

## The Chiswick Curve

### Appellants Opening Submissions.

#### Introduction.

1. As children, we were brought (infrequently) “up”<sup>1</sup> to London from the then still working coalfields of South Wales. The M4 was newly minted and its elevated section was (to us) in our battered Vauxhall Victor Estate an engineering and automotive revelation.
2. We knew we had arrived in the Capital, when from our elevated vantage point we saw, pointed out and marvelled at the animated, analogue orange Lucozade advert on the side of York House in the “Golden Mile”.
3. Times have changed. London is now one of the major Global Cities and one of the most dynamic places on the planet. It is the engine of growth for the UK economy and is home to some of the most inspiring, exciting and delighting pieces of European architecture, (tantalising but clear views of which are afforded you from the said elevated section.<sup>2</sup>)
4. London’s hub airport, (Heathrow) is one of the busiest and most economically important ports of any type in in the world and is now set to get bigger and busier. The capital’s links to the important Thames Valley economic areas, the Cardiff City Region and all points west are hugely important to the City and the nation’s wellbeing. The “Golden Mile” itself is identified for strategic level growth which befits its location in this growth corridor and is promoted as one of London’s new Opportunity areas by both local and strategic Governance.
5. As a result, this part of the M4/A4 corridor into the City is now one of the most strategic and symbolic gateways to and from the capital city.
6. For many world leaders, politicians business people, tourists, millions of workers, commuters and travellers and yes ordinary young families from South Wales, the Golden Mile is still where London starts. It is, for many their first encounter with the World City from the west and their last meaningful memory of it from the East.
7. The existing “Golden Mile” has long been recognised as being inadequate to the task of reflecting London’s new role. The analogue Lucozade advert has gone, but the Golden Mile’s deficiencies don’t end there. The existing buildings and structures are not as yet a worthy spatial gateway to London.
8. There therefore, exists an opportunity for the Golden Mile as a whole, better to reflect London’s C21st status and World role by creating a series of townscape incidents, markers and experiences along its length.

#### The principle and role of a tall, landmark building on the appeal site.

9. It is common ground with the local planning authority and the strategic planning authority that the appeal site is an appropriate site for a tall, landmark building serving an eastern gateway function.
10. It is a settled fact that at present there is not much of quality to mark the importance of the Golden Mile or of the City for which it acts as a Gateway.
11. This is particularly recognised to be the case to the east of the Golden Mile where there is little that “announces” the entrance (or departure) point into (or from) the Golden Mile as a whole. “There is a clear opportunity to mark” this place “with a special gateway building”<sup>3</sup>.

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<sup>1</sup> It was always “up” despite the fact that in altitude and latitude we were clearly going “down”.

<sup>2</sup> The Shard, Wembley, the City Cluster, Canary Wharf and more are all visible.

<sup>3</sup> E.g. p 83 Capacity Study Final Report July 2017.

12. The only site upon which such a function might be achieved is the application site: at present and for decades unused and failing to contribute. “A notable and outstanding building at this site could establish a prominent landmark.” “It should be a highly recognisable building in views from the A4” and M4 corridor.. change the perception of the area, enhance the corridor’s image and instil confidence in investors and developers”<sup>4</sup>.
13. The acceptance of the site as an appropriate Eastern marker of the sequence of gateway buildings and structures is not only widespread. It is also longstanding.
14. It is consistent with the identification of the Golden Mile as an appropriate location for tall buildings in principle in the development plan and with the consistent and specific identification of the site as fit for this purpose in the Council’s capacity study, in emerging policy and guidance and through its previous planning decisions.
15. The main issue to be determined therefore is not whether a tall landmark building playing a gateway function is appropriate or not on the appeal site, but whether the proposed building achieves that function in an acceptable way having regard to context including its impact on heritage assets of the highest order.

