Ministry of Housing, Communities & Local Government

Our ref: APP/G6100/V/19/3226914
Your ref: GLA/4279 & 01508/A/P6

Mr Mark Connell
JLL
30 Warwick Street
London
W1B 5NH

10 September 2020

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY L&Q
LAND AT CITROEN SITE, CAPITAL INTERCHANGE WAY, BRENTFORD TW8 0EX
APPLICATION REF: GLA/4279 & 01508/A/P6

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry on 14-24 January and 4-6 February 2020 into your client's application for planning permission for redevelopment of the site to provide a mixed use scheme of 441 residential units (Class C3) including 50% affordable housing with ancillary facilities, flexible uses (within Classes A1, A2, A3 and B1) and a nursery (Class D1). Comprising buildings of 12, 13, 16, 17 and 18 storeys in height with associated cycle parking, car parking, play space, landscaping and public realm improvements, ref. GLA/4279 & 01508/A/P6, dated 3 November 2017.

2. On 15 April 2019, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application be approved.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where noted, and agrees with his recommendation. He has decided to approve the application. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Having taken account of the Inspector's comments at IR1.5, notwithstanding the criticisms by the Royal Borough of Kensington

Ministry of Housing, Communities & Local Government
Phil Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 42853
Email: PCC@communities.gov.uk

and Chelsea, the Secretary of State is satisfied that the Environmental Statement and ES Addendum May 2018 complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

7. In this case the development plan consists of the 2016 London Plan (LonP) and the 2015 Hounslow Local Plan (HLP). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.13.

8. The Secretary of State also agrees that the Richmond Local Plan is a material consideration, but for the reasons given at IR15.91 gives it limited weight.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those set out at IR3.17-3.27.

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

11. The emerging plan comprises Intend to Publish London Plan (IPLP) 2019. The Secretary of State considers that the emerging policies of most relevance to this case include D9 Tall Buildings; H4 Delivering Affordable Housing; HC1 Heritage conservation and growth and HC2 World Heritage sites.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The emerging London Plan is at an advanced stage of preparation, and the Secretary of State has directed the areas where changes must be made. However, details of the way in which the Plan will deliver the aims set out in the Secretary of State's directions are not yet finalised. The Secretary of State considers that policies in the emerging Plan where no modifications have been directed (which includes the policies set out in paragraph 11 above), carry significant weight.

Main issues

Impacts on heritage assets

13. The Secretary of State has given careful consideration to the Inspector's analysis of heritage issues at IR15.3-15.51. He agrees, for the reasons given at IR15.5, that any harm to designated heritage assets would be from the impact of the development on the significance of these derived from their settings. He agrees with the Inspector at IR15.6 that any harm to the significance of the Orangery would also harm the Outstanding

Universal Value (OUV) and the significance of the World Heritage Site (WHS), Registered Park and Gardens (RPG) and Conservation Area (CA). For the reasons given at IR15.7-IR15.21 he agrees with the Inspector that in terms of the ability of the public to appreciate the Orangery, the effect of the scheme in the setting would be negligible (IR15.21) However, he also agrees with the Inspector at IR15.22 that listed buildings should be preserved for their own sake and the setting of the Orangery is important to the OUV of the WHS. The Secretary of State agrees for the reasons given at IR15.22 that the degree of erosion to the significance of the listed building, and so that of the WHS, would be slight. Overall, the Secretary of State agrees (IR15.23-15.24) that the proposal would cause less than substantial harm to the significance of the Orangery, and thus the OUV and WHS, and that this harm would be nowhere near the level of substantial. For the reasons given at IR15.25, and taking into account HE's findings on this matter (IR9.21) he concludes that the level of harm to the significance of the Orangery, and so on the OUV of the WHS, on account of impact on its setting the harm is 'less than substantial', and that within this scale, the harm is moderate.

14. For the reasons given by the Inspector at IR15.26-15.31 the Secretary of State agrees that the cumulative impact of the proposal, when viewed with existed buildings, on the significance of Kew Gardens, would be minor (IR15.30). He further agrees at IR15.30 that when the cumulative impact is taken together with the direct impact he finds above, this would amount to a little, but not much, more than moderate harm, and that this would not come close to a substantial level of harm within the 'less than substantial' scale. The Secretary of State agrees with the Inspector's conclusions at IR15.31 on the question of a tipping point.

15. The Secretary of State has given careful consideration to the Inspector's analysis of the proposed planting scheme at IR15.32-15.34. He agrees for the reasons given at IR15.33 the screening would take time to materialise and that there might be a number of reasons why it might not be effective. He further notes that the Council has not agreed to support the scheme or to accept the funding for it (IR15.34). The Secretary of State concludes the planting scheme is not necessary to make the development acceptable in planning terms, and that therefore the Undertaking to fund the scheme would not comply with Regulation 122 of the CIL Regulations. Unlike the Inspector, the Secretary of State has not taken the Unilateral Undertaking into account in determining the application or given it any weight. This does not affect the Secretary of State's overall decision.

16. The Secretary of State has had regard to the Inspector's analysis of potential impacts on the Strand-on-the-Green Conservation Area and its associated listed buildings at IR15.35-15.41. For the reasons given he agrees that the scheme would have a harmful effect on the contribution the settings make to the significance of the group of listed buildings (IR15.37), and thus to the significance of the Conservation Area as a whole. For the reasons given at IR15.39 he concludes that this harm would be moderate on the 'less than substantial' scale. For the reasons given at IR15.40 he further agrees overall the weight to the harm to the significance of the SotG CA and its listed buildings on account of impact on their settings, and the cumulative harm, should be assessed, within the scale of 'less than substantial' harm as a little more than moderate.

17. For the reasons given at IR15.42-15.45 the Secretary of State agrees with the Inspector's conclusions in relation to Kew Green, the Wellesley Road Conservation Area and Kew Bridge or its Conservation Area.

18. The Secretary of State has given careful consideration to the Inspector's analysis of the likely relative heritage impacts on any alternative scheme at IR15.64-15.68. For the

reasons given he agrees that there is a reasonable prospect that a lower scheme might have reduced impacts on the settings of the Orangery/WHS and the Strand-on-the-Green CA/listed buildings while still offering a reasonable amount of housing and affordable housing. However, he also agrees (IR15.68) that the weight to be given to such an alternative should not be substantial.

19. The Secretary of State attaches great weight to the conservation of the heritage assets, in line with paragraph 193 of the Framework. Paragraph 196 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The Secretary of State agrees with the Inspector that there would be conflict with LonP Policy 7.8, 7.10, emerging IDLP policies HC1 and HC2, and potentially HLP CC4 (IR15.39) which requires a balance between harm to designated heritage assets and public benefits (IR15.85).

Other harm

20. For the reasons given at IR15.49 the Secretary of State agrees that the levels of daylight in 75 of the habitable rooms would fail to meet BRE standards, and that this weighs against the proposal. He further agrees, for the reasons given at IR15.50 that the level of contributions to fund improvements to Transport for London services should not weigh against the proposal. Given his conclusions on the impacts on the Wellesley Road Conservation Area, the Secretary of State agrees with the Inspector at IR15.51 that the absence of any reference to the low-rise, high quality townscape within it would not weigh against the proposal.

Housing

21. The Secretary of State notes that the applicant does not dispute that the Council can deliver a 5-year supply of housing land (IR6.18), and he has proceeded on that basis. The Secretary of State notes that the proposals would provide 441 new homes, 218 of which would be affordable (IR15.59). He has taken into account the acute housing shortage right across London (IR15.61) and the Inspector's conclusions on affordable housing at IR.60. For these reasons the Secretary of State considers that overall, the benefits of housing should be given substantial weight. The Secretary of State agrees with the Inspector at IR15.86 that the proposal does not conflict with Lon P policies 3.3-3-5 and 3.8-3.13, and HLP policies SC1, SC2 and SC3, and emerging IPLP policies GG2 and GG5.

Design

22. The Secretary of State has considered the Inspector's reasoning given at IR15.52-15.58 and for the reasons given agrees that the positive aspects of the design would be negated by the flaws with regard to daylight and heritage in particular, taking account of other criticisms as well. As such he agrees that the design is neutral in the planning balance (IR15.85). The Secretary of State agrees that given the Inspector's conclusions on design, there is no conflict with HLP policy SC4 (15.86).

Other benefits of the proposal

23. The Secretary of State agrees (IR15.62) that the proposals would be on a brownfield site in a highly sustainable location. He further notes (IR15.62) that construction would bring 250 jobs, though agrees that these would be short term, and that there is little evidence

that the proposal would bring a massive uplift to the area around it. He further agrees that the provision of a nursery is a benefit of modest weight. The Secretary of State agrees that economic activity and regeneration would be further benefits but taken together these add little to the substantial benefits of housing provision (IR15.63). As such he agrees with the Inspector that relative to his conclusions on the importance of housing and of protecting the historic environment, the other benefits attract a little weight in favour of the scheme.

24. For the reasons given at IR15.88 the Secretary of State agrees that emerging policies IDLP GG5 and GG2 support the scheme. He further agrees that the limited exploration of alternatives should not breach the requirements of IDLP policy D.9 (IR15.89).

Planning Conditions

25. The Secretary of State has given consideration to the Inspector's analysis at IR13.1-13.2, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

26. The Secretary of State has given further consideration to the Inspector's analysis of the Unilateral Undertaking at IR14.2 and IR15.32-15.34. For the reasons set out at paragraph 15 above, he concludes that it does not comply with Regulation 122 of the CIL Regulations and he has thus not taken it into account or given it any weight.

27. Having had regard to the Inspector's analysis at IR14.1, the planning obligation dated 4 March 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR14.1 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State agrees that the application is not in accordance with LonP Policies 7.8 and 7.10 of the development plan, agreeing with the Inspector at IR15.84 that such policies do not require a balancing exercise. He agrees (IR15.86) that the application is in accordance with LonP Policies 3.3-3.5 and 3.8-3.13 and HLP policies SC1, SC2, SC3, SC4 and SV1.

29. In reaching his conclusions on whether the proposal is in line with the development plan overall, the Secretary of State agrees (IR15.87) that a conclusion on the heritage test is necessary. In line with the Framework he affords the less than substantial harms he has identified to heritage assets great weight.

30. Against this he weighs the provision of housing, including affordable housing, which he considers carry substantial weight in favour of the scheme. He considers that the nursery provision carries modest weight and the regeneration and economic benefits add a little weight.

31. Overall, the Secretary of State considers that the benefits of the scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to heritage assets he has identified at paragraphs 13-19 of this decision letter. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.

32. Given this conclusion, he agrees that the proposal is in accordance with the development plan overall (IR15.87). He further agrees that in the circumstances of this case, even if he had concluded there was overall conflict with the development plan, the material considerations would still have justified the same overall conclusion on the case (IR15.94). The Secretary of State has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. In line with paragraph 193 of the Framework and s.66(1) of the Act he gives great weight to the heritage harms he has identified. The Secretary of State gives further moderate weight to the harm to the living conditions of proposed occupiers in terms of daylight standards. The material considerations weighing in favour of the scheme are set out in paragraph 30 above.

34. Overall, the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission.

35. The Secretary of State therefore concludes that the application should be approved, subject to conditions.

Formal decision

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission subject to the conditions set out in Annex A of this decision letter for redevelopment of the site to provide a mixed use scheme of 441 residential units (Class C3) including 50% affordable housing with ancillary facilities, flexible uses (within Classes A1, A2, A3 and B1) and a nursery (Class D1). Comprising buildings of 12, 13, 16, 17 and 18 storeys in height with associated cycle parking, car parking, play space, landscaping and public realm improvements, ref. GLA/4279 & 01508/A/P6, dated 3 November 2017.

37. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

39. A copy of this letter has been sent to London Brough of Hounslow and the Mayor of London, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by the Secretary of State to sign in that behalf

Annex A Planning conditions

1. Time limit
The development must be commenced within three years from the date of this permission.

2. Approved plans and documents
The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Proposed drawings	
Site plans	
1699_DWG_PL_xx_00_001 R01 Proposed site plan	1699_DWG_PL_xx_00_002 R00 Proposed block plan
38397-PBA-XX-D-C 501-SO Rev 1 Proposed indicative surface water drainage strategy	
Elevations	
1699_DWG_PL_xx_00_100 R03 Proposed site elevation south-east	1699_DWG_PL_xx_00_102 R03 Proposed site elevation north-west
1699_DWG_PL_xx_00_101 R03 Proposed site elevation north-east	DWG_PL_xx_00_103 R03 Proposed site elevation south-west
Floor Plans	
1699__DWG_PL_xx_20_100 R07 Proposed ground floor plan	1699__DWG_PL_xx_20_110 R04 Proposed tenth floor plan
1699__DWG_PL_xx_20_101 R05 Proposed First (podium) floor plan	1699__DWG_PL_xx_20_111 R04 Proposed eleventh floor plan
1699__DWG_PL_xx_20_102 R04 Proposed second floor plan	1699__DWG_PL_xx_20_112 R04 Proposed twelfth floor plan
1699__DWG_PL_xx_20_103 R04 Proposed third floor plan	1699__DWG_PL_xx_20_113 R04 Proposed thirteenth floor plan
1699__DWG_PL_xx_20_104 R04 Proposed fourth floor plan	1699__DWG_PL_xx_20_114 R04 Proposed fourteenth floor plan
1699__DWG_PL_xx_20_105 R04 Proposed fifth floor plan	1699__DWG_PL_xx_20_115 R04 Proposed fifteenth floor plan
1699__DWG_PL_xx_20_106 R04 Proposed sixth floor plan	1699__DWG_PL_xx_20_116 R04 Proposed sixteenth floor plan
1699__DWG_PL_xx_20_107 R04 Proposed seventh floor plan	1699__DWG_PL_xx_20_117 R04 Proposed seventeenth floor plan
1699__DWG_PL_xx_20_108 R04	1699__DWG_PL_xx_20_118 R05

Proposed eight floor plan	Proposed roof plan
1699__DWG_PL_xx_20_109 R04 Proposed ninth floor plan	
Elevations and sections	
1699__DWG_PL_01_20_200 R01 Proposed Block 1 Section AA	1699_DWG_PL_01_20_303 R02 Proposed Block 1 South West elevation
1699__DWG_PL_01_20_201 R01 Proposed Block 1 Section BB	1699_DWG_PL_0203_20_300 R02 Proposed Block 2 and 3 East Elevations
1699_DWG_PL_0203_20_200 R01 Proposed Block 2 and 3 Section AA	1699_DWG_PL_0203_20_301 R02 Proposed Block 2 and 3 North Elevations
1699_DWG_PL_0203_20_201 R01 Proposed Block 2 and 3 Section BB	1699_DWG_PL_0203_20_302 R02 Proposed Block 2 and 3 South Elevations
1699_DWG_PL_0203_20_203 R01 Proposed Block 2 and 3 Section CC	1699_DWG_PL_0203_20_303 R02 Proposed Block 2 and 3 West Elevations
1699_DWG_Pl_0405_20_200 R01 Proposed Block 4 and 5 Section AA	1699_DWG_PL_0405_20_300 R02 Proposed Block 4 and 5 North East Elevations
1699_DWG_Pl_0405_20_200 R01 Proposed Block 4 and 5 Section BB	1699_DWG_PL_0405_20_301 R02 Proposed Block 4 and 5 North West Elevations
1699_DWG_PL_01_20_300 R02 Proposed Block 1 North East elevation	1699_DWG_PL_0405_20_302 R02 Proposed Block 4 and 5 South East Elevations
1699_DWG_PL_01_20_301 R02 Proposed Block 1 North West elevation	1699_DWG_PL_0405_20_303 R02 Proposed Block 4 and 5 South West Elevations
1699_DWG_PL_01_20_302 R02 Proposed Block 1 South East elevation	

3. CIL Phasing Plan

The development shall be carried out in accordance with a phasing plan to be submitted to and approved in writing by the Local Planning Authority (LPA) prior to the commencement of development.

4. Detailed drawings, external materials and balcony screens

Notwithstanding the details shown on the approved plans, prior to the commencement of the development (other than demolition, site clearance and ground works):

a) details and appropriate samples of the materials to be used for the external surfaces of the buildings and hard surfaced areas of the development, including details of change in elevational treatment, shall be submitted to and approved in writing by the LPA;
b) sample panels of the building materials and hard surfacing shall be provided on site to be inspected and approved in writing by the LPA and thereafter shall be retained on site during the construction of the development;
c) details of the following features and elements of the development shall be submitted to and approved in writing by the LPA:

i. Brick bonding, and brick and cladding detailing, to be shown on annotated plans at a scale of not less than 1:20, unless otherwise agreed in writing with the LPA.
ii. External windows, balconies, winter gardens, doors, screens, louvres and balustrading to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
iii. Depth of window reveals, colonnades and soffits to be shown on annotated plans at a scale of not less than 1:20 unless otherwise agreed in writing with the LPA.
iv. Rainwater goods to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
v. Privacy screens to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
vi. Shop fronts, entrances and openings to be shown on annotated plans at a scale of not less than 1:20 unless otherwise agreed in writing with the LPA.

The development of each building shall be carried out in accordance with the approved details prior to the first occupation of the relevant building.

5. Building and Site Management

Prior to the first occupation of each building to be provided as part of the development, a Management Strategy in respect of the relevant building shall be submitted to and approved in writing by the LPA.

Each Management Strategy shall include:
a) Details of security measures including location of security/concierge office, location and details of CCTV;
b) Details regarding the receipt, management and distribution of post, parcels, supermarket and other deliveries to the residential units;
c) Details of the controlled areas of the development and details of those who will have access to each of the identified zones;
d) Points of access and how access will be controlled;
e) Confirmation of disabled access arrangements;
f) Refuse and Recycling Storage and Collection (Operational Waste Management Strategy retail and residential); and
g) Measures and procedures to prevent and deal with antisocial behaviour and crime.

The site shall be managed in accordance with the approved strategy for the life of the development or as otherwise agreed in writing by the LPA.

6. Final Drainage Design

Prior to commencement of construction works (excluding site investigations, demolition and site clearance), final detailed drainage design including drawings, supporting calculations and an updated Drainage Assessment Form shall be submitted to the Lead Local Flood Authority for review and approval, aligned with the June 2018 Revised Surface Water Drainage Strategy and associated drawings. Evidence shall also be included to demonstrate that the offsite surface water sewers are suitable to receive the runoff.

A detailed management plan confirming routine maintenance tasks for all drainage components, including the green/blue roofs, permeable paving and attenuation tank, shall be submitted to and approved in writing by the LPA prior to occupation of the development to demonstrate how the drainage system is to be retained for the lifetime of the development.

7. Implementation of drainage design

No building to be constructed as part of the development shall be occupied until evidence (photographs and installation contracts) has been submitted to and agreed in writing by the LPA to demonstrate that the sustainable drainage scheme for the site has been completed in accordance with the details approved pursuant to Condition 6. The sustainable drainage scheme shall be managed and retained thereafter in accordance with the agreed management and maintenance plan for all of the proposed drainage components.

8. Landscaping, public realm, play space and boundary treatments

A landscaping and public realm scheme for the public and private areas in the development as shown in section 4.1 of the Design and Access Addendum (dated April 2018) shall be submitted to and approved in writing by the LPA prior to the commencement of public realm and landscape works.

The landscaping and public realm scheme shall include the following details in respect of the development:

a) The overall layout, including extent, type of hard and soft landscaping and proposed levels or contours;
b) The location, species and sizes of proposed trees and tree pit design;
c) Details of soft plantings, including any grassed/turfed areas, shrubs and herbaceous areas;
d) Enclosures including type, dimensions and treatments of any walls, fences, screen walls, barriers, railings and hedges;
e) Hard landscaping, including ground surface materials, kerbs, edges, ridge and flexible pavements, unit paving, steps and if applicable, any synthetic surfaces;
f) Street furniture, including type, materials and manufacturer's specification if appropriate;
g) Details of children's play space equipment and structures, including key dimensions, materials and manufacturer's specification if appropriate;
h) Any other landscaping features forming part of the scheme, including amenity spaces and green/brown roofs;
i) A statement setting out how the landscape and public realm strategy provides for disabled access, ensuring equality of access for all, including children, seniors, wheelchairs users and people with visual impairment or limited mobility; and
j) A wayfinding and signage strategy.
k) Details of how all of the landscaped areas (public and private) will be managed and maintained.

All landscaping in accordance with the approved scheme shall be completed or planted (as applicable) during the first planting season following practical completion of the development.

The landscaping and tree planting shall have a two-year maintenance/watering provision following planting and any trees or shrubs which die within five years of completion of the development shall be replaced with the same species or an alternative to be approved in writing by the LPA.

The development shall be carried out strictly in accordance with the approved details and shall be retained as such thereafter.

9. Cycle parking

Details of the secure/enclosed cycle parking spaces for the residential units, visitors and commercial/retail tenants, including their location and type of storage, shall be submitted to and approved in writing by the LPA prior to occupation of any part of the development.

The approved measures shall be installed prior to occupation of the relevant building to which the cycle parking spaces relate and retained permanently thereafter in accordance with the approved details unless otherwise approved in writing by the LPA.

10. Noise fixed plant

Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10dB below the background noise levels when measured from the nearest sensitive receptors. All such fixed external plant shall be installed in accordance with the approved plans. No fans, louvres, ducts or other external plant that are not shown on the approved plans shall be installed without the prior written approval of the LPA.

11. Noise, vibration and internal residential environment

Prior to the:

a) commencement of any development above ground floor slab level, details of the built fabric and ventilation strategy within the residential part of the development shall be submitted to and approved in writing by the LPA. Such details shall ensure that the approved residential units are insulated against external noise in order to achieve internal noise levels, taking into account any ventilation requirements, which do not exceed the guideline values contained in table 4 of BS 8233:2014;

b) occupation of the A1-A3, B1 and D1 uses forming part of the development, details of the built fabric and ventilation strategy in respect of those uses shall be submitted to and approved in writing by the LPA. Such details shall ensure that the approved residential uses are insulated against noise from the A1- A3, B1 and D1 uses in order to provide effective resistance to the transmission of airborne and impact sound horizontally and/or vertically between those uses and the residential uses. The approved details shall be installed prior to the occupation of the A1-A3, B1 and/or D1 uses (as relevant) and thereafter retained.

All works which form part of the strategies approved above shall be completed and evidence, that demonstrates compliance with the approved strategies and verifying compliance with the relevant minimum standard, shall be submitted to and approved in writing by the LPA prior to first occupation of the relevant uses. The works shall be retained in accordance with the approved details for the lifetime of the development.

12. External lighting and security

Notwithstanding the plans hereby approved, details of:

- CCTV;
- General external lighting;
- Security lighting;
- Access control measures for residential core entrances;
- Secured by Design accreditation measures and counter terrorism measures;

on or around the buildings or within the public realm in the development shall be submitted to and approved in writing by the LPA and installed prior to the first occupation of the relevant building to which the above measures relate.

The details shall include the location and full specification of all lamps; light levels/spill; illumination; cameras (including view paths); and support structures. The details will also include an assessment of the impact of any such lighting on the surrounding residential environment.

The development shall be carried out strictly in accordance with the details so approved and shall be retained as such thereafter.

13. Sustainability standards for non-residential uses

The development shall achieve an 'Excellent' rating under BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) for the Shell/Shell and Core stage and an 'Excellent' rating under BREEAM Refurbishment and Fit-out 2014.

a) Within 6 months of work starting on site, unless otherwise agreed with the LPA in writing, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Interim (Design Stage) Certificate, issued by the Building Research Establishment (BRE), shall be submitted to and approved in writing by the LPA to show that a minimum 'Excellent' rating will be achieved.
b) Within 3 months of first occupation of the development, unless otherwise agreed with the LPA in writing, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the LPA to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.
c) Prior to commencement of the fit-out of the development, unless otherwise agreed with the LPA in writing, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Interim (Design Stage) Certificate, issued by the BRE, must be submitted, by the fit-out contractor, to and approved in writing by the LPA to show that a minimum 'Excellent' rating will be achieved.
d) Within 3 months of first occupation, unless otherwise agreed with the LPA in writing, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Final (Post-Construction) Certificate, issued by the BRE, must be submitted, by the fit-out contractor, to and approved in writing by the LPA to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.

14. Compliance with energy strategy

The development shall be built in accordance with the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application, demonstrating how the development will follow the hierarchy of energy efficiency, decentralised energy and renewable energy technologies to secure a minimum 35% reduction in CO2 emissions below the maximum threshold set in Building Regulations Part L 2013.

Prior to occupation of the development, evidence (e.g. photographs, copies of installation contracts and as-built worksheets prepared under Standard Assessment Procedure or the National Calculation Method) shall be submitted to and approved in writing by the LPA to demonstrate that the development has been carried out in accordance with the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application unless otherwise agreed by the LPA in writing.

15. Accessible and adaptable dwellings

A minimum of 10% of all dwellings to be constructed as part of the development shall be built to requirement M4(3) wheelchair user dwellings contained within Part M volume 1 of the Building Regulations, as identified on the plans approved under condition 2. All other dwellings shall be built to requirement M4(2) accessible and adaptable dwellings contained within Part M volume 1 of the Building Regulations.

16. Air Quality

Prior to the installation of the Mechanical Ventilation with Heat Recovery (MVHR) system, detailed plans of the proposed MVHR system shall be submitted to and approved in writing by the LPA.

The details shall demonstrate that:

- the air quality at the internal location of the air intakes is predicted to be within legal limits and that appropriate NOx filtration and air tightness for windows and doors shall be included in the building design for the nursery; all residential units on the ground and first floor levels; and the relevant residential units located within an area classified as Air Pollution Exposure Criteria - B on the second and third floor levels;
- the overall efficiency of the MVHR system at least meets the details set out in the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application;
- the ventilation system will provide sufficient ventilated air for all dwellings, the nursery and other publicly accessible areas within buildings; and
- there are sufficient measures in place to monitor operation of the ventilation system and remedy defects for as long as any dwelling remains occupied.

The development shall be carried out and retained in accordance with approved details.

17. Air Quality/Combined Heat and Power (CHP)

Prior to the occupation of the development the results of tests undertaken on the installed boiler and CHP systems must be submitted to and approved in writing by the LPA. The results of the tests shall be approved if they demonstrate that the installed boiler and CHP systems meet, or exceed, the emissions rates and other parameters set out in chapter 10 of the environmental statement dated November 2017 submitted with the planning application.

Any gas fired boilers installed as part of the development shall be Ultra Low Emission with emissions to be less than 40 mg NOx/kWh in accordance with the Sustainable Design and Construction SPG.

18. Non-Road Mobile Machinery

(1) All Non Road Mobile Machinery (NRMM), such as mobile cranes and bulldozers, of net power between 37kW and 560kW (inclusive) to be used during the course of the demolition, site preparation and construction phases shall meet at least Stage IIIA of EU Directive

97/68/EC (as amended) if in use before 1 September 2020 or Stage IIIB of the directive if in use on 1 September 2020 or later.

(2) If NRMM meeting the relevant Stage set out in paragraph 1 above is not available for the demolition, site preparation or construction phases, the LPA shall be informed and every effort shall be made to use the least polluting equipment available by applying the following techniques instead of meeting the relevant Stage, subject to the prior written consent of the LPA:

- Reorganisation of NRMM fleet;
- Replacing equipment with new or second-hand equipment which meets the requirements of the relevant Stage;
- Retrofitting abatement technologies to reduce particulate emissions;
- Re-engining the NRMM

(3) Unless the NRMM complies with the relevant Stage set out in paragraph 1 above standards, no NRMM shall be on site at any time, whether in use or not, without the prior written consent of the LPA.

(4) A list of all NRMM used during the demolition, site preparation and construction phases of the development shall be kept up to date on the online NRMM register at https://nrmm.london/

19. Biodiversity

Prior to occupation of the relevant building to be provided as part of the development, details of the ecological mitigation listed at paragraph 18.1.7 of the Environmental Statement dated November 2017 shall be submitted to and approved in writing by the LPA. The approved details shall be implemented in full and thereafter permanently retained, unless otherwise agreed in writing with the LPA.

20. Land contamination

a) Prior to the commencement of development a contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the LPA.

b) If the Phase 1 report recommends that a Phase 2 site investigation is required, then this investigation shall be carried out, and a report submitted to and approved in writing by the LPA. The Phase 2 site investigation shall be carried out by a competent person to identify the extent and nature of contamination. The report produced following the Phase 2 site investigation shall include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary in the Phase 2 site investigation report.

c) If required by the Phase 2 site investigation report, a scheme for decontamination of the site shall be submitted to and approved in writing by the LPA.

d) During the construction of the development, the LPA shall be notified immediately if additional contamination is discovered beyond that identified in the Phase 1 report or Phase 2 report. A competent person shall assess such additional contamination and shall submit appropriate amendments to the scheme for decontamination in writing to the LPA for approval before any work on that aspect of the development continues.

e) Before the development is first occupied, the agreed scheme for decontamination referred to in paragraphs c) and d) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to and approved in writing by the LPA.

21. Piling

No piling work shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the LPA. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

22. Construction environmental management and logistics plan

The development shall not be commenced until a demolition and construction management and logistics plan has been submitted to and approved in writing by the LPA. The demolition and construction works shall be carried out in accordance with the details approved.

The plan shall include specific details relating to the construction, logistics and management of all works associated with the development and aim to minimise road vehicle movements, traffic congestion, pollution and adverse amenity impacts. The plan shall be produced in accordance with Transport for London's latest Construction Logistics Plan Guidance. The plan shall include:

a) Details of the site manager, including contact details (phone, email, postal address) and the location of a large notice board on the site that clearly identifies these details and a 'Considerate Constructors' contact telephone number;
b) The parking of vehicles of site operatives and visitors;
c) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
d) Wheel washing facilities;
e) A scheme for recycling/disposing of waste resulting from demolition and construction works;
f) Any means, such as a restriction on the size of delivery vehicles, construction vehicles and machinery accessing the site in respect of demolition and construction, required to ensure that no damage occurs to adjacent highways through the construction period;
g) Any means of protection of services such as pipes and water mains within adjacent highways during demolition and construction;
h) Measures to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of building plants and materials and similar demolition/construction activities during demolition and construction;
i) Measures to ensure that pedestrian access past the site on the public footpaths is safe and not obstructed during construction works;
j) Location of workers' conveniences (e.g. temporary toilets);
k) Ingress and egress to and from the site for construction vehicles, including vehicles associated with the delivery of materials used in the construction of the development;
l) Proposed numbers and timings of truck movements throughout the day and the proposed routes for their access to the site during demolition and construction of the development;
m) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places during demolition and construction of the development;

n) Details of the mitigation for dust and emissions, as well as methodology for monitoring, during demolition and construction;
o) Measures to minimise disruption to neighbouring and adjoining residential and commercial occupiers during demolition and construction.

The development shall be carried out in accordance with the approved details.

23. Construction Hours
No demolition or construction work, and no deliveries relating to the demolition or construction work, shall take place on the site except between the hours of 8am to 6pm on Mondays to Fridays and 8am to 1pm on Saturdays and not at all on Sundays and Public Holidays.

24. Water efficiency measures
Prior to first occupation of each building constructed as part of the development, a schedule of fittings and manufacturer's literature for the relevant building shall be submitted to and approved in writing by the LPA to show that the development has been constructed in accordance with the approved internal water use calculations of 104 litres per person per day as set out in the Silcock Dawson Sustainability Statement dated May 2018 submitted with the planning application.

25. Water supply and wastewater capacity
Development shall not commence (excluding demolition works above existing ground level) until impact studies on the existing water supply infrastructure have been submitted to and approved in writing by the LPA. The studies shall determine the amount of any new additional capacity required in the water supply infrastructure and identify a suitable connection point.

26. Sourcing of materials
No building to be provided as part of the development shall be occupied until evidence (e.g. photographs and copies of installation contracts) has been submitted to and approved in writing by the LPA to demonstrate that the relevant building has been carried out in accordance with the approved sustainable sourcing of materials standards set out in the Silcock Dawson Sustainability Report dated May 2018 submitted with the planning application.

27. Solar glare
Prior to commencement of the superstructure works, measures to demonstrate that the design and materials selected for the windows and cladding of the buildings forming part of the development will not have an adverse effect on motorists using the M4 Elevated Motorway shall be submitted to and approved in writing by the LPA. The buildings of the development shall be constructed in accordance with the approved details.

28. Ventilation (A1-A3 uses)
Details of external ventilation equipment, including ducting, shall be submitted to and approved by the LPA prior to first occupation of the relevant commercial units. The external ventilation equipment shall be installed in accordance with those details approved by the LPA.

29. Fire Safety
Prior to commencement of the development, an update to the Fire Safety Review prepared by FDS Consult (dated March 2018 and submitted with the planning application) to account

for the relevant fire safety standards applicable at that time shall be submitted to and approved in writing by the LPA. The Fire Statement shall detail how the development will function in terms of:

d) The development's construction: the methods, products and materials used;
e) The means of escape for all building users: stair cores, escape for building users who are disabled or require level access, and the associated management plan approach;
f) Access for fire service personnel and equipment: how this will be achieved in an evacuation situation, water supplies, provision and positioning of equipment, firefighting lifts, stairs and lobbies, any fire suppression and smoke ventilation systems proposed (including sprinklers), and the ongoing maintenance and monitoring of these; and
g) How provision will be made within the site to enable fire appliances to gain access to the building.

The development shall be constructed in accordance with the details approved above.

30. Opening hours (A1-A3 and B1 uses)

The ground floor level Class A1/A2/A3 and B1 premises, as shown on the approved drawings, shall not be open to customers other than between the hours of 0700 and 2300 on Mondays to Saturdays, and 0800 to 2200 on Sundays and Public Holidays.

31. Aircraft Radar Mitigation Scheme

No construction work shall exceed 10m above ground level on site until a Radar Mitigation Scheme (RMS), including a timetable for its implementation during construction, has been agreed with the Operator (NATS) and approved in writing by the LPA.

The RMS shall thereafter be implemented and operated in accordance with the approved details.

32. Rooftop TV equipment details

A scheme for the provision of communal/centralised satellite and television reception equipment to be installed on the roof of any building to be constructed as part of the development shall be submitted to and approved in writing by the LPA prior to development proceeding above podium level in respect of the relevant building. The development shall be implemented in accordance with the approved scheme and the equipment shall thereafter be retained and made available for use by all occupiers of the development.

33. Restriction of rooftop plant and equipment

No water tanks, plant, lift rooms or other structures, other than those shown on the approved drawings, shall be erected upon the roofs of the buildings to be provided as part of the development without the prior written approval of the LPA.

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by David Nicholson RIBA IHBC

an Inspector appointed by the Secretary of State

Date 11th June 2020

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 77)

THE MAYOR OF LONDON

APPLICATION BY L&Q

Inquiry held on 14-24 January and 4-6 February 2020. Site visits held on 5 February 2020

Citroen Site, Capital Interchange Way, Brentford, TW8 0EX

File Ref: APP/G6100/V/19/3226914

CONTENTS **Page**

[1] Cover photomontage from Mr Brown's proof of evidence

List of abbreviations used in this Report

AH	Affordable housing
AN	Advice Note (HE)
AQ	Air quality
AVR	Accurate Visual Representation
BFC	Brentford Football Club
BZ	Buffer Zone (to a WHS)
CA	Conservation Area
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
CIW	Capital Interchange Way
EIA	Environmental Impact Assessment
EiP	Examination in Public
ES	Environmental Statement
GLA	Greater London Authority (the Mayor of London)
GPA	Good Practice Advice (in Planning)
GWC	Great West Corridor
HE	Historic England
HTVIA	Heritage, Townscape and Visual Impact Assessment
IC	Examination in chief
ICOMOS	International Council on Monuments and Sites
IPLP	Intend to Publish version of the London Plan
LB&CA Act	Listed Buildings and Conservation Areas Act
LBH	London Borough of Hounslow
LPA	Local Planning Authority
LPR	Local Plan Review
Mayoral SPG	*London's World Heritage Sites – Guidance on Settings* Mayor of London Supplementary Planning Guidance (SPG) 2012
MPlan	Management Plan (for Kew Gardens)
NPPF	National Planning Policy Framework
OUV	Outstanding Universal Value
OA	Opportunity Area
P&CP Act	Planning and Compulsory Purchase Act 2004
PPG	Planning Practice Guidance
PTAL	Public transport accessibility level
RBGK	Royal Botanic Gardens Kew
RPG	Registered Park and Garden
RX	Re-examination
s106	Section 106 of the T&CP Act
SoCG	Statement of Common Ground
SoS	Secretary of State (for Housing, Communities and Local Government)
SotG	Strand on the Green
SOUV	Statement of OUV
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
T&CP Act	Town and Country Planning Act 1990
TfL	Transport for London
UNESCO	United Nations Educational, Scientific and Cultural Organization
XX	cross-examination
WHS	World Heritage Site

File Ref: APP/G6100/V/19/3226914
Citroen Site, Capital Interchange Way, Brentford TW8 0EX

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning (T&CP) Act 1990, on 15 April 2019[2].
- The application is made by L&Q to the Greater London Authority (The Mayor of London).
- The original application Refs. GLA/4279 & 01508/A/P6 is dated 3 November 2017.
- The development proposed was amended prior to consideration by the Mayor, to: *Redevelopment of the site to provide a mixed use scheme of 441 residential units (Class C3) including 50% affordable housing with ancillary facilities, flexible uses (within Classes A1, A2, A3 and B1) and a nursery (Class D1). Comprising buildings of 12, 13, 16, 17 and 18 storeys in height with associated cycle parking, car parking, play space, landscaping and public realm improvements*.
- The reason given for making the direction was that the Secretary of State (SoS) has considered his policy on calling in planning applications and concluded, in his opinion, that the application should be called-in.
- On the information available at the time of making the direction, the following were the matters on which the SoS particularly wished to be informed for the purpose of his consideration of the application:
  a) The extent to which the proposed development is consistent with the Government policies for delivering a sufficient supply of homes (NPPF Chapter 5);
  b) The extent to which the proposed development is consistent with the Government policies for building a strong, competitive economy (NPPF Chapter 6);
  c) The extent to which the proposed development is consistent with the Government policies for conserving and enhancing the historic environment (NPPF Chapter 16);
  d) The extent to which the proposed development is consistent with the development plan for the area including any emerging plan;
  e) and any other matters the Inspector considers relevant.

Summary of Recommendation: that the application should be approved.

1. Procedural matters

1.1 The application was made to the London Borough of Hounslow (LBH)[3]. This was called-in by the Mayor of London[4] and then by the Secretary of State (SoS).

1.2 The Inquiry sat from 14 January to 6 February 2020. I held it open to allow for written representations regarding late evidence[5]. The Inquiry was then closed in writing on 6 March 2020[6]. As well as conducting an accompanied site visit[7] on 5 February 2020, I made unaccompanied visits on 21 October 2019 and shortly before the Inquiry opened.

1.3 A combined general Statement of Common Ground (SoCG) was agreed between the Applicant (L&Q) the Mayor (GLA) and the LBH[8]. A separate heritage SoCG was agreed between the Applicant, the Mayor, the LBH, Historic England (HE) and the Royal Botanic Gardens Kew (RBGK)[9].

[2] Core Document (CD) K01
[3] Subsequently a Rule 6 party at the Inquiry
[4] Now the local planning authority (LPA)
[5] Subsequently numbered Inquiry Document (ID) numbers ID27 and ID28
[6] By letters dated 6 March 2020
[7] See ID34 for full details
[8] CDF 01 Statement of Common Ground (SoCG) between Applicant, the Mayor and LBH
[9] ID9

1.4 Drawings were amended during the application process and it was common ground that the documents submitted with the application, and its amendments prior to the SoS call-in, are those for which planning permission is sought[10].

1.5 It was agreed[11] that the Environmental Statement (ES) November 2017 and the ES Addendum May 2018 are adequate for determining the application. However, RBGK considered[12] that the Heritage, Townscape and Visual Impact Assessment (HTVIA) and ES did not meet the information requirements of the relevant policy and guidance because: they do not take account of established methods for assessing the harm to the setting of a World Heritage Site (WHS); they were flawed in their approach to cumulative assessment; they did not take proper account of Supplementary Planning Guidance (SPG) or Planning Practice Guidance (PPG) in assessing cumulative impacts, and did not set out any review of reasonable alternatives that have been considered.

1.6 A signed and dated Legal Agreement was submitted[13]; I deal with its contents and justification below. On the last sitting day, the Applicant submitted a Unilateral Undertaking relating to a Planting Scheme[14] with an explanatory Note and a copy of a High Court Judgment[15]. I gave the parties time to comment on these and closed the Inquiry in writing on 6 March 2020.

Matters arising since the last sitting day of the Inquiry

1.7 On 10 March 2020 the High Court published its Judgment on the challenge to the *Chiswick Curve (CC)* upholding the SoS's Appeal Decision[16]. The CC was a scheme for a mixed use building of 25 and 32 storeys of up to 327 residential units, office and other uses[17].

1.8 On 13 March 2020, the SoS wrote to the Mayor acknowledging the Intend to Publish version of the London Plan (IPLP) and exercising his powers to direct changes which are set out as Directions in Annex 1[18].

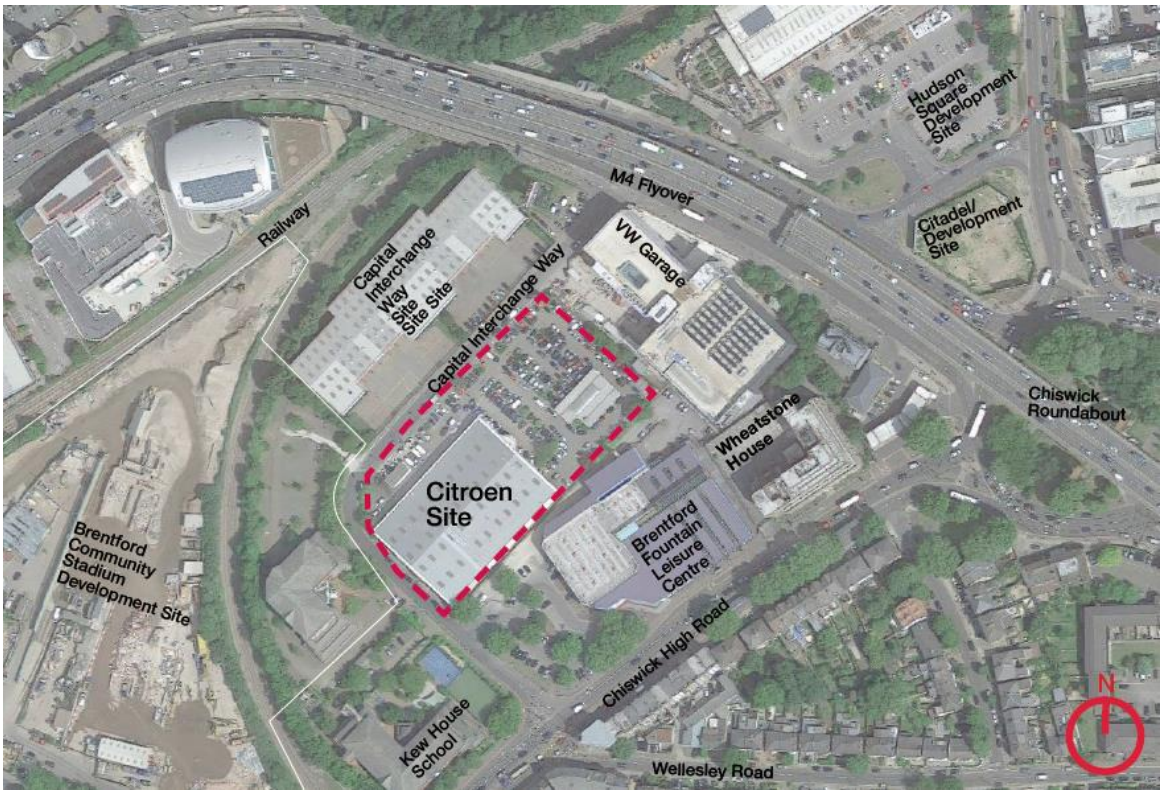
1.9 The Kew Management Plan (MPlan) was formally adopted on 7 May 2020[19] and any reference to the draft can now be read as the adopted MPlan. Finally, just before submitting my report, the *Westferry Printworks* Appeal Decision, which was raised in evidence, was quashed by a Consent Order from the High Court dated 20 May 2020[20].

1.10 I sought comments on all of these matters which I summarise at the end of the parties cases where appropriate[21].

---

[10] CDF 01 §3.3
[11] ID9 §7.9
[12] CDF 01 Applicant and RBGK §4.5 and ID16
[13] ID35 made under Section 106 of the T&CP Act 1990 (as amended) and all enabling powers
[14] *Kew Planting Scheme* Unilateral Undertaking signed and dated 28 February 2020. ID40 Appendix 1
[15] *H J Banks & Co Ltd v Secretary of State for Housing, Communities and Local Government [2018] EWHC 3141 (Admin) and [2019] P.T.S.R. 668*
[16] Post-Inquiry Document (PID)5 Judgment in *Starbones Ltd v Secretary of State for Housing, Communities and Local Government & Ors [2020] EWHC 526 (Admin) (10 March 2020)*
[17] CD I4
[18] PID7
[19] PID9
[20] PID11 dated 20 May 2020, quashing the decision at ID10
[21] PID6, 8, 10 and 12

2. The site and surroundings



Annotated satellite image[22]

2.1 The Application site[23] extends to approximately 0.96 hectares and is located close to the Chiswick roundabout and the elevated section of the M4. The site currently comprises a car dealership and service workshop (Peugeot/Citroen) with approximately equal coverage of buildings and hardstanding. The main showroom and workshop building is just over 7m in height. Different parts of the site have Public transport accessibility levels (PTAL) of 4 and 3[24].

2.2 The site is directly behind the Brentford Fountain Leisure Centre which fronts onto the Chiswick High Road section of the South Circular. There is a Volkswagen car dealership to the north-east. Capital Interchange Way (CIW) curves around the site on its north-western and south-western boundaries. Across Chiswick High Road lies a predominantly residential area around Wellesley Road. Further south on Chiswick High Road are Kew Bridge Station and Kew Bridge itself. Either side of the Bridge are Rivers House and Kew Bridge West. A little further west is Kew Steam Museum, with a distinctive tall standpipe tower which is a prominent landmark. Gunnersbury Station lies to the east of Chiswick roundabout.

2.3 Other tall buildings in the area include the six 22-storey residential blocks of Haverfield Towers, which stand on the opposite side of the River from Kew Gardens directly behind the Orangery; the Kew Eye apartments next to the M4; the BSI building to the north of Gunnersbury Station; and Vantage London.

[22] From Mr Brown's proof p27.
[23] See CD B01: Council Officer's report, and CDF 01: SoCG
[24] See ID26 Appendix 2

2.4 West of CIW is the Brentford Football Club Community Stadium and development site (BFC). This was implemented in 2017 and includes a new 17,250-seat stadium and 11 tall buildings on surrounding land for housing and commercial uses. Construction work is nearly complete on a 9-storey building on the former Wheatstone House site, which adjoins the Volkswagen dealership and the Leisure Centre sites near to the Chiswick roundabout.

2.5 Across the M4 is the site of the approved Citadel scheme – which is also the site of the now rejected 31 storey CC proposals. The proposed Hudson Square development (the current B&Q site) lies just north of this. At 1-4 CIW, just the other side of the road from the application site, LBH has resolved to grant permission for buildings of up to 16 storeys subject to conditions and satisfactory planning obligations[25]. Most of these taller buildings and proposals are within the proposed Great West Corridor (GWC) – see s3 below.

Heritage considerations

2.6 Across the Thames is the London Borough of Richmond with Kew Gardens and Green Kew, both of which are designated as Conservation Areas (CAs). Kew Gardens is also a Grade I Registered Park and Garden (RPG) and, most recently of these designations, a World Heritage Site (WHS) which has roughly the same boundaries as the RPG and the CA. It contains many listed buildings including Kew Palace, the Orangery, the tall Pagoda, and others at Grade I. The WHS's Buffer Zone (BZ) incorporates Kew Green and extends to the Brentford side of the Thames. The key images are Views 20, 22, 23 and 30[26]

2.7 It was common ground[27] that the heritage assets which would be potentially affected at Kew Gardens are the RPG, its CA, the WHS, and its Grade I listed Orangery. Of the many other historic structures within the Gardens, Kew Palace survives while the White House has been demolished. The Great Lawn and lake are much smaller than when designed by Chambers and redesigned by Burton (and others) as part of the 18th and 19th Century landscapes.

2.8 The Strand on the Green (SotG) CA follows the north bank of the River Thames. Designated in 1968, it includes around 22 Grade II listed buildings along the River, all listed for group value, as well as the Grade II* listed Zoffany House which together with 64-71 SotG would be most affected.

2.9 Kew Green CA was designated in 1969, has since been extended, and contains 38 listed buildings, four of which are listed at Grade II*.

2.10 The Wellesley Road CA is mostly residential and lies just to the south-east of the application site, across the Chiswick High Road. Its CA Appraisal[28] notes its wide range of Victorian properties with their original detail, style and character; few are listed.

2.11 Kew Steam Museum is a group of Grade I and II listed buildings; Kew Bridge Station and Kew Bridge itself are both listed at Grade II.

