Department for Levelling Up, Housing & Communities

Stephenie Thourgood
Gerald Eve LLP
72 Welbeck Street
London
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Our ref: APP/H5390/V/21/3277137
Your ref: 20/01283/FUL

4 July 2022

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY HFS DEVELOPMENTS 2 LIMITED
EDITH SUMMERSKILL HOUSE, CLEM ATTLEE COURT, LONDON, SW6 7TW
APPLICATION REF: 20/01283/FUL

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Paul Griffiths BSc(Hons) BArch IHBC, who held a public local inquiry which opened on 30 November 2021 and closed on 7 December 2021 into your client's application for planning permission for the erection of a 20 storey tower (plus plant) with single storey basement and ground floor mezzanine, for residential use, ancillary community use at ground floor level, hard and soft landscaping, and associated works, in accordance with application Ref. 20/01283/FUL, dated 15 May 2020.

2. On 10 June 2021, 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 and planning permission granted subject to conditions and the Agreement under s.106.

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

Procedural matters

5. At IR1.11 and IR12.48 the Inspector identifies that a High Court judgement relating to the decision of the Minister of State for Housing to grant permission for the Holocaust

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Memorial and Learning Centre in Victoria Tower Gardens, Millbank was being awaited. The High Court judgment on that case has since been handed down, however, the Secretary of State does not consider that the outcome of that judgment raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this application, and he is satisfied that no interests have thereby been prejudiced.

Policy, statutory and other 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 Hammersmith & Fulham Local Plan adopted February 2018 and the London Plan adopted March 2021. The Secretary of State considers that relevant development plan policies include those set out at IR5.2-5.20.

8. 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 the guidance and publications detailed at IR5.23.

9. 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.

Main issues

Townscape and the Character and Appearance of the Area

Design

10. For the reasons given at IR12.78-12.82, the Secretary of State agrees with the Inspector that the site is not in one of the areas deemed suitable for tall buildings in the Local Plan and as a result is not in accordance with the locational requirements of Local Plan Policy DC3, or Part B of London Plan Policy D9 (IR12.78). For the reasons given at IR12.11-12.27, the Secretary of State agrees with the Inspector that in design terms, there should be no 'in-principle difficulty with placing a tall building on the site (IR12.18); and that the proposal would appear quite different to the rest of the estate but that is no bad thing when the reason for that difference is that the building would be of a significantly higher standard of detailed design (IR12.26). He further agrees that the high quality of the design would mean that the building would act as a beacon, marking the southern entrance to the estate, in a way that would enhance the townscape, and the character and appearance of the area (IR12.26). He further agrees that the design of the proposal is exemplary and it would be an addition to the skyline of outstanding quality that would raise the bar for development in the area, and London generally, and would meet all the criteria set out in Local Plan Policy DC3, and most of those in Part C of London Plan Policy D9 (IR12.79). The Secretary of State affords the outstanding design quality and excellent living conditions for the prospective residents (as set out below at paragraph 18) significant weight.

The Effect on the Setting and thereby the Significance of Heritage Assets

11. For the reasons given at IR12.28-12.30 the Secretary of State agrees with the Inspector that in relation to the Presbytery (Grade II), the Harwarth Mausoleum (Grade II), a War Memorial (Grade II), and a Tombstone to Warrington Taylor (Grade II) associated with the Church of St Thomas of Canterbury (Grade II*), the proposal would have no harmful impact on their setting, or their significance (IR12.30). For the reasons given at IR12.38-12.45, he further agrees with the Inspector's conclusions that the proposal would not be harmful to the setting or significance of the other heritage assets raised by the Rule 6(6) party.

12. For the reasons given at IR12.31-12.37, the Secretary of State agrees with the Inspector that notwithstanding the attractive design of the proposal, and the visibility of other tall buildings from the churchyard, there would be visual tension, particularly where the proposal would sit directly behind the spire and that would detract from, and have a harmful impact on, the setting, and thereby significance of the Church of St Thomas of Canterbury (IR12.34). The Secretary of State further agrees that the harmful impact on the setting and thereby the significance of the church would, therefore, also result in a harmful impact on the setting and thereby the significance of the Central Fulham Conservation Area (IR12.35).

13. For the reasons given at IR12.46-12.54, the Secretary of State agrees with the Inspector that the Church of St Thomas of Canterbury does derive something of its significance from its setting, but the overwhelming proportion is locked into its form and fabric (IR12.51) and that the harm that would be caused to the setting and thereby the significance of the church would be less than substantial, and very much at the lower end of the scale (IR12.52). He further agrees that the harm that would be caused to the setting and thereby the significance of the Central Fulham conservation area as a result of the proposal would be very minor indeed and even further toward the bottom of the scale of less than substantial harm than what would be caused to the significance of the church (IR12.53). The Secretary of State attaches great weight to the harm to the Church of St Thomas of Canterbury and the Central Fulham Conservation Area.

14. The Secretary of State has gone on to apply the heritage balance as set out in paragraph 202 of the Framework. For the reasons given at IR12.55-12.57 and IR12.76-12.77, he agrees with the Inspector that even though the harm caused to the setting and thereby significance of the church, and the setting and thereby the significance of the conservation area are weighty matters, they are very clearly outweighed by the public benefits that would flow from the provision of 133 units of affordable housing in such a well-designed building (IR12.57). The heritage balance is therefore favourable to the proposal. In reaching these conclusions the Secretary of State has taken into account Historic England's objection and the Inspector's conclusion on it, as set out at IR12.58-12.63, and also the views of the Rule 6(6) party, who considered that the harm should be put near the middle of the less than substantial scale. For the reasons given at IR12.76-12.77, the Secretary of State agrees with the Inspector that the proposal is in clear accordance with Local Plan Policy DC8 (IR12.76) but does not comply with London Plan Policy HC1 (IR12.77).

15. For the reasons given above and at IR12.78- 12.84, the Secretary of State further agrees with the Inspector that the stipulation in London Plan Policy DC9 that proposals should take account of, and avoid harm, to the significance of London's heritage assets and their settings, is satisfied (IR12.80). He further agrees at IR12.82 that the criteria in Part C of

London Plan Policy D9 are met and that an alternative scheme would be very likely to have much the same impacts on the setting and thereby the significance of the church, and the conservation areas, while delivering a reduced number of housing units, and correspondingly less public benefit as a result (IR12.83). The Secretary of State agrees at IR12.84 that the proposal complies with Local Plan Policy DC2, and London Plan Policies D2 and D3 and London Plan Policy GG2.

Living Conditions

16. For the reasons given at IR12.64-12.68 and IR12.88-12.90, the Secretary of State agrees with the Inspector that with respect to the living conditions there would be no significant reduction in the levels of privacy enjoyed by existing residents (IR12.65), there would not be any difficulties resulting from an increase in foot traffic (IR12.67) and that while the proposal would lead to some reduction in levels of daylight and sunlight reaching nearby dwellings and their gardens, and open spaces, the technical analyses carried out on behalf of the applicant show these reductions would be well within reasonable bounds (IR12.66). Overall, the Secretary of State agrees with the Inspector that the proposal would have no unacceptable impact on the living conditions of existing residents of the area (IR12.68) and that the proposal accords with London Plan Policy D6 and Local Plan Policy DC2 with regard to living conditions (IR12.88).

17. For the reasons given at IR12.69-12.74 and IR12.88-12.90, the Secretary of State agrees with the Inspector that with respect to the living conditions for prospective residents, the lack of balconies and/or winter gardens would be more than compensated by the generosity of the internal space on offer (IR12.69). He notes that the proposal does not provide the amount of on-site play-space that would be required by London Plan Policy S4 but agrees with the Inspector that a financial contribution in the Agreement under s.106 (IR12.70) would be an appropriate response to the balance required between the provision of play-space and the need to make best use of the application site for housing (IR12.71) and therefore satisfies paragraph 5.4.6 of the accompanying text to London Plan Policy S4 (IR12.90). He further agrees that with respect to the microclimate around the buildings in terms of wind, those using the spaces around the base of the building would not be affected to an unacceptable extent (IR12.72). On fire safety, the Secretary of State agrees with the Inspector that in light of the requirements as they stand, there is no good reason to question the approach taken to fire safety by the applicants (IR12.73) and there is accordance with London Plan Policy D12 in terms of fire safety (IR12.89).

18. Overall, the Secretary of State agrees with the Inspector that the proposal would provide generally excellent living conditions for prospective residents and considers that the proposal would have no unacceptable impact on existing residents of the area (IR12.74) and that the proposal accords with London Plan Policy D6 and Local Plan Policy DC2 in this regard, and the Council's Planning Guidance SPD (Supplementary Planning Document) (IR12.88). As set out at paragraph 11, the Secretary of State affords the outstanding design and excellent living conditions for the prospective residents significant weight.

Local Services/Infrastructure

19. For the reasons given at IR12.75, the Secretary of States agrees with the Inspector that there are no issues in terms of drainage that weigh against the proposal.

Other matters

20. For the reasons given at IR12.4-12.7 and IR12.86-12.87, the Secretary of State agrees with the Inspector that the baseline for the consideration of the proposal in terms of its impact is a cleared site but the fact that the site was occupied by a tall building for more than 50 years is a material consideration. The Secretary of State also agrees that when the Council took the decision to demolish Edith Summerskill House it was not a decision taken in isolation and that there was always the intention that it would be replaced and as such London Plan Policy H8 must have a bearing on the proposal (IR12.87). He also agrees that in increasing the number of units on site from 68 to 133, the proposal clearly accords with the requirement of London Plan Policy H8 to ensure any existing housing lost is replaced by new housing at existing or higher densities (IR12.87).

21. The Secretary of State notes the Council can demonstrate a five-year supply of deliverable housing sites when measured against the target for the Borough set out in the London Plan (IR12.8) and that in relation to affordable housing all parties agree that there is a significant shortfall against what are pressing needs (IR12.10). For the reasons given at IR12.85-12.87, the Secretary of State agrees with the Inspector that the delivery of 133 affordable homes would contribute to meeting London and the Borough's housing, and affordable housing, targets as set out in London Plan Policies GG4, H1 and H4 and Local Plan Policies HO1, HO3 and HO5 (IR12.85). The Secretary of State affords the provision of affordable housing significant weight.

Development plan compliance

22. Overall, the Secretary of State agrees with the Inspector at IR12.91 that the scheme does not comply with London Plan Policy HC1 in terms of its harmful impact on the significance of designated heritage assets, Local Plan Policy DC3, the locational requirements for tall buildings in London Plan Policy D9, or London Plan Policy S4 in relation to play-space. Nonetheless he agrees that in delivering 133 affordable housing units in a building of outstanding design that makes efficient use of a well-located, small, previously-developed site, while providing safe and mostly excellent living conditions for its residents, without any unacceptable impact on the living conditions of existing residents, the proposal accords with a number of London Plan and Local Plan policies (IR12.92). Overall, the Secretary of State agrees with the Inspector that there is strong accordance with the development plan read as a whole (IR12.93), and that the proposal is also in accordance with the Framework (IR12.99). In reaching this conclusion, the Secretary of State has taken into account the points underlined by the Inspector at IR12.94-12.98.

Planning conditions

23. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.16, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 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 56 of the Framework and that the conditions set out at Annex A should form part of his decision.

Planning obligations

24. Having had regard to the Inspector's analysis at IR11.1-11.12, the planning obligation dated 21 December 2021, paragraph 57 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 IR11.1-11.12 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policy DC3 of the Local Plan and Policies S4, HC1 and the locational requirements for tall buildings in D9 of the London Plan but finds that it is in accordance with the development plan overall. He 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.

26. Weighing in favour of the proposal is the delivery of 133 affordable housing units in the context of a significant shortfall against need which is afforded significant weight. The proposal would deliver a building of outstanding design quality and excellent living conditions for prospective residents which together are afforded significant weight.

27. Weighing against the proposal is the less than substantial harm to the setting and thereby significance of the Church of St Thomas of Canterbury and to the Central Fulham Conservation Area. This harm is afforded great weight; however, the Secretary of State has concluded that the balancing exercise under paragraph 202 of the Framework is favourable to the proposal. He has also found that the proposal is in accordance with the Framework as a whole.

28. Overall the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted, subject to the conditions set out at Annex A, and the Agreement under s.106.

Formal decision

29. 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 the erection of a 20 storey tower (plus plant) with single storey basement and ground floor mezzanine, for residential use, ancillary community use at ground floor level, hard and soft landscaping, and associated works, in accordance with application Ref. 20/01283/FUL, dated 15 May 2020.

30. 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

31. 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.

32. A copy of this letter has been sent to the London Borough of Hammersmith and Fulham and Mr Turney, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Mike Hale
Decision officer

This decision was made by the Minister of State for Housing, Stuart Andrew MP, on behalf of the Secretary of State, and signed on his behalf

Annex A List of conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

9_1307_P_001_B: Site Location Plan;
9_1307_P_100_B: Proposed Site Location Plan;
9_1307_P_110_B: Proposed Site Layout Plan;
9_1307_P_120_A: Proposed Site South-East Elevation;
9_1307_P_121_A: Proposed Site South-West Elevation;
9_1307_P_122_A: Proposed Site North West Elevation;
9_1307_P_123_A: Proposed Site North East Elevation;
9_1307_P_200_B: Proposed Basement Plan;
9_1307_P_201_C: Proposed Ground Floor Plan;
9_1307_P_202_A: Proposed Mezzanine Plan;
9_1307_P_203_A: Proposed First to Third Floor Plans;
9_1307_P_204_A: Proposed Fourth Floor Plan;
9_1307_P_205_A: Proposed Fifth to Nineteenth Floor Plans;
9_1307_P_206_A: Proposed Roof Top Floor Plan;
9_1307_P_207_A: Proposed Roof Plan;
9_1307_P_300_A: Proposed Building South East Elevation;
9_1307_P_301_A: Proposed Building South West Elevation;
9_1307_P_302_A: Proposed Building North West Elevation;
9_1307_P_303_A: Proposed Building North East Elevation;
9_1307_P_400_A: Proposed Building Section AA;
9_1307_P_401_A: Proposed Building Section BB;
9_1307_P_402_A: Proposed Building Section CC;
9_1307_P_403_A: Proposed Building Section DD;
9_1307_P_404_A: Proposed Building Section EE;
9_1307_P_405_A: Proposed Building Section FF;
9_1307_P_500_A: Façade Details Typical Upper Floor Type A;
9_1307_P_501_A: Façade Details Typical Upper Floor Type B;
9_1307_P_502_A; Façade Details Typical Roof Level Type A
9_1307_P_510_A: Façade Details Ground Floor South East Facade;
9_1307_P_511_A: Façade Details Ground Floor South West Facade;
9_1307_P_512_A: Facade Details Ground Floor South West Facade;
9_1307_P_513_A: Façade Details Ground Floor North West Facade;
9_1307_P_514_A: Façade Details Ground Floor North West Facade;
9_1307_P_515_A: Façade Detail Ground Floor North East Facade;
9_1307_P_516_A: Façade Detail Ground Floor North East Facade;
9_1307_P_517_A: Façade Detail Ground Floor North East Facade;
9_1307_P_518_A: Façade Detail Ground Floor North East Facade;
9_1307_P_519_A: Façade Detail Ground Floor Arcade Section

3) No development shall commence until the establishment of a Community Liaison Group, to be maintained for the duration of the construction works hereby approved, having the purpose of (i) informing nearby residents and businesses of the building programme and progress of demolition and construction works for the development; (ii) informing nearby residents and businesses of appropriate mitigation measures being

undertaken as part of each phase of the development; (iii) informing nearby residents and businesses of considerate methods of working such as working hours and site traffic; (iv) providing advanced notice of exceptional hours of work, if and when appropriate; (v) providing nearby residents and businesses with an initial contact for information relating to the works and procedures for receiving/responding to comments or complaints regarding the development with the view of resolving any concerns that might arise; (vi) providing telephone contacts for nearby residents and businesses 24 hours daily throughout the works for the development; and (vii) producing a leaflet prior to the commencement of the development for distribution to nearby residents and businesses, identifying progress of the development and which shall include an invitation to register an interest in the Liaison Group. The terms of reference for the Community Liaison Group shall be submitted to the Council for approval prior to commencement of any works on site and it shall be implemented in accordance with the approved terms of reference. The Community Liaison Group shall meet at least once every quarter until completion of the development.

4) The development shall not commence (save for below ground works) until particulars and samples (where appropriate) of all the materials to be used in all external faces of the building including details were relevant of the colour, composition and texture of the concrete, metal and stone work; details of all surface windows including window opening and glazing styles; roof top plant and general plant screening; and all external hard surfaces including paving have been submitted to and approved in writing by the local planning authority. These details will have reference to and include the mitigation measures identified within the submitted Pedestrian Level Wind Microclimate Assessment RWDI #2002211 REV B 24 February 2020. The development shall be carried out in accordance with the approved details and retained as such thereafter.

5) The development shall not commence (save for below ground works) until detailed drawings at a scale not less than 1:20 (in plan, section and elevation) of typical sections/bays of the approved building have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed cladding, fenestration (including framing and glazing details), balustrades, shop-front and entrances and roof top plant and plant screening. The development shall be carried out in accordance with the approved details and retained as such thereafter.

6) Any changes proposed to the approved roof plant layout shall be prepared on detailed plans, sections and elevations at a scale of 1:20 and submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

7) Prior to commencement of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include a detailed plan showing phasing; relevant foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent); contractors' method statements; waste classification and disposal procedures and locations; location of site offices, ancillary buildings, plant, wheel-washing facilities, stacking bays and car parking; details of storage and any skips, oil and chemical storage; membership of the Considerate Contractors Scheme; delivery locations; the proposed control measures and monitoring for noise and vibration; lighting; restriction of hours of work and all associated activities audible beyond the site boundary to 0800-1800 hours Mondays to Fridays and 0800-1300 hours on Saturdays; and advance notification to neighbours

and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works. The details shall include for each phase of works the use of on-road Ultra Low Emission Zone compliant vehicles for example Euro 6 and Euro VI; and provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway. The works shall be carried out in accordance with the relevant approved CMP.

8) Prior to commencement of the development hereby permitted a Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the local planning authority. The CLP shall include the details for all the relevant foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent). The development shall be carried out in accordance with the relevant approved Construction Logistics Plan. Each CLP shall cover the following minimum requirements: site logistics and operations; construction vehicle routing; contact details for site managers and details of management lines of reporting; a detailed plan showing phasing; location of site offices, ancillary buildings, plant, wheel-washing facilities, stacking bays and car parking; storage of skips, oil and chemical storage; access and egress points; and details of membership of the Considerate Contractors Scheme.

9) No part of the development hereby approved shall be occupied or used prior to the provision of the cycle storage arrangements for not less than 244 long-stay spaces (including 8 for larger cycles) inside the building and 4 short-stay, visitor spaces externally, as indicated on the approved drawings, and set out within the submitted Transport Assessment, have been fully provided and made available. Such facilities shall be retained for their intended purpose thereafter.

10) No part of the development hereby approved shall be occupied or used until a Cycle Parking Management Plan has been submitted to and approved in writing by the local planning authority. The development shall not be operated other than in accordance with the approved Cycle Parking Management Plan.

11) No part of the development shall be occupied prior to the provision of the refuse storage enclosures, including provision for the storage of recyclable materials, have been provided in accordance with the approved drawings. All the refuse/recycling generated by the development hereby approved shall thereafter be stored within the approved areas and these facilities shall be retained for their intended purpose thereafter.

12) No part of the development hereby approved shall be used or occupied until a Waste Management Strategy has been submitted to and approved in writing by the local planning authority. Details shall include how recycling will be maximised and be incorporated into the facilities of the development. All approved storage arrangements shall be provided in accordance with the approved details and be retained as such thereafter.

13) Prior to first occupation of the development, a Delivery and Servicing Plan (DSP) including vehicle tracking where required, shall be submitted to and approved in writing by the local planning authority. The DSP shall set out the management of deliveries, emergency access, collection of waste and recyclables, times and frequencies of

deliveries and collections, silent reversing methods, location of loading bays, and vehicle movement in respect of the community floorspace. The approved measures shall be implemented for the lifetime of the development.

14) No development shall commence until a scheme for temporary fencing and/or enclosure of the site has been submitted to and approved in writing by the local planning authority, and the temporary fencing and/or enclosure has been erected in accordance with the approved details. The temporary fencing and/or enclosure shall thereafter be retained for the duration of the building works in accordance with the approved details. No part of the temporary fencing and/or enclosure of the site shall be used for the display of advertisements.

15) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the local planning authority. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

16) No development shall commence until a site investigation scheme has been submitted to and approved in writing by the local planning authority. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

17) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until (following a site investigation undertaken in compliance with the approved site investigation scheme) a quantitative risk assessment report is submitted to and approved in writing by the local planning authority. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages; and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

18) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until a remediation method statement, if required, is submitted to and

approved in writing by the local planning authority. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

19) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full if required, and a verification report confirming these works has been submitted to, and approved in writing, by the local planning authority. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all appropriate waste Duty of Care documentation; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. Any required remediation shall be detailed in an amendment to the remediation method statement and verification of these works included in the verification report. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

20) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report, has been submitted to and approved in writing by the local planning authority where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. If required, a verification report of these monitoring works shall then be submitted to and approved in writing by the local planning authority when it may be demonstrated that no residual adverse risks exist. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

21) The development hereby permitted shall not commence (save for below ground works) until a statement of how 'Secured by Design' requirements are to be adequately achieved has been submitted to and approved in writing by the local planning authority. Such details shall include, but not be limited to: site wide public realm CCTV and a feasibility study relating to linking CCTV with the Council's borough wide CCTV system; access controls; basement security measures; and means to secure the site throughout construction in accordance with BS8300:2009. No part of the development shall be used or occupied until these measures have been implemented in accordance with the approved details, and the measures shall be retained thereafter.

22) The development hereby permitted shall not commence (save for below ground works) until details of the proposed soft and hard landscaping of all areas external to the building have been submitted to and approved in writing by the local planning authority. The details shall include: planting schedules and details of the species, height and

maturity of any trees and shrubs, including sections through the planting areas; depth of tree pits, containers and shrub beds; and details relating to the access of each building, including pedestrian surfaces, materials, kerb details, external steps and seating that ensure a safe and convenient environment for blind and partially sighted people. The details shall reference and include the mitigation measures as set out in the submitted Pedestrian Level Wind Microclimate Assessment RWDI #2002211 REV B 24 February 2020. The landscaping works shall be carried out in accordance with the approved details and retained as such thereafter.

23) The development hereby permitted shall not commence (save for below ground works) until a Landscape Management Plan for all of the landscaped areas has been submitted to and approved in writing by the local planning authority. This shall include details of management responsibilities and maintenance schedules for all landscape areas. The landscape management plan shall be implemented in accordance with the approved details.

24) The development hereby permitted shall not commence until all the trees in the proximity of the development that are to be retained, have been protected from damage in accordance with BS5837:2012. This protection shall endure throughout the construction process.

25) The development shall not commence (save for below ground works) until details of any proposed external artificial lighting, including security lights have been submitted to and approved in writing by the local planning authority and no occupation shall take place until the lighting has been installed in full accordance with the approved details. Such details shall include the number, exact location, height, design and appearance of the lights, together with data concerning the levels of illumination and light spillage and the specific measures, having regard to the recommendations of the Institution of Lighting Engineers in the Guidance Notes for The Reduction of Light Pollution 2011 (or other relevant guidance) to ensure that any lighting proposed does not harm the existing amenities of the occupiers of neighbouring properties. No part of the development shall be used or occupied until any external lighting provided has been installed in accordance with the approved details and it shall be retained as such thereafter.

26) The development hereby permitted shall not commence (save for below ground works) until details of the external noise level emitted from plant/machinery/equipment and mitigation measures as appropriate have been submitted to and approved in writing by the local planning authority. The measures shall ensure that the external sound level emitted from plant/ machinery/equipment will be lower than the lowest existing background sound level by at least 10dBA in order to prevent any adverse impact. The assessment shall be made in accordance with BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. A post-installation noise assessment shall be carried out where required to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

27) No part of the development hereby approved shall be used or occupied until details of anti-vibration measures have been submitted to and approved in writing by the local planning authority. The measures shall ensure that machinery, plant/equipment, extract/ventilation system, and ducting are mounted with proprietary anti-vibration

isolators and fan motors are vibration isolated from the casing and adequately silenced. Implementation shall be carried out in accordance with the approved details and retained as such thereafter.

28) The noise level in rooms at the development hereby approved shall meet the noise standard specified in BS8233:2014 for internal rooms and external amenity areas.

29) The development hereby permitted shall not commence (save for below ground works) until details have been submitted to and approved in writing by the local planning authority of an enhanced sound insulation value DnT,w and L'nT,w of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining dwellings, for all the residential floors. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

30) Prior to commencement of the development, details shall be submitted to and approved in writing by the local planning authority of the sound insulation of the floor/ceiling/walls separating the community floorspace from the dwellings. Details shall demonstrate that the sound insulation value DnT,w is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures implemented to contain noise within the community premises and to achieve the criteria LAmax,F of BS8233:2014 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

31) Prior to the commencement of the development hereby permitted, an Air Quality Dust Management Plan (AQDMP) in order to mitigate air pollution shall be submitted to and approved in writing by the local planning authority. The AQDMP must include an Air Quality Dust Risk Assessment (AQDRA) that considers sensitive receptors off-site of the development and is undertaken in compliance with the methodology contained within Chapter 4 of the Mayor of London 'The Control of Dust and Emissions during Construction and Demolition', SPG, July 2014 and the identified measures recommended for inclusion into the AQDMP. The AQDMP submitted must comply with the Mayor's SPG and should include: Inventory and Timetable of dust generating activities during construction; Site Specific Dust mitigation and Emission control measures in the table format as contained within Appendix 7 of Mayor's SPG including for on-road and off-road construction traffic; Detailed list of Non-Road Mobile Machinery (NRMM) used on the site. The NRMM should meet as minimum the Stage IV emission criteria of Directive 97/68/EC and its subsequent amendments. This will apply to both variable and constant speed engines for both NOx and PM. An inventory of all NRMM for the first phase of construction shall be registered on the NRMM register https://nrmm.london/user-nrmm/register prior to commencement of construction works and thereafter retained and maintained until occupation of the development; use of on-road Ultra Low Emission Zone (ULEZ) compliant vehicles in accordance with the emission hierarchy (1) Electric (2) Hybrid (Electric-Petrol) (3) Petrol, (4) Hybrid (Electric-Diesel) (5) Diesel (Euro 6 and Euro VI); Details of MCERTS compliant monitoring of Particulates (PM10) used to prevent levels exceeding predetermined PM10 threshold trigger levels. Developers must ensure that on-site contractors follow best practicable means to minimise dust, particulates (PM10, PM2.5) and NOx emissions at all times. Approved details shall be fully implemented and permanently retained and maintained during the construction phases of the development.

32) Prior to occupation of the development, details of the installation of the Zero Emission Air/Water Source Heat Pumps and Zero Emission Emergency generators to be provided for space heating and hot water shall be submitted to and approved in writing by the local planning authority. Approved details shall be fully implemented prior to the occupation/use of the development and retained as such thereafter.

33) The development hereby permitted shall not commence (save for below ground works) until detailed drawings at a scale not less than 1:20 (in plan, section and elevation) of the rooftop plant enclosures have been submitted to and approved in writing by the local planning authority. No part of the development shall be used or occupied until the enclosures have been constructed in accordance with the approved details, and the enclosures shall be retained in their approved form thereafter.

34) No part of the development hereby approved shall be occupied or used until an Inclusive Access Management Plan (IAMP) has been submitted to and approved in writing by the local planning authority. The IAMP shall set out a strategy for ongoing consultation with specific interest groups with regard to accessibility of the relevant part of the site. On-going consultation shall then be carried out in accordance with the approved IAMP. The development shall not be operated other than in accordance with the approved IAMP.

35) No part of the development hereby approved shall be used or occupied until details of fire rated lifts in the building, including details of the loading lifts to the basement levels, have been submitted to and approved in writing by the local planning authority. All the lifts shall have enhanced lift repair services, running 365 days/24-hour cover, to ensure no wheelchair occupiers are trapped if a lift breaks down. The fire rated lifts shall be installed as approved and maintained in full working order for the lifetime of the development.

36) The development hereby permitted shall not commence until details of the proposed basement waterproofing and flood proofing measures have been submitted to and approved in writing by the local planning authority. The basement waterproofing and flood proofing measures shall be implemented in accordance with the approved details and retained as such thereafter.

37) Prior to commencement of the development hereby permitted details of the foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works have been completed in accordance with the approved details. They shall be retained in their approved form thereafter.

38) The development hereby permitted shall not be occupied or used until details of the proposed window cleaning equipment have been submitted to and approved in writing by the local planning authority. The details shall include the appearance, means of operation and storage of the cleaning equipment. No part of the development shall be used or occupied until the equipment has been installed in accordance with the approved details. The equipment shall be retained in its approved form thereafter.

39) The development hereby permitted shall not commence (excluding below ground works) until details of the methods proposed to identify any television interference caused by the proposed works have been submitted to and approved in writing by the local planning authority. The details shall include the measures proposed to ensure that

television interference which might be identified, is remediated in a satisfactory manner. Development shall be carried out in accordance with the approved details.

40) The development shall not commence (excluding below ground works) until the following details have been submitted to and approved in writing by the local planning authority: (i) the completion of a Base-Line Airwaves Interference Study (the Base-Line Study) to assess airwave reception within/adjacent to the site; and (ii) the implementation of a Scheme of Mitigation Works for the purpose of ensuring nil detriment during the construction works identified by the Base-Line Study. Such a scheme of mitigation works shall be first submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

41) The development hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of the full postal addresses of the residential units hereby approved. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.

42) The window glass at ground level in the development shall not be mirrored, painted or otherwise obscured.

43) No roller shutters shall be installed on any entrance or display facade hereby approved.

44) No advertisements shall be displayed on or within any elevation of the building(s), forecourt or public spaces of the development hereby approved.

45) All planting, seeding and turfing approved as part of the agreed soft landscaping scheme shall be carried out in the first planting or seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or shrubs which die, are removed or become seriously damaged or diseased within 5 years of the date of the initial planting shall be replaced in the next planting season with other similar size and species.

46) No alterations shall be carried out to the external appearance of the buildings, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings.

47) No external entrance doors in the building hereby approved shall open over the public highway.

48) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that principal Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted.

49) No music nor amplified sound (including voices) emitted from the development hereby permitted shall be audible at any residential/noise sensitive premises.

50) The ground floor entrance doors to the buildings and integral lift/stair cores shall not be less than 1 metre wide and the threshold shall be at the same level as the adjoining ground level fronting the entrances to ensure level access.

51) No impact piling shall take place until a piling method statement (detailing the 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 water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling shall be undertaken in accordance with the terms of the approved piling method statement.

52) The development shall be completed in accordance with the Fire Statement Addendum of 17 September 2020 prior to occupation and retained as such thereafter.

The Planning Inspectorate

Report to the Secretary of State

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Date 4 April 2022

The Town and Country Planning Act 1990

Application by

HFS Developments 2 Limited

Inquiry Opened on 30 November 2021

Edith Summerskill House, Clem Attlee Court, London SW6 7TW

File Ref: APP/H5390/V/21/3277137

Appeal Ref: APP/H5390/V/21/3277137
Edith Summerskill House, Clem Attlee Court, London SW6 7TW

- 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 Act 1990, on 10 June 2021.
- The application is made by HFS Developments 2 Limited to the Council of the London Borough of Hammersmith and Fulham.
- The application 20/1283/FUL is dated 15 May 2020.
- The development proposed is the erection of a 20 storey tower (plus plant) with single storey basement and ground floor mezzanine, for residential use, ancillary community use at ground floor level, hard and soft landscaping, and associated works.
- On the information available at the time of making the direction, the Secretary of State particularly wished to be informed about the following matters for the purpose of his consideration of the application: the extent to which the proposal is consistent with the development plan; and any other matters the Inspector considers relevant.

Summary of Recommendation: The application be approved.

1. Procedural Matters

1.1 The Inquiry opened on 30 November 2021 and closed on 7 December 2021 after a total of five sitting days. Aside from the applicant and the Council, Mr Richard Turney took a full part in proceedings as a Rule 6(6) party. Mr Turney is a Barrister, specialising in planning, but appeared in a personal capacity, as a local resident. Members of the public addressed the Inquiry too.

