience something to *write home about* or, in the modern age, to post on social media. When the visiting child gets back home s/he would be able to look out of the window, or go to the top of the hill in the park, and point out the *Tulip* – *that's where I went on my school trip*. Not quite the same as trying to point out an upper floor of an office block amongst a group of office blocks.
- 7.86 In the same vein the argument that heritage assets are best appreciated by visiting the site and experiencing historic buildings and architecture may be correct, but it

<sup>581</sup> Mr Green's

<sup>582</sup> Mr Green by reference to CD1-10 chapter 6

<sup>583</sup> including Mr Green

<sup>584</sup> CD19C-17 paragraphs 444 and 445

<sup>585</sup> Mr Green

<sup>586</sup> Through Mr Green

<sup>587</sup> Viewing Gallery and Educational Provision Table: CD19B-41

<sup>588</sup> Section 106 agreement Schedule 7 paragraph 3.1: CD19B-24 page 62

<sup>589</sup> By Dr Wright, only for XX on matters such as opportunities for children living outside London

<sup>590</sup> When Mrs Hampson gave evidence - that issue is addressed in CD19B-31

does not diminish the weight to be given to the different form of educational experience offered by the *Tulip*. The space would also be available for other education and community activities between 3pm and 7pm on working days throughout the year<sup>591</sup>; this is a significant additional benefit.

- 7.87 The Mayor also questioned the sustainability benefits of the scheme. This was unjustified when the relevant policies in the extant and NLP are complied with<sup>592</sup>. An example of the approach<sup>593</sup> was to argue that little weight should be given to increasing the urban greening factor from 0.01 to 0.31<sup>594</sup>. The figures speak for themselves - that is a very significant proportionate increase reflecting the changes proposed to the existing public area where rather bleak granite surfacing predominates. The sustainability benefits of the scheme as agreed in the Benefits SoCG<sup>595</sup> should be recognised as contributing to the cumulative benefits of the schemes.
- 7.88 The Mayor's characterisation of the proposal as socially exclusive<sup>596</sup> is unjustified. The visitor attraction is no different to the London Eye or ToL - those who use it would pay. The difference (in this respect) between this proposal and an attraction such as the London Eye is positive and inclusive - the s106 agreement (the terms of which were negotiated by the City and the Mayor's officers) would secure an education and community facility which would be available without charge to school children and community groups from all over London. It would be a socially inclusive and welcoming facility inviting people from all over London and the world into the City.

## Conclusion

- 7.89 It is clear that attempts<sup>597</sup> to downplay the benefits of a new visitor attraction which would attract 1.2m visitors p.a. (101,000 of whom would not otherwise have come to London) and which would provide innovative education and community space, should be rejected. Weight should be attributed to the various benefits in accordance with the evidence of the witness<sup>598</sup> most experienced in dealing with planning cases in the City.

## **G. Heritage Balance**

### ***Whether the public benefits of the proposals would outweigh any harm identified in the heritage balance***

- 7.90 The balancing exercise contemplated by NPPF§196 may be thought to be at the heart of the decision making approach in this case. The approach to be taken when fulfilling the duty imposed by s66(1) of the LB&CA Act 1990 is as above. As HE recognise, this is not an issue on which they are able to assist. Save for views on heritage benefits<sup>599</sup>, in accordance with their normal practice they leave this issue to the planning authority - on appeal the SoS. For the reasons I have already given, the City is the party best placed to assist the SoS on this judgement.
- 7.91 Although considerable importance and weight (or in the words of the NPPF *great* weight) should be given to each asset's conservation (and therefore to any harm to significance which is found to occur) (and the more important the asset the greater

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<sup>591</sup> Section 106 agreement Schedule 2 paragraph 16.5: CD19B-24

<sup>592</sup> Appellant's Further Sustainability Note 10<sup>th</sup> December 2020: CD19B-32

<sup>593</sup> Mr Green's

<sup>594</sup> See CD19B-17 page 4. Appellant's note on sustainability

<sup>595</sup> CD19B-15 paragraph 2.6

<sup>596</sup> H Philpott QC closing paragraph 5

<sup>597</sup> Mr Green's

<sup>598</sup> Mrs Hampson

<sup>599</sup> English PoE section 8: CD16-3



the weight should be) it is also important to consider the extent or degree of harm to each asset. The overall weight given to the desirability of preserving the setting of the LBs depends on the extent of the harm assessed and the heritage value of the asset in question<sup>600</sup> – those are two different factors. The decision maker must decide on the matters to be placed on the negative side of the scales.

- 7.92 On the basis of the evidence, the negative factor is the *less than substantial* harm to the significance of the ToL arising as a result of the impact which would occur in the view from the north bastion of Tower Bridge. The extent of that harm is at the lower end of the spectrum of *less than substantial* harm. On the positive side you have the benefits considered above. Great weight should be given to the scheme's outstanding and innovative design.
- 7.93 The essence of the question is whether, giving great weight and considerable importance to the assessed extent of harm, and taking account of the fact that the heritage value of WHS is high, the degree of harm to the WHS's significance is sufficient to turn away a scheme of outstanding architecture which would signal a new stage in the City's development, and enhance the appearance of the Cluster with a world class design likely to become a significant and powerful icon for London in the 21<sup>st</sup> century. The City's judgement is that the benefits outweigh the assessed harm.

## H. Planning Balance

***The balance when assessed against the NPPF, the scheme's consistency or otherwise with the development plan and any other material considerations, and the overall planning balance.***

- 7.94 All main parties agree that the proposal would cause some harm to the significance of the WHS. As a consequence, the planning policies which provide that heritage assets should be conserved are not adhered to.
- 7.95 Many of the development plan policies seek to protect the significance of heritage assets by adopting an approach which results in proposals which cause any harm to significance of assets to conflict with the policy. Those policies include the old London Plan (7.8 and 7.10) and the Local Plan heritage policies (CS12 and DM12.1). Those policies do not incorporate the balancing exercise found in NPPF§196. As a consequence, a single cause (such as impact in one view) of *less than substantial* harm to significance can result in multiple policy conflicts to heritage and view protection policies. If those policies had incorporated the balancing exercise, there would be no breach.
- 7.96 Consideration must be given to whether the conflict with multiple policies arising as a result of harm arising in one or more views is sufficient to cause the proposal to conflict with the development plan when considered as a whole. The City take the view that such breaches do cause the proposal to fail to comply with the development plan as a whole, but only as a result of a single cause, and because of the absence of a policy provision which would allow public benefits to be weighed against *less than substantial* harm to the significance of heritage assets.
- 7.97 An alternative view<sup>601</sup> is that compliance with the policies which support enhanced cultural and visitor attractions, educational and community provision and design quality outweigh the conflict with the heritage policies and cause the proposal to comply with the development plan when considered as whole.

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<sup>600</sup> Palmer at paragraph 5: CD10-10

<sup>601</sup> See Goddard PoE 11.15 CD13-4

- 7.98 The NLP has now been published. It contains policies HC1 and HC2, and policy D9C(1)(d), which do not incorporate the balancing exercise. The SoS will have to consider whether, notwithstanding breaches of policies HC1 and HC2, compliance with D9C(1)(d), and with other supporting policies, causes the proposal to comply with the development plan when considered as a whole<sup>602</sup>.
- 7.99 Whether one takes the view that the development plan is complied with or not, the essential question to be asked is whether the assessed degree of harm to the significance of designated heritage assets of high value is sufficient reason to turn away the benefits of the scheme. That is the question which application of the NPPF§196 balancing exercise allows to be answered. In this case, for the above reasons, the application of that NPPF balancing exercise comes down strongly in favour of granting planning permission. As a result, other material considerations indicate that planning permission should be granted.
- 7.100 The reason that application of the development plan policies and the NPPF cause different conclusions to be reached based upon the same degree of harm to the same designated heritage assets is that the development plan policies do not incorporate the balancing exercise. That balancing exercise is incorporated in national policy and is contemplated by the ICOMOS guidance<sup>603</sup>.
- 7.101 To make a decision in accordance with the development plan heritage policies would frustrate national policy in relation to heritage assets on the basis of development plan policies which are not consistent with that national policy. For that, amongst other reasons, this is just the type of case which the *unless* in section 38(6) of the PCPA 2004 contemplates, being one where the other material considerations clearly outweigh the indication given by the development plan.
- 7.102 Turning to the main issues identified in my introduction;
- a. The harm to the significance of the ToL as a heritage asset (comprising the WHS, conservation area, scheduled monument and LBs) is at the lower end of less than substantial.
  - b. No harm would be caused to the significance of other LBs, conservation areas or non-designated heritage assets.
  - c. The public benefits of the proposal outweigh the *less than substantial* harm to the significance of designated heritage assets and any additional harm to strategic views.
- 7.103 Once it is decided that public benefits outweigh heritage harm and any impact on strategic views, the answer becomes clear, planning permission should be granted.

## Conclusion

- 7.104 This innovative and very high quality scheme, which can properly be described as *world class* architecture, offers an opportunity to London to develop its international image and its visitor economy whilst offering significant educational and community benefits and public realm improvements. The scheme would also advance the City's ambition to enhance the Square Mile's cultural attractions and extend an invitation to a wider range of people to enjoy the wonder of the Cluster and a view over all London has to offer.

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<sup>602</sup> The City anticipates that if the new London Plan is published before the decision is made on this case, parties will be offered the opportunity to make further submissions.

<sup>603</sup> CD8-13 paragraph 2-1-5

7.105 After careful deliberation the City decided to seize the opportunity presented by this proposal and the City urges you to do likewise and to recommend to the SoS that planning permission be granted.

## **8 The case for the Mayor of London**

*Its closing submissions, with minor adjustments, are as follows.*

### **Introduction**

- 8.1 The Mayor's power to direct refusal is used sparingly. It has never before been felt necessary to use it in relation to a proposed tall building in the Cluster. This case is exceptional. The level of harm the proposed tower would cause is exceptional. It includes significant harm to heritage assets of international and national significance, strategically important views, the townscape and skyline of the City, and a primary civic space in the heart of the Cluster - an area whose successful development is vital to London's prosperity, and which depends on protecting, enhancing and animating its already limited areas of public realm.
- 8.2 The proposal is neither world class architectural quality<sup>604</sup> nor high quality design<sup>605</sup>, prioritising self-regarding ambition for visibility and prominence to the detriment of the Cluster's coherence, both in terms of shape and materiality. Its incongruous nature would be readily apparent on the skyline in long range views, as well as in the local townscape. It would appear as a significant and uncharacteristic intervention in one of London's most important and highly sensitive locations.
- 8.3 There is a strong statutory presumption in favour of refusal, and extensive conflict with development plan and national policy. The harm and policy conflict is nowhere near offset by the comparatively limited public benefits that this inherently unsustainable and socially exclusive scheme would deliver.

### **Effect of the appeal proposals on the character and appearance of the area, urban design, townscape and architectural quality**

#### *Introduction*

- 8.4 The Mayor's case on these issues is in the proofs of evidence<sup>606</sup>, supplemented by examination in chief<sup>607</sup> and the policy context<sup>608</sup>. There was no process of *testing, exploring and stretching* the client's brief, which was the approach that made F+P a world class architectural office.<sup>609</sup> The key design decisions were driven by the client's desire to achieve a tower that was as tall as possible<sup>610</sup> and the highly constrained nature of the site<sup>611</sup>. The decision to maximise its height was driven entirely by its function as an observation tower and the *competition* posed by other tall buildings<sup>612</sup>. Such decisions were not taken with the benefit of any proper understanding of potential

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<sup>604</sup> As required by NLP policy D3 D 12) [CD19D-27] LP policy CS14 [CD19H-2]

<sup>605</sup> As required by NLP policy D3 D(12) [CD19H-3] LP policy CS10, CoL LP policy DM10.1 [CD19H-2]

<sup>606</sup> Ms Adams Sections 5.3 (Design Quality and Architecture), 5.4 (Public Realm), 5.5 (Relationship with the Eastern Cluster) and 5.6 (Height and Impact on the Skyline) [CD15-3]. Dr Barker Mills para 10.31: good design should be based on an understanding of impact on and relationship to the historic environment, also XIC [CD15-5].

<sup>607</sup> The note of Ms Adams' XIC evidence is at CD194D-14.

<sup>608</sup> Ms Adams' PoE Section 2.2 CD15-3].

<sup>609</sup> Prof Tavernor explained, XIC.

<sup>610</sup> Mr Harrison, PoE, para 6.1.5 [CD13-8] and confirmed by Mr Harrison in XX by HE.

<sup>611</sup> DAS, p.7 (CD1-6).

<sup>612</sup> Harrison, Re-examination (RX).

impact<sup>613</sup>. Of the 32 consultants instructed during the design process, not one provided expert heritage input prior to the point at which the fundamental design concept was established<sup>614</sup>. There was no formal independent design review<sup>615</sup> until *after* the application had been reported to committee<sup>616</sup>, which meant it could play no part in the evolution of the scheme<sup>617</sup>. When it was put before the London Review Panel, their conclusions were strongly negative<sup>618</sup>.

## Public realm

### *Existing*

- 8.5 The existing plaza provides a highly valuable large, high quality open space<sup>619</sup> at the heart of the Cluster, an area where the scarcity of such space is identified as posing a challenge for achieving the policy ambitions for growth<sup>620</sup>. The important spatial contribution that it makes relies upon its generous size, simplicity, openness and absence of clutter<sup>621</sup>. It functions both as an area of transition for pedestrians and as a destination,<sup>622</sup> where the movement of people is not programmed or managed, and as the intended setting for the Gherkin<sup>623</sup>.
- 8.6 Importantly, these characteristics allow opportunities for *activation*, which has been recognised as essential for the area to remain competitive as a world class destination<sup>624</sup>. They also underpin its identification as one of only two primary civic spaces in the Cluster<sup>625</sup>. Those opportunities have been readily taken up, through the popular food market, cafe seating and the exhibition of sculpture<sup>626</sup>. These uses are fully aligned with public realm policy and meet the needs of the City's workers<sup>627</sup>. They are only examples of how the space can be used, and are not determinative of its potential. In addition, the plaza has significant public value as an uncluttered space for quiet reflection and relief from the densely developed and busy city. It is therefore a civic space of strategic importance within the Cluster, accessible to thousands of workers and able to accommodate precisely the activities that the *City Cluster Vision* identifies as essential for its success<sup>628</sup>.

<sup>613</sup> The DAS is silent on whether the proposals were designed with regard to the heritage context, particularly the setting of the ToL WHS. Mr Harrison sought to rely on the TVIA, but this is not an input into the design process.

<sup>614</sup> Prof Tavernor was instructed in August 2018. The milestone in the design process was reached in November 2017.

<sup>615</sup> The CoL's pre-application meetings are not a substitute for an independent design review panel, and no records were apparently kept of these meetings. It is neither transparent nor rigorous.

<sup>616</sup> The review took place on 16 April [CD4-2], the committee having considered it two weeks before [CD3-8].

<sup>617</sup> This is contrary to advice on the use of design review panels in NPPF 129 [CD6-1], they are of most benefit if used as early as possible. This is also reflected in Design Review Principles and Practice [CD11-53], design review is intended to offer feedback *that will lead to the improvement of schemes* (p. 6), that it is *Timely*. (p.7).

<sup>618</sup> They concluded their report: *The panel is unable to support The Tulip because it does not think it represents world class architecture, it lacks sufficient quality and quantity of public open space, and its social and environmental sustainability do not match the ambition of its height and impact on London's skyline*. The NPPF 129 [CD6-1] makes clear that decision-makers should have regard to the outcome of these processes.

<sup>619</sup> City Cluster Vision, p.25 [CD8-7]. Agreed as an accurate description by Mr Harrison in XX by GLA.

<sup>620</sup> City Cluster Vision, p. 17 [CD8-7].

<sup>621</sup> In the Architectural Design Report for the *Gherkin* [CD19B-33] it was explained that the circular plan allowed the existing pedestrian routes to be combined into dynamic public domain, making access across the site visibly available and inviting (p. 7).

<sup>622</sup> Ms Adams, PoE, para 3.4.4 and 4.2.5 [CD15-3]. See also the Gherkin Townscape Report [CD19B-35] at p. 8, which described how the plaza was designed to provide, inter alia, quiet spots for outside restaurant use, and p. 10 (paras. 10.6-10.7) on how the public realm is properly to be regarded as exemplifying architectural excellence.

<sup>623</sup> The Architectural Design Report [CD19B-33] explained how the Gherkin was conceived as a building in a space (p. 8, para. 8.3).

<sup>624</sup> City Cluster Vision, p.15 [CD8-7].

<sup>625</sup> City of London Audit Report, Open spaces and recreation, p.16 [CD11.2]. Note that the Gherkin Architectural Design Report [CD19B-33] described this as the *new public square*, consistent with its subsequent identification by CoL as a primary civic space.

<sup>626</sup> As part of the popular 'Sculpture in the City' programme.

<sup>627</sup> City Cluster Vision, pp.15 and 34 [CD8-7]. These forms of activation were strongly supported by those consulted.

<sup>628</sup> City Cluster Vision, p.17 [CD8-7].

- 8.7 Evidence failed to demonstrate that the development has been based on an understanding of how the existing public realm functions and creates a sense of place, or an understanding of how people use it, as required by policy and guidance<sup>629</sup>. It provided a wholly negative account of its existing condition<sup>630</sup>, and thus the Appellant's analysis of the impact rests on an inadequate understanding of the existing public realm and its importance<sup>631</sup>.

### *Impact*

- 8.8 Whereas new tall building proposals are normally expected to include net gains in street level public realm<sup>632</sup>, the scheme would result in a net *loss* of 88sqm at street level, and 35.5m of street level benches<sup>633</sup>. The impact would be disproportionately greater because of the harm caused to the function and character of the plaza. The removal of scope for activation is mandated by the s106<sup>634</sup>, but in any event is inevitable because of the loss of space and the pressures to which the residual space would be subjected. The proposed public realm would comprise a series of physically constrained spaces in which movement and activity are highly programmed both by design and through legal restraints. The spacious character of the northern part of the plaza, crucial in allowing for activation, would be lost. As was accepted, the narrow corridors of public realm remaining around the proposed buildings would no longer have the character of a plaza<sup>635</sup>.
- 8.9 The CoL seeks to diminish the loss of the market by reference to its modest scale, and by suggesting that it could be accommodated elsewhere. That misunderstands the harm. The prohibition of the market use exemplifies the loss of functionality and change of character of *this* key area of public realm. Moving the market *elsewhere* (even if that was secured, which it is not) is no answer, because it does nothing to mitigate the harm to this area of public realm. It also under-estimates its value as currently permitted. It is popular, serving 60,000 workers a year<sup>636</sup>, and is a significant and valuable amenity.
- 8.10 The quality and experience of the proposed public realm, which must take account of the many competing types and patterns of use that it must accommodate, will be poor and highly constrained<sup>637</sup>. Indeed, the areas of greatest pressure would be those that are the most physically constrained<sup>638</sup>. The proposed pattern was described as *compression and release*<sup>639</sup>, but as was explained<sup>640</sup>, the experience of compression and release relies not just on physical layout but what is required of the spaces programmatically. The main entrances and exits of important buildings<sup>641</sup> should be at

<sup>629</sup> NLP Policy D8 D [CD19D-27]. Mr Harrison also confirmed in XX by GLA that he had not taken into account the City Cluster Vision, which is extremely useful in understanding those things.

<sup>630</sup> Mr Harrison, PoE, s 3.2 [CD13-8]. Mr Harrison accepted that this account is wholly negative in XX by GLA.

<sup>631</sup> NLP Policy D8 D [CD19D-27] requires that development proposals are based on an understanding of how the existing public realm functions and creates a sense of place, demonstrating an understanding of how people use the existing public realm.

<sup>632</sup> CoL Public Realm SPD p. 41 Guideline 8.1 and para 8.2.2 [CD8-8].

<sup>633</sup> SOCG, para 4.8 [CD12-1]. The benches were highlighted in the Gherkin application materials as being of high quality materials, and described as street furniture at an ideal height for sitting on [CD19B-33] at p. 13.

<sup>634</sup> [CD12-6].

<sup>635</sup> Mr Harrison, XX by GLA.

<sup>636</sup> Mr Green, XIC.

<sup>637</sup> It is agreed that the success of the proposed public realm requires consideration of how areas are likely to operate and be experienced, having regard to the type and patterns of activity likely to occur (Mr Harrison, XX by GLA).

<sup>638</sup> Points 2, 3 and 4 on the plan at p.193 of the PoE of Mr Harrison [CD13-8].

<sup>639</sup> Mr Harrison, XIC.

<sup>640</sup> By Ms Adams

<sup>641</sup> As Mr Harrison in XX. PoE p192 [CD13-8], point 2 is for all visitors to the viewing gallery, restaurant/bar, and the educational and community space and where groups of up to 100 schoolchildren would emerge at lunchtimes. It is near the restaurant and bar entrance and that for the Gherkin restaurant. The space would be used by those going to and from the pocket park and pavilion roof, and others walking through. See XX of Mrs Hampson on patterns of behaviour.



points of *release*, whereas here it is the *compressed* spaces that would accommodate the main exit as well as a variety of other uses.

- 8.11 A similar problem arises at the entrance to the roof terrace, where conflicting demands would be made on a constrained part of the site. The issues to which this would inevitably give rise manifest themselves in the need for security staff to *disperse* visitors waiting for access<sup>642</sup>. Overall, the important role that the plaza currently plays, and which will only become increasingly important as the City becomes more densely developed, would effectively be lost<sup>643</sup>.

#### *Mitigation*

- 8.12 The proposed mitigation is limited and inadequate. The remaining ground level public realm is a product of what remains when the two northern corners are built upon. The small *pocket park* would be highly programmed, lacking any sense of openness and simplicity<sup>644</sup> and unable to fulfil many of the key functions of the existing plaza. Its attractiveness would be limited by the lack of sunlight for much of the day and its proximity to the busy entrances to both buildings, removing any sense of tranquillity and respite.
- 8.13 The existing ramp, the removal of which was emphasised as a significant benefit,<sup>645</sup> lies *outside* the plaza and has no significant effect on its current quality or use<sup>646</sup>. It would be replaced by the blank façade of the pavilion building facing onto St Mary Axe and a new void for vehicles, which would still therefore have to cross the pedestrian realm. The lack of animation along the street level façade fails to meet the ambitions of policy, which emphasise the delivery of complementary land uses through animation of ground floor spaces<sup>647</sup> and using active frontages to create positive reciprocal relationships between the inside and outside of buildings<sup>648</sup>.
- 8.14 The proposed roof top space is an inadequate substitute for the functional loss of the street level plaza. This was recognised by the CoL Public Realm officer in his objection<sup>649</sup>, in addition to other concerns<sup>650</sup>. It was identified as a concern by the LRP, which observed that the roof terrace was not equivalent to fully public open space at street level<sup>651</sup>. The difference between public realm at ground level and other levels is reflected in policy<sup>652</sup>, in particular the more demanding requirement for its provision in emerging CoL policy<sup>653</sup>. The roof terrace would not form part of the

<sup>642</sup> As required by section 4, Sch 8 of the s.106 agreement [CD19B-24].

<sup>643</sup> In RX, Mr Harrison drew attention to a photograph of the proposed public realm associated with the Tulip in the City Cluster Vision p.9. Mr Green explained in XIC that this document represented the corporate view of the CoL as at April 2019 and must be considered in light of the concerns of the public realm officer in respect of this scheme.

<sup>644</sup> CoL Public Realm SPD seeks public realm that is spacious and uncluttered (p.17) [CD8-8].

<sup>645</sup> Mr Harrison, XIC.

<sup>646</sup> Ms Adams XIC and RX. This was a carefully considered feature of the original design. In the Gherkin Townscape Report [CD19B-35] it was explained that the wall along the northern edge of the plaza (described as a *pure form*) *creates an enclosure, whilst shielding from view the delivery vehicles entering the basement* (p. 8, para. 8.5).

<sup>647</sup> Draft CoL LP, para 3.4.4 [CD19H-2].

<sup>648</sup> NLP, policy D3 6 [CD19D-27].

<sup>649</sup> Para 6 [CD11-52].

<sup>650</sup> Mr Richards in RX suggested that the concerns expressed were subsequently resolved by further information on pedestrian movement, however it is evident that many of the points raised are about matters that are not directly dependent on pedestrian movement. He accepted in XX by GLA that there had been no physical change to the proposed public realm between 1 Feb 2019 when the Public Realm Officer gave his comments and the OR date.

<sup>651</sup> [CD4-2].

<sup>652</sup> CoL LP policy CS14 *Tall Buildings* [CD19H-2] requires the provision of high quality public realm at ground level. CoL Public Realm SPD supports the provision of more public space for pedestrians, and preserving and expanding existing areas of public space (Aim 3, p.18) [CD8-8]. See also, Draft CoL Plan policy S12 (4) [CD19H-3].

<sup>653</sup> Draft CoL Plan policy S12 (4) places a more demanding requirement on the provision of ground level open space, requiring developments to provide the maximum feasible amount of open space at street level, in contrast to the requirement to incorporate publicly accessible other open space, including that at upper levels.



pattern of street level spaces identified by the Vision<sup>654</sup> as crucial to a well-functioning environment and would make no contribution to the permeability of the site. Like the pocket park, it would be highly programmed and lack the flexibility of the existing plaza.

- 8.15 Whereas the existing plaza was designed to be both visible and legible to pedestrians on St Mary Axe<sup>655</sup>, the entrance to the roof terrace would be tucked away at the back of the building posing the question: *where is the front door?* Access would be regulated, restricted, and managed by security staff<sup>656</sup>. It would be another heavily programmed space. The proposals would conflict with NLP policy D5, D8 and D9, LP policies CS7, CS10 and DM 10.1, the aims of the CoL *Public Realm SPD*, and the objectives of the *City Cluster Vision 2019*. This should be given very substantial weight<sup>657</sup>.

## The proposed tower

### *Policy and approach*

- 8.16 The CoL LP supports tall buildings on *suitable sites* within the Eastern Cluster.<sup>658</sup> This does not mean that all sites within the Cluster are suitable, and all proposals must satisfy the requirements of NLP and LP policy<sup>659</sup>. All tall buildings should be of an exemplary standard of architectural design quality<sup>660</sup>. The plan-led approach is underpinned by the CoL's use of 3D modelling<sup>661</sup>, which is used both to inform policy and massing scenarios and assess individual proposals<sup>662</sup>. Its use has allowed the CoL to move from a reactive approach to a proactive and positive approach to tall buildings<sup>663</sup>. The CoL's use of its model to assess applications is now included within the Draft CoL Plan<sup>664</sup> and is linked to compliance with other development plan policies<sup>665</sup>.
- 8.17 It is agreed that the use of the 3D model to curate the Cluster in this way serves the important public interest objectives of successfully planning the Cluster and protecting the WHS<sup>666</sup>. To achieve this, the CoL has sought to mediate between the significant height of the Cluster and the lesser height of the WHS. Development has been managed in order to avoid an abrupt vertical cliff edge and ensure the legibility of the

<sup>654</sup> [CD8-7].

<sup>655</sup> The Gherkin Townscape Report (July 1999), p. 35 *St Mary Axe* [CD19B-35] explains how the landscape features visible from the north along St Mary Axe *will indicate the existence of a special place, available for public use*.

<sup>656</sup> The CoL public realm officer identified that the roof terrace should not be considered as truly accessible public space at para 6 of his memorandum [CD11-52].

<sup>657</sup> Mr Green, PoE, paras 10.14 to 10.21 [CD15-8].

<sup>658</sup> Policy CS14 [CD19H-2].

<sup>659</sup> Para 6.5.4 [CD19H-2].

<sup>660</sup> NLP policy D9 C(c) [CD19D-27].

<sup>661</sup> In XX by GLA, Mr Richards agreed that the basis and purpose of the CoL modelling shows it is a very important tool for the successful planning of tall buildings in the City and for the plan-led approach.

<sup>662</sup> CoL's response to the EiP into tall buildings policy within the emerging LP, para 6 [CD7-8]. Mr Richards accepted in XX by GLA that the NLP advocates the use of 3D modelling. Indeed, he said the CoL had been instrumental in persuading the GLA of the importance of 3D modelling for assessing the impact of tall building proposals in the context of the NLP (XX by GLA). Support for the use of 3D modelling as part of delivering good design is incorporated into policy D4 D of the NLP [CD19D-27].

<sup>663</sup> Para 7 [CD7-8]. In XIC Mr Richards explained one of the reasons for establishing the 3D model was that the CoL were very concerned that it was operating in a very reactive way to tall buildings.

<sup>664</sup> Accepted by Mr Richards in XX by GLA.

<sup>665</sup> See the supporting text to policy S12 (Tall Buildings), para 6.5.11 [CD19H-3]. NLP policy D4 (Delivering Good Design) [CD19D-27] and policy CS7 (Eastern Cluster) of the CoL LP [CD19H-2]. It is surprising that the CoL sought to distance itself from the use of 3D modelling and the emerging shape of the Cluster in their opening in circumstances where it is now embedded within its emerging plan and has been relied on by CoL in response to the EiP into the tall buildings policy in the emerging LP [CD19C-1].

<sup>666</sup> Mr Richards, XX GLA, and para 116, OR [CD3-4]. In XX by GLA, Mr Richards agreed that both objectives were of significant strategic importance to the successful planning of the cluster, and the protection of the ToL.

Cluster as a single coherent entity on the skyline, with the WHS as a separate landmark to the east<sup>667</sup>. This has produced a *carefully negotiated* profile<sup>668</sup> whereby the Cluster steps up in height towards *1 Undershaft* from all directions<sup>669</sup>. It has been made possible only by the consistent application of the CoL's approach.

- 8.18 The use of 3D modelling in this way, and the strong emphasis placed upon it by the NLP as a means of protecting the setting of WHSs, have been relied on by the UK Government in correspondence with the WHC<sup>670</sup>. A comparison of the impact of the *Tulip* with the shape that emerged as a result of the 3D modelling was rightly treated by the City as an important material consideration in its own decision-making<sup>671</sup>. The Inspector/SoS now stand in the shoes of the Local Planning Authority (LPA) as decision-maker, and there is no reason it should be treated any differently now<sup>672</sup>.

#### *The base*

- 8.19 Tall buildings and the surrounding public realm should always be considered as one whole<sup>673</sup>. The base of the tower would be disproportionate in scale within the constrained nature of the site it occupies, splaying as it meets the ground. The large concrete buttresses and glass panelling would create a significant and overbearing built presence within the local townscape<sup>674</sup>, relate poorly to the surrounding streets<sup>675</sup> and reduce the spaciousness within the plaza within which the *Gherkin* is deliberately set<sup>676</sup>. The effect would lack any sense of lightness as the structure meets the ground<sup>677</sup>. The concrete buttresses would contrast starkly with the glazed materiality of the *Gherkin*, harming the ability to appreciate its architectural form and disrupting its relationship with the surrounding buildings. The entirely different scale of the buttresses within the relatively delicate local streetscape is largely unmitigated by street level activity<sup>678</sup>.

#### *The shaft*

- 8.20 The 186m concrete shaft has been intentionally designed to be *non-contextual* and to contrast with the *Gherkin* and the other tall buildings in the Cluster<sup>679</sup>. It would have most impact on the immediate space and neighbourhood<sup>680</sup>, dominating views from the middle distance<sup>681</sup>. It is agreed that concrete is uncharacteristic as a main material for tall buildings within the Cluster<sup>682</sup>, and that its use here would draw the

<sup>667</sup> OR, para 116 [CD3-4]. Mr Richards accepted in XX by GLA that the basis and purpose of the modelling shows that it is a very important tool for the successful planning of tall buildings in the CoL and has been promoted in this manner.

<sup>668</sup> OR, para 116 [CD3-4]. As confirmed by Mr Richards in XX by GLA and as set out in the CoL's SOC [CD14-2] at para 3.1, the CoL's position remains as set out in the OR, save for where on the spectrum the harm to the WHS sits.

<sup>669</sup> OR, para 91 [CD3-4]. Mr English explained in XIC that from the perspective of HE, the curation of the Cluster in this manner is essential for the protection of the WHS.

<sup>670</sup> DCMS Report on 'Palace of Westminster and Westminster Abbey Including Saint Margaret's Church (United Kingdom) (C426 bis), p.2 and Annex A [CD11-36].

<sup>671</sup> [CD3-4] at e.g. paras 90 to 91 and 139.

<sup>672</sup> Mr Richards, XX by GLA.

<sup>673</sup> CoL City Public Realm SPD p. 42, para 8.2.7 [CD8-8]; and see also NLP policy D8 F [CD19D-27]. The impacts described here must therefore be considered together with the points about public realm summarised above.

<sup>674</sup> Ms Adams, PoE, para 5.2.13 [CD15-3].

<sup>675</sup> A point supported by findings of the LRP [CD4-2] and contrary to NLP policy D9 C(1) a) iii [CD19D-27].

<sup>676</sup> Ms Adams, XIC, Figure 1. [CD19D-11].

<sup>677</sup> In contrast to a number of other notable visitor attractions, in particular the Eiffel Tower and the London Eye (see Ms Adams XIC [CD19D-14]).

<sup>678</sup> Ms Adams, XIC. See note at [CD19D-14], explaining the relationship with Bury St in particular.

<sup>679</sup> Mr Harrison, XX by GLA.

<sup>680</sup> Ms Adams, XIC. See XIC Note at [CD19D-14].

<sup>681</sup> Ms Adams, PoE, para 5.2.18 [CD15-3].

<sup>682</sup> Mr Harrison, XX by GLA and HE. He agreed that the existing and approved towers in the cluster share a number of common architectural features which this tower would not, particularly the shaft. These include that they are all framed structures, sometimes overtly expressed; they are all glass clad and reflective; the glazing allows patterns of occupation

eye upwards<sup>683</sup>. As identified by the LRP, the shaft would be mute in appearance, imposing itself on the area and wider skyline. The lack of any visible openings to provide a sense of human scale would contrast starkly to the visible activity within the surrounding office buildings and the complexity of the Gherkin<sup>684</sup>. It would present as a 14.3m wide concrete face to the *Gherkin* at a distance of merely 4.3m away.

- 8.21 Its materiality and form reflect its function, containing no usable space but merely a means of getting visitors to as high a level as possible. In this sense, it is first and foremost a product of engineering. The concrete exterior would lack any noticeable response to shifting light and weather conditions, in stark contrast to the reflective appearance of the other tall buildings nearby<sup>685</sup>. As explained, the shift of light across the shaft would only be appreciable over the period of a whole day, which is not a human timeframe<sup>686</sup>.

#### *The top*

- 8.22 The bulbous top of the *Tulip* would appear as a widening and extension of the concrete shaft<sup>687</sup>, drawing the eye upwards towards the narrowing sky gap between it and the *Gherkin* in views from ground level. Unlike other tall buildings, which taper as they get higher and become less detailed towards the top<sup>688</sup>, the glazed bulb is significantly wider and more detailed than the *stem*. The effect is that of a twelve storey building elevated disconcertingly into the air, amplifying the eye-catching prominence of the tower and its overbearing presence.

- 8.23 This is exacerbated by the asymmetrical design, contrasting with the axial symmetry of the Gherkin, which results directly from the internal function. As explained, the effect as a viewer moves around the building would be jarring<sup>689</sup>. The visual impact is heightened by the presence of *shiny* moving gondolas. Mr Harrison accepted that these would appear as *highly visible and eye-catching moving features on three sides of the top of the building*, appearing to *sparkle* in the light<sup>690</sup>. Both the asymmetry of the bulb and the presence of the protruding *jewel-like*<sup>691</sup> gondolas would be visible in long range views<sup>692</sup>. The *familial* relationship between the Gherkin and the bulb of the *Tulip*, which is central to the Appellant's case, is tenuous at best<sup>693</sup>.

#### *The building as a whole*

- 8.24 The *Tulip* would be a confusion of architectural ideas, producing an ultimately unsatisfactory result<sup>694</sup>. The evidence was compelling. The Inspector has a full note of

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to be visible, and gives a strong impression of the character of the cluster as working district; the other towers are consistent in architectural language from base to top, and concrete does not appear as a prominent architectural element; they are not top heavy, their elevations are generally sleek and uncomplicated by protrusions, and do not feature any visible moving elements.

<sup>683</sup> Mr Harrison, XX by HE.

<sup>684</sup> Mr Harrison agreed in XX by GLA that unlike the other tall buildings in the cluster, there is nothing in the shaft to give it human scale or to show activity within it.

<sup>685</sup> Ms Adams, PoE, para 6.1.8 [CD15-3].

<sup>686</sup> Ms Adams, XIC.

<sup>687</sup> Ms Adams, PoE, para 5.3.5.2 [CD15-3].

<sup>688</sup> Ms Adams, PoE, para 5.6.13 [CD15-3].

<sup>689</sup> And quite unlike a tulip (Ms Adams, XIC)

<sup>690</sup> Mr Harrison, XX by GLA. BRE Report, para 5.2.1 [CD3-1].

<sup>691</sup> DAS, p.153 [CD1-6].

<sup>692</sup> In respect of the visibility of the asymmetry, this was explained by Prof Tavernor in response to IQ. In respect of the visibility of the gondolas, this was accepted by Mr Harrison in XX by GLA.

<sup>693</sup> As explained at para 5.3.5.1 of the PoE of Ms Adams [CD15-3]. Nor was it an element of the original design, which explored a number of forms for the top of the building which had no apparent relationship with the Gherkin (see DAS [CD1-6], section 3.5; the Tulip is described as an 'alternative approach' at p. 48). The top of the building is only seen together with the Gherkin in views from the east in any event.

<sup>694</sup> Ms Adams, XIC, see also para 1.66 onwards in the note of Ms Adams' XIC evidence [CD14D-14].

the oral evidence<sup>695</sup>, and we do not repeat it here. The tower seeks to be a landmark, but within a Cluster of tall buildings with which it would compete rather than cohere. There is an inconsistency between the Appellant's position that the great merit of the *Tulip* lies in its singularity, dissociated and visually separate<sup>696</sup> from the *homogenous*<sup>697</sup> backdrop of other tall buildings, and the notion that the *Tulip* could somehow form part of the coherent whole or *complete*<sup>698</sup> it. Its overall design and appearance are likened to a *Tulip*, yet it lacks the proportions or symmetry that would justify the comparison. This is an example of repeated overblown attempts to instil meaning in a tower which, unlike many of the buildings and monuments referred to in evidence, lacks any significant meaning or celebration that would underpin its symbolism<sup>699</sup>. The result is a tower that would be starkly and intentionally different to the other tall buildings within the Cluster, both through its uncharacteristic use of concrete for much of its height, and its contrasting form.

### *Impact on the skyline*

- 8.25 The impact on the skyline would be significant. It is reflected in the inconsistency with the carefully curated shape of the emerging cluster, developed through use of the CoL's 3D model. The height of the tower would not simply conflict with that model and that carefully curated shape, it *falls outside the concept*<sup>700</sup>. It would introduce an *abrupt vertical edge* to the Cluster, the very effect the CoL has worked so hard to avoid<sup>701</sup>. The eastward descent from *1 Undershaft* that the CoL has consistently sought to achieve<sup>702</sup> would be entirely lost. Whereas previously some minor conflicts with the 3D model have been judged acceptable<sup>703</sup>, this would exceed the *jelly mould* by at least a third of its 305m height<sup>704</sup>.
- 8.26 As Mr Richards accepted, the inevitable impact of allowing this proposal is that the carefully curated emerging profile would simply *fall away*<sup>705</sup>, and with it the key means of achieving the significant public interest objectives that underpin it<sup>706</sup>. The CoL has no alternative approach to achieving those objectives<sup>707</sup>. The implication for future decision-making on any proposals for tall buildings to the east of the *Tulip* would inevitably be significant: it would be considerably harder to prevent the further erosion of the WHS's setting in circumstances where the carefully curated shape of the Cluster and the use of the 3D model had not been defended by the CoL. The precedent effect for future decision-making (agreed to be *clearly a material consideration*)<sup>708</sup> would be detrimental to the future protection of the setting of the

<sup>695</sup> [CD19D-14].

<sup>696</sup> Dr Miele, PoE, [CD13-7].

<sup>697</sup> Mr Harrison, PoE, para 3.6.1 [CD13-8].

<sup>698</sup> Dr Miele, PoE, para [CD13-7].

<sup>699</sup> See also Appellant's Opening Submissions suggesting the new tower would be an *opportunity [for the City] to make a statement about itself, about its people, and about the future it sees for itself* (para 1), *symbolic of a new start, a new spring for the City of London: more diverse, more inclusive, more democratic, and less mysterious* (para 4), *symbolic of the fact that the City has the wherewithal to act, achieve and deliver on these ambitions even in difficult times* (para 67), *symbolising a new start, a spring ... a symbol of hope, of renewal* (para 70) and *a symbol of openness, inclusion and confidence* (para 143) [CD19B-1].

<sup>700</sup> OR, para 508 [CD3-4] and paras 117-118. In XX by GLA, Mr Richards confirmed what is said there remains the CoL's view, and agreed this was plainly relevant to the judgment that must be reached on the impact of the proposed development on the WHS and on the successful development of the cluster and the skyline of London.

<sup>701</sup> OR, para 116 [CD3-4].

<sup>702</sup> OR, para 508 [CD3-4].

<sup>703</sup> See 100 Leadenhall [CD11-62].

<sup>704</sup> Richards in XX GLA that the jelly mould proceeds in a 45 degree line from 1 Undershaft to the ToL. This is broadly consistent with the image at Figure 55, para 5.5.10 of Ms Adams' PoE [CD15-3].

<sup>705</sup> Mr Richards, XX by GLA. This is despite Mr Richards denial in XIC that the CoL had not sacrificed the achievements in planning the Cluster.

<sup>706</sup> OR, para 129 [CD3-4].

<sup>707</sup> As accepted by Mr Richards in XX by GLA.

<sup>708</sup> Mr Richards, XX by GLA.

WHS<sup>709</sup>. Proposals for more tall buildings further to the east are already coming forward<sup>710</sup>. It is unclear how they will be managed in a way that would protect the WHS, if the CoL has abandoned its long-standing approach.

- 8.27 The Appellant argues that the approach to a visitor attraction must be different to that of office buildings, and the CoL justifies the proposal on the basis that it is *unique* and *unprecedented*<sup>711</sup>, seemingly willing to depart from the 3D model of the Cluster on this basis<sup>712</sup>. However, the policy requirements for tall buildings within the Cluster apply regardless of the proposed use, and the acceptability of the cluster's impact depends upon its coherence<sup>713</sup>. It is no answer to the significant impact of the *Tulip* to rely on the difference in its use. The policy context provides no presumption or expectation that a tall building housing a visitor attraction is necessarily suitable on this site.<sup>714</sup> If such a proposal cannot be designed in a manner that does not undermine the coherence of the Cluster and its appearance on the skyline, it may be that it is simply not a suitable site for it.

#### *Policy conflicts*

- 8.28 The proposal would conflict with NLP policies D1, D4, D5, D8 and D9 and CoL LP Policies CS7, CS10, CS14 and DM10.1 and, in particular, would fail to comply with criteria D8 B, C, D, E, F, G, M, D9 C(1) a) (i), (ii), (iii), b), c), d), e), 2) c), CS7(3), CS10 (1, 3) and DM10.1 (points 1, 2, 3). Very significant weight should be attached to this.

### **Effect of the appeal proposals on the significance of designated heritage assets**

#### *Introduction*

- 8.29 The proposal has generated strong and consistent opposition from those responsible for preserving the heritage interest of the WHS in the public interest, most notably ICOMOS<sup>715</sup>, HRP<sup>716</sup> and HE<sup>717</sup>. The strength of HE's concern is highlighted by the very unusual direct involvement of its Chief Executive at the committee meeting<sup>718</sup>, and its participation as a Rule 6 party at this Inquiry. It is common ground that significant

<sup>709</sup> See Dr Barker-Mills, PoE, para 9.18 [CD15-5]. Whilst the OR describes the effect of the Tulip as creating a *visual bookend* to the Cluster - the same wording used to describe the impact of *100 Leadenhall* (OR, para 118 [CD11-62]), Mr Richards explained in XX GLA that bookends are designed to be moved across as more books are added, highlighting the lack of protection that this offers. Similarly, his suggestion that future development might mediate between the cliff edge and the WHS (RX) would inevitably come at a cost of further encroachment into the visual separation between the cluster and the WHS and the remaining clear sky around the ToL.

<sup>710</sup> See [CD19C-11] p.4 application (Ref 20/00848/FULEIA) at Bury House, 31 Bury Street to *demolish the existing building and erect a new tower of approximately 198m AOD*, validated 28 October 2020 and *under consideration*. Dr Miele confirmed in XX by GLA that there is an active market for new towers in the Cluster, and that the SoS cannot assume there will be no new tall buildings proposed to the east of the appeal site. Note also Mrs Hampson's concession in XX by GLA that no significant reliance can be placed on proposed changes to the shape of the Cluster in the emerging CoL LP because of the stage reached and likely controversy.

<sup>711</sup> Mr Richards, XIC. The same description of a proposal being *unique* was put forward by developers of 1 Undershaft. Para 1.1 of the DAS [CD11-68].

<sup>712</sup> Dr Miele too explained in XX by GLA that the concept of *encroachment* by Cluster on the WHS was not relevant to this proposal because it is not an office building, but *unique*.

<sup>713</sup> Note that the CoL considers the current Cluster to define a coherent single dynamic and convincing urban form on the skyline (1 Undershaft OR, paras 111-112 [CD11-59]).

<sup>714</sup> As Mr Green explained in XIC, the correct interpretation of para 3.4.4 of the Draft CoL LP [CD19H-3] is that office and employment growth will be successfully accommodated by a cluster of tall buildings, which will provide an iconic view of the City and enhance its (the City's) role as a global hub for innovation in finance, professional services, commerce and culture. Emerging policy does not envisage tall buildings for cultural uses.

<sup>715</sup> [CD11-18].

<sup>716</sup> [CD17-9].

<sup>717</sup> CD5-3, CD5-4 and PoE of Mr English [CD16-3].

<sup>718</sup> The only time this has happened (Mr English, XX by CoL).



weight must be given to the views of HE and ICOMOS<sup>719</sup>. The Mayor's written evidence on these issues is to be found in its PoE<sup>720</sup>.

## The WHS

### *Issues of approach*

- 8.30 The ICOMOS guidance<sup>721</sup> provides that a *global* approach must be taken to assessing the impact of development on OUV. It is necessary to apply *the lens of OUV to the overall ensemble of attributes*. Impacts on the attributes of OUV must be considered both individually and collectively, rather than disaggregating *all the possible cultural heritage attributes and [assessing] impact on these separately through discrete receptors such as protected buildings ... and specified view-points with their view cones*<sup>722</sup>. The WHS must be seen as a single entity that manifests the OUV for which it is designated. This includes assessing the impact on integrity<sup>723</sup> and authenticity<sup>724</sup>.
- 8.31 Despite purporting to apply this guidance, the Appellant's assessment does exactly what it warns against, disaggregating the attributes and treating as relevant only those that expressly refer to setting<sup>725</sup>, and focussing unduly on discrete receptors such as specified viewpoints. This results in a reduction of the number of attributes considered and therefore a narrowed consideration of OUV, and a failure to appreciate how the attributes relate to each other and overlap. It produces an underestimation of overall impact<sup>726</sup>, with the Appellant concluding that harm would be caused only to a single view, in the way that it contributes to the appreciation of only one of seven relevant attributes of the OUV<sup>727</sup>.
- 8.32 Furthermore, the Appellant's approach fails to analyse the importance of setting to the attributes of OUV, and the impact of the proposal on the authenticity and integrity of the WHS as a whole<sup>728</sup>. If an assessment does not start from an understanding of significance and the contribution setting makes to it, any conclusions will underplay the impact of that proposal<sup>729</sup>.
- 8.33 The Appellant also conflates the impact on the LVMF views' composition in townscape terms with the impact on the OUV of the WHS and the ability to appreciate it. This is readily apparent from the reasoning on the level of harm to the ToL, which is couched in terms of the impact on LVMF views by reference to the LVMF guidance<sup>730</sup>. Whilst the LVMF views containing the ToL contribute to the appreciation of OUV, an

<sup>719</sup> Prof Tavernor, XX by GLA. Dr Miele explained that *of course* the views of ICOMOS were relevant to the SoS's consideration of heritage impact.

