

**PINS Refs: APP/A5840/W/22/3290473 & APP/A5840/Y/22/3290477  
APP/A5840/W/22/3290483 & APP/A5840/Y/22/3290490**

**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**

---

**CLOSING SUBMISSIONS ON BEHALF OF  
THE LONDON BOROUGH OF SOUTHWARK**

---

## **INTRODUCTION**

### **Overview**

1. Neither of the two schemes can properly be said to constitute sustainable development or good design.
2. The height and scale of both proposed towers are driven by commercial imperatives, seeking to maximise the delivery of office floorspace rather than following a design-led approach to find the most appropriate form of development that responds to the site's capacity for growth.
3. Both schemes represent overdevelopment of what is agreed to be a "*highly challenging*" site<sup>1</sup> in a "*sensitive and complex historic environment*"<sup>2</sup>. As Mr Stewart accepted, the site is highly challenging in part because it is a tight space in which to

---

<sup>1</sup> Allford PoE [11.1.1] and XX Stewart

<sup>2</sup> Barker-Mills PoE [9.5] and XX Stewart

try and accommodate such a large building, in close proximity to a number of listed buildings<sup>3</sup>.

4. The Appellant has consistently failed to grapple with the implications of those constraints for the appropriate scale and design of any redevelopment.
5. That failure manifests itself in the approach taken to context. The site lies in the heart of one of London's oldest and most important CAs, and within a sub-area agreed to have a particularly distinguished historic character, with characteristics of restrained quality and consistency<sup>4</sup>. It was agreed to be one of Southwark's most significant historic streets, with a highly significant cluster of nationally important historic buildings<sup>5</sup>. And yet for the purposes of considering context and seeking to justify height and scale the Appellant effectively ignores the CA boundary and the highly sensitive historic site and surroundings and looks only to the tall buildings which (with the exception of Shard Place, which we address below) all lie outside it.
6. The consequences of this self-serving and highly selective approach to context are all too predictable.
7. Both schemes have no meaningful relationship to their historic context, and either tower would become a dominating and overbearing presence within the CA and the setting of numerous LBs both in the immediate vicinity and further afield. Both would destroy the currently successful clear demarcation between the coherent and consistent historic environment and the tall buildings around London Bridge Station<sup>6</sup>, and set a damaging precedent for further such development within the rest of the CA.
8. The symptoms of this being too much development in the wrong place<sup>7</sup> are also apparent in the distinctly uncomfortable and harmful relationship the towers would

---

<sup>3</sup> XX Stewart

<sup>4</sup> CDE.06 CAA [3.5.1] and XX Stewart

<sup>5</sup> XX Allford and CDH.15 [96]

<sup>6</sup> XIC Adams

<sup>7</sup> Or not "proportionate to the significance of the proposed location and the size of the site" to use the words of SP Policy P17 Part 2.2

have with the Shard in a number of important viewpoints where they are seen either in alignment or in close proximity to one another. As we explain below, there are many important viewpoints from which the Shard is either obscured or largely obscured as the station's landmark by the new towers, or in which the relationship between them is "*visually uneasy*" as the Appellant describes it<sup>8</sup>.

9. The harm would be wide ranging and significant, both in design/townscape and heritage terms.
10. It is telling that, with limited exceptions, the harm is the same for both schemes.
11. The 2018 scheme met widespread and consistent objections from a range of important stakeholders consulted both before and after the application was submitted.
12. At the pre-application stage CABE/Design Council advised the Appellant that the height of the proposed tower required further justification, and that its isolation from other tall buildings in the area and its proximity to the historic buildings within the CA clearly lead to a significant impact on the CA and on historic views, both locally and within the LVMF<sup>9</sup>. HE advised that if the application was submitted in the form consulted upon it would strongly object due to the serious harm that would result to the historic environment<sup>10</sup>. The LPA's pre-application advice was that the height and level of harm to surrounding heritage assets was the "*key reason why the scheme cannot be supported by officers*"<sup>11</sup>.
13. Once the 2018 application was submitted the objections received from a wide range of important stakeholders reflected those same themes, and were expressed in similarly strong and unequivocal terms.
14. The Appellant's attempt to overcome the objections to the 2018 scheme with a new and markedly different design has proved to be unsuccessful. For all its myriad

---

<sup>8</sup> CDA.12-1 [5.5.39]

<sup>9</sup> CDC.09 pp. 1-2

<sup>10</sup> CDC.04, Summary

<sup>11</sup> CDC.02 p. 3

flaws, the Appellant's own TVIBHA continued to identify the same fundamental problems of visual dominance of the sensitive historic environment and uncomfortable relationship to the townscape context. That was partly a result of the still very considerable height of the tower, but also because the only way that the architects were able to accommodate the client's requirement to deliver the same quantum of commercial floorspace was by substantially increasing the width and massing of the tower so that it would extend along most of the site's frontage to St Thomas Street, with the bulk at floor 3 and above bulging out over the rooves of the listed Georgian Terrace. All of this has served to exacerbate the harmful and oppressive relationship between the tower and the designated heritage assets surrounding it.

15. In the circumstances, the LPA's discouraging pre-application response to what became the 2021 scheme should have come as no surprise. Nor should the strong objection subsequently received from HE, or the GLA's conclusion in its Stage 1 Report that *"the significant width proposed (over 60m) does not feel proportionate or comfortable in this low rise historic context with many designated heritage assets"* and that the *"design choice overall does not seem to be successful"*<sup>12</sup>.
16. Indeed, all the signals should have alerted the Appellant to the fact that this was simply not a suitable site to accommodate its desired quantum of commercial floorspace, and that it was necessary to take a step back and look at alternative options.
17. Those clear and consistent signals were ignored, and the Appellant pressed ahead with the scheme regardless. This time it did so without bothering to engage with the independent design review process, either *"early on"*<sup>13</sup> in the preparation of the scheme or at all, seeming to regard this as an unnecessary 'tick box' exercise rather than an important and obligatory step to ensure that the design quality of any tall building proposal is independently reviewed well in advance of any formal application for planning permission. Mr Allford's evident disdain for this process

---

<sup>12</sup> CDG.03 [41] and [44]

<sup>13</sup> CDD.21 Policy D4 Pt. D

seemed to stem from his belief that CABE was somehow not qualified to provide useful feedback on his designs, at least once he was no longer the chair<sup>14</sup>. The subsequent belated attempt by Mr Goddard to excuse this failure by reference to receipt of a discouraging pre-application response from the LPA<sup>15</sup> is fundamentally misconceived for two reasons:

- a. If the application was therefore submitted on the assumption that it would probably need to be appealed to the Secretary of State, that has no bearing whatsoever on whether it would have been appropriate to comply with the policy obligation to undergo design review “*early on*” in the process. That policy obligation, and the important public interest objectives that underlie it, are no less important or applicable when a scheme is being considered on appeal.
- b. If anything, a discouraging pre-application response from the LPA on (inter alia) design grounds should underline the importance of going through the design review process before submission. If that process produces a response from CABE which is more positive than the LPA’s initial view, it could be prayed in aid as part of the case for persuading the LPA that its initial response was wrong. If the response is negative, that would be important when deciding whether it was in fact appropriate to proceed to the stage of making an application for the emerging proposal.

18. The upshot is that the LPA has raised objections to both schemes on essentially similar grounds. The likely reasons for refusal<sup>16</sup> are the same in both cases, and are based on the adverse heritage impacts and the scale and design of the proposed development not being appropriate for the site and its surrounding context, resulting in harm to the townscape and local character. The first of those likely reasons for refusal has consistently been supported by HE, the Government’s principal heritage advisor, in relation to those assets which are most significantly

---

<sup>14</sup> Allford PoE [1.1.10] and XX Allford

<sup>15</sup> Introduced for the first time in oral evidence by Mr Goddard, the Appellant’s final witness

<sup>16</sup> The parties reached agreement in respect of the s.106 agreements during the course of inquiry and the LPA therefore no longer pursues likely reason for refusal 3 for the schemes

affected. It has taken the unusual step of appearing at this Inquiry as a Rule 6 party, reflecting its view as to the seriousness of the harm to the historic environment in this case.

19. It is agreed that there is a strong statutory presumption in favour of refusal of both appeals. That is reinforced by the wide ranging and extensive conflict with up to date<sup>17</sup> development plan and national policy, and conflict with the development plan when considered as a whole. The policies which are infringed are policies of the highest level of importance for the purposes of the determination of these appeals, the extent and significance of the breaches are considerable, and the conflict goes to the overall thrust of the development plan. All of those are agreed to be relevant factors in forming a judgment as to whether there is compliance or not with the plan overall<sup>18</sup>.
20. Southwark is a borough that is supportive of economic growth and consequential change through appropriate development, and the development plan reflects that. In accordance with the NPPF<sup>19</sup> and LP, and as developed through the SP, however, the LPA is seeking to achieve *good* growth that is environmentally sustainable. Neither scheme warrants that description.
21. The presumption in favour of the development plan therefore creates a further statutory presumption against the grant of planning permission in this case.
22. It is acknowledged that there would be public benefits associated with either scheme, but the extent and level of harm and of policy conflict is nowhere close to being offset by those benefits.

---

<sup>17</sup> "Bang up to date" in Mr Goddard's words (XIC)

<sup>18</sup> XX Goddard

<sup>19</sup> CDD.01 [8] and [9]

## **The Approach to New Tall Buildings**

23. The SP identifies a broad<sup>20</sup> area where tall buildings are expected, which includes the CAZ, Major Town Centres, Opportunity Area Cores and Action Area Cores<sup>21</sup>. This broad area includes the appeal site. The SP also identifies specific sites that may be suitable for tall buildings in site allocations, four of which are in the London Bridge area<sup>22</sup>. Both the LP (Policy D9) and the SP (Policy P17) have detailed and stringent policy criteria for the assessment of new tall building proposals, reflecting the significant adverse impacts that can be caused at both a local and London-wide level from a poorly designed tall building in the wrong place. In providing a far more detailed set of criteria to guide the assessment of impacts, LP policy D9 marks a significant change in the policy framework for the assessment of the acceptability of proposed tall buildings when compared to the approach of the London Plan 2016<sup>23</sup>.
24. It is apparent from the size and nature of the area identified by the SP that tall buildings would not be considered suitable on every site in that area. The inclusion of the Grade I Southwark Cathedral within the broad area exemplifies this. The SP does not attempt a fine grain approach to tall building site suitability (beyond the specific site allocations) and, as Mr Goddard accepted in XX, the fact that the broad area includes sites that are obviously inappropriate needs to be borne in mind when applying the policy. A common sense approach is required and inclusion within the broad area is very far from representing a green light for a tall building proposal. In fact, the studies and evidence base that informed the approach taken to tall buildings in the SP did not, despite Mr Goddard's (incorrect) suggestion to the contrary<sup>24</sup>, identify the appeal site or the wider BHSCA as a suitable location for tall building development. Indeed, when a more fine-grained analysis was undertaken the site was excluded from the area marked as "*Appropriate location for tall buildings*" and CAs, (including specifically the BHSCA) were described as generally

---

<sup>20</sup> Goddard in XX accepted that broad area was a fair description

<sup>21</sup> CDE.01 Fig 4 p. 137

<sup>22</sup> Ibid NSP52-55 inclusive, pp. 381-393

<sup>23</sup> Adams PoE [2.2.5.4]

<sup>24</sup> Goddard XX

unsuitable for tall building development in all relevant studies that informed the SP<sup>25</sup>.

25. The position of the Shard as the pinnacle of the London Bridge cluster also plays an important role in Southwark's approach to new tall buildings. The Area Vision in the SP for London Bridge explains that development should make sure that "*the Shard remains significantly taller and more visible than surrounding buildings as the station's landmark*" <sup>26</sup>. As Mr Allford accepted in XX, this approach is not simply concerned with height but also with relative visibility as the station's landmark, which requires the impact on the Shard's landmark qualities to be assessed from different locations around the area.
26. As well as the Shard's position as the apex of the cluster, the 'cluster' concept itself is relevant when considering new tall buildings in the London Bridge area in the context of their potential impact on the setting of the ToL. On the assumption that further tall building development is inevitable, clustering of tall buildings to a contained area provides a means of avoiding a spread of towers and thereby limiting adverse impact on the WHS<sup>27</sup>. The same underlying principle ought sensibly to apply to the London Bridge area as it applies to the City of London's eastern cluster. The same issues and impacts arise in both cases. Thus the existence of a cluster does not mean that its continued expansion in any and all directions should be regarded as acceptable. The shape, direction and extent of growth, and the overall curation of the cluster, all require careful consideration having regard to townscape and in particular heritage impacts. A tower that appears to be separated from the London Bridge cluster in important views risks both increasing harm to the ToL WHS and introducing a spread of towers across a wider area, failing to safeguard the

---

<sup>25</sup> Glasgow PoE [5.73]-[5.82]. See specifically CDE.08 Draft Bankside, Borough and London Bridge SPD 2009, Fig 9 p. 15, p. 32 bullet point 3 under 'Heights and tall buildings', Fig 20 p. 33, CDE.18 Bankside, Borough and London Bridge Opportunity Area stage 1: Tall Building Research Paper March 2010, p. 25 [4.4.7], p. 30 [5.1], p. 31 [5.2], CDE.19 Bankside, Borough and London Bridge Opportunity Area Stage 2: Tall Buildings Study 2009, Fig 8 p. 5, p. 52, CDE.20 New Southwark Plan Background Paper Tall Buildings July 2020, p. 69

<sup>26</sup> The site allocations also contain guidance on tall building proposals which is designed to retain the Shard's primacy and to 'curate' the cluster accordingly (CDE.01 pp. 385, 388)

<sup>27</sup> Barker-Mills PoE [4.18], CDH.10 Tulip Inspector's Report [14.7]-[14.8]



remaining openness of the ToL setting and undermining the public interest benefits of clustering.