**The Appeal Scheme Architect is a World Class Architect who has produced a scheme of the highest quality.**

16. Christophe Egret is a world class architect. He has a proven track record of delivering buildings of quality and sensitivity both in the UK and worldwide. His attention to detail in the consideration of context is the touchstone of his work.
17. We will invite you to visit his work both in the UK and if appropriate abroad to underscore an appreciation of this ability.
18. His ability to immerse himself in and to understand the context of a project is demonstrable. Inspector Gray used to emphasise that was no proper alternative to a full understanding of a project, its quality and its derivation from context than to hear from the Architect direct as part of the inquiry process. He was correct.
19. It is a shame that you will not hear Msr. Egret demonstrate this understanding or to describe the architectural parti “live” until the third week of the inquiry. But, we are confident that the skills of the man and his understanding of context are and will be demonstrated in full through the material placed and to be placed before the inquiry.
20. Submissions by lawyers about quality of architecture are rarely of significant utility in opening. But the Inspectorate has rightly paid much attention recently to the expert and independent views of the strategic authority In London on issues of architectural quality. This is not surprising because as the Mayoral team has now had the greatest experience of dealing with tall buildings and their complex impacts in the context of a World City of any strategic authority in the UK<sup>5</sup>.
21. It is relevant to note here therefore that in the context of a very thorough and full assessment of the quality of the scheme’s architecture (as judged against the provisions of the `London Plan and

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<sup>4</sup> Op cit

<sup>5</sup> “Independent appraisals of design quality have been carried out at pre- application stage by the Greater London Authority (‘GLA’) and by the Council’s own Whitechapel Design Review Panel, and again by the GLA through referral of the planning application. The design approach has been supported, with any initial reservations about the relative height of the two taller buildings effectively addressed by the reduction in height of Building I to below the height of the RLH. Significant weight can be attached to the GLA assessment that the amended proposals would accord with LP design policies” per Whitechapel Inspector 2018.

following in depth meetings, presentations and scheme iterations,) the Mayoral team judged the process and the proposal truly to secure a building of “the highest quality and standard of design”.

22. It would be instructive to compare and contrast the Mayoral approach to the analysis of quality of architecture to that of the objectors to the proposal leading upto the refusal of permission. For in truth there was no meaningful analysis of the architectural quality of the building or of the role that architectural quality plays in determining the impact of a proposal upon a view or a setting of a heritage asset.
23. The importance of this absence of a timely and fulsome consideration of architectural quality is emphasised by the way in which the Inspectorate has approached the issue of architectural quality and impact.
24. The relevance of architectural quality in assessing impacts has correctly been seen as critical. A fair-minded analysis of impact in any context (but particularly in a London context) cannot exclude a full and analytical consideration of architectural quality. For without that, the impact of a proposal cannot truly be judged. As the Blackfriars Road Inspector put it in relation to impacts on nearby historic assets:  
  
**“My feeling in relation to the objections is that it must sometimes prove difficult to differentiate between a significant impact, which a building of the height proposed would be bound to have, and whether that impact would, in fact, be harmful. The introduction of a very tall building does not automatically mean a harmful impact. I take a view ...that the site is a suitable one for a very tall building, that the building proposed is of very high design quality and that as a result and however prominent the building, its impact would not be harmful and would generally be an enhancement.”<sup>6</sup>**
25. Of course, each context is different, but a proper and careful analysis of architectural quality in that context cannot simply be set aside for an argument that a building is tall, visible and therefore harmful. The fact that a building is visible in the context of the world city cannot and does not equate to harm.
26. Even now, there is no systematic appraisal of design quality at all in most objectors’ evidence, and that, that there is, is unsystematic, partial and by definition an ex post fact rationalisation of an already taken decision without any proper consideration of design quality.
27. When the careful and deliberate sculpting and breaking down of massing of the proposal to create a composition in the relevant views is understood, when the treatment of the resultant façade types is appreciated, when the innovative use of fins, extrusions and feature coloured glass is established, then the judgment of the strategic authority, that this building is in its entire context a very fine piece of architecture can itself be appreciated and seen as accurate.
28. But, until this careful assessment has been undertaken, and undertaken fairly; until the nature and quality of what will be seen is properly understood a true and accurate assessment of impact is simply not essayable.

## **The impact of the proposal on the significance of heritage assets.**

### **Introduction.**

29. The proposal will be seen from and in conjunction with historic assets of the highest grading. That is not unusual for a tall building in the capital. Its mere visibility does not equate to harm, much less to

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<sup>6</sup> APP/A5840/V/08/1202839 & APP/A5840/V/08/1203024

significant harm. Otherwise planning policy would be very easy to draft and Inspector's jobs correspondingly straightforward.