<sup>720</sup> of Dr Barker-Mills. s7 (Heritage Assets Affected by Proposed Development), s8 (Contribution of Setting to Significance of Heritage Assets) and s9 (Heritage Impacts of the Proposals) [CD15-5].

<sup>721</sup> [CD8-13]. It is common ground that the ICOMOS guidance should be applied (Prof Tavernor, XX by GLA) and the Appellant's HIA methodology purports to do so.

<sup>722</sup> P.1 [CD8-13].

<sup>723</sup> Whether all attributes that convey OUV are extant and not eroded or under threat.

<sup>724</sup> The way that attributes convey OUV. Para 5-12 [CD8-13].

<sup>725</sup> As explained by Dr Barker-Mills XIC. E.g., Prof Tavernor (PoE, para 5.75 [CD13-15]) has not treated as relevant concentric defences on the basis that it is not explicitly referred to as being expressed through setting. This is despite the fact that the concentric defences are described as appreciated *particularly in the semi-aerial view of the Tower from Tower Bridge and now from the Shard* (para 3.4.2 of the ToL Management Plan [CD8-23]).

<sup>726</sup> Dr Barker-Mills, XIC.

<sup>727</sup> HIA, p.65 [CD1-17]. Prof Tavernor, PoE, para 5.87[CD13-15]. Dr Miele concludes that there would be harm to two attributes of OUV in views from Tower Bridge including LVMF View 10A.1. Dr Miele conceded in XX by HE that there would also be harm to a third attribute, that of the ToL's landmark siting.

<sup>728</sup> Prof Tavernor sought in XX by HE to deny that nothing in his PoE explained the contribution of setting to significance by referring to the HIA and TVBHA.

<sup>729</sup> Dr Barker-Mills, XIC.

<sup>730</sup> Prof Tavernor, PoE, para 5.65 [CD13-15].



assessment of impact on those views cannot be treated as a proxy for impact on OUV<sup>731</sup>. Any assessment of impact must be informed by reference to the full range of views in which the proposed tower would appear, including those in the WHS Management Plan, to inform a global assessment<sup>732</sup>. It is common ground that what is important for assessing harm to OUV and the ability to appreciate it is the extent to which a view contributes to the significance of the WHS or the ability to appreciate it<sup>733</sup>. Despite this, the Appellant's approach contains no analysis as to whether neutrally described aspects of the view make any contribution to the significance of the OUV of the ToL or the ability to appreciate it<sup>734</sup>.

- 8.34 The Appellant's methodology in the HIA introduces an additional input to the assessment of significance of effect identified as *quality of effect*<sup>735</sup>, which assesses whether an effect harms, preserves or enhances the *quality of the environment*.<sup>736</sup> As was accepted, this assessment does not reflect anything in the ICOMOS guidance, but rather, provides a *qualitative judgment feeding into effect*.<sup>737</sup> The practical effect is to introduce a significant element of subjectivity into the methodology which has nothing to do with heritage significance or OUV, thereby conflating impact on the distinct receptors of townscape and heritage. This subjective judgment on the *quality of the environment* directly informs the Appellant's conclusion on the significance of effect making it inherently unreliable as an assessment of heritage impact.
- 8.35 In order to seek to negate the impact on heritage, the Appellant places great emphasis on the design quality of the tower. This is contrary to the approach, recognised by policy<sup>738</sup> and reflected in the *Citroen* decision that good design is inherently informed by context, including historic context<sup>739</sup>. The proper approach to design quality within the assessment of heritage impact must have regard to what can be appreciated about the design and appearance of the tower within the particular context in which it is seen in relation to the heritage asset<sup>740</sup>. The Appellant's flawed approach<sup>741</sup> renders unsound any conclusion relying upon it.

## Harm

### *Existing harm*

- 8.36 The progressive tightening of policy to protect London's WHS includes the introduction of an explicit requirement to consider cumulative harm<sup>742</sup>, reflecting an acknowledgment that harm has occurred already and should be taken into account in assessment. The decision-maker must consider which elements of the ToL's existing and consented wider setting make a negative contribution to its OUV or the ability to appreciate it<sup>743</sup>. It is agreed that adding to harm that already exists from negative

<sup>731</sup> As explained by Dr Barker-Mills in his PoE at para 10.30 [CD15-5].

<sup>732</sup> NLP para 7.2.3 [CD19D-27]. Prof Tavernor accepted that RfR 4 is a consequence of conclusions as to impacts on LVMF views, and not a limitation on the views from which the concerns in RfR2 are to be assessed.

<sup>733</sup> Agreed by Prof Tavernor in XX by GLA.

<sup>734</sup> This is despite Prof. Tavernor's acceptance in XX by HE that juxtaposition within LVMF View 25A cannot mean that anything that contributes to it avoids harm. He was right, as such a crude approach would nullify policies which seeks to protect the wider setting of the WHS. Whilst the GLA acknowledged that juxtaposition in LVMF views *may be* positive (emphasis added), that does not – and could not – mean that any and every proposal which contrasts with the WHS will itself be beneficial (or even acceptable). It will all depend on a case-by-case appraisal.

<sup>735</sup> Table 4.4, p.11 [CD1-17].

<sup>736</sup> Table 4-4, p.11 [CD1-17].

<sup>737</sup> Prof Tavernor, XX by HE. The HIA describes the source for this input as Developed by Tavernor Consultancy based on GLVIA (Ref V3-16). Table 4-4, p.11 [CD1-17].

<sup>738</sup> NLP, policy D3 D(11) [CD19D-27], CoL LP policy DM10.1 [CD19H-2].

<sup>739</sup> Para 15.57 [CD9-4].

<sup>740</sup> Dr Barker-Mills, XIC.

<sup>741</sup> Which has been criticised by ICOMOS [CD11-18].

<sup>742</sup> The relevant references are to be found in section 8 of the Heritage SoCG [CD19B-28].

<sup>743</sup> NPPF definition of setting p. 71 [CD6-1].

contributors to setting would constitute cumulative harm, and this would be a material consideration in judging whether any additional harm is acceptable<sup>744</sup>. It is also common ground that *past harm shouldn't be used to justify additional harm*<sup>745</sup>.

- 8.37 The harmful impact of tall buildings on the ToL's setting, and the fundamental contribution that setting makes to the significance of the OUV and its integrity, have consistently been identified by ICOMOS and the WHC<sup>746</sup>.
- a. ICOMOS and the WHC consider that development within the setting of the WHS, but not affecting its physical fabric, is capable of leading to *in-danger* listing. This is highly relevant to the importance of setting to significance, and the ability to appreciate it, and when considering the extent to which *setting* harm can cause serious harm to significance<sup>747</sup>.
  - b. It is agreed the decision-maker should attach significant weight to the views of ICOMOS and the WHC<sup>748</sup> and to HE's advice on the impact of proposals on OUV<sup>749</sup>.
  - c. The 2006 *Mission* Report concluded new urban development had (by then) had considerable impact on the WHS's visual integrity, the proposed *Minerva* Tower was a *major threat* and *in danger* listing was contemplated as a result of development within the setting<sup>750</sup>.
  - d. In 2011 the *Mission* Report identified harm from the visual distraction from the Shard, attracting the gaze of visitors away from the ToL, and from 20 Fenchurch Street. Both schemes had been found acceptable by the UK planning system<sup>751</sup>. The UK Government accepted these findings<sup>752</sup>, and this is reflected in the Mayor's WHS Settings SPG<sup>753</sup> and the SOUV itself<sup>754</sup>.
  - e. ICOMOS's concerns about the appeal scheme<sup>755</sup> are agreed to be consistent with the previous pattern of concerns. Its view is that the integrity of the WHS has already reached its limits in terms of visual impact and there is no room for additional challenges to it<sup>756</sup>.
- 8.38 The Government has acknowledged ongoing concerns about the adequacy of the existing urban planning framework in London and is relying on the tougher policies of the NLP<sup>757</sup> to prevent exacerbating the existing harm, as agreed to be necessary by the report of the EiP into the emerging LP<sup>758</sup>.

<sup>744</sup> Dr Miele, XX by GLA.

<sup>745</sup> Dr Miele, XX by GLA.

<sup>746</sup> 2006 *Mission* Report [CD15-6A]. The impact was dealt with in XX of Prof. Tavernor by GLA who accepted in XX by HE that the Government recognised that the surroundings make a fundamental contribution to significance.

<sup>747</sup> Prof. Tavernor, XX by GLA.

<sup>748</sup> Prof. Tavernor, XX by GLA – this is agreed to be because of their role in identifying what gives the WHS its OUV, and in determining whether it should be on the 'in danger' list.

<sup>749</sup> Prof. Tavernor, XX by GLA. Agreed to be in part because if HE objects to a proposed development for potential negative impact on OUV, it is likely that the WHC it too will express concerns (see p. 24, para 3.1.5 [CD11-19]).

<sup>750</sup> Prof. Tavernor, XX by GLA and pp3 (background to the Mission), 4 (WHC Resolution, item 6) and s8 [CD15-6A].

<sup>751</sup> See pp. 7-8, [CD16-6A]. Prof. Tavernor agreed in XX by GLA that the fact the UK's planning system had approved individual tall buildings did not mean they had not resulted in harm (and see also para 5.31, [CD8-16]). Indeed, concerns about the Shard were so significant that more tall buildings visible above the on-site historic buildings would destroy the visual integrity, and seriously damage the ToL's OUV, possibly beyond repair (p. 12).

<sup>752</sup> p. 2, [CD11-13].

<sup>753</sup> p. 22, [CD8-16].

<sup>754</sup> p. 37, [CD11-39]. The SOUV states that key aspects of significance have been eroded by tall buildings and continue to be threatened by proposals for new development.

<sup>755</sup> Technical Review, [CD11-18].

<sup>756</sup> Prof Tavernor agreed in XX by GLA that significant weight should be given to this.

<sup>757</sup> Policies HC2 and D8 of the NLP [CD19D-27]. The policy HC2 B test should not compromise an appreciation of it or authenticity and integrity of attributes.

<sup>758</sup> Para 7.2.3 [CD19D-27].

### *Proposed harm*

- 8.39 The proposals would result in permanent and significant harm to six components that contribute to the attributes of OUV of the ToL, and the authenticity and integrity they express<sup>759</sup>. There is no dispute that setting makes a fundamental contribution to OUV and underpins many of its attributes<sup>760</sup>. The ToL's siting on the main approach to the capital goes to the heart of its historic role as a fortification and protector of the City, exerting influence beyond its walls<sup>761</sup>. The skyline silhouette of the WHS within its local and wider setting, in particular from the river and south bank, contribute to an understanding of the WHS's landmark siting and its role as a symbol of Norman power<sup>762</sup>. The scale and dominance of the White Tower convey its historic role as a military deterrent, the centre point of the concentric defences, and the last element of the fortress to be breached<sup>763</sup>. This is appreciated not just from its silhouette against the sky but from within and around the site<sup>764</sup>.
- 8.40 The form and visual dominance of the White Tower<sup>765</sup> would be diminished by the prominence and singular form of the *Tulip*, which would intentionally draw the eye upwards and compete for attention. Its presence would reduce the visual separation between the White Tower and the City in views from Tower Wharf<sup>766</sup> and LVMF View 10A.1<sup>767</sup>. From Tower Bridge<sup>768</sup>, the *Tulip* would rise immediately above and between the turrets of the White Tower, tracking behind it as an inescapable presence as the viewer moves north<sup>769</sup>. From the Innermost Ward<sup>770</sup>, the *Tulip* would intrude into the space behind the White Tower and its prominence would diminish the White Tower's dominance of the intimate space. The *Tulip*'s eye-catching presence would draw attention away from the more modestly scaled buildings of the Inner Ward<sup>771</sup>, diminishing the sense of separation from the modern City and appearing to bring the City significantly closer<sup>772</sup>.

<sup>759</sup> As explained by Dr Barker-Mills para 9.1 [CD15-5], the appropriate way to assess the impact of the proposals on the OUV is using the components of the identified attributes for the ToL. These are identified in bold, see PoE of Dr Barker-Mills para 7.18 [15-5]. This accords with Dr Miele in XX by HE considering the role that the dominance of the White Tower had in relation to multiple attributes that some concepts run across the attributes.

<sup>760</sup> Accepted by Prof Tavernor in XX by HE.

<sup>761</sup> Fortifications were identified by Inspector in the Chiswick Curve decision as a type of heritage asset where a good deal of the significance may be contained in setting, para 12.145 [CD9-1].

<sup>762</sup> Dr Barker-Mills, PoE, para 9.7 [CD15-5]. Dr Miele conceded in XX by HE that the ToL's landmark siting was harmed by the impact of the proposal on the dominance of the White Tower, which is a key aspect of this attribute.

<sup>763</sup> Dr Barker-Mills, XIC.

<sup>764</sup> Dr Barker-Mills, XIC.

<sup>765</sup> Dr Barker-Mills, PoE,

<sup>766</sup> Dr Barker Mills paras 9.2–9.5 [CD15-5]. The White Tower is individually listed Grade I, and Ax 2 photo 12 [CD15-6].

<sup>767</sup> Acknowledged by Dr Miele para 8.98 [CD13-7]; Prof Tavernor para 5.84 [CD13-15] in XX by GLA, Prof Tavernor acknowledged that views from this location allow the fine details and layers of history to be understood, and that attributes which are expressed in the detail and layers of history can be appreciated from here. This would include the concentric defences (visible structure and 3D form) and surviving medieval remains. Also that if the proposed development would compete with or distract attention from these aspects of significance, that would constitute harm.

<sup>768</sup> Dr Barker Mills, PoE, para 9.5 [CD15-5]; Appendix 2, photograph 5 [CD15-6].

<sup>769</sup> As explained by Dr Barker-Mills in XIC.

<sup>770</sup> Dr Barker-Mills, PoE, para 9.3 [CD15-5]; Appendix 2, photographs 22 and 23 [CD15-6].

<sup>771</sup> Dr Miele agreed that the 'Objectives and guidance' for View 1, Scaffold Site, Inner Ward in [CD8-22], namely that buildings outside the curtain wall should respect the sense of place of the Inner Ward and ensure the buildings surrounding the Inner Ward remain the focus of the view is not limited to any individual view, but is a general objective.

<sup>772</sup> Dr Miele accepted in XX by GLA that the test that he had applied was whether the proposal overwhelmed the individual buildings, which introduced a concept that was not in the Local Setting Study (PoE, para 8.116 [CD13-7]). Dr Miele also accepted that if the Inspector or SoS concluded that the eye catching nature of the proposals, and their prominence, mean that attention would be distracted from the buildings within the Inner Ward, or the proposals would compete for attention with them, that would constitute harm. He agreed that the reference in the SOUV to an existing adverse impact on views out from the WHS must refer to those views out from the Inner Ward identified at pp. 20-21, para 2.4.2 in [CD8-23].

- 8.41 The *Tulip* would harm the ability to appreciate the WHS's iconic silhouette in its local<sup>773</sup> and wider setting<sup>774</sup>. The *Tulip*'s prominence would cause visual distraction in the key views up, down, across and from the river that allow an appreciation of the ToL's strategic siting and relationship with the river<sup>775</sup>. In views across the river, including LVMF View 10A.1, the *Tulip* would appear contrary to the stepped profile of the Cluster<sup>776</sup>, harming the relationship between it and the WHS<sup>777</sup>. The space between the Cluster and the WHS would be diminished and the visual dominance of the WHS eroded.
- 8.42 In views from the south bank, including LVMF View 25A<sup>778</sup>, the *Tulip*'s appearance as a major and immediately apparent new element on the skyline<sup>779</sup> would relate poorly to the WHS<sup>780</sup>, drawing the eye away from it<sup>781</sup> and harming the visual integrity of the view. It is not enough that the characteristic of juxtaposition between the City and the WHS in this view is maintained<sup>782</sup>. The extent to which juxtaposition is positive depends upon whether the attributes of OUV remain legible. In contrast, even if it was accepted – and it should not be – it would not therefore be a heritage benefit.
- 8.43 The *Tulip* would harm the ability to appreciate the visible structure and 3D form of the concentric defences<sup>783</sup> and the visual linkage with the river and surrounding cityscape in views from the south and east. The *Tulip* would form a new sheer edge to the Cluster, drawing the eye upwards as it rises directly behind the Broad Arrow Tower and the Constable Tower in views along Tower Bridge. From Tower Wharf, the ability to appreciate the layers of concentric defences and their dominance would be harmed by the visual prominence of the *Tulip* and its relationship with the south-west bastion of the Byward Tower. In views from the Inner Ward the *Tulip* would rise directly above the parapets of the Grade I listed Chapel of St Peter Ad Vincula, part of the ToL's surviving medieval remains<sup>784</sup>, and the Grade II listed Waterloo Barracks. In respect of both of these individually LBs within the WHS, the *Tulip* would provide a prominent visual intrusion, causing *less than substantial* harm which is at the upper end in the case of St Peter Ad Vincula<sup>785</sup>.
- 8.44 The visual impact of the *Tulip* is exacerbated by the highly visible shiny<sup>786</sup> gondolas on the bulb by day, and the illumination of the shaft and cluster of aviation lights by night<sup>787</sup>. The nature of this lighting contrasts with the uniform illumination of the surrounding tall buildings, creating an effect similar to the lighting of the ToL's solid

<sup>773</sup> Dr Barker-Mills, PoE, para 9.7 [CD15-5].

<sup>774</sup> Including LVMF 25A.1–3. Dr Barker-Mills, PoE, para 9.6 [CD15-5].

<sup>775</sup> Dr Barker-Mills, PoE, paras 9.14 to 9.18 [CD15-5].

<sup>776</sup> Ms Adams, PoE, paras 6.1.6 and 6.1.7 [CD15-3].

<sup>777</sup> Dr Barker-Mills, PoE, paras 9.11 to 9.13 [CD15-5]. It was agreed by Prof Tavernor in XX by GLA that the existing tall buildings already appear close in this view (see also his PoE at p. 7, para 1.15 [CD13-15]).

<sup>778</sup> Dr Barker-Mills, PoE, paras 9.6 and 8.20 [CD15-5].

<sup>779</sup> As accepted by Prof Tavernor, PoE para 5.23, 5.29, 5.35 [CD 13-15] and in XX by GLA, that if the Inspector concludes that the proposed development would compete with and distract attention from the WHS in this view, that would amount to harm, even if the juxtaposition in the view remained.

<sup>780</sup> In XX by GLA, Prof Tavernor agreed that the requirement in the SPG to avoid dominance (para 415, [CD8-14]) extends to the whole WHS and not just the White Tower.

<sup>781</sup> An effect that Prof Tavernor accepted in XX by HE is relevant in this view to the effect on OUV.

<sup>782</sup> Dr Barker Mills, XIC. Also explained by Mr English in XIC, the approach to '*juxtaposition*' is far more nuanced than that adopted by Appellant.

<sup>783</sup> Dr Barker-Mills, PoE, para 9.8 to 9.11 [CD15-5].

<sup>784</sup> Prof Tavernor and Mr Richards have wrongly treated this attribute of OUV as not relating to setting by inserting the words [*fabric of*] into their quotation. (Richards, para 9.138 [CD14-4]. Prof Tavernor, para 5.75 [CD13-15]).

<sup>785</sup> Dr Barker-Mills, PoE, para 9.41 [CD15-5].

<sup>786</sup> A description accepted by Mr Harrison in XX by GLA.

<sup>787</sup> The shaft would be illuminated by linear and up-lighting. For details, see pp. 27-29 of [CD1-3] and p162 of [CD1-6]. There is no visual imagery that allows for the lighting effects to be adequately understood, and the Inspector should consider the existing view on site during the hours of darkness, and use his judgment to consider the likely impact of the proposals by reference to the prominence of e.g. the aviation lights on existing buildings.

masonry (and in much closer proximity). The overall effect is one that is significantly more distracting than the existing office buildings. As explained in detail<sup>788</sup>, the attributes of OUV that would be adversely affected are the ToL's landmark siting, the physical dominance of the White Tower, the concentric defences, the surviving medieval remains, and the ToL as a symbol of Norman Power.

### *Cumulative harm*

- 8.45 The Appellant's approach to assessing cumulative harm is fundamentally flawed because it assumes no harm has been caused by existing and consented tall buildings<sup>789</sup>. Thus the concern about moving from a position of *no harm* to *high level less than substantial harm* proceeds from a false premise<sup>790</sup>. Its approach was that existing harm *reduces* the potential for this proposal to cause harm, because on each occasion that harm is caused the *comparative* contribution that the same level of harm makes *reduces*<sup>791</sup>. It is misconceived, and would leave no means of preventing the incremental erosion of the contribution of setting to the significance of the WHS<sup>792</sup>.
- 8.46 The Appellant emphasises the lack of objection by the Mayor to individual tall building proposals. The Inspector and the SoS must, however, assess the position as it stands, based on the evidence available now. They are not constrained in the conclusions they reach on that evidence by any views the Mayor may have formed on proposals in the past, based on the material available at that time. The Mayor has presented evidence at this Inquiry on the basis of an assessment of the proposal within the context that now exists and with the benefit of expert advice. That evidence indicates that earlier proposals have caused harm, a conclusion supported by the SOUV. Insofar as inconsistency arises therefore, it is explained on the basis of the changes in circumstances. In any event, the Inspector and the SoS are considering these matters afresh<sup>793</sup>.
- 8.47 Nor does the advent of the concept or designation of the Cluster remove the scope for harm from tall buildings within its limits<sup>794</sup>. The Appellant has sought to characterise UNESCO's support for clustering of tall buildings following the 2006 *Mission Report*<sup>795</sup> as a positive encouragement for the development of more tall buildings within the Cluster<sup>796</sup>. As Mr English explained, the Cluster was proposed as a means of *managing* the identified harm of tall buildings within the setting of the WHS. This is reflected in the wording of the WHC's document, which spoke of a policy of concentration as a means of *limiting the impact* on the WHS, not removing the possibility of further harm. It cannot properly be characterised as a suggestion that tall buildings within the WHS's wider setting would cause no harm so long as they were within the Cluster<sup>797</sup>. Policy makes clear that the impact of tall buildings on heritage assets, and the WHS in

<sup>788</sup> in the PoE of Dr Barker-Mills

<sup>789</sup> See paras 53 – 56 above.

<sup>790</sup> Accepted by Dr Miele in XX by GLA. It is agreed that this issue does not arise where existing harm is identified.

<sup>791</sup> Dr Miele, PoE, para 8.48 [CD13-7]. Dr Miele accepted in XX by GLA that this was the implication of adopting his approach as a general principle for assessing cumulative harm.

<sup>792</sup> Dr Miele accepted in XX by GLA that this is *one outcome* that could arise, but did not consider that to be the case on the facts.

<sup>793</sup> HE did not identify harm caused by Heron Tower at the time of the application. It has since been recognised in the SOUV in 2011 that the existing towers (incl. Heron Tower) had harmed the integrity of the WHS [CD11-39].

<sup>794</sup> As seemed to be suggested to Dr Barker-Mills in XX by Appellant.

<sup>795</sup> Mr English, Appendices Part 2, pdf p.65 [CD16-5].

<sup>796</sup> However, Dr Miele acknowledged in XX by GLA that the identification of the Eastern Cluster did not mean that every site within the Cluster was suitable.

<sup>797</sup> Not only because the physical extent of the cluster was neither known nor fixed at the time, but also because any such inference would be incompatible with the language used by WHC.



particular, is a key consideration in deciding whether a particular scheme or site within the Cluster is acceptable.

- 8.48 The existing and consented Cluster has diminished the dominance of the WHS and the White Tower in particular, weighting the relationship in favour of the City in key views from which the OUV of the WHS can be appreciated<sup>798</sup>. The Cluster's presence in key views from within and outside the WHS has eroded the sense of separation between the modern City and the WHS, causing a degree of visual competition. The *Tulip* would exacerbate this existing harm. However it would do so in a manner that would clearly go far beyond what has gone before, as a result of its deliberately distinctive form and materiality, its incorporation of moving gondolas and its sentinel<sup>799</sup> location on the eastern edge of the Cluster, separated from the existing and consented towers in key views.

*Where does this harm sit on the spectrum?*

- 8.49 It is agreed that the only policy or guidance on the approach to determining where on the spectrum of *less than substantial* harm the proposals sit is that contained in PPG paragraph 018<sup>800</sup>. This guidance postdates *Bedford*, takes it into account and does not misunderstand the law<sup>801</sup>. It is agreed that a judgment that the significance of the asset is *very much reduced* would equate to a finding of *substantial* harm<sup>802</sup>. For such a finding, the decision-maker must look for whether there has been an adverse impact on a key element of significance, which is seriously affected by the proposal.<sup>803</sup>
- 8.50 It is first necessary to identify which aspects of significance (or ability to appreciate it) are affected by the proposals, and the importance of those aspects. The key question is not which elements of significance remain unaffected<sup>804</sup>. This is consistent with the approach in the *Citroen* appeal<sup>805</sup>. In the context of this appeal, this concerns the contribution made by setting to the OUV and integrity of the WHS and the ability to appreciate it. Having done that, it is then necessary to consider the extent to which this would be adversely affected by the proposal.
- 8.51 Having thereby identified where the harm should sit on the spectrum, it is then necessary to take account of the importance of the asset in determining the weight that should be attached to the harm. As explained above<sup>806</sup>, setting goes to the heart of the ToL's OUV (and the ability to appreciate it), and makes a fundamental contribution to the attributes that express it. The evidence<sup>807</sup> demonstrates that the *Tulip* would cause significant harm to six components that contribute to these attributes. The harm is rightly identified as at the upper end of less than substantial<sup>808</sup>.

<sup>798</sup> Including LVMF Views 10A.1 and 25A 1 – 3.

<sup>799</sup> Prof Tavernor, XIC.

<sup>800</sup> Prof Tavernor, XX by GLA. [CD19B-5].

<sup>801</sup> Prof Tavernor, XX by GLA.

<sup>802</sup> *Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin), at para 25 [CD10-2].

<sup>803</sup> As set out in the PPG at [018] [CD6-2] in respect of whether there has been substantial harm in the context of works to a listed building. As set out in *Bedford*, it is agreed that the yardstick for determining impacts on the setting of a listed building is essentially the same one (Prof Tavernor, XX by GLA). Prof Tavernor accepted in XX by GLA that there is no law or guidance that requires for substantial harm that the designation of the asset would be removed despite this assertion in his PoE at para 5.66 [CD13-15].

<sup>804</sup> Consistently with the approach adopted by Inspector in the *Citroen* appeal at para 15.15 [CD9-4].

<sup>805</sup> Para 15.15 [CD9-4]. The Inspector explained that the key point is how important the aspect that would be affected, that is the setting, is to its significance.

<sup>806</sup> See para 58 above.

<sup>807</sup> Dr Barker-Mills

<sup>808</sup> Significantly exacerbating the existing harm caused by other tall buildings in the wider setting of the WHS.



- 8.52 The CoL reached the same view in its carefully considered Officer's Report (OR).<sup>809</sup> It was accepted that neither the assessment of impact nor the importance of setting to the WHS have changed since that conclusion was reached<sup>810</sup>. The reasons given to explain the change in position have been inconsistent<sup>811</sup> and unconvincing. The analysis of the issue by experienced officers in the OR is clear and orthodox, revealing no inconsistency with law or PINS' decision-making.

### *Weight*

- 8.53 Great weight must attach to *any* harm to a designated heritage asset<sup>812</sup>. Beyond this starting point, the further weight to be attributed to the harm is a product of the extent of assessed harm and the heritage value of the asset<sup>813</sup>. The more important the asset, the greater the weight should be<sup>814</sup>. Very significant weight must attach to the harm to the WHS on the basis that the harm would be at the upper end of less than substantial, and to an asset of the very highest, and international significance<sup>815</sup>.

## **Other heritage assets**

### *Approach*

- 8.54 The methodology used to assess impact on other heritage assets in the TVBHA is neither transparent nor robust. In many respects, it is extremely difficult if not impossible to follow. The peer review of the TVBHA<sup>816</sup>, struggled to explain how conclusions on impact were reached by reference to the explanations provided. It was, for example, unable to explain how the impact on St Botolph's Church had been assessed as *neutral* on the basis of *a balance of benefit and harm*, when the impact<sup>817</sup> was said to be *not explicitly beneficial*<sup>818</sup>. The witness *simply [could] not identify* a benefit from the explanation provided that could be weighed against the harm<sup>819</sup>.
- 8.55 As was accepted, there is no analysis of the elements of each asset's setting that make a positive, negative or neutral contribution to its significance<sup>820</sup>. Instead, the methodology effectively assumes that the existence of tall buildings immunises any heritage assets from impact from further tall buildings, no matter what the nature of the adverse effect that would otherwise arise.
- 8.56 Holland House is a good example. Both the OR and the TVBHA acknowledge that the impact would be *significant* or *major* and would obscure or block views of the LB<sup>821</sup>. However both assessments conclude that there would be no *setting* harm whatsoever, the TVBHA even characterising the impact as beneficial. Both dismiss the impact on views of the building from the north-west on the basis that they are *modern views*

<sup>809</sup> OR, para 122 [CD3-4].

<sup>810</sup> Mr Richards, XX by GLA.

<sup>811</sup> The most recent offered for the first time only in XIC in November 2020.

<sup>812</sup> *Palmer v Herefordshire Council* [2016] EWCA Civ 106 at para 5 [CD10-10].

<sup>813</sup> *Palmer* at para 5. [CD10-10].

<sup>814</sup> Para 193 of the NPPF [CD6-1].

<sup>815</sup> Mr Goddard did not consider the weight to be attributed to the harm in the overall planning balance a matter for his evidence and accepted that he had provided no analysis of weight within his PoE (XX by HE).

<sup>816</sup> By Dr Miele. In response to XX by GLA.

<sup>817</sup> Dr Miele expressed this as being an impact on the view.

<sup>818</sup> TVBHA, p.189 [CD1-11].

<sup>819</sup> Dr Miele, XX by GLA.

<sup>820</sup> Dr Miele accepted that the TVBHA at p.39 [CD1-11] provided no analysis of the presence of tall buildings as positive, negative or neutral in the setting of St Andrew Undershaft, the example he was asked about by GLA in XX. The same omission applies to the assessment of all heritage assets with existing tall buildings in their setting.

<sup>821</sup> OR, para 179 [CD3-4]. TVBHA, p.196 and 198 [CD1-11].

that were not originally available<sup>822</sup>. As was accepted<sup>823</sup> and reflected in guidance<sup>824</sup>, new views of a LBs can contribute to its significance and the ability to appreciate it. In this case, the opening up of these new views by the creation of the plaza was identified at the time as enhancing the setting and ability to appreciate the building<sup>825</sup>.

- 8.57 Another good example is the Church of St Andrew, Undershaft<sup>826</sup>. The TVBHA finds that the impact on the close setting of the church would be *major*, but because there is already an established presence of tall buildings, the conclusion is that the effect is *negligible*<sup>827</sup>. In the view from Leadenhall Street, which is recognised in the assessment as having heritage value in the existing position, the major change to the skyline composition from the proposal rising above the Church is considered to be *beneficial* on the basis that it would preserve the dramatic contrasting setting<sup>828</sup>. In respect of the cumulative impact, the loss of the Church's skyline presence, and the prominence of the three consented tall buildings in its close setting, is also assessed as having no adverse heritage impact whatsoever<sup>829</sup>. It was accepted that these assessments contain no analysis of whether the existing contrast between tall buildings and the Church is positive, negative or neutral in relation to the significance of the asset or ability to appreciate it<sup>830</sup>. Instead, it expresses what is preserved by reference to existing townscape character, a distinct receptor to that of heritage significance<sup>831</sup>. Such an assessment therefore cannot be relied upon. The CoL has adopted the same flaws<sup>832</sup>.
- 8.58 The Appellant's case is that the *juxtaposition* between the old and new is a *uniformly* positive feature wherever it occurs in the City. Juxtaposition *per se* is not, of course unique to the CoL. It is commonplace in the UK. The *extent* of juxtaposition may be particularly marked here, and represented to a greater degree by modern tall buildings than elsewhere, but that is:
- a. a difference of degree, not principle; and
  - b. not an excuse or licence to skip an essential step in assessment, which is to consider whether any juxtaposition (existing or proposed) would be positive, negative or neutral in terms of the significance of any asset or the ability to appreciate it.
- 8.59 The effect of the Appellant's and CoL's approach is to avoid any proper structured analysis of a development proposal which maintains or contributes to this *juxtaposition*, consistently producing conclusions that such developments are not harmful. As was explained, juxtaposition between the old and the new cannot be

<sup>822</sup> Mr Richards, PoE, para 10.105 [CD14-4]. TVBHA, p.55 [CD1-11].

<sup>823</sup> Mr Richards, XX by GLA.

<sup>824</sup> HE Advice Note 3 on Settings [CD8-4].

<sup>825</sup> *Gherkin* Townscape Report [CD19B-35]. p 6 para. 5.2.2 and p. 37]. In XX by GLA, Mr Richards agreed that the plaza provided good opportunities to appreciate the façade of Holland House, a building whose significance lies in part in the fact it is a striking landmark and from the very high quality of the materials and detailing of the façade (see Mr Richards, PoE p. 239, para 10.102 [CD14-4]). He agreed this was an example of the phenomenon described in HE's Advice Note 3 (Settings) at p. 11, para 30 [CD8-3], whereby fortuitous views can allow significance to be appreciated.

<sup>826</sup> TVBHA, p.195 [CD1-11].

<sup>827</sup> TVBHA, p.53 [CD1-11].

<sup>828</sup> TVBHA, p.94 [CD1-11].

<sup>829</sup> TVBHA, p.94 [CD1-11].

<sup>830</sup> Dr Miele, XX by GLA. Dr Miele attempted to distance himself from the conclusions in the TVBHA stating that he did not write the assessment and had not carried out the full assessment himself.

<sup>831</sup> Dr Miele, XX by GLA.

<sup>832</sup> See, for example, the analysis of the impact on Bevis Marks Synagogue at para 10.83 of the PoE of Mr Richards [CD14-4].

treated as automatically positive<sup>833</sup>. If followed, their approach would ultimately result in a failure to apply the statutory duty in section 66(1), which depends upon a proper assessment of whether heritage harm has been caused.

### *Harm*

- 8.60 The appeal proposals would result in *less than substantial* harm to nine Grade I, four Grade II\* and nine Grade II LBs<sup>834</sup> and four conservation areas, by virtue of the impact of the proposals on their setting and the contribution of setting to the significance of these assets. Neither the Appellant nor the CoL have accounted for any harm to any of these heritage assets when striking the planning balance.
- 8.61 The prominent and eye-catching form of the *Tulip* at such close proximity to the Grade I listed Church of St Andrew Undershaft, St Helen's Bishopsgate and Bevis Marks Synagogue, the Grade II\* listed Holland House, the Grade II listed Bury Court and St Helen's Place Conservation Area<sup>835</sup> would cause a marked exacerbation in the existing harm from tall buildings to the setting of the assets and the ability to appreciate their architectural or historic significance. The effect would be variously to create an overbearing presence from within the curtilage of the heritage asset,<sup>836</sup> visually dominate the asset<sup>837</sup>, or visually isolate and obstruct important views of the asset<sup>838</sup>.
- 8.62 The distinctive form and appearance of the *Tulip*, including its significant height, would make it an assertive feature within the setting of the Grade I listed Tower Bridge<sup>839</sup>, Guild Church of St Ethelburga, the Churches of St Katherine Cree<sup>840</sup>, St Botolph Aldgate, and All Hallows, the Grade II\* listed 10 Trinity Square<sup>841</sup>, Lloyds Register, Sir John Cass School, the Grade II listed Dixon House and the Lloyds Avenue conservation area<sup>842</sup>. In these instances, the *Tulip's* form and appearance would cause visual competition and distraction and erode the dominance of the asset in important views that contribute to the significance of the asset and the ability to appreciate it. The level of harm to each of these heritage assets is set out<sup>843</sup>.

### *Weight*

- 8.63 Considerable weight must be attached to the adverse impact on these other designated heritage assets. Even if it was concluded that only one additional LB was going to be subject to harm, it would necessarily have a very significant effect on the overall planning balance because it engages a strong statutory presumption in favour of refusal, and must attract considerable weight. The reality is that the adverse effects arising in this case are clearly more extensive than that.

### *Claimed heritage benefits*

<sup>833</sup> Dr Barker-Mills, XIC. Dr Barker-Mills provided the example of the juxtaposition between the 20 Fenchurch St and Tower Bridge, an image of which is on the cover page of the HE Advice Note 4 [CD8-6].

<sup>834</sup> Not including those within the WHS itself

<sup>835</sup> Dr Barker-Mills, PoE, para 9.25-9.29 and 9.32 [CD15-5].

<sup>836</sup> In the case of Bevis Marks Synagogue.

<sup>837</sup> In the case of St Helen's Bishopsgate and St Andrew Undershaft.

<sup>838</sup> In the case of Bury Court and Holland House.

<sup>839</sup> Dr Barker-Mills, PoE, para 9.33 [CD15-5].

<sup>840</sup> See the Guild Church of St Ethelburga and that of St Katherine Cree are at Dr Barker-Mills para 9.36 [CD15-5].

<sup>841</sup> Dr Barker-Mills, PoE, para 9.35-9.37 [CD15-5].

<sup>842</sup> All discussed at Dr Barker-Mills, PoE, para 9.36 [CD15-5].

<sup>843</sup> In the PoE of Dr Barker-Mills, PoE, paras 9.41 – 9.43 [CD15-5].

- 8.64 The Appellant is the only party to assert that heritage benefits would be delivered<sup>844</sup>. The claimed benefits comprise an *enhancement* of View 25A, a *potential* increase in visits to the ToL, a new elevated view of the ToL and a better ability to appreciate the significance of London's heritage assets and the *interrelationship between the old and the new*<sup>845</sup>. The Appellant additionally claims a heritage benefit to the setting of the Grade I listed Church of St Helen's, the Grade II\* listed Holland House and Grade II listed 38 St Mary Axe<sup>846</sup>.
- 8.65 These claimed benefits have not been substantiated. As explained, the proposals would harm View 25A<sup>847</sup> and the setting of the heritage assets identified<sup>848</sup>. As was accepted, there is no evidence at all before the Inquiry that the proposals would bring additional visitors to the ToL<sup>849</sup>. It was also accepted that an understanding of London's heritage is better gained from visits to the assets themselves<sup>850</sup>. Moreover, elevated views of London's heritage is plainly something offered by all consented and existing viewing galleries.
- 8.66 On this basis, the Mayor does not consider there to be any material heritage benefits of the proposal.
- 8.67 If, notwithstanding those points, it is considered that some heritage benefits would arise, these should be afforded limited weight for the same reasons<sup>851</sup>.

### **The effect of the appeal proposal on strategic views, including the LVMF Views 10A and 25A.1-3**

#### *Introduction*

- 8.68 The Mayor's evidence on these is explained in detail in the PoEs<sup>852</sup>. The NLP and LP require that tall buildings enhance the skyline and image of London and make a positive contribution to the existing and emerging skyline<sup>853</sup>. Both NLP and local policies implement the LVMF, supported by the LVMF SPG, requiring that development proposals do not adversely affect, and seek to make a positive contribution to, the characteristics and composition of strategic views and their landmark elements<sup>854</sup>. Harm to LVMF views results in a distinct conflict with the development plan. Both views in issue here are afforded the same protection in policy and guidance.

#### *View 10.A*

- 8.69 The extent of dispute in respect of this view is narrow. The Appellant's assessment of the impact accepts that it is major in magnitude and the significance of the effect is very major and adverse in both the proposed and cumulative condition<sup>855</sup>. The singular form of the *Tulip* in a *sentinel* location<sup>856</sup> at the eastern edge of the Cluster

<sup>844</sup> Mrs Hampson in XIC confirmed that it was not part of the CoL's case that heritage benefits would be delivered.

<sup>845</sup> Mr Goddard, PoE, para 10.33 [CD13-4], as supplemented and expanded upon by Mr Goddard in XIC.

<sup>846</sup> Prof Tavernor, PoE, para 3.34 [CD13-15] and Dr Miele, PoE, para 18.5 [CD13-7]. These heritage benefits are not in the Mr Goddard's PoE and it is unclear whether they are considered to be material benefits.

<sup>847</sup> By Mr Barker Mills and Ms Adams who analyse the harm to LVMF View 25A at para 9.45 and section 6.1 of their PoEs, respectively [CD15-5] [CD15-3].

<sup>848</sup> Dr Barker-Mills identifies mid-range harm to the setting of 38 St Mary Axe (Bury Court), Holland House and the Church of St Helen's Bishopsgate at para 9.42 of his PoE [CD15-5].

<sup>849</sup> Mr Goddard XX by HE.

<sup>850</sup> Dr Wright, XX by HE. Mr Goddard, XX by HE.

<sup>851</sup> Unlike heritage harm, which must be given considerable weight in order to reflect the s.66(1) duty regarding preservation, no such legal mandate applies to heritage benefits.

<sup>852</sup> of Ms Adams Section 6.1 [CD15-3] and Dr Barker-Mills Paras 9.44 to 9.51 [CD15-5].

<sup>853</sup> NLP policy D9 C 1) a) (i) [CD19D-27]. CoL LP policies CS7 (3) and CS14 [CD19H-2].

<sup>854</sup> NLP policy HC4 A [CD19D-27].

<sup>855</sup> Pp.90 and 92, TVBHA [CD1.11].

<sup>856</sup> Language of Prof Tavernor in respect of this view in XIC.

and visually separated from the rest of the Cluster would be a dominant presence within the central portion of the view. The effect of its form would draw the eye away from the more subtle forms of the WHS, disrupt the sensitive balance between the City and the WHS, reducing the separation between them contrary to the LVMF guidance<sup>857</sup>.

- 8.70 The Appellant seeks to minimise the significance of the impact on the basis that it forms part of a *kinetic* sequence of experience as the viewer crosses Tower Bridge. This ignores the fact that View 10A.1 as defined and protected by the LVMF is a static view, the impact on which is not negated by the ability to appreciate views from elsewhere. Moreover, the reality would be that once the *Tulip* is noticed by the viewer, it would be a constant presence when travelling north along Tower Bridge, at times tracking behind the White Tower on the approach to Tower Wharf<sup>858</sup>. The extent and significance of its influence on the viewer both to the south and the north of the static viewing point would serve to exacerbate and not diminish the extent of the harm.

#### *View 25A.1-3*

- 8.71 There is no dispute that the *Tulip* would appear as an immediately apparent, eye-catching, and instantly recognisable landmark feature on the skyline in this view<sup>859</sup>. Nor is there any dispute that the *Tulip* is distinct in form and materiality from the other consented tall buildings in the Cluster. This lack of affinity with other tall buildings would disrupt the central characteristic of the view, namely the relationship and delicate balance between the City and the WHS, introducing a prominent third aesthetic and architectural language into the highly sensitive space between the two landmark features<sup>860</sup>. This is identified in the OR to create an assertive vertical edge to the cluster, which appears abrupt<sup>861</sup>.
- 8.72 Neither the Appellant nor the CoL identify any harm to View 25A.1-3, despite the Appellant's identification of the impact in this view as *major* in scale. The basis for this is no more sophisticated than a claimed reinforcement of *juxtaposition*, which is already identified as existing within the view<sup>862</sup>. In essence, as long as there is juxtaposition in the view, it is said that not only can there be no harm, but anything modern added to the City is a positive benefit. The reliance on juxtaposition alone would mean no new tall building could cause harm within the view, as long as it provided a contrast with the ToL. This negates any assessment of the nature and quality of the juxtaposition created and its impact on the contribution that the view makes to the setting of the WHS by reference to its OUV or the ability to appreciate it. Such an approach would also be inconsistent with adopted development plan policies which make clear that much more is required in terms of design and impact than simply maintaining a juxtaposition. This includes having an acceptable relationship with heritage assets, including the WHS.
- 8.73 The Appellant asserts that the *Tulip's* addition would be beneficial on the basis of claimed *design quality*, although it was unable to explain why the same *high quality* of design was not capable of negating the universally acknowledged harm to

<sup>857</sup> [CD8.14].

<sup>858</sup> Dr Barker-Mills, XIC.

<sup>859</sup> Mr Richards, PoE, paras 8.67, 8.69, 8.92, 8.116, 8.117, 8.141, 8.164, 8.165, 8.189 (in respect of LVMF View 25A 1, 2 and 3, proposed and cumulative) [CD14-4]. Prof Tavernor, PoE, paras 5.23, 5.29, 5.31, 5.35, 5.37 (in respect of LVMF View 25A 1, 2 and 3, proposed and cumulative).

<sup>860</sup> Ms Adams, PoE, para 6.1.4 [CD15-3].

<sup>861</sup> Para 125 [CD3-4].

<sup>862</sup> As was identified in the GLA Stage 1 report for 22 Bishopsgate (and Stage 1 reports in respect of other tall buildings) the LVMF guidance acknowledges that the juxtaposition between the Tower and the City Cluster is a key characteristic of [this view and View 10A.1,] and a relationship that *may be* seen as positive.



View 10A<sup>863</sup>. The approach is flawed in any event, because properly assessed this is not a high quality of design for the reasons set out above.

### *Conclusions on views*

- 8.74 Significant harm would be caused to both views, resulting in conflict with NLP policies HC4A and D9 C 1)a)(i) and CoL LP policy HC4A, CS7(3) and CS14. The weight that should be attached to this harm is very significant having regard to their acknowledged importance and to the number of people who experience them. That conclusion applies to both views, individually and collectively, and the acknowledged harm to view 10A alone is enough to create development plan policy conflict and a weighty material consideration in the negative side of the balance.
- 8.75 The Appellant seeks to *net off* this harm with a claimed benefit to an entirely separate view<sup>864</sup>. Such an approach is wrong in principle. Policy requires tall buildings to make a positive contribution to the skyline and enhance protected views. Delivering such a benefit (if accepted) would simply represent compliance with policy in respect of that view and cannot be used to diminish the conflict arising from the impact on another.

### **Public benefits**

- 8.76 The public benefits of the proposal are discussed in detail in the PoE<sup>865</sup>.

