

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY STARBONES LTD

LAND AT CHISWICK ROUNDABOUT, GREAT WEST ROAD, CHISWICK, LONDON W4

APP/F5540/W/17/3180962 & APP/F5540/Z/17/3173208

**OPENING SPEECH ON BEHALF OF
THE ROYAL BOTANIC GARDENS KEW**

Introduction

1. The Royal Botanic Gardens, Kew (“Kew Gardens”) is, as you will know, a world renowned botanical garden and scientific institute established in 1759. It houses a historically and scientifically significant collection of living and preserved plants and fungi¹. Moreover, and of direct relevance to the issues on this appeal, it is also the site of a designed landscape of international significance with contributions by most of the major landscape designers of the eighteenth century including Charles Bridgeman, William Kent and Lancelot “Capability” Brown. This landscape was redesigned in the nineteenth century by William Hooker, William A Nesfield and Decimus Burton to create the most famous example of a Victorian botanic garden.
2. Kew Gardens is also the site of an important collection of buildings of all periods of English architecture from the sixteenth century onwards, including: Kew Palace, important surviving garden buildings from the eighteenth century, and the most significant collection of glasshouses worldwide including the Orangery, the Palm House and the very recently restored and re-opened Temperate House².
3. Kew Gardens is overlain by and contains a number of heritage designations of “*the highest significance*”³ including:
 - i. A World Heritage Site;
 - ii. A Grade I Registered Historic Park and Gardens;

¹ Kew Gardens contains the most diverse collection of plant species of any botanic garden in the world.

² This has recently undergone a £42million restoration and was re-opened by Sir David Attenborough in May.

³ See para 132 of the NPPE, CDC.01

- iii. 2 Conservation Areas;
 - iv. 46 Individual listed buildings and structures, including 6 Grade I Listed Buildings and 5 Grade II* Listed Buildings; and
 - v. 1 Ancient Scheduled Monument.
4. The modern experience of Kew Gardens by the visitor, is of a safe haven in this busy city; a place to escape and walk alone or to spend time with family and friends. This reflects historic design intents to separate Kew Gardens from the wider world. The high walls and decorative gateways that puncture the walls, and the enclosing nature of the trees all contribute to this feeling of retreat and escape into a world apart. This sense of being a ‘world apart’ is rooted in Kew Gardens historic design ethos and purpose⁴.
5. However, there are existing features that break into the skyline outside the garden’s boundaries and are (regrettably) highly noticeable. These infringe on the experience of immersion in the verdant landscape of Kew Gardens and impact (adversely) the ability to understand and experience its design intent. These features are all tall buildings north of the River and which are almost universally recognised as having a very negative impact on the heritage designations that overlay Kew Gardens. Chief among these are the six Haverfield Towers on the Haverfield Estate; the 16-storey building on the former Thames Water site on Kew Bridge Road⁵ and the so-called Kew Eye (for which read “Kew eye-sore”⁶)⁷.
6. The 2002/2003 inscription review mission for Kew Gardens – part of the process leading to its inscription as a World Heritage Site – and undertaken by the International Council on Monuments and Sites (“ICOMOS”⁸) noted the negative impact of tall buildings

⁴ See Mr Croft’s proof at para 5.6.4.

⁵ Very close to the Haverfield Estate. Application ref 00657/B/P15. Kew Gardens objected vigorously to this during the spring and summer of 2002, citing concerns about jeopardising the World Heritage Site nomination, then in progress. In the ICOMOS site evaluation (as to which see further below, CDF.19, at p 109 2nd column) there is reference to the adverse effect of this 16-storey development which had by then been granted permission.

⁶ Also known as the Wallace house development. The adverse impact of this tall building approved in 2005 and at that time under construction was noted in the World Heritage Centre’s 2014 Periodic Report (see Mr Croft’s App F, p 11). It was strongly objected to by Kew Gardens at the time.