30. But, of course considerable weight and importance must be given to avoiding unacceptable harm to the significance of the assets effected.
31. Heritage assets of the type being considered at this inquiry are at least as integral to the capital's World City status as its commercial and mercantile core, its cultural and artistic diversity or its transport infrastructure. The Appellant and its advisers have appreciated this fact from the outset and have sought to produce a building which has at its very core, a proper understanding and respect for the significance of these assets.

#### **World Heritage Site, RBGK and its Listed buildings.**

32. The London Plan recognises correctly that all of the London WHS "are embedded in the constantly evolving urban fabric of London". It calls for a "balance between protecting the elements of the World Heritage Sites that make them of Outstanding Universal Value and allowing the surrounding land to continue to change and evolve as it has for centuries."<sup>7</sup>
33. The LP specifically envisages and identifies the potential for development in the settings of WHS and for those settings to be enhanced by architecture of "the highest quality architecture". The LP refers decision makers to specific Mayoral Guidance on the development within the settings of WHS and encourages them to follow the stepped approach set out in that guidance.
34. It is hugely instructive therefore that the custodians of the specific development plan policy protecting World Heritage Sites and the authors of the guidance specific to WHS settings find no unacceptable harm to the significance and setting of RBGK in this London context.
35. And the evidence supports that conclusion.
36. In its short rule 6 statement, RBGK state that "it is not the visibility of tall buildings per se, [from RBGK] but their particular location and impact when seen in key views from within the designed landscape that is the key consideration".
37. And that must be right. The visibility of buildings per se cannot be unacceptable. Part of the character and significance of KG lies in the fact that the Gardens are embedded in a wider urban and metropolitan context.
38. Any walk in the Gardens will establish that beyond doubt. The influences of the City beyond the gardens abound. A significant number of taller buildings and structures are visible or have been granted permission and will be, including the Wembley Arch and Brentford FC; the noise of traffic on the Kew Road is tangible, aeroplanes in the process of lowering their undercarriage pass overhead at less than 2-minute intervals.
39. There is therefore no policy which prohibits new buildings within this wider setting being visible from the Gardens. Such a policy would neither be proportionate nor workable. And so, the issue is: in WHS terms, whether a building distant from the gardens and only visible from a limited number of places truly compromises a viewer's ability to appreciate the WHS Outstanding Universal Value: and in listed building, historic garden and CA terms whether the proposal unacceptably harms the setting of the relevant asset.
40. The OUV of Kew Gardens so far as is chiefly relevant to this application comprises:
  - a. a rich and diverse historical landscape providing a palimpsest of landscape design;

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<sup>7</sup> See LP policy 7.10 and text.

- b. an iconic architectural legacy.
41. To assist in a viewer's ability to appreciate these values, a buffer zone has been identified which "comprises areas key to the protection of significant views in and out of Kew".
  42. In addition, recognising the potential for impact beyond the buffer zone both the existing and 2012 Management Plan and the Landscape Management documentation for the Gardens identify key views and vistas.
  43. Again, its rule 6 statement the WHS Management Plans are described as "protecting key sightlines and views" and the allegation is made that the proposal is contrary to the aims of the management plan in this regard.
  44. However, the proposed development does not lie within the buffer zone. Neither actually is there any sustainable allegation from the Council or any other party that any of those carefully identified key views or vistas or secondary views is harmed in any material way by the proposal.
  45. As a matter of fact and judgment, the position adopted by the Mayor in relation to the areas where the building is seen, namely that "the development forms part of the background setting that includes existing areas of the City" and that the "development will NOT affect principal views or setting elements of any of the iconic architectural Kew buildings" is clearly correct<sup>8</sup>.
  46. It is the impact on kinetic and incidental views (not identified as key views or vistas) which falls to be considered therefore. And when undertaking such an analysis two essential propositions identified above should not be mislaid:
    - a. The fact that mere visibility from the Gardens cannot equate to harm and
    - b. The requirement to have regard to design quality in assessing impact.
  47. The two impacts focussed on by the Council in its report to Committee are alleged harm to views of the Orangery and alleged harms to setting of Kew Palace. Obviously, these impacts (and others) will be examined closely by the inquiry.
  48. But, the images (already in evidence) will suffice to establish that the Mayor was correct in establishing that both of these highly listed buildings are either already seen or are to be seen in the context of the Golden Mile and the city beyond. This is part of their existing character.
  49. The impact of the proposal on those entering the Palace who choose to turn their head away sharply to the right on entry will be not be harmful to an understanding or significance of the Palace but what will be seen will be a view of a high-quality building, marking an important gateway to the wider city within which Kew Gardens is embedded.
  50. The impact on the kinetic view of the Orangery is not an impact on a primary or iconic view of the building and what will be seen as part of the kinetic experience will be of a building of demonstrable and understandable quality. It will be seen and appreciated clearly at a distance behind the recently consented and visible Brentford FC development which also rises up above the Orangery (though much closer and for longer) as part of this kinetic experience.
  51. Interestingly these impacts of the FC development were specifically (and correctly) found by the Council not to harm the OUV, integrity, authenticity or significance of the gardens thereby allowing the proposal specifically to comply with policy 7.10 of the LP<sup>9</sup> protecting WHS from harm.

