Ministry of Housing, Communities & Local Government

Our ref: APP/G6100/V/19/3225884
Your ref:

Georgia Thomson
Associate Director
Quod

By email only:
Georgie.thomson@quod.com

25 June 2020

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY NOTTING HILL GATE KCS LIMITED
LAND AT 43/45 AND 39/41 NOTTING HILL GATE AND 161-237 (ODD), KENSINGTON CHURCH STREET, LONDON W11 3LQ
APPLICATION REF: PP/17/05782

1. I am directed by the Secretary of State to say that consideration has been given to the report of Christina Downes BSc DipTP MRTPI, who held a public local inquiry on 5-8 and 12-15 November 2019 into your client's application for planning permission for the demolition of the existing buildings and redevelopment to provide office, residential and retail uses, and a flexible surgery / office use, across six buildings (ranging from ground plus 2 storeys to ground plus 17 storeys), together with landscaping to provide a new public square, ancillary parking and associated works, in accordance with application ref: PP/17/05782, dated 8 September 2017.

2. On 14 March 2019, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the Greater London Authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission should be granted, subject to the conditions.

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

Ministry of Housing, Communities & Local Government
Phil Barber, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 42853
Email: PCC@communities.gov.uk

Procedural matters

5. In May 2018 the application was called-in by the Mayor for his own determination. Following discussions the affordable housing offer was increased to 15 social rented units and 8 intermediate rented units. To accommodate this the homes were increased to 55 units with a change to the housing mix. The office floorspace was increased slightly and there was an increase in height of one storey on one of the buildings on Kensington Church Street and 2 storeys to the building on the western side of the tower. Minor alterations were made to the facades and internal layouts. However, as these changes were all fully considered at the public inquiry the Secretary of State does not consider that the changes raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this application and he is satisfied that no interests have thereby been prejudiced. The development description has therefore been amended as set out in IR2.

Matters arising since the close of the inquiry

6. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. In this case the development plan consists of the London Plan (2016) and the Royal Borough of Kensington and Chelsea Local Plan (2019) and proposals map (2019). The Secretary of State considers that relevant development plan policies include those set out at IR22-34.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), the National Design Guide (October 2019) as well as a number of non-statutory documents as set out in IR36-38.

10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, their settings and features of special architectural or historic interest which they possess.

<u>Emerging plan</u>

11. The emerging plan comprises the draft New London Plan, which is at an advanced stage. In December 2019, the Mayor issued the "Intend to Publish" version of the emerging New London Plan. After considering that Plan, on 13 March 2020 the Secretary of State for Housing, Communities and Local Government wrote to the Mayor making a series of eleven Directions to the Plan. The Mayor cannot publish the New London Plan until the

Directions have been incorporated, or until alternative changes to policy to address identified concerns have been agreed.

12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

13. New London Plan policies which are relevant to this case where changes must be made include policy D3 (Optimising site capacity through the design led approach). However, details of the way in which the Plan will deliver the aims set out in the Secretary of State's directions are not yet finalised. The Secretary of State therefore considers that these policies in the emerging Plan carry moderate weight. Other policies in the emerging Plan which are relevant to this case and where no modifications have been directed include D4 (Delivering good design), D9 (Tall buildings), policy H1 (Increasing housing supply), policy H6 (Affordable housing tenure) and policy HC1 (Heritage conservation and growth). The Secretary of State considers that these policies carry significant weight.

Main issue

Effect on the character and appearance of the area including through design considerations

14. The Secretary of State notes that there is little dispute that the application site is in poor condition and in need of regeneration (IR357) and that the main focus of dispute relates to the tower, albeit only one element of a significantly more extensive scheme (IR359). He has gone on to carefully consider the Inspector's analysis of the effect on the character and appearance of the area at IR357-395.

Whether this is an appropriate location for a tall building, and architecture and design

15. For the reasons given in IR360-366, the Secretary of State agrees with the Inspector's conclusion at IR366, that there is no policy impediment in principle to the redevelopment of Newcombe House with a tall landmark building of the height proposed, and further agrees that the important consideration is whether the design is of a sufficiently high quality and whether the impact on the surrounding townscape would overall be a positive one. For the reasons given in IR367-375, he agrees with the Inspector's conclusion that the slipped form of the tower, its articulated design and the consistency of materials would provide a balanced and well-considered composition. He also agrees with both this and the previous Inspector that the tower would be visually engaging, slender and elegant, albeit that from some directions the building, apart from the top part of the taller element, would appear bulkier and the two elements would appear less distinguishable (IR374).

Effect on townscape

16. For the reasons given in IR377-378, the Secretary of State agrees that the important matter when considering the effect on the townscape is whether the building would respond to its context in a positive way or not, and also agrees that from many places the tower would be seen its effect would be marginal due to the distances involved or the intervening buildings and green infrastructure (IR378).

17. For the reasons given in IR379-380, the Secretary of State agrees with the Inspector that the effect on the townscape from the north-west would be neutral (IR380). For the

reasons given in IR381-386 he agrees that there would be a minor adverse impact on the townscape of Hillgate Village (from the south west) through the increase in height and bulk in some closer views (IR386). For the reasons given in IR387-388 he agrees that from the north there would be a minor adverse impact on the townscape as the upper parts of the side and front of the taller corner building would rise significantly above and disrupt the existing roofline (IR388). For the reasons given in IR389-390, he agrees that the proposals would result in an enhancement to the streetscape of Notting Hill Gate (IR390). He further agrees that from the south the development would represent an improvement to the streetscape (IR391), and that there would be a neutral effect on the more distant townscape overall (IR392).

Conclusions on character and appearance

18. Overall the Secretary of State agrees with the Inspector's assessment at IR393-395 and IR521 that the proposal would be a high-quality development that would represent a considerable improvement on what currently occupies the site. Adverse impacts would be localised and minor in nature, and overall the development would integrate successfully and positively with its surroundings (IR393) with the effects being neutral to beneficial. He agrees with the Inspector's assessment that the development would comply with policies 7.4, 7.5, 7.6 and 7.7 in the London Plan and policies CV11, CL1 and CL2 in the 2019 Local Plan, but that given there would be some neutral effects and minor harm, albeit of a limited nature, he agrees there would be some conflict with policies CL11 and CL12.

<u>Heritage - the effect of the proposed development on the settings of nearby heritage assets, including the conservation areas and listed buildings</u>

19. The application site lies within the setting of a number of heritage assets, including several conservation areas, listed buildings and a Registered Park and Garden. The Secretary has carefully considered the Inspector's analysis of the effect of the development on these various heritage assets at IR396- 437. He agrees with the approach to consideration of the heritage assets which is set out in IR396-401.

Conservation Areas

20. For the reasons given in IR403-404 and IR407-408, the Secretary of State agrees with the Inspector that the significance of the Kensington Conservation Area as a whole and the Ladbrooke Conservation Area overall would not be harmed (IR404, IR408). For the reasons given in IR405-406, IR409-411 and 413-414, he agrees with the Inspector that there would be less than substantial harm to the significance of the Pembridge Conservation Area, at the lower end of the spectrum (IR406); the Kensington Palace Conservation Area, at the lower end of the spectrum (IR412); and Royal Parks Conservation Area, at the lowest end of the spectrum (IR414).

Listed buildings

21. For the reasons given in IR416-417 the Secretary of State agrees with the Inspector that in respect of 1-5 Pembridge Gardens, the harm to significance would be minor on the scale of less than substantial harm (IR417). For the reasons given at IR418-419, he agrees with the Inspector who did not find that the spacious setting of 19 and 20 Kensington Palace Gardens would be eroded or that the effect on the skyline would affect the significance of these two high quality listed houses (IR419). For the reasons given at IR420-421 and IR424-425, he agrees with the Inspector who found that the significance of 10 and 11 Pembridge Square, Linden Gardens Mews Arch and the

Coronet Theatre would be preserved (IR420, IR421 and IR425). For the reasons given at IR422-423, he agrees with the Inspector that the heritage value of Notting Hill Gate Underground Station would be better revealed, and an enhancement to significance would ensue (IR423).

Kensington Palace and Kensington Gardens Registered Park and Garden

22. In respect of Kensington Palace, the Inspector found from a limited number of viewpoints, and especially during the winter months, the tower would be more evident on the skyline and through gaps in the vegetation and this would fail to preserve the setting of the Palace. For the Kensington Palace Gardens she found it would diminish slightly the experience of being in a peaceful green space but mainly in the winter months (both at IR433). Overall and for the reasons given at IR426-433, the Secretary of State agrees with the Inspector's conclusion that there would be less than substantial harm to the significance of Kensington Palace and Kensington Gardens Registered Park and Garden, albeit of a relatively minor nature (also IR433).

Conclusions on heritage

23. For the reasons given at IR434-437, the Secretary of State agrees with the Inspector that great weight should be given to the conservation of heritage assets, and that the balancing exercise in paragraph 196 of the Framework needs to be undertaken. He has done so in paragraph 42 below. In the light of his findings there, he agrees with the Inspector that the proposal is in accordance with policies CL3 and CL4 of the 2019 Local Plan (IR437). However, as there is no reference to balancing harm with public benefits in policy 7.8 of the London Plan, which states that development affecting heritage assets and their settings should conserve their significance, he considers that the proposal is in conflict with that policy.

<u>The benefits that would arise from the proposed development and the weight to be attributed to them</u>

Housing

24. The Secretary of State notes that there is no dispute that the Council has a five-year supply of deliverable housing sites, but agrees with the Inspector at IR442 that the evidence suggests the rate of housing delivery has not been very good over the last few years. For the reasons given at IR442-444 the Secretary of State agrees with the Inspector that the provision of 55 residential units attract very significant weight (IR443).

Affordable housing

25. For the reasons given at IR445-465, the Secretary of State agrees with the Inspector that the affordable housing that would be provided on the site would be a benefit that should be given very substantial weight (IR463), noting that the Council has a poor record of affordable housing delivery against a very large need (IR447). He considers the proposals comply with the development plan in this respect.

26. In respect of the Supplemental Agreement, the Secretary of State considers that a late stage review is supported by the 2019 Local Plan and the Mayor's *Affordable Housing and Viability Supplementary Planning Guidance*. If that review concluded that a further contribution should be made, there is no reason in principle why the Supplemental Royal Borough of Kensington and Chelsea Affordable Housing units purchased pursuant to part

2 of Schedule 2 to the Supplemental Agreement should not be taken in account offsetting the further contribution.

27. Nonetheless, the Secretary of State notes that the Applicant is not obligated by the Supplemental Agreement to purchase any supplemental off-site dwellings in the Borough and he does not regard the relevant provisions as necessary to make the development acceptable in planning terms. The Secretary of State also agrees with the Inspector that the relevant provisions do not comply with Regulation 122 of the CIL Regulations since the trigger for purchasing additional dwellings within the Borough precedes the late-stage review and may not be necessary and justified by the review (IR459). Unlike the Inspector, the Secretary of State has not taken these provisions into account in the determination of the application. However, given the Secretary of State's decision on the application, he does not consider that it is necessary to issue a 'minded to grant decision' (IR465, IR497).

28. In respect of off-site nomination rights contained with Part 1 of Schedule 1 of the Supplemental Agreement, the Secretary of State agrees with the Inspector that the obligations would not comply with Regulation 122 of the CIL Regulations (IR461). Unlike the Inspector, the Secretary of State has not taken those obligations into account in determining the application. This does not affect the Secretary of State's overall decision.

29. In reaching his overall conclusions on this matter, the Secretary of State has taken into account the Inspector's analysis at IR464-465. For the reasons set out above he agrees that neither the supplemental off-site provision nor the off-site nomination rights would comply with Regulation 122 in the CIL Regulations and they do not therefore constitute a reason for granting planning permission. Overall, he has concluded that the Applicant's affordable housing proposals contained within the main S106 Agreement comply with the development plan and that very substantial weight attaches to the provision of affordable housing.

Step-free and stair-free access to the underground station, Medical Centre and Farmer's Market

30. The Secretary of State has carefully considered the Inspector's analysis of the benefits afforded by step-free and stair-free access to the underground station at IR466-471, and agrees with the Inspector for the reasons given that this benefit attracts very significant weight in the planning balance (IR471). For the reasons given at IR472-478 he agrees that the provision of the Medical Centre would be a very important public benefit to which substantial weight should be attributed (IR475), and that the re-provision of the Farmer's Market to a far higher standard is also a benefit of very significant weight (IR478).

Other benefits

31. For the reasons given at IR479-486, the Secretary of State agrees with the Inspector's conclusions that the provision of offices (IR480), retail provision (IR482) and new public square and pedestrian links (IR486) each carry very significant weight.

Other matters

32. IR466 confirms the site has the highest Public Transport Accessibility Level (PTAL6b). As set out at IR489 there are currently 61 spaces and the proposal has 25 car parking spaces for residential use, with no parking space provision for the office or retail uses. The Inspector considers the parking in accordance with the adopted development plan

policies and notes that that the Greater London Authority and the Council's Highway Officers are content with the proposed parking provision (all at IR489). However, the Secretary of State considers this level of provision would conflict with the Direction issued to the Mayor on 13 March in respect of the emerging New London Plan, which would require the development to be car free. Nevertheless, given compliance with adopted development plan policies, overall the Secretary of State considers this relatively small breach against emerging policy should carry only limited weight against the proposal.

33. The Secretary of State agrees with the Inspector's conclusions on the precedent effect of the scheme (IR488), the effect on living conditions for nearby residents (IR490) and the implications for the privacy and security of nearby diplomatic residences and embassies (IR491).

Planning conditions

34. The Secretary of State has given consideration to the Inspector's analysis at IR306-331, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

35. The Secretary of State has had regard to the Inspector's analysis at IR332-351 and IR494-517, the planning obligation contained within two fully executed Deeds submitted with the planning application (the S106 Agreement and the Supplemental Agreement), both of which are dated 29 November 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended.

36. The Secretary of State notes that the S106 Agreement contains a 'blue pencil' clause, whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with the CIL regulations (IR497). For the reasons given in IR499-515, he agrees with the Inspector that the obligations listed at IR517 do not meet the statutory tests in paragraph 122 of the CIL regulations or the policy tests in paragraph 56 of the Framework. He has therefore not taken them into account.

37. He further notes that the Supplemental Agreement does not contain a blue pencil clause. He has addressed the obligations relating to supplemental off-site provision of affordable housing and off-site nomination rights in paragraphs 26-29 above.

38. The Secretary of State agrees with the Inspector that the remaining obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework, and he has taken them into account in reaching his decision.

Planning balance and overall conclusion

39. For the reasons given above, the Secretary of State considers that although there would some conflict with Local Plan policies CL11 and CL12 in the light of minor harm to character to character and appearance, and conflict with London Plan policy 7.8, the proposal is in compliance with policies on housing, local character, design, tall buildings and the vision for Notting Hill Gate, and is line with the development plan when considered overall. He has gone on to consider whether there are material considerations

which indicate that the proposal should be determined other than in accordance with the development plan.

40. The provision of housing attracts very significant weight and the Secretary of State concludes that the provision of affordable housing overall carries very substantial weight. The provision of office accommodation and new retail units both attract very significant weight. Improvements to the public realm, the improved Farmers' Market and improvements to the underground station access each also carry very significant weight. The provision of the new Medical Centre carries substantial weight.

