

xTown & Country Planning Act 1990 – S.78 and  
Town & Country Planning (Inquiries Procedure)(England) Rules 2000



Closing Submissions by

Martin Taylor

on behalf of

The Kew Society

Public Inquiry commencing 12 June 2018

Application by Starbones Ltd., Land at Chiswick Roundabout,

Great West Road, Chiswick, London W4 5QB

Local Planning Authority reference 00505/EY/P18 or P/2015/5555

and 00505/EY/AD22 or P/2015/5560

PINS references APP/F5540/W17/3180962 and APP/F5540/Z/17/3173208

1.0 In my opening submission I made clear that, respecting the Inspector's request to avoid repetition, we would rely on the cases against granting this Appeal to be made by parties representing London Borough of Hounslow, Historic England and the Royal Botanic Gardens Kew in respect of views, heritage and some other impacts. For the avoidance of doubt, we support and endorse those cases as made at this Inquiry. We have listened throughout to the evidence they presented, their examination of their own and cross-examination of the Appellant's witnesses. We believe that our confidence was well-placed. We believe that those parts of the appellant's case for approval of the scheme have been refuted.

2.0 Instead, I said we would focus on the issues identified by the Inspector as "living conditions" and "other matters". This closing submission focusses on these two headings relating to Appeal A whilst a separate heading covers Appeal B.

### 3.0 Living Conditions

3.1 I presented and was cross-examined on evidence regarding the impacts of traffic and consequent pollution included in TKS/1/A and TKS/1/C. None of that evidence from either traffic or pollution statistics has been disputed whilst no counter-evidence was produced to suggest that exceedances of current air quality (AQ) standards are being meaningfully improved. Further, we have evidenced in TKC/1/D that the Government has recently announced a change in Clean Air Policy and AQ standards (now under DEFRA consultation). That new policy seeks to halve by 2025 the number of people living in locations where concentrations of particulate matter are above the World Health Organisation (WHO) limit of 10ug/m3.

3.2 To permit the Chiswick Curve in the location as currently proposed would fly in the face of this emerging policy – the revised Environmental Statement (Inquiry Doc APP5, Appendix 3.1, Air Quality ES Addendum Technical Note, para 2.16/table 7.5) estimates a PM2.5 concentration of 11.9 for 2016 and 11.2 for 2020, both above the proposed WHO standard of 10ug/m3. Particulate matter PM2.5's are especially dangerous for health (additionally so for the young) because they are small enough to pass through the walls of blood vessels in the lung after being inhaled, enter the blood stream, and reach other parts of the body.

3.3 It was proposed for the Appellant by Mr Gordon that residents living at level 6 or above would live outside areas of the worst pollution levels but this is to suggest that those residents can access their homes for work, school, shopping or leisure without traversing ground level pavements and streets.

3.4 In his rebuttal proof Mr Gordon had also suggested that in my evidence I had ignored "the official reductions in emissions predicted by the Government, despite clear evident commitment to emissions reductions". There might "be evident commitment" but there is no "evidence" supporting that reductions will occur. Points supporting this:-

(i) There has been no reduction in pollution in London Borough of Hounslow (LBH) or London Borough of Richmond on Thames (LBRuT) since the EU compliance deadline for the UK in 2010. Almost all the sites in these Boroughs which exceeded the annual mean NO<sub>2</sub> and PM<sub>10</sub> compliance levels in 2010 continued to exceed, at similar levels, in 2016, as reported in the 2017 Air Quality Action Plans published by LBH and LBRuT.

(ii) At a National level, in February 2018 the High Court ruled that the Government's 2017 plan to reduce NO<sub>2</sub> levels to compliant levels at roadsides was "unlawful", as it does

not contain measures sufficient to ensure substantive compliance with the 2008 Directive. In response to this the Government published its Clean Air Strategy in May 2018 which still puts the burden of reducing emissions pollution onto local authorities, requiring them to carry out feasibility studies as to how they can reach compliance within the shortest possible time. None of this gives any credibility to the notion that reductions in emissions to compliant levels are going to happen by 2020.