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<sup>8</sup> Mayoral Stage 1 and 2 reports CDG 01 and 02.

<sup>9</sup> See report to committee on BFC (CG appendices)

52. The impact of the proposal on these and other incidental, kinetic and more fleeting views and settings will consist of a distant, well designed and contextual building of exactly the type called for as appropriate to WHS settings by London Plan Policy 7.10.
53. It follows, that there can be no direct impact on any of the listed buildings in KG relevant to this appeal. The Mayor is right to find (now on multiple occasions) that the settings of the WHS, the registered gardens, listed buildings and conservation area are left unharmed and that the London Plan policy in relation to WHS is complied with.

#### **Gunnersbury Park and Gardens and its buildings.**

54. A similar approach to the Gunnersbury complex of gardens, listed buildings and associated conservation area must be taken. But in opening I can be briefer.
55. Gunnersbury does not lie isolated in semi-rural suburbia. Part of its context is that it sits adjacent to the M4 corridor into central London. The existence of the M4 is not a secret but is a fundamental part of the environment. According to the Inspectorate, “the setting of this Conservation Area is already defined by the presence of large commercial structures, including signs”<sup>10</sup>. We agree.
56. Much of the park thus already has a visibly contrasting urban setting.
57. The proposed development deliberately responds to and complements the sensitive features in that environment. The building, where it will be seen will be a building of quality which marks an existing and undeniable part of the Park’s context: the fact that it lies immediately adjacent to an important gateway to London.
58. Post development the character of the Park, the integrity of its listed buildings and their settings will neither be harmfully altered nor undermined.

#### **Kew Green Conservation Area and its buildings**

59. Kew Green has a close context and a wider context.
60. Close to, there remains the potential to understand the Green as a distinctive townscape green. But even there, to describe the scene as an archetypal English village green is pressing that description beyond destruction.
61. The south Circular road, London’s first inner orbital route dissects the Green with 4 lanes of (sometimes moving) traffic and its associated noise night and day: planes overhead remind you of your spatial proximity to one of the world’s global city’s airport. This is not an archetypal village green it is a very specific one with its own distinct London character and appearance and special presence. It is not Finchingfield and it is not good planning to pretend that it is.
62. The Green’s wider context reinforces the inevitable consequences of Kew Green’s location in the wider city. Indeed, the council itself has recognised that visitors to the Green cannot choose to ignore the emanations of the wider City which are clear and apparent.
63. And in this wider context, views of the wider city are neither unexpected, nor, particularly having regard to their distance, harmful. The tall building elements of BFC, much much closer to the Green will be significantly visible. They would clearly be part of a significantly different and more urban community development “outside” of an alleged village green experience. But such development was

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<sup>10</sup> See 2015 Advertising Inspector decision Proof Richard Coleman.

described correctly by the Council itself (even at outline stage) as “not materially altering the appearance of the Conservation Area given the distance from the site”.