### *Economic*

- 8.77 The scale of economic benefit is largely agreed<sup>866</sup>. The identified benefits arising from the construction process are inherently short term, and not significant in either a local or regional context. The overall significance of the economic benefits (including the direct and indirect benefits from the operational phase) would be very minor, when considered in the local and regional context. This is reflected in the Environmental Impact Assessment (EIA), which identified the benefit as *minor beneficial* and *not significant*, taking into account the sensitivity of the receptor by reference to priority in local, regional and national economic and regeneration policies<sup>867</sup>.
- 8.78 The economic benefits are not comparable to those from office development of equivalent height, which is the priority land use for the Cluster and generates substantially greater economic benefits<sup>868</sup>. This is not an area within the City in which the priority land use is proposed to change<sup>869</sup>. Other uses are expected to be *complementary* to the priority land use rather than effecting a shift in the land use balance. This is relevant to weight, because there is no strategic need for greater diversification in this part of the CAZ.

<sup>863</sup> Prof Tavernor XX by HE.

<sup>864</sup> LVMF View 25A.

<sup>865</sup> of Mr Green Paras 10.56 to 10.148 [CD15-8].

<sup>866</sup> Benefits SoCG Paras 2.1 to 2.2 [CD19B-27].

<sup>867</sup> CD1-10, ES Ch.6, p.6.3, Tables 6.1 and 6.2. In XX by GLA, Mr Goddard agreed that the production and content of ESs are subject to the EIA Regs and guidance, which are intended to ensure that the assessment is objective, systematic and transparent, and undertaken by appropriately qualified experts. This was agreed to be important because of the role the ES is intended to play in informing decision-making on substantial proposals, and facilitating public involvement in decision-making. The assessments of significance are to be undertaken with the intention that they can be relied upon by decision-maker for the purpose of weighing both negative and positive impacts when deciding whether to grant planning permission or not. There was no suggestion the assessment in the ES socio-economic chapter should not be relied upon for the purposes of decision-making.

<sup>868</sup> See, for example 22 Bishopsgate ES Addendum [CD19D-7], Table 5, para 4.8. 1 Undershaft ES, Ch.6, Table 6-11 [CD19D-5]. See CoL Local Plan, p.20 (The Vision and Strategic Objective 1), p.21, p.31 paras 3.1.3 to 3.1.4. See also policy CS7 (Eastern Cluster) [CD19-H2]. and also CoL Draft Local Plan para 3.4.4 and 3.5 'The Spatial Strategy' and Policy S21 [CD19H-3].

<sup>869</sup> In XX by GLA, Mr Goddard accepted that the cluster is not one of those areas where the emerging plan is seeking to change the focus so far as land use is concerned.



8.79 The weight to be attributed to the economic benefits must also reflect the dis-benefits. In addition to direct economic losses<sup>870</sup>, the significant harm to the public realm and the opportunities for activation that it offers is also relevant here. High quality active public realm has been identified as essential to the delivery of the ambitions for strategic growth for the Cluster (see above)<sup>871</sup>. New visitor attractions have not. For the reasons explained in detail<sup>872</sup>, the economic benefits should be given very limited weight<sup>873</sup>.

### *Tourism*

8.80 In considering the claimed *tourism* benefits, it is important not to *double count* the indirect economic benefits of additional visitors. The Appellant's only metrics to quantify these benefit are the annual visitor numbers and their impact on the local economy. These benefits have already been accounted for<sup>874</sup>, and the Appellant acknowledges the claimed tourism benefits and the economic benefits are *allied* to and go *hand in hand*<sup>875</sup>.

8.81 Moreover, it is agreed that there is no identified need or shortfall in tourist attractions within London either in policy, guidance or in any independent study<sup>876</sup>. The evidence of Mr Rusby was clear, what he was identifying was not a need but what he characterised as an *opportunity*<sup>877</sup>. In any event, there is no evidence that a scheme of this type could not go elsewhere within the CoL or London, if there was such a need<sup>878</sup>.

8.82 If a paid for visitor attraction is considered a benefit, it should be given very limited weight. This benefit must also be weighed against the significant and permanent harm caused to the WHS, and two strategic views, which are of considerable importance to the image of London<sup>879</sup>. The existence of a number of other well-designed<sup>880</sup> free to access viewing galleries within the City and the Cluster, the popularity of which is not disputed<sup>881</sup>, further reduces the weight to be attributed to any tourism benefits.

<sup>870</sup> For example, the loss of existing office space and the loss of the market use.

<sup>871</sup> As accepted by Mr Harrison in XX by GLA.

<sup>872</sup> By Mr Green para 10.106 [CD15-8].

<sup>873</sup> The weight to be given to these benefits is not materially affected by COVID-19 or possible Brexit disruption. It is agreed that current UK Govt. predictions are that economy will be back to pre-Covid levels by at least the end of 2023, and that any operational benefits of this scheme would not be realised until 2027 at the earliest (XX Rusby). Mr Goddard accepted in XX by GLA that he was not suggesting to the SoS that the decision on whether to approve a permanent and prominent addition to London's skyline within the setting of a WHS should be swayed by short term factors such as the COVID-19 pandemic or Brexit disruption. That was consistent with Mr Rusby's earlier concessions in XX by GLA in the context of tourism. It is also clear from CD19C-12 and 12A, and Mr Richards' oral evidence that the CoL does not consider COVID-19 likely to affect the spatial planning of the Cluster.

<sup>874</sup> See above at paras 112 to 115.

<sup>875</sup> Mr Goddard, XIC.

<sup>876</sup> Mr Rusby, XX by GLA. He agreed in XX by GLA that the Mayor's Tourism Vision [CD11-1] identifies areas for action to maintain competitiveness, but contains no suggestion that a lack of elevated viewing galleries, restaurants and bars needs to be addressed to make London more competitive, or indeed a lack of major visitor attractions in Central London more generally. Mr Goddard agreed in XX by GLA that it is relevant to consider the weight to attach to the benefits of a scheme by reference to whether there is an existing or likely future shortfall (see e.g. p. 47, para 9.6.2 [CD9-8]). He also agreed that if the Inspector/SoS were to conclude that there is no shortfall in visitor attractions in the CAZ, that would be relevant to the weight to be attached to the benefit of providing a further visitor attraction.

<sup>877</sup> XX by GLA.

<sup>878</sup> In XX by GLA Mr Goddard confirmed it was not his case to suggest that there was no other site in the City or the CAZ which could provide a dedicated commercial viewing platform with bar and restaurant.

<sup>879</sup> Mr Rusby accepted in XX by GLA that one of the distinctive attractions of London for tourists is its outstanding built heritage, including its WHS and great array of listed buildings. He agreed that this distinguishes it from many new competing destinations. In seeking to compete with those emerging markets, London must be careful not to cause harm to that which makes it unique.

<sup>880</sup> See e.g. [CD11-64] (22 Bishopsgate OR at paras 102, 104, 119 and 124); [CD11-59] (1 Undershaft OR at paras 101, 104 and 117-118) and [CD11-62] (100 Leadenhall OR at paras 106-107 and 110) and the images and descriptions in [CD19C-14].

<sup>881</sup> Mrs Hampson, PoE, 8.38 [CD14-3].

## Education

- 8.83 The education offer is limited, poorly conceived and was quite clearly a low priority during the design process. The thirty two consultants<sup>882</sup> the Appellant instructed during the development of the design did not include an educational consultant<sup>883</sup>. The limitations on its space and use indicate that the Appellant has provided what it considers to be the minimum necessary to secure permission. As originally submitted the proposal was for a single 88m<sup>2</sup> classroom. This was increased to three much smaller classrooms in an attempt to overcome one of the planning objections raised by the Mayor<sup>884</sup>.
- 8.84 Even as increased, the space is constrained, in particular in light of the need to accommodate 100 children, plus teachers and educational facilitators at any one time. Its location at the lowest level of usable space within the bulb reflects the building's socially stratified nature<sup>885</sup>. It provides the most restricted views<sup>886</sup>.
- 8.85 Nor would the visiting children have access to the most exciting elements of the building, including the glass slides and gondolas. It was accepted that potentially it would be something of a disappointment for the children to be allowed in, but not to have the chance to experience these things<sup>887</sup>. That would inevitably reinforce the sense that the experience for the schoolchildren and community groups at the bottom of the bulb is an inferior one compared to those who can afford to pay to use the areas above. To that extent, it was acknowledged that it would be socially exclusive<sup>888</sup>.
- 8.86 The ability to deliver the *tailored* experience for each school in practice remains unclear. The management of groups of children from different schools within the space, the ability to reconfigure the layout between sessions, and the storage of furniture and partition walls<sup>889</sup> remain substantially unresolved<sup>890</sup>. These very real practical issues, all of which must be overcome in a constrained space, do not appear to have been fully thought through as part of the late change to increase the quantum of education space.
- 8.87 The roundtable event for those that would supposedly benefit from the facility<sup>891</sup> shows a strikingly low uptake, with only three of the 74 schools invited<sup>892</sup> sending representatives<sup>893</sup>. Not only does this provide limited evidence as to how well the educational facility would work in practice, it also raises questions as to *why* there

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<sup>882</sup> When the Inspector questioned Mr Harrison on this matter, he identified 34 consultants listed at p.9 of the DAS [CD1-1]. One of the companies listed is the Appellant and one is the Appellant's legal advisers, Taylor Wessing LLP.

<sup>883</sup> Harrison, response to IQ. The roundtable event held by Appellant post-dated the application and therefore could not have informed the design.

<sup>884</sup> The covering letter makes clear that it was in response to the GLA Stage 1 report [CD2-3].

<sup>885</sup> Ms Adams, XIC.

<sup>886</sup> Although the Appellant's witnesses praised the glimpsed views between neighbouring towers that would be provided (Dr Wright and Mr Harrison), these are not the views that provide the *raison d'être* of the proposal. Mr Harrison explained that a visitor attraction that did not provide the uninterrupted 360 degree views available at the higher levels, but instead simply [sat] within the existing cluster would sit as a different category and would not get built (Harrison PoE, para 6.1.6). It is apparent from the Appellant's note at [CD19B-25] on the images available through the 3D goggles that the representation of other tall buildings cannot be relied on to assess the landmarks that would be available from level 3. There remains serious doubt as to whether all the landmarks listed in Mr Harrison's PoE at p.222 will be visible.

<sup>887</sup> Mrs Hampson, XX by GLA.

<sup>888</sup> Mrs Hampson, XX by GLA and note Mr Rusby's confirmation in XX by GLA that the target audience for the Tulip is disproportionately drawn from the highest (AB) social class (see his Appx. 1).

<sup>889</sup> Despite this being identified as a good element of the proposal in Mrs Hampson's PoE, para 8.53 [CD14-3].

<sup>890</sup> See GLA Note 15.12.20, CD [19D-15].

<sup>891</sup> An event only organised after the application was submitted.

<sup>892</sup> Para 2.1, p. 6 [CD2-2].

<sup>893</sup> Dr Wright confirmed in XX by GLA that no education authorities were approached to ascertain their views about need, either before or after the roundtable event.

was a marked lack of enthusiasm and the implications for the likely future uptake of the facility<sup>894</sup>.

- 8.88 The weight to be given to the facility must also reflect the agreed position that there is no shortfall in existing high quality locations for school trips<sup>895</sup>, let alone a shortfall in elevated viewing platforms providing educational facilities or access for schools<sup>896</sup>. There are several such facilities within the City itself, some of which provide views at a higher level than level 3 of the *Tulip* and for more generous hours<sup>897</sup>. In particular, as recorded in the roundtable report, the value of this space from the teachers' perspective lies in the views, not the technology offer<sup>898</sup>, something already available elsewhere<sup>899</sup>. It is also unclear the extent to which this educational facility would *compete with* other facilities for the number of schools trips that schools can provide<sup>900</sup>. It is no longer asserted that every school child in London will be able to visit once in their school lifetime, despite that misleading claim featuring heavily in the OR<sup>901</sup>, and in evidence<sup>902</sup>.
- 8.89 The Appellant has chosen to frame its offer so as to restrict access for those school children who happen to live outside London<sup>903</sup>, despite the absence of any evidence demonstrating a justifiable basis for such differential treatment<sup>904</sup>. On the contrary, the evidence demonstrates that London's pupils already benefit from better opportunities for horizon-broadening trips than their peers outside the capital<sup>905</sup>, and that they have the benefit of a rich history and culture that is already easily accessible to them<sup>906</sup>. It is agreed that there is no evidence of a shortage of existing high quality locations for school trips for London's schoolchildren, but that there *is* evidence of a relative disadvantage for schoolchildren in other regions and that there are many disadvantaged areas outside London and within day trip range<sup>907</sup>. There is simply no justification for limiting access for children outside London in this way, compounding that existing imbalance<sup>908</sup>.
- 8.90 In respect of the community use of the facility, it is notable that the Appellant has called no witness to speak specifically to this use<sup>909</sup>. There has been almost no evidence about how the space would function as a community facility, and no demonstration that the limited hours, which finish at 7pm and exclude weekends,

<sup>894</sup> Mrs Hampson accepted in XX by GLA: the extent to which London schools would take up the offer is unknown.

<sup>895</sup> Dr Wright, XX by GLA.

<sup>896</sup> In XX by GLA Dr Wright confirmed that no-one attending the roundtable identified elevated classrooms as a gap in the curriculum or thought such trips/visits was something missing in London (Appx. 2, Agenda [CD2-2]). She agreed that if they had identified this, it would have been recorded. She confirmed that she had not attempted to compare the educational benefits of a visit here with the benefits offered by other facilities that a school might visit instead.

<sup>897</sup> 1 Undershaft (see [CD19B-41]).

<sup>898</sup> Para 3.5 [CD2-2].

<sup>899</sup> Dr Wright accepted in XX by GLA that the consensus that the experience of being at such great height would likely outweigh the technological offer is relevant when the Inspector comes to consider what weight to attach to that offer, and the comparative benefits of other elevated facilities that are available to book for school visits.

<sup>900</sup> Mrs Hampson explained in response to IQ that it is not necessarily the case that every school entitled to use the *Tulip* would do so, in light of the other facilities that would compete with it.

<sup>901</sup> OR, paras 468, 520, 524, OR summary [CD3-4].

<sup>902</sup> Mrs Hampson's PoE Paras 8.51, 10.19 and 12.9 [CD 14-3].

<sup>903</sup> Indeed, the Appellant's evidence inaccurately describes the facility as exclusively for London's schoolchildren (Dr Wright, rebuttal PoE, para 3.1 [CD13-29]).

<sup>904</sup> As raised by GLA in discussions on the s106 agreement and in Dr Wright's rebuttal PoE [CD13-29]. Dr Wright was asked in XX by GLA about this restriction and was unable to provide a satisfactory response.

<sup>905</sup> Dr Wright, XX by GLA and see p. 13 [CD11-37].

<sup>906</sup> Dr Wright, XX by GLA and see Dr Wright's PoE, p. 19, para 3.67 [CD13-21].

<sup>907</sup> Dr Wright, XX by GLA.

<sup>908</sup> In XX by GLA, Dr Wright agreed there was no evidence that the proposed differential treatment depending on where they lived was appropriate.

<sup>909</sup> Dr Wright confirmed in XX by GLA that she only knew the basic facts about this use.

would cater to the needs of the targeted community groups<sup>910</sup>. The CoL would have preferred more generous hours<sup>911</sup>.

- 8.91 Outside the delimited times for education and community use, level 3 would be used in a manner just like the rest of the building: as commercial, income generating floorspace<sup>912</sup>.

### *Sustainability*

- 8.92 By its nature as an observation tower, the *Tulip* is extravagant in its building typology. The ratio of accommodation to servicing and circulation is the inverse of what an economic and sustainable design would usually seek to achieve<sup>913</sup>. As a result, it compares very unfavourably with other recent tall buildings in the cluster whose intensive use of resources is justified by their delivery of vast quantities of highly valuable employment floorspace in a location where that is the strategic priority land use and brings with it significant economic benefits<sup>914</sup>. The Mayor<sup>915</sup> accepted that the scheme would not be contrary to Policy SI 2, since this relates to the operational phase, but did not agree that it would *reach the highest sustainability levels of tall buildings in the City of London*. Rather, he explained that *the priority, ... is to achieve zero-carbon on site. It is only in cases where the zero-carbon target is not achieved on site that a contribution towards a carbon offset fund is to be provided. The appeal proposal does not meet the policy priority of achieving zero-carbon on site*<sup>916</sup>. The Mayor<sup>917</sup> also advised that BREEAM has weaknesses, particularly in well-located sites.
- 8.93 The sustainability benefits agreed in the benefits SoCG are minor, and must be considered in the context of the proposal's overall performance in sustainability terms<sup>918</sup>. Whilst the proposal achieves a 42.04% reduction in carbon, this falls short of the net zero target in the NLP<sup>919</sup>. The proposal also performs poorly in respect of the requirements in the NLP to aim for high sustainability standards and take into account the principles of the circular economy<sup>920</sup>, which includes designing for adaptability or flexibility, disassembly and using materials that can be used or recycled<sup>921</sup>. It is apparent that the *Tulip* could serve no other purpose than that of an observation tower, in contrast to the flexibility of tall office buildings. Its deconstruction would require a reversal of the construction process, using a diamond saw or wire saw. The only *reuse* that could take place of the vast quantity of reinforced concrete would be as aggregate.

## **Whether the public benefits outweigh the harm in the heritage balance**

<sup>910</sup> Which remain unidentified. In XX by GLA, Dr Wright agreed that the 3-7pm community use slot embraces both school pick-up and the latter part of the working day, and that the inability to use the facility at evenings and weekends would place significant constraints on its practical utility for many community groups.

<sup>911</sup> Mrs Hampson, response to IQ.

<sup>912</sup> Dr Wright agreed in XX by GLA that there will be more days when the facility can be used for private commercial hire than for education/community use, and that it would be more accurately described as a mixed education/community and private hire venue.

<sup>913</sup> Ms Adams, PoE, para 5.3.4.1 [CD15-3].

<sup>914</sup> Note also Mrs Hampson's evidence in XX by GLA that it is necessary to constrain the building to operating at less than its full design capacity in order to avoid unacceptable adverse effects, and that none of the other recent tall buildings in the cluster are prevented from being used to their full designed capacity by similar conditions or obligations. That is not only inherently unsustainable, it also indicates that this is not the right place for this scheme.

<sup>915</sup> Through Mr Green CD19D-16

<sup>916</sup> Ibid para 4

<sup>917</sup> Adams to IQs

<sup>918</sup> Mr Green, response to IQ.

<sup>919</sup> NLP policy SI2 [CD19D-27]. The previous requirement under the London Plan 2016 was 35% onsite saving.

<sup>920</sup> NLP policy D3 D(13) [CD19D-27].

<sup>921</sup> NLP, para 3.3.10 [CD19D-27].

8.94 The Mayor's evidence on the heritage balance is provided in the PoE<sup>922</sup>. The limited public benefits of the proposal do not outweigh the significant harm to the ToL WHS and the considerable number of other heritage assets<sup>923</sup>.

### **Whether the appeal proposals are in accordance with the development plan taken as a whole**

8.95 The proposal conflicts with development plan policies relating to design and architectural quality, public realm, tall buildings, strategic views, WHSs and other heritage assets. These policies are amongst the most important in the development plan. The nature and extent of that conflict is substantial. As such, the proposal is in conflict with the development plan when considered as a whole.

### **Whether the public benefits would outweigh any other harm resulting from the appeal proposals**

8.96 In accordance with s.38(6) of the PCPA 2004, the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The harm caused would be substantial, and weighs heavily against the grant of consent. The proposals also conflict with the NPPF. The benefits, which have been shown to be very limited, are incapable of tipping the balance in favour of granting permission.

### **Conclusions**

8.97 For the reasons summarised above<sup>924</sup>, the appeal should be dismissed, and planning permission refused.

### **The case for the Historic Buildings and Monuments Commission for England: Historic England (HE)**

*The gist of its case is as follows.*

#### **Introduction**

9.1 The proposals ask for considerable, permanent harm to the significance of heritage assets which are special to our national culture and recognised throughout the world. The Appellant has underplayed that harm and misjudged the weight it should be given in the planning balance and invests it with meaning and merit that it does not deserve. In this location, with its attention-seeking aspirations, need for prominence and landmark status, it cannot be described as causing limited harm to the setting of the ToL, one of the world's great historic monuments.

9.2 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 good reason<sup>925</sup>. It does not often become involved in public inquiries but here its Chief Executive addressed the City's planning committee in person to express serious disquiet about the potential

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<sup>922</sup> of Mr Green Paras 11.29 to 11.33 [CD15-8].

<sup>923</sup> To which considerable weight must be given in accordance with the duty in s.66(1) and para 193 of the NPPF.

<sup>924</sup> The limitation on the length of closing submissions (Inspector's note of PIM, para 17 [CD12-5]) inevitably means they cannot be comprehensive, and are necessarily only a summary of the Mayor's case, the full nature and extent of which is to be understood from the proofs submitted, the oral evidence of its witnesses and the points put in XX (themselves necessarily selective to meet the requirement identified in PIM Note, para 16).

<sup>925</sup> See R (Hayes) v. York City Council [2017] PTSR 1587 at [92].



harm. It's advice concerns the effect on the ToL as a WHS, a similar effect on the ToL CA, and to a lesser degree on the Grade I listed Trinity House and St Botolph's, treated separately.

- 9.3 The ToL is a heritage asset of the highest significance, and its setting as affected by these proposals makes a fundamental contribution to that significance. It's easy to say that the ToL is of the utmost heritage significance but more difficult to understand and act on this in planning decisions. It is a monument of truly exceptional historic and architectural importance with the highest protection in policy and guidance<sup>926</sup>. As a fortress and palace, a prison, execution site and barracks, it is one of only a handful of structures that has played an active role in nearly a millennium of our national story. Its inscription by UNESCO as a WHS confirms its status as the rarest and most valuable of heritage assets, at the top of the tree globally, and of significance that is *so exceptional as to transcend national boundaries*<sup>927</sup> and *of the highest importance to the international community as a whole*<sup>928</sup>. The UK has voluntarily entered into important and emphatic duties<sup>929</sup> to protect the appreciation of its heritage significance. These duties should be reflected in the weight given to its conservation through the planning system.
- 9.4 The SOUV is the key reference for its protection<sup>930</sup>. It succinctly emphasises the function of the Tower, one of England's most iconic structures, as a fortress and outstanding model of monumental Royal power, and an example *par excellence* of a late 11<sup>th</sup> Century Norman castle<sup>931</sup>. The WHSMP is an essential tool<sup>932</sup> for conserving and managing the site. It was sent by the UK<sup>933</sup> to UNESCO in 2016 and should be treated as a government-approved plan<sup>934</sup>. It expresses significance through attributes which are critical to understanding impact<sup>935</sup>.
- 9.5 Both the SOUV and the attributes convey how setting is fundamental to understanding the Tower's significance: its *protection and control* of the City; its *landmark siting*, and *gateway* to the capital. Its integrity is defined by reference to its *landmark siting and visual dominance as key aspects of its significance* and confirm how setting is fundamental to how the Tower can demonstrate OUV<sup>936</sup>. These attributes are expressed in its *location and setting*. Setting is therefore key to these attributes. The attribute of *internationally famous monument* also refers to the visual dominance of the White Tower including LVMF protected View 25A.1-3.
- 9.6 It is important to establish the degree to which setting contributes to significance because guidance advises us to do so and because this is a crucial judgement. As at *Citroen*, the key point is not how some aspects would be left untouched, but the importance of the aspect that would be affected, that is the setting, to significance. This is vital to subsequent judgements, yet the Appellant has made no concerted attempt to assess the contribution made by setting to significance. It does not deal with this stage of analysis in any discernible or coherent way, and nor does the HIA which ICOMOS roundly criticised. Symptomatic of this failure is a reliance on this

<sup>926</sup> NPPF CD6-1, paras 184, 194b; PPG CD6-2, para. 26.

<sup>927</sup> PPG CD6-2 para. 28

<sup>928</sup> Operational Guidelines, CD8-33 para. 49.

<sup>929</sup> Tavernor xx. See CD11-45 Article 4.

<sup>930</sup> CD8-33 para. 51

<sup>931</sup> CD8-23 pp. 36-7 Tavernor's evidence makes no references to the site as a fortress, castle, a place of military architecture, despite these features of the site being mentioned over 20 times in the SOUV alone.

<sup>932</sup> CD8-16, para. 2.21; Tavernor xx

<sup>933</sup> as a State Party to the Convention

<sup>934</sup> As agreed by Tavernor in xx

<sup>935</sup> Richards in xx

<sup>936</sup> Tavernor xx



scheme adding to a juxtaposition between the Tower and the Eastern Cluster when the reality is more complicated and nuanced as the SOUV and WHSMP confirm.

- 9.7 The SOUV records how the Tower's significance had *to some extent been eroded by tall new buildings in the eastern part of the City of London* (i.e. the Eastern Cluster) and how some of these have *had an adverse impact on views into, within and out of the Property* and the Tower's relationship with the City *will continue to be threatened by proposals for new development that is inappropriate to the context*<sup>937</sup>. The description of authenticity warns that *the ability of the Tower to reflect its strategic siting and historic relationship to the City of London is vulnerable to proposals for development that do not respect its context and setting*<sup>938</sup>. The protection and management requirements caution that *the most significant challenges to the property lie in the protection of its setting, given that pressures remain significant, particularly in the wider setting*<sup>939</sup>. The WHSMP also recognises that the dominance of the White Tower has been eroded and cautions that, although there has been a relationship with the Eastern Cluster for almost half a century and its intensification is part of planning policy, *the distinguishing sky space between them is diminishing*. The WHSMP understands that views from the Inner Ward illustrate the evolving relationship, but records that the view over the Chapel Royal is increasingly dominated by the growing eastern cluster in the city<sup>940</sup>.
- 9.8 So, this juxtaposition with the Eastern Cluster is not regarded as an unqualified positive or expressed in wholly favourable terms. This is not so much about an evolving city as the ability to appreciate the OUV through the attributes, including preserving the remaining dominance of the Tower and its landmark siting. Considering any development in the Cluster must refer not just to the juxtaposition but to the SOUV and the attributes in the WHSMP. These identify how development has eroded fundamental aspects of significance and made it vulnerable to further harm, highlighting how great the contribution of setting is to significance.
- 9.9 The LVMF records that View 10A.1 enables the *fine detail and layers of the history of the Tower to be readily understood*, enhanced by the *free sky space around the White Tower*. Where that has been compromised, *its visual dominance has been devalued*<sup>941</sup>. While part of a wider River prospect rather than an iconic view, it was the original picture postcard view, is the closest to the ToL and has set piece qualities. With View 25A, it provides the best understanding of the detail of the ToL. This is identified by the Local Setting Study as enabling a *significant appreciation of the many aspects of OUV along the route*<sup>942</sup>. View 9<sup>943</sup> from the north bastion allows views which *exemplify many of the cultural qualities that give the Tower its OUV*, including its landmark siting. On approaching the north bastion, the City skyline, including the *Gherkin* and *Tower 42*, appear to move closer to the White Tower *where they tower over it, reducing its apparent prominence and scale*<sup>944</sup>. From View 9, additional tall buildings in its backdrop could *further diminish its perceived scale*.
- 9.10 LVMF view 25A.1-3 provides the *greatest understanding of the WHS ensemble*<sup>945</sup>. The LSS notes that views from its similar View 10 *exemplify many of the cultural qualities that give the Tower its OUV*, the aim being to *create views in which the White Tower*

<sup>937</sup> CD8-23 p. 37

<sup>938</sup> CD8-23 p 38.

<sup>939</sup> Ibid p 39

<sup>940</sup> Para 7.3. p18/99 and 2.4.2/21

<sup>941</sup> CD8-14 para182 p99

<sup>942</sup> including the landmark siting, the White Tower and the concentric defences

<sup>943</sup> CD8-22, p. 101

<sup>944</sup> Ibid pp. 58 and 101

<sup>945</sup> CD8-14 para412 p214

*appears dominant in its setting ... and as an outstanding example of concentric castle design*<sup>946</sup>. The range of views in LSS View 1<sup>947</sup> illustrate the *unique sense of place set apart from the modern City* illustrating that the setting is at the front and centre of the OUV and so the significant contribution that setting makes to significance.

- 9.11 The Mayor's SPG recognises that the setting of each WHS *fundamentally contributes* to OUV<sup>948</sup> as does the 2012 Government Report in noting that there had already been impacts on the *visual integrity* of the Tower<sup>949</sup> and recognising how its surroundings are central to its OUV. The 2014 Report<sup>950</sup> accepted that there were significant negative factors, both current and potential, outside the property, which had compromised its integrity and authenticity. ICOMOS and the WHC have similarly recognised the critical contribution made by setting to OUV to the extent of contemplating putting the property on the List of World Heritage in Danger<sup>951</sup>. The extent to which ICOMOS and the WHC have emphasised the importance of setting and its important link with the OUV of the Tower are important material considerations. The ICOMOS recommendation, regarding the concentration of tall buildings in the City and statutory protection for the iconic view from the south bank refers to limiting impact in conjunction with a buffer zone extending up to 1km over the eastern part of the City into Tower Hamlets, does not negate concern regarding development in the Cluster. This is confirmed by the technical review by ICOMOS of the current scheme<sup>952</sup> which underscores that setting as expressed through the SOUV and attributes makes a highly important contribution to significance; and that adding to the juxtaposition through development in the cluster should not simply be treated as consistent with that contribution.
- 9.12 Some of the relevant views highlight the importance of setting. From The Queen's Walk, the Tower ensemble is at the centre with the curated form of the Cluster to the west. The geometric protection in the strategic view is centred on the White Tower, but applies to the whole of the ToL and its setting which is enhanced by the extensive clear sky. From a walk across Tower Bridge, the strategic setting remains legible due to the gap between the Tower and the Cluster with the clear sky being fundamental to understanding its position: why the fortress was built here, as a controller and gatehouse, but set apart from the City. While the Cluster defers sufficiently to allow these qualities to remain intelligible, the substantial contribution made by setting is increasingly susceptible to harm from development which does not allow the White Tower to appear more prominent than the buildings which surround it.
- 9.13 From the Wharf, views allow an appreciation of the White Tower's dominance with limited distraction allowing a ready understanding of it and the linked defences, including the curtain walls. Inside the ToL, the White Tower dominates, and its setting is enclosed by the curtain walls. Beside the Chapel Royal and the Royal Execution site, the more intimate atmosphere confirms the sense of being apart from the City but the tall buildings visible over the roof have intruded<sup>953</sup>. In all these ways, the significance

<sup>946</sup> CD8-22, p. 104

<sup>947</sup> Ibid p 80

<sup>948</sup> CD8-16 para1.3 p4

<sup>949</sup> DCMS State of conservation Report (SoCR) 2012, CD11-13, p. 2

<sup>950</sup> Periodic Report 2014, CD11-38 p. 3

<sup>951</sup> See references in Closing at f/ns 52, 53 and 54

<sup>952</sup> The scheme would be in a *very delicate context, as a new additional element to the already over-dominating urban development pressure and already-stretched boundaries*, where the property *has already reached its limit in terms of visual impact* such that *there is no room for additional challenges to it*.

<sup>953</sup> Moving close to St Peter ad Vincula may allow its history and architecture to be understood without the tall buildings, but it becomes more difficult to understand the relationships within the wider space. Visitors can best experience the qualities of the Inner Ward from the restricted locations where the modern city is not visible and does not interrupt the sense of intimacy. The Royal Execution Site, a stage for European history, is key to the symbolic value of the Tower.

of the ToL as a Royal Palace and ensemble of fortifications is inextricably linked with its setting, the qualities of which are now highly vulnerable to insensitive development.

*The building would not exhibit the "highest" or "exemplary" architectural quality required by policy.*

9.14 Adopted and emerging policy requires the architectural quality of tall buildings to be of the *highest* and of *exemplary* quality. The scheme is being promoted as of *world class* quality, of international significance and recognition, but this doesn't bear scrutiny. There is no dispute that the proposals are from a highly successful practice led by a designer of global renown. But lauded practices do not always produce acclaimed buildings. Each building should be judged individually, on its own merits, in response to its context. Looking behind the gloss of the promotional imagery<sup>954</sup>, there are important aspects of the architecture and design which undermine the claims that this scheme would achieve the outstanding quality, and response to context, of the best buildings. There are design implications from the location and function of the building. It has an immutable purpose for a constrained site. To succeed as a viewing gallery, it needs height and prominence. These factors would have inescapable impacts beyond the immediate surroundings.

9.15 The misplaced assumption that the site within the eastern cluster was acceptable in principle is a false premise which does not warrant this architecture in this location. Policy does not espouse tall buildings anywhere in the Cluster but only if they adhere to criteria including the conservation of heritage assets.

9.16 The apparent desire for a building which recovered and enhanced the *Gherkin's* pre-eminence on the skyline, and an avowedly *eye-catching* one, do not obviate the need to respond to context. For all the declarations that the effects on heritage assets, including the ToL, were considered and discussed, there is little evidence that they informed the basic question of whether it would be appropriate to build this scheme on this site, in such a sensitive setting<sup>955</sup>. Rather, the primary aim of the scheme was to build as tall as possible, putting the visitor first rather than the wider context. Nothing in the key design principles recognised the City's planning objective of curating the cluster by stepping down from an apex at *1 Undershaft*. Massing studies focussed on the *Gherkin* not the wider context<sup>956</sup>. The architecture was compelled to catch and draw the eye of the viewer over as wide a distance as possible.

9.17 The aspiration to stand out has resulted in a scheme which would assert itself in the critically important setting between two significant landmarks, the Cluster and the ToL. These discordant effects are exacerbated by the inevitably conflicting form of the scheme. The different elements of the building have an awkward relationship with one another, with the design relying on an overwrought visual analogy to give it substance<sup>957</sup>. The bulging top would create an uncomfortable sense of scale, exacerbated by an asymmetry (created by a pure focus on views to the Gherkin) in many views. The configuration of column and top would intimate continuing symmetry, but this would break down and be apparent and unsettling. The inverted *spoons* of the tip would improve the space for the viewing floors, but would house a fairground

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<sup>954</sup> Several of the images in Mr Harrison's proof are aerial views which would not be seen and/or do not include cumulative schemes, in particular 1 Undershaft and 100 Leadenhall: see pp. 136,154, 226, 228 and 232. Apart from the fully rendered images in the HIA (CD1-17) and in RT2A and RT3A, other visuals including the 3D images in the VR headsets are not verified and should not be treated as such: see CD19B-25, which is agreed.

<sup>955</sup> By November 2017, and the key milestone in the design, when the single pod of the viewing platform turned 90 degrees to its current form, there is scant evidence from the DAS that a genuine appraisal and understanding of context had been undertaken or had influenced the key design principles: see CD1-6 pp. 10-40.

<sup>956</sup> DAS at CD1-6 pp. 46, 47, 52, Harrison proof CD13-8 5.3.3/158, 5.3.6/162.

<sup>957</sup> English, CD16-3, para 7.9 p88: settling on a seemingly arbitrary species of flower

element in gondolas, a *slow-motion rollercoaster ride*<sup>958</sup> which at its widest points would expand the building to around double the width of the shaft below. The *eye-catching jewels*<sup>959</sup> in the form of gondolas would separate it visually from anything else in the cluster.

- 9.18 The claimed familial relationship with the *Gherkin*, over only the very top of the building, would ignore the striking disparity between the rest of the proposal and everything around it. The massing would respond to the *Gherkin* in only a limited way, employing a utilitarian concrete shaft of c.230m in height and 14.3m in width that would be both uncharacteristic and incongruous. Its blank monolithic appearance would be the antithesis of the human scale drawing the eye upwards in views both near and far and hindering any reconciliation of the different elements. The engineering where the shaft joins the tip would fall short of the structural lightness the name invites the viewer to see. The concrete fluting would bring limited relief to what is in reality a huge monolithic expanse of concrete expressed at height.
- 9.19 Despite the architectural detailing, the resulting form would be an uneasy, strained relationship of parts which would lack the *Gherkin's* refinement and sculptural form. The intention to create a distinctive landmark, *dissociated* from the Cluster<sup>960</sup>, would create an unsatisfactory tension with claims that it would benefit from a Cluster location. Given the degree of divergence, that tension is not resolved by relying on the collection of individual forms of other buildings within the Cluster. Overall, its overwhelming rejection of context is a major impediment to the scheme being able to achieve good design.

*The harm caused by the scheme to the significance of the Tower of London is properly described as towards the upper end of less than substantial; harm which has been seriously understated by the unreliable assessments of the appellant and the City*

- 9.20 First, there is no dispute that *Bedford* represents the current law on *substantial harm*<sup>961</sup> where the significance of a heritage asset would be *vitiated or very much reduced*<sup>962</sup>. This finding is relevant when considering the spectrum of *less than substantial harm*. Second, care is required as, even when considering *substantial harm*, *very much reduced* means something different, below *vitiated*, and is flexible<sup>963</sup>, capable of covering a wide range of circumstances requiring a planning judgement. This is not a *substantial harm* case and *less than substantial harm* must be treated as lying below *substantial harm*, where a different judgement is called for.
- 9.21 Third, care is needed on that judgement, particularly where there would be no physical impact. The important point is not to look at what is *undrained away*, such as historic fabric, as this should not dictate judgements on harm. The correct approach is to reach a judgement based on the importance to significance of what would be affected, and what that effect would be, not counting up the components of attributes that would be affected. Even where only some attributes are affected, this does not mean that harm would not apply to something central to significance<sup>964</sup>. Here, the proper course is to

<sup>958</sup> Harrison proof CD 13-8 5.12.4/233

<sup>959</sup> CD1-6 p. 153

<sup>960</sup> Miele proof 6.84/26

<sup>961</sup> By reference to NPPF paras 194-196

<sup>962</sup> CD10-2 at [25]

<sup>963</sup> The *Chiswick Curve* decision confirmed that substantial harm can be found in setting cases: see CD9-1 paras 12.143-5 p145, referring to the *Razor's Farm* case.

<sup>964</sup> Richards xx, accepted that whereas the WHS was inscribed by reference to two criteria for designation (CD8-33 pp. 36-7) the Operational Guidelines confirm that OUV may be sufficient for inscription where it is reflected in only one (CD8-33 77/25). The fact that harm is not caused by reference to all of the criteria under which OUV has been identified for any site does not mean that the harm should be qualified. The 2015 Periodic Report confirms at s 5.3 p. 10

identify the fundamental importance of setting, by specific reference to OUV and the attributes, and assess how the scheme would impact upon it. Fourth, any assessment of harm will depend not on the proportion of setting affected, but on the importance of the views affected with regard to the contribution of setting to OUV.

- 9.22 Fifth, when identifying impacts, these may arise where a proposal would lift the eye, so reducing the appreciation of buildings which contribute to OUV, or where a scheme would compete with such buildings. Sixth, policy requires a judgement on whether harm would be caused to significance, regardless of architectural quality. The highest architectural quality is not the same as no harm. Even well-designed tall buildings need to be in the right place<sup>965</sup>. The highest design quality is not just a thing in itself but involves a careful response to context, both immediate location and further afield. Harm to heritage interests must affect design quality<sup>966</sup>.
- 9.23 Seventh, the LVMF does not define the heritage significance of the ToL or how harm might arise. It is directed at views. Elements which relate to OUV are not the same as those dealing with townscape, hence the separate RfRs. Any anticipation in the LVMF of tall development in the Cluster adding to *character and stature*<sup>967</sup>, does not relate directly to the OUV of the ToL. Nor does avoiding domination by nearby development as what matters is whether development would affect the ToL's domination, or any other aspect of OUV. The important point is not the emergence of the Cluster, but the separation between it and the White Tower and how it would be affected with regard to the attributes of OUV. Development that would add to a consolidated cluster would not automatically be positive, the touchstone is the ability to appreciate the OUV of the WHS. Views 25A.1-3 identify the juxtaposition of the WHS with the modern city as a central characteristic of the view<sup>968</sup> but this does not mean any development forming part of that juxtaposition avoids harm. It also says that the City has grown to encompass the WHS, *the latter retaining only its essential historical relationship with the river and a clear backdrop silhouette to the White Tower from the south west*, but this does not circumscribe what is relevant in the SOUV or the WHSMP. Advice that the WHS should continue to dominate its surroundings does not limit the concept of dominance to a restricted area divorced from the site or the Cluster. It applies to new development in the entire setting to the WHS, viewed from all assessment points, not only the geometrically protected view. The key remains the impact on the ability to appreciate OUV<sup>969</sup>. The requirement that development in the setting of the WHS should be of appropriate height, scale, massing and materials reflects this broad approach.
- 9.24 Unlike the promoters of the scheme, HE has properly understood the approach, assessed harm in accordance with the ICOMOS adopted methodology promoted by the planning system<sup>970</sup> and used previously at appeal<sup>971</sup> to more clearly articulate where on the spectrum of less than substantial harm a proposal may lie. The appellant's assessment has been denigrated by ICOMOS, which says that the scheme should be abandoned, and the SoS should give significant weight to its views. Pitching judgements at the low level of less than substantial plainly underplays the true harm that would be caused by this scheme.

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that both the integrity and authenticity of the WHS had been compromised, without distinguishing between the criteria for inscription: CD11-38.

<sup>965</sup> CD8-6 para 1.1-2 p2

<sup>966</sup> Miele xx; Goddard xx and Citroen at CD9-4 15.57-8

<sup>967</sup> CD8-14 para 187 p101

<sup>968</sup> Ibid para 411 p213

<sup>969</sup> Ibid para 414 p215

<sup>970</sup> GLA SPG at CD8-16 5.1-5.8/64-5 and Appendix 4; PPG CD6-2 Reference ID 18a-035-20190723

<sup>971</sup> CD8-13 and Hayle Harbour at CD16-5 para 29-37 pp 53-5



### *The assessment of harm*

#### **The Appellant's Heritage Impact Assessment (HIA)**

9.25 The Appellant's evidence revealed a lack of confidence in its HIA. It purported to: take account of ICOMOS guidance<sup>972</sup>, focus on identifying changes to the relevant aspects of significance, be a response to OUV when dealing with the sensitivity of the asset, and to take in effects on OUV<sup>973</sup>. But the HIA methodology goes on to identify beneficial, adverse or neutral effects on the *quality of the environment*, which has nothing to do with HIA. A neutral finding is inconsistent with ICOMOS guidance<sup>974</sup>.

9.26 The narratives are based on this methodology and so confirm the problem. For example, View 25A<sup>975</sup> refers to a beneficial effect which is not based on OUV and says nothing of attributes. No wonder ICOMOS found that the HIA was *not consistent with the information in the available documents, assessments and opinions* and had *internal contradictions: determining that the intervention is significant in nature, while at the same time minimising its expected impacts, and even evaluating them as slightly positive, implying that aspects related to heritage values have been understated*<sup>976</sup>.

#### *Other points on attributes, integrity and authenticity*

9.27 The potential impacts on the concentric defences and surviving medieval remains of the Tower, were dismissed on the grounds that the WHSMP did not explicitly state that these attributes were expressed through location and setting. The attribute of concentric defences is explained by reference to their *visible structure* and their *visual linkage with the surrounding cityscape*, which allude to the importance of setting<sup>977</sup>. The surviving medieval remains include St Peter ad Vincula and the appreciation of the Inner Ward, including the Chapel Royal, is strongly influenced by the sense of being in a place apart from the City. There is no good reason to exclude this attribute from being affected by setting development. The failure to conduct a robust and transparent analysis against these attributes tends to underestimate the harm caused by the scheme. The proponent's evidence also omits the erosion of integrity and the vulnerability of authenticity and so is based on a partial understanding of OUV.

#### *The curation of the Eastern Cluster*

9.28 The concept of a cone sloping down from a centre is not new<sup>978</sup>. Through a series of planning decisions, the City has sought to develop the Cluster as a: *coherent single urban form, managed to enhance the visual compactness of the cluster, with a central focal point on the skyline and an apex to the cluster*, where 1 Undershaft is now permitted, with *other towers diminishing in height eastwards towards the Tower of*

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<sup>972</sup> CD1-6, Tables 4.1-3 p. 10: this requires judgements on the sensitivity of the heritage resource, magnitude of change and significance of effect (as a combination of these factors) to be directed at the attributes which convey the OUV of the WHS. See e.g. CD8-13 para 5-1 p8 and para 5-8 p9

<sup>973</sup> See CD1-6, Tables 4-1 and 4-2

<sup>974</sup> which only provides scope for a neutral finding where there is no magnitude of change to the significance of the asset in question - see CD8-13 para5-7 p9

<sup>975</sup> Views 18-20 in the HIA CD1-17

<sup>976</sup> CD11-18, p3

<sup>977</sup> The defences were designed to complement the White Tower to deter those outside and potential setting impacts should not be excluded from consideration. The LSS identifies them as relevant in setting out the aims for views from the south bank: CD8-22 View 10 p. 104 "*an outstanding example of concentric castle design*"; and see View 9 p. 101 "*views in which the military architecture of the Tower and its defences can be appreciated*".

<sup>978</sup> As Mr English explained. CD16-6 p. 81 also refers to the concept by the City's former chief planner, Peter Rees.

*London<sup>979</sup> and a lower tier of buildings forming foothills to the east of the Cluster mediating the height difference between the taller Undershaft tower and the lower scale of 30 St Mary Axe to the east.*

- 9.29 The Cluster is<sup>980</sup> a *pressure valve* to allow for the City's office needs while preserving heritage assets. The *careful negotiation* of this form over successive decisions has tried to avoid harmful encroachment on the ToL and this is a legitimate planning objective<sup>981</sup>. The City's 3D modelling is not adopted policy but has produced a *jelly mould* to allow a proactive approach to assessing proposals, as confirmed by the emerging City Plan<sup>982</sup>. It has *provided confidence that the cluster can evolve whilst taking account of key protected views and the wider setting of the Tower of London WHS<sup>983</sup>, an approach in line with policy CD7 of the Local Plan<sup>984</sup>. The model did suggest certain parameters, certain aspirations which we have been developing, including an idea of the cluster that we view as the future, as a dynamic profile that leaves St Paul's with a breathing space and similarly from the North Bastion of Tower Bridge<sup>985</sup>.*
- 9.30 The committee report for this scheme linked the evolution of the Cluster with protecting the wider setting of the WHS<sup>986</sup>. It confirmed the conflict caused by this proposal with the relationship to the WHS and the *aspiration for the emerging cluster to step upwards gradually in height away from the Tower in a deferential manner.<sup>987</sup>* It would introduce an *abrupt vertical edge to the cluster* in the view from the North Bastion.<sup>988</sup> The scheme would be *at odds with this aspiration for the future shape and form of the city cluster,<sup>989</sup>* such that its profile would be severely compromised. The form of the Cluster may not be set in stone, but these findings are important material considerations, which show how the scheme would conflict with a material and legitimate planning objective to provide clarity on the skyline, by deferring and avoiding harm to the WHS.
- 9.31 As much as a third of the building would project beyond the *jelly mould<sup>990</sup>*. This extent of conflict does not sit easily with the suggestion that there would be only a low level of *less than substantial* harm caused to the ToL. At 305m AOD, this would be the tallest building in the Cluster, apart from and extending the height of the eastern edge, identified as the most vulnerable for conserving the significance of the ToL. It would create a *cliff-edge* to the ToL below, something the curation was supposed to avoid. Still less would this building *resolve* the Cluster in views from the south bank, but create a jarring edge. Alternatively, there would be pressure for more tall buildings to solve this problem. This potential would risk further harm to the ToL. The fact that the City has never refused permission for a tall building in the Cluster<sup>991</sup> reinforces this concern.