27. The Appellant's perspective on the approach to new tall buildings in the London Bridge area has proven to be remarkably and inappropriately simplistic. Its witnesses have appeared to view the presence of the Shard, the News Building and, in particular, Shard Place as giving rise to a presumption that tall buildings would be suitable anywhere in the London Bridge area generally and within the BHSCA specifically. The logic of their position, if correct, would mean that it could never be said that the cluster has gone far enough in any direction because one tall building, for example, Shard Place begets another one – the appeal site – on the basis that it is just 30 seconds or 30 metres away<sup>28</sup>. It is a recipe for the incremental erosion of the area's special and distinctive character and heritage interest, and for additional cumulative harm to the OUV of the WHS.
28. The refrain from the Appellant's team throughout the inquiry was that London Bridge is, and always has been, a place of change, with the implication that the LPA's resistance to these particular towers pushes inappropriately against this 'inevitable' tide of change. However, change in the form of a new tall building in a particular location in the London Bridge area is neither inevitable nor inevitably good.
29. There has been an over-reliance on decisions made in respect of other sites, in particular Vinegar Yard and Shard Place.

Shard Place

- a. The 2014 committee report<sup>29</sup> is not a statement of policy and should not be treated as such. It assesses a different proposal on a different site by reference to the previous development plan. The two sites are significantly different in ways that the mere number of seconds or metres between them

---

<sup>28</sup> As described by Mr Katkowski QC in XX of Adams and Glasgow

<sup>29</sup> CDH.15

does not reflect<sup>30</sup>. This over-reliance on the grant of permission for Shard Place was not just apparent in the manner in which the Appellant's case was presented at the inquiry but also in their application materials. Notably, the BHA for the 2018 scheme describes the grant of consent for Shard Place as sending a 'clear message' that there is a place for modern development of scale in the CA<sup>31</sup>. This represents a significant failure to consider each decision on its own facts.

#### Vinegar Yard

- b. The Appellant is keen to rely on the aspects of the GLA's Representation Hearing Report (also not a policy document<sup>32</sup>) that they felt supported their case. Again, however, the Appellant's case fails to acknowledge key differences between that proposal and the two appeal schemes<sup>33</sup>, where the former met development plan policy requirements and the latter do not. For example, in respect of the requirement under LP Policy D9 (d) that proposals resulting in harm to heritage assets demonstrate that alternatives have been explored, GLA officers were satisfied that this had been shown in relation to Vinegar Yard. By contrast, the best that Mr Goddard could come up with in respect of alternatives being explored in this case was the fact that there were two alternative schemes, both of which, even on Mr Stewart's evidence, give rise to effectively the same heritage harms.

- 30. The over-reliance on previous decisions in cases with materially different facts, and emphasis on the suggested inevitability of adding another 'layer of history'<sup>34</sup> to London Bridge through further tall building development reflects a highly simplistic and crude approach. It effectively seeks to side-step the detailed, and recently

---

<sup>30</sup> Barker-Mills in XIC explained that the location of Shard Place on the edge of the CA and that of the appeal site in the heart of one of the distinct sub-areas of the CA was a critical difference when examining the impacts of the tall buildings across the CA

<sup>31</sup> CDA.12-2 [13.6]

<sup>32</sup> Nor even a previous decision by the SoS where issues of consistency of approach might arise

<sup>33</sup> Barker-Mills in XIC explained that the location of Vinegar Yard outside the CA and that of the appeal site in the heart of one of the distinct sub-areas of the CA as well as the fact that Vinegar Yard will be partly obscured in certain views by Guy's Tower means that it is not credible to seek to draw a comparison between the two

<sup>34</sup> A phrase favoured by Mr Allford

enhanced, scrutiny that the development plan rightly expects of buildings that have the potential to give rise to significant and wide-reaching impacts.

### **A Point of Landmark Significance**

31. The first criterion of Policy P17 of the SP is the locational requirement that tall buildings must be *“located at a point of landmark significance”*<sup>35</sup>, defined as being *“where a number of important routes converge, where there is a concentration of activity and which is or will be the focus of views from several directions”*<sup>36</sup>. These factors are concerned with the site and its existing status rather than on the nature or impacts of the tall building that is proposed. It is common ground<sup>37</sup> that not every site within the broad designated area can be of ‘landmark significance’<sup>38</sup>.
32. The Appellant has long been aware that compliance with this policy requirement is problematic here. That much is plain from its decision to instruct DP9 to argue for its removal from the draft SP tall buildings policy. DP9 argued that this criterion did not *“recognise the role that tall buildings can play in creating new areas of townscape significance and stimulating regeneration”*<sup>39</sup>, but those arguments did not prove persuasive and the requirement has become part of the development plan. Mr Goddard’s attempt to suggest in XX that this representation did not imply any concern as to the implications of the proposed criterion for the soon to be submitted 2018 scheme, and was merely directed towards preventing the policy from being overly prescriptive, is not credible. The only sensible reason for the Appellant to pay DP9 to make those representations was to seek to influence SP policies so that they would be more favourable to the 2018 scheme, which Mr Goddard did accept<sup>40</sup>. This was not an exercise in altruism. In simple terms, if the Appellant and its team of

---

<sup>35</sup> CDE.01 p. 133

<sup>36</sup> Ibid p. 135

<sup>37</sup> Allford XX

<sup>38</sup> See our earlier submission about the implications of the very broad area designated, and its implications for policy application.

<sup>39</sup> INQ19 [2.43]-[2.4]

<sup>40</sup> XX Goddard

advisors had thought the application of this criterion would tend to support the suitability of the site for a tall building they would not have sought its removal.

33. Against that background, it is notable that none of the Appellant's witnesses addressed the application of the SP's definition of landmark significance in their written evidence. Instead, Mr Allford simply asserted that the site was at a point of landmark significance<sup>41</sup> and Mr Goddard, without more, relied upon that assertion<sup>42</sup>. The first attempts at an explanation were made in oral evidence.

34. Dealing with each aspect of the definition in turn:

- a. The site is not located "*where a number of important routes converge*". Whereas Borough High St is an important route, in the context of surrounding major streets including Tooley Street, St Thomas St is a more local route<sup>43</sup>. In any event, and importantly, the appeal site is not located at a point at which important routes converge. Mr Allford initially accepted that the point of convergence between Borough High St and St Thomas St is Barclays Bank. However, when (presumably) he realised the implication of this concession, he then claimed that the point of convergence in fact encompassed a far wider area along Borough High St and east along St Thomas St. The point of convergence was said to extend so far along St Thomas St that a person standing outside Keats House was still at a point where important routes converge. That was an absurd position to adopt. Mr Goddard's later bite at the cherry was similarly unpersuasive. He claimed that the new entrance to London Bridge underground station would result in the site being at the point at which important routes converge, entirely missing the point that the focus of the policy is on the existing position<sup>44</sup>. Further, even if it is accepted that a large run of St Thomas St is located at a point at

---

<sup>41</sup> Allford PoE [7.1.6.2e]. Although it is stated in this paragraph that 'as illustrated in earlier points, the site meets the definition of a point of landmark significance', nowhere in the PoE is this assertion in fact explained

<sup>42</sup> Goddard PoE [6.53]

<sup>43</sup> Adams PoE [5.2.2]

<sup>44</sup> Goddard XIC

which important routes converge, the location of the towers would not be on St Thomas St but rather in a backland location with no street frontage.

- b. The site plainly is not *“where there is a concentration of activity”*.
  - i. Mr Allford’s position was that so long as people walk past the site to access major attractors of footfall such as the Shard or London Bridge station, the site itself qualifies as a location where there is a *“concentration of activity”*<sup>45</sup>. He accepted that this would make every building along Borough High Street and the western end of St Thomas St a location where there is a concentration of activity. That, again, is an absurd approach to the policy requirement.
  - ii. It is the destination to which people are moving that represents the concentration of activity, and not the places they pass on their way to it. The site generates a modest level of footfall from its existing use, but it cannot properly be described as representing a concentration of activity in any meaningful sense.
  - iii. The status of the appeal site can usefully be contrasted with that of the Shard, Shard Place and the News Building, all of which sit on top of or immediately adjacent to major access points to London Bridge underground and rail station, and in the case of the News Building, the bus station, and all of which are hives of activity associated with the use of the station. There is no tension between these three buildings being located at a point of landmark significance and the appeal site not.
- c. As for the final aspect of the definition, Mr Allford agreed in XX that the appeal site is not currently the focus of views. He also accepted that if you put a big enough building on any site it is likely to become a focus of views to some extent, but that this does not tell you anything about whether the site itself is located at a point of landmark significance. He was right to make these concessions. Ms Adams explained that the absence of a tall building in the location of the appeal site provides important openness between the

---

<sup>45</sup> Allford XX

London Bridge cluster and the historic area around Southwark Cathedral in views from London Bridge<sup>46</sup>. The absence of landmark status of the appeal site allows focus to appropriately be placed on views of true landmark locations such as the Shard and Southwark Cathedral.

35. The upshot of the Appellant's approach to the landmark significance requirement is that, on Mr Allford's analysis, any site along St Thomas St or Borough High St could be said to be located at a point of landmark significance. That is not a realistic approach to the clear policy criteria and serves only to emphasise the inability of the site, on a proper analysis, to meet any of the aspects of the definition<sup>47</sup>. The Appellant's concerns about meeting this criterion back in 2018 were well founded: the proposed towers would clearly not be located at a point of landmark significance and thus conflict with the first criterion of Policy P17.

## **THE EFFECT OF THE APPEAL PROPOSALS ON THE SIGNIFICANCE OF DESIGNATED HERITAGE ASSETS**

### **Introduction**

36. In closing we do not seek to address the impact on each of the designated heritage assets covered by Dr Barker-Mills' written evidence, but instead focus our attention on those which were addressed in the oral evidence of the LPA, HE and the Appellant, namely:
- a. Borough High St CA
  - b. Guy's Hospital
  - c. The St Thomas St LBs
  - d. Southwark Cathedral
  - e. ToL WHS
  - f. St Paul's Cathedral

---

<sup>46</sup> Adams PoE [5.2.3]

<sup>47</sup> And the damaging precedent that would be set if the Appellant's position was accepted

37. The impact on the other designated heritage assets that would be harmed should not, however, be treated as an unimportant or peripheral issue. Those impacts are identified and assessed in section 9 of Dr Barker-Mills' PoE, which we commend to the Inspector and SoS as a fair and robust assessment of where harm occurs, and the extent of the harm. Where harm occurs, it is to be given great weight, with the specific level of weight reflecting both the extent of harm and the significance of the asset in each case.
38. In these appeals it is not only the weight ascribed to the harm to individual assets that matters, it is also the extent of and weight to be given to the collective harm. Many of the designated heritage assets that will be adversely affected in this case are not only important in their own right, they are also important in the role they play as part of the special character and appearance of the BHSCA. The number of individual designated heritage assets within the CA that are adversely affected therefore reflects and is consistent with the widespread nature of the adverse impact on its special qualities.

### **General approach and policy points**

39. The Appellant's flawed and incomplete approach to the assessment of heritage impacts has been problematic from the outset. Significant concerns about the methodology and transparency of the assessments used in the BHA were raised during the review of the ES by the LPA's EIA Consultants LUC in respect of both applications<sup>48</sup>. These are not new points. The Appellant has had notice of them for years, and yet the same errors and omissions are reflected in its evidence to this inquiry.
40. Dr Barker-Mills summarised his concerns in his PoE<sup>49</sup> and gave further evidence on the errors in approach (including a worked example) in XIC. That evidence was clear, compelling, and obviously right. The XX of Mr Stewart then served to demonstrate

---

<sup>48</sup> See CDA.42 (2018) at pp. 36+ and CDB.67 (2021)

<sup>49</sup> Section 10

how those substantial gaps and methodological errors in the analysis gave rise to some of the more surprising conclusions reached in the Appellant's assessment.

41. It has also been instructive to observe and consider some of the propositions about approach that have been put in XX of Dr Barker-Mills and Mr Young. They too reveal much about the Appellant's reluctance to acknowledge and then address the true scale of impact that would arise in this case.
42. Fortunately a good deal of helpful common ground on approach has now been established through XX of Mr Stewart.

### Setting

43. The following matters are common ground in relation to setting<sup>50</sup>:
  - a. The statutory duty in s.66 arises where a proposed development affects a LB *or its setting*. Where that is the case, special regard must be had to the desirability of preserving the LB *or its setting*. There is no issue between the parties as to the importance of setting: it is not a secondary consideration, but rather something which is itself given a special statutory protection in decision-making.
  - b. The concept of setting is defined in the NPPF Glossary. As the NPPF makes clear, there are two reasons why setting is important. The first is that elements within the setting of a heritage asset may make a contribution to its significance. The second reason is that setting may affect the ability to appreciate significance.
  - c. HE GPA 3<sup>51</sup> reflects those twin roles, and any assessment needs to consider both aspects. That is reflected in the steps and how they are described throughout the guidance.

