

APP/A5840/W/22/3290473 & APP/A5840/Y/22/3290477

APP/A5840/W/22/3290483 & APP/A5840/Y/22/3290490

NEW CITY COURT, 4-26 ST THOMAS STREET, LONDON

CLOSING SUBMISSIONS – HISTORIC ENGLAND

Note on referencing

In the interests of (relative) brevity, all participants - parties, witnesses and counsel - are referred to by their initials in these submissions. No discourtesy is meant. I also use the acronyms 'CA' and 'LB' to refer to conservation areas and listed buildings respectively, and various other acronyms the meaning of which should be obvious. Given that there was widespread use of electronic documents during the inquiry, I have tried to provide pdf page numbers where these differ from the internal pagination of the hard copy document.

I. INTRODUCTION

1. I observed in opening that HE does not routinely appear as a Rule 6 party at planning inquiries. This step is not taken lightly and is reserved for the most serious cases, where HE considers the heritage impacts of a scheme would be particularly harmful.
2. HE's advice on GPE's tall building proposals has remained utterly consistent, from the pre-application response right up to today. I invite you to review the pre-application response letter dated 9 July 2018¹. You will see that precisely the same concerns were raised about the effect of a tall building on this site, in terms of the heritage assets that would be harmed, the way the harm would arise, and how serious it would be.
3. In line with HE's role as the Government's expert advisor on the historic environment, these submissions focus on heritage matters. There are of course certain areas of overlap with other topics considered at the inquiry, in particular design and policy.

¹ CDC.04

HE has sought to engage with those issues only insofar as they are relevant to the assessment of heritage impacts. It will have been clear from the evidence that HE does not advance a case on the weight to be given to non-heritage related public benefits and has not attempted to strike the overall planning balance. This requires consideration of a range of matters outside HE's specialist area of expertise.

4. That said, having heard and reflected on the evidence of all parties, HE remains convinced that the proposed buildings would be very damaging to some of London's most special historic places. Bearing in mind the weight that must be accorded to the harm (given its extent and the importance of the assets), weighty public benefits will necessarily be needed to clearly and convincingly justify a grant of permission.
5. As explained in opening and by AY in evidence, HE has sought to take proportionate approach and has focussed on the heritage assets which would either suffer the greatest harm, or which are of the highest significance. Ultimately all parties have adopted a similar focussed approach in presenting their cases. Whilst you have evidence before you on a wide range of heritage assets that are potentially affected, your findings on the five key assets covered in HE's case appear likely to be determinative.
6. The remainder of these submissions are structured as follows:
 - II. Matters of law and policy
 - III. Other overarching issues
 - IV. Conclusion on law and policy and other overarching issues
 - V. Borough High Street Conservation Area
 - VI. The Listed Terrace
 - VII. Guy's Hospital (Grade II*)
 - VIII. Southwark Cathedral (Grade I)
 - IX. Tower of London (World Heritage Site)
 - X. St Paul's Cathedral (Grade I)
 - XI. Heritage benefits
 - XII. Policy implications
 - XIII. Conclusions

II. MATTERS OF LAW AND POLICY

Decision making framework for the historic environment

7. The starting point, and the most important consideration in any case where LBs and CAs are concerned, is the Planning (Listed Buildings and Conservation Areas) Act 1990 ('LBA 1990'). This contains four sections which are relevant to these appeals.
8. Section 16 deals with the requirement for LBC. HE has not objected to the grant of LBC in this case (considered in isolation), and supports the approach taken by the other main parties as to the prospect of granting standalone LBCs.
9. Section 66 applies to LBs and requires the decision maker to have "special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".
10. Sections 69 and 72 both relate to CAs. Section 69 defines CAs as "areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance". Where development is proposed in a CA, s. 72 requires that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area".
11. It is well established that, in both s. 66 and s. 72, "preserving" means avoiding harm, and that any harm to a LB or its setting, or a CA, must be given "considerable importance and weight" and gives rise to a "strong presumption against granting planning permission".²
12. I emphasise two further points at this stage which flow from the statute, and which are relevant to points made later:

² CDH.04 - East Northamptonshire DC v SSCLG [2014] EWCA Civ 137 p. 8-9 paras 20, 22-24 and 28. PS agreed with these propositions (XX by ED) and confirmed his understanding that the consequences of a finding of harm are the same under s. 66 and s. 72.

- a. Section 66 gives equal treatment to both a LB and its setting. It therefore follows that harm to the setting of a LB must be given considerable importance and weight and engages the same presumption as harm to the building itself. Any approach to assessment which has the effect of relegating setting to a secondary or less important consideration would be inconsistent with s. 66 and wrong in law.
- b. Section 69 makes clear that the “character and appearance” of a CA which is to be preserved or enhanced is that which embodies or reflects the special architectural or historic interest which justified the designation.³ The LBA 1990 is plainly not intended to protect aspects of character which do not sustain, or which detract from, that special interest. It is common ground that, when considering whether a building would preserve or enhance the character and appearance of the CA, the question is how it relates to the special interest of the CA – not how it fits with the character of the area in a general, or in a townscape sense.⁴

13. The Court of Appeal has described the NPPF as “laying lay down an approach which corresponds with the duty in section 66(1)”.⁵ Clearly the application of NPPF cannot result in a lower level of protection for LBs and CAs than the legislation. The NPPF adopts a unified approach to all designated heritage assets, creating a single framework to cover the discharge of several different statutory provisions (and, in the case of WHSs, international obligations). As a result, NPPF goes further than the law requires in some cases. One example is that harm to a CA caused by development in its setting attracts “great weight” under the NPPF, whereas s.72 of the LBA 1990 does not refer to setting. Another example is the approach to heritage benefits, which I discuss later. It can sometimes be relevant to make a distinction between the way policy is framed and the way the statutory duties are drafted.

³ This is reinforced by HE’s guidance in CDF.05 HEAN 1 “Conservation Area Appraisal, Designation and Management”, see in particular paras 11, 17 and 34 (pages 5, 8 and 15; pdf 9, 12 and 19).

⁴ Accepted by PS in XX by ED

⁵ CDH.13 Jones v Mordue [2015] EWCA Civ 1243 p.11, para 28. Although the Court was considering the original (2012) version of the NPPF, there has been no material change to the content of the paragraphs the Court was referring to.

14. The NPPF requires great weight to be given to the conservation⁶ of designated heritage assets, and notes that the more important the asset, the greater the weight should be. Para 200(b) describes WHSs and Grade I and II* LBs as “assets of the highest significance”.

Significance and setting

15. The concept of “significance” within the NPPF is equivalent to the ‘special interest’ for which LBs and CAs are designated. The NPPF further confirms that (i) significance “derives not only from a heritage asset’s physical presence, but also from its setting”,⁷ and that (ii) the cultural value described within the SOUV for a WHS “forms part of its significance”.

16. With the exception of the BHSCA and the LBs at 4-8 and 12-16 St Thomas Street (“the listed terrace”), all of the heritage impacts arising in this case are setting impacts. PS confirmed⁸ that, in such cases, any assessment must consider the twin roles or elements referred to in the NPPF definition of “setting”,⁹ namely (i) whether the development would make a positive, negative or neutral contribution to the significance of the heritage asset, and (ii) how the development would affect the ability to appreciate that significance.

17. In XX of NBM and AY, CKQC questioned how the effect of a development on the ability to appreciate a heritage asset - for example by drawing the eye away from it or introducing a visual distraction - could amount to harm. It was suggested that relevant heritage harm could only occur if there was an effect on “the heritage interest of the asset itself”.¹⁰

⁶ See glossary p. 66: “Conservation (for heritage policy): The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.”

⁷ See also references to setting in paras 194 and 195 NPPF

⁸ XX of PS by HPQC

⁹ NPPF glossary p. 71

¹⁰ XX of NBM

18. You will undoubtedly recall NBM's vivid example of how he could distract attention and draw the eye away from your importance and authority by waving his arms around, without actually making you any less important or authoritative.¹¹ This moment of levity deftly illustrated a serious point about how development in the setting can undermine heritage value.
19. The LBA 1990 extends protection to the setting of LBs because it recognises that what happens in the setting can affect the special interest of the LB, even if there is no effect on the fabric of the building. This is reflected in the NPPF, which invites consideration of how the setting of a heritage asset allows it to be "experienced" or "appreciated", as well as what it contributes to the asset's significance. Historic places are not given statutory protection for their own sake; they are protected for their special interest and value to *people*. The NPPF captures this point, stating that the purpose of conserving heritage assets is so that "they can be enjoyed for their contribution to the quality of life of existing and future generations". Similarly, "significance" is defined as "the value of a heritage asset to this and future generations". Of course it is harmful if a new development undermines or reduces peoples' ability to experience and appreciate what is of value about a historic place.
20. The importance of considering how significance is experienced and appreciated is reflected in the PPG. This confirms that "environmental factors such as noise, dust, smell and vibration" and "our understanding of the historic relationship between places" can affect the way an asset is experienced in its setting.¹² Clearly such factors relate to experience and appreciation, not the special architectural or historic interest of a LB or CA. And they are regarded as relevant by the Government.
21. Further support for this point, if needed, can be found in various pieces of HE guidance, see for example:
- a. GPA 3 "The Setting of Heritage Assets": para 9, 19 (steps 2 and 3) and para 30.¹³
 - b. HEAN 4 "Tall Buildings": para 5.3, 6th bullet.¹⁴

¹¹ XX of NBM

¹² CDD.11 para 013 (pdf 7)

¹³ CDF.04 pp. 4, 8 and 11 (pdf 8, 12 and 15)

¹⁴ CDF.07 p. 24 (pdf 27)

- c. HEAN 1 “Conservation Area Appraisal, Designation and Management”: para 58.¹⁵

22. Finally on this point, it can be noted that whilst CKQC suggested that effects on the ability to appreciate a heritage asset might not “play into” harm to its heritage interest,¹⁶ GPE’s own heritage expert concluded that the proposals would cause less than substantial harm (“LTSH”) to Guy’s Hospital and Southwark Cathedral *by compromising the ability to appreciate their significance from parts of their settings*.¹⁷

Approach to assessing harm

Edith Summerskill House v Tulip

23. The different approaches taken by Inspectors (and endorsed by the Secretary of State) in the decisions on the Edith Summerskill House (‘ESH’) and Tulip appeals was explored in some detail during the oral evidence. These were both cases involving development in the settings of heritage assets. The decisions reveal two different approaches to determining the degree of LTSH caused by a proposed development.

24. In ESH the Inspector sought to gauge the “proportion” or “component” of the significance of a listed church and a CA which could be attributed to their settings and would therefore be affected, in order to decide the extent of LTSH caused by the proposed tall building. Because the “overwhelming proportion” of the church’s significance was “locked into its form and fabric”, and impacts on significance would “only occur from a few places in the churchyard or cemetery”, the Inspector found that the harm would be “very much at the lower end of the scale”.¹⁸ A similar approach was taken to the CA.

¹⁵ CDF.05 p. 22 (pdf 26)

¹⁶ XX of NBM and AY

¹⁷ See PS proof p. 36, para 5.64 “a small effect on viewer’s ability to appreciate cathedral against a clear sky” leading to LTSH and p. 36, para 5.68 ““some harm to the viewer’s ability to appreciate the significance of the hospital principally as a result of the effect on views from the hospital courtyard” leading to LTSH. See also p. 31, para 5.42 where returning the listed terrace to its original state as a standalone terrace would “better reveal their heritage significance by allowing one to appreciate these buildings from the new public realm” – in this case the ability to appreciate a heritage asset from within its setting is seen as a heritage benefit.

¹⁸ CDH.20 IR p. 78 (pdf 96) paras 12.50 – 12.54, endorsed by the SoS at DL p. 3 para 13

25. In the Tulip appeal the SoS endorsed the Inspector's approach that, when assessing harm, "the key point is not whether some aspects would be left untouched, but the importance of what would be affected, that is the setting, to its significance".¹⁹
26. The difference between these two approaches was perhaps best encapsulated by NBM, observing that the Inspector in ESH appeared to be looking at the issue of harm "quantitatively rather than qualitatively".²⁰
27. None of the heritage witnesses discussed these competing approaches or sought to explain how they had determined the degree of LTSH harm caused in their proofs. However, it can be seen that both AY and NBM both took a qualitative approach which most closely aligns with the Tulip decision - they did not attempt to identify the 'proportion' of significance affected in any given case. Instead they sought to identify the aspects of significance which were particularly relevant (given the nature of development proposed), and then considered the extent to which those aspects would be affected. This is most easily illustrated by the assessments of the Tower of London WHS, where both AY and NBM identified the attributes which were relevant and then considered how far the proposals would affect those attributes.
28. PS' approach was harder to discern. In EiC he said that he agreed with para 12.50 of ESH, but under XX he confirmed that he had followed the approach set out in the Tulip and did not seek to justify a different approach. When I explored this in XX PS agreed that he had considered the proportion of significance derived from the fabric and setting of Guy's Hospital respectively, and had taken account of how much of Southwark Cathedral's setting was unaffected or left untouched. So his assessment seems to be more aligned with ESH than the Tulip.
29. HE's position is that, of these two approaches, that taken in the Tulip appeal is clearly to be preferred. It is a simpler, straightforward approach which looks at what is being affected and why it is important. It avoids a mechanical or mathematical exercise, which might otherwise be felt necessary in order to determine what 'proportion' of

¹⁹ CDH.10 IR p. 136 (pdf 150) para 14.2, endorsed by the SoS at DL p. 3 para 16

²⁰ NBM ReX

significance would be affected. The Tulip decision is recent and concerned the same WHS which is at issue in this case; it would seem to be appropriate to take consistent approach to assessing harm in this case.