1.2 Owing to the ongoing pandemic, the Inquiry took place 'virtually' using the Council's 'Zoom' platform. I am very grateful for the assistance of Council Officers in setting the system up for my own purposes, but also for ensuring that others could participate effectively. Owing to other commitments, Mr Turney was not able to be in attendance throughout the Inquiry but was able to keep abreast of it using the Council's YouTube channel, where recordings of proceedings were made available.

1.3 Reflecting their shared position in support of the proposal, the applicant and the Council agreed a Statement of Common Ground well in advance of the Inquiry[1]. Helpfully, following the Case Management Conference that took place on 10 September 2021, Mr Turney was able to agree a Statement of Common Ground with the applicant and the Council[2].

1.4 As agreed at the Case Management Conference, the parties put together a series of Core Documents to assist the Inquiry. This series includes the evidence submitted to the Inquiry by the parties. This information can be accessed through the drop-box link: https://www.dropbox.com/sh/wkxgi4n6hcarq92/AABZpIY-beJlGHOosOCJYuoma?dl=0

1.5 PINS will make available separately other material, including representations from third parties, received in accordance with the usual timetable, and during the Inquiry, and the various Inquiry Documents[3].

[1] CD4.4 – Referred to hereafter as SoCG
[2] CD4.7 – Referred to hereafter as SoCG(2)
[3] Listed in Annex C

1.6 In that regard, particular reference has been made to two documents prepared on Mr Turney's behalf. The first is a review of the applicant's Townscape and Visual Impact Assessment prepared by Claire Browne of HCUK Group (dated 16 September 2020) and the second is a review of the applicant's Heritage Statement prepared by Christopher Griffiths of HCUK Group (also dated 16 September 2020). These were submitted to the Council as part of the consultation process on the original application alongside a covering letter from Lorenzo Pandolfi of the HCUK Group. These documents have not been made available as part of the Core Documents but are among the consultation responses that are included as part of the Council's Questionnaire. This is part of the material that will be submitted separately.

1.7 As set out above, the Council is supportive of the proposal and was of a mind to grant planning permission for it. However, 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 Act 1990, on 10 June 2021. The Secretary of State particularly wished to be informed about the extent to which the proposal is consistent with the development plan; and any other matters the Inspector considers relevant. With that in mind, I set out a series of issues I wanted to explore at the Inquiry during the Case Management Conference. These have informed the general approach of the parties to their evidence, and the presentation of their cases to the Inquiry, but, of course, my identified issues were not presented as a closed list. I refer to these below.

1.8 I made an unaccompanied visit to the site, and its surroundings, in advance of the Inquiry. I made a further, accompanied, visit to the site and its surroundings after the Inquiry closed[4] following a walking route agreed between the main parties[5]. After the accompanied element of the site visit, as suggested, I travelled to East London to take in some completed projects by the architects Henley Halebrown - Hackney New Primary School and 333 Kingsland Road, Taylor Court and Chatto Court on the Frampton Park Estate, and Wilmott Court on Well Street.

1.9 A draft s.106 Agreement was discussed at the Inquiry[6]. I allowed time after the Inquiry closed for this to be amended and completed. The final version was received on 21 December 2021[7]. I deal with its content below.

1.10 The Inquiry took place against the background of activity in the Planning Court on two separate matters relevant to this case. The first[8] related to the London Plan Policy D9. Preliminary material was placed before the Inquiry[9], but the Judgment was handed down on 16 December 2021[10] and I was able to give the parties the opportunity to comment on it in relation to their cases[11]. I have reported on these additional submissions alongside the parties' cases below.

[4] On 21 December 2021
[5] ID15
[6] ID8
[7] ID16
[8] Referred to hereafter as the *Hillingdon* case
[9] CD14.4, CD14.8, CD14.9 and CD14.10
[10] *R (London Borough of Hillingdon) v Mayor of London* [2021] EWHC 3387 (Admin) – ID13
[11] ID14

1.11 The other matter relates to the challenge brought by the London Historic Parks and Gardens Trust against the decision of the Minister of State for Housing to grant permission for the Holocaust Memorial and Learning Centre in Victoria Tower Gardens. While some of the background material to that challenge has been made available[12], and the case has been heard, at the time of writing, the Judgment is not available. I will have to leave this matter with the Secretary of State to approach the parties for their comments once it is published.

1.12 It transpired during the proceedings that one of the images presented[13] contained depiction errors. A corrected replacement was helpfully provided[14].

2. The Site and Surroundings

2.1 This is all described fully in the SoCG[15]. In short, the site is currently vacant but was formerly the location of Edith Summerskill House. The site lies on St Thomas's Way, within the Clem Attlee Estate. It is bounded by residential properties to the east and west. To the north of the site lies the Clem Attlee Estate Community Hall on Len Freeman Place, whilst St Thomas Way lies to the south of the site.

2.2 The site lies at the southern end of the Clem Attlee Estate, a post-war predominantly mid-rise estate punctuated by 18 storey high rise point blocks and 11 storey tri-axial (or 'Y' blocks) To the south-east of the site across St Thomas' Way are a series of perpendicular Victorian residential roads with 2 storey terraced housing, including Hartismere Road and Fabian Road.

2.3 The site lies approximately half a mile from both Fulham Broadway and West Brompton Underground Stations. Numerous bus routes serve North End Road, Dawes Road, and Lillie Road to various destinations in west and south-west London. The site has a PTAL rating of 4, indicating a good level of accessibility to public transport.

2.4 The site does not lie within a conservation area but there are several in the vicinity. The Central Fulham Conservation Area lies to the west, the Sedlescombe Road Conservation Area lies to the east, and the Walham Green Conservation Area is to the south.

3. Planning History

3.1 This is set out in full in the SoCG[16] but there are some matters that are useful to pick out. Edith Summerskill House was built in the 1960s as part of the wider Clem Attlee Estate. That Estate replaced an area of predominantly terraced housing that was extensively damaged by wartime bombing. The building contained 68 residential units across 18 storeys (plus plant). It was vacated in 2011 because the accommodation was considered sub-standard.

[12] CD14.5, CD14.6, CD14.7 and CD14.15
[13] CD4.12b and CD4.12c AVR10
[14] ID5
[15] CD4.4
[16] CD4.4

3.2 The Council, as landowner, took the view that refurbishment was not viable. It was therefore decided to relocate the tenants and demolish the building so that it could be replaced by a new residential building designed to meet modern standards.

3.3 A decision was made to submit a prior approval application for its demolition. This was submitted on 7 October 2016. No notification of a determination was received within 28 days so that development (or demolition) could commence pursuant to paragraph B.2(b)(vii)(cc) of Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. The building was then demolished, and this was certified as complete on 16 November 2018.

3.4 In parallel with, but not linked to, that process, on 1 May 2017, an application for planning permission was submitted to the Council for the erection of a 20-storey residential tower on the site. This was reported to the Council's Planning and Development Control Committee with an Officer recommendation for approval[17]. Members resolved to grant planning permission subject to conditions, and the completion of an Agreement under s.106. This Agreement was signed, and the decision notice was issued on 3 October 2019.

3.5 Shortly after, a claim for Judicial Review of the decision was brought by a local resident[18]. The Council submitted to judgment and the grant of permission was subsequently quashed by the High Court on 9 December 2019[19]. The Council accepted that the grant of planning permission was unlawful because the Officer's report failed to consider the acceptability of the proposed development against the baseline of a cleared site, thereby leaving out of account a material consideration.

3.6 Subsequently, the application at issue here was made to the Council. It is dated 15 May 2020[20]; it was validated by the Council on 7 July 2020 with the reference: 20/01283/FUL[21]. The application was recommended for approval by Council Officers to the Council's Planning Committee on 28 September 2020. The Committee resolved to grant planning permission subject to conditions and an Agreement under s.106[22]. As set out above, 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 Act 1990, on 10 June 2021

4. The Proposals

4.1 The scheme is described in the application as: *the erection of a 20 storey tower (plus plant) with single storey basement and ground floor mezzanine, for residential use, ancillary community use at ground floor level, hard and soft landscaping, and associated works*.

[17] The report is at CD14.2
[18] Mr Turney
[19] The Consent Order is at CD14.3
[20] CD1.1-CD1.3
[21] The accompanying material and drawings can be found at CD1.1 to 1.25 and CD1A_1 to CD1A_43 and material relating to the application is at CD2.1 to CD2.20
[22] CD3.1 to CD3.4

4.2 As set out in the SoCG[23], it would comprise 133 residential units in a total floor-space of 15,740 square metres (GEA) and a footprint of 718 square metres (GEA). The residential units would all be affordable housing units, 105 (79%) of which would be social rented, 28 (21%) intermediate rent units.

4.3 The building would have a single-storey basement, an ancillary community room and kitchen at ground floor level. There would be public realm, landscaping, and highway improvements within and surrounding the site. It would provide 224 long-term cycle parking spaces, including 8 large cycles, at mezzanine level, and 4 visitor cycle spaces as part of the public realm.

5. Planning Policy

5.1 The development plan for the area includes the London Plan of March 2021[24] and the Hammersmith & Fulham Local Plan of February 2018[25]. A raft of relevant policies from both documents has been documented in the SoCG[26] but I pick out those that bear most heavily on the proposals.

5.2 In relation to the London Plan, Policy GG2: Making the best use of land, sets out that to create successful sustainable mixed-use places that make the best use of land, those involved in planning and development must (amongst other things): enable the development of brownfield land, particularly on surplus public sector land, as well as using small sites; prioritise sites which are well-connected by existing or planned public transport; promoting higher density development, particularly in locations that are well-connected to jobs, services, infrastructure and amenities by public transport, walking and cycling; applying a design-led approach to determine the optimum capacity of sites; understand what is valued about existing places and use this a catalyst for growth, renewal, and place-making, strengthening London's district and varied character.

5.3 Linked to that, London Plan Policy GG4: Delivering the homes Londoners need, says that to create a housing market that works better for all Londoners, those involved in planning and development must(amongst other things): ensure that more homes are delivered; support the delivery of the strategic target of 50% of all new homes being genuinely affordable; and create mixed and inclusive communities, with good quality homes that meet high standards of design, and provide for identified needs, including for specialist housing.

5.4 London Plan Policy D3: Optimising site capacity through the design-led approach, tells us that all development must make the best use of land by following a design-led approach that optimises the capacity of sites. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site. Higher density developments should generally be proposed in locations that are well-connected to jobs, services, infrastructure and amenities by public transport, walking and cycling. Local context is to be enhanced by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape,

[23] CD4.4
[24] CD6.1
[25] CD5.1
[26] CD4.4

with due regard to existing and emerging street hierarchy, building types, forms and proportions. London Plan Policy D4: Delivering good design, seeks to underline all that.

5.5 London Plan Policy D6: Housing quality and standards, explains that housing development should be of high-quality design and provide adequately sized rooms with comfortable and functional layouts that are fit for purpose. Dual-aspect dwellings should be maximised, and the design of development should provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context.

5.6 Given recent consideration by the High Court[27] in the *Hillingdon* case, it is worth setting out London Plan Policy D9: Tall buildings, in some detail. Part A deals with definition and says that based on local context, development plans should define what is considered a tall building for specific localities, the height of which will vary within different parts of London but should not be less than 6 storeys or 18 metres measured from ground to the floor level of the uppermost storey.

5.7 Part B covers locations. First, Boroughs should determine if there are locations where tall buildings may be an appropriate form of development, subject to meeting other requirements of the Plan. This process should include engagement with neighbouring Boroughs that may be affected by tall building developments in identified locations. Second, any such locations and appropriate tall building heights should be identified on maps in development plans. Third, tall buildings should only be developed in locations that are identified as suitable in development plans.

5.8 Impacts are dealt with in Part C. Development proposals should address visual impacts in long-, mid-, and immediate-views. Whether part of a group or stand-alone, tall buildings should reinforce the spatial hierarchy of the local and wider context and aid legibility and wayfinding. Architectural quality and materials should be of an exemplary standard to ensure that the appearance and architectural integrity of the building is maintained through its lifespan. Proposals should take account of, and avoid harm to, the significance of London's heritage assets and their settings. Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. The buildings should positively contribute to the character of the area.

5.9 In terms of housing generally, London Plan Policy H1: Increasing housing supply, sets out the ten-year targets for net housing completions that each local planning authority should plan for in Table 4.1. To ensure that these targets are achieved, Boroughs should, amongst other things, optimise the potential for housing delivery on all suitable and available brownfield sites through development plans, and planning decisions especially on, of relevance here, surplus public-sector owned sites, and small sites.

5.10 As far as affordable housing is concerned, London Plan Policy H4: Delivering affordable housing, sets the strategic target for 50% of all new homes delivered across London to be genuinely affordable. Policy H8: Loss of existing

[27] ID13 and ID14

housing and estate redevelopment, says that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floor-space.

5.11 London Plan Policy S4: Play and informal recreation, makes clear that development proposals for schemes that are likely to be used by children and young people should (amongst other things): increase opportunities for play and informal recreation; and for residential developments, incorporate good-quality, accessible play provision for all ages. At least 10 square metres of play-space should be provided per child.

5.12 However, paragraph 5.4.6 of the accompanying text says that off-site provision, secured by an appropriate financial contribution, may be acceptable where it can be demonstrated that it addresses the needs of the development, whilst continuing to meet the needs on existing residents.

5.13 London Plan Policy D12: Fire Safety, requires all development proposals to achieve the highest standards of fire safety.

5.14 Heritage matters are the focus of London Plan Policy HC1: Heritage conservation and growth. Part C tells us that development proposals affecting heritage assets, and their settings, should conserve significance, by being sympathetic to their significance within their surroundings.

5.15 In terms of the Local Plan, Policy HO1 says that by various means the Borough will seek to exceed the London Plan (2016) minimum target of 1,031 additional dwellings a year up to 2025, and to seek at least 1,031 additional dwellings a year up to 2035. These figures have been superseded by the latest iteration of the London Plan. London Plan Policy H1 and Table 4.1 set the ten-year target for the Borough at 16,090 dwellings.

5.16 Local Plan Policy HO3 makes plain that housing development should increase the supply and improve the mix of affordable housing to help achieve more sustainable communities in the Borough. Housing mix is dealt with in Local Plan Policy HO5 and seeks to increase the supply and choice of high-quality residential accommodation that meets local residents' needs, aspirations, and demand for housing.

5.17 The design of new buildings is covered by Local Plan Policy DC2. It is permissive of new-build if it attains a high standard of design, compatible with the scale and character of existing development and its setting. All proposals are expected to respect (amongst others): the historical context and townscape setting of the site, and its sense of place; the scale, mass, form and grain of surrounding development and connections to it; the relationship of the proposed development to the existing townscape, including the local street pattern, local landmarks, and the skyline; the local design context, including the prevailing rhythm and articulation of frontages, local building materials and colour, and locally distinctive architectural detailing, and thereby promote and reinforce local distinctiveness; and good neighbourliness and the principles of residential amenity.

5.18 Local Plan Policy DC3 relates to tall buildings. As with London Plan Policy D9 covered above, it is important to rehearse this policy in some detail. It begins by saying that tall buildings, which are significantly higher than the general

prevailing height of the surrounding townscape and which have a disruptive and harmful impact on the skyline, will be resisted. However, tall buildings may be appropriate in: the White City Regeneration Area; the Earls Court and West Kensington Regeneration Area; the South Fulham Riverside Regeneration Area; and Hammersmith Town Centre.

5.19 The policy then sets out a range of criteria against which proposals in the areas identified above will be considered against. Any such proposal will need to demonstrate that it (amongst other things): has a positive relationship to the surrounding townscape in terms of scale, streetscape and built form; is of the highest quality of architectural design and materials with an appropriate form and silhouette which contributes positively to the built heritage and image of the Borough; has an acceptable impact on the skyline, and views from and to public spaces, the riverside and waterways and other locally important views and prospects; and has had full regard to the significance of heritage assets including the setting of, and views to and from, such assets, has no unacceptable harmful impacts, and should comply with Historic England guidance on tall buildings.

5.20 The purpose of Local Plan Policy DC8 is to conserve the significance of the Borough's historic environment by protecting, restoring and enhancing its heritage assets. A series of principles is then set out which are to apply when applications affecting heritage assets are to be determined. These include: the presumption will be in favour of the conservation, restoration and enhancement of heritage assets and the more significant the designated heritage asset concerned the greater the presumption should be; applications should conserve the setting of, make a positive contribution to, or reveal the significance of the heritage asset – the presence of heritage assets should inform high quality design with their setting; particular regard will be given to matters of scale, height, massing, alignment, materials, and use; and proposals which involve substantial harm, or less than substantial harm to the significance of a heritage asset will be refused unless it can be demonstrated that they meet the criteria in paragraphs 134 and 134 of the National Planning Policy Framework[28].

5.21 The latest (July 2021) version of the National Planning Policy Framework[29] is of course a significant material consideration.

5.22 There is no need for me to recite passages from it here but Chapters 4: Decision-making; 5: Delivering a sufficient supply of homes; 11: Making effective use of land; 12: Achieving well-designed places; and 16: Conserving and enhancing the historic environment are of particular relevance. The Framework is supplemented by Planning Practice Guidance[30] and the National Design Guide – Planning Practice Guidance for Beautiful, Enduring and Successful Places (2021)[31].

[28] Those paragraph numbers refer to the version of the Framework operable when the Local Plan was adopted
[29] CD7.1 - Referred to hereafter as the Framework
[30] Relevant passages at CD7.2 – Referred to hereafter as PPG
[31] CD7.3

5.23 The Council has published planning guidance in an SPD[32] and there are several Historic England publications that have some bearing, notably their Advice Note 3: the Setting of Heritage Assets[33], Advice Note 3: Tall Buildings[34] and the second edition of the consultation draft on the replacement for Advice Note 4: Tall Buildings[35].

5.24 Last, but by no means least, all accept that the proposal will affect the setting of listed buildings. As such, s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)[36] needs to be taken into account. This requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

5.25 All accept too that the proposal would have an impact on the settings of various conservation areas. However, s.72(1) of the Act does not protect the settings of conservation areas so it has no application in this case.

6 The Case for the Applicant

6.1 This is set out in full in opening and closing statements to the Inquiry and in evidence[37]. What follows is a summary of the case presented in closing, supplemented by post-Inquiry submissions relating to the *Hillingdon* case[38], but it is imperative that the applicant's evidence, and the application and supplementary material is considered in full in order to gain a proper appreciation of the case presented.

Introduction

6.2 A tall building has stood on this site for most of the last 60 years. Clem Attlee Court opened in 1957. Pevsner described it as *Fulham's post-war showpiece*[39]. As has been explained, the estate heralded a shift in the character of this area of Fulham toward *housing for all* as part of the new welfare state which had been born under Clement Attlee[40].

6.3 Edith Summerskill House - 68 affordable homes arranged across 18 storeys – along with its companion building Herbert Morrison House, were added to the estate in the early 1960s. They were then two of the Borough's tallest buildings. The vision for tall point block buildings on the estate was laudable, and was influenced in particular by French, Swedish and Danish examples of the early 1950s[41]. However, Edith Summerskill House was a poorly executed

[32] CD8.1
[33] CD7.5
[34] CD7.6
[35] CD7.7
[36] Referred to hereafter as the Act
[37] ID1 and ID12, CD4.1, CD4.10-CD4.13, CD4.17-CD4.22
[38] ID13 and ID14
[39] CD4.12 Paragraph 2.17
[40] CD4.12 Paragraph 2.6
[41] CD4.12 Pages 14-16

building and the Council demolished it for health and safety reasons in 2018, to make way for the scheme at issue.

6.4 The proposal is an urgently needed replacement for Edith Summerskill House. It has the staunch support of both the Council and the GLA.

6.5 It is a building of **exceptional** quality. This scheme was one of only 17 projects worldwide to be shortlisted for the *World Architecture Festival Future: Residential Award* in 2019. It will set a new benchmark not only locally, but regionally and nationally for what is possible in the development of social housing. It will be a beacon of the estate's regeneration[42].

6.6 But the building is not only a wonderful piece of architecture. It will address the urgent needs of some of the Borough's most vulnerable residents by delivering 133 affordable homes – 105 social rent and 28 intermediate units. These will be, in the language of the London Plan[43] *genuinely* affordable homes, and that was strongly supported by the GLA[44]. They will make the best use of a sustainably located brownfield site, in a way which accords with a raft of local, London-wide and national policies[45]. The needs are profound. And local, London-wide and national policies tell us to meet them in sustainable, brownfield locations exactly like this one.

6.7 The case for the applicant can be summed up under the following headings: (i) There is an acute and chronic shortage of affordable housing in the Borough; (ii) The development plan requires the site to be optimised; (iii) This is an appropriate site for a tall building; (iv) This building's design is exceptional; (v) The scheme will make a positive contribution to the townscape; (vi) The building's impacts on the historic environment are decisively outweighed by public benefits; (vii) The argument over 'alternatives' takes us nowhere; (viii) There are no other considerations that weigh against the grant of permission; and finally (ix) The planning balance.

(i) There is an acute and chronic shortage of affordable housing in the Borough

6.8 The Council's Local Plan[46] was adopted in February 2018. It paints a portrait of a borough of *contrasts*, and of *wealth and deprivation*[47]. On the one hand, we find some of the highest house prices in the UK. On the other, 8 of the Borough's *Lower Super Output Areas* are in the top 10% of the most deprived nationally[48]. Sadly, that includes the Clem Attlee Estate.

6.9 Along with high levels of deprivation, the Local Plan describes a Borough which has become increasingly polarised[49] - in particular that: *the mix of social housing tenants has come to include proportionally more people on lower*

[42] As Professor Tavernor put it
[43] CD6.1 Policy H4
[44] CD2.4 Paragraph 9
[45] CD6.1 Policies GG2, H1 and D3 and the Framework (CD7.1) Paragraphs 119-120
[46] CD5.1
[47] CD5.1 Paragraph 2.3
[48] CD5.1 Paragraph 2.7
[49] CD5.1 Paragraphs 2.8-2.9

incomes, some experiencing multiple deprivation[50]. Deprivation and polarisation have led to a range of social ills including high levels of child poverty[51] and lower life expectancy in less affluent parts of the Borough[52] - almost 8 years lower for men, and 5.5 for women. More housing and better-quality housing is at the heart of the Council's strategy to right these wrongs, and to improve the health of the local community[53].

6.10 That is why the lack of affordable homes for low- and middle-income households is recognised as a *key challenge* for the Local Plan[54]. The Council's existing housing stock (which of course includes the Clem Attlee Estate) is said to be old and increasingly expensive to maintain to a decent standard[55]. In particular, the design of the Council's social housing stock makes it difficult to increase the number of wheelchair accessible homes[56], and their lack of energy efficiency exacerbates fuel poverty[57]. Recent stock has tended to comprise smaller units which leads to overcrowding which, in turn, affects residents' health and well-being[58].

6.11 The consequences of the very high cost of private housing in the Borough are spelled out in the Local Plan. In the end, many households have no choice but to leave altogether[59].

6.12 There were 1,950 households on the Council's Housing Register, waiting for a home, in 2017[60]. That number already told a desperate story. As the Secretary of State has said in many decisions, these are real people, in real need, **now**. And their voices are not often heard in planning inquiries. It is disturbing then to find that this number has now increased to around 3,000[61]. Getting off that list and finding an appropriate home in this Borough can take a **decade**[62]. There are many, many more households (1,374 in 2017) in temporary accommodation and 17% of households in social rented housing in the Borough are overcrowded[63]. The picture is bleak.

6.13 Which is why we find, at the heart of the Local Plan's *spatial vision*[64] and its *strategic objectives*[65] the aim to deliver **22,000 homes** up to 2035, of which 50% will be affordable, in order to *meet the needs of local people and maintain and create more mixed and sustainable communities*. That objective

[50] CD5.1 Paragraph 2.9
[51] CD5.1 Paragraph 2.10
[52] CD5.1 Paragraph 2.11
[53] CD5.1 Paragraph 2.12
[54] CD5.1 Paragraph 2.20
[55] CD5.1 Paragraph 2.23
[56] CD5.1 Paragraph 2.24
[57] CD5.1 Paragraph 2.26
[58] CD5.1 Paragraph 2.25
[59] CD5.1 Paragraph 2.20
[60] CD5.1 Page 98
[61] CD5.3
[62] CD5.3
[63] CD5.1 Paragraph 6.35
[64] CD5.1 Page 27
[65] CD5.1 Page 30

is expressed in the Local Plan's policies HO1[66] and HO3[67]. The plan seeks to **maximise** *affordable housing supply*[68]*.*

6.14 The Borough's challenge became even more acute earlier this year when its housing target was increased through the new London Plan[69]. The heart of the London Plan's ambition is for *good growth* which is to say *growth that is socially and economically inclusive and environmentally sustainable*[70].

6.15 One of the six Good Growth Objectives is in London Plan Policy GG4: Delivering the homes Londoners need[71]. That requires many more homes to be delivered, with a strategic target of 50% of those being *genuinely affordable*. Policy H1 A[72] sets a new target for this Borough of 16,090 homes over 10 years. Policy H4 A sets the strategic target for 50% of those homes to be affordable[73].

6.16 Delivering more genuinely affordable housing is described as a key strategic issue for London[74]. All schemes are required[75] to maximise the delivery of affordable housing and make the most efficient use of available resources (of which more below).

6.17 What is remarkable is that even this bold strategic target will not actually meet needs for affordable housing – the evidence showed that the true need was for 65% of London's new homes to be affordable[76].

6.18 Nonetheless, the position is clear; the development plan requires this Borough to deliver **over 8,000 affordable homes** in the period up to 2031, or **around 805 affordable homes annually**. However, the average annual delivery of affordable homes in the Borough since 2017/18 has been 153 homes. The scale of under-delivery is enormous. The cumulative shortfall in the delivery of affordable homes in just the last four years has been **over 1,700**.

6.19 Which is why the staggering need for more affordable homes in this Borough is a point of common ground: The GLA records an *identified* local need for new *genuinely affordable homes*, and accords *substantial* weight to this scheme's addressing of those needs[77]; the Council describes the need for more affordable housing as *pressing*[78] and the state of the Borough's affordable housing shortage as *chronic*[79]; the Rule 6(6) party called the need for affordable housing *overwhelming*[80]; and the applicant describes the shortfall in

[66] CD5.1 Page 90
[67] CD5.1 Page 95
[68] CD5.1 Page 97
[69] CD6.1
[70] CD6.1 Paragraph 1.01
[71] CD6.1 Page 22
[72] CD6.1 Page 157 and Table 4.1
[73] CD6.1 Page 172.
[74] CD6.1 Paragraph 4.4.1
[75] CD6.1 Paragraph 4.4.1
[76] CD6.1 Paragraph 4.4.5
[77] CD 2.3 (GLA Stage 1 Report) Paragraphs 46 and 76
[78] CD4.9 Paragraph 9.9
[79] Mr Wilson in-c
[80] Mr Turney's oral evidence

the Borough's delivery of affordable homes as *substantial* and attributes *very substantial weight* to the scheme's contribution to addressing those needs[81].

6.20 At the national level, the social objective at the heart of the Framework requires us to ensure that: *a sufficient number and range of homes can be provided to meet the needs of present and future generations*[82]. That objective is not being met in the Borough.

(ii) The development plan requires this site to be 'optimised'

6.21 The London Plan's second Good Growth principle is in London Plan Policy GG2: Making the best use of land. The need for this approach flows from the rapid growth of London, which leads to increasing and competing pressures on the use of space[83]. The London Plan explains that: *this will mean creating places of higher density in appropriate locations to get more out of limited land*[84].

6.22 This objective is set out in London Plan Policy GG2[85]. We are, in particular, required to: (i) **Enable** the development of brownfield land on surplus public sector land, and sites on the edge of town centres, as well as utilising small sites; (ii) **Prioritise** sites which are well connected by existing or planned public transport; (iii) **Proactively explore** the potential to intensify the use of land to support additional homes and workspaces, promoting higher density development, particularly in locations that are well-connected to jobs, services, infrastructure and amenities by public transport, walking and cycling; and (iv) Apply a **design-led approach** to determine the optimum development capacity of sites.

6.23 The objective is taken further by London Plan Policy H1 B which requires us to optimise the potential for housing deliverable on suitable and available brownfield sites and **especially** sites with PTAL ratings of 3 to 6, public sector sites, and small sites.

6.24 **Higher density** development is to be promoted in locations which are well connected to jobs, services, infrastructure and amenities by public transport, walking and cycling[86].

6.25 The application site is: brownfield; on public-sector owned land; and in a well-connected location accessible to jobs, services, infrastructure and amenities by public transport walking and cycling. The site has a PTAL of 4 which accounts for a good level of access to public transport. There are three bus stops within a 300m walk of the site with very frequent services, and Fulham Broadway Underground Station on the District Line is around 850m to the south-east of the site. Moreover, the site is only 120m from the Fulham Regeneration Area, and the boundary of Fulham Town Centre.

6.26 For those reasons, the principle not only of this site's re-development but of its **optimisation** is right at the heart of the London Plan's requirements. That

[81] CD4.13 Paragraph 8.31
[82] CD7.1 Paragraph 8(b)
[83] CD6.1 Paragraph 1.2.1
[84] CD6.1 Paragraph 1.2.2
[85] CD6.1 Page 17
[86] CD6.1 Policy D3 B Page 110

optimisation is not some kind of mechanistic function, like, for example, a density matrix[87]. Rather, the optimisation must follow a *design led approach* which optimises the site's capacity, which means *ensuring that development is of the most appropriate form and land use for the site*[88]. The manner in which the scheme's design meets this test is dealt with below.

6.27 There is a further consequence of the policy requirement to *optimise*. In the case of desperately needed affordable housing, when a redevelopment seeks to **replace** homes, there can be **no net loss** in the number of new homes. That is made clear in the Local Plan, which tells us that when social housing is redeveloped to improve its quality: there should be no net loss of social/affordable rented housing in terms of numbers of dwellings[89].

6.28 That aim is also expressed through London Plan Policy H8[90]. All the parties agree that this policy is relevant to this application[91]. Its application must be treated with care. Sub-paragraphs A and D state that: *A Loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace*; and *D Demolition of affordable housing, including where it is part of an estate redevelopment programme, should not be permitted unless it is replaced by an equivalent amount of affordable housing floorspace*.

6.29 Read literally, the previous Edith Summerskill House is no longer *existing housing* within A. Its demolition has already been permitted within D. So, again read in a literal way, those provisions are not engaged. But policies should not be read literally like a contract or a statute. Policies must be interpreted with reference to their broad purpose and overall context[92].

6.30 Here, that purpose is spelled out in the accompanying text to London Plan Policy H8 which tells us (with emphasis in the original): *Estate regeneration that involves the loss and replacement of affordable housing should deliver an* ***uplift in affordable housing*** *wherever possible*[93].

6.31 Which explains why one of the Mayor's **key requirements**, as set out in the GLA Stage 1 report in this case, is that proposals *ensure no loss of affordable housing*[94], and that the GLA found the application in accordance with London Plan Policy H8.

6.32 It is also why the Council[95] in its role as local planning authority would expect a scheme on this site **as an absolute minimum** to re-provide the affordable homes which were lost when Edith Summerskill House was demolished, and that their delivery should not just be reproduced, but **optimised**.

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[87] So Mr Turney's comparison to illustrative density parameters takes us nowhere
[88] CD6.1 Policy D3 A Page 110
[89] CD5.1 Paragraph 6.27
[90] CD6.1 Page 185
[91] CD4.7 Paragraph 9
[92] *SoS of State for Communities and Local Government v Hopkins Homes Ltd* [2017] 1 W.L.R. 1865 Paragraphs 74-75
[93] CD6.1 Paragraph 4.8.5
[94] CD2.3 Paragraphs 19-24
[95] As set out by Mr Wilson

6.33 That part of the requirement to *optimise* has implications for the kind of scheme which can come forward on this site. All parties – including the Rule 6(6) party – agree that the site should be re-developed urgently for affordable housing. Its redevelopment will have been separated by a few years from the demolition of the previous building. But this scheme's **purpose** is simple: to replace and upgrade Edith Summerskill House.

6.34 It would fly in the face of the approach to optimising site capacity for this scheme to do anything other than **re-provide, and then increase** the number and quality of affordable homes.

6.35 What is proposed is the replacement of a building of some 18 storeys which provided 68 homes on a relatively small and constrained site. That is why, applying modern floor-to-ceiling heights and the requirement to optimise this site's capacity, a policy-compliant approach to this **inevitably** results in a building of greater height.