---

<sup>50</sup> XX Stewart

<sup>51</sup> CDF.04 [3], p. 2 (Box) and pp. 10-13 steps 2 and 3



- d. The same position is reflected in up to date development plan policy. Policy HC1 Part C<sup>52</sup> is concerned with protecting not only significance but also appreciation of significance within the surroundings of heritage assets.
  - e. Mr Stewart has sought to assess both aspects, recognising that both roles are important. He would expect the Inspector and SoS to consider both, and to treat both as important, consistently with the statutory duty to have special regard to the desirability of preserving the setting of the LBs affected in this case.
44. In those circumstances, the attempts made on behalf of the Appellant's advocate in XX to downplay the importance of setting in general, and the impact on the role setting plays in the ability to appreciate significance were effectively (and rightly) disowned by the Appellant's own heritage witness.

#### Calibration of harm

45. The following matters are common ground in respect of the approach to calibrating harm to heritage assets<sup>53</sup>:
- a. Assessing where harm sits on the spectrum of LTSH is a matter of judgment for the decision-maker.
  - b. The courts have made clear that the NPPF does not direct the decision-maker to adopt any specific approach to identifying harm or gauging its extent<sup>54</sup>.
  - c. 'Substantial' in the NPPF means what it says, and any attempt to put a gloss on the meaning of the term has no justification in the context of the NPPF. The policy framework and guidance provide a steer that relevant factors include the degree of impact, the significance of the heritage asset under scrutiny and its setting<sup>55</sup>.

---

<sup>52</sup> CDD.021 p. 279

<sup>53</sup> XX Stewart

<sup>54</sup> See CDH.07 [47]

<sup>55</sup> CDH.07 [53]

- d. Whilst an example has been given in the PPG to assist in considering whether harm is substantial in relation to works to a LB, it does not purport to be a definition of the word 'substantial'. That is unsurprising given that the PPG is guidance and not policy.
- e. The example that is given in the PPG contemplates that substantial harm could occur if an adverse impact seriously affects a key element of a LB's special architectural or historic interest, even if other key elements are unaffected. That is consistent with what the SoS concluded in the Tulip DL at [16] where it was found that the key point is not whether some aspects are left untouched, but the importance of what would be affected (in this case setting) to the asset's significance.
- f. There is nothing in Mr Stewart's evidence that seeks to take issue with the approach taken by the SoS in the Tulip DL or to give reasons to justify a different approach being taken in this case.
- g. If in this context it is appropriate to treat the word "*serious*" as synonymous with "*substantial*", concluding that harm below the threshold is not "*serious*" in that narrow technical sense does not mean that it is unimportant. Treating LTSH as a less than substantial objection involves an error of law, and does not reflect the statutory duties.

#### Cumulative harm and precedent

46. The following matters are common ground in respect of the approach to cumulative harm and precedent<sup>56</sup>:
- a. The PPG makes clear that when assessing any application which may affect the setting of a heritage asset, decision-makers may need to consider the implications of cumulative change.<sup>57</sup>
  - b. That guidance must be understood in the light of the NPPF's definition of 'setting', which recognises that there may be elements of the setting of a heritage asset which make a negative contribution to significance or the ability to appreciate it. Where that is the case, and a proposed development

---

<sup>56</sup> XX Stewart

<sup>57</sup> CDD.011 [013]

would exacerbate that negative contribution, that is a material consideration in judging whether the additional harm is acceptable or not. That is consistent with HE's advice in GPA3 that where the significance of an asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration needs to be given to whether additional damage will further detract from the significance of the asset<sup>58</sup>.

- c. A setting which suffers from elements making a negative contribution may therefore have a particular sensitivity to further change as a result. To treat such a setting as being 'less sensitive' as a result would mean that on each occasion an additional element of harm was permitted its sensitivity would be said to reduce again. On that approach, it would never be possible to prevent the gradual cumulative erosion of the remaining contribution that setting makes to significance or the ability to appreciate it.
- d. The LP specifically calls for the contribution to cumulative impact to the setting of London's WHS to be clearly illustrated and assessed where a development may contribute to such an impact<sup>59</sup>, which reflects a recognition that the setting of those WHS has already suffered harm from past development. There was no suggestion that Mr Glasgow's explanation of the background to this in his PoE<sup>60</sup> was factually inaccurate, although it was not a matter Mr Stewart had mentioned in the section of his own PoE describing the last 20 years of development in central London and especially tall building development.
- e. LP Policy HC1 also requires cumulative impacts on heritage assets and their settings from incremental change to be actively managed. Effective implementation of that policy requirement requires the decision-maker to consider:
  - i. the impacts of previous change on significance and ability to appreciate significance;

---

<sup>58</sup> CDF.04 p. 4

<sup>59</sup> CDD.021 Policy HC2 Pt. C

<sup>60</sup> Glasgow PoE pp. 38-41

- ii. the extent to which the impacts of proposed development may have a cumulative effect together with existing impacts; and
- iii. the potential for significance and ability to appreciate significance to be eroded by incremental change.

#### Juxtaposition of old and new

47. It is agreed that it is not automatically positive to have modern skyscrapers standing near historic buildings. Just because that juxtaposition has been identified as positive in previous reports does not mean that it will always be positive for every proposal or for every asset. It will need to be assessed and its appropriateness or otherwise considered on a case by case basis<sup>61</sup>.

#### Development Plan policy approach to protecting the WHS

48. The most recent iteration of the LP includes crucial policy changes to respond to the WHC's concerns arising from the decision to consent the Shard and other tall buildings. This most recent iteration is agreed<sup>62</sup> to mark a shift in policy on heritage in general and WHSs in particular. These important differences in planning policy provide another reason why little or no weight should be given to previous permissions, or their justifications, as setting a binding precedent<sup>63</sup>. As Mr Stewart agreed, that means it is not appropriate to say that because building A was found to be acceptable in the past, the same type and level of impact should now be regarded as acceptable for building B.
49. The changes in planning policy are agreed to reinforce the greater weight that should now be given to heritage protection on account of the revised wording<sup>64</sup>.
50. LP Policy HC2 Pt. B is agreed to be an important part of the strengthened policy framework to address the problems that had arisen from previous decisions<sup>65</sup>. It is

---

<sup>61</sup> XX Stewart

<sup>62</sup> XX Stewart

<sup>63</sup> CDH.10 [14.17]

<sup>64</sup> XX Stewart

common ground that there is no scope for compliance with the policy if harm is caused to the OUV of the WHS – there is no scope for compliance on the basis of harm being outweighed by benefits<sup>66</sup>. The same approach appears in Policy D9 Pt. C (e). The supporting text makes clear that making good on the Government’s commitment to protecting the WHS<sup>67</sup> requires effective implementation of policies for conserving and enhancing the historic environment. In other words, it is not enough just to have these policies, making good on the commitment requires them to be implemented effectively in development control decision-making.

51. Finally, it is necessary to deal with the (bad) point pursued in RX of Mr Goddard, namely the suggestion that because Policy P17 of the SP does not have an equivalent to Policy D9 Pt. C (e) of the LP, there is a *conflict* between the policies which should be resolved in favour of P17 pursuant to s.38(5) of the PCPA 2004. That is a hopeless argument, because Policy P24 of the SP also applies, where relevant, to any tall building proposal and sets *exactly* the same test for development affecting the OUV of WHS and their settings as LP Policy HC2 and D9<sup>68</sup>. Policy P17 does not set a *different* approach to impact *on WHS*. The simple fact that the specific test for impact *on WHS* in SP Policy P24 is not duplicated in SP Policy P17 cannot properly be argued to mean that there is a conflict between the policies in the two parts of the development plan. Any suggestion to the contrary is simply wrong.

#### Architectural Quality as a factor potentially reducing heritage harm

52. “*Good design is inherently informed by its surroundings, including the historic context*”<sup>69</sup>. Where a proposed building would be a poor and unsympathetic response to its historical context that will weigh heavily against the quality of the design<sup>70</sup>. Those concepts are reflected in the extent to which the development plan

---

<sup>65</sup> XX Stewart

<sup>66</sup> XX Stewart

<sup>67</sup> See emboldened text in [7.2.1]

<sup>68</sup> CDE.01 p. 149

<sup>69</sup> CDH.10 IR [14.84], endorsed by the SoS at DL [38]

<sup>70</sup> CDH.10 DL [38]

and national policy and guidance emphasise the importance of context when assessing whether a proposal can properly be considered to represent good design<sup>71</sup>.

53. Whilst Dr Barker-Mills was right to accept<sup>72</sup> that in principle the quality of a design might reduce heritage harm, it does not do so here. Indeed, the detailed design of each scheme serves to exacerbate rather than reduce the harm caused.
54. By way of example, Dr Barker-Mills referred to the impact on Guy's Hospital in TVIBHA 2018 view 49, where he said that the design of the scheme does not reduce or negate harm as the girders and railway bridge themes are nothing to do with this part of the CA and the architectural expression of the 2018 tower has nothing to do with the neoclassical architectural approach which is of such importance to the heritage significance of Guy's North Quad<sup>73</sup>.
55. There is also confusion in the Appellant's own evidence about the intended relationship between the detailed design and the closest designated heritage assets. Whilst Mr Stewart describes the 2018 scheme as providing a "*dramatic contrast*"<sup>74</sup> and "*dramatic and striking juxtaposition*" with those assets, and refers to a relationship of 'dominance' of the proposed tower over the existing streetscene, Mr Allford's description is that the design would provide a "*calm neutral backdrop*"<sup>75</sup>. The same inconsistency arises in respect of their descriptions of the 2021 scheme<sup>76</sup>.
56. Reliance on 'design quality' in the abstract cannot be an excuse for the fact that the design of a development has not been properly informed by its context, including the historic environment.

---

<sup>71</sup> See Ms Adams' PoE section 2.2.2 for a helpful summary

<sup>72</sup> XX Barker-Mills

<sup>73</sup> RX

<sup>74</sup> See e.g. Stewart PoE [4.10], [5.43]-[5.44], [7.12], [7.32]

<sup>75</sup> Allford PoE [7.1.5.3]

<sup>76</sup> See Stewart PoE [9.9] and [10.35], and Allford PoE [9.19.12], Figure 486 and [10.1.5.3]

## **Assets of Focus**

57. There are two preliminary points to be made about the evidence relating to the impacts on the heritage assets in this case.

### **Preliminary point (i): Images of the proposed towers**

58. When considering the impact of the proposed towers by reference to sub-area 4 of the CA and the settings of those LBs closest to them<sup>77</sup>, there is a notable lacuna in the suite of images (both still and moving) produced by the Appellant.
59. The Appellant has produced a full height image of the 2021 scheme as seen from St Thomas St outside the Shard looking west, but no equivalent full height image for the 2018 scheme. In XX of Mr Stewart it was established that there was no technical reason why such an image was not (or could not have been) produced, the Appellant just chose not to do so.
60. The image for the 2018 scheme only extends as far as about level 16 (approx. 65m AOD), some 40m or more below what is shown for the 2021 scheme and almost 80m less than its full height of 144m AOD. Mr Stewart confirmed that if the Inspector wants to get an idea of what the full height of the 2018 tower would look like from ground level looking west on St Thomas St the Appellant has not provided *any* illustrative material to show this<sup>78</sup>.
61. The LPA through Ms Adams has sought to fill the gap, and it is agreed that her amended Figure 32<sup>79</sup> is the best image that the Inspector has for this purpose.
62. That is a remarkable state of affairs, having regard to the technology available to the Appellant and to the following points:
- a. the proposal is to erect a 144m high tower in the middle of a low rise CA and very close to many LBs;

---

<sup>77</sup> This includes in particular the LBs within the western end of St Thomas Street and Guy's Hospital

<sup>78</sup> XX Stewart

<sup>79</sup> INQ.08

- b. harm is acknowledged in the view from St Thomas St, and to Guy's Hospital through development in its setting<sup>80</sup>; and
  - c. in correspondence the LPA asked the Appellant to provide a fully rendered version if it did not consider Ms Adams amended image to be sufficiently accurate or representative to be relied upon by the Inspector<sup>81</sup>.
63. It is compounded by the fact that in neither of the 'walk through' videos produced for the purposes of the Inquiry does the viewer on St Thomas St look up to take in the building as a whole (for either scheme) and therefore enable the effect of the scale of the building to be appreciated.
64. Why is the Appellant so coy? Its TVIBHA acknowledges the view from St Thomas St to be one in which *"the degree to which the Development dominates the existing street scene [part of a CA, comprised largely of LBs] from this viewpoint is considerable, and the coherent quality of the existing view is disrupted"*. In the circumstances the most likely explanation would seem to be a reluctance to allow the full magnitude of that adverse impact of major significance to be appreciated by the decision-maker, for fear of what that might lead to.

#### Preliminary point (ii): the evidence of Dr Barker-Mills

65. Dr Barker-Mills' evidence was notable for the care he had taken to ensure that his assessment was clearly structured to follow the approach espoused in HE guidance, and to be transparent. That is important, because it allows others (including the Inspector) to understand what informs each stage of the assessment, where professional judgment has been exercised and the basis for those judgments. In

---

<sup>80</sup> Harm caused, in particular, by the height and resulting dominance of the proposed towers

<sup>81</sup> The LPA and HE sought to obtain the Appellant's permission to make use of the VuCity modelling of the schemes so as to produce accurate still images which could be referred to in evidence. That would have enabled gaps such as these to be filled without any issues as to accuracy, and, importantly, for the LPA and HE independently to assess and identify which images might be most useful to illustrate the issues raised by their respective cases. The London Plan envisages that the impact of tall building proposals will be assessed by decision-makers using 3D virtual reality modelling (p. 142 [3.9.5]). The Appellant would not give its permission for that to be done, and the LPA has therefore done its best to assist the Inspector without the benefit of the greater flexibility and functionality that VuCity would have provided



those circumstances it is remarkable how little challenge there was (either in rebuttal, XX of Dr Barker-Mills or XIC of Mr Stewart) to the detail of his assessment.