### *The proper assessment of harm to the Tower of London*

<sup>979</sup> CD16-3 p27 decisions for 1 Undershaft, 100-107 Leadenhall, Leadenhall Triangle and Bevis Marks House

<sup>980</sup> As described by Richards

<sup>981</sup> Accepted by Harrison xx, Richards xx

<sup>982</sup> CD7-3 6.5.11/135. See too the UK government response to the 2017 reactive monitoring mission by ICOMOS regarding Westminster WHS, CD11-36, that 3D models should be used "to inform decision-making": p. 3.

<sup>983</sup> 1 Undershaft committee report CD11-59 para. 181, 100 Leadenhall report CD11-62 para 185.

<sup>984</sup> See CD3-4 para. 139.

<sup>985</sup> As explained by Richards. CD16-3 5.39/31-2, referring to CD15-4 App. B1/98 at 1.09.

<sup>986</sup> CD3-4 para. 139.

<sup>987</sup> CD3-4 para. 139.

<sup>988</sup> Ibid.

<sup>989</sup> Para. 91.

<sup>990</sup> Richards in response to xx and questions from the Inspector.

<sup>991</sup> Hampson xx and to IQs.

## Introduction

9.32 The most serious impacts would be on the WHS. The harm would be to the substantial contribution made by setting to its OUV, seen in views from Tower Bridge, and to a lesser degree from the Wharf, the Inner Ward of the Tower, and the South Bank. HE's concerns from the South Bank have been developed since its original objection to the scheme<sup>992</sup>. This harm would arise from proposals which would dominate, compete with, or draw the eye from, these historic buildings and places, wilfully imposing themselves onto their context and ignoring the warning in the SOUV of threats to integrity and authenticity.

*South Bank (HIA Views 18-20, LVMF 25A.1-3; LSS View 10)*<sup>993</sup>

9.33 From the South Bank, the height, form and materials of the building would be accentuated by clear sky, creating a new focal point. The distance between the building and the ToL is greater than from Tower Bridge, but the sheer height and vertical emphasis, with the mutely contrasting concrete stem, would give a sharp edge to the Cluster, disrupting its composition in views and detracting from the dominance of the White Tower, the walls and mural towers of the concentric defences, and the landmark siting. The scheme would impose its conspicuous profile, competing with the ToL as a whole, dominating the western elements of the concentric defences and distracting from the White Tower. The curation of the Cluster was influenced by potential impacts on the WHS in this view, albeit not as much as views from Tower Bridge<sup>994</sup>, and the differentially shaped aspiration of the Cluster would be lost by the cliff edge of an eye-catching landmark, whose height, massing and singular design would reduce the prominence and appreciation of the WHS.

9.34 A simplistic reliance on the scheme adding to the existing juxtaposition<sup>995</sup> has been relied on as already weighted in favour of the City<sup>996</sup>. But relying on the dominance of the City to gauge impact subverts the need to consider the effect on the remaining dominance of the White Tower. If it were found to compete harmfully, that would remain the case even with the juxtaposition. The Views are intended to deter schemes that would not respect the WHS, regardless of the presence of the Cluster. The reality is that, read within the composition as closer to the ToL than Tower Bridge, its sheer size and form would vie for attention and compete with the Tower, causing some harm. There would be the same features which would be harmful in the view from Tower Bridge: the height of the building, the contrast in form and materials and the distinct typology setting it apart and *dissociating itself* from the other buildings in the Cluster<sup>997</sup>. Notwithstanding the separation, the height of the scheme, and its sheer, then bulging form at a stark eastern edge of the Cluster, would draw the eye, thereby reducing the appreciation of the ToL.

*Tower Bridge: HIA Views 8, 8N; LVMF 10A; LSS Approach Route 14, View 9*

9.35 There would be greater harm in views from Tower Bridge. The scheme would introduce a brutal juxtaposition above the westernmost turret and compete for dominance with the White Tower. It would be highly conspicuous and assertive, undermining the visual space between the City and the ToL and the attributes of the White Tower's dominance. The viewer would also be drawn from the concentric defences by a strident vertical landmark.

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<sup>992</sup> by Mr English

<sup>993</sup> CD1-17, pp. 32-37. Also images in the presentation of Mr English for his evidence in chief: CD19E-7

<sup>994</sup> Richards xx.

<sup>995</sup> HIA CD1-6 p. 32; and para7.8 p60, 7.9/60, 7.14/61

<sup>996</sup> Tavernor CD 13-5, 5,65/79

<sup>997</sup> As Dr Miele accepted

- 9.36 The scheme would not only harm the dominance of the White Tower but its attributes of landmark siting and as an internationally famous monument. The same effects would detract from an understanding of the visible concentric defences here<sup>998</sup> as part of what the LVMF recognises as the layers of history in the view. The HIA concedes that there would be a major change to the view, but this is not adequately reflected in any judgments on the significance of the harmful effect and the fundamental role and vulnerability of setting in understanding the Tower as a fortification have not been recognised. The scheme may not fully close the gap to the Cluster, but its prominence and profile would make it harder to appreciate the significance of the distance between the City and the White Tower. The *sentinel*<sup>999</sup> quality of the building would compete with the WHS and undercut its fundamental characteristics. The acknowledgements in the City's Report<sup>1000</sup> sit uneasily with the overall assessment of harm to significance at the lower end of the spectrum.
- 9.37 The HIA refers to the composition of the Cluster *already being weighted in favour of the City*<sup>1001</sup> but this fails to admit that the OUV and the attributes are based on maintaining the dominance and landmark siting of the WHS itself<sup>1002</sup>. The kinetic experience of walking across Tower Bridge does not qualify the harm and the view from the North Bastion has been selected as of strategic importance in its own right. The suggestion that viewers will maintain in the mind's eye views of the proposal that do not affect the appreciation of the Tower cuts both ways: any walk would involve harm to the appreciation of significance in the view that would not somehow be forgotten.

*Tower Wharf and the Inner Ward: HIA View 26, 26N, 30*<sup>1003</sup>; *RT3A Views GLA 8CC, GLA4A, GLA1D, HE1A and HE5*<sup>1004</sup>; and *HE Views B1/07 3i-iii and B1/07 4ci-iii*)<sup>1005</sup>

- 9.38 From Tower Wharf,<sup>1006</sup> the height of the solid shaft and bulging upper form would appear as a disruptive feature above the curtain walls, diminishing the dominance of the White Tower over the foreground and the river, and detracting from the ability to appreciate the complexity of the defences and the Norman keep. The distracting effect would be greater due to the mixture of materials, including the concrete shaft which would more closely resemble the masonry walls. From the southern wall walks, the proposal would draw the viewer's attention away from the historic buildings. Where views are experienced on the move, such as mounting the steps beside Coldharbour Gate or moving outside the New Armouries, the proposal would be the first, building to assert itself, competing with the Chapel Royal and Waterloo Block in particular<sup>1007</sup>.
- 9.39 Tall buildings can be seen in these views and so some cumulative harm would arise<sup>1008</sup>. From the South Bank and Tower Bridge, HE is concerned about the vulnerability of the setting. Within the ToL, especially views over the Chapel Royal, the relationships are different. From here, the urban context is lost behind the ToL's walls. Some significance has been eroded by existing buildings and HE advised that

<sup>998</sup> Tavernor accepted (xx) that if the proposal competed with or distracted attention from the defences this would constitute harm

<sup>999</sup> Tavernor xx.

<sup>1000</sup> CD3-4 paras 117-8

<sup>1001</sup> CD1-17 p. 28.

<sup>1002</sup> Professor Tavernor xx. Dr Miele proof 5.57-8/18 and CD 8-22 p. 101-102

<sup>1003</sup> CD1-17 pp. 42-5.

<sup>1004</sup> CD13-19.

<sup>1005</sup> See further the images of Mr English: CD19E-7 and the appendices to his proof CD16-4 Appendix B1/07. See C11-83 1.4.2, 4.5.3, 4.5.18-20, Appendix 1 and 13, as well as the Heritage SoCG CD19B-28 p. 10.

<sup>1006</sup> See RT3A CD 13-19 View GLA8CC; HE View B1/07 3i-iii

<sup>1007</sup> See HIA (CD1-17) View 30, RT3A Views GLA4A, GLA1D, HE Views B1/07 4ci-iii; and then RT3A CD 13-1 Views HE1A and HE5.

<sup>1008</sup> Accepted to be as summarised in *Citroen*

there might be harm at 40 Leadenhall,<sup>1009</sup> 50 Fenchurch Street,<sup>1010</sup> the Scalpel,<sup>1011</sup> 1 Undershaft,<sup>1012</sup> 22 Bishopsgate<sup>1013</sup> and 100 Leadenhall.<sup>1014</sup> Each was granted permission but that does not preclude finding that there was harm to the intimacy of the Inner Ward as a world apart. Judgements on buildings can change after they are built, and unbuilt schemes can be part of a cumulative assessment.

- 9.40 Impact in this case would come from the greater stridency of the scheme compared with other office buildings. This building would be, and be seen as, markedly different with a perceptible gap between. The contrasting form, with moving *jewels* in the form of gondolas, would draw attention to itself and its bulbous top would emphasise a sense of overlooking. It would intrude into the intimate setting including Beauchamp Tower (concentric defences) and Chapel Royal as a focus for attention (surviving medieval remains).
- 9.41 Although it concedes that the setting is of a high, or very high sensitivity, with *intrusions* by the modern City<sup>1015</sup>, the HIA relies on the preservation of the existing commercial character to explain why significance would be preserved. These references cannot be reconciled<sup>1016</sup>. The implication seems to be that this scheme would not cause harm because further tall buildings in the Cluster are inevitable. However, Local Plan Policy CS7 for tall buildings in the Cluster accepts that not all sites are appropriate and requires the application of criteria, including conserving heritage assets and their settings<sup>1017</sup>. Again in these views, the HIA fails to translate major change into an assessment against the attributes other than the White Tower. The juxtaposition between the memorial context of an execution site and a fairground-type ride would be jarring. If the scheme would draw the eye from Tower Bridge, it would also do so here.

### *Conclusions on harm to the WHS*

- 9.42 In these various ways the scheme would undermine the attributes at the core of the OUV. Its location, height, prominence and eye-catching form, with its top silhouetted against the sky, would undermine the landmark setting of the ToL as a fortress separate from the City, as shown in View 10A.1 and to a lesser degree in View 25A.1-3. The profile would challenge the White Tower, competing with what persists of its pre-eminence on the skyline. The sharp edge to the Cluster would be unfortunate against the ogee-shaped turrets. It would detract from the concentric defences, particularly in Views 25A.1-3 and 10A.1. From the Wharf, one of the best locations to see the defences, the scheme would divert attention, the strong vertical emphasis hampering the strong sense of horizontal scale. There would be an unsettling effect from Tower Green.
- 9.43 Following the ICOMOS guidance<sup>1018</sup>, there would be moderate adverse impacts on the attributes of landmark siting, dominance of the White Tower and internationally

<sup>1009</sup> CD11-66 22/pdf p. 463.

<sup>1010</sup> CD11-66 pdf p. 1242-3.

<sup>1011</sup> CD11-66 18/pdf p. 379.

<sup>1012</sup> CD11-59 para. 43; objection letter for this scheme at CD5-2.

<sup>1013</sup> CD11-66 3.1(e) p.113 (Pinnacle); see too CD5-2.

<sup>1014</sup> CD11-66 pdf p. 1061, where its position was put in terms of not increasing existing harm caused by the eastern cluster.

<sup>1015</sup> CD1-17 p. 42.

<sup>1016</sup> Miele xx.

<sup>1017</sup> CD6-4 p. 74.

<sup>1018</sup> See the guidance at CD8-13 p. 9 and Appendix 3B on p. 16; and CD16-3: 7.35/103 (landmark siting); 7.48/108 (dominance of the White Tower); 7.57/113 (concentric defences); and 7.63/117 (surviving medieval remains); 7.66/118 (internationally famous monument); see too 7.27/98 and 7.29/100, as well as the conclusion at 7.74-6/122-3 where the markedly more harmful influence of the appeal scheme relative to existing or consented schemes, in particular from views within the WHS, is summarised.



famous monument, with minor adverse impacts to the concentric defences and medieval remains. These would cause impacts between large/very large and moderate/large significance having regard to the very high sensitivity of the heritage significance in question, translating into a NPPF-based finding of harm towards, but not at, the upper end of the *less than substantial* harm spectrum. For the above reasons, the suggestion that there would be any heritage benefit in views from the South Bank, was incoherent in terms of heritage significance.

- 9.44 The Appellant and the City rely on *Bedford* to claim that the upper end of the *less than substantial* harm overstates it. But they have misjudged it. *Citroen* does not help as even there the SoS found moderate harm where the proposals lacked the strident profile of this scheme. The SoS found recently in a setting case at *Anglia Square*<sup>1019</sup> that harm should be pitched at the upper end of *less than substantial*. Here there would be major changes to a setting which makes a fundamental contribution to significance, by an eye-catching, attention seeking proposal which has made no attempt to respect its wider heritage context. The OUV of the Tower would be much reduced and the HE assessment is sound.

*Further harm to other important heritage assets*

**Tower of London Conservation Area, Trinity House (see RTA3 Views HE2B, HE3C, HE4A and HE View B1/07 8i-ii)**

- 9.45 These can be addressed briefly<sup>1020</sup>. As the Conservation Area covers the Tower and the north bastion on Tower Bridge,<sup>1021</sup> the appraisal is covered by the assessment against the OUV of the WHS. St Katherine's Dock, an early 19<sup>th</sup> Century extension of the London Docks, and Trinity Square Gardens, laid out as open space at the end of the 18<sup>th</sup> Century, are other character areas that would be harmed. The former has an enclosed, relatively peaceful character from being set apart from the rest of the City, although this has been reduced by tall buildings above the roofline. The latter is an exception to the experience of the busy roads elsewhere in this part of the Area. The setting is also defined by historic buildings, the most significant of which is Grade I Trinity House, which was designed with the Gardens and is an exemplar of late C18 neo-classical style. The ability to appreciate their intended relationship with and from the Gardens is an important contribution made by setting here, with minimal visual distraction above the roofline. The proposals would be alien and prominent on the skyline distracting from the buildings and gardens as elsewhere. The harm to the CA would overlap with, and mirror, that to the WHS, elsewhere, at the lower end.

*St Botolph without Aldgate (see TVBHA View 54)*

- 9.46 This Grade I church from the mid-18<sup>th</sup> Century has retained its landmark qualities from Aldgate High Street<sup>1022</sup>. Its square brick tower signposts its main entrance, surmounted by an elegant octagonal spire which draws the eye upwards where currently development does not interfere with the setting against the open sky<sup>1023</sup>. Setting makes an important contribution to significance by supporting its prominence as an historical landmark. The height and bulbous massing at the top of the scheme,

<sup>1019</sup> CD 19E-5 (see e.g. DL 44/8-9); see CD19E-6 for relevant extracts from the TVBHA in that case.

<sup>1020</sup> Mr English's evidence. See 6.68/75-6.76/83 and 7.79/124-7.84-129 dealing with 1 and 2 Tower Green and the Waterloo Block as listed buildings within the ToL in their own right, but subject to similar harm to that set out above in relation to the Inner Ward: see CD16-3, respectively 7.67/119-7.7.68/120 and 7.69/120-7.70/121.

<sup>1021</sup> See CD11-44 p.3.

<sup>1022</sup> The TVBHA refers to the *equally significant close views from Minorities or those looking east from Aldgate High Street*: p. 54.

<sup>1023</sup> CD8-26, p. 36. The City identifies it as a church with a skyline presence in its Protected Views SPD.

with its moving gondolas, would compete in closest proximity with the slender, tapering spire, unlike other buildings further away that would not be as conspicuous.

- 9.47 The appellant accepted<sup>1024</sup> that the TVBHA<sup>1025</sup> does not follow the relevant HE guidance by assessing the contribution of setting in heritage terms, while the City accepted that in some of the transient views there would be an *uneasy* relationship between the eye-catching upper storeys and the tower, which would be *visually challenged*<sup>1026</sup>. This should be treated as the development competing with or distracting from the heritage asset<sup>1027</sup>. While in other locations of the City a juxtaposition between old and new may be viewed as successful, that is not the case here where harm would be between moderate and low on the *less than substantial* spectrum.

*The weight to be accorded to the less than substantial harm should be very significant; and the approach of the appellant and City to weighing heritage harm has been equivocal and insecure*

- 9.48 In cases involving LBs and their settings, whilst the degree of harm is a matter of judgement, if harm is found, the decision maker is not entitled to give it such weight as they think fit but must go on to give it considerable weight<sup>1028</sup>. Harm to a LB or its setting gives rise to a strong presumption against planning permission<sup>1029</sup>. While not uniform, any harm must be given considerable weight and the more valuable the heritage asset in question the greater the weight it must be given<sup>1030</sup>. Here, the importance of the asset is reflected in the weighing exercise, not in assessing the extent of harm that would be caused<sup>1031</sup>. This is reflected in the NPPF<sup>1032</sup>. Great weight should be accorded to any harm<sup>1033</sup>, recognising that the final judgement will depend on factors including the value of the asset. Where less than substantial harm is weighed against public benefits<sup>1034</sup>, this does not amount to a less than substantial objection to a development<sup>1035</sup>.
- 9.49 The Tower has designations of the greatest heritage importance. Inscription articulates its status as the rarest of designations, nationally and globally. Here, the proposals would cause harm towards the upper end of the less than substantial spectrum, to heritage significance of a national and international register, which should be accorded very substantial weight. Neither the Appellant nor the City were convincing in how this should be placed in the planning balance<sup>1036</sup>. The City found the case remained *very finely balanced* but in doing so ignored the further heritage harm identified by HE.

*Permission should only be granted if the very significant weight to be accorded to heritage harm is outweighed by even greater public benefits*

<sup>1024</sup> Miele xx that consideration of the view did not deal with the criteria for development in the setting of heritage assets in GPA3 (CD8-4).

<sup>1025</sup> See pp. 188-9 and p. 54.

<sup>1026</sup> CD 14-4 10.61/228.

<sup>1027</sup> as the appellant also accepted Miele xx.

<sup>1028</sup> Giving considerable importance and weight to the desirability of preserving does not mean that the assessment of weight to be accorded to harm is a matter for the decision-maker: cf Citroen IR CD15.23/107.

<sup>1029</sup> Barnwell Manor, CD 10-1 at [23].

<sup>1030</sup> See Palmer, CD10-10 at [5].

<sup>1031</sup> Cf the Citroen IR CD 9-4 15.23/107.

<sup>1032</sup> which requires that when considering the impact of development on significance, great weight should be given to the asset's conservation; and the more important the asset, the greater the weight should be. CD6-1, para. 193

<sup>1033</sup> Cf the Citroen IR CD9-4 15.23/107.

<sup>1034</sup> NPPF, CD6-1, para. 193.

<sup>1035</sup> Barnwell Manor, CD 10-1 at [29].

<sup>1036</sup> Goddard, Hampson and Richards xx

- 9.50 HE leaves the balancing exercise benefits to others but makes the following points.
- 9.51 It is necessary to reach a view on compliance with the development plan. The Appellant accepted some conflict with former London Plan policies on heritage, WHSs and strategic views. The NLP has corresponding policies<sup>1037</sup>. The City accepted conflict with LP policies CS7, CS10, DM10.1 and CS14. The City concluded overall that the scheme would not accord with the plan<sup>1038</sup>.
- 9.52 The heritage policies of the NLP were prepared to *actively respond* to concerns in the 2017 ICOMOS *Mission Report* that current policies had *not been totally effective* in preventing negative impacts on London's WHSs<sup>1039</sup>. The draft policy emphasises the importance of properly prepared HIAs and so criticisms by ICOMOS of the HIA here, and harm to this WHS which conflicts with this policy, should carry particular force. So too should conflict with the WHSMP<sup>1040</sup>, which promotes the protection of the wider setting from development that could harm OUV<sup>1041</sup>.
- 9.53 The same factors apply to the NPPF balance. From a heritage perspective, HE does not accept that any coherent case has been made for the proposals delivering the benefits that appear to be claimed by the appellant<sup>1042</sup>.
- 9.54 Views to the west and south appear liable to be obscured<sup>1043</sup> by neighbouring developments (*1 Undershaft, 100 Leadenhall and Twentytwo*). These and several other<sup>1044</sup> buildings would be offering free viewing facilities with enclosed space available for school and community visits, with an education programme in dedicated classroom space at *1 Undershaft*, (with curation initially agreed with the Museum of London)<sup>1045</sup> which could be seen, at greater height<sup>1046</sup>, in views from the proposed facility<sup>1047</sup>.

<sup>1037</sup> NLP HC1 C, HC2 B-C, HC3 D and HC4 A-D. Also conflict with policies D9 c1a, c, d and e and D3(11). Further conflict would arise with the emerging City Plan, albeit that its draft policies can only be given limited weight.

<sup>1038</sup> Confirmed by Hampson xx.

<sup>1039</sup> in the Panel's words, CD7-4 330/72.

<sup>1040</sup> Ss the government approved document designed to explain why the tower is so significant.

<sup>1041</sup> See CD8-23, Objective 11, p. 96, and guidance which requires proposals to consider their effect on the established eastern cluster, the space between it and the Tower and the effect on the ability to recognise, understand and appreciate the OUV of the Tower": 7.3.27/101.

<sup>1042</sup> It has oversold the education facility, promoting it as *world class* when nearly as much of the third floor was occupied by plant, there was a single classroom, and this was not sufficiently important to merit an education specialist within the 32-expert team: CD1-6 pp. 9 and 115. The increase in floorspace only came in response to concerns expressed by the Mayor/the City; from the plans and 3D images, the overall space is not generous, or thought through, including corridors of not much more than 3m, on the lowest floor of the building, with little consideration to storage. Further, the main slot during the school day (10-3) would be available for 210 days of the year, leaving 155 days when it would be available for other use; the afternoon slot (3-7) would be available on weekdays throughout the year but trips for school groups in KAS4-5 would extend beyond the school day with less demand during exams and school holidays. Availability between 3-7 for community groups in weekdays would not cater for evening meetings. There would be more days when time was available for commercial compared with education or community use: Wright xx. Priority booking is to London schoolchildren: see CD19B-24 Sch. 7 paras 3.2 and 6. If a slot time remains unbooked 3 months before any date, it is offered to other education/community groups and if not then filled within a month of the date it can be used for other purposes: see CD 19B-24, Schedule 7, para. 8.1.

<sup>1043</sup> See images at CD19B-25. Note that these visuals, including the 3D images in the VR headsets, are not verified and should not be treated as such; rather they are aide memoires to assist with the Inspector's site visit and an overall appreciation of the nature of identified views.

<sup>1044</sup> The latest agreed document on *Viewing Gallery and Education Provision Table – 15 December 2020* lists 7 constructed or consented viewing galleries elsewhere: 1 Undershaft, 100 Leadenhall Street, 22 Bishopsgate, 120 Fenchurch Street, 6-8 Bishopsgate, 20 Fenchurch Street and the Shard (paid for).

<sup>1045</sup> See CD19C-14, which refers at pdf p. 19 to "an initial agreement with the Museum of London to curate the space as an annexe to the Museum, with a central lecture/display area and displays focussing on the past and future city, utilising digital technology". The space at 1 Undershaft (203 sqm NIA) would compare favourably with the 172 sqm NIA of dedicated space on the latest drawing; even allowing for a flexible layout up to 352 sqm, this is against 1307 sqm NIA of free publicly accessible enclosed space for school/community visits at 1 Undershaft.

<sup>1046</sup> See latest agreed document on "Viewing Gallery and Education Provision Table – 15 December 2020".

<sup>1047</sup> Indeed as Mr English explained (EiC), this proposal would interfere with views from this consented scheme.

- 9.55 The interest shown by schools has been relatively limited<sup>1048</sup>. Availability of places to visit for school trips, from elevated viewpoints or otherwise, was not an issue for attendees and there is no evidence of any deficit in high quality opportunities<sup>1049</sup>.
- 9.56 The best way to gain an appreciation of heritage from an educational perspective is to visit the places themselves, because there is a direct and immersive connection to what they are seeing<sup>1050</sup>. There is a broad range of educational and cultural attractions in and around the City that already offer pupils direct and potent learning experiences<sup>1051</sup>.
- 9.57 The value of history and heritage at height would be less compared with visiting the places themselves, particularly the ToL<sup>1052</sup>. There is no evidence that this proposal would generate more trips to the ToL whereas schools will have finite time and resources to arrange school trips<sup>1053</sup>.
- 9.58 There is an extensive and growing number of viewing galleries<sup>1054</sup> and the experience provided by these spaces and the proposal would be similar.

### Conclusion

- 9.59 HE concludes that:
- the proposals would not exhibit exemplary architectural quality;
  - they would cause less than substantial harm to the significance of designated heritage assets, not only but in particular the WHS;
  - they would conflict with policy on strategic views, with respect to view 10A.1 and 25A.1-3;
  - any benefits of the scheme from a heritage perspective would at best be very minor and come nowhere near the level of harm that would be caused).
  - HE respectfully asks that great care and rigour is applied to the wider balancing exercise. This building signals conspicuous and pronounced harm to heritage assets of

<sup>1048</sup> An Educational Roundtable set up by the Appellant did not identify gaps in enhancing the curriculum through trips to other institutions. It involved invitations to 72 schools. Only 12 school representatives attended. 8 of these 12 were inexperienced trainees on the Teach First graduate programme: see CD2-2 2.3/7. No education authorities were invited: see CD19B-14. The Statement of Community Involvement (CD2-14) shows that 2812 London state schools were contacted to inform them of the proposals and explore their requirements for the facility. Only 27 responses were received to the questionnaire: 3.1. It appears that 4 schools attended the exhibition space at 20 Bury St and that a presentation was made to a further 14 schools in the same schools' partnership: see 2.7-2.12. Priority is given to London schools when there is no dispute that they have the greatest access to educational school visits and are making use of this already: See DfE Research Report "School cultures and practices" Wright proof 3.68/19.

<sup>1049</sup> Wright xx. see too CD11-37 p. 13 where the DfE found in London "a greater depth and strength to schools' networks, both in terms of the opportunities for 'horizon broadening trips' and visits that schools were able to offer pupils, and in relation to teachers' own professional networks"; see too p. 91. The issue of addressing social mobility is a far wider question than this scheme can meaningfully address: see CD11-7, "Cracking the Code", where the key findings place greater emphasis on other components of school teaching: see pp iii, iv, vi, vii-viii). See too 109/43 and 114/45 which confirm that preparing students for all aspects of school life involves direct experiences outside the classroom, and not the experience of visiting a facility such as this proposal.

<sup>1050</sup> It is the importance of engaging authentically with the world as it is experienced, and the importance of place, that is emphasised in Ms Wright's appendices: see PoE 3.40/13, 3.45.3 and Appendix 2 pp. 2, 4 and 8 (Council for Learning Outside the Classroom Manifesto); App. 2 p. 11 (Ofsted Learning Outside the Classroom: how far should we go?).

<sup>1051</sup> See English proof CD16-3 8.13/137 and f/n 344, referring to the Museum of London, St Paul's Cathedral, the Monument, the Tower Bridge Experience, the V&A Museum of Childhood, Docklands Museum, Globe Theatre. Many are free and the City offers grant to cover the cost of locations that charge.

<sup>1052</sup> which welcomes around 130,000 school children, including Key Stage 1.

<sup>1053</sup> Dr Wright could only say that with the proposal in place the selection of where to visit would be a matter for individual schools: In response to questions by the Inspector.

<sup>1054</sup> offering an experience of seeing the history of London in the view to those who seek it, images of many of which the City has helpfully provided - See CD19C-14. The suggestion that these are "undemocratic" or "superficial, secondary" (Harrison proof 3.6.4/114) because the buildings in which they are accommodated are largely offices spaces is misplaced. The experience of arriving at a discrete ticketed entrance and being taken by lift to a viewing platform is similar to what is proposed here.

the utmost importance. Planning permission should only be recommended or granted if the countervailing benefits can clearly and convincingly be justified as greater.

## **10 The case for Sheriff Chris Hayward**

*Other than minor alterations for brevity, the statement is reproduced in full.*

- 10.1 I am Chris Hayward. I am the Deputy Chairman of the Policy and Resources Committee and was the Chair of the Planning and Transportation Committee, both of the Corporation of the City of London when the *Tulip* was considered on 2 April 2019.
- 10.2 The Committee received a full presentation by the Chief Planning Officer and the Assistant Director - Design as well as a full report and copies of representations and a late paper setting out additional comments received since the main report was prepared. HE, HRP and the Appellant addressed the Committee. Committee Members were able to ask questions of their representatives. The debate was lengthy, thorough and the Committee considered all aspects of the application carefully.
- 10.3 The Committee resolved by a substantial majority of 18 to 7 to grant planning permission subject to the Mayor being given 14 days to consider the application and the conditions and obligations being applied. I voted in favour of the proposal.
- 10.4 Every so often a scheme emerges that is exceptional and challenges convention either because of its use or its design. I believe the *Tulip* epitomises both. It would be a beacon for the energy, creativity, innovation, and the ever-evolving nature of the City of London.
- 10.5 In my view the *Tulip* is World Class and would be a wonderful and exciting addition to the London skyline which will resonate internationally and provide a new iconic building for the City.
- 10.6 To object to the *Tulip* because it is eye catching and different fails to recognise the role of radical new architecture in London's rich historic fabric. St Paul's was a radical intervention in its time and London's evolution includes many others. To name a few, the BT Tower, the Millennium Wheel and here in the City, the Barbican, the Lloyds Building and the *Gherkin*.
- 10.7 Officers made clear in their report to the Planning and Transportation Committee and re-iterated this in their presentation to the Committee that they considered the scheme resulted in less than substantial harm to the significance of the [ToL WHS] arising as a result of impact in one view of the [ToL] from Tower Bridge.
- 10.8 I and the Committee take very seriously the impact of any proposal on the [ToL WHS]. We recognise the significance of the City sitting alongside this nationally and internationally significant monument and that the setting of the [WHS] is a key consideration.
- 10.9 I believe the City placed very considerable weight on heritage interests when - striking the balance between the City's need to grow to deliver the World's leading international and professional services centre and safeguarding the City and surrounding areas' wonderful heritage.
- 10.10 In the light of the identified less than substantial harm to the [ToL WHS] it was essential that the public benefits of the scheme clearly outweighed that harm. Negotiations with the Appellant secured additional Public Benefits and I am of the view that the Public Benefits are very significant.



- 10.11 The *Tulip* is an iconic new building for the City and its skyline, enhancing London's status and attraction for visitors, residents and workers.
- 10.12 The *Tulip* provides an amazing visitor attraction for 1.2 million visitors in a highly accessible location and would help to boost and diversify London's tourist offer and economy supporting the wider UK's visitor offer.
- 10.13 It would draw people into the City and add to and diversify the City's visitor offer both directly and indirectly contributing to the City's aspirations to be a 24/7 City. It would act as a catalyst for the evening and weekend economy which would enhance inter-relationships between established and emerging attractions in this part of London and which would reinforce London's position as a leading world city. It would be particularly busy at weekends, opening this underused part of the City. Anyone visiting the area at the weekend will attest to an area, largely devoid of activity and vibrancy with the office buildings, cafes and shops closed. I believe the *Tulip* could transform this area, introducing a substantial boost, creating a vibrant, bustling and exciting place for Londoners and visitors, encouraging them to explore the City and the surrounding area, including the nearby Petticoat Lane Market. This footfall will encourage cafés, pubs and retailers to open their doors at the weekend.
- 10.14 The *Tulip* diversifies uses within the City making it more inclusive and more resilient to change.
- 10.15 The provision of an educational facility for at least 40,000 of London's state school children, free of charge, each year is a significant benefit. It would be an inspirational space and a significant resource for key subjects in the school curriculum. It has the potential to introduce the City to many children who may not otherwise visit the City or consider it as a place that they may one day wish to work.
- 10.16 The Level 3 educational and community space would be a motivational, inspiring and inclusive space that would be available for young Londoners as a priority and available to London communities.
- 10.17 The roof top garden and pocket park which increase greening will provide improved areas for resting and dwelling for the benefit of workers, visitors and residents.
- 10.18 The planning obligations and conditions would ensure that the impact of the proposal is acceptable and that the wider benefits of the scheme are realised including consolidation and timing of servicing vehicles.
- 10.19 The Covid Recovery Commission, just before the Inquiry opened, published a report *Levelling up Communities*, which advocates measures to create the conditions for communities to recover from the devastating impact of COVID-19, especially those from more deprived communities who have been disproportionately affected. The report advocates a focus on delivering educational opportunities, more resilient communities, strengthening economic growth, creating jobs and a more resilient economy. The *Tulip* is located cheek by jowl with some of London's most economically deprived areas. The economic and planning case for the *Tulip* is ever stronger in supporting the recovery of the City post COVID-19 and in particular our SMEs, retailers and hospitality outlets, all of which have suffered horrendously during the pandemic.
- 10.20 I believe the *Tulip* is precisely what the City and London needs at this challenging time. It will become an enduring symbol of resurgence and I am keen to make clear my fullest possible support for it.

## 11 Written Representations<sup>1055</sup>

*There was a mixture of representations in support and opposition. Many of these repeat those already made by the main parties. Novel points are set out below.*

- 11.1 The ToL is owned by the Crown, but is the responsibility of the SoS for DCMS.  
**Historic Royal Palaces** (HRP) is an independent charitable trust which is vested by the SoS for DCMS with responsibility for the care and maintenance of the ToL on behalf of the Crown. Its aim is *to conserve the palaces and to educate and inform the understanding of the public about their history and the skills required to maintain them*. A key objective of the revised and updated ToL WHSMP is to ensure that the Tower can meet steadily rising visitor numbers (nearly 3m people now visit the site annually) without harming its significance as a WHS. As guardians of the ToL WHS, HRP considers that the proposed development would have a seriously harmful effect on the setting of the ToL WHS and on aspects, or *attributes* of the WHS's OUV. It therefore wrote to set out its strong objections<sup>1056</sup>.
- 11.2 The proposal is to create a spectacular, *world class* new visitor attraction in the heart of the City of London, as a high-level viewing gallery and for leisure/bar/restaurant purposes, little more than 600m to the north-west of the ToL WHS. If constructed, it would form a tall, vertical edge to the City's Eastern Cluster of tall buildings. From the first informal notification in October 2018, HRP has continually and consistently objected directly to DCMS, the City, by reference to ICOMOS<sup>1057</sup> or through HE.
- 11.3 In its summary of relevant policy, HRP drew attention to s66 of the LB&CA Act, NPPF §§184, 193, 194(b) and 196, PPG reference ID: 18a-018-20190723, 026-038; and various London Plan Policies.
- 11.4 UNESCO's WHC and its cultural heritage advisor, ICOMOS, interpret the World Heritage Convention in a way that places great weight on the need to avoid harm to the OUV of a WHS. Only if proposed development is essential and cannot occur without harm to OUV does ICOMOS concede in its *Guidance on Heritage Impacts Assessments for Cultural World Heritage Properties* 2011 that balancing harm against public benefit is acceptable.
- 11.5 Given the recommendations of the UNESCO Reactive Monitoring *Mission* to the ToL in December 2011, and warnings by the World Heritage Centre relating to the increasing impact of tall buildings on the setting of the WHS, HRP is concerned that the proposed *Tulip* would pose a very serious risk to the continuing status of the ToL as a WHS. We believe that, if built, the proposal could result in the WHS being placed on UNESCO's World Heritage *In-Danger* list of properties that might be deleted from the list.
- 11.6 **William Upton QC CC**, Member of the Court of Common Council, Ward of Farringdon Without, City of London, emphasised that this is not a proposal that was ever envisaged for this part of the City and that the *Culture Mile* at the Barbican is unrelated to this important commercial area of the City. There would be adverse impacts on so many heritage assets, as well as the other adverse impacts identified by the Mayor. Furthermore, this appeal is seeking to ask the Inquiry to re-evaluate how we develop the London skyline, even though that has been subject to the Local Plan process.
- 11.7 He noted the ICOMOS letter regarding the impact on the UNESCO WHS. This was not presented to the committee as part of the officers report. The committee was

<sup>1055</sup> See CD17-1 to CD17-19

<sup>1056</sup> Most of these are covered in detail in the closing submission of HE, I summarise but a few of these.

<sup>1057</sup> Para 23 CD17-9

provided with a copy as part of a number of documents that were sent on the Friday before the Tuesday April 2019 committee. When the representatives of HE and HRP made their presentation to the committee, they had not seen the letter (as the Minutes record). I do not consider it was given full consideration. Given the timing, the officer's report has to be read in the light of this as well.

- 11.8 The main purpose, as an observatory, is now hardly novel – the City is already served by many public viewing platforms, in addition to those outside the City (most obviously, the Shard). The education point has the potential to be important; a *classroom in the sky* could be iconic. In the current proposal, the actual education contribution is a very small part of this scheme, on only 1 of the 12 levels.
- 11.9 We are seeking world class architecture. It is a very difficult brief. The client has a very constrained site at ground level, right next door to an existing iconic building. He has turned to very eminent architects, who command great respect. The SoS is being asked to approve what wants to be the tallest building in the City. The impact of this project will be very public. Whilst I know we are dealing with a serious project, we cannot ignore how Londoners view the tall buildings that have been erected. Their nicknames show how outstanding architecture can gain public notoriety. The designers have tried to label it a *Tulip*. HE has referred to a lift shaft. Some have referred to Las Vegas. I would note that the press has already picked up on the rather raunchier interpretations. The SoS cannot ignore this risk on this project. We want an outstanding project, and should expect nothing less.
- 11.10 Six **Councillors of the City** of London Corporation and members of its Planning Committee<sup>1058</sup> wrote to set out their minority view. They felt that the design and external appearance of the *Tulip* is of a concrete shaft with a glass bulb on top which would be self-evidently out of keeping with the City's skyline. It would not be *innovative* as it bears more than a passing resemblance to the *Stratosphere Tower*<sup>1059</sup>, an existing structure in Las Vegas which was built in the early nineties.
- 11.11 They argued that the increase in pedestrian movement would be significant and that the problem of increased pedestrian congestion at the base of the Tulip would only be mitigated by its attracting fewer visitors than expected. But that would create another problem, which is the economic sustainability of the project. If the project turned out not to be sustainable, the City skyline would be topped with an enduring symbol of failure.
- 11.12 With regard to the educational facility for *40,000 of London's state school children free of charge each year*, offering a schoolchild virtual learning which could be done anywhere in a classroom with a view of part of London is not a valuable contribution to education. Instead of children being taught about the ToL by virtual means, they would learn much more by visiting the Tower itself, and many of the other historical sites and museums in the City. Panoramic views are already freely available for school parties in a number of existing buildings in the City, including the *Walkie-Talkie* at 20 Fenchurch Street, the Monument and Tower Bridge, and will be available in a number of other buildings for which planning permission has been given.
- 11.13 The structure would fail aesthetically, increase pedestrian congestion on already congested pavements, be at high risk of ceasing to be economically sustainable, leaving the City skyline topped with an enduring symbol of failure; and offend the City's heritage policies.

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<sup>1058</sup> Marianne Fredericks, Graeme Harrower, Sue Pearson, Barbara Newman, Natasha Lloyd-Owen and Mark Bostock

<sup>1059</sup> See illustration in Miele p118

- 11.14 The fact that the City's Planning Committee nevertheless reached that conclusion (by a vote of 18 to 7) is no surprise, given its reputation for never refusing permission for a major development, however many planning policies it infringes. This predictable pattern of decision making reflects the City's conflicted nature as a body that primarily promotes private commercial interests while also exercising the functions of a local authority. This conflict is evident in the annual dinner of the Planning Committee, which entertains, at the City's expense, guests drawn almost entirely from the property development industry.
- 11.15 **R J Hoefling**, for The Honourable Company of Master Mariners (HCMM), set out its background which compels him to register its objection to seeing *The Tulip* overlook Tower Hill and its environs. There are 23 Grade I listed sites between *The Tulip* and the Thames, 9 having maritime associations and one also being an UNESCO WHS<sup>1060</sup>. The HCMM is concerned that construction of *The Tulip* would lead to increasing development east of the City's Eastern Tall Building Cluster of which *The Gherkin* is the current eastern limit.
- 11.16 He highlighted an extract from the LBTH report which notes that: *LBTH officers attended a pre-application EIA scoping meeting with the applicant's team on 30 November 2018 at the Council's Offices. The scheme was presented before LBTH officers, with the submission to [the City] a couple of weeks after. The applicant team explained that one of the drivers for developing this proposal was to give greater prominence to the existing office building at 30 St Mary Axe ("the Gherkin") and preserve the site of the Gherkin from being lost amongst the emerging and permitted developments surrounding the site.*
- 11.17 He also submitted a detailed map of the significant sites<sup>1061</sup> followed by detailed notes on each of these.
- 11.18 After the sitting days<sup>1062</sup>, he added the objection that adverse weather might limit the primary purpose and viability for the *Tulip* and so the public benefits, drawing comparisons with helicopter sightseeing operations, and the *View Guarantee* offered for the *Shards* in case of poor visibility. He supported this argument with 3 sets of data from the Met Office.
- 11.19 He also raised the concern that, unlike the *Shards* and the *London Eye*, which are on the South Bank mostly looking north, the *Tulip* views would mostly look south into the sun.
- 11.20 **Dr Mary Dengler**, a local resident, expressed doubts about how the proposed development would negatively impact light and air in her property and, in an area of the City with small roads and pavement, about the nuisance from noise and overcrowding in the area.
- 11.21 **Yvonne Courtney** added her concern about the prospect of 1m+ annual visitors descending on the tiny lane which leads into Bury St. Invited to a preview of *The Tulip* it seemed clear to her that the freeholder wants a *beacon* to signal his neighbouring *Gherkin* which is now rendered invisible by newer towers. The educational element is disingenuous given the forthcoming *Trellis* tower (replacing the *Aviva*) on the other side of the *Gherkin* plaza will feature an educational facility run by the Museum of London. Nor is it environmental given most of the structure is a lift shaft. In assessing the points raised here - please also strongly consider the

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<sup>1060</sup> the London Wall; All Hallows by the Tower church; Tower of London; St Olave's church; Custom House; Trinity House; Tower Bridge; the Merchant Navy Memorial's First World War section and Lloyd's Building.

<sup>1061</sup> CD17-1 p10

<sup>1062</sup> In a letter dated 16 December 2020, CD19F-6 and CD19F-7

fact that the location for this structure also happens to be home to a little-known, much loved residential enclave.

- 11.22 **Andy Quinn** referred to the *Minerva* tower which at 200m was approved in 2002 directly behind the ToL. The Mayor at the time then introduced a new protected view from City Hall for views to the North and North East of the White Tower. This proposal is not in that view. He invited me to walk along Tower Bridge and see the queue of tourists taking a picture of the Tower of London in the foreground and the ever growing cluster of skyscrapers in the background. Rather than harm, this juxtaposition enhances the prominence of the ToL, a C10 skyscraper juxtaposed against the C21 towers. He argued that more harm is done to the setting of the ToL from the urban motorway that surrounds the site rather than a view of this proposal which would be impossible to view with the naked eye without seeing perhaps another dozen towers (with more to come that have been approved but not yet built) in the same view.
- 11.23 **Saghir Ahmed** raised concerns that there is always too much dirt pollution in air around this area and he is already sick of sneezing so often due to pollution. There is also construction work noise every day that's not acceptable.
- 11.24 **Douglas Ford** thought that the project is a striking and innovative structure which will fit well with the other tall buildings in this cluster, be a substantial investment in London which will create jobs and incomes, become a symbol of London, as has the *Shards*, and would raise the morale of the capital.
- 11.25 **Peter Murray** Hon FRIBA FRSA AoU is Founder and Curator-in-Chief of New London Architecture (NLA), a director of The London Festival of Architecture, Chairman of The London Society, Past Master of the Worshipful Company of Chartered Architects, Chairman of The Temple Bar Trust and assessor of The City of London Building of the Year Award. He has acted as communications consultant on many major developments in the Square Mile including Broadgate, City Point, Heron Tower, Plantation Place and The Leadenhall Building. He has written a book on the Leadenhall Building which details the changing skyline of the City of London and the Corporation's planning policies. He expressed support for the scheme which he also submitted in video evidence<sup>1063</sup>.
- 11.26 **Paul Finch** Hon FRIBA has a host of qualifications as an architectural critic, notably as Editor of *The Architectural Review* and *Architects' Journal* and as a founder Commissioner and subsequent Chair at the *Commission for Architecture & the Built Environment (CABE)*, now *Design Council Cabé*<sup>1064</sup>. He declared that he is currently deputy chairman of the *Royal Fine Art Commission Trust*, of which Lord Norman Foster is president (though he does not attend trustee meetings). The proposal has not been considered by the Trust, which does not carry out design review activities. His reasons for supporting the scheme were that:
- The City of London has recently pursued a policy of introducing variety to the Square Mile in the form of residential, retail and cultural buildings
  - This has been seen as complementary to the ongoing commercial activities conducted mainly in large-scale office buildings
  - The *Tulip* would continue and enhance that policy, making an educational and cultural contribution to an area of intense commercial development

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<sup>1063</sup> Letter at CD19F-4A. In addition, he submitted a video to the Appellant which is included in its closing CD19B-45 p20. There was no opportunity for cross-examination of his evidence.

<sup>1064</sup> See CD19F-3 for full details. His letter is also referenced by the Appellant. He also appeared for CABE, in support of the scheme, at the Inquiry into the *Walkie-Talkie*



- It is as welcome as it is unusual for a world-class architectural practice to design adjacent buildings of a quite distinct character and with entirely different uses
- The design is both a stimulating piece of form-making, distinctive on the skyline, and a functional response to a rich programme which contrasts with the mono-cultural office developments to be seen in much of the City
- While distinctive, the design does not attempt to be the tallest structure in the area – it is as tall as it needs to be but no more
- Some of the criticism of the design is arbitrary and based on the crudest of analyses – personal taste
- The track record of the architect in the City of London is first-class, and there is no reason to conclude that the *Tulip* proposal would be anything other than another significant contribution to the amenity of its location
- There is extraordinary demand on the part of the public (of all ages) to access the *Gherkin* whenever it is made available for public visits. That desire to see London from the heart of the city will be met on a daily basis by this proposal
- The design meets the standards, aspirations and requirements of the NPPF
- Just as importantly, it would add to the variety and life of the City of London, and indeed London as a whole.

11.27 While I chose not to overload the Inquiry, or the SoS, with each and every commentary on the scheme, it is worth noting that there were informed representations from interested parties against the scheme<sup>1065</sup> as well as those highlighted by the Appellant in its favour (above). None of these commentators appeared at the Inquiry.

11.28 An objection on the basis of heritage impact on Bevis Marks Synagogue was submitted by the **S&P Sephardi Community**<sup>1066</sup>. A subsequent letter advised that, following agreement by the Appellant to make a contribution proportional to mitigate the impacts of the development on the Synagogue, and educational benefits, the S&P Sephardi Community and the London Sephardi Trust were able to support the Application<sup>1067</sup>.

## 12 Conditions

12.1 The suggested conditions were discussed at the Inquiry reaching a final agreed draft version<sup>1068</sup>. The City submitted an Explanatory Note<sup>1069</sup>. These must be necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects<sup>1070</sup>. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests and, in the event that permission is granted, they should be imposed as set out in the attached Appendix 3. Apart from minor adjustments, and as below, should the SoS allow the appeal, I recommend that they are attached. I have adjusted the reasons to refer to the NLP.

