Chiswick Roundabout Site

CLOSING SUBMISSIONS BY LB HOUNSLOW

1 INTRODUCTION

1.1 At the heart of the case is the need to protect some of the most important and cherished heritage assets in London. A World Heritage Site, nine Conservation Areas, and a large number of listed buildings including some of the most valuable of all which are listed at Grade I. In heritage terms Historic England and the Local planning authority both gave powerful evidence of substantial harm to two very special conservation areas. The world heritage site at Kew also appeared at the Inquiry and gave evidence of substantial harm to Kew Gardens and a risk that this proposal would cause Kew Gardens to have to be put on the in-Danger list as happened at Liverpool.

1.2 Set against this substantial harm to London's important heritage , is the push by this appellant for a single building : a block of flats (with some office space below) which would damage for this and future generations the irreplaceable designated assets of one of the great capital cities of the world.

1.3 Nobody questions that Christophe Egret could have designed a building of acceptable scale mass and height if he had been asked to. However, his hands in this case have been tied : first, by a commercially-driven developer unquestionably driven by the wish to secure as many flats as possible, especially those which would offer expensive views over Kew Gardens and other heritage assets ; and second, by a heritage advice that wrongly only took account of one heritage asset the palm house when designing the height. Even then it was only 1 view of the Palm House. The conservation areas of SOG and Kew Green and their significance [amongst other heritage assets

including numerous grade I listed buildings and RPGs] did not influence decisions on scale, mass, form and height.

1.4 That heritage advice, provided by Richard Coleman, stands alone. It is flatly at odds with the expert assessments of Historic England, UNESCO, ICOMOS, the Royal Botanic Gardens, the Greater London Authority, and the London Borough of Hounslow acting on the advice of Built Heritage Consultancy and Grover Lewis Associates. The Inspector and the Secretary of State are in the welcome position of being able to draw on a wide-range of high level expertise in heritage matters. Richard Coleman, acting for the developer, disagrees with all of them. His is a lone voice.

1.5 LBH welcome and seek a tall building at this location, a building which would mark the eastern gateway to the Golden Mile. The building should provide jobs, and may also provide homes. But it must be a tall building which respects its context, namely a broad swathe of London's heritage environment. That is why the Council are promoting an SPD and Local Plan that seeks to have a gateway building for the M4 but respectful height of 60m[1] for the heritage assets.[2] The Council's approach is a commendable and balanced one which unlike the appellant's considers the range of heritage assets. It will avoid substantial harm to valued and very long standing special conservation areas and avoid the world heritage site being put on the in-danger list. The real choice here is between the balanced and sensible approach of the council and the extraordinary approach of the appellant claiming benefit to heritage assets which was not related to their significance. It would fundamentally undermine the basic tenet of heritage policy if it were accepted.

[1] 60 to 65 in the emerging development plan DO5
[2] This approach is consistent with the emerging London plan at D8 page 126 of CDC5

2 DEVELOPMENT PLAN

2.1 The development plan consists of the Hounslow Local Plan 2015, the West London Waste Plan 2015, and the London Plan Consolidated with alterations since 2011 (2016).

3 VISUAL REPRESENTATIONS

3.1 The short conclusion is that in terms of mass scale and height the visualisations of Mike Spence in 4.2 are as close as one can get on paper to what will be seen in the field.

Expertise of Mike Spence

3.2 Mike Spence was the only expert on visualisations that the inquiry heard from. His expertise is unquestionable and should not have been questioned.

3.3 The LI is the

> *"the recognised expert and professional body for landscape matters… and the valuable contribution they can make to … landscape and visual impact assessment in particular"*[3]

3.4 The purpose of the LI in producing the GLVIA is clear from the preface where it says

> *"A clear objective has been to continue to encourage higher standards in the conduct of Landscape and Visual Impact assessment"*

3.5 Mr Spence is one of two technical experts on the sub-committee that the LI choose to revise the guidance on photomontage.

- See §2.1 Mike Spence's proof
- §2.3 Mike Spence's proof.

[3] Inq 25

3.6 It is not surprising that he has been appointed to that committee bearing in mind his CV. He provided visualisation for the following high profile large projects amongst many others.

i) White rose carbon capture project for the largest power station operator in the UK and the whole of the western Europe, Drax. This had 110 m towers and was promoted as an NSIP.

ii) He prepared expert visualisations for Port of Leith masterplan a very large port in Edinburgh with 3 chimney where the visibility from Arthurs seat and Edinburgh Castle had to be carefully considered.

iii) He has done visualisations for 11 inquiries in 2017. [4]

iv) His clients include Oxford University, Drax, National Trust, EA, Scottish natural heritage and ESB|I the electricity board of Ireland.[5]

3.7 Mr Coleman accepted his expertise when asked about it and said "he is certainly more expert than me on visualisations". The only point pursued in cross-examination was that he had only done one high building in London. The reality is that visualisation tecnhiques are common across the whole country and tall structures are similar to tall buildings. He of course knew the point that if there was a close view of a tall building that would need a particular treatment.

His visualisations are the same detail as you would see in the field

3.8 The part of the guidance that is still applicable form 1/11 is that the visualisations have to match the detail in the same view in the field.

- See 6.1 Spence proof and app 7 quoted in GLVIA at 8.18

[4] Inq 26
[5] ibid

3.9 This was unfortunately something that had not occurred in Bromley in a case where Inspector Peerless had observed at para 53 of LBH 6.

The criticisms of Spence methodology not pursued.

3.10 His method was transparent and set out in detail at 4.1 to 4.13 proof.

3.11 Mr Coleman recognised that it was appropriate to use block models for scale and massing.[6]

3.12 The stitched photography the LVMF did not want to rule out using sophisticated techniques. [page 54 Coleman rebuttal] the criticisms of his stitching were limited to one view that was not used for any of the visualisations. [page 26 of Coleman rebuttal.] He did not relying on any stitching alleged error in any of the visualisations in 4.2 of Spence as he confirmed in cross-examination. Thus the point was one that went no-where and was not maintained.

3.13 In terms of surveying accuracy RC graciously and properly accepted that the criticism were a mistake.

3.14 He did not disagree that the fig 10a did not get anywhere in his rebuttal because Robson had used a different method and the photo thus did not align. Thus the suggestion made from the appellant wrongly doing the Spence methodology got no-where and was not pursued by RC.

3.15 In terms of printed views he agreed that the level of detail in Spence's visualisations did represent the detail you would see with two eyes open.[7]

3.16 In summary he accepted that there was no paragraph of the LVMF which Mr Spence had failed to comply with his visualisations.

[6] GLVIA page 146 inq 6
[7] See cross-examination of Coleman by LBH

3.17 Thus the position is that the visualisations of Mr Spence can be relied on absolutely as the most accurate representation and aide memoire of the level of detail that one would see in the field. They comply completely with the objective of the Landscape institute in 01/11 the GLVIA and indeed the LVMF.

The visualisations of the appellant.

3.18 Unfortunately the same cannot be said of the appellant's work.

3.19 The use of the tilt-shift lens was inappropriate for the vast bulk of visualisations and was not properly explained as a decision taken contrary to the LVMF.

- See app 1 of Spence and Dr Macaulay conclusions where he said

  The use of the tilt shift lens appears to be unfounded and that the appellant could and should have used a 50mm lens for their AVRs

3.20 Mr Spence reached the same conclusion at §6.3 Spence of his proof where he concluded that:

> *The appellant's choice of a tilt shift lens raised serious concern.*
> *In my opinion the tilt-shift lens is not a reasonable lens to use for this kind of project.*[8]

3.21 Mr Spence clearly said that with massive experience and expertise and fully recognising when tilt shift could be used at §5.15 of his proof. However it was not necessary in this case because there was a much better solution which he deployed and explained at 5.16.

3.22 Thus the two experts Dr Macaulay and Mr Spence said the tilt shift was *not reasonable* for this project and *unfounded*.

3.23 There was no satisfactory explanation of the techniques employed and the decisions made as the LVMF requires at §476 at page 54 of RC rebuttal. There was no reason why the critical views from heritage assets such as Kew Gardens, Strand-on-the-Green and Kew Green used

[8] 5.19 proof Spence

a tilt shift and one photo just of sky. There was no warning to look at all the RC images with one eye closed as Spence said correctly was necessary at his 5.52.

3.24 The three supporting letters put by the appellant[9] in were correctly not referred to by RC in his evidence. There was no suggestion in those nearly identical letters that they had been shown the material of Mike Spence before being invited to criticise him or really knew anything of the project. There was no explanation for the very similar wording or who wrote the words despite this being requested outside the Inquiry. They add nothing and ultimately RC was correct not to rely on them to criticise one of the greatest experts on visualisations in the country.

3.25 There was also absolutely no proper justification for why the appellant had failed to centre the tower in the visualisations. They attempted to rely on some assertion that the tower was in the central 40 degree horizontal field of view with one exception. However bearing in mind that they were showing 68 degree field of view that gave them a high degree of error. They could put it anywhere in the middle 60% or so of the photo. They actually had no justification for 40 degrees it was a figure that Mr Spence asked where it came from when he was asked about it and no answer came back. He said the correct position was about 5degrees would be reasonable. In fact looking at the LVMF when they did show a photomontage it was at most 5 degree from the centre on page 53[10] demonstrating that there was simply no support for the approach of the appellant. It is difficult to see that when the text said that "the proposed development should ideally occur close to the optical axis ie towards the centre" that could possibly mean anywhere in the middle 60% as the appellant did.

[9] Rebuttal of coleman at 39-41
[10] See LVMF in RC rebuttal at page 53

3.26 Mr Spence actually got to the reason why the appellant had put the tower close to the optical axis. It was of course not for the reason the appellant gave because they did not give any reason apart from for 12a. The reason was because when they took the photos they did not take them correctly. His technique of taking 360 degrees although of course more complex and time consuming avoided this difficulty.

3.27 The representations of the appellant because of these choices did not do what was claimed at A11 §2.10 and did not comply with the guidance in the LVMF or that in the LI. It did not fulfil the fundamental aim of the LI to producer "images of a size and resolution sufficient to match the perspective and as far as possible the detail in the same view in the field".[11] It would if Kew/ LBH had not taken action have left the Inspector in the same position as Katie Peerless had been in at the Bromley appeal when she was left with visualisations which "did not appear exactly as they do to the human eye when standing in the position from which the photographs were taken. In reality the site appears closer and the proposed buildings would look consequently larger when seen from the surrounding roads"[12]. In that case RC accepted that there was no mention of that problem to the Inspector before she when on site. Here there was no mention of the problem in the TVIA but rather an overblown claim for how robust they had been.[13]

[11] See 01/11 quoted at 6.1 Spence
[12] LBH/6
[13] See §2.10 of cd A11

4 IMPORTANCE OF HARM/ PRESUMPTION AGAINST HARMFUL DEVELOPMENT

Summary of why Considerable importance and weight applies to harm in this case.

4.1 The Court of Appeal has set out that the statutory test requires that: "considerable importance and weight" must be given to any harm under the Town and Country Planning (Listed Buildings and Conservation Areas etc) Act 1990. The Courts have held that there is a strong presumption against granting permission where there is harm. The NPPF applies an identical approach to all designated heritage assets. That approach has been held to correspond with the statutory duty. Thus the "considerable importance and weight" to harm, and the strong presumption against granting permission where there is harm should be applied to all designated heritage assets. The NPPF makes it clear that as heritage assets are irreplaceable, any harm or loss requires clear and convincing justification. The policy in the NPPF says the more important the asset the greater the weight should be to its conservation. Thus in this case the greatest weight needs to be given to the harm to the significance of these assets and the starting point is that planning permission should be refused where there is harm.

4.2 The more detailed explanation for why this is the correct approach to harm is as follows.

No difference between approach in policy to RPG and other heritage assets.

4.3 It was agreed by all the parties that the approach to 'designated heritage assets' in the NPPF is identical.[14] This is apparent from paragraphs 132-134 of the NPPF and the definition of designated heritage assets. The result of this is that harm to a conservation area from harm to its setting has exactly the same policy approach to it. This

[14] Accepted by Coleman in Cross examination

is entirely logical since otherwise the harm to the setting of the river buildings in the strand on the green would attract different weight from the harm to the conservation area which would be illogical. It would be entirely illogical with a unified policy approach to try to apply considerable importance and weight to any harm in the area covered by section 72 but not to much greater harm from a development just outside. If that were correct the door knocker change or window change in the area would get considerable importance and weight test but not a massive change from a huge tower immediately behind which would change the character and appearance when you were in it.

4.4 It is also illogical to say that if you are outside the statutory duty but have very strong policy support that this is in practice less. The illogicality of this was exposed by Kew in closing at paragraph 57. HE did not suggest any practical difference in the policy test form a harm to setting of a conservation area albeit that the statutory duty does not apply. They cited the long standing policy position that the desirability of preserving or enhancing the areas should also be applicable to handling for proposals which are outside the conservation area but would affect its setting or views into or out of the areas.[15]

STATUTORY DUTY AND PARAGRAPH 132 NPPF

4.5 When considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 132 requires decision makers to give "great weight to the asset's conservation". This reflects the statutory requirement in s. 66(1) of the Planning (Listed Buildings and Conservation Areas etc) Act 1990 to:

> *"pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".*

[15] See paragraph 27 Harwood QC and 4.27 of PPG 15 this was accepted in cross-examination by Coleman in cross-examination by me

4.6 It is well established that the concept of "preserving" the building or its setting in s. 66(1) means "doing no harm", and there is no requirement to enhance a listed building (or a conservation area, under s. 72): ***South Lakeland District Council v Secretary of State for the Environment*** [1992] 2 AC 141, 150) and ***East Northamptonshire District Council v SSCLG*** [2014] EWCA Civ 137, [2015] 1 WLR 45, para 16.

4.7 If a decision maker concludes that a proposal will cause harm to a designated heritage asset, that harm must be given considerable importance and weight. It gives rise to a strong presumption that planning permission should not be granted: ***East Northamptonshire District Council v Secretary of State for Communities and Local Government*** [2015] 1 WLR 45, paras 22-23. It should be exceptional and must be justified.

PRESUMPTION AGAINST HARM/ TILTED BALANCE?

4.8 The presumption against harm has been set out by the Court of Appeal in ***Barnwell Manor***[16], a case which everyone accepts is good law and should be applied. In that case Sullivan LJ said as follows.

> *"23 .... There is a "strong presumption" against granting planning permission for development which would harm*[17] *the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight."*[18]
> *...*
>
> *28 .... That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer*

[16] ***East Northamptonshire District Council v Secretary of State for Communities and Local Government*** [2015] 1 WLR 45
[17] My emphasis
[18] §23 CD H5

have to be "wholly exceptional"), but it does not follow that the "strong presumption" against the grant of planning permission[19] has been entirely removed.

4.9 The Court of Appeal has held in ***Jones v Mordue*** [2015] EWCA Civ 1243 (paragraph 28) that the 'fasciculus' of provisions between paragraphs 131 and 134 NPPF "corresponds with the duty in section 66(1)" so that generally "a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty".

4.10 Thus now that the policy has unified all harms to be treated according to the same tests and in fact some of the most precisous assets are protected by the policy test alone it would be entirely illogical to treat some harms to a conservation area as different from other harms. The policy protection is so great, deliberately that considerable importance and weight can be given to the harm to a setting.

5 SUBSTANTIAL HARM

LAW

5.1 In order to apply paragraphs 132-134 NPPF it is necessary for a decision maker to form a view about whether the proposed development would cause harm to the significance of a heritage asset which is "substantial" or "less than substantial". The NPPF does not define either of these terms.

5.2 The approach of LBH is that the term substantial harm should be understood by reference to the government guidance that has a section entitled "how to assess if there is substantial harm". This is a view that is fully supported by HE the Government advisor on Heritage[20]. It is right to give their views and submissions on this considerable weight

[19] My emphasis
[20] See paragraph 9ff of Harwood QC

and only depart from them for good reason as the courts have found. [21] This must particularly be the case here where they have appeared through a very senior team leader of London and with leading Council.

5.3 The relevant part of the PPG (CD 14.6 page 7/27) provides as follows:

> *"In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.*
>
> *While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm."*

5.4 This was applied quite simply in this case by Mr Grover. For both Kew Green and Strand on the Green he reached the view that the tower would seriously affect a key element of their significance. The key element of Kew Green was its village character when viewed from the green. This would clearly be seriously affected by putting a highly discordant tower completely at odds with this significant character highlyt visitble from the Green. For strand on the green everyone agreed that the key element of its significance was the "picturesque charm where of variety of buildings but of common interest and scale" on the waters edge. The views from the south with these smallscale buildings with predominantly open skyline was the key view where all these listed buildings could be seen from. Thus when one looks at what

[21] See Maurici QC paragraph 18(1)

the PPG says is an important consideration, it is inescapable that there is substantial harm. This was a view that HE supported.