30. HE considers that ESH does not sit very comfortably with the equal treatment of LBs and their settings under s. 66 LBA 1990. The Inspector's view was that "unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm". Since it is hard to imagine any LB which would derive a "major proportion" of its significance from its setting (bearing in mind the designation is for the special interest of the building itself), the ESH approach appears to make findings of high levels of harm less likely in setting cases. On the face of it this would make such harm easier to justify. This point is illustrated by PS' evidence – he believed para 12.50 of ESH was consistent with the "big difference" he saw between direct effects (on the fabric of a LB) and indirect effects (from development in the setting).²¹ Yet there is no difference in how these effects are treated in s. 66.

31. For similar reasons, the ESH also sits uneasily with the PPG, which states that substantial harm "may arise from works to the asset or from development in its setting", and that "even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting."²² The Government clearly recognises that development in the setting of a heritage asset can cause a high level of harm, whereas this would seem unlikely adopting the approach in ESH. Under XX, both NBM and AY gave examples of development in the setting of LBs which, while not affecting any of the significance "locked into" their fabric, would clearly produce a high level of harm. NBM referred to the building of a small house in front of the Royal Crescent in Bath, while AY spoke about building a wall around the entirety of St Paul's Cathedral. Clearly these are extreme hypothetical examples, but they showed how focussing on the "proportion" of significance either affected or "left untouched" might produce outcomes which defy common sense.

²¹ PS EiC

²² CDD.11 para 018 (pdf 9)

32. The legal position is clear. There is nothing in the LBA 1990 or the NPPF (or anywhere else) which mandates a single approach to determining the extent of harm. This is left to the judgment and expertise of planning inspectors (or, in this case, the SoS). The approach you take to determining the degree of LTSH to any heritage asset in this case is a matter for you, provided it is a reasonable one. If a choice has to be made between the two approaches just discussed, then HE invites you to adopt the Tulip approach. However, there may be other approaches entirely which would be equally acceptable.

Substantial harm and the boundary between it and LTSH

33. Another topic which probably occupied more time than it warranted during the oral evidence was the definition of substantial harm. None of the heritage witnesses identified any substantial harm arising from either scheme. The point was pressed very strongly in XX of AY, seemingly to set up an evidential basis for arguing that, because none of the identified harm is 'substantial', it should therefore be regarded as either "not serious" or as affecting some element of the heritage asset which is not "key" to its significance.

34. There is no prescribed "definition" or "test" for substantial harm. In the London Historic Parks and Gardens case the High Court confirmed that – on the basis "serious" was synonymous with "substantial", the PPG²³ was consistent with the approach endorsed by Jay J in the Bedford case, namely "whether the impact of the proposed development was sufficiently serious in its effect that the significance of the designated heritage asset, including the ability to appreciate that asset in its setting, was (if not vitiated altogether) at least very much reduced".²⁴

35. The bottom line is found in the Bramshill judgment: "Whether there will be such "harm", and, if so, whether it will be "substantial", are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific

²³ CDD.11 para 018 (pdf 9): "whether the adverse impact seriously affects a key element of its special architectural or historic interest"

²⁴ CDH.07 London Historic Parks and Gardens Trust v Minister of State for Housing [2022] EWHC 829 p. 12, para 52. The Court also confirmed in para 53 that "a word like 'substantial' in the NPPF means what it says and any attempt to impose a gloss on the meaning of the term has no justification in the context of the NPPF".

approach to identifying “harm” or gauging its extent”.²⁵ It is clear that substantial harm is intended to be a high test, leaving a very wide range of LTSH falling below the threshold.

36. It must always be remembered that LTSH still carries considerable importance and weight and does not amount to a less than substantial objection.²⁶ The fact harm is not ‘substantial’ within the meaning of the NPPF does not mean that it is not to be regarded as a serious matter.

The range of LTSH

37. The PPG advises that the category of harm needs to be identified (ie. substantial or LTSH) and then “within each category of harm ... the extent of the harm may vary and should be clearly articulated”.²⁷ It is settled law that there is no legal or policy obligation to place harm on a ‘spectrum’ or within a ‘range’ of LTSH. It is however an obvious way of following the advice in the PPG, and is something both AY and NBM have done with a view to identifying how serious the harm is considered to be.

38. PS did not attempt to place harm within a range or spectrum in his assessment. That would not be objectionable if it was otherwise how extensive the harm was considered to be. PS’ written evidence and assessments do not go beyond identifying the harm – insofar as it is accepted – as “considerably less than substantial”. There is limited explanation of exactly why and how this harm arises, and there is a further problem (which I will come onto in due course) about the offsetting of harm against benefits which further muddies the waters.

Weight to be given to heritage benefits

39. AY expressed the view that limited weight should be given to heritage benefits.²⁸ There is a legal distinction to be made in this regard between CAs and LBs. In the case of CAs, s. 72 LBA 1990 requires special attention to be paid to conserving and enhancing the character and appearance of a CA. This puts enhancement (‘heritage

²⁵ CDH.06 p. 22 (pdf 24) para 74

²⁶ CDH.04 East Northamptonshire DC v SSCLG [2014] EWCA Civ 137 p. 9 para 29

²⁷ CDD.11 para 08 (pdf 9)

²⁸ AY XX

benefits'), on an equivalent statutory footing to preservation (avoiding harm). Given the approach taken by the Courts to s. 66 and s. 72, it is probably correct to say that enhancements to the character and appearance of a CA should carry great weight. So far as LBs are concerned, s. 66 requires special regard to be had to preservation, but there is no mention of enhancement. The considerable importance and weight that must be given to harm as a result of s. 66 does not necessarily apply to enhancement of a LB or its setting.

40. From a policy perspective no distinction is made between CAs and LBs and para 199 NPPF requires 'great weight' to be given to "conservation", which includes enhancing significance. HE therefore accepts that, as a matter of policy, interventions which are regarded as enhancing the significance of a LB should be given great weight.

41. That is not the end of the matter. The weight to be given to harm is not uniform. Even though all harm carries great weight, it is uncontentious that a low level of harm will carry less weight (and therefore be easier to outweigh with public benefits) than a high level of harm. PS accepted in XX that the approach to benefits must logically be the same. A small amount of benefit should be accorded less weight than a large amount of benefit.²⁹ It also logically follows that benefits to highly graded heritage assets will carry greater weight than benefits to less important heritage assets. It is therefore necessary to consider the level of benefit which will occur and the relative importance of the heritage asset which is receiving the benefit to reach a concluded view on weight.

²⁹ PS XX by ED

III. OTHER OVERARCHING ISSUES

Extent to which heritage has informed the design

42. The DAS should provide an account of the design process, including an explanation of how the proposed development is a suitable response to the site and the surrounding area. Given that the location of the appeal site in a central position within the BHSCA, it is reasonable to expect that the DAS would explain how the proposed tall buildings attempt to respond to the character and appearance of the area.
43. It is fair to say that the DAS contains a good amount of detail about the heritage assets within the site itself, and there is some discussion of the history of St Thomas Street and Kings Head Yard and the setting of the Kings Head pub.³⁰ On the other hand, analysis of the character and appearance of the BHSCA is seriously lacking. The only explanation of how the schemes respond to the special architectural and historic character of the CA is in discussion of design references³¹ and palette.³² Consideration of how the form and scale of the building and the layout of spaces relates to the CA context is entirely lacking – although tellingly the 2018 DAS notes that the building should be “set back as far as possible from the High Street”.³³
44. Unsurprisingly (given the responses of consultees to the 2018 scheme) the 2021 DAS shows a greater level of awareness of the negative effects of a tall building on heritage assets. For example there is reference to heritage settings as constraints in ‘height definition’ leading to what is described (inaccurately) as a “mid-rise tall building proposal”;³⁴ and an acknowledgement that attempts should be made to provide “greater distance away from ... the rear of the listed Guy’s Hospital”.³⁵ Notwithstanding this, analysis of the BHSCA is no more advanced in the 2021 DAS compared to the 2018 version, and although the CAA contains clear guidelines for

³⁰ Although the pub is called the “Old Kings Head pub” and is referred to as such in some of GPE’s documentation, in the list entry the Grade II LB is identified as the “Kings Head public house”. Accordingly that is the name used in these submissions.

³¹ CDA.06 2018 DAS p. 88 (pdf 91)

³² CDA.06 2018 DAS p. 71 (pdf 73)

³³ CDA12 208 DAS p. 70 (pdf 72)

³⁴ CDB.08 2021 DAS p. 72 (pdf 38)

³⁵ CDB.08 2021 DAS p. 73 (pdf 38)

development, there has been no analysis in either DAS (or elsewhere) of how the schemes perform against them.³⁶

45. Further doubt arises as to the relevance of heritage considerations to the overall design when one considers the following:

- a. Within the first 6-9 months of becoming involved with the site, AHMM had decided that a new building should be provided that “should become another addition as part of the important cluster”.³⁷ It is clear from SA’s evidence as a whole that the design has sought to respond and relate to the tall buildings at London Bridge Station, leading him to describe the 2018 scheme as “working with the composition” of the tall buildings and “bringing this part of the cluster to a satisfactory condition”.³⁸ There was a conscious choice to develop a building with a form and appearance which responds to the collection existing tall buildings, rather than the BHSCA.
- b. This design intention is clearly reflected in the ‘Metabolist tower’ which was one of the earliest iterations of tall building design and which was represented by a model in the inquiry room. This building is roughly $\frac{3}{4}$ the height of the Shard. It is a clear visual demonstration of GPE’s intent to respond to the existing tall buildings, and their failure to pay any serious attention to the constraints imposed by the CA.
- c. PS confirmed that all design iterations which were tested against the 7 key benchmark views (agreed with LBS in 2015) produced the same adverse effects.³⁹ These effects flowed from the principle of a tall building in this location rather than any matters of detailed design.⁴⁰ It is therefore unsurprising that the 2018 and 2021 TVIBHAs find the same level of adverse effect for both appeal schemes. Despite this, and despite SA agreeing that a robust and reliable analysis of heritage impact was very important to the

³⁶ As confirmed by SA and PS in XX by ED

³⁷ SA EIC, discussing slide 6 in his presentation

³⁸ SA EIC, discussing slide 18-29 in his presentation.

³⁹ PS XX by ED

⁴⁰ PS XX by ED

design process,⁴¹ neither SA nor PS suggested that GPE should consider a different form of development.⁴² SA's evidence was that he "did not think the less than substantial harm would ever be addressed"⁴³ – which is plainly the case if a tall building is the only form of development that will be contemplated.

46. The evidence has demonstrated that the buildings' designs have not been adequately informed by their heritage context; in particular the character and appearance of the BHSCA which forms the immediate context of the appeal site. GPE are clearly an experienced developer and have had heritage advice throughout the proposals, so it is unlikely that they have been unaware of the inherent tension between the schemes and their historic context. Rather they have treated this as something that will need to be accepted if redevelopment is to occur – hence the line of questioning of NBM which suggested (in the context of the area identified in policy P17) that some harm to heritage is inevitable and effectively 'priced in' to any tall building development.⁴⁴ GPE have been unwilling to consider the possibility that, despite the inclusion of the site within a very broad area where LBS expects tall buildings, it may not actually be suitable for such development.

Design quality

47. GPE have advanced the proposition that good quality design could (in principle) reduce the level of harm caused by a tall building. AY was prepared to accept this possibility, but believed that it would depend on the type of building being considered and the nature of the context.⁴⁵ NBM was also prepared to agree to the idea in principle, although he felt that it would be hard in practice given that exemplary design is a policy requirement.⁴⁶ Ironically, PS did not subscribe to the idea of high quality design reducing harm, although he was clear that poor design could

⁴¹ SA XX by HPQC

⁴² SA XX by HPQC and ED, PS XX by ED

⁴³ SA XX by ED

⁴⁴ XX of NMB by CKQC

⁴⁵ AY XX

⁴⁶ NBM XX

exacerbate it.⁴⁷ His conclusions on heritage harm reflected the harm caused by a high quality scheme; an unsatisfactory design would be more harmful in his view.⁴⁸

48. HE's position, as expressed through GPA 3 "The Setting of Heritage Assets", is consistent with AY's oral evidence:

"For some developments affecting setting, the design of a development may not be capable of sufficient adjustment to avoid or significantly reduce the harm, for example where impacts are caused by fundamental issues such as the proximity, location, scale, prominence or noisiness of a development. In other cases, good design may reduce or remove the harm, or provide enhancement."⁴⁹

49. The heritage harm identified in this case results from the principle of introducing a tall building in this location. The form and scale of this type of development produces specific types of effect ("dominates the existing street scene"⁵⁰, "dominates the historic foreground"⁵¹) which will not change whatever variation on design is chosen – as confirmed by the fact that none of the iterations tested by PS produced any different results.⁵² In any event the designs of these schemes are now fixed and are presented for determination. It may be the case that a building with poorer design quality would produce even greater harm – but that doesn't take GPE's anywhere.