64. The appeal proposal would be seen and understood as being yet further away, as part of the greater urban context and what would be seen would be an understandable building of quality; a properly and specifically designed marker of something important in the spatial make-up of the area in which Kew Green sits.
65. Of course, the Council has already accepted the appropriateness of the existence and visibility of such an urban marker in views from Kew Green.
66. There is already an implemented planning permission for a tall building (the Citadel) which would be visible above the houses on the south side of the Green. In its own capacity study, (significantly inputted to by HE on the issue of building heights) the council judges that such a building would NOT have a significantly adverse impact on the heritage setting of Kew Green notwithstanding the fact that such a building would clearly and deliberately be seen in what the Council has selected as the sensitive view<sup>11</sup>.
67. That judgment was correct seeing a tall landmark building in these views is not necessarily harmful: but to transform that judgment (as does the emerging SPD) into a mechanistic proposition that no building over 60m irrespective of quality could ever be acceptable is nonsensical.
68. Judged on its merits, a very well-designed building seen as a background element to the Green but also as a marker of its very place in the City need not cause harm to Kew Green’s very particular character and appearance.
69. And that is what the proposal achieves and was specifically designed to achieve.

#### **Strand on the Green Conservation Area and its buildings**

70. Similar considerations apply to Strand on the Green.
71. The charm and character of Strand on the Green CA lies in significant part upon the fact that its beauty and richness exist so close to and embedded within the wider urban area of a great city.
72. Its significance and that of its listed buildings is best (but not only) experienced from within the Conservation Area itself. It is there that the richness and detail of the architecture, architectural compositions and accidents and spaces can be understood and experienced. None of this significance will be affected in any way by the proposal sitting significantly beyond the CA in the M4 corridor.
73. The setting of the Conservation Area as seen from the Surrey tow path is important. But again, it is relevant to understand from this view that part of the context and character of the conservation area is its location in relation to the rest of the wider city and in particular in relation to the Golden Mile.
74. And that location and relationship is bound in a properly operating planning system to be reflected in physical terms. And so, it is. The Brentford FC proposal, (under construction) will clearly appear above and beyond the existing river front buildings. The L and Q development, recovered by the Mayor for in July 2018 will similarly be apparent and will likely be determined well before determination in this case.
75. Again, the Council now corporately (assisted by HE) takes the view that a building marking the application site of the height of the consented and implemented Citadel can acceptably and

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<sup>11</sup> P 83 Capacity Study Brentford East.

significantly appear above the building line of the CA;’s buildings without causing significant harm to heritage asset’s settings in the identified sensitive view from the Surrey side.

76. The issue therefore is not whether a building on the application site can visibly and acceptably mark its location in this view, but whether the nature and quality of that marking is an appropriate one.
77. It is (inter alia) in this view that the Christophe Egret’s handling of massing scale articulation and colour will be very clear and apparent. A bespoke and carefully constructed elevation will be seen and will be understood as an organic and high-quality addition to the townscape.
78. The local planning authority prefers the consented and implemented Citadel scheme. Indeed, it posits the Citadel as a more acceptable alternative to the proposal that could come forward in the event of refusal. (The consent is secured in perpetuity, and the likelihood of an office building coming forward and regenerating that site any time **soon** can be explored in evidence.)
79. It will be a matter for you and the Secretary of State to decide, but the Citadel is a self-assertive, shiny, reflective townscape presence on the horizon which appears to have paid no attention to the heritage assets in its wider context. No one ever described the Citadel as being of the “highest quality architecture”. And that is not surprising.
80. The council might prefer to wait and to settle eventually for something less than the highest quality at this key location.
81. The planning system should not.

#### **Other Conservation Areas and historic Assets.**

82. This opening is not the place to consider all of the other assets in any detail. But the fact that I do not does not betoken lack of importance or lack of consideration.
83. Of the other conservation areas which are properly part of the analysis in this case, almost all have a strong pattern and grain that give them a well-defined and self-contained character and appearance. None (insofar as is relevant) have sections which have been specifically included to act as a necessary setting or buffer to the elements of value within them.
84. Seeing a well-designed tall building marking an important spatial location from within such a Conservation area is not harmful. Indeed, if anything the contrast would accentuate the characteristics for which the conservation area was designated.