⁷ The negative impact these tall buildings have in terms of breaking the skyline is plain to see on a visit to Kew Gardens, and see also Mr Croft’s proof App. D: photos 1 – 4, 6 – 16 and 18 and 19 – 20.

⁸ See Mr Croft’s proof at para. 3.3.5 for the role of ICOMOS; it acts as adviser to the World Heritage Committee and World Heritage Centre – as to which see below.

stating that “[t]he ICOMOS mission took the view that the overall aspect of six 22-storey tower blocks (Haverfield estate) at Brentford on the opposite bank of the Thames, opposite the gardens and outside the buffer zone, seriously diminished the visual experience at Kew at several points in the gardens.”⁹

7. The current World Heritage Management Plan for Kew Gardens (2014) (CDF10), is an important material consideration on this appeal¹⁰, and it refers to the Haverfield Towers¹¹ as having “diminished the visual experience at Kew at several points in the Gardens” before noting that “[c]urrent development proposals for Brentford raise additional concern for future intrusion within the visual envelope of the WHS”¹². Moreover, it states that the Haverfield Towers “have a detrimental effect on the skyline due to their visibility throughout most of the Gardens”¹³ and that “[t]hese buildings increase pressure for further tall buildings in their vicinity”¹⁴.
8. So there is no question but that the World Heritage Site has already been significantly adversely affected by external development in the form of tall buildings north of the River. The appeal proposal seeks to worsen this situation in two key ways. Firstly, by introducing significant new visual intrusion into areas of the World Heritage Site that currently retain their historically intended enclosed character e.g. the Order Beds, Grass Garden, Rockery, and views from and to Cambridge Cottage. This essentially extends the current impact of external development into new areas of the World Heritage Site, leaving less of the World Heritage Site with its historically intact setting and character. Secondly, it would significantly increase the cumulative impact of current development on the setting of key assets in the World Heritage Site and on important areas of the World Heritage Site. For example, it would intensify the impact of external development on the setting and character of the still open former areas of the Great Lawn, it would

⁹ CDF.19; and note that this also refers to the grant of permission for the former Thames Water site on Kew Bridge Road (see p. 109)

¹⁰ See e.g. the London Plan in Policy 7.10 which refers to weight being given to implementing the provisions of a Management Plan. And see also the PPG, CDC.02 at para. 35 referring to Management Plans as important material considerations. And see also the Mayor’s London’s World Heritage Sites – Guidance on Settings SPG, 2012, CDC.11.

¹¹ Para. 3.6.3 states “The Haverfield Estate tower blocks are also visible from the Broadwalk, a key vista, where they punctuate the skyline above the trees in the Riverside Zone and represent an unfortunate “eyesore”.

¹² See para. 3.9.2.

¹³ See para. 8.3.

¹⁴ See para. 5.31 of the Mayor’s London’s World Heritage Sites – Guidance on Settings SPG, 2012, CDC.11 and see Mr Croft’s proof at paras. 3.2.17, 5.8.20 and 8.1.4,

significantly increase the impact of development on the setting of the Orangery and would also worsen the impact of development on the setting of both Kew Palace and the Palm House¹⁵.

9. Kew Gardens is a non-departmental public body sponsored by DEFRA and is a registered charity whose Trustees are appointed by the Government. It must be said that the decision to seek rule 6 status and oppose the appeal scheme at this inquiry was not lightly taken given the costs and resources involved. Kew Gardens, through an external consultant, looks at all planning applications coming in each week in six wards in the LB of Hounslow and two in the LB of Richmond. This is several dozen applications a week. It has done this monitoring for many years. But it only objects to a very small percentage of the applications made in these wards. It only objects when its interests are adversely affected, as is the case here. It almost goes without saying that it really is a wholly exceptional course for Kew Gardens to have sought rule 6 status and to be appearing at a planning appeal as it is doing here. It has done so because of genuine concern as to the harm that will result if the appeal is allowed. Kew Gardens' case is that the appeal proposal is *"a tipping-point beyond which further development would result in substantial harm to the OUV, authenticity and integrity of the World Heritage Site"*¹⁶.