12.2 Under section 100ZA(5) of the T&CP Act 1990: *Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant*. Accordingly, agreement to these conditions<sup>1071</sup>, which were appended to a letter, was confirmed<sup>1072</sup> together with

<sup>1065</sup> CD18-1 to CD18-3: the client's project director for the *Gherkin*, the Guardian and Building magazine

<sup>1066</sup> Dated 7 March 2019, supported by a paper from Caroe Architecture dated 9 January 2019

<sup>1067</sup> CD19C-18, dated 28 March 2019

<sup>1068</sup> CD19C-22

<sup>1069</sup> CD19C-9

<sup>1070</sup> NPPF§206

<sup>1071</sup> Submitted on 17 December 2020 CD19C-22

<sup>1072</sup> Letter from Taylor Wessing dated 17 December 2020 sent by email by Senior Counsel Emma Tait

any amendments or additions arising during or as a result of the Inquiry. Some conditions originally suggested that they must be fulfilled in consultation with parties other than the LPA. This would be unenforceable and so I have removed or altered this to after consultation. Of course, it is likely that the LPA would consult anyway.

- 12.3 It was common ground that the proposals would have no unacceptable impact on aviation routes, subject to an acceptable crane operation plan and construction management strategy<sup>1073</sup>. The conditions suggested to safeguard aircraft come from Heathrow Airport, London City Airport, and NATS (En-route) plc (formerly the National Air Traffic Services). NATS had no objection to the building itself subject to the imposition of a single condition requiring a Crane Operation Plan<sup>1074</sup>. The City of London Airport added further suggested conditions<sup>1075</sup>. As I highlighted during the Inquiry, these are somewhat repetitive. In the Schedule, I recommend simplified versions but if the SoS prefers the full versions of the earlier draft conditions 18-22 then there would be little harm other than to brevity in attaching them.
- 12.4 I queried the conditions which refer to superseded Use Classes. Although the revised Order allows for this, where the application pre-dates the revisions, it struck me as retrograde. Therefore, to control the uses more precisely, which is necessary to justify some of the benefits put forward, I recommend that the conditions stipulate the precise uses as in the attached Schedule.
- 12.5 The Appellant was at pains to emphasise the sustainability credentials for the scheme and put forward Condition 44 requiring a post-construction BREEAM assessment rating of *Outstanding*. There could be difficulties in enforcing this after it has been built, and few of the details of the construction phase would remain relevant after practical completion. Nevertheless, as with the s106 requirement to endeavour to retain the architects, it would be sufficiently enforceable to meet the tests.
- 12.6 I queried the efficacy of condition 46 on façade cleaning for concrete. Following the Appellant's *Further Note on Concrete*<sup>1076</sup>, I accept that careful detailing could reduce the level of staining and that the specification could make stains easier to remove. I retain some doubt as to whether the condition would be enforceable after the use has ceased, but that does not negate its necessity.

### 13 Planning Obligations

- 13.1 The Agreement under s106<sup>1077</sup> contains obligations on the Owner<sup>1078</sup>, both the limited company and its chargee, and the City as LPA. A Summary and explanation for the various elements of the Legal Agreement was submitted to the Inquiry, as was a Compliance Note covering how the Agreement would comply with the Community Infrastructure Levy (CIL) Regulations 2010<sup>1079</sup>. As with the suggested conditions, these were discussed more than once during the Inquiry with written queries, responses and comments, made Inquiry Documents<sup>1080</sup> and minor amendments were made during the course of the Inquiry.

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<sup>1073</sup> CD19B-26 para 10.16

<sup>1074</sup> Set out on p7 of CD17-2

<sup>1075</sup> See original list in CD12-7

<sup>1076</sup> CD19B-44

<sup>1077</sup> A copy of the Engrasment s106, dated 17 December 2020 is at CD19B-43

<sup>1078</sup> The names on the Agreement do not precisely match the name of the Appellant. Should the SoS be minded to allow the appeal, I recommend that he should ensure that the City has done checked the ownership details as set out in CD19B-4 item 1.

<sup>1079</sup> CD19C-20

<sup>1080</sup> Inspector's queries and responses CD19B-4; Mayor's comments CD19D-3

- 13.2 A summary of the obligations is set out in the SoCG<sup>1081</sup>. These cover: Affordable Housing; Carbon Offset Contribution; Construction; Cycle Parking; Deliveries and Servicing; Development Programme; Education and Community Use; Legible London Contribution; Local Employment, Training, and Procurement; Monitoring Costs; Open House; Pavilion Roof Top Garden; Public Realm (including the *Pocket Park*); Section 278 Works<sup>1082</sup>; Security; Solar Glare and Convergence; Television Interference; Travel Plan; Visitor Management; and Wind. The number of visitors would be limited by controlling the number of ticket sales.
- 13.3 My conclusions (below) are based on an assessment in the light of the CIL Regulations and of NPPF§204, which set 3 tests<sup>1083</sup> for such obligations. It was agreed that the planning obligations, including the costs of monitoring<sup>1084</sup>, meet the 3 tests and, following discussions and amendments at the Inquiry, I am satisfied that the obligations in the Agreement all comply with the Regulations and the NPPF and I have given weight to them in my conclusions.
- 13.4 The Education and Community obligations set out space requirements, fitting out, opening hours, capacity, staffing and booking arrangements. It would require an *Education and Community Use Management Plan* prior to completion which would need to be approved before occupation. It would control the details to the satisfaction of the City with arrangements for monitoring and review<sup>1085</sup>. It is reasonable to suppose that this would include enforcement provisions. It would detail the accommodation, location on Level 3, size, uses, equipment, degree of flexibility, fitting out, storage, arrangements for free access to school and community groups, provision of materials, staffing, timings, resources, publicity, dedicated website, security, entry and exit requirements and booking system. It would allow for changes by agreement.

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<sup>1081</sup> CD19B-26 p23-25

<sup>1082</sup> Under the Highways Act 1980

<sup>1083</sup> 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.

<sup>1084</sup> CD19B-26 para 10.31 p30

<sup>1085</sup> It now includes a floor plan with alternative layouts for the Education space CD19B-43 End of Sch7 p89

## 14 Conclusions

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

### *Main considerations*

- 14.1 As above, the Secretary of State (SoS) considers that the appeal relates to proposals for development of major importance having more than local significance. Combined with the extant Reasons for Refusal (RfR), and other matters raised, I find that the main considerations in this appeal are:
- i. the effect of the proposals on the significance of designated heritage assets derived from their settings with particular regard to the Outstanding Universal Value (OUV) of the Tower of London (ToL) World Heritage Site (WHS), the Tower and Trinity Square Conservation Areas (CAs), and various listed buildings (LBs) within the ToL and within the City;
  - ii. any other harms which might affect the overall balance, including loss of ground level public open space;
  - iii. whether the design would be of the highest architectural quality, including the sustainability credentials of the scheme;
  - iv. the public benefits of the proposals with particular regard to the economy, provision of visitor attractions, educational facilities and any other benefits which might affect the overall balance;
  - v. whether the public benefits of the scheme would outweigh any harm identified in the heritage balance of the National Planning Policy Framework (NPPF) and any other material considerations, the consistency or otherwise of the scheme with the development plan as a whole, and the overall planning balance.

### *Heritage assets*

- 14.2 The relevant heritage assets are set out above. The scheme would not cause any direct physical harm to any heritage asset, rather the disputes concerned their settings. The parties set out their opinions on heritage assets whose heritage significance might be affected by the proposals, including areas of disagreement. HE and the Mayor considered that it was not possible to agree a statement of significance without having a shared understanding of the contribution that setting makes to significance. It was common ground that the starting point for understanding the significance of the ToL WHS is the SOUV, as agreed by the WHC in 2013, and its 7 attributes. The WHSMP sets out the way in which each attribute is expressed and each should be considered in turn. As at *Citroen*, the key point is not whether some aspects would be left untouched, but the importance of what would be affected, that is the setting, to its significance. [2.5][2.6][2.13][3.9][3.10][3.12][3.23][3.39][3.40]
- 14.3 The ToL has many designations, most notably that of WHS. As there would be no physical harm to the ToL, I consider that its status as a scheduled ancient monument is of limited relevance but, in any event, I agree with the Mayor and HE that the important elements of the monument are covered by the WHS Management Plan (WHSMP) and need not be considered separately. Similarly, the importance of the setting of the ToL to the significance of the ToL CA is more than covered by the SOUV to the WHS, although there would also be impact on views from St Katherine's Dock and Trinity Square Gardens. With regard to the individual LBs within the WHS, the impact of the proposals on the contribution that setting makes to the special interest

of the White Tower and Ramparts as LBs is also central to the OUV of the WHS. For other LBs within the ToL, such as the Waterloo Block/Barracks, each has its own significance and, to some degree, its own setting. While in many ways they overlap with OUV, they are not all the same and so I have considered some buildings separately. [2.5][2.11][4.4][6.107][7.23][7.37][8.43][9.38][9.45]

### Approach to considering the setting of the ToL

- 14.4 Following the ruling in the *Bedford* case on the meaning of *substantial harm* in the NPPF, it was common ground that there would be *less than substantial harm* to the OUV of the WHS when viewed from Tower Bridge (LVMF View 10A). Elsewhere, the Appellant argued that there would be no harm, or even a benefit, while objectors found *less than substantial harm* with regard to a number of assets. The PPG confirms that the category of harm should be explicitly recognised but also, notwithstanding *Shimbles*, that the extent of harm should be clearly articulated. The parameters for *substantial harm* to arise in *Bedford* are relevant in expressing the degree of *less than substantial harm* and in turn the weight to be balanced against public benefits. [3.51][3.52][6.64][9.20][9.44]
- 14.5 There was limited agreement on cumulative harm, but the method of assessing it was agreed to be that set out in *Citroen*. Advice on cumulative harm in the Settings SPG is *that previous permissions for similar developments do not necessarily represent acceptability of impacts on setting*. A major difference between the parties was whether the *Tulip* would be seen as a part of the Cluster, and whether that would negate any potential harm, or even turn it into a benefit. [3.6][3.9][3.36-3.38][3.55][6.106][7.40][8.35][8.50][9.6][9.44]

### Juxtaposition

- 14.6 Central to the Appellant's case, that there would be limited harm in View 10A only, was the past consideration of the juxtaposition of new buildings in the Cluster with their historic context, including the ToL. From the examples summarised above, it was argued that the juxtaposition of the Cluster and the setting of the WHS was not, in principle, unacceptable or harmful, and that its unique nature has been seen by the planning system as beneficial. Moreover, that this is a longstanding element of development planning in London which has been underscored by the NLP. I saw for myself, as set out in the LVMF SPG, that the juxtaposition of the WHS with the modern city is a central characteristic, notably in the views from the South Bank. In Reports on at least 3 permissions, the Mayor has repeated the phrase: *the juxtaposition between the Tower and the City cluster is a key characteristic of these views, and a relationship that may be seen as positive*. To understand this stance involves consideration of some of the history of applications for tall towers. [3.14][3.32-3.42][4.16-4.19][6.73-6.76][6.81-6.83][6.97][6.100][7.52-7.54][8.58-8.59][9.6-9.11][11.22]
- 14.7 Following the ICOMOS Mission, the WHC confirmed that it favoured the clustering of tall buildings in the City. It did not say it favoured tall buildings. Rather, it saw confining them to a small area as a way of avoiding the spread of towers and limiting any adverse impact on WHSs. This is not the same thing. When concerned by the significant impact that would result from the *Minerva Tower*, the WHC recommended further protection including a *policy of concentration of tall buildings in the City, thereby limiting the impact on the [ToL]'s surrounding urban landscape*. It follows that reducing pressure for tall office development outside the Cluster could of itself amount to a heritage benefit, particularly with regard to the contribution that setting makes to the OUV of the ToL WHS in Views 10A and 25A.1-3. The WHC therefore encouraged the City to curate the Cluster in order to limit the harm to WHSs. It did not advocate more tall buildings on the basis that they would, of themselves, be



beneficial. Rather, it saw corralling the towers together as a way of safeguarding what remains of the openness of the setting to the White Tower. To the extent that any proposal would be part of a consolidated group of offices, and so relieve pressure for office development elsewhere that might cause greater harm to the setting of the WHS, then it could then be positive. [3.12][3.42][3.45][4.25][6.87][7.27][8.37][8.47][9.50][11.22]

14.8 This does not automatically negate concern regarding development in the Cluster. It does not mean that it is necessarily positive to have modern skyscrapers standing near historic buildings. What it means is that if new office towers are inevitable, which they have been seen to be, at least until recently, it would be better to put them all together. Accepting the need to balance heritage harm against public benefits, especially those from substantial office developments in the City, the Cluster was seen as a means of managing the identified potential for harm to the settings of WHSs from an almost inevitable increase in tall office buildings. [3.39][4.16-4.18][6.74][6.82][6.108][7.55][8.16][8.42][8.72][9.8]

14.9 Following the *Minerva* proposal, the Report on the 2006 *Mission* raised the possibility of *Danger Listing*. The WHC was content not to consider this if there was either statutory protection for the iconic view from the South Bank or a management plan was finalised. With the LVMF Views enshrined in the London Plan, and the 2016 WHSMP in place, both have happened. As the WHC should now be content, the concern about *Danger Listing* should generally be given limited weight. [3.43][6.87][6.112][7.27][8.37][11.5]

14.10 Added to this has been the past opportunities for localised heritage benefits as reflected in HE guidance that: *Settings which have changed may also enhance significance*. In a period of austerity, much of the post-war growth of the City was bland and uninspiring and had harmed the setting of the White Tower. Some developments in the Cluster have replaced an unsightly environment, of unattractive buildings and spaces, such as the precursor to the *Walkie-Talkie*. The *Gherkin* resolved the problem of a bombed out site. More recently, the *Scalpel* and *1 Undershaft* provided the opportunity for other heritage benefits, and I saw that opening up the ground floors could amount to significant improvements to the settings of *St Andrew Undershaft* and *St Helens*. Where heritage enhancement has already taken place, there may be less scope for such benefits to be weighed in the balance in the future. [3.38][4.9][4.12][4.13-4.14][4.17-4.18]

14.11 It is worth noting from the GLA Reports that these found a *relationship that may be seen as positive* (my underlining). Just because the new and historic juxtaposition has been identified as positive in previous reports does not mean that it will always be positive for every proposal or for every asset, particularly when in some cases that was an assessment reached on balance. Although the Deputy Head of Planning confirmed that the Mayor's position in previous Reports had not changed, this does not amount to a policy statement that any such juxtaposition would be viewed favourably in the future, as demonstrated by its position in this appeal. [3.24][3.38][4.13-4.16][4.19][6.74][6.86][6.95][6.106][7.25][8.64][9.7]

#### *Juxtaposition in this appeal*

14.12 There are also important differences between the consented towers within the Cluster and the proposals for the *Tulip*. **First**, the examples cited were essentially for office space. This is the purpose of the Cluster as borne out by the innumerable references to *office* in the Local Plan (LP) and its policies to increase office floorspace, resist any losses and concentrate this in the Eastern Cluster. Although support in principle for tall buildings in the Cluster is not limited to office buildings, and the proposed use gains general support from some policies, office space remains its focus and was the

assumption by the WHC, ICOMOS and HE in accepting that the Eastern Cluster is an appropriate location for tall office buildings in the City. Indeed, there is little to suggest that the WHC even considered the merits of tall towers for other uses. Consequently, the scheme should not automatically benefit from the presumption in favour of clustering tall office buildings in order to reduce impact on the settings of WHSs. [3.3][3.18][3.28][4.12][4.15][6.14][7.5][8.78][9.29]

- 14.13 **Second**, its relatively slender form, with a broader top, would be quite at odds with, and stand out from, its office neighbours, all of which are vertical or tapering from much larger bases. This would have two effects: first, from a distance, only the *stem* and *flower* of the *Tulip* would be visible above other buildings in the Cluster, making it appear less grounded; second, it would stand out as different and less cohesive, reducing its association with the overall Cluster. Other than its lower portions, in key views it would not be concealed by, or stand in front of, other Cluster buildings as at *Heron Tower* or *100 Leadenhall*. These effects would diminish its sense of being part of the developing Cluster. [5.1-5.3][6.42][6.46][7.13][8.2][8.22][8.24][11.10]
- 14.14 **Third**, even with carefully selected aggregates and regular cleaning, the choice of fair-faced concrete rather than curtain walling for the *stem* would be likely to give it a much duller finish than that of glazing and this would probably increase over time as cleaning would erode the finer aggregates. This would also make it stand out as different to the Cluster where the glazing gives a consistent feel and emphasises the office character. In views where the *stem* of the building would come very close to the turrets of the White Tower, its appearance would be much less contrasting with masonry than the shiny steel and glass of other tall buildings. Both against the White Tower and more locally, this would further reduce the contrast that gives rise to any beneficial *frisson* from the juxtaposition. The concrete *spoons* surrounding the *flower* would support three series of glass gondolas, not seen at high level in other towers, and add to the differences, and lack of cohesion, between the *Tulip* and the Cluster. [4.7][5.7][5.15][6.30][6.48][7.12][8.19-8.21][9.18][9.33][9.38][11.10]
- 14.15 **Fourth**, there would be no significant localised heritage benefits such as replacing existing eyesores or opening up views, against which to balance any possible heritage harm, as at the *Scalpel*, or at *1 Undershaft*. The appeal scheme would not remove or avoid harmful buildings, such as the precursor to the *Walkie-Talkie* or the poor replica previously proposed for the site of the *Gherkin*. There would be no heritage or public benefit from demolishing the recent office block at 20 Bury Street. While the merit or otherwise of the use of the plaza was not agreed, and nor was the weight to the benefit of removing the ramp, there was no persuasive evidence that the changes in the immediate area would amount to any significant heritage benefit. [3.38][4.9][4.12][4.13-4.14][4.17-4.18]
- 14.16 A **fifth** difference is that while the *Tulip* would stand within the Eastern Cluster diagram in the 2015 LP, it would stand slightly further east than any of the other of the tallest towers, including the *Gherkin*, *Heron Tower*, *Twentytwo* and the permitted *100 Leadenhall*. From key views, notably from View 25A.3, it would be separated from other towers and seen against open sky and stand slightly apart from its neighbours in the Cluster. If completed now, it would be the tallest building in the City, at the accepted maximum height of both the *Shards* and the permitted *1 Undershaft*. Assuming that the latter is built, there would then be two buildings at that height, shifting the apex of the Cluster to a mid-point further towards the White Tower rather than stepping down, as was the aspiration of the City's *3D modelling initiative*. It would be likely to be used to justify further development at height between it and the White Tower, even if this were to step down. If *1 Undershaft* is not built, the effect would be accentuated. [3.30][4.18][6.53][7.28][8.17][9.31][9.33]

- 14.17 **Sixth**, the Government has relied on implementing heritage policy to demonstrate to the WHC that it is protecting the setting of WHSs. It is critical to WHC acceptability that this is implemented, including that in the ToL WHSMP. Since previous permissions, this has now been strengthened in the New London Plan (NLP) with WHS policy *which includes the authenticity and integrity of attributes* and reference to the Government's commitment, set out in bold in the supporting text, to **protecting, conserving, presenting and transmitting to future generations the [OUV] of [WHS]s and to protecting and conserving their settings**. The Panel Report identified that this should mark a shift in policy on heritage in general and WHSs in particular. This should also be taken into account in identifying the significance of the WHS when applying the NPPF§196 balance. These important differences in planning policy provide another reason why little or no weight should be given to the previous permissions, or their justifications, as setting a binding precedent. [3.10][3.11-3.12][3.21][3.39]
- 14.18 With regard to *Danger Listing*, I was not persuaded that the *Tulip* alone might result in this extreme measure. However, the stance of the WHC is predicated on policies being in place, including what is now the NLP and the WHSMP, and presumably on these being effective. Given the ICOMOS response, and advice that the *Tulip* should be abandoned, allowing it might begin to undermine that perception. The degree to which that might happen, and justify the suggestion that it might amount to a serious embarrassment to the Government, is one for speculation and should be given limited weight. Nevertheless, the changes in planning policy, at least partly in response to the concerns of the WHC, reinforce the greater weight that should now be given to heritage protection on account of the revised wording. [3.43][6.87][6.112][7.27][8.37][11.5]

#### *Conclusion on juxtaposition*

- 14.19 My purpose in explaining the history of previous permissions is not to prejudice the SoS's view on the impact that the scheme would have on heritage assets, and on the ToL WHS in particular. It is to avoid him having any preconceived notion that juxtaposition is necessarily a good thing, rather than that it may be a good thing, subject to circumstances. The Appellant presented the WHC's support for clustering tall buildings as encouragement for more of them. I prefer the City's analogy of a pressure valve and see it as an attempt to round them up into as small an area as possible, ideally with an apex and some modelling at the edges, in order to limit the likely harm to the settings of WHSs. Moreover, there are important differences, set out above, between the *Tulip* proposals and previous permissions in the Cluster. These reinforce the point that the juxtaposition of the Cluster as a whole should have little bearing on this appeal. Again, this is not to prejudge the outcome, rather the reverse, leaving the SoS free to determine this appeal on its own merits. [3.45][6.72][6.87][8.47]
- 14.20 In any event, and acknowledging that precedent can be a material consideration, it was common ground that for understanding the significance of the ToL, the starting point is the SOUV, and that is what I consider now. Moreover, for the LBs within the ToL and the City, any general proposition does not, and cannot negate the obligation, both in the NPPF and the statutory duty, to assess the impact on setting of the scheme on each asset. [3.40][8.53]

#### *Future development of the Cluster*

- 14.21 *London Recharged: Our Vision for London in 2025* is no more than a report at a particular moment, but its surveys confirm that many expect a permanent shift from daily office attendance to home working. A downturn in the economy as a result of

COVID-19, and/or the movement of some financial employment to Europe following the withdrawal of the UK from the EU, could also affect the demand for office space. However, even if it does, I heard evidence that current Government predictions are that the economy will recover within a couple of years and that demand for tall buildings in the City is unabated. By comparison, the benefits from the operation of the *Tulip* proposals would not arise for several years. [3.50][6.15][7.81][10.19]

- 14.22 The City's summary of *Development Schemes* suggests that it is more likely that there will be no effect on the Cluster as a result of increased working from home or from short-term effects on the economy, that the permitted towers will be built and that the Cluster will continue to grow. In this scenario, permission for the *Tulip* would move the apex further towards the ToL, encourage other tall development in between, and further reduce the airspace around it. As illustrated above, *100 Leadenhall* has already nudged the line from *1 Undershaft* to the White Tower higher and further east and it must be likely that the *Tulip* would encourage yet another push to the east, instead or as well as, the area between *1 Undershaft* and the *Walkie-Talkie* as set out in the City's summary. [3.28][3.47][f/n158][3.50][4.28]

### Setting

- 14.23 Setting is experienced through views and the evidence was directed to those which can be readily seen, especially by large numbers of people. It also focussed on those identified as strategic in the LVMF SPG, which refers to the need to protect the settings of heritage assets, and is in turn given status by the NLP. The most relevant views towards the site for the *Tulip* from outside the ToL are from Tower Bridge and from The Queen's Walk on the South Bank. These incorporate the LVMF Views: 10A from Tower Bridge and 25A.1-3 from The Queen's Walk. I deal with these in turn. The setting when seen from Butler's Wharf is also relevant although from here the views of the *Tulip* would be filtered, if not obscured, by Tower Bridge. [3.14][3.23][3.32][3.44][5.8-5.9][6.51][6.88][6.95-6.96][7.5][8.33][8.68][9.5][9.23]

### ToL WHS

- 14.24 The White Tower, at the centre of the ToL, is an outstanding example of innovative Norman architecture and the most complete survival of a late 11<sup>th</sup> century (C11) fortress palace in Europe. With its later concentric walls, it was at the cutting edge of military design and a model example of a concentric medieval fortress from the C13 and early C14. Although altered, this degree of survival means that little in its physical appearance diminishes the importance of its symbolic siting. Its later use as a Royal palace, and its extraordinary importance as the location of events in English history, are of great interest but of less relevance to development within its setting. [2.5][3.22][3.32][6.89][6.98-6.102][7.36][8.40][9.5]
- 14.25 Of the seven attributes that express the OUV of the ToL, those which are key for this appeal include:
- that of *internationally famous monument*, one of England's most iconic structures and emblematic of the effect of the Norman conquest;
  - its *landmark siting* as the gateway to the capital, the new Norman kingdom, and its strategic site and demarcation point between the City and the monarchy, both protecting and controlling;
  - that of a *symbol of Norman power*;
  - that for centuries it expressed its *physical dominance* through the White Tower soaring over its surroundings set against a clear sky.
- All these attributes of its significance rely to a great extent on its setting, and this is recognised in both the Settings and LVMF SPGs. [2.6][f/n43][3.31-3.32]

### *How WHS assets would be affected*

- 14.26 The OUV of the WHS, and the special interest of the White Tower and concentric defences as derived from their settings, are vulnerable to development that would overshadow or distract from its dominance or from the reasons why that expression of power is so important. As above, there was common ground that there would be harm in LVMF View 10A.1, where the scheme would interfere directly with views of the airspace above the White Tower, but no agreement elsewhere. [3.47][5.8-5.9]

### **View 10A**

- 14.27 As above, the LVMF SPG identifies that this is a view of *significant depth and width* from where the *understanding and appreciation* of the ToL *is enhanced by the free sky space around the White Tower. Where it has been compromised its visual dominance has been devalued*. It was an early picture postcard view and, outside the paying perimeter, is one of the closest public views which takes in the White Tower, the ramparts and the sea entrance. The relevant attributes of OUV include that of an *internationally famous monument*, and its components of iconic White Tower and visual dominance; its *landmark siting*, including its strategic relationship with, and key views of the Tower and its skyline, up, down, across and from the River; and the *physical dominance [of the White Tower]*, especially where its silhouette can be seen against clear sky. As identified in the SPG, and I experienced walking north over the Bridge, View 10A.1 is not a blinkered one of just the ToL, but part of the wider River prospect and frontages as the City comes steadily closer into view. This means that the White Tower is not the only point of interest. Equally, as I saw physically and virtually, just as there is a wide panorama, views of the White Tower are not limited to one location and the relationship between the ToL and its setting can be appreciated continuously.  
[3.32][3.47][5.8][6.98][6.103][7.22-7.23][7.41][7.58][8.40-8.41][8.70][9.9][9.42]
- 14.28 The *Tulip* would be very tall. It would stand above *Twentytwo* and be the same height as the *Shards of Glass* and the proposed apex to the Cluster at *1 Undershaft*. If the *Tulip* is built first, it would be the tallest structure in the City. Although narrower than the 12-storey *flower* at the top, and much thinner than any nearby tower, the stem, at more than 14m in diameter, would still be substantial. Together with the 12-storey *flower*, lifted to the top of the building, the *Tulip* would be a very sizeable structure. In the panorama from the precise point of View 10A, the *Tulip* would not be directly behind the White Tower, but slightly off to the left. However, the experience from Tower Bridge is part of what was referred to as a kinetic one, and I saw that within a very few metres north of View 10A, indeed while still standing on the masonry pier, the *Tulip* would appear against the open sky directly behind the first of the turrets to the White Tower. Moreover, while this panorama may encourage the viewer to stop and enjoy it all, that does not necessarily mean that less attention would be paid to the ToL, or dilute the impact of the City on it, and the potential impact of the *Tulip* on the White Tower in particular. Rather, this impact would be apparent for much of the walk across the Bridge. From here to the abutment tower on the north bank, the *Tulip* would appear to move right the way through the airspace behind the White Tower and this would be highly apparent and intrusive to the viewer. From the third or fourth stanchion north of View 10A, the *Gherkin* already impinges on the airspace, appearing a little higher than the top of the tallest turret, as will *100 Leadenhall*. However, the *Gherkin* is much lower, and *100 Leadenhall* would be off to the left, so the impact from these is/will be much less than from the *Tulip*.  
[4.11][5.1][6.20][7.53][8.70][9.7][9.9][9.12]
- 14.29 Of its attributes, from View 10A.1 its *landmark siting* as the gateway to the capital and a *symbol of Norman power*, and the extent to which the White Tower can still



express its *physical dominance* over the City, are particularly noteworthy. The sky space component of these attributes is central to its OUV. So is the extent to which the location, height and use of materials of the *Tulip*, together with the upper section of the *stem* expanding into the much wider *flower*, raised very high into the air, would distract from these critically important aspects of the ToL's OUV. From View 10A.1, the open sky around the White Tower would be severely affected by the *Tulip*. The extent to which its height and location would detract from the ToL would be significant. It would be a dominant presence within the central portion of the view and would draw the eye away from both the White Tower and the lower level Ramparts of the WHS. In my judgement, it would disrupt the sensitive balance between the City and the WHS, reducing the separation between them and doing so high into the sky. [4.4.3][5.9][7.50][8.39][9.5][9.36-9.37]

- 14.30 The choice of concrete for the *stem* would provide a contrast with the curtain walling in the Cluster. On a dull day, both the concrete to the stem and the glazing to the office buildings might look dull. However, on a sunny day, the concrete finish would be significantly closer in appearance to the masonry of the White Tower and the Ramparts<sup>1086</sup>. The Appellant described this as complementary. While that might be arguable in a townscape assessment, in terms of heritage, I find it would be a greater distraction than the more consistent glazing to the rest of the Cluster and so harmful. [5.1][6.30][6.48-6.50][8.19-8.21]
- 14.31 The City argued that in other Tower Bridge views the *Tulip* would contribute to the diversity of forms and shapes in the Cluster and be read as part of it, and as such, would not cause harm to the OUV or significance of the ToL. The diversity would certainly be true, but this also highlights the tension between the aim of blending in with the rest of the Cluster and being an iconic landmark that would want to compete with the other very tall buildings. While from elsewhere on the Bridge than View 10A the scheme would not be directly above the White Tower, so that there would be a lesser effect, it would still be significant. Indeed, the fact that the scheme would have an impact on the setting of the ToL right across the Bridge should add weight to the harm. Taken together, I find that the *Tulip* would seriously detract from the OUV of the WHS, and the significance of the White Tower in particular, and result in more than moderate impact. In the context of the enormous importance of the ToL WHS, its significance as a whole would not be *drained away* but the contribution provided by its setting would be much reduced. [5.9][6.77][7.23][7.50][7.57][8.74][9.37][11.22]
- 14.32 NPPF§193 requires great weight to be given to the conservation of any designated heritage asset and the more important the asset, the greater the weight. Given the considerable importance of the asset in question, reflected in the host of designations and the emphasis in the SOUV on the way the White Tower dominates its setting, the weight that should be given to this level of harm in View 10A.1 alone should be very considerable. Although unlikely, if *1 Undershaft* and/or *100 Leadenhall* are not built, the *Tulip* would appear even more exposed and have an even greater separation from the rest of the Cluster, adding to the harm. [3.25][3.51][7.91][7.93][8.53][9.48]

### Views 25A.1-3

- 14.33 The views from The Queen's Walk on the South Bank reveal a fabulous image of London. It is a popular location (as I saw even during periods of travel restrictions). The views from moving along the promenade allow an understanding of the ToL as a whole and its dominance of a key point in the River at the entrance to the historic parts of London and the edge of the City. They provide a good view not only of the White Tower, but also the concentric defences, and the relationship with the River,

<sup>1086</sup> Compare images in Site Visit Booklet from View 10A at 3.11 and 3.12

the Middle Tower and other entrances. The latter are relevant to its attribute of *landmark siting* as the gateway to the capital, and its strategic demarcation point between the City and the monarchy, both protecting and controlling. From the South Bank it is easy to see why the White Tower was built here, both as a gatehouse controlling the River and the City, and set apart from it.

[3.14][3.32][3.43][5.8-5.9][6.89][6.95][7.23][8.42][9.11][9.33]

- 14.34 The Cluster stands off to one side of the White Tower, just as Tower Bridge does on the other. All 3 are highly visible elements in all the LVMF Views from the South Bank. On the other hand, even from View 25A.3, at the Tower Bridge end of The Queen's Walk, the Cluster does appear relatively separate from the White Tower, if not the ramparts, and the latter already have lower buildings in their backdrop (although this wouldn't preclude a cumulative impact on significance). As above, the LVMF SPG notes that *the juxtaposition of the [WHS] with the modern city is the central characteristic of this view*. Due to perspective, I saw that there is a sense of balance between the Cluster and Tower Bridge which frame both the White Tower and the airspace around it. [5.8-5.9][6.95][7.23][7.45-7.47][7.61][8.64][8.71-8.72][9.5][9.39]
- 14.35 Between roughly mid-way along The Queen's Walk and the start of Tower Bridge, the *Tulip* would stand above the Middle Tower, the Byward Tower and the concentric defences. It would appear different and separate from the rest of the Cluster due to its height, form, materials and position. While each tower is different, they have a certain communality. Due to the differences that I have set out above, the *Tulip* would not appear as part of this family of towers. Without *1 Undershaft* and *100 Leadenhall* the appearance of separation would be greater. To the extent that the open sky above and around the White Tower extends to the Cluster, this would be reduced. *1 Undershaft* would form an apex to the Cluster. If built, it would be the same height as the *Tulip*. If the suggested interpretations of the *jelly mould* model are close to accurate, around a third of the *Tulip* would fall outside it. [3.47][6.53][7.28-7.30][8.25][9.5][9.29][9.42]
- 14.36 Compared with existing towers, the *Tulip* would stand out in these views. It would be as tall as the *Shards of Glass* and equal tallest tower in the Cluster. When looking at the ToL, it would be more likely to raise the eye higher and further than any existing tower, and so be more diverting. This would amount to a much greater distraction than any or possibly all of the existing Cluster. It would also bring the apex of the Cluster much closer to the White Tower. The effect on Views 25A.1-3 would be both to add another object of interest to the existing wide River panorama and to draw the eye to the tall, thin *stem* and much wider *flower* of the *Tulip*. With *1 Undershaft* and/or *100 Leadenhall*, it would still stand out noticeably with less interaction, or overlap, between it and the other towers than between each of them. It would not only move the apex but also the curve of the *jelly mould* further east towards the ToL and alter its current profile. It was suggested that further development, to avoid a *cliff edge*, would soften an otherwise abrupt profile to the *Tulip* when viewed from this angle. If it did so, that would result in further encroachment into the clear sky between the Cluster and the White Tower. If *1 Undershaft* is not built, the *Tulip* would be particularly prominent as the tallest structure in the Cluster. Indeed, even if both are built, the *Tulip* would appear to challenge for the dominance of the Cluster rather than seek to merge into it. [3.47][4.18][6.53][7.30][8.25][9.16-9.17][9.29-9.30]
- 14.37 An attribute of OUV which would be particularly affected in Views 25A.1-3 would be that of *internationally famous monument*, given the White Tower is an iconic and emblematic structure with visual dominance in this iconic view. Also its *landmark siting*, including its strategic relationship with the Tower and its skyline from across the river; its *symbol of Norman power*; and the *physical dominance [of the White*

*Tower*], again, especially where its silhouette can be seen against clear sky.  
[2.6][7.50][9.5][9.36][9.43][10.8]

- 14.38 The Appellant accepted that there would be a gap between the *Tulip* and the nearest building of comparable height, and that the top would be eye-catching, but argued that the very different form, materials and character to the office buildings would provide a lighter counterpoint to the *Walkie-Talkie*, and put forward this contribution to the Cluster as a benefit of the scheme. From my consideration of the heritage impact during the site visits, I disagree. Against the existing skyline, I consider that it would be at least as visible as any of the other towers, as indeed is its purpose, but in a position that would draw the viewer's eye to a greater extent. Without the proposals for *100 Leadenhall* and *1 Undershaft*, it would be even more obvious and distracting. It follows that the Appellant's argument that consolidating the Cluster in views from the South Bank would amount to a heritage benefit does not stand up.  
[4.15][4.21][6.97][7.58][8.22][8.64][9.23][9.40][9.43]
- 14.39 The *Gherkin* is the closest of the taller tower blocks in the airspace to the left of the ToL in View 25A.3. Although other towers have now been permitted on roughly the same alignment as the *Gherkin*, as the illustrations show, none would come significantly closer to the White Tower in this view. The *Tulip* would be the first substantial proposal since the *Gherkin* to intrude further into that airspace and do so at the greatest possible height (within aviation constraints). In my judgement, it would have a significant impact on the setting of the ToL when viewed from the South Bank. I saw on my evening visit that the aviation lights would maintain this distraction into the evening. [8.44][9.9][9.46]
- 14.40 I find that the degree of harm in Views 25A.1-3, and View 25A.3 in particular, would be much *less than substantial*, but much more than negligible, and of a lower order than the moderate impact on View 10A. As with the impact from Tower Bridge, given the ToL's designations and the important attribute of the White Tower dominating its setting, the overall weight from combining the negligible to moderate impact and the importance of the asset, in accordance with NPPF§193, should be significant. Once again, there would be a difference in impact with or without *100 Leadenhall* and/or *1 Undershaft*. If these are not built, as the tallest structure in the City, the *Tulip* would be a far more pronounced intrusion as its greater height, bulging top and contrasting materials would be even more obvious and distracting. Although a low probability, this higher risk to the setting should add weight to the harm.  
[3.32][4.17][4.22][5.8-5.9][8.44][8.71-8.72][9.5][9.23][9.33][9.42]
- 14.41 The Appellant put great emphasis on the design quality of the *Tulip* and argued that this would reduce any potential harm and could have heritage benefits from this angle, as a result of further consolidating the Cluster. I find that the important differences in height, position, form and materials of the *Tulip* mean that it would not appear as a consistent part of the Cluster and so this consideration would not apply.  
[4.13][7.61][7.97][8.35][9.22]
- 14.42 The City saw No.10 Trinity Square (the Port of London Authority building) as marking the transition in scale between the existing Cluster and the western edge of the WHS. It argued that as the location of the *Tulip* would be well to the left of this from The Queen's Walk, it would read as part of the Cluster and set apart from the White Tower. While this might be a suitable rule of thumb for the lower edges of its 3D *jelly mould* model (something I cannot fully assess), pushing the apex of the Cluster much closer towards 10 Trinity Square would leave little room for further development without either breaching this marker or creating a sudden change in height at this point. It is therefore an unsuitable guide for assessing the impact in this appeal. [7.54]

- 14.43 I note that prior to its Rule 6 Statement, HE did not claim or allege any harm at all to Views 25A. While I read HE's pre-application advice as tending to focus its limited resources on the aspects where the greatest harm would be done, I accept that this was unhelpful to the Appellant. However, I have considered it afresh and on its own merits, as will the SoS. Moreover, while the weight to be attributed to the relatively minor harmful impact from this angle should be significant, given the considerable weight to the harm to View 10A.1, it would do little to alter the overall balance.  
[6.91][8.29]

### **Cumulative harm**

- 14.44 The parties agreed that the correct approach to cumulative harm is as set out in the *Citroen* Inspector's Report. Of the three steps, the first is that the proposal should be assessed initially, followed by a cumulative assessment. In this case, reports into previous towers have concluded that there would be no overall harm to the OUV of the WHS. I acknowledge that these were made before construction, and that one is entitled to re-evaluate an assessment afterwards. Also that in some cases the conclusion was reached on balance, where there was a heritage enhancement, but that this does not exclude a harmful ingredient that could have a cumulative effect on setting. However, to re-evaluate or re-assess the balances in previous schemes would be a lengthy exercise. I have not attempted this and was not asked to do so. In the absence of evidence that the existing and permitted schemes have or would cause harm, there is none to add to that which would be caused by the *Tulip*. There is therefore no assessment of cumulative harm to make. Indeed, the differences between this and other towers goes to the heart of the weight that should be given to the harm that would be caused by the current proposals. Conversely, the harm that the *Tulip* would cause precludes any cumulative benefit.  
[3.6][3.9][3.31][3.36-3.38][4.3][5.8][6.84][6.105-6.107][7.39-7.40][8.36][8.45][8.57][8.69][9.39]

### *Individual heritage assets within the ToL*

- 14.45 The White Tower is the oldest, tallest and foremost element of the ToL. Its special interest as a LB, and the effects of the scheme on its setting, closely align with its contribution to the C11 significance of the WHS, including all the attributes related to its Norman origins, and I have not considered them separately. The Ramparts to the Inner and Outer Wards, punctuated at regular intervals with towers, are also Grade I listed and belong to the later C13 and C14 additions. Their significance as LBs is reflected in the SOUV by reference to the concentric medieval fortress. Parts of these would be directly below the *Tulip* in views from Tower Bridge and the eastern end of The Queen's Walk, including the Middle Gatehouse and Byward Tower, and so their significance would be more affected. They are in the highest tier of LBs and the weight to the harm to them should be approaching considerable.  
[2.5-2.11][6.107][7.36][8.40][9.7][9.45]
- 14.46 From the North Walls, much of the City and the Cluster can be seen very readily. While the *Tulip* would add to this intrusion, from here it would appear slightly more a part of the Cluster and, with most of the ToL behind the viewer, the City has already become the local character in views out rather than just the backdrop to the ToL. The mostly C16 Chapel of St Peter ad Vincula is more important for its intimate setting in the Inner Ward than other parts of the ToL. Close to, I saw that this would be unaffected by the scheme, but in certain views from Tower Green, and the more constrained setting of the Inner Ward, only a small amount of the Cluster is visible. Moreover, in a few views only the *Tulip* would be visible. This would increase the extent to which the viewer might be distracted by the Cluster, and in a different way. Given the many layers of important English history enshrined in this intimate

courtyard, the impact is a separate consideration and this adds to the overall harm. [2.5][6.108-6.109][7.43][8.43][9.27]

- 14.47 The proposals would also have an impact on the setting of the Waterloo Block when seen from the Inner Ward. Its significance, as a Barracks, harks back to when it would have stood silhouetted against a clear sky. As a Grade II LB, it derives less weight in NPPF§193 terms than other assets, but is nevertheless listed and part of the WHS. The weight to how the *Tulip* would distract from an appreciation of its significance would be slight compared with some of the other assets. There would be effects on other assets within the ToL, but the totality of any other harm to these would be insignificant compared with those set out above. [2.5][7.37][8.43][9.38]

#### *Other heritage assets*

- 14.48 The RfRs identify six heritage assets that would be affected, including the ToL. The Mayor refers to *less than substantial* harm to 9 Grade I, 4 Grade II\* and 9 Grade II LBs (plus those in the ToL) and 4 CAs. Following my site visits, I recommend that while there might be harm to the settings of other heritage assets, by comparison with the harm to the ToL from View 10A.1, the weight would be so slight that the balance would be unaffected. This does not mean that harm to their settings might not be crucial to deciding a different case. Should the SoS consider that the Decision might turn on these, the evidence is set out in detail by the parties. I therefore address the 6 assets and summarise only a few others. [1.6][2.13]

#### **Approach**

- 14.49 As above, the *relationship of modestly scaled listed buildings and churches when seen against the backdrop of the City's prominent tall buildings is characteristic of this part of the City*. I saw that the interplay between the charm of weathered historic masonry and the elegance and sheen of modern curtain walling in the now well-established, contrasting modern setting provides a certain *frisson* which may have been what was referred to by the Mayor in his *Twentytwo* Report, where he added the word *exciting* to his repeated phrases. The extent to which the differences between the scheme and other towers are important varies with each. [2.12-2.14][2.16][2.19][7.55]
- 14.50 The church of **St Botolph without Aldgate** (Grade I) stands opposite the junction with the Minories. From here, George Dance's C18 brick tower is seen against the backdrop of the Cluster but its stone spire generally reads against the open sky while the *Gherkin* is more or less concealed by lower buildings in between. The *Tulip* would not only be much taller, and so more visible, but its monolithic concrete *stem* would be much more akin to the masonry of the spire than curtain wall glazing, reducing the contrast. This would be distracting to the contribution that the setting makes to its significance and so harm its special interest. While of an order of magnitude below the *less than substantial* harm to the OUV of the ToL, as with any harm to the setting of a LB, this should still be given considerable importance and weight. [2.14][3.33][8.62][9.46]
- 14.51 **10 Trinity Square** (Grade II\*) was designed to stand out. Indeed, it was identified by the City as a landmark on the skyline, a transition point in views of the Cluster and the ToL, and a feature in the CA. The *Tulip* would impinge on those views, from across the River, from the North Walls of the ToL, and from one or two points along the road between it and Trinity Square Gardens. It would draw the eye differently and to a greater extent than the rest of the Cluster and so harm its significance, albeit at the lower end of *less than substantial*. [2.12-2.13][2.17][3.33][7.54][7.62][8.62]



- 14.52 **Bevis Marks Synagogue** (Grade I) is listed largely for its age, rarity and internal features. This does not mean that its setting is necessarily unimportant, but in this case it is largely limited to what can be experienced from within its courtyard. The occupants had previously objected, but withdrew this and I did not enter. Notwithstanding the Mayor's objections with regard to the atmospheric qualities of the courtyard, from the information before me, I find it unlikely that there would be any impact on its significance from the scheme. [1.8][2.15][8.61][11.28]
- 14.53 The inter-war office building at **38 St Mary Axe** (Grade II), now the Baltic Exchange, stands adjacent to the *Gherkin*. Its significance lies in its simple classical revival style and its awarded architect. Given the contrasting modern buildings surrounding it, the contribution that setting makes to its significance is limited and even with the loss of the ramp and the introduction of the *Pavilion*, I find that this would be unaltered. [2.18][8.64]
- 14.54 The **Church of St Helen's Bishopsgate** (Grade I) faces west such that views of its front façade include the *Gherkin* in the background. The *Tulip* would stand roughly behind it. With regard to any cumulative effect, the setting has already reached a tipping point whereby it is overwhelmingly dominated by the curtain glazing of the *Gherkin*. This has added a beneficial contrast as well as a distraction. I find that there would be no change to the contribution its setting makes to its significance and so no harm. I note that HE did not either. [2.16][8.61]
- 14.55 HE identified harm to **Trinity House**. I noted that although now surrounded by taller development on three sides, and partly screened by trees on the fourth, it is still a prestigious building and that there are glimpses of the full glory of its main façade from Trinity Square and its Gardens in which there is little of the Cluster visible. While the relationships with 10 Trinity Square, the Gardens and its memorials would be unaltered, to the extent that the *Tulip* would be seen and would distract from this, there would be some slight harm. [2.12][2.17][2.19][7.54][9.2][9.45]
- 14.56 Regarding other heritage assets, including Tower Bridge, Holland House, Lloyd's of London, Sir John Cass School, Dixon House and the Guild Church of St Ethelburga and the churches of St Andrew Undershaft, St Katherine Cree and of All Hallows, but also others referred to, I find that the *Tulip* would either do little to impact their surroundings or do nothing to alter the contribution that setting makes to their significance. [2.13][2.20][4.22][6.13][6.113][8.56][8.62]
- 14.57 Much of the harm to the **ToL CA** would overlap with that to the WHS. Other areas identified in the CA appraisal that would also be affected are St Katharine's Dock and Trinity Square Gardens, but at the lower end of *less than substantial* for this appeal. [2.11-2.12][2.19][7.23][7.54][9.45]
- 14.58 To the extent that there would be harm to the significance of 10 Trinity Square and Trinity House as a result of the development within their settings, there would be harm to the character and appearance of the **Trinity Square CA**. For similar reasons to those regarding St Helen's Church, I find that the **St Helen's Place CA** would be unharmed and I found no harm to the **Lloyds Avenue CA**. [2.10][2.12][3.35][8.62]
- 14.59 I have noted the Appellant's claim that there might be a slight heritage benefit to the settings of **Holland House**, **Bury Court** and **Dixon House**. While the scheme might add more interest to some views, enhancing a view is not the same as enhancing the aspects of a setting that contribute to the significance, or special interest, of a listed building. In any event, I found no heritage benefits would arise. I have considered the claim that looking down on the ToL would also be a heritage benefit, but not even the City thought that and nor do I. [2.1][5.3][6.55][6.113][7.7][8.61][8.64][9.43]

## Conclusions on heritage

- 14.60 Starting, as agreed, with an understanding of the significance of the WHS, its SOUV and its attributes, I find that there would be harm to the setting of the ToL and other heritage assets. Notwithstanding that the harm would be *less than substantial*, in each instance, the desirability of preserving the setting should be given *considerable importance and weight* and this finding gives rise to a strong presumption against planning permission being granted. On account of the exceptional status of the ToL, I find that the harm as perceived from LVMF View 10A should be given considerable weight in the heritage and planning balances. Harm in Views 25A.1-3, and in views from within the ToL set out above, would add to this, as would harm to the settings of other assets. The weight in each case should be of a lower order than that related to View 10A, but then combined in the overall planning balance and assessment against the development plan as a whole. [3.25][3.39][3.51][4.4.2][6.107][7.91][8.37][9.4-9.8]
- 14.61 While for similar reasons, the scheme would also be detrimental to the special interest of the LBs and CAs derived from their settings, I have not conducted a separate exercise for this duty to that required by the NPPF. Unlike LBs and CAs, there is currently no statutory protection for WHSs. However, given the statutory underpinning of development plans, and the inclusion of policies on WHSs in both the LP and the very recent NLP, their protection should be given the highest level of weight for any heritage asset. On top of this, the ToL includes many Grade I listed structures and is central to the ToL CA. [3.43-3.45][6.87][6.123][7.27][8.59][9.11]
- 14.62 I acknowledge that in principle it would be possible for an especially high quality design to negate the universally acknowledged harm to View 10A, but for the reasons set out below, I do not find that this is the case here. My findings on heritage harm, and on the impact on the ToL WHS in particular, are also broadly in line with those of HE, whose views the Courts have found should be given considerable weight and only departed from for good reason. [9.2]
- 14.63 Finally, it is not inevitable that the more recently consented schemes will be built. Not all previous permissions for towers in the City have proceeded, notably the *Minerva* and *Pinnacle* towers. There are new threats to the demand for office space from the movement of some investment in the City, following the UK's withdrawal from the EU, and the trend towards home working, accelerated by COVID-19. The long term effects from these, if any, are uncertain but they could affect the viability of *1 Undershaft* and other office development which then might not be built. The City's evidence suggested that there is still high demand for offices in the City and that even if there is a fall overall, the Cluster is still likely to be very popular. Nevertheless, they represent more than a possibility and the impact of the *Tulip* on the setting of the WHS, especially in the LVMF Views, would be far more pronounced without *1 Undershaft* and *100 Leadenhall*. Taken with the general uncertainty that any consented scheme will proceed, this possibility should add a little to the potential harm to the setting of the ToL (as well as a slight increase in the weight to the benefit to improved views from the *Tulip*). [3.42][3.50][4.15][4.25][4.27][6.15][8.37][8.79-f/n 864][10.19][11.22]

## Other harms

### Strategic views

- 14.64 RfR4 alleges harm to strategic LVMF views 10A.1 and 25A.1-3 by reference to the juxtaposition with the ToL WHS and so echoes the harm to heritage assets in these views. By noting in View 10A that an understanding of *the fine detail and the layers of history of the [ToL] ... is enhanced by the free sky space around the White Tower*,

the LVMF SPG specifically refers to the WHS, its OUV and the WHSMP. In other words, harm to this view is closely aligned to harm to the OUV of the ToL and the conflict with the guidance mirrors that with heritage policies.

