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**LPA Appeal Refs: 18/AP/4039 and 18/AP/4040
21/AP/1361 and 21/AP/1364**

**NEW CITY COURT 4-26 ST THOMAS STREET LONDON SE1 9RS
APPEALS BY GPE (ST THOMAS STREET) LIMITED**

**OPENING STATEMENT ON BEHALF OF
THE LONDON BOROUGH OF SOUTHWARK**

References: 'CD' refers to Core Documents, 'SoCG' refers to a Statement of Common Ground

INTRODUCTION

1. The appeal proposals seek to introduce a prominent tall building into a sensitive location within the Borough High Street Conservation Area, the setting of the Tower of London World Heritage Site and a large number of other heritage assets, and the London skyline. Two quite different tall building proposals, each comprising an application for planning permission and listed building consent, are before the inquiry. The principal element of the 2018 Scheme is a 37-storey tower at 144m AOD. For the 2021 Scheme, the main component is a 26-storey tower at 108m AOD which, although lower than the 2018 Scheme, delivers a similar quantum of floorspace through its greater massing. In spite of the differences in their form and design, each proposal would have a significant impact on the local and wider surroundings. Alongside the tall buildings, each Scheme would deliver new public realm, an elevated public garden, a new access to London Bridge underground station and the restoration,

refurbishment and rebuilding of the Grade II listed Georgian terrace at 4-16 St Thomas Street.

2. The significant potential impacts of new tall buildings and the need to actively manage this impact fall to be addressed through the detailed framework set by the London Plan and the Southwark Plan¹. This framework requires consideration of the effect of tall building proposals at ground level, within the immediate and wider townscape and skyline including in relation to strategic and borough views, and on the capital's heritage assets. Whilst the appeal site sits within the broad area identified by the Southwark Plan as potentially suitable for tall buildings that does not mean that the site itself is necessarily suitable. There will be many sites within that broad area that are wholly unsuited to such development and site suitability must be assessed against the criteria set by policy. The management of new tall buildings across the borough, including at London Bridge, was the subject of recent consideration by the London Borough of Southwark ('the Council') and the Inspectorate through the preparation of the Southwark Plan, which led to four site allocations (not including the appeal site) at London Bridge, along with a general requirement that new tall buildings maintain the primacy of the Shard and its status as a pinnacle and landmark.² The Council's case is that the appeal proposals fail to accord with the requirements set by the London Plan and Southwark Plan. Both the 2018 and 2021 Schemes are in conflict with the development plan overall and that conflict is not outweighed by the public benefits of the proposals.
3. The appeals are for non-determination. In respect of the 2018 Scheme, the Council and Appellant engaged in a pre-application process between August 2015 and November 2018 before the applications were submitted in December 2018. The Council's pre-application response letters were not supportive of the Scheme, identifying an *"insensitive approach...to a number of heritage assets of the greatest*

¹ Policy D9 of the London Plan (**CDD.21**) and P17 of the Southwark Plan (**CDE.01**).

² Southwark Plan (**CDE.01**), London Bridge Area Vision AV.11 (p. 90), Site Allocations NSP52-55 (pp. 380-392), paragraph 7 of the supporting text to Policy P17 (p. 134).

*order of significance*³, a *“substantial and harmful impact on its sensitive historic setting which remains unjustified”*⁴, the proposed tall building’s likely isolation from the London Bridge cluster⁵, and the Scheme’s failure to comply with the locational criteria of the then extant Southwark Plan 2007 in respect of being situated at a point of landmark significance⁶. The application was subject to various modest amendments but in October 2020 the Appellant wrote to the Council requesting that the assessment of the 2018 Scheme be put on hold while they progressed an alternative scheme – the 2021 Scheme.

4. Following a pre-application process between October 2020 and April 2021, the applications for the 2021 Scheme were submitted in April 2021. The Council’s pre-application response to the 2021 Scheme was, as with the 2018 Scheme, not favourable. It explained to the Appellant that *“the reduced height (which is accompanied by a significant increase in bulk of the building) does not overcome the principal concerns expressed in relation to the 2018 scheme, particularly on the harm to the townscape, the conservation area and setting of a large number of listed buildings, and would not be supported were it to be formally submitted”*.⁷
5. The appeals were lodged in January 2022. The PINS timetable for the appeals necessitated the preparation and issuing of the Council’s Statements of Case in advance of the next available Planning Committee. A bespoke Planning Committee was organised for 19 April 2022 at which the Statements of Case were considered and Members unanimously endorsed the likely reasons for refusal⁸, which are common to both Schemes. They are summarised as follows:
 - a. The proposed development would give rise to less than substantial harm to a number of designated heritage assets including the Outstanding Universal Value of the Tower of London World Heritage Site, Grade I listed Southwark Cathedral,

³ CDC.01 May 2018.

⁴ CDC.02 December 2018.

⁵ Ibid.

⁶ Ibid.

⁷ CDC.03 April 2021.