66. We therefore commend Dr Barker-Mills' written and oral evidence to the Inspector and SoS as being robust, credible and reliable.

#### Borough High St CA

67. Dr Barker-Mills assesses the impact on the BHSCA in his PoE at [9.79]-[9.82], as supplemented by his oral evidence in XIC. His evidence shows that there would be LTSH to the CA, above the middle and towards the upper end of the range. His evidence on this matter has the benefit of consistency with the views of Mr Young on behalf of HE, whose own evidence displays an impressive detailed understanding of this highly valuable CA.

68. The same cannot be said of the Appellant's evidence. Mr Stewart is a lone voice in arguing that the impact on the CA would be to enhance it<sup>82</sup>, and the justification for that conclusion did not withstand scrutiny in XX. His assessment acknowledged (unspecified) harm, but then suggested this was "*offset*" by "*the many positive qualities of the development*" – which turned out to have nothing to do with the special qualities for which the CA had been designated. The outcome of the assessment he has undertaken is simply not credible, as even a cursory glance through the TVIBHA images of the proposed towers taken from important viewpoints within the CA would reveal. Dr Barker-Mills was right to say<sup>83</sup> that it is simply not accurate to present this as a reasonable difference of professional judgment about effects. The assessment is methodologically flawed, and incorporates irrelevant considerations which are critical to the conclusions reached. No reliance can be placed on it as a result.

69. The Inspector will, of course, reach her own expert conclusions as to whether there is harm and if so the extent and significance of that harm. In doing so it can be noted

---

<sup>82</sup> Indeed, even the Appellant's SoC accepted that there would be LTSH to the BHSCA (CDI.02 [5.10]).

<sup>83</sup> XIC

that Mr Stewart did not dispute that the CAA represented a fair encapsulation of the special qualities that justified designation and that the Inspector and Secretary of State should use it for the purposes described in [1.1.1]<sup>84</sup>.

70. There are three further points we would wish to make about the approach to the assessment of harm to the BHSCA.

- a. As with the approach to heritage assets generally, the key point is not whether some aspects of the CA are left untouched, but the importance of what would be affected to the CA's significance. In this case it is agreed that when assessing impact on the CA it is important to have in mind the distinct character of the sub-areas, as well as the overall identity of the CA as a whole<sup>85</sup>. In any event, it is agreed that whilst the towers would be situated in the heart of sub-area 4, they will also be very apparent in views from the other three sub-areas<sup>86</sup>. That reflects the relatively low heights of buildings in the CA, the position of the appeal site within it, and the height of the proposed towers<sup>87</sup>.
- b. Sub-area 4 is agreed to have its own distinct character, with the quality and consistency of the buildings and the formality of the hospital buildings clearly being key to the character and appearance of this sub-area<sup>88</sup>. It is also agreed to represent a marked change in character from the High St, to already possess a listed landmark feature<sup>89</sup> which is consistent in character and appearance with the other LBs in this part of the CA, and to have a special identity in which the completeness and coherence of the elements in this part of St Thomas St is of special note<sup>90</sup>.
- c. The Appellant's evidence and approach is remarkably and inappropriately dismissive of this very important and historic CA.

---

<sup>84</sup> XX Stewart

<sup>85</sup> XX Stewart

<sup>86</sup> XX Stewart

<sup>87</sup> XX Stewart

<sup>88</sup> XX Stewart

<sup>89</sup> The former Parish Church of St Thomas on the northern side of the street

<sup>90</sup> XX Stewart

- i. The variety within the CA as a whole - arising from its unusual and highly valuable time-depth – is treated as somehow making it less sensitive to the impact of tall buildings. Why that is believed to be the case is never properly explained, presumably because there is no proper basis for it. The CAA makes clear that the overall identity of the BHSCA is as much to do with scale and form as other factors<sup>91</sup>. These special qualities make it more rather than less sensitive to the impact of new development which is entirely (indeed dramatically) out of keeping in both scale and form.
- ii. The yards leading off BHS – features of obvious and acknowledged importance to its character and appearance – are treated by the architect designing the scheme as “*places of misery*”<sup>92</sup>, a problem to be addressed, rather than an essential and valuable feature of the historic grain of the townscape recognised both in the CAA and the SP’s Area Vision<sup>93</sup>.
- iii. The Appellant has focussed relentlessly on the ability to see tall buildings from within the CA, and, as we have already explained, the LPA’s decision in 2014 to approve Shard Place on the very edge of the CA, right next to the Shard itself, as effectively allowing for ‘open season’ in terms of erecting towers further into the CA. The first of those matters fails to recognise the importance and implications of the CA Boundary. We have responded to the second of those matters in the introductory part of this closing, which we do not repeat here.

71. Having regard to the importance of the asset, and the extent of harm, very significant weight should attach to the harm to the BHSCA<sup>94</sup>.

---

<sup>91</sup> [3.1.6]

<sup>92</sup> XX Allford

<sup>93</sup> CDE.01 Policy AV.11

<sup>94</sup> Glasgow PoE [11.7]

### Guy's Hospital (Grade II\*)

72. Dr Barker-Mills assesses the impact on Guy's Hospital in his PoE at [9.47]-[9.55], as supplemented in XIC. His evidence explains why there would be LTSH to this GII\* LB, above the middle and towards the upper end of the range. Importantly, his assessment is also consistent with the views of Mr Young on behalf of HE.
73. On behalf of the Appellant Mr Stewart acknowledges LTSH would be caused, though he has seriously under-estimated the level of that harm by identifying it as "*minor*". His calibration of harm is unreliable, as illustrated by the following points:
- a. His assessment plainly relies on the existence of other tall buildings within the setting of the LB as serving to limit the extent of harm, rather than giving rise to existing harm to which the proposed tower would add cumulatively. He agreed that his assessment did not in fact assess whether the impact of these modern elements is positive, neutral or negative<sup>95</sup>.
  - b. When asked in XX to express a view as to whether Guy's Hospital Tower was a negative element in the setting, he acknowledged that it was but concluded that it too had a "*minor*" effect. This is helpful, because:
    - i. it establishes common ground that there is a need to consider cumulative harm from tall buildings in this instance; and
    - ii. it allows the Inspector to get a sense on site of quite what Mr Stewart regards as a "*minor*" effect.
  - c. In XX it became apparent that the level of harm to this particular LB was regarded by Mr Stewart as being ameliorated by what he had described as "*tangible long term benefits to the setting*" of this LB<sup>96</sup> but which he ultimately accepted not to be relevant either to its heritage significance nor the ability to appreciate its significance. To say the least, that is a surprising and elementary error to make when assessing the extent of harm to a Grade II\* LB, and symptomatic of the general lack of rigour, robustness and transparency in the Appellant's assessment.

---

<sup>95</sup> XX Stewart

<sup>96</sup> CDA.12-2 [12.103]

74. Having regard to the importance of the asset, and the extent of harm, very significant weight should attach to the harm to Guy's Hospital<sup>97</sup>.

#### The St Thomas St LBs (Grade II and II\*)

75. Dr Barker-Mills assesses the impact on these LBs in his PoE at [9.56]-[9.59] (9, 9a, 11-13 and 15) [LTSH below the middle of the range], [9.60]-[9.71] (Bunch of Grapes PH, 4-8 and 12-16) [LTSH around the middle of the range], as supplemented in XIC.
76. His oral evidence<sup>98</sup> also included an examination of how the impact on these buildings was assessed in the Appellant's BHA, by way of a worked example of how that assessment had failed to follow key parts of the HE recommended 'stepped' approach and could not be relied upon. That evidence was clear and compelling, illustrating the points made in section 10 of his PoE, and the Appellant has offered no satisfactory answer to it.
77. Having regard to the importance of the assets, and the extent of harm, significant weight should attach to the harm to these LBs<sup>99</sup>.

#### Southwark Cathedral (Grade I)

78. Dr Barker-Mills assesses the harm to this Grade I LB in his PoE at [9.38]-[9.46], and this was supplemented in XIC. For the reasons that he gives, the level of LTSH would be above the middle and towards the upper end of the scale. His assessment is broadly consistent with that of Mr Young on behalf of HE, who characterises the level of LTSH as 'High'.
79. Mr Stewart acknowledges LTSH would be caused, though he has seriously underestimated the level of that harm by identifying it (belatedly<sup>100</sup>) as "*minor*". His calibration of harm is unreliable, as exemplified in the following points:

---

<sup>97</sup> Glasgow PoE [11.6]

<sup>98</sup> XIC

<sup>99</sup> Glasgow PoE [11.6]

- a. Mr Stewart has failed adequately to consider the issue of cumulative harm.
  - i. In XX Mr Stewart accepted that there was no assessment in the BHA of whether the presence of tall buildings such as Guy's Hospital Tower in the setting of the cathedral where it can be seen is positive, negative or neutral. He also accepted that Guy's Hospital Tower plainly is a negative element of setting.
  - ii. He also acknowledged that the Shard has an unsatisfactory relationship with the cathedral.
  - iii. Where the setting already features negative distracting elements in the form of tall buildings, adding the appeal proposals is agreed to give rise to cumulative harm<sup>101</sup>.
  - iv. The Appellant has not assessed cumulative harm, and indeed appears positively to rely on the presence of tall buildings in the existing view as justification for adding more<sup>102</sup>.
- b. A related flaw in Mr Stewart's assessment is that it does not sufficiently acknowledge the importance and value either of the view of the cathedral from the north across London Bridge or the views immediately in front of the cathedral where it is currently seen against clear sky without tall buildings in the background.
- c. So far as the latter views are concerned, Mr Stewart accepted that these are views which at present offer a particularly good opportunity to appreciate the form, silhouette and external architecture of the cathedral<sup>103</sup>. The effect of the development will be to introduce a tall building behind the cathedral in views where it is currently seen against clear sky. That is agreed to be harmful<sup>104</sup>. Where Mr Stewart's assessment goes wrong, however, is to treat as harmful only those instances where the proposed tower would be seen

---

<sup>100</sup> Until his XIC on Day 9, Mr Stewart had gone no further in calibrating harm to any heritage asset than to say it was "Considerably less than substantial harm". This was the phrase used in the BHA, his PoE and the HSoCG. It is of very limited (if any) utility for the purposes of the exercise required by the PPG, because the phrase is broad enough to encapsulate harm from above the middle of the range right down to the very bottom of the range.

<sup>101</sup> XX Stewart

<sup>102</sup> See e.g Stewart PoE [5.53]-[5.56] and [5.58]-[5.59]

<sup>103</sup> XX Stewart

<sup>104</sup> XX Stewart

directly *behind* the Cathedral's tower. Where the two are seen *alongside one another* Mr Stewart assumes that there is no longer *any* adverse impact either on the significance of the cathedral as derived from its setting, or on the ability to appreciate that significance<sup>105</sup>. That is an inappropriately narrow and restrictive approach, taking no account of the existence and extent of distraction and visual competition where the two towers are seen alongside one another.

80. Having regard to the importance of the asset, and the extent of harm, very significant weight should attach to the harm to Southwark Cathedral<sup>106</sup>.

#### ToL WHS

81. Dr Barker-Mills assesses the harm to the ToL in his PoE at [9.10]-[9.25], and this was supplemented in XIC. For the reasons that he gives, the level of LTSH would be just below the middle of the range for the 2018 scheme and at the low end of the range for the 2021 scheme. His assessment is broadly consistent with that of Mr Young on behalf of HE, albeit a notch higher in the case of the 2018 scheme. Mr Young concludes that there would be LTSH in both cases, characterising the level of LTSH as 'Low' in both instances.
82. Mr Stewart concludes that there would be no harm at all for either scheme. Whilst he is wrong in respect of both schemes, his conclusion in respect of the 2018 scheme is simply not credible. The following points are of particular relevance when forming a view on this point:
- a. Dr Barker-Mills' assessment of the extent to which the relevant attributes rely on setting is uncontroversial<sup>107</sup>.
  - b. Mr Stewart confirmed that whereas in his assessment it was noted that the tower would be visible as one of a number of tall buildings and would add to

---

<sup>105</sup> XX Stewart

<sup>106</sup> Glasgow PoE [11.6]

<sup>107</sup> XX Stewart, and see Barker-Mills PoE [8.6]

the grouping, he had given no consideration of whether that existing grouping gave rise to harm.

- c. Mr Stewart accepted that the approach taken in the assessment was to refer to and endorse the findings of the Inspector who held the inquiry into the Shard, incorporating those findings wholesale into the assessment.
- d. It is plain from the subsequent events recorded in the Tulip decision (and the decision itself) that:
  - i. those findings cannot be relied upon as a guide to what is now to be considered acceptable;
  - ii. the Government has acknowledged harm was caused by the Shard<sup>108</sup>; and that
  - iii. policy has subsequently been significantly tightened in order to address the evident ineffectiveness of the previous policies to protect the OUV of London's WHS.
- e. If the Inspector and SoS conclude that the visibility of the 2018 scheme, cumulatively with other tall buildings, would mean that attention would be distracted from the buildings within the Inner Ward, or the proposals would compete for attention with those buildings, that would constitute harm<sup>109</sup>.

83. The ToL WHS is a heritage asset of universal and international importance, among the most important cultural heritage sites in the world and a key feature of London's identity as a world city<sup>110</sup>. It is agreed<sup>111</sup> (and the Government has made clear<sup>112</sup>) that harm to its OUV should be given the maximum weight possible in decision-making. It is also agreed that if the Inspector and Secretary of State were to find that there would be LTSH to this asset it would be appropriate to attach the maximum possible weight to this harm and to conclude that it gives rise to a conflict with development plan policy<sup>113</sup>.