(iii) This is an appropriate site for a tall building

6.36 In 2016, well before the demolition of Edith Summerskill House, the Council produced a background paper on Tall Buildings to inform its next Local Plan[96]. The purpose of that document was to identify: *broad areas where tall buildings may be appropriate within the existing townscape setting*[97]. The Clem Attlee estate is noted as *part of* that existing townscape setting, and the paper explains that the estate includes tall buildings[98].

6.37 The paper did not suggest putting *more* tall buildings on this estate than were already there. However, the function of the paper was to identify areas for **new** tall buildings[99]. The paper did not look backwards – it did not evaluate whether areas where tall buildings already exist, like the Clem Attlee Estate, were appropriate or not either for the tall buildings they already contained, or for new tall buildings. In particular, it was silent on the issue of re-providing tall buildings on sites (like at the Clem Attlee Estate) where tall buildings already existed.

6.38 That 2016 Study fed into Local Plan Policy DC3[100] which says that: *Tall buildings, which are significantly higher than the general prevailing height of the surrounding townscape and which have a disruptive and harmful impact on the skyline, will be resisted by the Council. However, areas where tall buildings may be appropriate are as follows: White City Regeneration Area; Earls Court and West Kensington Opportunity Area; South Fulham Riverside Regeneration Area; and Hammersmith Town Centre*.

6.39 The applicant[101] accepts that while the policy is not explicit in this regard, it can reasonably be read as presuming against new tall buildings outside these

[96] CD14.11
[97] CD14.11 Paragraph 2.2
[98] CD14.11 Paragraph 4.5
[99] CD14.11 Paragraph 7.1 focuses on: *any new tall building*
[100] CD5.1 Page 173
[101] Through Mr Henderson

areas. For that reason, it is accepted that the proposal conflicts with Local Plan Policy DC3, and by extension, with London Plan Policy D9 B 3)[102].

6.40 However, care must be taken when weighing that conflict because when Local Plan Policy DC3 was adopted, Edith Summerskill House was still in place. The policy, like the evidence base it is predicated upon, is silent on the issue of replacing tall buildings on sites where they already stand. On the contrary, the work on which Local Plan Policy DC3 was based looked forward to where new tall buildings could be located in the Borough. It did not consider the acceptability of areas, like the Clem Attlee Estate, where tall buildings were already in place.

6.41 What really matters of course is the *purpose* of the policy. That is spelled out in the Plan[103]: *The policy aims to ensure that tall buildings do not harm the built heritage and townscape character, but are properly located, contribute in a positive manner to enhance a sense of place and are an integral part of the long-term spatial vision for the borough*.

6.42 That is why we must also consider the extent of the scheme's accordance with detailed development management criteria at Local Plan Policy DC3 criteria (a) to (j)[104] and London Plan Policy D9 C[105]. The reason is that where the building *does*, for example, contribute positively to the townscape (through an exceptional design), the fundamental purposes behind these policies are not infringed.

6.43 The design of the building is dealt with below but its very high quality, and the positive contribution it would make to the local townscape and sense of place mean the core objectives of Local Plan Policy DC3 and London Plan Policy D9 would be met. That does not obviate the conflict with the letter of those policies. But it should reduce the weight that conflict attracts in the planning balance.

6.44 The reason this policy issue is a point of dispute before the Inquiry is because of the judicial review[106] against the Council's previous grant of permission for the scheme. That grant was quashed by the High Court for the following reason[107]: *The Officer's Report failed to consider the acceptability of the proposed development against the baseline of a cleared site. The failure to do so meant that the Defendant left out of account a material consideration*.

6.45 Should permission be granted for this scheme, the demolition of Edith Summerskill House will have preceded its redevelopment by a few years. That means even though a tall building has been a characteristic of this townscape for many decades, the Rule 6(6) party is right to say, technically at least, that the *baseline* is that of a *cleared site*. That has meant that some of the assessments have needed to be re-run (and, indeed, the relevant assessments *have* been re-run). But this point about baseline: (i) does not negate the

[102] CD6.1 Page 138
[103] CD5.1 Paragraph 12.18 Page 174
[104] CD5.1 Page 173
[105] CD6.1 Page 138
[106] Brought by Mr Turney
[107] CD14.3

decades-long history of there being a tall building on the site as part of the townscape and local character; (ii) does not obviate the requirement to optimise the capacity of the site for the reprovision of affordable housing; (iii) does not somehow render a site which has been appropriate for a tall building for decades somehow inappropriate; and (iv) does not render a building that was beautifully designed before the Judicial Review any less successful after the Judicial Review.

6.46 It was suggested[108] that there is not, and has never been, a successful tall building on the Clem Attlee Estate. But as the applicant has made clear[109], the historic failure was not in the principle of a tall building on this site, it was in the detail of its execution.

6.47 Viewed realistically, there has been a tall building on the application site for most of the last 60 years. The idea that the site is, all of sudden, somehow inappropriate for a *replacement* tall building is untenable.

6.48 Again, the clear direction of the London Plan is that when affordable homes are to be replaced, their replacements should be at existing *or higher* densities with *at least* equivalent floorspace[110]. That imperative runs through local, London-wide and national policy. This scheme responds to it with elegance, ingenuity and compassion. And it is to that design response that we now turn.

(iv) The building's design is exceptional

6.49 This scheme is an **outstanding** piece of design. The Council[111] called it a *game changer* in the quality of affordable housing. They are right. In the future, if permission is granted, this building will come to be just as celebrated as Pugin's nearby Church of St Thomas of Canterbury (more on which below). It will raise the bar for built form in this part of London.

6.50 The real genius of this building lies in the overlapping square arrangement of its footprint, its staggered volume, the classical proportions and elevational rhythm of its arched façades, and its inner and outer skins. It will make a slender and elegant contribution to the townscape. It will activate the frontages at ground floor level. It will improve the public realm. Its internal arrangements will create functional and sustainable homes of outstanding quality for its residents.

6.51 As was explained[112], there were three ambitions for this project: (i) to respond to the heritage of the Clem Attlee estate and its poignant history in relation to the Welfare State and the idea that housing might have a **civic** property, by making a well-designed and beautiful building; (ii) to design very high quality, well planned and well-lit homes in a way which optimises the site's capacity; and (iii) to ground the building in its context through active frontages which shape the public realm using tactile materials and robust details which will age well.

[108] By Mr Turney
[109] Through Professor Tavernor
[110] CD6.1 Policy H8
[111] Through Mr Jones
[112] By Mr Henley in-c

6.52 Fulham suffered from bomb damage during the 2nd World War. The application site and the area to the north, previously terraced houses, were razed to the ground. As part of the extensive post-war reconstruction, the Clem Attlee Estate was built, and the first buildings were opened by former Prime Minister Clement Attlee in 1957.

6.53 Attlee was Prime Minister between 1945-51. His government reformed trade union legislation, working practices and children's services; it created the National Parks system, passed the New Towns Act 1946, and established the town and country planning system through the Town and Country Planning Act 1947[113].

6.54 Each of the estate's buildings is named for a member of Attlee's cabinet. Baroness Edith Summerskill (1901-1980) was a doctor and politician who became a leading figure in Attlee's government. She served as Parliamentary Secretary to the Ministry of Food (1945–50) and as Minister of National Insurance (1950–51).

6.55 Edith Summerskill House and its companion building, Herbert Morrison House, were added to the estate in the early 1960s. At that time, they were the tallest buildings in the area. The masterplan for the estate established an important area of open space between the two buildings[114].

6.56 Edith Summerskill House was a prominent building – 68 affordable homes arranged across 18 storeys. It met important local needs in the provision of affordable homes. But the quality of its design and accommodation was poor. Its generic H plan presented blank gable ends to the rest of the estate and to St Thomas's way. It appeared to *turn its back* on the terraced housing to the south[115]. It was made of a reinforced concrete frame, had substandard floor-to-ceiling heights, and it contained asbestos.

6.57 As for the proposed replacement, the first moment of genius in its conception was the overlapping square arrangement of its plan form[116]. That approach has several advantages. It reduces the building's perceived width, it increases the building's surface area, which maximises the potential for natural light and good ventilation, and it allows for the building to be set back to create public space along St Thomas's Way.

6.58 The approach has allowed for more elegant proportions to be composed, along with a generous and efficient floorplate. As was explained[117], this is a building with no corridors. It maximises the efficient use of space. Its residents would enjoy an unusually generous amount of light (5 out of 7 homes on each floor will have dual-aspect living areas), and internal living space.

6.59 From the entrance foyer to the community room, to the mezzanine, to the cycle storage area, to the efficient but generous arrangements of apartments

[113] CD4.12 Paragraph 2.7
[114] CD4.10 Paragraph 2.6.4
[115] CD4.12 Paragraph 2.20 and the aerial photograph at CD4.10 Page 10
[116] See the illustration at CD4.10 Page 19
[117] By Mr Henley in-c

across each floor, the approach to the building's layout has been meticulous and ingenious.

6.60 The double square floorplate leads to a staggering of the volume[118]. That approach reduces the apparent mass of the building and generates more elegantly proportioned primary elevations.

6.61 The building is characterised by a composition of 2 and 3 storey precast concrete columns and arches which are composed to moderate the building's scale, to provide depth and shadow, and to enrich its façades. The top of the building is crowned by a projecting open frame, an extension of the piers below, softening its silhouette and framing the sky.

6.62 This building is designed to be appreciated at a number of different scales – from the wider urban townscape to the more localised streetscape to the human scale at street level[119]. This approach has resulted in a series of well-proportioned relationships in the way the façades are designed[120].

6.63 In particular, the height of the building has been tested in relation to the Golden Ratio. The bays also arrange themselves into different square and golden rectangle proportions. All of which leads to harmonic rhythms running through the building[121].

6.64 Then, the approach brings together two orders – the domestic and the civic. One of the ways in which this is achieved is by giving the building 2 skins – meticulously detailed windows overlain by the concrete arches[122].

6.65 This approach is the opposite of the utilitarian or functionalist style which characterises so much of England's social housing – a style driven more by procurement procedures than by aesthetic quality.

6.66 By contrast this proposal celebrates the role of this building and the lives of the people who will live in it by giving it depth and richness with texture. The aim is to create a building in which people have pride[123]. This building presents so much more to the world than an assemblage of its functional elements. It has an order, a completeness, not borne out of functional necessity but out of the aim to dignify the lives of those who will live in it.

6.67 The carefully selected materials, including different textures of ivory-coloured concrete and bronze anodised aluminium window frames, exploits the effect of light and shade which accentuates the three-dimensional form of the building and animates the façade. The façade will be precast which will ensure it can be constructed efficiently and to a high standard, and in a way which weathers well.

6.68 The wild-bond brick at ground-floor level will meet the ground with a tactile, human scale. The archways will provide a welcoming entrance to the estate,

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[118] See the illustration at CD4.10 Page 24
[119] See the illustration at CD4.10 Page 51
[120] As explained by Mr Henley and Professor Tavernor in oral evidence
[121] As Mr Henley put it
[122] See the illustration at CD4.10 Page 57
[123] As Mr Henley outlined in oral evidence

improving permeability, and the community space will open the building up to its neighbours in the estate, and activate the ground floor[124].

6.69 This scheme took shape over many years of evolution in consultation with the Council, the GLA, the applicant's consultants[125], as well as the general public. There was no fixed brief. No minimum quantum to be delivered. What has resulted is a wonderful response to a constrained site. But it has emerged in a design-led way, always cognisant of the estate's civic history, and the requirement of the development plan to optimise the site's potential.

6.70 It has been repeatedly suggested by the Rule 6(6) party that the building should have been fundamentally redesigned as a result of the successful Judicial Review. But why?

6.71 Following the Judicial Review, the relevant technical assessments were re-run against a *bare earth* baseline, and there were new assessments on townscape and on heritage[126]. The outcome of that work was **positive**. The work confirmed, even measured against a *bare earth* baseline, that this scheme will enhance the quality of the local townscape and only bring about low-level harm to the significance of two heritage assets (more on these points below).

6.72 The updated work confirmed the obvious: this building is exceptional. Its success does not depend on the point made in the Judicial Review. So, there is no requirement to go back to the drawing board.

6.73 The Rule 6(6) party also suggested that the Design Team should have produced a separate capacity study for the site. But again, why? The work of the architect in evolving the design is so much more sophisticated, subtle, and advanced. The design successfully optimises the site's capacity. It delivers an uplift in affordable housing without causing any unacceptable harm to townscape, heritage, or anything else.

6.74 In the end, as was explained[127], the scheme draws on the area's rich architectural heritage including: (i) Pugin's concern for the honesty and use of materials and structure; (ii) the concrete architecture of Clem Attlee Court; and (iii) the brickwork and detailing of the terraced houses, in particular, that lie to the south of the site.

6.75 This scheme will raise the bar for the quality of the built form in this part of West London. The architects' attention to detail on everything from materials to textures, to internal layouts, to the proportions and layering of the building's façades, has been meticulous.

6.76 The scheme's ambition[128]: *is to create a grounded tower of affordable homes, in fact a civic building of housing, that dignifies the lives of residents and neighbours. This would set it apart from most welfare state council housing built in British cities in the third quarter of the Twentieth Century and most affordable housing being built today*.

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[124] See the illustration at CD4.10 Page 69
[125] Professor Tavernor and Mr Froneman
[126] By Professor Tavernor and Mr Froneman respectively
[127] By Mr Henley in oral evidence
[128] CD4.10 Paragraph 5.11.1 Page 49

6.77 That ambition has been met. As it has been put[129], this scheme: *sets a new standard for social housing in this country*. The scheme has been endorsed by a number of independent experts. It has the strong support of the Hammersmith and Fulham Design Review Panel[130] which praised its *quality, rigour and invention*. It also has the support of the GLA[131] who confirmed that the building's architecture is *high quality*, would enhance the local area, and would form an *attractive landmark*. The Council[132] praises its design as *sensitive* and *high quality*, in particular picking out the elegant proportions of its arched facades, the building's strong expression in its base, middle and top, and the framing of the crown which would make a *particularly positive addition to the skyline*.

6.78 National policy is more concerned than ever with the design quality of new buildings. This is the kind of high quality, beautiful, and sustainable building which the Government tells us is fundamental to what the planning and development process should achieve[133].

6.79 This is an outstanding piece of work[134]. It is correct to say[135]: *The application scheme provides an opportunity to step out of the shadows of the past, to raise the character and quality of architecture locally, by providing a contemporary exemplar of civic, social housing of the highest order*.

(v) The scheme will make a positive contribution in townscape terms

6.80 This building will enrich the experience of this urban area. In views from the north, Herbert Morrison House is normally already in view, as is the Empress State Building at Earls Court. Where this scheme is visible, it will be understood positively as part of the Clem Attlee estate and will provide a positive urban focus.

6.81 From the south, again Herbert Morrison House is often already visible. Where it is seen, this scheme will provide a positive urban focus. Its interlocking volumes will reduce the visual mass of the building by generating depth to the composition and creating slender elevations. The projecting open frame at its crown will capture the sky beyond, the light coloration of the cladding softening its skyline silhouette. When visible, the scheme's light coloration and high-quality detailing will provide a vertical counterpoint to the long horizontals of the terraces. From closer quarters, on St Thomas's Way for example, the rusticated brickwork at the base of the scheme will be visible, as will the entry arcade. It will provide a colour and texture contrast with the visually lighter and more slender piers and arches of the residential floors above.

6.82 From the east, again, the character of the townscape will be enhanced. There are already views of the Empress State Building, the Ibis Hotel, and the other

[129] CD4.12 Paragraph 3.16 Page 33
[130] CD4.8 Paragraph 3.33 Page 10
[131] CD2.3 – GLA Stage 1 Report
[132] CD4.8 Section 3
[133] CD7.1 (The Framework) Paragraph 126
[134] It is no coincidence that both Professor Tavernor for the applicants and Mr Jones the Council describe the proposal as one of the finest buildings they have dealt with in their careers
[135] CD4.12 Paragraph 3.19

buildings on the Clem Attlee estate. Where the scheme is seen, its elegant architectural character and light coloration will complement the eclectic motifs and verticality of the buildings in streets like North End Road. The scheme will provide a positive (if sometimes distant) urban focus. The setting of these streets will be enhanced.

6.83 From the Walham Green Conservation Area, again in those places where it would be seen, the elegance of the building and its light colouration, will enhance the character of the street vista, or in some places, have only a neutral effect.

6.84 From the west, the Central Fulham Conservation Area, most views will be neutral. However, there will be some adverse impacts on the townscape because the scheme will be seen in views alongside the spire of the Church of St Thomas of Canterbury.

6.85 The scheme will make positive contributions to longer-range views where it will be seen. It does not form part of any designated local or strategic views – when it is seen, any views will be incidental.

6.86 The Rule 6(6) party suggests that the application site's context is predominantly influenced by the 2-3 storey terraced housing to the south[136]. That is wrong[137]. The application site is part of an estate which includes a number of tall buildings, and on which a tall building sat for most of the last 60 years.

6.87 It is said by the Rule 6(6) party that the transition from the scheme to the Victorian housing to the south would be too abrupt. But, you could go all over London and find that kind of contrast [138]. When it is well done, as it would be here, such a contrast need not lead to harm.

6.88 The Rule 6(6) party rely on a TVIA 'review'[139]. That evidence has not been tested and for that reason, the weight to the attributed to it must be considerably tempered. But in any event, much of the difference comes down to the repeated assertion that when the building would be seen, its impacts would be *adverse* in nature. But, of course, visibility is not the same as harm, particularly for a building as well designed as this one. As was explained[140], you cannot divorce the building's exceptional quality from how it will be read in its context.

(vi) The building's impacts on the historic environment would be decisively outweighed by public benefits

6.89 Like Edith Summerskill House was before its demolition, the scheme would be visible from certain points toward the west of the cemetery of Augustus Pugin's Church of St Thomas of Canterbury, and from various points in the Central Fulham Conservation Area. That would lead to some low-level harm to the significance of those heritage assets.

[136] CD4.14 Paragraph 3.7
[137] As Professor Tavernor explained in oral evidence
[138] As Professor Tavernor explained in oral evidence
[139] Prepared by Ms Claire Brown
[140] By Professor Tavernor

6.90 In terms of the Church of St Thomas of Canterbury, this was designed by Pugin, the renowned architect, designer, author, theorist, and leading figure in the English Roman Catholic and Gothic revivals. It was built in the late 1840's to serve a growing population of Irish immigrants. The church is, then, an example of a building which was intended to serve poorer communities. There is a powerful resonance between the purposes of the church and the purpose of the application scheme[141].

6.91 The predominant source of the church's significance lies in its physical form, design, proportions and physical attributes, such as the fine detailing of its interior and its plan form. Nonetheless, the setting of the church also contributes to its significance. The church's setting has evolved considerably. It was originally in an open setting with no development either side. But today, the church is set in a tight urban context.

6.92 That setting includes the cemetery, from which other tall buildings including Herbert Morrison house can already be seen. Beyond the cemetery, it is difficult to appreciate the building other than on the Rylston Road itself. There are incidental views of the spire in the wider area, but as Historic England explain[142], views of spires are unlikely to make significant contributions to the significance of historic assets unless the views are designed or associative.

6.93 In some views from the cemetery, the scheme will distract from and visually compete with the spire[143]. On the other hand, that is not the case for everywhere in the cemetery; one already appreciates the urban context of the setting, including tall buildings, from within the cemetery; and this would also be the case for a building on the appeal site of a substantially lower height.

6.94 In the end, the scheme affects *some* views in *part* of the Church's setting, but that setting is not the predominant source of the Church's significance. The previous Edith Summerskill House was in place when the Church was listed. The qualities which led to it being listed will not be harmed by this scheme. So, while there would be some harm to its significance as a result of the proposal, that harm would be at a low level of less than substantial harm.

6.95 The Rule 6(6) party's assessment[144] of a high level of less than substantial harm cannot be right. It suggests (on the basis of the metric set out in the Appendix to the HIA) that *most* of the Church's significance would be vitiated by this scheme. And that is obviously wrong – not least because most of the Church's significance derive from features *other than* its setting; features that would be wholly unaffected by this scheme. Of course, the Rule 6(6) party's HIA was not tested at the Inquiry and that substantially tempers the weight it can be given.

6.96 As far as the Central Fulham Conservation Area is concerned, the area was developed in the mid-late 19th century with a street pattern of grid-like rectilinear roads, bisected by Filmer Road, and lined with Victorian terraced houses, along with associated pubs, churches, shops and schools. There is a

[141] As Mr Froneman explained in oral evidence
[142] CD7.5 Page 7
[143] As Mr Froneman explained and accepted
[144] Arrived at by Mr Griffiths in his HIA Page 27

good deal of uniformity in the scale and form of the predominant Victorian terraced houses.

6.97 The tight residential streets limit extensive visibility of areas outside the conservation area, though there are longer views along the linear roads. There are views of tall buildings from the area, for example Herbert Morrison House from Filmer Road, and also Tom Williams House, and the Chelsea Waterfront.

6.98 The areas where the scheme would be most strongly juxtaposed with the Victorian townscape of the Central Fulham Conservation Area are the areas around the Church of St Thomas of Canterbury - Rylston Road, Estcourt Road, and Sherbrooke Road.

6.99 In some views, a tall modern building would distract from the coherence and uniformity of the townscape. However, only a small degree of harm can be attributed to that – and well within the lower end of the less than substantial spectrum in the Framework because the conservation area is relatively large and many parts of it would not be affected at all. Even where effects would occur in the streets above, these would not be in both directions of a particular street, and the distant presence of the proposed development would not obscure or obliterate the foreground/middle ground townscape of the conservation area. Rather, it would in most cases be no more than a distant presence that could provide some distraction.

6.100 In reaching conclusions, reliance is placed[145] on the conclusions reached by the Inspector in a recent case, endorsed by the Secretary of State[146], where it was said that: *The first point is that the requirement is to consider the effect on the significance of the asset as a whole and not just a part of it. The use of views is a useful tool in the heritage analysis. However, it is not an end in itself and, in my opinion, the Council made the mistake of being overly reliant on the effect on views rather than considering the effect on significance of the asset overall. This is particularly relevant in relation to the particular conservation areas here because they are extensive and varied in character. This may mean that findings of harm will be more difficult to substantiate. Nevertheless, that is the approach that is required, and it must be followed*.

6.101 The Rule 6(6) party suggests that the correct approach is more complicated than that, but it is not. The simple point is that the Framework requires an assessment of the significance of the affected designated heritage asset, overall.

6.102 To the extent that the Rule 6(6) party has departed from that, they have adopted the wrong approach[147] to assessing the significance of (in particular) conservation areas. That might go some way towards explaining why the Rule 6(6) party identifies harm to so many more assets than the applicant, the Council, the GLA and Historic England. But the other point that flows from the Rule 6(6) party HIA is the repeated assumption that where the building would be visible, from a conservation area, that visibility would cause heritage harm. It would not. Not only because of the building's exceptional design, but also

[145] By Mr Froneman
[146] APP/G6100/V/19/3225884 IR Paragraph 399 SoS DL Paragraph 19
[147] In Mr Griffiths' HIA

because the more distant views have no bearing at all on the significance of the conservation areas, or other assets, affected. Again, that is the point the Framework requires us to consider. Visibility is not the same as harm.

6.103 Unfortunately, Historic England's response to the application[148] was similarly unhelpful. Albeit there is an allegation of harm to the Church of St Thomas of Canterbury, the *extent* of that harm is not calibrated, and the *basis* for the objection is that (in their view) the harm is not supported by a *clear and convincing justification*. But that very considerably steps outside their brief.

6.104 The clear and convincing justification in this case comes through the Framework paragraph 202 balance – that is the weighing of the scheme's public benefits, and in particular the delivery of 133 affordable homes, against the extent of less than substantial harm. It is well beyond the remit of Historic England to conduct that balancing exercise. It is telling that the bodies who are best equipped to reach a proper view on the scheme, namely the Council and the GLA, both support it.

6.105 The planning balance is considered further below but the position is clear. As the GLA and the Council agree, the substantial public benefits this scheme will deliver decisively outweigh the less than substantial harm it would cause to the significance of the Church of St Thomas of Canterbury and the Central Fulham Conservation Area.

6.106 For completeness, while none of the parties allege that substantial harm (in the language of the Framework) would be caused, the applicant has addressed the issue[149]. It is a matter of planning judgement that should be informed by the language of the PPG, and the *Bedford* and *Bramshill* decisions[150], but in the end it is a matter for the decision-maker. That is also consistent with the very latest word on this subject from the Minister of State for Housing[151].

(vii) The argument over 'alternatives' takes us nowhere

6.107 The principles were summarised by the Planning Court in the *Stonehenge* and *Trusthouse Forte* cases[152]. These include (i) the fact that other land exists upon which the development proposed would be yet more acceptable for such purposes would not justify the refusal of planning permission for that proposal; (ii) alternatives will only be relevant in exceptional circumstances, and normally only in situations where (among other things) (a) there is an alternative site for the same project which would not have the same adverse effects, or would not have them to the same extent, and (b) there could only be one permission granted for a development, or at least only a very limited number of permissions; (iii) that position is to be contrasted to cases where permission is sought for dwellings; and (iv) in those exceptional circumstances where alternatives might be relevant, vague or inchoate schemes, or which have no real possibility of coming about, are either irrelevant, or where relevant, should be given little or no weight.

[148] CD2.19
[149] CD4.11 Page 35
[150] CD9.2 and CD9.1 respectively
[151] CD14.15 Paragraphs 34-44
[152] CD9.4 Paragraphs 268-276 and CD9.5

6.108 In this case, there is no alternative scheme before the Inquiry and no alternative site(s) for this scheme either. The exceptional circumstances in the caselaw do not arise so – at least as far as the common law requirements are concerned – there was no obligation to consider alternative sites. There is no relevant policy requirement to consider alternatives in the Local Plan or the Framework.

6.109 The Rule 6(6) party relies on one of the development management criteria of London Plan Policy D9 C 1) d)[153] which says in relation to tall buildings that: *proposals should take account of, and avoid harm to, the significance of London's heritage assets and their settings. Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. The buildings should positively contribute to the character of the area*.

6.110 That policy was not part of the development plan when the application was made. It also, more importantly, is not relevant to the Rule 6(6) party's own analysis of the case - because the application is said to fail at the earlier hurdle of London Plan Policy D9 B 3) – a point addressed above.

6.111 However, the scheme accords with that policy. This Borough has a need not for hundreds but for many **thousands** of new affordable homes. It is **inevitable** that this need will not be met by one scheme or even a few schemes. Many, many schemes will be required to meet it, all over the Borough. The importance of that objective is set out in the Council's Local Plan, above. The London Plan emphasises the priority on meeting the need in sustainable, well-connected brownfield sites just like this one.

6.112 So, unlike the other cases referred to, the need to be addressed by this scheme could never be met by a single scheme, or even a handful or schemes. The Borough will need many, many schemes to address its desperate need for affordable housing.

6.113 That is why an alternative assessment in this case is unnecessary. Even if one found another site in the Borough to deliver 133 affordable homes, that would not obviate the need to provide several thousand more homes, and the need to optimise this site's capacity to re-provide affordable housing.

6.114 The only issue then is whether or not alternative formulations of the building were adequately explored within the meaning of London Plan Policy D9 C 1) d). To answer that we need to start with the agreed context – all agree that this site should be urgently developed for affordable housing and that its capacity must be optimised.

6.115 The Rule 6(6) party agrees[154] that what previously existed on the site is relevant to what it should now accommodate. It is proposed to replace a building of some 18 storeys that provided 68 homes on a relatively small and constrained site. That is why, applying modern floor to floor heights, and the necessity to optimise capacity, a policy-compliant approach to this inevitably results in a building of greater height.

[153] CD6.1 Page 139
[154] ID10 Paragraph 11

6.116 What matters is how that building is designed and a number of options were indeed explored[155] and that means the relevant criterion of London Plan Policy D9 has been met[156]. The alternatives were premised on a building which increased the number of affordable homes over and above the previous Edith Summerskill House, but that was an inevitable function of the development plan. The alternatives were also premised on a taller building, but, given the requirements to optimise the site, to maximise affordable housing and to make effective use of a very constrained small site, that too was inevitable.

6.117 There is no alternative scheme put forward on this site, by the Rule 6(6) party, or anyone else. The Rule 6(6) party does not tell us what optimising the site in this case would look like. How tall a building? How many homes? Nonetheless, suggestions were made that an appropriate height might be about 11 storeys, that is simply replacing the units lost from Edith Summerskill House[157]. Such an approach would not make any material difference to the building's impacts[158]. On the contrary, the building would lose its elegant and slender proportions. The footprint would become more populated, and permeability would be lost. The scheme would become denser, appearing like a slab, or a stump. And it would still be visible, in particular from the cemetery. So, nothing material would be gained from this type of reduction. But almost half of the benefit provided by the scheme would be lost (68 rather than 133 affordable homes).

6.118 In any event, there is no worked alternative before the Inquiry showing 11 storeys. That is for good reason: the policy objective in both the local and London Plans is not only to match the extent of housing which has gone before. It is to **optimise** site capacity to meet ballooning needs, and to address the policy objective of maximising the delivery of affordable housing.

6.119 Then, suggestions were made that an appropriate height for a proposal on the site was somewhere below 7 storeys[159]. That would provide around 35 affordable homes – a considerable reduction even from the previous Edith Summerskill House.

6.120 That position is revealing. The planning policy imperative is clear. The site's capacity must be **optimised**, and the provision of affordable housing must be **maximised**. For 60 years, a tall building stood on this site and provided 68 affordable homes across 18 storeys. The Rule 6(6) party agrees[160] that what previously existed on the site is relevant to what might replace it. As set out above, the objectives of the development plan are to *increase* that amount.

6.121 The Judicial Review established that the correct baseline for technical assessments is *bare earth*. That is a clever point for lawyers. However, the Rule 6(6) party tries to use that argument to prise open an enormous loophole – because the demolition of Edith Summerskill House preceded the re-provision of housing by a few years, it is said (rhetorically) that we must now

[155] CD1.4 (DAS) Section 5
[156] As Mr Henderson explained in re-e
[157] Evident from Mr Turney's questions
[158] As Mr Froneman and Professor Tavernor made clear
[159] Mr Turney in x-e based on the views of Ms Browne
[160] ID10 Paragraphs 5 and 11

re-evaluate whether the optimised re-provision of affordable homes should happen *at all*[161].

6.122 That argument stumbles when it meets common sense. The outcome of the Judicial Review does not obviate the need to optimise this site and to meet urgent needs. The planners, architects and consultants charged with delivering this site cannot and should not ignore its history. The demolition of Edith Summerskill House was not a free-standing project. It was always intended that **more** affordable housing would be re-provided in its place. And of course, there is no prospect that either the Council or the GLA would support a scheme on this site which substantially **reduced** the amount of affordable housing measured against the previous Edith Summerskill House. The idea that the site should only accommodate something of around 7 storeys is not credible.

6.123 Turning back to the various limbs of London Plan Policy D9 C 1) d): the *clear and convincing* justification in relation to the low-level heritage harm in this case is provided by the very substantial weight of public benefits. Making good a *clear and convincing* justification does **not** require a consideration of alternatives[162]; the building would make an outstanding contribution to the character and appearance of the area. Whether alternatives were adequately explored within the meaning of this policy is not a question of law – it is a question of judgment. And here, the SCI and the DAS[163] demonstrate that the design evolved through an extensive exploration of various alternative options. The outcome was that the low-level negative impacts that the building would cause have been mitigated and ameliorated as far as they can be by careful and sensitive design choices. That work met the terms of London Plan Policy D9 C 1) d).

6.124 Still, an important point, the London Plan does **not** require harm to heritage assets to be eliminated altogether. The approach in D9 C 1) d) is comparable to that at paragraph 202 of the Framework which is to say that any harms must be weighed in the balance against public benefits. That exercise has been undertaken here and the applicant, the Council and the GLA all agree that the balance tilts decisively in favour of a grant of planning permission.

(viii) There are no other considerations that weigh against the grant of permission

6.125 There are no other issues – technical or otherwise – which stand in the way of the proposal. In particular, the Rule 6(6) party no longer pursues any point about the adequacy of the scheme's contribution towards local services and/or infrastructure.

6.126 Moreover, the Rule 6(6) party no longer raises any issues in terms of fire safety measured against the relevant policy of the London Plan[164] and accepts that there would be technical compliance with fire safety requirements[165].