⁸ See CDI.08 for the approved minutes of the Planning Committee.

Grade I listed St Paul's Cathedral⁹, Grade II* listed Guy's Hospital and the Borough High Street Conservation Area¹⁰. The harm is not outweighed by public benefits (RfR 1);

- b. The proposed development's scale and design is not appropriate for the site and its surrounding context, resulting in harm to the townscape and local character. As a result of this harm (and the harm caused to heritage assets), and its relationship to the local and wider context, the proposed development does not constitute good design in context and would be contrary to development plan policies and to national planning policy on achieving well-designed places in the NPPF (RfR 2);
 - c. In the absence of a completed section 106 agreement or unilateral undertaking, the proposal development fails to secure appropriate planning obligations to mitigate its adverse impacts and to secure the public benefits of the proposal to ensure compliance with planning policies for these topics (RfR 3).
6. In respect of both Schemes, although not advanced as a likely reason for refusal, the Council's case is that the impact of the respective proposals on daylight to surrounding residential and student housing properties, sunlight to nearby residential units and overshadowing of the proposed public realm within the site are material considerations that weigh against the Schemes in the planning balance.
7. In respect of the 2018 Scheme only, the suitability of the servicing arrangements proposed is, in the absence of resolution of the outstanding issues with TfL, a further factor identified as weighing against that Scheme in the planning balance.

⁹ The impact on St Paul's also raises issues regarding compliance with development plan policy in respect of London View Management Framework Strategic Views and Borough Views.

¹⁰ The full list, beyond those identified in the main text, is Grade I listed George Inn, Grade I listed The Monument and St Magnus the Martyr Church, Grade II* listed 9 [List UID: 1385872], 9A [List UID: 1385873] and 11-15 St Thomas Street (Mary Sheridan House part at Grade II [List UID: 1385875] and part at Grade II* [List UID: 1385874]), Grade II* listed Church of St George the Martyr, Grade II listed Bunch of Grapes Public House [List UID: 1385870] and nos. 4-8 and 12-16 St Thomas Street [List UID: 1385871], Grade II listed 15 St Thomas Street, Grade II listed Kings Head Public House, Trinity Church Square Conservation Area, Bank Conservation Area, Tower Conservation Area.

8. With regard to the listed building consent applications, the Council supports the majority of the proposed works to the listed Georgian terrace. In respect of the 2018 Scheme, the Council considers that the introduction of shopfronts at the rear of the listed building would result in less than substantial harm at the lower end of the scale but that this would be outweighed by the wider package of public benefits through the works. The Council considers that permission should be refused for the listed building consent applications because, in the absence of an appropriate planning permission for replacement extensions and external elements that would ensure that the buildings are made weather-tight and are rebuilt in accordance with an appropriate scheme, the proposals fail to safeguard their special architectural and historic interest.
9. The issues that arise from the reasons for refusal will be addressed by the evidence of three expert witnesses on behalf of the Council. Dr Nigel Barker-Mills of Barker-Mills Conservation will provide evidence in respect of heritage and the impact on strategic and borough views from the perspective of the historic environment. Ms Elizabeth Adams of Adams & Sutherland will address matters of architecture, urban design and townscape. Mr Michael Glasgow of Atkins will provide evidence on matters of planning and the overall planning balance, and he will also participate in the servicing round table.
10. The matters agreed between the Council, the Appellant and, where relevant, Historic England and TfL are set out in the Planning SoCG, Heritage SoCG and Servicing SoCG.¹¹
11. These opening submissions provide an overview of the Council's case. They are structured having regard to the Inspector's identification of the main issues as follows:
 - a. The effect of the appeal proposals on the significance of designated heritage assets;

¹¹ There is one other SoCG (Character and Appearance) that the parties are hoping to agree shortly.

- b. The effect of the appeal proposals on the character and appearance of the area with regard to urban design, townscape, architectural quality, skyline and public realm;
- c. The s. 106 Agreements;
- d. The suitability of the servicing arrangements for the 2018 Scheme;
- e. The public benefits of the appeal proposals;
- f. The weight to be given to the public benefits of the appeal proposals and whether the public benefits would outweigh any harm identified in reaching the heritage balance;
- g. Whether the appeal proposals are overall in accordance with the development plan or not; and
- h. Whether the public benefits would outweigh any other harm resulting from the appeal proposals.

MAIN ISSUES

The effect of the appeal proposals on the significance of designated heritage assets

12. As the evidence of Dr Barker-Mills will explain, the impact of the appeal proposals would be overwhelmingly harmful. That harm ranges from less than substantial above the middle and towards the upper end of the range down to the lowest end of the range for a large number of different heritage assets. The nature and scale of the impact is exemplified by Historic England's decision to participate in the appeals as a Rule 6 party.