5.5 The position of Hounslow is that PPG guidance is perfectly consistent with a proper reading of ***Bedford BC v SSCLG*** [2013] EWHC 2847 (Admin). HM Government were clearly well aware of ***Bedford*** when they produced the PPG so it would be a bizarre idea that the guidance was inconsistent with the judgment. take the view that that PPG fits perfectly well with ***Bedford***, if the judgment is correctly interpreted.

5.6 The High Court in ***Bedford*** was considering whether an Inspector's formulation of the threshold for 'substantial harm' was lawful in 2012, with particular regard to the practice guide which was in force at the time. It is important to be clear about what it was <u>not</u> deciding.

5.7 The most important thing that it was not deciding was what substantial harm in the NPPF meant. The judgment is clear that the NPPF does not purport to quantify harm or explain what is meant by the adjective "substantial".

> *"It is also plain in my judgment that paragraphs 131 to 134 are not purporting to quantify harm or explain what is meant by the adjective "substantial".*"[22]

5.8 What Jay J did was to derive assistance from the practice guidance which was then extant. At paragraph 20 he said:

> *"The inspector drew some assistance from the practice guide, and in my judgment he was right to do so."*

5.9 Stopping there, the judge was clearly finding that it is correct for an Inspector to be guided and derive assistance from an existing practice guide as to how to interpret 'substantial harm'. This is entirely consistent with the H position. Our submission is that you should be guided by the extant PPG. Jay J was clearly not saying that the NPPF set out what substantial meant for all time, but quite the reverse: it

[22] Paragraph 19 CD h4

expressly did not, and one had to look to the Practice Guidance for assistance. Thus to say that ***Bedford*** now assists with what the PPG means when it came out 2 years after the judgment is rather a strange submission.

5.10 Even then the ratio[23] of ***Bedford*** is to be found in paragraph 26, and that was the judge's conclusion on what the Inspector had said at that time with the practice guidance as it then was.

> *Although Mr Cosgrove did not put his argument quite in this way, I have considered whether the formulation "something approaching demolition or destruction" is putting the matter too high in any event. "Substantial" and "serious" may be regarded as interchangeable adjectives in this context, but does the phrase "something approaching demolition or destruction" add a further layer of seriousness as it were? The answer in my judgment is that it may do, but it does not necessarily. All would depend on how the inspector interpreted and applied the adjectival phrase "something approaching". It is somewhat flexible in its import. I am not persuaded that the inspector erred in this respect.*

5.11 Thus what the judge was holding was that the Inspector, by using the formulation "something approaching" had not unlawfully put the matter too high, because he was applying a flexible standard.

5.12 In paragraph 25 Jay J set out his understanding of what the Inspector had been looking for when applying a test of "something approaching demolition or destruction". The judge was not giving his own view of what 'substantial harm' meant..

> *"Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."*

5.13 It is notable that the judge in this paragraph was considering <u>both</u> limbs of paragraph 133 NPPF – 'total loss' and 'substantial harm'.. In terms of physical harm, the judge considered that "demolition or destruction"

[23] The binding part of the decision being the reasoning that led to the decision

was a case of ‘total loss’, and ‘substantial harm’ would occur if there was a lower level of impact namely “serious damage to the structure”. Applying the same approach to non-physical harm, ‘total loss’ equates to significance being “vitiated altogether”, and substantial harm would occur if significance was “very much reduced”.

5.14 Therefore the most that can be said is that in ***Bedford*** the Court confirmed that in the absence of any definition of ‘substantial harm, in the NPPF, and in light of the practice guidance then extant, it was not unlawful (in a case of non-physical harm) to reach a finding of substantial harm where significance would be “very much reduced” by the proposed development. Thus, if ***Bedford*** is interpreted sensibly it fits perfectly well with the PPG.

5.15 First because Bedford did not try to define what ‘substantial harm’ meant but was only concerned with the lawfulness of a particular formulation used by the Inspector in that case.

5.16 Secondly because a requirement for significance to be “very much reduced” could in any event fit perfectly well with the current PPG even if it is thought that the Court in ***Bedford*** was trying to set out what ‘substantial harm’ meant in the NPPF for all time and was not just deciding whether one Inspector’s approach to the issue had been unlawful.

5.17 Thirdly because, when read properly, ***Bedford*** does not support the proposition that ‘substantial harm’ can only be caused where significance is either “vitiated altogether” or “drained away”. The Court was not endorsing such an approach as being correct.

5.18 Thus in conclusion the LBH approach to substantial harm is supported by Bedford for the following reasons.

5.19 Firstly LBH commend the guidance in the PPG in the section "how to assess if there is substantial harm". That specifically says that an important consideration will be whether "the adverse impact seriously affects a key element of its special architectural or historic interest".

5.20 ***Bedford*** expressly said the NPPF did not explain what is meant by substantial, and it was right to look at the practice guide at the time of that case, now of course the PPG. The Court did not endorse the Inspector's approach as being correct.

5.21 It is difficult to believe that the PPG is inconsistent with a correct reading of ***Bedford***, because it was published after it and there has not been any decision that suggests it is wrong in law or that the Secretary of State should not be guided by the PPG in assessing whether there is substantial harm.

5.22 In any event even if one reads Bedford as expressing a view as to how to assess substantial harm, which was intended to be applied whatever the guidance (which is not what Jay J was saying), the phrase "very much reduced" can be read as consistent with the new PPG and would mean that there was substantial harm in this case as Mr Grover and Mr Dunn explained.

5.23 It is difficult to see that really a couple of Inspector's cases where it is unknown precisely what submissions were made take the matter very much further[24]. Here we have leading counsel for HE and you have 4 sets of submissions on the law. It is vastly preferable to deal with the evidence in this case rather than rely on recitation of parts of a case from other inspector cases.

[24] Coleman did not say that he had done an exhaustive search of all cases where substantial harm had been found

IN PRINICPLE CAN EASILY BE SUBSTANTIAL HARM FROM HARM TO SETTING

5.24 There is nothing between the parties that harm to setting of a conservation area can be substantial harm. Paragraph 132 of the NPPF says that significance can be harmed or lost through alternation or destruction of the heritage asset or development within its setting.

5.25 The Secretary of State found in Razor's farm that he did not find it difficult to envisage that impact on setting could cause substantial harm.[25] Coleman agreed that must be right. The Inspector there only had brief points made by the Council on that issue.[5.30 of IR]

5.26 The PPG says in the section on substantial harm that:

> *"The harm may arise from works to the asset or from development in its setting"*[26]

5.27 Having been taken through these multiple references RC said that they establish that it was possible to have substantial harm from harm to the setting.[27]

6 IMPACT OF THE PROPOSALS ON HERITAGE ASSETS

6.1 The evidence of Philip Grover was considered careful and displayed good expert judgment. He has considerable expert experience working for all sides on heritage cases. He was a founder member of the IHBC and a director of postgraduate study at Oxford Brookes. He was Director of Historic environment at the London Office of RPS. He has worked for the Government when it was the ODPM English Heritage and local planning authorities. He was uniquely well placed to give a balanced view of the harm in this case.[28]

[25] Para 12 of app 17 of Goddard.
[26] C2 para 17
[27] cross-examination by LBH
[28] 1.1-1.7

KEW GREEN

6.2 The KG Conservation Area was designated in 1969, one of the earliest designations. The adopted CA appraisal (CDF.02) describes it as an area designated due to "its character as an historic open space, the associated high quality of mostly C18th development and its superior riverside environment … a visually cohesive area with an easily identifiable sense of place it has a definite village character". It is, the CA continued, " a fine example of an historic green". A visually quiet non-urban skyline is an integral part of that open village character – that is precisely why the CA appraisal identified as a problem and pressure development which "may harm the balance of the river and landscape-dominated setting, and the obstruction or spoiling of views, skylines and landmarks".

6.3 It is that village character which is at "the very heart of the significance" (Grover EIC). CE agreed with the significance of Kew Green, describing it as " a very beautiful green, with all the qualities that can be expected of an English village green" (XX by Kew Society), a description agreed by RC (XX by HE).

6.4 Philip Grover's evidence that the appeal building would seriously affect a key element of the significance is compelling. The visual images depict a dramatic impact, wholly supportive of Philip Grover 's assessment. It would seriously effect the village character from the village green. This is not just a key element but the key element.

6.5 His assessment that the CC would be a highly intrusive, incongruous and alien intervention on Kew Green is plain from the images : Viewpoint 10 of Spence App 4.2 tells the story viewed from the east side, Viewpoint 11 from the west side. In terms of height, mass, and

bulk, the tower would loom large, completely altering for the worse the skyline behind the Green.

6.6 It is telling that even the appellant has not sought to challenge either that the village character of the Green is at the heart of the significance or that the CC would seriously effect this key element. Instead the appellant has sought to veer away from the main road in favour of two principal detours.

i) The impact of the busy South Circular Road ;

ii) The impact of the consented Brentford FC scheme and Citadel scheme.

6.7 Neither of these detours are helpful. The presence of a busy London road does not have any meaningful impact in the views across the Green. Nor does it reduce or alter the significance, to the objective observer it makes the presence of an historic open space of village character all the more remarkable. The impact of both the Brentford FC schemes and the Citadel schemes are plainly not comparable : it is one thing being visible in the skyline, it is another to dominate it. 48m is not the same as 109m.

6.8 The appellant's Opening (para 68) acknowledged that Kew Green has a "very particular character and appearance". Rather than respecting that, the appeal building imposes itself in precisely the way Studio Egret West say can be avoided : "I am a tower. I've arrived, ba-boom, get out of my way" (Egret App Vol 2 p62). The appellant relies on its claim to quality however the cosmetic subtleties of the design would not be obvious in views over Kew Green. What would matter at that distance is damaging and discordant height, bulk, and mass completely at odds with the village character of Kew Green.

6.9 PG's thoughtful and measured approach considered the harm against the government's advice in the PPG (para 17), which sets out as an important consideration whether the adverse impact seriously affects a key element of the special interest. For those reasons, the assessment of substantial harm is justified and wholly realistic.

6.10 PG's analysis accorded with the CA appraisal in identifying the superior riverside environment as an important ingredient of Kew Green's significance as well as the Green itself – the impact on the riverside is explored within the context of Strand-on-the-Green below.

6.11 Surprisingly, CE in his presentation to the Inquiry advanced the argument for the first time that the significance is somehow reduced by cricket and other activities being seen taking place on the Green. That is a nonsense of an argument : if anything at all, his observation only reinforces that this is every ounce a picturesque English village green in London.

6.12 RC's argument[29] that the CC would benefit Kew Green entirely collapse. He could not point to any aspect of the significance of Kew Green which was enhanced. The case of benefit collapsed. It was after all non-sensical: the significance is as a village green, a 109m tower behind it cannot add to that significance. RC tied to justify his position (XX by HE) by raising a new argument that the CC would "tell you where you are in the world". When it was then suggested to him that "you don't need to know where the M4 is when you are on Kew Green", RC could do no better than offer up "but it's not a bad thing to know". It is of course nothing to do with significance. It is significance which is at the heart of the NPPF policy at 128 and 132 as is explained in the PPG at paragraph 9 which explains "why significance is

[29] Examination in chief

important in decision making"[30]. Thus the fact that the Tower could not possibly enhance any aspect of significance means that the RC argument of benefit collapsed.

6.13 RC was the only person who has claimed benefit : HE, two advisers to LBH, the LBH committee members (unanimously), RBG, and well-informed amenity societies and residents all took the view that the significance of Kew Green would be harmed. When pressed, RC could not relate any of his alleged benefits to the significance. So much is obvious because village character is the antithesis of a 120m tower block. Thus, in reality, his argument is absurd and undermines all credibility in the appellant's case. Once harm is accepted, there is in reality no dispute about the level of impact (substantial) as was apparent in cross-examination of RC by HE in relation to Strand-on-the-Green. The same point is applicable to Kew Green[31].

6.14 The answer given by RC in cross-examination to Richard Harwood and then clarified in answer to the inspector that if there was harm it was substantial within the meaning of 132 and 133 of the NPPF was clearly his position. The attempt by RH to take him back to his prior position in his proof and lead him into a different answer was wholly unconvincing even if it was tried 3 times after complaint.

STRAND-ON-THE-GREEN

6.15 Strand-on-the-Green was designated even earlier than Kew Green, in 1968. It is entirely unsurprising that the Thames Landscape Strategy described this as "one of the most important historic and architectural waterfronts between Kew and Chelsea."[32]There is a requirement to

[30] C 2 page 20 paragraph 9
[31] Strand on the green he alleged was major beneficial on A11 page 37 and the same for Kew Green on a11 page 45 at 8a.97
[32] See F11 at 4.10

have regard to that strategy in the adopted local plan.[33] Thus whether it is technically SPG still it having been so under the UDP is one of those questions that ultimately does not make any or any material difference because on any view it must be taken into account.

6.16 The description of the special interest in the CA appraisal (CDF.01) is striking: "its use of and setting beside the water's edge, with fishermen's cottages, boat builders' sheds, public houses, maltings and larger and more elegant private houses added in the late 18th century … The overall effect is one of picturesque charm, where a variety of individual buildings but of common interest and scale …"

6.17 The appraisal identified as a pressure Strand-on-the-Green's vulnerability to inappropriate changes on skyline from the Surrey side and towards Brentford.[34]

6.18 The appeal scheme wounds the conservation area exactly where the appraisal says it is vulnerable. It is of little surprise that, in light of this vulnerability, the appraisal identified as a guiding principle that to give special consideration to the impact of taller buildings on the character[35].

6.19 At no stage has the appellant acknowledged or identified either the pressures or the guiding principles identified in the appraisal, which the appellant treats as if it ends on the first page.

6.20 Once again, Philip Grover's analysis was measured and straight-forward: the Chiswick Curve would appear in the important views from the south side of the river as "a large, bulky and incongruous addition to an otherwise largely unbroken skyline of traditional buildings" (Proof 5.67). The scale of the tower would plainly be

[33] CD D1 GB5 at criterial i.
[34] CD F1
[35] F1 last page last section

discordant with the "common interest and scale" described in the CA Appraisal, a straight-forward proposition. Clearly as Philip Grover said a key element of this conservation area is the run of listed buildings on the waterfront and the views of those from the south. This is what is described as the "picturesque charm" of "individual buildings but of common interest and scale". This is not only a key element it is **the** key element of the significance. Thus the harm to the views from the south side of the river, the river itself and the bridges are critical. Mr Coleman accepted in cross-examination[36] that the emerging conservation area appraisal was correct to describe:

> *"The most important views are those of the half kilometre curve of the Strand itself from Kew Bridge and the opposite riverbank"*[37]

6.21 The most important views are shown on the diagram on page 18 as was also agreed. The river and the opposite surrey bank is the place where the whole run of listed buildings can be appreciated.

6.22 Philip Grover was correct to say the proposal would seriously affect this key element. Once again, his assessment is supported by the images. Viewpoint 9 of Spence App 4.2 gives a very clear indication of the sheer mass and scale of the proposed building in the immediate backdrop of the remarkably in-tact Strand-on-the-Green. The kinetic experience demonstrated by the appellant's Moving Study 1 reinforces the extent of the intrusion as will the site visits.

6.23 The appellant attempts to water down the impact with a series of manufactured arguments which seek to distract :

i) That there will be some modest visibility of consented development (Citadel) in the setting is not disputed, but as is the case with Kew Green, it is simply not comparable to the height and mass of the CC. The appellant's approach, though dressed up

[36] Cross-examination by LBH Thursday 28th about 4.30
[37] See 7.1 of appendix 5.2 shane baker

as well-rounded, is in truth too black and white – visibility does not always equal harm and there are different levels of harm, seeing a modest intrusion in the setting is plainly less harmful than seeing a massive intrusion in the setting. The proposal uses material mass scale and form which are designed to stand out. PG explained that the reflective materials would stand out and in combination with the height and bulk of the structure would reinforce the prominence of the proposed building. [§6.23 and 6.24 of PG proof.]

ii) Goddard repeated the absurd proposition in chief that because the citadel was visible visibility is not an issue. This is absurd and would justify every house in an urban area being converted to a 120m tower with not visual objection. Although Goddard spoke quickly and made a lot of superficially plausible points not many of them survive 5 minutes of consideration.

iii) The appellant has now conceded the obvious that the river side and opposite bank is the most significant view where the row of listed building beside the waters edge can be appreciated. There is no getting away from the obvious, which is that the south side of these properties on the river of the south surrey bank is the best place from which to understand the "overall effect" referred to within the CA appraisal. The appellant attempts to justify the argument by suggesting that the significance lies in the architectural detailing (Appellant Opening para 72) – that is not an argument made in the original THVIA (CDA.11, para 8A.48) and it washes over the significance of Strand-on-the-Green as an original fishing village on the Thames.

iv) Once again, the appellant relies on the "quality" argument, but what matters in this context is that it harms the significance

because it radically harms the key view where one should be appreciating the picturesque charm of the conservation area not the attention seeking tower. It is an argument that turns heritage policy on its head. It fails take any account of the central purpose of all heritage policy which is to conserve significance. In any event the cosmetic treatments even if they did assist would not be fully appreciable at this distance and certainly would not reduce the harm of the scale mass and form.

v) The appellant attempts to relate the CC to Strand-on-the-Green by reference to colouration, demonstrated by a photograph depicting the colours of the riverside buildings reflected into the Thames (Egret Fig 8.10). This argument is a sugar-coat. There may be a colourful reflection at a particular time of day, in particular weather conditions, and at a particular time of the year, but mass, scale and height do not change with the weather. In any event, as pointed out to CE during xx by HE, the predominant colour of the CC in the view is grey. Moreover, the colour of the CC has nothing to do with the significance of Strand-on-the-Green, which relates to a picturesque riverside village not to the colour of occasional reflections in the water. There is no reference to the colour of the reflection in the CAA.[38]

vi) An argument only really emerging during re-examination of CE was a hierarchy argument, that for some reason the CC ought to be the tallest building in the skyline behind Strand-on-the-Green. There is no basis for this argument. The appeal site should operate as a marker at the eastern end of the Golden Mile, on the approach from the M4 to London ; not as part of some sort of hierarchy in the view across the river towards Strand-on-the-Green, there is no sound rationale at all for this, yet another

[38] See CD F2

example of manufactured post-rationalisation. The hierarchy is called for in relation to the corridor.[39] That want a gateway for the corridor. For the heritage assets however it does not want prominence and seeks to avoid the dominance on the skyline.[4.38 SPD] It does not want a prominent landmark as seen from the heritage assets but a lack of prominence. The appellant case confuses the two desires of the SPD emerging plan. These seek a landmark and hierarchy on the M4/A4 but lack of prominence from the heritage assets.