(iii) The uptake of electric cars is still very low (1.9% of the total new car market in 2017), whilst diesel car (the main polluter culprit) sales have fallen in the last quarter from 45% of the total market to 35%, they still account for 1 in 3 new cars. Many new diesel cars purchased in the last couple of years are still non-compliant with respect to emissions, despite new regulations and tougher tests. It seems unlikely that kerbside emissions are going to reduce markedly any time soon as a result of changes in purchase pattern.

(iv) The updated Environmental Statement for Chiswick Curve indicates massive exceedance of annual mean NO<sub>2</sub> and short term NO<sub>2</sub> objectives at the automatic monitor at Gunnersbury Ave for 2016 and both exceedances are marginally worse than in 2014 (Table 7.3). 4 out of 5 diffusion tube monitors near the site exceed the NO<sub>2</sub> annual mean objective. Moreover there is no evidence of improvement in NO<sub>2</sub> pollution at these sites since 2012.

3.4 We suggested to the Inquiry that other proposed measures such as the Mayor's Ultra Low Emission Zone (ULEZ) with a boundary at the North/South Circular Road (which adjoins the site) was likely to lead to an increase in non-compliant vehicles on those roads as they avoid entering the ULEZ. The Cycle Superhighway<sup>9</sup> as currently proposed was highlighted as likely to increase slow-moving and jammed traffic at the Chiswick roundabout and feeder roads, increasing the already toxic air pollution. These suggestions were not criticised.

3.5 We highlighted that the Mayor's draft London Plan Policy SI1 states: "London's air quality should be significantly improved and exposure to poor air quality, especially for vulnerable people, should be reduced: Development proposals should not:

- (a) lead to further deterioration of existing poor air quality,
- (b) create any new areas that exceed air quality limits, or delay the date at which compliance will be achieved in areas that are currently in exceedance of legal limits,
- (c) reduce air quality benefits that result from the Mayor's or boroughs' activities to improve air quality,
- (d) create unacceptable risk of high levels of exposure to poor air".

3.6 The Appellant has produced no evidence that the Chiswick Curve proposal would comply with these policies.

3.7 Para 18 of the latest (2018) draft NPPF requires: "Planning policies and decisions should contribute to and enhance the natural and local environment by...preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air quality;". The Chiswick curve proposal does not appear to comply.

3.8 We are quite clear that the Chiswick curve site is an inappropriate site for residential development unless and until very significant reductions in pollution levels have been achieved and this Appeal should be rejected.

#### 4.0 Other matters

##### 4.1 Design

4.1.1 In cross examination of the appellant's architect, Mr Egret, I asked for evidence to establish that the novel car stacker proposed for the basement car park of this combined residential/office building had adequate off-highway entry/exit waiting ramps to ensure that queues could not form on the public highway. Vehicles waiting to park on the highway would compound traffic delays and pollution. I have not yet seen such evidence. Further, I highlighted that the £2.73m capital cost of the equipment (as evidenced in the Rider Levett Bucknall cost estimates) would likely require periodic replacement over the life of the building. Necessary regular stacker equipment maintenance (to ensure safe and reliable operation) would be a further operational cost. All such costs (of capital and annual maintenance) would be for the occupiers' account, recoverable as part of an apportioned service charge.

4.1.2 In cross-examination, Mr Coleman, the Appellant's heritage witness, was at pains to emphasise the critical importance to the "high quality" Chiswick Curve exterior design including the proposed external fins and colouring and their essential regular cleaning and maintenance. We discussed the risk that such design features might be victims of "value-engineering" or omission if the project advanced and cost-savings were required. Further, I asked Mr Goddard about the apportionment of the likely high cost of cleaning windows, fins and coloured finishes with particular reference to the private and affordable housing elements. The 211/116 unit split might result in about one third of these exceptional ongoing costs falling on the affordable housing provider(s) which might in turn have implications for public funding.