13. With regard to the approach to judging the level of heritage harm, the Council relies upon the approach that was endorsed by the Secretary of State in the Tulip decision¹² and, before that, the Citroen decision¹³. In short, the decision-maker should focus not on whether some aspects of a heritage asset would be left untouched, but rather on the importance of what would be affected, namely the setting and its contribution to the significance of the assets in question. This aligns with the approach taken in the

¹² CDH.10 paragraph 14.2 of the IR endorsed by the Secretary of State at paragraph 16 of the DL.

¹³ CDH.10 paragraph 14.2 IR.

Historic Environment section of the NPPG, which states that when contemplating whether works to a listed building would cause substantial harm, an important consideration is whether the adverse impact seriously affects a ‘key element’ of its special architectural or historic interest.¹⁴ The Council notes, and has already drawn to the Inspector’s attention, the recent decision of the Secretary of State in relation to a tall building proposal in the London Borough of Hammersmith and Fulham and the Inspector’s findings in that decision as to the approach to heritage harm.¹⁵ It represents one approach to assessing harm taken by an Inspector but, as the Court of Appeal stated in *City and Country Bramshill Limited v SoSCHLG*, the decision-maker is not directed to adopt any specific approach to identifying harm or gauging its extent.¹⁶ In the recent decision of the High Court in *London Historic Parks and Gardens Trust v Minister of State for Housing*, the Court endorsed and reinforced the position adopted in *Bramshill*, stating that it was consistent with the general approach taken by the courts in deferring to and respecting the expertise of Planning Inspectors and guarding against undue intervention in policy judgments within Inspectors’ areas of specialist competence.¹⁷ With this in mind, it is the Council’s case that the approach taken by the Secretary of State in the Tulip and Citroen appeals is to be preferred but it recognises that ultimately this is a matter for the Inspector’s expert judgment.

14. The sensitive nature of the appeal site is apparent from its location within a Conservation Area, the number of designated and undesignated heritage assets both within the site itself and within close proximity to it, and its position within the settings of some of London’s most important and iconic heritage assets. The location, height, form, mass and visual dominance of the appeal proposals would result in harmful impacts on the setting of the Tower of London World Heritage Site (‘WHS’) and some of the Grade I listed buildings within it¹⁸, Grade I listed Southwark Cathedral, , Grade II* listed Guy’s Hospital, the Borough High Street Conservation Area and Grade I listed St Paul’s Cathedral including in the context of London View Management Framework

¹⁴ **CDD.11** Paragraph 018.

¹⁵ **CDH.20** see paragraphs 12.49-12.52 of the IR endorsed by the Secretary of State at paragraph 13 of the DL.

¹⁶ **CDH.06** [2021] EWCA Civ 320, para. 74.

¹⁷ **CDH.07** [2022] EWHC 829 (Admin), Paragraph 48.

¹⁸ The White Tower, the Inner Curtain Wall including the Queen’s House, and the Outer Curtain Wall.

Strategic Views and Borough Views. The appeal proposals would additionally cause harm to the setting of a large number of other listed buildings including three further Grade I¹⁹, numerous further Grade II* and Grade II buildings, and three further Conservation Areas.

Tower of London WHS

15. The Tower of London WHS is a heritage asset of the very highest significance and of international importance. As a consequence of its significance, it benefits from the highest level of policy protection.
16. As the evidence of Dr Barker-Mills will explain, the relationship between the Tower of London and its setting is at the heart of the significance or OUV of the WHS, as well as being key to the ability to appreciate its significance. The location of the Tower of London on the raised topography of the north bank of the River Thames is a product of its original function of controlling and protecting the City of London.
17. Unease about the management of tall buildings in the setting of the Tower of London was first raised by UNESCO and the World Heritage Committee ('WHC') at the point at which it was put forward for inscription in 1988, and has remained a concern. The ICOMOS Mission Report of 2011²⁰ raised a clear concern about the impact of tall buildings, both completed and permitted at that stage, indicating that the visual integrity of the Tower of London had been compromised by the Shard. The Mission recommended that if any further tall buildings were planned, they should not exceed the height by which they would become visible above the on-site historic buildings that are part of the Tower complex. The Mission considered that any additional tall buildings in the area would destroy the visual integrity of the property and severely compromise its OUV, possibly beyond repair. The WHC regard the setting of the TOL as already eroded and as having potentially reached its limit in terms of the additional tall buildings it can accommodate without harm to the OUV of the property, and the

¹⁹ St George the Martyr, the Monument and the George Inn.

²⁰ CDF.013

Shard was regarded as a harmful intervention in terms of the OUV and the visual integrity of the Tower of London.