41. The Secretary of State has found that there would be a minor breach of parking provision when considering policy in the emerging London Plan and attaches limited weight to this breach. The Secretary of State has identified 'less than substantial' harm to the significance of the Pembridge Conservation, the Kensington Palace Conservation Area, the Royal Parks Conservation Area, listed buildings at 1-5 Pembridge Gardens, together with the Kensington Palace and Kensington Gardens Registered Park and Gardens, and in the light of his s.66 duty and paragraph 193 of the Framework, he attributes considerable weight to this harm.

42. The Secretary of State has gone on to carry out the balancing test set out at paragraph 196 of the Framework. The public benefits of this proposal are considerable, as summarised in paragraph 40 above. He agrees with the Inspector at IR520 that the package of public benefits is of such importance that it would outweigh the harm that would arise to the significance of the heritage assets. He therefore considers that the balancing exercise under paragraph 196 of the Framework is favourable to the proposal.

43. Overall the Secretary of State considers that given that the proposal is in overall conformity with the development plan, the material considerations in this case indicate a decision in line with the development plan – i.e. a grant of permission.

44. The Secretary of State therefore concludes that planning permission should be granted, subject to the conditions in Annex B.

Formal decision

45. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's application and grants planning permission subject to the conditions set out in Annex B of this decision letter for planning permission for the demolition of the existing buildings and redevelopment to provide office, 55 residential units, retail uses and a flexible surgery/ office use, across six buildings (ranging from ground plus 2 storeys to ground plus 17 storeys), with two-storey basement together with landscaping to provide a new public square, ancillary parking and associated works, in accordance with application ref: PP/17/05782, dated 8 September 2017, as amended as set out in paragraph 5 above and IR2.

46. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

47. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an

application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

48. A copy of this letter has been sent to the Greater London Authority and the Royal Borough of Kensington and Chelsea (Rule 6 party), and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Phil Barber
Authorised by the Secretary of State to sign in that behalf

Annex A - SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Chris McErlane, Director Notting Hill Gate KCS Limited	28 April 2020

Annex B List of conditions

1. The development hereby permitted shall be commenced within three years from the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the approved plans in Annex Four.

3. Notwithstanding the details shown on the submitted plans, no development above ground floor slab level shall be carried out until:

   a. Details and samples of the materials to be used for the external surfaces of the buildings and hard surfaced areas shall be submitted to and approved in writing by the local planning authority; and

   b. Sample panels shall be constructed on site of building materials and hard surfacing, to be inspected and approved in writing by the local planning authority.

   c. Details of the following features and elements of the scheme shall be submitted to and approved in writing by the local planning authority:

      - Brick bonding and brick and cladding detailing shown on annotated plans at a scale of not less than 1:20;
      - External windows, balconies, winter gardens, doors, screens, louvres and balustrading shown on annotated plans at a scale of not less than 1:10;
      - Depth of window reveals, colonnades and soffits shown on annotated plans at a scale of not less than 1:20;
      - Rainwater goods shown on annotated plans at a scale of not less than 1:10;
      - External plant;

- Shop fronts, entrances and openings shown on annotated plans at a scale of not less than 1:20.

  The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby permitted approved and thereafter retained.

4. Prior to the first occupation of the development hereby permitted, a Building and Site Management Strategy (BSMS) shall be submitted to and approved in writing by the local planning authority.

   The BSMS shall include:

   a. Details of security measures including the location of the security/ concierge office and the location and details of CCTV and security lighting, including an assessment of the impact of any such lighting on the surrounding residential environment;

   b. Details of the different controlled areas of the development and details of those occupiers who will have access to each of the identified zones;

   c. Details of the points of access and how access will be controlled;

   d. Details of access arrangements for those with disabilities;

   e. Details of refuse and recycling storage and collection;

   f. Measures and procedures to discourage antisocial behaviour and crime; and

   g. A scheme for the maintenance of the external fabric of the building.

   The site shall be managed in accordance with the approved BSMS.

5. Prior to the commencement of development (other than site investigations, demolition, site clearance and groundworks), a drainage strategy shall be submitted to and approved in writing by the local planning authority.

   The drainage strategy shall include:

   a. A detailed analysis of surface water run-off (ensuring that surface water run-off is managed as close to its source as possible) and the attenuation volume (to achieve either greenfield run-off rates or as close to greenfield run-off rates as possible);

   b. Details of the proposed sustainable drainage system types, their location, appearance, attenuation capacity, specification (including section/profile drawings), structural integrity, construction, operation, access, and maintenance;

   c. Drainage plans to show how surface water run-off will be conveyed to the sustainable drainage systems and, if necessary, any connections to the sewer system. Evidence shall also be included to demonstrate that the off-site combined sewers are suitable to receive the runoff; and

   d. A management plan confirming routine maintenance tasks for all drainage components, including the sustainable drainage system, to demonstrate how it is to be maintained for the lifetime of the development.

No building hereby permitted shall be occupied until the drainage strategy for the site has been fully completed in accordance with the approved details. The drainage strategy shall be managed and maintained thereafter in accordance with the approved details.

6. No development above ground floor slab level shall be carried out until a Landscaping and Public Realm Scheme (LPRS) for the public and private areas in the development has been submitted to and approved in writing by the local planning authority.

   The LPRS shall include:

   a. Details of children's play space equipment and structures;

   b. A statement setting out how the landscape and public realm strategy provides for disabled access, ensuring equality of access for all;

   c. A wayfinding and signage strategy;

   d. Confirmation that any materials for the areas maintained by the local planning authority are in compliance with its palate of materials;

   e. A strategy for management and maintenance for the lifetime of the development;

   All landscaping shall be completed in accordance with the approved LPRS, the approved landscaping drawings, the Landscaping Strategy, dated September 2017 (attached to the Design and Access Statement) and the Landscaping Strategy, dated July 2018 (attached to the Design and Access Statement Addendum), during the first planting season following practical completion of the development.

   The landscaping and tree planting shall have a two-year maintenance and watering provision following planting. Any trees or shrubs which die within five years of completion of the development shall be replaced with the same species, unless otherwise agreed in writing by the local planning authority.

7. Details of the type of secure and/ or enclosed cycle parking spaces for the occupiers and visitors of the residential units, commercial units, retail units and doctors' surgery shall be submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to occupation of the relevant building, and thereafter retained.

8. Before any of the office accommodation is first occupied an Office Travel Plan shall be submitted to and approved in writing by the local planning authority. The Office Travel Plan shall be prepared in accordance with the principles of the Interim Office Travel Plan, dated September 2017. The Office Travel Plan shall be reviewed on each of the first, third and fifth anniversary of the first occupation of the offices and then at five-year intervals for the lifetime of the development. The office use shall be carried out in accordance with the approved Office Travel Plan.

9. The public square shall be accessible only to emergency vehicles, vehicles required for maintenance of the development, and vehicles necessary for the set-up and breakdown of events within the public square. The public square shall not be used by any other vehicles.

10. Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10 dB below the background noise levels when measured from the nearest sensitive receptors. All plant shall be installed in

accordance with the approved plans. No further fans, louvres, ducts or other external plant shall be installed.

11. No development above ground floor slab level shall be carried out until details of the built fabric within the scheme has been submitted to and approved in writing by the local planning authority.

    The submitted details shall ensure that:

    a. The residential units are insulated against external noise, which achieves internal noise levels that do not exceed the guidelines values contained in table 4 of BS 8233:2014: *Guidance on noise insulation and sound reduction for buildings*;

    b. The residential units are insulated by noise insulation measures to provide effective resistance to the transmission of airborne and impact sound horizontally and/or vertically between the residential units and the non-residential uses by at least 10 dB above the criteria in Approved Document E of the Building Regulations.

    The approved measures shall be installed prior to the first occupation of the residential units and thereafter retained.

12. All non-residential uses shall meet the following requirements under BREEAM UK New Construction 2014 (or such equivalent standard that replaces this):

    a. Within 6 months of work starting on site, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Interim (Design Stage) Certificate, issued by the Building Research Establishment (BRE), shall be submitted to and approved in writing by the local planning authority to show that a minimum 'Excellent' rating will be achieved.

    Within 3 months of first occupation of the building, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.

    Prior to commencement of the fit-out of the building, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Interim (Design Stage) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to show that a minimum 'Excellent' rating will be achieved.

    Within 6 months of first occupation, a BREEAM A Refurbishment and Fit-out 2014 Parts 3 and 4 Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be maintained for the lifetime of the development.

13. The development shall be built in accordance with the submitted Energy Strategy, dated September 2017 and the Energy Strategy Addendum dated July 2018 and the measures shall be maintained thereafter in accordance with the manufacturer's instructions.

14. A minimum of 10% of all dwellings shall be built to requirement M4(3) wheelchair user dwellings contained within Part M volume 1 of the Building Regulations, as identified on the approved plans and shall be retained thereafter. All other dwellings shall be built to requirement M4(2) accessible and adaptable dwellings contained within Part M volume 1 of the Building Regulations and shall be retained thereafter.

15. Prior to the first occupation of the development the mitigation measures identified in section 33 of the *Pedestrian Level Wind Microclimate Assessment* by RWDI dated 6 September 2017 and the Addendum dated July 2018, shall be implemented in full and thereafter retained.

16. Details of the ventilation system, designed to supply clean air into the residential units and residential amenity space that does not exceed the national Air Quality Objectives for Nitrogen Dioxide (NO2) and Particulate Matter (PM10), shall be submitted to and approved in writing by the local planning authority before any residential unit is first occupied.

    The ventilation system shall be retained in accordance with the submitted details and maintained in accordance with the manufacturer's instructions. Any replacement system shall also be designed to meet the agreed standards.

17. Prior to the first occupation of the development details of tests undertaken on the installed boiler and CHP systems shall be submitted to and approved in writing by the local planning authority. The tests shall demonstrate that the installed boiler and CHP systems meet, or improve on, the emissions rates and other parameters set out in the *Air Quality Report*, dated July 2018. The boiler and CHP systems shall be maintained thereafter to ensure that the emissions rates continue as approved for the lifetime of the development.

18. Prior to the occupation of the relevant building, details of the ecological enhancements as outlined in the *Initial Ecological Appraisal and Bat Survey Report*, dated September 2017, shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out in full and thereafter retained.

19. Prior to the commencement of works (excluding site investigations, demolition, site clearance and ground works):
    a. A contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the local planning authority. Should the Phase 1 report, recommend that a Phase 2 site investigation is required, then this shall be submitted to and approved in writing by the local planning authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report shall include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary; and

    b. If required, a scheme for decontamination of the site shall be submitted to and approved in writing by the local planning authority prior to first occupation of the development.

    c. The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination and shall submit appropriate amendments to the scheme for decontamination to the local planning authority

for approval in writing before any work on that aspect of the development continues.

d. The agreed scheme for decontamination referred to in clauses b) and c) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the local planning authority for approval.

20. No development shall commence until full particulars of the methods by which the retained street trees adjacent to the site on Kensington Church Street are to be protected during the preparation, demolition and construction, landscaping and other operations on the site including the erection of hoardings, site cabins, or other temporary structures, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

21. No piling work shall take place until a piling method statement has been submitted to and approved in writing by the local planning authority. This shall include details of the depth and type of piling, the methodology by which the piling will be carried out, measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure and the programme for the piling works. The development shall be carried out in accordance with the terms of the approved piling method statement.

22. No development shall take place until a Demolition Traffic Management Plan (DTMP) has been submitted to and approved in writing by the local planning authority. The DTMP shall include:

    a. Routeing of demolition vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;

    b. access arrangements to the site;

    c. the estimated number and type of vehicles per day/week;

    d. details of any vehicle holding area;

    e. details of the vehicle call-up procedure

    f. estimates for the number and type of parking suspensions that will be required;

    g. details of any diversion or other disruption to the public highway during preparation and demolition work associated with the development;

    h. work programme and/or timescale for each phase of preparation and demolition work associated with the development;

    i. details of measures to protect pedestrians and other highway users from demolition activities that affect the highway; and

    j. where works cannot be contained wholly within the site, a plan shall be submitted showing the site layout on the highway including the extent of hoardings, position of nearby trees in the highway, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

    The development shall be carried out in accordance with the approved DTMP. A one-page summary of the requirements of the approved DTMP shall be affixed to the

frontage of the site for the duration of the works at a location where it can be read by members of the public.

23. No excavation or construction works shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:

    a. Routeing of excavation and construction vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;

    b. access arrangements to the site;

    c. the estimated number and type of vehicles per day/week;

    d. details of any vehicle holding area;

    e. details of the vehicle call-up procedure

    f. estimates for the number and type of parking suspensions that will be required;

    g. details of any diversion or other disruption to the public highway during the excavation and preparation work associated with the development;

    h. work programme and/or timescale for each phase of the excavation and construction work associated with the development;

    i. details of measures to protect pedestrians and other highway users from construction activities that affect the highway; and

    j. where works cannot be contained wholly within the site, a plan shall be submitted showing the site layout on the highway including the extent of hoardings, position of nearby trees in the highway, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

    The development shall be carried out in accordance with the approved CTMP. A one-page summary of the requirements of the approved CTMP shall be affixed to the frontage of the site for the duration of the works at a location where it can be read by members of the public.

24. No development shall commence until such time as the lead contractor of the site is signed to the Considerate Constructors Scheme and its published Code of Considerate Practice.

    The following details shall be clearly displayed on the site so that they can be easily read by passing members of the public and shall be retained on display throughout the duration of the construction works:

    a. membership details;

    b. contact details;

    c. working hours as stipulated under the Control of Pollution Act 1974;

    d. Certificate of Compliance.

25. No development shall commence until a Code of Construction Checklist and Site Construction Management Plan have been submitted to and approved in writing by the local planning authority.

26. Prior to the first occupation of the development, a completed Water Efficiency Calculator for New Dwellings shall be submitted to and approved in writing by the local planning authority. This shall show that internal potable water consumption for each of the dwellings will be limited to 105 litres per person per day (excluding an allowance of up to 5 litres for external water consumption) based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations. The development shall be carried out in accordance with the approved water efficiency details, which shall be retained thereafter for the lifetime of the development.

27. The development shall be carried out in accordance with the Fire Safety Strategy, dated September 2017, and the Fire Safety Strategy Addendum, dated July 2018, and the measures within these documents shall be retained thereafter for the lifetime of the development.

28. All ground floor commercial uses and events in the public square hereby approved shall not operate between 23:00 hours and 07:00 hours the following day.

29. Prior to the commencement of above ground works on each building, details of the ventilation and extraction equipment of the A1 and/ or A3 uses in that building, including ducting, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the A1 and/ or A3 uses in that building are commenced. The approved ventilation and extraction equipment shall be retained thereafter and maintained in accordance with the manufacturer's instructions.

30. A Delivery and Servicing Plan (DSP) for the commercial units, shall be submitted to and approved in writing by the local planning authority. The DSP shall cover the following matters:

    a. Deliveries and collections including vehicle sizes and number of trips;

    b. Servicing trips (including for maintenance);

    c. Monitoring and review of operations.

    No commercial unit shall be first occupied until the approved DSP is in place and its approved terms shall remain operable for the lifetime of the development.

31. A Delivery and Servicing Plan (DSP) for the residential part of the development shall be submitted to and approved in writing by the local planning authority. The DSP shall cover the following matters:

    a. Details of the management and receipt of deliveries and collections;

    b. Servicing trips (including for maintenance);

    c. Monitoring and review of operations.

    No dwelling shall be first occupied until the approved DSP is in place and its approved terms shall remain operable for the lifetime of the development.