50. A related point which was explored in the evidence was the extent to which a building could properly be considered to represent good design if it did not appropriately respond to its context (historical or otherwise).

51. EA expressed the view that it was "not possible to isolate the concept of architectural quality from its context and setting" and that while it might be "perfectly possible to have enjoyable compositional concepts" considered in isolation, when those were put into context and tested any good qualities were undermined.⁵³

⁴⁷ PS XX by ED

⁴⁸ PS XX by ED

⁴⁹ CDF.04 GPA3 p. 14 para 39 (pdf 18)

⁵⁰ CDA.12-1 2018 TVIBHA view 50 p. 257 para 5.624 (pdf 261); CDB.14-1 2021 TVIBHA p. 231 para 5.524

⁵¹ CDA.12-1 2018 TVIBHA view 44 p. 233 para 5.554 (pdf 237); CDB.14-1 2021 TVIBHA p. 207 para 5.451

⁵² PS XX by ED

⁵³ EA XX

52. PS took a different approach. His assessment involved first reaching a conclusion on the design quality of each building “in its own right”. That conclusion was then carried forward into and informed the assessment of heritage impact.⁵⁴ PS felt that it was proper to consider the ‘inherent’ quality of design separately from the question of whether the buildings would represent appropriate development in their context.⁵⁵

53. PS’s approach is not consistent with the National Design Guide, which confirms that “well designed places are responsive to local history, culture and heritage”⁵⁶ and that well-designed development is “demonstrably based on understanding” of patterns of built form and architecture prevalent in the area to inform the layout, form and scale of development.⁵⁷ The NDG provides “a series of tests for assessing whether a place is well designed or not. If they are not met, then it can be concluded that it is not well-designed”.⁵⁸ This document is part of the PPG⁵⁹ and serves as recent confirmation that, so far as the Government is concerned, the relationship between a proposed building and its heritage context is fundamental to the question of whether it can be considered ‘good’ design. This same point is echoed in the approach of the Inspector in the Chiswick Curve decision.⁶⁰

54. The failure of the schemes to respond appropriately to their historic context prevents them from being regarded as “well-designed”. Regardless of the perceived architectural quality of the buildings ‘in their own right’, the evidence has demonstrated that any tall building proposal will cause an equivalent level of harm to heritage – including to a Grade I and II* LB.

55. In the recently published 2nd edition of HEAN 4 “Tall Buildings” HE advises that:

⁵⁴ PS XX by ED; and see structure of proof, with analysis of design in paras 4.1-4.5 and 9.1-9.4, and then references back to the design being “high quality” within the sections on heritage for each proposal.

⁵⁵ PS XX by ED

⁵⁶ CDD.20 NDG p.10 para 40 (pdf 14) and see p. 11 para 41 2nd bullet (pdf 15)

⁵⁷ CDD.20 NDG p.11 para 43 (pdf 15)

⁵⁸ CDD.20 NDG p.4 para 15 (pdf 8)

⁵⁹ CDD.20 NDG p.2 para 3 (pdf 6)

⁶⁰ CDH.16 IR p. 122 para 12.8 and 12.9 (pdf 132)

“there will be locations where the existing qualities of place are so distinctive and the level of significance of heritage assets so great that tall buildings will be too harmful, regardless of the perceived quality of the proposal’s design and architecture”.⁶¹

56. The appeal site is undoubtedly a location which falls squarely within this guidance. The existing qualities of the BHSCA are highly distinctive and the proposals would affect heritage assets of the highest significance. A tall building on this site will be too harmful, regardless of design. This was essentially AY’s conclusion: the appeal site is simply “not an appropriate location for a tall building”.⁶²

Treatment of existing tall buildings

57. Both SA and PS relied heavily on the existence of tall buildings at and near London Bridge station to justify the adverse visual and heritage effects they accept would occur. SA considered that juxtapositions between tall buildings and low level historic buildings were part of the character of the area and represented the “layering of history”; he said that the existence of tall buildings “in and against the CA” was clearly established and represented “a successful model for the current history being laid down”.⁶³ PS variously described the proposed tall buildings as “not bringing about any effects of a kind not already present”⁶⁴ in the BHSCA, and as “consistent with the established character” of the area.⁶⁵ Similar themes can be detected in PS’ analysis of effects on LBs within the CA, in particular Guy’s Hospital⁶⁶ and Southwark Cathedral.⁶⁷

58. There are two fundamental problems with this evidence, considered from a heritage perspective.

⁶¹ CDF.07 HEAN 4 p. 6 para 3.2 (pdf 9)

⁶² AY proof p. 115 para 15.3

⁶³ SZ EIC

⁶⁴ PS proof paras 5.32 and 10.23

⁶⁵ PS proof paras 7.32 and 12.21

⁶⁶ PS proof p. 36 para 5.67 “the hospital is already located in close proximity to several tall buildings ... its setting today is the urban landscape of central London”

⁶⁷ CDA.12-1 p. 253 para 5.612 (pdf 257) “Given that the modern world, in the form of tall buildings, is keenly felt when in this space today, the appearance of the Development in this view would represent a continuation of this current state of affairs”.

59. First, as explained earlier, the “character and appearance” which s. 72 LBA 1990 seeks to preserve and enhance is that which relates to the special architectural or historic interest of the CA and underpins its designation. PS accepted this was the case.⁶⁸
60. Whatever the position in terms of townscape (which is outside HE’s remit), it is obvious that the existing tall buildings near London Bridge station are not part of the special architectural and historic interest of the BHSCA, as summarised in the Conservation Area Appraisal. Whilst the CAA dates from 2006 and thus predates the modern development around London Bridge, earlier incarnations of tall buildings at London Bridge station⁶⁹ already existed at the time the CAA was published. With the exception of Shard Place, the tall buildings and resulting juxtapositions relied on by PS and SA – past and present – have been outside the CA boundary. The character and appearance of the CA itself has remained unaffected and the consistent range of building heights and scales within its boundary remains. Nothing has materially changed in this respect since 2006. I will return to Shard Place in due course.
61. PS repeatedly referred to the existing tall buildings and juxtapositions as being an important part of the “character” of the CA. His failure to appreciate the distinction between ‘character’ in a general sense and the ‘character’ which is relevant under s. 72 LBA 1990 is a glaring error in his assessment. It leads him to suggest that the proposed schemes are essentially ‘in keeping’ with the character of this part of the CA – when in fact they would be fundamentally at odds with it. This inevitably undermines PS’s conclusions.
62. Second, PS confirmed that he had assumed the existing tall buildings have a positive effect on the character and appearance of the CA when undertaking his assessment. He did not undertake any systematic appraisal of those buildings to explore what about them could be regarded as beneficial.⁷⁰ The same approach can be detected in his treatment of tall buildings in the setting of other heritage assets, including the Tower of London WHS. Essentially the existing tall buildings have been treated as part

⁶⁸ PS XX by ED

⁶⁹ Southwark Towers (replaced by the Shard) and New London Bridge House (replaced by the News Building) – see SA proof p. 31 fig. 107, reproduced as Slide 4 in AY’s EiC presentation.

⁷⁰ PS XX by HPQC

of the baseline and there has been no attempt to consider whether they have a positive, negative or neutral effect on the significance of any of the assets. They are just ‘there’.

63. This is all the more puzzling bearing in mind that PS has considered whether the existing buildings on the appeal site contribute positively, negatively or neutrally to the character and appearance of the CA: see section 6 of the Heritage Statement.⁷¹ There has been no attempt to explain the difference of approach between existing buildings on site and existing buildings in the surrounding area. It can’t be justified.

64. HPQC took PS through advice and guidance in the PPG,⁷² GPA2⁷³ and GPA3⁷⁴, all of which explain why it is important to assess whether existing development has caused harm. HEAN 4 reinforces this point in the specific context of tall buildings, stating that the issue of cumulative impact needs to be considered to ensure that (among other things) “where harm already exists, it is not compounded”.⁷⁵ In other words, existing harmful development should not be used to justify further harm.

65. Unfortunately that is precisely what has happened in this case. PS confirmed that Guys Hospital tower has had a “marginal effect” on the ability to appreciate the significance of the Grade II* LB.⁷⁶ His attempts to avoid conceding the same point in respect of the listed terrace lacked credibility.⁷⁷ Clearly Guys Tower has produced harmful effects to a range of designated heritage assets in its vicinity. Similarly, although PS considers the Shard to be of high architectural quality, he conceded that it has harmed the significance of Southwark Cathedral.⁷⁸ These are two examples of how the existing

⁷¹ CDA.18 p. 70 (pdf 71)

⁷² CDD.11 para 013: “When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change.”

⁷³ CDF.03 p. 8 para. 28 (pdf 11) “Where the significance of a heritage asset has been compromised in the past by unsympathetic development to the asset itself or its setting, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset in order to accord with NPPF policies.”

⁷⁴ CDF.04 p. 4 para 9 (2nd bullet) (pdf 8), essentially repeating what is said in GPA2.

⁷⁵ CDF.07 HEAN 4 p. 35 para 6.5 (pdf 38)

⁷⁶ PS XX by HPQC

⁷⁷ PS XX by HPQC

⁷⁸ PS XX by ED. Note this concession disproves PS’ contention that “if a new building is of a high standard of architecture, it is likely to add positively to views in which it appears”: PS proof p. 26 para 5.25

tall buildings have compromised the significance of heritage assets in the CA (and therefore harmed the CA itself).

66. PS suggested that the appeal schemes would not harm the CA because “the contrast in scale is comparable with that which results from the presence of the Shard, Shard Place ... and the Guy’s Hospital Tower”.⁷⁹ In respect of Guy’s Hospital he stated that the effects would be “comparable with the effects ... from the construction of the Shard and Shard Place”⁸⁰ and a “continuation” of the current state of affairs.⁸¹ If the existing buildings are in fact harmful, then the introduction of “comparable” effects is plainly adding further cumulative harm.

67. PS acknowledged that he had not considered the issue of cumulative harm.⁸² This represents a major error in his approach. It is an error which AY and NBM have not made. AY has been clear that his view (and the view of HE corporately) is that the existing tall buildings around London Bridge have harmed the CA, Guy’s Hospital, Southwark Cathedral, the Tower of London WHS and St Pauls Cathedral. AY has properly taken that into account in his assessment of the effect of the proposals,⁸³ concluding that the proposed schemes would produce cumulative impacts and exacerbate harm which has already occurred.

68. I now turn to consider the specific issue of Shard Place, which has been seen as particularly significant because of its location at the edge of, but within, the boundary of the BHSCA.⁸⁴ For the reasons already discussed, the fact that Shard Place is within the BHSCA boundary does not mean that it must be assumed to be consistent with the character and appearance of the CA. There needs to be an assessment of whether it makes a positive, negative or neutral contribution. The same goes for its effect on the settings of other heritage assets.

⁷⁹ PS proof p. 55 para 7.32

⁸⁰ PS Proof p. 37 para 5.68

⁸¹ CDA.12-1 p. 253 para 5.612 (pdf 257)

⁸² PS XX by HPQC

⁸³ See eg. AY proof p. 53 para 7.79, p. 69 para 8.27, p. 88 para 10.25

⁸⁴ Although PS expressed the view that this did not make a fundamental difference when considering the impact of the building in the backdrop of a view: proof p. 27 para 5.26

69. LBS' reasons for granting planning permission can readily be understood from paragraphs 106 and 107 of the committee report. They essentially relate to its edge-of-CA location, its location in an area of substantial change, and the lack of quality of the building to be replaced, as well as the existence of a unique opportunity to complete the group of tall buildings around the station forecourt. This all makes sense and, aside from the point about the quality of the building to be replaced, these reasons do not apply to the appeal site.

70. It is fair to say that the committee report is very 'light' on heritage matters, bearing in mind LBS was considering a tall building within the CA, immediately adjacent to a Grade II LB and immediately opposite a Grade II* LB. Heritage was not identified as a main issue for consideration, but was instead wrapped up in the discussion of design issues.⁸⁵ There appears to be a finding of LTSH (it is not entirely clear),⁸⁶ but the test in para 202 is never actually applied. The report contains some highly questionable conclusions concerning the relationship between the proposed building and its historic context.⁸⁷ Additionally, Shard Place is within the wider setting consultation area of St Paul's Cathedral from LVMF view 3.A1 and is seen to overlap with the Grade I listed building from this location,⁸⁸ yet this point is not discussed at all in the committee report.