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[161] ID10 Paragraph 7
[162] As set out on behalf of the Minister of State in CD14.15
[163] CD1.20 and CD1.4 respectively
[164] CD6.1 London Plan Policy D12
[165] ID10 Paragraph 26

6.127 It is nevertheless suggested that after Grenfell the Secretary of State will wish to *consider* whether buildings of this sort *remain an appropriate response* to accommodate social housing. No evidence is adduced to support that contention. In any event, a call-in application like this is obviously not the correct forum to conduct that kind of consideration. We are here engaged in the balance of the development plan and other planning considerations under s.70 of the Town and Country Planning Act 1990 and s.38(6) of the Planning and Compulsory Purchase Act 2004. This is a decision-making procedure rather than an opportunity to reconsider the wider merits of existing policy.

6.128 Further, the Rule 6(6) party no longer pursues any point in relation to flooding or the capacity of the local sewer network.

6.129 The consultation on this scheme has been extensive[166]. There is no suggestion that the procedures fell below the relevant legal requirements or those in the Council's SCI.

6.130 The scheme accords with the relevant local separation distances in relation to overlooking[167]. GIA's work[168] shows that the scheme will not cause a noticeable alteration to sunlight reaching any of the surrounding amenity spaces.

6.131 Given the site's constrained urban context, it could never realistically accommodate enough children's play-space on site. However, the applicant has agreed to make a ringfenced contribution of £50,000 toward local play-space – an approach which satisfies the relevant policies, including London Plan policy S4, to the satisfaction not only of the Council[169] but also the GLA[170].

6.132 In terms of daylight/sunlight, the site is at the moment cleared so changes are inevitable. However, the position is well summarised by the GLA[171]: *The applicant has submitted a daylight and sunlight assessment which assesses the impact of the building on lighting conditions at surrounding properties. The assessment shows that, due to a new building being introduced into a vacant site, some windows to surrounding properties would experience lower levels of daylight and sunlight than recommended under Building Research Establishment (BRE) guidance. Overall, 63% of neighbouring windows assessed would adhere to BRE guidance in terms of daylight, and 93% would adhere in terms of sunlight. In most cases where breaches do occur, the breaches are minor. Where more major breaches occur, the affected windows would generally still receive more than 20% Vertical Sky Component (VSC), or else the existing level of daylight is so low as to make the loss of daylight negligible. Noting that this is a vacant site within an urban area, where there is a reasonable expectation of development occurring, and also that a building with similar impacts existed on the site for some 50 years before being demolished in April 2018, the impacts on daylight and sunlight are considered to be reasonable and acceptable*.

[166] See the SCI at CD1.20
[167] CD8.1 Page 19 HS7 (iii)
[168] CD1.24 deals with daylight/sunlight and CD4.23 overshadowing
[169] CD4.9 Paragraphs 7.72-7.77
[170] CD2.3 Paragraph 34
[171] CD2.3 Paragraph 48

6.133 The Council takes the same view[172] and although the Rule 6(6) party criticised some aspects of the consultants' work, no evidence was called to suggest that its conclusions are wrong.

6.134 Wind conditions around the site would be acceptable with the proposed landscaping and mitigation measures described in the wind microclimate assessment[173]. Again, this is a topic on which the Rule 6(6) party has called no evidence to suggest that the applicant's expert assessments are wrong. The applicant's position, described in the technical reports, is accepted by the Council[174] and the GLA[175].

6.135 The Rule 6(6) party originally suggested that the scheme was driven by a requirement to replace social housing lost from another scheme in the Borough called Watermeadow Court[176]. That idea was not supported by the evidence before the Inquiry[177] and it was explained that the suggestion is incorrect. The driver for this building was providing much needed affordable homes in order to optimise a sustainable brownfield site.

The Planning Balance

6.136 All parties, including the Rule 6(6) party, agree that the site must urgently be developed for affordable housing and the scheme to achieve that redevelopment must respond to the London Plan's requirements for optimisation.

6.137 A grant of planning permission would accord with the development plan, read as a whole. It is also supported by a raft of other material considerations including, and in particular, national policy in the Framework which sets out the Government's priority of significantly boosting housing land supply[178] and the requirement to make effective use of land in meeting the need for homes in a way that makes as much use as possible of previously-developed, or brownfield, land[179]. To that end, the Framework requires decision-makers to give substantial weight to the value of using suitable brownfield land within settlements for homes[180].

6.138 Of course, the NPPF also puts great weight on achieving well-designed places, and this is a scheme which – for all the reasons set out above – meet the criteria at paragraph 130 of the Framework being *visually attractive as a result of good architecture* and adding *to the overall quality of the area.*

6.139 Given the acute and chronic picture in this Borough explained above in relation to the delivery of affordable homes, **very substantial** weight must be given to their provision here – particularly at such high quality.

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[172] CD4.9 Paragraph 7.50
[173] CD1.19
[174] CD4.9 Paragraphs 7.56-7.61
[175] CD2.3 Paragraph 47
[176] CD4.14 Paragraphs 2.3 and 7.4.1
[177] CD4.21 Page 6 refers
[178] CD7.1 Paragraph 60
[179] CD7.1 Paragraph 119
[180] CD7.1 Paragraph 120 (c)

6.140 In the end, this scheme speaks most eloquently to the social objective of sustainable development at paragraph 8 b) of the Framework which is: *to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural wellbeing*. It is hard to conceive of a building which better meets that brief.

6.141 Finally, should permission be granted, the Secretary of State has the assurance of the Peabody Trust, one of London's leading Housing Associations, with a 150 year track record, which builds around 1,500 affordable homes annually, that this scheme will be delivered, and delivered soon[181]. The scheme is costed, and it is in the Peabody Trust's development programme. Funding is in place. Subject to permission being granted, work could start on site in June 2022.

6.142 The low-level less than substantial heritage harms are decisively outweighed by the scheme's public benefits – in particular, the timely provision of much needed affordable homes in a building of exceptional quality – so the test at paragraph 202 of the Framework is passed.

6.143 In the end, in the language of section 38(6) of the Planning and Compulsory Purchase Act 2004, granting the application accords with the statutory development plan read as a whole, and other material considerations lend further support to the grant of permission.

6.144 And even if the Secretary of State decides that there is some conflict with the statutory development plan, other material considerations (in particular the delivery of much-needed affordable homes on a sustainable brownfield site in a building of **exceptional** quality) indicate that permission should be granted in any event.

6.145 For the purposes of this inquiry, the applicant has accepted the Council's stated position that it has a 5 year housing land supply, at face value[182]. The burden under paragraph 74 of the Framework is on the Council to demonstrate a 5 year housing land supply against the up-to-date London Plan target. If the Inspector or the Secretary of State were to find that burden not discharged, the consequence would be that the tilted balance is engaged under paragraph 11(d)(ii) of the Framework and in that circumstance, the case for granting permission would become even stronger than it is already (because the Secretary of State would then grant permission unless *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*).

6.146 For all those reasons, planning permission should be granted for the scheme.

Post-Inquiry Submissions in relation to Hillingdon

6.147 The judgment in this case has clarified three important points on the interpretation of London Plan Policy D9. First of all, Parts A and B of the policy

[181] CD4.13 Exhibit A
[182] CD4.26

are not a *gateway* to Part C[183]. Second, in considering whether to grant planning permission for a tall building which does not comply with Part B 3) of the policy, because it is not identified in the development plan, it is sensible, and in accordance with the objectives of London Plan Policy D9, for the proposal to be assessed by reference to the potential impacts which are listed in Part C[184]. Third, approached in that way, a scheme can accord with the development plan read as a whole, even if it does not fully accord with London Plan Policy D9, because it had not been identified as suitable in the development plan under Part B[185].

6.148 The approach taken by the Rule 6(6) party on this issue was that the requirements in Part C of London Plan Policy D9 are only relevant if the scheme's location was identified in the development plan[186]. That was considered the *obvious ordinary meaning* of the policy. As it turns out, that was wrong – that contention has been rejected by the Planning Court.

6.149 The applicant's planning evidence was predicated on the conservative assumption that conflict with London Plan Policy D9 B leads to conflict with London Plan Policy D9 as a whole[187], and the criteria at D9 C are material to weighing the extent of any conflict with the policy, the weight to be attributed to any conflict, and whether the scheme accords with the development plan read as a whole notwithstanding the conflict. This was reflected in the applicant's closing[188].

6.150 As the Mayor's position has been accepted the consequences are that: the basis on which the Rule 6(6) party approached London Plan Policy is wrong; the precautionary approach in the applicant's evidence was too conservative – if the applicant's evidence is accepted, a finding that the scheme accords with London Plan Policy D9 read as a whole is possible; in the language of s.38(6) of the Planning and Compulsory Purchase Act 2004, the criteria at D9 C are not only material considerations, they are capable of leading to accordance with the policy read as a whole even if there is conflict with D9 B; and the applicant's essential position is unchanged – a grant of permission would accord with the statutory development plan read as a whole and there is support too from a raft of powerful material considerations. In short, the outcome of the Hillingdon case has made the analysis in favour of a grant of permission even stronger.

6.151 For the sake of completeness, the Rule 6(6) party has made further points about Local Plan Policy DC3 but this is not part of the judgment. There is nothing to add to the submissions already made on that policy.

7 The Case for the Council

[183] ID13 Paragraph 82
[184] ID13 Paragraph 85
[185] ID13 Paragraph 87
[186] CD4.3 Paragraph 8 and CD4.14 Paragraphs 6.3 and 6.6
[187] CD4.13 Paragraph 5.86
[188] ID12 Footnote 63

7.1 This is set out in opening and closing statements to the Inquiry and in evidence[189]. What follows is a summary of the case as presented in closing[190], supplemented by post-Inquiry submissions relating to the *Hillingdon* case[191]. It is, however, imperative that the entirety of the evidence presented by the Council is considered carefully, in order to properly appreciate their case.

Introduction

7.2 The context for the consideration of this application is the pressing need for more affordable housing in London, and the Borough, and the urgent need to redevelop this vacant and highly accessible brownfield site in order to make a substantial contribution to meeting that need. The housing need position, and the policies seeking to address that need, and the public interest benefits of the proposal, appear not to be controversial.

The Pressing Need for More Affordable Housing

7.3 All of the main parties are agreed that there is a pressing – indeed overwhelming - need for social housing, that the site should be urgently developed for social housing, and that the public interest benefits associated with the delivery of such housing should be given very significant weight[192].

7.4 That degree of consensus is helpful, and it should not come as a surprise. It reflects a straightforward application of the policies in the development plan and the Framework, and the housing need position in London, and in the Borough.

7.5 The need for more housing in London, and in particular affordable housing, is clear and stark. In the Mayor's Foreword to the new London Plan it is explained that London now faces a: *wave of growth, the likes of which has not been seen for a century*. Its population is projected to increase by 70,000 every year, reaching 10.8 million in 2041 – *This means that just to meet demand there is a need to build tens of thousands of new homes … every single year*[193].

7.6 The 2017 London Strategic Housing Market Assessment (SHMA) has identified a significant overall need for housing, and for affordable housing in particular. London needs 66,000 new homes each year, for at least twenty years, and the evidence suggests that 43,000 of them should be genuinely affordable[194].

7.7 The targets set by the London Plan, however, will not meet that need and cannot be increased because they reflect capacity constraints. The ten-year housing targets set by Table 4.1 of the London Plan are based on the 2017 London Strategic Housing Land Availability Assessment (SHLAA). This shows that there is capacity across London for approximately 40,000 new homes a year on large sites (0.25 ha and above), and capacity for development on small sites (below 0.25ha) for 12,000 new homes a year[195]. That leaves a

[189] ID2, ID11, CD4.2, CD4.8-CD4.9, and CD4.15-CD4.16
[190] ID11
[191] ID13 and ID14
[192] CD4.14 at Paragraphs 7.2, 7.3 and 7.5
[193] CD6.1 Page XII
[194] CD6.1 Paragraph 1.4.3
[195] CD6.1 Paragraphs 4.1.7 - 4.1.8

significant gap between housing need and supply, even if the ambitious targets set by the London Plan are met.

7.8 Whilst 65% of London's housing need is for affordable homes[196] (that is 43,500 per year)[197], the London Plan's strategic target is for 50% of the annual 52,287 net housing completions to be genuinely affordable[198]. In other words, even if both targets are met it would fall well short of meeting the identified need for more affordable homes. Delivering more genuinely affordable homes has therefore rightly been identified as a key strategic issue for London, with all schemes expected to maximise delivery of affordable housing and make the most efficient use of available resources[199].

7.9 The London Plan identifies a target of 16,090 net housing completions for Hammersmith and Fulham during the plan period[200], an annual target of 1,609. This is markedly higher than the previous annual target of 1,031[201]. At present there is an accumulated shortfall against the previous and current target of 1,688 homes[202].

7.10 The SHMA undertaken for the Local Plan shows that to meet the need for affordable housing, 100% of all new homes should be affordable. The Borough is characterised by areas with high levels of deprivation. Eight of the Borough's Lower Super Output Areas are within the top 10% most deprived nationally, including the Clem Attlee Estate[203].

7.11 The Borough is also an area of contrasts, of wealth and deprivation[204]. Notwithstanding the existence of areas of significant deprivation such as the Clem Attlee Estate, the Borough has the 4th highest house prices in the country[205]. As at March 2016 the average house price was £767,000[206]. This has resulted in a disproportionately high need for affordable housing in the Borough, and accordingly the lack of affordable homes to rent or buy for low- and middle-income households is identified as: *a key challenge for the Local Plan*[207]. Paragraph 6.35 of the Local Plan provides some sense of the scale of the challenge: *The need for more affordable housing in the Borough is demonstrated by the number of households on the Housing Register – (as of February 2017) there were 1,950 applicants on the housing register and approximately 1,374 households in temporary accommodation. Also 17% of households in social rented housing in the Borough are overcrowded. Hammersmith and Fulham is ranked 12th in terms of Boroughs with the most overcrowded properties*.

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196 CD6.1 Paragraph 4.4.5
197 CD6.1 Paragraph 4.4.1
198 CD6.1 Policy H4: Delivering Affordable Housing
199 CD6.1 Paragraph 4.4.1
200 CD6.1 Page 163 Table 4.1
201 CD5.1 Policy HO1
202 CD4.9 Appendix PW1
203 CD5.1 Paragraph 2.7
204 CD5.1 Paragraph 2.3
205 CD5.1 Paragraph 6.29
206 CD4.9 Appendix PW1 Page 67
207 CD5.1 Paragraph 2.20

7.12 The current position is that there are around 3,000 people who qualify for Council housing and are waiting to be offered a property in Hammersmith & Fulham[208]. In other words, the position has worsened markedly since the Local Plan was adopted in 2018. The document also paints a stark picture of the waiting times for properties that are faced by those on the register, commenting that: *It's difficult to estimate when you will receive an offer of housing … This can be up to 10 years. We know how distressing it can be if you're waiting for social housing. We really appreciate that delays are likely to make a bad situation worse for many people and we'll always do everything we can to help*.

7.13 That key challenge is reflected in the Spatial Vision for the Local Plan[209]: *Genuinely affordable homes to buy and rent will have been delivered to meet local needs*; *At least 22,000 additional homes will have been developed, particularly family and affordable homes to buy or rent, that meet the needs of local people and maintain and create more mixed and sustainable communities. Fifty per cent of the new residential dwellings will be affordable. The new housing will be fully integrated socially, economically and physically with the rest of the borough*. This is underlined further in its Strategic Objectives[210], and the key aim of the Local Plan[211]: *to meet local housing need by increasing housing supply, particularly the supply of affordable housing*.

7.14 The public interest importance of this objective goes further than simply the scale of the demand. Affordable housing is central to allowing Londoners of all means and backgrounds to play their part in community life. Providing a range of high quality, well-designed, accessible homes is important to delivering what the London Plan has dubbed 'Good Growth', ensuring that London remains a mixed and inclusive place in which people have a choice about where to live[212].

7.15 In these circumstances, it is essential to ensure that opportunities to deliver more affordable housing in well-designed schemes such as this are seized, and not unduly delayed.

7.16 That imperative is reflected in the housing policies of the London Plan. In order to ensure that the ten-year housing targets are achieved, Policy H1: Increasing Housing Supply[213] requires Boroughs to optimise the potential for housing delivery on all suitable and available brownfield sites, especially those with good levels of accessibility by public transport, public sector sites, and small sites.

7.17 As London Plan Policy H2: Small sites makes clear, Boroughs should proactively support well-designed homes on small sites to significantly increase the contribution of such sites to meeting London's housing needs. Increasing

[208] CD5.3
[209] CD5.1 Page 27
[210] CD5.1 Page 30 – see *Delivering Affordable Homes for Local People*
[211] CD5.1 Paragraph 6.25
[212] CD6.1 Paragraph 1.4.2
[213] CD6.1 Policy H1

the rate of housing delivery from small sites is a strategic priority requiring positive and proactive planning decisions[214].

7.18 London Plan Policy H8 seeks to ensure that when existing housing is lost, it is replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. Indeed, where demolition of affordable housing is proposed, the policy provides that it should not be permitted unless it is replaced by an equivalent amount of affordable housing floorspace[215]. For the purposes of policy, existing affordable housing floorspace includes vacant floorspace, regardless of condition[216].

The Benefits of the Application Scheme in that Context

7.19 The application scheme provides a valuable opportunity to make a significant contribution to delivering on that strategic priority, and to do so in short order. If planning permission is granted, the applicant's evidence is that implementation would be likely to follow quickly with commencement on site as early as June 2022[217].

7.20 The application scheme would deliver 133 affordable residential units on a highly accessible, publicly owned, vacant brownfield site. It would optimise the development of that site, with a well-designed tall building of dramatically better architectural quality than the other large and tall buildings on the Clem Attlee Estate. The proposed new building would enhance the local townscape and deliver a very high standard of accommodation. Those individuals and families lucky enough to move from unsuitable accommodation into one of these spacious and thoughtfully conceived dwellings would benefit from a substantially improved quality of life as a result.

7.21 The former Edith Summerskill House provided 68 units of affordable housing. It was vacated in 2011, due to the sub-standard accommodation it provided, and the conclusion reached that refurbishment was not viable. It was therefore decided to relocate the existing tenants, demolish the building and redevelop the site by constructing a new residential building in its place that meets modern standards. As has been explained[218], as a result of the long period of vacancy and the poor state of the building, concerns over public safety led to a decision to submit a prior approval application to authorise demolition ahead of the planning application for the redevelopment of the site. Following its demolition in 2018 the site has remained empty and unused.

7.22 Although in this case there is no existing housing on site because demolition of the former Edith Summerskill House preceded the decision on its replacement, there is no dispute as to the relevance of London Plan Policy H8 in determining this application for planning permission[219]. The objective of the policy is to ensure that where affordable housing is lost through demolition, it is replaced

[214] CD6.1 Policy H2 and Paragraph 4.2.1
[215] CD6.1 Policy H8
[216] CD6.1 Paragraph 4.8.5
[217] CD4.13 Paragraph 3.22
[218] By Mr Wilson x-in-c
[219] CD 4.4 Paragraph 6.2 and CD4.7 Paragraph 9; in terms of the GLA, CD2.3 Paragraph 19 and CD 2.4 Paragraph 7; and for Mr Turney ID10 Paragraph 11

by at least the same quantum of new affordable housing and where possible more. That is the case regardless of the condition of the existing housing, and thus the underlying policy objective is not based on there being a real prospect of a continuation or resumption of the use of the existing housing as a form of 'fallback'[220]. Instead, the objective reflects the strong policy and public interest case for redeveloping sites such as this so as to provide at least equivalent and preferably additional affordable housing compared to that which has been lost. It is an approach that reflects the severity of the housing (and in particular affordable housing) supply position in London, and hence the importance of avoiding a net reduction where redevelopment takes place.

7.23 Against that backdrop, there is a powerful positive case for the grant of planning permission for the proposed development. The Mayor of London's Stage 2 Report *strongly supports* the principle of the scheme and the delivery of the proposed additional affordable housing[221]. The scheme would accord with the clear strategic direction given by the London Plan and contribute to meeting a strategic priority for London, and a strategic objective and key aim of the Local Plan.

Good Design

7.24 The proposed development is an exceptionally good design. It would provide an exemplar of what the planning and development process should strive to achieve[222], namely a high quality, beautiful and sustainable building enhancing both the local and wider area.

7.25 The Council's evidence[223] has provided an independent assessment that strongly supports the evidence given on behalf of the applicant as to the quality of the design and how it would accord with the requirements of planning policy.

7.26 This is undoubtedly a well-considered scheme, derived from a proper understanding of, and intelligent response to, the site and its context. The care and attention given to its design and how it will sit within its local and wider context shines out from the DAS[224] and from the applicant's evidence[225]. In turn it is reflected in the local planning authority's own independent assessment of what has emerged from that design process.

7.27 The overall effect is a building which celebrates its role in creating affordable housing in a way that is both visually attractive and practical[226]. As it was put[227], the architect has made the most of the opportunity presented.

7.28 The scheme would make efficient use of the site, optimising its potential whilst skilfully reducing its impacts through thoughtful configuration, articulation and choice of materials. The device of creating two off-set, overlapping squares

[220] As required by cases such as *Mansell v. Tonbridge and Malling BC* [2017] EWCA Civ 1314
[221] CD2.4 Paragraphs 7-9
[222] CD7.1 (the Framework) Paragraph 126
[223] Through Mr Jones CD4.8
[224] CD1.4
[225] Delivered through Mr Henley (CD4.10-4.10b) and Professor Tavernor (CD4.12)
[226] Mr Henley in-c
[227] Professor Tavernor in-c

with distinct volumes results in a slender profile, similar to the former Edith Summerskill House, and a regular grid. This makes for efficient use of the available space but also translates into a characteristic and attractive regularity of the external architecture. The façade of the building has been designed to provide depth and visual interest, allowing the building to be read both as a whole and at a variety of scales when viewed within the surrounding context. This enables the building to respond to that context at different scales and also serves to moderate its scale[228].

7.29 The architectural quality and materials are of an exceptionally high standard. Its appearance would greatly enhance the appearance of the Clem Attlee Estate, improving its legibility, the definition of its urban spaces and its overall townscape and identity. The building would form an attractive landmark, substantially raising the bar in terms of the quality of design in a location that already features several large and tall buildings[229] but has nothing of this quality. A landmark building is appropriate here, marking the location of – and an important entrance to - a large and important estate of social housing and community facilities, which already features large and tall buildings and has done so for over 60 years. That is reflected in the fact that the masterplanning of the Estate included a tall landmark building on this site.

7.30 The relationship between the building and the public realm would be transformative. The proposal would not only provide public amenity spaces and enhanced pedestrian routes from St Thomas's Way to the Clem Attlee Estate protected by the built form and landscaping, but it would also deliver a ground floor community facility that would be accessed from the end of the arcade along the eastern elevation. This would activate the frontage and overlook the play space situated adjacent to it. It is a really intelligent piece of design and placemaking.

7.31 The proposed building would be visually attractive, adding to the overall quality of the area as a result of good architecture, layout and appropriate and effective landscaping. It would also function exceptionally well. The evidence[230] demonstrates the thought that has gone into the layout and functioning of the communal areas, and the residential flats themselves. By way of example: (a) the clever, generous and effective approach to cycle storage would encourage and facilitate sustainable modal choice, avoiding the problems clearly encountered elsewhere on the Estate where it can be seen that residents frequently resort to parking their bikes on balconies (rendering them less useful) because of the absence of secure storage elsewhere; (b) the communal areas at ground floor would benefit from natural surveillance, and in turn provide natural surveillance of the public realm beyond; (c) the flats would exceed the internal space standards set by the London Plan and the Mayor of London's Housing SPG - they would benefit from efficient cores - the majority would be dual aspect with generous living spaces occupying corners for cross-ventilation, maximum daylight penetration and excellent outlook; and (d) the incorporation of additional internal space in lieu of balconies produces an

[228] CD4.8 Paragraphs 3.42 to 3.49
[229] The 10 storey Jim Griffiths House and Tom Williams House, and the 18 storey Herbert Morrison House.
[230] Of Mr Henley, the architect

overall benefit in terms of safe and usable living space, given the downsides of providing external balconies at height.

7.32 As explained below by reference to the first of the main issues, the development would sit well within the surrounding built environment whilst representing an appropriate (and beneficial) degree of innovation so as to make optimal use of the site and to enhance an area that currently lacks coherence and is clearly in need of improvement.

7.33 The sense of place that exists in the immediate area around the appeal site at present is neither strong, coherent, attractive nor welcoming. In part, of course, that is because the site is vacant, and creates a very poor impression of the Clem Attlee Estate with nothing suitable to mark the location of such a significant concentration of housing. In addition, the existing townscape on St Thomas's Road is very mixed[231] and makes this a suitable opportunity for innovation rather than emulation.

7.34 The proposed building would deliver a substantial positive change, creating a strong sense of place, with attractive and welcoming public realm defined by beautiful and distinctive architecture. The southern façade would be aligned with the adjacent George Lingren and Nye Bevan Houses to create a legible edge to the street, with attractive public realm beyond. The building would optimise the site's potential, creating a safe, inclusive and accessible environment benefiting both future residents and those who already live on the Estate.

7.35 The previous scheme, which was almost identical to the application scheme, was subject to independent design review by the Hammersmith Design Review Panel. Their response[232] was summarised, inter alia, as follows: *The panel* [were] *most impressed by the quality, rigour and invention displayed in this project. The panel supported the elevational strategy … They applauded the rigorous assessment of the design, testing the building in distant and local views and its impact on the interior*.

7.36 Where suggestions were made for further consideration of individual aspects, the design approach was further refined to respond to the panel's suggestions[233].

7.37 The end result is said to be[234]: *One of the best social housing schemes I have seen. A step change from what you would expect and a really high quality and well-designed development scheme*.

7.38 The proposal more than satisfies the policy requirements for good design generally, and for tall buildings in particular, both in the Framework[235] and the development plan[236]. It is a design of the highest quality and would deliver a substantial benefit to the local and wider townscape.

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[231] As Mr Jones explained
[232] As set out by Mr Jones CD4.8
[233] CD4.8 Paragraph 3.34
[234] By Mr Jones CD4.8 Paragraph 3.34
[235] CD 7.1 Paragraphs 126-136
[236] CD6.1 London Plan Policies D4, D8, D9 and CD5.1 Local Plan Policies DC1, DC2 and DC3

Impact on the Townscape or the Character and Appearance of the Area

Introduction

7.39 The Council has undertaken its own independent assessment of this issue, which is reflected in the reports to committee[237], and its evidence to the Inquiry[238].

7.40 That evidence is fair, balanced, and independent and is to be commended. It considers the application scheme on its merits, against the existing baseline of a cleared site. It is not correct to suggest that this analysis: *is infected by the earlier consideration of the proposals against a radically different baseline*[239]. There is nothing whatsoever in the Council's written or oral evidence which could properly be said to support that criticism. A similar submission can be made in respect of the applicant's witnesses.

7.41 In contrast, the Rule 6(6) party chose not to make the author of his assessment available to explain and answer questions. As was accepted[240], that must limit the weight that can be attached to the assessment.

The Existing Townscape and Character and Appearance

7.42 The townscape character of the area in which the site is located varies significantly. The site itself is vacant, with the adjacent buildings (George Lingren House and Nye Bevan House) significantly set back from St Thomas's Way. This produces a poorly defined edge to the street, and in its current condition the site does not present an attractive pedestrian route to the interior of the Estate, and to the important open spaces and community uses adjacent to its northern boundary, which were evidently intended to provide a focal point between the two tallest buildings within the Estate.

7.43 The northern part of the Estate features a cluster of taller buildings. Elsewhere within the Estate the prevailing heights are mixed and of a generally lower scale. The Estate suffers from limited provision of amenity space and direct/permeable pedestrian routes, leaving it with poor legibility and permeability overall.

7.44 Looking further afield the townscape varies significantly. Whilst the areas south of the site are characterised by buildings of a lower scale, these terraces are enclosed by mixed-use commercial developments of various periods with larger buildings such as the Empress State Building and Ibis Hotel prominent in longer-distance views. This is an area whose character has very clearly evolved over time and continues to do so. When the area is considered as a whole including the Clem Attlee Estate, it is fair to characterise it as mixed in character with a number of tall buildings both nearby and further afield, yet clearly visible as part of the wider townscape.

The Assessment of Impact

[237] CD 3.2 Section 5.3 and CD3.3
[238] CD4.8
[239] ID10 Paragraph 6.
[240] By Mr Turney in x-e in relation to Ms Browne's and Mr Griffiths' material

7.45 The proposed redevelopment of this site with such a high-quality scheme (as summarised above) would enrich the townscape quality of the Estate, improving its appearance, character and identity, and delivering a meaningful and attractive landmark aiding wayfinding to and within the Estate. As was explained[241], the building deserves what was referred to as a 'civic' presence as an exemplar and a gateway to the Estate - it would be positive, welcoming, drawing people through and integrating the communities in which it is located. It would provide a source of pride for those who live on this important and populous estate; something that the planning system should aspire to achieve when a prominent affordable housing development is created.

7.46 It would also create an attractive and high-quality addition to the wider townscape, whose character already includes a mixture of taller buildings seen from within lower rise terraced residential streets. The building would relate well to its surroundings at ground level, intermediate level and in longer distance views.

7.47 The Council has assessed the townscape impacts systematically, reviewing the impact on grouped townscape views, appraising how the development would be perceived within this townscape, and considering the issue of cumulative change[242]. This assessment demonstrates that where the building is visible, the impacts would either be beneficial – reflecting the quality of the design - or negligible. There would be no disruptive and harmful impact of the skyline, which is important when assessing the degree of conflict with Local Plan Policy DC3. On the contrary, it would significantly improve the Clem Attlee Estate and make a positive contribution to the local townscape and the skyline of Fulham.

7.48 Nothing in the analysis and critique provided by the Rule 6(6) party[243] alters that position[244]. That is significant, because the analysis and critique provided on behalf of the Rule 6(6) party was given careful and repeated consideration in advising Council members in respect of the application, and in the preparation of the Council's evidence to the Inquiry. It is not possible to know what the response would have been to the Council's criticism that the assessment prepared on behalf of the Rule 6(6) party was flawed because there was no proper assessment of the quality of the design and the effect this should have on the assessment of townscape impact[245]. There was no opportunity to ask about this.

Policy Compliance

7.49 For all those reasons summarised and as set out in detail in the Council's written evidence, the proposed development would more than meet the expectations of the Framework in terms of high-quality design, and comply with the relevant development plan policies: London Plan Policies D4, D8 and D9; and Local Plan Policies DC1, DC2 and the relevant criteria in DC3

[241] By Professor Tavernor in x-e
[242] CD4.8 Pages 18-23.
[243] That of Ms Browne
[244] Mr Jones in-c
[245] Mr Jones in-c

Effect on the Setting and thereby the Significance of Designated Heritage Assets

Approach

7.50 The Council has undertaken its own independent assessment of this issue[246]. That evidence is to be commended as fair, balanced and independent. A structured approach has been adopted, consistent with the guidance in the Framework, PPG, and relevant development plan policies[247]. Furthermore, in undertaking the assessment, an inherently cautious and conservative approach to the calibration of harm has been taken. Pending further guidance from the Courts as a result of the Holocaust Memorial decision[248], the Council has therefore: *approached the task of identifying and articulating the extent of any harm in this case on the basis that it is a matter of judgment, having regard to the factors that contribute to the significance of the asset in question, and the extent to which the proposed development would adversely affect that significance. In order to ensure that my assessment is robust, I have not assumed that in order for harm to be classed as 'substantial' most if not all of the significance of the asset in question must be lost. I have recognised, however, that in accordance with the advice in the PPG 'substantial' harm is a high test, so it may not arise in many cases*[249]*.*

7.51 The Council's assessment of impact reaches essentially similar conclusions to those reached by the applicant's consultant[250].

7.52 The Council recognises that Historic England has objected to the proposals, and that generally significant weight should be attached to its views. In this case, however, there are three main factors which must inevitably temper the weight that is accorded to their representations. First, Historic England has chosen not to appear at the Inquiry to explain and answer questions about its position. Second, Historic England has not provided any proper explanation of how it has sought to calibrate the level of less than substantial harm, or where on the spectrum the harm would sit. The PPG requires such an exercise to be carried out for the purposes of decision-making, and its absence is therefore important. Third, as was explained[251], the objection is based on an allegation that the harm identified has not been 'justified', in other words that the positive benefits associated with the scheme do not outweigh the harm. With respect, that is a conclusion that is not supported by the substantive parts of their representation because it requires account to be taken of those benefits, and then a striking of the heritage balance. Historic England has not attempted that exercise.