---

<sup>108</sup> See e.g. CDF.015 p. 2

<sup>109</sup> See also CDF.10 Local Setting Study p. 10 View 1 and related objectives and guidance

<sup>110</sup> CDD.21 LP [7.2.1]

<sup>111</sup> XX Goddard

<sup>112</sup> See Glasgow PoE [6.15] and CDH.11 [21]

<sup>113</sup> XX Goddard



84. Having regard to the importance of the asset, and the extent of harm, very significant weight should attach to the harm to the ToL caused by the 2018 scheme, and significant weight should attach to the harm caused by the 2021 scheme<sup>114</sup>.

#### St Paul's Cathedral (Grade I)

85. Dr Barker-Mills assesses the impact on St Paul's Cathedral in his PoE at [9.26]-[9.32], explaining why there would be LTSH towards the lower end of the range for both schemes. Mr Young gave oral evidence on this matter on behalf of HE, and Mrs Dring asked questions of Mr Stewart in XX. This was not an asset in respect of which Dr Barker-Mills gave oral evidence, and nor were the questions put in XX of Mr Stewart on behalf of the LPA directed at this asset. In those circumstances the LPA is content to rely on its written evidence without further elaboration in closing submissions.
86. Having regard to the importance of the asset, and the extent of harm, significant weight should attach to the harm to St Paul's Cathedral<sup>115</sup>.

#### Heritage Benefits

87. There are acknowledged to be some heritage benefits that would arise from the proposed works to the Grade II listed terrace. As Dr Barker-Mills has explained, the effective reversal of the previous opening up of the interiors and restoration of the plan form would be a heritage benefit.
88. In just the same way as any harm (no matter how modest) to the heritage significance of a designated heritage asset should be given considerable importance and weight, it is accepted that works which provide a benefit to that heritage significance (no matter how modest) should also be given considerable importance and weight.

---

<sup>114</sup> Glasgow [11.5]

<sup>115</sup> Glasgow [11.6]

89. That is the appropriate starting point, but as the Court of Appeal has made clear in *Bramshill*<sup>116</sup> that “does not predetermine the appropriate amount of weight to be given to the “conservation” of the heritage asset in a particular case. Resolving that question is left to the decision-maker as a matter of planning judgment on the facts of the case, bearing in mind the relevant case law, including *Sullivan L.J.’s* observations about “considerable importance and weight” in *Barnwell Manor*.”
90. Adopting that approach, plainly not all benefits (just as not all harms) will have the same weight in planning balance<sup>117</sup>.
91. Dr Barker-Mills gave oral evidence as to why he did not regard the benefit to be particularly significant in the context of the schemes as a whole, and his view and reasoning was echoed in the views of Mr Young on behalf of HE. These are benefits, but their relative importance in the overall planning balance should inevitably reflect the relatively modest level of heritage benefit that they will deliver.
92. On the evidence the Inquiry has heard it is plain that the other claimed heritage benefits<sup>118</sup> are nothing of the kind.

### **Listed Building Consent Applications**

93. For the reasons set out in INQ-11, the LPA is now content that the LBCs could be approved if permission is refused for planning applications subject to the imposition of an appropriate condition ensuring that work isn’t carried out in respect of particular aspects without planning permission being in place for appropriate corresponding works.
94. As the Appellant has pointed out<sup>119</sup>, the reality is that the relevant works would almost certainly not be carried out in those circumstances.

---

<sup>116</sup> CDH.06 [73]

<sup>117</sup> Mr Stewart accepted this in XX by Ms Dring

<sup>118</sup> See Goddard PoE [9.35 a., c. and d.]

<sup>119</sup> Mr Katkowski QC

## **Conclusions**

95. When the adverse effects on heritage assets are considered as a whole, their collective weight must be very substantial indeed. Those effects give rise to a strong statutory presumption in favour of dismissing the appeals, and to significant direct conflict with development plan policies of the highest importance for the determination of these appeals.
96. As we explain below, the benefits that the schemes deliver (including the modest heritage benefits) would come nowhere near outweighing that harm and overcoming the resulting statutory and policy presumptions.

## **THE EFFECT OF THE APPEAL PROPOSALS ON THE CHARACTER AND APPEARANCE OF THE AREA WITH REGARD TO URBAN DESIGN, TOWNSCAPE, ARCHITECTURAL QUALITY AND PUBLIC REALM**

### **Introduction**

97. The Council's evidence on these issues is in the PoE of Ms Adams<sup>120</sup>, supplemented by XIC. The policy context is summarised in Ms Adams' PoE<sup>121</sup>. There are inevitable overlaps between this issue and the heritage impacts, not least because so much of the surrounding townscape is of heritage significance. These issues are also addressed under the headings "The Approach to New Tall Buildings" and "A Point of Landmark Significance" in the introductory section above.

### **Approach**

98. It is plain from Mr Allford's oral evidence that the quantum of deliverable commercial floorspace that would be achievable through a tall building proposal was a key driver of the brief. This driver applied to the 2018 and 2021 schemes - when asked whether he had suggested to the Appellant that they consider reducing their

---

<sup>120</sup> Sections 4 (The Proposals) and 5 (Likely Reasons for Refusal)

<sup>121</sup> Section 2.2

ambitions in respect of the quantum of development in order to allow the drawbacks of the 2018 scheme to be avoided, Mr Allford said that he had not, because the brief had been fixed by 2018 and he understood that it was “*on the cusp of being viable*”.<sup>122</sup>

99. The brief for the 2021 scheme thus encompassed the same broad overall level of floorspace with a “*reduction of mass in the sky and increase within the city*”<sup>123</sup> along with the removal of retail space and the introduction of a fully on-site servicing arrangement.
100. The substantial increase in mass within the city was said by Mr Allford to be directed towards appeasing Southwark Cathedral’s Fabric Advisory Committee and removing “*one of the barriers*” to the LPA making a favourable decision in respect of the project<sup>124</sup>. It was not a meaningful attempt to respond to and resolve the much wider concerns raised by the LPA and many others about the impact of a tall building on the site in the more immediate context of Guy’s Hospital, sub-area 4 of the CA and the listed buildings on St Thomas Street, or in respect of any of the other local heritage assets impacted. The Appellant’s commercial imperative has led to a blinkered approach to the design process and to substantial adverse impacts on the design outcomes for both schemes.
101. Mr Allford’s views as to the success of the design of each Scheme must be approached with caution. It is unsurprising (and uncontroversial) that he is unable to be impartial or independent when giving evidence in relation to the schemes that his practice has designed<sup>125</sup>. His particular role as the scheme architect and the inevitable positive view that he takes of the design outcomes means that the weight that should be attached to his evidence is diminished. By contrast, Ms Adams was an independent and impartial witness with no prior involvement in the schemes.

---

<sup>122</sup> Allford XX

<sup>123</sup> Allford XIC

<sup>124</sup> Allford XX

<sup>125</sup> Allford XX

102. Notwithstanding the obvious distinction in their status at the inquiry, Mr Allford took the opportunity in response to XX to cast aspersions on Ms Adams' expertise, claiming in particular that she does not have any experience of designing office space.
103. His criticism is entirely unfounded, and unfair:
- a. It was unfounded because Ms Adams' practice was a very recent winner of the New London Architecture Award for best new workplace.<sup>126</sup> That is reflective of the breadth and extent of the relevant experience that Ms Adams is able to bring to bear in her expert evidence, as set out in section 1 of her PoE.
  - b. It was also unfair because Ms Adams' expertise was (quite rightly) not challenged in the Appellant's Rebuttal PoE nor when she was being cross-examined. If an expert witness is to be criticised in a public inquiry as not holding sufficient experience or expertise to provide an expert opinion, the appropriate approach is to put that to the witness directly to allow them a fair opportunity to respond<sup>127</sup>.
104. Ms Adams took great care in her evidence, both written and oral, to analyse and explain the existing context at and in the vicinity of the appeal site and the design and townscape impacts of each scheme. She explained her views as to the success of the design of the schemes in a clear and methodical manner and by reference to the general design policies and, notably, the detailed criteria set by the LP and SP tall buildings policies. Her evidence was credible, balanced and fair, and we commend it to the Inspector and SoS.

---

<sup>126</sup> Adams PoE [1.1.2]

<sup>127</sup> That is what happened when Ms Adams' lack of direct experience in the design of buildings in the City of London was raised by both the City of London and the Appellant in the Tulip inquiry when she provided evidence in support of the Mayor of London's case. The attack made was squarely rejected by the Inspector, who noted that those, like Ms Adams, less caught up in the experience of working in the City of London tall building cluster were "*likely to have fewer preconceptions*" than those who have longstanding experience in that part of London and in respect of that cluster. See CDH.10 IR [14.97]. See also IR [6.37] where the Appellant's case is summarised, in which Ms Adams is described as a 'novice' and IR [7.14], where the City of London's case is summarised, in which it is stated that Ms Adams has no experience of working in the unique townscape environment of the City of London

105. The decision by the Appellant to proceed with a tall building was made in 2014/2015<sup>128</sup>, before any engagement with stakeholders or, notably, any input from Mr Stewart on townscape and heritage matters<sup>129</sup>. When the Appellant's team did engage with stakeholders in respect of the schemes and their impact, Mr Allford's general approach was not to pay heed to and seek to respond to concerns raised. His yardstick for a successful design was whether he considered the Schemes to be 'delightful'<sup>130</sup> and on the basis of his responses to questions in XX he did not appear to be terribly interested in (let alone respectful of) the views of others, including HE and CABE. This lack of willingness to pay proper heed to the views of others seems to have stemmed principally from his opinion on the approach to or quality of the advice that he received. As already explained, he viewed the quality of CABE's advice as being insufficient to justify a design review of the 2021 scheme and in respect of HE, he considered them to not be sufficiently 'progressive' to warrant taking proper account of, and responding to, their clearly expressed concerns<sup>131</sup>.
106. Mr Allford's dismissive approach to the considered views of stakeholders reflected a striking lack of humility in relation to the development of this plainly sensitive site.
107. The dismissive approach did not stop there. It was instructive and somewhat surprising to hear Mr Allford disagreeing so significantly with the views of Mr Stewart as to the townscape and heritage impacts of his proposed towers. Mr Allford at least seemed to acknowledge Mr Stewart's view as a "*correct technical analysis*"<sup>132</sup> (which, ironically, it was not) but made no attempt to respond to and address the adverse impacts he had identified in the TVIBHA. Given the nature and scale of the impacts (even as identified by Mr Stewart), his findings should have set alarm bells ringing. The TVIBHA identified a number of problematic relationships between the towers, the Shard, the BHSCA and the immediate streetscene, from a range of viewpoints within the CA. In respect of the 2018 scheme, to name but a few, the TVIBHA identifies a "*visually uneasy*" conjunction with Shard in the view

---

<sup>128</sup> Allford XX

<sup>129</sup> Stewart XX – he was not instructed until 2016

<sup>130</sup> Allford XX

<sup>131</sup> Allford XX by HE

<sup>132</sup> Allford XX

from St Saviour's war memorial and a "*noticeable shift in the balance between historic foreground and modern background*", a "*noticeably greater*" domination of the historic foreground by modern background than is the case with the view as existing from Southwark St/Stoney St, a considerable domination by the development of the existing street scene and disruption to the coherent quality of the view from St Thomas St/London Bridge St, and a greater distraction to the viewer than the Shard from Guy's West Wing Quad Panorama<sup>133</sup>.

108. It is striking that Mr Stewart reached the same conclusions in respect of townscape impacts for the same set of views for the 2021 scheme<sup>134</sup>. It was established in XX that Mr Allford considered that Mr Stewart's analysis would likely be the same if a third option for a tall building were to be proposed with similar floorspace. This, we submit, rather suggests that the site is fundamentally unsuitable for a tall building, either at all or certainly with the quantum of floorspace sought by the Appellant.
109. As for heritage input, there is no dispute that reliable and robust input regarding the effects of particular design options on heritage assets is a very important design input for a highly sensitive site such as the appeal site<sup>135</sup>. That is consistent with the development plan, which expects design to respond to a site's historic context<sup>136</sup>. As the Inspector in the Tulip recognised, an unsympathetic response to the historical context is relevant to whether a scheme is of good, or, as is required here exemplary, design. Given that Mr Stewart was not instructed until after Mr Allford and the client had settled on a tall building as the way forward for the project and given that Mr Stewart was unable to point to anything specific in either scheme that had changed as a result of his heritage advice, it appears that thorough and careful

---

<sup>133</sup> 2018 TVIBHA CDA.12-1 p. 229 View 43 from St Saviours war memorial [5.5.39], p. 233 View 44 from Southwark St/Stoney St [5.554], p. 257 View 50 STS/London Bridge St [5.624], p. 245 View 47 from Guy's West Wing Quad Panorama [5.588]. See also views from Bedale St (p. 269 View 53 from Bedale Street [5.661] and p. 273 - View 54 from Bedale Street/BHS [5.674]), which describe the relationship of the new building to the existing streetscene as not creating 'a particularly positive pictorial relationship'

<sup>134</sup> CDB.14-2 p. 203 View 35 from St Saviours war memorial [5.436], p. 207 View 36 from Southwark St/Stoney St [5.451], p. 219 View 39 Guys Quad West Wing Panorama [5.485], p. 231 View 41 from St Thomas St/London Bridge St [5.524], p. 243 View 45 from Bedale St [5.561] and p. 247 View from 46 Bedale St/BHS [5.574]

<sup>135</sup> Allford XX and see Adams PoE [5.3.1.4]

<sup>136</sup> CDD.21 LP Policy D3 D(11) p. 111, D9 C(d) p. 139, CDE.01 SP P13 para. 2 p. 126, P14 para. 2 p. 127, P17 p. 133

assessment of the historic context did not inform the main elements of the design in any meaningful way<sup>137</sup>. The outcome is a design that does not positively respond to the site's historic context, and this not only leads to a conflict with heritage policies of the development plan but also with those applying specifically to design.