32. Prior to the first occupation of any residential unit or the doctors' surgery, a Car Park Management Plan (CPMP) shall be submitted to and approved in writing by the local planning authority. The CPMP shall include the following:

    a. Details of the layout;

b. The proposed allocation of and arrangements for the management of parking spaces, including disabled parking bays serving the residential development;

c. Details of the provision of Electric Vehicle Charging Points, including both active and passive provision for both the residential and office parking areas in accordance with adopted London Plan Guidance;

d. Details of the controls of means of entry to the car park, and a proactive regime of car lift maintenance; and

e. The safety and security measures to be incorporated within the development to ensure the safety of car and cycle parking areas.

The car park shall be provided and managed in accordance with the approved CPMP for the lifetime of the development.

33. Prior to the construction of above ground works on each building, a scheme for the provision of communal or centralised satellite and television reception equipment and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and timetable. The equipment shall thereafter be retained and maintained in accordance with the manufacturer's instructions and shall be made available for use by all occupiers of the development.

34. No above ground development shall be carried out (excluding demolition) until an assessment of the interference to existing television, radio and other telecommunications services has been submitted to and approved in writing by the local planning authority. The assessment shall include the method and results of surveys carried out, the measures to be taken to rectify any identified problems and a timetable for implementation. The development shall be carried out in accordance with the approved assessment and timetable.

35. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any future amendment to or re-enactment of that Order, no satellite dishes, shall be installed on the approved buildings other than as required by Condition 33.

36. No water tanks, plant, lift rooms or other structures, other than those shown on the approved drawings and those approved by Condition 5, shall be erected upon the roofs of the approved buildings.

37. The areas of flat roof on Buildings WPB 1 and WPB 2, adjacent to the western site boundary at second floor level, shall only be used as an emergency escape route or for maintenance purposes and not as a roof terrace or amenity space at any time.

38. Prior to commencement of the development (other than site investigations) a Stage 2 (detailed design) safety audit of the junction of Newcombe Street and Kensington Place shall be undertaken and submitted to and approved in writing by the local planning authority.

39. No part of the development shall be occupied until a positively pumped device has been installed within the development to prevent sewer water flooding to the basement levels.

40. No development shall commence until:

a. A Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MIStructE) has been appointed for the duration of the building works and their appointment confirmed in writing to the local planning authority; and

b. The name and contact details of the person supervising engineering and construction on site for the duration of building works have been confirmed in writing to the local planning authority.

In the event that either the appointed Engineer or appointed Supervisor cease to perform that role for whatever reason before the construction works are completed, those works shall cease until a replacement chartered engineer of the afore-described qualifications or replacement supervisor has been appointed to supervise their completion and their appointment confirmed in writing to the local planning authority. At no time shall any construction work take place unless an engineer and supervisor are at that time currently appointed and their appointment has been notified to the local planning authority in accordance with this condition

41. The application architects, or other such architects as approved in writing by the local planning authority, acting reasonably, shall be retained for the detailed design phase of the project.

42. The units annotated as "retail" on Drawing Nos: P-SITE-AA(0)011A and P-SITE-AA(0-)100A shall not be occupied by tenants that operate more than three other retail units in the Royal Borough of Kensington and Chelsea at the time of first occupation by the relevant tenant.

43. The units annotated as "retail" on drawing nos. P-SITE-AA(0-)011A and P-SITE-AA(0-)100A shall be constructed in accordance with the approved drawings and shall not be amalgamated at ground floor level thereafter.

44. The units annotated as "retail" on drawing nos. P-SITE-AA(0-)011 A and PSITE-AA(0-)100A shall be retained for purposes falling within Class A1 or Class A3 of the Town and Country Planning (Use Classes) Order 1987 only. At any time, a minimum of 10 such units shall be used for purposes falling within Class A1.

45. Notwithstanding condition 2, the areas annotated as 'Flexible Surgery/ Office' at fourth, fifth and sixth floor levels on approved drawings P-SITE-AA(0-)104 A, P-SITE-AA(0-)105 A and P-SITE-AA(0-)114, shall only be used as a health facility and not for any other use which falls within Class D1 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 and any subsequent amendments to the Use Classes Order.

End of conditions 1-45

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date: 26 March 2020

TOWN AND COUNTRY PLANNING ACTI 1990

GREATER LONDON AUTHORITY

Application made by

NOTTING HILL GATE KCS LIMITED

Inquiry Held on 5-8 and 12-15 November 2019
Site Visits Held on 6 November 2019 (unaccompanied) and 26 November (accompanied)

43/45 and 39/41 Notting Hill Gate and 161-237 (odd), Kensington Church Street, London W11 3LQ

File Ref: APP/G6100/V/19/3225884

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ABBREVIATIONS LIST

Term	Acronym
Building Height in the Royal Borough Supplementary Planning Document	Building Height SPD
Community Infrastructure Levy Regulations	CIL Regulations
Council of the Royal Borough of Kensington and Chelsea	The Council
Greater London Authority	GLA
Hillgate Village Residents' Association	HVRA
Main Legal Agreement	S106 Agreement
National Planning Policy Framework	The Framework
Notting Hill Gate KCS Limited	the Applicant
Notting Hill Gate Supplementary Planning Document	NHG SPD
Notting Hill Gate Underground Station	The underground station
Planning Contributions Supplementary Planning Document	Contributions SPD
Public Transport Accessibility Level	PTAL
Royal Borough of Kensington and Chelsea Consolidated Local Plan	2015 Local Plan
Royal Borough of Kensington and Chelsea Local Plan (September 2019)	2019 Local Plan
Statement of Common Ground	SCG
Supplemental Legal Agreement	SA
Transport for London	TfL

File Ref: APP/G6100/V/19/3225884
43/45 and 39/41 Notting Hill Gate and 161-237 (odd), Kensington Church Street, London W11 3LQ

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 14 March 2019.
- The application is made by Notting Hill Gate KCS Limited to the Greater London Authority.
- The application Ref PP/17/05782 is dated 8 September 2017.
- The development proposed is demolition of the existing buildings and redevelopment to provide office, residential and retail uses, and a flexible surgery/ office use, across six buildings (ranging from ground plus 2 storeys to ground plus 17 storeys), together with landscaping to provide a new public square, ancillary parking and associated works.
- The reason given for making the direction was that the types of issues raised led the Secretary of State to conclude that in the light of his policy he should determine the application himself.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - *Policies in the National Planning Policy Framework on delivering a sufficient supply of homes;*
  - *Policies in the National Planning Policy Framework on achieving well designed places;*
  - *Policies in the National Planning Policy Framework on conserving and enhancing the historic environment;*
  - *Any other matters the Inspector considers relevant*.

Summary of Recommendation: That planning permission be granted.

PROCEDURAL MATTERS

1. The planning application was originally submitted by Notting Hill Gate KCS Limited (the Applicant) to the Council of the Royal Borough of Kensington and Chelsea (the Council) as local planning authority. However, the Mayor of London issued a direction under the powers conferred to him by section 2A of the Town and Country Planning Act 1990 and the Greater London Authority (GLA) became the local planning authority for the purposes of determining the application. At the inquiry, the Council was a Rule 6 Party.

2. Following negotiations with the GLA, amendments were made to the scheme and these are considered further in paragraph 17 below. The main parties have agreed that the description of development is now as follows:

   "*demolition of the existing buildings and redevelopment to provide office, 55 residential units, retail uses and a flexible surgery/ office use, across six buildings (ranging from ground plus 2 storeys to ground plus 17 storeys), with 2 storey basement together with landscaping to provide a new public square, ancillary parking and associated works*".

3. Further public consultation was carried out and the background application documents were amended where relevant to take account of the revisions.

4. There is an overarching statement of common ground (SCG) between all three main parties. In addition, there are topic specific SCG on built heritage and viability/ affordable housing between the Applicant and the GLA (***Documents CD 4.4-4.9***).

5. There was criticism of the Applicant's visual representations by objectors, especially in respect of the images relating to impacts from Kensington Gardens in the vicinity of Kensington Palace. At the inquiry I therefore requested additional visual representations of the winter view with the trees bare of their leaves to be prepared. This work was undertaken, and all parties were given time to absorb this additional information and confirm that they felt able to address it. I am therefore satisfied that no prejudice has been caused to anyone and that these representations are helpful in understanding impacts throughout the year (***Document INQ 19***).

6. There are two submitted Deeds, a Main Agreement (S106 Agreement) and a Supplemental Agreement (SA). I allowed a further period after the close of the inquiry for the fully executed documents to be submitted. This happened on 2 December 2019 and the legal documents will be considered later in my Report. On the final sitting day of the inquiry, the Council provided further information on its housebuilding programme and I allowed a short time thereafter for responses to be submitted. The results of the 2019 Housing Delivery Test was published on 13 February 2020 and further representations were submitted by the Applicant and the Council (***Documents INQ 29; INQ 37-39; INQ 43***).

THE SITE AND SURROUNDINGS

7. A description of the site that is agreed by all main parties is in the overarching SCG (***Document CD 4.4, section 2***). There are useful maps showing the relationship of the site to the adjoining conservation areas, listed buildings and Kensington Gardens (***Documents POE 1, section 3; POE 4, appendix 1***). Aerial photographs are helpful in showing the site and its context (D***ocument POE 10, Figures 16, 19***). There are also panoramic photographs taken from the top of the existing Newcombe House, which give a feel of its relationship with its surroundings (***Document POE 10, page 14***). There are useful photographs of the existing site (***Documents CD 1.10, pages 39-51, POE 14, plates 11, 12, 31, 32***). There are photographs of the surrounding area in various parts of the evidence, including ***Document POE 11***. The various conservation area appraisals also provide useful photographs and maps (***Documents CD 5.6-CD 5.13***).

The main points are:

8. The application relates to some 0.5 hectares of land at the corner of Notting Hill Gate and Kensington Church Street. It is adjacent to the Notting Hill Gate Underground Station (the underground station), which is served by the Central, District and Circle lines. The site comprises a number of linked blocks with a car park behind. This can accommodate about 61 cars and is used on Saturday mornings for a farmers' market. The highest building is Newcombe House on the northern part of the site, which is 12 storeys and now largely vacant. This is an early 1960's pre-cast concrete slab construction that stands behind a podium and is reached from street level by concrete stairs. Green netting hangs from each side elevation for safety reasons. The building is set back, which has resulted in a

wide pavement space along this part of the Notting Hill Gate frontage with planting boxes, a large plane tree and a bench around its trunk.

9. Along the Kensington Church Street frontage there is a one and 2 storey linear block comprising shops and restaurants. At the southern end on the corner with Kensington Place is a 5 storey block known as Royston Court. This has retail uses on the ground floor with residential accommodation above. This is now vacant but was previously used as 20 bedsits for rough sleepers.

10. Newcombe Street enters the site from its southern side off its junction with Kensington Place. Along one frontage is the rear of Royston Court and the various commercial units and on the other is the side wall of the Grade II listed Bethesda Baptist Church and the car park. The latter occupies the whole central section of the site and is bounded on its western side by a wall topped with railings that form the side of the listed underground station. The dome of the roof above the upper platforms rises beyond. Immediately to the north of this is London Underground Limited's large red brick substation, some 3 storeys in height, whose blank elevations face onto Jameson Street and Uxbridge Street. There is a road beneath Newcombe House onto Uxbridge Street and from the undercroft there are pedestrian steps and a passageway that leads onto the Notting Hill Gate frontage. There is no dispute that the site and its buildings are in poor condition.

11. The site is within the Notting Hill Gate District Centre, which typically comprises 3-6 storey parades with retail and other commercial uses at ground floor and residential and office uses above. There is a mix of traditional Victorian architecture and 1960's buildings. To the east and west of Newcombe House are Astley House and David Game House, which are two other examples of development from this era. In the case of the latter there has been recent refurbishment and the addition of an additional fourth floor. Campden Hill Towers is another building constructed at this time and is similar in form to Newcombe House although it is 18 storeys in height and at right angles to the road frontage. It also appears to be in better condition, perhaps on account of its mainly residential use. Of the traditional buildings remaining, a notable feature is the Grade II listed Coronet Theatre at the junction with Hillgate Street.

12. The application site and the other development along this stretch of Notting Hill Gate are not within, but immediately adjoin, a number of conservation areas. To the west of the application site is the Kensington Conservation Area, which is extensive and is sub-divided into 10 sub-areas. The closest is Hillgate Village, which is characterised by its domestic architecture, narrow streets and village atmosphere. To the north-west and north-east are the Ladbroke and Pembridge Conservation Areas respectively, which are large and varied in character. To the east is the Kensington Palace Conservation Area, which includes Kensington Palace Gardens with its grand houses, many of which are occupied as embassies. The eastern part of the conservation area comprises the Grade I listed Kensington Palace and Kensington Gardens, which is a Grade I Registered Park and Garden. The Borough boundary with Westminster runs along the eastern edge of the conservation area and abuts the Royal Parks Conservation Area within the adjoining Borough.

RELEVANT PLANNING HISTORY

13. The widening of Notting Hill Gate was undertaken by the former London County Council in the late 1950's and involved widescale clearance of buildings along the road to accommodate the increase in motor traffic. Various sites became available for redevelopment and, in the early 1960's, the 12 storey office block at Newcombe House and the 18 storey Campden Hill Towers, along with lower office and flatted buildings were erected, including the 5 storey Royston Court at the southern end of the application site. Newcombe House was set back from the main road and elevated above a podium because it was not possible at that time to build above the pedestrian interchange tunnel of the underground station below (***Core Document CD 10.12***).

14. On 12 June 2017 an appeal was dismissed for a broadly similar development. The Inspector concluded that the scheme would be acceptable in terms of character, appearance and design. He further concluded that the less than substantial harm to some designated heritage assets would be clearly outweighed by the substantial benefits of the scheme. However, he was concerned about the loss of social housing and the lack of provision of any affordable housing on the site. He was not satisfied with the viability work and considered that a realistic assessment of the existing use value probably could have provided a viable scheme with all the other benefits retained plus some affordable housing.

THE APPLICATION PROPOSAL

15. The proposal is detailed in ***Document POE 12***, which has several useful plans and diagrams. The overarching SCG includes the various stages that the application has been through and an agreed description of the proposed development (***Document CD 4.4, sections 3.3, 4***). Models were provided at the inquiry to assist understanding and a photograph of one of them is at ***Document POE 10, appendix 4***. The main differences of the current application proposal with the previous appeal scheme are set out in tabular form at ***Document POE 18, page 8***.

The main points are:

16. All buildings on the site are proposed to be demolished. The originally submitted proposal was for buildings ranging from 3 to 18 storeys in height incorporating 46 residential units, of which 9 would be social rented units, as well as offices, shops and a GP surgery. In January 2018 the Council resolved to refuse planning permission on grounds of an adverse effect on townscape and heritage, inadequate affordable housing provision and lack of a legal agreement to secure necessary infrastructure. In May 2018 the application was called-in by the Mayor for his own determination.

17. Following discussions with the GLA the Applicant increased the affordable housing offer to 15 social rented units and 8 intermediate rented units. This amounted to 35% by habitable room and 42% by unit. To accommodate this the homes were increased to 55 units with a change to the housing mix. The office floorspace was increased slightly and there was an increase in height of one storey on one of the buildings on Kensington Church Street and 2 storeys to the building on the western side of the tower. Minor alterations were made to the facades and

internal layouts. The Mayor reconsulted interested parties and the period of response was extended.