6.24 PG's conclusion of substantial harm is manifestly sound – a key element of the significance would be seriously affected. It is fully supported by HE.

6.25 The reality was effectively conceded, albeit inadvertently, by CE in his presentation to the Inquiry. In the view towards Strand-on-the-Green, the CC would he said "guide the eye upwards". It would, in other words, draw the eye away from what makes this CA significant, away from the picturesque riverside row of houses, and towards the massive building in the background. After a night to think about it, CE described that upwards view as "a magical moment" – however, the magic of the view towards Strand-on-the-Green is in seeing what makes it significant, the CC would, as CE was conceding, draw the eye away from that and distract from it. Whereas CE the architect described the CC as drawing the eye towards it, RC claimed (XX by HE) that it would not distract, an argument at odds with his own argument that the CC is intended to be seen.

6.26 It is important to note that RC agreed (XX by HE) that if the CC did harm Strand-on-the-Green, then in NPPF terms the harm would be substantial. This is entirely unsurprising in this case where the

[39] See page 82 and 83 capacity study leading and 4.31ff of the spd

sensitivity is high and the magnitude of change is high such that on any view there is a major effect.[8a.49 A11] Therefore a finding of harm which is the only sensible finding bearing in mind that all the heritage consultants who looked properly at effect on significance reached that view. Paragraph 133 of the NPPF is engaged. The attempts to go back on this in re-examination were highly unconvincing.

6.27 The reality of the appellant scheme is of course that it would be substantially harmful. It is part of the problematic pressures in the conservation areas that ought to be avoided. The Strand-on-the-Green was set out as being "vulnerable to inappropriate development".

GUNNERSBURY PARK

6.28 Gunnersbury Park CA is the closest CA in terms of distance to the appeal site.

6.29 The special interest as set out in the CA appraisal (CDF.04) consisted of firstly the Park itself and Kensington Cemetery ; and, secondly, the residential Garden Estate which the appraisal described as "a complete and relatively unspoilt example of a 1920's garden suburb estate".

6.30 PG's analysis considered in turn the Park itself, the cemetery, and the garden estate.

The Park

6.31 In the Park itself, the Grade II* Large Mansion, Orangery, and Temple all sit within a designed landscape which is itself a Grade II* Registered Park and Garden. Mr Grover explained his assessment that the CC would transform for the worse important views within the park, "a major incongruous intrusion" (Grover EIC). That assessment is again supported by the visual representations, see for example at Spence App 4.2 views across the designed landscape (Viewpoint 1),

the view across the Round Pond by the Temple (Viewpoint 2), and the view from the Large Mansion (Viewpoint 3).

6.32 Even Mr Coleman has had little choice other than to accept that harm would result to the consciously designed landscape, in spite of managing to add the words "potential", "could" and "possibility" into a single sentence (Proof 9.21). He responds with the generalised assertion that the form, design, texture and colour of the scheme somehow avoids harm – this lacks substance, it is assertion over analysis. It, again, chooses to overlook entirely the impacts of height, mass and bulk.

6.33 James Wisdom, Chairman of the Friends of Gunnersbury Park and Museum, addressed the Inquiry in the clearest of terms – what matters, he explained, is the way in which the Curve would "loom" over the park, confining and restricting the experience of visitors to the Park. Mr Coleman's talk of texture, colour and so on is a smokescreen for what will be the real impact, an enormous building imposing itself on cherished heritage assets.

6.34 The appellant in Opening (para 57), in respect of Gunnersbury Park, argued that the CC would mark the fact the park is adjacent to "an important gateway to London". That has nothing to do with the experience of the Park, it has nothing to do with the significance of the Park. It is a post-fitting argument which does not address the real issue, but seeks to distract from it. CE accepted (XX by HE) that, contrary to 9.2.49 of his written evidence, there was no need for a visual marker in Gunnersbury Park.

6.35 Similarly obscure was RC's evidence (EIC) that there was an existing urban context to Gunnersbury Park because of a relatively urbanised approach to the park. However, if that was right it would in any event

have nothing to do with the significance of the registered park and gardens, or the buildings within it.

The cemetery

6.36 PG described the Cemetery as an important part of the CA, a tranquil and visually enclosed place, a place of quiet contemplation (EIC). He acknowledged in xx that its proximity to the appeal site would mean that some of the architectural features of the CC would be recognised from the cemetery – it was telling, however, that this was put to him in xx on respect of the cemetery, because it highlights that those features would not be recognisable from other important views. The impact of the CC would be powerful, intrusive, incongruous and alien (PG Proof 5.41), a judgment to be clearly understood when considering the viewpoint reflected at Spence App 4.2 at Viewpoint 4. That there may be some degree of existing urban context to the setting of the cemetery misses the point – nothing in the setting compares to the impact of the CC.

The Garden Estate

6.37 The significance of the residential estate, "a complete and relatively unspoilt example of a 1920's garden suburb estate" would plainly be undermined by the CC (see Spence App 4.2 Viewpoint 5). The appellant's claim that the significance is about the size of the gardens (Addendum THVIA CDA.15 at 8A.6) is not credible. The Garden Estate is all about unspoilt 1920's suburbia, in whose setting the CC would be highly intrusive, incongruous, and alien (PG Proof 5.42).

6.38 RC advanced a bizarre argument in oral evidence (XX by LBH) that the CC would provide the garden estate with "urban legibility" and would "humanise" the nearby M4 which can be heard but not seen

from the estate. This simply lacked any credibility : how can adding a very large tower into the setting of a conservation area whose significance is all about being an example of unspoilt 1920s suburbia, protect let alone enhance it ? What possible advantage in there is "humanising" through built form a motorway which cannot presently be seen from the conservation area ?

KEW GARDENS

6.39 The impact of the CC on the significance of Kew Gardens will be set out in considerable detail by the R6 party RBG.

6.40 Kew Gardens is one of only 4 World Heritage Sites in London, alongside The Tower of London, Westminster Palace including Westminster Abbey, and Maritime Greenwich. A WHS is the rarest form of heritage asset, so rare that its importance is international not just national. The Gardens include 44 listed buildings. Four of these are listed at Grade I. These four include The Orangery and Kew Palace.

6.41 The significance of the WHS transcends national boundaries and the Council's refusal of consent is as a matter of fact supported by the United Nations, UNESCO having written to the UK government Department for Digital, Culture, Media and Sport in April 2018 and again in May 2018 (RBG/3). UNESCO sought the advice of ICOMOS, whose 24 page Technical Review (RBG/3a) concluded that the Chiswick Curve would considerably harm the OUV of Kew Gardens. ICOMOS concluded their report by making plain that visual integrity was a crucial element of Kew Gardens, that visual integrity was threatened by the proposed development, and that the proposed development would considerably harm the OUV of Kew Gardens.

6.42 The UK government have made crystal-clear in national planning policy guidance (para 26) that the OUV indicates a WHS's importance

as a heritage asset of the highest significance to be taken into account by the Secretary of State , and in the draft NPPF (para 182) the government seek explicitly to draw attention to the international recognition of World Heritage Sites.

6.43 The explicit position set out by the government is hardly surprising given the language of Article 4 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) which identified the UK's duty "of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage […] It will do all it can to this end, to the utmost of its own resources …"

6.44 The Mayor has made plain (London Plan 7.10) that "Development should not cause adverse impacts on World Heritage Sites or their settings (including any buffer zone). In particular, it should not compromise a viewer's ability to appreciate Outstanding Universal Value, integrity, authenticity or significance". Indeed at para 61 of the GLA's Stage 1 report (CDG.01) the GLA rightly pointed out that "World Heritage Sites are places of Outstanding Universal Value to the whole of humanity and the effect of development is a key strategic consideration" (para 60).

6.45 The Statement of OUV (CDF.17) distills into 5 attributes set out in the 2014 WHS Management Plan (CDF.10) of which the most relevant are (i) a rich and diverse historic cultural landscape providing a palimpsest of landscape design and (ii) an iconic architectural legacy.

6.46 The Council's evidence given to the Inquiry by PG draws particular focus to (1) The Orangery (2) Kew Palace (3) The Temple of Aeolus and Plant Family Beds area.

The Orangery

6.47 The Grade I listed Orangery is the oldest surviving glasshouse in Kew Gardens, described as an iconic glasshouse in the RBG WHS Management Plan (CDF.10, para 3.9.20). It is both part of the rich and diverse historic cultural landscape and the iconic architectural legacy of Kew Gardens. Viewpoints 14 and 15 of Spence App 4.2 depict the impact of the CC on those attributes, the CC rising as "an arbitrary vertical element" (PG Proof 5.23) which would be a "highly intrusive, incongruous and alien feature directly behind The Orangery or slightly to the right" (PG Proof 5.23). PG explained in his oral evidence that the significance is rooted in the Orangery's setting within a designed landscape. The Great Lawn across which the Orangery is viewed is an important open space - historically, at the time of inscription, and now.

6.48 The appellant argues that the Great Lawn was historically associated with the White House rather than the Orangery, but the White House was demolished in 1802, and in any event that historical claim is at odds with the illustrations produced by RBG (Appendix E Croft). The kinetic experience reinforces the impact, helpfully demonstrated by the appellant's Moving Study 2. The appellant's case in respect of the Orangery rests on four contentions : that the Great Lawn is not 'great' (RC Prof 9.10), that the Haverfield Estate towers are visible from the lawn, that the Citadel would also be visible in views of the Orangery, and that the CC is a building of outstanding design quality. Each of these contentions is flawed:

i) The Great Lawn is an important area of designed open space in Kew Gardens ;

ii) the Haverfield Towers do not justify other inappropriate developments;

iii) the Citadel is so much more modest in height and mass so that the impact is not comparable ; and

iv) the whole concept of design quality is mis-used. In respect of design, it is notable that RC accepted (EIC, though perhaps not the answer which was expected by RHQC) that the ability to appreciate the quality of the CC in this view depended on good eyesight and favourable weather conditions.

Kew Palace

6.49 Kew Palace is another jewel in Kew Gardens' Crown, one of its 4 Grade I listed buildings.

6.50 Kew Palace is a 17th century house which has an intrinsic historical and visual relationship with the surrounding designed landscape. PG described in evidence how the setting contributed to the significance of the Palace. He explained how "the proposed tower would form a highly intrusive, incongruous and alien feature in the wider setting of the landscape" (PG Proof 5.26). His analysis is supported by the viewpoints at Spence App 4.2 Viewpoints 12 and 13. Of viewpoint 12, although this is an oblique view, PG explained in his oral evidence that the CC would be an intrusion into a view which presently does not reveal an urban environment. In the views from the upstairs bedrooms (see Viewpoint 13), the CC would be even more prominent, rising much higher than any other buildings in the skyline.

6.51 In respect of the oblique view, the appellant accepts "that there are no other tall buildings readily visible in this particular view and that the garden setting of the palace contributes to the significance as set out in the officer's report" (RC Proof 9.15). Of course this particular view is an oblique one, but the only response which the appellant has is to say that visitors would see "a beautiful building in the far distance". This

stock response is an unpersuasive here as everywhere else because it was entirely unrelated to the significance of the Palace. In any event whatever the cosmetic treatment what will resonate and be harmful will be the bulk, height, and mass.

6.52 In respect of the view from the upper floors, the appellant identifies one substantive point – raised not in xx of PG but in xx of AC – and it is a bad point. In particular, it was put that the blinds are drawn on the upper floor windows. As AC said in re-examination, this is of no relevance at all, the view from the window is inherent to the issue of the setting and the significance. Furthermore it is notable once again that RC accepted (EIC) that the quality of architecture would only be apparent "if you focused hard". No-one from the design team had been upstairs in Kew Palace before designing the Tower.

Temple of Aeolus

6.53 The Temple of Aeolus is a Grade II 19th century listed building on a raised viewing mound. It is an open-sided classic rotunda, clearly designed to allow views in all directions, an important view being that across the Plant Beds. The CC would form a highly intrusive, incongruous and alien feature in the setting, rising far above anything else in the skyline (including the BSI building which, it should be noted, was built before the designation as a registered park/garden and CA and before the inscription as a WHS). The analysis is supported by Viewpoint 18 of Spence App 4.2. consideration of this viewpoint highlights two very pertinent points :

i) The Tower would clearly be much more prominent than other features in the 'urban environment' ;

ii) The Tower would be partially obscured by a single tree, RBG have given clear and persuasive evidence about the danger of

relying on the screening effect of a tree whose life expectancy is an unknown factor.

6.54 The appellant's argument that the CC would somehow have a beneficial impact on this view (RC Rebuttal 6.11) lacks credibility. In the real world the CC would not be seen as "a sculptural object " in the view (also 6.11), it will be seen for what it is, namely a building, vastly bigger than anything else in the setting.

6.55 The appellant seems to suggest that it is only those views in the management plan at page 95 that should be given real weight. This cannot possibly be the case.

i) They have designed the whole scheme around a view of the palm house which is not one those views. Thus they clearly do not believe their own argument.

ii) The documents when analysed for Kew's context do not bear this out at all for the reasons that Mr Maurici explained. All the propositions of a general nature were drawn from all the WHS's and did not start with the particular context of Kew which is set out in the SPG[40]. This explains the most self contained and the immediate surroundings are self contained. Philip Grover explained this in re-examination carefully. The reality is that it is not just the views at page 95 that need to be considered in the Kew context.[41]

OTHER CONSERVATION AREAS

6.56 Although the oral evidence at the Inquiry has focussed attention on Strand-on-the-Green, Kew Green, Kew Gardens, and Gunnersbury

[40] C11 page 35
[41] See maurici at 73[5] for example.

Park, there are a wide range of additional CAs which would be harmed by the CC and these must not be forgotten.

6.57 Wellesley Rd CA was designated in 2002. Based mainly on 19th century development, it has historical value as an early residential estate in Chiswick with a surviving suburban townscape and a level of architectural detailing (PG Proof 5.72 to 5.76 and CA Appraisal CDF.08). The CC would be highly visible and would be dominant and incongruous as an out-of-scale intrusion (PG Proof 5.77 to 5.82) ;

6.58 Thorney Hedge CA was also designated 16 years ago in 2002 and consists of a short length of ancient thoroughfare, am example of a relatively in-tact small-sale Victorian suburban estate (CA Appraisal CDF.07 and PG Proof 5.83 – 5.88). The CC would be clearly visible and plainly at odds with the low-rise suburban setting (PG Proof 5.89 – 5.94), as demonstrated by Viewpoint 6 of Spence App 4.2 ;

6.59 Kew Bridge CA was designated 14 years ago in 2004. The special interest was set out in PGs Proof (5.95 – 5.98) and in the CA Appraisal (CDF.09). Although PG acknowledged in his oral evidence the effect of the consented Brentford FC scheme in the visibility of the CC in some views, the CC would nonetheless remain prominent and incongruous in views such as from the bridge approach and the junction coming over the north end of the bridge

6.60 Grove Park CA was another designated in 2002, the first large Victorian housing estate in Chiswick designed to comprise large upper-class mansions and ample recreational areas, with the original character still recognisable (CA Appraisal CDF.06 and PG Proof 5.106 – 5,113). In terms of the impact of the CC on this CA, PG emphasises the views from Chiswick Bridge (Proof 5.115) and this is reinforced at viewpoint 8 of MS App 4.2 ;

6.61 Chiswick House CA was designated over 40 years ago in 1977. Although the CC would not be visible from Chiswick House and its grounds which provides the primary special interest (CA Appraisal at CDF.03 and PG Proof 5.119 – 5.123) it would be visible from Staveley Rd which is a residential street which contributes to the special interest, and that visibility would be harmful (PG Proof 5.126 – 5.128).