### **Height, scale and massing**

110. Ms Adams assesses the adverse impacts of the design of the schemes in terms of their height, scale and massing in her PoE at [5.3.1] and [5.5.2].
111. Good design does not exist in a vacuum when it comes to place-making and planning. Mr Allford accepted that a proposal that fails to respond positively to local context and the wider London landscape would fail to accord with the development plan<sup>138</sup>. Yet, what he has designed, even after two attempts, is entirely at odds with the immediate context and would be harmful to the wider London landscape. As became clear at the inquiry, the height, scale and massing of both schemes are driven not by context but by client requirements, commercial considerations and by a process that has eschewed the input of assessment regarding heritage and townscape impact and the advice of many stakeholders. The result is two disruptive and discordant towers that are disproportionate to the size and significance of the site and the scale and character of the surrounding townscape.

### **Architectural Quality**

112. The LP and SP require tall building design to be exemplary<sup>139</sup>. Ms Adams' PoE explains why neither scheme meets this standard at [5.3.2] and [5.5.3]. She assesses each building's base, middle and top in accordance with the approach set by Policy D9 of the London Plan.

---

<sup>137</sup> Stewart XX and Allford XX

<sup>138</sup> Allford XX. See Adams PoE [2.2.2] for a summary of the relevant LP and SP policies, as well as the relevant parts of the National Design Guide, which require design to respond appropriately to context

<sup>139</sup> LP Policy D9 C 1(c), SP Policy P17 para. 3.1



113. Good design is about much more than the architectural expression of a building. As Ms Adams' written evidence explains, architectural quality is not a simple phenomenon confined to form making or composition and instead requires success on a number of levels including achieving high quality place-making and being responsive and sensitive to context. Design quality should not be assessed in isolation from a building's setting or its impact on adjacent or associated existing buildings<sup>140</sup>.
114. The Appellant's approach has sought to focus on the quality of the appearance of the building divorced from its context.
115. The view from Guy's Hospital looking west from the north quad<sup>141</sup> exemplifies the folly of the Appellant's approach. However 'good' or 'exemplary' one might find the architectural expression of either or both of the schemes to be in isolation, the view of the towers from this location demonstrating why scale, siting, height and massing are highly relevant factors when judging the quality of a design in context. The result of the juxtaposition of Guy's Hospital north quad and the schemes, with the leap in scale of the towers and their very awkward relationship with the classical formality of the historic building in the foreground, is extremely unfortunate. The same concerns arise in respect of the relationship between the towers and the Georgian terrace on St Thomas St. Ms Adams aptly described that the terrace would become subservient to the tower and would consequently reduce the terrace to a base for the modern towers, or a "*footnote*"<sup>142</sup>.
116. Moreover, leaving to one side the incongruous juxtapositions created by the towers' scale, height and mass, the appearance of the towers would serve to exacerbate that harm when considered in context. The warehouse and large scale infrastructure references borrowed by the Appellant from locations outside of sub-area 4 of the CA (and for the 2021 scheme from an entirely different CA<sup>143</sup>) bear no relationship to the materiality of the existing London Bridge cluster that the Appellant is seeking to

---

<sup>140</sup> Adams PoE [6.22]

<sup>141</sup> CDA.12-1 2018 TVIBHA View 49 p. 253, CDB.14 TVIBHA 2021 View 41 p. 227

<sup>142</sup> Adams XIC

<sup>143</sup> The Tooley St CA (see INQ7, p. 23 sheet 10D and XX Allford)

align their schemes with but they also jar significantly with the consistent formal Georgian architecture of St Thomas St and, as we have already explained, the neoclassical approach taken to Guy's Hospital.<sup>144</sup>

117. It was suggested by Mr Stewart that using brick, the predominant material in sub-area 4, would have been a peculiar choice for tall buildings on the appeal site because it would have *"undermined the differentiation between old and new"*<sup>145</sup>. It was ironic then that in RX, Mr Stewart was taken to the National Design Guide where a good practice example of a tall building that sits well in its context, which is in fact located in Southwark, uses brick.<sup>146</sup> It is not suggested that brick is the only acceptable solution for a tall building on the appeal site or in Southwark but rather that a necessary component of good design is an architectural expression that is an appropriate response to the specific context of the appeal site, something which cannot be properly said of either scheme.

### **Public Realm**

118. The quality of the public realm for each scheme at ground level has been significantly compromised by the commercial imperative to maintain a particular quantum of floorspace. For each scheme, the public realm is ungenerous, lacking a sense of openness, overshadowed and dominated by tall buildings, and unlikely to be attractive to users as a place to dwell. Ms Adams' PoE explains the inadequacies of the public realm at [5.3.8] and [5.5.8].
119. The public realm will receive little sunlight for most of the year. The mainly sunlit images produced to illustrate it<sup>147</sup> belied the written evidence that is before the decision-maker. The 2018 scheme's Landscape Strategy describes *"most of the public realm"* as being in *"light-to-deep shade during most of the day for most of the*

---

<sup>144</sup> Barker-Mills RX

<sup>145</sup> Stewart XIC

<sup>146</sup> CDD.20 p. 17 Blackfriars Circus – example 3

<sup>147</sup> See e.g. INQ.07 pp. 64 (18-6A), 66 (18-6C), 69 (18-8B), 74 (18-9D), 99 (18-14B), 109 (18-17B), 110 (18-18A), 114 (18-19B), 136 (21-6A), 141 (21-8B), 147 (21-9E), 149 (21-9G), 150 (21-9H), 177 (21-17B), 195 (21-23)

year”<sup>148</sup>. The GIA appendix to Mr Goddard’s rebuttal evidence shows that a large proportion of the public realm would be non-compliant with BRE Guidelines and it suggests that the entrance from St Thomas St is not considered to have a specific requirement for sunlight because rather than being an amenity space<sup>149</sup> it is instead simply “a point of entry”<sup>150</sup>. This is despite Mr Allford seeking to rely on it as providing a pocket park of amenity space<sup>151</sup>.

120. The 2021 scheme fares worse. The increase in massing of the 2021 scheme results in a decrease in public realm from approximately 1305 sqm in the 2018 scheme to 1136 sqm, of which 54% would be under cover. As Mr Allford accepted, this would result in reduced daylight, sunlight and views of the sky in the 2021 scheme<sup>152</sup>. This is reflected in the 2021 Landscape Strategy, which describes “most of the outdoor areas” that are not covered being “in part shade for most of the day during most of the year” and the GIA appendix to Mr Goddard’s rebuttal, which shows most of the courtyard outside the new London Bridge underground station entrance as failing to comply with BRE Guidelines<sup>153</sup>.
121. It is not simply the increased mass of the tower that has an adverse impact on the public realm in the 2021 scheme. It is also compromised by the arrangement for on-site servicing. This is due to a number of factors:
- a. The 2021 scheme does not include a link from the entrance square to the tower on St Thomas St through Beak Alley to King’s Head Yard due to the presence of the servicing yard. This means that pedestrians wishing to access Beak Alley need to use an access that is shared with the servicing yard, which will be used by HGVs and refuse vehicles.
  - b. It means that there will be two substantial gaps in the building line<sup>154</sup> and the active frontage on St Thomas St, one for the entrance to the tower and

---

<sup>148</sup> CDA.20 p. 16

<sup>149</sup> These are identified in APP-3-B-5 p. 9 at [4.2]

<sup>150</sup> APP-3-B-5 p. 9 [4.3]

<sup>151</sup> Allford XIC

<sup>152</sup> Allford XX

<sup>153</sup> CDB.19 p. 31, APP-3-B-5 p. 14

<sup>154</sup> In a CA where the CAA (CDE.06) describes the “main defining elements” as being “groups of buildings that combine into frontages that define streets, spaces and views” (p. 42 [4.3.1]) and notes that in “almost all

another for the servicing yard and access to Beak Alley, resulting in a greater loss of active frontage on St Thomas St.

- c. The 2018 scheme has active frontages on Beak Alley with retail units and a gym entrance as well as a shop at the back of Keats House. Those important features are absent in the 2021 scheme, which therefore has no passive surveillance down Beak Alley. Instead, it becomes an alleyway with dead frontages, shielding the loading bay behind. It is surely no coincidence that the Appellant chose not to show the pedestrian access shared with the servicing access through to the blank frontages of Beak Yard in the 2021 video walk-through (in contrast to the 2018 scheme where every aspect of the public realm including Beak Alley was shown)<sup>155</sup>. There is no dispute between the parties that the 2021 public realm would be materially less attractive and appealing to pedestrians when compared to the 2018 scheme<sup>156</sup>.

122. Finally, there is a distinct reason to be concerned about the success of the 2018 public realm. It emerged during the inquiry that the substantial reduction in retail provision in the 2021 scheme was a change to the brief made by the client to reflect concerns about the likely success of retail in the current climate, linked to the rise in online retail and decline in the bricks and mortar version. When Mr Allford was asked whether he had considered in his written evidence the implications of concerns about whether retail in this location could be successful for the success of the public realm in the 2018 scheme, he admitted that he had not, and suggested that the Appellant could cross-subsidise the retail, and that he envisaged that GPE would curate the units' occupancy so that it would be successful. As Mr Goddard

---

streets in the Conservation Area buildings are built right to the edge of the footway" (p. 51 [4.4.3]), and where the CAA guidelines explain that development can respond to the character that is created by the distinctive urban pattern by "maintaining the established or historic building line on the street" (p. 55 [5.2.4])

<sup>155</sup> Although Mr Allford claimed that this discrepancy related to the walk throughs being 'quick' and not showing every part of the project, it is strange indeed to miss out just one part of the public realm in an otherwise comprehensive walkthrough and this omission is much more likely to reflect anxiety on the Appellant's part about the suitability and success of this particular aspect of the 2021 scheme than an attempt at concision

<sup>156</sup> Allford XX

accepted<sup>157</sup>, neither appeal seeks a personal permission for the Appellant and there is no guarantee that the Appellant would deliver the schemes themselves (we say more about this in relation to the benefits below). The identity of the Appellant is irrelevant to the decision that must be made now as to the likely success or otherwise of the public realm. The lack of confidence in the retail provision in the 2018 scheme casts significant doubt on the likely success of the public realm, even leaving aside its physical inadequacies.

### **Impact on Townscape and Views**

123. Ms Adams' PoE explains the adverse impact of the schemes on townscape and in respect of local, borough and strategic views at [5.3.9] and [5.5.9]. The impact on LVMF views is addressed in Dr Barker-Mills' PoE at [9.91] - [9.93].
124. The requirement in AV.11 of the SP for the Shard to remain significantly taller and more visible than surrounding buildings was a further policy criterion that the Appellant sought to have excised from the plan through its Local Plan representations.<sup>158</sup> Again, the only credible explanation for seeking to remove this criterion is that the Appellant and its professional advisors concerned about the impact, if adopted, on its ambitions for the site.
125. The Appellant was plainly right to be concerned, in a context in which the townscape input received from Mr Stewart identified an uncomfortable and uneasy relationship with the Shard and one in which views of it would be obscured and the proposed tower would become the new focal point from a number of important viewpoints (as we have explained already).
126. Rather than face up to this issue and explain why he considered that the design and impact of the schemes was consistent with the policy requirement and objectives notwithstanding Mr Stewart's assessment, Mr Allford chose in his XIC presentation to show only one image to represent the relationship between the schemes and the

---

<sup>157</sup> Goddard XX

<sup>158</sup> INQ19 [7.3]

Shard, that of the view over London Bridge looking south<sup>159</sup>. He presented none of the images that show the two buildings in close alignment or proximity (for example the view from Southwark St east of the railway bridge, Southwark St/Stoney St or the War Memorial on Borough High St) even though he agreed that these images are plainly relevant for the Inspector and Secretary of State to consider.

127. The impact in these viewpoints is stark, and quite clearly runs contrary to the objectives of the SP in terms of the role and status of the Shard within the townscape. Why choose to avoid them when dealing with this point? No independent and impartial assessment or presentation in relation to this issue would do so. The only explanation would seem to be a desire to avoid acknowledging and dealing with the harmful impact and policy conflict that they reveal.

### **Conclusion**

128. The schemes would conflict with policies SD4, D1, D3, D4, D8, D9 and HC4 of the LP and policies P13, P14, P17, P18 and P21 of the SP as well as the good design requirements of the NPPF and National Design Guide.
129. Very significant weight should attach to this policy conflict and the harms that flow from it. Indeed, it is difficult to conceive of circumstances in which a tall building that fails to accord with these centrally important policies could be judged to be acceptable, let alone to accord with the development plan overall.

### **2018 SERVICING**

130. The servicing arrangements proposed for both schemes, the relevant policy framework applicable to the consideration of these matters, and the areas of disagreement in respect of the 2018 scheme are explained in detail in the Servicing SoCG<sup>160</sup>.