10. There are a number of other developments which are in the pipe-line north of the River. And a number of these are referred to by the Appellant in its evidence¹⁷. These, if granted, will only further add to the adverse effects already being caused by external development and to which this appeal seeks to make a particularly significant addition. It seems to be the Appellant's case that the regeneration of Brentford and in particular along the Great West Road mean change is coming to the skyline of this part of West London, and that this inevitably means increased visibility of tall buildings from Kew Gardens¹⁸. This is refuted, and is a matter that will need to be explored further in the evidence.

¹⁵ See Mr Croft's proof at paras. 5.8.11 - 5.8.13.

¹⁶ See para. 5.31 of the Mayor's London's World Heritage Sites - Guidance on Settings SPG, 2012, CDC.11

¹⁷ See e.g. Mr Goddard's proof at section 9.

¹⁸ See Mr Goddard's proof which is quite stark in this regard.

11. The Secretary of State for Housing, Communities & Local Government was thus plainly right to recover this appeal. The appeal raises issues about the international obligations that fall on the UK Government to protect Kew Gardens, and which obligations include the management of change outside of Kew Gardens that may affect its Outstanding Universal Value¹⁹. The refusal of planning permission has been very recently supported by the UNESCO World Heritage Centre in Paris, which Centre supports the World Heritage Committee²⁰. The refusal has also been strongly supported by a technical review undertaken by ICOMOS²¹.
12. Kew Gardens draws resolve not just from the support for refusal of the appeal proposal by these important international bodies, but also from the strong opposition to this appeal from others²² including: Historic England²³, the LB of Hounslow²⁴, the LB of Richmond²⁵ and Historic Royal Palaces. Moreover, Kew Gardens opposition to the appeal has been discussed and endorsed by the World Heritage Site Steering Group²⁶.
13. The appeal thus raises important issues; in particular as to impact on the World Heritage status of Kew Gardens as a result of development, and particularly the development of tall buildings, north of the River. This is, of course, an issue that the LB of Hounslow is seeking to address through its draft Brentford East Planning and Design SPD (October 2017, CDD.05) and which would limit the height of buildings east of the Great West Corridor, including on the Appeal Site, in order to seek to avoid impact on, inter alia,

¹⁹ See Mr Croft's proof at para. 3.2.1

²⁰ Established by Article 8 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972). The Committee is responsible for the establishment and management of a list of places that are considered to be of outstanding universal value, called the World Heritage List. The committee also maintains the "World Heritage in Danger" list. See for its views in this case RBG/3..

²¹ See RBG/3a.

²² See Mr Croft's proof at para. 2.2.6.

²³ Which is, of course, the Government's statutory advisor on the historic environment. Its objections are partly based on the impacts on Kew Gardens. As a statutory consultee its views should be given considerable weight and only departed from for good reason: see e.g. *R (East Meon Forge and Cricket Ground Protection Association) v East Hampshire District Council* [2014] EWHC 3543 (Admin), paras. 108 – 109.

²⁴ Reason for Refusal 1 records that the appeal proposal "*would cause harm ... to a range of designated heritage assets including Royal Botanic Gardens Kew World Heritage Site ... listed buildings of all grades ... and conservation areas through harm to their settings.*"

²⁵ The local planning authority in which Kew Gardens is located.

²⁶ See section 7 of Mr Williams' proof, and his App. 4.

Kew Gardens. This draft SPD has been supported by Kew Gardens²⁷. The Brentford East Capacity Study Final Report (CDD.06, July 2017) thus records²⁸:

“Given the world importance of The Royal Botanic Gardens, it is unacceptable that tall or over-scaled developments should continue to invade the setting through a process of accretion following “one off” decisions. This process could result ultimately in the marked degradation of this World Heritage Site. A strategic judgement, informed by a robust Brentford East Framework Study, would assist in an effective consideration of future proposed developments. The setting of the World Heritage Site demands that proposed change must be viewed in a broader and more holistic manner.”

