

NEW CITY COURT INQUIRY
APPELLANTS' CLOSING SUBMISSIONS

Introduction

1. In a few words: even were it to be concluded that the 2018 and 2021 proposals would cause the extent and degree of less than substantial harm ("LTSH") to heritage the Council and Historic England contend would be the case, the public benefits each scheme would bring are so compelling both planning appeals should be allowed.
2. The associated listed building consent appeals are uncontroversial and subject to the imposition of suitably worded conditions should be allowed.

The overall development plan strategy relevant to the appeal site and proposals

The overall strategy

3. It is important to understand the overall development plan strategy relevant to the appeal site and proposals in order to set the proposals within their full and proper context. The strategy is set by the London Plan ("LP") [CDD.21] and the Southwark Plan ("SP") [CDE.01], both of which are up-to-date, although the SP was adopted after the LP¹ such that, to the extent that there is any conflict between policies in the respective plans, the conflict is to be resolved in favour of the policy in the SP².
4. The appeal site is within the Central Activities Zone ("CAZ"), an Opportunity Area (the Bankside, Borough and London Bridge Opportunity Area) and a town centre. The development plan policies bearing on these designations resemble a set of Russian Dolls³ in which the message of facilitating economic growth is consistent across the larger scale CAZ through to the Opportunity Area and in turn to the town centre and the local (London Bridge) area surrounding the site itself. As the appeal site is within all of these designated areas its use for office-led redevelopment would

¹ The LP was adopted in March 2021 and the SP in February 2022.

² See section 38(5) of the Planning and Compulsory Purchase Act 2004.

³ Chris Goddard in chief.

simultaneously contribute to meeting what are described by the development plan as *international, national and London-wide roles*.⁴ There are also specific local roles too.

5. A convenient starting point for understanding the overall strategy is Policy GG5 of the LP *"Growing a Good Economy"*⁵, the opening words of which aim *"to conserve and enhance London's global economic competitiveness"* by a series of imperatives (*"must"*) amongst which are to *"promote the strength and potential of the wider city region"* (A) and planning for *"sufficient employment .. space in the right locations to support economic development and regeneration"* (C).
6. Next is the CAZ which is the subject of LP Policy SD4 *"The Central Activities Zone"*. Part A of which states *"The unique international, national and London-wide roles of the CAZ .. should be promoted and enhanced"*. Part B is hugely significant to these appeals as it provides, with our emphasis added:

*"The nationally and internationally significant office functions of the CAZ should be supported and enhanced .. including the intensification and provision of sufficient space **to meet demand** for a range of types and sizes of occupier and rental values."*

The demand-led approach i.e. not simply to fulfil economic projections⁶ is important.

7. The significance of the CAZ in economic terms is underscored in paragraph 2.4.1 of the supporting text to Policy SD4 which describes it as ***"one of the world's most attractive and competitive business locations."*** The emphasis is as set out in the LP. The message is reiterated over and over in the LP thus e.g. in the supporting text at paragraph 2.4.8 *"As a whole, the CAZ supports a nationally and internationally significant scale and **agglomeration of offices**, enabled by the hyper-connectivity of its public transport infrastructure."* Again, the emphasis is as in the LP itself.

⁴ Policy SD4 A of the London Plan

⁵ Referred to in chief by Chris Goddard.

⁶ Chris Goddard in chief. And Michael Glasgow also accepted (xx) that the policy embodied a demand-led approach.

8. This *international and national* importance is “*crystal clear*”⁷ not just in Policy SD4 but throughout the LP. Policy SD5 “*Offices, other strategic functions and residential development in the CAZ*” specifically prioritises offices (by giving office development greater weight relative to residential development) while paragraph 2.5.1 of the supporting text to the policy reiterates “*The CAZ is an **internationally and nationally significant office location***”. (Emphasis in the LP itself.)
9. The specific policy of the LP dealing with offices, Policy E1, makes it clear (Parts B and C) that increases in the current stock of offices “*should be supported*” in the CAZ. The same policy also provides (Part A) that improvements to the quality of office space “*should be supported*”. Policy E1 thus lends supports to both quantitative and qualitative improvements in office floorspace⁸.
10. Moving from the CAZ to the Opportunity Area, Policy SD1 (Part A) of the LP aims “*To ensure that Opportunity Areas fully realise their growth and regeneration potential*”. Part B of the policy aims to “*deliver the growth potential of Opportunity Areas*” (B1) and “*support development which creates employment opportunities*” (B2). Opportunity areas are stated in paragraph 2.1.1 of the supporting text to the policy to be “*significant locations with development capacity to accommodate new ... commercial development*”.
11. It is a strategic requirement (“*must*”) under LP Policy GG2⁹ to “*enable the development of brownfield land, particularly in Opportunity Areas .. and sites within .. town centres..*” (Part A), while prioritising sites which are well-connected by public transport (Part B), promoting higher density development particularly in well-connected locations (Part C) and optimising the development capacity of sites (Part D).

⁷ Michael Glasgow accepted (xx) that the importance ascribed by the LP to the wider area in which the appeal site sits for office development could be so described.

⁸ Accepted by Michael Glasgow in xx.

⁹ As referred to by Chris Goddard in chief.

12. LP Policy SD6¹⁰ *“Town Centres and high streets”* also encourages offices (as a main town centre use¹¹) in town centres as a way of promoting their vitality and viability.
13. Unsurprisingly, alongside and interwoven with all this, the LP also seeks to protect London’s heritage which it lauds e.g. at 1.2.7, GG5 F, SD1 B4, SD4 C, 2.4.4 o, 2.4.9. These are just examples, there are several others quite apart from the bespoke heritage policies themselves. The key point we wish to stress is in applying section 38(6) of the 2004 Act and working out what determination (whether to allow or dismiss the appeals) would be in accordance with the development plan (when read as a whole) one must keep in mind (1) the LP has a demand-led approach to facilitate office redevelopment proposals such as ours and it does so *because it sees increasing the supply and improving the quality of office floorspace in the various designated areas within which the appeal site sits as being of global, national and London-wide significance*; (2) the LP seeks to protect heritage, some of which (the WHS) is of international significance; and (3) to the extent these (i.e. 1 and 2) pull in opposite directions in cases like the appeal proposals, as discussed later on in these submissions *the development plan* reconciles any tension by recognising that public benefits can outweigh harm to heritage.
14. The strategic policies of the LP are carried forward at a local level in the Southwark Plan. Accordingly, SP Policy ST1 (1 indent 3) *“Southwark’s Development Targets”* sets a development target of 10,000 jobs between 2019 and 2036 in the Opportunity Area (out of a target of 58,000 jobs across Southwark). It also sets (in 1 indent 4) a Southwark target of 460,000 sqm of office floorspace in the same period and provides that around 80% of this figure is to be delivered in that part of the CAZ in Southwark, confirming at the Southwark level the emphasis given to the CAZ¹². Policy SP4 *“A green and inclusive economy”* repeats these targets but makes it plain (in 1) the 460,000 sqm of office floorspace is an *“at least”* figure and therefore a minimum. This policy also treats (in 5) the Southwark jobs target as a minimum (*“at least”*) figure. Policy ST2

¹⁰ As referred to by Chris Goddard in chief.

¹¹ See the Glossary to the LP.

¹² Accepted by Michael Glasgow in xx.

“Southwark’s Places” explains (in 3) “Most new development will happen in the Opportunity Areas..” and (in 1) Southwark’s spatial strategy “to strengthen the distinctive network of diverse places so that they will continue to be successful and vibrant” is, as CG pointed out¹³, to be achieved “as set out in the Strategic and Area Visions and Strategic Targets Policy”. Policy P30 (1 at indent 1) of the SP (Office and business development”) specifically provides that in the CAZ, town centres and opportunity areas development “must retain or increase the amount of employment floorspace on site”.

15. Policy in the SP is then further refined by way of area sub-division with the area vision policy relevant to the site being AV.11 *“London Bridge Area Vision”*. The appeal site is within the designated area as shown by the blue line on the “Vision Map” on page 92 of the Plan. It is literally irrelevant that an evidence base document dating back to 2013, the Bankside, Borough and London Bridge Characterisation Study [CDE.13], may not at that stage have included the appeal site in London Bridge¹⁴. What counts is the adopted SP itself. Policy AV.11 variously provides that, as well as London Bridge being an area with a rich heritage (3rd bullet) and one of the UK’s busiest and fastest growing transport hubs (4th bullet) it is (1st bullet) *“A globally significant central London business district”* where (1st of the 2nd set of bullets) development should *“Attract global commerce with headquarter and local offices”* and (2nd of the 2nd set of bullets) support *“inspiring new architecture”*. Growth of the area’s *“strategic office provision”* is a specifically identified opportunity (last bullet in the policy).

16. The London Bridge Area including the appeal site is a *“globally significant”* part of the *“engine room”*¹⁵ of the London and Southwark economy.

17. A specific facet of AV.11 (8th of the 2nd set of bullets) provides that development in London Bridge should *“Harness the expertise and infrastructure from Kings College London, Guy’s Hospital and other medical and science facilities to develop a strong,*

¹³ Re-ex.

¹⁴ Point put to Chris Goddard in xx by the Council.

¹⁵ Chris Goddard’s apt phrase in re-ex.

dynamic and specialised local economy that will attract new specialised services and research and promote health and wellbeing in the local environment.” The excellent fit of our two proposals with this objective was clear from the evidence of Mr Villars¹⁶ on behalf of Guy’s and St Thomas’s NHS Foundation Trust.

18. Just as the LP, the SP also seeks to protect heritage not least via its bespoke heritage policies. To the extent the drive for economic growth in the globally significant London Bridge Area might give rise to tensions with heritage protection policies we reiterate the point made earlier, one needs to look to see how *the development plan* seeks to square the circle.

Approach to competing strands or tensions in the development plan strategy

19. Each of our proposals derives strong and emphatic support in principle from the LP and SP policies concerning the global, national and London-wide significance of office development in the four designated areas within all of which the appeal site lies.
20. And yet to the extent the proposals would cause harm to heritage they would be inconsistent with policies in the plans which seek to protect heritage.
21. It is hardly unusual to find policies in a development plan pulling in opposite directions. As ever, the question is whether there is accordance with the development plan when read as a whole. Mr Goddard’s conclusion is¹⁷ that both schemes accord with the development plan when read as a whole. How can this be? Again, there is nothing unusual in the answer as ultimately issues like this have to be resolved by the well understood notion of a planning balance. Fortunately, the most recent part of the development plan, the SP, explicitly tells us how to reconcile matters.
22. The ground is laid in AV.11 which supports *“a mix of inspiring new architecture .. and .. heritage..”* in the London Bridge Area. Both of our proposals include a tall building

¹⁶ See also INQ-018.