---

<sup>159</sup> INQ17 pp. 36-37

<sup>160</sup> SOCG-02

131. Notwithstanding the Appellant's proposed introduction of a consolidation strategy for the servicing arrangements on both White Hart Yard and St Thomas St<sup>161</sup>, and the proposed restriction of the use of the St Thomas St loading bay to hours outside the AM, PM and lunchtime peak, the 2018 scheme arrangements would introduce highways impacts that result in harm and fail to comply with relevant LP and SP policies.<sup>162</sup>
132. 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 increase in the already considerable pedestrian use of St Thomas Street and TfL's proposals associated with the Healthy Streets approach. That approach and the specific measures that TfL are taking on St Thomas St (including through the consultation that opened during the inquiry whereby further temporary works are proposed such to install semi-permanent materials to replace the blue barriers) are directed towards giving pedestrians greater priority and more space to move.
133. As Mr Hiley from TfL explained in the round table session, the introduction of a loading bay outside the 2018 scheme would require the removal of 14m of the extended pedestrian footway and would also involve the trolleying of goods across the footway, neither of which would accord with the Healthy Streets approach. Mr Vaughan also referred to the introduction of bollards to ensure that vehicles remained within a fixed boundary, which would directly reduce the space available for pedestrians and run contrary to the objectives of policy. The loading bay would not be for the exclusive use of the appeal proposals, and if it is full when a particular delivery vehicle arrives, that vehicle may seek to mount the pavement, again causing pedestrian conflict.
134. In addition to pedestrian conflict, as Mr Hiley explained, this arrangement would provide less road space to TfL to enact future measures on St Thomas St, such as a bi-directional cycle lane.

---

<sup>161</sup> Servicing SoCG pp. 10-12

<sup>162</sup> CDD.21 Policies D3, D9, T2, T5 and T7 and CDE.01 Policies P14, P18 and P50

135. A common principle for other schemes on St Thomas St is the diversion of servicing activity away from St Thomas St (e.g. Shard Place with its fully internalised servicing yard)<sup>163</sup>. By not delivering this for the 2018 scheme, the Appellant's proposal is an outlier. Both the SP and the LP expect servicing to be undertaken on-site<sup>164</sup>. The LP policy T7 G requires servicing to be undertaken off-street with "*on-street loading bays only used where this is not possible*". As accepted by Mr Goddard in XX, in order to comply with Policy T7, the Appellant must demonstrate that it is not possible to service the development off-street, it is not a question of preference or whether it would be more straightforward to do so, and that this is a high bar to overcome.
136. Mr Goddard's approach to the interpretation of Policy T7 was that the judgement about whether it is "*possible*" to incorporate off-street servicing was to be exercised by reference to what was possible within the particular scheme in front of the planning authority, rather than whether this would be possible with a reconfigured scheme. This led him to consider that there was no conflict with Policy T7, but the underlying premise is false.
- a. If Mr Goddard's approach was correct, it is difficult to imagine circumstances in which an applicant could fail to comply with the policy because they would always be able to claim that the particular design that they had opted for in respect of a specific scheme precluded on-site servicing. That is not only a self-serving approach to take to policy interpretation but it also defies common sense.
  - b. In order for the policy to have any practical purpose, it must require an assessment as to whether it would be possible to introduce on-site servicing with a reconfigured scheme.
  - c. Given that it has proven possible for the Appellant to include on-site servicing for the 2021 scheme, it is plainly possible for servicing to be undertaken on-site on this site with a similar level of commercial office floorspace, and so the high bar set by Policy T7 is not met.

---

<sup>163</sup> Glasgow round table

<sup>164</sup> SP P50 para. 5



137. The other principal cause for concern is the increased use of White Hart Yard by servicing vehicles which would result in an increased risk of collision between vehicles, pedestrians and cyclists both within the Yard and where the Yard meets Borough High Street. It is agreed that White Hart Yard has limited visibility for vehicles<sup>165</sup>. As Mr Hiley explained in the round table, *“vehicles coming in and out of yards is quite hairy for pedestrians and cyclists because the sight lines are so short”* and *“every additional vehicle going in and out of White Hart Yard is an additional risk”*. The fact that servicing vehicles currently use the Yard is not a good reason to increase the reliance on what is already an undesirable arrangement. Increasing the number of occasions when this risk occurs brings with it additional harm.

138. Moderate weight should be attributed to this harm in the planning balance.

## DAYLIGHT

139. The Appellant’s daylight and sunlight consultants, GIA, identify that both schemes will cause a *“noticeable reduction to the daylight amenity within the student housing blocks located to the south of the appeal site”*<sup>166</sup>, namely Orchard Lisle House and Iris Brook House. There is no dispute between the parties as to the conclusions of GIA’s technical assessment. The following matters are agreed<sup>167</sup>:

- a. The impact on the amount of daylight reaching student accommodation is a negative impact of the schemes.
- b. When assessing the weight to be attached to this negative impact in the planning balance, the Inspector and Secretary of State will need to consider both the nature (i.e. the magnitude of the reduction) and the extent (how much of the student accommodation is affected) of the impacts.
- c. The ES concludes that the effects are either moderate adverse or moderate to major adverse for the two schemes i.e. significant adverse environmental effects<sup>168</sup>.

---

<sup>165</sup> Mr Vaughan agreed this in the round table

<sup>166</sup> Goddard Rebuttal Appendix 3-B-5 [3.8]

<sup>167</sup> Goddard XX

<sup>168</sup> Glasgow PoE [6.90] and [6.108] summarises the ES findings

- d. Protection of the amenity of young people is important and good levels of daylight in student rooms are relevant to health and wellbeing and therefore student welfare.
  - e. The loss of daylight means that more energy consumption is needed to ensure that rooms are adequately lit and this has both adverse sustainability and cost implications.
140. In spite of his acceptance of these factors in XX, Mr Goddard's view was that the daylight impacts on the amenity of Orchard Lisle House and Iris Brook House should attract "*very, very very little weight*" in the planning balance. This casually dismissive approach to what will be a noticeable and significant reduction in amenity for those affected is consistent with the Appellant's wider reluctance properly to face up to and take account of the negative impacts of the schemes. It is also not a credible assessment of the weight that should fairly be given to this adverse effect. Given the nature and extent of the impact on the student accommodation, and the importance of protecting the amenity of young people, Mr Glasgow is right in concluding that this should attract moderate weight.

## **BENEFITS**

141. As we explained in opening<sup>169</sup>, the principal differences between the parties in terms of the identification of public benefits flow from the LPA's heritage and design and townscape likely reasons for refusal. Beyond the modest heritage benefit of restoring the Georgian terrace, the LPA does not accept that either scheme delivers heritage benefits. Further, on the basis of Ms Adams' evidence, the design of the schemes is far from exemplary and is instead harmful, and there is consequently no public benefit associated with the quality of the design of either scheme.
142. The differences between the parties with regard to the weight to be attached to public benefits and the calibration scales of each of the respective witnesses is set

---

<sup>169</sup> INQ01 [57]

out in the note submitted to the inquiry on 9 August. We do not address each and every difference of opinion but instead focus on the main points.

## **Economic**

### **Employment Floorspace**

143. One of the key differences between the parties is the significance of the fact that the LPA can comfortably achieve the SP's strategic targets for the delivery of employment floorspace and economic growth over the plan period without the additional 'windfall' floorspace that would be contributed by one or other of the appeal schemes.
144. It is the LPA's case that this necessarily bears on the weight to be attached to this benefit.
- a. Mr Glasgow explained that in generating figures for how growth should be distributed within the Borough in the SP, the LPA has had regard to a variety of different sensitivities and considerations.
  - b. In that context, the addition of substantially increased levels of employment floorspace in any one location (particularly within a relatively 'mature' area such as London Bridge) cannot simply be assumed to represent an unalloyed benefit. In short, if one keeps introducing further substantial levels of growth beyond what has been planned for in the SP, having regard to opportunities and constraints, the risk is that harms are introduced that go beyond those reflected in the balance struck in the development plan<sup>170</sup>.
  - c. That is the context in which to consider the significance of the additional benefit generated by surpassing the levels of growth identified in the development plan, alongside consideration of the impact that might have on the delivery of sustainable development more generally. The LP expects the special features that Londoners value about a place, such as historic

---

<sup>170</sup> Glasgow XX and RX

elements, should be used positively to guide and stimulate growth.<sup>171</sup> As Mr Goddard accepted<sup>172</sup>, in some cases that will mean guiding particular forms of development away from valued heritage assets. That may help to stimulate growth in less sensitive locations. This approach is consistent with the concept of good growth (rather than simply growth at any cost) that underpins the development plan as a whole. In circumstances in which the LPA has a clear pipeline of delivery of employment floorspace in the London Bridge area, the weight that should attach to the benefit of further floorspace is fairly characterised as moderate.

145. Mr Goddard treated the identity of the Appellant as a factor that justified the application of “*additional weight*” to the provision of office floorspace given the Appellant’s “*track record, and ability and commitment to deliver the Scheme, if permitted within a short timescale*”<sup>173</sup>. That approach is misconceived in circumstances where it is common ground between the parties that:
- a. There is no proposal to make a grant of permission for either scheme personal to the Appellant.
  - b. There is nothing to prevent the Appellant from selling the site to another developer with the grant of planning permission.
  - c. There is nothing to stop the Appellant from changing their corporate approach for commercial reasons at some future date and e.g. not delivering the scheme themselves or coming back with a different scheme.
  - d. If planning permission is granted and material weight is accorded to the Appellant’s “track record”, there is no comeback if the Appellant does not in the event deliver the scheme.
  - e. Aside from the standard condition regarding the implementation period for a permission, there is nothing proposed to secure the timing of delivery.
  - f. The Appellant has not explained their intended delivery timescales for the schemes should permission be granted<sup>174</sup>.

---

<sup>171</sup> CDD.21 [1.2.7]

<sup>172</sup> Goddard XX

<sup>173</sup> Goddard Rebuttal [5.12]

<sup>174</sup> Goddard XX

146. There is another significant practical hurdle to be overcome before the development could be implemented, namely the need to enter into a Development Agreement with TfL and/or LUL for the delivery of the station works<sup>175</sup>. The matters to be covered by the Development Agreement are set out in Sch. 5 clause 1.2, and include a range of technical design, protective, commercial, consenting and licensing matters which will necessarily take some time to complete. Whilst the parties are obliged to use reasonable endeavours to reach agreement, the history of negotiations with LUL just to establish agreement to the principle of a new access point<sup>176</sup> suggests that agreement on all points of detail for the design and implementation of the station works will not be straightforward.
147. In the light of these factors, the identity of the Appellant is irrelevant to the weight to be attached to this benefit.

#### Jobs

148. The Appellant has also overvalued the scale of the benefit arising from the provision of new jobs associated with the schemes.
149. It is agreed that in judging the weight to be attributed to this benefit, it is relevant to compare the number of jobs provided by the schemes with the jobs delivered by other comparable office led development in Southwark, as well as a London-wide comparison<sup>177</sup>.
150. So far as the local Southwark context is concerned:
- a. No challenge was made to Mr Glasgow's evidence that the number of jobs delivered by the schemes is commensurate with similar developments in the area such as Becket House and Vinegar Yard<sup>178</sup>.
  - b. Further, no challenge was made to his assessment that if the delivery of one of the schemes was combined with Vinegar Yard and Becket House, together

---

<sup>175</sup> S.106 Agreement, Sch. 5 clause 1.1

<sup>176</sup> XIC Allford – during which he explained that LUL had to be persuaded of the principle because they were “... *naturally resistant to any interference with the design of stations and exits*”.

<sup>177</sup> Goddard XX

<sup>178</sup> Glasgow PoE [7.13]

they would make up approximately the 10,000 jobs total required in the entire Bankside, Borough and London Bridge Opportunity Area for the whole plan period<sup>179</sup>.

- c. The substantial contribution made by those schemes towards the target in this part of the Opportunity Area is relevant to the weight that should be attributed to the windfall benefit provided by this scheme.

151. On a London-wide scale, it is agreed that the delivery of the additional jobs associated with the scheme is not significant<sup>180</sup>. This is reflected in the ES Scoping Report for the 2018 scheme, which treats the provision of new jobs as an insignificant socio-economic issue and states that *“whilst [this] job creation is large in number, will contribute towards job creation targets and is clearly an economic benefit, these jobs are unlikely to be materially significant in the context of the wider London area”*<sup>181</sup>.

152. That conclusion is significant. In XX Mr Goddard’s attention was drawn to his previous acceptance that:

*“... the production and content of ESs are subject to the EIA Regs and guidance, and undertaken by appropriately qualified experts. This was agreed to be important because of the role the ES is intended to play in informing decision-making on substantial proposals, and facilitating public involvement in decision-making.”*<sup>182</sup>

153. Mr Goddard agreed that nothing relevant has changed since he accepted those points of principle, and that they applied just as well to a considered and reasoned decision to scope out a potential positive effect pursuant to the scoping process set by the EIA Regs<sup>183</sup>.

---

<sup>179</sup> Glasgow RX. See CDE.01 SP ST1

<sup>180</sup> Goddard XX

<sup>181</sup> Glasgow PoE [8.9]

<sup>182</sup> CDH.10 p. 106 [8.77] and f.n. 867

<sup>183</sup> XX Goddard

154. There was a subsequent attempt in RX to distance the Appellant's case from what was said on its behalf during the EIA Scoping process by emphasising that this was considering significance on a London-wide basis. That attempt was misguided, for two reasons.

- a. As with all environmental topics, it is a matter of judgment for the appropriately qualified experts to determine the most appropriate basis to judge significance having regard to the proposed development and the nature of the effect under consideration. In this case the relevant experts have judged that the most appropriate basis for assessing significance is to look at what would be delivered in the London context. It is not an arbitrary choice, but one informed by expert judgment on the facts of the particular case. Any ex post facto attempt to disown that choice to suit the Appellant's arguments in an inquiry should be given short shrift.
- b. In this case the adverse townscape and heritage impacts of the proposed development will be felt far beyond the local context. They also adversely affect heritage assets which are significant at a London, national and (in the case of the ToL WHS) international level. If the scale of employment benefits are such as to be material only at a local level, that is itself a strong indicator that they are unlikely to attract the sort of weight needed to outweigh those adverse impacts in the balance.