18. The layout envisages 6 linked buildings around a central public square that step up in height towards the north. The square and Kensington Church Street would have active retail frontages and be linked by two pedestrian concourses. The upper floors of these buildings would be in residential use and they would vary in height between the 3 storeys adjacent to the railway and the 4-5 storeys adjacent to Kensington Church Street. A 3 storey cube would stand at the southern end of the square adjacent to the back of the Bethesda Baptist Church. There would also be an access from Kensington Place and this is where the servicing would take place. There would be a 2 storey basement across much of the site, which would be used to provide 30 car parking spaces and ancillary storage for the commercial units. 25 of these would be allocated for residential use and 5 for the medical centre (***Document INQ 18***).

19. The highest part of the development would be at the northern end of the site adjacent to Notting Hill Gate. This would comprise several elements, including a 4 storey podium immediately abutting the pavement. This would contain retail uses with offices above. Behind this would be an 18 storey tower with a lower slipped section of 14 storeys on its eastern side. This part of the development would contain offices on the lower floors and residential above. On the other side would be a 7 storey building, which would house offices and the medical centre on the upper levels. This would be reached by 2 dedicated lifts from the basement car park. From here a lift would be installed to provide step-free access to the ticket hall and the Circle and District line southbound platform (***Document INQ 24***).

20. In terms of floorspace the proposal would include 4,765m^2 (GIA) offices in comparison with the 5,206m^2 existing at present. Retail floorspace would amount to 2,638m^2 in comparison with the existing 2,569m^2 currently on the site.

21. To summarise, the constituent buildings with their heights and uses are listed below along with the acronyms that have been adopted by the Applicant to identify them (***Document POE 12, page 6***):

    a. 5 and 4 storey retail and residential buildings fronting Kensington Church Street: KCS 1 and KCS 2.

    b. 3 storey office building adjoining the western perimeter and the Bethesda Baptist Church: WPB 2 Cube.

    c. 3 storey retail and residential building adjoining the western perimeter with the underground Station: WPB 1.

    d. 7 storey office/ retail and medical centre building adjoining the western perimeter and substation: WPB 3.

    e. 18 storey office/ residential corner building: CB central form.

    f. 14 storey office/ residential corner building: CB east form.

    g. 4 storey retail/ office building fronting Notting Hill Gate: NHG.

PLANNING POLICY

22. The development plan includes the **LONDON PLAN** (2016) and the **ROYAL BOROUGH OF KENSINGTON AND CHELSEA LOCAL PLAN** (2019 Local Plan) and Proposals Map (2019). Whilst all relevant policies have been taken into account, those that are considered the most pertinent to this application are set out below (***Documents CD 6.1; CD 5.1; CD 5.14***).

THE LONDON PLAN

23. **Policy 3.3** seeks to increase housing supply to meet identified housing need and enhance housing choice and affordability. Boroughs should seek to achieve and exceed their minimum average housing targets. In the case of the Council this is an annual target of 733 dwellings between 2015 and 2025. **Policy 3.12** seeks to secure the maximum reasonable amount of affordable housing on mixed use schemes having regard, amongst other things, to their viability. Normally affordable housing should be provided on-site.

24. **Policy 6.1** concerns the integration of transport and development. Provisions include supporting development that generates high levels of trips in locations with high levels of public transport accessibility. It also seeks to ensure that Londoners can use safely, easily and with dignity all parts of the public transport network including by securing step-free access where appropriate and practicable. **Policy 6.13** relates to car parking with a maximum of one space per residential unit. In areas of good public transport accessibility, the aim should be for substantially less.

25. **Policy 7.4** seeks to respect local character. There should be regard to the form function and structure of the area and the scale, mass and orientation of surrounding buildings. Planning decisions should be informed by a number of provisions, including the surrounding historic environment. **Policy 7.5** seeks to make the public realm comprehensible at the human scale using gateways, focal points and landmarks as appropriate to help people find their way. Landscaping and infrastructure should be of the highest quality.

26. **Policy 7.6** requires buildings to be of the highest architectural quality and design in terms of composition, scale and materials, amongst other things. Tall buildings in particular should not cause unacceptable harm to surrounding amenity in terms of privacy, overshadowing, wind and microclimate. Provisions include that the potential of sites should be optimised.

27. **Policy 7.7** relates to the location and design of tall buildings. There should be a plan-led approach to identifying appropriate, sensitive and inappropriate locations and they should not have an unacceptably harmful impact on their surroundings. Applications should be accompanied by an urban design analysis, particularly if the site is not identified as a location for tall buildings in the local plan. The policy sets out a number of provisions, including that they should make a significant contribution to regeneration and that particular consideration should be given if they are proposed in sensitive locations, including the setting of listed buildings, conservation areas and registered parks and gardens.

28. **Policy 7.8** includes a provision that development affecting heritage assets and their settings should conserve their significance by being sympathetic to their

form, scale, materials and architectural detail.

THE 2019 LOCAL PLAN

29. There are a number of policies relating to conservation, quality and design. Policy **CL1** requires that development respects the existing context and takes opportunities to improve the quality and character of buildings and the area. It includes a number of criteria, including that a positive contribution must be made to the townscape through the architecture and urban form. **Policy CL2** requires all development to be of the highest architectural and design quality. **Policy CL3** includes a requirement that development must preserve or enhance the character or appearance of conservation areas and protect the special interest of the area and its setting. **Policy CL4** requires development to protect the heritage significance of listed buildings, scheduled ancient monuments and Archaeological Priority Areas. For major development desk based archaeological assessment are required unless deemed unnecessary by the Greater London Archaeological Advisory Service.

30. **Policy CL11** requires all development to protect and enhance views, vistas, gaps and the skyline that contribute to the character and quality of an area. Policy **CL12** requires that the setting of valued townscapes and landscapes are respected through appropriate building heights. Amongst other things the policy seeks to resist buildings taller than the surrounding townscape except in exceptionally rare circumstances where there is a wholly positive impact on the character and quality of the townscape.

31. **Policy CH1** seeks to boost the supply of homes by meeting and exceeding the current London Plan target minimum of 733 net additional dwellings a year, amongst other things. **Policy CH2** indicates that the maximum reasonable level of affordable housing will be sought. A minimum of 35% affordable housing is to be provided, subject to viability considerations. Evidence of exceptional site circumstances or other public benefits is required to justify any reduced provision. The tenure split should be 50% affordable housing for rent and 50% to be intermediate products. The policy requires complete integration and equivalent amenity provision.

32. **Policy CT1** aims to ensure better alternatives to car use by making it easier and more attractive to walk, cycle and use public transport and managing congestion and the supply of car parking. One of the provisions is to require new developments to contribute towards step-free access and ensure it is delivered at underground and rail stations where there is a redevelopment opportunity. **Policy CF2** aims to promote vital and viable town centres with a range of shop units.

33. **Policy CV11** sets out the vision for Notting Hill Gate in 2028. This includes that the area will have strengthened its distinct identity as one of the Borough's main district centres benefitting from a high level of public transport accessibility. It will continue to be a major office location and build upon its long-standing reputation for arts, culture and the evening economy as well as serving the needs of local people. The policy states that opportunities set out in the Notting Hill Gate Supplementary Planning Document will have been taken to refurbish or redevelop outdated 1950s buildings.

34. The latter plan replaced the **ROYAL BOROUGH OF KENSINGTON AND CHELSEA CONSOLIDATED LOCAL PLAN** (2015) (2015 Local Plan). This plan was in place when the application was being considered by the Council and subsequently the GLA. It was also the adopted plan at the time of the previous appeal (***Document CD 8.4***).

35. The **DRAFT NEW LONDON PLAN** is at an advanced stage and the Mayor is considering the Panel Inspectors' Report following the examination (***Documents CD 9.1; CD 9.2***).

36. There are various **NON-STATUTORY DOCUMENTS** of relevance to the application. In particular, the Council's **Notting Hill Gate Supplementary Planning Document** (2015) (NHG SPD) relates specifically to the area in question. The **Building Height in the Royal Borough Supplementary Planning Document** (2010) (Building Height SPD) includes guidance on tall buildings and refers to Newcombe House specifically. The **Planning Contributions Supplementary Planning Document** (2019) (Contributions SPD) provides guidance relating to the delivery of contributions towards infrastructure delivery in accordance with policy C1 in the 2019 Local Plan (***Documents CD 5.2; CD 5.3; CD 5.4***).

37. The Mayor's **Affordable Housing and Viability Supplementary Planning Guidance** (2017) includes provisions for viability reviews. The Mayor's **Transport Strategy** (2018) includes the Mayor's objective to make the public transport network navigable and accessible for all (***Documents CD 6.2; CD 6.4***).

38. The Council has also produced **Conservation Area Appraisals** for each of the surrounding conservation areas (***Documents CD 5.6; CD 5.8; CD 5.10; CD 5.12***).

39. The **National Planning Policy Framework** (2019) (the Framework) establishes that the purpose of the planning system is to achieve sustainable development. Of particular relevance in this case is section 5 concerning the delivery of sufficient homes; section 6 seeking to build a strong, competitive economy; section 9 aiming to promote sustainable transport; section 11, regarding making effective use of land; section 12, achieving well-designed places and section 16 concerning the historic environment. **The Planning Practice Guidance** is a web-based resource and provides further relevant advice in respect of the above matters. **The National Design Guide** (October 2019) forms part of the Government's collection of planning practice guidance. It illustrates how well-designed places that are beautiful, enduring and successful can be achieved in practice.

THE CASE FOR NOTTING HILL GATE KCS LIMITED

*The Applicant's case is fully set out in its evidence, including its opening and closing submissions (**Documents INQ 36A, 36B, 36C**). The main points are:*

THE 2017 APPEAL DECISION

40. In June 2017 an appeal decision was made by a senior, highly respected Inspector with particular expertise in dealing with architecture, design, townscape and heritage. This was for a redevelopment scheme, which was in all material respects the same as the present proposal. The appeal was dismissed

for the sole reason that there would have been a loss of on-site social housing at Royston Court without any provision for on-site affordable housing. The Inspector considered that such provision would probably be viable and that dismissing the appeal for this reason should not necessarily prevent the development going ahead in its current form and would only delay it slightly (***Document CD 10.10***).

41. The 2017 scheme was commended for being "of the most exceptional design and *architectural quality*", which would replace the "*drab*" and "*ugly"* existing buildings. The Inspector concluded that although "*minor*" less than substantial harm to heritage assets would arise "*the substantial benefits*" of the scheme would clearly outweigh this. The reasons that were given in this appeal decision gave everyone involved the clearest possible indication of what was expected to happen next. In direct response to the Inspector's decision and the Mayor of London's intervention, the scheme now includes 23 on-site affordable homes.

42. However, despite the Council's Executive Director of Planning, advising the members in the clearest terms of the "*powerful*" significance of the Inspector's decision and recommending approval of the new application, the Planning Committee resolved to refuse the application on the grounds that the architecture of the proposed tall building would be of insufficient high design quality and would cause substantial harm to nearby listed buildings and conservation areas, which would not be outweighed by the public benefits of the scheme (***Documents CD 3.2; CD 3.4***).

43. The Council maintained its position that the development would cause substantial harm until as late as May 2019. This was in open defiance of the previous Inspector's decision and the importance of consistency in making planning decisions. This is a powerful material consideration, which the Council accepted at the inquiry.

44. The Mayor of London stepped in and took the matter out of the Council's hands. In due course, amendments were made to the application proposal so as to increase the number of on-site affordable homes and the Mayor resolved to grant planning permission. The Council lobbied the Secretary of State to call-in the application claiming that the amended scheme did not provide the maximum reasonable amount of affordable housing, and that it would cause substantial harm to heritage. The application was called-in and the Secretary of State expressed interest in being informed about policies concerning housing, design and heritage (***Documents CD 2.6; CD 2.12***).

45. The Council has now withdrawn the twin pillars of the case it made to the Secretary of State. The allegation that the amended scheme fails to provide the maximum reasonable amount of affordable housing was withdrawn in September 2019. The assertion that there would be substantial harm to heritage was downgraded in May 2019 to a claim of less than substantial harm. The one issue of affordable housing that led to the dismissal of the previous appeal has now been resolved to the Council's satisfaction (***Documents CD 2.20; CD 3.15***).

46. The Council's case is wholly at odds with the previous Inspector's decision in terms of the quality of the architecture and design; the degree of harm to the

townscape; and the degree of harm to heritage assets, including the surrounding conservation areas, the Kensington Gardens Registered Park and Garden and various listed buildings. The benefits of the proposal were seen as moderate either individually or cumulatively, contrary to the conclusion of the previous Inspector that they would be substantial overall, even without any affordable housing. The proposed tower was not considered as positive whereas the previous Inspector repeatedly described it as beneficial. The Council's conclusion is that the public benefits would not outweigh the less than substantial harm to heritage assets whereas the previous Inspector concluded that they would.

47. The Council contended that the previous Inspector did not appear to understand how properly to assess the issue of harm to heritage. It considers that this might not have been entirely his fault because the 2012 Framework, which was applicable at the time, did not clearly reflect the correct application of the law. Such a contention does not bear scrutiny. This was an Inspector of seniority, expertise and distinction and his decision shows no sign of any failure of understanding on his part as to how to go about assessing the issue of harm to heritage. As for the contention that the 2012 Framework was inconsistent with the law in respect of assessing heritage issues, this is directly contrary to the ruling by the Court of Appeal in the case of *Mordue*[1] (***Document CD 11.4, paragraph 28***).

48. The Council also contended that the analysis of the architectural quality of the proposed tower and its impact on the local townscape was not detailed enough. This is an unfair criticism. An Inspector's decision letter is not meant to be a treatise. The Inspector went on extensive visits over some three days to the various viewpoints referred to in the evidence. His conclusions on townscape were set out in 27 paragraphs with an additional 12 paragraphs on heritage issues. The evidence has clearly and convincingly demonstrated that the previous Inspector was right to conclude that the proposals, with the inclusion of on-site affordable housing, should be allowed to proceed.

49. The proposed development would be in accordance with the development plan and so applying section 38(6) of the Planning and Compulsory Purchase Act 2004 planning permission should be granted. Material considerations, including the benefits that the proposal would deliver, the previous appeal decision and the Framework far from indicating otherwise, lends further support to the case for granting planning permission. Should it be concluded that the proposal would not accord with the development plan then these material considerations would indicate that permission should be granted nonetheless. Finally, should it be concluded that there would be harm to the significance of heritage assets, this would be less than substantial and applying paragraphs 193, the first sentence of 194 and 196 of the Framework, the public benefits would outweigh any such harm.

WHETHER THIS IS AN APPROPRIATE LOCATION FOR A TALL BUILDING

50. The argument by the Council that the site is not an appropriate location for a

[1] *Jones v Mordue* [2015] EWCA Civ 1243.

tall building because it has not been identified as such in the development plan is peculiar. There is already a tall building on the site and the Local Plan identifies the opportunity for a taller tall building to replace it. The previous Inspector concluded that the same tall building that is now proposed would be appropriate on this site. In any event, policy 7.7 in the London Plan makes explicit provision for tall buildings to come forward on sites that have not been identified in a plan as a location for a tall building and policy CL12 in the 2019 Local Plan recognises this too (***Documents CD 5.1, pages 100 and 203; CD 6.1, page 293***).