¹⁷ Proof paragraph 10.6 and in chief.

and so turning to the bespoke policy in the SP concerning tall buildings, Policy P17, we find in Part 3.2 of this centrally important policy to the determination of the appeals the specific incorporation of a balancing exercise namely:

“Where proposals will affect¹⁸ the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) clear and convincing justification in the form of public benefits will be required.”

23. The balance encapsulated in this policy amalgamates the point made in the first sentence of paragraph 200 with what is said in paragraph 202 of the NPPF [CD D.01], the latter of which relates: *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal ..”*

24. It is noteworthy that the *tall buildings* policy in the SP contains this balancing exercise as the reason for its specific inclusion here (rather than just leaving things to other parts of the plan) surely can only be a recognition that tall buildings are inherently likely to give rise to some or other harm to heritage. This is especially so were one to adopt the Council’s and Historic England’s approach of treating a tall building in the setting of a heritage asset as a “distraction” from and thus harmful to the asset’s significance. And even more so once one appreciates that the SP explicitly encourages more tall buildings *“around London Bridge Station and Guy’s Hospital”*¹⁹ where it must surely be obvious it is impossible to build a tall building without causing such “distraction”. The clue is in the “tall” and were there any doubt about it, the “Fact Box” on page 135 of the SP tells us that a “point of landmark significance” is somewhere *“which is or will be the focus of views from several directions”*. One can hardly be a focus of views and yet not be seen in the setting of heritage assets in an area like London Bridge which the SP tells us²⁰ is *“An area with a rich heritage”*.

¹⁸ It is obvious this means “affect” as in harm as agreed in xx by Dr Barker-Mills, Michael Glasgow and Alasdair Young.

¹⁹ SP Policy P17 see Reasons para. 7

²⁰ Policy AV.11 3rd bullet

25. Suffice it to say all roads in this case have their eventual destination in a balancing exercise²¹. The Appellants' case remains as put in opening: *"the cumulative, extensive and very real public benefits either proposal would bring would comfortably outweigh whatever LTSH²² to heritage you find either of them would cause; and the same would go for any other harm you conclude would arise."* It is plain wrong to suggest our approach is to *"sacrifice"*²³ heritage in favour of growth. Instead, we simply rely on the way the development plan itself seeks to make overall sense of those of its objectives which pull in opposite directions.

Tall buildings

Broad area

26. In accordance with Part 1 of Policy P17 of the SP the appeal site falls within the area where tall buildings are *expected* as shown on the adopted Policies Map and on Figure 4 of the Plan. Of course, the area shown is broad and it is clearly not the case that any site within it is to be considered, without more analysis, as suitable for a tall building. The fact that the appeal site falls within the identified area is, however, the correct starting point (as Mr Goddard said²⁴). Little is to be gained from reflecting²⁵ that Southwark Cathedral is within the area in question. One would not expect individual sites (although a more unlikely development site than the Cathedral is hard to imagine) to be excluded from a broad area. Perhaps more to the point is that the Council could have chosen to make it clear that conservation areas were excluded from the area but, on the contrary, they are included in it and part of allocation NSP52 *"London Bridge Health Cluster"* (which includes the principle of a tall building) is in fact also within the Borough High Street Conservation Area.

²¹ Accepted by Michael Glasgow in xx.

²² Less than substantial harm.

²³ xx of Chris Goddard by the Council.

²⁴ xx by the Council.

²⁵ A point put in xx by the Council to Chris Goddard.

The relevance of allocation

27. It is not a pre-requisite of SP Policy P17 that tall buildings must be on a site which has been allocated as one where they may be appropriate. The policy does not say (but could easily have done so if that was its intention) that tall buildings can only come forward on sites so allocated. Mr Glasgow accepted²⁶ that his evidence was not to be taken as inferring that only allocated sites within the broad area were suitable for tall buildings. The correct approach is clearly (as is common ground) to consider the appeal proposals against the detailed criteria of Policy D9 of the LP and Policy P17 of the SP. Should there be a conflict between the criteria in the one plan compared to the other, this is to be resolved in favour of what is said in the most recently adopted plan.²⁷

28. Mr Glasgow did, however, claim that the non-allocation of the appeal site for a tall building was to be seen in the light of *“a much fuller response”*²⁸ from the Council (to the Appellant’s representations on the draft plan) than that found in the Council’s Site Allocations Methodology Report Update 2021 [CDE.09], where the reasons for the non-allocation of the site for redevelopment are explained. This says no more than *“the site is a fragmented mixture of buildings likely to be in multiple ownership and unlikely to come forward as a whole. Redevelopment could be achieved under other NSP policies.”* Inaccurate though the response is in relation to site ownership, there is no suggestion in it that the site was unsuitable for redevelopment for any other reason nor for a tall building. Now that the response of the Council’s officers to the Appellant’s representation has been provided to the inquiry [INQ-19], it is apparent that Mr Glasgow was mistaken. All that the response says is that *“redevelopment of this site can be brought forward through other development management policies.”* Again, there is no suggestion here that the appeal site is unsuitable for redevelopment with a tall building or otherwise.

²⁶ In chief.

²⁷ Section 38(5) of the 2004 Act

²⁸ In chief and confirmed in xx.

29. Equally, nothing in the evidence base material for the SP carries any force in deciding what is to be made of the non-allocation of the appeal site in the Plan. The draft Supplementary Planning Document [CDE.08] showing the appeal site to lie beyond an appropriate location for tall buildings in the London Bridge Area, and stating that tall buildings were not appropriate in the Conservation Area, which dates back to 2009, was never adopted. The not dissimilar statement in the Tall Buildings June 2020 Background Paper [CDE.20] that “*generally ... tall buildings will not be acceptable in conservation areas*” was likewise deliberately (it must be assumed) not carried forward into adopted policy. For what it is worth, the earlier March 2010 Opportunity Area Stage 1 Tall Building Research Paper [CDE.18] arguably shows the appeal site to lie within the area at London Bridge and Guy’s Hospital Campus identified as appropriate for tall buildings²⁹. However, the long and short of the matter is that the adopted SP does not say that tall buildings are confined to allocated sites, and allows for their development on other sites in the broad area identified in the plan, including sites in conservation areas. (It would be odd were it otherwise given the Council’s decision to approve Shard Place which is in the same conservation area as the appeal site; nor was Shard Place identified in the draft SPD as a suitable site for a tall building.) Rather than banning tall buildings in conservation areas SP Policy P17 adopts the approach of requiring any harm to heritage to be weighed against public benefits (P17 at 3.2).

A cluster

30. There can be no doubt that the SP recognises the existence of a tall buildings cluster in the vicinity of London Bridge Station and Guy’s Hospital. This is made unequivocally clear in the reasons for Policy P17. These state at paragraph 7 that “*The riverfront areas of Blackfriars Road, Bankside and London Bridge provide an established height for tall building clusters set back from the river with a number of prominent buildings visible on the skyline including ... Guy’s Hospital Tower, London Bridge Place³⁰, and the Shard. The Shard which stands at 309.6m, has formed a new pinnacle within the*

²⁹ The “*purple blob*” as referred to by Chris Goddard (xx) found at figure 22 – the “blobagram”.

³⁰ The News Building

existing cluster of tall buildings around London Bridge Station and Guy's Hospital. This tall building has redefined the skyline of the area, making London Bridge a focus for new tall building development."

31. Although he eventually accepted³¹ the obvious point that the SP acknowledges such a cluster at London Bridge [station], Mr Glasgow's initial reluctance to concede as much was puzzling. This was based on the initial CABE response to the 2018 scheme in their letter of 1st June 2018 [CDC.09] which questioned "*whether the existing morphology can meaningfully be called a cluster*". CABE's musings on the subject are all very interesting no doubt *but* the SP's explicit recognition that there is indeed a cluster here is determinative. CABE's view was in any event not without its ambivalence (as Mr Allford pointed out³²) insofar as their letter also expressed the view that the Council should define in a plan where new tall buildings might be appropriate, for example as a series of punctuations along St Thomas Street, in which case the proposed tower at New City Court might form the western end stop. Their second response of 13th November 2018 [CDC.10] takes matters no further and again the key thing is what the SP has to say on the subject.

32. Another somewhat odd aspect of Mr Glasgow's evidence was the suggestion in his proof (at paragraph 2.15) that there were "*two distinct clusters*", one around the Shard and the other farther to the east along St Thomas Street, a suggestion that was modified in his oral evidence to two different families of buildings as opposed to two clusters³³. (One "family" being the glassy tall buildings of the Shard, Shard Place and the News Building all by the same architectural studio; the other being more a bunch of friends in different architectural styles farther east along St Thomas Street.)

33. In any event, one only has to look at diagrams in Mr Allford's proof (pages 34 – 36, 112, 128, 129, 179, 196 – 198) and the model showing the existing and approved tall buildings to appreciate that there is a cluster of tall buildings here and that it is one cluster.

³¹ xx.

³² In xx by the Council.

³³ In chief.

34. There is no evidence to support Mr Glasgow's further (related) claim³⁴ that the St Thomas Street allocations were intended to curate the cluster by locating it as far away as possible from heritage assets. In this regard we note that the notion in paragraph 7.3.28 of the Tower of London World Heritage Site Management Plan [CDF.09] that "*the area to the east of the Shard can accommodate substantially tall buildings without their being visible from the Inner Ward*" has proven to be wrong³⁵, as demonstrated by cumulative view 27 in appendix 2³⁶ to Mr Stewart's proof. Each of the consented tall buildings on allocation NSP53 (Capital House and Edge London Bridge) and the tall building on allocation NSP54 approved by the Mayor (Vinegar Yard) would be visible from the Inner Ward. Further, each of the allocations for tall buildings *explicitly* draws attention to heritage constraints (see NSP 52, 53, 54, 55) which is hardly surprising as one of the allocated sites is Guy's Hospital itself.