7 THE CORE OF THE APPELLANT'S CASE

7.1 The appellant's case at its heart effectively relies upon three assertions, which it repeats over and over again.

Assertion 1 : Design quality

7.2 The first, as the analysis of the heritage arguments above demonstrates, is to treat the claim to design quality as an all-conquering trump card which can be played at every turn. It is an assertion repeated a staggering 102 times in RC's proof alone. More is said about this later in these Closing Submissions.

7.3 One of the only local examples of this alleged design quality trumping harm was given by the appellant as the Hive. This was a spectacularly misconceived.

7.4 The Hive : The appellant looks to draw support for its design case from The Hive (RC Proof 6.23 and 10.12), and goes so far as to submit within RC's appendices the Heritage Statement submitted in support of The Hive (RC APP/3/D/4). The Hive is described in the Kew Guide (RBG/1/C5, at p86) as "an open-air structure […] made from around 170,000 individual components that together create an intriguing lattice or honeycomb effect […] The Hive encapsulates the story of honeybees and their important role in pollinating crops and other plants". The Heritage Statement described The Hive as " a high-quality sculpture that encourages educational interest in important ecological

issues, moreover it is a contemporary folly in the landscape that follows the precedent set by other similar works since the garden's foundation" (para 1.3). It had already proved extremely popular with visitors" (para 3.1). The concept was "to highlight the importance of pollinators such as honeybees […] to the ecosystem" (para 3.1). The installation is "both physically and visually permeable" and "the sculpture appears delicate and small in scale" (para 3.5). Other than modernity, The Hive has absolutely nothing in common with the CC, and it is fanciful to compare them as RC has tried to do.

7.5 The other examples given by the appellant are all equally misplaced. They are at least 9 miles wide of the mark being usually in the London context. The precedents of central park that CE mentioned were clearly even further wide of the mark.

Assertion 2 : GLA support

7.6 The second is to pray in aid the supposed support of the GLA (see for example Appellant Opening para 22). It is impossible to suggest, and the appellant wisely does not attempt to do so in any serious way, that the GLA has greater expertise in heritage matters than Historic England, or Andrew Croft in the specific context of Kew Gardens, or the Built Heritage Consultancy and Grover Lewis Associates.

7.7 Fundamentally, the GLA did not regard this as a case (contra the Citroen site) where they would wish to take over jurisdiction. Even after the GLA were aware that the Council had resolved unanimously to refuse the proposal, they did not regard there to be sound planning reasons to intervene in the case (see para 60 of Stage 2 Report dated 6th February 2017 at CDG.02). Nor have they sought to make detailed written still less any oral evidence to this Inquiry. They knew by the time of the Stage 2 Report that LBH were going to refuse and they

were content to allow that to happen even though they had the power to intervene. The position of the GLA which does not even set out its view as to harm to the WHS and Kew Green should be given little weight. Not only are their conclusions on heritage impossible to know but of course any reasoning behind those non conclusions cannot be worked out at all. The evidence points to the dedicated albeit part-time heritage person at the GLA not even being asked to comment on this application. [inq 20 and 21] Thus to afford a non-conclusion with no reasoning as much attention as the appellant does is surprising. They were not at the inquiry and could not explain the position and were not cross-examined and thus the Inquiry should give more weight to the tested evidence of Hounslow, HE and Kew than the cryptic position of the GLA.

7.8 The GLA took the explicit view that harm would be caused to Strand-on-the-Green, albeit in their view less than substantial. This is completely at odds with the appellant who argues that there would be no harm to Strand-on-the-Green (RC Proof 9.31). The appellant points in the same breath to the GLA position and the Blackfriars Road decision (Opening paras 22 – 24) but in this case the GLA took the view that the proposal would result in heritage harm even after considering the appellant's claim to mitigation. Nowhere, either in RC's written evidence or in the 12 paragraphs of the Appellant's Opening (paras 70 – 81) which solely addressed Strand-on-the-Green, has the Appellant referenced the inescapable fact that the GLA concluded that this important heritage asset would be harmed by the CC. Put another way, the GLA flatly rejected the position which was being taken by RC.

7.9 As to other affected heritage assets, the GLA simply say (CDG.02 Stage 2 Report at para 31) that "GLA Officers do not agree with the range and extent of harm to heritage assets that would be caused by the

proposed development". They do not seek to identify where the areas of disagreement arise or to what extent. CE, engaging as he was during his carefully-prepared presentation could not dispute the inescapable logic that the GLA did not support a scheme that they allowed to be refused and where they concluded there was harm.

7.10 The fact that the GLA wrote that they disagreed with LBH as to the range and extent of harm to heritage assets provided no clues as to what specific views, if any, they had formed. How could one tell for instance what they thought about harm to Kew Green? CE could of course not shed any light on this he is not clairvoyant or psychic.

7.11 The appellant has not fairly represented the position of the GLA, and in fact have entirely avoided the single explicit conclusion on heritage which the GLA chose to articulate.

7.12 Before moving on to the third component of the appellant's case, it is pertinent here to point out that the appellant at 5.2.2 of the D&A (CDA.01) had quite unfairly claimed that in terms of massing the scheme has responded to the GLA, LBH, and key stakeholders. The LBH were clearly not in support of the scheme either at officer or member level ; the GLA at that stage (December 2015) had not even published the Stage 1 Report which was to in due course to identify wide-ranging issues ; and the Committee Report tells us the positions of the key stakeholders (whether HE, Kew Gardens, LB Richmond, Strand-on-the-Green Association, Brentford Community Council, West Chiswick and Gunnersbury Society, Historic Royal Palaces, Georgian Society etc), who were universally opposed to the scheme. Pressed in xx, CE eventually accepted that the applicant had in truth acted with a flagrant disregard for the views of the key stakeholders. Of all those listed at 5.2.2, the massing only really responded to one : Citydesigner ie RC.

7.13 The attempt to suggest that the pre-application response not previously put in evidence offered support for a 120m building is misconceived. In fact the pre app [inq 23] said that "officers have not seen alternative heights so cannot state whether this is indeed the optimal solution and this is highlighted as a point for further discussion." In fact we still have not seen any alternative height below what is proposed and Egret has not been asked to look at it.

7.14 In addition the pre app said that the "impact on views of the development particularly from the sensitive areas including" the WHS Gunnersbury park and the conservation areas "need greater consideration". The pre –app also recommended "engagement with Kew and Historic England should be progressed as soon as possible." [42]

7.15 The continuing comments of the Council after application was made were clear in a section headed building height that said the following.

> *The quantity of development proposed for the modestly sized site has created a massing that reduced the potential slenderness and elegance of the three tower form and negates the efforts made in designing both a series of innovative and memorable facades*[43]
> *4.7 …The height of the building means that it does impact on views from a number of heritage assets…Reduction in height of the proposal would in turn reduce its adverse impact on heritage assets ..*

7.16 Thus when looked at properly the pre-app did not present a different picture as to the appropriateness of scale and mass. In any event during the currency of the application the stance of the LPA was obsvious. Even if none of that is correct the extent to which the appellant has listened to the views of the Council is apparent from their misplaced decision to appeal in the face of opposition from the Council supported entirely by HE and Kew as well as numerous other stakeholders. This is really an application made and pursued to appeal completely

[42] Inq 23 second page
[43] See 4.3 page 11 Coleman appendix vol 2

contrary to the views of all those whose job is objectively to look at applications.

Assertion 3 : Other buildings

7.17 The third component of the appellant case is to identify where there are other large-scale buildings present in particular views. However, no other building, in any of the views focussed on in this Inquiry, approaches the level of dominance and intrusion which would be inflicted by the CC – not surprising when it is remembered that the CC would be the tallest building in West London. Furthermore, this core strand of the appellant's case flies in the face of Policy CC3 (CDD.01 at p136), which is the Tall Building Policy for the borough. Whilst (d) of CC3 seeks to avoid adverse impacts on the settings of or views from heritage assets, (p) sets out the policy expectation that tall building development will "take opportunities to enhance the setting of surrounding heritage assets, the overall skyline and views". In particular the justification for CC3 (p138) explicitly refers to the relevance of other tall buildings, thus at 6.11 "The borough has a number of tall buildings that do not positively contribute to the townscape and their existence should not be grounds for the provision of more". And HE Guidance on Tall Buildings (CDF.14) makes a similar point (para 4,6). The appellant nonetheless attempts to rely on other tall buildings which do not positively contribute, such as Haverfield towers and the BSI building, as ballast for their own case.

7.18 The appellant's focus on other buildings in particular views is a flawed argument in two further respects :

i) The appellant insists on including into their analysis buildings which are not even consented yet, notably the Citroen site. That is not a helpful approach ;

ii) The appellant insists on comparing to the Citadel, which has an implemented consent on the appeal site, and which would be less than half the height of the appeal scheme, at 59m. In terms of the Citadel, the impacts on heritage assets are far less significant because it is so much smaller in the relevant views, with nothing of the dominance of the CC. [more on the Citadel later in these submissions].

8 INAPPROPRIATE DESIGN FOR CONTEXT

Council case is that fundamental of designs are bad wrong scale mass and form and does not respond to heritage context.

8.1 Absolutely central to the consideration of design is height, bulk, mass, and scale. This is set out in a number of policy documents.

i) Firstly the NPPF CDC.01 (para 59) tells us that design policies "should concentrate on guiding the overall scale, density, massing height, landscape, materials and access" ;

ii) Secondly the London Plan CDC.04 tells us that tall and large buildings should not adversely affect the character of an area by virtue of sale, mass and bulk (7.7), and that new development should be sympathetic to heritage assets in terms of form and scale (as well as materials and details) ;

iii) Thirdly the Hounslow Local Plan CDD.01 tells us that the height, scale, massing must relate to the surrounding character (CC3).

8.2 Context matters. Thus in the design chapter of the NPPF the government emphasise (para 61) that "securing high quality design goes beyond aesthetic considerations. Therefore planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built, and

historic environment". The design of a building particularly in a context such as this cannot be treated as if divorced from its surroundings. This is an emphatic policy position in both Hounslow's Local Plan (CC3) and the London Plan (CC3 REF ??). Para 130 of the emerging Framework sets out what the existing position clearly should be it says where the acknowledgement of outstanding or innovative design is tempered with a heavy caveat : "so long as they are sensitive to the overall form and layout of their surroundings". The CC is not a standalone object in isolation. It is a building with context, and that context includes some of the most important heritage assets in the United Kingdom.

8.3 The government could not have been clearer in national policy that design does not operate as a trump card where harm is caused to heritage assets. Thus at para 65 of the NPPF the government say : " Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about existing townscape, if those concerns have been mitigated by good design (**unless the concern relates to a designated heritage** asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits)" (my emphasis). The government therefore make the very point repeated by LBH, HE and Kew in this case which is that if the development would harm heritage assets, a developer cannot simply say "but we've got a really good architect and look at his design". As LBH emphasised in Opening, a building cannot be high quality design if it does not respond appropriately to heritage.

8.4 Good design cannot be separated from the heritage context. The proposal in this case is not good design because it does not conserve the heritage environment. It is too tall, too bulky, too big in terms of

scale and mass. It harms the setting of important heritage assets, and it cannot therefore be properly described as an example of good design.

8.5 PG made absolutely clear why, when considered properly in its context, the proposal is badly designed. He said (Proof 6.3)

> *"In my opinion the proposed development would be of dominant scale and form, and would appear as an overpowering mass, protruding into the skyline, unrelated to any other existing or planned building. The two related concepts of scale and form are taken together as the excessive height and bulk of the proposed design clearly derives from the attempt to fit such a large amount of accommodation onto the relatively small appeal sites".*

8.6 In his oral evidence he explained that Kew Green and Strand-on-the-Green had not been used to control the height, mass and scale (as the appellant conceded): therefore although "the Appellant's DAS describes the proposal as a 'bespoke design-led response', it would seem to me that the proposal is in fact a development-led response that seeks to accommodate an excessive amount of accommodation on a relatively small site" (PG Proof 6.6). In EIC, he was very clear and straight-forward that if a proposal fails policy in terms of scale, mass, and height, that tells him that the design is not high quality, because scale, mass, and height are such fundamental ingredients of design.

8.7 PG went on to explain his judgment in terms of the inelegance of the proposed building : "The inelegance of the design relates to its proposed bulk and mass […] in many views the two protruding towers would merge into one, forming a single ungainly bulk" (PG Proof 6.8).

8.8 Design cannot be treated as if context is an irrelevant or marginal issue. In this case, part of the context is the Golden Mile. But at the heart of the context is the heritage environment. A design whose mass, bulk, scale and height is not properly informed by that heritage environment is not good design

The Tower can and does to harm to heritage assets.

8.9 It is common ground that despite the best efforts to give a charismatic presentation about the quality of his own work it is clear that the Tower can do harm and damage. All parties accepted this.

8.10 At 7.6 of his proof RC said that if the Tower was juxtaposed with elements of the Palm house there would be:

> *An adverse impact on the attributes of OUV of the WHS most specifically the iconic architectural legacy including the palm house the temperate house and modern additions such as the princess of wales conservatory.*

8.11 He explained that this "consideration" was "one shared between myself and Mr Egret." This is all despite his claim that the "design has similar qualities to those of the Palm House"[44]

8.12 Thus there can be no doubt that the Tower can do harm to heritage assets even where it alleged to have similar design qualities. In fact if it had really been considered it is obvious that it can harm Strand-on-the-Green and Kew Green and Gunnersbury Park where there are not similar design qualities.

8.13 Thus all the warm words about the concepts of the curve etc does not alter the fact that can be and is damaging to heritage assets. Mr Coleman accepted as he had to that of course it would not be suitable to have buildings like at central park in this context even if a view is reached that the building is "beautiful" against the vast bulk of opinion. It really is only those that are part of the appellant team at this inquiry that repeatedly say it is beautiful. There is absolutely no concensus. Grover who independently has reviewed numerous buildings over many years was not so impressed and actually thought it was inelegant. He thought with very clear justification that it was

[44] Ibid §7.6 coleman

Clumsy bottom heavy form with a narrow base
Stubby protrusions rising from an enormous solid rather than elegant slender form
Single ungainly form[45]

8.14 He amplified this in examination in chief by reference to the elevations and visualisations.

Over height scale and mass result from client nothing to do with context or heritage

8.15 The design of a building has to start with the brief. It is frankly astonishing that nowhere in a 246 page D&A or a 195 page Proof (not including addendums and appendices) did CE attempt to set out the brief given to him as the architect. The position was even more extraordinary when he chose to completely ignore the issue in three hours of presentation to the Inquiry. Pressed in xx, CE initially gave the impression that he had simply been given carte blanche. He claimed to have been told "We have a site, please look at it creatively to find a good building". Accused then of treating the Inquiry as if it had no understanding of the realities of the development industry, he decided to acknowledge that he knew Galliard's "knowledge and know-how" was in the world of homes not offices. It is simply not plausible of the appellant's architect to ask the Inspector and the Secretary of State to accept that this was the limit of the brief.

8.16 This is especially when we know that the brief was responsible for him dropping his favoured solution for the site. The initial concept was three defined volumes.[cd A1 page 64] This was so that it responded to context developed a sculpted form created a generous setting and considered the articulated mass that allows light to come through. These were the reasons CE gave for this initial 3 volume concept. He obviously at this moment knew the site and its size. However the problem with this was then that when he presented this to the client

[45] See §6.8 proof PG

"this proposal yielded a lower number of apartments per core"[46] Thus the initial concept was compromised by the clients desire for more flats. They wanted to "maximise the potential opportunities" [page 62] and in particular of flats with views to Kew Gardens.[64 cdA1] The clients knew that flats higher up are relatively more valuable as James Brown said in app 2 of Goddard rebuttal that higher flats are "more desirable (and thus more valuable" dwellings.

8.17 It is inconceivable that the experienced and commercially-driven developer did not provide some indications in terms of the number of units and the importance of views from upper floors. That it is inconceivable is well-demonstrated by an extract from the book published by CE's practice, 'Framing Serendipity (CE App 2 p177) where Mr West talks about the 'magic' of the architectural vision without which the emphasis is effectively about money : "the project is not viable unless we can deliver x square metres of rentable space or y number of units", and CE then picks up the baton within the same page of the book by adding "The magic comes when the client talks to the planner and they are no longer focused on the money and the units". And, perhaps most tellingly of all, the architects, in the context of 'Partnerships and Collaborations', say this : "The height that a developer aspires to is often linked to the quantum required to make a redevelopment viable" (p31). And then (XX by HE) after a night to think about it, CE changed his position again when asked about the brief : "we were asked how many homes do you think you can get on the site in an elegant architecture", at least this might have been inching closer to the reality. Both CE and RC were asked (XX by HE) to produce for the Inquiry a copy of the brief to the architects : CE agreed and RC was evasive – the brief has never appeared.