51. The Building Height SPD explains that it does not set out to indicate where tall buildings are appropriate. The NHG SPD explicitly envisages a landmark building on the application site, which by its nature is likely to be prominent. Figure 11 in the Notting Hill Gate SPD does not reflect the existing situation as asserted by the Council as it refers to development principles and shows things that are not there now (***Document CD 5.2, paragraph 1.7; CD 5.3, page 14***).

52. The reference in the Notting Hill Gate SPD to the potential acceptability of a modest increase in height at the site is not a policy requirement. The Council's argument that even if the proposal met all policy requirements in the development plan it should still be refused planning permission on the basis of the SPD is untenable. Policy CV11 in the Local Plan refers to the SPD in terms of the vision for Notting Hill Gate in 2028. However, that does not mean that what is said in the SPD has now become planning policy (***Documents CD 5.3; CD 5.1, page 98; INQ 36B***).

ARCHITECTURE AND DESIGN

53. The quality of the architecture and design of the scheme is exemplary. The previous Inspector found it to be so and highlighted the following points:

    a. The arrangement of stone and glass within each façade of the tower would vary but follow a structured pattern. The proposed balance would create a pleasing rhythm which would be both interesting and cohesive (***Document CD 10.10, paragraph 16***).

    b. The slipped form would provide a degree of elegance to each half of the tower and the stepped height and offset plan form, with a pleasing rhythm to its fenestration, would provide considerable articulation that would result in a bold and attractive appearance (***Document CD 10.10, paragraph 22***).

    c. The staggered elegant forms of the proposed tower; the well-considered external appearance (***Document CD 10.10, paragraphs 23, 24***).

    d. The extensive site analysis, and the way that this has been used to inform the details of the design, would result in a convincing ensemble; the design has been carefully tailored to respond to its context from each direction; the combination of the varied proportions of stone and glazing together with the unifying rhythm is commended (***Document CD 10.10, paragraph 28***).

    e. The scheme would be of a high design quality with the tall building, public realm and urban setting all carefully considered and well-resolved; the proposed tower would not be excessively tall or bulky but would have a

positive impact (***Document CD 10.10, paragraph 29***).

f. The overall design of the scheme would accord with policies, which set criteria. These include a high-quality design response and the highest standards of architecture. The proposal would satisfy policy in chapter 7 of the Framework, which requires good design (***Document CD 10.10, paragraph 30***).

g. The scheme would comply with policies in the 2015 Local Plan requiring development of the most exceptional design and architectural quality (***Document CD 10.10, paragraph 31***).

54. The representative of the Ladbroke Association and Kensington Society[2] was measured and considered in his support for the quality of the scheme and the benefits it would bring to the community. The question is not how many people like the design. Views will differ and people often fear change. Often what is criticised before being built is cherished in the years afterwards. However, all the benefits of this scheme could not be delivered with a different scheme of lower height. There were a lot of assertions made by objectors, particularly in relation to a mythical alternative scheme. But there was not a jot of evidence before the inquiry that there would be any other way of developing this site than the one that has been put forward. It represents the optimum scheme for the site.

55. A detailed and thorough analysis has been made of the architecture and design of the scheme, which has been worked through into incredible detail. Different forms of tall buildings have been studied. The slipped version was the one thought to work best in the round. The lower set buildings would complement Kensington Church Street and the adjacent conservation areas in terms of the scale and quality of the design. The space itself would be successful as it would be seen from the street, it would have visual permeability and new pedestrian passageways that would lead into it. Great care and resources have been put into this scheme to ensure that it would be a long-term and suitable landmark for this location. It would create a new urban quarter and could be described as a mini bit of City at this important junction with its 6b public transport accessibility level (PTAL) (***Documents CD 10.11; POE 11, section 3; INQ 20***).

56. Every element of the scheme is now accepted by the Council apart from the tower. It also agreed that the lower parts of the scheme would all be beneficial compared to the existing situation[3].

TOWNSCAPE

57. The Council accepted that if the decision-maker in this case agrees with the previous Inspector's conclusion that the tower would be of the highest architectural design quality, that would be the end of the townscape objection[4]. The Council found harm in only 6 of the 49 agreed views and the following comments can be made (***Documents POE 11; POE 13, pages 8-14***):

[2] Mr P Mishcon. His comments are recorded in paragraphs 268-270 of the Report.
[3] This was agreed by Ms Buckingham in cross-examination by Mr Katkowski.
[4] This was agreed by Ms Buckingham in cross-examination by Mr Katkowski.

a. In view 16, an ugly building with squat proportions and poor materials would be replaced on a site deemed suitable for a landmark building related to the District Centre. The new tower has been designed meticulously using very high-quality materials, including Portland stone. It would be well-articulated through the upper elements. In terms of townscape the effect would be beneficial and moderate due to the distance away.

b. In view 17, the tower would be a significant and high-quality local landmark. Its Portland stone cladding, articulated by vertical window strips, would have a recessive character in the view. The north and west faces would add positively to the skyline. The WPB3 building would be perceptible but the tall corner building would remain the main landmark element. The distant focus of the street vista would be enhanced with a major beneficial impact.

c. In view 23 the tall building would be seen at a distance providing a local, clearly articulated local landmark. It would enhance wayfinding and there would be a moderate beneficial impact.

d. In view 25 the existing building can clearly be seen with its horizontal curtain wall banding. The proposal would have more of a vertical emphasis. It would use high quality materials, be well-articulated, and would provide a landmark to assist with wayfinding.

e. In view 28 the Portland stone detailing and high-quality design can be seen more clearly. The new building would be a landmark in terms of wayfinding and townscape. There would be a major beneficial impact.

f. In view 38 the foreground conservation area and listed buildings are seen but also the District Centre beyond. The existing building steps forward into that space and has a direct relationship with David Game House. The proposal would be set back from that. Whilst it would be clearly more prominent within the view and above the skyline of the buildings, it would be performing this landmark role with very high-quality materials and detailing. The impact would therefore be neutral.

58. The building would be at an optimum height. If it were shorter it would become more squat and less elegant. The building could not be lower and still be successful as it would become less stumpy and would not have that elegance that a tall building requires. It was suggested by objectors that a tall building can be visually distracting. Whilst that may be the case with a very large and poorly designed building it would not be so with a well-designed building that would welcome to be seen (***Document POE 10, paragraphs 3.17-3.21***).

HERITAGE

Governing principles

59. In carrying out a heritage assessment there has to be an understanding of the heritage significance/ heritage interest of the asset in question. This is because the Framework requires an assessment of whether there would be harm to the significance of a designated heritage asset. Significance is defined in the Framework glossary as "*the value of a heritage asset… because of its heritage interest*." It is the significance of the asset that is protected and in this case the

concern is with architectural and historic interest.

60. An assessment then needs to be made as to whether the proposed development, which in this case is in the setting of each asset, would damage or reduce the heritage significance/ the heritage interest of the asset. Thus, the question is not whether the development would harm the setting of an asset but rather whether the significance of an asset would be undermined by the proposed development being within its setting.

61. If harm is found, one has to judge whether that harm would be substantial or less than substantial. If it is the latter a judgement should be made as to the degree of harm. This is a broad spectrum as is indicated in the *Planning Practice Guidance*[5] and it should be judged where on that spectrum any identified harm would lie. Given that paragraph 196 of the Framework requires the decision-maker to weigh the less than substantial harm against the public benefits, it is logical that the extent of harm should be considered in order to know what needs to be outweighed. Not all less than substantial harm is therefore equal or even similar in its consequences.

62. The exercise is done on a net basis. Any harm to, and any enhancements of, the heritage significance of each asset should be weighed in turn to come to an overall conclusion as to whether the significance of the asset would be harmed, enhanced or whether there would be an overall neutral effect. This was the approach taken by the previous Inspector throughout his assessment of whether there would be harm to heritage assets. He netted the harm against the benefits in those instances where he perceived the presence of both. The Council was not aware of the net balance principle[6]. This explains a lot about its approach in this case and why such different conclusions were reached to the previous Inspector (***Documents CD 11.6, paragraph 29; POE 14, appendix 4, paragraph 1.4v***).

63. A sensible way of sense-checking allegations of harm to the heritage significance of a conservation area is to look at whether anything in the explanation of the asset's significance in the conservation area appraisal would need to change or would no longer be valid in the event of the development taking place. A similar point applies to the statement of significance for the registered park and garden. The appraisals in this case are lengthy and detailed documents whose purpose is to set out precisely what makes the area significant, what makes it special and thus why it is protected. The Council was unable to point to anything in the various appraisals that would need to be changed or rewritten or point to anything that would no longer be valid if the scheme was built. This must add force to the conclusion that the significance of the conservation areas would not be harmed.

64. The same approach is useful with regards to listed buildings although the list descriptions are relatively succinct compared to the lengthy and detailed

[5] *Planning Practice Guidance* (paragraph 018: Reference ID: 18a-018-20190723) revision 23/7/19.
[6] Ms Buckingham said she had not come across this approach before in cross-examination by Mr Katkowski.

exposition found in the appraisals. The relevant list descriptions in this case do assist as a starting point in understanding the significance of the listed buildings, as they contain the headline points and a precise summary of what is considered to be significant about the buildings and what makes them listable.

65. In the case of a conservation area and of a registered park or garden one is looking to see whether the significance of the area as a whole would be harmed and take into account the full extent of the setting in its 360-degree form. The correctness of this approach was accepted by the Council[7] and the previous Inspector rightly took this approach in his decision.

66. It follows that it may very well be hard to make good a case of harm from development within the setting of an asset. However, that does not indicate any error in the approach, it is simply a function of it. The task is not to lower the bar so as to make it easier to find harm. The Kensington Conservation Area, for example, is vast with 10 sub-areas and an extensive setting all around it. It may well be hard to conceive of a development proposal within the setting of this conservation area that would harm its special interest as a whole. It should not be at all surprising if the levels of harm, if any, would be low. No one apart from the Council has ever found more than very slight harm to the relevant conservation areas in this case and it can only be explained by having used a fundamentally wrong approach (***Document INQ 23***).

67. The Council appears to have muddled harm to views with harm to significance (***Document POE 15, paragraph 4***).

68. It is important not to assume that if one's eye would be "distracted" by the proposed tower there would be harm to the significance of the asset from which one can see the development. The architectural and historic interest of the area would not change by being able to see something else in the setting of the asset as well. Two or more things can co-exist and be understood as different. If one is standing in the Ladbroke Conservation Area, for example, and can see Newcombe House or the proposed tower in the setting, that does not mean that the heritage significance is or would be harmed. It should be remembered that all of the conservation areas were designated after the Newcombe House and Campden Hill Towers were built and so were considered special despite the presence of these two ugly buildings in their settings.

69. The Council accepted that if it is concluded that the proposed tower is of a high enough quality in its architecture and design, then there would not be harm to the significance of the heritage assets and that would be the end of its heritage case[8].

70. The legal requirement to give "*considerable importance and weight*" to a finding of harm, and the "*strong presumption against*" harmful development applies only where the statutory duties are engaged. In this case the proposed development is within the setting of various conservation areas rather than

[7] This was accepted as the correct approach by Ms Buckingham in cross-examination by Mr Katkowski.
[8] This was accepted by Ms Buckingham in cross-examination by Mr Katkowski.

within any of the conservation areas themselves. The statutory duty does not apply in respect of the conservation areas and there is no legal requirement to give considerable importance and weight to any finding of harm nor is there a strong presumption against granting permission. The Council's allegation that there is a strong presumption against granting planning permission in cases where harm has been found whether or not the statutory duties are engaged, is wrong as a matter of law. The caselaw[9] that is referred to confirms that the strong presumption arises only where one or other of the statutory duties is engaged. Nor is there any statutory duty with regard to the registered park/garden and so the legal requirements do not apply (***Document INQ 34B, paragraphs 8, 26, 27***).

71. The legal requirement does apply in the case of the listed buildings as their settings are protected by statute. If, contrary to the previous Inspector's decision, harm is found to any of these then when weighing the harm against the public benefits the decision-maker would need to apply the legal requirements.

72. Paragraph 193 of the Framework requires, as a matter of policy, that great weight be given to the asset's conservation thus maintaining its significance. It does not require, as the Council contended, that great weight should be given to any harm identified. If the Framework required great weight to be given to harm regardless of how much harm was identified, there would be no point in assessing where on the spectrum any identified "less than substantial harm" lay, or whether the harm was substantial or less than substantial. The answer would always be that the harm should be given great weight. Caselaw does not support such a proposition. The *James Hall and Company Limited* judgement[10] simply finds that minimal harm is harm all the same. It indicates that the fact that the harm may be limited or negligible will go to the weight to be given to it. This is contrary to the Council's assertion that great weight should be given to any harm regardless of its degree (***Document INQ 34B, paragraphs 26, 30***).

73. There is no known concept or mechanism of adding up instances of less than substantial harm to a number of assets and concluding cumulatively that there is substantial harm or a high level of less than substantial harm. Such an approach was rejected by the previous Inspector and the Council agreed that this was no longer part of its case[11] (***Document CD 10.10, paragraph 42***).

Effect on the conservation areas

74. The character and significance of each of the four surrounding conservation

[9] The caselaw referred to in the Council's closing is *Leckhampton Green Land Action Group Limited v Tewkesbury Borough Council* [2017] EWHC 198 (Admin) (***Document INQ 34C, paragraph 49***) and *Lady Hart of Chilton v Babergh District Council* [2014] EWHC 3261 (Admin) (***Document INQ 34C, paragraph 14***). Mr Katkowski also referred to *The Forge Field Society, Martin Barraud and Robert Rees v Sevenoaks District Council* [2014] EWHC 1895 (Admin) (***Document INQ 34C, paragraph 55***).

[10] The caselaw referred to in the Council's closing is *James Hall and Company Limited v City of Bradford Metropolitan District Council* [2019] EWHC 2899 (Admin) (***Document INQ 34C, paragraphs 34, 35***).

[11] This was agreed by Ms Buckingham in cross-examination by Mr Katkowski.

areas has been considered and a comparison of the different assessments has been tabulated. No harm was found to the significance of any of the surrounding conservation areas and, in the case of the Pembridge Conservation Area there would be a slight enhancement. The assessments of Historic England and the previous Inspector and the Applicant were broadly comparable with no more than minor harm or a small impact being found. By contrast, the Council's assessment found much higher levels of harm to the four surrounding conservation areas. This is due to the incorrect way that the assessment has been undertaken in terms of the guiding principles outlined above (***Documents POE 14 pages 12-70; INQ 23***).

75. The Royal Parks Conservation Area is in the Borough of Westminster and the City Council accepted the previous Inspector's conclusions. He found very slight harm, with the tower being a distant speck amongst a mix of buildings and Historic England found a small impact. The Council did not mention this conservation area in its statement of case. However, it revised its view from one of moderate harm to minor or low. However, in view of the distance and other city influences visible from the park, it is not considered that any harm would arise to this conservation area. The proposed development would not make the registered park any less significant than it is at the moment.

Kensington Gardens, Registered Park and Garden and Grade I Listed Kensington Palace

76. The appreciation of the architectural and historic significance of Kensington Gardens and Kensington Palace would not be affected by the presence of the small and distant speck of the proposed tower, which would be seen amongst other buildings. No harm would arise to either heritage asset. Similar points apply to the Grade I listed Kensington Palace itself (***Document POE 14, section 5***).

Listed buildings

77. Between 19 and 20 Kensington Palace Gardens, Newcombe House can be seen. With the proposed development more built development would be seen. However, this would not impede these listed buildings or erode their significance. There would be no harm and a similar conclusion was reached by the previous Inspector. Historic England would have been deeply concerned if there was harm, but instead found a fine balance (***Document POE 14, paragraph 3.76-3.78***).