[1.6][3.13-3.14][3.32][4.16-4.17][7.57][7.60][9.9]

- 14.65 For Views 25A.1-3, the SPG describes the *background setting of the White Tower and the juxtaposition ... with the modern city*. The SPG advises that new development *should not dominate the [WHS] – especially the White Tower* – and refers to *all the constituent parts* of the ToL from View 25A, and how: *From all Assessment Points, the [WHS] should continue to dominate its surroundings*. It follows that the importance of this strategic view is also closely aligned with the setting of the WHS. At the same height as the *Shards*, the *Tulip* would be very tall and prominent in both Views. Given the importance of the setting of the WHS to these Views, the harm to its setting would also cause considerable harm to the Strategic Views.

[3.32][6.76][6.83][7.61][9.23]

## Plaza

- 14.66 The plaza around the *Gherkin* is one of very few open spaces in the Cluster and identified as a Principal public space in the *City Cluster Vision*. This aligns with Aim 3 of the *City Public Realm* SPD for less cluttered spaces. The plaza includes benches, several trees, and steps and low walls against No.20 Bury Street. Adjoining Bury Court, a wall sections off the basement ramp. Other than the three columns which echo the Swiss Re logo, the ramp is substantial, intrusive and bland. While its formal uses, such as for sculpture and food stalls, are few and limited, until the pandemic the space within the plaza was well used during weekdays, if much less so at weekends. An identified benefit of the *Gherkin* was a slimmed down base, allowing greater public realm. *1 Undershaft* would remove the ramp on the other side of St. Mary Axe and provide better pedestrian connections. On my visits, the plaza was in limited use, with many nearby retail and catering outlets closed. With few people around, the hard materials stood out. I saw that it provides an open space in the route along St Mary Axe and a 360° setting to the elegantly articulated junction where the *Gherkin* meets the ground. [2.3][3.48][4.1][5.1][6.56][7.4][7.17]

- 14.67 The functional aspects of the proposals have been skilfully resolved and exquisitely illustrated. The scheme would occupy most of the north-eastern half of the plaza, including its ramp, associated walls, and benches. It would replace these with the base of the *Tulip* tower, the *Pocket Park* and the *Pavilion*. The latter would have a green wall and rooftop terrace while the *Pocket Park* would provide a formal arrangement of ground level seating and a home for the IRA bombing memorial. The roof garden would have slightly limited opening times. Being on the north side of the *Gherkin*, both would frequently be in shade. The *Pavilion* would restore the built street frontage along St Mary Axe and follow the curve of the *Gherkin*. Visitors would make the scheme busy, or very busy, but earlier concerns around capacity were resolved prior to the Inquiry, and the s106 Agreement would limit the number of visitors so that it would function satisfactorily. There would be increased long stay cycle parking, the removal of 16 parking spaces, and consolidation of deliveries. The entrances would have limited space around them for pedestrians, unlike attractions such as the London Eye. Overall, the scheme would provide a greater quantity of public seating, on the roof of the *Pavilion* and in the fixed seating in the *Pocket Park*, than there is at present. [2.2][4.1][5.4][6.60][7.16][8.5]

- 14.68 As much of the scheme would be built on areas currently occupied by the ramp or the offices at 20 Bury Street, the effective loss of open space would be limited to two triangles of the plaza between the *Gherkin* and the roads on either side. Most of the proposals would stand on space that is not currently available to pedestrians. On the

other hand, the buildings would occupy some useful areas around the *Gherkin* and half of its 360° setting would be lost. Functionally, there would be less space at ground level for public use or circulation, and the whole arrangement would be more complicated, while there would be more demand for open space. In restoring the street frontage, and reflecting the *Gherkin's* glazing, the *Pavilion* would also further enclose St. Mary's Axe and reduce the sense of openness along the street. Shrinking the ground level open space would also harm the character of the plaza as a plinth to the *Gherkin*. Although the unattractive entrance to the ramp would be removed, it would be replaced with the double width entrance to the lorry lifts facing the street and large vehicles would still cross pedestrian areas. The sculpture exhibitions and food market would be lost. The *Pocket Park* would, as its name suggests, be small. On the other hand, a decent amount of the plaza would survive and much of the new greenery would replace the ramp.

[2.1][5.1][5.3-5.4][6.2][6.31][6.57][7.16-7.18][7.75][8.13][11.11]

- 14.69 In conclusion, I consider that, both visually and functionally, there would be harm and benefit compared with the current arrangement. While finely balanced, I find that the loss of public open space at ground level, and the intrusions into the plaza as a plinth to the *Gherkin*, would outweigh the increased public open space on the roof of the *Pavilion*, and additional seating in the *Pocket Park*, as well as the removal of the ramp and its retaining wall. Overall, the proposals for the plaza count against the scheme.

### Office floorspace

- 14.70 There would be a loss of some 428m<sup>2</sup> of office floorspace at 20 Bury Street. This would conflict with policy and weighs against the scheme. On the other hand, compared with other factors in this appeal, the loss would be trivial and should be given negligible weight. [2.1][3.18][5.20]

### Design

- 14.71 Design was argued by one side as a benefit and by the other as a source of harm. As well as being an iterative process, good design embraces all elements of a scheme, such as form, function, aesthetic, detailing, durability, sustainability, local and wider context, an appreciation of the environment and heritage, and many other factors, and tries to satisfy all these requirements in the same space. As part of an overarching aim to achieve well-designed places, NPPF§127 sets 6 criteria for developments. [3.19][5.11]

### Function

- 14.72 It was accepted that the scheme would function properly with regard to delivering a very high level viewing experience together with some exciting fairground-style additions. Enormous skill and effort has been put into resolving the difficulties of providing all the entrance and exit requirements in such a tight space. The same architectural practice as the *Gherkin* would be likely to deliver a matching standard of detailing as is apparent from the unusual degree of work carried out already. The elegance of the resulting arched buttresses to the base, particularly as seen in the large scale model, is especially noteworthy, as is the detailing to F+P's curved glazing design to the *Pavilion*, reminiscent of its Willis building in Ipswich and other schemes. On the other hand, the number of visitors would need to be limited to prevent overcrowding at ground level. Overall, the extent to which the design would overcome the constraints and function well is a matter which should be given significant weight. [3.4][3.31][6.28][6.40][6.42][6.54][7.12][8.4][8.8][8.90][9.4][9.14]

- 14.73 In truth, little if any thought has been given to how the building would function over its extended lifetime. However skilfully finished, the function of the *stem* of the tower would still be a concrete lift shaft with the sole purpose of transporting visitors to the upper levels. There are no plans for its re-use when it has served its purpose as a viewing tower, whether because its views might be curtailed by other towers, its advantages eclipsed by other viewing opportunities or other attractions, or that it might simply fall out of favour. Whether this might happen in 20 or 200 years' time is academic to the principle that its life cycle has not been properly considered. The intention is that it would be permanent with no plans for its demolition. The only option then would be for its expensive, problematic and lengthy demolition. The City advised that it was used to demolishing buildings but, if the owner was disinclined with little incentive, it would leave either an unmaintained eyesore or a large public liability. This counts heavily against its design quality.  
[3.16-3.17][5.14][6.30][6.119][8.93][11.9][11.21]

### Visually attractive

- 14.74 The scheme has been designed by one of the world's greatest architectural practices, and it shows in its highly polished presentation. This written report is not adequate to describe the quality of evidence put forward. From the flair of the initial sketches to the almost poetic eloquence of its advocates, the quality of sketches and drawings in architect's evidence, the information in the DAS, several models plus a 3D print, the virtual reality goggles, including state of the art moving images, and the expertise of witnesses who are at the very top of their field, it is undoubtedly the best presented scheme that I have ever seen in my career or am likely to see. This was echoed by the City. If design was judged on models alone, this is certainly world class. To the limited extent that these matters are aspects of design, they should be given considerable weight. Nevertheless, presentation should not be confused with architectural quality and even hiring the finest architects in the world will not always guarantee quality let alone that all the problems with a brief can be overcome. Achieving the highest architectural quality goes well beyond the level of detailing and presentation, regardless of its technical dexterity.  
[3.10][3.21][5][5.6-5.7][6.67][6.82][7.15][7.70]

### Aesthetic

- 14.75 Perhaps along with whether the skywalk and gondola rides would be the ultimate in exhilaration, or likely to trigger a terrifying attack of vertigo, one of the most subjective elements of the scheme may be its aesthetic. Nevertheless, there are some objective indicators that are worth examining. First, the Appellant explained why the scheme should not, and would not, look like an office building. Following the architectural maxim that *form follows function*, that must be right.  
[4.4.4][5.2][6.3][6.33][6.42][6.46][7.12][7.69][8.19][8.21][8.61][9.17][9.19]
- 14.76 Next, parallels were drawn with classical columns. I am familiar with these and on my visits I saw those at St. Paul's and the Monument. The *Tulip* would also have a tripartite structure with a base, middle and top. The fluting to the stem, other than the buttresses, would add texture and be reminiscent of a classical column (even if the jump-form construction means that it would lack entasis). The *Tulip* would not be typical of classical architecture as Wren knew it, as the *buttresses* and *spoons* at the base and the top would flow into the *stem* rather than provide clear breaks. These would be integral parts of the engineering of the concrete structure that would hold the glazed floors to the *flower* and transfer the various loads. To my mind, an attempt to echo classicism without mimicry, and so go beyond pastiche, should not be criticised for differences in approach. The designers were entitled to be inspired by classical columns without the need to try and copy them precisely. [5.1][6.40][6.48-6.50][7.62][8.22][9.17-9.18]



- 14.77 I was told that the structure would be tamed and refined, with the *spoons* and gondolas turned into engineering detail as part of the architectural expression. However, where the concrete *stem* would extend into the *spoons* would be largely concealed behind the stainless steel structure supporting the gondolas. Consequently, rather than reading a bit like three-pronged forceps cradling the glazed *flower*, from a distance there would simply be an uneven break between the concrete finish of the *stem* and the steel and glazing of the *flower*. The way that this change would be articulated isn't readily apparent in the bird's eye images but would be seen in views from the ground. Whatever the reason, and however carefully detailed, I find that the result would be visually compromised, being neither a continuous flowing object, as with the *Gherkin*, nor a structure of three distinct parts, as with the *Monument*. [5.7][6.42][6.46][7.62][9.17-9.18]
- 14.78 Many of the images indicate a sheen to the concrete blending gently into the glazing. While not a criticism, the smaller scale models, notably the 3D print, are of uniform colour and so do not reflect the difference in finish between the curtain glazing of the office towers and the proposed concrete for the *Tulip*. Having studied the various images and the examples of structures elsewhere, I am not persuaded that the finishes would be comparable. I consider that in dull weather the concrete surface would appear unreflective compared with glazing, while sunshine would draw out its similarity with masonry, losing the contrast between the curtain walling of the Cluster and the stonework of the White Tower. [5][5.15-5.16][5.13][6.48-6.49][8.20][8.44][9.38]
- 14.79 Subject to conditions, the concrete would be regularly cleaned and adequately maintained, at least while the *Tulip* is operating. In the longer term, I am less confident. Notwithstanding the smooth finish, I find it likely that years of cleaning the concrete would erode the finer material and that over time it would appear even more dull. It would then be more susceptible to staining such as I saw on the Millennium Bridge (albeit that there it suffers from accelerated weathering due to the tide). From a distance, the fluting would be less apparent. All this would be in stark contrast with the reflective surface of steel and glass, the latter which I saw at the *Gherkin* may require replacing every 20 or 30 years. There would be no easy option to replace the concrete finish to the *stem* of the *Tulip*. [4.7][5.15-5.16][7.13][12.16]

#### Symmetry

- 14.80 The three concrete buttresses would extend into *spoons* which would support oriel windows and, with the circulating gondolas, create three bulges in the glazing of the *flower*. The asymmetry of the *stem* would therefore extend into the *flower*. There would be axial symmetry to the west, towards *Gherkin* and the centre of the Cluster, which would also be roughly the view of the *Tulip* from Whitechapel Road. From some views this asymmetry would be appreciated kinetically while in others it would not. [5.2][6.44-6.45][8.23-8.24][9.17]
- 14.81 There was no attempt at symmetry in the early sketches. Instead these showed a more dramatic exuberance and sculptural energy. To my mind, the final design has lost much of the drama of these sketches but not quite grasped the greater simplicity and refinement usually found in classical architecture and, indeed, in most of F+P's work including the *Gherkin*. While there has obviously been considerable effort and architectural dexterity employed in modelling the top of the building, I find that the way the gondolas, slide and skywalk have been incorporated into the viewing areas has produced a compromised design that is neither a flamboyant expression nor a consistent elegance. [3.4][3.20][3.38][5.2][5.21][6.7][6.12][6.28][6.33-6.34][6.43][7.20][8.2][8.19][8.24][8.71][9.14]
- 14.82 I did not pursue the notion of *beautiful* found in the draft NPPF. It is evident, for all the reasons that they set out, that the Appellant and its supporters consider that the

scheme would be beautiful while objectors think it would not. While I certainly accept that innovative designs can be beautiful, in other regards I consider that the concept of *beauty* or otherwise for this appeal is in the eye of the beholder and that any further discussion is unlikely to be helpful. [6.19][6.34]

Overall appearance

- 14.83 The quality of presentation is second to none. Subject only to the few limitations in the s106 Agreement, F+P would be retained as architects offering some comfort that the attention to detail would be followed through into the finished article. The aesthetic and symmetry are more subjective matters but ones in which I find too many compromises to amount to world class architecture.

### **Sympathetic to local character and history**

- 14.84 The *Gherkin* set a marked change in character for the immediate area which now includes the old and the new. At low level, the scheme would demonstrate an understanding of the local context by following historic building and street lines, as well as echoing the footprint of the *Gherkin*. At high level, the local character extends much wider. As repeated in the *Citroen* decision, and recognised by policy, good design is inherently informed by its surroundings, including the historic context. Here, the proposed tower would have an adverse impact on the history of the area and on the setting to the ToL in particular. [6.56][7.46][8.20][9.14]
- 14.85 The Appellant argued that the quality of a design, including its innovative nature, can reduce or negate what might otherwise cause harm to a setting. I agree. The ToL WHSMP refers to the permission for the *Shards* and that: *The reasons for approval included ... quality of the design* and noted its *slender form, drawing the eye upwards, whose elegance and reflective surface goes some way to mitigating the effects of its size and proximity to the WHS*. In my judgement, the *Tulip* would not share the qualities of *elegance and reflective surface*, unlike much of the Cluster where the contrast with historic buildings has been more effective. Nor would a high level viewing tower be particularly innovative, and so the quality of design would not mitigate against the visual distraction it would cause. [3.41][4.11][6.81][7.69][7.83][7.92][11.10]
- 14.86 From Whitechapel Road the *stem* of the *Tulip* would obscure much of the *Gherkin*, cutting across its elegant curved form and diagonal highlighting. The large flower above would appear relatively top-heavy while the way in which the glazing would echo the *Gherkin* would be lost as a result of the *stem* cutting across it. While from here it would achieve the goal of reinstating the dominance of the *Gherkin* as the tallest structure in the view, it would do so at the cost of seeing much of the grace and charm of the original. [2.3][3.46][4.9][5.2][9.31][11.9][11.26]
- 14.87 For the reasons set out above, the form and materials of the *Tulip* at its proposed height and location would be a poor and unsympathetic response to the historical context and this weighs very heavily against the quality of the design.

### **Strong sense of place**

- 14.88 The Appellant's architect also led the *Tulip* project for F+P, was at the forefront of the project team for the *Gherkin*, which undoubtedly created a strong sense of place, and is very familiar with the site's context. It is evident that this was analysed with extreme care and considerable detail. I saw that the narrow passages proposed between the buildings and areas of open space, referred to as *compression and release*, would draw comparisons with the historic alleyways elsewhere in the City. Within the immediate surroundings, the base of the *Tulip* and the *Pavilion* would

create distinctive spaces, wrapping around half of the *Gherkin*, and achieve this by replacing the ramp and using a rather poorly articulated corner of the site along Bury Street, currently next to a vacant unit and appearing unloved. The design for the double height arches between the buttresses has been skilfully handled and would be attractive and welcoming alongside the green wall. This quality of detailing would be carried through to the *Pocket Park* and the *Pavilion*. [3.4][5.6][6.24][6.54][8.7][8.10][9.10]

14.89 I accept that the sense of drama and the expression of structural forces at the base of the *Tulip* would be striking and would echo the sharks' teeth of the *Gherkin* cleverly making the most of the tight constraints of the site. However, *compression* would occur at the entrances where one would ordinarily want space to congregate ahead of a visit and to linger before choosing to disperse. While agreed to be functionally satisfactory, it might still feel uncomfortable. Even with the adjoining green wall, the elevation along Bury Street would be largely concrete, with glimpses of the bar/restaurant gathering point and security at the base of the *Tulip*, replacing a retail unit. The *Pavilion* would be a bright new building with an exciting roof garden at high level, but the street elevation would substitute the lorry lift entrance doors for the start of the ramp. [2.1][5.1][5.3][5.40][6.54][7.75][8.5-8.6][8.12]

14.90 Consequently, the ground level functions would be achieved only by reducing the open spaces on two sides of the Plaza that provide not only a rare release from the narrow streets of the City, but also a delightful platform from which to enjoy the elegance of the *Gherkin*. On balance, I find that while the scheme would enhance detailed elements of the existing context it would do so at a cost to openness.

### **Optimise the potential of the site**

14.91 There was no dispute that the scheme would develop this *windfall* site to the full. Relatively little office space would be lost to a large scheme that would occupy a small area of land with little prospect of use for other built development. As above, considerable skill has gone into overcoming the functional requirements within such a tight site and turning these into attractively detailed elements. Nevertheless, this would not overcome the loss of open space and part of the backdrop to the *Gherkin*. [5.19][6.2][6.18-6.19][6.116]

### **Inclusive and accessible**

14.92 There was no dispute that the scheme would be accessible and encouraging visits by disadvantaged children (see below) would be inclusive. To the extent that other parts of the galleries, restaurant and bars would be at a price, it would be less so. [3.6][3.24][3.30][4.7][6.16][6.30][6.113][7.5][10.12]

### **The Brief**

14.93 No detailed brief was presented to the Inquiry but it was evident that its aim was to provide views from as high as possible, subject to aviation limits, on a very small site. This resulted in the narrow *stem* and wider top to take advantage of the space at that level. There was little information on other priorities, other than how the scheme architect saw the benefits, and little reference at early stages to studying its high level impact on the WHS. What information there is centres around Lord Foster's early sketches. These looked at an offset *flower*, and have a rather avant-garde and sculptural quality to them, perhaps appearing more as a Daffodil does than the current association with a Tulip. They might have required unprecedented construction technologies, though this would not be unusual for F+P. Whether these were unworkable, or rejected for financial or other reasons, is unclear, but the resulting scheme retains much of the top-heavy emphasis of these ideas but without the exuberance. Although a wealth of impressive models have been produced for the

scheme, it was not evident how these might have played a part in reviewing the overall design concept as opposed to the finer detail. No information was presented as to what other options were considered for the *Pavilion's* functions that might have reduced or eliminated the need to develop so much of the plaza or whether the space was so limited that this was not an option. [3.55][4.8][6.8][6.42-6.43]

- 14.94 More importantly, the design's response to the brief has placed the wish to be seen, and for visitors to see out, well above those of heritage. I accept that it is usually incorrect to say that a scheme is wrong in principle without knowing what might be achieved in the hands of a more competent designer. The *Gherkin* is a case in point where F+P achieved an enormous amount of office floorspace on a fairly small site, but also produced an extraordinarily beautiful building. If, despite the best efforts of some of the finest architects in the country, the height, form and material requirements cannot be met in a way that would avoid undue harm to the setting of the ToL, then it may be that the fault lies with the expectations of the brief. Either way, the extent of heritage harm, and other shortcomings as a result of conforming to the brief, should preclude it being described as outstanding. [3.49][4.8][6.116-6.117][7.20][7.65][7.69][8.89][9.14]

### Engagement and the London Review Panel (LRP)

- 14.95 NPPF§§128-9 advocate early discussions about design and the use of design reviews. LPAs are expected to *have regard to the outcome from these processes, including any recommendations made by design review panels*. In this case, while there had been many internal reviews and that F+P believed that it excelled at this, there was little evidence of how these had shaped the outcome. There was no independent review until after the application was reported to committee. [3.4][4.6-4.8][8.4][8.14][8.20]
- 14.96 Heritage input only came after the initial concept and there was little to suggest that the design had been adequately influenced by consideration of the setting of the ToL. In particular, I have no information on the way that heritage concerns played a part in choosing:
- the location of the *Tulip* within the site. It would be at the closest corner to the ToL where it would have the greatest impact on its setting and create a vertical edge to the Cluster when viewed from the South Bank;
  - the choice of material for the *stem*. Concrete would be at odds with the rest of the Cluster. I was told that this was chosen for cost and reduced embedded energy, but I have little information on how these were balanced against heritage concerns;
  - the height. This would be simply the maximum allowable. Having been overshadowed by other towers, it is as if the *Gherkin* is stretching its arm up and saying: *look, I'm still here*;
  - the shape and form of the *flower*. With a much wider diameter to the top, this would be likely to draw the eye to a greater extent than a tapered form. [4.6][4.8][4.19][5.1][6.20][6.51][8.4][8.17][8.24][9.14][9.18][11.26.6]
- 14.97 By contrast, the LRP did publish its independent view and articulated its many criticisms. It acknowledged that it *may be a successful response to the functions of its brief*, providing an indication of where, in its view, the problems with the scheme arose. It concluded that *it does not think it represents world class architecture*. The Panel was not approached again. I note the Appellant's criticisms of the Panel itself, including that it may well have spent less time considering the scheme than did the Inquiry, and that the Appellant's own witnesses, and those of the City, have more experience of working there and in the Cluster in particular. This criticism was also applied to the Mayor's witnesses. However, this cuts both ways, as those less caught up in the minutiae of working in and around the Cluster may also have fewer preconceptions than those who have developed a strong empathy for the

juxtaposition of new and old. Regardless of the experience of its members, I find that many of the criticisms of the Panel are valid and the fact that these were largely ignored during the design process weighs against the scheme.

[4.6-4.8][4.19][6.39][8.14][8.20]

## Sustainability

14.98 Subject to a condition, the scheme would achieve a BREEAM rating of *outstanding* with a target score of 89%. It would be located on a brownfield, *windfall* site at one of the most accessible parts of the capital, with the highest possible PTAL level, a site that is presently used for back of house offices and plant together with an HGV ramp. The City, and in particular the Cluster, offers little cultural activity at the weekends and in holiday periods which is a waste of its accessible location. The scheme would achieve a high score for Urban Greening and take steps to improve air quality, reduce water and encourage cycling. Overall, F+P has gone to enormous lengths to make the construction and operation of the scheme as environmentally responsible as possible. [5.12][5.14][6.119][7.69][7.76][8.92][12.5]

14.99 The BREEAM rating would certainly be commendable and an objective indicator that the environmental quality of the design might be high. On the other hand, F+P's recent award-winning scheme for *Bloomberg* achieved a BREEAM score of nearly 100%. I also heard that BREEAM has its limitations, particularly around public transport accessibility which can boost its score. Moreover, while the project might be made as sustainable as possible given its brief, BREEAM focusses on construction and gives less consideration to life-cycle effects. The scheme would demolish an office building which is less than 20 years old. In operation there would be a reduction in carbon emissions compared with the Building Regulations requirements, with a s106 obligation to secure carbon offsetting if the minimum reduction is not met, but the scheme as a whole would not be carbon neutral, and would not achieve zero-carbon on site. While energy use in the lifts would be minimised, these are unregulated emissions which would consume a large quantity of electricity not counted in other ways. [3.16] [4.8][5.11-5.13][6.30][6.119][8.92-8.93]

## Life-cycle

14.100 One of the main considerations when assessing the life-cycle sustainability of a building is the extent to which it could be reused or its materials easily demolished and recycled. The floor areas would be very small compared with those of the adjacent offices and no suggestions were put forward for other uses. The bulk of the *Tulip* would be built of reinforced concrete. This is one of the least sustainable materials due to its high embedded energy and difficulty in recycling. The claim that it would have less embedded carbon than a steel alternative was not supported by detailed calculations, or evidence that other options were feasible, and ignores the comparative ease with which steel can be recycled. There were no plans for it to ever be dismantled and, if undertaken, the *stem* would have to be disassembled by diamond or wire cutting in stages amounting to its construction in reverse and it could only be recycled as aggregate. It would therefore be a slow process and the aggregate could not easily be crushed on site. [3.3][3.17][5.14][8.93]

14.101 While the scheme might have decades of profitable use, the Cluster is evolving and may do so relatively quickly. The *Tulip* would set a new apex, or joint apex, which is likely to spur other developers to match its height. If so, the *Tulip* might lose more of its potential views and its attraction. Even if the *Tulip* were to be viable for many decades, the cost of dismantling it would be likely to mean that there might never be any incentive to remove it. While the conditions controlling cleaning could operate during its lifetime, there would be no way to enforce this if the use ceased and the



owner, currently a limited company based overseas, was dissolved. While the City advised that it is used to buildings being demolished, this generally occurs to allow for larger buildings that make replacement economic and where the predominant use of steel and glass makes them more readily recycled and viable to do so. The very small footprint for the *Tulip* would make cost-effective replacement unlikely. [5.13][5.15-5.16][12.6][13.1]

- 14.102 Concrete is also used in the lift and service shafts of other tower blocks. However, elsewhere these occupy only a tiny proportion of much larger floor plates which are given over to the chief planning purpose of the area, that is to say offices, and the lifts are primarily for that purpose. At *1 Undershaft* there would be more than 130,000m<sup>2</sup> of highly valuable employment floorspace to justify the servicing. At the *Tulip*, the extensive measures that would be taken to minimise carbon emissions during construction would not outweigh the highly unsustainable concept of using vast quantities of reinforced concrete for the foundations and lift shaft to transport visitors to as high a level as possible to enjoy a view. [4.17][11.21]

### Other

- 14.103 There are many examples of where high quality designs have become cherished parts of the wider context and I was reminded that there were strong objections in its day to the Eiffel Tower and other iconic structures. Be that as it may, and while there is a subjective element to this, I find that the top heavy appearance, unduly contrasting *stem* material, and the generally asymmetrical design would not combine to produce a building that would be likely to be cherished as much as, say, the Eiffel Tower, the London Eye, Tower Bridge or indeed the *Gherkin*. Moreover, unless *1 Undershaft* and *100 Leadenhall* are abandoned, the *Tulip* would never have the opportunity to stand apart in the same way that many icons have done. While other examples may have been criticised in their time so were proposals which are now reviled or never saw the light of day. I note the concern of interested parties that, unlike the attractive soubriquet the *Tulip*, or the affectionate monikers given to the *Gherkin* and other towers, the scheme might acquire a less appealing nickname which might denigrate the City and depreciate its value as a tourist destination. However, I consider that this is all conjecture and should be given no weight. [5.2][f/n677][6.20][7.13][7.88][8.23][11.9]

### Conclusions on Design

- 14.104 As above, the scheme would probably function well as a visitor attraction albeit with no certainty as to how long or what would become of the structure as and when the use ceases. Its better than outstanding presentation and technical resolution suggest that the details of its appearance would amount to the highest quality architecture but aspects of its broader aesthetic and asymmetry when viewed more widely would count against it being universally visually attractive. In the immediate vicinity, the *Pavilion* would follow historic building lines but from a distance the *Tulip* would cause considerable harm to one of London's most important historic assets, and further harm to several others. While there was certainly innovation in the way that the scheme was presented, the design itself is more of a synthesis of established ideas into a new form and would have some resemblance to other viewing towers. Any improvement to the sense of place at ground level would be more than offset by the loss of public open space. The scheme would certainly optimise the potential of the site, and would be generally accessible to all, but its inclusivity would be limited by the cost of the main attractions. With regard to its evolution, whether because the constraints were insurmountable or otherwise, its design team did not take the opportunity to respond to the criticisms of the LRP and many of the flaws it

identified, whether in the brief or the design, have persisted.  
[3.16][3.24][4.8][5.14][6.12][6.36][7.15][7.93][9.14][10.6]

- 14.105 As above, while the architects may have taken all possible steps to fulfil its brief in the most environmentally sympathetic way, its long term sustainability would be sadly lacking. Evidence that it would be likely to become a cherished landmark was far from persuasive. I have noted the statements of various learned supporters of the scheme, as well as detractors, but I have little information on how well they studied the proposals, compared with the testimonies of witnesses at the Inquiry, and in the absence of a chance for cross-examination, give these limited weight.  
[3.16][3.18][5.11-5.13][6.2][6.18][6.30][7.69][7.76][8.3][8.92-8.93][11.11]
- 14.106 In too many ways, the scheme would be neither one thing nor another. It would attempt to be an eye-catching iconic landmark, with a different form and facing materials, yet also to blend into the Cluster. It would aim to advertise its gondolas and still strive for a restrained classicism leading to something that would be neither wild nor refined but a muddle of architectural ideas. This approach was described as restrained but to my mind it should be viewed as compromised. Its *stem* would reveal a functional approach to the lift shaft while its surface fluting would be almost decorative. It would echo the radial symmetry of the *Gherkin* but only achieve it in one direction. Overall, I find that the unresolved principles behind the design would mean that in many regards it would fall between two stools and fail to comfortably settle on either. Taken together, I find that the development would not amount to a design of outstanding quality. Although it would be outstanding in terms of its detailing and presentation, on account of its confused approach and broad disregard for the historic environment in particular, the quality of design would not be nearly high enough as to negate its harm to the settings of heritage assets. [14.71-14.103]

## **Benefits**

### **Economic**

- 14.107 The first of the propositions in the Appellant's closing submissions relate to the economy. It put forward the benefits of investment, by strengthening the City - through increasing diversification and accessibility, making it more flexible, vibrant and attractive - particularly at weekends, and by increasing its tourist offer. The Appellant submitted the only economic data. It flows from the estimates of visitor numbers which would be restricted by the s106 Agreement and should therefore be taken as reasonably accurate. The economic value of the scheme, in terms of investment and employment, would be substantial. It would arise on a site which is essentially a *windfall* (in the sense that it was not planned for development) and, apart from the existing Bury Street offices, the sculpture exhibitions and food market, as part of the public realm, has little other direct economic use, and the losses from these would be trifling by comparison. With these minor caveats, the new jobs and economic benefits would not be at the expense of other development. The two estimates of construction costs differ widely, but either would be a considerable sum. Nevertheless, it would be small in the context of the City. Although the construction investment in the *Tulip* would be short-term, it would take around 5 years from the grant of permission before most of the construction benefits would take hold. The City advised that interest in tall towers had never been greater, suggesting that lack of investment in construction in the Cluster should not be a concern. [3.8][3.15-3.17][5.17-5.21][6.1][6.10][6.14-6.15][6.22][7.79-7.80][8.77][8.80][10.12-10.13]
- 14.108 While a grant of permission might be an expression of confidence in the City at a time of deep recession, the full benefits would only arise after the scheme is built and operational in around 7 years' time. The benefits would not be particularly

significant at a local level let alone regional context. Unless it is thought that the damage to the economy by the withdrawal of the UK from the EU, or by the pandemic, are likely to be particularly damaging to the financial sector and especially long-lived, the vast majority of the economic benefits would have negligible impact on helping the country recover from these economic ills. To try and read across from 97 *Cromwell Road* and say that the economic benefits should outweigh the heritage harm is to ignore the other benefits in that case.

[3.50][5.18-5.19][6.15][6.32][7.81][8.77][f/n873][10.19]

- 14.109 Measured against planning policy relevant to the economy, the benefits of the proposals would not be comparable to those of the priority land use in the Cluster of an office development of comparable cost or equivalent height. Although tourism is supported in general by policy (see below), the priority in this part of the CAZ is for employment floorspace and there is no strategic need for greater diversification here. Nevertheless, economic benefits, direct and indirect, are an important material consideration. For all these reasons, while it would be wrong to give limited weight to this amount of investment, in my judgement at the most moderate weight should be given to the economic benefits in the context of City as a whole and the timescale for construction. Allowing harmful development for the sake of economic investment alone would set a questionable precedent.

[3.3][3.18][4.12][5.20][6.31][6.85][7.71][8.79][9.29][14.108-14.109]

## Tourism

- 14.110 It was accepted that 1.2 million people would be likely to visit the *Tulip* each year, limited by the s106 Agreement, of which over 100,000 would not have otherwise visited London. This compares favourably with some of the capital's top attractions. London's visitor infrastructure is promoted by policy, as is enhancing its visitor attractions. Adding to, and diversifying these would contribute to the City's aspirations and this is consistent with its overall strategy to develop as a vibrant, attractive and welcoming destination for all, particularly at weekends. As well as the viewing galleries, a bar and restaurant, the scheme would offer the excitement of gondola rides outside the main body of the building, spiral stairs and slides, and a skywalk with a view directly down through a glass floor.

[5.2][5.18][6.19-6.21][7.70][7.78][10.12]

- 14.111 On the other hand, there are a huge number of existing visitor attractions in London and a growing number of viewing galleries. These include those at the *Shards of Glass* and the *Walkie-Talkie* but also the more recent towers within the Cluster and those permitted at 1 *Undershaft* and 100 *Leadenhall*. However great an opportunity this might be, there is no significant gap in London's visitor attractions. The fact that there are already free-to-access viewing galleries and education facilities within the Cluster should reduce the weight to the benefits from tourism. Moreover, the probability is that the quality of the views out would to some extent be compromised by the erection of the latest permissions even if the sight of other towers was an opportunity to view them up close at a height. [2.3][4.29][5.23][8.65][8.82][9.58]

- 14.112 I have studied the Met Office data submitted illustrating the number of days the viewing areas are likely to be compromised by bad weather. However, while this could well reduce the desirability of the visitor attraction during poor weather, this also applies to other tall attractions, and the s106 Agreement would still secure the same minimum number of school visits. Consequently, the weather data makes little difference to the weight to the benefit to tourism. [11.18]

- 14.113 While a view down onto the top of the *Gherkin* might *delight the senses*, as the Appellant put it, it is also likely to be available from 1 *Undershaft* and elsewhere. On

the other hand, if they are not built, the views to the west and south would be appreciably better and this should slightly increase the weight to the benefits of the viewing galleries and associated experiences, at least for a time. [5.2]

- 14.114 In principle, it would be wrong to give the scheme's potential tourism benefits anything other than substantial weight. However, in the context of the many other visitor attractions, viewing galleries, and proposals for more, some of which would obscure views out, weight to be attributed to any tourism benefits should be significantly reduced. For the Cluster, tourism would be more of an opportunity than a need. The advantages for the area of more tourists are also closely aligned with the economic benefits and should not be counted twice in the overall balance. Again, noting the primary policies for the area promote offices, on balance the weight should be no more than moderate. [14.110-14.113]

### Education

- 14.115 The education offer of enhanced school trips negotiated with the City would be a further advantage of the scheme. It would be hard to fault the enthusiasm of the Appellant's education witness, who is doubtless looking forward (albeit several years in the future) to this fantastic opportunity to demonstrate her relevant skills. She was appointed late on the process and, of the 32 original consultants, none was an education specialist. The appointment appeared to be a low priority during the design process, below that of a visitor attraction and the economy. Nevertheless, in reality what matters is not the genesis of this offer, or her evidence, enthusiastic though it was, but what might actually be provided. [5.5][5.22][6.25-6.27][7.72][7.85][8.4][13.4]
- 14.116 The reasonable expectation, rather confirmed by the extent of negotiations, must be that the Appellant would provide what would be required by the details in the s106 Agreement, and no more. The guarantee of visits for at least 40,000 school children would compare with the 60,000 school visits to the ToL. While the Appellant canvassed London teachers and education stakeholders for their views, they had a pretty limited response leaving some doubt as to whether the offer would be fully embraced. I was told that whether or not a visit would be in lieu of another school trip would be up to individual schools, casting further doubt on the full extent of the potential benefits. The claim that it would enable each London school child to visit once during their time at school had to be withdrawn as inaccurate, possibly by a factor of two. While of itself not altering the scheme, I note that this claim was prominent in the case put to members in the original report to committee, which found this part of the education offer to be a significant benefit yet the overall case to be *very finely balanced*. [2.4][5.5][6.26][7.72][8.84][9.49][10.15][13.4]
- 14.117 The Education space would be at the lowest glazed floor in the *flower* with the most restricted views. While only a small point, it should be noted that from this floor the *Shards of Glass* is likely to be obscured by *100 Leadenhall*. Visiting school parties would not benefit from the most exciting elements, including the glass slides and gondolas, and this could be socially divisive by leaving them either disappointed or pressuring their parents and guardians into repeat, paid for, visits. The arguments over storage, and whether it could be adequately provided within the space available, was a rare unresolved detail in the overall proposals. It is a matter that would need to be overcome in order to comply with the overall requirements but is trivial compared with other matters and should be given negligible weight. [5.5][6.25-6.27][7.84-7.85][8.13][8.86][13.4]
- 14.118 There was limited evidence as to how the space would be used for community groups other than that this would end at 19:00 hours and exclude weekends, when

it would be available only for private functions. Other tall towers also have publicly accessible elevated viewing galleries, some with much larger areas, especially those more recently built and permitted. While few of these have dedicated education spaces, one will now be required for the recently permitted *1 Undershaft*, and this will be at a higher level than at the *Tulip*.