7.53 Likewise, the Rule 6(6) party has not made its expert[252] available to answer questions. That evidence should attract correspondingly reduced weight as a

[246] CD3.2 Section 5.3, CD3.3, and CD4.8
[247] CD4.8 Paragraph 4.39
[248] CD14.5-CD14.7 and CD14.15
[249] CD4.8 Paragraph 4.39
[250] Mr Froneman
[251] Mr Froneman in-c
[252] Mr Griffiths

result. Moreover, the assessment of harm in that evidence is exaggerated, and lacks balance[253]. It should therefore be treated with considerable caution.

Assessment of Impact

Conservation Areas

7.54 The Council has identified that there would be some less than substantial harm to the setting and thereby the significance of the Central Fulham Conservation Area, towards the lower end of the spectrum[254].

7.55 That judgment as to where on the spectrum the harm would sit reflects a number of points. First, there are already several other large/tall buildings within the Clem Attlee Estate and thus within the setting of this conservation area. As such, the introduction of a further tall building would involve only a relatively limited change in the overall setting of the conservation area. Second, the Victorian character, grain and appearance of the conservation area would remain the pre-dominant and legible characteristic of the area and its surroundings. As with the other existing tall buildings, the proposed development would sit in the background in views of the terraces and would not materially harm the ability to appreciate them either individually or collectively. Third, visibility is not to be equated with harm. Furthermore, where the proposed building would be visible, the high quality of the design would serve to mitigate any harm.

7.56 There would not be any harm to the setting or significance of the Walham Green Conservation Area[255]. Whilst there would be some degree of inter-visibility that does not mean that there would be harm caused to significance. The building would clearly be experienced as a background feature, allowing the key historic buildings and terraces of mixed-use commercial buildings to continue to be experienced and read as part of the established and predominant character of the area.

7.57 The Council has also provided an assessment of potential impact on the other nearby conservation areas[256]. For the reasons set out, there would be no harm to the setting or the significance of any other conservation area in the vicinity.

Listed Buildings

7.58 In terms of the Church of St Thomas of Canterbury and its associated buildings and structures, the Council[257] has explained why there would be less than substantial harm to the significance of the church, and to the group of heritage assets within its curtilage, as a result of the proposal. Having regard to what gives the church its significance, and the limited extent to which the proposed building would affect the ability to appreciate its architectural and historic interest, the assessment is that the harm should be regarded as sitting towards the lower end of the spectrum of less than substantial harm.

[253] As pointed out by Mr Jones and Mr Froneman in oral evidence
[254] CD4.8 Paragraph 4.46
[255] CD4.8 Paragraph 4.54
[256] CD4.8 Appendix 1 and Mr Jones' oral evidence
[257] Through Mr Jones

7.59 The development would be situated some distance from the church and would be behind the viewer in the main viewpoint from the public realm. The impact on dynamic views of the church from the surrounding streets would be limited and fleeting.

7.60 The main adverse impact would be on views from one corner of the churchyard at the rear of the building. From this location it is acknowledged that there would be some element of competition with and distraction from appreciation of the church. Even from here, however, the impact would be limited as the development would appear either to frame views of the church, or it would be read as a background feature. It would not be the only tall building in the background. Both Herbert Morrison House and Empress State Building are clearly visible from the same viewpoints.

7.61 The scale, architectural detailing and composition of the church and its spire would remain prominent in the foreground and the effect on the ability to appreciate these features would be limited.

7.62 The church was designated as a Grade II* listed building at a time when the former Edith Summerskill House was in situ as part of its background. There is no suggestion – let alone real risk – that its designation would be affected by the proposed development, which is of vastly superior architectural quality and more sympathetic to the church in its style and detailing than its predecessor.

7.63 As far as the Church of St John, Walham Green is concerned, the proposal would not cause any harm to the setting or the significance of this designated heritage asset. Whilst there would be some visibility in mid-range or background views of the church, the development would not be visible within the localised setting of the church and its curtilage. Where the development would be visible, it would have no material effect on the experience or perception of the church.

7.64 The Council has also provided an assessment of potential impact on the other listed buildings in the vicinity[258]. For the reasons set out, there would be no harm to the setting of any other listed building in the vicinity.

Locally Listed (Buildings of Merit)

7.65 There would be no adverse impact on the setting of any relevant locally listed buildings, for the reasons the Council sets out[259].

Policy Compliance

7.66 The Council has undertaken an assessment that accords with the requirements of paragraph 195 of the Framework, and in reaching its own view it has taken account of the factors listed in paragraph 197. Where harm has been identified, this is less than substantial and therefore falls to be weighed against the public benefits of the proposal. For reasons summarised below, in this case the public benefits clearly outweigh the limited degree of less than substantial harm. Consequently, the heritage balance is in favour of granting

[258] CD4.8 Appendix 1 and Mr Jones' oral evidence
[259] CD4.8 Paragraphs 4.69-4.75 and Appendix 1

planning permission. In those circumstances there would be no conflict with national planning policy.

7.67 For the same reasons, the proposed development would comply with Local Plan Policy DC8 which incorporates the Framework balancing exercise in criterion h.

7.68 London Plan Policy HC1 does not incorporate the Framework balancing exercise, and hence conflict is generated by any harm no matter whether it is outweighed by public benefit. Following the approach taken by the Secretary of State in other recent decisions, the heritage balance must therefore be struck in order to form a conclusion as to whether there is compliance with the development plan when considered as a whole[260]. For the same reasons, therefore, the development would comply with the plan as a whole, notwithstanding conflict with Policy HC1.

London Plan Policy D9 C 1) d) and the Issue of Alternatives

7.69 The case advanced by the Rule (6) Party relies heavily on the issue of alternatives to the proposed development, whether that be locating the proposed affordable housing (or at least some of it) on alternative sites, and/or alternative lower forms of development on the site which might reduce the harm to heritage assets[261]. This aspect of the Rule 6(6) Party's case is not well-founded conceptually or in terms of this specific case.

7.70 First, this is not a case where either common law principles or the heritage policies of the Framework make it necessary to consider alternative sites or proposals as an obligatory material consideration.

7.71 The authorities on alternatives make clear that the circumstances in which alternative sites would be an obligatory material consideration do not include situations where the need is such that a great many sites and planning permissions will be required to satisfy it. As Simon Brown J (as he then was) put it in *Trusthouse Forte*[262] the authorities establish that land may be developed in any way that is acceptable for planning purposes. The fact that other land exists upon which the development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site. The same principle would also hold for alternative schemes on the same site. If the scheme proposed is judged to be acceptable, the fact that the decision-maker considers that an alternative scheme might be even better would not justify the refusal of planning permission[263].

7.72 The reason for drawing that contrast is exemplified by the present case and the current state of need and supply for housing, and in particular affordable housing, in London. In the circumstances summarised above, it is simply not credible to suggest[264] that the need here could be met by a limited number of permissions and therefore addressed on alternative sites. The London Plan

[260] See for example CD9.6 (APP/G6100/V/19/3226914) at IR 15.84-15.87 and DL 28-29
[261] ID10 Paragraphs 7-11
[262] *Trusthouse Forte Hotels Ltd. v. SSE* (1986) 53 P&CR 250 CD9.5
[263] See *R (on the application of Mount Cook Land Ltd) v Westminster CC* [2003] EWCA Civ 136 at paragraph 30
[264] As Mr Turney attempted in x-e by Mr Simons

targets are *capacity constrained* – in other words even if development took place at a scale that fully utilised available site capacity on *all available sites* (reflecting current assessments) it would not be enough to meet the identified need. In that situation any argument based on meeting the need on another site or sites is plainly hopeless. *All* suitable sites are needed, and the housing that would be delivered on *all* such sites must be optimised. If another site is developed to its optimal level for housing and affordable housing, that does not (indeed cannot) affect the policy requirement to do the same for this site.

7.73 Thus, the alternative *sites* argument is a non-starter. It must fail because it could not as a matter of logic make any difference to the appropriate scale of development that is acceptable on this site. That is the case whether one is considering the position as a matter of application of common law, or pursuant to London Plan Policy D9.

7.74 In applying the Framework's heritage policies there is no need to consider alternatives simply because harm has been identified to designated heritage assets. The point is set out clearly and succinctly on behalf of the Minister of State for Housing in the ongoing challenge to the Holocaust Memorial decision[265].

7.75 A further reason why alternatives would not be an obligatory material consideration in this case applying common law principles springs from what was said by Auld LJ in the *Mount Cook*[266] case: *even in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight*.

7.76 There has been no specific alternative proposal for the site put forward by the Rule 6(6) Party. The closest one can find is the suggestion of something of a scale that is transitional between the 2 storey villas to the south and the 3-7 storey dwellings on the southern part of the estate[267]. The suggestion was that the site should be developed at a scale *below* 7 storeys but that is the only evidence adduced as to what scale would be suitable here as an alternative to the application proposal[268].

7.77 As a suggested alternative, that fails all of Auld LJ's criteria. It is vague and inchoate and – in light of the development plan policies requiring optimisation and Policy H8 – there is no realistic possibility that a development of that sort would be approved even if it was ever thought appropriate to promote a scheme that under-utilised the site's potential in that way. It would be a wholly inefficient and wasteful use of a highly accessible piece of brownfield housing land, something that would rightly be regarded as unacceptable in the face of the need and the development control policies that have been put in place to try and address it. In the absence of any detail, it is not possible to know how many units would be delivered in a scheme of that height, but it

[265] CD14.5 Paragraphs 43-44
[266] *R (Mount Cook Land Ltd.) v. Westminster City Council* [2003] EWCA Civ 136 Paragraph 30
[267] CD4.14 (Appendix) Response to Officer's Report at Paragraph 14
[268] Mr Turney x-e

would necessarily be significantly below what the site provided for over 60 years and flatly contrary to the clear objective of London Plan Policy H8[269].

7.78 The second main point is that the reference to exploration of alternatives in London Plan Policy D9 C 1) d) does not bear the weight that the Rule 6(6) party seeks to place upon it.

7.79 Although the application was prepared, submitted and considered by the local planning authority at a time when this policy was not part of the development plan, and in circumstances where it was considered that Part C would not apply here even when the new London Plan was adopted[270], there is no dispute that this part of the policy is a material consideration for the Secretary of State. Depending on the outcome of *Hillingdon*, it may fall to be applied as part of the process of determining the extent of compliance with the plan, but in any event its requirements are relevant when considering the acceptability of the proposal overall. In order to discern what that policy requires, and how it applies to the facts of this case, there are some preliminary points to note.

7.80 The approach to the interpretation of policy is clear and well-established. Policy statements are to be interpreted objectively in accordance with the language used, read as always in its proper context. However, policy statements should not be construed as if they are statutory or contractual provisions. Many statements of policy are framed in language whose application to a given set of facts requires the exercise of judgment[271]. The importance of those caveats in avoiding the over-legalisation of development control decision-making was emphasised by Lord Carnwath in the *Hopkins Homes* case.

7.81 It is also important to recall that there is a distinction between the issue of interpretation of policy and its application. The former is a matter of law, the latter a matter of planning judgment for the decision-maker.

7.82 It is right to draw attention to the fact that the reference to alternatives in Part C 1) d) does not exist in a vacuum and must be understood and applied having regard to the other elements of the sentence in which that reference appears[272]. The words used are: *Proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh the harm* (emphasis added).

7.83 The policy does not therefore require heritage harm to be avoided, or for schemes to be refused where the heritage balance shows that the harm is outweighed by public benefits and thus acceptable in accordance with the approach set by national policy[273]. It expressly contemplates the approval of

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[269] The likely opposition of the Mayor of London to any such proposal can be discerned from what was said about these matters at Stage 1 (CD2.3 Paragraphs 22 and 52) and Stage 2 (CD2.4 Paragraph 7).

[270] CD 3.2 Paragraph 7.14; CD 1.18 Paragraph 8.44; and CD4.14 Paragraph 6.6

[271] *Tesco Stores Ltd. v. Dundee City Council* [2012] PTSR 983 per Lord Reed at Paragraphs 18 and 19

[272] Mr Wilson x-e

[273] Mr Turney is therefore wrong when he submits that the '*point*' of the policy '*is that tall buildings, if appropriately located, might avoid heritage harm altogether' ID10 Paragraph 28*

such schemes – as it must in order to be consistent with the Framework. The requirement to demonstrate exploration of alternatives must be understood and applied with those points clearly in mind.

7.84 Equally importantly, the policy does not mandate the nature and extent of the exploration of alternatives that would be required in any individual case in order for the policy expectation to be satisfied. That is left as a matter of judgment for the decision-maker on a case-by-case basis. It does not, for example, require consideration of alternative *sites* in circumstances such as this where for the reasons set out above any such exercise would be futile and provide no assistance in determining what level of development would be acceptable on *this* site.

7.85 Nor does it oblige applicants to explore alternative forms of development which would clearly fail to optimise the site's potential and run contrary to key objectives of the development plan. The Rule 6(6) Party's evidence to the Secretary of State is that an optimal development of the site would lead to a scheme of at most 6 storeys[274]. In the absence of further detail, it is not possible to discern with any confidence the likely number of affordable homes that would be produced at that height, but it would plainly involve a substantial net reduction in comparison with what has been provided on the site for 60 years. Any such scheme would plainly fail to optimise the potential of this site, contrary to policy, and would be a non-starter for that reason.

7.86 Any exploration of alternatives must therefore take place in the context set by the other relevant policies of the development plan, the nature of the development being proposed (in this case affordable housing) and having regard to the particular circumstances of the individual site (which in this case would include the fact that it has accommodated a tall building comprising affordable housing for approximately 60 years).

7.87 The applicant's evidence was clear that alternative forms of development were explored[275], and in a way that is consistent with the approach described, and thus entirely appropriate. That is sufficient to satisfy the requirement of the policy.

7.88 Any suggestion that significantly lower alternative forms of development had to be explored in order to satisfy the policy is therefore misconceived. In any event, the evidence to this Inquiry has shown that any such exploration would have yielded nothing that would alter the judgment about the acceptability of the application scheme.

7.89 There is common ground amongst the expert witnesses that a reduction in the height of the scheme to bring it down to the height of the former Edith Summerskill House would yield only a limited reduction in the level of heritage harm[276]. Of course, any such reduction would also involve a substantial reduction in the number of new affordable dwellings on the site and thus in the public interest benefits to be weighed in the heritage balance. Leaving aside for one moment the need to satisfy other policies in the development plan, it

[274] Turney x-e
[275] Mr Henley and Mr Henderson in oral evidence
[276] Mr Froneman in-c and Mr Jones in-c

should be obvious that consideration of any such alternative is of little use in informing the decision about the application scheme. It is not an alternative way of delivering *the same project* with fewer adverse effects. It is a different project, yielding significantly reduced benefits.

7.90 The same would be true of a scheme that was lower than the height of the former Edith Summerskill House. Whilst it may be possible to conceive of myriad alternative lower forms of development where both benefits and harms are reduced in a way that would pass the 'heritage balance' test, that would not alter the fact that the application scheme also passes that test and is therefore acceptable in heritage terms. The policy does not require such a 'race to the bottom' whereby the exploration of alternatives must result in the elimination of harm or its reduction to the lowest level compatible with passing the heritage balance test. That would be absurd.

7.91 If the application proposal is acceptable, applying the heritage balance, the nature and extent of the exploration of alternatives that is required should reflect that judgment and – crucially – the wider policy context and the particular circumstances of the application site. That is what happened here, and it was an entirely appropriate way of meeting the requirements of the policy.

Other Issues

The Living Conditions of Existing Residents

7.92 The application is supported by a suite of technical assessments that demonstrate the proposed development would not give rise to any unacceptable impacts on the living conditions of existing residents.

7.93 No contrary expert evidence has been adduced by those opposed to the development, and there has been no suggestion that the applicant's technical assessments are flawed or unreliable in any way. It must therefore be common ground between the main parties that those assessments provide a robust and reliable basis for the Secretary of State's exercise of planning judgment in this case.

7.94 Those assessments demonstrate that the impacts on the living conditions of existing residents would be acceptable. It is inevitable that any substantial new development on a cleared site in an urban environment will have some adverse effects on the outlook, levels of light and so forth, that are currently enjoyed by those living nearby. Policy therefore calls for an assessment of whether the resulting living standards are *appropriate*[277] or *acceptable*[278], and tells authorities that when considering applications for housing they should apply a flexible approach in applying policies or guidance relating to daylight and sunlight so as to avoid inhibiting the efficient use of sites[279]. A balanced approach is required.

[277] CD6.1 London Plan Policy D3 Part D 7) - see also Policy D6 Part D, which requires the design of development to provide: *sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context* (emphasis added)
[278] CD7.1 Paragraph 125c
[279] CD7.1 Paragraph 125c

7.95 The Daylight and Sunlight Report submitted in support of the application demonstrates that there is near full compliance with the BRE Guidance save for a limited number of minor transgressions. Although there would be some instances where the change would be noticeable, that is entirely unsurprising and unexceptional where development is proposed on a cleared site in an urban location such as this. Change on the limited scale that would be experienced here is acceptable, and does not give rise to conflict with policy.

7.96 The Rule 6(6) Party's evidence in this respect has been relatively limited. It has been suggested that the existence of instances where the BRE guidelines are not met is indicative of over-development, but that point has not at any stage moved beyond simple assertion. There is nothing to show that the resulting conditions would be uncharacteristic or unacceptable. Whilst criticism is made of the comparator chosen in the assessment itself[280], the Council has been clear[281] that the issue had been considered more broadly by reference to the nature of the surrounding townscape. In any event, there is no evidence to demonstrate that the resulting conditions would be unusual, uncharacteristic or in any way unacceptable in an urban environment such as this.

7.97 There was also a complaint that the applicant's assessment did not consider impact on the amenity areas, but that has now been addressed by the submission of a Supplementary Assessment[282]. That assessment shows that none of the assessed amenity areas experience a reduction in sunlight of more than 20% and are therefore BRE compliant. The majority of amenity spaces assessed experience no change in sunlight received on 21st March as a result of the proposed development. Where there are reductions in sunlight, these are very small, and the amenity area continues to receive two hours or more of direct sunlight to well above 50% of the amenity area. They remain, therefore, BRE compliant.

7.98 Far from being indicative of over-development, the results show that the proposal would give rise to a very limited impact. The proposed development therefore accords with London Plan Policy D6 and Local Plan Policy HO11.

7.99 In terms of amenity and overlooking, any substantial development on a cleared urban site such as this is bound to lead to some degree of overlooking. That does not equate to an unacceptable impact, and in this case the scheme has been carefully designed to limit overlooking and to ensure that no such impacts arise.

7.100 Beyond the first five storeys, comparable to the height of the adjoining properties, the angle of the residential windows and increasing height means that future occupiers will not be able to look into the windows of their neighbours and the scope for overlooking residential gardens will be reduced. The resulting degree of overlooking would be typical of an urban location and entirely acceptable.

7.101 Given that the site is currently vacant and located in an urban environment it is inevitable that any efficient redevelopment would result in some increase in

[280] ID10 Paragraph 25
[281] Mr Wilson x-e
[282] CD 14.12

overlooking[283]. Furthermore, the proposed building is some 20m to the boundary treatment of the nearest adjoining gardens of Hartismere Road and Fabian Road, which is beyond the 18m of separation that is generally regarded as acceptable in the Borough[284].

7.102 The proposed development therefore accords with Local Plan Policy DC2 and Local Plan Policy HO4 in this regard.

Microclimate

7.103 The applicant's Pedestrian Level Wind Microclimate Assessment[285] shows that the majority of thoroughfares, entrances, roadways and car parks in and around the site would be suitable for their intended use during the windiest season. Where the assessment identified exceptions, these have been addressed through suitable landscaping features and (in the case of location 50) the addition of a planter to restrict pedestrian access. With these measures in place, the resulting wind microclimate would be acceptable.

7.104 The concerns of the Rule 6(6) party in respect of this issue are limited in scope. It is noted that there would be some increased level of windiness in the amenity areas during the windiest season which would mean that at times the conditions in the play-space would no longer be congenial for sitting. Play-spaces are however, by their very nature, locations for activity and movement. Any such impact would have only a limited effect on the amenity they provide. During the windiest season there would also be an increase in windiness at times in the public realm to be created on St Thomas's Way. The precise layout and design of that area is a matter for detailed design, and with suitable mitigation measures incorporated into the landscaping treatment the effect would be reduced to an acceptable level. A suitable obligation has been agreed and included in the Agreement under s.106 to ensure that the recommendations of the assessment are implemented.

7.105 In these terms, the proposal would therefore accord with London Plan Policy GG1 and Local Plan Policies CC2 and DC3.

Car Parking

7.106 The site is located in an area with very good public transport links, as is reflected in its strong PTAL rating. It has been explained[286] that both London Plan[287] and Local Plan policy[288] expect car free development as the starting point for all developments in locations such as this. The maximum parking standard within the London Plan for this site is zero. Accordingly, the Obligation prohibits future residents from obtaining parking permits[289]. The Rule 6(6) party raises no issue on this matter[290].

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[283] As explained by Mr Wilson in oral evidence
[284] CD8.1 Page 19 Policy HS7
[285] CD1.19
[286] By Mr Wilson in oral evidence
[287] Policy T6
[288] Policy T4
[289] The basis for that is explained in the CIL Regulation 122 Compliance Table (ID7)
[290] Confirmed by Mr Turney in oral evidence

The Living Conditions of Prospective Residents

Quality of Accommodation

7.107 The standard of accommodation provided for prospective residents would be very high. Most of the units would be dual aspect, with generous living spaces occupying the corners allowing for maximisation of ventilation and sunlight. All units would exceed London Plan space standards.

7.108 The submitted Daylight and Sunlight Statement demonstrates that all habitable rooms within the proposed scheme would have the benefit of excellent lighting provision[291].

7.109 Those individuals and families lucky enough to move off the housing register and from unsuitable accommodation into one of these spacious and thoughtfully conceived dwellings would benefit from a substantially improved quality of life as a result.

7.110 The proposal would therefore comply with London Plan Policy D6 and Local Plan Policy HO4. More than that, however, it would deliver affordable housing of an exemplary standard, which is what a planning system focused on achieving good design and meeting the housing needs of present and future generations should aspire to achieve.

Amenity and Play-Space

7.111 As summarised above, the private amenity spaces for each unit have been internalised and the required floorspace added to the internal layout of the property. This approach has been accepted by the GLA and the Council as appropriate on a constrained site such as this.

7.112 There are a number of playgrounds and opens spaces available within a short distance of the site, and these are judged both by the GLA and the Council to be sufficient to cater for the needs of the new residents.

7.113 In a site located in a densely developed urban area such as this, it is unlikely that a housing development of any scale will be able to deliver the quantum of play-space identified by the GLA's play space calculator on site. It is also unlikely that there will be scope to deliver that quantum of additional play-space on other land nearby. That does not serve as a barrier to development and could not if the London Plan's ambitious plans for housing growth are to be met. The appropriate and pragmatic response must be to look for opportunities to enhance the quality of existing play-space and to secure a contribution of funds to be used for that purpose. That approach is reflected in paragraph 5.4.6 of the supporting text to London Plan Policy S4 which says: ***Off-site provision****, including the creation of new facilities or improvements to existing provision, secured by an appropriate financial contribution, may be acceptable where it can be demonstrated that it addresses the needs of the development whilst continuing to meet the needs of existing residents* (emphasis added).

[291] CD1.11

7.114 The concerns of the Rule 6(6) party about the calculation of an appropriate sum of money to be paid towards improvements to local play-space appear to have been overcome by the additional information on comparables that the Council has provided[292]. The s.106 has also been amended so as to ensure that the funds are spent on play-space within 100m.

7.115 The amenity and play-space provision are therefore consistent with London Plan Policies D6 and S4 and Local Plan Policies DC2, OS1, OS2 and OS3. If the Inspector and Secretary of State were to conclude differently, and to find that there was some conflict, it is one to which limited weight should attach for the reasons set out above. Having regard to the existing accessible play-space in the surrounding area, and the evident scope for it to be significantly improved using the financial contribution that has been secured, any quantitative shortfall against the GLA's play-space calculator would not provide a proper basis to turn this development away.

Fire Safety

7.116 There has been no attempt by objectors to engage with the contents of the Fire Statement that was submitted by the applicant[293], or the Fire Statement Addendum submitted in order to address the requirements of the then draft London Plan in response to the request made in the GLA's Stage 1 Report[294]. Nor are any specific points made about alleged shortcomings by reference to the requirements of London Plan Policies D5 and D12. The Fire Statement and the Fire Statement Addendum show that those requirements are met, and that the proposed development will achieve the highest standards of fire safety.

7.117 A development control decision on an application for an individual tall building is clearly not the forum to seek to anticipate what, if any, recommendations may emerge from the Inquiry into the Grenfell fire[295]. The London Plan's policies contain detailed guidance on fire safety and are recently adopted. Pursuant to section 38(6) those policies fall to be applied in assessing the issue of fire safety unless and until any additional or different policy emerges through the proper formal processes in due course. All that has been accepted by the Rule 6(6) party[296].

Whether any Impacts on Local Services and/or Infrastructure would be Properly Mitigated

Local Services

7.118 The Council's evidence[297] has explained how the infrastructure required to support the growth provided for in the Local Plan will be delivered. None of that has been challenged and does not seem to be controversial.

[292] ID2
[293] CD1.16
[294] CD1.16a
[295] See ID10 at Paragraph 26
[296] Mr Turney x-e
[297] That of Mr Wilson

7.119 The Council has also summarised the findings of the Education and Primary Healthcare Assessment[298], which demonstrates that there would be no material adverse impact on education or health provision as a result of the proposed development. Again, none of that has been challenged, and does not seem to be controversial.

7.120 The Borough has a Regulation 123 list that identifies the infrastructure for which provision will be made using CIL receipts, and the infrastructure to be provided by means of section 106 obligations or s.278 agreements. The evidence[299] has explained why it is not considered that any additional infrastructure (or contributions thereto) are required to make this development acceptable.

7.121 To set against that all that was said by the Rule 6(6) party in evidence was that the absence of an obligation to make a contribution towards *local services, such as schools or healthcare* is *surprising given the scale of the development*[300]. There was no specific allegation of a likely impact on local services or infrastructure which would be unacceptable, if not mitigated by the payment of funds. Nor was any specific policy conflict alleged. In other words, there was no attempt to show that any contribution would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. No further obligation could therefore properly be said to be required in line with the Government's policy in the Framework[301].

7.122 This matter is no longer pursued by the Rule 6(6) party as a ground for objection to the scheme[302].

Drainage

7.123 Whilst the Rule 6(6) party's Statement of Case included a suggestion that the adverse impacts weighing against the grant of permission included impact on the local sewer network[303], it was subsequently confirmed[304] that no objection was maintained in relation to drainage, and this was reflected in the SoCG[305].

7.124 The Council has addressed the issue of drainage in evidence[306] and explaining why the proposed development is acceptable in terms of its drainage and flood risk impacts, and that appropriate mitigation has been identified and secured by condition. There is no conflict with policy, or adverse effect to weigh in the balance in this regard.

S.106 and Conditions

[298] CD1.7
[299] Of Mr Wilson
[300] CD4.14 Paragraph 5.10
[301] CD7.1 Paragraph 57
[302] Mr Turney x-e
[303] CD4.3 at Paragraph 20g – it was said to be *unclear* if the impact was acceptable.
[304] Mr Turney x-e
[305] CD4.7 at Paragraph 31h and CD4.4 at Paragraphs 7.107-7.108
[306] Responding to CD4.3

7.125 The s.106 obligation is in agreed form[307]. For the reasons set out in the CIL Obligations Schedule[308], all of the obligations meet the tests set by Regulation 122 and within the Framework. They are therefore properly sought and provided and may be taken into account as reasons for granting planning permission.

7.126 There are no outstanding disputes as to appropriate conditions[309], having taken on board the changes discussed during the Inquiry.

The Heritage Balance

7.127 The substantial public interest benefits that this proposal would deliver are as listed in the Council's evidence[310], and may be summarised as follows: delivery of 133 much needed affordable housing units (79% social rented, 21% intermediate); development of a highly accessible vacant brownfield site; creation of a high-quality building of architectural excellence that would become an integral part of Hammersmith's townscape and a landmark to aid wayfinding; an ancillary community hall for use by residents of the building and wider estate, cleverly integrated with the new and existing public realm to the benefit of both; improved engagement with the public realm, and an improved pedestrian experience and connectivity into and through the Estate; and improvements to off-site play-space.

7.128 Those benefits should attract very significant weight, clearly and overwhelmingly outweighing the limited less than substantial harm to heritage assets that has been identified, providing a clear and convincing justification for that harm. Accordingly, there is no conflict with national planning policy on the protection of heritage in the Framework, and a decision to grant planning permission would be appropriate and consistent with the duty in s.66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990.

The Development Plan

7.129 Compliance with the development plan is to be considered by reference to the plan as a whole rather than asking whether the proposed development is in accordance with each and every policy in the plan. That approach recognises the fact that individual policies may pull in different directions, and that it would be difficult to find any project of significance that was wholly in accord with every relevant policy in the plan. The Inspector and Secretary of State will therefore have to make a planning judgment, bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of compliance or breach[311].

7.130 It is the judgment of the local planning authority that when the development plan is considered as a whole, the proposed development is in accordance with the relevant policies. That was the judgment expressed in the officer's report to committee, and the Council's evidence provides a full and detailed

[307] CD4.27
[308] CD4.27
[309] ID6
[310] CD4.9 Pages 51-52 Paragraph 9.55
[311] *R v. Rochdale MBC, ex p. Milne* (No. 2) [2001] Env. L.R. 22

explanation as to why it remains their professional judgment now following the adoption of the new London Plan[312].

7.131 The assessment acknowledges the conflicts that have been identified with relevant policies, most notably London Plan Policy D9 and elements of Local Plan DC3 and attaches significant weight to that conflict[313]. Nevertheless, having regard to the very considerable extent of policy compliance and the strategic importance of the policies that are complied with having regard to the objectives of the development plan, the proposed development complies with the development plan when taken as a whole.

7.132 That assessment has been undertaken on the conservative assessment that no account can be taken of how the proposed development performs against the criteria for tall buildings in Part C of London Plan Policy D9. If in due course the Planning Court finds in favour of the Mayor of London's interpretation of Policy D9, that assessment will turn out to have been too conservative. As was set out[314], the implications of such a finding would be significantly to increase the degree to which the proposal complies with the development plan, because it would satisfy all of those criteria to the extent that they are relevant[315].

Other Material Considerations

7.133 There are three main other material considerations that should weigh heavily in the balance in favour of the grant of planning permission.

7.134 The first is that the proposal would satisfy the criteria of both Local Plan Policy DC3 and London Plan D9, the purpose of which is to assess the impact and therefore establish the acceptability of a tall building. Should the Mayor of London's interpretation of Policy D9 be upheld, that element of this 'other material consideration' would then move into the first part of the s.38(6) assessment, but the assessment against the criteria in Local Plan Policy DC3 would remain within the second part.

7.135 The second is that the proposal would satisfy both the detail and the thrust of national planning policy in the Framework.

7.136 The third is that the proposed development would make a substantial contribution to meeting the clear identified need for affordable housing within the Borough, in circumstances where there is already a significant shortfall against the development plan target, that target has recently increased by a significant amount, and even if met it would not be sufficient to meet the established level of need.

The Overall Planning Balance

7.137 The proposed development accords with the development plan when considered as a whole.

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[312] CD4.9 Section 8 Pages 40-53
[313] That is the case notwithstanding his view that the plan-making process was primarily concerned with identifying new areas in which tall buildings may be appropriate, rather than assessing whether existing tall buildings might appropriately be replaced - Wilson in-c
[314] By Mr Wilson in oral evidence
[315] CD4.9 Pages 58-63 Paragraphs 10.40-10.89

7.138 Accordingly, the presumption in favour of sustainable development in paragraph 11 of the Framework means that the proposed development should be approved without delay.

7.139 The other important material considerations that exist in this case reinforce that presumption. Indeed, they are of such significance and should attract sufficient weight to justify the grant of planning permission even if a different planning judgment was reached as to compliance with the plan overall[316].