35. The SP clearly promotes a cluster of tall buildings in the London Bridge Area. This is driven by the very ambitious development proposals for the London Bridge Area found in AV.11, is founded in the recognition (in Policy P17, reason 7) that the redefinition of the skyline of the area by development of the Shard has made London Bridge "*a focus for new tall building development*" and is reflected in the London Bridge allocations (including NSP52, 53 and 54 on St Thomas Street and Colechurch House, NSP 55). It is important to appreciate³⁷ that the approach of the SP in its promotion of a cluster of tall buildings here has been developed against the context of the increased protection to world heritage sites ("WHS") (including the Tower of London WHS) embodied in Policy HC2³⁸ of the LP³⁹. The present case is very different⁴⁰ from the *Tulip* decision [CDH.10] in this respect.

³⁴ xx.

³⁵ As accepted by Alasdair Young in xx.

³⁶ At page 49.

³⁷ As Chris Goddard pointed out in re-ex.

³⁸ Available in its draft form from December 2017.

³⁹ And also now found in Policy P24 of the SP.

⁴⁰ Chris Goddard in xx.

36. Would either proposal in this case form part of the cluster of tall buildings recognised in Policy P17 to exist around London Bridge Station and Guy's Hospital and promoted in the SP? It is obvious it would. The proximity of the proposals to the Shard, Shard Place⁴¹ and Guy's Hospital Tower makes it unrealistic to suggest otherwise. The appeal site is diagonally across the street from Shard Place, the walk between them being some 30 seconds. The approved tall buildings which would form the foothills of the cluster to the east along St Thomas Street extend considerably further from the Shard than would the proposed tall building on the appeal site⁴². Ours would be 118 metres from the centre of the Shard, whereas the Vinegar Yard tower approved by the Mayor would be 238 metres. Were the cluster to be left as it is, or as it would be with the approved schemes, it would, as was put in xx to Miss Adams and as Mr Goddard observed be pretty lop-sided.⁴³ As CABE suggested, a tall building on the appeal site could be regarded as the western stop of the cluster.

The cluster conundrum

37. The same issue of how to reconcile the development plan pulling in opposite directions as already discussed in the submissions also arises when considering how the promotion of a cluster of tall buildings at London Bridge fits with heritage considerations in the light of a battery of policies, expressed in varying degrees of strictness, concerned with protection of the historic environment. The latter include in the LP Policies HC1 "*Heritage conservation and growth*" and HC2 "*World Heritage Sites*", and in the SP, Policies P19 "*Listed buildings and structures*", P20 "*Conservation Areas*" and P24 "*World heritage sites*". As said, tall buildings will almost inevitably give rise to some adverse heritage impacts particularly if one adopts the "distraction" amounts to harm equation.

⁴¹ The eastern edge of the appeal site is only 86m from the western edge of the base of the Shard (figure 102 in SA's proof), 118m from its centre and 30m from Shard Place (paragraph 4.9 of Chris Goddard's rebuttal).

⁴² See figure 115 in Simon Allford's proof.

⁴³ In chief.

38. Again, the resolution of the conundrum is to be sought in the planning balance. Policy P17 of the SP provides as much in its Part 3.2. In so providing it not only acknowledges the likely risk of some conflict between the development of tall buildings and heritage interests but also puts forward its solution in incorporating a planning balance test expressed by way of a requirement for clear and convincing justification for harm to heritage significance in the form of public benefits.
39. A similar approach is taken in the LP which, in the tall buildings Policy D9, Part C 1)d) provides *“Proposals resulting in harm [to the significance of heritage assets] will require clear and convincing justification, demonstrating that alternatives have been explored and that there are clear public benefits that outweigh that harm.”* The approach is similar but not identical because this criterion refers to demonstrating that alternatives have been explored in addition to the public benefits outweighing the harm. The Appellants’ case is not only is the balance of harm and benefit to be struck favourably to the appeal proposals but also that alternatives have been explored (as to which more later).
40. It is acknowledged that LP Policies HC1 (heritage generally) and HC2 (WHS) do not contain a criterion which would allow public benefits to be weighed against harm to heritage but as said the tall buildings policy, D9, does in respect of heritage generally (D9 Part C 1 d) albeit in D9 Part C 1) e) there is a criterion that tall buildings *“must preserve, and not harm, the OUV of the WHS, and the ability to appreciate it”* with no acknowledgment that public benefits can outweigh harm. SP Policy P19 (listed buildings) at Part 2 (at the end of the policy) would allow for public benefits to be weighed against harm as would Policy P20 (conservation areas) in Part 3. Whereas Policy P24 (WHS) does not do so.
41. **However** the approach in the most recently adopted plan, namely the SP, must prevail and as said, the bespoke tall buildings policy in the SP, Policy P17 Part 3 (2) explicitly provides for the balancing exercise between harm to heritage and public benefits. In so doing it does not carve out and exclude WHS from this.

42. Even had it done so, the decision-maker would be required under the “material considerations” part of section 38(6) of the 2004 Act to apply paragraph 202 of the NPPF which necessitates the weighing of harm to heritage (any designated heritage, including WHS) against public benefits.

43. In other words, whatever the route taken, all roads lead to the balancing exercise.

44. An example of the approach we describe is not far to seek and is found in the Mayor’s approval of the Vinegar Yard proposal. The Greater London Authority (“GLA”) report on this proposal [CDG.04]⁴⁴ itemises occurrences of LTSH to several heritage assets (including the Tower of London WHS)⁴⁵ which it considered were “*at the low to moderate end of the scale*”⁴⁶ but concluded (notwithstanding the considerable importance and weight attached to this harm) that the public benefits delivered by the scheme would clearly and convincingly outweigh the heritage harm⁴⁷. The report also concluded that, despite the breach of a number of heritage protection policies in the development plan⁴⁸, and thereby partial conflict with it, the proposal was adjudged to accord with the development plan overall⁴⁹.

A point of landmark significance

45. SP Policy P17 (Part 2 at indent 1) provides that tall buildings must be located at “*a point of landmark significance*”. The “*Fact Box*” at the end of the Policy P17 states that a point of landmark significance is “*where a number of important routes converge, where there is a concentration of activity and which is or will be the focus of views from several directions.*”

46. Judged sensibly against the Fact Box, a tall building on the appeal site would be at a point of landmark significance.

⁴⁴ Covered by Chris Goddard in chief.

⁴⁵ At paragraph 579.

⁴⁶ At paragraph 586.

⁴⁷ Ibid.

⁴⁸ At paragraph 578.

⁴⁹ At paragraph 589.

47. The Fact Box is not to be read as if it was a statute. An overall planning judgment is required. The microscopic location of a point of a convergence of routes at Barclay's bank on the corner of St Thomas Street and Borough High Street put in xx to Simon Allford (and which he correctly resisted⁵⁰) illustrates the overly prescriptive and artificial nature of the line of reasoning employed by the Council. The wider area of this junction (including the appeal site) sensibly represents⁵¹ the convergence of a number of important routes for the purposes of the Fact Box, especially when direct access to the London Underground station (separated from the appeal site by the thickness of only a wall – which it is proposed to remove) is taken into account⁵². St Thomas Street itself is also such a convergence not least in the sense of routes by rail and tube. The concentration of activity around the area of the junction and along St Thomas Street is not seriously to be doubted. And it is hardly consistent with the Council's case complaining about the visibility of the tall buildings we propose to imply that either tall building will not be the focus of views from several directions when their objection appears to rest on the proposition that they will be.

48. If that strand of the Council's reasoning which considered Fielden House (Shard Place) to be a point of landmark significance because it was *"located at a significant river crossing"*⁵³ i.e. London Bridge itself, were to be applied to the present case the appeal site is a point of landmark significance too.

49. It would be odd and plain wrong to conclude that whereas all the tall buildings along St Thomas Street from Vinegar Yard to the east to Shard Place to the west have been considered to be located at a point (or points) of landmark significance, the appeal site which is that much closer to the junction of St Thomas Street and Borough High Street, and London Bridge itself, and is the other side of a wall from a tube station, is not. That really wouldn't make sense.

⁵⁰ xx.

⁵¹ As suggested by Simon Allford in xx.

⁵² But ignored in xx of Simon Allford.

⁵³ Officer report [CDH.15] at paragraph 105.

Townscape and design

50. As submitted in opening, the townscape in the vicinity of the appeal site has undergone, and continues to undergo, huge transformation in which taller buildings are an ever-increasing characteristic bringing with them contrasts in scale and architectural style which are all part of the area becoming a globally significant business district. It is our case that each of our proposals constitutes exemplary architectural and design quality. Either of the proposals would (as Mr Stewart explained⁵⁴) enhance the character and appearance of the area in townscape terms with any adverse effects greatly outweighed by the beneficial effects. Striking new buildings (which would be handsome and delightful in the words of Mr Allford⁵⁵) would replace the poor quality and dated 1980s office building; generous new and inviting public realm would be created and the historic Georgian terrace would be sympathetically restored.

51. In the circumstances of the present appeals and the extensive tall building development which has already taken place and been approved in the London Bridge area leading to *“an intermingling of the old and new”*⁵⁶ we say that the contrast that would be produced by juxtaposition of each of the tall buildings proposed and their lower-scale immediate context would be appropriate.

52. In considering this it is important to keep firmly in mind that the SP sees the very area within which the appeal site lies as *“a focus for new tall building development”* (P17 Reasons paragraph 7) and mandates (*“should”*) *“a mix of inspiring new architecture .. and .. heritage..”* in the London Bridge Area, where the site sits (AV.11, 2nd tranche of bullets, 5th bullet). Both appeal schemes would be a perfect fit with this.

53. We referred in opening to *“the contrasts in scale and style”* where tall buildings here in Southwark *“are found cheek by jowl with and in the closer and wider settings of*

⁵⁴ Proof passim and in chief.

⁵⁵ In xx by the Council.

⁵⁶ Peter Stewart in chief.

heritage buildings and areas” and described these contrasts as “threads in a rich tapestry woven by us in our era.” Paragraph 49 of the National Design Guide [CDD.20]⁵⁷, under the heading of “context” very much encapsulates the same idea: “today’s new developments extend the history of the context. The best of them will become valued as tomorrow’s heritage, representing the architecture and placemaking of the early 21st century.”

54. The Council’s townscape and design objection to the present proposals suffers from a number of significant problems. First and foremost, it is advanced via the relevant witness, Miss Adams, in a way which lacks any proper balance. In opening we described her proof as a *“hatchet job”*. Miss Adams’ oral evidence lived up to our characterisation. She asserted⁵⁸ that, save for the restoration of the Georgian Terrace, there were no good things to be said about either of the proposals. This is an untenable view which calls into question the objectivity of her evidence. Quite apart from the inherent unlikeliness of the President of the RIBA and a leading architect of proven distinction producing two consecutive duds on the same site, it does not even reflect the Council’s own pre-application position in respect of the 2018 Scheme [CDC.02]⁵⁹ where (amongst a range of criticisms) it was at least recognised that benefits flowed from *“the generous and well-proportioned square to the rear of the tube station and the new public space on St Thomas Street”* and that the proposal *“also improves the setting of the grade II listed Kings Head Public House, improving views of its frontage and making it a feature of the new square.”*

55. Secondly, a mainstay of Miss Adams’ critique was the absence of any *“design story”* she was able to detect for the schemes and the related claim that it appeared that the design journey had started with a tower rather than this resulting from the consideration of alternative forms of development.