71. HE's position is that Shard Place has caused harm to the CA and to the setting of Guy's Hospital. Whilst the reasons for permitting it can be understood from the report, the analysis of heritage effects is lacking. Shard Place cannot be regarded as having preserved or enhanced the character and appearance of the CA. The tall modern building is fundamentally at odds with the special architectural and historic interest of the area, and particularly sub-area 4 – for essentially the same reasons as apply to

⁸⁵ CDH.15 p. 5 para 32

⁸⁶ p. 14 para 95

⁸⁷ For example at p. 16 para 103 it is said that, by aligning with the axis through Guy's quad, the large public staircase on the west side of the tall building "offers the opportunity to complete a sequence of spaces that starts at the southern end of Guy's campus" and thereby complements the historic setting (later in para 116 it is noted that "this point is disputed by Guys who have made representations stating that the proposal does not respect the setting of the listed building." At p. 17 para 112 it is also said that the use of masonry cladding set behind a glass skin will be congruous with the traditional materials of the CA and complement the historic setting. There are other examples.

⁸⁸ See PS appendix 2 p.10

the buildings proposed by GPE. The decision to permit Shard Place should not be regarded as a justification for further tall building development in the BHSCA. AY's position was that the CA boundary should be redrawn to exclude Shard Place. It is hard to disagree with that.

Judgements about the 'quality' of the CA and settings of other heritage assets

72. A theme which came through repeatedly in PS' written and oral evidence was his focus on a notion of 'quality' or attractiveness as a relevant consideration when assessing heritage significance and therefore impact. The idea being that less attractive CAs or settings, or those otherwise considered to be of lower 'quality', are less sensitive to the introduction of new development.

73. This revealed itself in a number of different ways.

74. First, the methodology of the built heritage assessment ('BHA') identifies that the assessment of sensitivity of an asset "may be moderated to take into account a judgement about its quality in the round".⁸⁹ In XX PS confirmed that, in performing the 'moderating' exercise, he had taken account of factors not relevant to the significance of the heritage asset or ability to appreciate that significance.⁹⁰ That cannot be regarded as a legitimate approach.

75. Second, along similar lines, when discussing Southwark Cathedral PS referred to the fact that it was not within a "historic setting" and was not a place where one could "film a historic drama".⁹¹ This echoed a comment made in the Heritage Statement about the CA:

"There is almost nowhere in the conservation area that passes what has been termed the 'Dickens test'; that is, there are no areas that could be used to film a historic drama with a shot or sequence of shots that extended beyond a building or two."⁹²

⁸⁹ CDA.12-2 p. 341 para 10.17

⁹⁰ PS XX by HPQC.

⁹¹ PS XX by ED

⁹² CDA.18 p. 68 para 5.47 (pdf 69)

This “Dickens test” has no basis whatsoever in any law, policy or guidance. The idea that less historically ‘intact’ places are less sensitive to new development is problematic in light of guidance on cumulative harm, as it can potentially create a situation where the more harm that occurs, the more further harm can be justified, and so on until there is little of heritage value remaining.

76. Third, during his oral evidence PS sought to contrast the BHSCA with Bloomsbury, which he regarded as more “coherent” in that a person could “walk round a Georgian world”. In PS’ view the BHSCA is not an “area of such coherence that something introducing significant change may disrupt it”.⁹³ This example was taken up by CG, who compared the BHSCA with “Bloomsbury and other cherished CAs in London that are sacrosanct”.⁹⁴ This apparent ‘ranking’ or ‘grading’ of CAs has no basis in statute or policy and is not the result of any systematic analysis. It appears to be based on a subjective view about what ‘matters’ (in this case, coherent design).

77. This downgrading of CAs which do not strongly display PS’ concept of “coherency” risks relegating other important aspects of character and appearance as somehow less valuable or sensitive. An example of how this has actually happened can be seen in the approach taken to Kings Head Yard and other historic yards off Borough High Street. SA in particular spoke of these yards in highly disparaging terms, describing Kings Head Yard variously as an “unwelcome backwater”, an “unsightly alley”, a “road to nowhere” and “a very, very difficult place to be”,⁹⁵ leading him to argue that the appeal schemes would relieve the “misery of the yards”.⁹⁶ PS was slightly more measured, but still described Kings Head Yard as “not very nice” and having a “gritty quality”.⁹⁷ Yet these yards are highly significant remnants of a medieval street pattern which is unique in London. Perhaps unsurprisingly given their shared background and experience as architects,⁹⁸ both SA and PS appear to place much greater weight

⁹³ PS EIC

⁹⁴ CG XX by HPQC

⁹⁵ SA EIC – HE invites you to visit KHY on a Thursday or Friday evening and judge for yourself whether people are finding it a “difficult place to be”.

⁹⁶ SA XX by ED

⁹⁷ PS EIC

⁹⁸ Review section 1 of PS’ proof and compare with the equivalent parts of NBM’s and AY’s evidence.

on perceived visual quality and architectural design than other factors which may be relevant to the special interest of a heritage asset or the contribution made by its setting. The importance of these other factors is underestimated as a result.

78. Fourth, on several occasions PS took account of whether a particular view was one which a visitor would want to photograph. Again, this novel ‘test’ or ‘tool’ for assessing heritage effects seems to be one of PS’ own confection. It suggests a confusion between pictorial quality or the attractiveness of a composition on one hand and the way the view relates to special interest of a heritage asset on the other. The ability to see a nicely composed view is not the same thing as the ability to understand an aspect of heritage significance or appreciate that significance.

79. PS’ preoccupation with views and visual effects permeates his heritage assessment more generally. In XX he confirmed that where adverse visual effects were found in the TVIA, those were to be read across to the adverse effects identified within the BHA.⁹⁹ The assessment of heritage impact starts and ends with the assessment of visual effects. Again, the risk is that other aspects of significance which are affected may be missed or given insufficient attention in the assessment. The further danger of basing the heritage assessment so heavily on the analysis of views is that the assessment will then miss out any adverse effects which have not been expressly identified through the views analysis. An example of where this had occurred was the view from the North of Southwark Cathedral,¹⁰⁰ where for both schemes PS had assessed the effects as ‘neutral’ in the TVIA but accepted in XX that there was in fact harm to significance, leading him to concede that para 5.63 of his proof was incorrect.¹⁰¹ Another obvious example of heritage harm not picked up in the visual assessment was on St Thomas Street, where the assessed visual effect went from ‘adverse’ (from London Bridge Street¹⁰²) to ‘beneficial’ (from opposite Guy’s Hospital¹⁰³) within the width of Guy’s forecourt. PS did not accept that the latter view

⁹⁹ PS XX by HPQC

¹⁰⁰ CDA.12-1 p. 293 (pdf 297) and CDB.14-1 p. 267

¹⁰¹ PS XX by ED

¹⁰² CDA 12-1 p. 257 (pdf 261) and CDB.14-1 p. 231

¹⁰³ CDA 12-1 p. 257 (pdf 261) and CDB.14-1 p. 237

was harmful in heritage terms, but his attempts to justify that conclusion were not credible.¹⁰⁴

Treatment of benefits in reaching conclusions on harm

80. The Court of Appeal has confirmed that the identification and assessment of benefits to be weighed against harm to a designated heritage asset is a matter for the decision maker. A sensible approach must be adopted but there is not one particular way in which this must be done.¹⁰⁵ It may be appropriate to apply an internal heritage balance, weighing harmful and beneficial heritage effects together to reach an overall ‘net’ view. In other cases it may be appropriate to identify all the harms on one side of the equation and balance them against all the benefits on the other side.

81. AY has not sought to undertake an internal heritage balance, save in the case of the listed terrace where there are accepted to be both positive and negative effects from development. He has identified the harms that would arise without at that stage considering beneficial effects.

82. It is not entirely clear what approach PS has adopted. His proof of evidence states conclusions about the effects on the BHSCA, the listed terrace, Southwark Cathedral and Guy’s Hospital “in the round”, by taking account of positive and negative effects.¹⁰⁶ However there is not always a clear articulation of the precise benefits being taken into account. For example, PS states that the schemes would have “positive and negative aspects” on the setting of Southwark Cathedral¹⁰⁷, but the nature of these “positive aspects” (and how they might relate to the significance of the Cathedral or the ability to appreciate it) is nowhere explained. Combined with the failure to articulate where the assessed harm sits within the range of LTSH, this produces considerable uncertainty as to what level of harm has been identified, either before or after the perceived benefits have been ‘netted off’.

¹⁰⁴ PS XX by ED

¹⁰⁵ CDH.06 Bramshill p. 22-23 paras. 76 and 80 (pdf 24 and 25)

¹⁰⁶ Eg. PS proof 5.38, 5.47, 5.64, 5.68

¹⁰⁷ PS proof para 5.64

83. There is a further issue regarding the nature of the benefits that are being taken into account in these “in the round” assessments. In the case of Guy’s Hospital, PS purported in his proof to balance harmful effects against “tangible long term benefits to the setting for the hospital”, consisting of enhanced local connections and high quality public realm.¹⁰⁸ This purports to be an ‘internal heritage balance’, but PS conceded that these benefits did not relate either to the significance of the Grade II* LB or the ability to appreciate it.¹⁰⁹ It follows that these were not ‘heritage’ benefits and therefore could not ‘net off’ any heritage harm in an internal balance. PS has not said what level of harm he considers would arise before any benefits have been taken into account.

84. The position is even more stark in respect of the BHSCA, where PS overtly weighed the identified LTSH against “the many positive qualities of the Development which would benefit the CA as a whole, both in respect of its heritage significance and in more general terms”.¹¹⁰ These ‘general’ benefits included internal spaces “bringing something new and attractive to a varied area”,¹¹¹ new areas of public realm “which will be attractive in their own right and will also relieve pedestrian congestion”,¹¹² and “better and less congested access to the underground station”.¹¹³ PS doesn’t appear to have weighed all of the public benefits advanced by GPE against the harm,¹¹⁴ but he has gone well beyond an internal heritage balance to conclude that the overall effect on the BHSCA is beneficial. Again, the approach to balancing benefits, together with the failure to identify the extent of any ‘un-netted’ harm, leaves you with no clear evidence as to the degree of LTSH to the CA which is accepted by PS.

¹⁰⁸ PS proof p. 37-37 para 5.68

¹⁰⁹ PS XX by HPQC

¹¹⁰ CDA.12-2 p. 357 para 2.393 and CDB.14-1 p. 329 para 12.400

¹¹¹ PS proof p. 24 para 5.17

¹¹² PS proof p. 30 para 5.35

¹¹³ PS proof p. 30 para 5.35

¹¹⁴ For example uplift in employment floorspace and sustainability benefits are not mentioned.

IV. CONCLUSIONS ON LAW AND POLICY AND OTHER OVERARCHING ISSUES

85. The legal and policy context establishes the following as a correct approach to identifying and assessing the impacts of new development on heritage assets:

- a. Identify the heritage assets potentially affected.
- b. Gain a proper understanding of the significance of the heritage assets potentially affected, using available sources of information such as Conservation Area Appraisals and other studies as well as list descriptions and professional assessment. For CAs this means having a clear understanding of the special architectural and historic interest of the area, the character and appearance of which is sought to be protected by the designation.
- c. Within the consideration of significance, consider (i) the setting of the heritage asset and how it contributes to significance, or how it allows that significance to be appreciated; and (ii) any issues of cumulative harm arising from the presence of development which is detracting from significance or the ability to appreciate it (this should have been identified through consideration of existing significance and setting).
- d. Assess how the proposed development will affect the significance of the heritage asset – whether that is an effect on the fabric of the heritage asset, or on the relationship between the setting and the significance of the building. Whatever approach is adopted, it must not undermine the equivalent statutory protection given to LBs and their settings.
- e. Harm needs to be identified as either substantial or LTSH, and the extent of harm within those categories should be clearly articulated. Identifying where the harm sits within a range or spectrum is one obvious way of doing this.
- f. Any harm to a designated heritage asset must be given considerable importance and weight and creates a strong presumption against granting

planning permission. The weight given to harm will increase depending on the importance of the asset and the extent of harm.

- g. Heritage benefits should be given great weight; again the precise amount of weight depends on the importance of the asset being enhanced and the extent of the benefit.
- h. In a case of LTSH, harm should be weighed against the public benefits of the proposal to determine whether it has been clearly and convincingly justified. This stage goes beyond consideration of purely heritage issues.

86. PS' assessment of heritage effects is undermined by several serious errors. These errors affect most stages of the assessment. The existence of these serious errors may be explained in part by the fact that PS' background and qualifications are in architecture,¹¹⁵ whereas AY and NBM have a solid background in heritage. A further explanation may be found in the fact that PS – unlike AY or NBM – has been responsible for combining townscape/visual impact and heritage assessments within single documents (the TVIBHA and then the proof). It is perhaps unsurprising that some concepts and approaches have become confused as a result.

87. The series of errors I have identified means that PS' conclusions on heritage effects must be regarded as fatally flawed. The assessment has not been robust and cannot be relied on to inform the determination of these appeals.

88. AY's evidence is clearly to be preferred. It is notable that, although AY and NBM have undertaken separate assessments and presented them differently, there is good agreement between their findings on the five key assets HE has chosen to focus on in its evidence. AY was challenged in XX as to his opinion on various points of principle, but criticism of his assessment of heritage impacts was limited to inconsequential matters such as his use of the word 'serious' in describing harm and whether the

¹¹⁵ PS proof section 1

appeal site could properly be regarded as being in the “heart” of the BHSCA. XX of AY did not expose any major flaws in his assessment.