18. Both the Mayor and the Council have recognised the importance of this impact and, as Mr Glasgow will explain in evidence, the approach to development management in relevant policies in the London Plan and Southwark Plan has been tightened and made more robust so as to reflect and respond to this concern.²¹
19. The 2018 and 2021 Schemes would introduce a tall building located to the west of the other recently consented or constructed tall buildings (Shard Place, Capital House, Vinegar Yard and Becket House) and would introduce a new development that would extend the visual intrusion of new development into the sense of enclosure within the Tower of London and erode the degree to which it is visually enclosed within its setting, as well as having an impact on its visual linkages. Neither the 2018 nor the 2021 Schemes would appear to be obviously part of a curated cluster and they would appear visually detached from the existing group in important views, particularly from the eastern part of the Inner Ward. Both Schemes would have further adverse effects, namely reducing the visual prominence of the Grade I listed White Tower and concentric defences by appearing as a distracting feature in the sky space adjacent and above the curtain walls as one progresses around the north-western part of the setting of the WHS. This would exacerbate and add to the harm already caused by the Shard.
20. The harm to the WHS for the 2018 Scheme is fairly characterised as less than substantial harm just below the middle of the range and for the 2021 Scheme, at the low end of the scale of less than substantial harm.
21. The protection of the WHS should be given the maximum weight possible²² in decision-making. The harms caused by the 2018 Scheme should attract very significant weight within the planning balance and, for the 2021 Scheme, significant weight.

²¹ M Glasgow PoE paras. 5.60-5.68, pp. 38-40.

²² **CDH.11** 8 Albert Embankment SoS Decision, para 21 DL, p. 4.

Southwark Cathedral (Grade I)

22. In approaching from the north across London Bridge, the Cathedral is an important feature and there is currently clear breathing space in the form of a corridor between the Cathedral tower and commercial buildings to the east including the Shard. The corridor of space makes an important contribution to the appreciation of the Cathedral. Both the 2018 and 2021 Schemes would infill much of that space, challenging the visual prominence of the Cathedral and eroding the contribution made by this part of the setting to the Cathedral's significance as a heritage asset.
23. Both Schemes would also have a significant adverse impact on the experience of the Cathedral in the areas of its setting immediately to the north along Montague Close and associated spaces, which presently enable the best appreciation of the architectural composition of the building.
24. From Montague Close, the relative position and relationship of the 2018 Scheme to the central tower of the Cathedral changes as you move along the street and as you experience the Cathedral within its setting. The Cathedral tower can presently be appreciated against clear sky. The tall building in the 2018 Scheme will be distracting and visually intrusive, and will appear visually attached to the tower from certain viewpoints. The appreciation of the east end of the Cathedral and the chancel, already harmed by the appearance of Guy's tower, would be further harmed by the new tall building immediately to the right and it would appear visually attached to the north transept of the Cathedral which is now its main entrance.
25. As for the 2021 Scheme, in the immediate setting of the Cathedral the tall building would present a considerable visual challenge to its prominence. It would appear in an extremely unfortunate visual relationship with the Cathedral in views from the north western area of the setting, appearing immediately behind and visually attached to the central crossing tower of the Cathedral. The increased width of the proposal in comparison to the 2018 tall building would result in the clear sky setting being lost on both the east and western profiles of the tower and the simple clarity of the silhouette of the Cathedral being eroded.

26. As Dr Barker-Mills will explain, the harm to the significance of the Cathedral arising from both the 2018 and 2021 Schemes is above the middle and towards the upper end of the range of less than substantial harm. In light of the significance of the asset affected and the scale of harm identified, such harm should be attributed very significant weight.

Guy's Hospital (Grade II*)

27. Guy's Hospital and the other heritage assets on St Thomas Street display coherence in terms of planning, materials used and functional historic links. The quality of coherence associated with these buildings represents a positive contribution made by setting to the significance of Guy's Hospital and the ability to appreciate its significance. This quality of coherence is vulnerable to the intrusion of tall buildings into this area.

28. Both Schemes propose tall buildings that would have little affinity with the consistent historic grain and character of this setting, which would be particularly harmful to the carefully balanced and planned nature of the hospital complex, including the quads. In particular, the relationship between the proposed tall buildings and the architectural formality of the entrance court would be extremely damaging to the significance of the Grade II* composition of the hospital. The buildings would also intrude into the experience of the closed quads or courts of the hospital to the south. The Schemes would rise behind the central pedimented block of the west chapel wing of the entrance court but would be off the central axis and at an angle. This dissonant relationship would be further emphasised by the design of both Schemes, which is particularly challenging to an appreciation of the classical architecture.

29. For both the 2018 and 2021 Schemes, the harm to Guy's Hospital is assessed by Dr Barker-Mills as being above the middle and towards the upper end of the range of less than substantial harm. As with the weight to be attached to the harm to Southwark Cathedral, the harm to Guy's Hospital should be attributed very significant weight.