Conclusions

7.140 For the reasons summarised above and set out in more detail in the Council's written and oral evidence, planning permission should be granted for the proposal.

Post-Inquiry Submissions in relation to Hillingdon

7.141 The Judge found that the Mayor of London's interpretation of policy was correct for the reasons summarised at paragraphs 80 to 87 of the judgment. Accordingly, it is appropriate to assess a tall building against the criteria in Part C of Policy D9 for the purposes of determining the extent of compliance with that policy and the development plan as a whole, even where a proposal is in conflict with Part B 3) of Policy D9 because it is not a location identified as suitable in a Local Plan. That is now common ground between the main parties[317].

7.142 In closing[318], the Council summarised the main implication of such an outcome as: *If in due course the Planning Court finds in favour of the Mayor of London's interpretation of Policy D9 [the assessment of overall compliance with the development plan] will turn out to have been too conservative. As was set out, the implications of such a finding would be significantly to increase the degree to which the proposal complies with the development plan, because it would satisfy all of those criteria to the extent that they are relevant*[319].

7.143 The Council's assessment was that the proposal was in compliance with the development plan, considered as a whole, even making that conservative assumption and treating compliance with the criteria in Part C only as an 'other material consideration'. That position is necessarily strengthened now that compliance with the criteria in Part C is to be considered when determining the extent of compliance with Policy D9 and thus with the development plan as a whole.

7.144 The reasons given by the Court for reaching that conclusion are also relevant. The Court set out in greater detail the fundamental legal principles to which reference has been made[320] including that policies may pull in different

[316] The Council has submitted a document demonstrating that it has a five year housing land supply (CD4.26), reflecting the SoCG (CD4.7 Paragraph 15), and therefore the tilted balance would not be engaged in those circumstances
[317] See Mr Turney's further submissions at Paragraph 2
[318] ID11 Paragraph 140
[319] CD4.9 Pages 58-63 Paragraphs 10.40-10.89
[320] ID13 Paragraph 83 summarised in ID11 Paragraph 137

directions and many statements of policy in a plan may be mutually irreconcilable, so that in a particular case, one must give way to another.

7.145 It was found that those drafting Policy D9 must have been aware of those principles[321] and it was held that: *In considering whether to grant planning permission for a tall building which did not comply with paragraph B 3), because it was not identified in the development plan, it would surely be sensible, and in accordance with the objectives of Policy D9, for the proposal to be assessed by reference to the potential impacts which are listed in Part C*[322].

7.146 In the particular case before the Court, notwithstanding the fact that the proposed tall building did not comply with Part B 3) of Policy D9, the Mayor of London had determined that the proposal accorded with the provisions of the development plan when read as a whole. The Court concluded that was a planning judgment the Mayor was entitled to make in the exercise of his discretion[323].

7.147 This reflects the planning judgment that the Council has reached on the proposed tall building here and it is clear from the Court's judgment that such an outcome is: in line with what those drafting Policy D9 would have contemplated at the time the policy was prepared; and in accordance with the objectives of Policy D9.

7.148 A further consequence of the judgment[324] is of course that compliance with the criteria in Part C of Policy D9 ceases to be an 'other material consideration' because it forms part of the first element of the s.38(6) exercise and not the second. The assessment against the criteria in Local Plan Policy DC3 would remain within the second element[325].

7.149 For these reasons, it is the Council's position that the decision of the Court materially strengthens the case for concluding that the proposed development is in accordance with the development plan read as a whole, and consequently the case for granting planning permission for this much needed and well-designed scheme.

8 The Case for the Rule 6(6) Party (Mr Turney)

8.1 This is set out in full in evidence and the closing statement to the Inquiry[326]. What follows is a summary of the case as presented in that closing statement, supplemented by post-Inquiry comments in relation to the judgment in the *Hillingdon* case. It imperative that Mr Turney's material, including the review of the applicant's Townscape and Visual Impact Assessment prepared by Claire Browne of HCUK Group (dated 16 September 2020) and the review of the applicant's Heritage Statement prepared by Christopher Griffiths of HCUK

[321] ID13 Paragraph 84
[322] ID13 Paragraph 85
[323] ID13 Paragraph 87
[324] As explained in ID11 Paragraph 142
[325] That reflects the Council's consistent position – ID11 Paragraph 142 and so the points made in Mr Turney's submissions on this matter (ID14) do not take things further
[326] ID10, CD4.3 and CD4.14, and ID14

Group (also dated 16 September 2020), is read in full in order to gain a full understanding of the case presented.

8.2 The issues can be addressed as follows: (i) the planning history, the need for the development, and the failure to assess the capacity of the site and alternatives to the form of development proposed; (ii) the impacts on the character and appearance of the area and in particular, townscape matters; (iii) the impact on heritage matters; (iv) play-space; (v) other adverse impacts of the proposed development; and (vi) the development plan and overall planning balance.

Planning history; need for development; and failure to assess capacity and alternatives

8.3 These topics can be dealt with together because of the unique circumstances of this case. In 2017, when planning permission was first sought for the proposal, the former Edith Summerskill House still stood on the site. As all agree, it was a detractor from the townscape, the setting of the Grade II* listed St Thomas of Canterbury Church, and the setting of Central Fulham Conservation Area. The proposed development was assessed in that context. The conclusion reached at the time[327] was that the proposed development would have beneficial effects both in townscape and heritage terms.

8.4 The Inquiry has not been shown any scheme alternatives which were considered, but it was told[328] that all options were for tall buildings, between 110 and 150 units. The Inquiry has also been told little about the arrangements that led to the creation of the applicant joint venture, but it was explained[329] that there is no contractual requirement for the site to deliver any particular quantum of development. It is quite clear that both the applicant and the Council proceeded on the basis that the proposed development was acceptable *in the context of the existing tall building*.

8.5 However, it is now a matter of agreement that the context of the former Edith Summerskill House is <u>not</u> the basis upon which to assess this proposal. Despite this agreement, both the applicant and the Council have sought to pray in aid the presence of the building throughout the Inquiry. It is correct to note that the planning history of a site may be a relevant consideration, and it is not suggested that it should be ignored. However, in circumstances where the previous building is agreed to have been a detracting feature in townscape, character and appearance, and heritage impact terms, it is unclear where the point goes at all. The bottom line is that the impacts of the proposed development must be assessed against a cleared site. There is nothing in law or policy to suggest that such an assessment should be altered by the history of harmful impacts caused by previous development on the site.

8.6 The reason that this in important is that much of the analysis presented by the applicant and the Council is infected by the earlier consideration of the proposals against a radically different baseline. Thus, having accepted the error in the determination of the 2017 application, the applicant failed to

[327] By Professor Tavernor
[328] By Mr Henley in oral evidence
[329] By Mr Henderson in oral evidence

reconsider the capacity of the site to accommodate development of this scale. It failed to revisit its earlier choices notwithstanding that the position had fundamentally changed from one where the proposed development was claimed to deliver townscape and heritage benefits, to one where harm in these terms was acknowledged.

8.7 As a result of all that, there has never been any attempt to properly assess the capacity of the site. Even in presenting the case to the Inquiry, the context was shown[330] as including the original Edith Summerskill House. The Council[331] referred to the same images in their description of context. No-one has stopped to question whether development at the scale proposed remains the appropriate solution for the site. The Council was keen to emphasis in questioning[332] that the capacity of the site had been identified as between 2 and 7 storeys[333]. That is, in fact, the only expert assessment to grapple with the capacity of the site, while putting the proposal at issue to one side.

8.8 The applicant confirmed, contrary to the terms of the Officer's 2017 report, that there is no viability reason for building at the scale proposed on the site. Similarly, it is no longer suggested that development on this site is required to meet social or affordable housing needs arising from the loss or development of the Watermeadow Court site.

8.9 Remarkably for a scheme of this nature, the architect has provided very little information about alternative designs, and there has been no consideration of alternative sites. Some alternative floorplates and architectural treatments were, it seems, considered[334]. But the scale of the development has not been the subject of any consideration of alternatives. It was accepted however[335] that alternatives to a tall building and alternative sites for accommodating need had been considered.

8.10 That is a material and striking omission for several reasons. First, even on the applicant's assessment, this is a proposal which conflicts (at least in part) with the locational policies for tall buildings in Local Plan Policy DC3 and London Plan Policy D9. This creates a clear case for asking *why* a tall building needs to be located in an area that is not designated for such a building. Second, even on the applicant's assessment, the proposal causes harm to the setting and thereby the significance of a designated heritage asset of high value – the Grade II* listed Church of St Thomas of Canterbury. Third, London Plan Policy D9 expressly requires that proposals 'resulting in harm (to heritage assets) will require clear and convincing justification, **demonstrating that alternatives have been explored** and that there are clear public benefits that outweigh the harm'. Neither the applicant nor the Council[336] could answer for the apparent conflict with this element of tall buildings policy.

[330] CD4.10 Paragraphs 2.1-2.5
[331] Through Mr Jones
[332] Mr Turney x-e
[333] By Ms Browne
[334] Mr Henderson re-e
[335] By Mr Henderson in x-e
[336] Through Mr Henderson or Mr Wilson

8.11 The law on alternatives is extensive. It has recently been summarised by the High Court in *Save Stonehenge*[337]. Here, alternatives are an 'obviously material consideration'. To use the phrase in *Jones*[338]: *such circumstances will particularly arise where the proposed development, though desirable in itself, involves on the site proposed such conspicuous adverse effects that the possibility of an alternative site lacking such drawbacks necessarily itself becomes, in the mind of a reasonable local authority, a relevant planning consideration upon the application in question*.

8.12 Alternatives are plainly a material consideration in light of the policy position and the actual harm caused. In the absence of any attempt to show that alternative forms of development or alternative sites have been considered at all, the justification for the harm caused is substantially weakened and the conflict with the tall buildings policies should be given greater weight.

8.13 Finally on this issue, reference has been made to London Plan Policy H8[339]. However, this is not a proposal that involves the loss of existing housing. The policy is not, therefore, engaged at all by the proposals. That must follow from the agreement that the proposal falls to be considered against a cleared site. Whilst the thrust of London Plan Policy H8 is to replace lost homes with at least as many as have been lost, on the facts, this adds little to the general requirement to optimise the output of sites. Put another way, what previously existed on the site is one of the factors that needs to be weighed in the balance in assessing what the site should now accommodate. Even on its terms, London Plan Policy H8 does not require the quantum of housing on the site to increase. It is important to recall in this context the agreement that the delivery of a building on the same footprint as that which is proposed which *replaced* the housing which once existed on the site would cause less harm to the setting and thereby the significance of the Church of St Thomas of Canterbury, and the Central Fulham Conservation Area.

Character and Appearance and Townscape

8.14 Standing back and looking at the site, it is simply ill-suited for a tall building. It is physically constrained. To the south and west, there is a strong uniformity of scale and type of buildings. These are predominantly, two-storey terraces of the type recognised as being typical of large parts of the Borough[340]. Within the Clem Attlee Estate, the western part is given over to housing at a scale commensurate with the Victorian street pattern beyond. The south-east part of the Estate is of a lesser scale than the northern part, with a relatively close-knit street pattern.

8.15 Taking the Clement Attlee Estate as a whole, the southern part is far less capable of accommodating a tall building. It was agreed that there is no transition from this part of the site: the building proposed would lie just a few metres from the terraced streets behind. Viewed from the north, the estate will rise up to the proposed development (and thus appear to provide transition) but then there would be a cliff edge on the southern boundary.

[337] CD9.4 Paragraphs 268 to 276
[338] See CD9.4 at paragraph 271
[339] CD6.1
[340] CD14.11 refers

8.16 The effect of a building of this scale would be clearly harmful to the character and appearance of the area. It would be extremely overbearing in close views. Much play was made of the 'base' of the building, but the site is so constrained that this would barely be viewed. Certainly, when approaching from the south, it would only be in the final approach to St Thomas's Way that the base would appear.

8.17 In a wider context, while some adverse effects were acknowledged[341], the analysis understates the impacts[342]. There would be wide reaching views, and the building would jar with the townscape character, particularly when viewed from the west, south, and south-east.

8.18 Whilst parts of the design are clearly of quality, the architectural treatment of the building is fundamentally confused. It is suggested that this is a 'civic' building that could form a gateway[343]. Further, it is said that the building would act as a symbol for the regeneration of the Clement Attlee Estate[344]. However, while a 'civic' quality may be appropriate for some residential buildings, this is simply not the place for it. It is a quiet corner of the Borough, not a town centre, or a major thoroughfare. The building would not serve any wayfinding purpose save for locating itself. It is not in a location where people would wish to travel save to get to their homes. And as the Council[345] was keen to emphasise, there are no regeneration proposals at all for the wider estate, and the building would therefore remain as a new addition, of a different scale and form to the existing estate, doing nothing for what is already there.

8.19 Finally on this issue, the ability of the Borough to accommodate tall buildings has been the subject of assessment[346]. The clear conclusion of that assessment – which included consideration of existing tall buildings, including those in the Clement Attlee Estate – was that four areas were potentially suitable for tall buildings. For the reasons given in the assessment, other areas such as that where the application site sits, cannot readily accommodate tall buildings without harm.

Heritage Matters

8.20 There is a danger of overcomplicating the analysis of heritage impacts. The parties are agreed that less than substantial harm would be caused to two designated heritage assets. There would be others that would be similarly affected. There has been much judicial discussion about the assessment of the scale of heritage impacts. Ultimately, a rounded planning judgment needs to be made as to the extent of harm. What is clear is that particular impacts may properly be regarded as 'high up' the scale of less than substantial harm even if large parts of the significance of the asset concerned are unaffected.

[341] By Professor Tavernor
[342] Compare Ms Browne's findings
[343] By Mr Henley
[344] By Professor Tavernor
[345] Through Mr Wilson
[346] CD14.11

8.21 That point is important in the context of the Church of St Thomas of Canterbury where the applicant[347] significantly underplays the level of harm. The impact on the setting of the church when viewed from the cemetery, and from surrounding streets, would lead to a high level of harm to its significance. That is clearly what was in the mind of Historic England when describing the harm as 'serious' (the suggestion that this simply means *any level of heritage harm* is clearly misplaced). The fact that the setting of the church would be preserved when the viewer's back was turned to the proposed development is not a proper basis for reaching a conclusion that the harm is low down the scale. That is true of almost any impact on setting. Aspects of setting will be preserved, but the profound and significant change to the setting of the church in many views is enough to conclude that a high level of less than substantial harm would be caused.

8.22 The same issue arises in relation to the Central Fulham Conservation Area. It is true that as a large conservation area, much of its setting would be unaffected because the building would not be seen when the viewer is facing away from it, or on streets that do not align with views towards the site. But it does not follow that the impacts are simply diluted by the scale of the conservation area. In a rounded judgment, the impacts are materially detrimental.

8.23 There are further heritage harms that should have been identified by the applicant and the Council[348]. The impact on the setting of the Walham Green Conservation Area, and of St John's Church, would be clearly negative. The building proposed would intrude into the historic core of the conservation area, around the church. It would be an unwelcome intrusion that would cause harm to the setting of the conservation area because it would interrupt the enclosed view of historic buildings and the street pattern which has been preserved, particularly around the church, and the approaches towards it.

8.24 Heritage harm obviously has to be weighed against public benefits of the proposal. However, it is also important to recall the particular approach to be taken to heritage harm in the application of tall buildings policies.

Play-Space

8.25 There would be a clear breach of London Plan Policy S4 and Local Plan Policy OS3 as a result of the failure to provide sufficient play-space. The London Plan contemplates that off-site provision can be made, particularly for older children's play. But that off-site provision must still meet the needs of the development proposed. Here, 400 square metres of play-space would be required within 100 metres of the development site simply to meet the needs of under 5s from the development. Inexplicably the applicant has persisted with an argument that these requirements are met[349]. There is 200 square metres of existing children's play-space within 100 metres of the site. That is insufficient to meet the needs of the development even if it was not currently used by existing residents.

[347] Through Mr Froneman
[348] As set out by Mr Griffiths
[349] Neither Mr Henderson nor Mr Wilson could explain why

8.26 The proposal to commit funding, without any indication of how it will be spent, or any requirement to do so, does not alter this basic fact. It is deeply regrettable that such an important point has been given such little thought, especially when this scheme would accommodate many families with young children. It is a major drawback of the proposal.

Other Adverse Impacts

8.27 The forecast daylight and sunlight impacts depend wholly on a 'contextual' analysis which is based on streets around the Empress State Building, and the Ibis Hotel. This is self-serving because the impact of a tall building should not be judged acceptable because another tall building has similar impacts, particularly when those buildings alluded to were not permitted under a modern policy regime. The impacts would be serious and extensive.

8.28 Similarly, the proposed building will cause a deterioration in wind conditions such that the play-space and amenity areas will not be suitable for sitting out in windy seasons.

8.29 The play-space will also be overshadowed for much of the day, as confirmed by the analysis put in during the Inquiry[350].

8.30 Others have questioned the wisdom of permitting a single core tall building in the light of the Grenfell disaster, notwithstanding technical compliance with existing fire safety requirements. Whether such buildings remain an appropriate response to identified social housing needs will need to be considered.

Development Plan and Overall Planning Balance

8.31 For the reasons set out, the proposals are contrary to the development plan. The detailed criteria for tall buildings are not met, as set out above. Even if they were, the conflict with the locational policies in London Plan Policy D9 and Local Plan Policy DC3 is profound. The Borough has carefully identified locations for tall buildings and the application site is not one of them. That analysis adds to the weight to be given to those policies, regardless of how the *Hillingdon* litigation is resolved.

8.32 There is further conflict with London Plan Policy D9 through the failure to assess alternatives which would avoid or reduce heritage harm. Local Plan Policy DC3 incorporates similar advice by reference to the Historic England tall buildings guidance[351]. The point of these policies is that tall buildings, if appropriately located, might avoid heritage harm altogether. This is a logically prior question to whether any heritage harm might be outweighed. It could be avoided.

8.33 There is also conflict with London Plan Policy S4 and Local Plan Policy OS3 in relation to play-space and with Local Plan Policy HO11 in terms of sunlight and daylight. There is conflict with the heritage policies of the London Plan and the Local Plan because the benefits of the scheme fail to outweigh the harm it would cause.

[350] CD4.24
[351] CD7.6 (and CD7.7)

8.34 The proposals do not optimise the use of the site, nor replace what was there before. They result in clear overdevelopment, as expressed through these planning impacts.

8.35 The heritage harm caused requires convincing justification. The benefits of delivering social and affordable housing are significant. However, since this form of development is fundamentally inappropriate, and since housing could be delivered elsewhere, and in a different form that avoids such impacts, the benefits do not outweigh the harm.

8.36 Drawing all these strands together, taken as a whole, the proposals conflict with the development plan. In particular there is conflict with policies relating to tall buildings, heritage, play-space, and residential amenity. There is heritage harm which should be given significant weight, and which is not outweighed. The development plan conflict is not outweighed by the benefits applying (as agreed) the conventional balance.

8.37 For all those reasons, and for the reasons given in evidence, the application should be refused.

Post-Inquiry Submissions in relation to Hillingdon

8.38 In *Hillingdon* the local planning authority agreed that on a proper interpretation of London Plan Policy D9, Part C of the policy only applies to development proposals in locations identified as suitable for tall buildings[352]. The *Hillingdon* judgment confirms that the detailed criteria in Part C of London Plan Policy D9 are relevant to the assessment of proposals for tall buildings which, contrary to Part B 3), are not in locations identified as suitable for tall buildings[353]. Assessment against those criteria may go to whether the proposals are in accordance with the development plan, taken as a whole.

8.39 That approach is consistent with the stance taken at the Inquiry, and for the reasons set out in evidence, the scheme remains contrary to the development plan taken as a whole. The criteria in Part C of London Plan Policy D9 may be relevant in an assessment of the extent of development plan compliance but the conflict with the plan-led element of Policy D9 is significant, and in any event, several of the criteria in Part C are not met.

8.40 The Hillingdon judgment also gives useful guidance on the interpretation of Local Plan Policy DC3 which leads to a different approach to assessing compliance with that policy. The judgment says[354]: *There is no wording which indicates that Part A and/or Part B are gateways, or pre-conditions, to Part C. In order to give effect of [the Claimant's] interpretation, it is necessary to read the words underlined below into the first line of Part C to spell out its true meaning: Development proposals <u>in locations that have been identified in development plans under Part B</u> should address the following impacts'. But if that had been the intention, then words to that effect would have been included within the policy. It would have been a straightforward exercise in drafting……*

[352] CD14.9 Paragraph 74
[353] ID13 Paragraph 85
[354] ID13 Paragraph 82

8.41 By contrast with London Plan Policy D9, such words are included in Local Plan Policy DC3. The policy reads: *In these areas identified as potentially appropriate for tall buildings, any proposal will need to demonstrate that…..*. 'These areas' means, obviously, the four areas identified in the preceding paragraph. Accordingly, on the analysis in Hillingdon, on a proper reading of Local Plan Policy DC3, the criteria which follow apply only in the four areas identified and the locational requirements do act as a gateway or pre-condition to the application of the subsequent criteria.

8.42 It follows that on the analysis in Hillingdon, the proposals should be regarded as straightforwardly contrary to Local Plan Policy DC3 regardless of whether the criteria in the second part of that policy are met, strengthening the conclusion that there is a breach of the development plan, taken as a whole. In any event, those criteria are in large part not met for the reasons set out in evidence and submissions.

9 Third Party Representations

9.1 A significant number of representations were made on the application when it was with the Council, and more were made as part of the consultation process leading up to the Inquiry. Given the unusual circumstances, and my concern that a 'virtual' event might deter some people from appearing at the Inquiry to speak, I allowed submissions to be taken in during the Inquiry that might ordinarily have been returned as being out of time[355]. All these are part of the package of material that will be passed on for consideration[356].

9.2 Two people did however address the Inquiry.

9.3 **Irene Chia**, a local resident, raised objections to the proposal on two grounds. The first is that the scheme would lead to a reduction in the levels of privacy enjoyed by residents in the back gardens of properties on Hertismere Road and Fabian Road. The scheme would make the situation worse than it was when Edith Summerskill House was in place because it would be higher, and there would be more facing windows. The second issue relates to traffic and parking. While the proposal is said to be 'car-free', some residents are bound to have vehicles which will lead to additional traffic and parking pressure in an area that is already busy. There will be increased footfall too.

9.4 **Paul Nichols**, a local resident expressed support for the proposals[357]. In summary, disappointment was expressed that Edith Summerskill House has taken so long to be replaced when the Borough has a desperate need for social housing. The principle of a tall building on the site should not be in doubt on an existing high-density estate in a well-serviced part of Inner London. The new building is well designed and planning permission should be granted so that redevelopment can take place quickly.

9.5 Given the nature of the issues raised, one of the written submissions made during the Inquiry warrants summarising here. That is the submission of **Tony**

[355] There were of course circulated around the main parties so that any issues raised could be addressed in evidence and/or submissions
[356] Referred to in paragraphs 1.5 and 1.6 above
[357] ID7

Bird FICH dated 3 December 2021, enclosing a letter from **Ronnie King** OBE OStJ QFSM FIFireE, Adviser and Hon. Admin. Secretary to the All-Party Parliamentary Fire Safety & Rescue Group, dated 7 August 2021. Put very simply the point raised in the representations is that a new build residential tower block of twenty storeys should have at least two staircases (rather than a single staircase as proposed) so that, in accordance with good fire safety practice, those escaping will be able to turn their back on any fire, in order to reach an alternative safe exit from the building.

10 Conditions

10.1 Discussions between the Council and the appellant resulted in a comprehensive list of conditions that was presented to the Inquiry. This was discussed in a round-table session and after that a final list was presented[358].

10.2 I have considered the suggested conditions in the light of advice in paragraph 56 of the Framework[359]. This states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided, unless there is clear justification. Footnote 25 to the Framework points out that Sections 100ZA(4-6) of the Town and Country Planning Act 1990 will require the applicant's written agreement to the terms of a pre-commencement, unless prescribed circumstances apply. I have taken the presence of pre-commencement conditions on a schedule agreed between the applicant and the Council as conferring that agreement.

10.3 As one would expect, conditions are required to deal with commencement, and to set out the approved plans[360].

10.4 Given the location of the site, surrounded by residential development, and with restricted access, conditions governing the manner in which construction takes place are necessary to protect the living conditions of adjoining residents. These include the need for a Community Liaison Group[361], a Construction Management Plan[362], a Construction Logistics Plan, an Air Quality Dust Management Plan[363], a condition to deal with site hoardings[364], another to deal with the protection of existing trees[365], and another to cover piling[366].

10.5 Given the obvious potential for the site to have been contaminated, a whole series of conditions are required to deal with this matter[367].

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[358] ID6 (I have attached the final 'clean' version submitted on 7 December 2021)
[359] CD7.1
[360] Suggested Conditions 1 and 2 respectively
[361] Suggested Condition 3
[362] Suggested Conditions 7 and 8
[363] Suggested Condition 31
[364] Suggested Condition 14
[365] Suggested Condition 24
[366] Suggested Condition 51
[367] Suggested Conditions 15-20 (inclusive)

10.6 While the submitted drawings are relatively detailed, it is reasonable to apply conditions to govern aspects of the design[368], and require samples of materials[369]. Linked to that, other conditions are necessary to ensure any subsequent changes to the building can be managed by the Council[370]. To ensure that it is provided in an appropriate manner, in appearance and amenity terms, it is essential that details of external lighting are made subject to condition[371].

10.7 Conditions are necessary to deal with the landscaping scheme and its ongoing maintenance[372].

10.8 The cycle parking proposed needs to be secured by condition. I have modified that suggested to properly reflect the number of spaces shown on the plans[373]. To supplement that, a further condition is needed to ensure that once provided, the cycle parking is properly managed[374].

10.9 Conditions are necessary to address the provision of facilities for storage and disposal of household refuse and recycling, and to secure a Waste Management Strategy that encourages householders to recycle as much as possible[375]. Linked to that, a condition is required to secure a Delivery and Servicing Management Plan[376] to ensure these operations can take place in ways that are safe and protect residents' living conditions.

10.10 A range of conditions are needed in order to address the need to protect against noise. First, noise and vibration from plant need to be covered[377]. Then, residential units need to be adequately protected against other external sources of noise[378]. On top of that, the means to ensure adequate sound insulation between flats, and between residential uses and the community space, need to be secured by conditions[379]. A condition has been suggested to ensure that no music or amplified sound from the premises is audible at nearby residential or other noise sensitive locations[380]. Given the potential for the community space to house events, this is a necessary imposition.

10.11 For environmental reasons, a condition[381] is necessary to require details of air and water source heat pumps and the emergency generators to be submitted for the approval of the Council.

10.12 A series of conditions has been proffered to address various matters relating to access. First of all, to ensure that all needs are properly catered for, it is

[368] Suggested Conditions 5, 33 and 21
[369] Suggested Condition 4
[370] Suggested Condition 6, 42, 43, 44, 46 and 48
[371] Suggested Condition 25
[372] Suggested Conditions 22, 23 and 45
[373] Suggested Condition 9
[374] Suggested Condition 10
[375] Suggested Conditions 11 and 12
[376] Suggested Condition 13
[377] Suggested Conditions 26 and 27
[378] Suggested Condition 28
[379] Suggested Conditions 29 and 30
[380] Suggested Condition 49
[381] Suggested Condition 32

necessary to attach a condition requiring the submission and subsequent approval of an Inclusive Access Management Plan[382]. Linked to that, a condition is required to ensure level access at ground floor level and minimum door widths at the main entrance and lifts[383]. On top of that, a condition is needed to secure details of the lifts, and their ongoing operation[384]. A condition is necessary to ensure that the development is carried out in accordance with the Fire Statement[385].

10.13 A condition has been suggested that requires external entrance/exit doors not to open over the public highway[386]. I can appreciate the intent but the submitted ground floor plan[387] suggests that this situation is unlikely to arise. However, that might depend, in the longer term, on how the external spaces around the building are dealt with in ownership and/or management terms. On that basis, I have suggested that it be retained.

10.14 The proposed waterproofing and flood-proofing works in the basement of the building are clearly required and need to be secured by condition[388]. Details of foul and surface water drainage need to be submitted for the approval of the Council and implemented in accordance with the approved details[389].

10.15 There is the potential for a tall building such as this to cause interference with television and airwave signals. Mitigation measures, should any such interference occur, have to be secured by condition[390]. As with all tall buildings, there is an issue around the means by which windows are cleaned. This needs to be dealt with by condition[391].

10.16 Finally, to ensure ease of co-ordination with the Obligation relating to residents' parking permits, details of the correct postal addresses of the new dwelling units need to be lodged with the Council before occupation[392].

11 The Obligation

11.1 As set out above, after discussions between the Council and the applicant, a draft version of an Agreement under s.106 was available for discussion at the Inquiry. This was helpfully supplemented by an analysis of the various Obligations included therein, prepared by the Council, in the context of the CIL Regulations 2010 (as amended)[393]. Like the discussion around conditions, this took place on a 'round table' basis. I gave the parties time after the Inquiry closed to complete and sign the document and a final version, dated 21 December 2021, was duly received[394].

[382] Suggested Condition 34
[383] Suggested Condition 50
[384] Suggested Condition 35
[385] Suggested Condition 52
[386] Suggested Condition 47
[387] CD1A_14
[388] Suggested Condition 36
[389] Suggested Condition 37
[390] Suggested Conditions 39 and 40
[391] Suggested Condition 38
[392] Suggested Condition 41
[393] CD4.27 (repeated in ID8)
[394] ID16

11.2 Mirroring Regulation 122(2) of the CIL Regulations 2010 (as amended), the Framework explains in paragraph 57 that planning obligations must only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

11.3 The Agreement under s.106 contains a series of Obligations which I address in turn. The first is the Carbon Offset Contribution of £171,841 which is subject to any recalculation following the submission of a Revised Energy Strategy. That figure has been arrived at using the Council's formula for carbon offset payments and is required because the required zero-carbon target cannot be met on site. All this is in accord with the approach of London Plan Policy SI2 and Local Plan Policy CC1. In that context, this Obligation clearly meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.4 Second, there is the Play-Space Contribution of £50,000 which is to be used for the purposes of improving play-space within 100 metres of the site. This is intended to address the needs of children living in the development, and the requirements of London Plan Policy S4 and Local Plan Policies DC2, OS1, OS2 and OS3. It has been agreed between the Council and the applicant as a proportionate response having regard to those needs. I deal with this matter in more detail in my conclusions below and it is sufficient to record here that the Obligation meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.5 After that, there is an Obligation to carry out and complete Wind Mitigation Measures prior to the first occupation of the building. These measures have been identified in the applicant's Pedestrian Level Wind Microclimate Assessment which shows that mitigation measures are required to make the proposal acceptable in microclimate terms. The Obligation is there to secure those mitigation measures as required by London Plan Policy GG1 and Local Plan Policies CC2 and DC3. As such, the Obligation meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.6 There are then a series of Obligations relating to Highways and Transport Infrastructure. These cover highway works, including surface treatments, reconstruction of crossovers, replacement street trees, street furniture, and the alteration of waiting and loading restrictions, that would be required to mitigate impacts on the public highway, as required by Local Plan Policy T3 and associated SPD. These Obligations very clearly meet the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.7 Linked to that, Obligations are included to deal with the submission and subsequent monitoring of Travel Plans relating to residents of the development, and construction workers. These are intended to encourage a shift away from the use of the private car, amongst other things, and are required by Local Plan Policy T2. In that light, the Obligations meet the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.8 Further to that, are limitations to prevent residents of the development applying for parking permits relating to any Controlled Parking Zone in the Borough. Given that the proposal is intended to be 'car free' and that this is relied upon to ensure that there would be no impact on existing parking demand in the area, this is clearly necessary to gain accordance with Local

Plan Policy T2. As such, the Obligation meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.9 As set out, all the residential units in the scheme are 'affordable'. On that basis, Obligations are included to secure them, the tenure split, and a specified unit mix, together with mechanisms for appointing a registered provider, nominations arrangements, marketing, eligibility and liaison with the Council. Given the basis of the proposal, these Obligations very clearly meet the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.10 On top of that, an Obligation is included to ensure that 10% of the units are suitable for wheelchair users with 90% of those designed to meet Building Regulations M4(2) and 10% M4(3). Given the requirements of Local Plan Policies DC2 and HO6, this Obligation meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.11 Finally, in accordance with Local Plan Policy E4, there is a need for a Jobs, Employment and Training Strategy. This is intended to identify and promote employment, training and business opportunities for local residents and businesses in the course of the construction process. This meets the tests set out in paragraph 57 of the Framework and Regulation 122(2).