89. It was clear from AY’s evidence that he has a deep understanding of the BHSCA and the highly graded heritage assets within it, resulting from his involvement in Southwark casework for nearly a decade. That has included a lot of work relating to tall building proposals in the North of the Borough. AY described some of the casework he has been involved with, including schemes which have led to real enhancements in the character and appearance of the CA.¹¹⁶ AY’s long experience of working with heritage in Southwark is unmatched by either of the other heritage witnesses. It means that he has a really thorough understanding of the BHSCA and heritage assets within it and what gives them their special interest and value. This makes his assessment reliable and credible. His conclusions should be accepted.

¹¹⁶ Most relevantly for current purposes, the conversion of Boland House (the East wing of the main forecourt) to a science gallery and associated public realm improvements which have enhanced the setting and improved public’s ability to appreciate the significance of the building.

V. BOROUGH HIGH STREET CONSERVATION AREA

Significance

90. BHSCA has long been recognised as an area of special architectural and historic interest. It was designated in 1968, just one year after the Civic Amenities Act 1967 first introduced the CA designation.¹¹⁷ Both AY and NBM emphasised the extraordinary ‘time depth’ of the area. By way of example, AY noted the recent discovery of an incredible and largely intact Roman mosaic at the Landmark Court site on Southwark Street.¹¹⁸

Urban grain

91. This long history of occupation has resulted in an area with a very rich history, with each period of history building on the one before and leaving its mark. This has led to a CA with quite distinct character areas, representing different stages of its development. The High Street is one of the oldest roads in London and still forms the spine of the area and is its most powerful influence.¹¹⁹ The distinctive medieval grain of the High Street and land adjacent still survives and is clearly legible. AY explained that there is nothing else comparable in London.¹²⁰ GPE are dismissive of the yards and see them as an opportunity to deliver “places and spaces for people” to provide “an important and delightful addition to pedestrian movement”.¹²¹ But the yards are a remarkable survival. They illustrate the way the High Street developed from long and narrow burgrave plots, where frontage buildings were serviced by the long plots behind.¹²² The yards always had a backland and subservient character.

92. Kings Head Yard provides a good illustration of the different layers of history of the yards. The narrow enclosed space accessed through an opening in the High Street is a visual reminder of the burgrave plots, which have informed the rhythm and scale of

¹¹⁷ AY proof

¹¹⁸ AY EiC

¹¹⁹ CDE.06 p. 15 para 2.21 and AY EiC

¹²⁰ AY EiC. PS agreed there was no other comparable area in London, aside from perhaps Bishopsgate – I invite you to compare that part of London with Borough High Street on a modern map. You will see that very little is left of the medieval street pattern at Bishopsgate.

¹²¹ SA EiC

¹²² See CDE.06 CAA p. 16 para 2.24

the High Street frontage buildings.¹²³ The Kings Head pub (Grade II listed) replaced one of the medieval coaching inns and thus provides a reminder of how the yards were used in their 'heyday' before the arrival of the railways. The façade of the former hop sample rooms illustrates a later layer of history, the Victorian repurposing of the yards for commercial activity. The yards may not be the most visually attractive places, but focussing unduly on that aspect (as SA has done) misses the point about what makes them so significant. The CAA records that "the street forms and layout of the Conservation Area contribute fundamentally to its character",¹²⁴ and the yards are referenced several times within the appraisal of the CA's character and appearance.

93. AY was not 'romantic' about Kings Head Yard.¹²⁵ He acknowledged that the 1980s NCC development had "not been particularly sympathetic", with facadism becoming very clear in certain views and the service yard in particular noted as detracting from the special character of the yard. Nevertheless, the 1980s development did respect the fundamental urban grain. The yard remains narrow and enclosed, with the hop sample rooms façade providing a complementary setting to the Grade II listed pub and serving as a reminder of the historical development of Kings Head Yard and the wider area, where the hop trade flourished during the Victorian period.¹²⁶ The hop sample rooms façade is noted in the CAA as making a positive contribution to the character and appearance of the CA, and PS concurred with this view in his assessment.¹²⁷

Form and scale of development: High Street

94. The CAA notes that, given the "eclectic mix of materials and details, reflecting its evolution over a long period" (contrasting with the "Georgian world" of Bloomsbury), the overall identity of the CA "is to do as much with scale and form as with materials and detail".¹²⁸ The CAA contains numerous references to the 3-4 storey scale of

¹²³ CDE.06 CAA p. 27 para 3.2.11. This is a point accepted by PS in XX by HPQC

¹²⁴ CDE.06 p. 15 para 2.2.1

¹²⁵ As implied by SA in EiC

¹²⁶ It is unnecessary and probably impossible to resolve disagreements between AY and PS as to the extent of historic fabric remaining. In EiC SA accepted that at least part of the façade was or included original fabric. The positive contribution to the setting of the Kings Head pub is noted in CDA.18 Heritage Statement p. 71 (pdf 72)

¹²⁷ CDA.18 Heritage Statement p. 75 para 6.7 (pdf 76)

¹²⁸ P. 22 para 3.1.6

existing development on Borough High Street.¹²⁹ It conveys a clear message that this scale and form of development is important to the character and appearance of the CA, and is part of what makes it distinctive. This is shown to be true when one considers the dramatic difference in form and scale between the area within the CA boundary and the area immediately outside it, where s. 72 LBA 1990 does not apply. AY observed that seeing the varied (but low) heights and variety of architectural styles provides an insight into how ancient the High Street is.¹³⁰

95. The Shard, Shard Place, the News Building and Guys Hospital Tower can all be seen to rise up well above the consistent 3-4 storey buildings of the High Street from various locations, albeit they are seen at an appreciable distance.¹³¹ As AY explains, these buildings create a conspicuous visual distraction and have harmed the character and appearance of the CA.¹³² Existing development in the backlands of the CA does not protrude above the High Street frontages. This point applies to the NCC office building as well – whilst it has a variety of negative features, it remains recessive in most views and does not disrupt the appreciation of the consistent scale of the High Street.

Form and scale of development: St Thomas Street

96. A consistent scale of approximately 4 storeys is also a key feature of the St Thomas Street sub-area of the BHSCA. This part of the CA is very different from the High Street. The CAA notes the “restrained quality and consistency” of its architecture and the “conservative, established tone”.¹³³ St Thomas Street is much more of a ‘set piece’, with all of the buildings being associated with the development of St Thomas’ Hospital to the north and then Guy’s Hospital opposite, built to receive the ‘incurables’. All of the buildings are based on classical principles and have a civic or domestic (and not commercial) character.¹³⁴ There is uniformity of scale and massing,¹³⁵ with the

¹²⁹ See e.g. pp. 25-26 paras 3.2.2, 3.2.4, 3.2.6

¹³⁰ AY EiC

¹³¹ AY and EA both described the current situation as providing ‘breathing space’

¹³² AY proof p. 33-34

¹³³ CDE.06 – CAA 3.5.1

¹³⁴ EA described the street in EiC as having “almost a domestic scale, although a civic quality”

¹³⁵ AY EiC

exception of the former St Thomas' church at 9A St Thomas Street which derives and retains significance from its prominence and landmark siting.¹³⁶

97. Keats House, on the south side of St Thomas Street, is identified in the CAA as an unlisted building which makes a positive contribution to the character and appearance of the CA.¹³⁷ All the heritage witnesses share this assessment.¹³⁸ It has a highly attractive and characterful appearance. Whilst only the frontage survived the 1980s development, PS agreed that this fact is not immediately obvious.¹³⁹ In AY's words, Keats House in its present form does "everything it needs to do in terms of the CA".¹⁴⁰ It has always been attached to Conybeare House (the West wing of Guy's Hospital), reflecting its history as a building erected by Guy's Hospital to provide accommodation for medical staff.¹⁴¹ It is therefore "in the right place" at the moment,¹⁴² its location attached to Guy's Hospital illustrating the historic association between these buildings.

98. AY and EA both emphasised the special qualities of this part of the CA as experienced from its eastern end, immediately after arrival at London Bridge station. This is of course one of the key points of arrival into the CA. AY described how, from this point, the visitor leaves a "very modern high density character area" and suddenly enters "a completely different character area that is incredibly historic and very consistent in terms of scale of building".¹⁴³ EA made similar points and characterised this point of entry into the CA as providing a "really extraordinary contrast to the spaces one has left behind".¹⁴⁴

99. From the west end of St Thomas Street the tall buildings at London Bridge station appear highly prominent. The extreme juxtaposition between them and the adjacent listed buildings is clearly harmful in heritage terms. They are alien to the special

¹³⁶ AY XiC

¹³⁷ CDE.06 CAA p. 49

¹³⁸ AY EiC, CDA.12 Heritage Statement p. 76 para 6.8 (pdf 77), NBM proof p. 108 para 9.82

¹³⁹ PS XX by ED

¹⁴⁰ AY EiC

¹⁴¹ See extract from 'The Builder' in CDA.19 p.5

¹⁴² AY EiC

¹⁴³ AY EiC

¹⁴⁴ EA EiC

architectural and historic interest of the CA which underpins its designation, and they draw attention away from the restrained consistency of this part of the CA. They also deprive the Grade II* listed former church of its landmark status.

100. The existing NCC building has “harmed the character of the CA by introducing a building that bears no relation to its historic context, with very unsympathetic junctions with the historic buildings it incorporates”.¹⁴⁵ For these reasons HE has no objection to the principle of redevelopment. However SA’s characterisation of the building as “a horrific missing tooth” in the ‘smile’ described by NBM was an over-exaggeration.¹⁴⁶ The 1980s building detracts from the architectural character of St Thomas Street, but it is not all bad. It maintains the consistent building line on the south side of the street and it adheres to the scale and proportions of the surrounding historic buildings. Once again, the bulk of the office building behind remains recessive and does not disrupt the street scene.

Impacts

Kings Head Yard

101. Both appeal schemes would open out the narrow enclosed yard to provide public realm, turning Kings Head Yard into Kings Head Square. It is common ground that the sense of enclosure provided by Kings Head Yard is of historical significance.¹⁴⁷ It illustrates the unique urban grain of this area which is hugely important, even if the current presentation of the yard is not as attractive as it might be.¹⁴⁸ The loss of this narrow street pattern and sense of enclosure is clearly harmful. Although the 2021 scheme tries to “do more to recognise the enclosed nature” of the yard,¹⁴⁹ it is not successful. The yard would still open directly into an area of open space, and the very large and imposing entrance to the proposed tall building detracts from the sense of narrowness and enclosure.¹⁵⁰

¹⁴⁵ AY proof p. 43 para 7.57

¹⁴⁶ SA EiC

¹⁴⁷ PS XX by HPQC

¹⁴⁸ As AY points out, this is in part to do with management arrangements associated with the NCC building, which is not an irreversible impact: proof p. 37 para 7.39

¹⁴⁹ AY EiC

¹⁵⁰ AY EiC

102. SA sought through his evidence to draw parallels between the proposals to open out Kings Head Yard and the existence of areas of open space within the appeal site shown through historic map regression.¹⁵¹ He claimed in EiC that “there used to be historic entry into and through the site to ease flow”, but could not point to any evidence confirming the extent of historic public access into open spaces within what is now the appeal site. In any event the key point is that, whilst Kings Head Yard itself changed width and alignment at certain points, it has never been experienced as part of a public square and has never led onto an area of public open space. SA accepted this.¹⁵² There is no historical precedent for what GPE proposes to do.
103. Throughout their history the yards have retained a ‘secondary’ and subservient character, and the CAA reflects this by advising developers to keep utility areas behind the street frontage, “accessed from the rear or through narrow passages under and between buildings”.¹⁵³ The yards have not been the site of principal commercial buildings and activity, this is an important aspect of their character and appearance. The proposals would invert the hierarchy of the High Street and its yards by introducing a radically taller commercial building in the backlands, further damaging the special interest of Kings Head Yard.
104. The appeal schemes would also involve the demolition of the hop sample rooms façade. Given that this is accepted as an element which makes a positive contribution to the character and appearance of the CA, its loss should be regarded as causing LTSH in accordance with para 207 NPPF.
105. Contrary to the position advanced by SA, the appeal schemes would not enhance the setting of the Grade II listed Kings Head pub. In his heritage statement PS concluded that “the significance of this public house derives in large part from its location on Kings Head Yard”.¹⁵⁴ The yards were the location of the original coaching inns, and the position of the current pub within an enclosed yard is illustrative of that history. Opening out the yard to create Kings Head Square will undoubtedly make it

¹⁵¹ See slide 5A in INQ.17 (SA’s EiC presentation); the same images can be found in the DAS and in SA’s proof.

¹⁵² SA XX by ED

¹⁵³ CDE.06 p. 55 para 5.2.4

¹⁵⁴ CDA.18 p. 135

easier to view the whole of the pub's façade,¹⁵⁵ but it will no longer be seen within a historically appropriate setting. This is another harmful effect.