Borough High Street CA

30. The Borough High Street Conservation Area is one of the oldest in the capital, and that early designation reflects its particular significance. The character of the Conservation Area is complex, reflecting its lengthy period of occupation in what is the original Roman suburb, unrivalled anywhere else in the capital outside of the City of London.
31. The diverse character and appearance of the Conservation Area includes places, such as in the vicinity of the appeal site on St Thomas Street, where a consistent height and grain make a major positive contribution to significance. The Conservation Area Appraisal identifies the St Thomas Street sub-area (sub-area 4), in which the appeal site is located, as having a particularly distinguished historic character, different to the frenetic commercial activity of the rest of the Conservation Area. The Appraisal notes the restrained quality and consistency of sub-area 4's Georgian and Regency houses and the formality of the Hospital and Medical School buildings.²³
32. Both Schemes would have a serious adverse impact on the Conservation Area and would be entirely at odds with, and damaging to, the distinctive characteristics of sub-area 4. Each would introduce a tall building that is completely out of scale with the historic context into the heart of the Conservation Area. Each would develop what is in effect the rear of several buildings to introduce a monolithic building in a context in which the grain of historic development is characterised by yards or alleys flanked by buildings of subservient scale at the rear of the development that addresses the street. As Dr Barker-Mills will explain, each would create a visually dominant landmark that would be seen in important views identified within the Conservation Area and each would introduce a new visual focus when approaching from the south, challenging one of the most significant landmarks in the area, the Church of St George the Martyr.
33. Further harm would be caused by removing the hop sampling room façades on Kings Head Yard and relocating the façade of Keats House, two non-designated heritage

²³ CDE.06 para. 3.5.1 p. 37.

assets that meet the criteria for making a positive contribution to the Conservation Area. In addition, the introduction of significant gaps into the formerly consistent and coherent building line along St Thomas Street would harm the architectural qualities that makes this sub-area of the Conservation Area distinctive.

34. As Dr Barker-Mills will explain in evidence, he has assessed the harm to the Conservation Area as falling above the middle and towards the upper end of the range of less than substantial harm. It is appropriate to attach very significant weight to this harm in the planning balance.

St Paul's Cathedral (Grade I)

35. New City Court is not in close proximity to St Paul's Cathedral. However the tall buildings proposed will appear within the setting of the Cathedral and it is the extent to which each of the Schemes would distract, challenge or erode the capacity to appreciate the Cathedral or elements of its silhouette that is relevant.

36. In respect of the 2018 Scheme, the tall building would emerge immediately behind the north-west of the two towers of the Cathedral and appear as a strongly vertical mass in views from the Kenwood Gazebo (LVMF view 3A1), severing the visual connection between this tower and its backdrop. The visual competition and distraction arising from the new building would be harmful to the ability to appreciate St Paul's and would exacerbate harm already caused by Guy's Tower. The 2018 Scheme would also represent a distraction to the appreciation of St Paul's from local views, specifically View 1 (north facing view from One Tree Hill) and View 2 (St Paul's Cathedral from Nunhead Cemetery). In respect of the former, the distraction would not be a serious challenge to the visual prominence of the Cathedral but from Nunhead Cemetery, the effect would be more pronounced. The tall building would immediately attract attention and visually challenge the Cathedral as the dominant building in this view.

37. The impact of the 2021 Scheme on St Paul's would be reduced but remains material. In respect of the view from the north, the tall building would still exacerbate the harm

caused by Guy's Tower by completing a circle of development that visually isolates the dome from the western towers and the effects in respect of the Borough views from the south would remain but would be reduced when compared to the impact of the 2018 Scheme.

38. Both Schemes would result in less than substantial harm at the lower end of the range to the setting of St Paul's. By causing harm, the proposals would also fail to comply with the Visual Management guidance of the London View Management Framework as well as conflicting with policies in the London and Southwark Plans that seek to protect strategic and borough views.²⁴ Having regard to the significance of the asset and the scale of harm, significant weight should be attributed to this harm in the planning balance.

Other Heritage Assets

39. The appeal proposals would result in less than substantial harm to a significant number of other heritage assets, including those of the highest significance.
40. Dr Barker-Mills' proof of evidence identifies and assesses the various other listed buildings and three other Conservation Areas that would be affected by virtue of the impact of the appeal proposals. His evidence considers the contribution that setting makes to the significance of these heritage assets, which allows for an informed assessment of the impact of the appeal proposals.
41. Dr Barker-Mills' evidence will also show that the Appellant's approach to assessing the impact of the appeal proposals on heritage assets is flawed in terms of the approach that it adopts and the consequent quality and reliability of its analysis.

Conclusion

42. The extensive impact of the appeal proposals can be appreciated by considering the number of heritage assets that are adversely affected. Many are located in close

²⁴ Policies P17 and P22 of the Southwark Plan (**CDE.01**) and Policies D9, HC3, HC4 of the London Plan (**CDD.21**).

proximity but some are located at some considerable distance from the appeal site. The wide extent of the impacts in this case is an illustration of why the development plan sets such stringent tests for tall buildings. A tall building on the wrong site will make its unwelcome presence felt far and wide. The heritage assets affected include iconic assets that represent the international identity of London as a world city. It is notable that Dr Barker-Mills' views regarding the level of harm that would be caused by the proposals to key assets align with Historic England's assessment, undertaken by Mr Young. The status of Historic England as a statutory consultee and its specialist role mean that its views should be given considerable weight and only departed from for cogent and compelling reasons.²⁵

43. Harm to designated heritage assets results in a strong statutory presumption against the grant of planning permission. As the evidence of Mr Glasgow will explain, in this case the public benefits do not outweigh the harm caused by either of the appeal proposals. The appeal proposals are contrary to relevant policies in the London Plan²⁶, the Southwark Plan²⁷ and the NPPF and their impact engages the statutory protection which requires that considerable weight be given to any harm identified.