[5.5][5.21-5.22][6.27-6.28][6.118-6.119][7.65][7.72][8.85][8.90-8.91][9.54]

- 14.119 In my judgement, when compared with the weighty matter of harm to heritage assets, the benefits of this facility should be given no more than moderate weight in the overall balance. It would comply with relevant policy and in some ways go beyond the minimum requirement offered in adjacent towers. The limitations to both school visits and community groups, and the uncertainty of whether visits would be at the expense of other school trips, mean that the weight to the benefit should be significantly reduced. [5.22][8.8-8.9][9.55][9.57][14.115-14-118]

## Balances

### *Heritage balance*

- 14.120 For the above reasons, considerable weight should be given to the *less than substantial* harm the scheme would cause to the contribution setting makes to the attributes of OUV of the ToL WHS when seen from View 10A.1 and more widely when crossing Tower Bridge. It would cause further harm to the OUV of the WHS in Views 25A.1-3 and to the settings of individual LBs within the ToL. There would be additional harm to the settings of each of other designated heritage assets, notably the church of St Botolph without Aldgate, the ToL CA, and to 10 Trinity Square, Trinity House and the Trinity Square CA. The latter would not be insignificant, but in this appeal each would be of a much lower order than that to the OUV of the WHS in View 10A.1. Taken together, the other heritage harm would still be important and, if it is judged that the harm arising from View 10A.1 would be less than I have found, there would still be a very high level of other heritage harm. [2.6-2.7][3.10][3.31][7.35][7.48-7.50][8.30-8.32][8.41-8.42][9.4-9.5][9.35-9.37][11.1]

- 14.121 Turning to cumulative harm, and following the approach in *Citroen*, if it is accepted that there is no existing harm to the OUV of the ToL from any of the towers within the Cluster, and there was insufficient evidence to conclude otherwise, then there could not be cumulative harm. [3.6][3.9][3.36-3.38][4.3][5.8][6.84][6.105-6.107][7.39-7.40][8.45][8.57][9.39]

- 14.122 Set against these harms would be the three main public benefits to the economy, tourism and education. Each should be given fair to moderate weight but for the reasons set out above I find that they warrant rather less weight than was claimed for them. Even collectively they should not warrant more than moderate weight in the context of the considerable weight to the harm to the OUV of the ToL. [14.109][14.114][14.119]

- 14.123 When weighing up harm to designated heritage assets, as well as the requirement to distinguish between *substantial* and *less than substantial* harm, it may be helpful to look at a spectrum. However, the *Shimbles* case does not require this and, while PPG (para 018 of 18a) expects harm to be articulated, it does not ask for a spectrum. Given that weight should usually be relative to the factors at play in any decision, to read across from one case to another by way of a spectrum may be unhelpful, although reference to how close to *substantial* harm a scheme would come is relevant. This is true of the appeal proposals which are for development of major importance, having more than local significance, and where both the harms and the benefits are weighty matters. [3.51-3.52][3.56-3.57][6.63-6.64][6.90][6.104][7.47][8.43][8.49][9.20]



- 14.124 Under NPPF§196, considerable weight should be given to the *less than substantial* harm to the significance of designated heritage assets. This applies particularly to the WHS and Grade I LBs of the ToL whose conservation should be given greater weight under NPPF§193 due to their importance. I find that this harm would not be outweighed by the public benefits of the proposal, individually or together. The scheme would not provide the clear and convincing justification required by NPPF§194 for the harm to significance that would be caused as a result of the proposed development within their settings. [3.516.64][6.126][7.90][7.95][8.53][11.3]
- 14.125 Following the *Mordue* Judgment, working through the relevant parts of the NPPF also deals with the statutory duty for LBs and, by extension, for CAs. Against all relevant tests, I find that the heritage balance is therefore firmly against the scheme. [3.25][3.51][8.59][14.120-14.124]

### **Other material considerations and overall NPPF balance**

- 14.126 For the reasons set out above, the balance between harm to heritage assets and all the public benefits weighs heavily against the scheme. The harm to strategic views would be additional but, as much of this also relates to the heritage harm, to add any significant weight to this could amount to double counting. On balance, there would be some additional harm through the loss of open space to the plaza. The poor overall sustainability and other flawed aspects to the design add to the conclusion that the quality of design would not be outstanding. On balance, many aspects would not amount to good design as expected by NPPF§124 and NPPF§127; nor would it be the product of effective engagement throughout the process as envisaged by NPPF§128. Overall, it would be neither outstanding, nor sufficiently innovative, nor promote high levels of sustainability, and should not gain support from NPPF§131. [14.69][14.105-14.106]

### *Development plan, other policy and overall Planning balance*

### **NLP**

- 14.127 The NLP is very recent and its policies should be afforded full weight. The proposals for a mixed-use visitor attraction would gain support from NLP Policy SD4, particularly with regard to supporting tourism and attracting visitors. Insofar as the scheme would erect a substantial structure on a vacant area, it would accord with the expectation to make the best use of land in Policy D3, but it is a moot point as to whether this is a better use of land than sought-after public open space. It would not reflect the circular economy principles, in supporting paragraph 3.3.10, including: designing for longevity, adaptability or flexibility, disassembly, and using systems, elements or materials that can be re-used and recycled. [3.3][9.51]
- 14.128 The proposals would conflict with the expectation in Criterion D to Policy D4 that the *use of the design review process should inform design options early in the planning process*. The loss of public realm would be contrary to Policy D8, offset slightly by the additional green infrastructure. [3.4][8.15][8.28][9.51]
- 14.129 The location of the *Tulip* would be within the Cluster in accordance with Tall Buildings Policy D9.B1-3. However, the scheme would fail against Criterion C1)a)i due to its appearance in distant views, and would fall below the high bar of *exemplary* in Criterion C1)c), including the use of materials of an exemplary standard to ensure that the appearance of the building is maintained through its lifespan. Its harm to heritage, limited exploration of alternatives and relatively limited public benefits would be contrary to Criterion C1)d). It would fail against the stipulation in Criterion C1)e) that *buildings in the setting of a [WHS] must preserve, and not*

*harm, the [OUV] of the [WHS], and the ability to appreciate it.* There would be some support for the scheme from Policy D9.C2f) through jobs and economic activity and Criterion D to the extent that there would be free public access to some groups. Nevertheless, overall, there would be considerable conflict with Policy D9. Unlike policies HC1 and HC2 (below) Policy C1)d) does include the heritage balance required by NPPF§196. [3.5-3.6][7.31-7.32][7.98][8.15][8.28][8.74]

- 14.130 The proposals would self-evidently gain support from Policy S3 on Education, and from Policy E10 for Visitor infrastructure. [3.7-3.8][7.79]
- 14.131 The greatest conflict, and the matter to which most weight should be given, is with the heritage chapter, notably policies HC1 and HC2. Harm to heritage, and the failure to conserve significance, would conflict with the general protection in Policy HC1 and the expectation that the scheme should avoid harm *by integrating heritage considerations early on in the design process.* Harm to the settings of heritage assets in general would be contrary to Policy HC1.C. [3.9-3.10][3.12][3.45][7.98]
- 14.132 The considerable harm to the OUV of the ToL would be in direct conflict with Policy HC2, specifically for WHSs, notably its criteria B and D, as the scheme would compromise both the *ability to appreciate their [OUV], and the authenticity and integrity of their attributes;* it would also be contrary to the WHSMP referred to in Criterion D. I note that the expanded Policy HC2 on WHSs *actively responds to the ... Mission Report* and its conclusion that *the current Plan had not been totally effective in preventing negative impacts on the [OUV] of London's WHS, ... justifying a bespoke policy.* The scheme would run counter to the *UK Government commitment,* in supporting paragraph 7.2.1 to Policy HC2, to **protecting, conserving, presenting and transmitting to future generations the [OUV] of [WHS]s** [bold type as the NLP]. Although not policy, the draft Panel Report commented that *Policy HC2 actively responds to the findings of the [ICOMOS] Mission Report* and its conclusion that *the current Plan had not been totally effective in preventing negative impacts on the [OUV] of London's WHS, ...* While not part of the development plan, this is helpful in deciding the weight that should now be given to conflict with Policy HC2 of the NLP. It should be noted that Policies HC1 and HC2 do not include the NPPF balancing exercise. [3.10-3.12][3.42-3.43][3.45][4.5][6.87][7.27][8.37][8.47][9.52][11.5]
- 14.133 There would be harm to Strategic Views, which are generally covered by Policy HC3, particularly Criterion D which is concerned with the OUV of WHSs. Policy HC4 expands on this with specific reference to the LVMF. While Criterion A echoes aspects of HC2, there would be specific conflict with HC4.C which adds consideration of illumination and specific reference to the silhouette of a WHS against a clear sky and development in its background. Policies HC5 and HC6 add general support for the scheme to the extent that tourism is part of *diverse cultural facilities,* and add to the night-time economy. [3.13-3.15][6.94][8.74]
- 14.134 There would be mitigation measures in the s106 Agreement, but the scheme is not expected to be fully *net zero-carbon,* as the objective in Policy SI 2A; it would comply with Criterion 2C, through an on-site reduction beyond the Building Regulations, and with 2E through its efforts to minimise carbon emissions, as demonstrated by its BREEAM score, and efforts to reduce the unregulated emissions from the lifts. There is no requirement in Criterion 2F to achieve *net zero-carbon* for the entire *life-cycle* of the scheme, and I recognise the Appellant's efforts to reduce the carbon footprint, including the element contained in its BREEAM target and the details in its Sustainability Statement. Nevertheless, it would be inevitable that, on balance, such a tall reinforced concrete building would perform poorly against a

*Whole Life-Cycle Carbon Assessment* and be contrary to the aspirations of this policy and its supporting paragraphs. Overall, the scheme would not conflict with the letter of this policy but nor should it gain support from it. For similar reasons, it would not promote a circular economy which is one of the aims of Policy SI 7.  
[3.16-3.17][7.76][8.92]

## LP

- 14.135 The 2015 LP is now over 6 years old and a replacement is in hand. In the event of differences, its policies may be afforded less weight than those of the NLP. It should be noted that not all of its relevant policies incorporate the NPPF balancing exercise. Its principle focus is on office floorspace as demonstrated through policies CS1 and DM1.1, particularly in the Cluster through Policy CS7.1. The scheme would be within the area identified for investment in tall buildings, but would conflict with the requirement to protect office floorspace, through the loss of 20 Bury Street, although this should be given limited weight in the context of this appeal. The scheme would conflict with Policy CS7.3 as a result of harm to the skyline, ground level, sustainability, and heritage assets. It would be contrary to Design Policy CS10, notwithstanding Criterion 2 which encourages design solutions that make effective use of limited land resources. It would fall below the design requirements of Policy DM10.1 for new development. [3.18-3.20]
- 14.136 There would be conflict with Policy CS12, and Criteria 1, 2 and 5 in particular, which aim to conserve or enhance the significance of the City's heritage assets and their settings. Similarly, the scheme would be contrary to the equivalent provisions in Criteria 1 and 5 of Policy DM12.1. With regard to Protected Views, the *Tulip* would fail to accord with Policy CS13.1.: to implement and manage the LVMF for the ToL, and 2.: To secure an appropriate setting of and backdrop to the ToL WHS. It would fail to accord with Policy CS13 to protect and enhance significant views of important buildings although it would comply with the locational requirements of Tall Buildings Policy CS14. [3.21-3.24][7.31][8.28][9.51]

## Emerging policy

- 14.137 The NLP has been adopted and the parties updated their cases to take account of this. The Replacement City of London Local Plan has yet to be formally submitted for examination, with adoption programmed no sooner than early 2022. Accordingly, its policies should be given limited weight at this stage and should have little bearing on the planning balance. [3.27-3.30]

## SPG

- 14.138 The Settings SPG is of some age but still relevant. The NLP now has similar adopted policies to those addressing the attributes of OUV and so the conflict is comparable. Its advice that: *[t]here should also be recognition that previous permissions for similar developments do not necessarily represent acceptability of impacts on setting* could be relevant, but for the reasons given above, I have not pursued this. [3.31][8.37]
- 14.139 There would also be conflict with the contemporaneous LVMF SPG, on account of harm to LVMF Views 10A.1 and 25A.1-3, which emphasises the ToL in general, and the White Tower in particular. Again, the harm to the view identified through the LVMF SPG would roughly coincide with the harm to the OUV of the ToL and so in this case the conflict with the guidance mirrors that with heritage policies. [3.32][7.60][8.68]

### Other policy and documents

- 14.140 The HE guidance in GPA3 helps to ensure that the correct approach is adopted to the consideration of setting. That in GPA4 extends this to considering tall buildings. Both are useful in interpreting development plan policies. [3.37-3.38][f/n1024]
- 14.141 The WHSMP is given additional weight through NLP Policy HC2.D and the PPG. As well as providing a very full explanation of OUV, the WHSMP sets out an explanation of the *attributes* of OUV which are the starting point for understanding the significance of the ToL. It identifies that *The most significant challenges to the property lie in managing the environs of the [ToL] so as to protect its [OUV] and setting*. The harm to the attributes would conflict with the aims of the WHSMP. [3.10][3.12][3.23][3.32][3.39-3.41][6.88][7.49][9.4]
- 14.142 *London Recharged: Our Vision for London in 2025* gives some insight into the extent to which working from home may continue after the pandemic. It is helpful to the extent that it informs the likelihood that *1 Undershaft* and *100 Leadenhall* will be completed and so the extent to which the *Tulip* would stand out, above and away, from the rest of the Cluster. [3.50][7.81]
- 14.143 Insofar as the scheme would reduce ground level public open space, and make the plaza more complicated and cluttered, it would be contrary to aspects of the *City Cluster Vision* and the *City Public Realm SPD*. [3.48][8.15]

### Overall planning balance

- 14.144 The *Tulip* proposals exude extremes. The honed detailing and exquisite presentation are quite exceptional for this stage of any scheme. Conversely, the chosen purpose, form, materials and location have resulted in a design that would cause considerable harm to the significance of the ToL, and further harm to other designated heritage assets. It would do so for the gains that a new visitor attraction would provide to the economy, tourism and education which are relatively modest by comparison with the City as a whole and with other nearby provisions. [14.60-14.63][14.109][14.114][14.119]
- 14.145 Achieving the functional requirements at low level in such a constrained space has been done with consummate skill but would not quite outweigh the harm through loss of highly valued public open space and substantial intrusions into half of the setting to the *Gherkin*. Although considerable efforts have been made to adopt all available sustainability techniques to make the construction and operation of the scheme as sustainable as possible, fulfilling the brief with a tall, reinforced concrete lift shaft, would result in a scheme with very high embodied energy and an unsustainable whole life-cycle. Based on planning criteria, the design would not be of the highest architectural quality, particularly due to its lack of heritage consideration but also due to its poor lifetime sustainability. [14.69][14.104-14.106][14.120-14.125]
- 14.146 The sizeable economic benefits would be modest in relation to the City and by comparison with the very tall office towers which fulfil the primary function of, and justification for, the Cluster. The tourism benefits should be seen in the context of the very many other attractions in London and while the predicted number of visitors to the City is significant, those that would not come anyway would be far fewer. The education offer would also be welcome, but would achieve rather less than originally claimed, the uptake would be uncertain and visits might be at the expense of trips elsewhere. The extent of benefit to community groups would be uncertain and time

limited. Taken together, these benefits should be given no more than moderate weight in the context of this appeal. [14.109][14.114][14.119]

14.147 Adopting the heritage balance set out in NPPF§196, the benefits of the proposals would fall well short of outweighing the considerable weight to the moderate harm to the OUV of the ToL WHS and other identified heritage harm. For similar reasons, the scheme would not be consistent with the development plan as a whole. In any event, I agree with parties who felt that the NPPF and the development plan are inextricably mixed and that there is nothing materially different between the balance required by the NPPF and the development plan. For all the above reasons, I find that the appeal should fail. [14.144-14.146]

## **15. Recommendation**

15.1 I recommend that the appeal should be dismissed.

**David Nicholson**

INSPECTOR



## Appendix 1: Appearances

### FOR THE APPELLANT, BURY STREET PROPERTIES:

Russell Harris Q.C.

Richard Turney of Counsel  
(Landmark Chambers)

Instructed by Alistair Watson  
Partner, Taylor Wessing LLP

He called

Robert Harrison BSc, MA, RIBA

Professor Robert Tavernor BA, Dip Arch,  
PhD, RIBA

Dr Sharon Wright BSc, MSc, EdD

Tim Rusby BSc, FRSA

Dr Chris Miele PhD, IHBC, MRTPI

Chris Goddard BA(Hons), Bpl, MRTPI,  
MRICS

Foster + Partners

Tavernor Consultancy

the-learning-crowd

The Visitor Attraction Company

Montagu Evans

DP9

### FOR THE CITY OF LONDON CORPORATION (THE LOCAL PLANNING AUTHORITY):

Neil Cameron Q.C.

(Landmark Chambers)

Instructed by Fleur Francis

The Comptroller and City Solicitor

He called

Gwyn Richards BA(Hons), DIP TP,  
MRTPI

Annie Hampson OBE, BA(Hons), DIP TP,  
MRTPI

Interim Chief Planning Officer and  
Development Director

Former Chief Planning Officer and  
Development Director

### FOR THE MAYOR OF LONDON (GLA):

Hereward Phillpot QC

Daisy Noble of Counsel

(Francis Taylor Building)

Instructed by Esther Thornton,

Principal Solicitor, TfL for the Mayor

He called

Dr Nigel Barker-Mills BA (Hons), PHD,  
Dip Cons AA, IHBC, FSA Conservation

Elizabeth Adams AA Dip, RIBA, ARB

Richard Green BSc (Hons) MA

Conservation Consultant at Barker-Mills  
Conservation

Director at Adams & Sutherland

Special Projects Manager at the GLA

### FOR HISTORIC ENGLAND:

Scott Lyness QC

(Landmark Chambers)

He called

David English BS(Hons), MA, MSc,  
IHBC, FRSA

Instructed by Beth Harries

Historic England

Assisted by

Daniel Whittle, Burges Salmon LLP

Historic England

### INTERESTED PERSON:

Chris Hayward

Sheriff of the City of London

## Appendix 2: Core Documents (CDs)

### Application documents and plans

Ref	Document
CD1-1	Application Form
CD1-2	Additional Information for Application Form
CD1-3	Aviation Safeguarding Assessment
CD1-4	CIL Form
CD1-5	Cover Letter
CD1-6	Design and Access Statement
CD1-7	Economic and Social Benefits Statement
CD1-8	Energy Statement
CD1-9	Environmental Statement – Non Technical Summary
CD1-10	Environmental Statement – Volume 1
CD1-11	Environmental Statement – Volume 2 – TVBHA
CD1-12	Environmental Statement – Volume 3 – Part 1
CD1-13	Environmental Statement – Volume 3 – Part 2
CD1-14	Environmental Statement – Volume 3 – Part 3
CD1-15	Environmental Statement – Volume 3 – FRA
CD1-16	Fire Strategy
CD1-17	Heritage Impact Assessment for the Tower of London WHS
CD1-18	Pedestrian Movement Assessment
CD1-19	Planning Statement
CD1-20	Sustainability Statement
CD1-21	Transport Assessment
CD1-22	Utilities Statement
CD1-23	Waste Management Strategy
CD1-24	A-000- XX-21-Diagram_Level All Project Symbols
CD1-25	A-000-XX-01_Cover_Sheet
CD1-26	A-000-XX-11_Drawing_list
CD1-27	A-EXB10-XX-01_Existing_20_Bury_Street_Plans
CD1-28	A-EXB10-XX-02_Existing_20_Bury_Street_Elv_Sec
CD1-29	A-EXSL-014-01-01_Context_Elevation_South Existing
CD1-30	A-EXSL-014-02-01_Context_Elevation_West Existing
CD1-31	A-EXSL-014-03-01_Context_Elevation_North Existing
CD1-32	A-EXSL-014-04-01_Context_Elevation_East Existing
CD1-33	A-LO-011-EX-01-Location Site Plan
CD1-34	A-PT-031-00-01_Ground_Floor_Plan
CD1-35	A-PT-031-01-01_Floor_01_Plan
CD1-36	A-PT-031-02-01_Floor_02_Plan
CD1-37	A-PT-031-03-01_Floor_03_Plan
CD1-38	A-PT-031-04-01_Floor_04_Plan
CD1-39	A-PT-031-05-01_Floor_05_Plan
CD1-40	A-PT-031-06-01_Floor_06_Plan
CD1-41	A-PT-031-07-01_Floor_07_Plan
CD1-42	A-PT-031-08-01_Floor_08_Plan
CD1-43	A-PT-031-09-01_Floor_09_Plan
CD1-44	A-PT-031-10-01_Floor_10_Plan
CD1-45	A-PT-031-11-01_Floor_11_Plan
CD1-46	A-PT-031-12-01_Floor_12_Plan
CD1-47	A-PT-031-B1-01_Basement
CD1-48	A-PT-031-BM-01_Basement Mezzanine
CD1-49	A-PT-031-RF-01_Roof Plan
CD1-50	A-PT-053-01-01_North_South_Section
CD1-51	A-PT-053-02-01_East_West_Section
CD1-52	A-PT-059-XX-01_Section_through_The_Tulip_Base_and_Pavilion
CD1-53	A-PT-064-01-01_West_Elevation
CD1-54	A-PT-064-02-01_East_Elevation
CD1-55	A-PT-064-03-01_South_Elevation
CD1-56	A-PT-064-04-01_North_Elevation
CD1-57	A-PT-194-XX-01_West_Elevation
CD1-58	A-PT-199-01-01_Cladding_Details_Levels_01-04

CD1-59	A-PT-199-02-01_Cladding_Details_Levels_05-08
CD1-60	A-PT-199-03-01_Cladding_Details_Levels_09-10
CD1-61	A-PT-199-04-01_Cladding_Details_Levels_11-12
CD1-62	A-PT-199-05-01_Cladding_Details_GF Entrance
CD1-63	A-PV-039-XX-01_Pavilion_General_Arrangement
CD1-64	A-PV-199-01-01_Cladding_Details_Pavilion_Entrance
CD1-65	A-SL-011-EX-01-Existing Site Plan
CD1-66	A-SL-011-EX-02-Demo Site Plan
CD1-67	A-SL-011-XX-01-Proposed Site Plan
CD1-68	A-SL-014-01-01 - Context Elevation South Proposed
CD1-69	A-SL-014-02-01 - Context Elevation West Proposed
CD1-70	A-SL-014-03-01 - Context Elevation North Proposed
CD1-71	A-SL-014-04-01 - Context Elevation East Proposed
CD1-72	A-SL-014-EX-01_Existing_Site_Elevation_South
CD1-73	A-SL-014-EX-02_Demolition_Site_Elevation_South
CD1-74	A-SL-014-XX-01_Proposed_Site_Elevation_South

Additional application documents and plans submitted after validation

CD2-1	Economic Impact Assessment
CD2-2	Education Roundtable Report
CD2-3	Educational Offer – Amendments – DP9 Letter 8 February 2019
CD2-4	Energy – Response to GLA Stage 1 Report
CD2-5	Energy and Sustainability – Response to CoL comments
CD2-6	HIA – Response to GLA, HE, and HRP comments
CD2-7	Pedestrian Movement Assessment – Clarification – February 2019
CD2-8	Pedestrian Movement Assessment – Clarification – March 2019
CD2-9	Public Open Space Comparison at Grade
CD2-10	Solar Convergence Assessment – Additional Note
CD2-11	Statement of Community Involvement – December 2018
CD2-12	Statement of Community Involvement – February 2019
CD2-13	Statement of Community Involvement – March 2019
CD2-14	Statement of Community Involvement – July 2019
CD2-15	Technical Note – Proposed Cycle Parking and Facilities
CD2-16	Memo – Response to CoL Public Realm Coach Strategy Comments
CD2-17	Memo – Retail Servicing Trip Rate
CD2-18	Technical Note – Velominck Cycle Parking System
CD2-19	Transport – Response to GLA Stage 1 Report
CD2-20	Transport – Response to London Borough of Tower Hamlet's comments
CD2-21	TVBHA – Additional Winter View
CD2-22	A-000-XX-11_Drawing_list
CD2-23	A-PT-031-00-01_Ground_Floor_Plan
CD2-24	A-PT-031-03-01_Level_03_Plan
CD2-25	A-PT-031-B1-01_Basement_Plan
CD2-26	A-PT-031-BM-01_Basement_Mezzanine_Plan
CD2-27	A-PV-039-XX-01_Pavilion_Plans_and_Elevations
CD2-28	Transport – Response Schedule to Transport for London Comments

City of London Corporation (CoL) application stage documents

CD3-1	Independent Review of the Daylight, Sunlight, and Solar Glare Assessment
CD3-2	Independent Review of the Pedestrian Movement Assessment
CD3-3	Not used – duplicate of CD3-1
CD3-4	Report to the CoL Planning and Transportation Committee - 2 April 2019
CD3-5	Report to the CoL Planning and Transportation Committee – Background Papers
CD3-6	Report to the CoL Planning and Transportation Committee - Late Items Addendum
CD3-7	Presentation to the CoL Planning and Transportation Committee
CD3-8	Printed Minutes of the CoL Planning and Transportation Committee
CD3-9	Decision notice – 19 July 2019

Greater London Authority (GLA) application stage documents (Rule 6 party)

CD4-1	GLA Stage 1 Report – 14 January 2019
CD4-2	Report of the London Review Panel – 7 May 2019
CD4-3	GLA Stage 2 Report – 15 July 2019
CD4-4	Mayor of London Direction – 15 July 2019

Historic England (HE) application stage documents (Rule 6 party)

- CD5-1 Pre-application advice letter – 2 August 2018
- CD5-2 Pre-application advice letter – 11 October 2018
- CD5-3 Advice from the London Advisory Committee
- CD5-4 Consultation response – 6 December 2018

National policy and development plan documents

- CD6-1 National Planning Policy Framework (February 2019)
- CD6-2 Planning Practice Guidance (extracts)
- CD6-3 London Plan (March 2016) (extracts)
- CD6-4 City of London Local Plan (January 2015) (extracts)

Emerging development plan documents

- CD7-1 Intend to Publish Draft London Plan (December 2019) (extracts)
- CD7-2 Secretary of State letter to Mayor of London (13 March 2020)
- CD7-3 Proposed Submission Draft City Local Plan (August 2020) (extracts)
- CD7-4 Draft London Plan Panel Report to the Mayor of London (October 2019) (extracts)
- CD7-5 Local Plan Issues and Options Draft City Local Plan (September 2016) (extracts)
- CD7-6 City of London Local Plan Issues and Options Evidence Summary (September 2016)
- CD7-7 City of London Draft New London Plan Response (December 2017)
- CD7-8 City of London Representation into the Draft London Plan EIP (extracts)

Supplementary planning documents, guidance, and strategies

- CD8-1 A Cultural Tourism Vision for London 2015-2017 (GLA)
- CD8-2 A Vision for London as a 24-Hour City (GLA, July 2017)
- CD8-3 Advice Note 2 – Managing Significance in Decision-Taking in the Historic Environment (Historic England, March 2015)
- CD8-4 Advice Note 3 – The Setting of Heritage Assets: Good Practice Advice in Planning 2nd Edition (Historic England, December 2017)
- CD8-5 Advice Note 12 – Statements of Heritage Significance: Analysing Significance in Heritage Assets (Historic England, 2019)
- CD8-6 Advice Note 4 – Tall Buildings (Historic England, December 2015)
- CD8-7 City of London City Cluster Vision (April 2019)
- CD8-8 CoL Public Realm – People Places Projects Supplementary Planning Document (July 2016)
- CD8-9 City of London Visitor Destination Strategy 2019-2023 (CoL, 2018)
- CD8-10 City Streets – the City of London Transport Strategy (May 2019)
- CD8-11 Conservation Principles, Policies and Guidance (English Heritage, April 2008)
- CD8-12 DCMS Policy Statement on Scheduled Monuments (October 2013)
- CD8-13 Guidance on Heritage Impact Assessments for Cultural World Heritage Properties (ICOMOS, January 2011)
- CD8-14 London View Management Framework SPG (GLA, March 2012)
- CD8-15 London's Image and Identity: Revisiting London's Cherished Views (HE, 2018)
- CD8-16 London's World Heritage Sites – Guidance on Settings SPG (GLA, March 2012)
- CD8-17 National Design Guide – PPG for beautiful, enduring and successful places (October 2019)
- CD8-18 Operational Guidelines for the Implementation of the World Heritage Convention (ICOMOS, January 2008)
- CD8-19 The Protection and Management of WHSs in England (Historic England, July 2009)
- CD8-20 Culture and Night-time Economy Supplementary Planning Guidance (GLA, April 2017)
- CD8-21 The Mayor's Economic Development Strategy for London – Consultation Report (GLA, December 2018)
- CD8-22 ToL Local Setting Study – An Assessment of the Local Setting of the ToL and Guidelines for its Management (ToL WHS Consultative Committee, August 2010)
- CD8-23 Tower of London World Heritage Site Management Plan (Historic Royal Palaces, 2016)
- CD8-24 Mayor's Transport Strategy (GLA, March 2018)
- CD8-25 Tower of London Tree Strategy (prepared for Historic Royal Palaces, July 2009)
- CD8-26 Protected Views Supplementary Planning Document (CoL, January 2012)
- CD8-27 Bank CA, CA Character Summary and Management Strategy SPD (CoL, 2012)
- CD8-28 Bishopsgate CA, CA Character Summary and Management Strategy SPD (CoL, 2014)
- CD8-29 Fenchurch Street Station CA, CA Character Summary and Management Strategy SPD (CoL, 2013)
- CD8-30 Lloyds Avenue CA, CA Character Summary and Management Strategy SPD (CoL, 2014)

- CD8-31 Interim Strategic Planning Guidance on Tall Buildings, Strategic Views and the Skyline in London (GLA, October 2001)
- CD8-32 Advice Note 4 – Tall Buildings: 2nd Edition Consultation DRAFT (HE, March 2020)
- CD8-33 Operational Guidelines for the Implementation of the World Heritage Convention (ICOMOS, July 2019)
- CD8-34 Planning Obligations SPD (CoL, July 2014)
- CD8-35 Open Space Strategy SPD (CoL, January 2015)
- CD8-36 Planning Obligations SPD – consultation draft (CoL, October 2020)

#### Relevant appeal decisions

- CD9-1 SoS for HCLG decision for appeals made by Starbones Limited relating to land at Chiswick Roundabout (19 July 2019) (APP/F5540/W/17/3180962 and APP/F5540/Z/17/3173208)
- CD9-2 Inspector's Report to the SoS for HCLG relating to appeals made by Starbones Limited (10 December 2018) (APP/F5540/W/17/3180962 and APP/F5540/Z/17/3173208)
- CD9-3 SoS for HCLG decision for application made by L&Q relating to land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX (10 September 2020) (APP/G6100/V/19/3226914)
- CD9-4 Inspector's Report to the SoS for HCLG relating to an application made by L&Q relating to land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX (11 June 2020) (APP/G6100/V/19/3226914)
- CD9-5 Inspector's Report to the First SoS relating to an application made by Teighmore Limited relating to land adjoining London Bridge Station, at St Thomas Street/Joiner Street, London SE1 (23 July 2003) (APP/A5840/V/02/1095887)
- CD9-6 First SoS decision for application made by Teighmore Limited relating to land adjoining London Bridge Station, at St Thomas Street/Joiner Street, London SE1 (18 November 2003) (APP/A5840/V/02/1095887)
- CD9-7 SoS for HCLG decision for application made by The City of London Real Property Company Limited relating to the site at 20 Fenchurch Street, 14-15 Philpot Lane, 10 Rood Lane, 33-35 Eastcheap and part of basement at 37-39 Eastcheap, London (9 July 2007) (APP/K5030/V/06/1200476)
- CD9-8 Inspector's Report to the SoS for HCLG relating to an application made by The City of London Real Property Company Limited relating to the site at 20 Fenchurch Street, 14-15 Philpot Lane, 10 Rood Lane, 33-35 Eastcheap and part of basement at 37-39 Eastcheap, London (11 May 2007) (APP/K5030/V/06/1200476)
- CD9-9 SoS for Transport, Local Government and the Regions decision for application made by Heron (London) Properties Ltd relating to the site at 106-126 Bishopsgate and 35-37 Camomile Street, London (22 July 2002) (APP/K5030/U/01/000252)
- CD9-10 Inspector's Report to the SoS for Transport, Local Government and the Regions relating to an application made by Heron (London) Properties Ltd relating to the site at 106-126 Bishopsgate and 35-37 Camomile Street, London (30 April 2002) (APP/K5030/U/01/000252)
- CD9-11 Inspector's Decision on an appeal made by Putney High Street Development LLP relating to 45-53 Putney High Street and 327-339 Putney Bridge Road, London (29 July 2019) (APP/H5960/W/18/3209376)

#### Relevant judgments

- CD10-1 Barnwell v East Northamptonshire District Council [2014] EWCA Civ 137
- CD10-2 Bedford Borough Council v SoS for Communities and Local Government [2013] EWHC2847 (Admin)
- CD10-3 Catesby Estates Ltd v Steer [2018] EWCA Civ 1697
- CD10-4 City & Country Bramshill Limited v SoS for Housing Communities and Local Government [2019] EWHC 3437 (Admin)
- CD10-5 Jones v Mordue [2015] EWCA Civ 1243; [2016] 1 WLR 2682
- CD10-6 R (Kay) v SoS for Housing, Communities and Local Government [2020] EWHC 2292 (Admin)
- CD10-7 R (Corbett) v Cornwall Council [2020] EWCA Civ 508
- CD10-8 R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895 (Admin)
- CD10-9 R (James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited [2019] EWHC 2899 (Admin)
- CD10-10 R (Palmer) v Herefordshire Council [2016] EWCA Civ 1061
- CD10-11 R (Shimbles) v City of Bradford Metropolitan District Council [2018] EWHC 195 (Admin)
- CD10-12 R (Williams) v Powys County Council [2017] EWCA Civ 427
- CD10-13 Safe Rottingdean Ltd v Brighton and Hove City Council [2019] EWHC 2632 (Admin)
- CD10-14 Starbones Ltd v SoS MHCLG & Ors [2020] EWHC



CD10-15 Nottingham County Council and Broxtowe Borough Council v The SoS for the Environment, Transport and the Regions and Rjb Mining (UK) Limited [1999] P.L.C.R. 340

Other core documents

CD11-1 A Tourism Vision for London (London & Partners, 2017)  
 CD11-2 City of London Audit Report on Open Spaces (April 2020)  
 CD11-3 City of London Evidence Base for Tall Building Policy (December 2010)  
 CD11-4 City of London Local Plan Monitoring Report - Tall Buildings (July 2019)  
 CD11-5 City of London, Trinity Square Conservation Area Character Summary and Management Strategy Supplementary Planning Document (September 2014)  
 CD11-6 Not used  
 CD11-7 Cracking the Code: how schools can improve social mobility (The Social Mobility & Child Poverty Commission, 2014)  
 CD11-8 Creative Industries Economic Estimates Methodology, DCMS (2016)  
 CD11-9 Creative Industries Economic Estimates, DCMS (January 2016)  
 CD11-10 Cultural Capital Quantitative Survey (A New Direction, November 2014)  
 CD11-11 Cultural Education Challenge (2015-2018): Action Research Reflections (A New Direction, June 2018)  
 CD11-12 Cultural Education in England, DCMS & DfE (March 2012)  
 CD11-13 DCMS State of Conservation Report for Tower of London, Westminster Palace, Westminster Abbey and Saint Margaret's Church (March 2012)  
 CD11-14 Disadvantage and cultural engagement – a study in to the lives of young Londoners (A New Direction, February 2015)  
 CD11-15 Not used – duplicate of CD7-4  
 CD11-16 Guidelines for Landscape and Visual Impact Assessment Third Edition (Landscape Institute and Institute of Environmental Management & Assessment, 2013)  
 CD11-17 Historic England: Designation: Listing Selection Guide: Places of Worship  
 CD11-18 ICOMOS Technical Review of the Appeal Scheme (March 2019)  
 CD11-19 ICOMOS/ICCROM Reactive Monitoring Mission Report (June 2017)  
 CD11-20 List Entry: Chapel of St Peter ad Vincula – NHLE number 1357540  
 CD11-21 List Entry: Middle Tower – NHLE number 1065766  
 CD11-22 List Entry: Outer curtain wall with casements and mural towers – NHLE number 1242026  
 CD11-23 List Entry: Revetment Wall to South Side of Moat – NHLE number 1065765  
 CD11-24 List Entry: Revetment Wall to West and North Side of Moat, from outwork attached to Middle Tower (qv) to Tower Hill Postern – NHLE number 1065764  
 CD11-25 List Entry: The Tower of London, 256m ESE of All Hallows church – NHLE number 1002061  
 CD11-26 List Entry: The White Tower – NHLE number 1260258  
 CD11-27 List Entry: Tower of London (Inner curtain wall with mural towers, the New Armouries, the Queen's House and Tower Green) – NHLE number 1242062  
 CD11-28 List Entry: Waterloo Block – NHLE number 1242210  
 CD11-29 London Borough of Tower Hamlets Consultation Response – 8 February 2019  
 CD11-30 London Borough of Tower Hamlets Consultation Response - 12 March 2020  
 CD11-31 London's Cultural Tourists (London & Partners)  
 CD11-32 London Education Report: Primary Education (GLA, September 2019)  
 CD11-33 London Education Report: Secondary Education (GLA, September 2019)  
 CD11-34 London Visitor Survey (London & Partners, 2016) (extract)  
 CD11-35 Planning (Listed Buildings and Conservation Areas) Act (extract – section 66)  
 CD11-36 Report of the Department for DCMS in response to the WHC Decision (41 COM 7B.55) into the 'Palace of Westminster and Westminster Abbey including Saint Margaret's Church'  
 CD11-37 School cultures and practices: supporting the attainment of disadvantaged pupils DfE Research Report (May 2018)  
 CD11-38 State Party's Periodic Report to the World Heritage Centre (Cycle II 2013)  
 CD11-39 Statement of Outstanding Universal Value: Tower of London (2013)  
 CD11-40 St Helen's Place Conservation Area Character Summary (City of London)  
 CD11-41 The Tower Access Guide 2019  
 CD11-42 Tall buildings in the City of London (November 2019)  
 CD11-43 Not used – duplicate of CD11-1  
 CD11-44 Tower Hamlets, Tower of London Conservation Area Appraisal (2008)  
 CD11-45 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)  
 CD11-46 UNESCO Mission Report on the WHS of the Middle Rhine Valley (June 2008)

CD11-47	World Heritage Centre Preparing World Heritage Nominations, 2nd edition (UNESCO, 2011)
CD11-48	WHC Decision (41 COM 7B.55) into the 'Palace of Westminster and Westminster Abbey including Saint Margaret's Church' (July 2017)
CD11-49	WHC Decision on the Tower of London: 35 COM 7B.114 (July 2011)
CD11-50	100 Leadenhall Street Viewing Gallery Visitor Management Plan (Headlines) (May 2018)
CD11-51	City of London Committee Report for the Minerva Tower (extracts) (January 2004)
CD11-52	Consultation Response by Mr Noble, Group Manager (City Public Realm) for the CoL (1 February 2019)
CD11-53	Design Review Principles and Practice (Design Council, 2019)
CD11-54	1 Undershaft (16/00075/FULEIA) GLA Stage 1 Report (22 March 2016)
CD11-55	100 Leadenhall Street (18/00152/FULEIA) GLA Stage 1 Report (16 April 2018)
CD11-56	Town and Country Planning (Environmental Impact Assessment) Regulations 2017
CD11-57	Living with Beauty: Promoting Health, Well-being and Sustainable Growth: Report of the Building Better, Building Beautiful Commission (January 2020)
CD11-58	1 Undershaft (16/00075/FULEIA) Decision Notice (8 November 2019)
CD11-59	1 Undershaft (16/00075/FULEIA) Committee Report (28 November 2016)
CD11-60	1 Undershaft (16/00075/FULEIA) Top Floor Layout Drawing (L67-72)
CD11-61	100 Leadenhall Street (18/00152/FULEIA) Decision Notice (27 March 2019)
CD11-62	100 Leadenhall Street (18/00152/FULEIA) Committee Report (10 July 2018)
CD11-63	22 Bishopsgate (15/00764/FULEIA) Decision Notice (16 June 2016)
CD11-64	22 Bishopsgate (15/00764/FULEIA) Committee Report (17 November 2015)
CD11-65	22 Bishopsgate (15/00764/FULEIA) Section 106 Agreement (16 June 2016)
CD11-66	Reports and consultation responses in relation to other tall building developments in the City cluster
CD11-67	1 Undershaft (16/00075/FULEIA) Planning Statement (extracts) (January 2016)
CD11-68	1 Undershaft (16/00075/FULEIA) Design and Access Statement (extracts) (January 2016)
CD11-69	1 Undershaft (16/00075/FULEIA) s106 Agreement (extracts) (November 2019)
CD11-70	20 Fenchurch Street (the Walkie Talkie) Planning Statement (extracts) (November 2008)
CD11-71	20 Fenchurch Street (the Walkie Talkie) DAS (extracts) (November 2008)
CD11-72	22 Bishopsgate (15/00764/FULEIA) Planning Statement (extracts) (July 2015)
CD11-73	22 Bishopsgate (15/00764/FULEIA) Design and Access Statement (extracts) (July 2015)
CD11-74	30 St Mary Axe (13/01150/FULL) Decision Notice (January 2014)
CD11-75	30 St Mary Axe (13/01150/FULL) Delegated Report (January 2014)
CD11-76	30 St Mary Axe (13/01150/FULL) Gherkin Market – Operation Management Plan
CD11-77	Advice Note 01/11 - Photography and photomontage in landscape and visual impact assessment (Landscape Institute, March 2011)
CD11-78	'Box sized DIE featuring...' (artwork) by João Onofre, Design and Access Statement for temporary installation
CD11-79	Presentation of the artwork and site for 'Box sized DIE featuring...' by João Onofre
CD11-80	'Laura' (sculpture) by Jaume Plensa, DAS for temporary installation
CD11-81	Presentation of the artwork and site for 'Laura' by Jaume Plensa
CD11-82	Levelling Up Communities – Paper One (Covid Recovery Commission)
CD11-83	Technical Guidance Note 06/19 – Visual Representation of Development Proposals (Landscape Institute, September 2019)
CD11-84	1-6 Bury Court, 19-28 Bury Street, 14-34 (even) St Mary Axe (the Gherkin) (CPO/520/2000) Planning and Transportation Committee Report (4 July 2000)
CD11-85	London Recharged: Our Vision for London in 2025 (City of London, 2020)
CD11-86	2020 tourism forecast (Visit Britain, October 2020)
CD11-87	Mayor reveals tourist spending in central London to plummet by £10.9bn (Mayor of London, 23 October 2020)
CD11-88	City of London Planning Applications Tracker (Appellant, 30 October 2020)

#### Inquiry documents

CD12-1	Statement of Common Ground – duplicate of CD19B-7
CD12-2	Heritage Statement of Common Ground – duplicate of CD19C-7
CD12-3	Transport Statement of Common Ground – duplicate of CD19B-6
CD12-4	Benefits Statement of Common Ground – duplicate of CD19B-15
CD12-5	Inspector's Note of Pre-Inquiry Meeting
CD12-6	Draft section 106 obligations – updated version at CD19B-12
CD12-6A	Draft section 106 obligations – Site Plan
CD12-6B	Draft section 106 obligations - Education and Community Floorspace Plan
CD12-6C	Draft section 106 obligations – Statement of Compliance

- CD12-7 Draft planning conditions – updated version at CD19C-6
- CD12-8 Inspector's preliminary comments on the Draft Section 106 Conditions – 30 October 2020

#### Appellant's Inquiry Documents

- CD13-1 Appeal form
- CD13-2 Statement of case
- CD13-3 Summary of the Proof of Evidence of Chris Goddard - 6 October 2020
- CD13-4 Proof of Evidence of Chris Goddard - 6 October 2020
- CD13-5 Appendix to the Proof of Evidence of Chris Goddard - 6 October 2020
- CD13-6 Summary of the Proof of Evidence of Dr Chris Miele - 6 October 2020
- CD13-7 Proof of Evidence of Dr Chris Miele - 6 October 2020
- CD13-8 Proof of Evidence of Robert Harrison - 6 October 2020
- CD13-8A Summary of the Proof of Evidence of Robert Harrison – 27 October 2020
- CD13-9 Robert Harrison - VR\_Walkthrough\_2020
- CD13-10 Robert Harrison - Keyframes\_from\_WIP\_EducationVideo\_2020
- CD13-11 Robert Harrison - ConstructionSequence\_2018
- CD13-12 Robert Harrison - GondolaDiagram\_2018
- CD13-13 Robert Harrison - TulipIntro\_2018
- CD13-14 Summary of the Proof of Evidence of Robert Tavernor - 6 October 2020
- CD13-15 Proof of Evidence of Robert Tavernor - 6 October 2020
- CD13-16 Appendix RT2A to the Proof of Evidence of Robert Tavernor - 20 October 2020
- CD13-17 Robert Tavernor - 25A\_Queens\_Walk-2020
- CD13-18 Robert Tavernor - 10A\_Tower\_Bridge-2020
- CD13-19 Appendix RT3A to the Proof of Evidence of Robert Tavernor - 20 October 2020
- CD13-19A Appendix RT4 to the Proof of Evidence of Robert Tavernor - 20 October 2020
- CD13-20 Summary of the Proof of Evidence of Dr Sharon Wright - 6 October 2020
- CD13-21 Proof of Evidence of Dr Sharon Wright - 6 October 2020
- CD13-22 Appendix to the Proof of Evidence of Dr Sharon Wright - 6 October 2020
- CD13-23 Summary of the Proof of Evidence of Tim Rusby - 6 October 2020
- CD13-24 Proof of Evidence of Tim Rusby - 6 October 2020
- CD13-25 Appendix to the Proof of Evidence of Tim Rusby - 6 October 2020
- CD13-26 Rebuttal Proof of Chris Goddard – 20 October 2020
- CD13-27 Rebuttal Proof of Chris Miele – 20 October 2020
- CD13-28 Rebuttal Proof of Robert Tavernor – 20 October 2020
- CD13-29 Rebuttal Proof of Dr Sharon Wright – 20 October 2020

#### CoL's Inquiry Documents

- CD14-1 Appeal Questionnaire
- CD14-2 Statement of case
- CD14-3 Proof of Evidence of Annie Hampson – 6 October 2020
- CD14-4 Proof of Evidence of David Gwyn Richards – 6 October 2020

#### GLA's Inquiry Documents

- CD15-1 Statement of case – 10 March 2020
- CD15-2 Summary of the Proof of Evidence of Elizabeth Adams - 6 October 2020
- CD15-3 Proof of Evidence of Elizabeth Adams - 6 October 2020
- CD15-4 Summary of the Proof of Evidence of Nigel Barker-Mills - 6 October 2020
- CD15-5 Proof of Evidence of Nigel Barker-Mills - 6 October 2020
- CD15-6 Appendices to the Proof of Evidence of Nigel Barker-Mills - 6 October 2020
- CD15-6A Report of the Joint UNESCO-ICOMOS Reactive Monitoring Mission to The Tower of London & Westminster Palace, Westminster Abbey and Saint Margret's Church (May 2007)
- CD15-7 Summary of the Proof of Evidence of Richard Green - 6 October 2020
- CD15-8 Proof of Evidence of Richard Green - 6 October 2020

#### HE's Inquiry Documents

- CD16-1 Statement of case
- CD16-2 Summary of the Proof of Evidence of David English - 6 October 2020 (HE\_1\_C)
- CD16-3 Proof of Evidence of David English - 6 October 2020 (HE\_1\_A)
- CD16-4 Appendices Part 1 of the PoE of David English - 28 October 2020 (HE\_1\_B1) (v3)
- CD16-5 Appendices Part 2 of the PoE of David English - 28 October 2020 (HE\_1\_B2) (v3)
- CD16-6 Appendices Part 3 of the PoE of David English - 28 October 2020 (HE\_1\_B3) (v3)
- CD16-6A Report of the Joint UNESCO-ICOMOS Reactive Monitoring Mission to The Tower of London & Westminster Palace, Westminster Abbey and Saint Margaret's Church (June 2012)

Third party representations

CD17-1	The Honourable Company of Master Mariners - undated
CD17-2	NATS Safeguarding – 11 February 2020
CD17-3	Dr Mary Dangler – 13 March 2020
CD17-4	Oliver Mitchell – 17 February 2020
CD17-5	Nick Llewellyn – 19 February 2020
CD17-6	Andy Quinn – 19 February 2020
CD17-7	Alberico de Chiara – 20 February 2020
CD17-8	Yvonne Courtney – 27 February 2020
CD17-9	Historic Royal Palaces – 10 March 2020
CD17-10	Not used – duplicate of CD11-30
CD17-11	Peter Sainsbury - 20 August 2020
CD17-12	Ronnie James – 22 August 2020
CD17-13	William Upton QC – 3 September 2020
CD17-14	Mark Bostock, Marianne Fredericks, Graeme Harrower, Natasha Lloyd-Owen, Barbara Newman, and Sue Pearson (CoL Councillors) – 3 September 2020
CD17-15	Julian Ross – 30 September 2020
CD17-16	Alberico de Chiara – 6 October 2020
CD17-17	Saghir Ahmed – 20 October 2020
CD17-18	Douglas Ford – 4 October 2020 and 5 October 2020
CD17-19	Chris Hayward (Sheriff of London) - undated

Additional documents submitted during the Inquiry

19B: Appellant's Documents

CD19B-1	Appellant's Opening Submissions
CD19B-2	Note on the Education and Community Floorspace – level 3 plans – 3 November 2020
CD19B-3	Plaza Images – 5 November 2020
CD19B-4	Section 106 Obligations – GLA Queries and Appellant Responses – 3 November 2020
CD19B-5	Planning Practice Guidance on the Historic Environment (extracts)
CD19B-6	Transport Statement of Common Ground - updated version at CD19B-21
CD19B-7	Statement of Common Ground – 6 November 2020 - updated version at CD19B-26
CD19B-8	Statement of Michael Alan Dunn re Application by the SoS for HCLG in relation to the Holocaust Memorial, at Victoria Gardens, London (APP/X5990/V/19/3240661)
CD19B-9	Figures taken from the Evidence-in-Chief of Robert Tavernor – 10 November 2020
CD19B-10	1-6 Bury Court, 19-28 Bury Street, 14-34 (even) St Mary Axe (the Gherkin) (CPO/520/2000) Decision Notice (25 August 2000)
CD19B-11	Guide map of the Tower of London (Historic Royal Palaces) – 13 November 2020
CD19B-12	Draft section 106 obligations – 13 November 2020
CD19B-12A	Education and Community Management Plan – updated indicative layouts – 20 Nov 2020
CD19B-13	1 Undershaft (16/00075/FULEIA) s106 Agreement (November 2019)
CD19B-14	Appellant's note on the Education and Community Floorspace – 20 November 2020
CD19B-15	Benefits Statement of Common Ground – see updated version at CD19B-27
CD19B-16	Draft section 106 obligations – Appellant's amendments – 23 November 2020
CD19B-17	Appellant's note on sustainability matters – 23 November 2020
CD19B-18	Appellant's note in response to information requests – 23 November 2020
CD19B-19	Chris Miele – Errata to Proof of Evidence and the Rebuttal PoE – 24 November 2020
CD19B-20	City of London Cultural Strategy 2018-2022
CD19B-21	Signed Transport Statement of Common Ground – 30 November 2020
CD19B-22	Appellant's note on buildings with in-situ concrete – 2 December 2020
CD19B-23	Appellant's note on award winning buildings in the cluster – 2 December 2020
CD19B-24	Draft section 106 obligations – Appellant's amendments to CD19B-16 – 2 December 2020
CD19B-25	Appellant's note on the 360 Nodes – 3 December 2020
CD19B-26	Signed Statement of Common Ground – 8 December 2020
CD19B-27	Signed Benefits Statement of Common Ground – 8 December 2020
CD19B-28	Signed Heritage Statement of Common Ground – 8 December 2020
CD19B-29	1 Undershaft (16/00075/FULEIA) Design and Access Statement (full) (January 2016)
CD19B-30	Appellant's note on construction costs - 11 December 2020
CD19B-31	Appellant's note on storage for level 3 - 11 December 2020
CD19B-32	Appellant's note on sustainability - 11 December 2020
CD19B-33	The Gherkin Architectural Design Report – Volume 1, Section 2 (Swiss Re, July 1999)
CD19B-34	The Gherkin Planning Report – Volume 1, Section 1 (Swiss Re, July 1999)
CD19B-35	The Gherkin Townscape Report – Volume 1, Section 3 (Swiss Re, July 1999)
CD19B-36	The Gherkin ES – Part I, Main Text (Sections 1.0 – 7.0) (Swiss Re, May 2000)



- CD19B-37 The Gherkin ES – Part I, Main Text (Sections 8.0 – 17.0) (Swiss Re, May 2000)
- CD19B-38 The Gherkin ES – Part II, The Context of the Development and its Visual Impacts (Swiss Re, May 2000)
- CD19B-39 The Gherkin ES – Part III, Planning Application Drawings (Swiss Re, May 2000)
- CD19B-40 The Gherkin ES – Part IV, Non-Technical Summary (Swiss Re, May 2000)
- CD19B-41 Viewing Gallery and Education Provisional Table – 15 December 2020
- CD19B-42 Letter from the Appellant confirming its agreement to the pre-commencement conditions – 17 December 2020
- CD19B-43 Engrossment section 106 agreement – 17 December 2020
- CD19B-44 Appellant's Further Note on Concrete – 18 December 2020
- CD19B-45 Appellant's Closing Submissions – 18 December 2020
- CD19B-46 Appellant's Submissions re NLP – 18 March 2021
- CD19B-47 Appellant's Submissions on *Bramshill*
- CD19B-48 Site visit booklet