The importance of the World Heritage Site status of Kew Gardens, and its wider heritage significance

14. It is necessary at the outset to say something about the fact that Kew Gardens has been inscribed on the list of World Heritage Sites. The World Heritage Site designation is the most significant²⁹, and rarest³⁰, heritage designation there is. Thus, as is explained in the Planning Practice Guidance (“PPG”)³¹, World Heritage Sites have a “*significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity*”³². The World Heritage Site status is, it is submitted, the key material consideration³³ on this appeal. The inscription of Kew Gardens as a World Heritage Site places international obligations on the UK Government to protect it; which obligations are given effect to through the planning system³⁴.
15. World Heritage Sites are recognised internationally for their “Outstanding Universal Value” or “OUV” and this forms part of their significance³⁵ and must be taken into account in planning decision-making. Furthermore, the setting of a World Heritage Site

²⁷ But is objected to by the Appellant.

²⁸ See p. 86.

²⁹ See in this regard para. 182 of the draft revised NPPF.

³⁰ There are only 18 cultural heritage sites in England, and just 4 in London.

³¹ See para 28, p. 25 CDC.02.

³² The UNESCO Operational Guidelines for the Implementation of the World Heritage Convention state at para. 4 (see Mr Croft’s proof at para. 3.4.3) “*The cultural and natural heritage is among the priceless and irreplaceable assets, not only of each nation, but of humanity as a whole. The loss, through deterioration or disappearance, of any of these most prized assets constitutes an impoverishment of the heritage of all the peoples of the world. Parts of that heritage, because of their exceptional qualities, can be considered to be of “Outstanding Universal Value” and as such worthy of special protection against the dangers which increasingly threaten them*” (emphasis added).

³³ See para 8C.1 of the TVIA, CDA.11.

³⁴ See the PPG para 26, p 25 CDC.02 “*England protects its World Heritage Sites and their settings, including any buffer zones or equivalent, through the statutory designation process and through the planning system*”

³⁵ See Mr Coleman’s proof at para. 5.4 and the draft revised NPPF, to which he refers, at para. 182.

is recognised as something that contributes fundamentally to the appreciation of a World Heritage Site's Outstanding Universal Value³⁶.

16. Each of the London World Heritage Sites, there are only four including Kew Gardens, is made up of many separate heritage assets, most or all of which contribute to the attributes that make up the World Heritage Site's OUV. It is important to note that "[w]hile the settings of individual assets within the World Heritage Site may overlap or nest with each other; the World Heritage Site itself has a wider setting of its own"³⁷.

17. The setting of Kew Gardens World Heritage Site, and which contributes to its Outstanding Universal Value, is not limited to its buffer zone. This is clear from the documentation before this inquiry, including the Management Plan³⁸.

18. There has in some of the Appellant's documentation been an attempt to suggest that OUV of Kew Gardens is "*invested more prominently in the value of its horticulture and its tree collections, rather than its designed layout, which has been compromised*"³⁹. That this is not so is borne out by even the most cursory of reads of the 2010 Statement of OUV for Kew Gardens⁴⁰. This records that the criteria under which Kew Gardens was inscribed included:

"Criterion (ii): Since the 18th century, the Botanic Gardens of Kew have been closely associated with scientific and economic exchanges established throughout the world in the field of botany, and this is reflected in the richness of its collections. The landscape and architectural features of the Gardens reflect considerable artistic influences both with regard to the European continent and to more distant regions;

...