[46] DA cd a1 at §4.4

8.18 There is only one sensible explanation for why CE has been so coy with this Inquiry about the brief, namely because the brief was about maximising units and returns. That is a relevant matter, because it underpins the evolution of the design: sometimes, something which is not said at all is more revealing than something which is shouted about.[47]

Doe the people involved guarantee good design

8.19 The suggestion is that the people involved here on appellant side can give you confidence that the design is good. And here there is a cautionary tale : the fate of the Strata (RC Appendices Vol 1 pA14) and VTI Victoria (RC Appendices Vol 1 pA16), two buildings included by RC in his CV but both acknowledged even by him to be disasters once built. Both were winners of the award dreaded by all architects, the so-called Carbunkle Cup (XX of RC by HE), in 2010 and 2017 respectively. RC did not shirk from singing to the Inquiry about his CV, but he had not volunteered the fate of these two buildings. Neither project, he said when pressed in XX, had retained the original architects. However NOVA Victoria's was awarded the Carbuncle Cup for more fundamental reasons. The judges said the following:

> *… describing the building as 'crass' 'over-scaled and 'a hideous mess'. 'it makes me want to cringe physically. It's a crass assault on all your senses from the moment you leave the tube station"*

8.20 It is difficult to see that such sweeping criticisms are really attributable to some minor changes after the consent relating to value engineering and fins.

[47] See Arthur Conan Doyle the Adventures of Silver Blaze
Gregory (Scotland Yard detective): "Is there any other point to which you would wish to draw my attention?"
Holmes: "To the curious incident of the dog in the night-time."
Gregory: "The dog did nothing in the night-time."
Holmes: "That was the curious incident."

8.21 The evidence of Barbara Weiss to this inquiry is that having consulted many people and the criteria for the Carbuncle Cup that "this would make a worthy winner." It would be RC's hat-trick. Many of the criticisms made by BW especially on massing scale and insensitivity to context were made by PG.

8.22 The case presented by the appellant tries to be all things to all people : one minute a calm building (XX of RC by LBH), the next a reflection of the motorway and the roundabout ; one minute "low-key" (Finch Proof 4.19), the next a gateway to London. Egret at 7.3.1 describes the building as a couple dancing whereas in evidence he said it was still. These contradictions are not explained by different sides of the building because after all the motorway side of the building is what will be seen from Kew Green and Kew Gardens and parts of it from Strand-on-the-Green.

8.23 In simple terms, and fundamentally, it is a contradiction in terms to contend that a development which fails to respond appropriately to the heritage environment can at the same time be treated as a high quality design.

8.24 Paul Finch is another member of the appellant's team who has form for supporting schemes which went on to 'win' the Carbunkle Cup. He gave evidence on behalf of CABE supporting the Walkie Talkie building, the 2015 'winner' (XX by HE). He has been brought into this appeal by the appellant to provide an 'independent' design review of the appeal scheme. It is questionable how independent he really is, since he was named as part of the so-called Brentford East Collective (Goddard App 7) alongside Galliard Homes (the major part of the appellant company Starbones), Citydesigner (the appellant's heritage consultant RC), and DP9 (the appellant's planning consultants). The Collective describe themselves (letter at Goddard App 7) as " a group

of landowners and stakeholders invested in the delivery of the transformation if the area". The same letter sets out in some detail his critique of LBH's draft SPD. It was extraordinary that he made no reference to this when being asked questions about his work with/for Galliards, until he was taken to the document.

8.25 PF's review of the design scheme is of little or no assistance to this Inquiry because it became clear in his evidence that he had paid no real attention to the effect on heritage. All parties in this Inquiry have been agreed that the visualisations area a tool but that actually seeing and experiencing the context is vital, a point made also by RC (Proof 8.1). What became clear as PF's evidence unravelled was that PF did not seem to have done this exercise himself. He said he had been sent the appellant's TVIA's, but gave no evidence at all of going to the relevant places and developing his own understanding of significance and impact : the best he could come up with was a reference (XX by RBG) to visiting Kew Gardens with his family last summer.

8.26 PF accepted (XX by LBH) that how a proposal responds to heritage context is part and parcel of the quality of architecture. Taken in XX (by LBH) to the central issue of the significance of heritage assets, it was put to him that there was no justification for the height and mass of the proposal. His response was revealing : "The design itself is the justification". His approach explained why he does not appear to have bothered visiting the relevant heritage environment for himself, because he was quite clearly treating the architecture in isolation. Asked (XX by LBH) whether design in this case improved the significance of Strand-on-the Green CA, his answer was unashamedly evasive : "it depends what you mean by significance". Eventually (XX by LBH) he accepted that a tower in the background has nothing to do with the significance of SOG ; and in respect of Kew Green he

accepted that he had seen no evidence of height, mass etc informing the design.

8.27 PF told the Inquiry that the CC "is a building to be seen" (XX by LBH), and spoke (Re-Ex) of its "lustre" and "sparkle". His evidence was even in this respect confused, because also invited the Inspector and the SoS to regard the building as "low-key" (PF Proof 4.19). At the very end of his Re-Ex, in full flow, he told the Inquiry that the building "will become an icon", but in his written evidence he said that it was not trying to be pretty or iconic (PF Proof 4.25.8). His evidence was both superficial and full of contradiction.

8.28 CABE have produced a design review document called 'What makes a good project' (PF App 1). This document includes a section which sets out 'alarm bells'. We don't know whether there was "a clear brief (alarm bells 2nd bullet), but there was no evidence of adequate context analysis informing the design (alarm bells 6th bullet) – this alarm bell should have sounded loudly had PF carried out an objective and thorough analysis, and it should ring clearly in this appeal.

DESIGN EVOLUTION FAILED TO TAKE INTO ACCOUNT MOST HERITAGE ASSETS

8.29 It is obvious when we go back to the more contemporaneous document describing the design evolution

8.30 The approach of LBH has been demonstrably thorough, considered, and transparent. This contrasts sharply with the approach of the appellant. The appellant has not volunteered any underlying methodology, has refused to let anyone else see the visuals upon which the design conclusions were apparently based between July and October 2015, and does not appear to have carried out any testing of

comparative heights and massing, or at least none about which they are prepared to let on. Instead, to the extent that there was any methodology, this had to be extracted through xx of the appellant team in a public inquiry, to reveal that the methodology they applied amounted to an opinion expressed by RC, and (we eventually discovered) based on "a feeling" that the only heritage asset to which the CC should show any deference was the Palm House.

8.31 RC did accept during XX, for example in relation to Strand-on-the-Green and Gunnersbury Park, that if the CC looked as it did in MS's visualisations (grey and without façade detail) that the building would be harmful. In other words, in terms of mass, scale, bulk and height, the CC was harmful to the heritage environment. Taking the appellant's case at its very highest, therefore, it is the cosmetic detail which would save the CC, detail which for the most part would not be appreciable in distant views.

8.32 In both the DAS and the Proof, the influence of heritage on design featured only in the margins. In the list of identified constraints at 2.10 of the DAS (CDA.01), heritage assets did not even get a mention. When, much later in time, CE wrote his very lengthy Proof, a chapter (Chapter 7) was devoted to the evolution of the design. This chapter did pay lip service to the influence of heritage assets, but only in a very narrow sense, namely in respect of the Palm House (7.3.3, 7.5.4, 7.5.5). Yet by the time he came to give his presentation, there had been a remarkable change of emphasis : into the arena came a new page headed 'heritage considerations' (EIC p62), and the other new pages headed 'design consideration to heritage assets' (EIC p66-67). This amounted to a thinly-veiled retro-fit. It was inevitable that the veil would slip sooner or later, and it did so late in xx by LBH : "The key starting-point was that the Citadel was visible in Kew Green and Strand-on-the-Green. Therefore visibility in the background didn't feel

like … what I'm saying is that the visibility of a building was already established. The difference with the Palm House was that the Citadel was not visible". The truth, therefore, was that the only driver of heritage assets was the Palm House, just as it seemed from an objective reading of CE's Proof, but now the explanation for that approach had emerged. In short, CE had effectively accepted that the only heritage driver in the design of the scheme was the Palm House. It took a long time to emerge, but it was obvious for the simple reason that had any specific consideration been given to the other heritage assets, then that would have mattered enough to warrant a mention in CE's very detailed exposition of design evolution.

8.33 The rationale for treating the Palm House as a driver to limit height, rather than other very valuable heritage assets in addition to the Palm House, is deeply flawed. A key component of the appellant case is that the quality of the CC is such that it enhances views, but that does not square with an acceptance by the appellant that it would be harmful if seen in the setting of the Palm House. It is as if what the appellant is actually saying of their building is "it's good, but not that good". In which case, what matters is the basis on which they distinguished Palm House from other assets. This was explored in detail during the evidence of CE (XX by RBG), principally by reference to the 3 points made a 9.2.22 of CE's Proof. By reference to those points, the Orangery is also an architectural icon in Kew Gardens, it also sits within a landscape setting, and it also embodies a synergetic and harmonious relationship between architecture and landscape so there is no logical basis to distinguish the Palm house from the orangery. CE endeavoured to manufacture a response but this was wholly unconvincing, namely by introducing during his oral evidence (XX by RBG) the concept of a juxtaposition in the Palm House view, but he was unable to explain why there would be a concern about this if the

CC was not causing harm. This provided to the Inquiry an excellent example of the muddled approach taken by the appellant to seek to justify their design choices.

8.34 When the attempt by RC to rationalise the distinction he made for the Palm House had failed, he then took a different tack, saying (XX by RBG) that he "had a feeling" when he saw the Palm House that t should be treated differently. Another excellent illustration of the arbitrary nature of RC's approach is that in the TVIA (CDA.11) assessment for the Palm House he assessed the sensitivity of the view at Viewpoint 17 on page 140 as "high". However, in assessing the view across Kew Green in the TVIA p154 Viewpoint 21] that was also assessed by him as "high". Having treated both views as being highly sensitive, he treated one as a no-go area for the CC, and the other as a welcome area for the CC : these two positions are a clear contradiction, they provide an excellent demonstration of the flawed and arbitrary approach taken by RC.

8.35 A remarkable insight into the design evolution emerged when the chronology and tool-box of CE's design was explored. He was instructed in July 2015. By October his team had already circulated to LBH fully detailed drawings in advance of formal submission in December. However, as CE explained the only visuals which had been available to him at that stage showed the proposed building as a green wire. On what basis, therefore, was the appellant's team able to conclude that their design was avoiding (and on their case, benefitting) harm to heritage assets ? Their case is predicated on the proposition that it is the detailed quality of the building which matters – the facades, materials, colours etc – so given that these were not shown on the visual aids which they were using how could they have properly concluded that the building would not cause harm? And what fair reason could the appellant have for refusing, in response to a request

from RBG's solicitor [inq 22] to disclose the visuals which they were using at that time? This lends very substantial weight to the suggestion that the appellant's case is in reality a retrospective justification. The evidence of CE on this topic was that he had not been consulted on this refusal to disclose what the visualisations or could not remember and he had no objections to the disclosure. However despite making this solemn statement to the inquiry nothing has materialised. This shows that he cannot win the day and there is some darker and more evasive person really in charge of the approach at the appellant. Egret is not even allowed to disclose documents that he has promised publicly in front to an Inspector and 4 QCs to disclose. It also shows as an offered policeman of quality he is totally unable to win the day vs these other differently motivated forces.

8.36 The appellant's team had incorrectly approached the design on the basis that if a consented building would be visible in a particular view, then their design would automatically be acceptable in that view. That approach is clearly flawed. Visibility was treated by the appellant as a black and white concept: either it is visible or it isn't, without reference to the extent of visibility. The design approach treated as entirely irrelevant whether a new building would be 60m high or 120m high. In this respect, the advice of Mr Coleman failed the rest of his team.

USE NEGATIVE FEATURES TO INFORM DESIGN NOT POSITIVE.

Should have used positive features from heritage assets

8.37 Sadly having really left out of account any regard to the conservation areas in the design of these proposals the appellant has used much less attractive features to affect the design. We know that height was not informed at all by any feature of the conservation areas. This was obvious from Egret Coleman the journalist architect Finch. Having

ingored them for height it is fanciful to suggest that scale mass and form really was informed by them. There is not one word in the original A11 A15 or A1 to suggest that is the case.

8.38 It is clear that they should have used the conservation areas to inform the design they are obviously positive. This is almost by definition. Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides as follows.

> ***Designation of conservation areas.***
> *(1)Every local planning authority—*
> *(a)shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and*
> *(b)shall designate those areas as conservation areas*

8.39 The conservation areas that have been relied upon are all accepted as being correctly designated. They are thus of a positive character so much so that we know following the act that they have a character or appearance that is desirable to preserve or enhance. Thus that character and appearance is clearly positive. The design of a building which is going to have a serious impact on key elements of that appreciable character from within and from key views where the character and appearance is going to be appreciated needs to react to that positive character and appearance. That is what the appellant has failed to do react to the positive features of the heritage.

8.40 Instead of seeking to respond to positive character and appearance of heritage assets, the design process preferred instead to take cues from other negative influences. CE was keen to describe, both in his written and oral evidence, the design influence of the motorway, viaduct, and roundabout. Attempting to justify this during xx, he went so far as to describe the M4 as an "object of beauty, from an emotional point of view". He did not shy away from the influence which the surrounding transport infrastructure had on the design of the building. Indeed at

8.2.8 of his Proof he identified "the fast-paced vehicular context of Chiswick roundabout" as a driver of the height of the design. The elevated section was compellingly described by local people as a monument of shuddering ugliness. It is extraordinary that the hub of the local traffic system was a greater influencer of height that Kew Green, or Kew Palace, or the Orangery in Kew Gardens (to name a few), but that is what explains the intrusive nature of the CC on this multitude of important heritage assets. In Re-ex, CE explained that a building at the appeal site needs to have significant scale because of the presence of the M4, and to explain this he referred to the bank which used to sit on the site and which was "lost and out of scale" – that may be so, but it does no explain why the site needs a building 32 storeys height in order to relate to the motorway beneath it, or why a 60m building was not sufficient in scale to relate to the surrounding infrastructure. The Council were alive to the need to respond to the gateway and that is why in their considered and reasonable approach in cd d4-6 they have wanted a gateway building of 60m or 60-65 m. This is sufficient to have a gateway for the A4 M4 corridor without doing unacceptable harm to the heritage assets.

COMPARISONS WITH FALLBACK USES.

8.41 The appellant suggest that the Tower is better than the fall back uses. They are wrong. We deal with

i) The citadel

ii) Other development that may come forward.

THE CITADEL

8.42 The evidence of the appellant was that the Citadel was something that had at least a reasonable prospect of being built at some point. [48] Goddard explained by reference to an authority never mentioned and not in evidence how he thought this was the case. He surmised this was viable and deliverable when being cross-examined about it.[49] He had also had a conversation with his housebuilder client.

Citadel preferable in heritage terms.

8.43 In any event, there is no basis to conclude that the Citadel isn't in any event a solution to the site. It may have divided opinion, from an architectural point of view, in this Inquiry, but many buildings do. Its height (59m) would ensure that in terms of size it would still function as a marker building, without dominating heritage settings.

8.44 It was clearly promoted as a good building by the then-owner Bath Estates (whose director Kim Gottlieb is also a director of current owner Starbones). The committee report for the Citadel (Goddard App 2) described the quality of architecture in the following way.

> *The design of the office building has exploited the exposed site and the proposal would be a distinctive high quality landmark [8.20]*

8.45 It was accepted by RC that the overwhelming likelihood was that this was how the developer London and Bath estates were promoting it.

8.46 The report goes further describing the citadel as

i) as " a very attractive elegant structure .. a positive landmark" (8.29) – notably, in that case Bath Estates had reduced the height (to 59m) in order to address the impact on sensitive areas including Strand-on-the-Green and Gunnersbury Park (Goddard App 2 at 8.15).

[48] Goddard rebuttal at para 3
[49] Cross-examination by LBH

ii) It would represent

The creation of a strong positive landmark

8.47 The appellant now because it suits them despite the continuity of directorship in their joint venture tries to rubbish Mr Gottlieb's earlier scheme. Coleman did in examination in chief say that it would fulfil the gateway role to some extent.

8.48 In reality the Citadel is preferable to the new 109m proposed tower for a number of reasons.

i) Firstly it is much less damaging in heritage terms. This was explained in Philip Grover's proof at 4.15 and in his evidence in examination in chief. Put simply he said that:

"the citadel would be far less dominant in key views than would be the case with the appeal proposal. For example the citadel would hardly rise above

- *The tree line in Royal Botanic Garden Kew*
- *The tree line in Gunnersbury park*
- *The historic buildings that line the north side of Kew Green"*

ii) Secondly the citadel responds vastly better to the measured and reasonable position in the emerging SPD and GWC Local Plan Review. It provides a gateway to the corridor without an unacceptable impact on heritage. It responds to the constraints suggested in those documents as opposed to just cherry picking the parts that the appellant likes.

iii) It will be gateway as was the design approach of the promoter as was accepted by the LPA when they considered all the documents and was accepted by RC. A gateway can be achieve through distinctiveness.

iv) It responds better to the employment led regeneration which is called for by the local plan at SV1[50] page 20. It provides 19750m^2 as opposed to only 3901[51]

8.49 Thus the Citadel at least tries to perform a gateway role to the corridors without unreasonable adverse impact on the heritage assets. It is preferable.