⁵⁷ Referred to in re-ex by Peter Stewart.

⁵⁸ xx.

⁵⁹ Highlighted by Chris Goddard in chief.

56. On a fair reading, Mr Allford's proof narrates the design story and remembering the absence of any such story was not made as a criticism of Mr Allford's work (e.g. as set out in the DAS for each scheme) before Miss Adams came along, Mr Allford's oral evidence provided a superabundance of additional narration of the design story.⁶⁰

57. Nor did the design process start with a tower as a given. Mr Allford explained how a "*do minimum*" (our phrase) option in terms of adapting the 1980s building was considered extensively over a number of months but concluded to be an unviable proposition. It was put to Mr Allford by the Council⁶¹ that there was no "independent" report before the inquiry demonstrating this – but why should there need to be? Mr Allford's own informed view on that issue, forming as it does part of the essence of his practice as an architect expert in the development of office buildings⁶², is more than sufficient.⁶³ It is also important to remember that the Council have never previously challenged this position.⁶⁴

58. A further option considered before the idea of developing a tower was generated was the "*ocean liner*" concept (an 8-10 storey redevelopment filling the site) as Mr Allford also explained⁶⁵. This was rejected on the basis that it would not deliver public benefits and a tall building solution was settled on after about nine months⁶⁶ to release space on the site for public realm and associated public benefits.

59. We interpolate at this point that the consideration of the "*do minimum*" and the "*ocean liner*" options constitute, for the purposes of Policy D9, Part C 1 d of the LP exploration of two further alternatives in addition to the two schemes before the inquiry.

⁶⁰ In particular in chief.

⁶¹ xx.

⁶² xx.

⁶³ xx and your question.

⁶⁴ Simon Allford in re-ex.

⁶⁵ In chief and xx by the Council and Historic England ("HE").

⁶⁶ xx by the Council.

60. Thirdly, another main theme of the Council’s case advanced through Miss Adams’ evidence – that the design process for the schemes has been inadequately informed by context - lacks any merit and was refuted in Mr Allford’s proof and in his oral evidence⁶⁷. Enormous attention has been given to context, including study through map regression of how the appeal site and its context have changed over time, detailed consideration of the historical evolution of Kings Head Yard and exhaustive analysis of the changes that have brought about the Georgian terrace as it now appears and how it relates to the earlier development of the buildings on the north side of St Thomas Street. Consideration of context has gone far beyond looking at the architectural language of surrounding buildings and structures although this exercise has also been carried out with thoroughness. New buildings in the area have also been appropriately considered as part of the context.

61. Turning to the case of HE, it raises a point of principle in relation to design insofar as it includes the proposition (relied on in their opening and agreed with by Mr Young⁶⁸) that *“design cannot be regarded as ‘good’ if it causes unacceptable heritage harm”*. We invite rejection of this proposition as misconceived⁶⁹. It is premised on a non-existent free-standing notion of “unacceptable” heritage harm whereas the true position is that, certainly in the case of LTSH caused by a proposal, the proposal only becomes unacceptable if the conclusion is reached that the heritage harm is not outweighed by the public benefits of the proposal (see e.g. paragraph 202 of the NPPF). The acceptability or unacceptability of heritage harm resides not in the harm itself (as the proposition would mistakenly have it) but is the product of the necessary balancing exercise. Mr Young was unable to defend the proposition and it plainly cannot be the case that *“unacceptable heritage harm”* could mean, as he suggested⁷⁰, heritage harm which is unacceptable to HE.

⁶⁷ In chief and in xx by both the Council and HE.

⁶⁸ xx.

⁶⁹ As demonstrated in xx of Alasdair Young. The proposition was also rejected by Peter Stewart in re-ex.

⁷⁰ xx.

62. As it is, we submit that the requirements of the relevant design policies have been met in this case.

63. Each scheme represents optimisation of the appeal site's capacity by following a design led approach in accordance with Policy D3 of the LP. The generous public realm provided by each scheme and their relatively modest area uplifts (x 3.97 for the 2018 Scheme and x 4.08 for the 2021 Scheme⁷¹ seen against the generally much larger uplifts of the other modern tower schemes in the vicinity) belie any suggestion of maximisation rather than optimisation. The same is also true of the evidence given by Mr Allford⁷² that the quantum of new office floorspace, which had become fixed under the 2018 Scheme through the evolving design process over some four years, was "*on the cusp of viable*".

64. The design requirements of Policy P17 of the SP are met. Without itemising each and every one of these requirements we submit that each of the schemes have heights that are proportionate to the significance of their location (at a point of landmark significance) and the size of the site, make the necessary positive contributions to local character and townscape, manifest exemplary architectural design, provide generous public realm including elevated gardens, avoid harmful environmental impacts, maximise energy efficiency/prioritise the use of sustainable materials and, to the extent that there is harm to designated heritage assets , provide clear and convincing justification in the form of public benefits.

65. Each proposal represents the inspiring new architecture demanded by SP Policy AV.11 and neither infringes the requirement of that policy that the Shard remains significantly taller and more visible than surrounding buildings. Miss Adams' contention that the proposals would challenge the dominance of the Shard should not be accepted. Any new tall building in the near vicinity of the Shard would inevitably obstruct its visibility to some degree when viewed from a particular angle at a particular point (see e.g. the effect of the News Building when seen from London

⁷¹ See slides 2B and 2C respectively of INQ-17 presented in chief by Simon Allford.

⁷² xx by the Council.

Bridge). The requirement cannot be read to proscribe that which would be impossible to achieve. The Shard would remain both significantly taller and more visible with either of our proposals. Mr Allford correctly made the point⁷³ that the Shard was particularly prominent in mid and more distant views.

66. Influences in relation to railway infrastructure and warehouses drawn from outside sub-area 4 of the Conservation Area (in relation to the former) and from a different conservation area (Tooley Street in relation to the latter) have been appropriately relied on to influence the architectural language of the proposals. Mr Allford explained⁷⁴ that the wider area was appreciated by those within it as a continuous urban experience rather than entry into and exit from distinct conservation sub-areas, with a series of relationships and views. The railway infrastructure can be seen from sub-area 4 anyway. And, of course, each proposal would be seen from outside the Conservation Area in any event. The approach taken with the appeal schemes was, Mr Allford said⁷⁵, not to dilute the distinctive character and appearance of sub-area 4 but to enrich it (just as Shard Place has done likewise).

67. The assertion of the Council that there was a shortcoming in the design process in respect of the 2021 Scheme in that it was not taken to CABE for design review, resulting in a breach of Part 4 of Policy D3 “*Delivering good design*”, is a bad point. As Mr Goddard explained⁷⁶, the Council did not suggest that the 2021 proposal should go to CABE, instead a local design review panel was suggested for a date which was not convenient and the Council never returned with an alternative date but later made it clear in an email to the Appellant that the 2021 Scheme would not be supported in any event.⁷⁷ Importantly, the 2021 scheme arose from the many years of extensive consultation which preceded it in respect of the 2018 scheme (both before and after the submission of the 2018 application) and was primarily directed at addressing the criticism of the relationship between the 2018 scheme and Southwark Cathedral. The

⁷³ xx by the Council.

⁷⁴ xx by the Council.

⁷⁵ xx by the Council.

⁷⁶ In chief.

⁷⁷ Despite this coming after several months of positive discussions with senior officers of the Council

2021 scheme achieved at least some success in that regard as whereas the Cathedral object to the 2018 scheme, they support the 2021 scheme.

68. Finally on the subject of townscape and design it is worth remembering that the Council's statements of case in respect of each scheme (paragraph 8.20 in both statements) contend "the scale and design of the proposed development is not appropriate for this site and its surrounding context, **resulting in harm** to the townscape and local character." (Our emphasis.) The Appellants disagree and strongly so *but* if the conclusion is reached that there would be harm of the nature alleged then, along with any harm to heritage, it would need to be weighed against the public benefits of the proposals. The Appellants' case is that the public benefits of the proposals are so compelling they would outweigh not only harm to heritage but also, if any is added to the weighing scales, harm to townscape and local character too. The reality is that much of the case made against the proposals in terms of harm to townscape is based on the same or similar points to those made in relation to harm to heritage (they certainly morph into each other) and if as we say the public benefits are sufficient to outweigh harm to heritage, bearing in mind the particular weight which is to be given to any such harm, it is hard to see how they would not also outweigh harm to townscape.

Heritage

Matters of approach

69. The uncontentious starting point in approaching heritage issues is that the question of whether there is harm to a designated heritage asset is to be answered by asking whether there is harm to the significance of the asset⁷⁸.

70. As neither the Council nor Historic England contend that there is substantial harm to any heritage asset in this case, it is of obvious relevance to understand where the boundary lies between substantial and LTSH in order that the magnitude of harm this

⁷⁸ Accepted in xx by Nigel Barker-Mills.

latter concept signifies can be more clearly understood. It is common ground with both the Council⁷⁹ and HE⁸⁰ that substantial harm is a high test, as provided in paragraph 18⁸¹ of the Planning Practice Guidance (“PPG”) on Historic Environment [CDD.11]. This states that *“in general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.”*

71. Taking the example of works to a listed building as a proxy for impacts on heritage assets in general, it can be inferred from paragraph 18 of the PPG that LTSH is generally to be understood as harm which does not seriously affect a key element of the asset’s special architectural or historic interest, that is, its significance⁸².

72. An essentially similar point emerges from the way in which matters were put by the court in the case of *The London Historic Parks and Gardens Trust v The Minister of State for Housing*⁸³ (“the Holocaust Memorial case”) [CDH.07] where the judge concluded that the inspector in that case had interpreted *“the relevant test for substantial harm”* as being *“the serious degree of harm to the asset’s significance”*. This formulation, equating as it does *“substantial”* with *“serious”*, was (correctly) accepted by counsel for the claimant on the basis that it *“reflects the wording of the Planning Practice Guidance and is an expression of Government policy.”* And it was adopted by the court without demur⁸⁴.