Criterion (iv): The landscape gardens and the edifices created by celebrated artists such as Charles Bridgeman, William Kent, Lancelot 'Capability' Brown and William Chambers reflect the beginning of movements which were to have international influence"

³⁶ See the Mayor's SPG at CDC.11 para 1.3

³⁷ Ibid. para. 4.2.

³⁸ CDF.10.

³⁹ See the TVIA Addendum, CDC.15, para 2.33.

⁴⁰ See CGF.17, and as the PPG advises a para 29, CDC.02 "[a] Statement of Outstanding Universal Value is agreed and adopted by the World Heritage Committee for each Site on inscription. The Statement sets out what the World Heritage Committee considers to be of Outstanding Universal Value about the Site in relation to the World Heritage Convention and includes statements of integrity and, in relation to cultural sites or the cultural aspects of 'mixed' Sites, authenticity, and the requirements for protection and management. Statements of Outstanding Universal Value are key reference documents for the protection and management of each Site and can only be amended or altered by the World Heritage Committee."

19. The Statement in these paragraphs, and indeed elsewhere, places very considerable emphasis on the historic designed landscape that underpins and differentiates Kew from other Botanic Gardens across the world⁴¹. Moreover, the Statement expressly recognises that “[d]evelopment outside this Buffer Zone may threaten the setting of the property”.
20. The Management Plan further makes these points with numerous references to the importance of the setting of Kew Gardens, and the adverse impact on this from existing tall development and from threatened future developments.
21. Finally, in this regard, very much as one would expect there are numerous policies contained in the London Plan⁴², the Mayor’s London’s World Heritage Sites – Guidance on Settings SPG⁴³ and the Development Plans for both the LB of Hounslow and the LB of Richmond which seek to avoid adverse impacts on Kew Gardens as a World Heritage Site.

The harm the appeal proposal would cause

22. Kew Gardens object to the height and bulk of the appeal proposal and which mean it will be visible from a number of locations within the World Heritage Site, something that will, it says, have a consequent effect on its attributes of Outstanding Universal Value. The proposal would be so obvious from Kew Gardens that there is certain to be a detrimental impact to its setting and landscape attributes.
23. There can be no dispute that the significance of a heritage asset can be harmed, and indeed substantially harmed, by development in its setting⁴⁴. It is Kew Gardens’ case that the harm to the significance of the World Heritage Site is, cumulatively, substantial harm. Given that there is substantial harm to the World Heritage Site policy dictates that planning permission should be refused unless there are wholly exceptional circumstances.

⁴¹ Thus it says “Set amongst a series of parks and estates along the River Thames’ south-western reaches, this historic landscape garden includes work by internationally renowned landscape architects Bridgeman, Kent, Chambers, Capability Brown and Nesfield illustrating significant periods in garden design from the 18th to the 20th centuries” and “The landscape design of Kew Botanic Gardens, their buildings and plant collections combine to form a unique testimony to developments in garden art and botanical science that were subsequently diffused around the world”.

⁴² CDC.04, see especially Policy 7.10.

⁴³ CDC.11

⁴⁴ After all the NPPF says this in terms, see para 3.2.6.

24. In addition to the substantial harm to the setting of the World Heritage Site that the development would⁴⁵ give rise to there would also be harm to varying degrees to the setting and significance of the following designated heritage assets within Kew Gardens:
- i. The Orangery – Grade I listed building;
 - ii. Kew Palace – Grade I listed building and ancient scheduled monument;
 - iii. Palm House – Grade I Listed building
 - iv. Temple of Aeolus – Grade II listed building;
 - v. Cambridge Cottage – Grade II listed building.
25. The harm to these individual designated heritage assets varies from borderline substantial harm to less than substantial harm. There is a particular concern on the impact on the setting of the Grade I listed Orangery in particular in views over the open lawns in the Entrance Zone. These reflect, and respect, the historic “Great Lawn”⁴⁶. The NPPF makes clear that “*any harm*” to the significance of heritage assets requires “*clear and convincing justification*”. Kew Gardens has seen no such justification in the Appellant’s evidence; and the Appellant, of course, refuses to accept that there is even any harm to consider. It is a case of see no evil.
26. It is important to recall at the outset that in considering the impact of the appeal proposal on the significance of a designated heritage asset, great weight should be given to the asset’s conservation, irrespective of the degree of potential harm to its significance. But, of course, the more important the asset, the greater the weight should be⁴⁷. Here the weight to be given to any harm caused must be very great indeed as the assets affected are of the highest significance.
27. There is also a real concern that if the appeal proposal is consented notwithstanding the harm that this would cause to the World Heritage Site, and in the face of the strongest possible opposition from the World Heritage Committee, this may result in the Committee placing Kew Gardens on the In-Danger list, as they did at Liverpool in 2012.