The effect of the appeal proposals on the character and appearance of the area with regard to urban design, townscape, architectural quality, skyline and public realm

44. As Ms Adams will explain, neither Scheme represents good design, appropriate in its context and neither delivers the particularly high design and architectural quality standards required of tall buildings by the London Plan, Southwark Plan and the NPPF. Further, and significantly, neither Scheme accords with the detailed framework for the assessment of the acceptability of tall buildings in the Southwark Plan (Policy P17) and the London Plan (Policy D9).

45. For buildings of the scale proposed to be successful and introduce high-quality design, they must be founded on a careful consideration of the suitability of the site and its

²⁵ R (Hayes) v. York City Council [2017] PTSR 1587 at [92].

²⁶ London Plan policies SD1, SD4, D3, D9, HC1, HC2, HC3, HC4 (**CDD.21**).

²⁷ Southwark Plan policies P13, P14, P17, P19, P20, P21, P24 (**CDE.01**).

context to accommodate such development. In this case there has not been an appropriate assessment of what is distinctive about the appeal site and its local context. The 'design story' presented by the Appellant also lacks any explanation of how the existing built scale and conditions in that local context have informed the proposals to develop the appeal site with a tall building. In respect of the 2021 Scheme, the Appellant chose not to submit its proposals to the important process of independent design review, side-stepping the enhanced scrutiny expected by the London Plan²⁸ of tall building proposals.

46. Ms Adams' evidence will explain the distinctiveness of the local context including its location in a part of London that is varied and complex but where, in the immediate vicinity of the appeal site, the two sides of St Thomas St, including Keats House and the Georgian terrace on the south, and the Old Operating Theatre Museum, and Georgian Terrace on the north side, there is a particularly strong sense of place. Both sides of the street work together to define a coherent spatial quality, and consistent scale, distinct from the London Bridge station and tall building cluster focussed on the Shard. The current 6 storey 1980's building on the appeal site, with its associated garden and roof terrace spaces, is not striking in architectural terms but its respectful and restrained character allows the existing Georgian Terrace and Keats House to retain their integrity and presence within the local context.

47. In respect of the height, scale and massing of the Schemes, Ms Adams will explain that each proposal fails to respond positively to local townscape, character and context, including in respect of the historic environment. Each of the Schemes is of a scale, height and mass that would have an unacceptably and permanent adverse impact on the existing conditions and townscape qualities of the site. Each proposes a building footprint that is disproportionately large in relation to the land available and so restricts the possibility of creating high quality and generous public realm.

48. The first two criteria of policy P17 of the Southwark Plan relate to the identification of acceptable locations for tall buildings. Ms Adams will explain that the appeal site is

²⁸ Policy D4.

not located at a point of landmark significance in accordance with the definition in the Southwark Plan. It is self-evident from that criterion that not all sites within the Council's area, including those that fall within the broad locations identified by the Plan as potentially suitable for tall buildings, will be located at points of landmark significance. Further, neither proposal is of a height that is proportionate to the existing urban character, the significance of the location nor size of the site. Instead, each Scheme would constitute overdevelopment of the site.

49. With regard to the architectural design quality of each proposed tall building, the standard required is 'exemplary'²⁹. As Ms Adams will explain, neither proposal is 'exemplary' in design and nor does either meet the good design requirements of the NPPF and the National Design Guide. Rather than being exemplary, an appropriate descriptor of the design of both Schemes is that they are incongruous in terms of their architectural language and expression. By drawing architectural references from warehouses and large engineered structures such as the nearby railway, the design of each Scheme fails to accord with the built language and scale of the historic perimeter buildings around the site, and each Scheme introduces a materiality to the site that is in stark contrast to the existing condition. Ms Adams' proof of evidence undertakes an assessment of each proposal in respect of the base, middle and top in accordance with the 'visual impacts' section of policy D9 of the London Plan. The assessment demonstrates that each Scheme is inappropriate for both its immediate (for example, the overbearing relationship of the tall buildings and the Georgian terrace on St Thomas Street) and wider context.

50. In relation to the design of the public realm for each proposal, the proposed public realm for the Schemes, although different, will be constrained, narrow, limited in variety and predominantly overshadowed, and will be dominated by the scale of the tall building. Whilst some elements of what is required to ensure public space of an appropriate quality can be secured by condition (e.g. choice of materials, planting and a considered layout) these are insufficient to mitigate against the fundamental lack of space, and the problems associated with spaces which are too small, too shady and

²⁹ Policy D9 of the London Plan (**CDD.21**) and policy P17 of the Southwark Plan (**CDE.01**).

which, due to the ratio of building height to open space, are subservient to the tall building and dominated by its presence.