73. Surprisingly, Mr Young, having accepted⁸⁵ that paragraph 18 of the PPG was an appropriate way of distinguishing between substantial and LTSH, was not then able to

⁷⁹ Ditto.

⁸⁰ Alasdair Young xx.

⁸¹ Reference ID: 18a-018-20190723.

⁸² This proposition was accepted by Nigel Barker-Mills in xx and its acceptance was reinforced by him in re-ex when he explained that he had reached the conclusion that the harm in the present case was LTSH because the harm was not serious rather than because a key attribute was not affected.

⁸³ [2022] EWHC 829 (Admin).

⁸⁴ See paragraph 35.

⁸⁵ xx.

say⁸⁶ whether he had reached the conclusion in the present case that the harm was LTSH either because it did have a serious effect but not on a key element of the asset's significance or because it did have an effect on a key element of the asset's significance but that effect was not a serious one.

74. Perhaps more surprisingly, Mr Young agreed with the formulation in the Holocaust Memorial case that substantial harm involves serious harm to significance (with its inevitable corollary that LTSH does not involve serious harm) yet was quite unable to explain⁸⁷ how it was that he was able in his proof to maintain, as he does⁸⁸, that the heritage harm is serious notwithstanding that it is LTSH. This is a contradiction in terms as it involves this proposition: *substantial harm means serious harm, the harm here is not substantial but it is serious.*

75. Turning next to the question of calibration of the degree of harm arising in a case of LTSH, that calibration must be against the whole heritage interest of the asset⁸⁹. It is therefore contextually relevant in this regard, where impacts are indirect (affecting setting only), to keep in mind there are no direct impacts⁹⁰.

76. This leads us to the *Edith Summerskill House* decision⁹¹ [CDH.20] which contains a clear analysis of how setting impacts can be approached. The analysis is of particular relevance in this case in that all the heritage impacts here apart from the (beneficial) interventions in respect of the Georgian Terrace and the direct impacts on the Conservation Area are impacts on setting. The Inspector reasoned in his report that *"in cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very*

⁸⁶ xx.

⁸⁷ xx.

⁸⁸ See, by way of example only, his conclusion at paragraph 13.11 referring to *"the serious harm resulting from both appeal schemes"*.

⁸⁹ Accepted by Nigel Barker-Mills in xx.

⁹⁰ Ditto.

⁹¹ APP/H5390/V/21/3277137.

difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance.”⁹²

77. That inspector rounded his analysis off as follows: *“it is often argued that such an approach leads to harm to the significance of a designated heritage asset being underestimated. However, what is under consideration is the impact of change on the significance of a designated heritage asset. If that change would come about as a result of development in the setting of that asset, then it is only the component of significance that the asset derives from its setting that would be affected. That is the outcome of the approach the Framework takes.”⁹³*

78. The Secretary of State agreed with the Inspector’s reasoning in the above paragraphs⁹⁴. For his part, Mr Stewart completely agreed with it⁹⁵. The Inspector’s analysis is clear and compelling in its logic.

79. In the Council’s opening it was suggested that the approach taken in the *Edith Summerskill House* decision was different from the approach taken in the *Tulip* decision and it was indicated that the Council preferred the latter (although it was recognised that the matter was one for your judgment). In the latter the Inspector said that *“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.”⁹⁶* We submit that there is in fact little difference between the approaches in that the essential focus of each is on the contribution made to significance by setting. Thus it was that Mr Stewart considered both that he had followed the *Tulip* approach⁹⁷ but that, not inconsistently, the question of *“what was left untouched”* had figured in his consideration as relevant⁹⁸. He made it clear⁹⁹ that he was not saying that harm to

⁹² At paragraph 12.50.

⁹³ At paragraph 12.54.

⁹⁴ Decision letter at paragraph 13.

⁹⁵ In chief.

⁹⁶ At paragraph 14.2 of the Inspector’s report, endorsed by the Secretary of State in the decision letter at paragraph 16.

⁹⁷ xx by the Council.

⁹⁸ xx by HE.

⁹⁹ xx by HE.

setting was always less significant than harm to historic fabric but that it was less with the proposals presently under consideration.

80. Next, it is to be noted that because conservation of a heritage asset is defined in the Glossary to the NPPF as *“the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance”* and paragraph 199 of the NPPF provides that *“great weight should be given to the asset’s conservation”* it is necessarily the case not just that great weight should be given to harm to an asset’s significance but also that heritage benefits arising through enhancement of significance should carry great weight¹⁰⁰. This point revealed another difficulty with Mr Young’s evidence¹⁰¹ in that not only had he not appreciated it before but, having not adopted a net heritage balance approach and treated heritage benefits to be weighed in the overall NPPF paragraph 202 balance, his approach was to give the benefits of restoring the Georgian Terrace not their due great weight but only limited weight.

81. As for paragraph 202 of the NPPF, we add that satisfaction of the balancing test it contains supplies the necessary *“clear and convincing justification”* required by paragraph 200 of the NPPF for harm to the significance of a designated heritage asset; there is but one test, not two¹⁰².

82. Finally in respect of matters of approach, it was accepted in xx¹⁰³ that, because a conservation area is, by definition, an area based asset, assessment of the effect of a proposal on a conservation area is to be undertaken by reference to the area as a whole and, in this particular case, by reference to the whole of the Conservation Area rather than by reference to the particular sub-area (4) in which the appeal site lies. This is now disputed in HE’s Closing (paras. 117 – 121). I draw attention to the

¹⁰⁰ Accepted by Nigel Barker-Mills in xx.

¹⁰¹ xx.

¹⁰² Accepted by Alasdair Young in xx.

¹⁰³ Answers given in xx by both Nigel Barker-Mills and Alasdair Young.

treatment of the subject in paragraph 207 of the NPPF which explicitly refers to assessing the conservation area (and indeed, WHS) “as a whole.”

The role of photographs and visualisations

83. Photographs seeking to capture views of the existing situation and visualisations of the proposals are a tool to provide assistance but are no more than that and do not provide a substitute for going out on site¹⁰⁴. They cannot capture the human viewing experience and, as Mr Stewart explained¹⁰⁵, the points from which the photographs are taken and the visualisations provided are not in the majority of cases, “views” proper but simply photos taken from places where you would or might see the proposed tall building in either scheme. And, of course, views change and evolve in a dynamic sequence as the viewer proceeds on whatever may be his or her way.

84. Some caution is therefore to be exercised in considering the photographs and visualisations.¹⁰⁶ A case in point is provided by the photographs from London Bridge which do not convey the true on-site experience in which tall buildings behind Southwark Cathedral are, as things presently stand, readily apparent to the viewer (walking from north to south across the bridge).

Appropriate heritage input into design

85. There has been appropriate (robust and reliable¹⁰⁷, if you like) specialist heritage input into the design process for the schemes. Mr Stewart has fulfilled that role. Nothing is to be made of the fact¹⁰⁸ that he only came on board as part of the design team in 2016 by which time the principle of a tall building on the appeal site had become a fixed part of the proposals. The evidence of Mr Allford shows that AHMM already

¹⁰⁴ Nigel Barker-Mills xx, agreed by Peter Stewart in chief.

¹⁰⁵ In chief.

¹⁰⁶ Vu City has its limitations too in that it shows existing buildings as crude blocks rather than representing how they are seen in real life. (See pre-inquiry email correspondence on the subject cc'd to PINS.)

¹⁰⁷ The phrase used in xx of Simon Allford by the Council.

¹⁰⁸ xx of Peter Stewart by HE.

themselves had a good understanding of the heritage significance of the appeal site's surroundings but as Mr Stewart also explained¹⁰⁹ the project team had already had, before his involvement, the benefit of the services of Peter Riddington of Donald Insall Associates, a pre-eminent heritage specialist (since retired).

A word on the environmental assessment process

86. The point emerged clearly enough in xx of Peter Stewart by both the Council and HE (but bears repetition here for the avoidance of doubt) that, where the Townscape, Visual Impact and Built Heritage Assessments ("TVIBHA") [CDA.12.2 and CDB.14.2 for the 2018 and 2021 Schemes respectively] identified major adverse effects in relation to heritage assets, that was not to be equated with major adverse harm *to the significance of* the heritage assets.

87. On the contrary, the extent of the harm to the heritage significance of the assets (harm being encompassed in the finding of an adverse effect) is to be found in the narrative part of the assessment which follows on after the "*mechanical*"¹¹⁰ assessment of the significance of the change to the asset has been completed.

The main heritage assets

88. We turn next to consideration of the main heritage assets (as identified below) where harm could potentially arise. We continue to rely in full on the evidence of Mr Stewart in his proof and rebuttal in relation to the main and all other heritage assets. We consider (and do not think it should be contentious¹¹¹) that the restoration of the Georgian Terrace at 4-8 and 12-16 St Thomas Street is a heritage benefit which should, accordingly, be afforded great weight.

¹⁰⁹ Re-ex. Simon Allford made the same point in his evidence in chief and xx by the Council.

¹¹⁰ Peter Stewart's description.

¹¹¹ Some heritage benefit of considering the restoration in its own terms is accepted by Alasdair Young (proof paragraph 13.8 and xx) and was acknowledged by Michael Glasgow in xx (although it had nowhere featured in his proof) and by Nigel Barker-Mills in xx.

89. Table 1 (2018 scheme) and Table 2 (2021 scheme) in the Heritage Statement of Common Ground very helpfully sets out a side by side comparison of the presence or absence of harm and the extent of any LTSH as concluded by each of the three expert witnesses on heritage. *As has been made clear via the evidence of Mr Goddard, even were HE's and / or the Council's assessments of the presence and extent of LTSH to be preferred across the board to Mr Stewart's the Appellant submits the public benefits individually and cumulatively of each scheme are so compelling that they would outweigh all such harm, acknowledging of course that the presence of heritage harm creates a strong presumption against the grant of permission (the presumption is rebuttable by public benefits) and that considerable importance and weight, indeed great weight, is to be given to heritage harm (just as it is to heritage benefits).*

Borough High Street Conservation Area (BHSCA)

90. Mr Stewart summarises¹¹² the effect of the 2018 Scheme on the character and appearance of the BHSCA, considered in the round, to be positive. He concludes that there are some minor losses of heritage significance as a result of adverse effects on the appearance of the BHSCA as seen from a limited number of locations but that these are outweighed by the substantial public benefits in terms of urban design and townscape improvements to the site and wider area delivered by the 2018 Scheme, which include significant improvements to the character and appearance of the BHSCA. He provides a similar summary of the 2021 Scheme¹¹³.