High Street

106. The key impact on the High Street and its range of LBs would be the juxtaposition of a very tall modern building in the backland against the low level historic frontage buildings. The schemes would introduce a drastically different form of development into the heart of the CA. In AY's assessment this would be jarring and incongruous.¹⁵⁶ The proposed towers would be highly conspicuous and would appear to rise very close behind the historic buildings. This would affect the ability to appreciate the individual and collective architectural quality of the High Street buildings.¹⁵⁷ The breathing space currently provided between the heart of the BHSCA and the tall buildings at London Bridge station would be lost, reducing the ability to appreciate the depth of the long narrow plots deriving from the medieval pattern of development.¹⁵⁸
107. The likely effect can be clearly understood by looking at the assessed views. In his written evidence PS described this type of contrast or juxtaposition as "positive" and "dramatic and striking".¹⁵⁹ However, the TVIA concludes that, seen from the War Memorial or the junction between Southwark Street and Stoney Street, the proposed buildings would produce major and adverse effects.¹⁶⁰ These adverse effects led to findings of harm in the BHA.¹⁶¹ It is therefore common ground that the juxtaposition that would be experienced on the High Street would harm the character and appearance of the BHSCA.

¹⁵⁵ See CDA.06 2018 DAS p. 119 – The DAS states that the public square will provide "distance to appreciate the Old Kings Head Pub".

¹⁵⁶ Ay proof p. 45 and 46, paras 7.63 and 7.65

¹⁵⁷ AY proof p. 46 para 7.64

¹⁵⁸ AY proof p. 47 para 7.66

¹⁵⁹ PS proof paras 5.25, 5.32, 7.32

¹⁶⁰ CDA.12-1 p.229 and p. 233; CDB.14-1 p. 203 and p. 207. The effects were described as producing "a noticeable shift in the balance between historic foreground and modern background", with the new building dominating the historic High Street buildings "to a noticeably greater degree

¹⁶¹ PS XX by HPQC.

St Thomas Street

108. The same type of effect would occur in the St Thomas Street part of the BHSCA. From the St Thomas Street/London Bridge Street viewpoint PS concluded that “the degree to which the Development dominates the existing street scene ... is considerable, and the coherent quality of the existing view is disrupted”.¹⁶² The eye would be drawn away from the historic buildings¹⁶³ and towards a large modern building which is designed to respond to the tall buildings at London Bridge station and is fundamentally at odds with the special architectural and historic interest of the CA. PS confirmed that this resulted in harm to the character and appearance of the CA.¹⁶⁴ Although he did not accept it in XX, it is clear that the same type of harm will result from the relationship between the proposal and the historic buildings from other points along St Thomas Street (including from closer to the base of the building). At all times the viewer would be aware of the vast height of the proposed schemes towering over the “restrained consistency” of the Georgian architecture, even when they were not looking directly at it.
109. In views of St Thomas Street from the west the schemes would produce the same sort of effects, which would be exacerbated in the 2021 scheme by the increased proximity between the tall building and the listed terrace and the increased width of the northern elevation. From this perspective the cumulative impact of the appeal schemes together with the consented schemes to the east of London Bridge station would produce the appearance of a wall of tall modern development along St Thomas Street, eroding any sense of depth behind what would become a historic façade.¹⁶⁵
110. The proposal to relocate the frontage of Keats House is advanced not for the benefit of Keats House itself, but to allow access to the interior of the appeal site for servicing.¹⁶⁶ The current preference is for façade relocation instead of dismantling and rebuilding, but the proposed conditions would allow for either method. Both

¹⁶² CDA.12-2 p. 257

¹⁶³ PS XX by HPQC

¹⁶⁴ PS XX by HPQC

¹⁶⁵ AY proof p. 53 para 7.79

¹⁶⁶ SA XX by ED

methods pose risks to the historic fabric.¹⁶⁷ These risks are being taken purely because of the inherent difficulties in servicing a large development within a backland site. Although the DAS presented the separation of Keats House from Conybeare House as a benefit of the scheme,¹⁶⁸ once one appreciates that it was always attached to the hospital and that this relationship has historical associations it becomes obvious that the proposed intervention is harmful.

111. The 2021 scheme is more harmful so far as Keats House is concerned because of the introduction of a curve on the new eastern flank wall. SA accepted that there was nothing historically authentic about this curve.¹⁶⁹ It is clear from the swept paths in the appendix to the Delivery, Servicing and Waste Management Plan¹⁷⁰ that the curve is needed to accommodate refuse vehicles and HGVs. PS said that where it is obvious a façade has been “stuck on a new building”, that was a “bogus approach to conservation”¹⁷¹. It follows that the 2021 scheme can be described in those terms, because the curved wall leading into the servicing entrance will make it blindingly obvious that the frontage of Keats house is merely a façade – something which is not obvious at present.

112. It is extremely hard to see how CG is able to regard the works to Keats House as constituting an “improvement” and an enhancement to the character and appearance of the building.¹⁷² The works are plainly harmful.

CAA guidelines

113. The CAA contains a series of guidelines in section 5, drawing on “those themes that are essential to the Conservation Area’s historical character, which new development and improvement should pay heed to”.¹⁷³ It is common ground that these guidelines

¹⁶⁷ SA proof 6.16.4 notes an expected loss of up to 50% of the brickwork in the dismantling and rebuilding scenario, whereas in CDA.19 p.3 the expert consultants PAYE advise that sliding the façade is not recommended due to the risks of further cracking of stonework.

¹⁶⁸ CDA.06 2018 DAS p.50, CDB.08 2021 DAS p.48: “return Keats House closer to its original condition as a standalone villa, giving it breathing space”

¹⁶⁹ SA XX by ED

¹⁷⁰ CDB.07

¹⁷¹ PS XX by ED

¹⁷² CG proof p. 55 para 9.35(c)

¹⁷³ CDE.06 p. 54 para 5.1.1

should be a key consideration in the design development of any new building in the CA.¹⁷⁴

114. PS agreed that the overall message of the guidelines was that, whilst modern architecture is welcomed in the CA, it needs to respect the prevailing heights of the surrounding area.¹⁷⁵ The guidelines could not be clearer: “buildings should remain within the range of heights of the block of buildings in which they are sited”.¹⁷⁶ PS conceded that the proposed tall buildings breached the CAA guidelines, that this was something that should be taken into account, and that the breaches are not acknowledged in any of GPE’s documents.¹⁷⁷

Conclusions on harm to the BHSCA

115. There is little difference between the 2018 and 2021 schemes in terms of the degree of harm that would occur. In both cases it would be at the upper end of LTSH. There is broad agreement between AY and NMB on this. Although PS initially claimed in his proof and EiC that the effect on the BHSCA was beneficial, during XX he had to accept what was clear from a proper reading of the BHA and Heritage Statement – LTSH would occur. Because of the various errors in his assessment, you are left with no clear understanding of the extent of the accepted harm.

116. A line of questioning was advanced in XX of NBM and AY to the effect that harm to the character and appearance of the CA should be considered in the context of the “area as a whole”. The implication being that, if harm was only found to arise due to effects on certain views or in particular sub-areas, that might be characterised as being of a lower level in the context of the CA as a whole.

117. There are three points to make in response to that sort of suggestion.

118. First, the harms are widespread within the CA. Harm is accepted to arise within sub-areas 1 and 4 as a consequence of PS’ assessment of the CA. AY observed that sub-

¹⁷⁴ PS XX by ED

¹⁷⁵ PS XX by ED

¹⁷⁶ CDE.06 p. 57 para 5.2.7

¹⁷⁷ PS XX by ED

area 2 is a continuation of the High Street character and that whilst the proposals would be seen at more of a distance, the same type of effects would occur.¹⁷⁸ The proposals would also harm Southwark Cathedral (the key building in sub-area 3) and Guy's Hospital (the key building in sub-area 4) as LBs; this also constitutes harm to the character and appearance of the CA.

119. Second, in the case of Irving the planning officer had identified a harmful effect on the character and appearance of the CA but had sought to look at it in the context of the CA as a whole and found that the special character of the CA as a whole would be preserved. The Court found that this approach could not be supported: "If there is harm to the character and appearance of one part of the conservation area, the fact that the whole will still have a special character does not overcome the fact of that harm. It follows that the character and appearance will be harmed."¹⁷⁹ It will be noted that this is consistent with the approach taken in the Tulip case, where the focus should be on what is affected rather than what is left untouched. In this case there may be parts of the CA where the proposed schemes would not be visible or, if visible, would not cause harm. That does not in any way diminish the harmful effects which would occur elsewhere.

120. Third, it is instructive to consider the approach adopted to CA impacts in the Vinegar Yard decision.¹⁸⁰ The site contains a warehouse (9 Fenning Street) which is within the boundary of the Bermondsey Street CA, but the remainder of the site - including the part on which the tall building will be constructed - is outside the boundary.¹⁸¹ Like the BHSCA, Bermondsey Street CA covers a large area and is split into four distinct sub-areas.¹⁸² There are other similarities.¹⁸³ The GLA report found that the tall building would cause visual intrusion, particularly in views from Leather Market Gardens and Bermondsey Street (both within sub-area 1)¹⁸⁴ and would disrupt the strong roofline and visual coherence of historic Bermondsey Street. Some

¹⁷⁸ AY EIC

¹⁷⁹ CDH.19 p.1388 paras 56-58 (pdf 24)

¹⁸⁰ CDG.04

¹⁸¹ See p. 66 paras 256-257

¹⁸² See plan p. 90

¹⁸³ See p. 91 paras 365-366

¹⁸⁴ P. 93 para 375

impacts were also identified to specific buildings in the immediate vicinity of the site (within sub-area 3).¹⁸⁵ Notwithstanding the edge-of-CA location, the fact that the tall building itself will be outside the CA boundary, and that no impacts were identified to two of the four sub-areas, it was still concluded that there would be a moderate level of LTSH to the CA.¹⁸⁶ It is hard to see how the proposed buildings in this case, which occupy a much more central position within the BHSCA and affect all of the 4 sub-areas - including two of the most highly graded buildings - can reasonably be found to cause a lower level of harm than the Vinegar Yard scheme did to Bermondsey Street CA.

121. GPE seek to promote the idea that the proposed tall buildings are simply another layer of history, the contrasts of scale and style to be regarded as “threads in a rich tapestry”.¹⁸⁷ But the BHSCA is not the right fabric on which to stitch the ambitious modern office designs of global businesses. It was designated in 1968 in recognition of the special architectural and historic interest which could be appreciated through its character and appearance at the point of designation. That does not mean that the CA is to be preserved in aspic. Modern development has and will continue to take place within the BHSCA boundary. AY gave some recent examples of the same. But Parliament has decreed that, when an area is designated as a CA, those who are responsible for managing development must give great weight to preserving and enhancing the special qualities which warranted its designation in the first place. If this is not done, then those special qualities will over time be lost. And as the NPPF reminds us, heritage assets are an irreplaceable resource. They should be conserved so that they can continue to be enjoyed and appreciated into the future.

¹⁸⁵ See paras 369-374

¹⁸⁶ P. 93 paras 376-377

¹⁸⁷ INQ.3 GPE’s opening statement para 4.

VI. THE LISTED TERRACE

Development in the setting

122. The effects of inserting either of the proposed tall buildings within the backland behind the listed terrace have already been discussed in the context of the BHSCA. However there are additional effects on the terrace which derive from the close physical proximity of the towers and the way the relationship between the buildings has been addressed.

123. In the 2018 scheme the St Thomas Street elevation of the tall building has been curved to ‘pull away’ from the rear of the listed terrace and provide breathing space. The need to maintain the same level of floorspace in the 2021 scheme resulted in a wider building, which takes up much more space within the site. The relationship between the building and the terrace is significantly different as a result. AY described it as “an extension to the terrace without physical junction”.¹⁸⁸ PS agreed that the loss of ‘breathing space’ means that the 2021 scheme is, in that respect, less successful.¹⁸⁹

LBC works

124. HE did not object to the LBC application and recognises that there are benefits arising from the interventions to the fabric of the listed terrace. The key interventions are as follows.

Rear elevations

125. The only historic fabric remaining on the rear elevations of the listed terrace is at number 14, and that is overclad with a 1980s skin. Therefore, the proposed works would not be revealing historic fabric.¹⁹⁰

¹⁸⁸ AY EIC

¹⁸⁹ PS XX by ED

¹⁹⁰ A point agreed by PS in XX by ED

126. It was suggested that revealing the rear elevations of the terrace would better reveal the heritage significance of the listed terrace.¹⁹¹ This is not agreed because:

- a. The significance of the terrace lies primarily in the elevation to St Thomas Street (in particular the fenestration, the consistent roof line and the use of yellowy buff London bricks), where it makes a strong contribution to the street scene;¹⁹²
- b. Unlike the street frontage, the rear elevations were not designed to be seen, and PS confirmed that they would not have been seen as the terrace would have backed on to private land;¹⁹³ and
- c. The ability to appreciate any significance which would be considered to reside in the reconstructed rear elevations would be compromised in both schemes, but in different ways.
 - i. In the 2018 scheme, PS confirmed that the key aspect of the rear elevations that will be noticed by members of the public will be the shopfronts,¹⁹⁴ which will project out from the rear elevation and seek to entice customers.¹⁹⁵ It is common ground that the provision of shopfronts is not historically authentic.¹⁹⁶ It has the effect of inverting the hierarchy of the terrace.¹⁹⁷
 - ii. In the 2021 scheme the rear elevations would be seen almost (but not quite) abutting the large columns supporting the tower,¹⁹⁸ which would extend out over and above the rear building line and largely enclose the rear of the terrace within a poorly lit covered walkway.