78. There would be no harm to the heritage significance of 1-5 Pembridge Gardens. This was also the conclusion of the previous Inspector and Historic England. Newcombe House can be seen in the existing view, where one is aware of the modern hinterland and noise of the street. This is part of the experience when walking around and which is part of that experience. At this proximity the quality of the architecture and detailing of the proposed tower would be able to be appreciated. The historic interest of the listed buildings would not drain away and there would not be any impact on them (***Document POE 14, paragraphs 3.118-3.128***).

79. There would be no harm to the heritage significance of 10 and 11 Pembridge Square and this concurs with the view of Historic England and the previous

Inspector. The only views in which the proposed development would be seen in conjunction with those buildings would be where the significance of those buildings could not properly be appreciated (***Document POE 14, paragraph 3.109***).

THE PUBLIC BENEFITS

The approach to giving weight to the public benefits

80. In considering how much weight to give to the public benefits it is important not to treat the analysis as an academic, arid, exercise. It is vital not to lose sight of the fact that the decision in this case would affect the well-being of many, many real people. Their lives would be transformed hugely for the better as a result of this development. This is whether it be the 18,000 patients of the doctors' surgeries; the multitude of people who would enjoy the public square including the weekly farmers' market and the shops; or the tens of thousands of people who use the tube station every day, a great many of whom would benefit from the stair-free access. Disabled people would, for the first time in the Borough, be able to access the underground network via the step-free access that would be provided. Hundreds of people would work in the offices and shops; and there would be dozens of households who would live here, including 23 in the desperately needed affordable homes.

81. The Council adopted the wrong approach. It gave no more than moderate weight to all of the benefits on the basis that each complied with the development plan and thus they were said to be ubiquitous. It is hard to understand how, on this approach, a benefit would ever be given substantial weight. Furthermore, the Council accepted that there was no alternative scheme that could deliver these benefits and there was no evidence of any other way that these benefits could be achieved[12]. Far from being ubiquitous the benefits would be unique. It is counter-intuitive to moderate the weight given to a benefit because it delivers what the development plan aspires to achieve. In a plan-led system doing what the plan wants to happen should lead to greater not lesser weight. Where a development delivers the benefits that the plan says are important, they become important for that reason. The fact that they are supported by planning policy makes them even weightier.

The public benefits

82. The scheme would deliver exceptionally worthwhile public benefits, which would transform the lives of thousands of people:

Housing

83. The Council can demonstrate a five-year supply of housing land with a surplus of just 12 units. It has passed the Housing Delivery Test. However, these facts do not mean that all is well in the Borough, let alone across London, in terms of providing homes. The housing requirement across London is based on capacity not need. Thus, the 2019 Local Plan Examining Inspector concluded that the constraints on capacity justified only a 5% buffer being applied even though there has been a persistent record of under delivery between 2010-2017 and a

[12] This was accepted by Mr Keily in cross-examination by Mr Katkowski.

shortfall of 935 dwellings against housing targets for the first two years of the plan period (***Documents INQ 25, paragraphs 68, 69, 76; POE 18, paragraph 6.6***).

84. The need for homes is far greater than the capacity to provide them and it is therefore all the more important to make the most of the sites that do exist. House prices in this Borough are the most expensive in the country. The need is huge and the demand is insatiable. The capacity-based housing requirement in both the London Plan and the 2019 Local Plan is set as a minimum. The Housing Delivery Test is met by having 25% and then 45% of the requirement in the early years and is hardly indicative of a good record of delivery. The Council's claim that delivery is on track is thus misleading. The 2019 Housing Delivery Test indicates that over the preceding 3 years only 57% of the requirement was delivered. Normally this would mean that a 20% buffer would be imposed to improve the prospect of achieving the planned supply. Whilst the Framework may offer the Council protection until October 2020 because the 2019 Local Plan was recently adopted, that does not alter the fact that the failure to deliver is extreme both in the context of the Borough and London as a whole. There is a huge unmet need for new homes here and across London. The Secretary of State has recently told the Mayor that opportunities must be taken to densify around existing infrastructure and make best use of brownfield land to provide the homes that London needs. In this context, the provision of the proposed 55 homes should be given substantial weight (***Document INQ 43***).

Affordable housing

85. The Council is the worst-performing in London in terms of providing affordable housing. In the last monitoring year, the number of new affordable homes secured in planning approvals was zero. There are over 3,000 households on the Council's Housing Register with more than 2,300 households having to live in temporary accommodation. The level of homeless households is more than double the London average and people languish on the list for years (***Documents POE 18, Table 6.1; POE 16, paragraph 4.4***).

86. The annual need for affordable homes in the Borough is 1,171 which far exceeds the annual housing requirement of 733. If the emerging London Plan housing requirement recommended by the Examiners' for the Borough becomes 448 per year, then the massive need for affordable homes would represent about 261% of it. Meanwhile, on average over the last 5 monitoring years 76 affordable homes per annum have been delivered in the Council's area. The average number of new affordable homes secured in planning approvals over the last 5 monitoring years is 56 per year. The disparity between the scale of the need and what has been done to address it is staggering. The Council agreed that the unmet need for affordable housing in the Borough is a dreadful and desperate situation[13] (***Document POE 18, paragraph 6.6, table 6.1***).

87. The application scheme would provide 23 new affordable homes, which would be a similar number to the number completed in the entire Borough in 2016/17. These affordable homes would be provided within the development across three

[13] This was accepted by Mr Keily in cross-examination by Mr Katkowski.

of the four residential blocks. There would be 15 homes at London Affordable Rents, which are based on social rent levels and are the most affordable available. There would be 8 intermediate homes at Discounted London Living rent (***Document POE 16, paragraph 2.27-2.34***).

88. More and better affordable housing, in terms of numbers, floorspace and mix of units, would be secured. The homes would be 1, 2 and 3-bedroom flats compared to the 20 studios previously provided at Royston Court. 2,829m^2 of affordable floorspace would be provided compared to the 1,071m^2 at Royston Court. That would be a 264% increase in the affordable housing floorspace on the site (***Document POE 16, paragraphs 6.6-6.11***).

89. There is no dispute that the development would secure an amount and mix of affordable housing that would comply with, and indeed significantly exceed, policy requirements. It would secure nearly double the quantum of affordable housing on site than viability could justify. It would also deliver homes of a variety of sizes and of the highest quality. Rents would be very low at around half of the Local Housing Allowance levels. In the Borough there are 7,489 households with incomes able to afford the proposed intermediate rent homes, and there are 471 such households in the Campden Ward alone (***Document POE 16, table 2.6 and paragraphs 2.27-2.34, 5.13-5.16; POE 17, paragraph 2.6***).

90. The units would be truly affordable. They would be very meaningful for those who through no fault of their own are unable to access market housing. It is an exceptional and unique offer. The quality of what would be delivered would be exceptional. The units would have fitted kitchens, properly ventilated bathrooms, modern heating systems and insulation enabling lower living costs. The majority would be dual aspect with secure entrance lobbies, lift accessibility and private amenity space. They would be properly integrated within an active, mixed-use development and the scheme would be tenure blind. The lives of a teacher, nurse or someone on housing benefits would be transformed by being able to live in this Borough in a high-quality scheme next to an underground station and a few minutes' walk of Kensington Gardens. The proposed affordable housing should be given very substantial weight (***POE 16, paragraph 2.24-2.25***).

Offices

91. Notting Hill Gate is identified in the 2019 Local Plan as a major office location and the NHG SPD explains that the existing stock is of poor quality. It is an overarching aim of the Local Plan to enhance office provision in Notting Hill Gate. The proposal would replace outworn office accommodation with new grade-A quality accommodation which would exceed what is available anywhere else in the area. This should be given significant weight (***Documents CD 5.3, paragraph 2.23; CD 5.1, paragraph 11.3; POE 18, paragraph 8.7***).

Retail

92. The policies in the 2019 Local Plan and the guidance in the NHG SPD aim to regenerate the District Centre and enliven this part of it. The proposal would provide a bit more retail floorspace than currently on site, but the key point is that the quality of the floorspace would be much better. It would be arranged on site in such a way as to bring to life what is currently a depressing place.

Retail development is harder to achieve these days and investment in high-quality new shops in a high-quality environment is precisely what policy wants to see. The proposed retail is an important benefit that should be given significant weight (***Document POE 18, paragraphs 8.5-8.6***).

Medical centre

93. The Council has greatly understated the importance of the new doctors' surgery. Its suggestion that it would be sub-optimal on account of it not being at ground floor level is based on a lack of expertise in comparison with that of the doctors who would run the surgeries and the NHS West London Clinical Commissioning Group itself. The doctors explained that they are absolutely thrilled by the proposal and that the Applicant has worked closely with them to provide something that for over 10 years they have been looking for. It is their current working conditions that are sub-optimal and nowhere near compliant to current NHS premises standards. The NHS West London Clinical Commissioning Group has explained that the proposed surgery space would meet all applicable NHS standards, be state of the art and would constitute a significant improvement. They lend strong support and consider this to be a substantial public benefit (***Documents POE 19, appendix 1, appendix 2; INQ 9***).

94. The surgery would be on the 4th, 5th and 6th floors of the WPB 3 building. This is not an issue for the doctors who just want to see the surgery delivered. The Council itself requested that the surgery should not be placed on the ground floor as an active use was preferred. Although the concern was for people with disabilities, there would be two dedicated lifts to the surgery, direct from the car park, and from the ground floor lobby. Furthermore, the surgery would be right by the underground station and the bus stop. There would be a drop-off point which could be used by an ambulance if necessary. The surgery would be of the highest quality, would directly respond to the real need to improve medical facilities and would meet a priority for Notting Hill Gate in the 2019 Local Plan. It is a very special benefit that should be given substantial weight (***Document CD 5.1, paragraph 11.4***).

Public Square

95. The new public square would replace the existing unattractive private car park. Improving the public realm in Notting Hill Gate, which currently lacks a public space, is both an overarching aim and a priority in the 2019 Local Plan. The proposal would greatly improve the public realm and the public square would be a vibrant, high quality space that would provide a major amenity not just for the site but for the area as a whole. It is rare for a development to provide anything like this and it should be given very significant weight (***Documents CD 1.61; CD 1.62; CD 5.1, paragraphs 11.3, 11.4; CD 5.3, paragraph 2.39***).

Farmers' Market

96. The weekly Farmers' Market is very popular locally and is an important amenity for Notting Hill Gate. Its current location is the most appropriate but at present produce is sold out of the back of cars in a shabby car park. The space and facilities that would be provided would transform the market's home out of all recognition with proper stalls, electricity plug-in points and space in the

basement to store the stalls. The Farmers' Market described what is proposed as excellent and this is the sort of benefit that can only very rarely be secured. It should be given significant weight (***Documents CD 5.3, paragraph 2,19; POE 18, appendix 5***).

Step-free access to the underground station

97. The step-free access proposal, as recognised by Transport for London (TfL), would be a very significant benefit at a cost of some £7m. What is proposed is not the complete solution but there is no dispute that it is the maximum that could be done within the bounds of the Applicant's own land ownership. Given the nature of the disposition of sites at underground stations and the piecemeal manner in which they come forward for redevelopment, providing step-free access is only ever going to be done in an incremental way.

98. Disabled people cannot currently use Notting Hill Gate station at all. The proposal would enable them to access one Circle and District line platform rather than both platforms. Journeys for those wishing to go in the opposite direction, and for those outbound who want to get back later on, would be more convoluted. However, access would be provided to the entire step-free access underground system for the first time from Notting Hill Gate, which would be the only station in the Borough to have step-free access. This would be transformative.

99. The proposal would also allow stair-free access, with the new lift from the street to the ticket hall and then use of the existing escalators to the Central Line platforms. The step-free, and stair-free, access should be given very significant weight.

Conclusion on benefits

100. In real-life terms what is proposed would be an exceptional array of truly worthwhile benefits that would transform the lives of a great many people. The previous Inspector considered the benefits, which at that time did not include any on-site affordable housing, to be substantial and supported by a raft of development plan policies. With the addition of an excellent provision of on-site affordable homes, the benefits that would be delivered by the scheme should be given very substantial weight. The public interest lies in consistency in decision making and reaching fundamentally different conclusions to the previous Inspector would bring the planning system into disrepute especially given that the benefits would be even greater with the present proposal (***Document CD 10.10, paragraph 59***).

Overall conclusions

101. The existing buildings on the site are drab and have a depressing relationship with the public realm. They would be replaced with a high-quality scheme, including a taller tower, which would be so much better. The relationship of the scheme with the public realm would be transformed. If the tower would cause any (less than substantial) harm at all to heritage, the degree of harm at worst would be as the previous Inspector found. The scheme would bring several highly worthwhile, substantial, benefits which would clearly outweigh any such harm.

102. The Secretary of State has asked to be informed on how the scheme fares in respect of policies in the Framework concerning housing, design and heritage. It fares very well on all counts. The proposal would readily satisfy the Framework's policies concerning housing generally, affordable housing specifically, design and heritage (***Documents CD 2.12, paragraph 7; CD 7.1, paragraphs 59, 62, 64, 127, 130, 193-196***).

103. The application scheme addresses what the previous Inspector thought it could and should. If anything, it has done more than he anticipated as it also includes on-site affordable housing and all the other benefits previously offered. Permission should therefore be granted for this exceptionally well thought-through and socially responsible scheme.

THE CASE FOR THE GREATER LONDON AUTHORITY (GLA)

*The GLA's case is fully set out in its evidence, including its opening and closing submissions (**Documents INQ 35A and INQ 35B**). The main points are:*

THE PRINCIPLE OF REDEVELOPMENT

104. Redevelopment of Newcombe House has long been anticipated by development plan policy. As the previous Inspector noted, the site was identified as an eyesore in the 2015 Local Plan, which was relevant at the time. This saw its redevelopment as a catalyst for regeneration of the wider area. That theme remains the thrust of the 2019 Local Plan (***Document CD 10.10, paragraph 12***).

105. The site lies within an area where significant regeneration and growth is anticipated by the development plan. Within the London Plan it is located within the Notting Hill Gate District Centre where policy 2.15 anticipates medium growth up to 2036. Within the 2019 Local Plan the site lies within a District Shopping Centre and is designated as a centre where there is significant opportunity for regeneration. (***CD 6.1 Policy 2.15 and Table A2.1***)

106. The potential for redevelopment of Newcombe House is specifically referred to in policy CV11. In the context of identifying the vision for Notting Hill Gate in 2028, this explains that opportunities set out in the NHG SPD will have been taken to refurbish or redevelop outdated 1950s buildings. Paragraph 11.4 of the explanatory text indicates a number of relevant "*priorities*" including to:

    a. improve the public realm around Notting Hill Gate station;

    b. Refurbish or redevelop a number of sites identified in the NHG SPD, including Newcombe House, where refurbishment or redevelopment in a different plan form are both appropriate options;

    c. Provide active frontages at ground floor level.

    d. Provide step-free access at Notting Hill Gate station.

    e. Deliver cultural place making initiatives.

    f. Retain the Farmers' Market.

    g. Seek provision of a new primary healthcare centre.