[25] CDI 01
[26] See the Accurate Visual Representation (AVR) at CD N1
[27] ID9
[28] ID25

3. Planning policy

3.1 All relevant policy and guidance, including SPG and emerging policy, is listed in the SoCG[29].

The Development Plan

3.2 It was common ground[30] that the Development Plan includes the 2016 London Plan (LonP)[31] and the 2015 Hounslow Local Plan (HLP)[32].

London Plan (LonP)

3.3 Of particular relevance, LonP Policy 7.4 expects development to have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings; and sets criteria for planning decisions to achieve the aim that it would provide a high quality design response.

3.4 LonP Policy 7.6 demands that *architecture should make a positive contribution to a coherent public realm, streetscape and wider cityscape; that it should incorporate the highest quality materials and design appropriate to its context*; and sets criteria for planning decisions to ensure that *buildings and structures should: be of the highest architectural quality; be of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm; comprise details and materials that complement, not necessarily replicate, the local architectural character; and not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate – this is particularly important for tall buildings*.

3.5 LonP Policy 7.7 sets the strategic context for *tall and large buildings*, which *should be part of a plan-led approach to changing or developing an area by the identification of appropriate, sensitive and inappropriate locations* and *should not have an unacceptably harmful impact on their surroundings*. Policy 7.7E expects that *the impact of tall buildings in sensitive locations should be given particular consideration*. Such areas might include CAs, listed buildings and their settings, RPGs, and WHSs.

3.6 For planning decisions, and with specific reference to listed buildings, RPGs, CAs, and WHSs, LonP Policy 7.8 makes plain that *development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail*.

3.7 LonP Policy 7.10A establishes at that *development in [WHS]s and their settings, including any [BZ]s, should conserve, promote, make sustainable use of and enhance their authenticity, integrity and significance and [OUV]*. It notes that *the Mayor has published [SPG] on London's [WHS]s – Guidance on Settings to help relevant stakeholders define the setting of [WHS]s*. Policy 7.10B for planning decisions sets out that development should not cause adverse impacts on *[WHS]s* or their settings …, it should not compromise a viewer's ability to appreciate its *[OUV]*, integrity, authenticity or significance. When *considering planning*

[29] SoCG CDF 01 §§2.6-2.8
[30] Ibid §2.1
[31] Consolidated with Alterations with alterations since 2011 (CD C04)
[32] LBH Local Plan (CD D01)

applications, appropriate weight should be given to implementing the provisions of the [WHS MPlan]s.

3.8 Housing requirements in general are covered in LonP Policies 3.3-3.5. Affordable housing (AH) is covered in LonP Policies 3.8-3.13 which define the term, set targets, and expect the maximum reasonable amount of affordable housing when negotiating on individual schemes while acknowledging that negotiations should take account of development viability.

Hounslow Local Plan (HLP)

3.9 HLP Policy CC1 recognises the context and varied character of the borough's places, and seeks to ensure that all new development conserves and takes opportunities to enhance their special qualities and heritage. Policy CC2 aims to retain, promote and support high quality urban design and architecture to create attractive, distinctive, and liveable places.

3.10 HLP Policy CC3 supports tall buildings of high quality in identified locations which accord with the principles of sustainable development. At (d) this supports tall buildings along sections of the A4 with specific sites to be identified in the GWC Plan which should be carefully placed so as not to create a wall of tall buildings, ensuring they do not have a significant adverse impact on the setting of, or views from heritage assets including the Kew Gardens WHS. It sets criteria including that tall buildings should be of the highest architectural design and standards; and take opportunities to enhance the setting of surrounding heritage assets, the overall skyline and views. Criterion (f) does not allow existing tall buildings which are in inappropriate locations to be a justification for new ones; (l) expects tall proposals to be designed to give full consideration to its form, massing and silhouette, including any cumulative impacts, and the potential impact of this on the immediate and wider context.

3.11 Heritage is dealt with in Policy CC4 which expects development proposals to conserve and take opportunities to enhance any heritage asset and its setting, in a manner appropriate to its significance, and, where less than substantial harm will result to the significance of a designated heritage asset, that is to be balanced against the public benefits of the proposal. It requires developments to conserve and enhance CAs and the Outstanding Universal Value (OUV) of Kew Gardens WHS its BZ and its setting, including views to and from the site.

3.12 HLP Policy SC1 aims to maximise housing supply consistent with the principles of sustainable development. Policy SC2 aims to maximise the provision of affordable mixed tenure housing on development sites and sets a strategic target that 40% of additional housing delivered across the borough between 2015 and 2030 should be affordable. HLP Policy SC3 seeks to address housing need through a mix of housing sizes and types while Policy SC4 balances the need to make efficient use of land against the necessity for high quality design and accessibility.

3.13 HLP Policy SV1 commits to progressing a partial HLP review of the GWC including designation as an Opportunity Area (OA).

Other Statutory duties

3.14 Sections 66 and 72 of the Planning (Listed Buildings and CAs) Act 1990 place duties on the decision maker with regard to listed buildings, their settings and

to CAs. The Courts have found that *considerable importance and weight* should be given to the *desirability of preserving the setting of listed buildings* in any balancing exercise with material considerations which do not have this status[33].

National Planning Policy Framework (NPPF)

3.15 The revised Framework (NPPF) was published in July 2018 and further revised in February 2019. In interpreting policy, the Judgment in *Bedford*[34] established that substantial harm (NPPF§195) requires that: *very much if not all of the significance of the asset was drained away*.

3.16 Planning Practice Guidance (PPG) includes that on the *Historic Environment.* On WHSs, it refers to *protecting a [WHS] and its setting from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect* and notes that *relevant policies in management plans need to be taken into account … in determining relevant planning applications*[35].

Supplementary Planning Guidance (SPG)

3.17 The Mayor's *London's World Heritage Sites – Guidance on Settings SPG*, 2012 (Mayoral SPG)[36] advises that: *[t]he setting of a [WHS] is recognised as fundamentally contributing to the appreciation of a [WHS]'s [OUV] and changes to it can impact greatly, both adversely and beneficially, on the ability to appreciate its [OUV]*[37]. The SPG also highlights the importance of cumulative impacts and that *there may be a tipping–point*[38]*.* It adds that: *The magnitude of impact on an attribute of OUV or on other heritage assets is a function of the significance of the attribute of OUV or other heritage asset and the scale of change. Attributes of OUV of [WHS]s have a very high significance value, therefore even minor changes can have a significant effect and their impacts will require close scrutiny*[39].

3.18 The Mayor's Affordable Housing and Viability SPG *Homes for Londoners* 2017[40] expects viability assessments to be submitted as part of the planning process, and that they should be rigorously reviewed as required by the LonP[41].

Other Documents

3.19 The Mayor's *A City for all Londoners* (October 2016) and the Housing White Paper *Fixing our broken housing market* (February 2017)[42] emphasise the need for more intensive housing in London using previously developed land.

3.20 Historic England (HE) has published extensive guidance on the historic environment including *Managing Significance in Decision-Taking in the Historic*

[33] As interpreted by the Courts in CD J02 *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another [2014] EWCACiv 137*
[34] CD J01 *Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin)
[35] PPG at CDC 02 Refs: 032 Reference ID: 18a-032-20190723, 032 Reference ID: 18a-034-20190723
[36] CD C16
[37] See CDC16, §1.3
[38] CDC16, §5.31.
[39] Ibid 5.34
[40] CD C07
[41] Ibid 3.1 referring to LonP §3.71
[42] CD12.9 and CD12.10

Environment[43] and Good Practice Advice in Planning (GPA) Note 3 on *The Setting of Heritage Assets*[44]*.* The latter states *[w]hen assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change* and, under *Cumulative change*, that *[w]here the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset ….*

3.21 HE's Advice Note (AN) 4: *Tall Buildings* says: *Each building will need to be considered on its merits, and its cumulative impact assessed*[45], and that *[c]areful assessment of any cumulative impacts in relation to other existing tall buildings and concurrent proposals will also be needed …. The existence of a built or permitted tall building does not of itself justify a cluster or additions to a cluster*[46]. It reiterates the need for a clear and convincing justification for any harm and adds: *This may involve the examination of alternative designs or schemes that may be more sustainable because they can deliver public benefits alongside the positive improvement in the local environment*; and *if a tall building is harmful to the historic environment, then without a careful examination of the worth of any public benefits that the proposed tall building is said to deliver and of the alternative means of delivering them, the planning authority is unlikely to find clear and convincing justification for the cumulative harm*[47]*.*

3.22 The RBGK CA was designated in 1991. Its Appraisal[48] has been largely superseded by the WHS designation. The new Kew Gardens WHS MPlan has now been adopted[49]. As set out in the PPG (above) it should be taken into account in this decision. It expands on the contribution setting makes to the OUV of the WHS[50] and adds that the use of trees as screening *cannot be relied upon in the long term to protect against inappropriate external development*[51]*.*

3.23 The Kew Gardens Statement of OUV (SOUV)[52] refers to: *Elements of the 18th and 19th century layers including the Orangery, … convey the history of the Gardens' development from royal retreat and pleasure garden to national botanical and horticultural garden before becoming a modern institution of conservation ecology in the 20th century.* It continues: *Only a few buildings are being used for a purpose different from that originally intended (the Orangery now houses a restaurant).* Of the attributes of Kew Gardens WHS's OUV, the two that would be affected by the proposal are: the *rich and diverse historic cultural landscape providing a palimpsest of landscape design*[53], and the *iconic architectural legacy*.

[43] CDG 08
[44] CDG09 pp 2 & 4; and §§32 and 36
[45] CD G10 §3.8. See also §5.5 and the checklist on p8
[46] Ibid §4.6
[47] Ibid §5.5
[48] Which is broadly co-extensive with the WHS designation, see CDG7.
[49] PID9
[50] Section 3.3
[51] Section 9.3.2
[52] CD G12 p49
[53] PID9 New MPlan p24

3.24 The draft SotG CA appraisal notes that: *The [CA]'s special architectural and historic interest lies in its intrinsically tranquil 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 eighteenth century. … It has a clear new riparian character area from the other side of Kew Bridge … with a unique (to the borough) unified scale, grain and grouping of heritage assets, which contrasts with the larger and more varied buildings of Brentford. The overall effect is one of picturesque charm, both from within the area and from advantageous views on the opposite river bank …*.

3.25 Kew Green CA was designated in 1969. Its Appraisal[54] notes that this was *due to its character as an historic open space, the associated high quality of mostly C18th development and its superior riverside environment*. *The Green constitutes a fine example of an historic Green, … and is surrounded by large 18th and 19th century houses, many of which are listed*.

3.26 The International Council on Monuments and Sites (ICOMOS) was requested to comment on the planning application for the CC insofar as it would affect the setting of the RBGK, a World Heritage property[55]. At the time of the Inquiry it had not commented on this application.

World Heritage Site Management Plan (WHS MPlan)

3.27 As above, the WHS MPlan[56] is now adopted and can be given weight as a material consideration supported by policy. Its significance and relevant policies were summarised in some detail by RBGK. With regard to Views, vistas and setting, it notes[57] that *Further strategic strengthening of boundary plantings and screening within the Gardens will also be required in the long term, to help offset the threat of ever taller external building developments becoming visible within the landscape. The use of trees as screening however, cannot be relied upon in the long term to protect against inappropriate external development, which if not managed sensitively, will continue to erode the setting of the site and our ability to experience the gardens 'Arcadian' vision*.

Emerging policy

3.28 The IPLP, December 2019 has now been postponed. Even before the latest delay, it was agreed that the IPLP is at an advanced stage, having been considered at an Examination in Public (EiP) and subject to a Panel report, and that it is a material consideration of some weight. With the SoS's most recent letter, he has set out Directions for certain policies. It follows that other policies, which include heritage policies, are unlikely to be altered.

3.29 Of particular relevance, IPLP Policy D9, for Tall Buildings, reads at C1)d) that: … *Proposals resulting in harm will require clear and convincing justification demonstrating that alternatives have been explored*…[58]. Policy D9C4) includes the importance of considering cumulative impacts.

[54] CD G02 p1
[55] CD G28
[56] PID9
[57] Ibid p55
[58] Intend to Publish version of the London Plan (IPLP) CD C05A, p150.

3.30 IPLP Policy H4 sets out specific measures to achieve its strategic target of 50% of all new homes delivered across London to be genuinely affordable. IPLP Policy HC1C expects development to conserve the significance of heritage assets and their settings, including the active management of the cumulative impacts of incremental change. Several policies support the principle of building a strong, competitive economy, notably Policy GG5, and of making the best use of land Policy GG2. None of these policies is subject to the Direction.

3.31 Policy HC2B of the IPLP reads *Development proposals in [WHS]s and their settings, including any [BZ]s, should conserve, promote and enhance their [OUV], including the authenticity, integrity and significance of their attributes, and support their management and protection. In particular, they should not compromise the ability to appreciate their [OUV], or the authenticity and integrity of their attributes*. Policy HC2D adds that *when considering planning applications, appropriate weight should be given to implementing the provisions of the [WHS MPlan]*.

3.32 LBH has consulted on amendments to Volumes 1 and 2 of the current HLP, and consultation on the Regulation 19 draft of the Great West Corridor Local Plan Review (GWC LPR)[59] closed in September 2019. It was agreed that these are at an early stage and have not yet been to an EiP. As there are unresolved objections, including those from the Applicant and the Mayor, it was agreed that very limited weight can be attributed to the amendments and the GWC LPR[60].

3.33 The GWC LPR sets out a detailed spatial strategy for the GWC including land uses and building heights. Its aims include identifying the extent of the GWC, progressing its designation as an OA, and identifying sites suitable for tall buildings. The OA is identified as an area for 7,500 new homes and 14,000 new jobs. It identifies a three-tiered hierarchy of building heights. Policy P3 deals with GWC East, the section which contains the application site. This is shown with an allocation for residential in the spatial strategy and near, but not as, a focal building[61]. Policy GWC5 expects schemes to *avoid any further harm to the setting, views, significance, OUV of the [RBGK WHS] and other designated heritage assets and their setting in the Corridor and wider area.*

3.34 At the same time, the GWC LPR was supported by the GWC Masterplan and Capacity Study[62] which sets out a bold new vision for the renaissance of the GWC. Its analysis includes further height testing with regard to Kew Gardens WHS and a more detailed analysis of potential tall building clusters around the proposed BFC developments[63].

4. Planning history

4.1 See the SoCG[64] for full details. Of relevance, the application site was developed as a retail warehouse and garden centre. An application for the current car

[59] CD D05
[60] CDF 01 §2.15
[61] CDD 05 Fig.5.8
[62] CD D07
[63] Identified as Brentford Stadium Clusters West and East. Ibid pp139-140
[64] Planning SoCG CD5.1 s3

showroom and workshop use was granted in March 1996[65]. In February 2018 LBH considered the application and concluded that it should be refused permission for 5 reasons[66]. Subject to an agreement under Section 106 of the T&CP Act (s106), now completed, LBH's case no longer pursues reasons 2-5. Reason 1 claims that the proposals *by virtue of their location, scale and design, would not enhance the quality of the built environment and would cause serious harm to the significance of a range of designated heritage assets including a [WHS], listed buildings and conservation areas, as they would appear as overly tall and bulky elements that are discordant additions to the existing high quality townscapes, adversely affecting their setting. It has not been clearly and convincingly demonstrated that there are public benefits that would outweigh the harm caused*. It also refers to a number of relevant policies.

4.2 With regard to nearby sites under construction, the BFC development[67], as now approved, is for a new 17,250 seat stadium and enabling housing (910 dwellings) and a hotel. At Wheatstone House permission was granted on appeal in March 2015 to provide 95 apartments and ground floor commercial space within a 9-storey building[68].

4.3 Proposals for 1-4 CIW were refused planning permission in December 2017 for redevelopment to include up to 550 residential units, a bus depot and commercial units in three buildings of 18, 19 and 20 storeys. It now has a resolution to grant permission[69] for a mixed-use scheme of 420 residential units and flexible retail and commercial floorspace in buildings up to 16-storeys in height[70]. It would include 209 affordable units[71].

5. The proposals[72]

5.1 The site would be cleared of all existing buildings and workshops. The five new blocks would be staggered to achieve a variety of building heights. Two pairs of blocks would be connected to produce the three structures. The blocks would be arranged fanning out from the north corner, closest to the M4 flyover, to face the sun. There would be a raised podium between the blocks producing two courtyards and concealing ground floor parking below.

5.2 It was common ground[73] that the principle of redeveloping the site and the range of uses proposed would accord with the development plan as a whole; that there was no concern over the loss of the car dealership and garage; that the development plan strongly supports the principle of a mixed-use residential-led scheme; that a nursery is acceptable; as are ground floor uses of retail, employment and community uses. They also agreed that the principle of tall

[65] under application ref.1508/A/P4
[66] In the planning officer's delegated report CDB 01 §13.1
[67] Ref. 00703/A/P11
[68] Ref. 00248/U/P7
[69] CDI 01 Ref. 01508/1-4/P6 Capital Interchange Way Officer Report
[70] Block A 8-12 storeys, Block B 8-14 storeys, Block C rising to 16 storeys: see CIW Officer Report: CD I01 §4.6. The site is further away from Kew Gardens than the Citroen proposals.
[71] CD I01 §1.1. Re tenure split, Mr Baker clarified to the Inspector question from that 1-4 CIW is 30% London Affordable Rent, 10% Affordable Rent, 60% shared ownership (Citroen being 30% London Affordable Rent and 70% Shared Ownership)
[72] View from the south shown on the front cover
[73] CDF01 between the Mayor, LBH and the Applicant §§3.4-3.8

buildings on the site is acceptable having regard to policies LonP 7.7 and HLP CC3[74]. LBH did not agree that the height, scale or design of the proposed buildings would be acceptable. The effect on the significance of various heritage assets was not agreed.

5.3 View 23 (for the SotG) and View 30 (for the Orangery/WHS) were agreed to be of particular relevance. Also Views 20 and 22 for Kew Green CA.

5.4 It was also agreed that the design would provide new well-defined public routes and spaces, high quality landscaping, and an improved route from Gunnersbury Station to BFC Stadium (subject to other development). Other design matters were not agreed by LBH. There was general agreement on: housing mix, housing provision, access, daylight & sunlight, noise, air quality, wind, light pollution, waste, contaminated land, transport, social infrastructure, sustainability, flood risk and drainage. Also, that there would be 250 direct construction phase jobs. When the scheme is finished, there would be a modest net increase compared with the number of jobs at the current showroom.

5.5 It was agreed that the proposals would deliver a number of public benefits including:

- the delivery of 441 homes
- the delivery of 50% affordable housing by habitable room
- job creation
- improved public realm and a new public square
- environmental improvements to the area
- aesthetic improvements to the site
- provision of a nursery
- providing transformational change to a site within a proposed opportunity area (OA)
- encouraging sustainable travel behaviours through a package of measures.

The weight attached to these benefits was not agreed with LBH.

5.6 Other points[75] were agreed between the Applicant and the Mayor, but not LBH.

5.7 Of the 628 habitable rooms tested for daylight levels, 75 of these failed to meet the minimum BRE standards[76]; the vast majority of those were living rooms.

5.8 The balconies/internal spaces that would be particularly affected by poor air quality would be provided with mechanical ventilation and air conditioning.

6 The case for the Applicant, L&Q

Its case, with only minor adjustments, is as follows.

6.1 The application before the SoS is made by a major provider of AH, and would regenerate an under-used brownfield site in one of London's key areas for housing intensification. It would bring several very substantial benefits to the

[74] SoCG (CD F01), §§3.11-3.12
[75] Ibid §§3.14-3.19
[76] SB Proof (CD M06), §6.9.

community in Hounslow and in the context of the ongoing severe housing crisis in London. These are not points in dispute between the parties.

6.2 However, those benefits have to be set against acknowledged harm to several designated heritage assets in the wider area around the application site. The key judgement is whether the largely unchallenged public benefits of the scheme would outweigh the heritage harm.

6.3 That balance is set out in NPPF§196. There is nothing materially different about the overall assessment of compliance with the development plan – that too requires a balance between competing objectives, giving the protection of designated heritage assets due weight and consideration[77].

6.4 Furthermore, there is no material difference between the application of NPPF§196 and the statutory obligations which arise in heritage cases; the *strong presumption* which is said to arise when harm to designated heritage assets would be caused is not inconsistent with the exercise which NPPF§196 requires the decision-maker to undertake[78].

6.5 All aspects of law and policy which bear on this decision allow for permission to be granted in circumstances where there would be harm to designated heritage assets, including the WHS. Nothing in policy or law says that outcome would be, or should be, some sort of *exception*. The system has been put in place to balance interests; recent examples both in Hounslow[79] and at the national level make that crystal clear.

6.6 Whilst there is little if any dispute about the weight to be given to the scheme's benefits, there is quite a range of views on the degree of heritage harm the scheme would cause, ranging from harm right at the very upper end of *less than substantial* (by RBGK) to only very little harm (by the Applicant[80]) with various positions in between.

6.7 What the evidence shows is that Kew Gardens would suffer some limited harm due to the presence in parts of a short kinetic view (around View 30[81]) of the scheme's upper 6 storeys appearing at distance above the Orangery roof. The harm to the Orangery and the OUV of Kew Gardens have been overstated[82]. The revelation that RBGK is actively considering the topic of mitigatory planting pursuant to its MPlan further undermines the reasonableness of its position[83].

6.8 Similarly, there will be harm to the setting of the SotG CA, due to the scheme distracting the eye in some views along the tow path. But it is only along part of

[77] Confirmed by Mr Baker in cross-examination (XX).
[78] See discussion of the relationship between the statutory provisions and the NPPF tests in CD J04 *Mordue v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 1243*
[79] 1-4 CIW resolution (CD I7), Westferry Circus DL by Secretary of State, ID10 [now quashed]
[80] Dr Miele
[81] See CD N1, viewpoint 30 and the stills from the moving presentation in that document.
[82] by Mr Croft in particular but also by both Mr Dunn and Dr Scott
[83] It was a revelation –the MPlan talks in general terms about planting, but RBGK has never indicated, including in evidence before the Inquiry, that its horticultural section is actively considering mitigatory planting in relation to views of Brentford buildings. That was mentioned for the first time when Mr Croft was asked. The absolute objection in principle by Kew Gardens to discussion with the Applicant on this matter is not in accordance with Kew's MPlan and is regrettable. The Applicant stands ready to pursue those discussions with Kew and hopes that the rigid objection stance will be softened.

the relevant section of the tow path that the scheme would lie behind the frieze of waterfront buildings in the CA – much of the time the scheme will sit well behind and to the left of the key view. Kew Green CA's significance will not be impacted at all.

6.9 The balance is between the benefits and the degree of harm properly analysed. Several other points have been canvassed as to some extent relevant to the overall balance. The Applicant has shown that the viability of the scheme with 50% AH only works because it is a housing association and is prepared to build the scheme at a profit level very substantially below what would be acceptable to market developers[84]. This point lies beneath the balancing exercise in a way – it indicates that there is no evidential basis to reduce the weight to the benefits, or sharpen the edge of the heritage harm. There is no suggestion that the needs the scheme will meet can be pushed off or imagined away to another site. There is no evidence that they can viably come forward with a much reduced scheme on the site itself. This scheme is a very unusual thing: a 440 odd unit scheme with 50% AH (including a large amount of London Affordable Rent), brought forward by a major housing association on 2.1% profit – it needs all the parts of the equation to make sense. That is why it is an opportunity that ought to be grasped by the SoS.

Call in Issue 1: Supply of Homes

6.10 The SoS's first call-in matter[85] relates to housing. Only the Applicant, the Mayor and LBH produce evidence on this point, and they agree that significant weight should be given to the way that the scheme assists in delivering against Government, London and LBH policies for housing and AH[86].

6.11 The scheme would bring forward 441 units of housing of which 50% would be AH. It would make a substantial contribution towards the Government's objectives of significantly boosting the supply of housing and meeting the housing needs of all.

Affordable Housing (AH)

6.12 No dispute between the parties exists about the weight to be given to the AH component[87]. The significant weight to the AH provided is underpinned by the following points:

6.12.1 The absolute number of units and habitable rooms provided as affordable homes is greatly in excess of the levels one finds in LBH and in London as a whole: just 17% of units secured across London in the past three years, and only 23% in LBH[88].

6.12.2 The LBH policy requirement is 40%. Clearly, even this is not being delivered on average across LBH[89] and the scheme exceeds it by 10%. The London Plan does not set a 50% requirement on this site[90] and it is agreed that the offer is

[84] See the Quod note on viability, ID 13.
[85] CD K1
[86] CD F01 §§3.22 and Mr Baker's §6.54 p 50
[87] Ibid
[88] See ID13 and ID26 (Quod)
[89] Ibid
[90] Unlike in relation to the industrial site approach to 1-4 CIW, where 50% is a GLA AH requirement

the maximum reasonable level – indeed, as the viability shows, it is well beyond what would be considered the maximum reasonable level for most developers of the site[91].

6.12.3 As to the split of AH tenures, the Mayor, LBH and the Applicant agree that the scheme is acceptable; LBH's view is based on a full review of the viability assessment of the scheme and receipt of external advice. By habitable room, that represents 35:65 affordable rent:intermediate. 66 of the 218 units would not just be affordable rented homes, but would qualify as London Affordable Rent units, which is the most affordable of all the tenures. 152 of the units would be Shared Ownership homes, with affordability aligned to local household incomes and local needs. That profile of AH is a feature of the scheme being brought forward by L&Q rather than being any ordinary development. There is a high level of need for both tenures in LBH and London's single housing market. The shared ownership units, for instance, would be within reach of around 38,000 LBH households. An Early Stage Review Mechanism in the s.106 agreement also enables the proportion of London Affordable Rented units to rise under certain circumstances.

6.12.4 The AH offer therefore goes beyond policy requirements in LBH, both compared with a market developer and the Mayor's requirements. The written viability evidence[92] – uncontested by any party to the Inquiry – sets out that the scheme would produce well in excess of the 16% which would be possible were a more typical developer to try to bring forward this size of scheme adopting a viability-based approach.

6.12.5 The scheme's viability has been approached on the correct methodological basis, and shows that at 50% AH, the developer's profit element is a mere 2.1% of GDV. For a typical developer, the level of profit would be a blended rate of 15% of GDV (itself at the lower end of the range referred to in the PPG). Viability evidence shows that even carrying out a sensitivity test, using highly optimistic assumptions as to potential increases in GDV and falling build costs, the profit rises only to 8%. That profit shortfall, combined with the peak funding requirement of c.£45m and current low sales growth would mean that market developers would not proceed with the scheme[93].

6.12.6 L&Q is able to proceed with the scheme, and would do so, in part because of its ability as an RP to access lower cost finance via corporate borrowings secured against its substantial stock of existing homes. In addition, L&Q's acceptance of nil profit on the affordable homes (and a reduced profit on the private homes) effectively retains subsidy generated from the latter to fund the former.

6.12.7 As a result, the development would deliver significantly greater AH than would be achievable by a market developer.

6.12.8 Furthermore, viability evidence shows that the development would deliver 23 more affordable rented homes and 123 more shared ownership homes than

[91] See in particular the advice of Quod in ID26
[92] by Quod
[93] See ID26 and the Quod annex to Mr Connell's evidence

a scheme following the LBH 60:40 tenure mix and a viability assessment. This is a substantial local benefit.

6.13 There are no material considerations said by LBH to reduce the weight to be given to the AH benefits from the scheme. That obviously includes any question over tenure, and indeed the viability evidence shows that more, rather than less, weight should be given to the AH in this case because it is essentially an RP scheme for 218 affordable homes with cross-subsidising market units, on the very cusp of viability for an RP.

6.14 In the LBH and London Plan context, the scheme goes beyond the bare requirements of policy (which are not usually or on average met – by a considerable margin); the policy to seek 40% (let alone a notional 50%) target for AH as part of the minimum 7500 OA homes in the emerging LBH Plan still requires viability testing in the future EiP – but the evidence of the past few years in LBH shows how very challenging even the lower % is likely to prove. As things stand, the draft emerging policy is 40% and the scheme exceeds that[94].

6.15 A point was raised about the AH offer at the *resolved to be granted* 1-4 CIW scheme. That is not comparable and tells one nothing about the Citroen site proposals[95].

6.16 The Applicant will deliver the scheme[96]. It has invested heavily in the site and the surrounding area (e.g. Wheatstone House next door) and has grant available to it from the Mayor in respect of the scheme which it will use, and which is, practically speaking, impossible to *recycle* either off site or on site (i.e. to change the proposed tenures)[97]. There is no reasonable doubt about the delivery of the scheme[98].

6.17 The upshot is a powerful contribution to AH needs in London and LBH, maximising the AH benefit that the site can bring. Significant weight should be given to it in line with the NPPF's injunction to meet needs where they arise.

Market housing

6.18 It is also agreed between the Applicant, the Mayor and LBH that significant weight should be given to the 223 units of market housing that the scheme will deliver. LBH[99] does not argue (by contrast to the rejected argument on those lines at the CC Inquiry) that the weight should be reduced because LBH has a 5 year housing land supply[100]. That is because:

---

[94] Mr Baker in XX and RX
[95] See the advice of Quod in ID38 to Inspector dated 6 February 2020.
[96] See the L&Q letter, first annex to Mr Connell's evidence.
[97] HE continues to doubt the position set out in the L&Q notes on this – ID26 and the new note. There is nothing unclear about the position: the grant cannot be re-cycled by L&Q because insufficient time and sites exist (even if one assumes an extended grant period to 2022). HE's suggestion that the SoS should form the view that the GLA's grant could be extended is entirely unsupported by evidence and is indeed contrary to the evidence given by L&Q and the GLA. In the end the availability of grant does not make the key difference between the scheme viability and it failing – that more critically depends on the benchmark land value, the overall number of units and the tenure of the affordable units in accord with policy. The grant does not fully subsidise the affordable units – that is funded by L&Q as the RP.
[98] See the clarification re grant in ID26.
[99] Mr Baker
[100] See CD I4 §IR12.152

6.18.1 LBH has not in fact been delivering housing at such a rate or in such numbers that it complies with the Housing Delivery Test levels – it has only delivered at 78% of its target rate, therefore requiring, as LBH acknowledged, a 20% buffer to be applied[101].

6.18.2 Five year calculations as at the last AMR are not based on what LBH says it has firmly in mind now, namely the much higher housing requirement which is about to be imposed on it with the new LonP, at 1,782 units a year (compared to 822 as things stand).

6.18.3 Core to meeting emerging London wide needs is the OA which, as LBH agreed[102], is likely to be adopted as part of the development plan, and for which LBH has started to plan[103]. LBH agreed that one cannot be complacent about whether the Borough can achieve the 7,500 minimum figure in the OA[104] – indeed, the majority of the assumptions behind the capacity exercise, and the potential yield from brownfield sites and re-distribution of uses in the area, have not been independently tested yet[105]. LBH agreed that the indicative capacities of sites in the draft evidence base for the OA may well fall, just as some may rise[106].

6.18.4 No one at the Inquiry argued that the housing benefits of the scheme should be reduced on the basis that they could be achieved on alternative sites, or that there was no need for the Citroen site to deliver 441 units because of the capacity in the area in general. The reverse is true – the OA is relatively confined, and comprises complex brownfield sites where costs and viability issues are keenly felt. At the core of its eastern cluster is the BFC development, which is not able to produce policy-compliant levels of AH[107].

6.19 Significant weight should be accorded to the market housing component of the scheme in the planning balance. It complies fully with the Government's policy in the NPPF for the delivery of housing. The opportunity presented by the site and this scheme – i.e. the Applicant's particular ability to generate higher levels of AH – ought not to be passed up lightly. If, as is inevitable, the OA will call for balances against harm to designated heritage assets, then this kind of unusual, rich mix of housing benefits should be sought[108].

Call in Issue 2: Building a Strong, Competitive Economy

6.20 The scheme is residential-led, partly because the existing use of the site as a *sui generis* car showroom and consequent lack of applicable policies, does not

[101] See ID26
[102] Mr Baker
[103] See the emerging plan re Brentford East, CD D7 suite of documents.
[104] Contrary to the Hounslow closing, §123, the table in CDD7 relating to the 1700-odd capacity was not looked at to "*muddy the waters*". Mr Baker accepted by reference to it that what it shows is subject to the EiP and will be subject to change in various ways, leading to his acceptance that one should not be complacent that the needed housing will come forward in any event.
[105] This is something for the LPR EiP and there are substantial objections to all aspects of the draft.
[106] LBH closing submissions §119 p28 suggests that the Inspector should rely on the eLP and supporting work to form the view that there is an objection to the height proposed on the application site. That is inconsistent with Mr Baker's evidence
[107] See CD I3A, §1.7.
[108] According to Kew Gardens, these benefits are just "*common or garden*", which as a single-issue approach to the planning balance is unreliable.

require any particular employment use as part of the mix[109]. Partly of course, it is a scheme which seeks to meet pressing needs for housing and to optimise the site for that purpose. However, the scheme is not without economic benefits, particularly when seen as part of the evolving Brentford East cluster:

6.20.1 The proposal will support 250 direct construction phase jobs[110]. These are often described as *temporary* but of course they are only so on a particular site – the economic benefit of a very large construction project is in part that it allows continuity of the construction firms' business and retention of their staff, as well as local supply chain employment. Hence it should not be underestimated.

6.20.2 There will be a relatively small number of FTE jobs provided when the scheme is finished, representing a modest net increase on the jobs at the current showroom. Some weight should be given to them.

6.20.3 Finally, there is a relationship between the provision of housing and the functioning of the economy – unless there are sufficient (particularly affordable) homes in LBH and London in general, it will continue to be a city which workers find hard to live in, or even near, and this negatively impacts on the economic vitality of the area. The OAs are necessarily out to the fringes of central London and the housing they are to contain is very important in this respect.

6.21 The regeneration of the site is also part of the economic benefit of the scheme. Its future mixed use will be more beneficial to the local economy and the site will be physically improved such that it plays a positive role in bringing people to and through the area, cementing the benefits associated with the new football stadium and the cumulative townscape improvements. LBH gives the regeneration moderate weight, which is agreed. The agreed benefit of increased permeability through the area is also relevant here.

6.22 In all, the scheme strongly supports the Government's NPPF objectives for a strong, competitive economy.

Call in Issue 3: Heritage

Approach

6.23 The Applicant has recognised through its heritage expert's evidence[111] that there would be a degree of harm to the WHS at Kew Gardens (which is coterminous with the RPG and the CA) and the SotG CA. These harms lie within the *less than substantial harm* category. As a consequence, the Applicant accepts that:

[109] Care needs to be taken about existing floorspace for employment on the application site – it is mostly car parking. It is also not correct to say (Hounslow closing, §128) that there is no evidence of re-provision of the Citroen jobs – they are moving a stone's throw away from the current site, within Hounslow.
[110] See Mr Connell's evidence
[111] Dr Miele

6.23.1 significant importance and weight should be given to the harm particularly that to the CA at Kew Gardens and the Orangery

6.23.2 a clear and convincing justification should be given for such harm

6.23.3 the WHS is the most important of the designated assets but the designated assets are all of high importance

6.23.4 harm to these assets inevitably means a degree of non-compliance with development plan policies which are drafted to prevent or guard against harm to designated assets including Kew Gardens.

6.24 However, harm to designated assets, including to WHSs, is not an insuperable obstacle to planning permission. That is clear from the relevant development plans and the NPPF, and a recent example is the SoS's permission for the Westferry Printworks revised scheme [now quashed][112].

6.25 All agree that the NPPF§196 applies to these assets and that it is consistent with the adopted development plans in London and LBH. There is nothing in the IPLP which indicates that the protection of WHSs is not subject to the NPPF§196 balance, or indeed that they are any more, or less, important than they are in the current version of the plan[113].

6.26 The effects here are all matters of setting. The correct approach is as follows:

6.26.1 understand the significance of the asset in question

6.26.2 determine how the setting contributes to the significance of the asset

6.26.3 assess to what degree the change to the setting causes harm to the significance of the asset.

6.26.4 in terms of a cumulative approach to the assessment, it may be relevant to ask whether the change in question compounds or further exacerbates pre-existing harm to the asset's significance.

6.27 Three further important preliminary points.

6.28 As generally agreed, the *less than substantial* category comprises a sliding scale, spectrum or gradient from (at the bottom) the merest trace of harm, to (at the top) a very significant degree of harm a touch below what would fall within the *substantial* category of harm. However, some of the allegations of harm are pitched up towards the higher end of the *less than substantial category*. These are simply overstatements.

6.29 It is possible to get a clear sense of what kind of effect the top end of *less than substantial* represents, by looking at the way the Court has defined *substantial*

[112] This is true taking into account all of the points made on behalf of RBGK relating to the importance of WHS protection, the views of ICOMOS, the obligations on the UK to UNESCO, the fact that the WHS is "*top of the tree*" etc. (apparently no pun intended). The Applicant, and Dr Miele do not argue the converse, but it is simply not an answer to the fact that WHS is covered in the NPPF which represents the UK Government's high-level policy response to the duties on it owed to UNESCO.
[113] See the EiP Panel report on emerging WHS policy, CD C6.

harm, which would be only a degree away. In the *Bedford* case[114], the Court defined *substantial* harm in this way:

What the Inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.

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.

6.30 It is clear that an asset would have to derive a great deal of its significance from its setting in order for change in its setting to cause it *substantial harm*. That was the finding of the CC Inspector, and (dealing with essentially the same range of designated heritage assets as in this case) he said this, in a passage which goes to the heart of why the assessments of harm by HE, RBGK and LBH[115] are pitched far too high:

However, having regard to the conclusions in Bedford, notwithstanding questions of scale, design and prominence, substantial harm could only be caused if the heritage asset concerned derived most of its significance from its setting. It is difficult to see how very much if not all of the significance of the asset could be drained away otherwise. One can think of examples such as fortifications, eye-catchers or follies, lighthouses perhaps, where a good deal of the asset's significance would be contained in its setting. On that basis, the PPG is not wrong, in general terms.

However, no-one could reasonably argue that any of the designated assets at issue in this case derive most of their significance from their setting. In all cases, by far the greatest part of their significance, and in the case of the WHS, its OUV, is held in their confines and/or fabric. What this means is that in the light of the conclusions in Bedford, the harm I have identified can only reasonably be assessed as less than substantial.

As I have referred to above, points were made about the cumulative impacts on Kew Gardens …much of the significance of Kew Gardens is tied up in the gardens and the buildings. Kew Gardens derives some significance from its setting but that is a small part of its significance overall. In this context, even if RBGK is right, and one should look back further than the date of inscription to assess cumulative impacts, the harm caused by the proposal, along with all the other intrusions into the visual envelope, would still be less than substantial and nowhere near the level of harm required to be deemed substantial … all the intrinsic significance of Kew Gardens would be untouched.

[114] CD J1.
[115] Mr Croft, Mr Dunn and Dr Scott

6.31 These are important words of caution against overstating harm to significance due to impacts on setting[116].

6.32 Second, and connected, is the issue of limited impacts on an asset with multiple aspects to its significance. Concern is expressed that one should not artificially lower the degree of harm on the basis that only one aspect of significance is harmed. That proposition on its own is obviously right, but the main point is a simple one – what harm does the proposal do to significance? If it affects to some degree one part of what makes an asset significant, but leaves the other 3 or 5 or 10 aspects of significance untouched, that must be relevant to the assessment of how much harm to significance would be caused. Assets rich in significance are inherently more robust. That is not to say that harm to one aspect is unimportant; but it does indicate that with such assets it takes harm to multiple aspects of significance for harm to be pitched high up the *less than substantial* scale.

6.33 Third, cumulative harm. There is no dispute that, in very simple terms, the analysis is of incremental further harm caused by the scheme. That takes into account what harm has already been caused as the baseline. However, the harm attributable to the scheme under consideration is not the total harm. It is the degree of additional harm. Where this matters is when there is a very large degree of existing harm, and a further straw may break the camel's back[117]. That is the case RBGK advances again, in an almost identical way to the case before the CC Inspector. But it is not in fact the case in respect of any of the assets in question at this Inquiry.

6.34 It is also very important to be clear that analysing the further incremental degree of harm is not a backdoor route to large-scale harm through multiple small increments. The exercise in every case takes as the baseline the latest cumulative baseline. Once any particular tipping point is reached, the next increment may be judged unacceptable. As it happens, the effects here, seen as a proposed addition to the consented and built baseline, do not cause any

[116] In relation to Kew Gardens, the CC Inspector's views are a good guide; they are not inconsistent with the Mayors SPG, the inscription or the MP – the setting must be given due weight but not treated as so central to the OUV that any further impact, however small, is unacceptable. The overstatement by Kew Gardens of the importance of the setting on the OUV of Kew Gardens and what that means for the likely degree of less than substantial harm was rejected by the Curve Inspector by reference to exactly the same documents which are now relied on again at similar length by Kew Gardens, but they continue to ignore the clear findings of an Inspector who recently considered these very points.

[117] This is the central problem with HE's submissions, by reference to the Inspector's Haverfield Towers example. It is not the case that the harm of previous schemes would "*never be factored in*" to the successive development control decisions. It would, and it would inform the view as whether the scheme in question at each stage made a material difference to the prevailing degree of harm being experienced by the asset. If the effect would be *de minimis* for the first couple of additional storeys, then that is the relevant judgment – the incremental harm would not change the way the setting contributes to the asset's significance. At some point – and it would depend on the facts (hence Dr Miele's "*good question*") - the incremental change would bring about a perceptible change in the degree of overall impact felt by the asset. It does not follow that *any* further harm would bring that kind of change about, as the example of the Haverfield Towers precisely shows. Whether it would here is a judgment, and Dr Miele does not consider that it would. The HE/Kew approach is so hair-trigger sensitive to change because it assumes that all additional harm would have that effect, which is simply not the case.

tipping point to be reached, indeed though they cause identifiable further harm, they are relatively small scale[118].

Kew Gardens

6.35 The evidence of all the experts elides the OUV of the WHS, the CA and the RPG. In addition, because the Orangery (Grade I) is an important building for the OUV, the impacts on that have been treated as running with the WHS effects. OUV is agreed to be equated with significance. That is all understandable and these submissions also take points in that way.

6.36 What could have been a far too complicated analysis is simplified because the effect of the scheme is very limited: a short stretch of kinetic views around View 30, in which the scheme appears at varying angles including a gap in which it fades from view. What effect would seeing the Citroen scheme in that way above the Orangery have on the OUV of Kew Gardens?

6.37 Some effect, as we accept – it would distract to some degree from the Orangery. But the case for that harm being anything more than a very limited impact on the OUV etc. is founded on several erroneous propositions:

6.37.1 that the OUV has been so harmed by development in its setting that its significance has almost already suffered substantial harm[119];

6.37.2 that any additional visibility of development outside Kew Gardens affects the significance of the OUV and no account should be taken of its London context other than as harm;

6.37.3 the impact on View 30 is particularly important because of the role of that view in understanding the palimpsest of landscape design.

6.38 None of these propositions is true. The site visit will no doubt have assisted with the judgement as to how much or little the OUV would be affected:

6.38.1 the Orangery view from around and about View 30 would be affected; although the emerging BFC scheme is clearly visible in that space already. The damage would be (a) in lifting the eye above the Orangery roofline, and (b) a further modern element glimpsed in the views from Kew Gardens, eroding somewhat further the self-containment of the Gardens;

---

[118] Seen in the context of the existing relevant impacts on the asset. Kew Gardens closing submissions, footnote 173 records the exchange with Dr Miele accurately, including his view that his approach based on the existing harm as *minuses to be added to*. The argument of death by 1000 cuts is no different from any heritage impact assessment and it cannot be right to refuse – contrary to the HE advice – development which does not materially change the degree of existing cumulative impacts. It would be right to weigh heavily against the grant of permission any finding that a scheme would cause such a change in the prevailing set of harms. But whilst RBGK clearly feel embattled, this is not the right case to resist on that basis. The CC – which might still reappear – might be such a case given its much greater range of impacts on the WHS. But Kew's approach confuses the generality of the cumulative issue with the actual impact of this scheme.

[119] This proposition continues to form the core of the RBGK case at this inquiry. The time has come to say 'no' etc. That (a) entirely ignores the balancing exercise, which Kew Gardens have not carried out and do not even really mention, and (b) is far too broad brush approach which assumes that any further degree of harm is unacceptable and then works back to a position, which is untenable on the evidence, that the OUV is at tipping point of harm. A few minutes at Kew are enough in themselves to show how unsupportable that position is.

6.38.2 however, the setting of the Orangery needs to be seen as a whole. Its principal elevation is its greatest designed interest[120] and that is best seen from the space in front of it from where it is, and (the evidence seems to indicate) always was, best viewed[121]. It is an imposing and bright white built form. Its historic interest, its architectural interest and its connection to the botanical evolution of RBGK would be untouched by the scheme. Its main axial view would be unaffected[122]. It is only the oblique view from View 30 between later planting (most of it evergreen) that would be affected. Its own significance would be affected to a small degree by being distracted from a little in some – but not the most important – views of it[123];

6.38.3 taking the third error above first, the truth is that View 30 is not a view of particularly great importance. It's a view in the WHS in which an important building is partially visible but beyond that, the evidence does not support the attempts to suggest that something really significant would be affected:

a) the view is not one that was designed at any point – it is a by-product of the way the Gardens changed in various ways over 200 years

b) it is not a view that existed in the 18th Century

c) the landscape in which the Orangery was originally positioned has been lost and transformed into something quite different in the 19th and 20th Centuries. RBGK quite properly accepted that the original landscape had been *denatured* and that nothing but a *memory* of that landscape still existed

d) indeed, the evidence is tolerably clear – the Orangery was separated from the Great Lawn by trees planted as part of a designed separation. These are not replicated on images produced not for accuracy but for display, and which all agree must be read with a degree of caution due to the effect of artistic licence[124]. Kew's own c.1785 plan bears trigonometry lines[125], none of which cuts through the grove of trees because, presumably (by contrast

[120] Accepted by Mr Dunn XX
[121] Compare the original enclosure to left and right of the Orangery, the Burton/Nesfield plan bringing the Broadwalk and planting into an orthogonal relationship with the building, and the modern arrangement which gives the Orangery a relatively tight main setting to the south.
[122] See the visualisations in the Curve TVIA and those in CD N1.
[123] Dr Miele disagrees with the Curve Inspector's view at CD I4 IR 12.115 that view 30 is "*essential to an understanding of the place of the Orangery in the designed landscape*": it tells one nothing about the vanished 18th Century landscape; the evidence shows that the 19th Century design did not include this view as part of the design, and the contemporary situation is that some oblique views are available (view 30 set of views) but they are often occluded by Kew Gardens activities, interfered with by the weather station, and tell one nothing about any landscape compartment or theme. So, in fact these views are very difficult to interpret as part of an understanding of any phase of the design.
[124] Hounslow assert in closing, contrary to Dr Scott's evidence, that the Marlow image must be read with an understanding of artistic convention. It is hardly inconceivable that the separation in the design which made the Orangery largely invisible would be removed in the image of an idealised Arcadian landscape. Of course, Chambers would be happy with such an image in his book – this has nothing to do with accuracy.
[125] This is not a derivative or artistic image but a working drawing with sight-lines drawn clearly on to it. There is no idealisation here, and it shows that one could not set a view through the area of trees.

with other buildings and open-grown tree groups) no line of sight was available for use by the surveyor[126]

e) the Great Lawn has not survived and there is very little about the current network of footpaths and lawns which relates to the 18th Century landscape (shorn of lakes, open views, the White House itself etc.)

f) as a result, view 30 tells one nothing of any importance about the original design and is not a Decimus Burton designed view[127].

6.39 The attempts artificially to increase the importance of the only glimpsed view of the scheme from within Kew Gardens is itself an indicator of the strength of the harm case advanced by RBGK, HE and LBH. Not everything, even at Kew, is laden with meaning that is important for all humanity. For instance, both RBGK and HE witnesses accept that the *palimpsest* is not capable of being affected itself by the scheme because it only has existence as a quality inherent in the gardens themselves.

6.40 The OUV of Kew Gardens springs from the massive number and quality of designed spaces, the history of the place, and the connections between the physical place and the scientific endeavours undertaken at RBGK. It is packed with significance, analysed as its attributes or the criteria. There are over 50 listed buildings whose significance would not be affected at all by the scheme; the vast majority of its spaces and views would be untouched; none of the historical or scientific aspects of significance would be eroded in any way, and it is just unrealistic and counter-productive to assert otherwise.

6.41 That is why the Applicant's heritage witness is right to say that the harm is in the lifting of the eye over the Orangery and the small further degree of intrusion[128]. These submissions return in due course to the issue of mitigation, something which has changed during the course of the Inquiry.

6.42 Returning to the cases advanced by the other parties, it is notable that RBGK itself is alone in alleging that, on the clock of heritage harm, it is 11.59 and 50 seconds. That is not the view of the other 4 heritage witnesses, and is inconsistent with the clearly expressed views of the CC Inspector. The only change from the RBGK case at the CC Inquiry is that instead of alleging that the instant proposal would breach the midnight tipping point it would stop a second before it.

---

[126] Kew Garden's closing submissions §§80 and 81 fall into the error of giving too much weight to the pictorial images and overstate the designed visual connection between the Great Lawn and the botanical area wherein lay the Orangery.