11.12 In summary, it is my considered view that all the obligations in the various Schedules that make up the Agreement under s.106 meet the tests of the Framework and fully comply with the requirements of Regulation 122 of the CIL Regulations 2010.

12 Inspector's Conclusions

12.1 In this part of the report, I have used references thus **[--]** to cross-refer to previous paragraphs in the report, and in particular, the relevant part of the main parties' cases.

Introduction

12.2 In the lead-up to, and in opening the inquiry, cognisant of what the Secretary of State particularly wished to be informed about, I set out the main issues to be considered as: the effect of the proposals on the townscape or character and appearance of the area (and included in that the question of design and any effect on the setting and thereby the significance of heritage assets); the effect of the proposal on the living conditions of existing residents of the area (in terms of outlook, privacy, daylight/sunlight, overshadowing and the like) and prospective residents (in terms of the provision of play- and/or open-

space, and building- and in particular fire-safety); the question of whether any impacts on local services/infrastructure would be properly mitigated – included in that is the operation of the Obligations and drainage; and the proper context for decision-making and the influence of the Framework in the light of any benefits the scheme might bring forward. **[6.2-6.7, 7.2, 8.2]**

12.3 All that remains relevant, but before embarking on that analysis, there are some important points about the context for decision-making that feed into the consideration required.

The Baseline

12.4 As set out above, the application site was formerly home to Edith Summerskill House, one of two 'point blocks' on the Clem Attlee Estate, the other being Herbert Morrison House, constructed in the 1960s. Edith Summerskill House contained 68 residential units across 18 storeys (plus plant).

12.5 The demolition of Edith Summerskill House was certified as complete in November 2018, following an application for prior approval lodged in October 2016. An application for planning permission for a proposal much the same as that under consideration here was made in May 2017. Planning permission was granted for that proposal in October 2019. The reasons why this previous grant of permission was quashed by the High Court in December 2019 have been set out, and I need not dwell on them here.

12.6 What is relevant and important to note is that when the application at issue here was made (it was validated by the Council in July 2020), Edith Summerskill House had gone. The baseline for the consideration of the proposal in terms of its impacts is a cleared site, therefore. All accept that.

12.7 That said, the fact that the site was occupied by a tall building for more than 50 years is not something that can be completely ignored. It is a material consideration, as I explain below.

Housing and Affordable Housing

12.8 Helpfully, the Council has produced material to show that it can demonstrate a five-year supply of deliverable housing sites when measured against the target for the Borough set out in the London Plan.

12.9 This means that decision-making must be approached in the general manner set out in s.38(6) of the 2004 Act. I deal with this below.

12.10 However, the record of the Borough in relation to affordable housing is not so positive. All agree that there is a significant shortfall against what are pressing needs. The weight to be attached to the 133 affordable housing units the scheme proposes must take account of that situation. **[6.8-6.20, 7.3-7.23]**

Townscape and the Character and Appearance of the Area

Context

12.11 The genesis of the Clem Attlee Estate has been ably set out in the evidence. First, areas of largely terraced housing, destroyed or damaged by wartime bombing, were removed, and the estate, made up of predominantly mid-rise

housing, punctuated by two tall 18 storey point blocks, and a series of 11 storey 'Y' or tri-axial blocks, was arranged around areas of open space.

12.12 When built, the estate must have appeared very different to the traditional terraced housing on the surrounding streets. Notwithstanding changes made since, notably the removal of some of the original 'Y' or tri-axial blocks on the western side of the estate and their replacement with lower-rise housing, the estate retains that powerful contrast with its surroundings. It is a contrast that is in my view a pleasing one, reflecting as it does the changes the area has undergone in the Twentieth Century.

12.13 The application site itself, which was home to Edith Summerskill House one of the two point blocks on the estate, before its demolition, is on the south-eastern edge of the estate. It is bounded on either side by the four-storey Nye Bevan House and George Lindgren House. Notwithstanding the removal of Edith Summerskill House, the cleared application site is seen as part of the estate, rather than anything to do with the terraced housing to the south.

12.14 Moreover, the placement of a tall point block upon it was clearly a conscious design decision. The dialogue between Edith Summerskill House and Herbert Morrison House as point blocks, amid the lower housing and open spaces around them, was a carefully designed and important part of the overall composition of the estate.

12.15 I agree that the detailed resolution of the buildings that made up the estate was poor (though in the context of post-war austerity I can understand why that might be). However, that does not prevent an appreciation of the vision and ambition behind it, or the quality of the composition. It is perfectly reasonable for the architect to have used these qualities as the trigger for a new building on the site of Edith Summerskill House.

Design

12.16 Further, in the light of the London Plan, and the Framework, it is absolutely essential for the architect to have approached the design of the building from the point of view that the best possible use must be made of the site.

12.17 The key is that the site must be optimised, and I take that to mean that the correct balance must be struck between the amount of housing that can be provided upon it, and the impacts that might result from so doing.

12.18 That, considered alongside the fact that the site was home to a tall building as part of the composition of the original estate, suggests to me that, in design terms at least, there should be no 'in principle' difficulty with placing a tall building on the site. The success or otherwise of that depends to a large extent, as always, on the quality of the design.

12.19 The use of two interlocking squares as the plan-form is most thoughtful. It has the advantage of maximising the external face of the building, which in turn allows for more penetration of sunlight and daylight into the various rooms, and a high proportion of dual aspect units. Moreover, this device makes for a very efficient core, in terms of the use of space.

12.20 The various units themselves are similarly well-planned; their arrangement is logical and careful in the use made of space. Nevertheless, the units are,

relatively speaking, generous in terms of floor areas and room sizes. Part of the reason why they exceed the Mayor's space standards is because of the conscious decision to avoid the provision of external balconies and/or winter gardens. In view of the difficulties these can cause in buildings of the height proposed, I see no great difficulty with that, in design terms. In any event, the way in which the standardised window module functions would allow residents to open full height windows, protected by railings, allowing for natural ventilation, and ease of contact with the outside.

12.21 The way that the plan-form is translated into three dimensions is similarly intelligent. The use of a standardised window module, overlain by a second skin, with arches, gives the external form of the building, at its upper levels, a logic and discipline that is to my mind, pleasing. The switch from two-storey to three-storey arches in the second skin to reflect a grander scale as the height of the building increases is rational. The top of the building is well-handled too; it makes a distinct statement in moving away from the arch in the outer skin that makes for a plain upward conclusion. Taking the outer skin beyond the top-most storey of accommodation works well too, masking the plant, but also 'capturing' the sky.

12.22 That conclusion to the top of the building is underlined too by the proportional system adopted and in particular the application of the Golden Ratio to it. This would give the viewer the sense that the building is the height it is for good reason. This is not, like some, a tall building that has the appearance of having been 'extruded'; that it could continue upward indefinitely. It has a top that is set where it is by reason of design and proportion.

12.23 The way in which the proposal would meet the ground is also attractive. Cutting away a section of the plan-form to allow for an arcade provides for a legible way in not only to the building, but also to the estate. That new entrance to the estate would be announced by the building. The community room, and the attendant kitchenette, would provide an active frontage on to the play-space to the north.

12.24 The way in which the entrance to the building works is most adept. Access to the cycle storage at mezzanine level is by a stair with facility for bicycles to be wheeled up it. The landing opens out into the arcade, and the stair emerges on to a landing that looks down into the building's double-height entrance lobby. It is a small feature, but it speaks to the level of thought that has gone into the overall design.

12.25 The base of the building, formed in brickwork, would provide active frontages and assimilate the building into its surroundings. It would provide an obvious entrance to the southern part of the estate; something that it currently lacks. The hard landscaping, and associated planting, would augment that. At ground level, the building would work very effectively, and act, very clearly, as part of the Clem Attlee Estate[395].

12.26 From further afield, it would appear quite different to the rest of the estate but in my view that is no bad thing when the reason for that difference is that the

[395] See CD4.12c – AVR27 and AVR28

building would be of a significantly higher standard of detailed design[396]. The building would have a very well-composed base, middle, and top and in general terms, the high quality of the design would mean that the building would act as a beacon, marking the southern entrance to the estate, in a way that would enhance the townscape, and the character and appearance of the area. Having looked at some of the architect's other built work, it seems to me that this proposal will age well too, so that quality will endure. The other buildings I saw showed a care and attention in the choice of materials, and their detailing that is laudable.

12.27 Having said all that, I do not subscribe to the view that good design can excuse all impacts; even the best designed buildings can have those that grate. That is especially so when one is considering designated heritage assets that the building would have a relationship with. **[6.36-6.88, 7.24-7.49, 8.14-8.19]**

The Effect on the Setting and thereby the Significance of Heritage Assets

12.28 The applicant and the Council acknowledge that there would be harmful impacts on the setting and thereby the significance of two designated heritage assets – the Church of St Thomas of Canterbury, a Grade II* listed building, designed by Pugin, and dating from the mid-19th Century, and the Central Fulham Conservation Area. The Rule 6(6) party has cast the net further.

12.29 Dealing first of all with the Church of St Thomas of Canterbury, it is the chief element in a complex of listed buildings that includes the Presbytery (listed Grade II), the Harwarth Mausoleum (Grade II), a War Memorial (Grade II), and a Tombstone to Warrington Taylor[397] by Philip Webb (Grade II).

12.30 These monuments, and the Presbytery, do derive some of their significance as designated heritage assets from their setting, but this is bound up in the strong relationship they have with the church. That relationship would be unaffected by the proposal and on that basis, I find that it would have no harmful impact on their setting, or their significance.

12.31 The church, however, is a different matter. It predated the area's housing but over time, it has become enclosed. That is especially evident in the churchyard or cemetery (where the monuments are located) which is hemmed in by the backs of houses.

12.32 Nevertheless, the spire of the church is tall and slender and being visible from adjoining streets, notably Estcourt Road and Sherbrook Road, it marks the position of the church. These views of the spire contribute to the setting and the significance of the church.

12.33 Like Herbert Morrison House already does, and Edith Summerskill House did previously, the proposal would appear in many of these views[398]. However, in these and other similar views that are available I do not consider that the proposal would lead to visual tension with the spire, and it would not detract

[396] See CD4.12b and CD4.12c – AVR12, AVR13, AVR16, AVR17, AVR18, AVR26, AVR10 (as corrected in ID5), AVR21 and so forth
[397] William Morris' Business Manager
[398] CD4.12c - AVR06, AVR07, AVR08, and AVR09 and CD4.12a View F give a flavour

from the way in which it serves to locate the church amidst the housing that surrounds it. While strong, the presence of the proposal in these views would not have a harmful impact on the setting or the significance of the church.

12.34 There are, however, important views of the west front of the church, and the tower and the spire that springs from it, from the churchyard. The proposal would be a very strong presence in these views[399]. Notwithstanding the attractive design of the proposal, and the visibility of other tall buildings from the churchyard, there would be visual tension, particularly where the proposal would sit directly behind the spire. That would detract from, and have a harmful impact on, the setting, and thereby the significance of the church.

12.35 The church, and the churchyard, are located in the northernmost part of the Central Fulham Conservation Area and are an important part of its overall significance. The harmful impact on the setting and thereby the significance of the church would, therefore, also result in a harmful impact on the setting and thereby the significance of the conservation area.

12.36 In other views from within the conservation area, where the spire of the church and the proposal would be seen in the same view, for the reasons set out above, there would be nothing jarring about the relationship. As such, there would no harmful impact on the setting or the significance of the conservation area, as a result[400].

12.37 The Central Fulham Conservation Area is relatively large and there would be views of the proposal from many other parts of it too. However, in these views, the proposal would appear as a well-designed building, some distance away. There would be nothing harmful about that presence.

12.38 As set out above, the Rule 6(6) party raised issues around the impact of the proposal on a number of other designated heritage assets too.

12.39 The Church of St John, a Grade II listed building, is the focus of the Walham Green Conservation Area. The proposal would be prominent in views out of the conservation area, that also take in the church and in particular, its tower[401]. The Rule 6(6) party has suggested that the intrusion of the proposal into these views would be harmful to the setting and thereby the significance of both.

12.40 I do not share that view. The church derives an element of its significance as the centrepiece, on an island site, of what was once the separate rural settlement of Walham Green. That is the extent to which setting contributes to its significance. The visual presence of the proposal, strong as it would undoubtedly be, would not undermine, or confuse that relationship. In that way, the proposal would change the setting of the church, but it would not harm it, or the contribution it makes to the significance of the church.

12.41 In the same way, the significance of the conservation area is made up of the core of the (former) settlement it covers, and the buildings, particularly the historic ones, therein. The presence of a well-designed tall building, some distance away, well separated from it, would have an impact on the setting of

[399] CD4.12c - AVR9A, AVR9B, AVR 9C and also CD4.12a View 9C, View 9A, and View 9B
[400] CD4.12c - AVR06 AVR07 AVR08 and AVR09
[401] CD4.12c – AVR23, AVR24, AVRD and AVR25

the conservation area, and those buildings, but it would not be a harmful one. In my view, the significance of the Walham Green Conservation Area would not be dimmed buy the ability to see the proposal from it.

12.42 There is a pleasing group of historic buildings on Haldane Road which while outside the conservation area, are visible from within it along Haldane Road[402]. The proposal would be seen rising above the group, but I do not consider that in an urban setting, the relationship would be so extreme that harm would be caused to the setting or the significance of the conservation area as a result.

12.43 No.282 North End Road is a Grade II listed building, and its gate piers are also listed at Grade II. Both derive some significance from their setting as historic elements in a street-scene much changed since they were built. There would be a view towards the frontage of the building, from North End Road, along Coomer Place[403] that would take in the proposal at relatively close quarters. However, the juxtaposition would not be an awkward one, and the significance the listed buildings draw from their setting would not be undermined by the visual presence of the proposal.

12.44 The Sedlescombe Road Conservation Area lies to the north-east of the appeal site. There would be views of the proposal from it, and in particular something of an axial one along Anselm Road[404]. This conservation area derives most of its significance from the distinctive Arts and Crafts housing within it, and very little from its setting in a wider urban area. In that context, I do not see how, the visual presence of the proposal, despite being strong, would change that urban setting to the extent that the significance of the conservation area would be harmed.

12.45 Beyond the harm that would be caused to the setting and thereby the significance of the Church of St Thomas of Canterbury, and the Central Fulham Conservation Area, I agree that the analysis put forward on behalf of the Rule 6(6) party has tended towards equating visibility of the proposal with harm.

12.46 In terms of the two designated heritage assets where I have identified harm to significance through an impact on their settings, there is a need to calibrate that harm. Again, there is a difference between the parties.

12.47 The applicant and the Council agree that this harm would be at the lower end of the scale of less than substantial harm, while the analysis carried out on behalf of the Rule 6(6) party, in relation to these two designated heritage assets, puts it near the middle of that scale.

12.48 I accept that the threshold between less than substantial and substantial harm as referred to in the Framework has recently been considered by the High Court in relation to the decision of the Minister of State for Housing to grant permission for the Holocaust Memorial and Learning Centre in Victoria Tower Gardens, Millbank, and that the result of that is awaited. My analysis is therefore based on the position at the time of writing.

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[402] CD4.12c – AVRC and AVR21
[403] There is a photograph at Page 10 of the original Heritage Statement (CD1.17)
[404] CD4.12c – AVR20

12.49 The point was not made in these terms at the Inquiry but for my part I see little between the decision of the High Court in *Bedford*[405], the Court of Appeal in *Bramshill*[406], and the PPG. Essentially, substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached. That means that the range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar.

12.50 In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance.

12.51 In this particular case, the Church of St Thomas of Canterbury does derive something of its significance from its setting, but the overwhelming proportion is locked into its form and fabric. Moreover, harmful impacts as a result of the proposal on its setting, and thereby its significance, would only occur from a few places in the churchyard or cemetery. In views from the streets around the church, the proposal would have no harmful impact on its setting.

12.52 On that basis, the harm that would be caused to the setting and thereby the significance of the church would be less than substantial, and very much at the lower end of the scale.

12.53 In terms of the Central Fulham Conservation Area, its character and appearance, and all the significance locked into the buildings and spaces within it, would remain intact. The harmful impact to its significance would be limited to those views of the Church of St Thomas of Canterbury, set out above, that are within the conservation area. These views contribute something to the significance of the conservation area but bearing in mind its scale, and everything it contains, the harm that would be caused to the setting and thereby the significance of the conservation area as a result of the proposal would be very minor indeed and even further toward the bottom of the scale of less than substantial harm than what would be caused to the significance of the church.

12.54 It is often argued that such an approach leads to harm to the significance of a designated heritage asset being underestimated. However, what is under consideration is the impact of change on the significance of a designated heritage asset. If that change would come about as a result of development in the setting of that asset, then it is only the component of significance that the asset derives from its setting that would be affected. That is the outcome of the approach the Framework takes.

12.55 Returning to my findings above, these take me to paragraph 202 of the Framework. This sets out 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. That

[405] CD9.2
[406] CD9.1

balancing exercise needs to take place in the context of what it says in paragraph 199 of the Framework: When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).

12.56 In terms of the harmful impact of the proposal on the setting of the Church of St Thomas of Canterbury, a Grade II* listed building, there is a statutory as well as a policy, requirement to attach considerable importance and weight to it in the planning balance as a result of the workings of s.66(1) of the Act.

12.57 Nevertheless, even though the harm caused to the setting and thereby the significance of the church, and the setting and thereby the significance of the conservation area are weighty matters, they are, in my view, very clearly outweighed by the public benefits that would flow from the provision of 133 units of affordable housing in such a well-designed building, given the parlous situation the Council, and London generally, finds itself in, in relation to the supply of affordable housing. **[6.89-6.106, 7.50-7.65, 8.20-8.24]**

12.58 I take this conclusion into my consideration of the proposal against the development plan and other material considerations below but there is one further matter that needs to be dealt with here. That is the position of Historic England, who objected to the proposal[407].

12.59 As the Government's advisor on the historic environment, the views of Historic England should not be lightly set aside. However, in this instance, I have issues with their analysis. Historic England identify much the same impacts on the setting of the Church of St Thomas of Canterbury as I have above and say that these: *would cause serious harm to the setting of the Church of St Thomas of Canterbury, which we do not consider has clear and convincing justification as required by paragraph 194 of the Framework*[408].

12.60 Paragraph 200 of the (current version of the) Framework says that any harm or loss of the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.

12.61 Two points flow from that. First of all, *serious* is not a classification of harm that sits well with the Framework. Paragraph 200 makes clear that any harm to the significance of a designated heritage asset is to be considered serious. Indeed, s.66(1) and s.72(1) of the Act work in the same way. It is difficult therefore, to understand where along the scale of harm through less than substantial to substantial, the Historic England conclusion sits.

12.62 Second, the Courts have held[409] that if the decision-maker works through the sequence for dealing with proposals affecting heritage assets in the Framework and finds that any harm to significance is outweighed by public benefits, then the clear and convincing justification referred to in the Framework is in place.

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[407] CD2.19
[408] CD2.19 Page 6 under the heading Recommendation (this letter dated August 2020 refers to a previous iteration of the Framework)
[409] *Pugh v SoS for Communities and Local Government* [2015] EWHC 3 (Admin)

To work through that sequence, the decision-maker needs to take public benefits into account. It is not clear from their submission that Historic England have done so, and in any case, carrying out a balancing exercise of that sort would be well beyond their remit.

12.63 On that overall basis, very little weight can be attached to the views of Historic England, in this particular case.

Living Conditions

12.64 The starting point for an analysis of the impacts of the proposal on existing residents in the area, whether they live in the Clem Attlee Estate or in the terraced housing to the south of the site, is the baseline. It is correct to say that any redevelopment of the site, that makes best use of it as policy requires, is going to have something of an impact on the living conditions of existing residents of the area.

12.65 In terms of their outlook, the building proposed is going to be prominent and a strong visible presence for existing residents. However, in an urban setting, it would not be sited so close to existing dwellings that it would appear overbearing or oppressive. Windows in the proposal will overlook adjoining houses and gardens but the degree of separation would be such that there would be no significant reduction in the levels of privacy enjoyed by existing residents as a result.

12.66 The proposal would lead to some reduction in levels of daylight and sunlight reaching nearby dwellings and their gardens, and open spaces. However, the technical analyses carried out on behalf of the applicant, show that these reductions would be well within reasonable bounds.

12.67 Points were raised too about traffic generation and parking. The proposal is designed to be 'car-free'. People living within the development would not be able to apply for residents' parking permits. That it seems to me would act as a significant disincentive to car ownership, as would the ready access to public transport from the site. I appreciate that the development would lead to an increase in foot traffic in the streets around the site, but the street pattern is such that this would be easily dissipated. I do not believe there would be any difficulties in this regard as a result of the proposal.

12.68 In that overall context, I am content that the proposal would have no unacceptable impact on the living conditions of existing residents of the area.

12.69 As far as the living conditions of prospective residents of the proposal are concerned, I have covered above the quality of the internal accommodation that it offers. The lack of balconies and/or winter gardens would be more than compensated by the generosity of the internal space on offer. On top of that, there is open space available within the estate itself (I deal with play-space specifically below) and there is a good deal of open space a short distance away, in Normand Park.

12.70 Points have been raised about the availability of play-space. The proposal does not provide the amount of on-site play-space that would be required by London Plan Policy S4. However, it is difficult to see how it could while making best use of the site as required by other London Plan Policies, and the Framework. The applicant has dealt with this through a financial contribution

in the Agreement under s.106, an approach the supporting text to London Plan Policy S4 allows for.

12.71 This obligation will allow for a qualitative improvement in the facilities for play that sit to the immediate north of the site. That seems to me an appropriate response to the balance required between the provision of play-space and the need to make best use of the application site for housing. While it does not bear heavily on that conclusion, I draw comfort too from the quality and quantity of facilities for play in the nearby Normand Park.

12.72 The impact of the proposal on the microclimate around the building in terms of wind has been raised. There would be some impact, as might be expected from any tall building, in the windy seasons in particular, but in my view the scheme addresses those impacts in a well-balanced way. Those using the spaces around the base of the building would not be affected to an unacceptable extent.

12.73 One other matter that appears best dealt with under the ambit of the living conditions of prospective residents is fire safety. I can appreciate, in the context of the awful events at Grenfell, why the provision of a single staircase in a tall building like that at issue is questioned. However, a call in under s.77 is not the place to be reviewing the approach to fire safety in, and means of escape from, tall buildings. That would be a matter for any review of the Building Regulations that may flow from conclusions reached by the Grenfell Inquiry. In the light of requirements as they stand, there is no good reason to question the approach taken to fire safety by the applicants.

12.74 Taking these points together, I am content that the proposal would provide generally excellent living conditions for prospective residents and would have no undue impact on existing residents of the area. **[6.125-6.135, 7.92-7.117, 8.25-8.30, 9.3-9.5]**

Local Services/Infrastructure

12.75 I have dealt with these matters, in the main, in my analysis of the various obligations in the Agreement under s106 set out above. The only matter not dealt with in that analysis is drainage. The applicant's technical material addresses this matter, in terms of capacity, and general approach, and a condition is to be attached to deal with the precise details of surface and foul water drainage. There are no issues in terms of drainage that weigh against the proposal. **[6.128, 7.118-7.126]**

Final Conclusions

12.76 As I have set out above, the harm caused to the setting and thereby the significance of the Church of St Thomas of Canterbury, and the setting and thereby the significance of the Central Fulham Conservation Area attract considerable importance and weight but they are, nevertheless, very clearly outweighed by the public benefits that would flow from the provision of 133 units of affordable housing in such a well-designed building, in the light of the prevailing situation in relation to the supply of affordable housing. On that basis, given that it includes the balancing exercise in the Framework, the proposal is in clear accord with Local Plan Policy DC8.

12.77 However, London Plan Policy HC1 does not reflect the approach of the Framework to designated heritage assets in that it seeks to conserve the significance of heritage assets, without making provision for any harm to significance to be outweighed by public benefits. Given that the proposal would harm the significance of designated heritage assets, as set out above, it does not comply with London Plan Policy HC1.

12.78 That leads me on to considerations of design, and associated matters. The site is not in one of the areas deemed suitable for tall buildings in the Local Plan. As a result, the proposal is not in accordance with the locational requirements of Local Plan Policy DC3, or Part B of London Plan Policy D9.

12.79 However, as I have set out above, the design of the proposal is exemplary and it would be an addition to the skyline of outstanding quality that would raise the bar for development in the area, and London generally. In so doing, it would meet all the criteria set out in Local Plan Policy DC3, and most of those in Part C of London Plan Policy D9.

12.80 The complication, in terms of London Plan Policy D9 is the stipulation therein that proposals should take account of, and avoid harm, to the significance of London's heritage assets and their settings. Further, proposals resulting in harm will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm. In carrying out the heritage balancing exercise above, I have concluded that there are clear public benefits that very easily outweigh the harm to the significance of designated heritage assets the proposal would cause so on that basis, this part of the policy is satisfied.

12.81 However, the policy does suggest that the 'clear and convincing justification' required should include the exploration of alternatives, on the basis that harm should, if possible be avoided. The approach to alternatives was explored at the Inquiry.

12.82 For my part, I am not sure it takes matters very far in the context of an application for housing, and in particular affordable housing. It can be argued that the 133 units of affordable housing could be provided elsewhere in the Borough, or indeed London. However, the way in which the London Plan approaches housing, and making the best use of land, would suggest that any alternative site to that at issue should be accommodating the absolute maximum amount of housing, in any event. In the case of housing, unlike for example, a road scheme[410], there are no 'alternatives' in that sense. If a scheme has impacts that are found acceptable in the light of public benefits, then that should be the end of the matter. On that basis, and in the context of the housing this particular scheme would bring forward, I am content that the criteria in Part C of London Plan Policy D9 are met.

12.83 I would also observe, in relation to alternatives, that any alternative scheme for the site would have to make best use of it in order to accord with the approach of the London Plan. In that light, I do not believe that the suggestions made by the Rule 6(6) party that a scheme of 7 storeys or lower might be pursued are tenable. Of course, something higher than that, but

[410] As in the *Save Stonehenge* case – CD9.4

lower than the proposal, could be arrived at. However, any such scheme (and there are none before the Inquiry) would be very likely to have much the same impacts on the setting and thereby the significance of the church, and the conservation area, while delivering a reduced number of housing units, and correspondingly less public benefit as a result.

12.84 It follows from my conclusions above that in terms of its design, the proposal attains the high bar required by Local Plan Policy DC2. Moreover, in setting those high standards while simultaneously delivering 133 units of high-quality units of affordable housing, it complies with London Plan Policies D2 and D3, and London Plan Policy GG2.

12.85 In more general terms, the delivery of 133 affordable homes would contribute to meeting London and the Borough's housing, and affordable housing, targets as set out in London Plan Policies GG4, H1 and H4, and Local Plan Policies HO1, HO3 and HO5.

12.86 Some dispute has been raised about the applicability of London Plan Policy H8 which deals with the loss of existing housing and estate redevelopment. Edith Summerskill House was demolished through a separate process, and before, the scheme at issue was (first) considered by the Council. It is right then that the baseline for the consideration of impacts is a cleared site.

12.87 However, the suggestion that this also means that London Plan Policy H8 does not apply stretches that too far, in my view. When the Council took the decision to demolish Edith Summerskill House it was not a decision taken in isolation. There was always the intention that it would be replaced. In that light, London Plan Policy H8 must have a bearing on the proposal and in increasing the number of units on site from 68 to 133, the proposal clearly accords with its requirement to ensure any existing housing lost, is replaced by new housing at existing or higher densities.

12.88 The housing that would be brought forward by the scheme would provide living conditions for prospective residents that would be excellent in the main, and the impact on the living conditions of existing residents of the area would be well within reasonable bounds. On that basis, the proposal accords with London Plan Policy D6 and Local Plan Policy DC2, in this regard, and the Council's Planning Guidance SPD.

12.89 There is nothing to suggest that the scheme would raise any issues in terms of fire safety so there is accordance with London Plan Policy D12

12.90 In terms of the provision of play-space, the scheme does not accord with the requirements of London Plan Policy S4. However, as set out above, the approach taken in the Agreement under s106, and the financial contribution therein, satisfies paragraph 5.4.6 of the accompanying text.

12.91 Bringing all those points together, the scheme does not comply with London Plan Policy HC1 in terms of its harmful impact on the significance of designated heritage assets, Local Plan Policy DC3, the locational requirements for tall buildings in London Plan Policy D9, or London Plan Policy S4 in relation to play-space.

12.92 Nevertheless, in delivering 133 affordable housing units in a building of exemplary design that makes efficient use of a well-located, small, previously-

developed site, while providing safe and mostly excellent living conditions for its residents, without any undue impact on the living conditions of existing residents, the proposal accords with London Plan Policies GG2, GG4, H1, H4, H8, D2, D3, D6 and D12, and the criteria for tall buildings in D9, and Local Plan Policies HO1, HO3, HO5, DC8, and DC2.

12.93 On that basis, it is my strong conclusion that there is accord with the development plan, read as a whole.

12.94 There are points I would underline in reaching that conclusion. First, the *Hillingdon* judgment makes plain that a failure to accord with the locational requirements in Part B of London Plan Policy D9 does not stand in the way of a finding that a scheme for a tall building can accord with the development plan read as a whole.

12.95 I accept that the approach of Local Plan Policy DC3 is different because the criteria therein are specifically directed at the locations identified in the policy. However, it is fair to observe that this policy was framed in the context of the housing targets in the Local Plan which were based on the previous iteration of the London Plan. Those targets have increased significantly in the current London Plan. The locational approach of Local Plan DC3 must be, at the very least, open to question, therefore.

12.96 I might also add that London Plan Policy D9 and Local Plan Policy DC3 appear to make no provision for the approach to be taken to a *replacement* tall building. Given that it was always the intention of the Council to replace Edith Summerskill House, that must have some bearing on the application of these policies.

12.97 London Plan Policy HC1 that deals with heritage assets is of course very recently adopted. However, in failing to include a balancing exercise allowing any adverse impacts of a development proposal on the significance of heritage assets to be weighed against public benefits, it is, in my view, somewhat out of step with the Framework. It can reasonably be surmised that this omission was made in the knowledge that any failure against this policy would not prevent a finding of accordance with the development plan read as a whole. Otherwise, it seems to me, the ambitious targets for development in the London Plan would be very likely to be frustrated by the high number of heritage assets across the capital. It might also explain why, despite its absence from London Plan Policy HC1, it is included in London Plan Policy D9.

12.98 Finally, while London Plan Policy S4 sets out requirements for the provision of play-space, the accompanying text makes allowance for the payment of an appropriate financial contributions in lieu. That is what is in place here and the failure of the proposal to accord with the terms of the policy itself must be seen in this light.

12.99 For all those reasons it is my conclusion that the proposal is in accordance not only with the development plan, read as a whole, but also the Framework. There are no other material considerations that would justify a conclusion contrary to the development plan. **[6.136-6.151, 7.127-7.149, 8.31-8.42]**

13 Recommendations

13.1 I recommend that planning permission should be granted for the proposal, subject to the conditions set out in Annex D, and the Agreement under s.106.