91. We commend his evidence to you. We also noted in opening that the overall enhancement we see stems not least from the opening up of the site to public access for people to enjoy¹¹⁴. And we commented that in the case of either the 2018 or 2021 Scheme there would be a tall building in the BHSCA to join Shard Place just across the street, and the other tall buildings – not least the Shard – a few paces away from the conservation area but, as the Conservation Area Appraisal (“CAA”) [CDE.06] says:

¹¹² At paragraph 5.38 of his proof.

¹¹³ At paragraph 10.29.

¹¹⁴ A factor also relied on by Peter Stewart in chief.

*“Borough High Street has throughout its history had to accommodate change, and part of its character is due to the immense variety that change has brought.”*¹¹⁵ That was written in 2006 since when there has been more change and greater variety added to the continuum.

92. The Council and HE have repeatedly referred to Shard Place as being at the “edge” / “the very edge” of the Conservation Area while the appeal site has been characterised as being located at its “the heart”. The fact remains though that the two sites are diagonally opposite each other, a few metres apart – even were one to accept the characterisation the result would be that Shard Place is 30 seconds walk from the heart of the Conservation Area and the appeal site 30 seconds walk from its edge / the very edge.

93. The approach of the Council and HE in relation to the enclosure of King’s Head Yard (and the part opening-up of this enclosure by the appeal schemes) in particular is in stark contrast to the views of others. The relevant passage in the GLA Stage 1 Report [CDG.02] bears citation in full to demonstrate the point: *“The setting of the Grade II listed Old King’s Head Public House would be altered. Currently, the pub is tightly enclosed within a narrow alleyway, which is characteristic of the historic street pattern which contributes to the significance of this part of the Borough High Street Conservation Area. However, the narrowness and generally unattractive nature of the route and the building’s close proximity to the adjacent service yard and refuse area means that its existing setting negatively impacts the ability to fully appreciate the architectural and historic character and significance of the building. As such, GLA officers consider that the proposal to provide a new public square directly outside this Grade II listed building, comprising high quality materials, seating and tree planting, would be a significant change to its setting. High quality block paving, level changes and planting would delineate the historic route of the Kings Head Yard which is supported. On balance, GLA officers consider these changes to be positive and would not give rise to harm. Overall, despite the height of the proposed building, GLA officers*

¹¹⁵ At paragraph 5.2.8.

consider the layout and public realm proposals around its base would contribute towards creating an intimate human scale character within the proposed new square and yards which would respond positively to the prevailing historic character of this part of the Borough High Street Conservation Area.” Mr Allford was teased for describing the yard as he did (in summary, he finds the yard dispiriting) but he is in the good company of the GLA in seeing things as he does.

Guy’s Hospital

94. In his written evidence Mr Stewart describes the harm to Guy’s Hospital from each of the 2018 and 2021 Schemes as *“considerably less than substantial”*¹¹⁶. In his oral evidence he described the impact of seeing the tower in the 2018 Scheme rising behind the central pedimented bay of the western wing of the forecourt¹¹⁷ as a *“minor effect”* on the ability to appreciate the building’s significance.

95. We submit that this is a realistic calibration of the harm and to be preferred to that of the Council and HE who, we would say, are over-attached to notions of visual competition and distraction and the like. We appreciate that concepts like these feature in Historic England’s Good Practice Advice Note 3 *“The Setting of Heritage Assets”* [CDF.04], *but* they are not the conclusion of the analysis required by the NPPF. If it is concluded that there would be visual competition / distraction / drawing the eye away / harm to the ability to appreciate the significance of the asset or any such, whether in relation to Guy’s or any of the other heritage assets within the setting of which the proposals would stand, *one must still go on to work out whether this effect would cause harm to the significance of the asset*. The Framework repeatedly and exclusively refers to impact on / harm to *the significance of a heritage asset* – see paragraphs 199, 200, 201 (for substantial harm), 202 (LTSH), 203 (for non-designated assets), and 207. To be clear, we acknowledge that visual distraction &c if found is a material consideration – our point is that it is simply a step in the analysis but not its

¹¹⁶ At paragraph 5.68 of his proof in respect of the 2018 Scheme and paragraph 10.46 in respect of the 2021 Scheme.

¹¹⁷ See view 49 in the 2018 TVIBHA [CDA12.1].

conclusion. One must be careful not to assume that visual distraction (or similar) would harm the heritage significance of the asset in question. One must ask and answer the questions – does it, and if so, how?

96. Mr Stewart made the telling point¹¹⁸ (entirely pertinent to the question of the contribution of setting to significance whether under the *Tulip* or *Edith Summerskill House* approaches) that, however much one were to write about the significance of Guy's Hospital, it would be unlikely that the ability to view its western forecourt wing against a clear sky would be identified as a contributor. And visual competition (one might just as well substitute for competition the word "variety") between old and new or low and tall buildings, often without the ability to appreciate the historic against clear sky, is an inescapable feature of central London¹¹⁹ including in the close vicinity of the appeal site.

Southwark Cathedral

97. We submit that Mr Stewart's assessment of the impact of the 2018 Scheme in relation to Southwark Cathedral is careful and balanced. He summarised it in his proof in respect of the 2018 Scheme as follows¹²⁰. There are positive and negative aspects of the effects of the 2018 Scheme on the Cathedral's setting. Most aspects of the Cathedral's setting are unaffected by the 2018 Scheme, but considered in the round, the 2018 Scheme would cause some harm to the heritage significance of this listed building. The degree of harm would be minor, arising from the unsatisfactory visual relationship between the two towers (the 2018 Scheme tower and the Cathedral Tower) as seen from certain points, which would have a small effect on the viewer's ability to appreciate the Cathedral seen clearly against the sky. When one considers that most of the Cathedral's significance subsists in its fabric, that its setting is varied and takes in many large commercial buildings, and that most of its immediate setting

¹¹⁸ xx by the Council.

¹¹⁹ "*Not how the world works in Central London*" to put it as Peter Stewart did in xx by the Council when questioned on the clear sky point.

¹²⁰ At paragraph 5.64 with the equivalent summary in respect of the 2021 Scheme appearing at paragraph 10.45.

is modern, it is apparent that any harm to its significance is minor and, in NPPF terms, considerably LTSH.

98. In his oral evidence¹²¹ Mr Stewart pointed out that the Cathedral's setting was not an historic one, unlike Canterbury, York or Lincoln and that, while the asset was grade I, its setting was (so to speak) not of grade I quality. We also draw attention again to the point we noted in opening that the setting has been far from static over time and, as the CAA says, the Cathedral is "*set within the ever-changing environment of its modern setting*"¹²².

The Tower of London World Heritage Site ("ToL WHS" or "WHS")

99. Mr Stewart's assessment of no harm is sensible and measured. We rely on the way in which he put matters in his proof and, for convenience, repeat here his summary in respect of the 2018 Scheme¹²³ where he noted that it would be visible from only limited points within the ToL WHS, which is about 750m [and across the River] from the appeal site. Looking out from the WHS, one would see, from those points in it where the 2018 Scheme could be seen, the development appearing as part of the grouping of late twentieth century modern and tall large scale buildings at London Bridge, providing balance to the composition. The 2018 Scheme would not harm any elements of setting that contribute to the heritage significance or outstanding universal value ("OUV") of the WHS and there would be no effect on any of the attributes of the OUV, leading to the conclusion of no harm to heritage significance.

100. A similar analysis applies in the case of the 2021 Scheme¹²⁴ where Mr Stewart's evidence approaches more closely to his fellow heritage experts (who describe in this case harm at the low end of the range for LTSH (the Council) or as a low / very low level of LTSH (HE)).

¹²¹ xx by HE.

¹²² CDE.06 at paragraph 3.4.3.

¹²³ At paragraph 5.70.

¹²⁴ Summarised at paragraph 10.47 of Peter Stewart's proof.

101. That any degree of harm is identified in the case of the 2021 Scheme is indicative of an unduly demanding approach to harm which would appear to equate any visibility, however limited, of a tall building above the Inner Ward as harmful¹²⁵. That approach seems to reflect the views of the UNESCO-ICOMOS Reactive Mission Monitoring Report of 2011 considered by the World Heritage Committee at its meeting in June 2012, an extract of which report is cited by both Dr Barker-Mills¹²⁶ and Mr Young¹²⁷. The extract states, in the context of considering the Shard, that *“if any tall buildings are planned, these should not exceed the height by which they would become visible above the on-site historic buildings that are part of the Tower complex.”* The extract continues by opining that *“any additional tall buildings in the area would destroy the visual integrity of the property and severely compromise its Outstanding Universal Value (OUV), possibly beyond repair.”* The extreme (*“hysterical”* was the adjective suggested in xx¹²⁸) nature of this latter view does not deserve to be taken seriously. The postulates of destruction of visual integrity and severe compromise of OUV would clearly amount to substantial harm in NPPF terms. But no one suggests in the present case that the visibility of the tall buildings proposed by either appeal scheme would (despite visibility from the ToL) come anywhere close to occasioning substantial harm and Dr Barker-Mills made it clear that, while he was not prepared to say that the view of the Reactive Monitoring Mission was hysterical, it was a view which differed from his own¹²⁹. It would therefore be wrong to equate visibility of tall buildings above the Inner Ward of the ToL with harm to its OUV on the basis of a document which is patently laden with an inflated conception of harm.

St Paul’s Cathedral

102. Mr Stewart’s evidence is clear that neither the 2018 Scheme nor the 2021 Scheme would affect one’s ability to appreciate the significance of St Paul’s Cathedral from either of the London View Management Framework views 2A.1 (Parliament Hill) or 3A.1

¹²⁵ Cf. paragraphs 10.33 and 10.34 of Alasdair Young’s proof.

¹²⁶ Proof at paragraph 4.15.

¹²⁷ Proof at paragraph 10.19.

¹²⁸ Of Nigel Barker-Mills.

¹²⁹ xx.

(Kenwood) or, indeed, in any other views, whether of borough significance or not¹³⁰. His robust dismissal of the idea that it would in respect of the view from Kenwood as “way off”¹³¹ was, you may think, a healthy blast of common sense.

Other issues

Servicing in respect of the 2018 Scheme

103. No issue arises in respect of the servicing proposed for the 2021 Scheme. In respect of the 2018 Scheme we rely on Mr Vaughan’s proof and rebuttal (which provide detailed answers to TfL’s representations of 16th March 2022 [CDC .24] and Mr Glasgow’s reliance on them in his proof) as well as Mr Vaughan’s contribution to the round table session.