¹⁹¹ PS proof p. 31 para 5.42

¹⁹² AY EiC and proof p. 42 para 7.55. See also CDA.18 Heritage Statement p. 52 para 5.3 (pdf 53)

¹⁹³ PS XX by ED

¹⁹⁴ PS XX by ED

¹⁹⁵ See SA proof p. 104 fig. 286

¹⁹⁶ PS XX by ED

¹⁹⁷ AY proof p. 102 para 13.7

¹⁹⁸ See images in SA proof p. 150 and 206

Plan form

127. The reinstatement of plan form is recognised as beneficial, however this is limited bearing in mind that (i) as already mentioned, the significance of the LBs lies mainly in their street frontage and (ii) the restoration would not be scholarly in several respects.¹⁹⁹

Passageway

128. The reinstatement of the vaulted passage between numbers 8 and 10 St Thomas Street, which is shown on historic mapping, is agreed to be beneficial in heritage terms.

129. There is no legal requirement to give ‘great weight’ to enhancements to the LB, although they would attract that weight as a matter of policy. Even with that great weight, overall the benefits are limited in extent, and therefore limited in terms of their ability to outweigh or justify the heritage harms these schemes would cause.

Overall impact

130. In his proof PS has ‘netted off’ a variety of claimed positive effects, including the LBC works discussed above against the accepted harm to the terrace caused by the tall building “dominating the existing street scene” and “disrupting the coherent quality of the view”. He concludes that the “overall impact” will be positive.²⁰⁰

131. AY has also conducted an overall assessment of the effects on the fabric and setting of the listed terrace, but reached the opposite conclusion that “the limited enhancements proposed would ... be negated by the harm caused by the wider proposals”.²⁰¹ In other words, the proposals have a harmful effect on the terrace overall. I invite you to accept that assessment s more realistic.

¹⁹⁹ See plans at CDA.060 – CDA.062 (2018) and CDB.090 – CDB.092 (2021), which show that (i) in both schemes number 16 would remain open plan at ground floor level, which is not scholarly and (ii) on first and second floor level the reinstatement of the front and rear ‘rooms’ which is seen on the ground floor is abandoned in favour of an open plan form. In addition, the ‘houses’ share a reduced number of staircases, which provide access through openings in the party walls to office space and shared bathrooms. Again, these aspects of the works are not scholarly.

²⁰⁰ PS proof p. 32 para 5.47

²⁰¹ AY proof p. 57 para 7.91

132. In both assessments the heritage benefits associated with the LBC works have been taken into account and go towards reducing the harm. There is a difference of opinion as to whether the result of the weighing exercise is net benefit or net harm. Whichever view you take, it will be important to remember when you get to the para 202 NPPF balance that this element of the claimed heritage benefits will have already been taken into account as part of an 'internal heritage balance' on the listed terrace. The same benefits ought not to be taken into account again as public benefits in the para 202 balance, as that would amount to double counting.

VII. GUY'S HOSPITAL

Significance

133. Guy's Hospital is listed at Grade II*. AY described it as a rare survival of a purpose-built institution associated with the emergence of healthcare provision in the 18th Century and said that, after St Barts, it is the most important Georgian hospital complex in London.²⁰² It was one of first public healthcare facilities in capital and AY regarded it as "pretty incredible" that it still largely in use today for the same purpose.²⁰³

134. The LB derives a large part of its architectural significance from its formal composition, with the large forecourt leading into quiet courtyards in a sequence described in the CAA as "quite exceptional".²⁰⁴ There is a strong sense of symmetry and hierarchy. From within the forecourt the neoclassical architecture can be well appreciated, and the crowning pediments on each of the three building ranges provide focal points which are deliberately aligned with the central statue of Sir Thomas Guy. During the site visit you will have experienced how the forecourt provides a real sense of calm and seclusion, which belies its location close to points of entry/exit to London Bridge station. When you step through the entrance gates into the forecourt there is a distinct feeling of "leaving that behind and entering a really special place".²⁰⁵ This experience of arriving into the space and experiencing the ensemble of buildings is very important to an appreciation of the significance of the LB. It has recently been enhanced by the public realm improvements associated with the conversion of Boland House.

135. Tall buildings nearby have affected the ability to appreciate the architectural significance of the hospital, primarily by appearing above the roofline of the rebuilt east wing, although AY explained that this is less apparent when entering the

²⁰² AY EiC

²⁰³ AY EiC

²⁰⁴ CDE.06 p. 38 para 3.5.5

²⁰⁵ AY EiC

forecourt on axis.²⁰⁶ PS acknowledged a harmful effect from Guy's Hospital Tower but considered it to be only marginal.²⁰⁷ That tells you something about the reliability of his judgments.

136. At present, important views of the original central and western ranges from the entrance gates and within the forecourt can still be seen against a clear sky, free from the distracting presence of modern development. This clear sky setting is important to an appreciation of the order, hierarchy and symmetry of the composition, it allows the architectural details to be understood without visual distraction.²⁰⁸

137. Moving through the forecourt and the colonnade, you find the inner quads. These provided open spaces for the wellbeing of patients, but were at the same time enclosed to provide a secure environment.²⁰⁹ Whilst there is room for improvement in their presentation, the quads provide an even greater sense of seclusion from the modern world than the forecourt. Contrary to what the panorama photograph suggests,²¹⁰ the existing tall buildings nearby are only really apparent if you stand in the southwestern corner of the west quad. Elsewhere they do not intrude.

Impacts

Harm from development in setting

138. This is one of those situations where a picture is worth a thousand words. You only need to look at the assessed view towards the West range of Guys Hospital as proposed²¹¹ to understand the incredibly damaging effect of both the appeal proposals. These are such a stark images, they hardly require any explanation of how the harm arises. This is of course the case even without having an impression of the full height of the buildings from this position, due to the camera's field of view. The added sense of the full height of towers looming over you could only exacerbate their

²⁰⁶ AY EIC

²⁰⁷ PS XX by HPQC

²⁰⁸ AY EIC

²⁰⁹ AY EIC

²¹⁰ CDA.12-1 p. 244 (pdf 248)

²¹¹ CDA.12-1 p. 253, CDB.14-1 p.227

utterly dominating presence. The proposals would see the Grade II* LB flanked on three sides by tall buildings in close proximity. There is clear cumulative harm.

139. PS accepts that the introduction of either appeal scheme would result in some LTSH, but in EiC he said he was unable to “rate it as more than really minor”, and found it “really hard to understand” how adding a new building consistent with others nearby could be said to produce a really high level of harm. I have already discussed the error in PS’ approach to existing development which has led him to this position, and it should also be recalled that his “in the round” conclusion on Guy’s Hospital was reached after ‘netting off’ non-heritage benefits. Even leaving all that to one side, it is obvious that PS has drastically underplayed the degree of harm to this Grade II* LB.

140. Harm of a similar nature would also occur in views within the west quad. Again this is common ground. PS’ assessment confirms that the proposed buildings would have a ‘distracting’ effect here.²¹²

141. Again the effects of the two alternative proposals are similar despite their quite different designs. The increased width and greater solidity of the 2021 scheme makes it marginally more harmful here than the 2018 scheme.²¹³ But both proposals would cause harm at the upper end of the range of LTSH. This is a serious degree of harm. It is harm to the setting of the LB, but also another source of harm to the CA.

Light to the chapel

142. The west range of Guy’s Hospital houses the hospital chapel, which is a place for quiet reflection and contemplation. Light coming through the three stained glass windows, which are mentioned in the list description,²¹⁴ makes an important contribution to the intangible qualities of the chapel.

143. The Appellant’s evidence confirms a 43% (2018) or 46% (2021) loss of overall light levels inside the chapel, assessed using climate-based daylight modelling.²¹⁵

²¹² CDA.12-1 p. 245 para 5.588

²¹³ AY proof p. 70 para 8.29

²¹⁴ CDF.02-3 p.2/5

²¹⁵ CDA. 47 appx B and CDB.51 appx B

Alternative methods of assessment predict “major” reductions in “vertical sky component” and, for the 2021 scheme, major adverse impacts on daylight distribution.²¹⁶ However the effect is measured, it is clear that there will be an appreciable loss of light through the stained glass windows, which are an aspect of significance. This will cause harm to the intangible aspects of significance that relate to the communal value of the LB.²¹⁷

144. Kevin Murphy authored two reports on this issue²¹⁸ in which he concluded that a very low level of LTSH might be found, but only if two “questionable assumptions” were accepted. One such assumption was that “in respect of stained glass windows generally the measure of acceptability of effect should be ‘the more light the better’”.²¹⁹ It is submitted that this is indeed the thrust of HE’s guidance on the point.²²⁰ In any event, GPE did not call KM to give evidence and so his assumptions and conclusions were not subject to any testing through XX. In the circumstances AY’s assessment should be accepted.

145. In the GIA report in CG’s appx 5 the point is made that, because chapel is so close to existing development, it would only be possible to add a single storey on top before breaching VSC guidelines.²²¹ That may well be the case. This is of course an area in which there are numerous low level historic buildings, where the consistent scale is approximately 4 storeys, and where CAA guidelines seek to maintain the existing building heights. If these guidelines are followed and the character and appearance of the area is preserved so far as building form and scales are concerned, then there should not be any greater impact on light through the stained glass windows than exists at present.

146. The reduction in light to the stained glass windows is an additional element of LTSH to the significance of the Grade II* LB.

²¹⁶ CG appx 5 p. 16

²¹⁷ AY EIC

²¹⁸ CDA.47 and CDB.51

²¹⁹ CDA47 p8 para 26

²²⁰ AY appx 18 p. 26 (Introduction). The guidance states that “stained glass windows are critical to the appreciation of any building fortunate enough to be decorated with them. Seen as they were intended, from the interior in sunlight, they glow and cast patterns of light and colour onto the walls and floor”

²²¹ p. 17

VIII. SOUTHWARK CATHEDRAL

Significance

147. Southwark Cathedral is one of only three monastic churches to survive in London (alongside Westminster Abbey and St Bartholomew the Great). It is one of only four Grade I buildings in Southwark.
148. The Cathedral has been a religious landmark and focal point since medieval times. The large square tower with its gothic finials was intended as a striking architectural and religious statement and a visual spectacle. AY explained that church spires and towers are designed as beacons to direct worshippers to a house of God. They are a symbol of ecclesiastical authority and are meant to be dominant.²²² This very much applies to Southwark Cathedral.
149. It is common ground that the Cathedral's status as a "prominent historic landmark" is an aspect of its special architectural interest,²²³ and that views of the Cathedral from its setting where the tower is appreciated as a landmark contribute to the significance of the LB.²²⁴ Those locations include Montague Close to the north west²²⁵ and the views from Minerva Square included in NBM's appendices.²²⁶ In these views the silhouette of the imposing tower (and, in closer views, the detail of its impressive architecture) is seen unchallenged by visual distraction.
150. PS agreed that, in these locations where the Cathedral is appreciated as a landmark, the "relative dominance" of the tower and the extent to which it remains a "commanding presence" are relevant to the assessment of heritage impact.²²⁷
151. Existing tall buildings have harmed the contribution setting makes to the significance of the Cathedral as a prominent historic landmark. This is seen most

²²² AY EIC

²²³ SoCG on the Historic Environment, p. 9 last bullet

²²⁴ PS XX by ED

²²⁵ CDA.12 TVIBHA p.288 (pdf 292)

²²⁶ PS XX by ED

²²⁷ PS XX by ED

obviously from locations where the Shard appears directly behind the Cathedral tower. PS conceded that the Shard had caused harm in these views.²²⁸ The issue of cumulative harm is again in play here.

Impacts

152. It is common ground that the appeal proposals cause harm to the significance of the Cathedral where it appears directly behind the tower. In his proof and during XX by LBS PS maintained that in views where the appeal schemes are seen side by side with the Cathedral tower with clear sky between, the effect was “satisfactory” and not harmful. Consistently with this, PS assessed the visual effect of the proposals from the north of the Cathedral as ‘neutral’, and therefore not producing any heritage harm.²²⁹ However, when I XX’d him further PS conceded that his finding that “the commanding presence of the Cathedral ... is undermined” amounted to a finding of harm to significance, given that the commanding presence of the tower in such views is linked to the status of the Cathedral as a prominent historic landmark. This is a harmful effect which was not taken into account in PS’ assessment of heritage impact.

153. The failure of PS properly to understand the way setting contributes to the significance of the Cathedral, together with other errors of approach already discussed, has again led him to underestimate the extent of harm that would be caused by the appeal schemes. The harm would be at the upper end of the spectrum of less than substantial harm in the case of the 2018 scheme.