107. The application scheme would deliver all of these elements of the vision. However, there is no evidence that any of these benefits would or could viably be delivered by refurbishment of the application site. It follows, that redevelopment is the only way to deliver the vision set out in Policy CV11 of the 2019 Local Plan. Indeed, most local residents are not against the principle of redevelopment of the site. The Kensington Society and the Ladbroke Association both support the scheme on the basis of the benefits it will deliver. Accordingly, redevelopment of this site is the key to delivering the regeneration of Notting Hill Gate that has been an aspiration for so long (***Documents CD 5.1; INQ 12; INQ 15***).

108. The policy context also establishes that the site is in principle an acceptable location for a tall building. It offers one option for the retention and refurbishment of the existing Newcombe House which is in itself a tall building.

109. Within the NHG SPD the development principles plan for Newcombe House sets out a vision for the future for the site. It includes annotations that do not currently exist and the suggestion by the Council that it reflects the existing position was therefore obviously wrong. It identifies the site for a landmark building, which within a District Centre would, in the phraseology of the 2019 Local Plan, be a District Landmark. The Council identified the proposed corner building as being a district-scale building. Accordingly, the height of the proposed building would be appropriate for the hierarchy of the centre in which it is proposed. Furthermore, the NHG SPD indicates that a redevelopment may entertain a modest increase in height over the existing building, where the proposal includes significant benefits to Notting Hill Gate and delivers an architecturally excellent building, provided this does not have a harmful impact on views. (***Documents CD 5.3, figure 11, paragraph 4.17; POE 1, paragraph 5.36***).

110. In the light of the above, the only reasonable conclusion is that a tall building in this location is specifically envisaged by the development plan. Indeed, subject to compliance with other policies, this is agreed in the Planning SCG. The Council's in-principle objection to a tall building on the site only claimed a breach of Part A of policy 7.7 in the London Plan and not any other part of that policy. This contradicts the agreement reached in the Planning SCG. It was also claimed that policy CV11 in the 2019 Local Plan incorporates the NHG SPD and that any increase in building height that was not modest would breach the policy. This is not only an incorrect interpretation of the policy but was a new point not identified in the Council's statement of case. The explanatory text does not support the point either since it makes no reference to any requirement of a "*modest*" increase. It simply states that the NHG SPD identifies a number of sites for refurbishment/redevelopment. The NHG SPD does not form part of the development plan but remains merely guidance (***Documents CD 4.4, paragraph 7.5.1; CD 5.1, paragraph 11.4***).

111. If the proposed development is found to accord with the relevant development plan policies relating to design, townscape and heritage matters, it would be wrong in law to refuse planning permission on the basis of any conflict with the SPD requirement of a "*modest*" increase in height. That is because in this situation, the proposal would have the full support of the development plan. Even if the height increase were not seen to be modest, the weight that could rationally be given to a breach of this element of the guidance could not

outweigh the support of the development plan. To do otherwise would be to prioritise the guidance over the policies in the plan.

112. Policy CL12 in the 2019 Local Plan provides that policy will resist buildings significantly taller than the surrounding townscape, other than in exceptionally rare circumstances where the development has a wholly positive impact upon the character and quality of the townscape. The provision made in the development plan for the redevelopment of Newcombe House to remove the eyesore is wholly exceptional and plainly contemplated by the plan itself. A tall building here is the only way of delivering the benefits the 2019 Local Plan seeks to achieve. Accordingly, the exceptional circumstances and wholly positive impacts do exist here and the proposal therefore accords with policy CL12.

THE PREVIOUS INSPECTOR'S DECISION

113. It is important to recognise that the application is not the first scheme to be considered for the site. On the 12 June 2017 an appeal was dismissed for a redevelopment that was only in a slightly different form from that now being proposed. The concern was the loss of social housing and the failure to make any on-site affordable housing provision. The Inspector considered that this could be resolved with a viable scheme that offered most or all of the same benefits. He indicated that the scheme should not necessarily be prevented from going ahead in its current form and would only be delayed slightly.

114. In order to reach his conclusion, the previous Inspector concluded that:

    a. The benefits of redevelopment would be substantial and would be supported by a raft of development plan policies (***Document CD 10.10 paragraph 59***).

    b. The scheme would be acceptable and accord with the development plan with regard to character, appearance and design, including policies 7.4, 7.5, 7.6 and 7.7 in the London Plan and policies CL1, CL2, CL11 and CL12 in the 2015 Local Plan (***CD 10.10 paragraphs 30, 31 and 62***).

    c. The scheme would be a high-quality design response and represent the highest standards of architecture. It would satisfy policy in Chapter 7 of the 2012 Framework, including paragraph 64, which indicated that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area (***Document CD 10.10 para 30***).

    d. The scheme would give rise to minor/slight harm to some heritage assets, including the Ladbroke Conservation Area, the Royal Parks Conservation Area and Kensington Palace and its Registered Park and Garden. However, he concluded that the harm individually or taken together was clearly outweighed by the substantial benefits of the scheme. It therefore complied with paragraph 134 of the 2012 Framework, policy 7.8 in the London Plan and Policies CL3 and CL4 in the 2015 Local Plan (***Document CD 10.10, paragraphs 36, 38, 39, 63***).

115. These conclusions represent a significant material consideration, which did not exist when the Mayor declined to call-in the previous application for his own determination. The focus has now changed in the present proposal to include the delivery of affordable housing within a scheme of similar form.

116. The correct legal approach to the consideration of the previous appeal decision is important. The latest relevant judgement is *R(Davison) v Elmbridge Borough Council*[14], which establishes the following points:

    a. Where an administrative discretion is vested in a public authority that falls to be exercised on a potentially indefinite number of occasions, the law requires steps be taken to achieve reasonable consistency and avoid arbitrariness in its exercise.

    b. Consistency in decision making is a well-established principle in planning law. The classic statement of the principle is set out by the Court of Appeal in the *North Wiltshire* judgement[15] (***Document INQ 34C***).

    c. The greater the inconsistency between the new position reached compared to the previous decision, the more it requires explanation. This is established in the *JJ Gallagher Ltd* case[16].

117. The previous Inspector's decision is a highly relevant material consideration, not least because the parties now agree that the proposal is acceptable in respect of its provision for affordable housing. Indeed, the Council has itself given it significant weight in its Committee Report and statement of case (***Documents CD 3.7, paragraph 8.1; CD 4.3, paragraph 3.7***).

118. In that context, it is relevant to consider the extent to which the difference in the design of the application scheme justifies any alternative conclusion being reached in relation to impacts upon heritage assets and/or townscape concerns. This is particularly the case here where the previous Inspector's refusal was made simply to ensure that affordable housing came forward and where he expected a similar form of development with appropriate provision to be granted planning permission. In the absence of any material change in circumstances, to adopt a different view to those reached by the previous Inspector would materially undermine the good administration of the planning system. It would send out a loud signal that appeal decisions cannot be relied upon to point a way forward to developers. That they can simply be cast aside as if previous appeals had never happened. Such a course of action would be contrary to the public interest.

119. It is then relevant to consider whether there have been any material changes in circumstance. The only physical changes to the scheme now being considered relate to the heights of the two peripheral buildings KCS 1 and WPB 3 by one and 2 storeys respectively. The Council confirmed that it had no concerns regarding the additional height of KCS 1. No evidence was provided to support the concerns of Members about WPB 3. The only issues pursued in consequence of the resolution of Members related to the impact of the tower. That building remains unchanged from the previous decision. Thus, barring any other material change in circumstances, there is no good reason to depart from the conclusions

[14] *R(Davison) v Elmbridge Borough Council*[14] [2019] EWHC 1409 (Admin).
[15] *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P&CR 137.
[16] *JJ Gallagher Ltd v Secretary of State* [2002] EWHC 1812.

reached by the previous Inspector (***Document POE 1, paragraphs 6.2.18, 6.2.19***)[17].

120. The Council suggested that the previous Inspector's decision should not be relied upon because of material changes to national planning policy on design in the 2019 Framework and the publication of the *National Design Guide*. However, planning policy on design has not materially changed at the national level. Paragraph 56 of the 2012 Framework emphasised the great importance the Government attaches to the design of the built environment. It stated that good design is a key aspect of sustainable development. Paragraph 124 of the 2019 Framework states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. It reiterates that good design is a key aspect of sustainable development. These interchangeable statements do not reveal any shift in emphasis on design. The *National Design Guide* states that the fundamental principles of good design are long-standing. In any event, the Council did not identify any breach with this document (***Document CD 7.16, paragraph 4***).

121. It was asserted that paragraph 132 of the 2012 Framework did not contain the clear advice now in paragraph 193 of the 2019 Framework. However, paragraph 132 said in terms that great weight should be given to an asset's conservation. Regarding approach, the legal context is provided by the case of *Jones v Mordue, the Secretary of State for Communities and Local Government and South Northamptonshire Council* [2015] 2 AC 141. This indicates that if the decision-maker works through the relevant paragraphs in the 2012 Framework, including paragraph 134, the duty under section 66(1) will usually have been complied with (***Document CD 11.4, paragraph 28***).

122. The Council did not consider that the previous Inspector had applied great weight to the conservation of the designated assets as required by policy. In the light of *Mordue* this point cannot be pursued on any reasonable basis. This is a very experienced and respected Inspector who specialises in the design and heritage field. His decision was taken three years after the *Barnwell Manor case*[18], which was highly publicised and widely discussed within the planning community. He had submissions from experienced Counsel who referred to numerous cases concerning the relevant approach to weight. He referred in terms to the statutory duty and to paragraphs 132 to 134 of the 2012 Framework (***Document CD 10.10 paragraphs 39, 41***).

123. Following *Mordue* and absent some positive contrary indication in other parts of the text of his reasons, the appropriate inference is that the Inspector has taken

[17] Ms Buckingham confirmed in cross-examination by Mr Katkowski that she did not object to the increase in height of KSC 1. Also, that her points relating to WSB 3 were not points raised by the Members and were therefore not matters on which the resolution was based. She said that the concerns of Members to WSB 3 were not supported by her.

[18] *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, the Secretary of State for Communities and Local Government* [2014] EWCA Civ 137 (***Document CD 11.7***).

properly into account all those provisions[19]. The only conclusion consistent with the caselaw is that the Inspector applied the right approach to weight as set out in paragraph 132 of the 2012 Framework. The Council suggested that the 2012 Framework did not reflect the required legal approach. That is wrong as set out in *Mordue*. If the relevant paragraphs are worked through the legal duties are met. The Court of Appeal held that the 2012 Framework reflected the required legal approach.

124. The contention that the previous Inspector's decision was flawed in some way must be firmly rejected. Accordingly, there is no good reason to depart from the conclusions reached by the previous Inspector. Conversely, there are extremely strong reasons in the public interest to reach the same conclusions for the reasons given above.

THE SUPPLY OF HOMES

125. There is a five-year supply of housing in the light of the recent adoption of the 2019 Local Plan. That means that this is a case where paragraph 11(c) of the Framework applies. However, the Framework continues to seek to boost the supply of housing. Furthermore, it is supported by Policy 3.3 in the London Plan, which recognises the pressing need for more homes in London. This places an objective upon boroughs to achieve and exceed the relevant minimum housing target. Policy CH1 in the 2019 Local Plan supports this approach. That is because the London plan targets are not based on housing need but are instead capacity constrained figures. The capacity within London falls significantly below levels that could meet need.

126. The available data demonstrates that the Borough is particularly constrained and is failing to meet its housing targets by a significant amount year after year. There is a significant shortfall with only 16% to 54% of targets being met in terms of completions between 2015-2018 and only 15% to 48% in terms of permissions granted over the same period. In this context, the provision of additional housing in this District Centre, which is one of the most sustainable locations in the Borough, should be given significant weight in favour of the grant of planning permission (***Document POE 8, table 2***).

127. It is now agreed that the proposed affordable housing accords with Policy 3.12 in the London Plan and Policy CH2 in the 2019 Local Plan. However, the delivery of affordable housing within the Borough has been very poor for a number of years. Some 8% to 25% of affordable housing targets have been met in relation to completions over the period 2015 to 2018. In respect of the grant of planning permissions for affordable housing only some 0% to 9% of the target has been provided over the same period. Delivery of affordable housing in the Borough has been woeful. This situation will continue since there are almost no planning permissions in the pipeline (***Document POE 8, tables 2 and 3***).

128. The proposed development would deliver 23 affordable housing units. In the

[19] Mr Kiely in cross-examination by Mr Katkowski confirmed that he could not point to a positive contrary indication in the previous Inspector's decision. He thereafter altered his position to suggest that the Inspector "*may or may not*" have applied the weight required.

context set out above, this is the same amount as was delivered by the whole Borough in 2016/17 and is twice as much as has been permitted since 2016. Further, it would deliver rental products that are specifically tailored to be affordable within an extremely high-quality scheme. This would produce a thriving and successful mixed community. Together these factors mean that the affordable housing must be given significant weight in favour of the grant of planning permission (***Document CD 4.4, paragraph 7.2.23***).

129. The response to the housing crisis in London should be for the planning system to do all that it can to support schemes that deliver homes rather than contending that the problem is too big for the planning system to resolve. The Council's general point was that where a benefit was one that is required by, or accords with, policies in the development plan it should be given moderate weight in the planning balance. This is the wrong approach in a plan-led system. The development plan identifies what it is the planning system is to secure in the public interest. A scheme that accords with the plan, accords with the public interest and should be permitted unless material considerations indicate otherwise. Equally, a scheme that does not accord with the plan does not accord with the public interest and should be refused unless material considerations indicate otherwise. Accordingly, the plan identifies the considerations which are so important that they either lead to a grant or refusal of planning permission. The fact that the development plan supports the provision of affordable housing cannot therefore logically diminish its importance. Indeed, it enhances it as the previous Inspector found. The Council's approach is irrational and, if followed, would result in a decision tainted by error of law.

DESIGN

130. The Framework explains that good design is a key aspect of sustainable development and creates better places in which to live and work, helping to make development acceptable to communities. Paragraph 131 indicates that great weight is to be given to outstanding designs that help raise the standard of design more generally within an area. Chapter 7 in the adopted London Plan and Chapter 3 in the draft London Plan both contain policies relating to the places and spaces in which Londoners live and work. The previous Inspector, the Executive Director of Planning at the Council, the officers of the GLA and the Mayor himself indicated that they considered the scheme to be outstanding in terms of its design.

131. The only part of the proposed development that now remains controversial to the Council is the corner building. This has already been tested within this policy context at appeal. The Council accepted that because there had only been minor changes, the previous Inspector would have been likely to have reached similar conclusions in respect of the quality of the application scheme and its impact on the townscape. It was also recognised that if it is accepted that the previous Inspector had got it right in terms of the high-quality nature of the design, that was the end of the Council's townscape objection[20].

132. The previous Inspector's conclusions should be followed in terms of design

[20] These points were agreed by Ms Buckingham in cross-examination by Mr Katkowski.

quality and the effect of the building on views. Since he found accordance with paragraph 64 of the 2012 Framework, the scheme attracts the support of paragraph 131 of the current version and great weight must be given to its outstanding design. He also found accordance with policies 7.4, 7.5, 7.6 and 7.7 in the London Plan and various policies in the 2015 Local Plan, which remain unchanged in content in the 2019 version (***Document CD 10.10 paragraphs 28-31***).

133. Even on the Council's evidence the development would cause no widespread harm to the townscape[21]. In the case of 6 views its appraisal was totally at odds with the previous Inspector and, in any event, it was hopelessly flawed. There was no explanation of the scale that had been used to assess harm and the approach was muddled and lacking in transparency.