4.1.3 All parts of the community, and the design/construction industry in particular, are very aware of the Grenfell fire tragedy which occurred in a high rise residential building. I introduced evidence to the Inquiry of a recent debate in House of Commons linked to the publication of Dame Judith Hackitt's final report on related Building Regulations and Fire Safety. The debate was led by the Housing Secretary, James Brokenshire. It is clear from this evidence that the Government is planning changes to the regimes responsible for building safety during the construction, refurbishment and ongoing management of high-rise homes. Such change is unlikely to come without cost whether or not (for example) sprinklers or additional fire escapes and precautions might be required. Further costs would inevitably impact on residential development appraisals for the worse.

4.1.4 It was further highlighted during the parliamentary debate that some building developer/owners such as Bovis are pressing ahead, as the Government wishes, to cover existing building occupiers' interim fire safety measures and replacement cladding costs. Others, notably for this Inquiry including a 900 unit Galliard development at New Capital Quay in Greenwich, are not.

##### 4.2 Appraisal

4.2.1 Mr Goddard was clear in his evidence that the development appraisal is on the "margins of viability". Although any developer will have his own private assessments, the appraisal report by James Brown & Co for the affordable housing calculation is an indicator of risks in the project. No

provision is made for construction cost inflation between estimate and start on site. The developer's contingency for a project of this size, scale and complexity is slim at 2.5%. Borrowing costs appear to be shown at a constant 7% for a 54 month contract. The Appellant has produced no evidence of having contractually fixed interest rates for the construction project. At a time when many anticipate interest rate rises, it is surprising that alternative assumptions appear not to be modelled.

4.2.2 Given the slim margins in the project acknowledged by the Appellant, the risks of it not proceeding or requiring very significant "value engineering" appear high at the outset from the cost risks noted above - even before any possible downturn in the residential sales market is considered.

4.2.3 One option that the Appellant might consider, if this Appeal were erroneously to be allowed, could be to offer the consented site for sale. Galliard have in recent times sold major development projects in both Poplar and Silvertown. In these circumstances it is unlikely a new owner of the Chiswick Curve site would proceed without significant design and cost review.

## 5.0 The Overall Planning Balance - Public Benefits

5.1 In Section 13.0 of his Proof, Mr Goddard seeks to emphasise the public benefits he alleges will flow if the Chiswick Curve were to be consented. In cross-examination, I discussed some of these factors with him. At no time did Mr Goddard seek to quantify or monetise the value in financial terms of the alleged benefits:

5.1.1 Improvements to highways claimed include proposals by the architect for the public realm around the roundabout. There is no evidence as to how any such improvements to public areas are to be sustained with long-term funding and there is the considerable risk that such finishes as are proposed would rapidly deteriorate in the traffic dominated, pollution ridden environment.

5.1.2 The contractual securing of periodic public access to the viewing gallery may not yet be completely resolved whilst the equivalent "benefit" at the nearby Kew Eye does not appear to have had many public takers perhaps reflecting a suburban, rather than London City centre, location.

5.1.3 The claim of "permeability through the site" through the lobby as a benefit seems marginal if users still have to make use of pedestrian crossing points at each end of Larch Drive.

5.1.4 The provision of 3,901 sq m workspace could provide space for perhaps 415 employment opportunities. It is not clear how high quality such space might be or how attractive the market will find it given the mere 8 car parking spaces to be offered (a ratio of 1:487 sq m). In cross-examination of Mr Goddard I noted that a building on the nearby, market leading business location of Chiswick Business park appears to have an equivalent car park space ratio of 1:126 sq m. In passing, it may be noted that that the "fall-back" option for the Chiswick Curve site of the historic Citadel consent includes approval of 140 car parking spaces, a ratio of 1:141 sq m and a possible 1900 possible employment opportunities.