#### 19C: CoL's Documents

- CD19C-1 CoL's Opening Submissions
- CD19C-2 Comments on the draft planning conditions schedule – 3 November 2020
- CD19C-3 Comments on the Inspector's Preliminary Questions on the Planning Conditions – 3 November 2020
- CD19C-4 GLA's suggested planning conditions – circulated by the CoL – 3 November 2020
- CD19C-5 Foster + Partners comments on the Inspector's Preliminary Queries on the Planning Conditions – circulated by the CoL – 3 November 2020
- CD19C-6 Draft conditions schedule – 12 November 2020
- CD19C-7 Heritage Statement of Common Ground – 19 November 2020 updated version at CD19B-28
- CD19C-8 Draft conditions schedule – 20 November 2020
- CD19C-9 Explanatory note to support the draft conditions schedule – 20 November 2020
- CD19C-10 Draft list of Informatives – 20 November 2020
- CD19C-11 CoL's note on all Major and EIA applications received by the City Corporation since October 2018 – 24 November 2020
- CD19C-12 Report to the CoL Planning and Transportation Committee regarding revisions to the Proposed Submission Draft of the City Plan 2036 (17 November 2020)
- CD19C-12A Appendix 1 to the report to the CoL Planning and Transportation Committee regarding revisions to the Proposed Submission Draft of the City Plan 2036 (17 November 2020)
- CD19C-13 CoL's note on the update on the progress of the Replacement City of London Local Plan – 24 November 2020
- CD19C-14 CoL's note on free to visit elevated public spaces in developments in the City of London – 24 November 2020
- CD19C-15 City of London job fact sheet (CoL, January 2020)
- CD19C-16 Hotels Land Use Report (CoL, September 2020)
- CD19C-17 97-109 Cromwell Road (PP/18/03461) GLA Final Stage III Report (22 October 2020)
- CD19C-18 Withdrawal letter in relation to objections made by the S&P Sephardi Community and the London Sephardi Trust (28 March 2019)
- CD19C-19 Tesco Stored Ltd v Dundee City Council [2012] UKSC 13
- CD19C-20 Regulation 122 (Community Infrastructure Levy) – section 106 agreement: Statement of Compliance - originally submitted 30 October 2020
- CD19C-21 Draft conditions schedule – 10 December 2020
- CD19C-22 Draft conditions schedule – 17 December 2020
- CD19C-23 CoL's Closing Submissions – 18 December 2020
- CD19C-24 CoL's Updated Submissions re NLP – 18 March 2021

#### 19D: GLA's Documents

- CD19D-1 GLA's Opening Submissions
- CD19D-2 Comments on the draft planning conditions schedule – 3 November 2020
- CD19D-3 Note on the draft section 106 obligations – 3 November 2020
- CD19D-4 Email from Dr Sharon Wright inviting an endorsement from an educational professional (20 August 2020) – 11 November 2020
- CD19D-4A The Tulip briefing pack for possible endorsers (2020) – 11 November 2020
- CD19D-5 Environmental Statement for 1 Undershaft (16/00075/FULEIA) (extract)
- CD19D-6 Environmental Statement for 22 Bishopsgate (15/00764/FULEIA) (extract)
- CD19D-7 Environmental Statement Addendum for 22 Bishopsgate (16/00849/FULEIA) (extract)
- CD19D-8 Nigel Barker-Mills – Errata to Proof of Evidence – 30 November 2020



CD19D-9 Photographs along approach route 14 moving S-N across Tower Bridge – 30 Nov 2020  
 CD19D-10 Ms Adams – Errata to Proof of Evidence – 2 December 2020  
 CD19D-11 Ms Adams - Index and accompanying images for Evidence in Chief – 2 December 2020  
 CD19D-12 Level 3 Floor Plan – 2 December 2020  
 CD19D-13 Level 6 Floor Plan – 2 December 2020  
 CD19D-14 Elizabeth Adams - Evidence in Chief notes - 2 December 2020  
 CD19D-15 GLA's response to the Appellant's note on Level 3 Storage - 15 December 2020  
 CD19D-16 GLA's response to the Appellant's further sustainability note - 15 December 2020  
 CD19D-17 Letter from the Mayor of London to Rt Hon Robert Jenrick MP (9 December 2020)  
 CD19D-18 Letter from RT Hon Jenrick MP to Sadiq Khan the Mayor of London (10 December 2020)  
 CD19D-19 Annex A- Updated Changes to London Plan as a result of Directions (10 December 2020)  
 CD19D-20 Annex B to CD19D-18 – Further Directions (10 December 2020)  
 CD19D-21 GLA confirmation in relation to Dr Barker-Mills' evidence on 1 December 2020 (unable to find reference) - 10 December 2020  
 CD19D-22 GLA's Closing Submissions – 18 December 2020  
 CD19D-23 Letter from the Mayor of London to Rt Hon Robert Jenrick MP (21 December 2020)  
 CD19D-24 Annex A to CD19D-27 – Publication London Plan (December 2020)  
 CD19D-25 Letter from RT Hon Jenrick MP to Sadiq Khan the Mayor of London (24 December 2020)  
 CD19D-26 Letter from RT Hon Jenrick MP to Sadiq Khan the Mayor of London (29 January 2021)  
 CD19D-27 The London Plan (March 2021) (full version)  
 CD19D-28 GLA's Updated Closing Submissions – 18 December 2020  
 CD19D-29 GLA's Closing Submissions, covering letter and tracked changes - 10 March 2021  
 CD19D-30 GLA's Supplementary Submissions on the NLP – 10 March 2021, Submissions in Reply  
 CD19D-31 GLA's Submissions in Reply on the NLP – 18 March 2021

#### 19E: HE's Documents

CD19E-1 HE's Opening Submissions  
 CD19E-2 Slides from the City of London's presentation to the World Heritage UK Conference 2018  
 CD19E-3 New London Architecture Tall Buildings Report 2017 (Extract – pages 1 and 18)  
 CD19E-4 CoL Committee Report on Eastern Cluster 3-D Computer Modelling (24 April 2016)  
 CD19E-5 SoS Decision Letter and Inspector's Report for Anglia Square, Norwich  
 (PINS Ref: APP/G2625/V/19/3225505) (12 November 2020)  
 CD19E-6 Anglia Square Townscape and Visual Impact Assessment Addendum (Iceni Projects, August 2018) (Extract – pages 79-80)  
 CD19E-7 David English - Images for Evidence in Chief – 4 December 2020  
 CD19E-8 HE's Closing Submissions – 18 December 2020  
 CD19E-9 UNESCO letter dated 22 December 2020 re Royal Botanical Gardens, Kew  
 CD19E-10 HE's Updated Closing Submissions – 10 March 2021

#### 19F: Interested Parties

CD19F-1 William Upton QC – 2 November 2020  
 CD19F-2 The Honourable Company of Master Mariners – resubmitted 5 November 2020  
 CD19F-3 Paul Finch – 27 November 2020  
 CD19F-4 Peter Murray - 2 December 2020  
 CD19F-4A 'Why the City of London needs The Tulip' – a video by Peter Murray (3 November 2020)  
 CD19F-4B Embedded link to 'Why the City of London needs The Tulip' on YouTube – Peter Murray (3 November 2020)  
 CD19F-5 Submission by Roger Hoefling – 16 December 2020  
 CD19F-6 Further Submission by Roger Hoefling – 18 January 2021  
 CD19F-7 Met Office data attachments to CD19F-6

#### 19G: Media Not used

#### 19H: Miscellaneous

CD19H-1 London Plan (March 2016) (full version)  
 CD19H-2 City of London Local Plan (January 2015) (full version)  
 CD19H-3 Intend to Publish Draft London Plan (December 2019) (full version)  
 CD19H-4 Proposed Submission Draft City Local Plan (August 2020) (full version)

**Appendix 3: LIST OF SUGGESTED CONDITIONS**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To ensure compliance with the terms of Section 91 of the Town and Country Planning Act 1990.

- 2 The quantum of built floorspace for the detailed development shall be as specified in the table below:

	Quantum/Area(GEA)m <sup>2</sup>	Quantum/Area(GIA)m <sup>2</sup>
Visitor Attraction (including Education / Community)	4,817	4,468
Restaurant	1,018	974
Bar	517	480
Retail (Base of the Pavilion Building)	11	9
Retail (Base of the Tulip)	62	44
Back of House (including basement, parking, circulation space)	11,016	8,910

The development must be undertaken in accordance with this description of development and quantum of built floorspace.

REASON: To ensure that the development is undertaken in accordance with the approved drawings, documents and the Environmental Statement.

- 3 Prior to the commencement of the development including demolition, site clearance and/or construction works, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority (LPA). The CEMP shall include (but not be limited to) details relating to all structures:
  - (a) any demolition, ground works, (including decontamination)
  - (b) scheme for security fencing / hoardings, depicting a readily visible 24-hour contact number for queries or emergencies
  - (c) construction and access to the site
  - (d) hours of operation
  - (e) predicted levels of, means to control / minimise the impact of, and monitoring of noise, odour dust, vibration and smoke
  - (f) road cleaning including wheel washing
  - (g) suitable pollution prevention measures for the safe storage of fuels, oils and chemicals and the control of sediment laden site discharge to protect water quality including into the Thames during the construction phase
  - (h) details of vibro-compaction machinery and a method statement
  - (i) details of disposal of waste arising from the construction programme, including final disposal points (the burning of waste on the site at any time is specifically precluded)
  - (j) any other matters relevant to this particular site including liaising with developers and construction teams of neighbouring sites (through the LPA), in order to identify

and address potential cumulative environmental effects during the demolition and construction phase.

The CEMP should be in accordance with the GLA's Supplementary Planning Guidance 'Control of Dust and Emissions during Demolition and Construction'. The development shall be constructed in accordance with the approved management plan. The CEMP shall be implemented as approved and periodically reviewed following environmental audits of its implementation. Results of these audits will be made available to the Council upon request. The CEMP shall be retained and complied with for the duration of the demolition, site clearance and construction process for the relevant phase. The CEMP shall be based on the City of London Department of Markets and Consumer Protection's Code of Practice for Deconstruction and Construction Sites (or any subsequent, replacement code of practice).

REASON: In the interests of public safety and to ensure a minimal effect on the amenities of neighbouring premises and the transport network in accordance with Local Plan (LP) policies: DM15.6, DM15.7, DM21.3. These details are required prior to demolition in order that the impact on amenities is minimised from the time that the construction starts.

- 4 Demolition works shall not begin until a Deconstruction Logistics Plan to manage all freight vehicle movements to and from the site during deconstruction of the existing building(s) has been submitted to and approved in writing by the LPA. The Deconstruction Logistics Plan shall include relevant measures from Section 3 of the Mayor of London's Construction Logistics Plan Guidance for Developers issued in April 2013, and specifically address the safety of vulnerable road users through compliance with the Construction Logistics and Cyclist Safety (CLOCS) Standard for Construction Logistics, Managing Work Related Road Risk. The demolition shall not be carried out otherwise than in accordance with the approved Deconstruction Logistics Plan.

REASON: To ensure that demolition works do not have an adverse impact on public safety and the transport network in accordance with NLP Policy T7 and LP policies: DM15.6, DM16.1. These details are required prior to demolition work commencing in order that the impact on the transport network is minimised from the time that demolition starts.

## 5 Archaeology

- (a) Stage 1 WSI - Prior to the commencement of each phase of development hereby permitted (exception for demolition works above ground level) a stage 1 written scheme of investigation (WSI) shall be submitted to and approved by the LPA in writing. 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. Written schemes of investigation will need to be prepared and implemented by a suitably qualified, professionally accredited archaeological practice
- (b) Stage 2 WSI - If heritage assets of archaeological interest are identified by the stage 1 written scheme of investigation (WSI) undertaken prior to each phase of the development, then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved in writing by the LPA prior to the commencement of the relevant phase. For land that is included within the stage 2 WSI, no demolition/development/excavation shall take place other than in accordance with the approved stage 2 WSI which shall include:
  - (i) The programme and methodology of site investigation and recording
  - (ii) The programme for post investigation assessment
  - (iii) Provision to be made for analysis of the site investigation and recording

- (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
- (v) Provision to be made for archive deposition of the analysis and records of the site investigation
- (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation

Written schemes of investigation will need to be prepared and implemented by a suitably qualified professionally accredited archaeological practice.

REASON: To ensure the preservation of archaeological remains following archaeological investigation in accordance with LP policy: DM12.4.

- 6 There shall be no demolition on the site until a scheme for protecting nearby residents and commercial occupiers from noise, dust and other environmental effects has been submitted to and approved in writing by the LPA. The scheme shall be based on the Department of Markets and Consumer Protection's Code of Practice for Deconstruction and Construction Sites (or any subsequent, replacement code of practice) and arrangements for liaison and monitoring set out therein. A staged scheme of protective works may be submitted in respect of individual stages of the demolition process but no works in any individual stage shall be commenced until the related scheme of protective works has been submitted to and approved in writing by the LPA. The demolition shall not be carried out other than in accordance with the approved scheme.

REASON: In the interests of public safety and to ensure a minimal effect on the amenities of neighbouring premises and the transport network in accordance with LP policies: DM15.6, DM15.7, DM21.3. These details are required prior to demolition in order that the impact on amenities is minimised from the time that development starts.

- 7 There shall be no construction on the site until a scheme for protecting nearby residents and commercial occupiers from noise, dust and other environmental effects during construction has been submitted to and approved in writing by the LPA. The scheme shall be based on the Department of Markets and Consumer Protection's Code of Practice for Deconstruction and Construction Sites (or any subsequent, replacement code of practice) and arrangements for liaison and monitoring set out therein. A staged scheme of protective works may be submitted in respect of individual stages of the construction process but no works in any individual stage shall be commenced until the related scheme of protective works has been submitted to and approved in writing by the LPA. The development shall not be carried out other than in accordance with the approved scheme.

REASON: In the interests of public safety and to ensure a minimal effect on the amenities of neighbouring premises and the transport network in accordance with LP policies: DM15.6, DM15.7, DM21.3. These details are required prior to demolition in order that the impact on amenities is minimised from the time that the construction starts.

- 8 Within five working days of any site contamination being found when carrying out the development hereby approved the contamination must be reported in writing to the LPA and an investigation and risk assessment must be undertaken in accordance with the requirements of DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Where remediation is necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use must be submitted to and approved in writing by the LPA. Unless otherwise agreed in writing by the LPA the remediation scheme must ensure that the site will not qualify as contaminated land under Part 2A of the

Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Following completion of measures identified in the approved remediation scheme a verification report must be submitted to and approved in writing by the LPA and works shall not re-commence until approval is obtained. Remediation works shall not be carried out other than in accordance with the approved remediation scheme.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with the LP DM15.8. These details are required prior to commencement in order that any changes to satisfy this condition are incorporated into the development before the design is too advanced to make changes.

- 9 Before the development hereby permitted is begun a detailed site investigation shall be carried out to establish if the site is contaminated and to determine the potential for pollution of the water environment. The method and extent of this site investigation shall be agreed in writing with the LPA prior to commencement of the work. Details of measures to prevent pollution of ground and surface water, including provisions for monitoring, shall then be submitted to and approved in writing by the LPA before the development commences. The development shall proceed in strict accordance with the measures approved.

REASON: To prevent pollution of the water environment in accordance with LP policy: DM15.8. These details are required prior to commencement in order that any changes to satisfy this condition are incorporated into the development before the design is too advanced to make changes.

- 10 Before any works including demolition are begun a site survey and survey of highway and other land at the perimeter of the site shall be carried out and details must be submitted to and approved in writing by the LPA indicating the proposed finished floor levels at basement and ground floor levels as well as the public realm in relation to the existing Ordnance Datum levels of the adjoining streets. The development shall be carried out in accordance with the approved details (as set out in the survey) and retained thereafter.

REASON: To ensure continuity between the level of existing streets and the finished floor levels in the proposed building and to ensure a satisfactory treatment at ground level in accordance with LP policies: DM10.8, DM16.2. These details are required prior to commencement in order that a record is made of the conditions prior to changes caused by the development and that any changes to satisfy this condition are incorporated into the development before the design is too advanced to make changes.

- 11 No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the LPA after consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

REASON: The proposed works will be in close proximity to local underground utility infrastructure and piling has the potential to impact on this. The applicant is advised to contact Thames Water Developer Services on 0800 009 3921 to discuss the details of the piling method statement.



- 12 Demolition and Construction works shall not begin until a Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the LPA after consultation with TfL. The CLP shall include details of:
- (a) the management of all freight vehicle movements to and from the site during deconstruction and construction of the development;
  - (b) loading and unloading of plant and materials including vehicle turning areas;
  - (c) storage of plant and materials;
  - (d) sourcing of materials;
  - (e) programme of works (including measures for traffic management);
  - (f) provision of boundary hoarding, behind any visibility zones of construction traffic routing;
  - (g) hours of operation;
  - (h) means to prevent deposition of mud on the highway;
  - (i) location and height of cranes and scaffolding;
  - (j) a Construction workers' Sustainable Travel Plan including details of strategies to promote sustainable travel by construction staff and details of Blue Badge holder accessible parking shall be submitted to and approved by the LPA. Subsequently these approved parking areas shall be marked out and visible for use. There shall be no use of such areas for general parking including by staff wishing to travel to/from work by car unless they are holders of Blue Badges. The approved construction staff travel plan measures shall be put in place prior to commencement of the works, retained and continually monitored for the duration of these works;
  - (k) any other matters relevant to this particular site including liaising with developers and construction teams of neighbouring sites (through the LPA), in order to identify and address potential cumulative highway effects during the demolition and construction phase.

The CLP shall be prepared in accordance with the Mayor's CLP Guidance dated July 2017, and shall specifically address the safety of vulnerable road users through compliance with the CLOCS Standard.

The development shall be constructed in accordance with the relevant approved CLP. The CLP shall be implemented as approved and periodically reviewed following audits of its implementation. Results of these audits will be made available to the Council upon request. The CLP shall be retained for the duration of the demolition, site clearance and construction process for the relevant phase.

REASON: To ensure that construction works do not have an adverse impact on public safety and the transport network in accordance with NLP Policy T7 and LP policies: DM15.6, DM16.1. These details are required prior to construction work commencing in order that the impact on the transport network is minimised from the time that construction starts.

13 Terrestrial Television and Radio Interference

- a. No development including demolition shall take place until the developer has secured the completion of a Base-Line Terrestrial Television and Radio Interference Study (Base-Line Study) to assess terrestrial television and radio reception to residential properties in the vicinity of the site. The Base-Line Study shall be carried out in accordance with a Scheme first submitted to and approved in writing by the LPA, and which shall include details of the residential properties to be surveyed.
- b. No occupation of the development shall take place until the developer has secured:

- (i) the completion of a Post Construction Terrestrial Television and Radio Study (*the Post-Construction Study*) to assess any significant deterioration to terrestrial television and radio reception attributable to the development. The Study shall be carried out in accordance with a Scheme, including details of the residential properties to be surveyed, first submitted to and approved in writing by the LPA.
- (ii) the implementation of a Scheme of Mitigation Works for the purpose of remedying significant interference to terrestrial television and radio reception in the vicinity of the site attributable to the development identified by the Post-Construction Study. Such Scheme of Mitigation Works shall be first submitted to and approved in writing by the LPA and thereafter retained. The mitigation works shall not be carried out other than in accordance with the approved Scheme of Mitigation Works.

REASON: The details in (a) are required prior to commencement in order to create a record of the conditions prior to changes caused by the development and (b) is required to ensure that the existing television reception at other premises is not significantly affected by the proposed development.

- 14 Before any construction works hereby permitted are begun the following details shall be submitted to and approved in writing by the LPA in conjunction with the Lead Local Flood Authority and all development pursuant to this permission shall be carried out in accordance with the approved details and retained thereafter:

Fully detailed design and layout drawings for the proposed SuDS components including but not limited to: attenuation systems, rainwater pipework, pumps, design for system exceedance, design for ongoing maintenance; surface water flow rates shall be restricted to no greater than 5 l/s from each outfall and from no more than three distinct outfalls, provision should be made for an attenuation volume capacity capable of achieving this as outlined in the Flood Risk Assessment and Outline Drainage Strategy:

- a. Full details of measures to be taken to prevent flooding (of the site or caused by the site) during the course of the construction works;
- b. Evidence that Thames Water have been consulted and consider the proposed discharge rate to be satisfactory.

REASON: To improve sustainability, reduce flood risk and reduce water runoff rates in accordance with LP policy: DM18.1, DM18.2 and DM18.3.

- 15 Before any piling or construction of basements is commenced a scheme for the provision of sewer vents within the building shall be submitted to and approved in writing by the LPA. The agreed scheme for the provision of sewer vents shall be implemented as approved and brought into operation before the development is occupied and shall be so retained and maintained for the life of the building.

REASON: To vent sewerage odour from (or substantially from) the development hereby permitted and mitigate any adverse air pollution or environmental conditions in order to protect the amenity of the area in accordance with LP policy: DM10.1. These details are required prior to piling or construction work commencing in order that any changes to satisfy this condition are incorporated into the development before the design is too advanced to make changes.

- 16 No excavation of basements shall take place until it has been demonstrated that there would be no unacceptable risk to below ground utilities infrastructure, details of which shall be approved in writing by the LPA in liaison with Thames Water before such works

commence and the development shall be carried out in accordance with the approved details.

REASON: To ensure that below ground utilities infrastructure is protected in accordance with LP policy: DM2.1.

- 17 Development shall not commence until a construction management strategy has been submitted to and approved in writing by the LPA covering the application site and any adjoining land which will be used during the construction period. Such a strategy shall include details of cranes and other tall construction equipment (including the details of obstacle lighting). Such schemes shall comply with the AOA Advice Note 4 *Cranes and Other Construction Issues*<sup>1087</sup>. Construction shall be carried out in accordance with the approved construction management strategy to the satisfaction of the LPA.

REASON: To ensure that construction work and construction equipment on the site and adjoining land does not contravene the regulation set out in the London Tall Buildings Policy, and endanger aircraft movements and the safe operation of Heathrow Airport.

- 18 No cranes or scaffolding shall be erected on the site unless and until construction methodology and diagrams clearly presenting the location, maximum operating height, radius and start/finish dates for the use of cranes during the development, in the form of a "Crane Operation Plan", has been submitted to and approved by the LPA. The development shall be carried out in accordance with the approved "Crane Operation Plan".

REASON: In the interests of the safe operation of Heathrow Airport, London City Airport and of NATS En-route PLC.

- 19 No part of this development including demolition and site clearance shall commence before the completed building and its construction methodologies are assessed against London City Airport's instrument flight procedures (IFPs) and approved by a CAA approved procedure designer.

REASON: In the interests of the safe operation of Heathrow Airport, London City Airport and of NATS En-route PLC.

- 20 No Building or structure to permanently form part of the Development shall exceed London City Airport's *Obstacle Limitation Surfaces* dated August 2004, and no temporary infringements of London City Airport protected surfaces (305.3m AOD) shall occur while LCY is open or closed unless explicitly authorised in writing by the LPA.

REASON: In the interests of the safe operation of Heathrow Airport, London City Airport and of NATS En-route PLC

- 21 Before any mechanical plant is used on the development site it shall be mounted in a way which will minimise transmission of structure borne sound or vibration to any other part of the building in accordance with a scheme to be submitted to and approved in writing by the LPA. The approved scheme shall be implemented in full and thereafter retained.

REASON: In order to protect the amenities of commercial occupiers in the building in accordance following policy of the Local Plan: CS15.

- 22 Not used.

- 23 Not used.

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<sup>1087</sup> Currently at <https://www.aoa.org.uk/wp-content/uploads/2016/09/Advice-Note-4-Cranes-2016.pdf>

24 New plant noise

- (a) The level of noise emitted from any new plant shall be lower than the existing background level by at least 10 dBA. Noise levels shall be determined at one metre from the window of the nearest noise sensitive premises. The measurements and assessments shall be made in accordance with B.S. 4142. The background noise level shall be expressed as the lowest LA90 (10 minutes) during which plant is or may be in operation. Following installation but before the new plant comes into operation measurements of noise from the new plant must be taken and a report demonstrating that the plant as installed meets the design requirements shall be submitted to and approved in writing by the LPA.
- (b) All constituent parts of the new plant shall be maintained and replaced in whole or in part as often is required to ensure compliance with the noise levels approved by the LPA.

REASON: To protect the amenities of neighbouring residential/commercial occupiers in accordance with LP policies: CS15, CS21.

- 25 Prior to any plant being commissioned and installed in or on the building an Air Quality Report shall be submitted to and approved in writing by the LPA. The report shall detail how the finished development will minimise emissions and exposure to air pollution during its operational phase and will comply with the City of London Air Quality Supplementary Planning Document and any submitted and approved Air Quality Assessment. The measures detailed in the report shall thereafter be implemented, maintained and retained in accordance with the approved report(s) for the life of the installation on the building.

REASONS: In order to ensure the proposed development does not have a detrimental impact on air quality, reduces exposure to poor air quality and in accordance with the following policies: LP policy DM15.6 and NLP Policy IS 1.

- 26 No part of this development including demolition and site clearance shall commence until additional details and information in respect of the following shall be submitted to and approved in writing by the LPA and all development pursuant to this permission shall be carried out in accordance with the approved details and retained thereafter:
- (a) particulars and samples of the materials to be used on all external faces of the building including external ground and upper level surfaces;
  - (b) details of the proposed elevations including typical details of the fenestration and entrances;
  - (c) details of the elevations of the development (elevations, plans and cross-sections at scale 1:20 with 1: 1 details of joints and junctions);
  - (d) details of the concrete stem including surface colour, texture, draining channels and daily pour sequence;
  - (e) details of the ground floor entrances;
  - (f) details of soffits, handrails, balustrades and boundary walls around St Mary Axe Plaza;
  - (g) details of the integration of window cleaning equipment and the garaging thereof, plant, flues, fire escapes and other excrescences at roof level;
  - (h) details of the integration of cleaning equipment, cradles and their garaging;
  - (i) details of plant and ductwork to serve any of the shop, restaurant and bar use(s) (as set out in Condition 2 of this decision notice);
  - (j) details of signage and other displays;

- (k) details of ventilation and air-conditioning for any of the shop, restaurant and bar use(s) (as set out in Condition 2 of this decision notice);
- (l) details of all ground level surfaces including materials to be used;
- (m) details of the re-instatement of the Baltic Exchange memorial;
- (n) details of external surfaces within the site boundary including hard and soft landscaping;
- (o) details of the arrangements for the provision of refuse storage and collection facilities within the curtilage of the site to serve each part of the development.

REASON: To ensure that the LPA may be satisfied with the detail of the proposed development and to ensure a satisfactory external appearance in accordance with LP policies: DM3.2, DM10.1, DM10.5, DM12.2.

- 27 Prior to the commencement of any works on site, details shall be submitted to and approved in writing by the LPA showing the means of protection of any trees including their root system and the approved details shall be implemented prior to and during the course of the building works as appropriate.

REASON: To ensure the protection of the adjacent trees in accordance with LP policies: DM10.4, DM19.2. These details are required prior to commencement in order that any changes to satisfy this condition are incorporated before the design is too advanced to make changes.

- 28 Prior to implementation, a BREEAM pre-assessment demonstrating that a target rating of 'Outstanding' can be achieved shall be submitted to and approved by the LPA.

REASON: To demonstrate that carbon emissions have been minimised and that the development is sustainable in accordance with LP policies: CS15, DM15.1, DM15.2

- 29 Prior to implementation, a report demonstrating that the entire development is able to achieve an urban greening factor of at least 0.31 shall be submitted to and approved by the LPA.

REASON: To demonstrate that carbon emissions have been minimised and that the development is sustainable in accordance with LP policy: CS15, DM15.1, DM15.2

- 30 All unbuilt surfaces (including podium terraces at level 4) shall be treated in accordance with a landscaping scheme to be submitted to and approved in writing by the LPA before any landscaping works are commenced. This shall include details of the locations and design of short stay cycle parking spaces at ground floor level (as shown in plan A-PT-031-00-01). All hard and soft landscaping works shall be carried out in accordance with the approved details not later than the end of the first planting season following completion of the development. Trees and shrubs which die or are removed, uprooted or destroyed or become in the opinion of the LPA seriously damaged or defective within 5 years of completion of the development shall be replaced with trees and shrubs of similar size and species to those originally approved, or such alternatives as may be agreed in writing by the LPA. All hard and soft landscaping and tree planting shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards (in particular, BS 3882: Specifications for Topsoil, Recommendations (2015) and BS 8545: Trees from Nursery to Independence in the Landscape, Recommendations (2014) or other recognised codes of good practice). The landscaping scheme shall incorporate a maintenance plan which shall be agreed with the LPA. The landscaping shall be carried out in accordance with the approved scheme, details and maintenance plan and be maintained for the life of the building.



REASON: In the interests of visual amenity in accordance with LP policies: DM10.1, DM16.3, DM19.2.

- 31 No part of the building shall be occupied until the details of wind mitigation measures on the rooftop terrace of the Pavilion building and within the St Mary Axe Plaza have been submitted, approved by the LPA and implemented to the satisfaction of the LPA. The said wind mitigation measures shall be retained in place for the life of the building unless otherwise agreed by the LPA.

REASON: In order to ensure public safety and that the proposed development does not have a detrimental impact on the amenities of the area in accordance with LP policies: DM10.1, DM16.1, DM16.2.

- 32 The development shall incorporate such measures as are necessary within the site to resist structural damage arising from an attack with a road vehicle or road vehicle borne explosive device (including deflection measures for the entrance to the vehicle lifts), details of which must be submitted to and approved in writing by the LPA before any construction works thereby affected are begun. The said measures shall be carried out as approved and shall be retained in place for the life of the building unless otherwise agreed in writing by the LPA.

REASON: To ensure that the premises are protected from road vehicle borne damage within the site in accordance with LP policy: DM3.2.

- 33 Before any works thereby affected are begun details of all the entrances at ground floor shall be submitted to and approved by the LPA (after consultation with Transport for London). The approved details shall be implemented prior to the occupation of the building and thereafter retained.

REASON: To ensure that the LPA may be satisfied with the detail of the proposed development and to ensure a satisfactory external appearance in accordance with LP policy DM10.1.

- 34 There shall be no promoted events on the site. A promoted event for this purpose, is an event involving music and dancing where the musical entertainment is provided at any time between 22:00 and 07:00 by a disc jockey or disc jockeys one or some of whom are not employees of the premises licence holder and the event is promoted to the general public.

REASON: To safeguard the amenity of the adjoining premises and the area in general in accordance with LP policies: DM15.7, DM21.3.

- 35 The development hereby permitted shall not be open to customers between the hours of (23:00) on one day and (07:00) on the following day.

REASON: To safeguard the amenity of the adjoining premises and the area generally in accordance with LP policies: DM15.7, DM21.3.

- 36 Self-closing mechanisms must be fitted on the doors of all the retail units at ground floor level before the retail uses commence and shall be retained for the life of the premises. The doors must not be left open except in an emergency or for maintenance purposes.

REASON: To safeguard the amenity of the adjoining premises and the area generally in accordance with LP policies: DM15.7, DM21.3.

- 37 The rooftop terraces on the Pavilion building hereby permitted shall not be used or accessed between the hours of 22:00 on one day and 07:00 on the following day other than in the case of emergency.

REASON: To safeguard the amenity of the adjoining premises and the area generally in accordance with LP policies: DM15.7, DM21.3.

- 38 No amplified or other music shall be played on the roof terrace.

REASON: To safeguard the amenity of the adjoining premises and the area generally in accordance with LP policies: DM15.7, DM21.3.

- 39 No live or recorded music (including public address (PA) systems) shall be played such that it can be heard outside the development site unless prior approval is given by the LPA.

REASON: To safeguard the amenity of the adjoining premises and the area generally in accordance with LP policies: DM15.7, DM21.3.

- 40 Extraction and ventilation

- (a) Before any works thereby affected are begun, a scheme shall be submitted to and approved in writing by the LPA which specifies the fume extraction arrangements, materials and construction methods to be used to avoid noise and/or odour penetration from the shop, restaurant and bar use(s) hereby approved, and as set out in Condition 2 of this decision notice (should cooking be proposed).
- (b) No cooking shall take place within any of the shop, restaurant and bar use(s) floorspace hereby approved, and as set out in Condition 2 of this decision notice, until fume extraction arrangements and ventilation have been installed to serve that unit in accordance with a scheme approved by the LPA. The development shall be carried out in accordance with the approved details and retained thereafter.

REASON: In order to protect the amenity of the area in accordance with LP policies: DM15.6, DM15.7, DM21.3.

- 41 Before any works thereby affected are begun, a scheme in the form of an acoustic report compiled by a qualified specialist shall be submitted to and approved in writing by the LPA specifying the materials and constructional methods to be used demonstrating that there is adequate sound proofing to both airborne and structure borne noise transmission between the visitor attraction; the shop, restaurant and bar use(s) hereby approved (and as set out in Condition 2 of this decision notice); and the education and community space at Level 3. The development pursuant to this permission shall be carried out in accordance with the approved scheme and so maintained and retained thereafter.

REASON: To protect the amenities of the education and community floor in the building in accordance with LP policy: DM15.7.

- 42 Details of the acoustic properties of the loading bay door shall be submitted to and approved by the LPA before any works thereby affected are begun and shall be carried out in accordance with the approved details and shall be maintained and retained for the life of the building.

REASON: To minimise disruption to nearby occupiers in accordance with LP policies: DM10.1 and DM21.3.

- 43 Before the shell and core is complete, details of a Lifetime Maintenance Plan for the SuDS system shall be submitted to and approved in writing by the LPA in conjunction with the Lead Local Flood Authority and all development pursuant to this permission shall be carried out in accordance with the approved details, to include:
- a. A full description of how the system would work, its aims and objectives and the flow control arrangements;
  - b. A Maintenance Inspection Checklist/Log;
  - c. A Maintenance Schedule of Work itemising the tasks to be undertaken, such as the frequency required, and the costs incurred to maintain the system.

REASON: To improve sustainability, reduce flood risk and reduce water runoff rates in accordance with LP policies: DM18.1, DM18.2 and DM18.3.

- 44 A post construction BREEAM assessment demonstrating that a target rating of 'Outstanding' has been achieved shall be submitted to the LPA as soon as practicable after practical completion. The details submitted in the BREEAM assessment shall thereafter be retained.

REASON: To demonstrate that carbon emissions have been minimised and that the development is sustainable in accordance with LP policies: CS15, DM15.1, DM15.2.

- 45 Prior to occupation of the development, evidence must be submitted to and approved by the LPA to demonstrate that the entire development has achieved an urban greening factor average of at least 0.31 and the measures set out in that evidence for achieving a factor of at least 0.31 shall thereafter be retained.

REASON: To demonstrate that carbon emissions have been minimised and that the development is sustainable in accordance with LP policies: CS15, DM15.1, DM15.2.

- 46 A detailed facade maintenance plan shall be submitted to and approved in writing by the LPA after consultation with the Local Highway Authority prior to the occupation of the building hereby permitted. The development shall be carried out in accordance with the approved details and maintenance shall be carried out in accordance with the approved maintenance plan for the lifetime of the building.

REASON: To ensure that the LPA may be satisfied with the detail of the development to ensure that there is no obstruction on the streets and in the interests of public safety in accordance with LP policy: CS16

- 47 Prior to implementation, a plan showing that the development has been designed to allow for the retro-fit of heat exchanger rooms to connect into a district heating network (if this becomes available during the lifetime of the development), shall be submitted to and approved by the LPA. As soon as practicable after a connection becomes available, it shall be implemented in accordance with the approved plan (or any variation as approved by the LPA), unless it can be demonstrated that the heating system then operational is more sustainable than would result from the district heating network.

REASON: To minimise carbon emissions by enabling the building to be connected to a district heating and cooling network if one becomes available during the life of the building in accordance with LP policies: DM15.1, DM15.2, DM15.3, DM15.3, DM15.4.

- 48 Details of the position and size of both green walls (on the Pavilion building and the north east of the site on the flank of the exposed wall) and the green roof on the Pavilion building, the type of planting and the contribution to biodiversity and rainwater

attenuation shall be submitted to and approved in writing by the LPA prior to any work to the green walls and roofs are begun. The development shall be carried out in accordance with those approved details and retained as approved for the life of the development unless otherwise approved by the LPA.

REASON: To assist the environmental sustainability of the development and provide a habitat that will encourage biodiversity in accordance with LP policies: DM18.2, DM19.2.

- 49 Details of the construction, planting irrigation and maintenance regime for the proposed green wall(s)/roof(s) shall be submitted to and approved in writing by the LPA prior to any work to the green walls and roofs are begun. The development shall be carried out in accordance with those approved details and maintained as approved for the life of the development unless otherwise approved by the LPA.

REASON: To assist the environmental sustainability of the development and provide a habitat that will encourage biodiversity in accordance with LP policies: DM18.2, DM19.2.

- 50 No more than 81 motor vehicles (not including motorcycles) shall be permitted access to the servicing area per day within the building which shall apply for the life of the building (for both the *Gherkin* and the *Tulip* combined).

REASON: To protect the amenities of neighbouring residential and commercial occupiers in accordance with LP policies: DM21.3, DM21.5.

- 51 No Servicing vehicles are permitted into/ out of the development site between the hours 0700-1000 hours, 1200-1400 hours and between 1600-1900 hours on Mondays to Fridays (including bank holidays and public holidays). Servicing includes the loading and unloading of goods from vehicles and putting rubbish outside the building. This shall apply for the life of the building.

REASON: To avoid obstruction of the surrounding streets and to safeguard the amenity of the occupiers of adjacent premises, in accordance with LP policies: DM15.7, DM16.2, DM21.3.

- 52 The refuse collection and storage facilities shown on the drawings hereby approved shall be provided, retained and maintained throughout the life of the building for the use of all the occupiers.

REASON: To ensure the satisfactory servicing of the building in accordance with LP policy: DM17.1.

- 53 A clear unobstructed minimum headroom of 5m must be maintained for the life of the building in the refuse skip collection area as shown on the approved drawings and a clear unobstructed minimum headroom of 4.75m must be provided and maintained over the remaining areas and access ways.

REASON: To ensure that satisfactory servicing facilities are provided and maintained in accordance with LP policy: DM16.5.

- 54 At all times when not being used for cleaning or maintenance the window cleaning gantries, cradles and other similar equipment shall be garaged within the enclosure(s) shown on the approved drawings.

REASON: To ensure a satisfactory external appearance in accordance with LP policy: DM10.1.

55 The loading and unloading areas must remain ancillary to the use of the building and shall be available at all times for that purpose for its occupiers and its visitors.

REASON: To ensure that satisfactory servicing is maintained in accordance with LP policy: DM16.5.

56 Goods, including fuel, delivered or collected by vehicles arriving at or departing from the building shall not be accepted or dispatched unless the vehicles are unloaded or loaded within the curtilage of the building.

REASON: To avoid obstruction of the surrounding streets and to safeguard the amenity of the occupiers of adjacent premises, in accordance with LP policies: DM16.1, DM16.5, DM21.3.

57 A level clear standing area shall be provided and maintained entirely within the curtilage of the site at street level in front of any vehicle lift sufficient to accommodate the largest size of vehicle able to use the lift cage.

REASON: To prevent waiting vehicles obstructing the public highway in accordance with LP policy: DM16.5.

58 2 car parking spaces suitable for use by people with disabilities shall be provided on the development site in accordance with the drawings hereby approved and shall be retained throughout the life of the building and be readily available for use by disabled occupiers and visitors without charge to the individual end users of the parking.

REASON: To ensure provision of suitable parking for people with disabilities in accordance with LP policy: DM16.5.

59 Provision shall be made for disabled people to obtain access to the visitor attraction, rooftop terrace, the pocket park and to each retail unit via their respective principal entrances without the need to negotiate steps and shall be maintained and retained for the life of the building.

REASON: To ensure that disabled people are able to use the building in accordance with LP policy: DM10.8.

60 The pass door shown adjacent to or near to the entrances on the drawings hereby approved shall remain unlocked and available for use at all times when the adjacent revolving doors are unlocked.

REASON: In order to ensure that people with mobility disabilities are not discriminated against and to comply with LP policy: DM10.8.

61 (a) The total minimum quantum of cycle parking across the development shall not be less than the figures specified in the table below:

Location	Short Stay	Long Stay	Total
Pavilion Building (Velominck Cycle Parking System)	63	221	284
Shared Basement	0	114	114
St Mary Axe Plaza	64	0	64
TOTAL	127	335	462



- (b) The 114 (minimum) long-stay parking spaces within the Shared Basement and a minimum of 200 long-stay parking spaces within the Pavilion Building shall be allocated for the use of the Gherkin (314 spaces minimum)
- (c) The remainder of the cycle parking spaces shall be allocated for the use of the Tulip (148 spaces minimum)
- (d) A minimum of 12 long stay cycle spaces and their accesses shall be designed to be large enough to accommodate adapted cycles.

The cycle parking provided on the site must remain ancillary to the use of the Tulip and the Gherkin building and must be available at all times throughout the life of the building for the sole use of the occupiers thereof and their visitors without charge to the individual end users of the parking.

REASON: To ensure provision is made for cycle parking and that the cycle parking remains ancillary to the use of the building and to assist in reducing demand for public cycle parking in accordance with LP policy: DM16.3.

- 62 Unless otherwise approved in writing by the LPA, changing facilities and showers, including no less than 40 showers and 398 lockers, shall be provided in accordance with the drawings hereby approved and retained throughout the life of the building for the use of occupiers of the building.

REASON: To make travel by bicycle more convenient in order to encourage greater use of bicycles by commuters in accordance with LP policy: DM16.4.

- 63 Submission of details of a Fire and Emergency Escape Strategy for all building users (including people with disabilities) with details of the means of escape (including the Gondolas), areas of refuge and fire evacuation lifts and stairs shall be submitted to and approved in writing by the LPA (after consultation with the London Fire Brigade, Building Control Health and Safety Team) prior to first occupation of the building and the strategy shall remain in place thereafter. The development shall be carried out in accordance with the approved Fire and Emergency Escape Strategy details.

REASON: In the interests of the safety of occupants of the buildings in the event of a fire or emergency in accordance with LP policy CS3.

- 64 The generator(s) shall be used solely on brief intermittent and exceptional occasions when required in response to a life threatening emergency or an event requiring critical operational use and for the testing necessary to meet those purposes and shall not be used at any other time. At all times the generator(s) shall be operated to minimise its noise impacts and emissions of air pollutants and a log of its use shall be maintained and be available for inspection by the LPA.

REASON: To ensure that the generator(s), which does not meet City of London noise standards, and would have a negative impact on local air quality, is used only in response to a life threatening emergency or exceptional business continuity situation in accordance with LP policies: DM15.6, DM15.7, DM21.3.

- 65 Development shall not be commenced until Impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by, the LPA (after consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point. The development shall be carried out in accordance with the approved details.

REASON: To ensure that the water supply infrastructure has sufficient capacity to cope with the/this additional demand in accordance with LP policy: DM18.1, DM18.2 and DM18.3.

- 66 Unless otherwise approved by the LPA no part of the Tulip or Pavilion Building shall be used for the purposes of any advertisement (other than advertisements requiring express consent provided that such express consent has been granted).

REASON: To ensure the development is not used for general advertising purposes whilst allowing appropriate signage of the attraction itself in order to ensure that there is a satisfactory external appearance in accordance with LP policies: DM10.1, DM10.5.

- 67 The development shall not be implemented until an Illumination Strategy for the internal and external lighting of the Tulip (including aviation lights) and the Pavilion Building has been submitted to and approved by the LPA and shall be maintained throughout the life of the building. The development shall be carried out in accordance with the approved Illumination Strategy details.

REASON: To ensure a satisfactory external appearance and minimise disruption to nearby occupiers in accordance with LP policies: DM10.1, DM15.7.

- 68 Notwithstanding the details shown on plan A-PT-031-00-01, A-PV-039-XX-01, before any works hereby permitted are begun additional details and information in respect of the following shall be submitted to and approved in writing by the LPA (after consultation with Transport for London) and all development pursuant to this permission shall be carried out in accordance with the approved details:

- a) Details of the access / egress to the basement servicing area including surfacing materials;
- b) Details of road markings; visibility splays; and landscape features.

REASON: To avoid obstruction of the surrounding streets and to safeguard the amenity of the occupiers of adjacent premises, in accordance with LP policies: DM15.7, DM16.2, DM21.3.

- 69 The areas shown on the approved drawings as restaurant and shop uses, and as set out in Condition 2 of this decision notice, shall be used for those purposes only and for no other purpose (including any other purpose in Class E) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020).

REASON: To safeguard the retail uses in order to ensure that public access is provided to these parts of the premises such that these elements of the public benefits within the development are secured for the life of the development.

- 70 The development shall not be carried out other than in accordance with the following approved drawings and particulars or as approved under conditions of this planning permission:

A-000-XX-01 Rev 01, A-000-XX-11 Rev 05, A-000-XX-21 Rev 01, A-LO-011-EX-01 Rev 01 A-SL-011-EX-01 Rev 01, A-SL-011-EX-02 Rev 01, A-EXB1-010-XX-01 Rev 01, A-EXB1-010-XX-02 Rev 01, A-SL-011-XX-01 Rev 01, A-SL-014-EX-01 Rev 01, A-SL-014-EX-02 Rev 01,	A-SL-014-02-01 Rev 01, A-SL-014-03-01 Rev 01, A-SL-014-04-01 Rev 01, A-PT-031-00-01 Rev 02, A-PT-031-BM-01 Rev 01, A-PT-031-B1-01 Rev 02, A-PT-031-01-01 Rev 01, A-PT-031-02-01 Rev 01, A-PT-031-03-01 Rev 03, A-PT-031-05-01 Rev 01, A-PT-031-06-01 Rev 01,	A-PT-031-RF-01 Rev 01, A-PT-031-04-01 Rev 01, A-PV-039-XX-01Rev 03, A-PT-053-01-01 Rev 01, A-PT-053-02-01 Rev 01, A-PT-059-XX-01 Rev 01, A-PT-064-01-01 Rev 02, A-PT-064-02-01 Rev 02, A-PT-064-03-01 Rev 01, A-PT-064-04-01 Rev 01, A-PT-194-XX-01 Rev 01,
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A-SL-014-XX-01 Rev 01, A-EXSL-014-03-01 Rev 01, A-EXSL-014-01-01 Rev 01, A-EXSL-014-02-01 Rev 01, A-EXSL-014-04-01 Rev 01, A-SL-014-01-01 Rev 01,	A-PT-031-07-01 Rev 01, A-PT-031-08-01 Rev 01, A-PT-031-09-01 Rev 01, A-PT-031-10-01 Rev 01, A-PT-031-11-01 Rev 01, A-PT-031-12-01 Rev 01,	A-PT-199-01-01 Rev 01, A-PT-199-02-01 Rev 01, A-PT-199-03-01 Rev 01, A-PT-199-04-01 Rev 01, A-PT-199-05-01 Rev 01, A-PV-199-01-01 Rev 01.
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REASON: To ensure that the development of this site is in compliance with details and particulars which have been approved by the LPA.

Ends



# Department for Levelling Up, Housing & Communities

[www.gov.uk/dluhc](http://www.gov.uk/dluhc)

## 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.