8.50 The views of the Council were supported by others. The Citadel attracted far less vehement opposition. The appellant tried to get Barbara Weiss to say disobliging things about the Citadel without of course all the material on that in front of her. She clarified in her questions to Goddard that in fact she thought the Citadel was better than the Tower proposed here.

Other options if the client Does not do Citadel.

8.51 There is a massive contradiction at the heart of the case for the appellant on what they would do if they were refused permission. If the inspector and the Secretary of State upheld the position of HE LBH and Kew Gardens that this development is unacceptable they say they would continue to implement the citadel and that is all they would look at. They would of course they say ignore the the Secretary of State and any advice he would give as well as you as they have everyone all along in this project.

8.52 It is also contrary to what they have said all along in this inquiry. They have tried to present the client as someone so interested in quality of architecture and interested in creating a brilliant building. If they do not get their way they will now do all they can to build a buiding that they now believe is bad quality. It stretches credibility. They either do not

[50] Cd D1
[51] 12.46 goddard albeit that is expressed as net

believe the citadel is really bad quality or they are not genuinely interested in quality.

8.53 Secondly they seem to base this view that everything is hopeless apart from the Citadel on the advice of James Brown in one paragraph of a letter written for the rebuttal proof. This is surprising since we know the don't remotely follow the advice of James Brown and his viability assessments as to what they will really do. He as predicted 4% profit and says 20% profit is necessary to be viable and yet they have paid for an expensive team and think this is preferable commercially to the citadel. The fact that the LPA has accepted that James Brown's evidence is reasonable for affordable housing purposes does not mean that it can be extended to conclude what the appellant would do if this appeal were refused.

8.54 Thirdly James Brown has not in fact looked at any lower scheme and we know that looking at a lower scheme is complicated as he mentioned. He said "the economics of tall buildings are complicated".[52]This was also a point made by Finch who said that "simply increasing the height of a building does not necessarily mean it generates more profit". He spoke of his considerable real world experience of development economics and was at the inquiry. Thus the idea that they can now say it is not worth looking at any proposal apart from the Citadel without bothering to analyse any scheme is bizarre.

8.55 Fourthly Goddard having been taken to the fact that obviously if you proposed a different citadel with adverts it could well be more valuable tried to avoid the position. He looked at his appendix 5 which showed the capital value of the adverts was £25m vs cost of construction of £1.45 and started saying perhaps that was not right. They he said but you would have to pay CIL on a new one that was only about £1.1m

[52] See app 2 goddard rebuttal penultimate para

allowing for both LBH Cil and Mayoral of £20 and £35 respectively for a building of 19750sqm. Thus this got him nowhere. Then he said rather than redesigning the citadel to integrate the adverts someone would just hang them on there and not go for a different consent. This certainly would not be appropriate or compliant with policy. Policy CC5 says that "advertisements on buildings should be integral to the buildings design working with elevation and any architectural features and relevant to the use and context". [53] CG's approach of speculating what his client would do after refusal was ill considered and revealed that although he had an amazing ability to be superficially plausible almost nothing he said really survives considered thought. This is no doubt why he delivered so many of his points in oral evidence so that they could not be reflected on.

8.56 Fifthly one sometimes has to sit back and see if what someone is saying has the hallmark of plausibility. Can it really be right that there is no other viable scheme on this site in such a prosperous part of our country where there are extraordinary development pressures. Numerous other developers in fact every developer in West London has found that lower development than this tower is viable. Wheatstone house for example is being built providing affordable housing at 38.5m [see Shane Baker at 6.13 and 6.17. This is but one example. Can it really be correct that this site is like no other.

8.57 If the appellant want to say that nothing is viable or deliverable on this site apart from the citadel to help them gain permission here without studying any other proposal without any costings it is simply implausible and they would have to do a lot better than this to convince anyone. If they want to say that the advert and bad state that they are keeping the site at the moment would continue forever that is also not

[53] D1 page 146

plausible. Although adverts have been permitted temporarily pending redevelopment that argument cannot last for ever.

8.58 Thus the reality is that

i) The citadel is vastly preferable in the round and is far less damaging to heritage assets. It creates a gateway with much less damage.

ii) The appellant has not shown that if the the Secretary of State refuse this scheme that there would not be other options for this site that should properly be looked at.

Then dumbing down conditions do not rescue the position

8.59 Put shortly the no dumbing down conditions proposed by the appellant in the last week do not make an unacceptable proposal acceptable. The scale mass and height are entirely wrong in context. That is the big point.

8.60 The studio egret condition is one that the Council are rightly nervous about imposing.

i) Firstly it has never been imposed on any appeal so far as either party know. This would be the guinea pig.

ii) The emerging policy position which has not been tested suggest this may be appropriate in a section 106 [54] A condition can be varied more easily than a 106.

iii) The LPA think it is very hard for them to police the architect acting as a policeman to the client against dumming down.

[54] See page 104 C5 policy

iv) It would be easy for a client to make a good case for varying so as not to be beholden to fees etct of the architect or if particular people left.

8.61 In any event charismatic and engaging as Mr Egret is and was at the inquiry he has proved himself not to be very muscular at standing up to the client. He promised to provide the brief in evidence and was overruled. He promised to provide the visualisations that he actually used to develop the project and has not done so. If having giving evidence in public to an inspector he has not stood up to the client in order to do what he promised the idea of him standing up in the future is fanciful. In addition he did not really give any explanation as to why he did not ask the client to be allowed to be able to look at different lower solutions.

8.62 The other condition that is offered is one about providing a good deal of detail that has so far not been provided. The very policy in the emerging policy D2 says that the first way to retain quality is to "have sufficient design information including key construction details provided as part of the application to ensure the quality of design can be maintained if the permitted scheme is subject to minor amendments".[55] If the colour of the fins had have really been so crucial the RAL number could have been provided. If the exact dimensions of the fins was central that could have been provided. The reality is that these cosmetic additions to the building do not alter the fundamental problems and the fact that they have not been precisely designed so far is testament to that.

Conclusion on Design

8.63 Absolutely key aspect of the design in this case are extremely bad. The scale mass and height do not respond to context and the important

[55] Page 104 criteria H of D2 at cd C5

heritage assets. They use materials that are discordant. Thus the design is fundamentally bad.

8.64 The devices used cannot remedy these fundamental problems. In a similar way a tailor who made a 12ft suit that was far too massive would persuade no-on that it was acceptable by pointing to the fact that it had been made by a skilful tailor using wonderful coloured material and beautiful curves. If it does not respond to the context and positive attributes of the area it is supposed to fit it is bad design. This of course may not be the fault of Egret. He was not allowed by his brief to look at a 60m building as he fully accepted in cross-examination.

9 HOUNSLOW REASONABLE AND BALANCED APPROACH

9.1 LBH have been open about the suitability of the appeal site for a landmark gateway building. But way-marking is just about size, it can also come from distinctiveness, a point made in the supporting text (6.10) to LBH's tall building policy CC3 (CDD.01). Distinctiveness itself is not just about the built environment, a point emphasised by the government in the chapter on design within the PPG (26-020-20140306, CDC.02) : "distinctiveness is not solely about the built environment – it also reflects an area's function, history, culture, and potential need for change". There is no doubt at all that CE, described in Opening as a world-class architect, could have designed a landmark, a way-marker, on this site without it having to be so overwhelmingly tall. He agreed with this proposition in xx. Once again Studio Egret's book confirms this : "We find that there is always more than one way to evolve a place. There is always the potential for more than one

architectural solution" (p3), and "there's always two or three or four different ways to resolve a challenge" (p178).

9.2 During his presentation to the Inquiry, CE said that the solution for this site was a straight choice between the Citadel and the CC. But there was no proper evidence that this was the case. From a design perspective, there were plainly other solutions. Indeed RC confirmed in evidence (XX by LBH) that if the developer wanted a different building 60m high then was nothing to prevent them pursuing a high quality building (as an alternative to the Citadel) if they wanted ; RC further confirmed that he hadn't been asked to consider a 60m tall building at the site.

9.3 The Capacity Study demonstrated that LBH were not plucking a figure from the air but had instructed consultants (Urban Initiatives Studio) to carefully analyse a coordinated redevelopment of Brentford East. As to the approach to building heights, a sound methodology was applied which took specific account of heritage considerations. The analysis was set out in a detailed 95 page document published in July 2017. The analysis considered appropriate building heights in the context of the heritage environment. The approach to building heights was explained in Chapter 4, including the methodology which included testing through 3D modelling (see 4.3 p63). The analysis compared the consequences of a light touch ('scattered') approach against a more prescribed ('coordinated') approach, explaining why the scattered approach was discarded in order to better protect heritage assets. The appellant's approach is a blatant example of a scattered approach, which seeks to address the master-planning of the regeneration of Brentford East on a piecemeal basis, with – in truth – barely even lip service paid to protecting the heritage environment,

9.4 The Capacity Study recognised the opportunity for a special gateway building to mark the eastern entry point into the Golden Mile, and then tested a series of heights at the location in the context of the setting of heritage assets. It concluded that 59m was an appropriate height above which there would be a significantly harmful impact on the setting of heritage assets (p83). The findings of the Capacity Study were carried through into Draft SPD published in October 2017, which makes clear that it was rooted in the methodology of the Capacity Study (para 4.6).

This proposal would cause serious harm and create precedent

9.5 LBH have taken a wholly reasonable and measured approach to the development of Brentford East and the Golden Mile. Unlike the appellant, LBH have recognised through their Capacity Study (CDC.06) and draft SPD (CDC.05) that the development of the appeal site and nearby sites should be approached in a coordinated way. Applying this strategy, the SPD set out a series of principles in respect of building heights :

i) principle 1 : In Brentford East, building heights for both residential and commercial development should not exceed 24 metres which is equivalent to 6 commercial storeys or 8 residential storeys, other than the sites at Principles 2 and 3 and recognising that there may be other developments where greater heights may be permissible up to a height of 48 metres (para 4.26 page 28) ;

ii) Principle 2 : at the Chiswick roundabout site which is a gateway to the Golden Mile, a height of up to 60 metres would be acceptable for high quality well-designed development (para 4.36 at page 30) ;

9.6 Principle 3 : the maximum height of other tall buildings in Brentford East will be limited to 48 metres (equivalent to 16 residential storeys or 12 commercial storeys), other buildings would need to be subservient to the Chiswick roundabout site (paras 4.39 and 4.41 at page 32).

9.7 The approach is to create a gateway to the A4 and M4 as Coleman accepted in cross-examination. It is on that corridor that there want to be a hierarchy.

- See p83 of D6 and page 86 of D6

- 4.32 of D5 the gateway and hierarchy is "when travellign along the corridor". See also 4.33 and 4.34 of the SPD it was accepted that all these concepts were for the corridor.

9.8 However the other side of the balanced approach in these documents is to ensure a restriction on height so as to not be prominent from the heritage assets. This is as result of considering all the heritage assets and testing the effect of having different height. The restriction that then results is set out in paragraph 4.38 of the SPD which provides as follows.

> *4.38 Testing has also shown, as can be seen in the Brentford East Capacity Study Final Report that height increases above 60 metres would have significantly adverse impacts on tested numerous sensitive views. An increase in height beyond 60 metres will unacceptably increase the prominence of the development and dominate the skyline. This is considered to have a significantly harmful impact on the setting of heritage assets including views of the Strand on the Green and Kew Green Conservation Areas, as well as views from Gunnersbury Park and Gunnersbury Cemetery.*

9.9 Thus form the heritage assets it does not want hierarchy or gateways but rather something that does not increase prominence and is not significantly prominent.

9.10 There can be no doubt in the real world that were the appeal allowed, consenting a building of 120m at the Chiswick roundabout, that would drive a coach and horses through the coordinated range of heights envisaged by LBH. CG for the appellant claimed (EIC) that there would be no precedent set because every scheme would be judged on its own merits and in its own policy context. However, that is just not a realistic approach. It is of course not the approach he then 5 minutes took regarding Kew and going to previous decisions of the authority .

9.11 The fact that a precedent would be established is obvious. Thus in the well-known case of Pound-stretcher Ltd v SSE [1988] 3 P.L.R. 69 the court said (p74f) :

> *"In some cases the facts may speak for themselves. For instance, in the common case of the rear extension of one of a row or terrace of dwellings, it may be obvious that other owners in the row are likely to want extensions if one is permitted".*

9.12 Pound-stretcher was considered in Rumsey v SSE and Waverley BC (2001) 81 P.&C.R. 32, when the court said (16) :

> *" […] in Poundstretcher, it was rightly recognised that the planning judgment as to harm by precedent can be made in circumstances where the facts speak for themselves. The Inspector here identified his concern as being with the relatively small properties in the area ; his conclusions as to precedent and cumulative effect do not require greater exposition than he provided as to the material upon which they were based. The circumstances which he has identified can be treated as speaking for themselves ".*

9.13 If the CC was consented, then in terms of precedent the facts speak for themselves.

10 AMENITY SPACE

10.1 A lack of amenity space is a classic symptom of overdevelopment.

10.2 The issue arises in respect of communal amenity space. Policy SC5 of the Local Plan[56] is entitled 'Ensuring suitable internal and external

[56] Cd D1

space', and provides 'benchmark' standards for the provision of communal external space. The policy states that a set-off reduction should apply for the areas of private space. The facts are as follows.

i) The benchmark based on the SC5 formula is 8440 sqm, before setting off private space[57];

ii) 2378 sqm of private space would be provided ;[58]

iii) The minimum figure after setting off private space is 6062 sqm communal amenity space[59];

iv) 1385 sqm[60] communal amenity space would be provided ;

v) The deficit against the benchmark figure (after private space set-off) is 4677 sqm[61] ;

vi) The provision is 22.8% of the benchmark figure.

10.3 Although the appellant argues that these are benchmarks rather than inflexible requirements, it is important to remember three matters.

i) that the policy expresses these as minima: "Communal external space should be provided at no less than the following standards";

ii) the justification for the policy, set out at 5.18 of the supporting text, is : "New housing should provide the highest quality of internal and external space to meet the demands of everyday life for the occupants"[62] ;

[57] 6.44 Baker
[58] 6.51 Baker
[59] 6.51 Baker
[60] 6.53 Baker
[61] 6.53
[62] 112 of local plan cd d1

iii) the standards have been arrived at as a result of thorough high-level analysis, as explained in one of the Notes to the policy : "These standards draw on research and standards provided through : Lifetime Homes Guidance, Building for Life, HCA Housing Quality Indicator Standards, RIBA Case for Space and other good practice".[63]

10.4 The fact is amount of communal open space provided here in realation to the minimum levels is lower than in any example that Goddard gve ever in Hounslow. He came up with a number of point none of which excuse this severe lack. The first is to rely on the Park.

The walk to the park is hostile.

10.5 The evidence that Shane Baker gave with his long experience of the matter was compelling that the walk to the park would be hostile.

- 6.59-6.71

10.6 SB in EIC explained that the site is surrounded by heavily-trafficked and noisy roads, and that occupiers would need to cross Larch Drive, where there are no crossing signals, navigating through vehicles to reach the refuge. Noting that Larch Drive will also be used for deliveries, refuse, and the access to the basement car park, he added that the geometry allows high speed turns adding further uncertainty. It would be a very hostile environment.

10.7 The crossing over Larch drive he explained to be busy and hostile. He set out carefully the traffic volumes and explained in examination in chief all of the conflicting movements that would make crossing intimidating. He explained that the works proposed in the TA were largely cosmetic by reference to the plan in the TA.[64]

[63] Page 113 right hand side of local plan cd d1
[64] CDA after page 110

10.8 GLA agreed with this they described the "site surroundings are hostile for pedestrians and cyclists" they went on to says that the "road infrastructure .. creates barriers to movement". [G1 para 107]

10.9 The unilateral may in drafting terms take the matter as far as it can bearing in mind the work done by the appellant and the engagement of TFL. What all of the caveats suggest in the definitions is that there is very little certainty about what acutally will be delivered if very much to helpd the pedestrian. Even the plan in the TA could not be referenced by the appellant to give some more particularity. Goddard was clear that there will not be traffic lights so that Baker's assumption of largely cosmetic works was correct. The reality will still be a hostile environment for pedestrians and even worse for disabled and those who have pushchairs. This frankly is not a comforting situation to make up for the lowest level of communal amenity space ever in Hounslow on the evidence of this inquiry. The route to the park is not a substitute for such a woeful deficiency never previously sunk to.