#### **Harm: a definitional issue.**

85. The NPPF takes care to draw a distinction between “substantial harm or total loss of significance” and “less than substantial harm”. The different conditions give rise to two separate and distinct tests (see below).
86. The meaning of the words in the NPPF is a matter of law.
87. And in relation to non-direct impact on a heritage asset, the Courts<sup>12</sup> have found that in order to find substantial harm resulting from non physical or indirect impact, the decision maker should be looking for an impact which “would have such a serious impact that.. its significance was vitiated altogether or very much reduced”; an impact where “very much if not all of an asset’s significance is drained away”.

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<sup>12</sup> Bedford CD h4 18, 25, 26.



88. This is entirely consistent with the NPPFs allying of substantial harm with total destruction and the application of the same very stern test to both.
89. The Inspectorate and the Secretary of State have now both consistently applied this meaning to cases they have determined and there is no good, proper or lawful reason to change that position for the purposes of this inquiry.
90. On the basis of this definition which binds the parties at this and other inquiries, any proposition that any of the impacts identified above vitiates or very much reduces the significance of any of the assets is simply on proper reflection, untenable.
91. There is always a compass of reasonable dispute at inquiries like this. But to be reasonable and credible, allegations of harm must be proportionate and fair. And suggestions in this case that the significance of the WHS will be “vitiating or very much reduced” or that if the permission is granted, the very inscribed status of the Gardens would be put “at risk” are overblown, inappropriate and irresponsible.
92. The alleged substantial harm to the significance of Kew and Strand on the Green Conservation Areas by reason of development in one part their setting is similarly unsubstantiated.
93. Substantial harm to an asset by reason of development in its distant setting is simply not applicable to the circumstances of this case.

#### **The Approach to Balance.**

94. If contrary to the submissions of the Applicant, any harm to a designated heritage asset is found, such harm could only therefore conceivably be properly classified as “less than substantial”.
95. Of course, less than substantial harm does not denote a “less than substantial objection” and any harm to a designated heritage asset must be given “considerable weight and importance” and requires clear and convincing justification.
96. The method by which any such harm is to be justified is set out comprehensively in the fasciculus<sup>13</sup> of paragraphs represented by paras 132-136 of the NPPF.
97. For the purposes of “less than substantial harm” to a designated asset. The “harm should be weighed against the public benefits **of the proposal**, including securing its optimum viable use.
98. In contradistinction, for “substantial harm to or total loss of significance” there is a requirement to refuse “unless it can be demonstrated that the.. harm is **necessary** to achieve substantial benefits that outweigh the harm or loss...”
99. One of the key differences between the tests is therefore a requirement on the developer to demonstrate that the substantial harm is **necessary**. The Court of Appeal<sup>14</sup> has ruled that in the case of substantial harm or total loss, this requires the developer to establish that there is no reasonable alternative to the achievement of substantial benefit. There is no such requirement in para134, where unlike para 133, the decision maker is directed to balance the benefits of the proposal and the impacts of the proposal.

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<sup>13</sup> Mordue v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 1243 . When asked why Sales LJ used the term, a fellow (unnamed) member of the C of A said he thought he was just “showing off.”

<sup>14</sup> [2016] EWCA Civ 444

100. And in this case, the public benefits of the proposal are profound and, on proper reflection, any harm occasioned in the context of any designated heritage asset must if it exists be at the lower end of “less than substantial”.

101. The benefits begin with the provision of a building of the highest architectural quality, destined to be a well understood and iconic gateway to and from London for those passing along the M4 and move through the provision of a marker of a significant regeneration for the Golden Mile which would signal confidence in the location and assist in the formation of the strategically important opportunity area, the supply of a very significant amount of desperately needed housing at a time of London-wide crisis and affordable housing beyond that which could be required by policy, as well as the provision of high quality employment floorspace. The full list does not end there. But that would be enough.

102. Such benefits would substantially outweigh any reasonably conceivable level of harm associated with the proposal.

### **Other Issues**

103. Other issues such as the development control issues associated with the advertisement screens and the provision of amenity space as well as residential amenity and the matters specifically raised at the pre-inquiry meeting by you are not in any way unimportant. They are not left out of account or devalued. They are fully set out in the evidence and are, for now, best dealt with there and in closing.

