

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 79 AND  
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND)  
RULES 2000**

**Application by Starbones Ltd**

**Land at Chiswick Roundabout, Great West Road, Chiswick, London W4 5QB**

**Local Planning Authority references 00505/EY/P18 and 00505/EY/P19**

**PINS references APP/F5540/W/17/3180962 and APP/F5540/H/17/3173208**

**OPENING SUBMISSIONS ON BEHALF OF  
THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND  
(HISTORIC ENGLAND)**

1. Historic England is the lead body for the heritage sector and the Government's principal adviser on the historic environment. Its statutory duties include securing the preservation of ancient monuments, historic buildings and conservation areas. Historic England add properties to the statutory register of gardens and parks, and are a consultee on World Heritage Sites.
2. Historic England rarely see the need to intervene in a public inquiry. On this occasion we do given the widespread and extensive harmful impact of the scheme on historic sites, some of which are of the greatest importance.
3. The decision making framework relevant here is straightforward:
  - (i) account should be taken of the desirability of sustaining and enhancing the significance of all heritage assets (NPPF, para 131);
  - (ii) World Heritage Sites, Registered Parks and Gardens, listed buildings and conservation areas are all designated heritage assets;

- (iii) significance is the asset's value 'because of its heritage interest', including from its setting (NPPF, Annex 2: Glossary);
- (iv) 'great weight' is to be given to conserving the significance of all designated heritage assets, with greater weight to more important assets (NPPF, para 132, first and second sentences);
- (v) any harm or loss, including harm caused by an effect on setting, 'should require clear and convincing justification' (para 132, fourth sentence). In addition, any harm to a listed building or its setting gives rise to a strong presumption against the grant of planning permission (*Barnwell Manor*);
- (vi) development within the setting of a designated heritage asset may cause harm to its significance (NPPF, para 132);
- (vii) harm caused by the effect of a development on the setting of a designated heritage asset may be substantial harm (see *Barnwell Manor* and PPG 5-020-20140306 (on wind energy)) or less than substantial harm;
- (viii) substantial harm is a policy test to be applied in the light of the NPPF and the PPG. The PPG says that it is 'a high test, so it may not arise in many cases'. Giving the example of works to a listed building, the PPG advises that to constitute substantial harm, 'an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest': 18a-017-20140306. This is a reasonable approach to apply more generally;
- (ix) proposals leading to substantial harm to any designated heritage asset shall be refused unless:
  - (a) the substantial harm is necessary to achieve substantial public benefits that outweigh that harm; or
  - (b) four criteria in paragraph 133 are satisfied (these are not applicable in the present case);
- (x) In addition, substantial harm to a World Heritage Site, Grade I and II\* listed buildings and registered gardens, should be 'wholly exceptional' (para 132, last sentence). Substantial harm to a grade II listed building has to be exceptional (para 132, penultimate sentence);

(xi) 'less than substantial harm' is to be weighed against *public* benefits of the proposal (para 134) but does not amount to a less than substantial objection to a development (*Barnwell Manor*).

#### **Harm in the present case**

4. Historic England are concerned with the harm which the scheme will cause to four geographical areas: the Kew Botanic Gardens World Heritage Site; the Gunnersbury Park Registered Garden and the Gunnersbury Cemetery (both of which are in the Gunnersbury Park Conservation Area); Kew Green Conservation Area; and the Strand on the Green Conservation Area, along with listed buildings within them.
5. In all cases the harm is caused by the intrusion of the very tall and very large mass of the Chiswick Curve into important historic views of or from those areas.
6. Kew Botanic Gardens has a landscape of international renown, created from its history as a Royal residence and its past, present and future as the greatest botanic gardens in the world and a popular place for the public to visit. With a considerable degree of success it has kept the sight of urban London at bay. It is not Central Park, New York.
7. Gunnersbury Park is again a garden designed to connect with an Arcadian landscape and not a city environment and is now turned over to a successful public garden.
8. Kew Green is a quintessential village green, although lined with listed buildings which reflect the status of the area and its Royal connections.
9. Kew Gardens and Kew Green are part of the Arcadian Thames, but nowhere is more so than Strand on the Green with its buildings facing over the river, many of which have done for over two centuries.
10. The appeal scheme intrudes into key views which are entirely or largely unspoilt: the views of the orangeries at Kew Gardens and Gunnersbury Park; the view from the Gunnersbury Park temple; the tranquillity of Gunnersbury Cemetery; the unspoilt lines of buildings at Kew Green and Strand on the Green. In all cases a large, tall, lump will be hanging there, wholly alien to the historic, architectural and cultural interest of these areas. It will dominate

particular important views. It detracts from the appreciation of these areas and of certain listed buildings, including grade I and II\*, within them.

11. It is the sheer scale of the building and its relationship to those designated heritage assets which causes the harm. The problem is not the design of the 32 storey tower block but that it is a 32 storey tower block. Even if the design is seen as attractive in its own right, it is harmful to the historic views and interest of the heritage assets. The building is simply in the wrong place.
12. For the Kew Green and Strand on the Green Conservation Areas, we consider the harm to be substantial. The harm to the World Heritage Site, the Gunnersbury Park registered gardens and the conservation areas which include them is less than substantial, as is the harm to the setting of listed buildings.
13. We leave whether there is a clear and convincing case that public benefits outweigh the harm which has been caused to the other parties.

Richard Harwood QC

39 Essex Chambers

12<sup>th</sup> June 2018