10.10 Goddard seemed to suggest this walk was the one that others in the recently permitted FC application might be taking. The reality was in cross-examination that he accepted there is an existing route to the west under the M4 and so they would have a proper signal controlled route and would not have to face the un-signalised Larch drive.

10.11 The walk from the appeal site to Gunnersbury Park is not one which in the real world is likely to appeal to would-be occupiers of the CC. The pedestrian environment is exceptionally hostile, and CE acknowledged (Proof 5.6.4) that surrounding road network creates an "intimidating atmosphere" for pedestrians. Proposed public realm improvements will not resolve the perception that the walk to Gunnersbury Park is both hazardous and unpleasant, not least in negotiating Larch Drive. The appellant points out that the Highways Authority raised no technical

objection, but that does not address the perception of a hazardous walk to a local park. In fact, the position of TfL is set out in the GLA Stage 1 Report (CDG.01) who agreed with LBH that the pedestrian environment is "hostile" and that the surrounding road infrastructure "creates barriers to movement" (para 107).

10.12 The appellant attempts to rely on the quality of the space that is provided but this cannot compensate for providing barely 20% of the minimum provision which is expected in policy.

10.13 The argument that providing more amenity space would be at the expense of other uses is an ambitious point to make because that cannot justify providing sub-standard living conditions any more than it would if a development was seeking to provide flats whose internal floor areas fell below the applicable standards.

10.14 The suggestion that the standards are outdated because they began life in a 1997 SPG is meaningless when it is remembered that SC5 was examined by a Government-appointed Planning Inspector in 2015 who was plainly satisfied that the policy was sound (and the Local Plan was subsequently adopted in September 2015).

10.15 The appellant identified 5 other sites (Goddard Proof 10.9) where there was shortfall but reliance on these sites was shown to be simplistic. Wheatstone House provides external balconies for every unit and provides more than twice the % of the benchmark provided by the CC (47%) ; for the Phase 1 Brentford Waterside development, CG did not apply for a like-for-like comparison because he did not acknowledge the set off for private amenity space, the result of which in fact was a surplus of communal space (+718 sqm) against the benchmark figure ; Key Site 1 High Street has an entirely different context from the CC, within Hounslow Metropolitan centre and within 650m of Lampton Park, and the scheme itself provided outdoor balconies/terraces for

every unit ; Hounslow House provides approximately double the communal space compared to the CC (as a % of the SC5 figure), and is a 450m walk (along a footpath and with a signalled crossing en route) from Inwood Park ; Sunrise Plaza once again has a less dramatic shortfall compared to the appeal scheme, all units have private balconies/terraces, and residents have use of Lampton Park.

10.16 Having hunted around for examples of other consented schemes where there is a shortfall in communal amenity space, CG wasn't able to find a single example where the shortfall was as dramatic as in this case. Not one. If it wasn't already unhelpful enough that he had identified in his Proof (2.19) 5 other sites without drawing the Inspector's attention to the obvious differences in context from the appeal site, he then in EIC, for the first time and without notice (and having seemingly abandoned his argument re the other 5 sites since he was not taken to them to address the points made by SB about them in his evidence), sought to rely on a different site to demonstrate a shortfall : Albany Riverside (officer report at Goddard App 12). In EIC he said that here was a case of the policy not being applied rigidly and tried to support his position by saying that it was further away from Gunnersbury Park or another park. However, RH should have taken him to paras 7.124 - 7126 of the officer's report, but chose not to. The report made 3 clear points :

i) the site is adjacent to Watermans Park ;

ii) the site is on the fringe of the town centre where there is greater flexibility ;

iii) the shortfall is not as severe as in the appeal scheme.

10.17 Moreover, it is difficult or impossible to see how any of these arguments raised by the appellant fall within the description

"exceptional design considerations". There is no exceptional design reason why the appeal scheme could not provide a more adequate level of communal amenity space. The level of deficit would be vastly less if the tower was more modest as would be appropriate for heritage consideration set out above. Thus reducing the tower would be a win win. It cannot really be said that having a tower of half the size would fail to optimise the potential for the site. The density is 1374 units per hectare which is 500\% of the top of the range appropriate to an urban development site with a ptal of 4-6. The top of the range which development should be within is 260 and so 1374 is 5.28 times that or 528% of the top of the range.

10.18 The extant adopted London Plan is clear that

> *A rigorous appreciation of housing density is crucial to realising the optimum potential of sites but it is only the start.*

10.19 Mr Goddard's approach was the opposite of a rigorous appreciation of density it was to entirely ignore it and not bother so much as to calculate it. He did in cross-examination accept all the figures of Baker.

10.20 Thus the overdevelopment of this site causes multiple problems:

i) A spectacular conflict with the minimum required communal amenity space and

ii) Substantial harm to heritage

11 BENEFITS CLAIMED BY APPELLANT

11.1 All mixed use employment and residential developments will bring benefits in terms of providing homes and jobs.

11.2 The appeal scheme will provide work during the construction process, although this is naturally a short-term benefit, and aims to provide 420 jobs on site, however this should be tempered by two factors :

i) There is no evidence that the scheme will be creating new jobs rather than providing new offices for existing employment ;

ii) The consented and implemented scheme for the site (the Citadel) would provide very much more employment floorspace at 19,750 sqm[65] This compares to 3901 sq m in the appeal scheme albeit that is net.[66] Thus if the same density figures are used for each so that apples are compared with apples then the citadel would provide in the order of 5 times more jobs as Mr Taylor's questions of Goddard revealed. So if it is right to take around 390 jobs in the appeal scheme as goddard does[67]at a density of 10 sq m per employee it would be right to take of the order or the 1975 for the citadel[68] if one wanted to like for like comparison.

11.3 The provision of homes including affordable homes should always be treated as a benefit, however once again the weight should be assessed in the following context.

i) LBH have a 5 year Housing Land Supply (as agreed by the appellant, see Statement of Common Ground 8.18 which the appellant and Council swapped. This was confirmed in cross-examination by Goddard and by Russell Harris that there was no 5 ys supply point being taken. There is surely no point in the socg now. The lpa sent it to the appellant 2 weeks ago but it has stalled and now become out of date.

[65] Although to be strictly accurate this is gross internal see Goddard appendix 2
[66] See 12.46 of goddard
[67] 12.46
[68] although some allowance would have to be made for net and gross.

ii) In addition LBH have a very good track record of housing delivery. In the last 5 years they delivered 4243 set against a target of 3054. [see 2.10 of AMR lbh/8] This is 139% of their target.

iii) The 5YHLS as at March 2018 is 10.6 years, with a surplus of 4899 homes within that 5 year period (SB Proof 7.32). This is then set out in the AMR which is LBH/8 at 2.24. Mr Goddard frankly had no meaningful dispute to these figures in cross-examination despite them all having been set out in a proof of evidence which he had had for 2 months.

iv) The appellant looks to muddy the water by pointing to figures ventilated in the Consultation Draft London Plan (CDC.05), however this is not likely to go to examination until 2020 (EIC SB) and the correct figures to use are the figures in the adopted plan, against which LHB has a 5YHLS of 10.6 years.

v) The appellant also then referred to an OAN figure that Hounslow had produced for them. However they failed to mention that at 10.5 of the Cobweb report that it expressly said the 822 figure should be used "until such as a new and different London plan or regional strategy is adopted." The regional plan no doubt will follow the government guidance of starting with the OAN and then seeing whether it is consistent with policies in the Framework to meet that in full or it should have a reduction. There is no call for meeting an untested regional apportionment before it is adopted[69]. The correct approach of 5 ys is to use the tested London Plan figure and not be distracted from that.

vi) Although the scheme would provide affordable housing, the 'intermediate' proportion would be available to households with

[69] See Court of Appeal in Oadby and Wigston if seriously contested.

incomes of up to £70,000 which is far above the mean household income in Hounslow of £36,000 and so is at the very upper end of the 'affordable' range (SB Proof 7.29).

11.4 Public realm improvements are acknowledged and welcomed but as LBH have observed (SB Proof 7.21) these would be required from any development of the site and largely benefit the development itself. The public viewing terrace is a benefit to the public but limited in weight by virtue of access to the public being limited to a less than pubic-spirited 10 days per year (SB Proof 7.23). The atrium space at ground floor level, also relied upon by the appellant as a public benefit, is in reality unlikely to draw public visitors (SB Proof 7.25).

11.5 LBH acknowledge that the development would regenerate this site. However, other sites are already propelling regeneration of the area and this site can be regenerated without causing harm to heritage assets (SB Proof 7.7).

12 ADVERTISING

12.1 The advertising appeal has inevitably occupied limited time during this Inquiry. Although there is a temporary extant consent[70] which permits adverts which are 16m wide x 4m high, set at 12m above ground level. The proposed adverts are materially different both in terms of size and the position above ground level at 21.5m wide x 7.8m wide set at 15.6m above ground level (SB Proof 4.11). Screen 2 is 10 m wide and 7.8m tall and 3.9m above ground. The third is 10m wide by 7.8m tall and 7.8 above ground.[71]

12.2 The harm which the scale and position of the illuminated adverts would cause is multi-faceted.

[70] Goddard app 3
[71] Also §4.11 Baker.

i) Screen 1 which would wrap around the west-facing corner of the building wold be unduly prominent and visible from within Gunnersbury/Kensington Cemetery within the Gunnersbury Park CA and given the illumination, the advertisements would be particularly apparent in the darker winter months (PG Proof 5.131), the advert would also intrude harmfully into the Wellesley Road CA (PG Proof 5.131) The visualisations of Coleman to be taken to the site visit revealed that the advert 1 would also be visible from Strand-on-the-Green. This would be intrusive at night particularly.

ii) Screen 3 would intrude harmfully into the setting of Gunnersbury Park CA in a further respect, namely in the views from Gunnersbury Avenue

iii) LBH have in addition identified particular residential properties whose outlook would be harmed by the scale of these illuminated adverts, namely 525-527 Chiswick High Road, 4-6 Surrey Crescent, and 2 Clarence Road (SB Proof 6.26).

iv) These large-scale, illuminated advertisements inherently commercialise and debase the aesthetic intentions of the design, clashing with the elevational architectural features of the design (PG Proof 6.26 and 6.29). It is difficult to imagine that the incorporation of large-scale advertisements would have sat comfortably with CE's architectural aspirations. Moreover, the incorporation of the advertisements further undermines CE's claim to have had a more or less unfettered brief, it is inconceivable given the commercial implications that his brief would not have included the need to provide large-scale illuminated advertisements.

13 BALANCE AND CONCLUSIONS

Development Plan

13.1 The test for determination is provided by s38(6) the Planning and Compulsory Purchase Act 2004, this appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise. There is therefore a statutory presumption in favour of the development plan. First and foremost, the proposed development is contrary to the development plan read as a whole. The presumption therefore operates against the development. The material considerations arising in this case do not outweigh the conflict with the plan, and therefore the statutory presumption is not displaced.

13.2 The conflict with heritage policies is summaries pithily by Shane Baker at 8.12 of his proof. Bearing in mind the language of these policies, the level of conflict which is absolute bearing in mind all the above and the centrality and importance of these policies it would be impossible to conclude that such a level of conflict would not lead to conflict with the plan as a whole. This is even before the conflict with the design policies and the amenity space polices set out at 8.14 and 8.16 of Baker. The conflicts are further explained in Grover's proof.[72]

NPPF

13.3 One of the material considerations is the NPPF. The NPPF makes clear that as heritage assets are irreplaceable, any harm or loss requires clear and convincing justification (para 132). The more important the asset the greater the weight should be given to its conservation (para 132). Great weight should be given to the preservation of heritage assets (para 132) and the courts have made clear that where there is harm to a

[72] See 6.32-6.37 for the design and the 3.25-3.37 for the heritage and design policies and section 5 for the impacts

designated heritage asset there is a strong presumption against a grant of consent.

13.4 It is LBH's case that the development would result in substantial harm to heritage assets. In which case, the NPPF sets out (para 133) that consent should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm. In this case (a) the public benefits are not substantial (b) they do not outweigh the substantial harm (c) it is not necessary to incur that harm in order to achieve the benefits. We support the submissions of both Kew and HE on the necessity test. It is quite clear that the written evidence of Goddard did not contend that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm. His attempts to so orally were as late as they were unconvincing. Many of the benefits could be delivered by the Citadel which combines a gateway building with very much less heritage harm. It would have better regeneration benefits in terms of jobs. There would not doubt be other alternatives if the appellant looked for them. They cannot do substantial harm without looking for alternatives. It could not be clear and convincing justification for such harm which is required under the NPPF if alternatives had not been considered properly which they have not.

13.5 Even if a conclusion was reached that the level of harm was less than substantial, this still must be given great weight and the presumption against consent still operates. The harm should be weighed against the public benefits (para 134), and that harm, to a wide-ranging swathe of London's heritage environment including some of the most important heritage assets in the country would still overwhelmingly outweigh the benefits.

13.6 The proposed development is contrary to the development plan, that conflict is not outweighed by material considerations. The preservation of London's heritage should prevail, and these appeals should be refused.

13.7 The reality is that this proposal if allowed using the logic of the appellant then there would be no control to prevent harm to the significance of some of the most important heritage assets of Hounslow its neighbouring boroughs our capital city and indeed our country and the world in the case of Kew. The logic and balance of the position carefully set out in the evidence base and the emerging SPD and GWC Local Plan review which seeks to provide a gateway and redevelopment and regeneration of the golden mile without undue harm to the heritage assets would be vastly compromised by the appellant's position. The proposal is completely contrary to the restraining elements of that approach and offers no way to control future proposals if accepted.

13.8 The appellant's position at this inquiry if accepted would radically undermine the ability of Hounslow to protect precious irreplaceable heritage assets to pass on to future generations. LB Hounslow as stewards of this extraordinary array of heritage assets have used considerable resources in resisting these proposals because it is so central to the future of their borough and West London. They have used resources to promote a reasonable compromise through SPD and emerging policy to achieve benefits without undue harm. All that would be jeopardised by a grant of permission in this case. The Secretary of State must be fully made aware of the serious harm that would be caused by these proposals.

13.9 The council urge you to recommend refusal of appeal A and B and the Secretary of State to follow that.

Richard Ground QC

Ed Grant

2 July 2018

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH.

Status: Positive or Neutral Judicial Treatment

**465* Rumsey v Secretary of State for the Environment, Transport and the Regions and Waverley Borough Council

Queen's Bench Division

11 October 2000

(2001) 81 P. & C.R. 32

(Mr Duncan Ouseley, Q.C. , sitting as a Deputy High Court Judge):

October 11, 2000 [1]

H1 *Town and country planning—Application to extend dwelling—Area of Outstanding Natural Beauty—Cumulative effect of similar proposals—Precedent*

H2 The claimant sought planning permission to extend his bungalow by adding a floor and approximately doubling its present size. The house was one of a number scattered in the countryside of Waverley Borough, beyond the Green Belt, in an Area of Outstanding Natural Beauty ("AONB") and in an Area of Great Landscape Value. The second respondent refused permission. An appeal by the claimant against this refusal was determined after a hearing by an Inspector appointed by the first respondent. The written submission of the second respondent at the hearing mentioned its concern to avoid a gradual change in character from a small dwelling into a larger one through successive additions. It argued that if allowed the proposal could encourage others, resulting in the extension of similar dwellings which would, cumulative, be detrimental to the rural character of the countryside. The Inspector concluded principally that although the proposal would in itself have a limited effect it would, through making it difficult for the second respondent to resist similarly large extensions to dwellings in the countryside, be detrimental to the character and appearance of the surrounding area and not conserve the natural beauty of the landscape in the AONB. The claimant applied to have this decision quashed, principally on the ground that whereas the Inspector had to have a basis for concluding that there would both be a precedent created and that its effect would be harmful, the submission of the second respondent was merely a generalised concern and the approach of the Inspector was baseless. It also contended that the reasoning of the Inspector was legally inadequate.

H3 **Held,** dismissing the application, that the approach of the Inspector was not baseless. The nature of what material is required to reach a view on a precedent issue, beyond a mere fear or generalised concern, will vary from case. In the present case, the second respondent provided some written material, there was further discussion at the hearing, and above all the Inspector had his planning experience, his site visit and view of the area. Moreover, a planning judgment as to harm by precedent could be made in circumstances where the facts speak for themselves. The Inspector identified his concern as being with the relatively small properties in the area. His conclusions as to precedent and cumulative effect did not require greater exposition than he provided as to the material upon which they were based; The circumstances which he identified could be treated as speaking for themselves. Further, the reasoning of the Inspector

was clear and adequate. The Inspector found that the proposal had a limited effect but that this was insufficient to warrant a refusal. He identified the existence of some relatively small properties in the area, which were clearly those he had in mind as being at risk of similarly large extensions and to which the precedent effect would apply. He reached the planning judgment that those extensions would be difficult to resist because, taken in isolation, each would say it was insufficiently harmful to warrant refusal. He reached the planning judgment that ****466*** that consequential accumulation would be harmful to the character and appearance of the area, both in landscape terms and in reducing the variety of house sizes, which was part of the character and appearance of the area.