[127] It is not a modern designed view either, as the changes over the 20th Century to which Mr Griffith's drew attention attest, and the way in which the Trustees have planted evergreen trees along the Broadwalk screening the Orangery and its immediate setting from this wider area of lawn.

[128] Both RBGK and HE allege that the views of the scheme over the Orangery would be harmed to a much more severe degree than Dr Miele considers. His point about how the eye will distinguish depth of field, the difference between the scheme, some 1.2km distant from the viewpoint, have not been grappled with. The point is directly relevant to the degree to which the viewer will find the scheme proposals "*assertive*" or "*incongruous*". Insufficient attention has been given by Kew, HE and Hounslow to the effect of the design as a quiet, recessive set of forms. Even were the scheme the only impact – and of course the Brentford Stadium scheme is already present in these views – it would be a harmful distraction but of a relatively muted and modest kind.

6.43 It is simply not the case that Kew Gardens' setting has been so harmed that it stands on the brink of annihilating the OUV. The proposition is faintly ridiculous. The scientific and biological interest, the palimpsest, the historical (vanished) aspects, all of the physical attributes of the Gardens themselves, in every respect, would remain untouched by changes to the setting.

6.44 As for setting as at today's date, HE describes the setting as *well preserved* – and indicated that HE and RBGK had *liaised* but couldn't say whether HE had baldly told RBGK that it was overstating the current degree of cumulative harm.

6.45 It is not on an in-danger list and there is no evidence that ICOMOS considers that it would be entered onto such a list as a result of the Citroen scheme – let alone de-inscribe it as having had its OUV vitiated or drained away (like the Oman case where the biological interest had literally walked away). This is a further indication of an overblown judgement as to the baseline. One can see why RBGK was keen to suggest to the Applicant's heritage witness that he had not properly taken into account cumulative harm – in RBGK's eyes, the cumulative harm is already all but fatal to OUV, which is self-evidently not the case.

6.46 Nor is it the case that every further glimpse of modern Brentford adds to the cumulative harm[129]. The Applicant's heritage witness accepts that, unmitigated, the scheme would cause some limited harm due to its appearance above the Orangery in View 30. The RBGK approach leaves no room for expert judgement about degree – it says that things have already ticked on to near substantial harm, and <u>any</u> further glimpse, however small, would be unacceptable. Leaving aside the way that approach cuts clean across the balancing exercise we all agree is enshrined in national and local policy, it is unjustified on its own terms and contrary to the way the CC Inspector rejected a very similar argument in a case where (again, general agreement) the scheme in question would have done much more harm to Kew Gardens' setting than the Citroen scheme[130].

6.47 It stems in part, however, from the way the CC Inspector adopted HE's description of the setting contributing to significance by preserving Kew Gardens as a world apart[131]. It is important to look carefully at why the CC Inspector said that – in his view the absence of visual intrusion *revealed and enhanced* what was of significance rather than actually comprising it. That is not really contested by our heritage witness – his point is that the significance of Kew Gardens WHS hinges in a relatively small way on this point, compared to the riches contained within the site and, more intangibly, in its history, associations and connections to the world of botany and science.

6.48 So, the core question here is whether the additional glimpses of the outside world that the Citroen scheme would provide would seriously, or even moderately, harm the ability of the viewer to appreciate, or to have revealed to him or her, the significance of Kew. They would distract views over an important building for a brief section of kinetic views; that would, to a very small degree,

[129] For the reasons set out above – some changes do not move the dial materially in terms of overall harm to an asset. This is where the slippery issue of baseline becomes so challenging. The degree of harm in the existing situation must be taken into account, but rather than assuming that *any* degree of additional harm makes a difference, one must look at the incremental effect as GPA2 and GPA 3 advise.
[130] CD I4 IR 12.145-149 pages 144-145.
[131] Ibid IR12.103.

compound damage done by BFC and a number of other existing visual intrusions, although the foreground, *big sky*, prominence of the Orangery and existing screening within Kew Gardens would be unaffected. Outside those limited views, the scheme would not be visible, and the majority of the existing impacts would not be perceptible for large swathes of the Gardens either. That degree of harm would affect the Grade I listed building and the OUV to a limited degree – since they are assets of the highest importance, the harm, although relatively circumscribed, is a matter of significant weight.

6.49 The site visit has been undertaken but in any further consideration of the impacts at Kew Gardens (and indeed Kew Green/SotG), considerable caution should be exercised when looking at the visual material latterly produced by RBGK – it suffers from exactly the same problems as the same type of material was found to have by the CC Inspector. It is baffling that RBGK chose to present large scale versions of imagery which so recently had been criticised as being unreliable. No weight should be given to it.

6.50 It is recognised that the MPlan in its emerging version stresses the importance of limiting further visual intrusion into Kew Gardens, but it is also a theme of the document that RBGK are actively managing the visual envelope with new and amended planting. In that connection it was a genuine surprise to hear from RBGK's witness that such planting is being actively discussed[132]. RBGK's witness acknowledged that planting behind the Orangery would be in keeping with the original design. One surprising aspect to this evidence is that the idea of mitigatory planting to screen the only limited view of the scheme had never before been mentioned by RBGK other than to say that planting is slow and unreliable. This has not deterred generations of RBGK management from using it to respond to changes in the setting to the gardens, and of course it's actually in the MPlan .

6.51 Planting behind the Orangery would be capable of screening out the view of the scheme. It is regrettable that RBGK did not give more detailed attention to this rather than alleging that the scheme would all but destroy the OUV of Kew Gardens – it is clearly a potentially deliverable and effective mitigation that RBGK itself perhaps intend to employ to mitigate the view of the BFC development. An illustration has been produced[133] which shows that it would only take 4 evergreen trees to screen the development from View 30; they could be planted on an existing tree planting area to the rear of the Orangery as semi-mature trees; it is true that they would take a number of years fully to

[132] The Applicant does not accept that the CC Inspector rules out the importance of planting – see CD I4 IR 12.131, not cited in the RBGK closing. The Inspector there – dealing with a scheme which had multiple impacts from various areas of the WHS – said: *Notwithstanding that, the appellant makes a sound point about the ability of RBGK to manage, or plant trees. It is clear that the gardens are closely, and well, managed and if the march of development north of the Thames is something RBGK is concerned about, then they do have the ability in their planting and/or management plans, to do something about it.* There does not appear to have been any evidence at the CC Inquiry that RBGK was actively looking at the issue of mitigatory planting. It is hardly a surprise that L&Q seeks to follow up on the hitherto undisclosed exercise that Kew Gardens is in fact occurring. What is surprising is that Kew Gardens are making such a hostile point about the entire idea of potentially screening the views over the Orangery. It is entirely in accordance with the MPlan and RBGK and the SoS should note that RBGK seeks to prevent the agreed benefits – all of significant weight and in line with the NPPF – on the basis of a small additional increment to harm which they themselves could mitigate.

[133] ID40

mature, but they would be in the right place to be looked after properly. Not to at least consider this mitigation would be inconsistent with the MPlan .

6.52 A final point on the idea of the *world apart* as an integral part of OUV. This is not a concept one finds in the inscription documents or in earlier references to the gardens; it is something that has grown from the evidence at the CC Inquiry and features heavily in the emerging MPlan . It is a little over-stretched as a concept.

6.53 Kew Gardens is not hermetically sealed from the outside world – one of its oldest and most important buildings, the Pagoda, is advertised as a panoramic viewing spot from which one can see (on a good day) as far as Canary Wharf. Kew Gardens' place in London is celebrated. Whilst the Haverfield Towers, and the Kew Eye are accepted to cause harm, their effect on the urban setting for Kew Gardens cannot be ignored or simply written off as *more harm*, though they do cause such harm. LBH recognise this in their report on Albany Riverside, which it supported despite a degree of visual intrusion next to Kew Palace; one should not entirely exclude the fact that the setting is partly informed by larger modern buildings on the other side of the Thames from a more general and balanced approach to whether Kew Gardens is a *world apart* which cannot afford any further glimpses of our world.

6.54 LBH's *upper end* of less than substantial, *close to substantial* (for OUV and for the Orangery) is obviously an over-exaggeration, as is RBGK's *at the absolute limit of less than substantial*; even HE's *moderate* is too much given the small area affected and the small incremental impact[134]. The Applicant[135] accepted that his analysis did not treat all of the existing visual intrusion as baseline harm, but this makes little difference to his analysis, (a) given that Kew Gardens is not actually a *world apart* and not all views of buildings beyond Kew Gardens are simply harmful and (b) bearing in mind that his assessment is right about the value of view 30 and sensible about the degree of damage that the pre-existing visible buildings have done to the significance of Kew Gardens. He is still right to place the degree of harm at the lowest end of the less than substantial spectrum, but still attracting significant weight in the balance.

Alternatives to the impact on Kew Gardens

6.55 Where in this analysis should one address the question of alternatives? HE relies on its guidance for the proposition that harm to designated assets should be justified in part by an analysis of whether the same or similar benefits might be brought forward by a scheme which avoids the harm. It is a moot point whether in this case it is necessary to produce evidence of this kind but the question is largely academic because the SoS has firm evidence to show that there is no scheme which could come forward on the application site bearing the same or even similar benefits, which would not cause harm to Kew Gardens[136].

6.56 No objector undertook this exercise, and neither LBH nor HE at pre-application or pre-call in stages requested the Applicant to model a scheme invisible from

[134] Dr Scott, Mr Croft and Mr Dunn respectively
[135] Dr Miele
[136] The Applicant stresses that this is a matter of evidence, not speculation.

Kew and test it[137]. Schemes with maximum 15 and 12 storeys were assessed, but as is clear from the visual evidence before the Inquiry[138] it is only the latter (i.e. no greater than 12 storeys) which would avoid harm to Kew.

6.57 The SoS should be extremely cautious about the submissions made on behalf of RBGK about the potential for alternatives to the scheme on the site[139]. RBGK did not call evidence about alternatives, and did not prepare any evidence of its own about them. The points now sought to be made are without merit:

6.57.1 the issue of alternatives that were looked at is covered by the evidence submitted in the DAS and the architect's proof – the issue has not suddenly emerged at the Inquiry. The architect explained why it was not appropriate to conduct Accurate Visual Representation (AVR) modelling of those alternatives. It would be completely disproportionate to require such an exercise to be done at that stage of scheme development;

6.57.2 there is no real uncertainty, absent AVR modelling, of how much would have to be removed to ensure no visual impact on Kew Gardens. The evidence[140] simply shows what we can all see from the visual material– 6 storeys would need to be removed to ensure no impact[141];

6.57.3 there was no discussion of a *13 storey scheme*. RBGK didn't ask the architect about it, didn't call evidence about it, doesn't suggest that it would be invisible (it wouldn't, clearly – just count the storeys on the View 30 images);

6.57.4 it is suggested that the architect's approach to the Notional Reduced Scheme[142] is flawed because – apparently this is obvious, according to RBGK – there would have been a redesign of the layout and public open space. The DAS comprehensively gives the lie to that assertion – the shape of the site, its relationship to the leisure centre and the streets as well as surrounding buildings make it impossible airily to suggest that there is a completely different way of designing the scheme or site;

6.57.5 a similar point is the unsupported suggestion that there would have to be a different stepping arrangement. There is no basis for that suggestion, given the need for tall buildings (which they would all still be) to be articulated and to create or contribute to a varied cluster. If RBGK had wanted the SoS to give any weight to this suggestion, which is contrary to the existing evidence, it should have put it forward formally and let it be cross examined;

6.57.6 in any event, the quanta of affordable and market housing that the Notional Reduced scheme would support is severely unviable, and provides a clear evidential basis for rejecting the assertions now made that there must be some other way viably to design a scheme differently from the Applicant's evidence. Any such hypothetical (indeed, imaginary) further alternatives would clearly be

[137] The suggestion in IC of Mr Baker that the post-application letter at CD B2 (December 2017) represents Hounslow asking the Applicant to test the current scheme by showing them a 15 storey scheme for assessment is a misreading of the letter.
[138] As the architect said, and as Dr Miele said when asked
[139] at pages 45-49 of RBGK's closing submissions
[140] recounted at RBGK Closing Submissions footnote 287
[141] The Hounslow closing §136(ix) is factually incorrect. Mr Connell did not say that he thought a 15 storey building would be invisible from Kew Gardens, please see notes of that exchange.
[142] ID26

well below viable levels of return seen against the benchmark of the viability work.

6.58 Given the viability evidence that has already been produced about the application scheme, it is clear that the scheme is only deliverable with marginal profit by the Applicant as housing provider, at its current scale. It has always been obvious that a markedly lower scheme (i.e. invisible from Kew) could not viably be delivered. The viability experts have given a categorical demonstration that is the case in the two notes[143]:

6.58.1 they have used the same financial model as for the application scheme, which is unobjectionable, and the evidence base for the appraisal is also the same;

6.58.2 the scheme, as the architects say in the attached note, represents more of a decapitation than a *haircut*. It would produce no AH at all. If one inputs the same quantum of AH into the model, the scheme is unviable to the tune of £36m. Even if one had the same percentage of affordable (i.e. 49% by unit) on the fewer overall unit numbers, that gives a loss of £18.5m;

6.58.3 even if one approaches it on the basis of the 2.1% profit the Applicant is prepared to accept on the scheme, the scheme would provide no AH – indeed at 100% market housing the profit would be 1.7%. The Applicant would not be interested in delivering a scheme of that kind and it would be so utterly contrary to policy that one cannot assume that a scheme could come forward that anyone rationally would deliver at 12 storey maximum height.

6.59 The reality is therefore that regeneration for housing and AH on the application site involves buildings which need to be of a height that would be visible from Kew Gardens.

6.60 No other alternative has been put to the Applicant over the extended period of the application, including at the Inquiry. There is no evidential basis for an assumption that there is another viable scheme bringing forward AH (at all, and certainly not on anything approaching the same basis as the application). This is unsurprising when one looks at the agreed viability of the application itself. There is a fine balance between the amount of market units needed to make the scheme viable and subsidise (even with some grant available) the affordable 50% offer. As soon as one markedly reduces the overall quantum of development, the balance between market units, overall numbers and affordable is thrown completely out, and (as the viability evidence shows) the scheme becomes completely unviable even at a very low profit level.

6.61 This is quite different from the broad-brush conclusion in the CC case, where it was judged likely that another scheme might come forward which could achieve *some* of the scheme benefits (the employment), particularly, in that case, due to the presence of a fallback scheme. The parameters are completely different here and it is not possible to assume any such thing. Nor is the 1-4 CIW

[143] ID26 and ID40. The evidence is a clear, high-level demonstration that there is no realistic scheme which would remove or significantly reduce the harm to heritage assets.

scheme[144] an indicator even that a *slightly* lower scheme could on the Citroen site could achieve 50% AH. As the viability experts note[145]:

6.61.1 both Citroen and CIW have broadly the same overall unit numbers and AH number and split; however, crucially the 40% low cost rent in the application scheme is all London Affordable Rent; in the CIW scheme is split between London Affordable Rent and simply affordable rent – Quod illustrate the difference between the two;

6.61.2 furthermore, the Citroen site scheme has high fixed costs, including the EUV of the site as a car showroom, which greatly exceeds that of the cleared former industrial site at CIW. This has a major effect on the viability appraisal and makes the two cases quite different.

6.62 Consequently, there is no comparison between the viability profile of the two sites, and no evidence before the Inquiry that a viable scheme that avoids harm can bring forward any of the same AH benefits.

6.63 I return to the issue of alternatives later.

Strand on the Green (SotG) - including its listed buildings

6.64 There is nothing *world apart* about the SotG. It is a compressed, frieze-like set of buildings which have for many years been seen in a wider London context from the southern bank of the river. The CA Appraisal for the area lists ten or more key views, only one or two of which would be directly affected by having the scheme appear behind the key row of riverside buildings. Modern London appears in many of those views.

6.65 LBH says that the harm would lie in the middle of the spectrum of less than substantial; HE says the harm would be *at the upper end*, possibly reflecting HE's earlier, now withdrawn, position that the harm to SotG would be *substantial*. Again, there would be harm due to the eye being distracted upwards from the riverside houses, but it would be relatively limited in its scope.

6.66 First, there would be no direct impact on the asset. Second, there would be no impact on the relationship (in any view) between the *frieze* and the River/Oliver's Island, which is probably the key component of its significance. The houses are relatively grand in some cases, but they all face directly onto the River and have a picturesque appearance and a firm historical connection with the River and the Court at Kew. It is this very intense relationship which one enjoys from the southern tow path, and the scheme would not affect it.

6.67 Furthermore, the kinetic view means that the position of the scheme behind or in relation to the important houses and the river changes as one moves. The moving visualisation of the scheme presented to the Inquiry makes it clear that it is only in the eastern half (or perhaps third) of the walk that the scheme would sit in part behind any of the houses (for instance, View 23, where the scheme reads with the BFC scheme on another plane, but sits over a couple of

[144] This point arose from a question to Mr Baker from the Inspector.
[145] In the note to which other parties have 21 days to respond. All of Quod's points are visible on the face of the public record. Mr Baker, to whom this point was put, was not in a position to assist the Inspector with the detail of the CIW viability assumptions or the differences between the two.

the furthest-west buildings in the run at SotG). View 23 was chosen as a worst case. But about 30 or 40m further on, including when one has the orthogonal view looking directly at the faces of the houses across the river, the scheme has pulled a long way to the west and is not directly distracting the eye or harming the setting. Indeed, the application scheme has receded away from a direct skyline relationship with the houses at SotG before the viewer has gone past the end of Oliver's Island.

6.68 It's unclear whether that variation, and partial impact, has really been grappled with by LBH or HE. Perhaps both have focused overly on View 23. HE refers to the setting to the CA as *mostly clear*, which appears to be a recognition that BFC is too far west to play much of a role, being *sharply* distinct from the CA. Clearly, the Citadel would cause an impact, and one which does not diminish – it would always sit behind the important run of houses. LBH similarly recognises the setting of the CA as *preserved with little harmful alteration* – however, its witness focuses almost exclusively on View 23, where there would be change and harm, without looking holistically at the entire kinetic view.

6.69 Mr Dunn uses the term *primacy* in his evidence when trying to quantify the harm to SotG. The essential prime role of the houses and the river would be untouched, and for most of the relevant view, so would the skyline; there would be some views in which the skyline would be interrupted. Overall, the strong effect of the frieze of houses fronting the river with sky behind would be maintained in its primacy, with only a limited number of views changed such that the scheme would compete at least in terms of the skyline.

6.70 For these reasons, the Applicant's assessment of some but relatively limited harm is to be preferred. Other than in a very short set of views, what is key to the setting of the CA would not be harmed by the scheme.

6.71 A word here on alternatives also. The images show that to avoid appearing (in that set of views to the eastern end of the View 23 group) behind the houses at a noticeably greater height and scale, the scheme would have to undergo a similarly radical reduction in height and scale – at least as many storeys would need to be removed as in the Notional Reduced Scheme. The work is before the Inquiry to show that is not viable and deliverable. It is also not a good assumption that a reduction to the height of 1-4 CIW would be a reasonable alternative. That scheme is in a slightly different location and its resolution (not grant) is partly based on the screening effect of the application scheme, despite LBH's reluctance to face the plain words of the officers' report.

6.72 The Applicant should not be criticised for not seeking, beyond what it has done, to prove a negative – i.e. that there is no alternative scheme which would bring the same or similar benefits without the harm or with less harm. The viability parameters of the application site are what they are – this is the right scheme, deliverable by the Applicant, and brings very significant benefits. It would cause some harm to designated heritage assets, but that demerit is not exacerbated by the fact that there is a less harmful alternative. There simply is no such alternative.

Kew Green

6.73 Less needs to be said about the potential impact on Kew Green – the visualisations show that the scheme will do no more than peek above a couple

of buildings, within the tree line. There would be no direct impact. The historic relationship of the Green to the Palace will not be compromised, and nor will the all-important relationship between the large open green and the boundary buildings and trees. That relationship will not be disrupted at all.

6.74 Again, this is not a designated asset which is said to derive any part of its significance from being separate from the rest of London. It is bifurcated by a busy road which introduces noise and a set of very clear views of Brentford into the central part of the CA. Away from the road, one would have to be standing right at the southern extreme of the Green (hence the choice of Views 20 and 22) to have any view of part of the application scheme; it is a limited set of views.

6.75 In those views, there is little sense of disruption to what is a scene of large components – large sky (the scheme will not jut up above the tree line), large green foreground, large solid horizontal band of boundary buildings, all of different heights and varied designs. The extent to which the application scheme will be visible will be lost in that combination of very strong features. It would be subservient to any buildings against which it might be seen.

6.76 The Applicant's heritage witness is correct to judge that there would be no harm to the significance of the asset.

Call in Issue 4: Consistency with the Development Plan and Emerging Plan

6.77 The only case advanced against the scheme is based on heritage harm. LBH do not (subject to the signing of the s.106 agreement) maintain draft reasons for refusal 2-5. LBH made it plain that there is no freestanding design or townscape objection beyond its evidence. HE and RBGK simply raise heritage points by way of objection and call no other evidence.

6.78 It is self-evident that insofar as LonP and HLP policies seek to prevent harm being caused to designated heritage assets including the WHS at Kew Gardens, the scheme is not consistent with those aspects of the plans.

6.79 However, no party to the Inquiry suggests that one should reach a view on whether the development plan is complied with overall unless one carries out a balancing exercise, since the scheme garners strong support in housing, AH, regeneration and economic policy terms, which must be weighed against some strong negative findings on heritage policies (despite the relatively limited degree of harm). In essence, this is the same exercise that one must undertake under NPPF§196.

6.80 It is suggested (by RBGK and perhaps others) that the WHS protection policy and the other heritage policies are very important and therefore failure to comply with them equates to a failure to comply with the development plan as a whole. That is not the case:

6.80.1 it is not the case on the face of the policies, which do not themselves suggest that permission ought to be refused if they are not complied with – it would be surprising indeed if they had said that as they would not then comply with the NPPF;

6.80.2 the housing and AH policies are not subject to compliance with the heritage policies – i.e. effectively making them subservient to the heritage policies.

They are hugely important, freestanding policies, compliance with which needs to be weighed against the degree of non-compliance with aspects of the heritage policies.

6.81 Specific policy points arising also include the following:

6.81.1 LonP Policy 7.4 is a general townscape and design policy with which the scheme largely if not totally complies. There is no valid criticism of the excellent design of the scheme itself, its accommodation, amenity spaces, public spaces, active frontages, materials, detailing, legibility and wayfinding, and how it would enormously improve the area. The public space would include a high quality portico with protection from inclement weather. The only criticism is B(e), being informed by the surrounding historic environment – the architect explained about the way the orientation of the blocks, the way they step up and their brick-based materiality were all ways of knitting into the townscape including in medium-range views from the Wellesley Road CA;

6.81.2 if one takes the SotG and Kew Gardens as surrounding environment (which is a moot point), the architect indicated that regard was had to views from those areas, but that did not on balance lead to a scheme which had no impact on them, for a variety of perfectly proper planning reasons. It is not true also to say that since the Applicant was originally advised[146] that there would be no harm, no such balance was in fact undertaken. The architect's evidence was clear in writing and orally – the design team was well aware of the likely view of RBGK and HE from early on in the design process, and this was borne out when consultation (latterly) took place;

6.81.3 LonP Policy 7.6 is about the architecture of schemes. RBGK and HE do not give evidence specifically about the tests in this policy. The criteria are all met, including that of policy requiring buildings to be of the highest architectural quality. The architects are award winners and the scheme is a highly accomplished piece of work, achieving multiple objectives on a relatively constrained site. There is no objection on design quality from the daylight/sunlight results – LBH seemed to apply far too high a test, when the law and decisions agree that the BRE guidelines must be applied flexibly in London. The results are not much different from the Albany Riverside scheme, which LBH is scheduled to support at Inquiry later in the year, and which officers described as having high design quality147;

6.81.4 LonP Policy 7.7 contains the now familiar list of guidance on tall buildings. It is notable that its prescriptive approach is not being carried forward in the IPLP, but in this case that is rather academic; the scheme complies with the criteria. Cross examination focused on criterion E and impact of tall buildings in sensitive locations; the policy says that tall buildings should be given particular consideration. The policy adds little;

6.81.5 it is really LonP Policies 7.8 and 7.10 where there is non-compliance: the former's criterion D requires settings to be conserved. The Mayor has a particular concern about the proper interpretation of its policy; in this case the

[146] By JLL

[147] See CD A13, pages 34ff: the scheme's daylight measure is that the BRE's ADF test would be met in the case of 88% of those tested – the overall % would be higher because of the proportionate number of higher-up units if all the units were tested. See in particular §§6.8.11-6.8.14.

Applicant is content to accept a degree of non-compliance due to harm being caused to Kew Gardens and SotG, but obviously notes that the degree is very small and the overall impact on significance is very small. But it is this non-compliance in the LonP that needs to be weighed against those policies where it is agreed there is full compliance.

6.82 Much the same applies to the HLP, albeit that HLP Policy CC3 speaks in terms of not causing a *significant adverse effect* on assets. The Applicant's evidence does not indicate that such an effect would occur.

6.83 As for the emerging plans, all agree that relatively significant weight can be given to the IPLP, due to the stage it has reached. The main points are:

6.83.1 continued very strong emphasis on making the best use of land (GG2), housing delivery (GG4, H1, H4) and growing a good economy (GG5);

6.83.2 the OAs and the kind of intense housing and jobs yields that are needed within them (SD1);

6.83.3 heritage protection (HC1) including protecting WHSs (HC2). The latter policy largely replicates existing policy in adopted London Plan 7.10; the additions are the words conserve, promote and enhance in respect of OUV. So, whilst accepting that the Mayor has been criticised by ICOMOS and others in respect of some WHS policy and/or decisions, the thrust of the new policy is broadly the same as the old. It is notable that the new policy was not justified to the IPLP examiners as contrary to the NPPF but exceptional for some reason. It is a strong protection policy which is consistent with NPPF§196.

6.84 The balancing exercise under the IPLP is effectively the same as that for the current version.

6.85 As for the LPR, this is unlikely to be submitted for examination before the Summer of 2020[148]. It is agreed that little weight can be given to it, even less to evidence base documents, particularly where they are the subject of objection. The following points are of more importance in relation to the LPR:

6.85.1 it contains a commitment, which all agree is likely to remain in the plan, to deliver the minimum 7,500 homes in the GWC OA in line with the IPLP. That figure is not affected by the slight reduction in overall housing requirement in LBH. The application accords with the overarching housing and AH ambitions of the emerging plan and lies in the OA;

6.85.2 as already noted, little weight can be given to the specific allocations, to the notional heights of buildings on them, etc. For instance, there is a proper debate still to be had as to whether the Brentford East cluster should have a taller element nearer the M4, or whether (as elsewhere – see for instance Vauxhall/Nine Elms/Battersea) the cluster should be guided by good design on each plot, rather than be made subject to notional AOD or storey height limits. Experience elsewhere shows that they are out of date almost as soon as they are adopted and serve very little if any positive function – but these are all matters for the LPR Inspectors not for this application;

[148] Mr Baker told the inquiry

6.85.3 no weight should be given to the status or otherwise of the site in the LPR – it is objected to, and given that LBH's current view is that the Citroen site is a redevelopment site with in principle the capacity for tall buildings, there is nothing at this stage of things that prevents permission from being granted for the application scheme;

6.85.4 these are important points because there is a theme in the LBH case based on the non-compliance with the spot heights of buildings in the capacity study, and the differences between the application and the emerging local plan. The LPR is not referred to in the draft reasons for refusal and because of its very limited weight, should not be used as a yardstick to test the application.

6.85.5 In particular, there is no prematurity objection from LBH which accepted that the grant of permission would not prejudice the LPR. That was a very important acknowledgement, because the SoS needs to know that the LPA bringing forward its plan does not say that permission should be withheld on the basis that these tall buildings would prejudice that plan, or in effect, that the decision about the detail of built development on this site should be postponed to the LPR EiP.

6.86 In summary, the application complies with the IPLP overall, albeit it does not accord with Policy 7.10 and part of 7.8. It accords with the LPR's housing and AH policies and the thrust of the OA policy, but is again not in accordance with heritage protection policy. It makes little difference in the overall analysis because the plan is of limited weight.

Other Points Raised

6.87 The site lies has a Public transport accessibility level (PTAL) of 4 and 3 – the note put into the Inquiry deals with that issue.

6.88 The Inspector has clarification now in writing[149] on (1) the District Heating and Air Quality issue, (2) the grant funding regime, which explains in part why the Applicant's ability to use the Mayor's funding to deliver AH is limited by time and site availability, and why the grant referable to this scheme is unlikely to be *recycled* within the terms of the current deal to another of the Applicant's sites. It is certainly not possible to say that the grant would go to another LBH site if not used here[150].

6.89 The Inspector also has a note[151] on Fire Safety and the Building Regulations regime.

6.90 The nursery would be of some benefit to the local community, including the emerging community in the major schemes in the area, and whether it is subsidised or not, there is no indication that it will not fully meet a need in the area – it is a benefit of modest weight in the balance.

6.91 There is assistance from the Mayor/TfL in relation to improvements at Gunnersbury Station. The Chair of the WCGS[152] is clearly a sceptic where the TfL improvements programme is concerned, but the contributions sought by TfL

[149] ID26
[150] Ms Randell IC: if the grant wasn't used it would be returned to the Government
[151] Ibid
[152] Mrs Rabouhans

are justified and will be put towards CIL compliant projects. It is not accepted that there would be any difficulty when the BFC is in use – it has multiple access/egress, it would be used for a fraction of the year and there would be special match-day provision in place. The BFC developers (which include the club itself) have not objected to this scheme. The site is in a sustainable location, close to transport and to the town centre, and its relationship with the stadium is a plus, not a minus. It is part of a cluster of buildings around important civic uses (the stadium, the leisure centre) and will play an important role in marking the ways around the area.

Overall Conclusions

6.92 Even if one accepts the housing and AH need, why does that need have to be met here, now, in this way, causing harm to the WHS and other assets? Not quite the balanced way that NPPF§196 is framed, but another reasonable way, perhaps to get to the heart of the planning balance in this case. The answer is as follows:

6.92.1 the need for housing and AH is very large, pressing and will not go away. The benefit of the scheme in this respect would be significant;

6.92.2 no one says that the need will be met by development on other sites: the needs in London, in LBH and in the OA are too huge to make such a claim. It would be contrary to the NPPF to approach this planning balance by thinking that the housing needs could be met elsewhere;

6.92.3 the needs cannot be met by a scheme on the site that avoids the harm. To reduce the scheme to the extent it becomes invisible from Kew in View 30 would lead to an unviable scheme which the evidence shows beyond doubt would not be delivered;

6.92.4 lesser needs cannot be met by a lesser scheme on the site. The Notional Reduced Scheme evidence also shows that as soon as one materially reduces the overall quantum of housing, the site cannot viably support AH. Frankly, it is an excellent outcome on a site like this to have 50% affordable with so much London Affordable Rent but that outcome critically depends on the Applicant as the developers with access to grant and the ability to deliver the site with a 2.1% profit on GDV, and on the size of the scheme, since the overall number of units allows cross subsidy. One cannot notionally dial down or chip away at the unit numbers and end up with anything like 50% AH because if you do, the delicate balance which allows this outcome to be delivered almost immediately crashes to pieces;

6.92.5 the harm is to very important assets but is nowhere near as serious as RBGK, HE and LBH are suggesting (bearing in mind they all say different things – markedly different things in some cases) about the level of harm caused. It arises because of the inevitable tension between the OA and the settings of the assets. In the case of RBGK, there is at the very least the possibility of mitigation which the Applicant now gather is being discussed, and are willing to fund – if RBGK is willing to act in accordance with the MPlan and turn towards constructive mitigation and away from outright and rather strident opposition;

6.92.6 the balance favours meeting such important needs on this site, with the scheme that can deliver them. Perhaps the impact at Kew can be screened;

but even if not, it is a relatively minor impact even seen cumulatively, and the SotG impact is also, properly understood, a limited one.

6.92.7 Given that LBH appears to accept the significant benefits of the scheme, it is a little puzzling that they are not applying the approach that they expressly endorse in their CA Appraisal for SotG:

However, it is important to note that this is a [CA] adjacent to an OA in a World and Mega City (and the largest city in a wholly European country). There will be inevitable tension between the areas, and pragmatic decision-making in accordance with the NPPF... have had to be made and may be made again in the future.

6.93 The word *pragmatic* sometimes carries the implication that the decision in question is unprincipled, but by contrast here, the reference to the NPPF makes it clear that what LBH means is that some harm to important designated assets – some harm – is likely to be the result of a proper balance under NPPF§196[153]. This is consistent with the pithy assessment reached by the CC Inspector, rejecting Kew Garden's argument that no further *intrusion* should be allowed from Brentford: *the idea that Kew Gardens can be completely 'protected' from further visual intrusions of the city beyond is a battle that has been fought and lost.* That does not signify open season on Kew Gardens. It is a recognition that some balance is inherently part of proper planning in London where there are enormous issues of homelessness, community fragmentation, and progress to address through proper housing and AH.

6.94 In this case, the balance[154] is in favour of the grant of permission.

Additional Note

6.95 In its Note Addressing Further Matters[155] the Applicant put forward an Indicative Planting Scheme to screen out built development outside the boundary of the WHS, possibly eliminating the impact of the Citroen development entirely. It argued that this approach would accord with the MPlan. It offered a s106 obligation with a contribution towards the costs of implementing the scheme and attached draft wording for a planning obligation[156].

6.96 With regard to 1-4 CIW, it added a Note on relative viability explaining that:
- the existing use value is higher for the Citroen site;
- 1-4 CIW is a cleared site, whereas demolition and enabling works are required on the Citroen site;
- the affordable housing tenure split differs as the rented affordable tenure units for the Citroen development are all London Affordable Rent units (i.e. the most

[153] The opening of Hounslow's opening asserts that L&Q think that affordable housing trumps heritage. This was quite unfair and obviously not recognising the full range of benefits that the scheme would bring, and which Mr Baker for Hounslow accepts. The regeneration of the site, local design and townscape points, and the value of market housing and economic benefits are also of considerable importance to the case advanced by L&Q. The application depends on matters of judgement over which parties disagree, that is all.
[154] By which I include the clear justification for the harm to heritage assets, the overall development plan assessment, and the NPPF§196 balance.
[155] ID38 dated 6 February 2020
[156] Subsequently submitted, as above, ID40

affordable rented affordable tenures) while a significant proportion of the rented affordable tenure units for 1-4 CIW are not London Affordable Rent Units.

Additional comments

6.97 The outcome of the CC High Court challenge does not affect the case put forward by the Applicant.

6.98 With regard to the further delay to the IPLP, although it has not yet been adopted, the issues which are subject to discussions are narrow. The particular policy changes do not affect the issues raised in evidence, other than to reinforce the importance and need for new homes in London. Great weight should be attached to the policies that are not subject to the Direction which includes, but is not limited to OAs, AH, Housing targets, Design, and Heritage.

6.99 With regard to the WHS MPlan, this lacks consistency particularly in how development within and outside the Gardens is considered as well as the approach to planting. The preparation of the plan has not been rigorous or subject to proper consideration of comments received. It is contradictory and includes objectives which cannot be achieved. The result is a MPlan which cannot be considered to be sound.

6.100 Specifically, Appendix F is entitled *Public Consultation and Inquiry Report* but also provides commentary on the Inspector's Report for the CC and evidence presented at this Inquiry. The Inspector should disregard these sections as they provide additional evidence to the Inquiry, which cannot be cross examined or considered in the round, as well as a misrepresentation of the position at the Inquiry and in the submitted evidence. The comments in Appendix F are opinion rather than fact and should not be treated as evidence to the Inquiry. Those parts of the MPlan should be disregarded.

6.101 The general approach, to reinstate the Gardens to a point some 100 years ago when no development could be seen from within the Gardens is at odds with the summary which identifies that it is critical to the conservation of the OUV of the WHS that change be managed with a positive strategy for development. This does not follow through in to the MPlan, which expects any development visible from within the Gardens to automatically be harmful and to be refused as a matter of principle. This approach is not consistent with the NPPF.

6.102 Section 3.3 of the MPlan is most concerning. In providing a summary of the contribution that setting makes to the OUV, despite identifying detractors, attention is drawn to the largely *unbroken* skyline surrounding the Gardens as a significant contribution. Therefore, despite the presence of detractors, the OUV is robust and can still be appreciated. On this basis, the presence of detractors cannot be said to have a significant impact in undermining the OUV of the WHS.

6.103 The MPlan highlights that the management of planting throughout the Gardens forms a key element, which includes an active strategy[157] to maintain the

[157] Objective 13.4.4

setting of the WHS through the management of vistas. For example[158], where RBGK seeks to maintain and strengthen tree belts and boundary screening, to safeguard the setting, so that the urban area beyond the Gardens boundary is not visible.

6.104 The removal of already-built developments and aircraft approaching London Heathrow is not achievable. It is inconsistent to highlight modern buildings as key detractors but ignore the Grade I listed Water Tower. RBGK seeks to develop the Gardens with new structures while maintaining that visible development outside, by others, should be prohibited. The Pagoda was designed for panoramic views and is advertised as a visitor attraction. Interpretation plaques help to understand the surrounding built development. To suggest that views of taller development within the Gardens detracts, but on the other hand actively encourage visitors to remind themselves of such development is contradictory.

6.105 The final version of the MPlan has not been subject to rigorous review following public consultation and is inconsistent in how it deals with development as well as detracting factors. Importantly, RBGK seek to sterilise large parts of West London by seeking to limit the development potential of sites. This lack of rigour in the drafting of the MPlan illustrates that it should only be given limited weight.

6.106 The *Westferry* quashing was on the basis of a specific error in relation to the timing of the decision and how that appeared, rather than the matters to which the parties drew the SoS's attention. The reasons for the decision to grant remain relevant despite the quashing, in line with the approach of the Courts to quashed decisions.

7 The case for the Mayor of London as Local Planning Authority

Its case, with only minor adjustments, is as follows.

7.1 On 26 February 2018, the Mayor of London (the Mayor) directed that he would become the LPA for the determination of the application which is now, in its amended form, before this Inquiry. Following a hearing before the Mayor held on 20 July 2018, he resolved that planning permission should be granted for this development. The Mayor did so having recognised that some harm would be caused to the significance of various heritage assets. However, and notwithstanding that harm, he concluded that the development would not conflict with the development plan and that other material considerations supported its approval through the grant of permission. In particular, the Mayor concluded that the harm to the significance of heritage assets, which is a weighty consideration in its own right, was outweighed by the public benefits which the scheme would generate. Thus, the Mayor concluded, the SoS's policy set out in the NPPF concerning development affecting the historic environment was met.

[158] In key policy action 13.5.9. Also, section 9.3.2 (and highlighted at objective 9.5.5) where *Views, vistas and setting* are discussed. This states: *Further strategic strengthening of the boundary plantings and screening within the Gardens will also be required in the long term, to help offset the threat of ever taller external building developments becoming visible within the landscape.*

7.2 The application for planning permission now falls to be determined by the SoS. The Mayor however invites the SoS to reach the same decision as did he, and to grant planning permission accordingly.

7.3 In these submissions, we address the following matters: impact on the historic environment; application of heritage policies of the development plan, both current and emerging; wider planning effects of the scheme; and overall planning balance.

Impact of the proposed development on the historic environment.

7.4 The case for the Objectors is that six elements of the historic environment are harmed, to varying degrees, by the proposed development. In respect of four of those assets, the Mayor accepts there would be harm (albeit the extent of that harm alleged by some of the Objectors is, we say, overstated). In respect of the Kew Green CA and the listed buildings within and which face onto the Green itself, we say no harm would arise.

7.5 The assessment of impact upon which the Mayor relies is set out in evidence[159]. This assessment is comprehensive and thorough. We do not in these submissions rehearse that evidence. However, we provide a summary of the Mayor's case in respect of each asset and, briefly, respond to the points made against it.

SotG Conservation Area (SotG CA)

7.6 It is common ground that there is no direct harm to the SotG CA nor is there harm to views from the Strand itself, on the north side of the River Thames, which lies in the SotG CA.

7.7 There is however, unsurprisingly, some impact on views towards the SotG CA from the Thames towpath on the Richmond side of the River. It is common ground that the extent of impact on the CA falls to be assessed by reference to these views. There is no dispute that the views from the Richmond-side towpath are important views from which the river frontage of the CA can be appreciated.

7.8 When proceeding along that towpath from the east, the SotG CA and the proposed buildings will be seen, over some distance in the same view, as indeed is demonstrated by View 23. However, views of the CA from the Richmond-side towpath are experienced kinetically over a considerable distance. View 23 is not a natural or designed stopping or indeed pausing point; as the viewer proceeds westward, the relationship of the proposed development and the river frontage of the CA becomes disjointed. Moreover, and importantly, the orthogonal view of the important river frontage buildings, which are central to the character and appearance of the CA, from the southern towpath would not include the proposed buildings within the viewing plane. It is this orthogonal view which is described as the *most important (panoramic) view* and a *particularly vital view which is key to the special interest of the CA* in LBH's SotG CA Appraisal[160]; that critical view is illustrated by an image[161]. The application scheme would not be seen in that view in a way which materially affects the appreciation of the CA, or the important riverfront listed buildings.

[159] Mr. Griffiths (CD M5)
[160] CD G1A - November 2018
[161] Ibid page 31

7.9 Context, we submit, is of particular importance when considering the impact of the proposed development in views from the Richmond-side of the Thames. Tall buildings – both existing and emerging – are already present and visible in some views towards the SotG CA from this towpath – most notably Rivers House, the BSI building to the north of Gunnersbury Station, Vantage London and the buildings comprising the BFC scheme. The approved Citadel scheme will also be apparent in these views. Without the masking effect of the proposed development, so too will be the development at 1-4, CIW which LBH has resolved to approve[162]. As such, views of the CA from the Richmond side of the River already has, as part of its context, existing and emerging tall buildings, located both within the eastern part of what is to become the GWC OA and more widely. The introduction of the proposed development into those views must be seen in that context, as in the approach taken by the Mayor[163]. He accepts that the proposed development would add to the impact of existing development on the CA, but the effect upon it would not be significantly adverse or substantial.

7.10 Two other elements of context arise.

7.11 First, the application site lies within the GWC OA to be designated through the IPLP[164]. As in the existing LonP, those parts of London which are identified as OAs are intended to be the engines of growth to meet strategic, as well as local, development needs; the IPLP provides[165] that opportunity areas … *all have the potential to deliver a substantial amount of the new homes and jobs that London needs*. The IPLP provides, indicatively, that the OA should deliver 7,500 new homes and 14,000 new jobs. LBH has supported the allocation of the OA through the IPLP, and the aspirations in terms of levels of growth for it. In its LPR for the GWC (which reflects the OA designation)[166], LBH seek to deliver 7,500 new homes *as a minimum*[167] and, at 17,500, a greater number of new jobs than the indicative capacity in the IPLP[168]. This level of growth will necessarily generate substantial change in the GWC, including at and around the application site. It is expected that OAs will continue to be the focus for tall buildings, as was recognised by the Panel appointed by the SoS to examine the soundness of the IPLP[169]; a conclusion which is hardly surprising given the scale of development to be provided within these areas. LBH itself has recognised and supports the introduction of tall buildings within the eastern part of the OA and has confirmed that the application site is suitable for tall buildings[170].

7.12 The LPR identifies the BFC East part of the OA as accommodating a cluster of tall buildings within an area including the application site, as well as a series of Focal Buildings, including a building of 61 m AOD at the B&Q site (on the north side of the M4, adjacent to the Chiswick roundabout), of 66m AOD as CIW (adjacent to the application site) and of 70m AOD at Chiswick Roundabout (namely the site of the approved and implemented Citadel development, and of

[162] CD D11
[163] Mr. Griffiths' evidence
[164] CD D5A
[165] at §2.0.4
[166] CD D5
[167] see policy GWC 2
[168] see CD D5 p.29
[169] CD C6 §304 p.67
[170] CD F1 §3.11

the CC proposal)[171]. A *focal building* is intended to be a *distinct taller building that emphasises special locations in prominent townscape views*[172]. The delivery of these *focal buildings* in the BFC East area is a requirement of policy P3(m) *Supporting development that responds to the area's sensitive heritage locations and important views by delivering* …. The Council will of course have formulated this policy for the OA and the identified heights with the historic environment firmly in mind (as is clear from the Strategic Objectives[173] and from Policy P3(m) referred to above). The GWC LPR is emerging policy but, notwithstanding, even in its current form as a *proposed submission draft*[174], it can be taken as setting parameters for development which LBH, as LPA, find acceptable and considers to be sound.

7.13 This policy context is important in terms of the SotG CA and the assessment of the impact of the proposed development upon it. If the objectives of policy for the eastern part of the OA are to be met, as must be assumed will be the case, then more buildings of scale and height will be introduced. These buildings will change yet further the views towards the SotG CA from the Richmond-side towpath and thus the relationship of the CA to the wider cityscape, as experienced through those views. It is difficult, sensibly, to regard the heritage impact of the proposed development as other than limited when it is considered, as it must be, in its policy context.

7.14 Secondly, in terms of wider context, LBH's assessment of the impact of wider development proposals provides a useful touchstone when considering the impact of what is proposed here and its acceptability. The relationship of the approved Citadel development to the SotG CA is demonstrated in the version of View 23 which shows cumulative impacts. It is notable that LBH considers that that building does not *dominate the setting of heritage assets*[175]. Moreover, LBH proposes now that a building on the same site as the Citadel should be a *focal building* of 70m AOD[176] and, as such, 11 m higher than the approved Citadel building (which would stand at 59m[177]). If, as LBH have stated, the Citadel building does not *dominate the setting* of the SotG CA, it is difficult, reasonably, to consider that the Citroen proposal considered here would do so.

7.15 In conclusion, the Mayor accepts that the proposed development, to the extent that it adds to an existing and emerging cluster of tall buildings, would cause some harm to the significance of the SotG CA as a result of its relationship to the CA in views from the south side of the River. This harm is less than substantial and sits at the middle of that range; in this assessment, the Mayor and LBH are at one. It is however important to see these views and the CA as a whole in their proper context. The CA has now a clear relationship to an existing cityscape which is much changed from the historic position and which, in the fulfilment of planning policy, is set, with the fulsome support of the Council, to change further as a result of regeneration to meet strategic development needs within a soon to be confirmed OA. When considered properly and in this context,

[171] see CD D5 policy P3 at pp.107-108
[172] CD D7 §7.7.5 p138
[173] p.31
[174] CD D5 p.9
[175] see CD I4 §5.95 p.29 (Chiswick Curve Inspector's Report)
[176] CD D5 policy P2(m)(iii)
[177] CD I4 §5.95

the harm arising from the Citroen scheme must not be overstated; to categorise the harm as at the higher end of less than substantial, as HE invites the SoS to do, would be such an overstatement.

7.16 Nonetheless the harm which the Mayor has identified to the significance of the SotG CA must be given significant weight and must thus be considered alongside public benefits as part of a planning balance. We return to this below.

Listed Buildings within SotG CA

7.17 There will be some impact on views towards, and thereby on the appreciation of the significance, of some of the riverside listed buildings within the CA. As with the CA as a whole this impact will largely be by reference to views to the north from the southern towpath. Any impact which is adverse is limited to the western-most within the series of listed building along the Strand, namely Nos. 64-71, and concerns largely their group value.

7.18 The Mayor considers that the harm to the significance of the listed buildings along the Strand is less than substantial, as indeed do all other main parties. The Mayor's assessment is that this harm is at the lower level within the less than substantial gradation, whereas LBH and HE in particular consider that the harm to be within the middle of that gradation. They reach that conclusion by drawing no distinction between the impact of the proposed development on the significance of the CA and the impact on the significance of the listed buildings. That is, we submit, the wrong approach.

7.19 The listed buildings, as entities in their own right and as part of a group, can be appreciated from the SotG itself. Indeed, it is from this location that the detailed architectural features of their principal elevations – including porticos, etc. - are best appreciated, as indeed LBH[178], accepted. This view, and the opportunity it presents, will remain unaffected by the proposed development.

7.20 The listed buildings as a group can plainly be viewed and appreciated over the River. These views, in the context of appreciation of the CA, have already been addressed. As with the CA, it is notable that it is the orthogonal view of the buildings that the SotG CA Appraisal[179] identifies as being *most important* and *particularly vital* and *key to the special interest of the Conservation Area*[180]. This view is essentially unaffected by the proposed development.

7.21 Given that the closer views of the listed buildings, from where their architectural detailing is best appreciated, will remain unaffected and given the lack of material impact on what is acknowledged in the CA Appraisal as the most important view of the buildings as a group, it is submitted that the Mayor is correct in identifying the impact of the proposed development on the significance of these buildings as being at the lower end of the gradation of less than substantial.

The Orangery, Kew Gardens

[178] Dr. Scott
[179] CD G1A
[180] Ibid §7.3 p.31

7.22 It is common ground that the impact of the proposed development on the Grade I listed Orangery arises from impact on intermediate distance views of the building from within Kew Gardens.

7.23 It is common ground that the impact is less than substantial. The issue lies in where within the less than substantial range the impact falls.

7.24 The affected views of the listed Orangery are, on any basis, intermediate views of limited extent and can be appreciated only from a small area - approximately 100m^2 – to the south west on the Great Lawn. The most affected view being View 30, which is addressed in the HTVIA.