104. We make two broad contextual points to begin with. First, even if one were to take Transport for London’s (“TfL”) case in respect of the 2018 Scheme at its highest, the Council (adopting that case) does not advance it as a reason for refusal but simply says that there would be some harm, attracting moderate weight, which should be factored into the planning balance¹³². In other words, there is no “showstopper” here. This in itself really tells you all you need to know about whether the Council considers that the servicing proposals would pose an unacceptable impact on road safety or would lead to a severe residual cumulative impact on the road network because, in either of those eventualities, they would be required to suggest refusal in accordance with paragraph 111 of the NPPF.

105. Secondly, TfL initially accepted the servicing proposals for the 2018 Scheme as their written representations confirm¹³³ and the GLA Stage 1 Report [CDG.02]

¹³⁰ See paragraphs 5.74-5.76 summarising the position in relation to the 2018 Scheme and paragraphs 10.50-10.52 in relation to the 2021 Scheme.

¹³¹ xx by HE.

¹³² Michael Glasgow’s proof paragraph 11.9 and in chief.

¹³³ At paragraph 35.

reflected this position by describing the servicing strategy to be “*acceptable in principle*”¹³⁴ with details to be further addressed by condition¹³⁵. Whether or not TfL accepted the position “*reluctantly*”¹³⁶ or not on the basis that there was no viable on-site solution is neither here nor there. The fact is that they accepted the strategy in principle. They would hardly have reached that position if the strategy was genuinely flawed to an unacceptable degree.

106. TfL’s change of position cannot be justified by reference to policy. Policy T7 of the LP “*Deliveries, servicing and construction*” provides that “*development proposals should facilitate safe, clean, and efficient deliveries and servicing. Provision of adequate space for servicing, storage and deliveries should be made off-street, with on-street loading bays only used where this is not possible.*” TfL appear to argue that the fact that the 2021 Scheme has come forward with on-site servicing supersedes their earlier view re the 2018 scheme based on acceptance that on-site servicing was not possible when the 2021 scheme now shows that it is.

107. This does not hold water. The schemes are completely different and each requires to be judged on its own merits. TfL’s representatives never answered the question you posed at the round table session whether on-site servicing is possible with the 2018 scheme. It is not, as Mr Vaughan who did answer the question, explained. The point that the Council put in xx of Mr Goddard by suggesting that “*development proposals*” under Policy T7 were somehow to be understood in the abstract rather than by reference to the particular development proposals under consideration is not a good one. The possibility is to be judged by reference to the scheme in question considered on its merits. To suggest otherwise is wrong as a matter of interpretation. Policy T7, Part G is satisfied in the case of the 2018 Scheme.

¹³⁴ At paragraph 86.

¹³⁵ See paragraph 78.

¹³⁶ See again paragraph 35.

108. Any suggestion that TfL's change of position might be justified in the light of the Mayor's Vision Zero Policy objectives is not correct. As Mr Vaughan pointed out, Vision Zero had already been around for a year by time of the GLA Stage 1 Report [CDG.02] of 26th November 2019. The Mayor's Healthy Streets and Vision Zero objectives were taken into account in that response¹³⁷.
109. As for the on-street servicing bay proposals, Mr Vaughan's evidence demonstrates that this arrangement would work satisfactorily and, with the combination of the consolidation strategy proposed and the introduction of control over the timing of vehicle deliveries (with only two during the working day as opposed to seven at present), would represent an improvement over the existing situation. The loading bay could be designed not to interfere unacceptably with pedestrian movement on a widened footway or any cycle lane. The experimental footway widening scheme presently out for consultation could, with minor alterations, accommodate the 2018 Scheme (and the 2021 Scheme)¹³⁸.
110. The use of White Hart Yard for smaller vehicle deliveries does not create unacceptable risks. Following consolidation there would be 23 such vehicles over a 24 hour period. None of these deliveries would take place during peak pedestrian periods and there would be a maximum of four vehicles an hour outside such periods. The narrowness of the exit to White Hart Yard and the reduced visibility at that point encourages drivers to pull out slowly and carefully. There have been no recorded accidents involving pedestrians and vehicles at this junction.
111. Seen in the round with the removal of vehicular traffic from King's Head Yard using the present service yard of the existing building as a car park and, more importantly, the reduction in pedestrian flows on the crowded footways at the junction of Borough High Street and St Thomas Street (brought about by the new routes through the site), the servicing arrangements in the 2018 Scheme would meet Policy T2 "*Healthy Streets*" of the LP.

¹³⁷ See paragraph 78.

¹³⁸ See INQ-27.

112. The servicing strategy for the 2018 Scheme is underpinned by detailed controls in the section 106 agreement requiring, inter alia, a delivery and service management plan and a delivery and service monitoring plan backed up with a delivery and service cash deposit to ensure compliance.

BREEAM

113. Mr Glasgow indicated¹³⁹ that the Council now accepts that the BREEAM “very good” standard is appropriate for the Georgian Terrace.

Climate change and sustainability

114. Mr Glasgow also indicated¹⁴⁰ that the Council now accepts that, in respect of the 2018 Scheme, compliance with the necessary policy requirements can be achieved by condition. His rather throwaway accompanying observation that the 2018 Scheme was “*struggling*” (which Mr Goddard made clear¹⁴¹ is not accepted) does not therefore appear to lead anywhere.

Daylight and sunlight

115. The policy in the SP which deals with daylight and sunlight is P56. It lists daylight and sunlight as one of a number of considerations to be taken into account in coming to a conclusion whether development would cause “*an unacceptable loss of amenity to present or future occupiers*” In chief Mr Glasgow said that the schemes caused “*tension*” with the policy, rather than a partial breach thereof, in respect of their impact on daylight and sunlight at the student accommodation at Orchard Lisle House and Iris Brook House to be carried into the planning balance as moderate harm. However, in xx he accepted that there was no breach of the policy. In the absence of a policy breach it is difficult to see how moderate harm can arise to be carried into the

¹³⁹ In chief.

¹⁴⁰ In chief.

¹⁴¹ In chief.

balance. Policy is the arbiter of harm. If the policy is not breached there is no “unacceptable loss of amenity” and any loss of amenity below that threshold is, by definition, acceptable. Mr Goddard was therefore correct¹⁴² to take the position that the daylight and sunlight losses in issue had no material part to play in the overall decisions.

Public benefits

116. The public benefits either scheme would bring, cumulatively, are enormous. The range of benefits is substantially agreed (as set out in the Planning Statement of Common Ground) and the real point of departure between ourselves and the Council is the weight to be given to each benefit in turn and then to their accumulation overall. We single out some of the more important differences below but rely in full on the weighting in Mr Goddard’s evidence¹⁴³. Helpfully, there is now an agreed statement that sets out side by side for easy comparison the weight given to the benefits by Mr Goddard and by Mr Glasgow. Our case in a nutshell is that Mr Glasgow has talked down the benefits.

117. Also, it is important to include the considerable public benefits secured by the s106 planning obligations, and the CIL payments.

Quantity and quality of office space

118. Either proposal would bring about a major improvement in the quantity and quality of office space on the site. In the 2018 Scheme there would be 46,374 sqm of Grade A office accommodation, resulting in an uplift of 33,611 sqm of office floorspace across the site. The 2021 Scheme would provide 49,049 sqm of Grade A office accommodation, resulting in an uplift of 36,286 sqm of office floorspace across the site. Either scheme would thus make a significant quantitative contribution (7.2% and

¹⁴² In chief and in xx by the Council.

¹⁴³ Both in his proof and in oral evidence.

7.7% respectively of Southwark's net minimum additional office floorspace target¹⁴⁴) of new office floorspace in a policy-compliant location. Coupled with the high quality of the new floorspace to be provided, Mr Goddard is right¹⁴⁵ to attach substantial weight to this benefit. This is especially so given the across-the-board strong policy support for more and better quality office floorspace in the globally, nationally and London-wide significant location within which the appeal site lies.

119. Mr Glasgow's attribution of only moderate weight to this benefit on the basis that strategic targets can comfortably be achieved without the uplift in floorspace that the schemes would deliver¹⁴⁶ is wrong in principle. Providing more floorspace in circumstances where there is no cap on its delivery (the target is a minimum) is not a reason to reduce the weight to be attached to it. That is especially so in circumstances where uncontested¹⁴⁷ market overview and demand analysis¹⁴⁸ points to the difficulty of meeting demand for new build grade A office space in the SE1 market with only 4% of the potential future supply having minimal entry barriers. Planned allocations do not, as Mr Goddard said¹⁴⁹, necessarily translate into deliverable consents. The appeal site is owned by GPE, a hugely experienced and well-funded developer of office floorspace in central London. Once again, one must keep firmly in mind the importance (global, national and London-wide) attached *by the development plan* to more and better quality office space in the 4 designated areas in which the appeal site sits, and that the approach in the LP is to meet *demand* for office floorspace. In the light of points like these it really is hard to fathom how only moderate (middling) weight should be given. It's self-evidently a matter of substantial weight.

Employment and contribution to the local economy

¹⁴⁴ See the Planning Statement of Common Ground.

¹⁴⁵ Proof paragraph 9.14.

¹⁴⁶ Proof paragraph 8.4.

¹⁴⁷ Michael Glasgow xx.

¹⁴⁸ See the Cushman & Wakefield market overview and demand analysis at appendix 2 to Chris Goddard's proof.

¹⁴⁹ In chief.

120. Either scheme would generate significant job creation at construction and operational stages, accompanied by worker spend in the local economy and an increase in GVA. The figures (extracted from the Volterra report¹⁵⁰) are set out in Mr Goddard's proof¹⁵¹. The net additional FTE jobs in the operational phase, more than 2,000 and 3,000 in the 2018 and 2021 Schemes respectively should in any sensible analysis be seen as very important indeed. Mr Goddard gives the benefits of employment and the contribution to the economy substantial weight¹⁵².

121. Mr Glasgow relies¹⁵³ on the Appellant's ES scoping report for the 2018 Scheme to attach only moderate weight to the job benefits on the basis that the scoping report stated that the jobs were unlikely to be materially significant in the wider London area. However, the proposals would deliver on a single site 22% (2018) or 30% (2021) of the target of 10,000 jobs for the Opportunity Area. This is a sizeable contribution¹⁵⁴ to an important SP policy target. Whatever may have been the views of the environmental assessors, a London-wide jobs perspective is a poor basis for a comparative judgment when specific development plan targets are set for the more immediate area of the site. Indeed, Mr Glasgow relies on local Southwark policy considerations in giving significant weight to the schemes' provision of affordable workspace¹⁵⁵. He was right to do so.