H4 *Per curiam* —it was wrong for witness statements to be used to supplement or clarify the reasoning in a decision letter.

Cases referred to:

(1) *Poundstretcher Limited v. Secretary of State for the Environment [1988] 3 P.L.R. 69* .

(2) *R. v. Westminster City Council ex parte Ermakov [1996] 2 All E.R. 302* .

H6 Representation

James Pereira for the claimant.
Michael Gibbon for the first respondent.

Mr Duncan Ouseley, Q.C.:

1 The claimant sought planning permission for an extension to his house, by way of adding a floor to the existing bungalow, and approximately doubling its present size. The house "Beechnut House", Green Lea Wood, Frensham Hall Estate, Haslemere, is one of a number scattered in the countryside of Waverley Borough Council, beyond the Green Belt, in an Area of Outstanding Natural Beauty and an Area of Great Landscape Value. Waverley Borough Council refused planning permission because of the harmful conflict, which it thought the proposal had, with various policies for the protection of the countryside and with its restrictive policy, HS7, for extensions to dwellings in such a location.

2 The claimant's appeal to the Secretary of State was dealt with by an Inspector at a hearing. His dismissal of the appeal is now challenged under section 288 of the Town and Country Planning Act 1990 .

3 Mr Pereira, who appeared for the claimant, relies upon three grounds of challenge which all focus upon deficiencies which Mr Pereira contends arise from the way in which the Inspector dealt with the question of precedent and cumulative impact. This was an issue which was not, it is said, the major thrust of the Council's case but was an issue which the Inspector was particularly concerned to discuss. No complaint is made about that.

4 In essence, Mr Pereira submits that the Inspector did not dismiss the appeal because of any particular harm to the character or appearance of the surrounding area, or to the natural beauty of its landscape, which the proposed development would by itself cause. Rather, it was dismissed because the Inspector thought that it would act as a precedent for similar extensions, and that cumulatively such developments would be harmful to the character and appearance of the area. Mr Pereira, in brief, says that the Inspector had no basis for reaching such a conclusion, misunderstood the real point on precedent which the Council was making and gave legally inadequate reasons for his conclusions on the precedent point.

5 It is convenient at this juncture to set out the relevant parts of the decision letter.

6 The Inspector identified the main issue in paragraphs 2 and 3:

> **"The main issue**
>
> 2. From the representations made at the hearing and in writing and from my inspection of the site and its surroundings I consider, having regard to prevailing planning policies, that the main issue in this appeal is the effect of the proposed development on the character and appearance of the surrounding area.
>
> ***467** 3. As the site lies in the Surrey Hills Area of Outstanding Natural Beauty (AONB) I have also taken into account whether the proposed development would conserve the natural beauty of the landscape of this area."

He then examined the relevant development plan policies:

> **"Planning Policies**
>
> 4. The development plan for the area is the Surrey Structure Plan 1994 and the Waverley Borough Local Plan 1993. My attention has also been drawn to an emerging plan, the Waverley Borough Replacement Local Plan Deposit Draft January 1999 and the proposed pre-inquiry changes. The early stage of this plan towards adoption reduces the weight that may be attached to it.
>
> 5. The development plan contains policies to strictly control development in the countryside, to protect countryside designated as AONBs and Areas of Great Landscape Value (AGLVs), and to ensure good design. The emerging Local Plan contains policies with similar objectives.
>
> 6. Previous Structure Plans dating from 1980 have contained policies to control residential extensions in the countryside. The current Structure Plan does not have policies dealing with this. However, the explanatory text to this Plan says that it is expected that Local Plans will establish policies for this type of development and that they will be exercised in the light of the policies of

restraint on development in the countryside.

7. Local Plan Policy HS7 says that the extension of houses in the countryside, both within and beyond the Green Belt, will not normally be permitted unless certain criteria are met. The criteria relevant to this appeal are that the proposal will not:

— significantly change the scale of the original dwelling;
— be more intrusive in the landscape or otherwise detract from the rural character of the area;
— adversely change the character, appearance, bulk, massing and setting of the original dwelling."

In paragraphs 9–15, he set out his reasoning:

"Main issue

9. Originally a dwelling of 58.4 square metres stood on the appeal site. That was replaced by a bungalow with an 88.7 square metres floor area, built in accordance with a 1973 planning permission. In 1992 permission was given to extend the bungalow at ground floor level to 126.2 square metres, and that extension has now been built.

10. The proposed development would add a floor to the existing bungalow. This would approximately double its present floorspace, and add even more substantially to the original floorspace of the bungalow as granted permission in 1973. In my view the scale of the extension now proposed would result in development that would significantly change the scale of both the bungalow as permitted in 1973 and the bungalow as it presently stands on the site. Assessed against the dwelling on site in 1968 the proposed development would be even more disproportionate in size.

***468** 11. The appeal building as extended would be well screened by trees from nearby properties, from the immediately surrounding area and from the main road to the east. From what I saw it would be seen in more distant views from properties on the other side of the valley from which the site lies, though its visual impact from such views would be reduced by the wooded hillside backdrop to the appeal site.

12. Taken in isolation I consider that the proposed development would have a limited effect on the character and appearance of the surrounding area. However, the site is in an area characterised by scattered housing of varied sizes set amidst extensively wooded land. Much of the attraction of the area lies in the fact that, in the main, only glimpses of dwellings are seen, thus preserving the sylvan quality of the landscape. If permission was granted in this instance it would make it difficult for the Council to resist proposals for similarly large extensions in this rural area. Cumulatively such development

would, over time, detract from the character and appearance of this area. Additional weight is attached to this harm because of the designation of the site and surrounding area as an AONB.

13. In arriving at this view I have had regard to the fact that many of the dwellings close to the appeal site are fairly substantial, and that most, if not all, are larger than the appeal premises. However, there are also some relatively small properties in the area, and the variety of house sizes is part of the character and attraction of the area. Thus, I do not consider that extending the appeal premises to bring it more in line with the larger dwellings in the vicinity would make the proposed development more acceptable.

14. On the main issue I conclude that the proposed development would, through making it difficult for the Council to resist similarly large extensions to dwellings in the countryside, be detrimental to the character and appearance of the surrounding area. The proposal would be contrary to those policies on residential extensions in the development plan and emerging development plan in so far as they seek to avoid such harm. It would also be contrary to the more general policies of those plans which have the objective of protecting the countryside, and would not conserve the natural beauty of the landscape of this part of the Surrey Hills AONB.

15. I have taken into account in reaching the above conclusion the advantages that the appellants say would arise from improving the appearance of the appeal building, and their requirement for additional accommodation. However, I did not find the existing building as unattractive as was alleged, and in my view, whilst there would be some improvement to its design, this would not outweigh the harm I have found. Nor do I consider the existing dwelling to be so small that the requirement for additional accommodation should override the harm I have identified."

7 Certain observations may usefully be made at this stage as to the Inspector's approach. Mr Pereira submits that the Inspector has found that the proposed extension by itself would cause no harm. He focuses on the references in paragraphs 11–14 to the extended building being "well- ****469*** screened", with the impact on distant views being reduced by the wooded backdrop; there would be a "limited effect" taking the dwellinghouse in isolation; only glimpses of dwellings are seen, preserving the "sylvan quality of the landscape". In particular the proposal would be contrary to policies on residential extensions "in so far as they seek to avoid such harm" which is a reference back to harm caused by the Council's inability to resist similar proposals were this appeal to be allowed, rather than any direct harm caused by this proposal on its own.

8 I do not consider that the decision letter can be read in quite that way. It is important, as Mr Gibbon who appeared for the Secretary of State pointed out, to read the Inspector's decision as a whole and these particular comments in their planning context.

9 The development plan policies to which the Inspector makes general reference in

paragraphs 5 and 6 of his Decision Letter are restrictive of development such as that proposed. HS7, to which particular reference is made in paragraph 7, is supported in the Local Plan by explanatory notes at paragraphs 3.38 and 3.41–2 (Bundle pp. 57 and 54 respectively), which identify the objectives of the policy and the relevance to its application of avoiding ever-increasing numbers of smaller dwellings being enlarged (3.38). The Inspector concludes in paragraph 10 that the proposed extension would significantly change the scale of the bungalow as it presently is, and even more so when compared to the original. It is a requirement of HS7 that there should not be a significant change of scale compared to the original, a requirement proposed to be amended to a comparison with the building as it currently stands.

10 So the Inspector's subsequent comments relate to an extension that has failed to satisfy one of the policy criteria for such an extension exceptionally to be permitted.

11 I read the reference to "limited effect" in this context as a clear indication that the extension would have an adverse effect taken in isolation but that that would not by itself be sufficient to warrant a refusal. That is the point which he makes in paragraph 14. That limited adverse effect would also be a component of the accumulation of harm which he saw this extension, if built, then engendering through the precedent effect which it would have. I consider that the cumulative effect was the real point of objection and the last sentence of paragraph 14 should be read in that context.

12 I turn now in more detail to Mr Pereira's attractively made submissions. His first and main ground is that the Inspector had no basis for his conclusion on the precedent effect. He referred me to the well known comments of David Widdicombe, Q.C. sitting as a Deputy High Court judge in *Pound-stretcher Ltd v. SSE [1988] 3 P.L.R. 69* at p. 74F:

> "I accept Mr Hobson's proposition that where precedent is relied on, mere fear or generalised concern is not enough. There must be evidence in one form or another for the reliance on precedent. In some cases the facts may speak for themselves. For instance, in the common case of the rear extension of one of a row or terrace of dwellings, it may be obvious that other owners in the row are likely to want extensions if one is permitted. Another clear example is sporadic development in the countryside."

13 *Poundstretcher* concerned a relaxation of conditions on the range of goods which could be sold from retail warehouses on two retail warehouse parks in ****470*** Liverpool. The Inspector had relied upon the prospect that similarly constrained retail warehouses on two other identified retail warehouse parks in Liverpool would become similarly unconstrained, thus undermining town centres.

14 Mr Pereira submitted that there had to be a basis upon which the Inspector could conclude that there was a connection between permitting this extension and some planning harm which would be caused by subsequent cases which could treat this appeal as a precedent. The Inspector had to have a basis for concluding that there would be both a precedent created and that its effect would be harmful. On the facts of this case, Mr Pereira submitted that another extension, sufficiently similar to his client's proposal for his client's proposal to be a precedent for it, would equally leave

the sylvan quality of the landscape preserved. If it did not, then the instant case could not be a precedent for it. The Inspector's approach was baseless and paragraph 3.7 (Bundle p. 30) of the Council's submission was merely a generalised concern. Of course, it must be remembered that this comment in paragraph 3.7 triggered a more extensive debate at the hearing.

15 Attractively presented though they were, I am unable to accept Mr Pereira's submissions. First, as I have already said, I do not read the decision letter as Mr Pereira would have me read it. The Inspector finds a limited effect but insufficient by itself to warrant a refusal; it would become part of a wider harmful cumulative effect. Secondly, he specifically identifies, in para. 13 of his letter, the existence of some relatively small properties in the area; these are clearly the ones which he has in mind as being at risk of similarly large extensions, to which the precedent effect would apply. Thirdly, he reaches the planning judgment that those extensions would be difficult to resist; it is clear that that is because, taken in isolation, each would say that it was insufficiently harmful to warrant refusal, just like Mr Rumsey's case. Fourthly, he reaches the planning judgment that that consequential accumulation would be harmful to the character and appearance of the area both in landscape terms (paragraph 12 of the decision letter) and in reducing the variety of house sizes which is part of the character and appearance of the area (paragraph 13 of the decision letter).

16 I do not consider that that approach is baseless: the Council provided some written material, there was further discussion at the hearing, and above all the Inspector had his planning experience, his site visit and view of the area. The reasoning of the Inspector in the decision letter is clear and adequate. *Poundstretcher* cannot be seen as providing some precise legal test as to the nature of the material which an Inspector must have before him when reaching a judgment on a precedent issue. The recognition of the inadequacy of mere fear or generalised concern is no more than saying that an Inspector must have some material on which to base his view, and the nature of what is required will vary from case to case. But just using *Poundstretcher* as a guide, the Inspector here appears to have had at least as much material as in that case went sufficiently beyond a mere fear or generalised concern. Moreover, in *Poundstretcher* , it was rightly recognised that the planning judgment as to harm by precedent can be made in circumstances where the facts speak for themselves. The Inspector here identified his concern as being with the relatively small properties in the area; his conclusions as to precedent and cumulative effect do not require greater exposition than he provided as to the material upon which they were ***471** based. The circumstances which he has identified can be treated as speaking for themselves.

17 I should add that I do not accept an earlier submission which Mr Pereira made, but then drew back from, to the effect that if no harm were found in any individual case, then no harmful effect could follow from subsequent decisions on all fours with that one. I consider that it is open to a planning decision-maker to reach a contrary conclusion: one development is harmless, but a second or more, each individually harmless, would lead to a harmful accumulation; thus the first might be refused, because decisions could not be taken in isolation, when in reality one decision led to another.

18 Mr Pereira's first and main submission is accordingly rejected.

19 His second submission is based upon paragraph 5 of the Inspector's witness statement, which was submitted for the purpose of responding to and refuting an assertion in the claim form that the Inspector had no evidence in relation to precedent beyond that which the claimant characterised as merely an assertion contained in the Council's written submission, paragraph 3.7 (Bundle p. 30):

> "3.7 The Council is concerned to avoid a gradual change in character from a small dwelling into a large one through successive additions over a number of years. The appeal proposal if allowed, could encourage further such proposals resulting in the extension of similar dwellings which would, cumulatively, be detrimental to the rural character of the countryside."

In paragraph 5, the Inspector said:

> "5 The reference by the Council in its written statement was brief. The claimant did not himself refer to or deal with the effect of precedent in his written statement at all. At the outset of the hearing therefore I identified this concern of the Council as an area for discussion and allowed both the Council and the claimant to comment fully on it. It was clear from the Council's representations that it was of the view that there was currently a variety of sizes of properties in the area and that excessive increase in floorspace in the proposed development would cumulatively result in very large properties in the area. The claimant however contended that precedent elsewhere was not relevant, and each site had to be considered on its own merits. On site, the claimant's agent informed me that he had been keen for me to inspect the site."

20 Mr Pereira submits that the fourth sentence shows that the Council was concerned with the effect of the proposed extension when seen cumulatively with other large existing dwellings, rather than with the effect which the proposed extension would have as a precedent for yet more extensions. Thus the Council's case or the case as understood by the Inspector, was irrelevant to his conclusions which were based on the latter rather than the former point.

21 I accept Mr. Gibbon's contrary submission, that this paragraph is simply not happily worded rather than indicative of a misapprehension as to the thrust of the Council's material. It is clear that paragraph 3.7 of the Council's material is actually wholly in line with the Inspector's approach in his decision letter, so he did not then misunderstand it. It is perfectly clear from paragraph 7 of his witness statement that the Inspector there is clearly ****472*** setting out the Council's case as described in the decision letter. Paragraph 7 states that both relate to the precedent effect which the proposed development would have rather than to the effect which the proposed development would have rather than to the effect which it would have simply added to the currently existing dwellings. He did not misunderstand the case in paragraph 5 only to get it right in paragraph 7 of the witness statement. In that context therefore it is clear that the third sentence of paragraph 5 of the Inspector's statement is simply not expressed as clearly as it should be, and affords no basis for quashing the decision.

22 Mr Pereira's final submission was that the Inspector's reasoning in his decision letter was inadequate as it makes no findings as to the likelihood of other applications coming forward or of their potentially harmful effect, nor does he say that the facts speak for themselves. For the reasons which I have given when dealing with Mr Pereira's main submission, I do not consider there to be any inadequacy in the Inspector's reasoning. Of course, the Inspector does not actually say that the facts speak for themselves; but he does not need to; paradoxically the more obvious something is as a matter of judgment, the less likely it is that elaborate reasoning will be found, or that an Inspector will feel a need to say that it is obvious.

23 In reaching this particular conclusion, I have ignored paragraph 7 of the Inspector's witness statement. It is wrong in my judgment for witness statements to be used to supplement or clarify the reasoning in a decision letter. I appreciate that the purpose of the statement was the legitimate one of explaining what material was before the Inspector and in this context, a hard and fast distinction between explaining that and avoiding any elaboration of reasoning may be difficult to draw. But in so far as that material could be used to supplement or clarify the reasoning in a decision letter, it should be ignored.

24 In these circumstances, *R. v. Westminster C.C. ex parte Ermakov [1996] 2 All E.R. 302* , does not fall to be considered. For the sake of completeness, in so far as such a witness statement could be used itself to found a challenge, I do not consider that what the Inspector says in paragraph 7 of his witness statement is in any way at odds with his decision letter.

25 For all those reasons, this application is dismissed.

H7 **Representation**

Solicitors— Shuttari Paul , Middlesex; Treasury Solicitor .

H8 *Reporter* —Scott Lyness.

Claimant to pay the respondent's costs. Permission to appeal refused. ****473***

1. Paragraph numbers added by the publishers.