#### Affordable workspace

155. The LPA has acknowledged the provision of 10% affordable workspace to be a benefit to which significant weight should attach<sup>184</sup>. Whilst the level provided is the minimum needed to comply with policy, the provision of such floorspace is a strategic priority.

156. It is notable that Mr Goddard only ascribes moderate weight to this benefit<sup>185</sup>, and the contrast with Mr Glasgow's more generous position makes it hard to understand

---

<sup>184</sup> Glasgow PoE [8.6]

<sup>185</sup> Goddard PoE [9.19]

the Appellant's accusation that the LPA is "*talking the down the benefits*"<sup>186</sup>, or that the "*main reason*" the weight attached to benefits is not agreed is because Mr Glasgow "*appears to attach reduced weight to benefits which do not extend beyond the policy requirement*"<sup>187</sup>. Neither accusation is accurate or fair. Mr Glasgow has given a clear, considered and eminently reasonable explanation for the weight he has accorded to each benefit in this case.

157. In evidence the Appellant has sought to rely on the potential for King's College London ("KCL") to take space in the affordable elements of the scheme, either alone or as a joint venture with Guy's and St Thomas NHS Trust ("GST"), as being relevant to the weight that attaches to the affordable workspace<sup>188</sup>. That reliance was misplaced, as became apparent during the section 106 round table session. On behalf of the Appellant it was explained that no reliance was in fact placed on any particular occupier for the purposes of the planning balance. That is sensible. There can be no guarantee that either KCL or GST will take space in the development, and indeed the space has not been specifically designed for their purposes<sup>189</sup>. It is possible that KCL and/or GST may take space in the building, but it is equally possible that they do not. No weight can therefore be attached to that factor in the planning balance.

### **Environmental and Social**

158. The new London Bridge underground station access is acknowledged to be a public benefit, but the parties differ substantially regarding the appropriate weight that attaches to it.

159. There is no evidence that London Underground Ltd ("LUL") has ever identified a need for change to or enhancement of the existing access on the east side of BHS<sup>190</sup>.

---

<sup>186</sup> Appellant's Opening, INQ-03 [23]

<sup>187</sup> Goddard RPoE [6.4]

<sup>188</sup> See Goddard PoE [9.18] and his APP-3-B-7, and the XX of Glasgow on this matter.

<sup>189</sup> In contrast to e.g. Vinegar Yard where the space was specifically designed for hospital use, as the Appellant's solicitor explained in the round-table session.

<sup>190</sup> XX Goddard



Nor is there evidence that LUL considers the existing access is not functioning satisfactorily. Absent the proposed redevelopment of the appeal site, all indications are that the existing access would not be likely to change (or need to change) any time soon.

160. TfL is consulting on separate proposals to increase the space available to pedestrians on this side of BHS and into St Thomas St, which would serve to reduce congestion on the pavements including the pavement outside the station access.
161. The view of TfL is that the new access is “*required to meet an acceptable pedestrian comfort level*”<sup>191</sup> and so it is necessary mitigation to address what would otherwise be a potential obstacle to the grant of planning permission, rather than representing a pure enhancement.
162. Further, beyond providing a convenient access into the development for those employed in the retail and workspace, the extent to which the new access will represent a significant benefit to other underground users is limited. This is due to the following factors:
  - a. The existing entrance and exit on the east side of BHS is a secondary access<sup>192</sup>, used by about 12% of those using the station, in comparison to the far busier access points on St Thomas St and Duke St Hill<sup>193</sup>.
  - b. The fact that there is already an entrance and exit for those who wish to come out of the station and go one way or another along the east side of BHS means that for those seeking to go north and south on BHS, the new access is simply a further means of entering and exiting the same existing secondary point of access to the station.
  - c. As the Space Syntax studies show, most of the existing pedestrian traffic exiting the station on the east side of BHS heads north, south or west and only a limited proportion presently heads east along St Thomas St or into

---

<sup>191</sup> CDC.24 p. 4

<sup>192</sup> As accepted by Goddard XX

<sup>193</sup> Allford PoE Fig 143 p. 41

King's Head Yard<sup>194</sup>. So, a relatively small proportion of total users of the station use the existing BHS east access point and of that relatively small proportion, only approximately 1 in 5 current users of this access would benefit from a new access point that allows for a more direct route east.

163. Taken together, these contextual factors mean that this benefit is not properly characterised as “*exceptional*”<sup>195</sup> and Mr Glasgow is right to accord moderate weight to it.
164. At a very late stage<sup>196</sup>, and clearly conscious of the unhelpful implications of the figures in Mr Allford's PoE<sup>197</sup>, the Appellant introduced a new analysis<sup>198</sup> seeking to show that 70% of those using the new access to the station would be travelling to somewhere other than the development. Even when committed to writing, the basis for these figures was somewhat opaque. As Mr Glasgow's subsequent note explains, clarification of the underlying figures with the assistance of AHMM suggests that the percentage figure relies on a number of unstated and in places questionable assumptions. In particular, it is assumed that a large number of those who currently exit onto BHS to travel south along that street will henceforth eschew that option and would instead exit to the east before doubling back along King's Head Yard to BHS and continuing their journey as before. Even assuming that is likely (and it seems counter-intuitive), the actual level of benefit, if any, to those commuters compared to the existing position must be very limited indeed.
165. In relation to the weight to be attached to the public realm, the shortcomings of the public realm at ground floor level that we have identified above in terms of its quality, size, and function justifies the application of limited weight to this benefit. Further, whereas the Appellant sought to present the elevated public gardens that

---

<sup>194</sup> The relevant Space Syntax figure is reproduced in Allford PoE Fig 146 p. 41. It shows that in the morning peak, only 21% of the users of the Borough High St east entrance/exit go east along St Thomas St or into King's Head Yard

<sup>195</sup> Goddard PoE [9.21]

<sup>196</sup> Allford XIC – and therefore after the LPA's evidence had been called.

<sup>197</sup> As explained in Mr Glasgow's RX

<sup>198</sup> INQ-24

would be delivered by the schemes as an out of the ordinary public realm benefit, the provision of elevated public space is expected by both the LP and SP<sup>199</sup> for tall building proposals and there is therefore nothing unusual or exceptional about its provision in these schemes.

166. The Appellant attaches substantial weight to the delivery of zero carbon measures secured by condition. The LPA's view, as explained by Mr Glasgow in his PoE<sup>200</sup>, is that very limited (2018) and limited weight (2021) should attach to these sustainability measures.
167. When judging the overall sustainability credentials of the appeal proposals it is relevant to consider the wider context. The demolition of the existing building, which appears to be fully occupied, and its replacement with a wholly new building is an inherently resource intensive approach. There is very limited evidence of any serious consideration being given to alternative approaches which are less carbon intensive and more sympathetic to the site's context. Mr Allford was unable to point to any evidence to demonstrate that it would be unviable to adapt/extend the existing building, other than his assertion that this was the position.
168. Further, neither scheme can fairly be characterised as an exemplar in terms of delivering sustainability benefits. Rather than providing detailed information as to compliance with a range of sustainability measures up front, demonstrating that these matters have been driving factors throughout the design process, both schemes defer compliance in respect of a number of measures to conditions, with the 2018 scheme deferring a greater number of matters than the 2021 scheme.

#### **WHETHER THE PUBLIC BENEFITS OUTWEIGH THE HARM WITHIN THE HERITAGE BALANCE**

169. The LPA's evidence on the heritage balance is provided in the PoE of Mr Glasgow<sup>201</sup>.  
The modest public benefits do not outweigh the significant harm to the BHSCA,

---

<sup>199</sup> CDD.21 LP D9 and CDE.01 SP P17

<sup>200</sup> Glasgow PoE [8.17]-[8.19]

<sup>201</sup> Glasgow PoE section 9

Guy's Hospital, the St Thomas St LBs, Southwark Cathedral, the ToL WHS, St Paul's Cathedral and the considerable number of other heritage assets.

## **WHETHER THE APPEAL PROPOSALS ARE IN ACCORDANCE WITH THE DEVELOPMENT PLAN TAKEN AS A WHOLE**

170. It is common ground between the parties that relevant factors in considering whether the appeal proposals are in accordance with the development plan as a whole include the importance of the policies complied with or infringed, the extent of compliance or breach and the overall thrust of the development plan policies<sup>202</sup>.
171. We have already referred to the strategy of the development plan to deliver good growth. The concept of good growth that is said to “*underpin*” the LP is defined as growth that is socially and economically inclusive and environmentally sustainable<sup>203</sup>. In accordance with paragraphs 8 and 9 NPPF, the development plan seeks to achieve sustainable development in precisely the manner that national policy requires, through the delivery of the interdependent economic, social and environmental objectives, which are to be pursued in mutually supportive ways. Mr Goddard accepted in XX that the good growth concept is relevant to an understanding of the overall thrust of the development plan policies.
172. High quality design that is appropriate to its context and respect for, and the conservation and enhancement of, heritage assets are essential as component parts of delivering good growth and must be achieved alongside and in concert with the delivery of economic objectives. The development plan does not view these as objectives pulling in different directions. London's heritage is rightly viewed by the LP as of strategic importance to ensuring the city's success<sup>204</sup> and it is clear that this strategic role should not be sacrificed when seeking to achieve economic growth<sup>205</sup>. Further, a design-led approach to development and understanding what is valued

---

<sup>202</sup> XX Goddard

<sup>203</sup> CDD.21 LP [0.0.18]

<sup>204</sup> CDD.21 LP p. 16 [1.2.7]

<sup>205</sup> CDD.21 LP GG5 F p. 24

about a specific place is seen by the LP as being of strategic importance to the delivery of sustainable development and growth<sup>206</sup>. These strategic objectives and the interrelationship between delivering economic benefits and a high quality design that promotes and respects local distinctiveness and heritage permeate throughout the LP<sup>207</sup>.

173. The same interrelated objectives also underpin the SP's approach, the spatial strategy for which is to continue with "*regeneration and preservation to create destinations, town centres and residential communities that preserve and enhance the history of places particularly historical buildings and open spaces*"<sup>208</sup>.
174. In this context, Mr Glasgow was right to take the view that where a proposal gives rise to significant harms in relation to heritage and design matters, the strategy for good growth is undermined even where economic benefits are delivered, and it is appropriate to conclude that there has not been compliance with the development plan as a whole<sup>209</sup>.
175. Mr Goddard accepted in XX that to deliver growth that is good, the growth must not just deliver economic benefits but must also deliver a high quality design that promotes and respects local distinctiveness and heritage. However, he also expressed the view that eroding the distinctiveness of an area and failing to preserve the historic character of London's unique places through development *would* be consistent with the broad thrust of the development plan.<sup>210</sup> That position is untenable. His view was that the overall thrust of the development plan's strategy was to drive business growth and change. That is not what either part of the development plan actually says. Furthermore, not only was Mr Goddard's assertion fundamentally inconsistent with his concession regarding the remit of the good growth strategy (and the plain wording of that strategy articulated throughout the LP and SP), this misunderstanding of the overall thrust of the plan helps to explain

---

<sup>206</sup> CDD.21 LP GG2 D and E p. 17

<sup>207</sup> CDD.21 Policy SD1 B and [2.1.3], D1 A para. 7, B para. 1, Policy SD4 B and C and [2.4.1], [2.4.4], [2.4.9]

<sup>208</sup> CDE.01 ST1. See also p. 44 [1], ST2 pt 1, policy SP2

<sup>209</sup> Glasgow XIC

<sup>210</sup> XX Goddard

Mr Goddard's distinctly unbalanced view of the relative importance of protecting the historic environment and promoting economic growth, and the way in which those two objectives are expected to be pursued.

176. The schemes conflict with development plan policies relating to tall buildings, design and architectural quality, the protection of WHSs and other heritage assets, strategic views, public realm and servicing. These policies are not only amongst the most important in the development plan, they are necessarily of central importance to any determination in this case. The schemes also conflict with the overall thrust of the development plan and its strategy of seeking to achieve good growth. The nature and extent of the conflict is substantial. As such, the proposal is in conflict with the development plan when considered as a whole.

#### **OVERALL PLANNING BALANCE**

177. In accordance with s. 38(6) of the PCPA 2004, the appeals must be determined in accordance with the development plan unless material considerations indicate otherwise.
178. In this case both schemes conflict with the plan as a whole. The plan is agreed to be up to date<sup>211</sup>, and there is common ground that this will tend to increase the weight that attaches to policy conflict.
179. In accordance with the statutory presumption in favour of the development plan, permission should not therefore be granted unless other material considerations indicate otherwise.
180. The presumption in favour of refusal arising from the development plan is supported in this case by the strong statutory presumption in favour of refusal that arises because of the harm caused to designated heritage assets.

---

<sup>211</sup> XX Goddard

181. None of the other material considerations in this case would justify the grant of permission. The most important ‘other material consideration’ in this case is the harm that would be caused to interests of acknowledged importance, and which has given rise to the policy conflicts. Very substantial weight should be given to that negative factor in the planning balance. There are benefits of the schemes but the collective weight that they attract is relatively modest in comparison, and very far from capable of tipping the balance in favour of granting permission.

## **CONCLUSION**

182. For the reasons summarised above, the section 78 appeals should be dismissed and planning permission refused for both schemes.

**HEREWARD PHILLPOT QC**

**CAROLINE DALY**

**Francis Taylor Building**

**10 August 2022**