51. Each Scheme would disrupt the Shard's status as a landmark and would result in a tall building that would stand out, visually dissociated, from the London Bridge cluster. The London Bridge cluster can be understood as an area distinct from the historic terrace and group of buildings along western St Thomas St that include the appeal site. Each Scheme would undermine the spatial hierarchy of the local and wider context, the distinctive character and appearance of the Conservation Area and the relationship between the Conservation Area and the London Bridge cluster. Though the height of the 2021 Scheme is reduced, the increased bulk and solidity results in a similarly harmful impact on the townscape.

Conclusion

52. The 2018 and 2021 Schemes do not deliver the high standards of design and architecture required by the development plan and would fail to positively contribute to the local character of the area, the townscape, and the skyline. Both Schemes are contrary to London Plan and Southwark Plan policies and the NPPF.³⁰ As the evidence of Mr Glasgow will explain, having regard to the range of policy conflicts identified by Ms Adams' evidence, the manner in which these conflicts are aligned to the detailed criteria in the tall building policies in the development plan, the sensitivity of the context and the impact of the Schemes on intermediate views and longer distance borough and strategic views, very significant weight should be attributed to these matters in the planning balance.

The S. 106 Agreements

53. The s. 106 Agreements are not yet agreed between the parties. As explained in the joint letter sent by the Council and the Appellant on 15 July 2022, there remain residual matters to resolve in respect of which the parties are continuing to actively

³⁰ London Plan policies SD4, D1, D3, D8, D9 and HC4 (**CDD.21**) and Southwark Plan policies P13, P14, P18 and P21 (**CDE.01**).

negotiate. It is intended that the documents will be fully agreed as soon as possible and certainly before the close of the inquiry. The outstanding matters about which the Council and Appellant do not yet agree are:

- a. S. 278 Highways Works – the scope of works for both TfL and Borough highways;
- b. The requirement for a Cycle Hire Scheme which is proposed by the Council to be secured within the Travel Plan;
- c. Affordable Workspace – the level of cap on service charges for affordable workspace tenants; and
- d. The Plans Package.

54. There are also two further matters in respect of which TfL and the Appellant remain in dispute, namely the amount of financial contributions for the Cycle Hire Docking Station and Healthy Streets and the details of the entering into a development agreement by the Appellant and TfL for the delivery of the London Bridge station works.

Servicing (2018 Scheme)

55. The Council's transport planning team, along with TfL, have consistently raised concerns in respect of the servicing arrangements for the 2018 Scheme, both at the pre-application stage and following submission of that application. Those concerns have not been resolved and TfL's concerns are such that they have chosen to participate in the inquiry. The first principal matter of concern is the use of St Thomas Street by HGVs, vehicles servicing the Georgian Terrace and Keats House, refuse collection vehicles and motorcycles for loading and unloading, which would be incompatible with the expected increased pedestrian use of St Thomas Street and TfL proposals associated with the Healthy Streets approach. The other principal cause for concern is the increased use of White Hart Yard by servicing vehicles which will result in an increased risk of collision between vehicles, pedestrians and cyclists both within the Yard and where the Yard meets Borough High Street. The servicing issues associated with the 2018 Scheme result in a number of policy conflicts with both the

Southwark and London Plan³¹, and as Mr Glasgow will explain, they should be given moderate weight in the planning balance.

The public benefits of the appeal proposals

56. It is common ground that both Schemes will deliver public benefits although the nature, significance and extent of the public benefits are matters in dispute. The Inspector and Secretary of State will need to consider the extent and significance of the public benefits weighed against the identified policy conflict and harm in both the heritage and the overall planning balance exercises. The parties have agreed a number of public benefits of the appeal proposals, which are set out at section 10 of the Planning SoCG.

57. The principal differences between the parties in terms of the identification of public benefits flow from the Council's heritage and design and townscape likely reasons for refusal.

58. Specifically, the Appellant identifies the 'replacement of a mediocre 1980's building which makes an inefficient use of the site with a highly sustainable and efficient new building of exceptional design quality' as a public benefit.³² As will be evident from the Council's written evidence, this is not agreed.

59. The Appellant also identifies specific heritage impacts as public benefits of the Schemes, namely (i) the removal of the 1980s office building which is said to detract from the character and appearance of the Conservation Area and setting of designated heritage assets; (ii) the restoration and improvement of the Georgian terrace; (iii) the reconstruction and improvement of Keats House; and (iv) the improvement of the setting of adjacent listed buildings including the Old King's Head public house.³³ With the exception of the restoration and improvement of the Georgian terrace, the majority of works in relation to which the Council supports, it

³¹ Policies D3, D9, T2, T5 and T7 of the London Plan (**CDD.21**) and Policies P14, P18 and P50 of the Southwark Plan (**CDE.01**).