154. The 2021 scheme is lower and therefore less assertive and challenging in views, although still visually distracting. It would cause LTSH towards the middle of the range. The harm is to a Grade I listed building and so should be given very great weight. Again, it should be remembered that Southwark Cathedral is the key listed building in sub-area 3 of the BHSCA.

²²⁸ PS XX by ED

²²⁹ CDA.12-1 p. 293 (pdf 297), CDB.14-1 p. 267

IX. TOWER OF LONDON

Significance

155. The Tower of London World Heritage Site is of exceptional historic and architectural importance, both nationally and internationally. Within the Tower complex are a variety of designated heritage assets, including several listed buildings, a conservation area and a scheduled monument. However, the focus of HE's evidence has been the effect of the proposals on the OUV of the WHS. The tall building proposals would have broadly the same type of impact on the other heritage assets, such that a separate assessment was not felt necessary.

156. The WHSMP contains the SOUV and then goes on to introduce the 'attributes', which are "the features or relationships that express its OUV".²³⁰ It states that the attributes will be "the focus of protection and management policies and institutional arrangements aimed at sustaining and, where appropriate, enhancing the property's OUV". In the UK these policies and arrangements are contained in the planning system.²³¹ The ability of the attributes to convey the OUV allows a judgment to be formed as to the 'authenticity' of the WHS. If attributes are weakened or eroded, this can compromise authenticity,²³² resulting in harm. An analysis of the WHS' attributes and the extent to which they are affected is therefore important to a robust assessment.

157. The exercise of identifying relevant attributes and considering the effect of proposals on them was adopted by the Inspector in the Tulip decision,²³³ and is the approach that both NBM and AY have followed in their assessment. Analysis of the attributes provides a structured and transparent framework for assessment. PS conceded that he had not carried out this exercise, either in his proof or elsewhere.²³⁴

²³⁰ CDF.09 p. 40 para 3.3.1

²³¹ See CDF.07 p. 52 para 4.1.1

²³² P. 40 para 3.3.2

²³³ CDH.10 IR p. 141 para 14.25 (pdf 155)

²³⁴ PS XX by ED

158. AY's proof (p. 81-85) explains which attributes he identified as relevant, and how the setting of the WHS is relevant to their expression. He also discusses the effects of existing tall building development, particularly around London Bridge station, on the OUV of the WHS.²³⁵

159. Although in 2003 it was decided that the Shard would cause "no material harm to the setting of the Tower of London"²³⁶, much has changed since then. It has since been accepted that the Shard did have an impact on the visual integrity of the WHS, and that planning policies had to be strengthened to "lessen the risk of inappropriate development with an adverse impact on the Tower's visual integrity".²³⁷

160. Notwithstanding the strengthening of policy, it is the case that tall buildings continue to be permitted in locations where they are visible from within the Inner Ward. The Vinegar Yard scheme is the most recent example of this. Again, this raises the issue of cumulative harm; a point not considered by PS. He said in his proof that it was hard to see how the 2018 scheme could cause harm, and that "it can just as readily be maintained that the addition of modern buildings in the backdrop enhances rather than undermines the sense of enclosure from the outside world that is offered by the perimeter defences of the Tower".²³⁸ The fact that PS considered this to be a sustainable argument is revealing. It indicates either a lack of understanding, or a willingness to disregard, the history of dialogue between the UK Government and ICOMOS and the resulting policy developments. It is also a position which is at odds with the recent Vinegar Yard decision, where it was found that the tall building in that scheme²³⁹ would negatively affect the attributes of *landmark siting* and *concentric defences*.²⁴⁰

²³⁵ Proof p. 85

²³⁶ Shard decision 16.86

²³⁷ CDF.15 p.2 of appendix to letter

²³⁸ PS proof p. 57 para 7.43

²³⁹ Which will not protrude as far above the roofline in views from the Inner Ward as the 2018 scheme would: see PS appx 2 p. 49 (Vinegar Yard is the westernmost orange outline in the image, with a stepped outline)

²⁴⁰ CDG.04 p.89 para 358

Impacts

161. The 2018 scheme would be clearly visible above the roofline of the Queen's House in the Inner Ward, where it would exacerbate the visual distraction caused by the existing (and consented) tall buildings.²⁴¹ It would further undermine the sense of enclosure and separation felt in the Inner Ward and the protective function of the *concentric defences*. By appearing directly above the roofline, the tower in the 2018 scheme would affect the ability to appreciate the domestic scale architecture of the Queen's House, which is part of the *surviving medieval remains*. The tower would also be seen above the Waterloo Block when seen from the Royal Mint, further undermining the *physical dominance* of the White Tower from this view.
162. Because of its reduced height, the 2021 scheme would be less visible in views from the Inner Ward and would not be seen from the Royal Mint. A very low level of harm would be caused to the *concentric defences* and *surviving medieval remains*.
163. The Appellant's claim that the appeal proposals would cause "no harm" is unsustainable, given the content of the WHSMP and the approach taken in recent decisions including the Tulip and Vinegar Yard. Harm would occur. It would be towards the lower end of the range of LTSH in the case of the 2018 scheme, and at a very low level in the 2021 scheme. However, this harm is to a heritage asset of the highest possible significance and even a very low level of harm must therefore be given the greatest weight in the balance.

²⁴¹ PS appx 2 p. 49

X. ST PAUL'S CATHEDRAL

164. Sir Christopher Wren's architectural masterpiece was designed to be seen and appreciated over considerable distances. It is listed at Grade I. It is iconic and remains a defining feature of London's built environment. Whilst the dome is the most recognisable feature, the architectural contrast and relationship between the dome and the west towers is highly important. A summary of significance is provided in AY's proof of evidence.²⁴²
165. St Paul's has a very large setting which has been heavily influenced by modern development. The LVMF confirms that development behind the dome of St Pauls Cathedral currently compromises the ability to appreciate the landmark.²⁴³
166. The appeal schemes are within the Wider Setting Consultation Area, where the LVMF requires that development is "designed and sited so that it preserves or enhances the viewer's ability to recognise and appreciate the Strategically Important Landmark".²⁴⁴ With specific reference to view 3.A1 from Kenwood Gazebo, the LVMF states that proposals should "contribute to a composition that enhances the setting of the Strategically Important Landmark, and the ability to recognise and appreciate it".²⁴⁵
167. It is not accepted that the construction of a tall building directly behind St Paul's Cathedral can be regarded as enhancing its setting. Either of the proposed towers would appear directly behind the north-western tower of St Paul's and would add to the sense of mass behind the Cathedral, as well as adding to the visual severance of the west towers from the dome. The 2018 scheme would break the horizon, which would further draw the eye away from St Paul's. Again, there is an obvious element of cumulative harm.

²⁴² AY proof p. 93-96

²⁴³ CDD.24-1 p.55 para 117

²⁴⁴ P. 22 para 47

²⁴⁵ CDD.24-1 p. 56 para 121

168. PS maintains that the 2018 scheme would “provide a clearer backdrop” to the Cathedral from this view.²⁴⁶ You will form your own view on this. It is HE’s position that it is more difficult to see the outline of the north-western tower with the proposed building behind it than is the case in the existing view.

169. AY considers that the 2018 scheme would cause a low level of harm. The harm caused by the 2021 scheme would be slightly lower for reasons set out in para 11.20 of AY’s proof.²⁴⁷

170. Although the harm is of a low level, it is to one of the nation’s most cherished and highly graded historic places and must therefore carry very great weight.

²⁴⁶ PS proof p. 39 para 5.74, repeated in XX by ED

²⁴⁷ AY proof p. 99

XI. HERITAGE BENEFITS

171. CG summarised the heritage benefits relied on by GPE on p. 55 of his proof. I have already discussed the works to the listed terrace²⁴⁸ and Keats House²⁴⁹ and the change to the setting of the Kings Head pub.²⁵⁰ HE acknowledges a low level of benefit from the listed terrace works, but maintains that neither scheme would deliver heritage benefits to Keats House or the setting of the pub.

172. CG also advances as a heritage benefit the “removal of an unattractive office building which detracts from the character and appearance of the CA and the setting of designated heritage assets”.²⁵¹ HE recognises that the site does present an opportunity for enhancement. However, the demolition of the 1980s building is just one aspect of the scheme; it is highly artificial to hive it off and assess the effects in isolation from the development as a whole. The benefits which are to be weighed in the para 202 NPPF balance must be those which would arise from the grant of planning permission. In this case, the grant of planning permission would authorise demolition of the NCC building and its replacement with a tall building. These two elements of development taken together (as they must be) would not be beneficial in heritage terms. GPE accepts that the tall building would cause LTSH to two highly graded LBs.

²⁴⁸ Paras 124-132 above

²⁴⁹ Paras 110-112 above

²⁵⁰ Para 105 above

²⁵¹ CG proof p. 55 para 9.35(a)

XII. IMPLICATIONS OF HARM

Development plan policy

173. Findings of harm to the significance of heritage assets are relevant to the application of several policies of the London Plan and Southwark Plan, most notably D9 and P17 on tall buildings and HC1, HC2, P19 and P20 on heritage. HE has not expressed a view on overall compliance with these or other policies in the development plan, but notes that findings of harm which cannot be outweighed will inevitably lead to non-compliance with a range of relevant policies.

Statutory duties and NPPF

174. Neither ss. 66 or 72 of the LBA 1990 or chapter 16 NPPF compel a particular outcome where a proposal would cause harm to the significance of designated heritage assets. Legislation, policy, and guidance instead lay down a decision-making framework to ensure that any identified heritage harm is given the correct amount of importance and weight in the overall balance. I have set out the fundamental features of this decision-making framework earlier in these submissions.

175. As previously indicated, HE does not express a view as to how the overall balance should be struck in this case. However, it has been demonstrated that the appeal schemes would cause harm to designated heritage assets of the highest importance. In the case of Southwark Cathedral and Guy's Hospital (Grades I and II* respectively) the harm would be at a high level. The BHSCA would also be profoundly affected and the harm would again be at a high level.

176. GPE has consistently underestimated the harm that their proposals would do. The harm would be very serious (albeit not 'substantial' within the meaning of the NPPF) and must be given very great weight indeed in the balance. It is common ground that in this case there is a strong presumption against granting planning permission.²⁵² Very weighty public benefits will be need to clearly and convincingly justify the high degree of harm caused.

²⁵² PS XX by ED

XIII. CONCLUSIONS

177. The Courts have confirmed that, given HE's status as a statutory consultee and principal advisor to the Government on matters relating to the historic environment, its views should be given 'great' or 'considerable' weight by decision makers. Cogent and compelling reasons are needed before departing from HE's considered views.²⁵³

178. Here there are no such cogent or compelling reasons. HE has presented full and clear evidence on how the proposed schemes would harm five key designated heritage assets. Testing of the evidence has not undermined AY's assessment as to the nature and extent of that harm, which has remained consistent from his first formal response on GPE's proposals for this site. By contrast, PS' conclusions of low or no harm have been shown to be unreliable, having been arrived at through an assessment process containing a series of errors of approach and understanding. He has been driven into making several of concessions in his oral evidence.

179. I said in opening that, between 2004-2017 HE only raised serious concerns in 7% of cases involving tall buildings in London.²⁵⁴ Participation in a public inquiry is even more unusual. The fact that HE has felt it necessary to attend this event underscores how serious the concerns are, and how harmful these proposals are considered to be.

180. Growth is inevitable and necessary, but it must be sustainable. Protection and enhancement of the historic environment is a key part of that. The historic environment should not be seen as a barrier to growth, but as a necessary component of growth that is genuinely sustainable: growth should not come at the expense of highly valued heritage. HE's guidance on tall buildings reflects these points, noting that:

"Tall building development by its nature can have transformational impacts upon a place. This can be achieved without harm to heritage primarily by focusing on

²⁵³ See CDH18 p. 21 para 52

²⁵⁴ AY appendix 24 – this figure derived from a study of HE's London casework, revealing that 'serious concerns' were raised in 4% of cases, and in a further 3% of cases HE advised that the proposal would cause substantial harm.

sustainable locations and avoiding or effectively mitigating impact on the significance of heritage assets”.²⁵⁵

181. Whilst the appeal site is identified as within the very broad area in which tall buildings are expected in the Southwark Plan, the evidence has shown that a tall building simply cannot be accommodated on this site without causing a high level of harm to important heritage assets. The harm would occur because of the height of the proposed towers and their consequent visibility over a wide area and stark juxtaposition of scale locally. In other words it arises from the principle of this form of development in this location. Whilst any harm to heritage is in principle capable of justification, the harm to Grade I LBs and the WHS should be given the greatest possible weight and harm to Grade II* LBs and the CA should attract very substantial weight in the balance. It will only be capable of being outweighed by even more substantial public benefits. You will need to consider carefully whether you have seen evidence of such benefits to clearly and convincingly justify the grant of planning permission.

Emma Dring

10 August 2022



● ● ● cornerstone

● ● ● barristers

²⁵⁵ CDF.07 p. 4 para 2.3 (pdf 7)