Paul Griffiths

INSPECTOR

Annex A: APPEARANCES

FOR THE APPLICANT:

Zack Simons of Counsel	Instructed by Matthew White of Herbert Smith Freehills LLP
He called	Simon Henley RIBA Director Henley Halebrown
	Professor Robert Tavernor BA DipArch PhD RIBA Director, Tavernor Consultancy
	Ignus Froneman BArch.Stud ACIfA IHBC Director, Cogent Heritage
	Neil Henderson MTP MRTPI Partner, Gerald Eve LLP

FOR THE LOCAL PLANNING AUTHORITY:

Hereward Phillpot QC	Instructed by Poonam Rajput on behalf of the Chief Solicitor LBHF
He called	Allan Jones BA(Hons) MRTPI Dip.Town Planning and Urban Design Urban Design and Heritage Team Leader, LBHF
	Peter Wilson MA MRTPI Deputy Team Leader Strategic Applications, LBHF

FOR THE R6(6) PARTY:

Richard Turney

INTERESTED PERSONS:

Irene Chia	Local Resident
Paul Nichols	Local Resident

Annex B: CORE DOCUMENTS

Section 1	Application Documents Submitted
CD1.1	Application Forms and Certificate
CD1.2	CIL Form
CD1.3	Covering Letter (Gerald Eve LLP)
CD1.4	Design and Access Statement (HHbR)
CD1.5	Acoustic Report (Arup)
CD1.6	Air Quality Assessment (AECOM)
CD1.7	Amenity, Education and Primary Health Note (AECOM)
CD1.8a	Tree Constraints Plan Revision A
CD1.8b	Tree Constraints Plan Revision B
CD1.9	Basement Construction Method Statement (Arup)
CD1.10	Construction Management Plan (Arup)
CD1.11	Daylight and Sunlight Statement (GIA)
CD1.11a	Daylight and Sunlight Appendices
CD1.12	Desk Based Contamination Report (Arup)
CD1.12a	Appendix P1 to Desk Based Contamination Report
CD1.12b	Appendix P2
CD1.12c	Appendix P3
CD1.12d	Appendix P4
CD1.12e	Appendix P5
CD1.12f	Appendix P6
CD1.12g	Appendix P7
CD1.12h	Appendix P8
CD1.12i	Appendix P9
CD1.13	Ecology Statement (AECOM)
CD1.13a	Phase Habitat Survey
CD1.14	Energy Strategy (Arup)
CD1.15	Flood Risk Assessment (Arup)
CD1.16	Fire Strategy (Arup)
CD1.16a	Fire Statement (Addendum Issue)

CD1.17	Heritage Statement (Cogent Heritage)
CD1.18	Planning Statement (Gerald Eve LLP)
CD1.19	Pedestrian Level Wind Assessment (RWDI)
CD1.20	Statement of Community Involvement (George Cochrane)
CD1.21	Sustainability and BREEAM (including SuDS) (Arup)
CD1.22	Townscape, Heritage and Visual Impact Assessment (Tavernor Consultancy) (2019)
CD1.23	Transport Assessment (including Waste) (Vectos)
CD1.24	Daylight and Sunlight Report (24 February 2020) (Internal Daylight, Sunlight and Overshadowing Report)
CD1.25	Life-Cycle Carbon Emission Assessment

Section 1A - Drawings

CD1A_1	Site Location Plan
CD1A_2	Existing Site Layout Plan
CD1A_3	Existing Site South-East Elevation
CD1A_4	Existing Site South-West Elevation
CD1A_5	Existing Site North-West Elevation
CD1A_6	Existing Site North-East Elevation
CD1A_7	Proposed Site Location Plan
CD1A_8	Proposed Site Layout Plan
CD1A_9	Proposed Site South-East Elevation
CD1A_10	Proposed Site South-West Elevation
CD1A_11	Proposed Site North-West Elevation
CD1A_12	Proposed Site North-East Elevation
CD1A_13	Proposed Basement Plan
CD1A_14	Proposed Ground Floor Plan
CD1A_15	Proposed Mezzanine Plan
CD1A_16	Proposed First to Third Floor Plans
CD1A_17	Proposed Fourth Floor Plan
CD1A_18	Proposed Fifth to Nineteenth Floor Plans
CD1A_19	Proposed Roof Top Floor Plan
CD1A_20	Proposed Roof Plan

CD1A_21	Proposed Building South-East Elevation
CD1A_22	Proposed Building South-West Elevation
CD1A_23	Proposed Building North-West Elevation
CD1A_24	Proposed Building North-East Elevation
CD1A_25	Proposed Building Section A-A
CD1A_26	Proposed Building Section B-B
CD1A_27	Proposed Building Section C-C
CD1A_28	Proposed Building Section D-D
CD1A_29	Proposed Building Section E-E
CD1A_30	Proposed Building Section F-F
CD1A_31	Façade Details Typical Upper Floor Type A
CD1A_32	Façade Details Typical Upper Floor Type B
CD1A_33	Façade Details Typical Roof Level Type A
CD1A_34	Façade Details Ground Floor South-East Façade
CD1A_35	Façade Details Ground Floor South-West Façade
CD1A_36	Façade Details Ground Floor South-West Façade
CD1A_37	Façade Details Ground Floor North-West Façade
CD1A_38	Façade Details Ground Floor North-West Façade
CD1A_39	Façade Details Ground Floor North-East Façade
CD1A_40	Façade Details Ground Floor North-East Façade
CD1A_41	Façade Details Ground Floor North-East Façade
CD1A_42	Façade Details Ground Floor North-East Façade
CD1A_43	Façade Details Ground Floor Arcade Section

Section 2

CD2.1	Validation Notice
CD2.2	Site Notice
CD2.3	GLA Stage 1 Report
CD2.4	GLA Stage 2 Report
CD2.5	HSF Letter to MHCLG dated 17 November 2020
CD2.6	MHCLG Call-In Letter dated 10 June 2021
CD2.7	MHCLG Rule 6(6) Request Ruling dated 2 July 2021

CD2.8	ESH Energy Strategy – Arup Response to GLA Comments
CD2.9	2020 GLA Reporting Sheet ESH (sent with Arup note to LBHF)
CD2.10	Edith Summerskill House Energy Comments – Arup Response
CD2.11	Edith Summerskill House Energy Comments – Arup Response V2
CD2.12	Updated 2020 GLA Emissions Reporting Spread Sheet ESH V2
CD2.13	Correspondence from Paul Baker (LBHF) confirming the position regarding future heat networks in the area
CD2.14	Updated Energy Assessment and Sustainability Report
CD2.15	Fire Statement Addendum (17 September 2020)
CD2.16	Drainage and SuDS Addendum Technical Note
CD2.17	Written Response by the Applicant's Townscape Consultant Robert Tavernor (27 September 2020) to Comments from Claire Browne
CD2.18	Heritage Note by Cogent Heritage (24 September 2020) in response to comments made by Lorenzo Pandolfi of HCUK Group
CD2.19	Letter (10 August 2020) to Case Officer Peter Wilson on behalf of Historic England
CD2.20	Letter for Gerald Eve LLP to Peter Wilson (23 September 2020) enclosing draft conditions with text changes)

Section 3 – Committee Documents

CD3.1	LBHF Committee Agenda
CD3.2	LBHF Committee Report
CD3.3	LBHF Committee Report Addendum – Pages 1-5
CD3.4	LBHF Committee Minutes – Extract of ESH Minutes

Section 4 – Inquiry Documents

CD4.1	Applicant's Statement of Case
CD4.2	LBHF Statement of Case
CD4.3	Rule 6(6) Party Statement of Case
CD4.4	Statement of Common Ground (Applicant and Council) (August 2021)
CD4.5	Claimant's Grounds of Challenge
CD4.6	SoS Summary Grounds
CD4.7	Statement of Common Ground (Applicant, Council and Rule 6 Party)
CD4.8	Proof of Evidence of Allan Jones (LBHF)
CD4.9	Proof of Evidence of Peter Wilson (LBHF)

CD4.10	Proof of Evidence of Simon Henley (Applicant)
CD4.10a	Simon Henley's Slideshow
CD4.10b	Simon Henley's Video Animation
CD4.11	Proof of Evidence of Ignus Froneman (Applicant)
CD4.11a	Appendices to Ignus Fronemann's PoE
CD4.12	Proof of Evidence of Robert Tavernor (Applicant)
CD4.12a	Professor Tavernor's Appendix RT2 (Additional Views since TVIA)
CD4.12b	Professor Tavernor's Appendix RT3 (Views for On-Site Assessment)
CD4.12c	Professor Tavernor's Appendix RT3 (Views for On-Site Assessment)
CD4.13	Proof of Evidence of Neil Henderson (Applicant)
CD4.14	Proof of Evidence of Richard Turney (R6)
CD4.15	Summary Proof of Evidence of Allan Jones
CD4.16	Summary Proof of Evidence of Peter Wilson
CD4.17	Summary Proof of Evidence of Simon Henley
CD4.18	Summary Proof of Evidence of Ignus Froneman
CD4.19	Summary Proof of Evidence of Robert Tavernor
CD4.20	Summary Proof of Evidence of Neil Henderson
CD4.21	Supplementary Proof of Evidence of Neil Henderson
CD4.22	Rebuttal Proof of Evidence of Ignus Froneman
CD4.23	Note by GIA addressing Overshadowing (24 November 2021)
CD4.24	GIA Overshadowing Note (Corrected) (30 November 2021)
CD4.25	GIA Sun Exposure on Ground Assessment (30 November 2021)
CD4.26	LBHF 5 Year Housing Land Supply and Explanatory Note
CD4.27	Agreement under s.106 and Regulation 122 Compliance Schedule

Section 5 – LBHF Policy Documents

CD5.1	LBHF Local Plan
CD5.2	LBHF Local Register of Buildings of Merit (August 2015)
CD5.3	LBHF Housing Register (Excerpt)

Section 6 – Mayor of London Policy Documents

CD6.1	London Plan

Section 7 – National Policy Documents

CD7.1 National Planning Policy Framework

CD7.2 Planning Practice Guidance – Design: Process and Tools

CD7.3 National Design Guide – Planning Practice Guidance for Beautiful, Enduring and Successful Places (2021)

CD7.4 Advice Note 2 – Managing Significance in Decision-Taking in the Historic Environment (Historic England – March 2015)

CD7.5 Advice Note 3 – The Setting of Heritage Assets: Good Practice Advice in Planning (Historic England – December 2017)

CD7.6 Advice Note 4 – Tall Buildings (Historic England – 2015)

CD7.7 Advice Note 4 – Tall Buildings (2nd Edition Consultation Draft) (Historic England – March 2020)

CD7.8 Conservation Principles (Historic England – 2008)

CD7.9 Advice Note 12 – Statements of Heritage Significance (Historic England)

Section 8 – Other Relevant Policy and Guidance

CD8.1 LBHF – Planning Guidance SPD (February 2018)

CD8.2 Mayor's Good Practice Guide to Estate Regeneration

Section 9 – Relevant Case Law

CD9.1 City and Country Bramshill v SoS

CD9.2 Bedford BC v SoS

CD9.3 R v Rochdale MBC

CD9.4 R (on the application of Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport

CD9.5 Trusthouse Forte Hotels Ltd v Secretary of State

CD9.6 Secretary of State Decision on Citroen Site (APP/G1600/V/19/3226914)

Section 12 – Townscape Assessment Methodology

CD12.1 GLA London View Management Framework SPG (2012)

Section 13 – Townscape Character Areas

CD13.1 LBHF – Walham Grove Conservation Area Character Profile (2000)

CD13.2 LBHF – Barclay Road Conservation Area Character Profile (2017)

CD13.3 LBHF – Parsons Green Conservation Area Character Profile (1999)

CD13.4 LBHF – Queen's Club Gardens Conservation Area Character Profile (2005)

CD13.5 LBHF – Barons Court Conservation Area Character Profile (2005)

CD13.6 LBHF – Crabtree Conservation Area Character Profile (2001)

CD13.7 LBHF – Moore Park Conservation Area Character Profile (2008)

CD13.8 RBKC – The Billings Conservation Area Character Profile (2016)

CD13.9 RBKC – Brompton Cemetery Conservation Area Proposals Statement (Draft 2017)

CD13.10 RBKC – Nevern Square Conservation Area Proposals Statement (2018)

CD13.11 Pevsner & Cherry: The Buildings of England: London 3: North-West (1990) (Extract)

Section 14 – Miscellaneous

CD14.1 Townscape, Heritage and Visual Impact Assessment by Tavernor Consultancy (2017) – pages 33-79

CD14.2 LBHF Committee Report (2017)

CD14.3 High Court Consent Order – 9 December 2019 – CO/4423/2019

CD14.4 R (on the application of the London Borough of Hillingdon) v Mayor of London (Summary Grounds of Resistance on behalf of the Mayor of London) (Redacted)

CD14.5 London Historic Parks and Gardens Trust v Minister of State for Housing (Summary Grounds of Defence on behalf of the Minister)

CD14.6 London Historic Parks and Gardens Trust v Minister of State for Housing (Summary Grounds of Defence on behalf of the Secretary of State)

CD14.7 London Historic Parks and Gardens Trust v Minister of State for Housing (Claimant's Reply to Summary Grounds of Defence)

CD14.8 R (on the application of the London Borough of Hillingdon) v Mayor of London (Statement of Facts and Grounds on behalf of the London Borough of Hillingdon) (Redacted)

CD14.9 R (on the application of the London Borough of Hillingdon) v Mayor of London (Skeleton Argument on behalf of the London Borough of Hillingdon) (Redacted)

CD14.10 R (on the application of the London Borough of Hillingdon) v Mayor of London (Skeleton Argument on behalf of the Mayor of London) (redacted)

CD14.11 Tall Buildings Background Paper from the Local Plan Examination

CD14.12 Email Correspondence (10 September 2021 to 29 November 2021) between Applicant, Council and Rule 6 Party with 2 Play Space Plans

CD14.13 Weblink – Clem Attlee Board

CD14.14 Weblink – Fulham Estate Goes Green

CD14.15 London Historic Parks and Gardens Trust v Minister of State for Housing (Detailed Grounds of Resistance on behalf of the Minister)

Annex C: INQUIRY DOCUMENTS

ID1	Appellant's Opening and Appearances
ID2	Council's Opening Statement
ID3	Council's Appearances
ID4	Table of Corrections to Applicant's Evidence
ID5	Replacement Image AVR10
ID6	Draft Conditions
ID7	Submission of Mr Nichols
ID8	Draft Agreement under s.106 and Reg 122 Schedule
ID9	Submissions of Tony Bird FICH (03/12/21) enclosing a letter dated 07/08/21 from Ronnie King OBE OStJ QFSM FIFireE, Adviser and Hon. Admin. Secretary to the All-Party Parliamentary Fire Safety & Rescue Group
ID10	Closing Statement by Mr Turney
ID11	Closing Statement on behalf of the Council
ID12	Closing Statement on behalf of the Applicant
ID13	Approved Judgment in *Hillingdon*
ID14	Submissions by the Parties on *Hillingdon*
ID15	Agreed Itinerary for Accompanied Site Visit
ID16	Completed Agreement under s.106

Annex D: SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:
9_1307_P_001_B: Site Location Plan;
9_1307_P_100_B: Proposed Site Location Plan;
9_1307_P_110_B: Proposed Site Layout Plan;
9_1307_P_120_A: Proposed Site South-East Elevation;
9_1307_P_121_A: Proposed Site South-West Elevation;
9_1307_P_122_A: Proposed Site North West Elevation;
9_1307_P_123_A: Proposed Site North East Elevation;
9_1307_P_200_B: Proposed Basement Plan;
9_1307_P_201_C: Proposed Ground Floor Plan;
9_1307_P_202_A: Proposed Mezzanine Plan;
9_1307_P_203_A: Proposed First to Third Floor Plans;
9_1307_P_204_A: Proposed Fourth Floor Plan;
9_1307_P_205_A: Proposed Fifth to Nineteenth Floor Plans;
9_1307_P_206_A: Proposed Roof Top Floor Plan;
9_1307_P_207_A: Proposed Roof Plan;
9_1307_P_300_A: Proposed Building South East Elevation;
9_1307_P_301_A: Proposed Building South West Elevation;
9_1307_P_302_A: Proposed Building North West Elevation;
9_1307_P_303_A: Proposed Building North East Elevation;
9_1307_P_400_A: Proposed Building Section AA;
9_1307_P_401_A: Proposed Building Section BB;
9_1307_P_402_A: Proposed Building Section CC;
9_1307_P_403_A: Proposed Building Section DD;
9_1307_P_404_A: Proposed Building Section EE;
9_1307_P_405_A: Proposed Building Section FF;
9_1307_P_500_A: Façade Details Typical Upper Floor Type A;
9_1307_P_501_A: Façade Details Typical Upper Floor Type B;
9_1307_P_502_A; Façade Details Typical Roof Level Type A
9_1307_P_510_A: Façade Details Ground Floor South East Facade;
9_1307_P_511_A: Façade Details Ground Floor South West Facade;
9_1307_P_512_A: Facade Details Ground Floor South West Facade;
9_1307_P_513_A: Façade Details Ground Floor North West Facade;
9_1307_P_514_A: Façade Details Ground Floor North West Facade;
9_1307_P_515_A: Façade Detail Ground Floor North East Facade;
9_1307_P_516_A: Façade Detail Ground Floor North East Facade;
9_1307_P_517_A: Façade Detail Ground Floor North East Facade;
9_1307_P_518_A: Façade Detail Ground Floor North East Facade;
9_1307_P_519_A: Façade Detail Ground Floor Arcade Section

3) No development shall commence until the establishment of a Community Liaison Group, to be maintained for the duration of the construction works hereby approved, having the purpose of (i) informing nearby residents and businesses of the building programme and progress of demolition and construction works for the development; (ii) informing nearby residents and businesses of appropriate mitigation measures being undertaken as part of each phase of the development; (iii) informing nearby residents and businesses of

considerate methods of working such as working hours and site traffic; (iv) providing advanced notice of exceptional hours of work, if and when appropriate; (v) providing nearby residents and businesses with an initial contact for information relating to the works and procedures for receiving/responding to comments or complaints regarding the development with the view of resolving any concerns that might arise; (vi) providing telephone contacts for nearby residents and businesses 24 hours daily throughout the works for the development; and (vii) producing a leaflet prior to the commencement of the development for distribution to nearby residents and businesses, identifying progress of the development and which shall include an invitation to register an interest in the Liaison Group. The terms of reference for the Community Liaison Group shall be submitted to the Council for approval prior to commencement of any works on site and it shall be implemented in accordance with the approved terms of reference. The Community Liaison Group shall meet at least once every quarter until completion of the development.

4) The development shall not commence (save for below ground works) until particulars and samples (where appropriate) of all the materials to be used in all external faces of the building including details were relevant of the colour, composition and texture of the concrete, metal and stone work; details of all surface windows including window opening and glazing styles; roof top plant and general plant screening; and all external hard surfaces including paving have been submitted to and approved in writing by the local planning authority. These details will have reference to and include the mitigation measures identified within the submitted Pedestrian Level Wind Microclimate Assessment RWDI #2002211 REV B 24 February 2020. The development shall be carried out in accordance with the approved details and retained as such thereafter.

5) The development shall not commence (save for below ground works) until detailed drawings at a scale not less than 1:20 (in plan, section and elevation) of typical sections/bays of the approved building have been submitted to and approved in writing by the local planning authority. These shall include details of the proposed cladding, fenestration (including framing and glazing details), balustrades, shop-front and entrances and roof top plant and plant screening. The development shall be carried out in accordance with the approved details and retained as such thereafter.

6) Any changes proposed to the approved roof plant layout shall be prepared on detailed plans, sections and elevations at a scale of 1:20 and submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

7) Prior to commencement of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include a detailed plan showing phasing; relevant foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent); contractors' method statements; waste classification and disposal procedures and locations; location of site offices, ancillary buildings, plant, wheel-washing facilities, stacking bays and car parking; details of storage and any skips, oil and chemical storage; membership of the Considerate Contractors Scheme; delivery locations; the proposed control measures and monitoring for noise and vibration; lighting; restriction of hours of work and all associated activities

audible beyond the site boundary to 0800-1800 hours Mondays to Fridays and 0800-1300 hours on Saturdays; and advance notification to neighbours and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works. The details shall include for each phase of works the use of on-road Ultra Low Emission Zone compliant vehicles for example Euro 6 and Euro VI; and provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway. The works shall be carried out in accordance with the relevant approved CMP.

8) Prior to commencement of the development hereby permitted a Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the local planning authority. The CLP shall include the details for all the relevant foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent). The development shall be carried out in accordance with the relevant approved Construction Logistics Plan. Each CLP shall cover the following minimum requirements: site logistics and operations; construction vehicle routing; contact details for site managers and details of management lines of reporting; a detailed plan showing phasing; location of site offices, ancillary buildings, plant, wheel-washing facilities, stacking bays and car parking; storage of skips, oil and chemical storage; access and egress points; and details of membership of the Considerate Contractors Scheme.

9) No part of the development hereby approved shall be occupied or used prior to the provision of the cycle storage arrangements for not less than 244 long-stay spaces (including 8 for larger cycles) inside the building and 4 short-stay, visitor spaces externally, as indicated on the approved drawings, and set out within the submitted Transport Assessment, have been fully provided and made available. Such facilities shall be retained for their intended purpose thereafter.

10) No part of the development hereby approved shall be occupied or used until a Cycle Parking Management Plan has been submitted to and approved in writing by the local planning authority. The development shall not be operated other than in accordance with the approved Cycle Parking Management Plan.

11) No part of the development shall be occupied prior to the provision of the refuse storage enclosures, including provision for the storage of recyclable materials, have been provided in accordance with the approved drawings. All the refuse/recycling generated by the development hereby approved shall thereafter be stored within the approved areas and these facilities shall be retained for their intended purpose thereafter.

12) No part of the development hereby approved shall be used or occupied until a Waste Management Strategy has been submitted to and approved in writing by the local planning authority. Details shall include how recycling will be maximised and be incorporated into the facilities of the development. All approved storage arrangements shall be provided in accordance with the approved details and be retained as such thereafter.

13) Prior to first occupation of the development, a Delivery and Servicing Plan (DSP) including vehicle tracking where required, shall be submitted to and approved in writing by the local planning authority. The DSP shall set out the management of deliveries, emergency access, collection of waste and recyclables, times and

frequencies of deliveries and collections, silent reversing methods, location of loading bays, and vehicle movement in respect of the community floorspace. The approved measures shall be implemented for the lifetime of the development.

14) No development shall commence until a scheme for temporary fencing and/or enclosure of the site has been submitted to and approved in writing by the local planning authority, and the temporary fencing and/or enclosure has been erected in accordance with the approved details. The temporary fencing and/or enclosure shall thereafter be retained for the duration of the building works in accordance with the approved details. No part of the temporary fencing and/or enclosure of the site shall be used for the display of advertisements.

15) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the local planning authority. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

16) No development shall commence until a site investigation scheme has been submitted to and approved in writing by the local planning authority. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

17) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until (following a site investigation undertaken in compliance with the approved site investigation scheme) a quantitative risk assessment report is submitted to and approved in writing by the local planning authority. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages; and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

18) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until a remediation method statement, if required, is submitted to and approved in writing by the local planning authority. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

19) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full if required, and a verification report confirming these works has been submitted to, and approved in writing, by the local planning authority. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all appropriate waste Duty of Care documentation; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. Any required remediation shall be detailed in an amendment to the remediation method statement and verification of these works included in the verification report. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

20) Unless the local planning authority agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report, has been submitted to and approved in writing by the local planning authority where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. If required, a verification report of these monitoring works shall then be submitted to and approved in writing by the local planning authority when it may be demonstrated that no residual adverse risks exist. All works shall be carried out in compliance with the approved details and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

21) The development hereby permitted shall not commence (save for below ground works) until a statement of how 'Secured by Design' requirements are to be adequately achieved has been submitted to and approved in writing by the local planning authority. Such details shall include, but not be limited to: site wide public realm CCTV and a feasibility study relating to linking CCTV with the Council's borough wide CCTV system; access controls; basement security measures; and means to secure the site throughout construction in accordance

with BS8300:2009. No part of the development shall be used or occupied until these measures have been implemented in accordance with the approved details, and the measures shall be retained thereafter.

22) The development hereby permitted shall not commence (save for below ground works) until details of the proposed soft and hard landscaping of all areas external to the building have been submitted to and approved in writing by the local planning authority. The details shall include: planting schedules and details of the species, height and maturity of any trees and shrubs, including sections through the planting areas; depth of tree pits, containers and shrub beds; and details relating to the access of each building, including pedestrian surfaces, materials, kerb details, external steps and seating that ensure a safe and convenient environment for blind and partially sighted people. The details shall reference and include the mitigation measures as set out in the submitted Pedestrian Level Wind Microclimate Assessment RWDI #2002211 REV B 24 February 2020. The landscaping works shall be carried out in accordance with the approved details and retained as such thereafter.

23) The development hereby permitted shall not commence (save for below ground works) until a Landscape Management Plan for all of the landscaped areas has been submitted to and approved in writing by the local planning authority. This shall include details of management responsibilities and maintenance schedules for all landscape areas. The landscape management plan shall be implemented in accordance with the approved details.

24) The development hereby permitted shall not commence until all the trees in the proximity of the development that are to be retained, have been protected from damage in accordance with BS5837:2012. This protection shall endure throughout the construction process.

25) The development shall not commence (save for below ground works) until details of any proposed external artificial lighting, including security lights have been submitted to and approved in writing by the local planning authority and no occupation shall take place until the lighting has been installed in full accordance with the approved details. Such details shall include the number, exact location, height, design and appearance of the lights, together with data concerning the levels of illumination and light spillage and the specific measures, having regard to the recommendations of the Institution of Lighting Engineers in the Guidance Notes for The Reduction of Light Pollution 2011 (or other relevant guidance) to ensure that any lighting proposed does not harm the existing amenities of the occupiers of neighbouring properties. No part of the development shall be used or occupied until any external lighting provided has been installed in accordance with the approved details and it shall be retained as such thereafter.

26) The development hereby permitted shall not commence (save for below ground works) until details of the external noise level emitted from plant/machinery/equipment and mitigation measures as appropriate have been submitted to and approved in writing by the local planning authority. The measures shall ensure that the external sound level emitted from plant/ machinery/equipment will be lower than the lowest existing background sound level by at least 10dBA in order to prevent any adverse impact. The assessment shall be made in accordance with BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. A post-installation noise assessment shall be carried out

where required to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

27) No part of the development hereby approved shall be used or occupied until details of anti-vibration measures have been submitted to and approved in writing by the local planning authority. The measures shall ensure that machinery, plant/equipment, extract/ventilation system, and ducting are mounted with proprietary anti-vibration isolators and fan motors are vibration isolated from the casing and adequately silenced. Implementation shall be carried out in accordance with the approved details and retained as such thereafter.

28) The noise level in rooms at the development hereby approved shall meet the noise standard specified in BS8233:2014 for internal rooms and external amenity areas.

29) The development hereby permitted shall not commence (save for below ground works) until details have been submitted to and approved in writing by the local planning authority of an enhanced sound insulation value DnT,w and L'nT,w of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining dwellings, for all the residential floors. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

30) Prior to commencement of the development, details shall be submitted to and approved in writing by the local planning authority of the sound insulation of the floor/ceiling/walls separating the community floorspace from the dwellings. Details shall demonstrate that the sound insulation value DnT,w is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures implemented to contain noise within the community premises and to achieve the criteria LAmax,F of BS8233:2014 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and retained as such thereafter.

31) Prior to the commencement of the development hereby permitted, an Air Quality Dust Management Plan (AQDMP) in order to mitigate air pollution shall be submitted to and approved in writing by the local planning authority. The AQDMP must include an Air Quality Dust Risk Assessment (AQDRA) that considers sensitive receptors off-site of the development and is undertaken in compliance with the methodology contained within Chapter 4 of the Mayor of London 'The Control of Dust and Emissions during Construction and Demolition', SPG, July 2014 and the identified measures recommended for inclusion into the AQDMP. The AQDMP submitted must comply with the Mayor's SPG and should include: Inventory and Timetable of dust generating activities during construction; Site Specific Dust mitigation and Emission control measures in the table format as contained within Appendix 7 of Mayor's SPG including for on-road and off-road construction traffic; Detailed list of Non-Road Mobile Machinery (NRMM) used on the site. The NRMM should meet as minimum the Stage IV emission criteria of Directive 97/68/EC and its subsequent amendments. This will apply to both variable and constant speed engines for both NOx and PM. An inventory of all NRMM for the first phase of construction shall be registered on the NRMM register https://nrmm.london/user-nrmm/register prior to commencement of construction works and thereafter

retained and maintained until occupation of the development; use of on-road Ultra Low Emission Zone (ULEZ) compliant vehicles in accordance with the emission hierarchy (1) Electric (2) Hybrid (Electric-Petrol) (3) Petrol, (4) Hybrid (Electric-Diesel) (5) Diesel (Euro 6 and Euro VI); Details of MCERTS compliant monitoring of Particulates (PM10) used to prevent levels exceeding predetermined PM10 threshold trigger levels. Developers must ensure that on-site contractors follow best practicable means to minimise dust, particulates (PM10, PM2.5) and NOx emissions at all times. Approved details shall be fully implemented and permanently retained and maintained during the construction phases of the development.

32) Prior to occupation of the development, details of the installation of the Zero Emission Air/Water Source Heat Pumps and Zero Emission Emergency generators to be provided for space heating and hot water shall be submitted to and approved in writing by the local planning authority. Approved details shall be fully implemented prior to the occupation/use of the development and retained as such thereafter.

33) The development hereby permitted shall not commence (save for below ground works) until detailed drawings at a scale not less than 1:20 (in plan, section and elevation) of the rooftop plant enclosures have been submitted to and approved in writing by the local planning authority. No part of the development shall be used or occupied until the enclosures have been constructed in accordance with the approved details, and the enclosures shall be retained in their approved form thereafter.

34) No part of the development hereby approved shall be occupied or used until an Inclusive Access Management Plan (IAMP) has been submitted to and approved in writing by the local planning authority. The IAMP shall set out a strategy for ongoing consultation with specific interest groups with regard to accessibility of the relevant part of the site. On-going consultation shall then be carried out in accordance with the approved IAMP. The development shall not be operated other than in accordance with the approved IAMP.

35) No part of the development hereby approved shall be used or occupied until details of fire rated lifts in the building, including details of the loading lifts to the basement levels, have been submitted to and approved in writing by the local planning authority. All the lifts shall have enhanced lift repair services, running 365 days/24-hour cover, to ensure no wheelchair occupiers are trapped if a lift breaks down. The fire rated lifts shall be installed as approved and maintained in full working order for the lifetime of the development.

36) The development hereby permitted shall not commence until details of the proposed basement waterproofing and flood proofing measures have been submitted to and approved in writing by the local planning authority. The basement waterproofing and flood proofing measures shall be implemented in accordance with the approved details and retained as such thereafter.

37) Prior to commencement of the development hereby permitted details of the foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works have been completed in accordance with the approved details. They shall be retained in their approved form thereafter.

38) The development hereby permitted shall not be occupied or used until details of the proposed window cleaning equipment have been submitted to and approved in writing by the local planning authority. The details shall include the appearance, means of operation and storage of the cleaning equipment. No part of the development shall be used or occupied until the equipment has been installed in accordance with the approved details. The equipment shall be retained in its approved form thereafter.

39) The development hereby permitted shall not commence (excluding below ground works) until details of the methods proposed to identify any television interference caused by the proposed works have been submitted to and approved in writing by the local planning authority. The details shall include the measures proposed to ensure that television interference which might be identified, is remediated in a satisfactory manner. Development shall be carried out in accordance with the approved details.

40) The development shall not commence (excluding below ground works) until the following details have been submitted to and approved in writing by the local planning authority: (i) the completion of a Base-Line Airwaves Interference Study (the Base-Line Study) to assess airwave reception within/adjacent to the site; and (ii) the implementation of a Scheme of Mitigation Works for the purpose of ensuring nil detriment during the construction works identified by the Base-Line Study. Such a scheme of mitigation works shall be first submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

41) The development hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of the full postal addresses of the residential units hereby approved. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.

42) The window glass at ground level in the development shall not be mirrored, painted or otherwise obscured.

43) No roller shutters shall be installed on any entrance or display facade hereby approved.

44) No advertisements shall be displayed on or within any elevation of the building(s), forecourt or public spaces of the development hereby approved.

45) All planting, seeding and turfing approved as part of the agreed soft landscaping scheme shall be carried out in the first planting or seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or shrubs which die, are removed or become seriously damaged or diseased within 5 years of the date of the initial planting shall be replaced in the next planting season with other similar size and species.

46) No alterations shall be carried out to the external appearance of the buildings, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings.

47) No external entrance doors in the building hereby approved shall open over the public highway.

48) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-

enacting that principal Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted.

49) No music nor amplified sound (including voices) emitted from the development hereby permitted shall be audible at any residential/noise sensitive premises.

50) The ground floor entrance doors to the buildings and integral lift/stair cores shall not be less than 1 metre wide and the threshold shall be at the same level as the adjoining ground level fronting the entrances to ensure level access.

51) No impact piling shall take place until a piling method statement (detailing the 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 water or sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling shall be undertaken in accordance with the terms of the approved piling method statement.

52) The development shall be completed in accordance with the Fire Statement Addendum of 17 September 2020 prior to occupation and retained as such thereafter.

Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

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.