7.25 The view of the Orangery from the Great Lawn represented by View 30 is not an intentionally or designed view, but, as demonstrated[181], was, at its highest, intended to be a view filtered by a diffuse belt of trees[182]. The aerial photography from the 1920s demonstrates that in more recent times the view has been largely obscured. It has arisen, in its present form and indeed in any meaningful form, following tree removal or loss in the relatively recent past. View 30 is, it is submitted, far less central to the significance of the Orangery, and the appreciation of it, than is the view from the Great Lawn at positions closer to the asset to the west, south and east, from the Broad Walk and from the Hive. From these viewpoints, there will be no discernible impact arising from the proposed development.

7.26 Furthermore, View 30 is too far from the Orangery itself to allow appreciation of its architectural details.

7.27 Given the limited extent of the view, and its historic context, it was correct not to have overstated its importance to the appreciation of the significance of the asset.

7.28 The impact on the view and thus on the significance of the Orangery must however have regard to the existing context. Within views of the Orangery from the Great Lawn, the Haverfield Towers and the recently consented BFC development are experienced. As such, the existence of a wider cityscape now forms part of the setting of the asset: the application scheme will not therefore be a novel introduction in that respect. This context cannot be ignored. Plainly, the experience of the asset would be different if that existing development, which no one suggests is positive, were absent. But the existing development is there, and it does contribute to how the asset is experienced now and therefore its significance. However this context is approached, the ultimate test must be whether the application scheme itself adversely affects the significance of the asset, as it is now experienced, so as to be unacceptable in planning terms.

7.29 The scheme does introduce a further element into the skyline above the Orangery from View 30 and, notwithstanding the high quality of the design proposed, it will cause some harm to the appreciation of its significance. However, given extent and the context, that harm is less than substantial and is very limited: the Mayor was correct in his assessment in this respect.

Royal Botanic Gardens Kew WHS, Kew Gardens RPG and Kew Gardens CA

[181] By Mr. Griffiths
[182] see C. Griffiths' proof §4.40 (CD M5)

7.30 The focus of assessment, so far as these largely overlapping designations are concerned, has been on that of the highest heritage status, namely the WHS.

7.31 Following the approach taken in the determination of the CC appeal, the relationship of the proposed development to the significance of the WHS and its OUV was assessed again for the Mayor[183], who identified some harm. He has approached the assessment on the basis of the guidance set out in the Mayor's SPG *London's [WHS]s – Guidance on Settings*[184]. He was plainly right to do so. He has concluded that the proposed development will generate some harm to those elements of setting derived from context and views[185]. However, there are some positives in terms of impact on character of the setting, through the introduction of a high-quality development in an area of the setting which is positively planned to accommodate substantial change[186], and through some biodiversity enhancements, albeit he identified the latter as negligible in terms of value[187]. In terms of impact on OUV, a small adverse impact arises in respect of two attributes, namely the wider Arcadian landscape and the *iconic glasshouses*. In both cases this impact arises as a result of the visibility of the Citroen development from within the RBG. Overall, the Mayor accepts some harm will arise to the WHS and its OUV[188]. This harm is considered less than substantial (a conclusion with which all agree) and the Mayor considers it to be at the lowest level within the gradation. Great weight should be given to this impact, in accordance with the law and in light of the importance of the asset. Nonetheless, it falls to be weighed in the planning balance, which is addressed later.

7.32 We make two further points at this stage.

7.33 First, RBG Kew has sought to find fault with the approach[189]. As is demonstrably the case, he has followed the relevant guidance, in particular the Mayor's SPG, and reached a considered and well-reasoned set of conclusions. In so far as he is criticised for referring to impacts as *negligible* RBG Kew again overlook the fact that he expressly identifies *negligible* impact as amounting nonetheless to harm[190]. As he has explained, his adjectival use of the term negligible was not to discount harm but to qualify and to quantify that harm as being of the lowest level. He has not therefore offended the legal principle[191]. Indeed, far from discounting negligible harm, he has had regard to it, with the negligible level of harm qualifying the weight to be attached to the harm[192]. RBG Kew's criticism of the witness, and therefore of the Mayor, is we submit unjustified and unworthy.

---

[183] by Mr. Griffiths
[184] CD C16
[185] see proof §5.43(1) and (5)
[186] §5.43(2)
[187] §5.43(3) (a qualification which RBG Kew consistently seem to overlook)
[188] RBG Kew in its closing submissions (ID 32 §90) assert Mr. Griffiths' evidence to be that the harm to the WHS is outweighed by ecological benefits. That assertion is incorrect and reveals a failure properly to record, or to understand, Mr.Griffiths' written (proof CD M5 §5.46-5.47 and p.144) and oral evidence. As we have submitted, Mr.Griffiths concluded that there would be some residual harm to the significance of the WHS and its OUV but at a very low level.
[189] Mr. Griffiths'
[190] see e.g. his proof (CD M5) paras.5.44 and p.144
[191] in *R (James Hall and Co.) v Bradford MBC (2019)* EWHC 2899 (Admin) CD J9 at §34
[192] Ibid, as the Deputy Judge expressly advised in that case

7.34 Secondly, RBG Kew refer to and rely upon the emerging MPlan [now adopted – see additional note below]. The emerging document does not require or even suggest a different outcome with regard to the proposed development than does application of adopted and well-established planning policy. The assessment within it of the potential impact of development on the Citroen site[193] adds nothing[194] and, as Mr. Croft accepted, it forms no part or purpose of this draft management plan to assess the extent of impact or to carry out a planning balance. To the extent that the draft document seeks to resist any harmful impact (even less than substantial harm) to the WHS[195], it is not consistent with national, strategic or indeed local planning policy and can be given no weight.

Kew Green CA and listed buildings

7.35 The Mayor does not accept that any adverse impact will be caused to the significance of the Kew Green CA or any listed building within it.

7.36 Any impact of the proposed development on the significance of the Kew Green CA will be as a result of effect on longer range views from the south side of Kew Green looking north. Located some half a mile to the north of Kew Green, the application scheme will be glimpsed in views above existing buildings on the edge of both the eastern and western parts of the Green (as is demonstrated from Views 20 and 22). These glimpsed views are seen in the context of other development of scale within Brentford, including the consented and emerging BFC scheme. The wider cityscape to the north of the Kew Green CA in Brentford is already appreciated in these views. When consideration is given, as it must be, to the architectural treatment of proposed development, the effect on the significance of the Kew Green CA will be neutral.

7.37 For largely the self-same reasons, the impact of the proposed development in views from the south towards the listed buildings which enclose the Green on the north side is negligible and the significance of these listed buildings will not be harmed.

Other heritage-related matters

7.38 Considerable energy has been expended by Objectors at this Inquiry in seeking to undermine the thoroughness of the Mayor's consideration of the impact of the scheme on the historic environment. They do so, it is to be assumed, to seek to diminish the weight to be given to the Mayor's support for the proposal. These criticisms are without foundation.

7.39 The Mayor, when considering the application for planning permission, had the benefit of advice from a specialist heritage officer[196]. It has not and could not be suggested that she was not suitably qualified to give advice to the Mayor on heritage matters. That the Mayor took internal rather than external advice on

[193] CD G21 §13.3.2 p.73
[194] The reference in RBG Kew's submissions (ID 32) at §107(10) and Fn.120 is, it is submitted, not correct. Para.13.3.2 of the draft WHS MP (CD G21) refers to several schemes having the potential to negatively affect the setting of the WHS. No finding of actual adverse harm is expressed in respect of the Citroen development (unlike for example the assessment of the Chiswick Curve and the Albany Riverside development, where very significant and significant impact, respectively would, it is stated in the draft MP, arise).
[195] see §13.3.4 p.73
[196] Ms. Goldstein

heritage matters[197] is not a proper basis for any criticism. Furthermore, and as a matter fact, it is incorrect to assert, as LBH did in cross-examination[198], that her involvement was limited in its extent to an email of advice[199]. Rather, as explained[200], several meetings took place at officer level to consider and scrutinise the scheme, which the specialist heritage officer attended and in which she participated; she was involved in preparation of the representation hearing report[201] and the advice set out in that report concerning impact on the historic environment reflects her advice and professional judgment. She attended the Mayor's briefing meeting held before the representation hearing, as well as the two site visits which the Mayor carried out. More generally, the Mayor had the benefit of a lengthy and comprehensive report, prepared by officers, before the representation hearing, At the hearing the Mayor received an oral and visual presentation[202], which included several of the views now before the Inquiry. He heard oral submissions from LBH, HE and RBG Kew, amongst others, and both had and took the opportunity to question those who appeared. He carried out two site visits, again accompanied by LBH and HE and, on his visit to Kew Gardens, by RBG Kew. It cannot therefore be claimed that the Mayor was not fully informed of all relevant issues. It is also of note that, following the CC decision and Mr. Griffiths' advice, the Mayor was presented with a further report which reconsidered impact on the WHS (and corresponding area wide heritage designations), and the Mayor was invited to reconsider and reaffirm his view that planning permission should be granted, which he did. For the avoidance of doubt, neither the Mayor nor his advisers accepted the conclusions[203] set out in the HTVIA. That the Mayor and his officers identified harm to heritage assets demonstrates that this is the case[204],[205].

7.40 The assertion of RBG Kew that the Mayor's assessment was flawed[206] is not remotely supported by any fair consideration of the evidence. The Mayor's assessment of the scheme was thorough and comprehensive. His support for the scheme should be considered in this context.

Application of heritage policies of the development plan, current and emerging

7.41 The Mayor considers that there is some harm to the significance of four heritage assets or groups of assets. It is common ground that the planning balance provided for in NPPF§196 is engaged and this will be addressed later.

---

[197] a criticism made by RBG Kew in its submissions (ID 32 §107(1)
[198] of Ms. Randall (and as repeated in not dissimilar terms by RBG Kew in its closing submissions ID 32 §107(4)
[199] dated 24 May 2018 (ID 21)
[200] By Ms. Randall
[201] CD H3
[202] from Ms. Randall
[203] of JLL
[204] JLL's images set out in the HTVIA were referred to and relied on by the Mayor and his advisers in assessing the Citroen scheme. No one has suggested that these images are defective. The reference made and reliance placed upon them is unobjectionable therefore.
[205] LBH is wrong to assert (ID35 §§29 and 36) that when directing that he should become local planning authority he considered that the harm to heritage assets was not outweighed by public benefits. The Mayor's Stage 1 advice (CD H1) at p.1 (summary), §43 (p.9) and §55 (p.11) make it clear that this is not the case and the advice was quite to the contrary. See also Ms. Randall's evidence (xx and re-examination) in this respect.
[206] ID 32 §§107-108

7.42 With regard to the development plan, HLP Policy CC4(l) provides that it must be demonstrated that *where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm will be outweighed by the public benefits of the proposal …*. Policy CC4 therefore reflects expressly the current test set out in the NPPF and this will be addressed below.

7.43 With regard to the LonP, Policies 7.8 and 7.10 require development to *conserve* heritage assets[207]. Both policies have been reviewed to secure their conformity with the NPPF (about which, see below). An issue has arisen as to the construction of these policies. The Objectors, and in particular RBG Kew and HE, suggest that any harm to a heritage asset, however modest that level of harm may be, amounts to a failure to *conserve* the asset and would thereby generate a policy conflict. That, it is submitted, cannot be correct. Construction of policy is a matter of law, of course, and the exercise of construction involves consideration of context. Here, the context includes the NPPF which, as sound policies, 7.8 and 7.10 must be deemed to conform with. The term *conserve* has a particular meaning in policy terms; that is set out in the Glossary to the NPPF[208]; *conservation means the process of maintaining and managing change to a heritage asset in a way which sustains, and where appropriate, enhances its significance*. As such, *conservation* does not require no change, nor does it require no harm; what is required is that significance is sustained. Whether significance is *sustained* is a matter of judgement and, as an outcome, can be achieved with some level of harm and particularly where, as here, the level of harm to significance is at a low level. As such, the Objectors here are wrong to construe any harm as amounting to a failure to conserve an asset thereby generating a policy conflict[209].

7.44 With regard specifically to policy 7.10(B), the reference to there being *no adverse impact on [WHS]s or their setting*s must be considered and construed in the context of 7.10(A) which refers to *conservation* as well as in the context of the reference within (B) to the objective being *in particular* to avoid compromising the viewers ability to appreciate OUV. The opening sentence of policy 7.10(B) must be considered therefore in that context and is not absolute in and of itself.

7.45 Moreover, the result of the Objector's construction is that a conflict with development plan policy would arise whatever the level of harm. Such an outcome is flatly inconsistent with the NPPF, which does not condemn any harm but requires a more balanced approach. Given that the LonP can be deemed to be NPPF-compliant[210] such a construction is unlikely. If *conservation* is taken to mean what the NPPF provides this conflict is avoided.

7.46 For completeness, the references to *conservation* in the IPLP at policies HC1 and HC2 bear the meaning referred to above, as is clear from the Glossary.

---

[207] see 7.8(C) and (D) and 7.10(A)
[208] and is now included in the Glossary on the IPLP (CD C5A p.581)
[209] RBG Kew's assertion put in cross examination of Mr. Griffiths that the decision in the Westferry Printworks appeal (CD D10) involved a construction of policies 7.8 and 7.10 which accorded with that which it advances is not correct. The SoS in Westferry concluded that a policy conflict arose by reason of the particular level of harm that arose in that case. It does not follow that a conflict would arise as a matter of principle whatever the level of harm to heritage interests.
[210] following the Revised Minor Early Alterations (REMA) of 2013 (see CD C5 §0.16B)

7.47 It is submitted therefore that, given the low level of harm to heritage assets which would arise, no conflict with policies 7.8 and 7.10 of the current London Plan and HC1 and HC2 of the IPLP arises.

7.48 However, in the ultimate reckoning, this issue becomes rather academic. Whatever the position in terms of the construction and application of the policies of the development plan concerning impact on heritage assets, the NPPF is a material consideration in the determination of the application. NPPF§196 sets out guidance on how impact on heritage assets should be considered in the planning balance. No participant suggests that NPPF§196 does not fall to be applied and, if as a result of its application, the balance favours the grant of planning permission then that outcome could and ordinarily should outweigh any development plan conflict which might arise. Thus, whether or not a conflict arises in respect of policies 7.8 or 7.10 of the current London Plan, the NPPF§196 balance must be struck. It is notable that LBH[211] confirmed that, in terms of impact on heritage assets, the operation of the development plan would not generate a different outcome from the NPPF; we agree.

7.49 With regard to the IPLP, it is a matter of record that the Mayor intends to strengthen policies concerning impact on WHSs in particular. This has been acknowledged by the Panel examining the emerging Plan[212]. Policy HC2 does so by introducing a requirement for heritage impact assessments. The reasoned justification to the new policy is also more expansive as compared to Policy 7.10 of the current plan. However, what Policy HC2 does not do is to preclude or create a presumption against development which causes harm to the significance of a WHS or its OUV regardless of the degree of such harm. Indeed, such a policy approach would not be consistent with the NPPF and, as a development plan policy, would not be sound[213].

Wider planning effects of the scheme

7.50 The development proposes tall buildings on the application site. As discussed above, following formal publication of the IPLP, the site will lie within the OA, where tall buildings are expected. It is common ground between the Applicant, the Mayor and LBH that *the principle of tall buildings on the site is acceptable having regard to policies 7.7 of the London Plan and CC3 the LBH Local Plan*[214]. If, on the basis of the Mayor's case set out above, no unacceptable harm to the significance of heritage assets arises, then no conflict with Policy 7.7 of the LonP or CC3 of the HLP would arise; the former requires *particular consideration* to be given to impact on heritage assets (see 7.7(E)) and the latter at (d) seeks to avoid *significant adverse impact* on a range of heritage assets. Policy D9(C)(d) of the IPLP comprises one element of a range of criteria which are to be *addressed* and cannot, consistently with the new Plan as a whole, and with HC2 in particular, preclude outright any adverse effect on a WHS as a result of a proposal for a tall building.

7.51 Thus, if the harm to heritage assets is deemed acceptable, no conflict with tall building policies arises.

---

[211] Mr.Baker in evidence
[212] CD C6 §330
[213] applying the test for soundness set out at §35(d)
[214] CD F1 §3.11

7.52 No criticism has been levelled at the layout or design quality of the scheme. The Mayor considers the scheme to have been carefully and considerately assembled, and to be of high quality. LBH[215] expressed some misgivings around the quality of daylight and sunlight to be enjoyed by reference to the BRE Guidance, but not of itself so as to condemn the scheme. The levels of daylight and sunlight achieved are entirely consistent with that which can be expected of an efficient form of development on a brownfield site in an urban location.

Overall planning balance

7.53 It is common ground between all parties that NPPF§196 is engaged. The balance is between the harm to the significance of heritage assets, which all agree is less than substantial but at varying degrees, against public benefits.

7.54 It is common ground, unsurprisingly, that public benefit would be generated through the Citroen scheme.

7.55 The benefits of the scheme are well rehearsed in the evidence. We will not repeat that evidence here. There are however some particular points which warrant express reference at this point.

7.56 First, there is the contribution to the delivery of new homes: 441 new homes, included within which are 218 homes at affordable tenure. The Mayor and LBH recognised this as a substantial public benefit which contributes to the achievement of local policies for the OA, the strategic level need for new homes for London and the SoS's policy objective of boosting significantly the supply of homes[216]. This remains the case notwithstanding that LBH can demonstrate a five-year supply of deliverable sites for housing and has over the past few years met, indeed exceeded to a degree, its current London Plan housing target[217]; that said the Borough has not performed so well in terms of meeting targets for affordable homes. Moreover, housing need for London, and hence targets for delivery, are set to increase substantially through the IPLP[218]. Further, and as the CC Inspector recognised, London is a single housing market area and is under *extreme pressure*[219]. As such, the contribution of the Citroen scheme to London-wide housing needs, especially through development in an opportunity area, must be given significant weight. Notably, the significantly increased housing targets to be included in the IPLP are much more certain now than was the case at the CC decision and the decision letter[220] must now be considered in that updated context.

7.57 Second, the delivery of the substantial number of new homes will take place on a brownfield site in a highly sustainable location, eliminating a highly unsustainable use, namely a car showroom. The opportunity presented by the site has been optimised through the form and scale of development proposed. Again, this is a substantial benefit which advances planning policy at all levels.

[215] Mr. Baker
[216] NPPG §59
[217] K. Randall proof (CD M4) §9.11
[218] CD M4 §9.12 (as amended)
[219] CD I4 §12.152 p.146
[220] Ibid §35

7.58 Third, the development is of high quality in urban design terms and will deliver much improved connectivity across the site to the benefit of the wider area, as well as a generous and well-appointed public realm, including a new public square. This is also a substantial public benefit, advancing as it does the objectives of LonP Policy 3.5 and IPLP Policies D4 and D9.

7.59 Fourth, the nursery proposed will benefit existing and new residents and a net increase in jobs will be generated, which are again positive attributes of the scheme.

7.60 These outputs of the scheme are, it is submitted, substantial and significant public benefits which clearly outweigh, the harm to heritage assets which arises.

7.61 Two further points need to be addressed.

7.62 First, outputs which meet policy requirements may, and here should, be recognised as benefits of a scheme. That the delivery of AH may be a requirement of policy does not, it is submitted, diminish the benefit of the delivery of such housing in meeting identified needs. This is particularly the case given the acute and widely recognised need for more affordable homes in London. Significant weight should be given to the AH and the general market to be secured and delivered here.

7.63 Secondly, there is simply no basis to assert or to assume that the same or similar public benefits will be delivered if the application is refused, with the expectation that a smaller development, and in particular a development with a reduced height, will come forward in its wake. First, such a reduced scheme cannot plainly have the same benefits in terms of quantum of development or new homes as what is now proposed. Secondly, there is no evidential basis whatsoever to assume that an alternative scheme could be viable or would come forward. The Applicant's evidence[221] suggests that that would not be the case. No other party to the Inquiry has produced evidence to demonstrate or even to suggest a viable alternative development. Moreover, it cannot reasonably be assumed, simply because a particular form of development has been the subject of an application for planning permission on a neighbouring site, namely 1-4 CIW, that a similar scale and quantum of development would be viable and could be expected to be delivered on the application site. There is nothing to suggest that the same or similar viability inputs exist as between the two sites; indeed, it is commonly the case that matters such as benchmark land value differ radically between proximate sites by reason, for example, of the existing uses and the values attributable to them[222]. There is simply no credible or sensible basis to forgo the very significant public benefits which this scheme would deliver on the unsubstantiated assumption that an alternative and smaller development can be expected to emerge.

7.64 We invite the SoS to strike the NPPF§196 balance in the same way as did the Mayor and to conclude that the harm to the historic environment is outweighed.

7.65 The Mayor does not accept that a conflict with the development plan arises nor even with the heritage policies of the plan if taken alone. But if we are wrong,

[221] at ID 26
[222] a matter now addressed in ID40

we submit that the balance required under s.38(6) of the Planning and Compulsory Purchase Act 2004 (P&CP) Act should be struck on the same basis and in the same way.

7.66 We therefore invite the SoS to grant planning permission. The Inspector is requested to recommend accordingly.

Additional note

7.67 Following the SoS's consideration of the IPLP, the policies within this that are not subject to a Direction should now carry significant weight. Those that are carry less weight. The Directions do not affect the policies referred to as part of the Mayor's case, or more generally by others, at the public inquiry.

7.68 Following adoption of the Kew MPlan, the Mayor commented that he does not consider that new Appendix F fully records or summarises the evidence given at this Inquiry.

8 The case for the London Borough of Hounslow

Its case, with only minor adjustments, is as follows.

8.1 The development of the scheme by the Applicant and their strategic partner (the Mayor) shows that their approach is based on the proposition that the delivery of AH trumps the protection of the country's historic environment. LBH recognises that growth and heritage are compatible. It accepts the principle of tall building development in the LPR for the GWC, which aims for far-reaching and fast-paced growth whilst being sympathetic to London's heritage.

8.2 The proposals conflict with HLP and LonP policies[223] to protect the historic environment. These are fundamental to the development plan. This amounts to conflict with the development plan overall. LBH's case is that the proposed development would conflict with HLP Policies CC1, CC2, CC3, CC4, and LonP Policies 7.4, 7.6, 7.7, 7.8 and 7.10. It emphasised HLP Policies CC3 (tall buildings) and CC4 (heritage); and LonP Policies 7.7 (tall buildings) 7.8 (heritage) and 7.10 (WHSs). The IPLP *beefs up* London's heritage policies. In particular, Policy D9 (the successor to 7.7) includes stronger policies at C(1)(d) and (e). HC2 (the successor to 7.10) is strengthened by the wording that development proposals in WHSs should *conserve, promote and enhance* their OUV. The supporting text to HC2[224] emphasises the commitment of the Government to protect and conserve the OUV of WHSs. Each of emerging policies D9, HC1 and HC2 introduce the importance of cumulative impacts.

8.3 The Richmond LP is not part of the development plan but RBG Kew is within Richmond, and LB Richmond have objected. Its Policy LP6[225] is aimed at protecting, conserving, promoting, and where appropriate enhancing, the WHS, its BZ, and its wider setting. That policy is a material consideration even if the same protection appears in LBH's policies.

[223] Identified in draft Reason for Refusal (RfR) as HLP Policies CC1, CC2, CC3, CC4 and London Plan[223] Policies 7.4, 7.6, 7.7 and 7.8. Policy 7.10 was omitted in error and is also a policy relied on by LBH.
[224] Intend to Publish version of the new London Plan (CD C05A), §7.2.1.
[225] SB Proof (CD M06), Appendix 1.

8.4 National planning policy identifies that[226]:

- Heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance;
- Great weight should be given to their conservation, and the more important the asset, the greater the weight;
- Any harm to the significance of a designated heritage asset should require clear and convincing justification;
- Less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposal;
- Cases of substantial harm will be rare, requiring that a high bar be met[227]. Harm can be both serious and less than substantial, and it is well-established that an allegation of less than substantial harm does not amount to a less than substantial objection[228];
- To properly weigh less than substantial harm in the balance, the extent of harm should be clearly articulated[229]; in practice, this means that heritage experts should identify where the harm lies within a spectrum of less than substantial harm.

8.5 In this case, in addition to a WHS and three CAs, the proposals would impact a host of listed buildings including those at Grade I and II*. These impacts require the SoS to have special regard to the desirability of preserving their special historic and/or architectural interest and their settings.

8.6 The multi-decorated practice scheme architects worked as part of a team which included the developer and its development and project managers[230] who provided any heritage advice up until the Inquiry. No written brief to the architects has been provided to the Inquiry. However, the brief is accurately reflected in the *general priorities* set out in evidence[231]. Of 13 general priorities set out by RB[232], the language used exposes the true position. 12 of the 13 priorities are described in clear, strong terms (to provide, to maximise, to integrate, to address, to design and deliver). The exception is the reference to the wider heritage context: *to take due consideration of the impact of buildings from longer views, including the heritage assets identified by [HE]*. This is <u>not</u> a semantic point. The weaker language for heritage clearly denotes that this was regarded as a less pressing constraint than other factors[233]. The heritage advice[234] was that there would be no harm to the Kew Gardens WHS, to the Grade I listed Orangery, to the SotG CA and listed buildings or to Kew Green CA and listed buildings.

8.7 In heritage terms, the scheme was only as good as the heritage advice[235]. Since that was, to put it bluntly, that the architects did not need to worry about the

---

[226] NPPF (CD C01), §184, 193, 194 and 196
[227] PPG on the Historic Environment (CD C02), §018, Reference ID: 18a-018-20190723.
[228] *East Northamptonshire DC v SSCLG and Barnwell Manor* [2014] EWCA Civ 137 [2015] 1 WLR 4 (CD J02).
[229] PPG on the Historic Environment (CD C02), §018, Reference ID: 18a-018-20190723.
[230] JLL. See RB Proof (CD M01), §§4.3-4.4.
[231] RB Proof (CD M01), §4.6 and XX of RB by LBH.
[232] RB confirmed in XX by LBH that his written evidence including this section had gone through various iterations, was approved by the team, and was carefully-worded.
[233] See the evidence in §22 i-iv.
[234] See Heritage Statement of October 2017 (CD A12).
[235] XX of RB by LBH.

wider heritage context, it is not surprising that this was treated by them as a marginal priority and a barely troublesome constraint. The language chosen[236] accurately reflected the position as he saw it. The language was consistent and deliberate. Even the Applicant's heritage witness took the view that the advice was wrong. That wrong advice infected the scheme and is at the heart of its failure.

8.8 The Mayor was preoccupied with maximising the delivery of AH at all costs. At Stage 1[237], when the proposal was 40% AH, he concluded on heritage that less than substantial harm would only be caused to the significance of SotG CA and listed buildings. No harm was identified at that stage to the WHS[238], the Orangery, the Kew Green CA or listed buildings within it. He was not satisfied with the level of AH and concluded that the heritage harm (to the SotG CA and listed buildings) outweighed the public benefits. However, the Mayor revealed his priorities that the *less than substantial harm… would be outweighed by the public benefits of the scheme*[239], if the AH provision was resolved (i.e. increased).

8.9 The note setting out the heritage advice the Mayor had relied on[240] shows that the first time he sought expertise was in April 2018, three months after Stage 1. At Stage 2[241], he removed LBH as the LPA to determine it himself. He paid lip service to the fact that heritage impact *would be fully considered*[242], but the driving force was to maximise AH. Indeed, at the time the Mayor was calling the matter in, he had still not taken any specialist heritage advice (internally or externally). He had already discussed increasing the height of the towers for more AH before he appointed his internal heritage adviser[243] and so was already encouraging further height increases (for more AH) before taking heritage advice. Then, at the same time as acknowledging additional harm to the Orangery[244], as a result of the increase in height and an additional 50 units of AH (218 rather than 168), on the NPPF§196 balancing exercise, the Mayor resolved to grant planning permission.

8.10 In November 2019, after independent heritage advice, the Mayor acknowledged[245] that harm would be caused to the WHS, (including the Grade 1 RPG and the Kew Gardens CA), but determined that this did not alter the planning balance. Therefore, at Stage 1, harm to the SotG (CA and listed buildings) outweighed benefits including 168 units of AH, but despite additional harm to the Orangery and WHS, the increase by 50 affordable units still swung the balance from the Stage 1 position. This demonstrates that the Mayor did not regard heritage as a matter of great weight. If the Application hadn't been called in, he would have granted planning permission without obtaining any independent heritage advice – despite LBH's recommendation[246] – and on the

[236] by RB, in his list of priorities and list of constraints,
[237] GLA Stage 1 Response (CD H01).
[238] or the Kew RPG or CA
[239] GLA Stage 1 Response (CD H01), §55.
[240] GLA note on specialist heritage involvement (ID 21).
[241] GLA Stage 2 Response (CD H02) on 26 February 2018.
[242] Ibid §44.
[243] Lara Goldstein on 11 April 2018. See GLA note on specialist heritage involvement (ID 21), §6. She did not visit the site until 24 April 2018, and she did not report her findings until her email of 24 May 2018
[244] GLA Hearing Report Addendum (CD H04), §232.
[245] Mayor of London Report Addendum (CD H06).
[246] LBH's consultation response (CD B04), §7.37.

basis only of a brief internal email and informal chats between the Mayor's internal heritage adviser[247] and its witness at the Inquiry[248]. But for the SoS's intervention, harm would have been caused to the WHS without the Mayor even acknowledging it. Moreover, the Mayor has maintained his position at the very same time as strengthening his own policies to protect heritage assets, especially the WHS, and been an active member of the Steering Group responsible for strengthening the protection of the WHS through the draft MPlan.

8.11 The evidence for LBH in respect of Kew Gardens was sensible, measured and credible.

This is summarised in paragraphs 51-76. It largely echoes that of RBGK and HE below, so I do not repeat it here.

8.12 The SotG CA Appraisal sets out its significance[249]. It is characterised by its picturesque charm and its tranquil setting; its significance is best experienced from the opposite riverbank[250]. The key position (for both the SotG CA and its listed buildings) was View 23[251]. While the significance can also be appreciated from Kew Bridge itself and from the foot of the listed buildings[252], that from Kew Bridge is an oblique one in the context of noise from the bridge and that from the foot of the listed buildings deprives the viewer of the ability to see the rooflines or the skyline, both of which are important to appreciate significance[253]. All seemed to accept[254] that the best place from which to appreciate and understand the significance of the SotG CA and its listed buildings was from the towpath on the opposite side of the river, and that the skyline behind the riverside buildings makes an important contribution to the setting which is best appreciated from there.

8.13 The affected listed buildings are 64-71 Strand-on-the-Green[255]. The list descriptions recognise their group interest[256]. They form an important row of buildings, prominent from the opposite side of the river. The skyline contributes to their significance, as it does to that of the CA, so that the buildings are prime elements in the view, and this was emphasised by the CC Inspector (*primacy* was the Inspector's word)[257]. The proposals would be visible behind the buildings viewed from across the river - see View 23.

8.14 All but one witness agreed that the harm to the significance of the SotG CA would be at least in the middle range of less than substantial harm. The

[247] Lara Goldstein
[248] Kate Randell. As accepted in XX by LBH.
[249] Strand-on-the-Green CA Appraisal (CD G01A). See, in particular, §1.3.7
[250] All of the heritage witnesses agreed
[251] Accurate Visual Representation (AVR) or View 23. From the towpath on the opposite side of the river, south of Oliver's Island: SoCG on heritage matters (ID 9), §5.3
[252] As argued by CM Proof (CD M02), §§7.13-7.19.
[253] VS in EiC.
[254] Including CM in XX by LBH.
[255] Zoffany House (number 65) is listed at Grade II*; the others are Grade II.
[256] VS Proof (CD M07), §5.45.
[257] CC Inspector's Report CD I04, §12.50: *the riverside frontage, and the listed buildings it contains, retains primacy in the view across the river. That primacy in these views is an important element of the contribution setting makes to the significance of the Strand-on-the-Green Conservation Area, and of the many listed buildings fronting the river*.

Applicant's evidence[258] understates the impact as it relies on existing intrusion to justify further intrusion; the development plan requiring the backdrop to change when there is no carte blanche to developers; it refers to other places than the best viewpoint; it refers to a populist approach; and relies on design mitigation when it is height, spread and bulk that matter.

8.15 The evidence for the Mayor[259] was at odds with the CC Inspector and all other heritage witnesses. The rationale was unconvincing[260]. The CA Appraisal includes Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis[261]. The proposals magnify the identified weaknesses and demonstrate the identified threats. Existing development behind the SotG, notably the BFC Stadium, does not provide developers with a free pass when it comes to the historic environment. Development has to be properly managed in order to protect that environment. These proposals would cause a significant level of harm to the CA and its listed buildings. A smaller scheme would be less harmful[262].

8.16 Kew Green CA and its listed buildings are the only heritage assets identified by LBH, RBG and HE where the Mayor and the Applicant do not accept any harm. Its significance is as an historic open space, bordered by trees and high-quality, mostly eighteenth century development[263]. The CC Inspector described it as *a charming space, bounded by a pleasing variety of buildings, a lot of which are listed*[264]*.* It is an archetypal English village, dominated by church and green, with rambling buildings of mellow brick. The setting is well-preserved, substantially open behind the border, and provides the Kew Green CA and its listed buildings with a *raison d'etre*[265]. The extent to which the border and the green predominate over what lies beyond is an important element of the contribution that setting makes to its significance[266].

8.17 Without prejudice to kinetic views, the key positions are View 20 (south-east side of Kew Green) and View 22. The Citroen proposals will be visible in the setting, rising behind the border. Both are currently open and pristine. The proximity of the proposals in these views cannot be doubted. From View 20, the proposals rise up behind the listed buildings numbered 90-96 and 98-106. From View 22, the proposals rise up behind the listed buildings numbered 73 and 77. These buildings are all listed at Grade II.

8.18 These Views demonstrate how, in both summer and winter, the proposals would encroach, undermining the extent to which the border and the green continue to

[258] Proof (CD M02), §7.20 and §§7.33-7.37.
[259] Griffiths
[260] CG Proof (CD M05), §4.29, §5.21 and [260] XX by LBH
[261] (CD G1A): "It is important that the richness, diversity and beauty of this historical waterfront is respected. In particular, this requires the protection of its setting, skyline and backdrop from intrusive development. (p. 36); The skyline is especially vulnerable to inappropriate change. Special consideration to the impact of taller buildings on the character should be paramount" (p. 37); "Views into and out of the conservation area should be carefully considered, as well as how the conservation area's special interest is viewed from exterior views particularly from Kew Bridge and on the Richmond side of the river. Recent development proposals have especially failed to fully appreciate the impact of tall buildings on the view of the conservation area from the south side of the river" (p. 37).
[262] VS Proof (CD M07), §5.91 §5.92.
[263] VS Proof (CD M07), §5.28.
[264] Chiswick Curve Inspector's Report (CD I4), §12.59.
[265] VS Proof (CD M07), §5.36, 5.40.
[266] Chiswick Curve Inspector's Report (CD I4), §12.62; VS Proof (CD M07), §5.39.

predominate. They would not be *scarcely noticeable*[267]. Reliance on the scheme's fine architectural detailing[268] and design quality is misconceived as fine detail will not be evident in views at this distance, what will matter is height and spread[269]. The harm would be in the middle of the range of less than substantial; but if the proposed buildings were lower in height, the harm would be less (and removed if the buildings weren't visible)[270].

8.19 It is common ground that harm to the significance of heritage assets has to be weighed against the public benefits.

8.20 The provision of 441 homes is a significant public benefit[271]. However, LBH has a 5YHLS[272]; it has consistently over-delivered against its target (measured against the twin sources of completion statistics from LBH's Annual Monitoring Report [AMR] and the London Development Database); the IPLP will introduce higher targets for LBH[273]. These were agreed save for over-delivery[274]. Note that: between 2013-2016, LBH has delivered at 139% of its target[275]. For the period 2015-2018, it has delivered 138% against its target[276]; it is used to delivering well above the 822 target. The Applicant contradicts the Mayor and argues that LBH underdelivered, relying on the Housing Delivery Test (HDT)[277]. However, whereas the HDT relied solely on the London Development Database, the GLA's figures relied on that database but also the completion statistics from the AMRs produced by LBH. This twin-source approach by the Mayor is more robust[278].

8.21 LBH has been highly proactive in preparing for a higher target[279]. It has done so through its LPR for the GWC. This has now undergone its Regulation 19 consultation. Although it carries limited weight at this stage as a material consideration[280], it demonstrates LBH's positive response to the higher target. While the HLP Review seeks to determine the location and quantum of additional residential development through new site allocations, and responds to the IPLP which identifies the GWC as an OA and as an area for at least 7,500 new homes[281], it has a clear objective to conserve and enhance heritage assets[282], and is informed by a Masterplan and Capacity Study and View Assessment Appendix[283].

---

[267] CM Proof (CD M02), §8.19 is not credible
[268] CM Proof (CD M02), §8.18, §5.51, §5.55
[269] VS in EiC.
[270] VS Proof (CD M07), §5.73.
[271] SB Proof (CD M06), §6.54.
[272] The current target is 822 dwellings per annum. LBH have a 5YHLS. The last published position was set out in LBH's 2018 AMR, namely 10.6 years. LBH have updated the position to inform this inquiry: as at December 2019, the HLS remains in excess of 10 years. SoCG (CD F01), §3.32
[273] Intend to Publish version of the new London Plan (CD C5A), p. 175, table 4.1.
[274] All were agreed by the Mayor; all save (ii) were agreed by the Applicant. XX by LBH
[275] GLA Stage 2 Report (CD H02), §20.
[276] KR Proof (CD M04), §9.11.
[277] MC's Rebuttal (CD M12), Appendix 1 (Quod Housing and Viability Supplementary Rebuttal), §2.5.
[278] SB EiC.
[279] in fact, preparing for the even higher but now rejected target of 21,820
[280] By reference to §48 of the NPPF (CD C01), there remain unresolved objections and the Plan has yet to be submitted for examination.
[281] Regulation 19 Local Plan Review (CD D5), §1.3(b), §4.20
[282] Regulation 19 Local Plan Review (CD D5), Draft Policy GWC5(f), p. 65.
[283] CD D7 and D7A.

8.22 The LPR identifies a three-tiered hierarchy of building heights: a general height of 12-24m, a cluster of modestly-scaled tall buildings, and focal buildings of greater height within the clusters. Focal buildings emphasise special locations in prominent views[284]. Draft Policy P3 deals with the section of the GWC which contains the Application site; the design and heritage section of the policy at (m) adopts the three-tier height hierarchy[285]. For the East cluster, the focal building is at CIW[286] and the spatial strategy shows it at the 1-4 CIW site[287]. The location is not random, but part of a careful exercise: 1-4 CIW was selected because it marks the inside curve of the M4, emphasising the open outlook over Gunnersbury cemetery and providing a central focus to the East cluster.[288] 1-4 CIW marks the inside curve of the M4; the Citroen site does not[289].

8.23 The evidence base for the LPR was compiled when the Mayor had decided to call-in and support the scheme; it was effectively treated as part of the landscape. However, the scheme did not present an acceptable approach to height[290], and would harm modelled views towards the Orangery in Kew Gardens, across Kew Green, and towards SotG[291]. While the Applicant's planning witness made allegations[292] about the content of the Masterplan and LBH's decision-making consistency, he had little understanding of the document or the distinction in the height hierarchy between general building heights and the modestly-scaled tall building clusters. He failed to understand that although the Masterplan *accepted* the Citroen scheme it regarded it as *unacceptable*; or that resolving to grant planning permission at 1-4 CIW was consistent with the NPPF, because he had not grasped how the height hierarchy was structured.

8.24 As well as the site allocations through the GWC part of the LPR, LBH is also progressing a West of Borough part of the LPR, and has been acquiring sites through CPOs, for example where land assembly has proved an issue at the Brentford town centre site, (800 homes), and the Lionel Road site, (900 homes)[293]. The fact that the table of development capacity[294] totalled 7,161 homes instead of the 7,500 target failed to have regard to[295]:
i. the Tesco site was identified for 353 homes, it could produce an additional 617 units (over and above the 353), and in the recent public exhibition Tesco was promoting approximately 1500 new homes;

[284] Masterplan (CD D7), §7.5.5.
[285] Regulation 19 Local Plan Review (CD D5), Draft Policy P3, p. 107-108. Note that whereas (m)(ii) refers to the cluster height for Brentford Stadium East cluster as 46-66m AOD, this was an error and is expected to be corrected to 46-60m so as to bring it into line with the Brentford Stadium West cluster, and all other clusters referred to in the draft document, where the cluster heights are lower than the focal building heights (for obvious reasons).[285]
[286] Ibid, Draft Policy P3(m)(iii), p. 108.
[287] FB6, the yellow star within the blue circle on figure 5.8 of the Regulation 19 Local Plan Review (CD D5), p. 111.
[288] Masterplan (CD D7), §7.7.5.
[289] There is no basis in policy or emerging policy for KR's identification of the Citroen site for "landmark" buildings.
[290] View Assessment (CD D7A), p. 35: The Citroen scheme does not present an acceptable approach to height in the context of the study, which is made clear in view assessments that find its impact a measure of detrimental impact or distinctly detrimental impact in some views
[291] View Assessment (CD D7A), p.82, p.144, p.148 and p.154.
[292] MC's Rebuttal (CD M12): see for example §§2.11, 2.12 and 2.13.
[293] SB in EiC and re-examination.
[294] Masterplan (CD D7), §7.1.2.
[295] SB in re-examination.

ii. the table comprises allocations but does not take account of prior approvals (at least one in the GWC is expected to add over 200 new homes); it does not include any homes from the unallocated Citroen site, although LBH accepts the principle of tall buildings here and encouraged a scheme up to 15 storeys, but not beyond 48m in height, and that any revisions to the scheme should reflect the stepped approach of building up towards the M4[296]. It reasonable to assume that an alternative scheme could come forward in time and contribute to the housing provision in the GWC. The housing market is London-wide and LBH has contributed positively and fully to it in recent years and expects to continue to do so[297].

8.25 Significant weight attaches to the provision of AH (50% provision)[298]. LBH has not met their affordable homes target from 2015-2018[299], but in delivering 72% of the affordable home target they have been one of the highest performers in London (4th highest performing London authority)[300], and more than double the London-wide delivery % over the same period[301].

8.26 Although a higher housing target is closer now than at the CC Inquiry: the new target of 17,820 is lower than that of 21,820 at that time; and LBH is now much more advanced in preparing for the higher target than it was at that time[302].

8.27 The development will support 43 jobs at the site[303] compared with 30 people currently employed[304]; a net increase of 13 jobs. There is no evidence that the 30 jobs currently on site will be re-provided[305]. The employment floor space will reduce from 3,827m^2 to a fraction of this. Although the construction phase will support 250 workers[306], this is a very short-term benefit[307]. LBH gives little weight to the provision of employment as a benefit of the scheme; the Mayor gave it none[308]. Regeneration and public realm improvements are benefits of the scheme[309], including an improved route from Gunnersbury Stadium to Brentford Football Stadium (subject to other developments taking place).

8.28 The Applicant relied on design quality as a benefit, but a scheme which harms a range of heritage assets is not a well-designed scheme. Planning decisions should ensure that developments are sympathetic to local character and history[310]. The Applicant preys in aid the quality of residential accommodation as a benefit of the scheme. However, of the 628 habitable rooms tested for daylight levels, 75 of these failed to meet the minimum BRE standards[311]; the

[296] Letter from LBH to Applicant 22 December 2017 (CD B02).
[297] SB in EiC.
[298] SB acknowledged that this was the maximum reasonable amount and a significant benefit
[299] KR Proof (CD M04), §9.11.
[300] SoCG (CD F01), §3.34.
[301] KR Proof (CD M04), §9.10.
[302] SB in EiC.
[303] MC Proof, §8.26.
[304] KR Proof (CD M04), §8.23.
[305] MC confirmed in XX by LBH that he had no evidence for this.
[306] MC Proof (CD M03), §8.25
[307] SB Proof (CD M06), §6.59.
[308] KR Proof (CD M04), §9.41; and XX of KR by LBH.
[309] SoCG (CD F01), §3.13, §3.76.
[310] NPPF (CD C01), §127(c); SB Proof (CD M06), §6.22.
[311] SB Proof (CD M06), §6.9.

vast majority of those were living rooms[312]. In response, the Applicant advanced two weak points:
i. the policy requirement for flexibility in applying daylight guidance[313] – however, that is what LBH has done in not pursuing this as an objection. The Applicant conflates acceptability with high-quality as a scheme benefit[314];
ii. the Applicant attempts to draw support from the position LBH took to daylight at 1-4 CIW – however, from a similar total number of habitable rooms, there only 8 living rooms had a shortfall[315].

8.29 LBH has emphasised that the benefits advanced should be subject to a very important consideration: that a similar package could be delivered from a scheme which was less harmful to the heritage environment. Sixteen points support this proposition:
i. In the CC Decision, the SoS found the fact that *it could be possible for an alternative scheme with lesser impacts on designated heritage impacts to also provide benefits of this type* was material and important[316].
ii. The existence of the Citadel scheme as a fall-back to the CC was referred to by the SoS as no more than an *example* of a possible alternative scheme which, *should it proceed, would offer benefits in terms of job provision, and would comply with the Council's emerging policy for this area*.
iii. The CC Inspector concluded that *[…] whether the Citadel does or does not come forward is not the central point. There is a clear mandate in policy for a tall building on the site and it is reasonable to assume that one will manifest itself, in time*[317]*.* Here there is also a mandate for a tall building: the site is identified within a tall buildings cluster in emerging policy, and LBH has long accepted the principle of tall buildings on the site[318].
iv. The approach at the CC is consistent with HE's published advice GPA 2[319] that: *If there is any apparent conflict between the proposed development and the conservation of a heritage asset then the decision-maker might need to consider whether alternative means of delivering the development benefits could achieve a more sustainable result, before proceeding to weigh benefits against any harm* and its AN 4[320] which states that: *If a tall building is harmful to the historic environment, then without a careful examination of the worth of any public benefits that the proposed tall building is said to deliver and of the alternative means of delivering them, the planning authority is unlikely to be able to find a clear and convincing justification for the cumulative harm*. This wording adopts the NPPF language of clear and convincing justification.
v. Once views had been modelled, LBH suggested to the Applicant that they consider options of reducing the maximum height for the scheme to either 15 storeys or 12 storeys[321]; it continued to identify 15 storeys as a maximum in

[312] SB in EiC.
[313] MC Rebuttal (CD M12), §2.21
[314] SB in XX by the Applicant made the straightforward point that the daylight is "adequate" but not "fantastic".
[315] SB in EiC.
[316] Chiswick Curve Secretary of State's Decision Letter (CD I04), §36.
[317] Chiswick Curve Inspector's Report (CD I04), §12.36.
[318] Having regard to Policies 7.7 of the London Plan and CC3 of the LBH Local Plan; SoCG (CD F01), §3.11.
[319] *Managing Significance in Decision-Taking in the Historic Environment* (CD G08), §26. This is a material consideration
[320] *Tall Buildings* (CD G10), §5.5
[321] In June 2017. RB Proof (CD M01), §§6.30 and 6.36.