5.1.5 A total of 327 quality new homes is claimed, of which 116 are to be affordable. The issue of possible premium service charge costs has already been noted in respect of the social housing provider(s). In the case of the private sector homes it was not disputed by Mr Goddard that Galliard have a successful specialist sales team for apartment sales in overseas markets such as Hong Kong (as they are of course perfectly entitled to do). High rise apartments with views of the internationally renowned Royal Botanic Gardens Kew may be expected to have a particular appeal to

overseas buyers. However, in weighing the public benefits of the Chiswick Curve, it could be argued that international sales might not have the direct public benefit to housing need that sales to an existing UK resident purchaser might have.

5.1.6 A “new building of the highest quality” is claimed but opinions differ on what constitutes quality in design and some would argue that, as with beauty, judgement is in the eye of the beholder. Certainly few residents of Kew can be found to be admiring of Chiswick Curve.

5.1.7 Although in 2015 many doubted the validity of the valuation of claimed public/community benefits proffered for Brentford Football Club’s stadium planning application, no financial evaluation at all of Chiswick Curve’s total benefits has been advanced for the Curve Appellant. It is not, of course, surprising that no disbenefit evaluation has been attempted either.

5.1.8 We would ask the Inspector to consider these points most carefully in his report to the Secretary of State.

## 6.0 What is Town Planning about?

6.1 It is remarkable that no thought has been given to the possible combined development of the contiguous large site owned by British Airways Pension Fund and presently leased by B & Q (until early 2023). Slavishly perpetuating the two separate ownerships and road layouts settled in the 1980’s when the possibility of combining the two freehold land interests has not been tested at all seems to be missing an opportunity, at least for debate in the community interest.

## 7.0 Conclusion

For all the reasons set out above, the Kew Society believes that this Appeal should NOT be allowed and asks the Inspector so to report our views to the Secretary of State .

## Appeal B

### The Advertising Appeal

8.0 We have submitted to the Inquiry the evidence of recent academic research that links LED lighting to increased risks of prostate cancer and breast cancer seeking reassurance that there can be no adverse health impacts from the nature of the LED light sources in the present advertising proposals. As yet we appear to have received no response.

8.1 Current digital advertising at Chiswick roundabout astride the M4 (granted on Appeal in 2012, APP/F5540/H/12/2169784) is visible from the Thames towpath and north facing upper floors of residential and other property in Kew, particularly at night. Any advertising consent granted in respect of the present appeal should ensure that such advertising is not visible from Kew and the setting of heritage assets such as the UNESCO World Heritage Royal Botanic Gardens in Kew, the listed Kew Bridge and Kew Steam Museum, the Kew Green Conservation Area, and the River Thames is not impacted.

8.2 The NPPF requires that “[Planning policies should] limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation”.

8.3 LBH's planning policies include (CC5):

“(c) Ensuring that advertisements do not adversely impact on the setting of heritage assets, the skyline or the amenity of residential properties. Any impact will be assessed in terms of its significance;

(d) Encouraging all advertisements to positively contribute to an area's character and amenity of residential areas and resisting adverts that will cause severe harm in terms of townscape, amenity and public safety;

(e) Ensuring advertisements are sensitive to their context and well designed, and resisting excessive or obtrusive advertising and inappropriate illuminated signage”

8.4 The skyline will be significantly and adversely impacted by proposals on the scale of Chiswick Curve's advertising proposals whilst direct upward and spill light from the panels will further contribute adversely to general light pollution in the immediate area and wider West London. The Arcadian Thames is also at risk together with Gunnersbury Park and its southern nature habitat areas.

8.5 The development will clearly impact significantly adversely on nearby residential housing such as recent new dwellings on Chiswick Roundabout, existing dwellings on the east side of Chiswick High Road and those under construction at 650 Chiswick High Road (Wheatstone House) and the football stadium “enabling development” may be further prejudiced.

8.6 In view of the above we do NOT believe that this Appeal should be allowed and request The Inspector to report accordingly to the Secretary of State.

8.6 If, notwithstanding our evidence, the Inspector is minded to recommend approval of the advertising to the Secretary of State I would highlight our suggested amendments to the draft conditions agreed between the local authority and the Appellant during the Inquiry.

Martin Taylor  
The Kew Society  
5 July 2018