⁴⁵ In cumulation with other existing development.

⁴⁶ See Mr Croft’s proof at para. 5.57, and see the Management Plan at para 3.5.3 and which refers to the Entrance Zone being “*characterised by a large, open area of grass, marking the site of the 40 acre Great Lawn which formerly lay in front of the White House*”.

⁴⁷ See para. 132 of the NPPF.

This would be as a result of the threat posed by the appeal proposal to its Outstanding Universal Value, in combination with other existing harmful tall buildings and the significant risk that the appeal proposal would encourage further similar developments in the setting.

28. The Appellant's case that there would be only limited views of the appeal proposals from within Kew Gardens and that any and all such views would be beneficial, because of the design quality of what is proposed, will need to be explored in the evidence. Suffice is to say for now that Kew Gardens position is that this is not a justifiable position, and it is one that fails properly, or at all, to understand the attributes of Outstanding Universal Value of the World Heritage Site and the importance of its setting to this. There really can be no sensible dispute that the appeal proposal will be highly visible from a number of locations within Kew Gardens. The Appellant's position on this is perhaps most starkly stated thus "*[o]ur position goes further in that the scheme is of such a high quality that it will be a delightful feature wherever it is viewed from.*⁴⁸" This is not accepted. But however good or bad are the other aspects of design, it is the height, mass and bulk of the appeal proposal and its strong visual presence that is an issue for the setting and significance of the World Heritage Site. Even if one accepted all the hyperbole from the Appellant about the quality of the design, it must be the case that a building which is sculpturally beautiful or of very great intrinsic design quality might still be harmful because, for example, it is in the wrong place.

Conclusions

29. The protection of the World Heritage Site, in international law, is the responsibility of the UK Government. That responsibility lies squarely with the Secretary of State in determining this appeal. This is an obligation that, as already stated, applies to the management of change outside of a World Heritage Site that affects its Outstanding Universal Value. This appeal proposal is a real threat to the World Heritage Site.
30. Today when visiting Kew Gardens one is struck by the jarring and highly detrimental impact that views of existing tall buildings have. This reaction to existing tall buildings such as the Haverfield Towers and the Kew Eye is not as a result of these being poorly designed, although they undoubtedly are, it is as a result of their visibility. It is because

⁴⁸ See CDD.03 para 2.7.

they protrude arbitrarily above the defined tree line within the World Heritage Site and appear on major vistas and key views across and of Kew Gardens. As the Management Plan states the Haverfield Towers “*have a detrimental effect on the skyline due to their visibility*”⁴⁹. Moreover, these buildings add pressure for yet further tall buildings. The reaction to these existing detractors is: how did anyone ever come to grant planning permission for these developments? This inquiry is thus charged with examining whether a further even taller building⁵⁰, that will be highly visible from within Kew Gardens, and thus further damaging to the setting and significance of the World Heritage Site should be allowed. It is Kew Gardens’ case that plainly it should not.

31. Accordingly, it will in due course be submitted that the Secretary of State should refuse this appeal.

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⁴⁹ See para. 8.3 CDF.10.

⁵⁰ It will be the tallest in Hounslow.

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