December 2017[322].

vi. Based on flawed advice[323], the Applicant rejected the suggestion to reduce heights[324]. A maximum 15 storey scheme was not dismissed on the basis of being unworkable but on account of architectural design preferences[325]. The Applicant never looked in any serious way at reducing the heights as demonstrated by the fact that they did not commission any AVRs for lower heights.

vii. The architects concluded that a 15 storey maximum height, maintaining height differences in adjacent towers, would still have produced 392 units – only 35 units fewer than they submitted to LBH prior to amendment after the Mayor's call-in)[326]. It is unknown whether a maximum 15 storey scheme could have produced even more units by varying layout and height differentials.

viii. In the late note[327] the architects considered that a maximum 12 storey scheme would have needed to maintain a variation in height of 6 storeys per block[328]. Proportionally that would involve more variation between blocks than the Application scheme. This surprising comment calls into question whether if a maximum 15-storey scheme would produce 392 units, the extent of height differentials required had been overplayed.

ix. The Applicant produced no evidence (e.g. AVRs) as to the height at which the scheme would become invisible in the view towards the Orangery or across Kew Green. There was some speculation[329] but a lack of clarity.

x. A lower scheme, even if it remained visible in key views, would be less harmful[330]. It is difficult or impossible to properly identify how much less harmful without the benefit of AVRs[331].

xi. Without serious consideration, the viability of a reduced-height scheme was never properly tested. The most that the Applicant's viability consultant could say was that *a reduction in the number of homes would result in the viability of the scheme being even more challenging*[332]*.* That is far removed from an assertion that a lower scheme could not be viable.

xii. The eleventh-hour viability assessment[333] considered a scheme which did not exceed 12 storeys (the *notional reduced scheme*) but with what layout variation (e.g. the extent of public realm) whilst the block-to-block variation of 6 storeys which forms part of this notional reduced scheme is unfathomable.

xiii. The burden of demonstrating whether a less harmful (lower) scheme could *work* rests with the Applicant[334]. The suggestion that the alternative scheme argument should be reduced in weight because *no other party puts forward any alternative scheme which it says is acceptable and deliverable*[335] is

---

[322] Officer's Advice Letter (CD B02): *It is considered that any development beyond 48m in height should not be permitted on this site.*
[323] JLL advised that there would be no harm to the significance of heritage assets, a position abandoned once the Applicant appointed CM for the purposes of this inquiry.
[324] RB Proof (CD M01), §6.33.
[325] The scheme architect confirmed: RB in XX by HE.
[326] RB Proof (CD M01), §6.27.
[327] Note dated 27 January (ID 26)
[328] Hawkins\Brown file note (ID 26), §4.1.3.
[329] MC thought below 15 storeys, CM thought 12 storeys
[330] VS Proof (CD M07), §§5.65, 5.73, 5.91; and in EiC.
[331] As MC confirmed in XX by RBG Kew.
[332] MC's Rebuttal (CD M12), Appendix 1 (Quod Housing and Viability Supplementary Rebuttal), §3.4.
[333] Note dated 27 January (ID 26).
[334] This was accepted by the Mayor. XX of KR by HE.
[335] Note dated 27 January (ID 26), §5.3.

misconceived. It is not the function of the Council (or any other party) to design alternative schemes, although LBH were consistently encouraging the developer in 2017 to model a lower scheme. Policy support to confirm this, is in IPLP Policy D9: *proposals resulting in harm will require clear and convincing justification demonstrating that alternatives have been explored*…[336]. The burden rests with the developer[337].

xiv. The scheme which LBH recently resolved to grant planning permission adjacent to 1-4 CIW is lower than the Citroen proposals[338] but still provides 420 flats, including 209 affordable units[339]. It is viable based on a very similar tenure-split to this scheme[340]. Only 30 minutes before closing submissions were due to begin, the Applicant served yet another late note, this time including an attempt by their viability consultant to distinguish the two sites. LBH reserve a right to respond (if necessary) to this in writing but observe that the note identifies important similarities between the schemes. Most importantly, *reducing the overall unit numbers will see a reduction in affordable housing below 50%*: that is a million miles away from saying that a reduction in numbers (as a consequence of designing a less harmful scheme) would not be viable.

xv. Considering the public benefits of an alternative scheme does not mean that these should be identical (e.g. the same number of units). The planning witnesses agreed[341] that this was the only sensible interpretation because, in the real world, it would be virtually impossible for two different schemes to produce exactly the same set of benefits.

xvi. The scheme architect confirmed[342] that his practice has been in business for 30 years, has been shortlisted for the Stirling Prize, and has won the Architects' Journal Practice of the Year three times. They have designed many notable schemes in London[343]. The practice has *the skills, knowledge, resources, experience and expertise to develop complex projects in challenging environments*[344]*.* Its approach is the ability to develop a solution that fits; key words to describe the practice would be: skilful, resourceful, adaptable[345]. It is reasonable to expect that, if so briefed, the practice could have produced an alternative, less harmful scheme, capable of producing a similar range of benefits.

8.30 The less than substantial harm which would result from these proposals has to be balanced against the public benefits. This balancing exercise has been undertaken by three parties: the Applicant, the Mayor, and LBH. The approach

[336] Intend to Publish version of the London Plan (CD C05A), p. 150.
[337] SB in EiC; KR in XX by LBH.
[338] Block A 8-12 storeys, Block B 8-14 storeys, Block C rising to 16 storeys: see Capital Interchange Way Officer Report (CD I01), §4.6. The site is further away than the Citroen proposals in key views, which reduces impact: SB in re-examination.
[339] Capital Interchange Way Officer Report (CD I01), §1.1.
[340] SB in response to questions from the Inspector. Re tenure split, he clarified that 1-4 Capital Interchange Way is 30% London Affordable Rent, 10% Affordable Rent, 60% shared ownership (Citroen being 30% London Affordable Rent and 70% Shared Ownership). He was asked by the Inspector whether there was anything different about the Citroen site, compared to 1-4 Capital Interchange Way, that would mean the Citroen site with lower heights could not be viable. SB replied: "Not that I am aware of."
[341] for LBH and the Mayor: KR in XX by LBH; SB in EiC.
[342] XX of RB by LBH.
[343] Including Clapham Peabody Estate, Agar Grove regeneration, and Mill Harbour Village
[344] RB Proof (CD M01), §2.15.
[345] XX of RB by LBH.

of both the Mayor and the Applicant is demonstrably unsound and itself unbalanced. At Stage 1, the Mayor was indicating that a policy-compliant AH offer would overcome the harm identified then to SotG CA (and its listed buildings). In spite of the escalating harm in the advice being given to the Mayor, that appeared doomed to be overwhelmed by the increase in AH by 50 units. It is as if the provision of AH is afforded special importance within the balancing exercise. It is important, but it does not have special importance.

8.31 The Applicant's planning witness, and adviser from early on, demonstrated a black-and-white approach to the planning balance. In his rebuttal proof[346], he misrepresented a simple statement[347] that less than substantial harm to the SotG at 1-4 CIW was outweighed by the public benefits, in particular the provision of AH. He characterised that statement as *an attempt by LBH to argue that the public benefits are distinctly more favourable at CIW and should not be accepted and is clearly inconsistent*. That was an obvious mischaracterisation as LBH had concluded that the only heritage harm which could be considered *more than slight* was to SotG, and that no harm would result to the WHS[348]. In other words, on LBH's analysis, the harm was less than that LBH concluded would be caused by this scheme. LBH had not argued – anywhere – that the public benefits were more favourable at 1-4 CIW[349]. In heritage terms, the 1-4 CIW scheme is less harmful. The oral evidence of the Applicant's witness[350] failed to grasp this point. The heritage harm was treated as a singular position that harm would result, and that it was more or less irrelevant how serious that was. It was believed that, since both schemes would result in less than substantial harm, but offered similar benefits, it was *inconsistent* to treat one scheme favourably and the other unfavourably. There appeared to be no appreciation of differentials within harm, and it appeared blinkered by the benefits package. When the Applicant's planning witness was asked whether, whatever was said about where on the spectrum of less than substantial harm the harm lay, would the conclusion have been the same, the reply was: *Yes, in my mind the public benefits are clear and overwhelming*[351]*.*

8.32 By contrast, the LBH approach has been fair, objective, and balanced. It has accepted the principle of tall building development on the site. It engaged with the developer to suggest a lowering of the proposed height. It clearly identified, in its assessment, the level of harm within the spectrum for each relevant heritage asset. It afforded significant weight to the provision of housing and AH, and weight to other benefits offered by the scheme. That it resolved to grant planning permission on the neighbouring site at 1-4 CIW, where the level of harm was reduced (by virtue of its location slightly further away from the key heritage assets and its lower height), and where public benefits were comparable, is compelling evidence of consistency and of balance.

[346] MC Rebuttal (CD M12), §§2.5-2.7.
[347] by SB (in his proof)
[348] Officer Report for 1-4 Capital Interchange Way (CD I01), §7.31.
[349] Although it is noted that, in addition to a similar housing and affordable housing provision, the 1-4 Capital Interchange Way scheme provided approximately 4 times the employment floor space compared to Citroen, and more than 300 jobs.
[350] In particular XX of MC by LBH.
[351] XX of MC by LBH.

8.33 In opening, LBH said: *This case is about the balance between heritage and growth, which are entirely compatible, if properly-managed. This scheme does little more than pay lip-service to heritage. It gets the balance wrong*[352]. Nine days of evidence at this Inquiry has shown this to be an accurate assessment. It is respectfully submitted that planning permission should be refused.

Additional comments

8.34 The way in which this case is presented needs no further comment in respect of the CC judgment.

8.35 The Applicant now argues that RBGK could plant trees[353] at the rear of the Orangery to block views of this scheme. This was unfairly raised at the end of the Inquiry. There is no evidence that this would be successful, it is wrong in principle, such trees would take decades to establish, and they would need to be managed including for losses. The proposal is rushed and poorly considered. It does not offer a solution but shows a lack of understanding as: it proposes mitigation that it is unable to deliver; misunderstands WHS MPlan policies; proposes inappropriate specimens in an inappropriate location; and it does so by way of procedural injustice. The mitigation is an acknowledgement that harm would be caused but can neither be delivered nor enforced. The only way to do so is with the agreement of Kew: this will not be forthcoming, and the proposed mitigation will not be delivered. Mitigation could be offered by the Applicant, but it prefers to shift the responsibility to Kew.

8.36 The Applicant referred to the Westferry decision letter in closing as an example where harm to heritage assets including a WHS was not an insuperable obstacle to planning permission[354]. In light of the Consent Order, this reference is no longer appropriate and should be deleted.

9 The case for the Historic Buildings and Monuments Commission for England (Historic England)

Its case, with only minor adjustments, is as follows.

9.1 Historic England (HE) is the lead body for the heritage sector and the Government's principal adviser on the historic environment[355]. It rarely appears at a public Inquiry, but it has done so here given its serious concerns about the extensive harmful impacts that this scheme would cause to heritage assets, including those of the highest importance. As a statutory consultee and with its specialist role its views should be given considerable weight and only departed from for good reason.

9.1 HE is concerned with the harm which the scheme will cause to the settings of: the WHS; the Kew Green CA; the SotG CA; and the listed buildings within them (including the Grade I listed Orangery). ICOMOS has been informed of the

[352] LBH Opening Submissions (ID 4), §2.
[353] This is covered in the original closing and an additional note. My summary covers both.
[354] ID39 L&Q §24
[355] Its statutory duties include securing the preservation of … historic buildings and conservation areas. It adds properties to the statutory register of gardens and parks, and is a consultee on WHSs.

proposals and its response is awaited, however it has already said that where HE raises concerns *there are likely to be issues at the World Heritage level*.

9.2 The SoS has already accepted in relation to Kew that *any intrusion of [the] city must be harmful*[356] to its setting and its OUV. This scheme would clearly intrude into views from the Gardens and exacerbate the adverse effects of other development on the significance of this exceptional place. It would encroach prominently on views of the highly important SotG CA, one of the most important historic waterfronts on the Thames, allowing further new harmful development to spread at its greatest height into its most vulnerable location. It would harmfully disrupt the relationship between the historic buildings and open space in the KEW GREEN CA, a rare surviving example of a London village green.

9.3 Following the evidence at the Inquiry, HE's concerns with the impacts of the scheme have intensified. The Applicant and the Mayor have substantially underplayed the harm that these proposals would cause. They have fundamentally failed to recognise the important contributions made by settings to the significance of these heritage assets. They have failed to recognise the adverse effects of existing and consented detractors when calibrating their judgments on harm. They have wrongly claimed an inevitability of harm from prospective schemes in the GWC OA, despite agreeing that the emerging policy which plans future development there can only be given limited weight.

9.4 From the inception of the design process, the Applicant failed to take heritage impacts seriously when devising the scheme[357]. The architect inexplicably thought his role related to designing a scheme in its immediate context[358] and abdicated all responsibility to heritage advisers. Their assessment was only provided at a late stage when the fundamentals of the design had been set. Their advice - that the proposals would cause no harm at all - was relied upon during scheme design, but in preparation for the inquiry has been accepted by the Applicant to be wrong. The Applicant also failed to consult HE at all before submitting its application, which it now accepts was contrary to good practice. All this might explain the failure of the design process, but it does not excuse it.

9.5 It was also wrong in this case to have expected the Mayor to scrutinise the scheme effectively. The only written advice received before the representation hearing report was a short email, where the heritage impacts of the entire scheme were addressed in only around ten lines of consideration. This was accepted by the Mayor to be internally inconsistent and unclear. There is no transparent record of how discussions then led to the content of the report, and even then, the Mayor was wrongly advised not only that the scheme would cause no harm to the WHS[359], but that the proposals would comply with strategic policy on the historic environment. When HE was eventually consulted, the response of the Mayor was to seek an increase in the height of a scheme about which HE had

[356] CC decision letter CDI4
[357] There is nothing in the DAS or the addendum for the scheme to show that heritage issues had any influence on the design of the scheme at all.
[358] Brown XX.
[359] CDH3 at [223]/56. The addendum report of 2 December 2019 (CDH6) was prepared following the instruction of MR Griffiths over a year after the Mayor's decision on 22 August 2018 to grant permission (CDH5).

already expressed strong concern. Without this call-in the scheme would have been approved and these failures would not have come to light.

Royal Botanic Gardens, Kew[360]

9.6 Kew Gardens is 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. Its inscription as a WHS in 2003 placed an obligation on the UK Government to do all it can to protect, conserve and transmit to future generations its OUV, including the management of change outside the site. It is a Grade I registered garden, a CA, and the home of 56 listed buildings, two of which are also scheduled monuments. It is the rarest heritage designation and of the highest possible significance under heritage policy[361].

9.7 The SOUV for Kew, as approved by the United Nations Educational, Scientific and Cultural Organization (UNESCO)[362], specifically identifies how *elements of the 18th and 19th century layers including the Orangery…convey the history of the Gardens' development from royal retreat and pleasure garden to national botanical and horticultural garden*.

9.8 The Kew MPlan[363] evaluates the attributes of OUV to incorporate: *a rich and diverse historic cultural landscape providing a palimpsest of landscape design*; and an *iconic architectural legacy* including a *series of iconic glasshouses* such as the Orangery, the only surviving plant house of William Chambers in the WHS and its largest classical building.

9.9 It is beyond dispute that the garden landscape and the changes to it over time are central to the outstanding value of Kew. And the buildings that provide its iconic architectural legacy, including the Orangery, are a vital constituent of this layering of landscape design. The Orangery was one of the most important buildings in the Gardens, and represented the OUV. As a Grade I listed building, it is also of the highest significance in its own right.

9.10 The other important theme in the SOUV and MPlan is the expression of concern about the impact of development in the setting of the WHS. The SOUV, when addressing the integrity of the site, warns that that development outside the BZ *may threaten the setting of the property*.

9.11 The MPlan:
- highlights how the Haverfield Estate tower blocks *punctuate the skyline above the trees* and *represent an unfortunate eyesore*;
- emphasises how they are *affecting the setting on the northern edge of the Gardens…but the emerging dominant development along the western bank of the Thames within Brentford also poses a threat to the quality of the overall setting*[364];
- records how ICOMOS has taken the view that *the overall aspect of six 22-*

[360] HE deferred to RBGK for more detailed submissions
[361] See CDC4 [7.30]/297; Miele xx; NPPF [184] and PPG Reference ID 18a-026-20190723.
[362] See CDG6 [3.7.3]/55.
[363] Its importance is confirmed by London Plan policy 7.10 B (CDC4 p. 299). Also Hounslow HLP policy CC4 at CDD1 p. 140-1; the Mayoral SPG on WHSs CDC16 at [2.19], [2.21] and [2.23]/13-4 and PPG Reference ID 18a-034-20190723. It is approved by DCMS and DEFRA: see CDG6 p. 9.
[364] [3.6.5]/52-3.

storey tower blocks (Haverfield Estate)…diminished the visual experience at Kew at several points in the Gardens. Current development proposals for Brentford raise additional concern for future intrusion within the visual envelope of the WHS[365];
- specifically includes policies which state that development which would impact adversely on the WHS, its OUV or its setting is not permitted[366].

9.12 ICOMOS has more recently confirmed, when raising strong objections to the CC scheme, that any disturbance to the setting strongly diminishes the OUV of Kew. The UK Government has itself reported to UNESCO in terms which highlight the harm that development outside the BZ has caused to significance[367].

9.13 These strong concerns have been expressed because it is clear that the setting of the WHS makes an important contribution to its significance:
- the Operational Guidelines establish a direct link between the protection of OUV and the broader setting of a WHS[368];
- ICOMOS, when commenting on the CC proposals, was at pains to emphasise how the setting of Kew was *especially important*, given that views in this style of landscape garden *are crucial for the enjoyment and experience of the property and its OUV*[369];
- the MPlan emphasises the importance of ensuring the protection of the site so that *the landscape setting and interrelationships of the designed landscape and listed buildings can be fully appreciated*[370];
- the MPlan highlights the development of Kew has been based upon retaining an *enclosed 'otherworldiness'* which reinforces *a sense of seclusion from surrounding urban encroachment*, promoting a *strong sense of enclosure and separation which allows the Gardens to be experienced singularly within its high walls and boundary planting.* This sense of enclosure *underpins the character and OUV of the Property*[371], which is an *internally-oriented landscape* and *preserving the integrity of this setting from external intrusions plays a fundamental role in supporting OUV*. This summary was accepted by the Mayor to be accurate; and to the extent that any reservations were expressed by the Applicant they were not cogently articulated;
- the Mayoral SPG highlights how Kew is nine miles from central London and is the *most self-contained* of the four WHSs in London, offering the *chance to escape the city*[372].

9.14 This understanding of setting had already been supported by the CC decision, where HE's understanding of the importance of the setting was adopted by the Inspector and accepted by the SoS: *the setting of Kew Gardens cannot be separated from the first three attributes of OUV. The experience of the designed and historic landscape…, the iconic architectural legacy, and the living plant*

[365] [3.9.2]/60. See too Croft proof [5.7.10]/55.
[366] See Policy 1d at [12.3/142; and Policy 3a [12.5]/143.
[367] See CDG19 [2.4], [2.5], and the Table at [5.1.1]/ p. 11, which notes that *New residential development in Brentford is ongoing cause for concern*.
[368] CDG18 [112/32].
[369] CDG28, penultimate page.
[370] [9.1.2]/96; see too [9.2.8]/98.
[371] CDG21 p. 22.
[372] See p. 59; see too p. 43.

collections, is revealed and enhanced by the ability to appreciate these qualities in a well-preserved environment that still resonates with the sense of an Arcadian escape from the world of intense city living[373]. This formulation *neatly encapsulates the way in which the setting of Kew Gardens contributes to its significance*.

9.15 Further, *views towards the Orangery…are essential to an understanding of the place of the Orangery in the designed landscape*. As explained, these observations apply equally here. Setting is a fundamental component of OUV and the ability to appreciate Kew depends to a large extent on its setting. Thus, *if one accepts that part of Kew's significance as a designated heritage asset is its status as an escape from the city, then any intrusion by that city must be harmful*. And *any harm to the setting of these listed buildings [including the Orangery] would thereby harm the significance of that building, but also that of the designed landscape* which are both *important aspects of OUV*. In the specific circumstances of this case, visibility equals harm and it is untenable to suggest otherwise.

9.16 Subject to interruptions to the roofline by (in particular) the BFC development, which are considered further below, clear sky appears behind the roofline of the iconic architecture of the Orangery. This appears as a primary feature and *key marker* in the landscape in key views, in which open sky would have underscored the perception of removal from the urban world outside. Views towards the Orangery, illustrated in this case by View 30, are therefore of great significance given the contribution of the setting to the significance of Kew. They are experienced as part of the palimpsest of landscape design, taking its important architectural legacy, in an environment designed to be preserved from the sense of intense city living beyond.

9.17 The Applicant and the Mayor made various attempts to downplay the importance of these views, by contending amongst other things that View 30 was not a designed view; that there was no designed relationship between the Orangery and the Great Lawn or what succeeded it; that the view was not protected or regarded as an important vista in the MPlan; there are other available views across wider areas of Kew; that there is already built development in the view; and that the setting did not make a major contribution to significance relative to the buildings or the physical landscape itself. The Applicant relied in part on historical mapping and artists' impressions from the 18th and 19th centuries, to contend that there was never intended to be a strong visual connection between the Orangery and the Great Lawn, or the location of what is now View 30.

9.18 None of these contentions comes close to disturbing the important contribution made by setting to the significance of Kew:
- as explained in HE's evidence[374], there was as design relationship between the Orangery and the garden landscape including the Great Lawn which remains and allows the OUV and its attributes to be appreciated – the sense of experiencing a historic landscape design and its associated architectural legacy, within an enclosed environment with clear sky beyond, intended to be shielded

[373] CDI4 [12.101]/137.
[374] For which read Mr Dunn's evidence

from the outside world;
- visitors to Kew of course benefit from other views in other areas within the Gardens, but the point is that this one is significant; and if this approach is followed through it risks successive harm to other important views and significance, by implying that viewers can simply look elsewhere once each developer has taken its turn. As put it in evidence, it invites death by a thousand cuts;
- this view does not need to have been identified on a map in the MPlan for it to be substantively important when considered in the context of a particular threat from a proposed development, as is clear from the approach taken in the CC decision. It is plainly part of a setting which, as described above, is integral to the OUV of Kew;
- the historic mapping cannot be interpreted as unequivocally as the Applicant suggests to show a belt or clump of trees intended to block views of the Orangery from the Great Lawn:
i, the map evidence shows what is agreed to have been diffuse, not dense, planting between the White House and the Orangery;
ii, RBKC produced a further scaled plan dating from c.1785 which included survey triangulation lines and showed relatively sparse tree planting;
iii, overall the evidence is inconclusive and it would be wrong to accept the approach of the Applicant as definitive;
iv, thus it is entirely credible to suggest that these trees were planned to allow partial views from the Great Lawn in a way which complemented those of the White House, whilst not competing with them. This would be entirely consistent with informed and refined landscape design. The contrary idea that the largest glasshouse in the country at the time should be essentially blocked from views appears odd by comparison.
- ultimately, the debate over this tree planting does not weaken the importance of the view. The significance of Kew, and this view, is not in demonstrating a time capsule of landscape design. Although it survives only in a much-reduced form, the landscape in this part of Kew is a remnant of a royal garden that was re-used by Burton and Nesfield as part of the Victorian gardens and continues to play a strong contemporary role, by offering clear internal views in the surviving open character of the landscape, providing a legible and tangible link to the earlier design. Modern views here therefore remain important (and the Mayor at least accepted this in the end). They allow for an appreciation of the principal elevation of the Orangery in its intended garden context;
- the CC Inspector thus accepted that views towards the Orangery from and around the Broad Walk *across the Great Lawn, or what remains of its original conception, are essential to an understanding of the place of the Orangery in the designed landscape. As such, they are integral to the contribution setting makes to significance*;
- the existence of *regrettable* development in views of the Orangery is no reason to downgrade the sensitivity of the view or the contribution to significance that is made by the setting - quite the contrary. There is no dispute that there are existing detractors in that setting, of which Haverfield Towers (as well as the Kew Eye and the waterworks development) are the most relevant. There is also the BFC development (which is under construction and can be seen rising above the roof of the Orangery) and (if built) the Citadel. For reasons which are explained further below, they cannot be treated as a means by which further intrusions should be justified. This approach would also run flat contrary

to the views of ICOMOS, the existing and draft MPlans for Kew, heritage guidance and common sense.

9.19 It is common ground that the impact of the proposals would be harmful, to both the OUV and discretely to the significance of the Orangery As explained, the development would appear in View 30, near well-used paths, directly above the roofline of the Orangery. The scheme would be immediately apparent as a prominent modern feature, the form and scale of which would be at odds with the refined architecture and landscape of the WHS. The visual intrusion above the roofline of the Orangery would compete with and detract from the frontage of that building within its landscaped setting, undermining its primacy in the view and harming the contribution the setting makes to the significance of the listed Orangery and the landscape within which it sits.

9.20 The materials and detailing of the development are unlikely to be readily appreciable in this view, though its solidity will be very apparent. The new structures would distract from and obscure the significance of the Orangery in its symbiotic landscape setting, by appearing as an arbitrary and assertive new element on the skyline. The visibility of the proposed development, of a form and scale more at home at the centre of a major city, would invalidate the sense of escape that is central to the OUV here. Its presence would disengage the viewer from the same environmental characteristics that appealed to the royal court and inspired the architects and pioneers of the gardens. This intrusion of a dense urban built form amongst the garden environment, designed as an escape from the world beyond, would be inimical to the application and the significance of the WHS.

9.21 HE judges the harm that would arise, to both the OUV and the significance of the Grade I listed Orangery[375] as moderate within the less than substantial category. Given the highest importance of these heritage assets, very significant weight should be given to this harm.

9.22 Beyond its misconceived attempts to deny the importance of View 30, the Applicant and the Mayor seek to downplay this harm by arguing that not all of the criteria for inscription as a WHS, or its attributes, would be affected; that there would be no direct effect on the fabric of the WHS or the landscape palimpsest in particular; that visibility does not of itself amount to harm; that View 30 is part of a kinetic experience which would involve passage across the lawn where the scheme would leave the view; and that the viewer would be able to discern the difference between new development and the architecture of Kew. They again refer to the existence of the BFC development and the Haverfield towers in the views already, along with the perception of aircraft noise; and to the potential for trees to screen the affected view. They conclude that the harm would be at the low end of less than substantial.

9.23 These contentions – and the conclusion which flows from them - are fundamentally flawed:
- the video evidence submitted by the Applicant gives what HE regards as a clear illustration of the harmful impacts held in prospect by this scheme. The upper storeys of the towers would be undeniably prominent, unsympathetic and

[375] As well as the Grade I registered park and garden and the conservation area (all of which are elements of the World Heritage Site).

intrusive, drawing the eye away from the fundamental relationship between the Orangery and the landscape;
- when viewed with the BFC and the potential Citadel, most if not all of this kinetic view would have development visible above the roofline of the Orangery. The proposals would in any circumstances clearly impose themselves in a central element of that view;
- the mere ability to distinguish between these modern proposals and the historic architecture of the Orangery says nothing in itself about the effect on significance that these proposals would cause, by distracting from the fundamental relationship between landscape and architecture in an enclosed setting;
- as was accepted in the CC decision, this is a case where visibility in views does equal harm, given the particular contribution that setting makes to significance;
- the aircraft noise is not persistent as alleged and in any event does not relate to the integral relationship between the garden landscape and iconic architecture in a visually contained setting which is central to this case;
- it does not matter that criteria relating to inscription (relating to botany and ecology) would be unaffected, not least because inscription only requires a single criterion to be satisfied;
- similarly, the absence of any direct impact cannot realistically relegate the judgment on harm to a low level given the extent of intrusion and the importance of these views;
- reliance on RBGK planting trees to screen the view is not acceptable. It imposes an obligation on RBGK to deal with a harm which is not of their making. The proper approach is to ensure that prospective developers are not allowed to create the harm in the first place, particularly when successful mitigation cannot be guaranteed. To allow this approach would just see developers treating it is as a free pass to propose ever taller development. Trees would take time, potentially decades, to grow sufficiently. Their ability to filter views changes with the seasons and they may die, whether due to disease, high winds or other risks inherent in climate change. They should not be relied upon to affect the judgments on harm in this case.

9.24 A further fundamental difficulty with the Applicant's and Mayor's cases was their approach to the development which is agreed to detract from the significance of the WHS and the Orangery.

9.25 The Mayoral SPG on WHSs applies directly to this case. It advises that: *the cumulative effect of separate impacts should also be considered. These are impacts that are caused by incremental changes caused by past, present or potential developments with planning permission that cumulatively with the proposed development can have a significant impact on the setting of a WHS*.

9.26 The PPG also states that planning decisions need to take into account the principle of *protecting a [WHS] and its setting from the effect of changes which are relatively minor but which, on a cumulative basis, could have a significant effect*[376].

9.27 Specific HE guidance on tall buildings says that: *…a rigorous process of analysis and justification will be needed in each case. Nor will an existing tall building*

[376] Reference ID: 18a-032-20190723 and ID: 18a-013-20190723.

naturally justify further tall buildings so as to form a cluster. Each building will need to be considered on its merits, and its cumulative impact assessed. Further, *careful assessment of any cumulative impacts in relation to other existing tall buildings and concurrent proposals will also be needed to fully understand the merits of the proposal. The existence of a built or permitted tall building does not of itself justify a cluster or additions to a cluster. Where a proposal is promoted as part of a cluster, a successful design will have a positive relationship with the cluster; the altered impact of a cluster itself needs to be considered*. Similar advice appears in other HE guidance on *Managing Significance in Decision-Taking in the Historic Environment* and *The Setting of Heritage Assets*.

9.28 The underlying concern is that previous compromises to significance caused by unsympathetic development are used to help justify new development, by relying on incremental change which does not recognise the negative effects of those compromises in any assessment of potential harm. Despite claims to have conducted a proper cumulative assessment, both the Applicant and the Mayor wrongly relied on existing and consented development to calibrate downwards their judgments on harm.

9.29 In written evidence the Applicant described the Haverfield Towers as *there* and *so form part of the baseline condition*. The BFC development was *also a permanent part of the scene and so must be taken into account*. It was accepted that these *cannot fail to be noticed* but it was claimed that they *provide a context for the WHS* so that there is *thus, a coherence to the impact*. Further *the direction of change in the cumulative condition reduces because, relative to these others, the proposals have a limited impact* and *one will recognise that the proposals are part of the layer of larger development at Brentford*.

9.30 The Applicant plainly struggled[377] with how to conduct the cumulative assessment required. It was fairly stated that every case is fact sensitive. But in this case, the manner of how other detractors had been taken into account was confusing and incorrect:
- there were references to the EIA concept of the baseline, but it was accepted that this involved a neutral starting point to cumulative development and did not allow for previously approved detractions to the significance of Kew to be taken into account;
- worse still, the indications in the written evidence were accepted to point to a calibration of harm in which other harmful development downgraded the harm that would arise when the scheme was developed.

9.31 The judgement of the Applicant about the effects on the WHS would, it was accepted, not be the same if there was assumed to be no other development existing or consented visible from Kew. This suggested that no allowance had in fact been made in any way for other development; and that the Applicant was in fact relying on existing detractors to justify further harm. Overall, the approach taken was conceded to be inconsistent with the HE guidance and, it follows, the Mayor's SPG and other guidance relating to cumulative assessment. It would also strike at the very concerns expressed by ICOMOS and the MPlan about

[377] In questioning at the Inquiry: Miele xx.

development diminishing the visual experience of the WHS. There was no recognition of how overall the proposal would, when considered with these detractors, leave the asset closer to losing its significance, affecting the judgment on harm accordingly.

9.32 The problems with this approach were highlighted when the Applicant was asked by the Inspector about the hypothetical case of a further storey being added to Haverfield Towers. The approach of the Applicant was to assess the impact of the additional storey only, treating the existing building as part of a baseline, either neutrally or to justify a lower calibration of harm given the extent of harm that was already caused. It was unable to answer the follow up question about when the decision maker would say no to successive floors being added, because on whichever of the approaches mentioned, there would be an ever creeping and worsening baseline, the harm from which would never be factored in any way into the assessment.

9.33 Similar concerns arise in respect of the Mayor's evidence. Despite claiming to have taken into account the guidance and conducted a cumulative assessment, there are signs that in fact the presence of development or other activity detracting from significance has been relied upon to qualify judgments on harm.

9.34 The evidence refers to the scheme as *forming part of a broader pattern of development of an increased density to the north of the River Thames. The effect of the application scheme on this element of the setting would therefore be negligible*. After suggesting that the sound of aircraft intrudes upon the experience of Kew, this is said: *nonetheless the effect of the Kew soundscape does temper the impact of the application scheme insofar as it can be seen from the WHS*. By the end of the evidence it was accepted by the Mayor too that the assessment of harm was calibrated down because the proposals would not be the first scheme to intrude into the visual envelope of views towards the Orangery. On the Mayor's own approach, there was also methodological incoherence in making no change at all between the assessment of solus and cumulative impacts relating to Kew.

9.35 There was also some reliance placed on the comment by the CC Inspector that *the idea that Kew Gardens can be completely 'protected' from further visual intrusions of the city beyond is a battle that has been fought and lost*[378]. HE strongly disputes any reliance on this view in this case, as explained later.

9.36 For all these reasons the Applicant's and the Mayor's conclusion that the harm resulting from the proposals would be at the low end of less than substantial is misconceived. The proper judgment on harm lies further up the spectrum; on HE's analysis a finding of moderate harm is justified.

Strand on the Green Conservation Area (SotG CA)

9.37 The SotG CA was designated in 1968, the year after the enactment of the Civic Amenities Act which enabled such protection, and was the first designation in Hounslow, suggesting that its custodians prioritised the protection of its distinctive and substantial heritage value. It contains 23 listed heritage assets,

[378] CDI4 [12.107]/138.

of which the group at 64-71 SotG, including the Grade II* listed Zoffany House[379], are of particular importance for present purposes.

9.38 The CA appraisal[380] confirms its special interest (see s2 above).

9.39 The view from the Kew tow path on the south side of the river, as a *continuous unfolding view* is one which is accepted as *vital to the character, appearance and appreciation of the significance* of the area.[381]

9.40 It was agreed that views from the south side of the river are of particular importance; and that significance derives from a carefully balanced composition of river waterfront and uninterrupted sky, the latter of which makes an important contribution to the significance of the area.

9.41 The appraisal specifically recognises how harm to significance has been caused by recent development, in particular from views on the Richmond side of the river.

9.42 The views from the south riverbank *and along the Strand… and therefore the setting and appearance of the conservation area, have been and continue to be compromised by tall building developments to the west*. When dealing with weaknesses it advises that *it is important that the richness, diversity and beauty of this historical waterfront is respected*. This *requires the protection of its setting, skyline and backdrop from intrusive development*, because *the skyline of Strand on the Green is broken in on and intruded by the BSI tower at Gunnersbury, with the potential for the Citadel scheme to be finished and have the same impact and this should not be replicated*. The height of the BFC development has also *caused some harm*. *Threats* are highlighted as arising from *appeal decisions approving inappropriately tall and bulky buildings will put the character and appearance of this conservation [area] at risk of significant loss and harm. The skyline is especially vulnerable to inappropriate change*[382].

9.43 The clear – and agreed - point that emerges from the appraisal is that the skyline is particularly vulnerable as a result of existing development which detracts from the significance of the area.

9.44 This significance is revealed at View 23, standing on the public towpath on the south of the river[383]. As explained by HE, despite suggestions that a more important orthogonal view of the Strand is available further upstream, this location is of great importance because here the viewer, travelling westbound towards Kew, emerges from behind Oliver's Island, which roots the perception of the CA and its waterfront listed buildings in the Thames landscape, reinforcing the visual appeal and the sense of a place of historical continuity. At this point angled views allow the greatest appreciation of the length and flow of the Thames with the attractive and modestly scaled historic waterfront, including the tight grain of the group of listed properties standing side by side

[379] See CDG1A p. 18. Running east to west: Magnolia House (64), Zoffany House (65), 66 and 67, Carlton House (68 and 69), 70 and 70A, 71 (all Grade II except Zoffany House).
[380] CDG1A.
[381] Ibid 7.2
[382] Ibid 11.4
[383] See the new AVR material in CDN, 34-7; see in particular the unpaginated "Views for On-Site Assessment View 23.

looking onto the river. An important element in the view is the core of listed buildings, including Grade II* Zoffany House, that form the architectural riverfront. The open sky settling is a key element of significance here, as it anchors SotG in its context as an historic riverside settlement that pre-dates the expansion of modern Greater London by centuries. View 23 is in the end accepted by the Applicant as an important representative viewpoint for assessment.

9.45 From this location there can be seen to the west some of the larger scale buildings in Brentford. These are agreed to detract from the significance of the area, even if they are perceived further to the west of the immediate skyline of the listed buildings in these best views from the opposite bank of the river. In the backdrop however there rises the BFC development, behind Rivers House, which creates a sharp contrast with the traditional riverside buildings of the CA, causing harm to their significance. The emergence of this new development, in addition to existing development at Brentford, as well as the recently consented 1-4 CIW scheme, clearly emphasises the particular vulnerability and risk to the skyline that is highlighted in the CA appraisal, by giving the impression of development moving inexorably east from Brentford.

9.46 It is agreed that the source of harm which arises from the proposals is a taller element in the view drawing the eye away from this relationship between historic frontage and river. It is agreed that *any* impact on the interaction between the buildings and the river should attract particular weight.

9.47 From View 23 the proposal has an extreme degree of prominence and dominance, on its own and cumulatively alongside BFC and 1-4 CIW in particular. It does not matter here that there would be no physical interruption in space between the riverfront and the river. The important point, as accepted by the Applicant, is that this development would draw the eye away from the frontage. It is agreed that the proposals would exceed the height of any of the buildings in the CA more than twice over. They are much higher, too, than the larger scale buildings in the western part of the view. Their form and scale lack any relationship with the low-lying historic buildings with which they would be seen. In fact, moving into the view of the Strand buildings from the west, it is agreed that the scheme has been deliberately designed to step up in height, producing a very pronounced change in scale, at the very point of greatest vulnerability to further harm to both the CA and the core group of listed buildings.

9.48 As explained, the result is a competitive built form, the scale and massing of which distracts from the appreciation of the area's historic riverside setting, in a context where detractors have already caused loss to the significance of the assets in question. The design is characterised by notable height and by the expression of contemporary architectural forms which are associated with high density *anywhere* urban structures lacking any real connection to their context. The new buildings would read as a dense mass of clustered vertical forms, emphasising the blocked form of 1-4 CIW behind, distracting the eye from the calm of the riparian character of the CA through their large scale and irregular geometry. They would be completely at odds with the scale and appearance of the well-preserved and relaxed, village-like form of buildings gathered at the water's edge.

9.49 The Applicant has argued that in kinetic views westwards the scheme would move away from the historic frontage views, but it is clear from the images that the scheme appears for part of the selected journey and even when the scheme moves further west from the frontage as the movement continues westwards, it would still dominate the perception of the setting. If built, the Citadel would hove into view in any event. The impact of the scheme would not therefore be isolated to a single location and would harm kinetic views. The harm that would be caused in part of the kinetic view, or even View 23 itself, should not be somehow downgraded or treated as if forgotten by the moving viewer in this part of the Thames.

9.50 The architectural detailing, which the Applicant wrongly claimed as mitigating the effect of the scheme, simply does not have any meaningful influence on how the fundamentals of these buildings are read as a whole. It is agreed that this detailing has a vertical emphasis which itself draws up the eye and that the dominant influence on the setting of the heritage assets is instead the height and scale of the scheme.

9.51 The scheme would add a domineering, urbanising group of structures quite alien to the riverine surroundings. The visual primacy currently enjoyed by the historic buildings of the architectural riverfront would be subverted to the new development. It would bring into this rare survival of London's exceptional historic environment a stark and unavoidable clash of character. Its encroaching presence would magnify and exacerbate existing and consented impacts including the BFC development which are already apparent due to their irreconcilable difference of scale, material and form. The effect of allowing this development, would be to place the CA closer to the tipping point where its significance is very much reduced. The introduction of the Citadel would reinforce this conclusion.

9.52 HE is therefore entirely justified in concluding that the harm to the very high significance of the SotG would be in the upper realms of less than substantial. The judgments of the Applicant (low end of less than substantial) and the Mayor (moderate within less than substantial) on the other hand are simply untenable.

9.53 A striking feature of the Applicant's evidence is, again, how its judgment on the degree of harm has been wrongly informed by factors which are assumed to reduce or qualify that harm. First, it agrees that what can be seen of BFC is relatively poor. It agrees that even behind the scheme 1-4 CIW causes some harm and detracts from the significance of the heritage assets, because it would be visible in whatever spaces are left between the blocks of the proposals (albeit that the proposals would be higher and closer). It also takes the view that the Citadel would cause harm and have a *jagged and expressive view which attracts attention*.

9.54 But it again calibrates its judgment on the degree of harm arising from the proposals on the grounds that *the effect is an intensification of an existing one, not an entirely new one*. This approach undermines the objective of heritage policy and guidance by treating existing detractors as somehow mitigating harm when, on the Applicant's own evidence, the significance would be further diminished. The inexorable result is that on this ground alone the Applicant again depressed the proper judgment on harm.

9.55 Secondly, the Applicant relied on the supposition that the backdrop is to change anyway, and that harm is already deemed acceptable. The crux of this issue related to the claimed reliance on emerging policy to generate further tall buildings which would inevitably appear in the backdrop to the CA and the listed buildings.

9.56 This approach is also misconceived. A number of points arise:
- the IPLP no longer specifically identifies OAs such as the GWC as suitable locations for tall buildings. Nor does it contain minimum targets for development - only indicative capacity - for local authorities to take into account. The location and extent of tall buildings is left to local authorities to determine through the development plan process[384];
- it is common ground that the relevant emerging policy for the GWC, in the form of the LPR[385] can only be afforded limited weight;
- the issue of how much development is to come forward, or where it might be located, or in what form, is therefore far from settled. As the Applicant agrees, it is not possible to reach any reliable conclusions at this stage on where any tall buildings will be located;
- that applies with particular force here, when the Council's own CA appraisal has recognised the risk to important views of SotG; and as explained further below, the emerging plan is based on studies which expressly rule out impacts arising from this scheme;
- in this context, any suggestion in the CC decision, that protecting Kew (or SotG) from further visual intrusions *is a battle that has been fought and lost*[386] should not now be taken to apply, as the Applicant accepts[387]. The observations of the Inspector that Mayoral policies *strongly favour the development of the [GWC]…with tall buildings as an integral part of that approach*; that *the Council favours 60m-high development on the appeal site*; and that the Mayor is *prepared to accept* the Citroen proposals do not take into account the latest evidence: the strong objections to the LPR policies on heritage grounds; the explicit opposition to this scheme in the LPR; and the call-in of these proposals by the SoS;
- in fact, to the extent that weight is given to the LPR, its strongest indications are that development of this scale on this site is unacceptable. The strategic objectives of the review include *protecting heritage*[388]. Under Policy GWC5 schemes are to be designed which *avoid any further harm to the setting, views, significance, OUV of the [RBGK WHS] and other designated heritage assets and their setting*. The Masterplan and Capacity Study[389] also explains that tall buildings proposals must *demonstrate how they avoid harm to the significance of assets*. It is now agreed that there is nothing in the study which indicates any support for a tall building such as those proposed on the Citroen site; and that explicit opposition to the scheme appears in the Masterplan.

[384] See CDC5A, Policy SD1 p.p. 31-2; Table 2.1 at p, 38; Policy D9B p. 149.
[385] CDD5: GWC LPR Reg 19 Consultation supported by a Masterplan and Capacity Study with appended Views Assessment (CDD7 and 7A respectively) is subject to objections from parties including HE and RBGK (and the Mayor).
[386] CDI4 [12.107].
[387] Connell xx.
[388] P. 31, Objective 12; see too p. 64, 65.
[389] CDD7.

9.57 The Applicant has therefore underplayed its judgment on a further misconceived basis. It again relies on harm to justify more, but this time by anticipating harm which can on no sensible basis be assumed to be coming.

9.58 The evidence of the Mayor was also unsatisfactory, even it was closer to the assessment of HE that views from the southern bank of the Thames are *vital*, *integral* and *fundamental* to the significance of the CA; also that the setting of the area makes a substantial contribution to its significance, and that the *largely uninterrupted sky* was a particular feature of views in that setting. On that basis, moderate harm would be caused by the proposals even disregarding any cumulative assessment.

9.59 Despite affirming the need for a cumulative assessment which properly takes into account other detractors, the Mayor's evidence suggests that this is not actually the approach which has been followed. The proposals would, it is said, not look obviously taller or more prominent than existing buildings. That is plainly incorrect, but in any event, it has the sense of using the existing buildings (accepted as detractors) to justify the new ones. Similarly, there are odd judgments that the scheme would contribute positively to the skyline and in particular *nestle quite happily* into the existing context. The *nestling* image is extremely inapt; again, its use suggests that the extent to which there has already been a loss of significance to the CA was not really taken into account.

9.60 There is a further spurious basis for the judgment on the moderate level of harm. According to the terminology adopted by the Mayor, this finding involves a *high adverse* magnitude of change which is defined to mean a *radical transformation of the setting of built heritage asset*. This would lead the Mayor to a conclusion that there would be potentially a *major* significance of effect (close to HE's assessment) if it were not for the *mitigation* offered by the design of the scheme, which reduces the residual effect to *moderate*.

9.61 But, the design of the scheme is driven by its sheer divergence in height with the historic context. View 23 confirms that the skyline development is not varied to any meaningful degree; the primary impression is of a serried verticality which actually worsens as the eye moves along to the skyline above the lower-lying historic buildings in the important views. *Surface relief* and *material finishes* are also relied upon as mitigation, but on the Mayor's approach this is flatly inconsistent with the view that it is not feasible to appreciate the architectural qualities and detail of the historic buildings which lie closer to View 23. These mitigating features of the scheme in reality come nowhere near downgrading the judgement on major harm to the extent relied upon here.

9.62 For all these reasons the judgements reached on the harm to the CA and listed buildings by the Applicant and Mayor do not withstand scrutiny. Whilst they both rightly acknowledge harm to the significance of these heritage assets, both underplay the true extent of harm. The HE approach should be preferred.

Kew Green

9.63 Kew Green was designated as a CA in 1969, is part of the WHS BZ and contains 38 listed buildings, four at Grade II*. The CA appraisal[390] explains that it was

[390] CDG2.

designated as an *historic open space, the associated high quality of mostly C18th development and its superior riverside development*. The area is *made attractive by its abundance of mature street trees and it forms a visually cohesive area with an easily identifiable sense of place*. It has *a definite village character*. The Green includes *a fine example of an historic Green, with the entrance to Kew Gardens to the west, and is surrounded by large C18th and C19th century houses, many of which are listed and which through the quality of their architecture add formal grace to the central area*. The appraisal identifies *problems and pressures* including *development pressure which may harm the balance of the river and landscape-dominated setting, and the obstruction or spoiling of views, skylines and landmarks*.

9.64 Almost every building bordering or contained within the Green is listed, and although most date from the late eighteenth or early nineteenth centuries, some are older still. The common land is a rare and well preserved example of a large green at the centre of a London village, even including a cricket pitch and pavilion.

9.65 The setting of Kew Green is integral to its significance. Its character and appearance are upheld by the sense of broad open space, given a clear boundary and sense of enclosure by the line of well-preserved historic buildings and trees at its edges. It is traditional, aesthetically pleasing, and valuable for its immediately appreciable character as an historic place largely set apart from the modern city beyond. In key views a mostly uninterrupted skyline, viewed beyond trees, is a key element of setting which reinforces this significance, as the CA appraisal recognises.

9.66 These features are all apparent in the representative Views 20 and 22. It is agreed that there is a historic uniformity to the streetscape with little modern development; and that the well-preserved skyline is an important aspect of the character of the area which reinforces the significance of the village character.

9.67 It is also agreed that the proper approach to assessing harm is to consider the extent to which the scheme lifts the eye and so disturbs the relationship between the open space and the historic buildings which bound it.

9.68 The difference between the parties is that HE categorises the proposals as causing a moderate level of less than substantial harm. The Applicant says there would be no harm at all and that the cumulative condition would not increase the perceived impact or effect. The Mayor claims that the impact would be *negligible adverse* but with the mitigation offered by the architectural design this would be reduced to a *neutral* residual effect, which does not change under a cumulative assessment.

9.69 The judgements of both the Applicant and Mayor are not a fair reflection of the visual material before the Inquiry or how the proposals would be perceived in the relevant views.

9.70 It is difficult to see how the eye of the viewer could avoid being diverted from the fore- and mid-ground relationship between the historic buildings and the green. In View 20, from this east part of the Green, even with the distance

involved[391], the scheme would appear through a gap in the trees, above the roofline of the existing Grade II listed late Georgian terrace at Nos. 90-96 Kew Green. It would rise prominently within the view, introducing modern development that lifts the eye and thereby interrupts the skyline formed by the early 19th century buildings fronting this part of the Green. The currently harmonious combination of foreground open space and a background of traditionally scaled buildings and trees that makes Kew Green instantly recognisable as one of London's best remaining village greens would be encroached upon, by the conspicuous height and form of modern development. The materials and detailing of the development are unlikely to be readily appreciable in this view, and its solidity will be visually arresting. The development may reflect sunlight at particular times of day, and in the evening and night it would appear unusually prominent.

9.71 This effect - relating to up to 6 visible storeys - cannot seriously be described as scarcely noticeable or *neutral*. Indeed, it is difficult to see how under the Mayor's methodology there could be a degree of harm which is somehow rendered neutral by the architectural quality of the scheme. If the presence of the building is judged to cause harm, this must be caused by reason of its perceived height and massing. Other aspects of the detailed design cannot conceivably remove that harm. The Applicant takes a similarly confused approach – relying upon the separation of distance to avoid potential harm but at the same time claiming an ability – at that distance - to discern the finesse in the detailing. In reality the details will not be readily appreciable, but the viewer will be distracted by the unsympathetic scale and massing of the scheme.

9.72 Similar concerns arise in respect of View 22, in the south-west corner of the Green. In this view, the development would appear above the treeline and height of the existing buildings and would become the tallest element in the view (as with View 20), introducing modern development that again disrupts the historic low scale of the skyline formed by the buildings fronting the Green, which currently screens modern London from the view and helps preserve the village character here. The proposals would permanently alter this relationship, undermining the character of the Green.

9.73 The Applicant also produces View 20B, but this confirms wider impacts and shows the scheme rising intrusively into a clear gap between historic buildings that currently directs the eye to the clear skyline and reinforces the character of the area.

9.74 Claims about the orthogonal or glimpsed nature of views and the complementary architectural form are misplaced. Right-angled views do not temper the prominence of the buildings, which would appear assertively above the roofline with little discernible detailing. The blocked form of the scheme would not be read harmoniously with the contrasting refinement and scale of the historic buildings on the Green.

9.75 The Applicant and Mayor refer to traffic running through the Green, but this does not affect the important visual relationship that is agreed to provide the defining contribution to the heritage significance of the area. Again, even if it

[391] C. 800m from the viewing positions.

were perceived as a detractor, this can hardly be used to justify an accumulation of harm.