122. Returning to the London-wide comparison, its weakness as a point is demonstrated by the fact that as explained by Mr Goddard¹⁵⁶ given that London supports 5.7m jobs¹⁵⁷, any scheme would struggle to make a significant quantitative jobs contribution measured against this yardstick. And he also made the fair point¹⁵⁸ that the schemes could indeed be significant for jobs at a London-wide level in

¹⁵⁰ Appendix 6 to Chris Goddard's proof.

¹⁵¹ At paragraphs 9.6 and 9.7.

¹⁵² Proof paragraph 9.20.

¹⁵³ Proof paragraph 8.9.

¹⁵⁴ Michael Glasgow's own description in his proof at paragraph 8.8 and reiterated in xx.

¹⁵⁵ At paragraph 8.6 of his proof.

¹⁵⁶ Re-ex.

¹⁵⁷ Paragraph 2.2.2 of the LP.

¹⁵⁸ Re-ex.

qualitative, if not quantitative terms, for their potential to attract occupation as a global headquarters.

123. We say equally that there is no reason to reduce the weight given to job creation on the basis that the schemes would do no more than comparable schemes. The obverse is the case. A comparable scheme (of which Mr Goddard said there were none among those permitted along St Thomas Street¹⁵⁹ in terms of extent of job creation) should also attract the same substantial weight. It is not to be forgotten that paragraph 81 of the NPPF provides that *“significant weight should be placed on the need to support economic growth and productivity”* taking into account, inter alia, *“local business needs”* (as evidenced in this case in the Cushman & Wakefield market overview and demand analysis¹⁶⁰).

Public realm

124. The same theme of devaluation of the public benefits of the schemes is apparent in Mr Glasgow’s attribution of only limited weight¹⁶¹ to the public realm that they provide, in contrast to much greater weight (very substantial¹⁶²) that Mr Goddard realistically gives to this dimension of the schemes as part of his assessment of the wider topic of design quality and public realm. Mr Glasgow’s assessment cannot be sustained based as it is on Miss Adams’ unbalanced view that there is nothing good about the schemes. In its more balanced assessment, the GLA Stage 1 Report [CDG.02] was strongly supportive of the public realm in the 2018 Scheme¹⁶³.

125. The public realm is not *“mean”*¹⁶⁴ as Miss Adams would have it but generous. 1,355 sqm of new public realm is provided at ground level in the 2018 Scheme. To be added to this is the 700 sqm of the new elevated public garden (excluding the café). This makes a total of 2,055 sqm of new (multi-level) public realm overall which

¹⁵⁹ xx.

¹⁶⁰ Appendix 2 to Chris Goddard’s proof.

¹⁶¹ Proof at paragraph 8.14.

¹⁶² Proof at paragraph 9.28.

¹⁶³ See paragraphs 28-30.

¹⁶⁴ In xx

amounts to 73% of the available site area (the Georgian Terrace and Keats House not being available). As it stands, the existing site provides purely theoretical public realm (taking the most generous but wholly fanciful view) of 211 sqm. 1,136 sqm of new public realm is provided at ground level in the 2021 Scheme. To be added to this is the 780 sqm of new elevated public garden. This makes a total of 1,916 sqm overall.¹⁶⁵ In both schemes, public realm outside the appeal site boundary would also be enhanced.

126. The elevated free to access public gardens in the schemes are a unique feature of the development. None of the existing tall buildings in the area has such a facility nor are any of the other proposals coming forward on St Thomas Street delivering one¹⁶⁶.

127. The criticism that the public realm would be too busy with people passing through to enable space to dwell is misplaced. Appropriate areas to dwell are illustrated on the Space Syntax diagrams in respect of both the 2018 and the 2021 schemes¹⁶⁷. The provision of shade which has also featured as a quibble about the external public realm (although there will be plenty of daylight and reasonable sunlight) is not a bad thing but a good thing. The fact that 54% of the public realm would be enclosed is by no means an unsatisfactory feature of the 2021 Scheme but, on the contrary, represents an entirely appropriate design response in the provision of an elegant side lit gallery 17m tall with echoes of the highest part of the concourse reaching up to the elevated platforms at London Bridge Station¹⁶⁸.

128. If any implications were being suggested¹⁶⁹ for the success of the public realm in the 2018 Scheme in the light of the decision in respect of the 2021 Scheme to remove from the latter much of the retail provision proposed in the former, you need not have a concern in that regard. As Mr Allford pointed out¹⁷⁰, a good developer

¹⁶⁵ All figures in this paragraph taken from Simon Allford in chief.

¹⁶⁶ Simon Allford and Chris Goddard in chief.

¹⁶⁷ See respectively slides 18-13 and 21-11 of the Space Syntax diagrams in INQ.17 presented by Mr Allford in chief.

¹⁶⁸ Simon Allford re-ex.

¹⁶⁹ In xx of Simon Allford by the Council.

¹⁷⁰ xx and re-ex.

might well decide to address any resulting issue by cross subsidy of uses so that public space was activated; and it would realistically be expected that activity and engagement would be curated over time by the management of the building¹⁷¹. In addition, there is affordable retail space in the 2018 scheme.

Sustainable transport benefits

129. The nadir of the Council's approach to valuing the public benefits of the schemes comes in Mr Glasgow's attribution of only limited weight¹⁷² to the facilitation of the creation of a new entrance to the underground station, the permeability provided by the new routes through the site and the relief provided to crowded footways on Borough High Street – all in contrast to the very substantial weighting which Mr Goddard identifies here¹⁷³. We submit that Mr Goddard's position is strongly to be preferred. The new access to the underground station is another unique and "*exceptional*"¹⁷⁴ public benefit of our proposals. The GLA Stage 1 Report [CDG.02] in respect of the 2018 Scheme "*strongly supported*"¹⁷⁵ the new station entrance and improved pedestrian access between Borough High Street and St Thomas Street. In CABE's response of 1st June 2018 [CDC.09] it was observed that "*the panel was impressed by the proposed creation of a new entrance to the underground station together with the new public space to activate Kings Head Yard and integrate it into the public realm. The proposed development promises to seize a unique opportunity to enhance connectivity and public realm in the area.*"

130. What is to explain the Council's reluctance to acknowledge the true worth of the benefit we are providing here? It seems to come down to the view expressed in Mr Glasgow's proof¹⁷⁶ that "*the principal beneficiaries of the new access would likely be those employed within the development*". This is not the case: see INQ-24. Some

¹⁷¹ xx and re-ex.

¹⁷² Proof paragraph 8.15.

¹⁷³ Proof paragraph 9.34.

¹⁷⁴ Chris Goddard proof at paragraph 9.21.

¹⁷⁵ At paragraph 86.

¹⁷⁶ Proof paragraph 8.15.

70% of the users of the new public realm would not be users of the new buildings. Mr Glasgow's 10/08/22 Note on the subject attempts to cast doubt on this although the input he queries has been agreed with TfL modellers [para. 12 of the Note] and importantly, Mr Glasgow's Note puts forward no alternative figure of his own. *On the evidence, the only conclusion open to be reached is that most of the users of the new public realm would not be people working in the buildings on the appeal site.* The entrance / exit isn't as busy as others at London Bridge but this mustn't be allowed to distract from the absolute numbers – we are talking about *thousands* of people using this entrance / exit in the busier hours. The further attempt to mount that case in xx of Mr Goddard by reference to a single bullet point in paragraph 23 of the TfL representations of 16th March 2022 [CDC.24] is also to be rejected. Quite apart from the fact that the large majority of the users of the new public realm would not be users of the new buildings, it is to be noted that paragraph 23 of TfL's representations begins by stating that *"the new additional entrance will have the following public and development benefits"* (our underlining).

Heritage benefits

131. The restoration of the Georgian Terrace represents a heritage benefit, and is agreed to be such in the Planning Statement of Common Ground.¹⁷⁷ It is another benefit which is unique to our proposals in comparison to the other tall buildings built or permitted along St Thomas Street. Its omission as such from Mr Glasgow's proof was surprising. His ascription of only limited weight¹⁷⁸ to it in the face of a requirement to give it great weight under paragraph 199 of the NPPF is not only surprising but simply wrong. This is another example of *"talking down the benefits"* as we referred to it in opening.

Cumulative weighting of benefits and overall balance

¹⁷⁷ At paragraphs 10.1.12 and 10.1.24.

¹⁷⁸ xx.

132. Mr Glasgow, oddly, provides you with no *cumulative* weighting of the benefits of our proposals and was not prepared to do so¹⁷⁹. Mr Goddard, on the other hand, does give such an assessment and attaches very substantial weight¹⁸⁰ to the cumulative set of public benefits.

133. We reiterate the submission that the combined benefits would comfortably outweigh any LTSH that you find either of the proposals would cause; and that the same also goes for any other harm you conclude would arise.

134. For the avoidance of doubt, we say “*any*” LTSH that you find either of our proposals would cause to make it clear, as did Mr Goddard¹⁸¹, that we contend that the balance should still be struck in our favour not just if you find that our assessment of the LTSH is correct but also if you are persuaded that the assessment of the Council and/or HE is to be preferred (or if your assessment is in between).

135. The striking of the balance in this way would be four square in line with the conclusion expressed in the GLA Stage 1 Report [CDG.02] in respect of the 2018 Scheme where the conclusion was reached, notwithstanding an assessment of LTSH to a number of heritage assets, that this harm would be outweighed by the wider public benefits associated with the scheme.

Accordance with the development plan

136. We have already rehearsed the issue of accordance with development plan policy in various sections of these submissions. We submit that the determination in respect of each of our schemes which would be in accordance with the development plan, when read as a whole, would be to allow the appeals.

¹⁷⁹ xx.

¹⁸⁰ Proof paragraph 10.7 and in chief.

¹⁸¹ In chief.

137. Should a different conclusion be reached, we would nevertheless submit that material considerations, namely the compelling package of public benefits, would (in the language of the second part of s.38(6) of the 2004 Act) indicate otherwise such that the appeals should be allowed.

Overall conclusion

138. Accordingly, we ask you to recommend and the Secretary of State to allow both appeals. We ask to be allowed to add our layer of history to this globally significant business district.

Christopher Katkowski QC

Alan Evans

10th August 2022

Kings Chambers