³² CGoddard PoE, para. 9.26, p. 52.

³³ CGoddard PoE, para. 9.35, pp. 55-56.

does not accept that the matters relied upon by the Appellant will constitute benefits. The removal of the 1980's office building and its replacement with the tall building proposed by either Scheme would, as we have already explained, give rise to significant harm to the Conservation Area and the setting of a wide range of heritage assets. The relocation of the façades of Keats House, usually a method of last resort for heritage assets, would harm its physical integrity. The impact of the Schemes on the Old King's Head public house would also be harmful, resulting in less than substantial harm through the loss of the yard's historic sense of enclosure and the complementary architectural language of the building line along the north side.

60. Finally, although not referred to by Mr Goddard in his evidence, Mr Allford draws attention to servicing as a public benefit of both Schemes.³⁴ As we have explained, the servicing arrangements in relation to the 2018 Scheme will give rise to harm. The 2021 Scheme servicing arrangements are acceptable but do not themselves bring any public benefit.

The weight to be given to the public benefits of the appeal proposals and whether the public benefits would outweigh any harm identified in reaching the heritage balance

Economic benefits

61. The nature of the economic benefits that will be delivered by the Schemes is broadly agreed. The evidence shows that the weight to be attached to those benefits is not. In opening the Council's case we do not propose to rehearse all of those differences, but simply highlight some of the more important areas of dispute.

62. The economic benefit of the greatest scale is the delivery of a significant quantum of office floorspace. This must be viewed and assessed in its proper context. As Mr Glasgow will explain, the Council has set a strategy through its recently adopted Local Plan for the delivery of economic growth over the plan period, and the targets for employment floorspace can be comfortably achieved without the uplift in floorspace that each Scheme

³⁴ SAllford PoE p. 51, p. 82, p. 146

would provide. Having regard to this, it is appropriate to place moderate weight on this benefit in the planning balance.

Social and Environmental benefits

63. The provision of new public realm at both ground level and in the elevated garden spaces is a public benefit. However, the weight to be attached to that benefit must reflect the size, quality and functions of those spaces. Whereas the elevated spaces have the potential to be more successful, in particular the 2021 Scheme's garden which will be located at the top of the building as compared to the internal 5th/6th floor garden in the 2018 Scheme, the shortcomings of the public realm in terms of their quality, size, function and impact on heritage assets justifies the application of limited weight to this benefit.

64. The provision of an alternative access into and out of London Bridge underground station is likely to help to relieve congestion on the footway on the eastern side of Borough High Street and is a public benefit. Given that the principal beneficiaries of the new access are likely to be those employed within the development and the new access will not be very legible or obvious for those approaching from the east of St Thomas Street, this intervention should attract moderate weight in the planning balance.

Whether the public benefits would outweigh any harm identified in reaching the heritage balance

65. In this case, significant harm would be caused to a wide range of heritage assets, including those of the highest importance not just in a London context but also within the UK and international context. The harm is less than substantial but individually and collectively it is significant and must attract considerable weight, amplified in this case due to the importance of the assets affected and the extent of the harm that has been identified. The extent of the harm and the importance of the assets affected are also reflected in the objections made by Historic England and its participation in the inquiry, as well as the written objections received from a number of other heritage bodies.

66. Paragraph 202 of the NPPF identifies that less than substantial harm to identified heritage assets must be weighed against the public benefits of development proposals. The Council's case is that the public benefits do not come close to outweighing the significant and widespread harmful impacts of the proposals. The Council acknowledges that the differing forms of the 2018 and 2021 Schemes mean that the nature and extent of the heritage harms vary but the failure of the public benefits to outweigh the harms nonetheless applies to both proposals.

Whether the appeal proposals are overall in accordance with the development plan

67. The appeal proposals are in conflict with a number of key policies of the London Plan and Southwark Plan. In the light of the importance of those policies, and the nature and extent of the conflict, both schemes are also in conflict with the development plan when considered as a whole.

Whether the public benefits would outweigh any other harm resulting from the appeal proposals

68. The appeal must be determined in accordance with the development plan unless material considerations indicate otherwise (s. 38(6) of the Planning and Compulsory Purchase Act 2004). Having regard to the harm that the appeal proposals would cause arising from their heritage impacts, design quality, impacts on townscape, character and the London skyline, in addition to the harm identified in respect of servicing (for the 2018 Scheme) and the protection of amenity (for both Schemes), the relatively modest benefits that would be delivered by the Schemes do not outweigh the identified harms. While the precise nature of the harms and benefits is different for the two Schemes, they are not so different as to lead to a different conclusion in terms of the planning balance.

CONCLUSION

69. For the reasons summarised above, and set out more fully in the written proofs of evidence, it will be the Council's case that the appeals should be dismissed and planning permission and listed building consent refused.

HEREWARD PHILLPOT QC

CAROLINE DALY

Francis Taylor Building

19 July 2022