9.76 Other developments will or would have an impact on Kew Green and its listed buildings. In View 20, the consented BFC scheme would be largely screened by trees, but would be noticeable. In View 22 it would appear slightly above the roofline of the Grade II listed building at 71 Kew Green. This unwelcome development would cause harm to the setting of these heritage assets, albeit that it would be screened more by trees and be perceived at a lower level than these proposals. The current proposals, however, would cause further harm. In View 20, part of the Citadel proposal if built would be intrusively visible next to the 1920s mock Tudor Greyhound pub, reinforcing the sense of significance being lost due to the appearance of modern development in the backdrop.

9.77 Overall therefore HE's judgment (moderate harm) is to be preferred to findings of no harm, which are unrealistic even on a cursory view of the visual material.

9.78 HE does not often consider it necessary to remark on the interpretation of development plan policy dealing with heritage issues, but the failure by the Mayor in particular to acknowledge clear breaches of strategic and local policy requires comment. So too does the position with emerging policy.

9.79 The policy analysis in this case, as in any other, must apply the statutory presumption in favour of the development plan. The development plan in this case comprises the extant LonP and the adopted Hounslow LP.

9.80 The starting point for the application of heritage policy is that all parties conclude that the scheme would cause harm to heritage assets.

9.81 On a straightforward approach to LonP policy, the scheme would therefore fail Policy 7.10[392]. The Policy states that *development should not cause adverse impacts on [WHS]s or their settings…In particular, it should not compromise a viewer's ability to appreciate its [OUV], integrity, authenticity or significance*. In this case the words *in particular* are to be read as falling within the scope of the previous test. When that test is applied, adverse impacts are accepted by all to arise in this case. The Mayor is simply wrong to argue that the policy is satisfied despite acknowledged harm to the WHS.

9.82 A similar error is made in respect of Policy 7.8[393] which applies to heritage assets generally. It states that *development affecting heritage assets should conserve their significance*. Again, the Applicant rightly concedes that there would be conflict with this policy because to harm is not to conserve. The Mayor however has argued that even though proposals cannot cause harm and still *preserve*, they can cause harm but still conserve under this policy. This is apparently because (a) the IPLP and NPPF Glossary definition of conserve refers to significance being *sustained* which allows for some harm to significance to arise; or (b) the public benefits of the scheme may nonetheless mean it is acceptable.

9.83 These interpretations are misconceived. In relation to (a) there is in ordinary English no justification for distinguishing between *preserve* and *conserve*. There

[392] CDC4 p. 299.
[393] CDC4 p. 295.

is no meaningful distinction between *conserve* and *sustain* which conceivably allows harm to be caused whilst *sustaining* significance. As regards (b), from wherever this approach is drawn it adds wording to the policy which is simply not there. When this interpretation was applied in questioning to the moderate harm which the Mayor considers would arise in respect of SotG, there was simply no answer as to how this could possibly square with the conservation of significance under the policy. The proposals would therefore breach Policies 7.8 and 7.10 of the LonP.

9.84 Policy 7.7 also requires that impact of tall buildings in sensitive areas should be given particular consideration, including in the settings of listed buildings. Where such consideration concludes that harm would be caused, no support for the proposals can be derived from this policy. The policy also requires buildings to *enhance the skyline and image of London*. If they cause harm to heritage assets, by reason of impacts which arise (as in this case) from development on the skyline then they do not enhance it and conflict with Policy 7.7 arises. This approach accords with that taken by the SoS in the CC decision[394]. It should be followed here. For similar reasons there would be a conflict with Policy CC3 of the Hounslow LP. The Applicant also accepts a breach of Policy CC4.

9.85 Whilst HE leaves the judgement on overall compliance with the development plan to the SoS, it is right to record agreement that the importance of breached policies and the depth of conflict with them are relevant factors when reaching that judgement. Breach of policy protecting the WHS, an internationally-designated heritage asset of the highest possible significance, is accepted to be capable of involving breach of the development plan as a whole. So too is conflict wider heritage policy, particularly bearing in mind the multiple sources of harm in this case. Given the permanent and irreversible harm held in prospect by these proposals, there is ample scope for a finding that they would conflict with the development plan taken as a whole.

9.86 Policy is also emerging at strategic and local level. The IPLP is to be given significant weight given that it has reached EiP stage and it may be part of the development plan by the time the SoS reaches his decision, so this eventuality is addressed below.

9.87 Context is important here. It is agreed that the impetus for new policy on WHS in the IPLP was concern expressed by ICOMOS that the existing plan was not sufficiently effective to prevent negative impacts on WHS. The IPLP requires that proposals *conserve…their OUV, including the authenticity, integrity and significance of their attributes*.

9.88 Against this background, the Mayor again posits that harm to the WHS is consistent with the *conservation* required by the policy. To advance this misconceived proposition, and thereby undermine the rationale of the policy at such an early stage in its application, is of significant concern. The acknowledged harm in this case unquestionably causes a breach of this policy.

9.89 The same point applies to Policy HC1. This policy requires that *proposals affecting heritage assets and their settings should conserve their significance*.

[394] See CDI4 [23] and [20]. See too the approach to policies 7.8 and 7.10 in the Westferry Printworks decision at DL [41].

Indeed, the same paragraph of HC1 advises that proposals *should avoid harm* which, on the Mayor's own policy wording, contradicts his interpretation (of both published and emerging policy) that allows harm to be equated with conservation. There are clear breaches of the heritage policies in the IPLP.

9.90 Tall buildings policy has also moved on. Under Policy D9 proposals *should make a positive contribution to the existing and emerging skyline*. This would be breached, as explained above. Buildings in the setting of a WHS *must preserve, and not harm, the OUV…and the ability to appreciate it*. Even on the Mayor's own approach, which at least assumes *preserve* means *no harm*, that must mean conflict with the policy.

9.91 The policy also requires that proposals should avoid harm to the significance of heritage assets more generally, but recognises that this requires clear and convincing justification *demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm*. This is addressed further below, but even at this stage there are clear breaches of heritage policy in the IPLP which add to the conflict with development plan policy as set out above. If these policies are formally published by the Mayor they would then plainly amount to a conflict with development plan policy even if existing London Plan policies fall away.

9.92 Emerging policy at a local level is set out primarily in the GWC LPR. As above, it is common ground that this review should be given minimal weight, given its stage of preparation and the objections made to it by parties including HE. Suggestions in the evidence that further harm in views from RBGK or towards SotG is inevitable are therefore misplaced and premature. If any weight is to be accorded to this emerging policy, it is in fact against the scheme.

9.93 Other material considerations include the Richmond LP, as well as the WHS MP. Both contain policies which would be breached by these proposals. These policies would also be breached. The MPlan is to similar effect. These policy conflicts are also to be marked against the scheme.

9.94 The NPPF is obviously an important material consideration. HE recognises that it contains an established balancing exercise between less than substantial harm and public benefits. It leaves the assessment of benefits to the Inspector and the SoS, but in the light of evidence that has been heard at the Inquiry asks that the following issues are considered.

9.95 First, it is important that the statutory presumption in favour of the development plan, properly interpreted, is applied. The Mayor has not done this correctly. Second, when ascribing relevant weight to extant and emerging policy and the balancing exercise (including public benefits) in the NPPF, it is necessary to bear in mind the protection to heritage assets, in particular the WHS, which the IPLP, prepared in the context of the NPPF, is intended to provide. If recently examined policy is intended to assuage the concerns of ICOMOS about harm to the OUVs of WHS in London, great caution should be exercised when considering whether to allow development contrary to that policy at such an early stage in its application.

9.96 Third, the IPLP requires developers proposing tall buildings to demonstrate that alternatives have been explored[395]. This policy follows on from HE guidance on tall buildings which suggested that providing a clear and convincing justification for any harm *may involve the examination of alternative designs or schemes*[396].

9.97 Notwithstanding this guidance, the relevance of alternatives was also accepted by the SoS in the CC decision; and these are not restricted to consented schemes[397]. There is no reason why a similar approach should not be taken here, particularly now that IPLP policy requires an alternatives assessment. Indeed, the Applicant has chosen, belatedly, to provide a note on alternative scheme designs[398].

9.98 The IPLP policy is accepted by the Mayor to impose an obligation on the developer to produce evidence of attempts to see how other options could avoid or significantly reduce harm and deliver benefits of a similar order. Further, it is not necessary for the benefits to be exactly the same as those which could arise from the scheme as proposed.

9.99 Against this context, we ask that the evidence provided by the Applicant is scrutinised carefully. The Applicant accepted during the Inquiry that it had not carried out the exercise of looking at whether an alternative development could avoid harm to the WHS and other heritage assets. This perhaps explains the production of the late note; nonetheless the note gives the impression of a hasty and inadequate retrofit of an alternatives assessment onto a design process that is now being exposed, not least for relying on heritage advice that the Applicant now concedes to have been wrong.

9.100 The note[399] includes an alternatives assessment of a 12-storey scheme[400] which assumes (a) the maintenance of a height differential between blocks at current levels; and (b) no change to the layout of the scheme[401]. It is wholly unclear why this extent of height difference is necessary when set against potential reductions in heritage harm. There are no visuals to assist. The failure to consider any change in the layout of the scheme is also flawed, not least because we have been told that the proposals substantially overprovide for open space. The Applicant has already accepted that the scheme is not as far as it is concerned the only high quality design solution for this site, and there appears to have been no effort to meaningfully test this view to see if a scheme could be devised to avoid or significantly reduce the harm whilst

[395] CDC5A p150.
[396] CDG10 [5.5]. See s3 above and note the reference to cumulative harm. See too CDG8 at [26]/8.
[397] CDI4: "36. The Secretary of State considers that there are benefits to be provided through the creation of workspace, and in terms of supporting economic growth and productivity. However, he considers that it could be possible for an alternative scheme with lesser impacts on designated heritage assets to also provide benefits of this type. For example, the Citadel scheme, should it proceed, would offer benefits in terms of job provision, and would comply with the Council's emerging policy for this area" [emphasis added]. In that case the reference to alternatives was made in the context of a particular type of benefit but the Secretary of State was generally considering alternative schemes and so the approach is of wider application.
[398] Within the Note on "Response to Inspector's Further Questions, 27/1/20".
[399] Ibid
[400] See [5.1-3] and Appendix 1b.
[401] The same assumptions are made in the viability note.

providing a similar level of benefit. No full and transparent options analysis has been carried out.

9.101 Another aspect of the note deals with whether the Applicant could divert the grant it receives for this scheme under a strategic partnership deal with the GLA, which aims to achieve 60% affordable housing across its portfolio of London sites. The note still does not adequately resolve this issue.

9.102 It is critical that the SoS appreciates the scope and extent of harm that would arise as a result of this scheme, and the importance of this decision for the future of Kew Gardens and the CAs nearby. The SoS needs to apply development plan policy and have regard to newly prepared IPLP policy which has been specifically designed to address ICOMOS concerns about the protection given to London WHSs. This case is an early test of that response. The advancement of London as a world capital, or of the GWC as an OA, does not make continually creeping harm to these (or other) heritage assets inevitable or acceptable, however many developers exert pressure for tall buildings proposals in this area.

9.103 Any harm to the significance of a heritage asset must be given great weight; and the more important the asset, the greater the weight must be given to its conservation. Any harm to the setting of a listed building gives rise to a strong presumption against the grant of planning permission. In this case, there is harm to several heritage assets, including national and international designations of the rarest and most exceptional importance. Further harm would arise to heritage assets of the highest significance at the WHS and the Grade I Orangery; and to highly valuable CAs which are unique in maintaining a link with London's riverine and village history, including the SotG where the harm would be particularly significant. Harm would also arise to the setting of listed buildings in these areas. This accumulation of harm is of serious concern to HE. The greater the weight that is accorded to the harm that would result from this scheme, the greater the weight of benefits that are required to provide the clear and convincing justification for its approval.

Additional comments

9.104 HE confirmed[402] that the High Court decision does not amend its position as set out in evidence to the Inquiry adding that any reference to the (CC) in the Citroen proceedings can now be read as being subject to a challenge which was dismissed by the High Court.

9.105 Following the the further delay to the IPLP, HE added that the heritage policies *HC1 Heritage conservation and growth* and *HC2 [WHS]s* in the IPLP are not subject to disagreement between the Mayor and the SoS, increasing the weight that can be attached to them. Indeed, they should now be given greater weight than the corresponding policies in the current LonP.

9.106 The adopted MPlan expands on the contribution setting makes to the OUV of the WHS, thus strengthening the position taken by HE at the Inquiry[403].

[402] Response dated 25 March 2020
[403] See references to s3.3 in PID10

9.107 The Applicant referred to the Westferry decision in closing as an example of a case where harm to heritage assets, including a WHS, was not an insuperable obstacle to planning permission[404]. That reference is not apposite given the quashing of the decision.

10 The case for the Royal Botanic Gardens, Kew (RBGK)[405]

The gist of its case is as follows. See closing[406] for full details.

10.1 All 5 heritage witnesses agreed that the scheme would harm the significance of:
(i) the Grade I listed Orangery - an iconic[407] and keynote building within Kew Gardens; and
(ii) the OUV of the Kew Gardens WHS. It would intrude into the visual envelope of the Gardens further harming historic assets of the *highest significance* which *regrettably*[408] are already adversely affected by other harmful development – both existing and consented.

10.2 Setting is key to the OUV of a WHS[409]. The Mayoral SPG states that: *[t]he setting of a [WHS] is recognised as fundamentally contributing to the appreciation of a [WHS]'s [OUV] and changes to it can impact greatly, both adversely and beneficially, on the ability to appreciate its [OUV]*[410]. The setting of a WHS is not confined to its BZ[411]. Kew's setting is a key part of its OUV and so its significance. The CC Inspector found that: … *the experience of the designed and historic cultural landscape of Kew Gardens, the iconic architectural legacy … is revealed and enhanced*[412] *by the ability to appreciate these qualities in a well preserved environment that still resonates with the sense of an Arcadian escape from the world of intense city living*[413].

10.3 RBGK is the custodian of the WHS on behalf of the UK Government[414]. It is deeply concerned by the harm that would be caused to the WHS and is wholly unpersuaded that the scheme's benefits would come anywhere near to

---

[404] ID39 L&Q §24
[405] *Kew Gardens* is used to describe the physical site of the gardens - *The Royal Botanic Gardens, Kew* - which has the World Heritage Site inscription. In contrast *RBGK* is used to identify the legal entity that now occupies and manages the site: *The Board of Trustees of the Royal Botanic Gardens, Kew*
[406] ID39
[407] Mr Dunn for HE described the Orangery as being part of Kew Gardens *iconic architectural legacy* and *one of the most important buildings* in the Gardens; he indeed said that the Orangery *represents the OUV*. See Mr Croft at section 6 for a more detailed account of its importance.
[408] Dr Miele's characterisation as used in his EinC.
[409] In XX Dr Miele declined to accept this as a general proposition; but it is clear from the policy documents including the Mayoral SPG, CDC16, that this is the position. Dr Miele's refusal to accept this is telling. It is part of a larger picture of his underrating the importance of the setting of Kew Gardens WHS.
[410] See CDC16, §1.3
[411] See e.g. also the Mayoral SPG at §3.19, the current MPlan at §8.1 (CDG6) and the PPG (CDC02) §§26, 32 and 33 which refer to the BZ as forming only *part* of the setting. See also CDI4 §12.102.
[412] Mr Dunn in XX by Mr Warren said that setting was *integral to understanding of the OUV as a whole* and … *setting is a fundamental component [of OUV]. Ability to understand depends to a large extent on setting.* Mr Croft agreed. In RX Mr Dunn added that it was *best understood in its well-preserved setting* and because *the attributes of OUV rely on setting*.
[413] CDI4, §12.103.
[414] CDG21 section 8.2, and see further the section on *Ownership and Governance of the Site* in the letters from the RBGK in Croft App F.

outweighing such harm. Its objections draw support from HE[415], LBC and LB Richmond. The RBGK witness has unrivalled experience of the WHS. The Applicant's (and the Mayor's) arguments must be treated with caution[416] as they would lead to a *death of a thousand cuts*. Other WHSs similarly threatened with tall development outside their boundaries, including Liverpool Maritime Mercantile City, are now threatened with de-listing. While the views of ICOMOS are as yet unknown, it objected to the *CC* and *Albany* schemes and so is likely to share HE's concerns. Current detractors[417] already cause significant harm to the setting and OUV of the WHS and are at the very upper end of less than substantial harm.

10.4 WHSs are inscribed because their OUV is of such exceptional significance as to transcend national boundaries and to be of common importance for present and future generations of humanity[418]. They are by far the rarest[419] designated heritage assets in the planning system and indeed on the planet. Article 4 of the UNESCO Convention[420] imposes *important and emphatic*[421] obligations for the *protection, conservation, preservation and transmission to future generations of* WHSs. The UK Government gives effect to these obligations through the planning system[422]. The NPPF confirms that WHSs are *assets of the highest significance[423],* they are the most significant of heritage assets and thus sit at the top of the tree[424] of heritage protection. The PPG says that the OUV of a WHS *set out in a Statement of [OUV], indicates its importance as a heritage asset of the highest significance to be taken into account …*[425].

10.5 The current MPlan is *an essential tool for conserving, enhancing and managing [WHS]s and appropriate weight should be given to implementing the relevant provisions within them*[426]. It is expressly referenced in a number of the relevant

[415] As *the Government's adviser on the historic environment* and as a statutory consultee. Its views should be given considerable weight and only departed from for good reason: *R (Hayes) v York City Council* [2017] P.T.S.R. 1587 at §92. Dr Miele accepted in XX that is very rare indeed for HE to appear at an inquiry to oppose a scheme.
[416] Items (i) to (v) in §8
[417] Agreed between the key stakeholders on the WHS Steering Group: Including HE, the LB of Hounslow and the GLA – see their responses to the draft MPlan in Mr Croft's App F
[418] See the Operational Guidelines, CDG18 §49 and the PPG, CDC02, §28.
[419] There are only 18 cultural WHSs in England and just 4 in London, compared to over 1000 conservation areas, 19000 listed buildings, 150 registered parks and gardens and 150 ancient scheduled monuments: see the LonP, CDC04 §7.30, p. 297.
[420] The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (the Convention). See the annexes to the draft MPlan 2019 (CDG21) for the text of the Convention.
[421] In XX Dr Miele rightly accepted this description of the duties as being correct. See the draft MPlan (p.9)
[422] See the PPG, CDC.02, p 25 §26. With regard to *the statutory designation process* Kew Gardens WHS has 56 individual listed buildings and structures, ranging from Grade I to Grade II: see Mr Croft's proof at §5.4.1.
[423] CDC1 §194b) and see Dr Miele's answers in XX.
[424] See the NPPF, CDC1 §184, Dr Miele's proof §6.2 and his answers in XX.
[425] *by … the Secretary of State in determining such cases … following call-in* - see CDCO2, §26 headed *Why are World Heritage Sites important?* and see also §32 *World Heritage Sites are designated heritage assets of the highest significance.*
[426] See the Mayoral SPG, CDC16 §2.21. We have already seen above the importance the Mayoral SPG attaches to MPs in helping to define the setting of a WHS.

Development Plan policies. The Statement of OUV (SOUV)[427] emphasises the historic designed landscape and architectural legacy that differentiate Kew from other Botanic Gardens across the world[428]. The SOUV's concern that *[d]evelopment outside this [BZ] may threaten the setting of the property*[429] goes to the integrity of the WHS. It identifies visual intrusion outside the WHS BZ north of the River as a major threat to its setting, its OUV and significance[430]. The Mayoral SPG recognises that Kew's setting is different from the other three London sites which are all far more urban: two are city centre while Greenwich is close to Canary Wharf[431]. This SPG expressly acknowledges that the character of the landscape is one designed to allow escape from the City[432].

10.6 The CC Inspector found that: *[i]f one accepts, and I do, that the experience of the designed and historic cultural landscape of Kew Gardens, the iconic architectural legacy, and the living plant collections, is revealed and enhanced by the ability to appreciate these qualities in a well preserved environment that still resonates with the sense of an Arcadian escape from the world of intense city living*, then the visibility of the city beyond, *would have something of a harmful impact on the setting of Kew Gardens, and as a result, the OUV of the WHS, and its significance and the significance of the [RPG] and the [CA]*. The Inspector went on to say *[i]f one accepts that part of Kew Gardens' significance as a designated heritage asset is its status as an escape from the city, then any intrusion by that city must be harmful*.

10.7 The draft MPlan [now adopted] identifies the importance of its setting[433] and strongly emphasises Kew Gardens being *separated from the everyday world outside*[434]. This sense of enclosure underpins the character and OUV of the WHS[435]. Even after it was opened to the public the site retained an element of

[427] After 2005, UNESCO required all WHSs to produce a SOUV, a Statement of Integrity and, for cultural sites, a Statement of Authenticity, along with a description of Protection and Management Requirements. The SOUV for Kew Gardens was submitted by the UK Government to UNESCO and adopted in 2010 (CDG12).
[428] See Mr Croft's proof at §5.3.2 and his IC
[429] The *property* here means the Kew WHS. Dr Miele suggested that this was standard wording for all WHSs located within cities but Mr Croft in his IC explained what while the other 3 London SOUVs include reference to threats to their setting the particular wording here is bespoke to Kew Gardens.
[430] See Policy 3(h)
[431] P35: Kew Gardens is *some nine miles from central London*, that it *is the most self-contained of the four sites* and that *its immediate surroundings are domestic*
[432] See p. 59.
[433] See Croft section 5.7.4, and IC summarising that the setting provides: (i) an unbroken skyline maintaining a sense of a world apart; which (ii) enables a visitor to appreciate and understand landscape design; (iii) areas of openness and big sky that frame internal views; (iv) the backdrop to key views and vistas across the Great Lawn; and (v) the backdrop to views of key buildings including the Orangery. The setting of the Gardens makes a direct contribution to its OUV (its intrinsic significance) including the key aspects of integrity and authenticity - and to our ability to appreciate and understand the OUV. The site has a strong history of separation, of otherworldiness. This is maintained: 1) strong boundaries – walls and planting (RBGK's responsibility) and 2) clear skies through absence of development – the responsibility of planning decision-makers. Failure of either of these two aspects will degrade the intrinsic design significance of the site and its authenticity/integrity.
[434] CDG19 p 21.
[435] CDG18.

privacy[436]. It cannot credibly be argued that the visibility *per se* of tall buildings within Kew Gardens is not harmful to its significance, and attempts to argue otherwise should be rejected.

10.8 All five heritage experts disagree only on the gradation of harm within less than substantial under the NPPF. This is partly due to failing to properly assess cumulative harm. They also agreed that *any* harm, *any at all*, to the significance of the Orangery and to the OUV of the WHS, must attract very great weight given that the Kew Gardens WHS is an asset of the highest significance[437] and that wherever there is any less than substantial heritage harm requires a clear and convincing justification. As they all agree that the scheme will harm the OUV of the WHS, it cannot protect, preserve, promote, conserve or enhance it[438]. In particular, it would conflict with 3 policies: (i) Policy 7.10 of the London Plan (LonP); (ii) Policy HC2 of the IPLP; and (iii) Policy CC4 of the HLP[439]. The contention that a scheme which harms the significance of the WHS at the same time sustains it[440] only needs to be stated to see that it is fallacious. One cannot avoid the conclusion that there is a breach of Policies 7.10, HC2 and CC4 by arguing that these need to be read in the light of the NPPF, as shown in the *Westferry* Appeal Decision[441]. Where there are breaches of policies, as there are accepted to be here, the decision-maker has to judge whether there is compliance with the Development Plan overall[442].

10.9 There are a number of existing tall buildings, mostly north of the River in Brentford, which already harm the visual envelope of Kew Gardens[443]. This case focusses on the Orangery and associated Great Lawn, and so the buildings most relevant are the Haverfield Estate Towers, the Kew Eye[444], and the Waterworks/British Gas Development[445]. These all detract from the setting of the WHS and harm its OUV[446]. Two other harmful consented schemes are: The

---

[436] Ibid p 22 *When a part of the Gardens was thrown open to the public for the first time in 1841, the site still retained this element of privacy. In an increasingly urban and industrial environment, the secluded, rural aspect of the new Kew Gardens became a treasure to be prized*. And on the same page *When industrial development in Brentford threatened to intrude upon the gardens, the Directors launched successive campaigns of tree planting to shut them out, with the secondary effect of shutting out the Thames from most of the Gardens and increasing the sense of seclusion and enclosure.* See further Mr Croft's proof at section 5.7, and see below - this was never fully successful.

[437] See the NPPF §193, CDC1, and see the answers of Dr Miele and Mr Griffiths in XX.

[438] Various policies contain these requirements.

[439] Dr Miele (rightly) accepted conflict with all three of these policies. RBGK also says that there are breaches of Policy 7.7 and 7.8 of the LonP, HC1 and D9 of the IPLP and CC3 of the HLP.

[440] Mr Griffiths alone.

[441] Which is referred to in relation to the approach of the Secretary of State on policy. It is not a similar case on the facts. In XX Mr Griffiths confirmed that his analysis required him to disagree with the S/S's approach in the Westferry appeal decision to Policy 7.10 being breached despite finding it met NPPF §196.

[442] *R. (Cummins) v Camden LBC* [2001] EWHC Admin 1116 Ouseley J. at §§160 – 165. Factors to consider include: (i) the importance of the policies which are complied with or infringed, and (ii) the extent of compliance or breach.

[443] These are listed in the draft MP. See CDG21, Annex D, pp. A77 – A82.

[444] Also known as the Wallace house development approved in 2005. The adverse impact was noted in the UK Government's 2014 Periodic Report (CDG19). RBGK objected at the time. It was referred to at the CC inquiry as the *Kew eye-sore*.

[445] Very close to the Haverfield Estate, and also known as the Hyperion, Application ref 00657/B/P15. RBGK objected citing concerns about jeopardising the WHS nomination, then in progress. In the ICOMOS site evaluation CDG14 there is reference to the adverse effect of this 16-storey development which had by then been granted permission.

[446] All of these can be seen in the photographs in Mr Croft's App C.

BFC[447]; and The Citadel[448]. Schemes in the pipeline[449] include the CC; Albany Riverside; and Hudson Square.

10.10 Even ignoring pipeline projects, the existing and consented schemes harm the setting and significance of the Orangery and the OUV of the WHS. Visual intrusion from these, and the threat of others, has long been a concern in relation to the WHS[450]. The RBGK CA Appraisal[451] lists under *Problems and Pressures*: *Development pressure which may harm the balance of the river and landscape dominated setting, and the obstruction or spoiling of views, skylines and landmarks.*

10.11 The draft MPlan[452] raises cumulative harm from existing tall buildings and other proposals. Under *Cumulative Impact/Harm*, it sets out the significant harm to the setting and OUV caused by the current detractors. It finds, in NPPF terms, *the scale of existing harm is at the very upper end of less than substantial harm, and very close to substantial harm*, adding that *Additional harm must be understood as being cumulative with existing*[453]. It follows that any built form seen outside Kew Gardens is harmful *per se*; existing tall buildings are significant negative detractors; they should not be used to justify more of the same; there is a particular concern around cumulative harm to the WHS.

10.12 Cumulative harm is relevant to the setting of any designated heritage asset[454]. Its importance is much greater for WHSs. The Mayoral SPG highlights the importance of cumulative impacts[455]. This includes *impacts that result from incremental changes caused by past, present or potential developments*, noting that *there may be a tipping–point beyond which further development would result in substantial harm to the OUV, authenticity and integrity of the [WHS].* HE's *Advice Note 4 on Tall Buildings*[456] says *each building will need to be considered on its merits, and its cumulative impact assessed*, and that *[c]areful assessment of any cumulative impacts in relation to other existing tall*

[447] Under construction with the cores already overtopping the Orangery in some views as well as from the surviving areas of the Great Lawn. RBGK objected to this development; it may not have been appreciated that it would overtop the Orangery, so the officer report is silent, and no visualisations were produced; and the benefits were completely different. Dr Miele in XX accepted that this was harmful.
[448] This consented scheme has been implemented but not built. It is for the same site as the proposed CC. The CC Inquiry was told that it was unviable. The Inspector took the view that it probably was unviable but that *[i]t cannot be ruled out completely and the possibility of it coming forward is something that needs to be borne in mind*[448]. It was consented before the WHS was inscribed; the officer report omits possible impact on the setting of the Orangery, or that it would overtop this; another harmful mistake which may or may not be built. Dr Miele in XX accepted that this would be harmful.
[449] CDG21 p A83. See also footnotes 123-126 and ID 6.
[450] See detailed history at §§47-49
[451] Which is broadly co-extensive with the WHS designation, see CDG7.
[452] See Annex D, pp A77 – A83 and pp72 – 73.
[453] CDG21 p73 §13.3.4
[454] HE's Guidance on Setting [CDG09 pp 2 & 4; and §§32 and 36] says[454] *[w]hen assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change*. and under *Cumulative change* that *[w]here the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset ….*
[455] CDC16, §5.31.
[456] CDG10, at §3.8. See also the checklist on p8

buildings and concurrent proposals will also be needed to fully understand the merits of the proposal. The existence of a built or permitted tall building does not of itself justify a cluster or additions to a cluster[457].

10.13 There are 3 possible approaches to cumulative harm: assess the existing and proposed together; assess only that proposed; or rely on the existing as the baseline for the proposal. Policy and guidance dictate the first. The Applicant and The Mayor rely on the third. The potential for harm from this incremental approach is illustrated by the photographs of the Greenwich WHS 40 years apart[458]. If all the Docklands development had been applied for in one go the level of harm would be at the very least touching substantial; but it came bit by bit. The same is now sought to be done here. We are teetering on a tipping-point. The threat of more development on the back of past tall development has long been articulated as a key threat to the OUV of this WHS. The approach taken by the Applicant and the Mayor would cause the *death of 1000 cuts* for the OUV of Kew Gardens WHS[459]. There have already been a number of cuts inflicted, this scheme adds another.

10.14 Turning to the key importance of the Orangery, and its setting, this was built in the 1750s and is one of the few remaining buildings designed by Sir William Chambers and a rare but integral surviving remnant of Augusta's Gardens[460] which stood on the northern edge of Frederick's Great Lawn. It is an important building in the history of Kew Gardens[461]. While the WHS contains a large number of listed buildings only six of these are Grade I listed; it is specifically mentioned in the SOUV[462]. The MPlan describes it as both a keynote building within the WHS and an iconic building[463]. The CC Inspector's approach was that because that scheme would harm the setting, and so the significance of the Orangery, it would also harm the OUV and significance of the WHS, and

[457] See §§4.6 and 4.7. See also CDD07, p. 39 *A small number of existing developments, such as the Brentford Towers and the Kew Eye, are visible from within the registered parks and Kew Gardens WHS and detract from their setting. These developments do not set a precedent for future tall building development but instead highlight the sensitivity of these important heritage assets.*
[458] ID12
[459] This point was made by RBGK at the CC inquiry *when attention was drawn to the officer report for Brentford FC development saying that the proposed development was only visible in: a fraction of the landscape and architectural features at Kew Gardens. It was then pointed out that the same formula was repeated for the Citroen site, Capital Interchange Way, and Watermans [Watermans is the Albany Riverside site]. Repeating that formula in case after case means that more and more of Kew Gardens will suffer from visual intrusion*: CDI4, §7.66.
[460] CDG21 section 2.1, p12 §4, and pA24 *Of the work of these great Georgian designers, Chamber's work on Kew Gardens is the most identifiable in the modern landscape. His unique Chinese-inspired Pagoda is the most obvious survivor of this era … along with the Orangery, once the largest greenhouse in England*. It was the principal architectural feature in this area of Augusta's gardens, see Mr Croft's proof §6.2.5.
[461] CDG21, A71.
[462] CDG12, p. 49, under Brief Synthesis it is said *Elements of the 18th and 19th century layers including the Orangery, … convey the history of the Gardens' development from royal retreat and pleasure garden to national botanical and horticultural garden before becoming a modern institution of conservation ecology in the 20th century*.
[463] See current MP, CDG6, §3.5.3, 3.9.17 and 3.9.20 and draft MP, CDG21, p. 14 referring to it as one of the *Key structures* and A33 referring to it as one of iconic buildings of Kew Gardens. Dr Miele in XX accepted both.

the significance of the RPG, and the CA[464]. The MPlan, following this approach, now notes that the Orangery makes a direct contribution to the OUV[465].

10.15 The Great Lawn is a rare surviving open area (for Kew Gardens) within the Palace grounds in front of the Orangery[466]. While it survives in a much-reduced form, this is a remnant of Frederick's garden, lay in front of the White House and the Orangery[467] and the setting it provides for the Orangery is important[468]. This includes[469]: (i) its original development as part of Augusta's garden; (ii) its re-use by Decimus Burton and Nesfield as part of the Victorian gardens; and (iii) its continued role in the modern landscape. This was recognised by the CC Inspector[470].

10.16 The debate as to whether View 30 is a designed view turns on whether the Orangery would have been visible from the Great Lawn in the eighteenth century. The same debate with the same evidence arose at the CC Inquiry[471]. Assertions that the Inspector did not reach a conclusion on intended views are not correct[472]. It is tolerably clear that he found that views of the Orangery across the Great Lawn were important designed views[473]. Today, View 30 is located on what remains of the Great Lawn on a well-used path and close to a crossroads[474]. There is no question but that what remains of the Great Lawn provides an important part of the setting of the Orangery today, the issue is whether that was also true historically so that greater weight should be given to the harm caused by this scheme[475].

10.17 As above, there are existing detractors that already harm views of, and the setting of, the Orangery. At the time of the CC Inquiry, while the Haverfield Estate Towers would have been clearly visible from View 30, neither these nor any other development overtopped the Orangery until one got to near the

---

[464] See CDI4 §12.113; this was accepted by Dr Miele at §1.15, although§§4.36 and 4.37 seems less clear on this.
[465] CDG21, p. 23, §viii. And §vi p 25.
[466] CDG21, p. A41.
[467] *Historic illustrations show people promenading freely across the lawn as well as walking on set paths. Defined by trees, this was an enclosed area of open space, heavily separated from the world outside.*
[468] CDG21, A55.
[469] See Mr Croft's proof at section 6.2.4.
[470] Who wrote that the Orangery: *is a very important part of Kew Garden's iconic architectural legacy*, and that *it has a central place in the designed landscape; … views towards the Orangery from and around the Broad Walk, across the Great Lawn, or what remains of its original conception, are essential to an understanding of the place of the Orangery in the designed landscape. As such, they are integral to the contribution setting makes to its significance.* CDI4 §12.114-115
[471] Mr Croft, who was also a witness at the CC inquiry, explained that the evidence before this inquiry is identical to that at the CC inquiry save for Mr Stamper's evidence.
[472] See Dr Miele §§2.46 – 2.56 and Rebuttal Appendix 2. Mr Griffiths was wrong to suggest that this issue was debated more at this inquiry than at CC.
[473] See the previous quotations from the Inspector's Report. In the nomination document there is reference to the Orangery being *built as an addition to the White House (now demolished) and the classical style of the Orangery reflected its partner* and that [*b*]*oth buildings overlooked the Great Lawn, which once dominated this part of Kew Gardens.* In the Site Conservation Plan 2002 (Section 3, p 18) it is said that the significance of the Great Lawn is that this *[p]rovides the setting for the Dutch House … and the Orangery ….*
[474] See CDA 14, p. 103; viewpoint 30 is described in the ES as *Crossroads within gardens, south east of Treehouse Towers Play Area, Royal Botanic Gardens Kew.*
[475] See the detailed arguments over this in Kew's closing §§ 79-82

Broad Walk to the east[476]. This scheme will remove one more view of the Orangery from which currently there are no other modern buildings visible overtopping it and again shows the flaw in the Applicant's approach which fails to have any proper regard to cumulative impact.

10.18 Given the importance of the Orangery and Great Lawn to the OUV, harm to its setting also harms the OUV of the WHS. Attempts to downplay this harm because it only affects one part of a large WHS should be rejected[477]. The calibration of harm by the Applicant and the Mayor is too low because of their failure to properly deal with cumulative impact and understand the importance of setting to the OUV. Judged on its own, the impact of the scheme on the OUV is just above the mid-point of less than substantial[478]; cumulatively it is at the upper end of less than substantial. Applying the Mayoral SPG and the PPG policies on cumulative assessment, the harm based on the existing situation should be identified. One should not take existing tall buildings as a form of *acceptable* baseline that establishes a character for future views. Identifying that the scheme causes harm in addition to existing recognised harm, the total harm including the pre-existing harm and potential harm associated with consented (but not yet built) developments should be assessed. All of this development should be taken together as being at the very upper end of less than substantial[479] a view which is supported by the draft MPlan[480]. The impact on the Orangery as an asset is a discrete one in its own right. The impact on the WHS is different, albeit that it would also be affected by the impact on the Orangery.

10.19 The CC Inspector commented that *the idea that Kew Gardens can be completely 'protected' from further visual intrusions of the city beyond is a battle that has been fought and lost*[481]. RBGK strongly objects to this observation which is founded on the previous paragraph in his Report[482] which sets out policies for *the development of the [GWC] as an [OA].* However, the IPLP now delegates heights to LPAs while it strengthens protection for WHSs. Emerging LBH policy is at an early stage. The extant consent for the Citadel is not viable and should no longer be used as any kind of reference point[483]. The application to which this Inquiry relates was called in after the CC decision.

10.20 It is apparent that no regard was had to the potential impact on the WHS in the course of the design of this scheme as: the architects relied entirely on mistaken advice[484]; the AVRs were obtained late on; the architect was unaware of the MPlan[485]; the DAS and its Addendum are silent on possible

[476] Here the Haverfield Towers do overtop the Orangery. There are also views of the Steam Museum tower which, although listed, intrudes into the visual envelope of the Gardens and adds some further harm.
[477] This featured prominently in Mr Warren's XX of the heritage witnesses.
[478] See Mr Croft at §5.8.17.
[479] This is not inconsistent or out of line with *Bedford*
[480] See above and see CDG21 §13.3.4
[481] §12.107, CDI4
[482] §12.106, ibid.
[483] See CDD7 Great West Corridor Masterplan and Capacity Study, note on p. 136: *Any new scheme of the height of the Citadel must now provide significantly more public benefits than the Citadel scheme to outweigh the harm such height now represents to the World Heritage Site.*
[484] By JLL who found impacts to be acceptable
[485] Confirmed by Mr Connell in XX by Mr Maurici

impacts on the WHS; the design was influenced by the original scheme for 1-4 CIW which was rejected on grounds of excessive height and impact on the WHS[486]; the design process proceeded on the false basis that overtopping the Orangery was harmless.

10.21 The harms here are to historic assets of the rarest kind and of an exceptional nature. The benefits are of the common or garden variety[487]. The Applicant has failed to justify why alternative developments on the site could not deliver a similar level of public benefits without harming the WHS and the Orangery. The HE *Advice Note on Tall Buildings*[488] is important because it states that what is required is clear and convincing justification for the *cumulative* harm[489]. Applying that guidance, any suggestion that the benefits could outweigh the cumulative harm[490] is without merit.

10.22 The approach of the SoS in the CC appeal was to consider whether it was possible for an alternative scheme with lesser impacts on the WHS to provide *similar* but not the same benefits. Although this approach was in the context of the consented Citadel scheme, it is clear from the SoS's decision that there does not need to be a consented alternative in place[491]. The same considerations must apply here. There has been no proper exploration of, or defensible justification for rejecting, a less tall scheme that would have no impact on the WHS and would deliver similar albeit not exactly the same benefits. The burden to show there are no alternatives that would deliver similar benefits lies with the Applicant[492].

10.23 The evidence on alternatives has emerged in an unsatisfactory manner[493]. Alternative schemes limited the height to 12 or 15 storeys, there were no AVRs, it remains uncertain by how many storeys the scheme would need to be reduced in order not to be visible overtopping the Orangery. The ES was silent on why the 12-storey scheme was rejected. Limited evidence[494] claimed that it

---

[486] See Mr Brown's proof and his answers in XX.
[487] In so far as the design quality is considered benefit: (i) the features visible in the WHS, its height and spread, are the source of the harm; and (ii) limited weight can be given to this as all tall buildings are required by policy to be of a high quality design.
[488] CDG10 §5.5, Mr Croft at §§ 3.2.40–3.2.42 and Dr Miele in XX
[489] *If a tall building is harmful to the historic environment, then without a careful examination of the worth of any public benefits that the proposed tall building is said to deliver and of the alternative means of delivering them, the planning authority is unlikely to be able to find a clear and convincing justification for the cumulative harm* (see §5.5, emphasis added). In XX Dr Miele was stumped by this and had to argue that HE's advice was wrong. This advice dates back to 2015 and he accepted in XX he had produced no appeal decisions that suggested that HE's advice was in this regard erroneous or contrary to the NPPF.
[490] As properly assessed by Mr Croft: §5.8.20
[491] CDI4, §36 *The Secretary of State considers that there are benefits to be provided through the creation of workspace, and in terms of supporting economic growth and productivity. However, he considers that it could be possible for an alternative scheme with lesser impacts on designated heritage assets to also provide benefits of this type. For example, the Citadel scheme, should it proceed, would offer benefits in terms of job provision, and would comply with the Council's emerging policy for this area …*
[492] See CDA5, Policy D9(D) p 150 and Mr Croft's answers in XX, and see also Ms Randell's oral evidence in which she agreed this was where the burden lay.
[493] much emerging only in oral evidence or the late note dated 27 January 2020 entitled *Response to Inspector's Further Questions*. This evidence should have been included in the ES and/or L proofs
[494] Mr Brown §6.30, oral evidence and XX. Para. 6.36 says *L&Q highlighted that if the scheme was limited to a maximum of only 12 storeys it would result in the following: (1) A loss of 89 homes (2) No affordable housing.*

would not have maximised the use of the land, but oral evidence confirmed that such a scheme was not unworkable or unviable[495].

10.24 The belated Annex[496] has no change to the layout, maintains the height differential between blocks and falsely reduces the quantum of development. There is no emerging policy requirement for a landmark building on the site. At 1-4 CIW the developers were able to produce a similar number of units and 50% affordable housing with lower heights. There has been no proper justification provided as to why this is not possible on the Citroen site. Where the harm is to heritage assets of the highest significance, and the benefits unremarkable, there has been an obvious failure to properly consider if harm could have been reduced or avoided while still providing similar benefits. This is a failure to provide a clear and convincing justification for that harm.

10.25 The way the Mayor came to resolve to grant permission was *a sorry tale*[497]*.* This is relevant because the Applicants prey in aid the Mayor's support[498]; but this support should be given no real weight as the Mayor did so having full regard to the impact on heritage assets. The failures to properly consider matters are legion[499]. No weight can be given to the Mayor's support for this scheme in the light of the poor decision-making processes.

Conclusion

10.26 For all these reasons planning permission should be refused.

Additional notes

10.27 Finally, the Applicant now argues that RBGK could plant trees[500] at the rear of the Orangery to block views of this scheme. This was unfairly raised at the end of the Inquiry. There is no evidence that this would be successful, it is wrong in principle, such trees would take decades to establish, and they would need to be managed including for losses.

10.28 This proposal is rushed and poorly considered. It does not offer a solution but shows a lack of understanding as it: proposes mitigation that it is unable to deliver; misunderstands WHS MPlan policies; proposes inappropriate specimens in an inappropriate location; and, does so by way of procedural injustice.

10.29 The mitigation is an acknowledgement that harm would be caused but it can neither be delivered nor enforced. The only way to do so is with the agreement of Kew: this will not be forthcoming, and the proposed mitigation will not be delivered. Mitigation could be offered by the Applicant, but it prefers to shift the responsibility to Kew.

10.30 With regard to the MPlan, while tree screening is referred to, this only supports tree screening in a limited role and in limited areas. It also notes that the use of trees as screening cannot be relied on to protect against inappropriate

[495] Mr Brown in XX
[496] ID37 *Response to Inspector's Further Questions* on which there could be no XX
[497] See Kew's opening
[498] Mr Connell §§2.13 and 2.14
[499] See §107 (1)-(10)
[500] This is covered in the original closing and an additional note. My summary covers both.

external development. It requires boundary planting, but within the gardens planting is driven by botanical interest, historic landscape design and operational needs. Consequently, the area proposed for screening is not suitable[501].

10.31 There are also challenges with managing screening trees, including: pests and disease, climate change, and active tree management/health and safety. The reference to the CC report has been taken out of context.

10.32 The scheme would result in planting inappropriate specimens in inappropriate locations, compounding the errors referred to above regarding the validity of the mitigation and the misinterpretation of the MPlan. It would misunderstand the planting strategy[502]. Kew's specialists have raised further issues[503].

As above, raising the proposed mitigation so late in the Inquiry amounts to procedural prejudice. It does not come out of cross-examination[504] and Kew does not have the resources to recall a witness, even with a costs application. If the Inquiry is reopened, it would be as a result of the Applicant's unreasonable behaviour.

Further Responses

10.33 Following rejection of the CC High Court challenge, any reference to this can now be read as no longer subject to challenge. In addition, the ability of the SoS to reach the conclusions that he did, contrary to the recommendation of his Inspector, has been specifically endorsed by the Judge.

10.34 With regard to the delay to the IPLP, its heritage policies *HC1 Heritage conservation and growth* and *HC2 [WHS]s* are not subject to disagreement between the Mayor and the SoS, and therefore very significant weight can be attached to those policies notwithstanding the delay in adoption.

10.35 The WHS MPlan's adopted status makes it a key material consideration for decision-makers and provides clarity on the agreed views of the WHS Steering Group, including those of the GLA, LBH, HE and RBGK. As set out in PPG and the LonP, the adopted MPlan is a significant material consideration for the application[505].

10.36 Appendix D[506] provides a summary of the setting of the Orangery that addresses and provides an agreed position on the discussions at the Inquiry relating to its relationship with the Great Lawn: *The Orangery is an important building in the history of Kew Gardens. Alongside the White House, and later Crenelated Palace, it was the principal architectural feature in this area of Augusta's gardens. It was designed to be seen across the Great Lawn and Lake as a key designed architectural element in the 18th-century landscape of Kew Gardens. It was later adopted by Decimus Burton in his geometric design as a key feature along the Broad Walk, drawing the eye down the walk (when*

[501] See the plan at Appendix 1 of the WHS MPlan Setting Study
[502] In its *Living Collections Strategy* [available online at https://www.kew-gardens/plants/living-collection] – see extract at Appendix 3 to the Kew response
[503] Paragraphs 5.6 to the Kew response
[504] Ibid 6.3
[505] PPG §34 and LonP Policy 7.10 and IPLP HC2 - item D [as above]
[506] PID9 p138

coming from the Palm House) and providing a visual barrier to views from the Little Broad Walk until the junction with Main Broad Walk was reached from the entrance gates.

10.37 The adopted WHS MPlan identifies that the Orangery is an element of Kew's historic legacy: *Also constructed for Princess Augusta by William Chambers, the Orangery (1761) was once the largest glasshouse in Britain. This was the first of many glasshouses on the property, several of which were at the cutting edge of architectural and technological design, and which together tell the internationally significant story of glasshouse development over more than 250 years*[507].

10.38 RBGK referred to the SoS's decision on the *Westferry Printworks* scheme[508]. It was relied on solely to support its contention that there is a breach of LonP Policy 7.10. This remains RBG Kew's case. No part of the Order or the claim relates, as far as we are aware, to the SoS being wrong in his conclusions on Policy 7.10. Even if no weight is given to the SoS's views in the *Westferry* decision, RBGK's approach is maintained on the policy's wording.

11 The case for the West Chiswick and Gunnersbury Society (WCGS)

Its Chair's statement[509] *was relatively succinct and so, other than minor alterations for consistency in this Report, is reproduced here in full.*

11.1 The fact that I have attended every day but one of this Public Inquiry attests to the importance that I and the residents I represent - who live in the surroundings of the Application site - attach to this matter.

11.2 Having studied the documents and listened attentively during the Inquiry, I wish to record that we fully support the cases made by the Council and the Rule 6 Parties (HE and RBGK) and request that the Inspector record our endorsement.

11.3 Having listened attentively during the Inquiry, including to the responses given by the Applicant's and the GLA's planning witnesses to my questions, I would request that the Inspector take all these questions and responses into account.

11.4 In my short opening presentation[510] I provided an indication of how the proposed scheme would harm the quality of life of local residents in a number of ways with respect to our immediate environment. I wish to emphasise here that due weight should be given to the **cumulative harm** to existing townscapes and heritage assets and to the amenity and quality of life of the existing residential communities of the proposed scheme and others recently built, under construction or consented in the East Brentford/West Chiswick area.

11.5 In questioning the Mayor's witness, I drew attention to the error and omissions[511]. The absence of any reference to the low-rise, high quality **townscape** within the Wellesley Road CA to the east of the site is a serious

[507] PID9 Section 3.2.2, page 26
[508] At §41 of Counsel's closing (ID32) the Inspector's approach to identifying a breach of policy 7.10 is *clearly the correct approach given the actual wording of that policy*
[509] By Marie-Louise Rabouhans
[510] ID7 (sections 6 and 7)
[511] Miss Randell in her Proof of Evidence (8.29)

omission. Openness of outlook is a very important component of residential amenity in streets characterized as dense urban grid (as defined in the Council's Urban Context and Character Study) and within an area of public open space deficit.