### **The nature of the images.**

104. The lpa, through Mr Spencer for the first time and without notice either in its rule 6<sup>15</sup> or anywhere<sup>16</sup> now appears to question the fitness for purpose of the TVIA images which have formed the basis of everyone’s assessment of the project without complaint throughout. He says that the “visualisations are not a reasonable basis for.... impact assessment”. I say baldly that raising the matter at this time in the process for the first time and in this way is unreasonable, discourteous<sup>17</sup> and potentially unfair.

105. If he really means that, then we as an inquiry are in potential difficulty.

106. The lpa (and Inspector) is under a statutory duty to ensure in an ES case that the material in the ES is (and has been) sufficient to allow the (inter alia) visual impacts of the proposal reasonably to be judged. If it truly judges that the ES images are not a reasonable basis for assessing the effects of the development it is required to say so and to request the information required to remedy that allegation. And that must happen before determination. It cannot simply say at an ES inquiry, I know neither we (nor anyone else) have mentioned it before, and we have consulted the public and stakeholders on the basis of these images and taken those responses into account, but we now say these images are “not now a reasonable basis for impact assessment” and the application should be refused. The lpa is an integral part of the process of ensuring, especially in cases where visual impact is the main issue, that it is satisfied at all stages that the images are fit for the purpose of the ES process.

107. The Appellant is very confident indeed that its images are accurate and have been produced in line with a methodology which is wholly standard and appropriate in the particular circumstances of assessing tall buildings and their impact in London townscape. We draw comfort from the fact that the S of S (or his experienced ES team) which is under a specific duty to consider ES adequacy have not sought to question the AVRs or ES in this or any other way. Neither has the GLA or any other party whatsoever until now.

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<sup>15</sup> which now requires a party to state its case and the evidence in support of it in full.

<sup>16</sup> Including at the pre-inquiry meeting.

<sup>17</sup> Unfashionable to expect courtesy I know.

108. If the issue complained about by Mr Spencer essentially relates to the presentation of the image as opposed to its fundamental geometric accuracy (i.e. old chestnuts such as too much sky, size of reproduction underplays the way the eye reads it ... position in the image...etc), then we are very clear that with a very experienced inspector well used to forming judgments on AVRs and their inherent and well understood limitations compared to the human eye, that you and the Secretary of State have more than sufficient and accurate information in the ES to make a recommendation either way (and to be sufficient it has to be either way) on the application. We can and will provide larger versions of the images already in evidence to assist on the site view and generally if it would help... and the inquiry can move on.

109. But if the Ipa IS now at this very late stage taking a geometrical accuracy point truly relevant to ability reasonably to assess the impact of the proposal through the ES (the building is modelled in materially the wrong place) then there are potentially serious, procedural, legal and timetable consequences; for the Inspector is required as a matter of law prior to determination<sup>18</sup> to consider and to ensure that the ES as part of the holistic EIA process contains the information which allows for a reasonable assessment of (and consultation upon) the environmental effects including the visual effects and impacts of the proposal on the townscape. If the Council is truly saying at this late stage for the first time that the images are not a reasonable basis for assessment in that context, then either it should have required further information to make the images fit for purpose or it should now be inviting the inspector to so rule.

110. We need to watch this space with care.

**Overall conclusion in opening.**

111. Seeing something of great quality is rarely a bad thing. And when that something has been specifically and successfully designed to be seen in its context as a whole, then in townscape terms it is to be welcomed. The best of the new is not the enemy of the best of the old.

112. In the circumstances of this case, the skill of the designer has not been limited to the creation of the organic shape of the building, to the dance of forms which has been carefully sculpted as a response to the massively scaled urban presence of the motorway, to the way in which the building gently welcomes its visitors with a human scale at its base or to the way in which the building will celebrate the entry point to the Global City. Rather, Egret has created a thing of real moment and of the highest architectural quality because of the effort which has been deliberately taken to ensure that the Curve addresses each of its wider contexts with proportion, courtesy, subtlety, skill and care.

113. And for these reasons, the Inspector should recommend that both appeals be allowed.

Russell Harris QC  
Landmark Chambers.  
London  
England.

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<sup>18</sup> Reg 22 2011 EIA regs