11.6 I questioned the need for yet more **landmarks** (defined as something that stands out, helps orientation and sense of place). Promoting multiple landmarks debases this once useful urban design concept. We are in danger of getting lost in a dense forest of tall buildings - this will alienate rather than promote a sense of place. The scale of the BFC Stadium and its surrounding residential towers is such that it will not require any aid to wayfinding.

11.7 I also questioned reliance on PTAL as a measure of **public transport** accessibility; it is an over-simplified tool. Whether one is 500, 50 or 5 metres from a station is of no practical relevance if, on arrival at the station, one is prevented from accessing the platform as happens at **Gunnersbury Station** during peak periods. The same applies to the purported 2021 improvement in PTAL due to increasing frequency of services. Indeed, without the necessary major upgrade of Gunnersbury Station, an increase in frequency could exacerbate the situation by increasing the time one is held in a queue. Overground and underground trains in both directions share the same island platform. Increasing the frequency of service will shorten the gap between trains; it is the gaps which provide the opportunity to access the platform.

11.8 In considering the **planning balance**, the appellant and the GLA consider that the public benefits of the scheme outweigh the harm. The degree of harm has been fully covered by the other parties. I wish to re-iterate that the existence of intrusive tall buildings such as those of the Haverfield estate or those under construction around the BFC Stadium, is not a justification for more. To add to the recognized harm caused by such buildings is to add insult to injury.

11.9 Turning to the weight to be given to the **claimed benefits** of the scheme, I would draw the Inspector's attention to the issues that I raised when questioning the LBH planning witness[512] and to the points made by him.

11.10 While specific design aspects of the **housing** may be deemed acceptable by taking a flexible approach to standards for the residential units, in combination, such flexibility will provide accommodation of very questionable quality. For example, will future residents seeking to compensate for a lack of sunlight/daylight by using their balconies appreciate having to ascertain the ambient air pollution and noise in order to perform a risk/benefit analysis before stepping outside? Rather than argue that such compromises are necessary because of the high density and/or the hostile environment, I suggest that they demonstrate that the density is too high and that parts of the site are unsuitable for residential accommodation. These unsatisfactory aspects are indicative of over-development. The over-delivery of 1-bed units, especially in an area with a significant over-supply, will not produce a balanced development; the resulting *churn* will not lead to community cohesion. The aggressive pursuit of housing targets appears to be leading to an approach that might be characterized as *Never mind the quality, feel the width*.
I raised further shortcomings of the scheme in relation to the **Climate**

[512] Mr Baker

Emergency in my questions to the Applicant's witness[513]. These included the additional energy demands for mechanical ventilation, air conditioning etc. and the need for carbon off-setting. How can the UK Government hope to meet its carbon-reduction targets if it approves new buildings which will lock us in to unsustainable energy consumption for many years.
For AH and Market Housing, I would ask the Inspector and the SoS to take the cumulative shortcomings of the housing into account when considering the extent of the benefit and what weight should be given to it.
Moreover, since London is a single housing market, perhaps the Mayor should consider lowering the LonP housing targets for those boroughs such as Hounslow where many potentially available brown-field sites are located in heavily polluted areas.

11.11 In considering the weight to be given to the benefit of the provision of a **nursery**, I would ask the Inspector and the SoS to take account of the points I raised on the health implications of its location, and that of the play space in a position exposed to high levels of air and noise pollution. I would draw their attention to Policy CI3 of the Local Plan and Policy GWC 3 of the LPR of the GWC (Reg 19). The latter makes it clear that *Where we are now* is a very bad place in terms of air and noise pollution and very poor levels of physical activity.

11.12 In considering the weight to be given to the claimed benefit of Public Realm, Landscaping and Pedestrian connectivity I would draw the Inspector's and the SoS's attention to the questions I put to the planning witnesses[514] concerning the value and benefit of the public plaza. The plaza has been designed apparently for two conflicting purposes – as a public space to be enjoyed by residents of the new development and others with events taking place, market stalls etc. *and* – to provide room for spill out before and after football matches /connection between the BFC Stadium and Gunnersbury Station. The Applicant and the Mayor appeared to be unaware that the latter is in direct conflict with the draft Local Area Management Plan for the stadium and undertakings by BFC to direct supporters away from the residential streets to the east and south-east of the stadium/CIW. It appeared that no discussion had taken place between the Applicant and the Club.

11.13 In cross-examining LBH[515], reference was made to section 10 of the SotG CA Appraisal for and to the tensions between a CA adjacent to an OA in a world city. I would like to point out that 10.3 of this section states.

The bar for public benefits to exceed heritage harm is rightly set high and very hard to reach, particularly where such development also impacts on Kew Gardens [WHS]. Development should not seek to use public benefits as an excuse for unimaginative consideration of planning context, but rather demonstrate exceptional and innovative heritage-respecting design, which also provides significant public benefit.

I think that we can all agree that **London** is a **world city**. It is of national and strategic importance as our capital city. Its natural and historic environment is

[513] Mr Connell
[514] Mr Connell and Miss Randell
[515] Mr Baker

too important to be treated in a cavalier fashion. It should be conserved and enhanced in accordance with the NPPF. While regeneration of the GWC is important, the corridor is not, and must not become, the defining feature of the wider area. The big attraction of this area for visitors as well as those who live and/or work here is that, while easily accessible from Central London, it has significant heritage landscapes and a beautiful stretch of the Thames which, together with its predominantly low-rise buildings give much of it a generous, open, almost rural feel. This is complemented by its compact townscape of predominantly Victorian and Edwardian terraces, providing homes to its well-established, thriving residential communities. The special appeal of both is that they provide respite and retreat from the urban environment.
A significant part of the *pull* of London is the great variety of what it has to offer in terms of its built and natural environments. It is essential that development enhances and maintains this rich tapestry rather than leads to an homogenised city of poorly distinguished areas, sterile neighbourhoods and an assortment of high-rise blocks, competing for attention as they dominate the skyline.

So, my plea is that, as a **world city**, **London**

- provides its residents with homes of genuine high quality,
- understands the true value of its historic environment *and*
- pays full respect to its **world heritage**.

11.14 In **conclusion**, I maintain that the public benefits that would be delivered by the scheme are not as substantial as claimed and would not outweigh the harm that it would cause.

The West Chiswick and Gunnersbury Society believes that the Application should not be allowed and we earnestly request the Inspector to report accordingly to the SoS and for the latter to dismiss the Application and refuse planning permission.

12. Written Representations

12.1 As well as a representation at the Mayor's public representation hearing in July 2018, The Kew Society objected via a representation to the forthcoming public inquiry, reiterating its objections. Its statement focussed on: Local Context, Pollution, Building Height and Massing: effects on Local Heritage Assets, Draft Brentford East Supplementary Planning Document, Impact on Local Neighbourhood, Lack of Infrastructure and Public Transport.

12.2 A total of 8 responses were received from local residents[516], including 7 objections and one query relating to the future of the adjacent leisure centre. The following summary provides details of the issues raised in these responses.

- Why flats and not houses for families?

[516] CDB 01

- This development is one of a number in the locality, and the combination of these would place severe strain on infrastructure, especially transport.
- There is an aesthetic impact on the skyline from Kew Bridge.
- The buildings would be very close to each other and the amenity areas would not bring any value to their residents.
- This would add further to congestion and parking in nearby streets.
- The proposed height of the new towers would be significantly out of keeping.
- The proposal is too high, too dense, out of character with the surrounding CAs and Character areas and would be a severe visual intrusion into many valued views.
- The high level of pollution in the area makes it unsuitable for housing.
- The development threatens the existence of Fountains Leisure Centre.
- No development should be allowed prior to the adoption of the GWC Plan and Brentford East Supplementary Planning Document (SPD)/The application does not conform with the draft Brentford East SPD.

13. Conditions

13.1 The suggested conditions were discussed at the Inquiry before arriving at a final agreed version[517]. These must be necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects[518]. Following these discussions, I am satisfied that, for the reasons stated, all these conditions meet the tests and, in the event that permission is granted, these should be imposed as set out in the attached Appendix.

13.2 Under section 100ZA(5) of the T&CP Act 1990: *Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition*. Accordingly, the Applicant confirmed[519] agreement to the terms of the pre-commencement conditions.

14. Planning Obligations

14.1 A Legal Agreement together with a Summary and explanation for the various elements was submitted to the Inquiry[520] as was a Compliance Note[521] covering how the Agreement would comply with the Community Infrastructure Levy (CIL) Regulations 2010. My conclusions are based on an assessment in the light of the CIL Regulations and of NPPF§204, which sets 3 tests[522] for such obligations. Following discussions at the Inquiry, I am satisfied that the

[517] ID20 and ID36
[518] NPPF§206
[519] ID38
[520] ID30
[521] ID18
[522] CIL Regulation 122:(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —
(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and
(c) fairly and reasonably related in scale and kind to the development.

obligations in the Agreement all comply with the CIL Regulations and the NPPF and I have given weight to them in my conclusions.

14.2 A further obligation, in the form of a Unilateral Undertaking, essentially offers to pay for tree planting within Kew Gardens with the aim of screening the proposals.

15. Conclusions

From the evidence before me at the Inquiry, the written representations, and my inspection of the application site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

15.1 The matters on which the Secretary of State (SoS) particularly wished to be informed are set out in the bullet points at the top. Combined with other matters raised, I find that the main considerations in this Application are:

i. the effect of the proposals on the significance of designated heritage assets derived from their settings;

ii. any other harms which might affect the overall balance;

iii. the quality of its design;

iv. the benefits of the scheme with particular regard to housing and affordable housing (AH);

v. any other benefits which might affect the overall balance, including to the economy;

vi. whether the public benefits of the proposals would outweigh any harm identified in the heritage balance;

vii. the National Planning Policy Framework (NPPF) and any other material considerations;

viii. its consistency or otherwise with the development plan and the overall planning balance.

15.2 In essence, the application turns on the balance between the harm to various heritage assets and the public benefits, particularly of new housing and AH. The heritage balance is set out in NPPF§196 although I agree with the parties who felt there is nothing materially different about this or compliance with the development plan. [3.11 6.3 6.5 6.93 7.3 7.48 7.53 7.65 8.30 8.33 11.3]

Heritage assets

15.3 The relevant designated heritage assets (as defined in the NPPF) include the World Heritage Site (WHS) at Kew Gardens - which is also a Registered Park and Garden (RPG); the Conservation Areas (CAs) at Kew Gardens, the Strand on the Green (SotG) and Kew Green; and the numerous listed buildings within them, notably the Grade I listed Orangery at Kew, the Grade II* Zoffany House and the rows of adjacent Grade II buildings along the SotG , and those surrounding Kew Green. There was general agreement about the significance of the assets and the relevant policies from which any conflict might arise. [2.6 -2.9]

15.4 Parallels were drawn with the Chiswick Curve (CC) Inquiry and the parties made many references to it. In his Report, the CC Inspector wrote: *There is little I can usefully add to what the parties have said about the significance, status, and importance of the [SotG CA], and the listed buildings it contains*. Here, the same could be said not only of the SotG CA, but of Kew Gardens and Kew Green as well. [1.7 6.33 8.13 8.16]

15.5 There would be no direct harm to designated heritage assets. Rather, any harm would be from the impact of the development on the significance of these derived from their settings. It was common ground that there would be *less than substantial harm* to the significance of the SotG CA and of the WHS – expressed as its Outstanding Universal Value (OUV) – but disagreement as to the degree of, or weight to, any harm to significance within *less than substantial*. There was disagreement as to whether there would be any harm to the Kew Green CA. [3.11 6.23 7.42 8.4 8.8 8.30 9.68 9.94 10.3]

Kew Gardens

15.6 As above, Kew Gardens is subject to a raft of designations, including that of WHS, RPG and CA whose boundaries roughly coincide. In terms of heritage value, it is *at the top of the tree*. Of particular relevance to this application, the Statement of OUV (SOUV) refers to the Grade I listed Orangery. As the recently adopted MPlan now notes, the Orangery is not only important to the OUV, but its significance, and special interest, as a listed building overlaps with that set out in the SOUV. The CC Inspector found that because that scheme would harm the significance of the Orangery, it would also harm the OUV and the significance of the WHS, RPG and CA. I have dealt with it in the same way. [2.6 2.7 3.22 3.34 6.30 6.40 7.30 8.11-8.12 9.6 10.2 10.6-10.8]

15.7 The evidence and closings from RBGK, including the Further Responses since adoption of the MPlan, set out in detail the importance of the Orangery, both in its own right and in its contribution to the OUV of the WHS. RBGK's witness was claimed to have unrivalled experience of the WHS and all this was essentially unchallenged. Of the OUV's attributes, the two that would be affected by the proposal are: *a rich and diverse historic cultural landscape providing a palimpsest of landscape design*, and *an iconic architectural legacy*. [3.23 5.3 6.23 6.35 9.7-9.9 9.15 10.1 10.14-10.15 10.37]

15.8 The Orangery, together with Kew Palace, the White House and the Great Lawn were all part of a landscape which was designed as a piece, albeit over a period of years and subsequently radically modified. Any harm to the setting of the Orangery would also harm what remains of this landscape. In his CC Decision, the SoS accepted in relation to Kew Gardens that *any intrusion of [the] city must be harmful* to its setting and its OUV. There was no dispute that the scheme would affect the setting of the Orangery, and so the WHS as a whole, and particularly from viewpoints around View 30. [6.30 6.41 6.47 6.48 6.93 9.2 9.15 10.5 10.6 10.10 10.19 12.12]

15.9 The CC Inspector found that the Orangery: *is a very important part of Kew Garden's iconic architectural legacy*, and that *it has a central place in the designed landscape; … views towards the Orangery from and around the Broad Walk, across the Great Lawn, or what remains of its original conception, are essential to an understanding of the place of the Orangery in the designed landscape. As such, they are integral to the contribution setting makes to its significance.* I agree. [3.23 7.31 9.8 9.14 9.16 10.1 10.2 10.6 10.14 10.15]

15.10 RBGK gave evidence that the setting to the Orangery is important to the OUV as it provides: (i) an unbroken skyline maintaining a sense of a world apart; which (ii) enables a visitor to appreciate and understand landscape design; (iii) areas of openness and big sky that frame internal views; (iv) the backdrop to key views and vistas across the Great Lawn; and (v) the backdrop to views of

key buildings including the Orangery. [3.7 3.17 3.31 6.48 6.102 7.44 9.13-9.15 9.61 9.81 9.102 10.2 10.6]

15.11 Under NPPF§193-194, *great weight should be given* to the conservation of designated heritage assets even where the harm would be less that substantial, and any harm *should require a clear and convincing justification*. From the Courts' interpretation of s.66 of the LB&CA Act, *considerable importance and weight* should be given to the *desirability of preserving the setting of listed buildings* in any balancing exercise with material considerations which do not have this status. This should then be carried across to policy for the WHS. Any harm at all would be at odds with the adopted MPlan. [3.14 8.5 9.103 10.8]

15.12 While great weight should be given to every asset's conservation, as the Orangery/WHS are amongst the most important of such assets, even greater weight should be given to any harm. This applies to the effect of proposals both on their significance and on the ability to appreciate that significance. RBGK argued that consequently, that *any* harm, *any at all*, to the significance of the Orangery and to the OUV of the WHS, must attract very great weight given that the Kew Gardens WHS is an asset of the highest significance. [10.8]

15.13 As above, the *considerable importance and weight* to the *desirability* of preservation, should tip the scales to produce an unequal balance in its favour. However, the SoS should still take account of the actual severity of any change, or *scale of change* as the Mayoral SPG puts it, and so the extent of impact, as well as the relevance to its significance, and the importance of the asset. The overall weight to be given to any harm, and the conflict with policy, should be a product of these factors. [3.14 3.17 9.13 9.25 10.2]

15.14 In assessing impact on significance, and for a much taller scheme, the CC Inspector found that: *all the intrinsic significance of Kew Gardens would be untouched* and that *no-one could reasonably argue that any of the designated assets at issue in this case derive most of their significance from their setting.* RBGK took a different view arguing that setting is key to the OUV of the WHS. While setting is undoubtedly important, and not limited to its BZ, I was not persuaded that it's the most important thing about this remarkable place. [6.30 10.2]

15.15 The Applicant felt it must be relevant that the scheme would affect part of what makes the WHS significant, but leave other aspects of significance untouched. However, the key point is how important the aspect that would be affected, that is the setting, is to its significance. Moreover, in the case of a listed building, even if an attribute of its significance/special interest was not mentioned in its description (and may not have been identified at the time) does not prevent it becoming important. Either way, harm to the setting of the Orangery would also harm the OUV of the WHS. The weight to this should not be reduced just because it only affects one part of a large WHS. [6.30 6.32 6.38.2 6.40 6.43]

15.16 In assessing the weight to be given to the importance of the particular views that would be affected, much was made of whether or not there were designed views of the Orangery from particular viewpoints, and especially View 30. If so, any harm to these views would be a greater affront to its significance. Even with the adoption of the MPlan and its Appendix D, the evidence on this is

equivocal. It is known that Chambers designed the White House, the Orangery, and the Great Lawn. Also, that this was radically altered by Burton who used the Orangery as a key feature. As HE put it, *there was a design relationship between the Orangery and the garden landscape including the Great Lawn which remains … – the sense of experiencing a historic landscape design and its associated architectural legacy.* [2.7 6.38.3 7.8 7.25 9.13-9.17 10.2 10.5 10.6 10.14 10.16 10.37]

15.17 View 30 is taken from where the scheme would be visible above the roof of the Orangery. The Applicant argued that this is not a view of particularly great importance, is not a Chambers or Burton-designed view, that the Great Lawn has not survived, and there is very little about the current network of footpaths and lawns which relates to the 18th Century landscape (shorn of lakes, open views, the White House itself etc). It added that the *palimpsest* is not capable of being affected itself by the scheme because it only has existence as a quality inherent in the gardens themselves. [5.3 6.7 6.38.2-3 7.24-7.26 9.16 9.17 10.16]

15.18 On my site visits, I saw that part of where one can appreciate the setting of the Orangery today includes what was once part of the Great Lawn. What is less evident is whether that was also true historically so that greater weight should be given to the harm caused by this scheme. That is partly because evidence on the Great Lawn, and the Broad Walk, depends to some extent on the use of artistic licence to interpret the various historical documents. I am satisfied that in designing these features it is unlikely that Chambers (and subsequently Burton) had any one view in mind, such as one might have along an avenue to a country house, but nor was the ability to see the Orangery from the Great Lawn coincidental. Chambers would have wanted to show off his skill in its architecture just as he would for the, now demolished, White House. View 30 is relevant to this, and more important than some others, but not the only view that matters. Rather, Chambers placed the Orangery in a position that made sense botanically but also sought to show off his skills widely across the site. [6.38.3 7.25 9.18 10.17 10.37]

15.19 Given that these two extremes, of a specifically designed view and of a random view, can be eliminated, it is of less importance, or weight, whether the designer had any particular views in mind or simply controlled the whole ensemble, as he undoubtedly did. Or, as the CC Inspector put it, albeit for a different scheme, that views *across the Great Lawn, or what remains of its original conception, are essential to an understanding of the place of the Orangery in the designed landscape. As such, they are integral to the contribution setting makes to significance.* [6.38.3 7.25 9.18 9.17 10.16]

15.20 Turning to the actual effects, change to the setting would be as a result of the scheme's upper 6 storeys (or so) appearing at distance of approximately 1.2km above the Orangery roof from a few angles. Perspective would mean that the proposals would not be visible above the roof when standing close to it. Rather, in order to see the scheme, it would be necessary to stand well back (at View 30 or nearby). I first studied the view over the Orangery in the autumn, as requested, before the Inquiry opened. I noted that, as more of the scheme would be obscured when the trees were in leaf, which is for the part of the year when there are likely to be more visitors, the impact on views would be reduced. [6.7 6.57.2 6.41]

15.21 I saw that the height and width of the scheme could distract the eye in views from a relatively small area of the lawn when standing some distance away when the weather is good. Even so, the extent of change to the setting of the Orangery from these angles would be pretty minor. To put this in perspective, I doubt that the intrusion into the view would even register with the vast majority of visitors who would be far more taken by the quality of the Orangery, or a hundred and one other fascinating aspects of the Gardens. Furthermore, View 30 is too far from the asset to take in its architectural details. In terms of the ability of the public to appreciate the Orangery, the effect of the scheme in the setting would be negligible. [6.38 6.41 9.8 9.23 10.2 10.37]

15.22 On the other hand, listed buildings should be preserved for their own sake and the setting of the Orangery is important to the OUV of the WHS, if not absolutely key. As above, the impact on its significance as a listed building can be equated with the effect on the OUV of the WHS. Given that the extent of change would be minor, I find that the degree of erosion to the significance of the listed building, and so that of the WHS, would also be slight. [6.35]

15.23 As above, the overall harm should be some sort of product of impact and importance, with the balance tipped firmly in favour of preservation. However, to argue that a slight detrimental change to its setting should automatically be equated with considerable harm on account of the importance of the asset would be an extreme if not unreasonable position. It would prejudice the balance required to be taken by the decision maker under NPPF§196. *Considerable importance and weight* to the *desirability of preserving* does not necessarily result in considerable weight to the harm. Providing the *desirability of preserving* has been given considerable weight, and the balance tipped appropriately, the assessment of the weight to the actual harm to significance (or special interest) in the overall balances is a matter for the decision maker. Or, as the SPG puts it *[WHS]s have a very high significance value, therefore even minor changes can have a significant effect.* [3.14 6.3 6.4 6.93 7.41 8.5 8.9]

15.24 On this basis, the harm would not only be less than substantial but, following *Bedford*, also nowhere near the level of harm required to be deemed substantial. This also accords with the findings of the CC Inspector except that here the scheme is for up to 18 storeys compared with the 31 storeys there. [3.15 6.29 6.30]

15.25 I see no good reason why the WHS might be put on the List of WHSs in Danger as a result of the proposal. RBGK implied that UNESCO might withdraw WHS status if much more development took place outside the boundaries of Kew that detracted from its setting. It drew comparisons with the Liverpool Maritime Mercantile City WHS, now threatened with de-listing as a result of development close to its listed buildings. However, there was no evidence that the developments within the settings of each of these sites are remotely similar. For all these reasons, I find that the overall weight to the harm to the significance of the Orangery, and so on the OUV of the WHS, on account of impact on its setting should be assessed as moderate. I note that this was also HE's finding. [9.12 10.3 10.4]

Cumulative harm to Kew Gardens

15.26 The tall buildings in the area include a range of developments, either built, under construction, consented or with a resolution to grant permission. As above, the Mayoral SPG warns of *a tipping–point* while HE's AN4 advises *a careful examination of … any public benefits … and of the alternative means of delivering them … to be able to find a clear and convincing justification for the cumulative harm*. This wording adopts the NPPF language of clear and convincing justification, although the NPPF does not specifically refer to cumulative harm under its Historic Environment chapter. [3.17 3.21 6.32.2 8.4 9.13 9.25 10.2 10.5 10.12 10.18]

15.27 RBGK argued that an assessment of cumulative harm requires identifying that the scheme causes harm in addition to existing recognised harm, and that the total harm, including the pre-existing harm and potential harm associated with consented (but not yet built) developments, should be assessed together. [10.18]

15.28 The Applicant acknowledged that harm from the scheme would compound that from BFC and of other existing visual intrusions (it argued to a very small degree), and that this would affect the Orangery (and so the OUV). It noted that HE describes the setting as *well preserved* while, in RBGK's eyes, the cumulative harm is already all but fatal to the OUV. The Applicant argued that this is self-evidently not the case as it would leave no room for judgement: if the existing situation is near to substantial harm, then <u>any</u> further glimpse, however small, would be unacceptable. [6.43 6.45 6.48 10.2 10.6]

15.29 To my mind, cumulative harm should be assessed in three ways. First, it is the proposal that should be assessed initially, followed by a cumulative assessment. As HE AN4 notes: *Each building will need to be considered on its merits, <u>and</u> its cumulative impact assessed* [my underlining]. Which of these considerations carries more weight, and how these are combined, will be a matter for the decision-maker based on the circumstances. Second, existing harm should never be used to justify additional harm. Policy is unequivocal that the quantum of proposed harm should not be compared with existing harm in assessing whether it would make a significant difference. Finally, if the combination of existing and proposed harm would reach a tipping point then this would be particularly relevant in judging the overall effects. [3.21 6.30 8.29 9.27]

15.30 In this case, having studied the extent of visibility of existing buildings (such as the Haverfield Towers) and their positions relative to important views, I find that the severity of change (rather than the harm) to the setting of the Orangery would be a little more than slight. While the Haverfield Towers have a greater impact on the setting of the WHS as a whole, this is over a much wider area than that of the Orangery for which there are fewer viewpoints. Taken with existing impacts, and for similar reasons, I find that overall there would be a minor cumulative effect. Combined with the impressive credentials of these overlapping assets, the weight to the direct harm and the slightly greater cumulative harm should be assessed as a little, but not much, more than moderate. It would fall well short of a tipping point. The harm would still not come close to substantial. [2.3 6.53 7.28 9.11 10.9 11.8]

15.31 While the MPlan understandably raises the concern, and in strong terms, that development outside the BZ might reach a tipping point, or even lead UNESCO to consider whether to withdraw WHS status, there was little evidence that this would be the case. In a cumulative assessment, other tall buildings are also at a very significant distance. Indeed, the only building that really towers over the Gardens is the listed Pagoda within its grounds. The parallels with the *Westferry* Decision are not comparable and in any event that has now been quashed. [9.10 9.12 10.4]

Planting scheme

15.32 The Indicative Scheme Option for planting behind the Orangery claims that it would, in due course, be capable of screening out the view of the scheme. Indeed, it suggests that it would only take 4 evergreen trees to obscure the development from View 30 adding that: *If the Inspector agrees … that the planting is desirable and benefits the site's architectural legacy, then RBG Kew's refusal to cooperate is contrary to the objectives of the planning system on which RBG Kew otherwise rely heavily*. The adopted MPlan acknowledges both the need for screening ever taller external developments and the fact that these cannot be relied upon, just as the CC Inspector did. [3.22 3.27 6.51 6.95 6.71 6.103 10.30 10.31 14.2]

15.33 I accept that, as found in *Banks*, the Undertaking should be a material consideration. However, even if RBGK accepted the money, the screening would take time to materialise and, as it explained, there might be a number of reasons why it might not be effective. I noticed on my site visit that the boundary planting to screen modern development just outside the boundary is not entirely effective even at a much lower height. [1.6 3.27 9.13 10.30 14.2]

15.34 More fundamentally, RBGK is not required to cooperate. It has said in terms that its support will not be forthcoming. This could be for the reasons it sets out or any other motive. While there should be some acknowledgement that RBGK might be deliberately trying to thwart a possible solution to its objection, if it is not minded to accept the funds and/or carry out the planting effectively, the screening would not work. The Unilateral Undertaking should therefore be given limited weight. [6.95 9.30]

Strand-on-the Green (SotG)

15.35 The relevant designated heritage assets here are the SotG CA and the row of mostly Grade II listed buildings along the north bank of the River Thames. The recently updated CA appraisal confirms the importance to its significance of the River and water's edge, the historic buildings lining it, and its *picturesque charm, both from within the area and from advantageous views on the opposite riverbank.* The buildings are listed for group value with Nos. 64-71 being of particular relevance to the application. Zoffany House is Grade II* but, as the upgrade from Grade II almost certainly relates to the painter of that name who lived there, this element of its historic interest would be unaffected by development within its setting and the scheme would not harm this aspect of its significance. I also saw that the houses, as a group, relate closely to the River and are well-preserved and attractive. [2.8 3.24 5.3 6.64 7.20 8.12 9.2 9.37 9.44]

15.36 From the north towpath, close to the listed buildings, not only does the relationship between the River and the buildings dominate, but the proposals

would be out of sight behind them. From across the River, outside the CA, the view from directly opposite this row of listed buildings is the most important to their setting as it is from here that they can be best appreciated. The various views, and the video, show that only in a short stretch of the eastern portion of the towpath would the scheme sit behind the listed houses, while the Citadel, if built, would stand above them for much of the view from across the River. From the most important views further along the towpath to the west, the proposed buildings would be more prominent but would no longer appear above the listed buildings, unlike the Citadel (and the CC). [6.66 7.7 9.34]

15.37 View 23 shows the angle at which the scheme would most directly affect the settings of the relevant listed buildings, particularly Nos. 64-71 at the western end. It was chosen as a worst case. From here, the height and massing of the scheme would distract the eye and be at odds with the relative size and appearance of the listed buildings along the towpath. Moreover, from this distance the extent of change to the setting would be from the height and width of the scheme and the detailed design of its external treatment would be less apparent. As a result, I find that the scheme would have a harmful effect on the contribution the settings make to the significance of this group of listed buildings. To the extent that the view from across the River illuminates an important aspect of the CA's significance, albeit from a position that is not within it, there would also be harm to the CA as a whole. [2.8 6.6 7.17 9.47 9.71]

15.38 At the CC Inquiry, where a much taller scheme would have stood more directly behind the listed buildings, the Inspector found that the scheme *would compete with and distract from the frontage, thereby undermining its primacy in the view. … That would have a harmful impact on the contribution setting makes to the significance of the [SotG CA], and of the many listed buildings fronting the river*. Nevertheless, he concluded that the CC scheme *would cause some harm to the setting and thereby the significance of the [SotG CA], and the listed buildings on the river frontage*. He put it no higher than that and the SoS accepted this. The scheme before me would be significantly lower than the CC and would affect the settings of listed buildings from a short stretch of the opposite towpath at a more oblique angle. While there are other differences, to be consistent, it would be difficult to conclude a much greater degree of harm arising from the Citroen scheme and I do not. [6.69 7.7 7.8 8.13 9.19 9.51]

15.39 From policy in the NPPF§189 and elsewhere, the weight to the importance of the settings of a group of essentially Grade II listed buildings (whatever that impact might be) should, in principle, be demonstrably less than for the Grade I Orangery and the WHS at Kew. The calculation of weight to be given to the harm to the SotG CA and its listed buildings is therefore quite different to that to the WHS. While still limited, the extent of change to the settings of the SotG CA and its listed buildings would be much greater than the slight severity of change to the Orangery, but the importance is much lower. Again, looking at this as a product of these factors, I find that the weight to the harm to the SotG CA and its listed buildings should also be moderate. The setting of a CA is not protected by Statute, and s.72(1) of the LB&CA Act does not apply to the SotG CA in this case, but impact on its setting can affect its significance and so result in conflict with NPPF§196, LonP Policy 7.8 and HLP CC4. [3.6 3.11]

Cumulative harm to the SotG CA

15.40 As for Kew Gardens, the cumulative harm should also be assessed. With regard to the SotG, the severity of change (rather than the harm) to the settings of the listed buildings and of the CA would be moderate. Taken with existing and future impacts, and the BFC stadium in particular, there would be a cumulative effect but overall it would be not much greater. It would also fall well short of a tipping point. Overall, the weight to the harm to the significance of the SotG CA and its listed buildings on account of impact on their settings, and the cumulative harm, should be assessed as a little more than moderate. [2.4 3.34 4.2 6.67 6.68 7.9 9.42]

15.41 On balance, but by a different calculation, I find that the weight to the harm to the significance of Kew Gardens and to that of the SotG would be similar. In each case, this must be weighed against the public benefits in the heritage balance, albeit with the scales already tipped. The combined harm to both should be considered in the planning balance.

Kew Green

15.42 The CA appraisal explains its designation as an *historic open space,* with *high quality C18th development, a definite village character* and *a fine example of an historic Green.* As with the SotG, many of the more attractive buildings are listed at Grade II, a few at II*. As was nicely put by the CC Inspector: *The green is a charming space, bounded by a pleasing variety of buildings, a lot of which are listed ….* The difference here is that, given its much lower height, the scheme would not be as conspicuous as the CC. Nevertheless, it might just *lift the eye* and cause some harm to the setting and so to the significance of the Kew Green CA and the listed buildings that front onto the north side of the Green, Nos.90-96 Kew Green in particular but also No.71 and Nos.98-106. [2.6 2.9 3.25 5.3 6.8 6.49 6.73 7.4 7.36 8.16 8.17 9.1 9.63 9.70 9.76]

15.43 On the other hand, at no point would the scheme appear above the tree line and it would be even less visible when the trees are in leaf. The key Views are 20 and 22 from where the viewer would need to be focussing on the direction of the development to notice it at all. As the Green has 4 sides to it, the focus is much wider than the towpath to the SotG and it is further away from the site. While it would be too dogmatic to suggest that there would be no impact at all on setting, the extent to which this would affect the significance of the CA or that of the listed buildings would be close to negligible. The cumulative assessment would add little to this.

Other heritage assets.

15.44 The CC inspector found that: *Given the proximity of the Wellesley Road [CA] …, the [CC] would be prominent in views towards it …. However, in this part of the [CA], one can hardly fail to be aware of the Chiswick Roundabout, the elevated section of the M4, and attendant visual and other impacts. Notwithstanding that, the disciplined terraces, and the regular layout, are readily appreciated. The [CC] … would appear as something beyond the [CA] too and its visibility from within the [CA] would not undermine an appreciation of its significance in any way. While it would affect the setting of the [CA], in my view, it would not harm the contribution that setting makes to its significance*. The scheme before me would be significantly lower, at a similar distance and with comparable views. I also find, for similar reasons but based

on my own visit, the CA appraisal and the evidence before me, that the significance of this CA would be unharmed. [2.2 2.10 6.80.1 11.5]

15.45 From Kew Bridge the view is an oblique one and largely obscured by existing development. No party argued that impact on the setting of Kew Bridge or its CA should be a significant factor (if at all) in this case. I find that they would be unharmed. [2.2 2.11 8.12 12.2]

Heritage Balances

15.46 NPPF§196 requires a balance in each instance of less than substantial harm to the significance of a designated heritage asset. This is expressed as a single requirement and so should be applied to each affected asset individually. Where there is more than one instance of such harm, as here, these should be combined in a planning balance which I carry out below. Here the harm to the setting of each designated heritage asset would be less than substantial, including cumulative harm. By comparison, substantial harm requires that: *very much if not all of the significance of the asset was drained away*. My assessment is that this is not the case here and, contrary to assertions by the objectors, the harm would not come close to substantial for any asset. [3.15 6.3 6.4 6.25 6.78 6.91 7.41 7.48 7.53 8.9]

15.47 *Less than substantial harm* does not amount to a less than substantial objection. Taking account of the *considerable importance and weight* that should be given to the *desirability of preserving the setting of listed buildings*, I have found the overall weight to the harm to the significance of the Orangery (and by extension to the OUV of the WHS) should be assessed as moderate; the weight to the harm to the listed buildings on the SotG, and to its CA, to also be moderate; and the weight to the harm to Kew Green CA to be slight. The cumulative effect in each case adds a little to the harm but, altogether, should still not amount to more than a little above moderate harm for all the designated assets as a whole. [3.11 6.6 6.23 6.28-6.30 6.32 6.54 6.65 7.15 7.18 7.21 7.31 8.4 8.18 9.21 9.22 9.36 9.52 9.68 10.3 10.8 10.11 10.18]

15.48 I shall therefore assess the benefits of the scheme before recommending any particular heritage balance is struck.

Other harm

15.49 LBH queried the standard of accommodation for future residents with particular regard to levels of daylight to habitable rooms. As above, 75 rooms would fail to meet the minimum BRE standards for daylight and the vast majority of those would be living rooms. While in my assessment this proportion should not automatically be fatal to the scheme, and was not pursued by LBH as an objection, nevertheless it should weigh against the proposals in the overall planning balance. [5.7 6.80.3 7.52 8.28 11.10]

15.50 On the issue of infrastructure, and contributions that could be secured by planning obligation, the WCGS was sceptical about the Transport for London (TfL) improvements and the purported 2021 increase in PTAL from a greater frequency of services. This is because at Gunnersbury Station one is prevented from accessing the platform during peak periods. Furthermore, without the necessary major upgrade to the Station, an increase in frequency could exacerbate the situation by increasing the time one is held in a queue. That may all be true, but the contributions sought by TfL would be provided and it

would be unreasonable to ask the developers to do more. [2.2 2.3 5.4 6.90 11.7 11.12]

15.51 WCGS also queried the absence of any reference to the low-rise, high quality townscape within the Wellesley Road CA to the east of the site which it felt was a serious omission. As above, I have found that there would be no harm to the significance of its CA and, while I acknowledge that the presence of the development might well be unwelcome to existing residents, this is not a reason to deny others a home. [2.2 2.10 6.80.1 11.5]

Design

15.52 If viewed from directly above, the apartment blocks would fan out from the northern corner. There would also be a small public plaza. The variety of external treatments and the height differential between blocks would break up the perceived mass in some views, and the landscaping proposals would be an enhancement. [3.3 3.9 6.97 7.58 11.6 11.12]

15.53 I find that splaying the blocks is a clever device which would allow more sunlight into some flats, though at the cost of others, and would give some protection to the open spaces from the elevated M4. The scheme would offer benefits to pedestrians as the place with the sunniest aspect would be given over to a new public plaza and also offer a direct route from Chiswick High Road across the leisure centre car park. I therefore accept that the scheme would introduce a high-quality urban design into an area which is being positively planned to accommodate substantial change. [2.1 5.1 6.57.4 12.2]

15.54 On the negative side, as HE pointed out, the contemporary architectural forms could be associated with high density *anywhere* urban structures, lacking any real connection to their context. Moreover, the architectural detailing would not be readily apparent from a distance, and from some angles the splayed blocks would read as a band of clustered vertical forms, while for the most prominent block the step in heights would not be readily noticed from the SotG, as this would stand forward of the AH block next to the M4. [7.21 8.18 9.48 9.50]

15.55 Equally, the scheme would not be such a striking new entity, in the way that the CC might have been, that it would amount to an outstanding or innovative design which could demonstrably help raise the standard of design more generally in the area. It would not be at the head of any hierarchy along the GWC but would be one scheme among several. This would cut both ways: it would have fewer benefits as an architectural object but would be less dominant and distracting in the setting. Any blending with other developments would do nothing to diminish its impact as part of any cumulative effects. [8.22 8.23 11.30]

15.56 The WCGS pointed out that the public space, for new residents and others, would also be a spill out area before and after football matches rather than direct supporters away from residential streets. It argued that poor daylight to many flats would make future residents have to judge the ambient air pollution and noise before stepping outside to compensate for a lack of sunlight/daylight by using their balconies. It referred to over-delivery of 1-bed units, in an area with a significant over-supply, which would be unbalanced, and claimed that the resulting churn would reduce community cohesion. It noted the nursery and that its play space would be in a position exposed to high levels of air and

noise pollution. Finally, it wondered how the Government hopes to meet its carbon-reduction targets if it approves new buildings which would lock us into unsustainable additional energy demands for mechanical ventilation and air conditioning. These matters should all be weighed in the design balance. [11.10-11.12]

15.57 The harm to the settings of designated heritage assets also counts against the quality of the design. LBH argued that, without the written brief to the architects, it's not clear what was expected. Also, that the scheme could only be as good as the advice from its original consultants: that the architects did not need to worry about the wider heritage context. For this report, the distinction between the brief and the architects' input is of little relevance and what matters is the quality of the final design, including its impact on the settings of designated heritage assets. [7.5 8.6 8.29]

15.58 Overall, I find that the positive aspects of the design would be negated by the flaws with regard to daylight and heritage in particular, but taking account of other criticisms as well, so that the quality of the design would be broadly neutral in the planning balance, and should not be given any weight either as a benefit or a disadvantage of the scheme. [6.81.3 7.52 8.28 11.10]

Benefits: housing and affordable housing (AH)

15.59 The proposals would provide 441 new homes, 218 of which would be AH of one sort or another. LBH argued that as it had a 5YHLS the weight to the benefits of housing should be reduced. On the other hand, London is one housing market and so the benefits of new housing should not be downgraded. While LBH may well be a high performer, and close to any new targets, it would be wrong to argue that the London-wide need for housing could be met elsewhere. [5.5 6.11 6.18.4 7.56 8.20 8.24]

15.60 The Applicant argued that achieving more than usual AH was a further benefit. The current LBH policy requirement is only 40% and there is an Early Stage Review Mechanism in the s.106. The Mayor held out for 50% AH. It may be true that, compared with many other schemes, the proposals would result in significantly more AH than would be achieved by a market developer, but the scheme at 1-4 CIW calls this into question and although the viability evidence suggests that this is the maximum, it was not tested. Consequently, the AH offer is no more than would be policy compliant as and when the IPLP is formally published (which is likely to be before the decision on this case) and anything less could be weighed against the scheme. The AH should be given substantial weight but not more than that. [3.30 5.5 6.9 6.11 6.12.2 6.14 6.60 8.29 10.24]

15.61 RBGK suggested that the benefits of housing, and AH, were unremarkable and no more than a common or garden benefit. While this may be true in some circumstances, it should not apply when there is an acute housing shortage right across London. [7.62 10.21]

Other benefits

15.62 The proposals would be on a brownfield site in a highly sustainable location. It would employ 250 construction workers with other uses and include a nursery. Otherwise, there was little persuasive evidence that the proposal would bring a massive uplift to the area around it. The 250 jobs would be a short-term

benefit even if they might offer continuity of employment to some. The nursery would be an advantage to the local community, existing and new residents, and is a benefit of modest weight in the balance. [5.2 5.4 6.1 6.18 6.20.1 6.89 7.52 7.57 8.27 11.11]

15.63 Economic activity, and regeneration would be further benefits but taken together these add little to the substantial benefits I have found. Collectively, and relative to the importance of housing and of protecting the historic environment, the other benefits should be given a little weight in favour of the scheme. [6.20 6.21 6.59 6.78 7.15 11.13]

Heritage balances

Alternative schemes

15.64 The Applicant argued that alternative proposals, that would not harm the setting of the Orangery/WHS, could not deliver a similar level of public benefits. In the SoS's CC decision, he considered *that it could be possible for an alternative scheme with lesser impacts on designated heritage assets to also provide benefits of this type* …. He did not require the same benefits, only *similar*. While there was a fallback scheme at the CC, and other scheme benefits, the SoS did not stipulate that this was necessary. Comparisons were drawn with a suggested 12-storey scheme and with the proposals for 1-4 CIW where the developers were able to produce a similar number of units, and 50% AH, with buildings of up to 16 rather than 18 storeys. LBH accepted the principle of tall buildings here and encouraged a scheme up to 15 storeys, but not beyond that, and for it to reflect the stepped approach of building up towards the M4, which it would do but only in part. [1.5 3.21 3.29 6.18.4 6.55 6.71 8.24 9.91 9.96-9.99 9.100 10.21-10.23]

15.65 As well as a supplementary proof on viability, the Applicant presented a high level assessment of the viability of the Notional Reduced Scheme (of no more than 12 storeys) which it argued was firm evidence not speculation, to show that no other scheme could provide the same or even similar benefits without causing harm to the setting of Kew Gardens. This also sought to distinguish the Citroen site from 1-4 CIW by reference primarily to differences in the Existing Use Value of the site as a car showroom, compared with the cleared site at CIW. However, neither was the viability assessment reviewed at the time of the Application nor was a witness called for cross-examination. Moreover, it does not address the point that while any tall buildings would draw the eye, a larger/taller one might do so to a greater degree. It does nothing to address LBH's wish that it should not exceed 15 storeys. Taken together, the high level of the late viability information and the inability to question it in detail mean that this should be given limited weight. [6.57.4 6.58 6.60-6.62 6.72 6.96 7.63 8.29]

15.66 To my mind the arguments defending the lack of properly considered alternatives are weak and there is some strength to the criticisms. If in place at the time of the application, IPLP Policy D9 would have imposed an obligation, as part of a *clear and convincing justification*, to demonstrate that alternatives have been explored. A further consideration arises from the general argument that the design could have been better. This must almost always be true of what is an iterative process. Indeed, if one perpetually refined a design nothing would ever get built. It follows that for weight to be

given to this criticism there must be the reasonable possibility of a significantly different alternative with demonstrably better outcomes. [3.29 6.23.2 8.4 8.29iv-xiii 9.91 9.96 10.21]

15.67 The Notional Reduced Scheme of no more than 12 storeys would be bound to reduce the ability to achieve a comparable volume of accommodation. An alternative might come forward that mirrored the 16 storeys at 1-4 CIW. This would still be visible but to a lesser extent and probably over a smaller area. It would then be necessary to consider whether a reduction of only 2 or 3 storeys would make a significant difference to the harm identified, noting that the height was only raised in connection with heritage assets and that a reduction would have no other benefits other than meeting LBH's emerging aspirations for the area. It would do little to allay WCGS's concerns. Moreover, the current scheme is ready to proceed and there must be at least some uncertainty about any alternatives, not least over their timetable. The issue is therefore the likelihood that a significantly different scheme, not just one with some small tweaks, would come forward that would provide a much better balance between the provision of roughly the same benefits and much reduced harm to the settings of heritage assets. This must include the likelihood that it would be viable, that the Applicant would want to carry it out or sell the site to another who would, and be worth the delay in providing those benefits. [2.5 4.3 6.15 6.56 6.61 6.71 7.63 8.22 8.29 8.32 10.24]

15.68 For these reasons, some weight should be given to the possibility of alternatives. Despite the untested viability evidence, given the advanced stage towards approval for the proposals at 1-4 CIW with 50% AH, I find that there is a reasonable prospect that a lower scheme might have reduced impacts on the settings of the Orangery/WHS and the SotG CA/listed buildings while still offering a reasonable amount of housing and AH. Having said, the 1-4 CIW would rise to 16 storeys, to reflect its position on the inside of the curve of the M4, rather than the 12 storeys of the Notional Reduced Scheme. A 16 storey scheme for the Citroen site would only reduce the change to the setting of the WHS slightly. Taken with the lack of certainty that such a scheme would ever happen, the weight to any alternative should not be substantial. [6.58 6.61 8.22 8.29]

Heritage balances - conclusions

15.82 Having established the public benefits, I now return to the NPPF§196 balance. I recommend moderate weight should be given to the harm to the significance of the Orangery on account of development within its setting (and by extension to the OUV of the WHS) and also to the significance of the listed buildings at the SotG and Kew Green (and similarly to their CAs). In each case this should be slightly, but not greatly, increased by the addition of cumulative harm. Weighed against the substantial benefits of the scheme, I find that in each case the NPPF§196 balance should weigh in favour of the proposals. This is an important material consideration.

The development plan and overall planning balance

15.83 Under s38(6) of the P&CP Act, reiterated in NPPF§2, NPPF§12 and NPPF§47, the development plan forms the starting point for determination of this application. The relevant policies are set out above.

15.84 On account of the *less than substantial harm* to designated heritage assets, including cumulative harm, the scheme would lead to conflict with LonP Policies 7.8 and 7.10. The Mayor argued that to find conflict a with development plan policy regardless of the level of harm to heritage, would be inconsistent with the NPPF, which requires a more balanced approach; and that given the low level of harm to heritage assets, no conflict with LonP policies 7.8 and 7.10 would arise. I disagree. It is important to note that these policies do not have the same balancing exercise as in NPPF§196 and I find that there would be conflict with these heritage policies. [3.6 3.7 6.4 7.41 8.9]

15.85 Given my conclusions on design, I find that the scheme would be neutral with regard to LonP Policies 7.4 and 7.6 as well as HLP Policies CC1, CC2 and CC3. LonP Policy 7.7 requires particular consideration in such circumstances and so a balance is required. HLP Policy CC4 again requires a balance between harm to designated heritage assets and public benefits. [3.3-3.7 3.9-3.11]

15.86 While there would be tension regarding some elements, overall the housing policies in the development plan would offer broad support for the proposals. The housing and AH, together with making efficient use of a brownfield site would assist in meeting, and gain support from, the requirements of LonP Policies 3.3-3.5 and 3.8-3.13 and HLP policies SC1, SC2, SC3, and SC4. Its location within the GWC would mean some support from HLP Policy SV1. [3.8 3.12]

15.87 While some heritage policies require a balance, others do not, leading to the conflict set out above. Nevertheless, assessment requires a balance against the development plan as a whole. If the SoS agrees with my judgements on the harm to heritage and the benefits of the scheme, then it would accord with the development plan as a whole. The reverse is also true.

Material considerations

15.88 Emerging development plan policies are material considerations. Following the SoS's comments on the IPLP it is reasonable to assume that policies on which he has not commented are unlikely to change. The relevant heritage policies in the IPLP should therefore be given substantial weight. Of these, Policy GG5 on a competitive economy, and Policy GG2 on making the best use of land, support the scheme. [1.7 3.30 6.83.1 6.98 7.67 9.105 10.35]

15.89 For the above reasons, the limited exploration of alternatives should not breach the requirements of IPLP Policy D9. As with current LonP policies 7.8 and 7.10, the scheme would not accord with IPLP policies HC1 and HC2. Each of emerging policies D9, HC1 and HC2 also introduce the importance of cumulative impacts. The latter, and many other documents, add support for appropriate weight being given to the provisions of the now adopted WHS MPlan. This in turn adds support to the objections and elaborates on the SOUV. The Mayoral SPG, HE advice and guidance, and the various CA appraisals all clarify the interpretation of policy and the importance of the various assets. [1.8 3.7 3.17 3.22 3.24 3.27 3.30 6.7 6.50 6.99-6.105 7.68 9.8 9.13 10.5 10.28 10.35-10.37]

15.90 The application accords with the LPR's housing and AH policies but not heritage policy. As the site will lie within the OA, where tall buildings are expected, it would comply with the thrust of OA policy in the GWC LPR (including its Masterplan and Capacity Study) albeit not the fine detail of where a focal building should stand. At the CC, the Inspector anticipated that the Citroen

scheme would proceed without delay. On that basis, he assumed an overall context of a new stratum of development along and around the GWC. The Applicant and the Mayor similarly claimed an inevitability of harm from prospective schemes in the GWC OA. However, this has not yet happened, and the HLP should still be given only limited weight. [3.32 3.34 6.85 7.12 8.1 8.22-8.24 9.56 11.11]

15.91 The decision maker is entitled to include the Richmond LP among the material considerations, and I recommend that it should be. I also find that it is one of limited weight given that it doesn't cover the site and that other policy covers the same matters. [8.3 9.93 10.3]

15.92 At its heart, the balance is a simple one between the harms, primarily those that would be caused to the settings of a number of heritage assets, and the public benefits, mostly of new housing, particularly AH. As there is more than one instance of heritage harm, these should be combined in the planning balance. The range of heritage harm would be to one of the relatively commonplace Grade II listed buildings in the CAs at the SotG or Kew Green, to that of the highest order, in the case of the Grade I Orangery in the WHS. My findings of harm lead to conflict with NPPF§193, and s.66 of the Act, and means that this harm must attract great weight, or considerable importance and weight, in any balancing exercise. While I have carried out the NPPF§196 balances individually, when combined, the moderate harms to more than one asset do not lift the weight significantly. The additional harm to the Kew Green CA and its listed buildings adds very little to this. [3.11 6.3 6.19 6.25 6.54 6.92 7.3 7.53 7.65 8.4 8.30 8.33 11.8]

15.93 The moderate failings in some daylight levels adds further harm but the overall weight to harms would still not amount to substantial. Similarly, the various other benefits should not lift the weight to the these overall much above substantial. As above, design should be a neutral factor. [6.81.3 7.52 8.28 11.10]

15.94 For all these reasons, assessed against the NPPF, the benefits of the scheme should outweigh the harms. This balance amounts to a material consideration of sufficient weight that it could indicate determination other than in accordance with the development plan. With regard to the designated heritage assets, I consider that the development plan should not result in a different outcome from the NPPF. Nevertheless, if the same judgements were felt to lead to conflict with the development plan as a whole, then support from the NPPF could still indicate otherwise, such that the proposals should be approved in any event.

16. Recommendation

16.82 I recommend that the application should be approved, and planning permission granted subject to the attached Schedule of conditions and all the obligations in the Legal Agreement.

David Nicholson

INSPECTOR

Appendix 1

Schedule of conditions and reasons.

1. Time limit

The development must be commenced within three years from the date of this permission.

Reason: To comply with Section 91 of the T&CP Act 1990 (as amended).

2. Approved plans and documents

The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Proposed drawings	
Site plans	
1699_DWG_PL_xx_00_001 R01 Proposed site plan	1699_DWG_PL_xx_00_002 R00 Proposed block plan
38397-PBA-XX-D-C 501-SO Rev 1 Proposed indicative surface water drainage strategy	
Elevations	
1699_DWG_PL_xx_00_100 R03 Proposed site elevation south-east	1699_DWG_PL_xx_00_102 R03 Proposed site elevation north-west
1699_DWG_PL_xx_00_101 R03 Proposed site elevation north-east	DWG_PL_xx_00_103 R03 Proposed site elevation south-west
Floor Plans	
1699__DWG_PL_xx_20_100 R07 Proposed ground floor plan	1699__DWG_PL_xx_20_110 R04 Proposed tenth floor plan
1699__DWG_PL_xx_20_101 R05 Proposed First (podium) floor plan	1699__DWG_PL_xx_20_111 R04 Proposed eleventh floor plan
1699__DWG_PL_xx_20_102 R04 Proposed second floor plan	1699__DWG_PL_xx_20_112 R04 Proposed twelfth floor plan
1699__DWG_PL_xx_20_103 R04 Proposed third floor plan	1699__DWG_PL_xx_20_113 R04 Proposed thirteenth floor plan
1699__DWG_PL_xx_20_104 R04 Proposed fourth floor plan	1699__DWG_PL_xx_20_114 R04 Proposed fourteenth floor plan
1699__DWG_PL_xx_20_105 R04 Proposed fifth floor plan	1699__DWG_PL_xx_20_115 R04 Proposed fifteenth floor plan

1699__DWG_PL_xx_20_106 R04 Proposed sixth floor plan	1699__DWG_PL_xx_20_116 R04 Proposed sixteenth floor plan
1699__DWG_PL_xx_20_107 R04 Proposed seventh floor plan	1699__DWG_PL_xx_20_117 R04 Proposed seventeenth floor plan
1699__DWG_PL_xx_20_108 R04 Proposed eight floor plan	1699__DWG_PL_xx_20_118 R05 Proposed roof plan
1699__DWG_PL_xx_20_109 R04 Proposed ninth floor plan	
Elevations and sections	
1699__DWG_PL_01_20_200 R01 Proposed Block 1 Section AA	1699_DWG_PL_01_20_303 R02 Proposed Block 1 South West elevation
1699__DWG_PL_01_20_201 R01 Proposed Block 1 Section BB	1699_DWG_PL_0203_20_300 R02 Proposed Block 2 and 3 East Elevations
1699_DWG_PL_0203_20_200 R01 Proposed Block 2 and 3 Section AA	1699_DWG_PL_0203_20_301 R02 Proposed Block 2 and 3 North Elevations
1699_DWG_PL_0203_20_201 R01 Proposed Block 2 and 3 Section BB	1699_DWG_PL_0203_20_302 R02 Proposed Block 2 and 3 South Elevations
1699_DWG_PL_0203_20_203 R01 Proposed Block 2 and 3 Section CC	1699_DWG_PL_0203_20_303 R02 Proposed Block 2 and 3 West Elevations
1699_DWG_Pl_0405_20_200 R01 Proposed Block 4 and 5 Section AA	1699_DWG_PL_0405_20_300 R02 Proposed Block 4 and 5 North East Elevations
1699_DWG_Pl_0405_20_200 R01 Proposed Block 4 and 5 Section BB	1699_DWG_PL_0405_20_301 R02 Proposed Block 4 and 5 North West Elevations
1699_DWG_PL_01_20_300 R02 Proposed Block 1 North East elevation	1699_DWG_PL_0405_20_302 R02 Proposed Block 4 and 5 South East Elevations
1699_DWG_PL_01_20_301 R02 Proposed Block 1 North West elevation	1699_DWG_PL_0405_20_303 R02 Proposed Block 4 and 5 South West Elevations
1699_DWG_PL_01_20_302 R02 Proposed Block 1 South East elevation	

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the application as assessed in accordance with Policies SV1, CC1, CC2 and CC3 of the Hounslow Local Plan (HLP) and Policy 1.1 of the 2016 London Plan (LonP).

3. CIL Phasing Plan
The development shall be carried out in accordance with a phasing plan to be submitted to and approved in writing by the Local Planning Authority (LPA) prior to the commencement of development.

Reason: For the purposes of Regulation 9(4) of the Community Infrastructure Levy Regulations 2010 (as amended)

4. Detailed drawings, external materials and balcony screens
Notwithstanding the details shown on the approved plans, prior to the commencement of the development (other than demolition, site clearance and ground works):

a) details and appropriate samples of the materials to be used for the external surfaces of the buildings and hard surfaced areas of the development, including details of change in elevational treatment, shall be submitted to and approved in writing by the LPA;
b) sample panels of the building materials and hard surfacing shall be provided on site to be inspected and approved in writing by the LPA and thereafter shall be retained on site during the construction of the development;
c) details of the following features and elements of the development shall be submitted to and approved in writing by the LPA:

i. Brick bonding, and brick and cladding detailing, to be shown on annotated plans at a scale of not less than 1:20, unless otherwise agreed in writing with the LPA.
ii. External windows, balconies, winter gardens, doors, screens, louvres and balustrading to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
iii. Depth of window reveals, colonnades and soffits to be shown on annotated plans at a scale of not less than 1:20 unless otherwise agreed in writing with the LPA.
iv. Rainwater goods to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
v. Privacy screens to be shown on annotated plans at a scale of not less than 1:10 unless otherwise agreed in writing with the LPA.
vi. Shop fronts, entrances and openings to be shown on annotated plans at a scale of not less than 1:20 unless otherwise agreed in writing with the LPA.

The development of each building shall be carried out in accordance with the approved details prior to the first occupation of the relevant building.

Reason: To safeguard the character and visual amenities of the site and wider area and to ensure that the building is constructed in accordance with Policies CC1 and CC2 of the HLP and Policies 1.1, 7.4, 7.5 and 7.6 of the LonP.

5. Building and Site Management
Prior to the first occupation of each building to be provided as part of the development, a Management Strategy in respect of the relevant building shall be submitted to and approved in writing by the LPA.

Each Management Strategy shall include:

a) Details of security measures including location of security/concierge office, location and details of CCTV;
b) Details regarding the receipt, management and distribution of post, parcels, supermarket and other deliveries to the residential units;
c) Details of the controlled areas of the development and details of those who will have access to each of the identified zones;
d) Points of access and how access will be controlled;
e) Confirmation of disabled access arrangements;
f) Refuse and Recycling Storage and Collection (Operational Waste Management Strategy retail and residential); and
g) Measures and procedures to prevent and deal with antisocial behaviour and crime.

The site shall be managed in accordance with the approved strategy for the life of the development or as otherwise agreed in writing by the LPA.

Reason: In the interests of the proper maintenance, safety and security of the site and to ensure that the quality of the public realm is appropriately safeguarded and that access is maintained for disabled people and people with pushchairs, in line with policies 3.1, 3.8, 3.16, 7.2, 7.3, 7.5 and 7.8 of the adopted LonP and LP policies.

6. Final Drainage Design
Prior to commencement of construction works (excluding site investigations, demolition and site clearance), final detailed drainage design including drawings, supporting calculations and an updated Drainage Assessment Form shall be submitted to the Lead Local Flood Authority for review and approval, aligned with the June 2018 Revised Surface Water Drainage Strategy and associated drawings. Evidence shall also be included to demonstrate that the offsite surface water sewers are suitable to receive the runoff.

A detailed management plan confirming routine maintenance tasks for all drainage components, including the green/blue roofs, permeable paving and attenuation tank, shall be submitted to and approved in writing by the LPA prior to occupation of the development to demonstrate how the drainage system is to be retained for the lifetime of the development.

Reason: To prevent the risk of flooding to and from the site in accordance with relevant policy requirements including but not limited to LonP Policy 5.13, its associated Sustainable Design and Construction SPG, the Non-Statutory Technical Standards for Sustainable Drainage Systems and HLP Policy EQ3.

7. Implementation of drainage design
No building to be constructed as part of the development shall be occupied until evidence (photographs and installation contracts) has been submitted to and agreed in writing by the LPA to demonstrate that the sustainable drainage scheme for the site has been completed in accordance with the details approved pursuant to Condition 6. The sustainable drainage scheme shall be managed and retained thereafter in accordance with the agreed management and maintenance plan for all of the proposed drainage components.

Reason: To comply with the Non-Statutory Technical Standards for Sustainable Drainage Systems, the National Planning Policy Framework (Paragraph 103), the

LonP (Policies 5.12 and 5.13) along with associated guidance to these policies and HLP Policy EQ3.

8. Landscaping, public realm, play space and boundary treatments

A landscaping and public realm scheme for the public and private areas in the development as shown in section 4.1 of the Design and Access Addendum (dated April 2018) shall be submitted to and approved in writing by the LPA prior to the commencement of public realm and landscape works.

The landscaping and public realm scheme shall include the following details in respect of the development:

a) The overall layout, including extent, type of hard and soft landscaping and proposed levels or contours;
b) The location, species and sizes of proposed trees and tree pit design;
c) Details of soft plantings, including any grassed/turfed areas, shrubs and herbaceous areas;
d) Enclosures including type, dimensions and treatments of any walls, fences, screen walls, barriers, railings and hedges;
e) Hard landscaping, including ground surface materials, kerbs, edges, ridge and flexible pavements, unit paving, steps and if applicable, any synthetic surfaces;
f) Street furniture, including type, materials and manufacturer's specification if appropriate;
g) Details of children's play space equipment and structures, including key dimensions, materials and manufacturer's specification if appropriate;
h) Any other landscaping features forming part of the scheme, including amenity spaces and green/brown roofs;
i) A statement setting out how the landscape and public realm strategy provides for disabled access, ensuring equality of access for all, including children, seniors, wheelchairs users and people with visual impairment or limited mobility; and
j) A wayfinding and signage strategy.
k) Details of how all of the landscaped areas (public and private) will be managed and maintained.

All landscaping in accordance with the approved scheme shall be completed or planted (as applicable) during the first planting season following practical completion of the development. The landscaping and tree planting shall have a two-year maintenance/watering provision following planting and any trees or shrubs which die within five years of completion of the development shall be replaced with the same species or an alternative to be approved in writing by the LPA.

The development shall be carried out strictly in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interest of biodiversity, sustainability, and to ensure that the landscaping is of high design quality and provides satisfactory standards of visual amenity in accordance with LonP Policies 7.3, 7.4. 7.5 and Policies CC1 and CC2 of the LP.

9. Cycle parking

Details of the secure/enclosed cycle parking spaces for the residential units, visitors and commercial/retail tenants, including their location and type of storage, shall be

submitted to and approved in writing by the LPA prior to occupation of any part of the development.

The approved measures shall be installed prior to occupation of the relevant building to which the cycle parking spaces relate and retained permanently thereafter in accordance with the approved details unless otherwise approved in writing by the LPA.

Reason: To ensure satisfactory provision of cycle storage facilities, in accordance with Policy EC2 of the HLP and Policy 6.9 of the LonP.

10. Noise fixed plant
Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10dB below the background noise levels when measured from the nearest sensitive receptors. All such fixed external plant shall be installed in accordance with the approved plans. No fans, louvres, ducts or other external plant that are not shown on the approved plans shall be installed without the prior written approval of the LPA.

Reason: to protect the amenities of existing and future residents and ensure that the development provides a high quality design in accordance with Policies CC1, CC2 and EQ5 of the HLP and Policy 3.5 of the LonP.

11. Noise, vibration and internal residential environment
Prior to the:

a) commencement of any development above ground floor slab level, details of the built fabric and ventilation strategy within the residential part of the development shall be submitted to and approved in writing by the LPA. Such details shall ensure that the approved residential units are insulated against external noise in order to achieve internal noise levels, taking into account any ventilation requirements, which do not exceed the guideline values contained in table 4 of BS 8233:2014;

b) occupation of the A1-A3, B1 and D1 uses forming part of the development, details of the built fabric and ventilation strategy in respect of those uses shall be submitted to and approved in writing by the LPA. Such details shall ensure that the approved residential uses are insulated against noise from the A1- A3, B1 and D1 uses in order to provide effective resistance to the transmission of airborne and impact sound horizontally and/or vertically between those uses and the residential uses. The approved details shall be installed prior to the occupation of the A1-A3, B1 and/or D1 uses (as relevant) and thereafter retained.

All works which form part of the strategies approved above shall be completed and evidence, that demonstrates compliance with the approved strategies and verifying compliance with the relevant minimum standard, shall be submitted to and approved in writing by the LPA prior to first occupation of the relevant uses. The works shall be retained in accordance with the approved details for the lifetime of the development.

Reason: To protect the amenities and health of the occupiers of the building(s), in accordance with Policy EQ5 of the HLP and LonP Policies 7.14 and 7.15.

12. External lighting and security
Notwithstanding the plans hereby approved, details of:

- CCTV;
- General external lighting;
- Security lighting;
- Access control measures for residential core entrances;
- Secured by Design accreditation measures and counter terrorism measures;

on or around the buildings or within the public realm in the development shall be submitted to and approved in writing by the LPA and installed prior to the first occupation of the relevant building to which the above measures relate.

The details shall include the location and full specification of all lamps; light levels/spill; illumination; cameras (including view paths); and support structures. The details will also include an assessment of the impact of any such lighting on the surrounding residential environment.

The development shall be carried out strictly in accordance with the details so approved and shall be retained as such thereafter.

Reason: To safeguard the security of the development and to ensure that any resulting general or security lighting and CCTV are appropriately located, designed to not adversely impact on neighbouring residential amenity or ecology, and are appropriate to the overall design of the development in accordance with policies 7.3, 7.4, 7.6 and 7.19 of the LonP and Policy CC2 of the LP.

13. Sustainability standards for non-residential uses
The development shall achieve an 'Excellent' rating under BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) for the Shell/Shell and Core stage and an 'Excellent' rating under BREEAM Refurbishment and Fit-out 2014.

a) Within 6 months of work starting on site, unless otherwise agreed with the LPA in writing, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Interim (Design Stage) Certificate, issued by the Building Research Establishment (BRE), shall be submitted to and approved in writing by the LPA to show that a minimum 'Excellent' rating will be achieved.
b) Within 3 months of first occupation of the development, unless otherwise agreed with the LPA in writing, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the LPA to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.
c) Prior to commencement of the fit-out of the development, unless otherwise agreed with the LPA in writing, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Interim (Design Stage) Certificate, issued by the BRE, must be submitted, by the fit-out contractor, to and approved in writing by the LPA to show that a minimum 'Excellent' rating will be achieved.
d) Within 3 months of first occupation, unless otherwise agreed with the LPA in writing, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Final (Post-Construction) Certificate, issued by the BRE, must be submitted, by the fit-out

contractor, to and approved in writing by the LPA to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.

Reason: In the interests of sustainable development and in accordance with LonP Policies 5.2-5.7 and HLP Policies EQ1 and EQ2.

14. Compliance with energy strategy

The development shall be built in accordance with the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application, demonstrating how the development will follow the hierarchy of energy efficiency, decentralised energy and renewable energy technologies to secure a minimum 35% reduction in CO2 emissions below the maximum threshold set in Building Regulations Part L 2013.

Prior to occupation of the development, evidence (e.g. photographs, copies of installation contracts and as-built worksheets prepared under Standard Assessment Procedure or the National Calculation Method) shall be submitted to and approved in writing by the LPA to demonstrate that the development has been carried out in accordance with the the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application unless otherwise agreed by the LPA in writing.

Reason: In the interests of sustainable development and in accordance with LonP Policies 5.2-5.7, and HLP Policies EQ1 and EQ2.

15. Accessible and adaptable dwellings

A minimum of 10% of all dwellings to be constructed as part of the development shall be built to requirement M4(3) wheelchair user dwellings contained within Part M volume 1 of the Building Regulations, as identified on the plans approved under condition 2. All other dwellings shall be built to requirement M4(2) accessible and adaptable dwellings contained within Part M volume 1 of the Building Regulations.

Reason: To ensure a socially inclusive and sustainable development in accordance with Local Plan Policy SC3 and Policies 3.8 and 7.2 of the LonP.

16. Air Quality

Prior to the installation of the Mechanical Ventilation with Heat Recovery (MVHR) system, detailed plans of the proposed MVHR system shall be submitted to and approved in writing by the LPA.

The details shall demonstrate that:

- the air quality at the internal location of the air intakes is predicted to be within legal limits and that appropriate NOx filtration and air tightness for windows and doors shall be included in the building design for the nursery; all residential units on the ground and first floor levels; and the relevant residential units located within an area classified as Air Pollution Exposure Criteria - B on the second and third floor levels;
- the overall efficiency of the MVHR system at least meets the details set out in the Silcock Dawson Energy Strategy v4.6 dated May 2018 submitted with the planning application;

- the ventilation system will provide sufficient ventilated air for all dwellings, the nursery and other publicly-accessible areas within buildings; and
- there are sufficient measures in place to monitor operation of the ventilation system and remedy defects for as long as any dwelling remains occupied.

The development shall be carried out and retained in accordance with approved details.

Reason: To ensure that the development meets the requirements of LonP Policies 7.14 (Air Quality), Policy 5.2 (Minimising Carbon Dioxide Emissions) and Policies EQ1 and EQ4 of the LP.

17. Air Quality/Combined Heat and Power (CHP)

Prior to the occupation of the development the results of tests undertaken on the installed boiler and CHP systems must be submitted to and approved in writing by the LPA. The results of the tests shall be approved if they demonstrate that the installed boiler and CHP systems meet, or exceed, the emissions rates and other parameters set out in chapter 10 of the environmental statement dated November 2017 submitted with the planning application.

Any gas fired boilers installed as part of the development shall be Ultra Low Emission with emissions to be less than 40 mg NOx/kWh in accordance with the Sustainable Design and Construction SPG.

Reason: To ensure that the development is undertaken in accordance with the details provided as part of the planning application and to ensure that the development meets the requirements of LonP Policy 7.14 (Air Quality) and Policy EQ4 of the LP.

18. Non Road Mobile Machinery

(1) All Non Road Mobile Machinery (NRMM), such as mobile cranes and bulldozers, of net power between 37kW and 560kW (inclusive) to be used during the course of the demolition, site preparation and construction phases shall meet at least Stage IIIA of EU Directive 97/68/EC (as amended) if in use before 1 September 2020 or Stage IIIB of the directive if in use on 1 September 2020 or later.

(2) If NRMM meeting the relevant Stage set out in paragraph 1 above is not available for the demolition, site preparation or construction phases, the LPA shall be informed and every effort shall be made to use the least polluting equipment available by applying the following techniques instead of meeting the relevant Stage, subject to the prior written consent of the LPA:

- Reorganisation of NRMM fleet;
- Replacing equipment with new or second-hand equipment which meets the requirements of the relevant Stage;
- Retrofitting abatement technologies to reduce particulate emissions;
- Re-engining the NRMM

(3) Unless the NRMM complies with the relevant Stage set out in paragraph 1 above standards, no NRMM shall be on site at any time, whether in use or not, without the prior written consent of the LPA.

(4) A list of all NRMM used during the demolition, site preparation and construction phases of the development shall be kept up to date on the online NRMM register at https://nrmm.london/

Reason: To protect local amenity and air quality in accordance with LonP policies 5.3 and 7.14.

19. Biodiversity
Prior to occupation of the relevant building to be provided as part of the development, details of the ecological mitigation listed at paragraph 18.1.7 of the Environmental Statement dated November 2017 shall be submitted to and approved in writing by the LPA. The approved details shall be implemented in full and thereafter permanently retained, unless otherwise agreed in writing with the LPA.

Reason: In the interests of ecology and habitat preservation and enhancement, in accordance with LonP Policy 7.19 and HLP Policy GB7.

20. Land contamination
a) Prior to the commencement of development a contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the LPA.

b) If the Phase 1 report recommends that a Phase 2 site investigation is required, then this investigation shall be carried out, and a report submitted to and approved in writing by the LPA. The Phase 2 site investigation shall be carried out by a competent person to identify the extent and nature of contamination. The report produced following the Phase 2 site investigation shall include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary in the Phase 2 site investigation report.

c) If required by the Phase 2 site investigation report, a scheme for decontamination of the site shall be submitted to and approved in writing by the LPA.

d) During the construction of the development, the LPA shall be notified immediately if additional contamination is discovered beyond that identified in the Phase 1 report or Phase 2 report. A competent person shall assess such additional contamination and shall submit appropriate amendments to the scheme for decontamination in writing to the LPA for approval before any work on that aspect of the development continues.

e) Before the development is first occupied, the agreed scheme for decontamination referred to in paragraphs c) and d) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to and approved in writing by the LPA.

Reason: For the protection of Controlled Waters and to ensure the site is deemed suitable for use, in accordance with HLP Policy EQ8 and LonP Policy 5.21.

21. Piling
No piling work shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to

subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the LPA. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure. Piling has the potential to impact on local underground sewerage utility infrastructure. The applicant is advised to contact Thames Water Developer Services on 0800 009 3921 to discuss the details of the piling method statement.

22. Construction environmental management and logistics plan

The development shall not be commenced until a demolition and construction management and logistics plan has been submitted to and approved in writing by the LPA. The demolition and construction works shall be carried out in accordance with the details approved.

The plan shall include specific details relating to the construction, logistics and management of all works associated with the development and aim to minimise road vehicle movements, traffic congestion, pollution and adverse amenity impacts. The plan shall be produced in accordance with Transport for London's latest Construction Logistics Plan Guidance. The plan shall include:

a) Details of the site manager, including contact details (phone, email, postal address) and the location of a large notice board on the site that clearly identifies these details and a 'Considerate Constructors' contact telephone number;
b) The parking of vehicles of site operatives and visitors;
c) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing;
d) Wheel washing facilities;
e) A scheme for recycling/disposing of waste resulting from demolition and construction works;
f) Any means, such as a restriction on the size of delivery vehicles, construction vehicles and machinery accessing the site in respect of demolition and construction, required to ensure that no damage occurs to adjacent highways through the construction period;
g) Any means of protection of services such as pipes and water mains within adjacent highways during demolition and construction;
h) Measures to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of building plants and materials and similar demolition/construction activities during demolition and construction;
i) Measures to ensure that pedestrian access past the site on the public footpaths is safe and not obstructed during construction works;
j) Location of workers' conveniences (e.g. temporary toilets);
k) Ingress and egress to and from the site for construction vehicles, including vehicles associated with the delivery of materials used in the construction of the development;
l) Proposed numbers and timings of truck movements throughout the day and the proposed routes for their access to the site during demolition and construction of the development;
m) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places during demolition and construction of the development;

n) Details of the mitigation for dust and emissions, as well as methodology for monitoring, during demolition and construction;
o) Measures to minimise disruption to neighbouring and adjoining residential and commercial occupiers during demolition and construction.

The development shall be carried out in accordance with the approved details.

Reason: To safeguard the amenity of adjacent residents, to ensure efficient and sustainable operation of the borough's highway system and to safeguard pedestrian and highway safety and to prevent or reduce air pollution during demolition and construction in accordance with Policy CC2 and EC2 of the HLP and LonP Policies 6.14 and 7.14.

23. Construction Hours
No demolition or construction work, and no deliveries relating to the demolition or construction work, shall take place on the site except between the hours of 8am to 6pm on Mondays to Fridays and 8am to 1pm on Saturdays and not at all on Sundays and Public Holidays.

Reason: In order to safeguard the amenities of adjoining residential properties and to ensure that the proposed development does not prejudice the amenities of the locality in accordance with Policies CC1, CC2 and EQ5 of the LP.

24. Water efficiency measures
Prior to first occupation of each building constructed as part of the development, a schedule of fittings and manufacturer's literature for the relevant building shall be submitted to and approved in writing by the LPA to show that the development has been constructed in accordance with the approved internal water use calculations of 104 litres per person per day as set out in the Silcock Dawson Sustainability Statement dated May 2018 submitted with the planning application.

Reason: In the interests of sustainable development and in accordance with LonP Policies 5.3 and 5.15 and HLP Policies EQ2.

25. Water supply and wastewater capacity
Development shall not commence (excluding demolition works above existing ground level) until impact studies on the existing water supply infrastructure have been submitted to and approved in writing by the LPA. The studies shall determine the amount of any new additional capacity required in the water supply infrastructure and identify a suitable connection point.

Reason: To ensure that the water supply infrastructure has sufficient capacity to accommodate the additional demand in accordance with HLP EQ2, LonP Policies 5.13, 5.14, 5.15 and to ensure accordance with the Flood and Water Management Act 2010.

26. Sourcing of materials
No building to be provided as part of the development shall be occupied until evidence (e.g. photographs and copies of installation contracts) has been submitted to and approved in writing by the LPA to demonstrate that the relevant building has been carried out in accordance with the approved sustainable sourcing of materials

standards set out in the Silcock Dawson Sustainability Report dated May 2018 submitted with the planning application.

Reason: in order to ensure the sustainable sourcing of materials in accordance with the LonP Policy 5.3 and the Sustainable Design and Construction SPG.

27. Solar glare
Prior to commencement of the superstructure works, measures to demonstrate that the design and materials selected for the windows and cladding of the buildings forming part of the development will not have an adverse effect on motorists using the M4 Elevated Motorway shall be submitted to and approved in writing by the LPA. The buildings of the development shall be constructed in accordance with the approved details.

Reason: To ensure the safety for all road users on the M4 Elevated Motorway that they are not distracted by any glint or glare.

28. Ventilation (A1-A3 uses)
Details of external ventilation equipment, including ducting, shall be submitted to and approved by the LPA prior to first occupation of the relevant commercial units. The external ventilation equipment shall be installed in accordance with those details approved by the LPA.

Reason: In the interests of local amenity and visual appearance, and in accordance with Policy CC1 and CC2 of the LP.

29. Fire Safety
Prior to commencement of the development, an update to the Fire Safety Review prepared by FDS Consult (dated March 2018 and submitted with the planning application) to account for the relevant fire safety standards applicable at that time shall be submitted to and approved in writing by the LPA. The Fire Statement shall detail how the development will function in terms of:

d) The development's construction: the methods, products and materials used;
e) The means of escape for all building users: stair cores, escape for building users who are disabled or require level access, and the associated management plan approach;
f) Access for fire service personnel and equipment: how this will be achieved in an evacuation situation, water supplies, provision and positioning of equipment, firefighting lifts, stairs and lobbies, any fire suppression and smoke ventilation systems proposed (including sprinklers), and the ongoing maintenance and monitoring of these; and
g) How provision will be made within the site to enable fire appliances to gain access to the building.

The development shall be constructed in accordance with the details approved above.

Reason: To ensure that development achieves the highest standards of fire safety, reducing risk to life, minimising the risk of fire spread, and providing suitable and convenient means of escape which all building users can have confidence in.

30. Opening hours (A1-A3 and B1 uses)
The ground floor level Class A1/A2/A3 and B1 premises, as shown on the approved drawings, shall not be open to customers other than between the hours of 0700 and 2300 on Mondays to Saturdays, and 0800 to 2200 on Sundays and Public Holidays.

Reason: To safeguard the amenities of neighbouring residents and future residents of the development, in accordance with Policy CC1 and CC2 of the LP.

31. Aircraft Radar Mitigation Scheme
No construction work shall exceed 10m above ground level on site until a Radar Mitigation Scheme (RMS), including a timetable for its implementation during construction, has been agreed with the Operator (NATS) and approved in writing by the LPA.

The RMS shall thereafter be implemented and operated in accordance with the approved details.

Reason: In the interests of aviation safety.

32. Rooftop TV equipment details
A scheme for the provision of communal/centralised satellite and television reception equipment to be installed on the roof of any building to be constructed as part of the development shall be submitted to and approved in writing by the LPA prior to development proceeding above podium level in respect of the relevant building. The development shall be implemented in accordance with the approved scheme and the equipment shall thereafter be retained and made available for use by all occupiers of the development.

Reason: To ensure that the development makes appropriate provision for such equipment, so as to not impact adversely on the character of the area and architectural quality of the buildings, in accordance with LonP policies 7.4, 7.6 and 7.7 and HLP Policy CC1.

33. Restriction of rooftop plant and equipment
No water tanks, plant, lift rooms or other structures, other than those shown on the approved drawings, shall be erected upon the roofs of the buildings to be provided as part of the development without the prior written approval of the LPA.

Reason: In the interests of the appearance of the buildings and to safeguard the appearance of the area, in accordance with LonP policies 7.4, 7.6 and 7.7 and HLP Policy CC1.

Ends

Appendix 2: APPEARANCES

FOR THE MAYOR OF LONDON (GLA) THE LOCAL PLANNING AUTHORITY:

Douglas Edwards QC (Francis Taylor Buildings)	instructed by Aaron Richardson, Senior Associate, TfL for the Mayor
He called	
Chris Griffiths, LLB (Hons) MA IHBC	Associate Director Heritage Collective
Kate Randell BSc (Hons) MA MRTPI	Town Planner, GLA

FOR THE APPLICANT, L&Q:

Rupert Warren QC (Landmark Chambers)	Instructed by Richard Ford and Reza Newton, Pinsent Masons LLP
He called	
Russell Brown Dip Arch RIBA FRSA	Founding Partner, Hawkins Brown LLP, 159 St John Street LONDON
Dr Chris Miele PhD MRTPI IHBC	Senior Partner, Montagu Evans LLP
Mark Connell BSc (Hons) DipTP MRTPI	Managing Director, Sphere25, 101-135 Kings Road Brentwood

FOR THE LONDON BOROUGH OF HOUNSLOW:

Edward Grant of Counsel and Isabella Buono of Counsel (Cornerstone Barristers)	Instructed by Solicitor to London Borough of Hounslow
They called	
Dr Valerie Scott BA (Hons), MA, PhD	BEAMS Limited, The Castle Hertford
Mr Shane Baker BTP, MRTPI	London Borough of Hounslow

FOR THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND (HISTORIC ENGLAND):

Scott Lyness of Counsel (Landmark Chambers)	instructed by Marisia Beard at BDB Pitmans and Andrew Wiseman at Historic England
He called	
Michael Alan Dunn BA, MA, Dip UD, IHBC	Historic England, Canon Bridge House Dowgate Hill LONDON

FOR THE ROYAL BOTANIC GARDENS, KEW:

James Maurici QC (Landmark Chambers)	instructed by Daniel Whittle Burges Salmon LLP, One Glass Wharf, Bristol
He called	
Andrew Croft BA MA	Director, Chris Blandford Associates

INTERESTED PERSONS:

Marie-Louise Rabouhans	Chair, West Chiswick and Gunnersbury Society

Appendix 3: INQUIRY DOCUMENTS (ID)

ID1	Plans of Kew Gardens c.1785 (submitted by RBGK)
ID2	Opening Submission – Applicant (L&Q)
ID3	Opening Submission – LPA (Greater London Authority)
ID4	Opening Submission – LB Hounslow
ID5	Opening Submission – Historic England
ID6	Opening Submission – RBGK
ID7	Statement from West Chiswick and Gunnersbury Society (WCGS) – Marie-Louise Rabouhans
ID8	HE Letter dated 25 Sept 17 to Hounslow Council
ID9	Signed SoCG on Heritage Matters (L&Q, GLA, HE, LBH and RBGK)
ID10	Westferry Printworks Appeal Decision
ID11	Kew Gardens Visitor Map
ID12	Greenwich View Comparison – 40 Years Apart
ID13	L&Q (Applicant) Response to Inspectors' Questions
ID14	Air Quality Assessment Note (submitted by Applicant)
ID15	Waste Disposal (LBH)
ID16	RBGK Annexe to Statement of Common Ground - Position on Environmental Statement
ID17	Oxford Dictionary Excerpt – Definition of 'Conserve' (submitted by RBGK)
ID18	CIL regulation 122 Compliance Note (Submitted by GLA)
ID19	Note on PTAL (prepared by Applicant)
ID20	Draft Conditions – Agreed by all parties
ID21	GLA note on Heritage Specialist Involvement in its consideration of the Citroen Application
ID22	Kew Gardens Area Map (Submitted by RBGK)
ID23	Dentons CIL Compliance Note (Submitted by GLA)
ID24	What a Travel Plan should contain – extract from DfT's Essential Guide to Travel Planning (2007) – submitted by LBH
ID25	Wellesley Road Conservation Area Appraisal
ID26	L&Q Response to Inspector Queries dated 27 January 2020
ID27	Written comments on ID26
ID28	Written comments on IPLP and CC Judgment
ID29	CIL Regulation 122 Compliance Note
ID30	Section 106 Agreement Summary
ID31	Note by Greater London Authority on the sustainable travel vouchers and car club membership
ID32	Note by Transport for London in relation to Gunnersbury Station Improvements
ID33	Appendix 1: Sustainable Development Committee re Gunnersbury Station
ID34	Site visit route (parts 1 and 2)
ID35	Agreement under s106 signed and dated 4 March 2020
ID36	Agreed suggested conditions - final version, 5 February 2020
ID37	Applicant Note Addressing Further Matters Arising in Inquiry
ID38	Applicant agreement to the terms of the pre-commencement conditions - 6 February 2020
ID39	Closing submissions
ID40	Applicant Note to Inspector dated 28 February 2020 together with two appendices: Unilateral obligation; Judgment in *H J Banks*

POST-INQUIRY DOCUMENT (PID)
- Submissions received after the last sitting day of the Inquiry

PID1	Letter from the SoS dated 14 February 2020 requiring a further 4 weeks to consider the IPLP
PID2	RBGK response to the Applicant's note addressing tree screening
PID3	Letters closing the Inquiry in writing dated 6 March 2020
PID4	Final version of s106 Agreement
PID5	Judgment in *Starbones*
PID6	Submissions following the CC Decision
PID7	Letter from the SoS to the Mayor dated 13 March 2020 and annex
PID8	Further IPLP correspondence dated 13 March 2020
PID9	Adopted RBGK MPlan 2020-2025
PID10	Representations on the RBGK MPlan 2020-2025 and further delay to the adoption of the new LonP
PID11	Consent order quashing Westferry Printworks Appeal Decision
PID12	Representations on the Consent order

CORE DOCUMENTS

APPLICATION DOCUMENTS		
CDA 01	Planning Statement	November 2017
CDA 02	Planning Statement Addendum	May 2018
CDA 03	Community Infrastructure Levy (CIL) Amended Additional Information Form	May 2018
CDA 04	Statement of Community Involvement (SCI)	November 2017
CDA 05	Daylight, Sunlight & Overshadowing Report	November 2017
CDA 06	Design & Access Statement (DAS) (including Landscaping)	November 2017
CDA 07	DAS Addendum (including Landscaping)	May 2018
CDA 08	Drawings – Existing	November 2017
CDA 09	Drawings – Amended	May 2018
CDA 10	Proposed Ground Floor Plan	September 2018
CDA 11	ES Non-Technical Summary	November 2017
CDA 12	Environmental Statement (Vol 1)	November 2017
CDA 13	Environmental Statement (Vol 1) Addendum	May 2018
CDA 14	Environmental Statement (Vol 2) Heritage Townscape and Visual Assessment Addendum	November 2017
CDA 15	Environmental Statement (Vol 2) Heritage Townscape and Visual Assessment Addendum	May 2018
CDA 16	Environmental Statement (Vol 3)– Appendices	November 2017
CDA 17	Environmental Statement (Vol 3) – Addendum Appendices	May 2018
CDA 18	Revised Drainage Strategy & Catchments Strategy & Plan	July 2018
CDA 19	Daylight, Sunlight & Overshadowing Update	July 2018
CDA 20	Fire Safety Overview	July 2018
COUNCIL DOCUMENTS		
CDB 01	Officer Delegated Report	February 2018
CDB 02	Officers Advice letter	December 2017
CDB 03	REG 392 Cabinet Report	September 2016
CDB 04	Council Representation to GLA	Undated
NATIONAL & REGIONAL POLICY		
CDC 01	National Planning Policy Framework	June 2019
CDC 02	National Planning Practice Guidance	September 2019
CDC 03	National Design Guide	October 2019
CDC 04	LonP Consolidated with Alterations (2016)	March 2016

CDC 05	Draft New LonP Consolidated Changes	July 2019
CDC 05A	Draft New LonP Intention to Publish	December 2019
CDC 06	Draft New LonP EiP Panel Report	October2019
CDC 07	Homes for Londoners, Affordable Housing and Viability SPG	August 2017
CDC 08	Housing SPG	August 2017
CDC 09	Crossrail Funding SPG	March 2016
CDC 10	Accessible London SPG	October 2014
CDC 11	The Control of Dust and emissions during construction and demolition SPG	July 2014
CDC 12	Character & Context SPG	June 2014
CDC 13	Sustainable Design and Construction SPG	April 2014
CDC 14	Shaping Neighbourhoods: Play and informal Recreation SPG	September 2012
CDC 15	All London Green Grid SPG	March 2012
CDC 16	London World Heritage Sites – Guidance on Setting	March 2012
CDC 17	Planning for Equality and Diversity in London	October 2017
CDC 18	Mayor's Environment Strategy	May 2018
CDC 19	Mayors Housing Strategy	May 2018
CDC 20	Mayors Transport Strategy	March 2018
CDC 21	TfL Healthy Streets	February 2017
CDC 22	LonP Annual Monitoring Report 15 (2017/2018)	October 2019
CDC 23	2017 SHMA including Addendum to 2017 SHMA	December 2019
COUNCIL AND OTHER LOCAL PLANNING POLICY AND DOCUMENTS		
CDD 01	Hounslow Local Plan (HLP)	September 2015
CDD 02	Inspectors Report into LP	July 2015
CDD 03	Hounslow Planning Obligations and CIL SPD	November 2015
CDD 04	Air Quality SPD	March 2008
CDD 05	Great West Corridor Local Plan Review Regulation 19	July 2019
CDD 06	Hounslow Urban Context and Character Study	August 2014
CDD 07	Great West Corridor Masterplan and Capacity Study	July 2019
CDD 07A	Great West Corridor View Appendix: View Assessment	July 2019
CDD 08	Golden Mile Vision and Concept Plan	April 2014
CDD 09	Draft Brentford East SPD	October 2017
CDD 09A	Brentford East Capacity Study: Final Report	July 2017
CDD 10	Great West Corridor Workshop Developer Plan	November 2018
CDD 11	Council Response to LonP Consultation	March 2018
STATEMENTS OF CASE		
CDE 01	The Applicant's Statement of Case	September 2019
CDE 02	The Greater London Authority's Statement of Case	September 2019
CDE 03	The London Borough of Hounslow's Statement of Case	September 2019
CDE 04	Historic England's Statement of Case	September 2019
CDE 05	Royal Botanic Gardens Kew's Statement of Case	September 2019
CDE 06	RBG Kew Letter to GLA	July 2018
STATEMENTS OF COMMON GROUND		
CDF 01	The Applicant, the Mayor and LBH	November 2019
CDF 02	The Applicant & Historic England	December 2019
CDF 03	The Applicant & RBGK	December 2019
HERITAGE DOCUMENTS		
CDG 01	Strand on the Green Conservation Area Appraisal (1968)	January 2002
CDG 01A	Strand on the Green Conservation Area Appraisal (2018)	May 2018
CDG 02	Kew Green Conservation Area Appraisal (r1982)	January 2002
CDG 03	Gunnersbury Park and Surrounding Area (r1990)	November 2002
CDG 04	Wellesley Road Conservation Area Appraisal (r2002)	December 2002
CDG 05	Kew Bridge Conservation Area Appraisal (r2004)	June 2004
CDG 06	Royal Botanic Gardens Kew World Heritage Site Management Plan 2014	March 2014

CDG 07	Kew Gardens Conservation Area Appraisal	2004
CDG 08	Historic England Good Practice Note 2: Managing Significance in Decision-Taking in the Historic Environment.	July 2015
CDG 09	Historic England Good Practice Note 3: The setting of Heritage Assets (2nd Edition)	December 2017
CDG 10	Historic England Advice Note 4: Tall Buildings	December 2015
CDG 11	Royal Botanic Gardens Kew Inscription	July 2003
CDG 12	Retrospective Statement of Outstanding Universal Value Royal Botanic Gardens Kew	2010
CDG 13	Historic England: An Approach to Landscape Character Assessment	October 2014
CDG 14	ICOMOS Site Evaluation of RBGK	March 2003
CDG 15	Thames Landscape Strategy, Kew to Chelsea 2002	June 2002
CDG 15A	Thames Landscape Strategy Review – Brentford & Kew	December 2012
CDG 16	Royal Botanic Gardens, Kew RPG List Entry 1000830	October 1987
CDG 17	Orangery List Entry 1263075	January 1950
CDG 18	UNESCO Operational Guidelines WHC.19/01	10 July 2019
CDG 19	UK Government World Heritage Site Report	2014
CDG 20	Royal Botanic Gardens Kew World Heritage Site Management Plan 2003	November 2002
CDG 21	Draft Royal Botanic Gardens Kew World Heritage Site Management Plan 2019 (consultation version)	2019
CDG 22	Aerial Photos from 1920s and 1947, HE, Britain from Above	2019
CDG 23	R. Desmond, History of Royal Botanic Gardens Kew (London: Harvill Press, 1995)	1995
CDG 24	Historic England - Rural Landscapes: Register of Parks and Gardens Selection Guide	December 2017
CDG 25	Historic England - Urban Landscapes: Register of Parks and Gardens Selection Guide	December 2017
CDG 26	Referral letter from the Department for Digital, Culture Media & Sport to ICOMOS	8 January 2019
CDG 27	Extract from the Mission Report from the 41st Session of the World Heritage Committee relating to the Palace of Westminster and Westminster Abbey	21-23 February 2017
CDG 28	ICOMOS Technical Review of the Royal Botanic Gardens, Kew relating to Chiswick Curve	May 2018
CDG 29	ICOMOS Technical Review of the Royal Botanic Gardens, Kew re 40/40A High Street (Albany Riverside) proposals	November 2018
GREATER LONDON AUTHORITY REPORTS & CORRESPONDENCE		
CDH 01	GLA Stage 1 Response	January 2018
CDH 02	GLA Stage 2 Response	February 2018
CDH 03	GLA Hearing Report	July 2018
CDH 04	GLA Hearing Report Addendum	July 2018
CDH 04A	GLA Hearing Report Final Addendum	August 2018
CDH 05	Letter from Mayor of London	August 2018
CDH 06	Mayor of London Report Addendum 2 December	December 2019
CDH 07	Highways England letter to GLA requesting referral to SoS	August 2018
CDH 08	Highways England letter to GLA withdrawing objection	January 2019
CDH 09	Mayor of London Response to the GWC Consultation	October 2019
RELEVANT DEVELOPMENTS		
CDI 01	Officer Report 1-4 Capital Interchange Way P/2018/4117	September 2019
CDI 02	1-4 Capital Interchange Way TVIA as clarified P/2018/4117	April 2019
CDI 03	Brentford Community Football Club Permission (App Ref 00703/A/P11, as amended by 00703/A/P11(NMA), 00703/A/P11(NMA1) and 00703/A/P11(NMA2)	December 2018

CDI 03A	Brentford Community Stadium Officer Report	December 2013
CDI 04	"Chiswick Curve" Appeal Decision & Report APP/F5540/W/17/3180962	July 2019
CDI 05	Citadel Committee Report & Permission P/2002/0568	-
CDI 06	"Chiswick Curve" HTVIA (Volume 3 of Environmental Statement and Volume 3 Addendum)	October 2016
CDI 07	"Albany Riverside" Officers Report, Addendum Report and minutes	February 2018
CDI 08	Wheatstone House Appeal Decision	March 2015
	RELEVANT CASE LAW	
CDJ 01	Bedford Borough Council v SoS Communities and Local Government [2013] EWHC 2847 (Admin)	2013
CDJ 02	East Northamptonshire District Council v SoS for CLG and Barnwell Manor [2014] EWCA Civ 137 [2015] 1 WLR 4	2015
CDJ 03	R (Irving) v Mid Sussex DC [2016] EWHC 1529 (Admin)	2016
CDJ 04	Mordue v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 1243	2015
CDJ 05	R (on the application of Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)	2014
CDJ 06	R (Williams) v Powys CC [2017] EWCA Civ 427	2017
CDJ 07	Catesby Estates Ltd v Steer [2018] EWCA Civ 1697	2018
CDJ 08	R (Shimbles) v City of Bradford [2018] EWHC 195 (Admin)	2018
CDJ 09	R (James Hall and Company Limited) v City of Bradford Metropolitan District Council [2019] EWHC 2899 (Admin)	2018
SECRETARY OF STATE LETTERS		
CDK 01A	Holding Direction from the Secretary of State	20 Nov. 2018
CDK 01	"Call in" Letter from the Secretary of State	15 April 2019
LEGISLATION		
CDL 01	T&CP (Mayor of London Order) 2008	2008
PROOFS OF EVIDENCE		
CDM 01	Mr R. Brown (architecture) – on behalf of applicant	December 2019
CDM 01A	Summary proof of R. Brown	December 2019
CDM 02	Dr C. Miele (heritage) – on behalf of applicant	December 2019
CDM 02A	Summary proof of Dr Miele	December 2019
CDM 03	Mr M Connell (planning) – on behalf of applicant	December 2019
CDM 03A	Summary proof of Mr Connell	December 2019
CDM 04	Miss K Randell (planning) – on behalf of GLA	December 2019
CDM 04A	Summary proof of Miss Randell	December 2019
CDM 05	Mr C Griffiths (heritage) – on behalf of GLA	December 2019
CDM 05A	Summary proof of Mr Griffiths	December 2019
CDM 06	Mr S Baker (planning) – on behalf of lbh	December 2019
CDM 06A	Summary proof of Mr Baker	December 2019
CDM 07	Dr V Scott (heritage) – on behalf of LBH	December 2019
CDM 08	Mr M DUNN (heritage) – on behalf of Historic England	December 2019
CDM 08A	Summary proof of Mr Dunn	December 2019
CDM 09	Mr Andrew Croft (heritage) – on behalf of RBGK	December 2019
CDM 09A	Summary proof of Mr Croft	December 2019
CDM 10	Rebuttal evidence of R. Brown – on behalf of applicant	January 2020
CDM 11	Rebuttal evidence of Dr Miele – on behalf of applicant	January 2020
CDM 12	Rebuttal evidence of M. Connell – on behalf of applicant	January 2020
UPDATED VISUAL EVIDENCE		
CDN 01	Visuals	December 2019
CDN 02	Walkthrough videos	December 2019
CDN 03	360 visuals	December 2019

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.