134. The proposed development would bring about the regeneration of this area which has been long sought through development plan policy. It would do so in a manner that would enhance the townscape with a high-quality scheme that would improve permeability and connectivity. On that basis, the proposal would accord with relevant development plan policy and the Framework. Indeed, the design aspects of the scheme would deliver improvements that must be given significant weight in favour of the grant of planning permission.

135. On the point that permitting the proposal would lead to a proliferation of tall buildings in this area, the approach in *Poundstretcher*[22] should be applied. Weight should only be given to fear of proliferation of tall buildings as a material consideration if there is evidence that if planning permission is granted the Council would not be able to resist other similar applications. Given that Policy 7.7 in the London Plan and Policy CL12 in the 2019 Local Plan requires each tall building proposal to be assessed on its merits, there is no such evidence.

HERITAGE

136. During the consideration of the planning application, the Council's officers advised that less than substantial harm would be caused to the significance of some heritage assets. Members however, resolved that harm would be caused to the setting of heritage assets of a substantial nature. The rationale for that judgment has never been explained but it endured even after the previous Inspector's decision and substantial harm was alleged in the request to the Secretary of State to call-in the application and his decision was on this basis. This is a matter of great concern. Only after legal advice was received did Members change their position, presumably because it could not legally be sustained. Any suggestion that Members did not understand what substantial harm was in the technical sense would be a matter of grave concern in a Borough where conservation areas are likely to affect almost every planning application. In reality it is far more likely that they did understand what they were doing but were determined to refuse the application for reasons

[21] In cross-examination by Mr Katkowski, Ms Buckingham confirmed that in her assessment, 43 or the 49 views did not identify any harm to the townscape.
[22] *Poundstretcher, Harris Queensway v Secretary of State for the Environment and Liverpool City Council* [1989] J.P.L. 90

unconnected with the proper application of policy.

137. The Council's evidence to the inquiry did not support a view that substantial harm would be caused. Even in relation to 1-5 Pembridge Gardens, where the greatest level of impact was identified, it was made clear that the level of harm was nowhere near the level of substantial harm[23]. Notwithstanding the significant change of position on such a crucial issue, the Council has concluded that the public interest benefits that the scheme would deliver would still not outweigh the harm that would be caused.

138. There is no dispute that the development plan is up to date and there is no suggestion that the relevant policies are inconsistent with the Framework in respect of their approach to heritage assets. It follows that if the Framework's approach is followed, the outcome will determine whether the proposal accords with Policy 7.8 in the London Plan and Policies CL3 and CL4 in the 2019 Local Plan. If, as suggested by the Council, there was a difference of approach between the development plan policy and paragraph 196 of the Framework, the former could not be up to date (***Document INQ 34B, paragraph 13***).

139. The focus of the relevant policy test in paragraph 196 of the Framework is upon identification of harm to significance. It does not seek to protect the setting of heritage assets in and of itself. Where development occurs within the setting of a heritage asset, what has to be examined is the extent to which any subsequent change would give rise to harm to the significance of the heritage asset. The process to be adopted is carefully described by Historic England in its advice note: *The Setting of Heritage Assets* (***Document CD 7.12***).

140. When conducting an appraisal to be used in the paragraph 196 balance, the process is:

    a. To identify the significance of relevant heritage assets.

    b. To identify the contribution that setting makes to the significance of each relevant heritage asset.

    c. To identify the nature of the change within the setting as result of the proposed development.

    d. To identify the impact of the change within the setting upon the significance of each relevant heritage asset.

    This approach has been followed in a highly detailed and careful manner and the methodology was not challenged by the Council in any material way.

141. By contrast, the Council's evidence did not follow the requisite approach in its assessment of the impact upon the relevant conservation areas. It did not appraise the significance of the heritage asset as a whole but rather how the setting contributed to a particular view. It was not an assessment of how the view contributed to the significance of the heritage asset as a whole. What is also apparent is that the Council has not adopted a methodology that includes any assessment of the contribution of the setting to the relevant heritage

[23] This was confirmed by Ms Buckingham in cross-examination by Mr Katkowski.

assets. This is a vital step and crucial in the present application where development only occurs within the setting. There is grave doubt whether this step was undertaken at all, which is sufficient basis to reject the Council's evidence as flawed (***Documents POE 4 paragraph 2.22; POE 1, paragraph 6.3.4***).

142. This fixation upon what happens to the views as a result of the development is carried through into the Council's assessment of the impact of the proposed development on the setting in the view. In other words, it is the impact of the proposed development on setting that has been assessed and not the effect of change within the setting upon the significance of the heritage asset. This too is sufficient basis to reject its evidence as flawed. The Council recognised that the level of impact on the Royal Parks Conservation Area, the Kensington Gardens Registered Park and Garden and 10-12 Pembridge Square had been overstated[24] (***Document INQ 23***).

143. Care must be taken to guard against focussing upon a few views within a widely drawn conservation area/setting and concluding that changes in those views must lead to a high degree of harm to significance. That is not the correct approach. The question to ask is whether the proposed development would distract from the ability to appreciate the significance of a heritage asset. This is not the same as an assessment of whether the appearance of the scheme would be a distraction in the view.

144. The Council did not take any benefits of the proposed development into account in its heritage appraisal[25]. This means that the impact of the scheme upon the significance of the conservation area, as required by paragraph 200 of the Framework, has not been identified. The Courts have made clear in the case of *R (Palmer)*[26] that it is the residual impact upon significance that is to be identified and weighed in the paragraph 196 balance. In other words, the decision maker should identify all the harm to significance of a CA and all benefits to that significance and reach a conclusion as to the net effect of a scheme upon the significance of a CA as a whole. The fact that this approach had not been followed by the Council means that the impact of the scheme on the conservation areas had been over-stated.

145. Any suggestion that it is appropriate to place any identified impact upon the significance of a sub-area within a conservation area into the balance under paragraph 196 of the Framework must be rejected. That approach is wrong in law. It is harm to the significance of the designated heritage asset as a whole that must be considered. The Council's suggestion that changes in a limited number of views could give rise to moderate-major levels of impact upon the significance of large conservation areas must be rejected as wrong as a matter of approach. At most there could only be harm at the very lower end of the less than substantial scale.

146. The conservation area appraisals are, with one exception, relatively modern.

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[24] This point was agreed by Ms Buckingham in cross examination by Mr Katkowski.
[25] This point was agreed by Ms Buckingham in cross examination by Mr Katkowski.
[26] *R (Palmer v Herefordshire Council)* [2016] EWCA Civ 1061 (Document CD 11.6).

They have been produced in order to set out the factors that go to the significance of each conservation area. The Council did not identify a single way in which any of the appraisals would need to be changed if the development took place. It was agreed that if setting contributed materially to significance then it would be identified in the appraisal[27]. Accordingly, one could expect at least some change to be necessary if the impacts identified by the Council really would result from the scheme.

147. The degree of impact would be at the very bottom of the scale of less than substantial harm in every case where harm would occur. The relevant factors that have been considered in relation to each heritage asset included the number of viewing places, the change compared to the existing view, the effect of seasonal changes to trees and vegetation and the extent to which the high-quality design could be appreciated. The degree to which the proposed development would affect the appreciation of significance in each case was considered carefully. The assessment of the impact of the proposed development is also similar to that of the previous Inspector and that of Historic England (***Documents POE 4, section 5; INQ 1; INQ 23***).

148. Any contention that the impacts upon a number of heritage assets can be combined to give rise to an impact greater than the sum of its parts, would be wrong in law. Paragraph 196 of the Framework requires the harm to significance of each heritage asset to be identified. Since each heritage asset has a unique significance, it is not possible to combine impacts upon significance to give rise to a greater impact and be consistent with the words of paragraph 196.

149. The Council did not assess the impact of the scheme upon the underground station. The proposed delivery of step-free access would open up the Grade II listed station to allow access to those who have not previously been able to appreciate it. This would better reveal the heritage significance of the station and thus lead to an enhancement of significance (***Document POE 4, paragraphs 5.47-5.50***).

150. The Framework emphasises that great weight should be given to the conservation of heritage assets. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset, should require clear and convincing justification.

151. There was a suggestion by some that alternative designs for the redevelopment of the application site are material to the decision on this application. However, the proposal must be considered on its merits. If it is found to be acceptable in planning terms the fact that there may be some other yet more acceptable form of development on the site cannot form a rational basis for refusing planning permission for that which is in itself acceptable. This is so even in respect of a development that would give rise to harm to the significance of a conservation area but where that development is nonetheless found to be acceptable on balance as found in the case of *MR Dean & Sons (Edgware) Ltd*[28]. In any event,

[27] This point was agreed by Ms Buckingham in cross-examination by Mr Taylor.
[28] *MR Dean & Sons (Edgware) Ltd v First Secretary of State* [2007] EWCA Civ 1083.

no evidence has been presented which establishes that there is any likelihood of a different scheme coming forward which could deliver the same benefits with less harm on a viable basis.

BENEFITS

152. In addition to the very significant benefits of the proposal in terms of housing delivery, affordable housing delivery, townscape and urban design, there are other factors that together weigh very significantly in favour of the grant of planning permission. As already addressed in respect of affordable housing, the Council's approach to ascribing moderate weight to the benefits is churlish and illogical (***Document POE 8, paragraph 9.33-9.45 and table 4***).

Step-free access to the underground station

153. There is very strong policy support through Policy 6.1 in the London Plan and Policy CT1 in the 2019 Local Plan. In addition, Policy 14 in the Mayor's *Transport Strategy* and the NHG SPD support the provision of step-free access where opportunities arise (***Documents CD 5.3, page 10; CD 6.4, page 143; POE 8, paragraphs 9.24-9.25; POE 5, paragraphs 7-24***).

154. Following the receipt of a local petition, the Council resolved in January 2016 that work should begin for the provision of step-free access at Notting Hill Gate underground station urgently. The Officer's Report is illuminating since it identifies that the size of funding required means that in practice only the biggest developments can fund the costs of the entire work for step-free access. The same Report notes that the redevelopment of Newcombe House may deliver part or all of the step-free access costs (***Document POE 6***).

155. The main parties agreed that the proposal would do all that it could to deliver step-free access at the underground station. Full delivery would require the use of adjoining land at David Game House, which is beyond the Applicant's control. These premises have recently been refurbished and so it will be some years before they are likely to be redeveloped. The costs of TfL acquiring the third-party land would be substantially greater than if it were secured as part of any future redevelopment proposals. This makes any provision of step-free access via David Game House unlikely prior to its redevelopment. However, the proposal would increase the likelihood of step-free access being included in any such redevelopment significantly and thus would make the provision of full step-free access provision in the future more likely (***Documents POE 5, paragraphs 40-43; POE 7, paragraph 1.3.3-1.3.4***).

156. In the absence of what is proposed as part of the application scheme, step-free access to the southbound Circle and District line platforms could not be delivered. For the first time those in wheelchairs would have access to the London underground network from this popular and busy underground station. Its use may require some to travel past the station and change at Gloucester Road or Edgware Road in order to travel back to the platform with step-free access provision. However, the journey could be made where it cannot be made at all at present. The step-free access proposed as part of the scheme would reduce journey times and help remove barriers to accessing the transport network for those with reduced mobility. The proposal would also deliver stair-

free access to both the eastbound and westbound Central line platforms, delivering further benefits to passengers. Thus, the improvements would help deliver on key equality and inclusiveness policy objectives (***Document POE 5, paragraphs 33-39***).

157. The Council's response that step-free access was required by policy and would be secured as a matter of course is strongly disputed. It is very difficult to secure it as part of development schemes and opportunities to secure such benefits are rare. The delivery of step-free and stair free access via this unique opportunity would bring significant benefits to a variety of passengers who are currently experiencing difficulties in using the transport network. It would also send a signal to developers across London that such provision is required by the planning system where similar opportunities arise. Accordingly, this is a benefit that must be given substantial weight.

Other benefits

158. The Council's suggestion that access to the medical centre would present difficulties due to its location on the upper floors of building WPB 3, was not supported by the doctors involved or the NHS West London Clinical Commissioning Group. They are in the best position to know. The provision of this new medical facility is a matter to which significant weight should be given.

159. In addition, the scheme would deliver benefits long sought after in the development plan. These include the provision of commercial floorspace and active frontages. The local Farmers' Market would be provided with an enhanced, long term solution. The office floorspace would be flexible, modern and fit for purpose. There would be improvements to the public realm and connectivity and to the vitality and viability of the District Centre. In addition, the scheme would deliver some enhancement to the significance of the Kensington Conservation Area and the listed underground station (***Document POE 8, paragraphs 9.46-9.48***).

160. Taken together, there would be very substantial public interest benefits that would be delivered. These are public interest benefits which must be given very significant weight.

161. Applying the approach required by paragraph 196 of the Framework, the public interest benefits would clearly outweigh any harm to the significance of heritage assets. This is even having regard to the need to give great weight to an asset's conservation. That was the conclusion reached by the previous Inspector, even without policy compliant affordable housing. The application scheme would be acceptable in terms of its impacts upon heritage assets and would accord with Policy 7.8 in the London Plan and Policies CL3 and CL4 in the 2019 Local Plan.

THE DECISION-MAKING APPROACH

162. The presumption in favour of sustainable development applies through paragraph 11(c) of the Framework. As a result, the approach to the decision is simply that required by section 38(6) of the 2004 Act.

163. For the reasons set out above, the application proposal would be in accordance with the development plan; would be in accordance with the Framework; would

deliver significant public interest benefits; and would not give rise to any material consideration of sufficient weight to justify refusal of planning permission.

THE CASE FOR THE RULE 6 PARTY: THE COUNCIL OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

*The Rule 6 Party's case is fully set out in its evidence, including its opening and closing submissions (**Document INQ 34A and 34B**). The main points are:*

BACKGROUND TO THE APPLICATION

164. There is a long-running and convoluted planning history. Since the Applicant acquired the site in 2011, two planning applications for substantially similar development have been refused by the Council. The first of these decisions was subject to an appeal and in June 2017 the Council's refusal was upheld on the basis that it failed to comply with development plan policies on affordable housing. The second application was taken over by the Mayor of London for his own determination in March 2018 and subsequently subject to call-in by the Secretary of State in March 2019. The only material differences between the two applications are the policy-compliant provision of on-site affordable housing where previously none was proposed, leading to a corresponding increase in the number of residential units and an increase in height to two of the perimeter blocks.

165. Heavy reliance has been placed on various elements of the previous appeal decision. Whilst this is a material consideration, it is entirely appropriate to depart from it for the clear reason that it is doubtful that he gave correct weight to the harm to the heritage assets that he had identified. In any event it is open to the Secretary of State to find, in his judgment, that the harm was greater than that identified by the previous Inspector, as long as he explains the basis for the difference in findings. Furthermore, there is doubt as to how the previous Inspector approached issues of design.

166. This Council has consistently maintained its position that the proposal would cause harm to the significance of local heritage assets and have a negative impact on the character and appearance of the surrounding townscape by reason of its height, massing and design. These planning harms would not be outweighed by the planning benefits of the scheme. Members, along with the local residents who experience the area daily, have far greater local knowledge than any of the parties who have been involved in assessing the proposed development. This includes the Applicant's expert witnesses, the GLA, the previous Inspector, statutory consultees and indeed even the Council's planning officers. Unlike those promoting the scheme, the Council has no private interest in the outcome of the application. It is only concerned with what is right in the public interest.

167. Despite the Applicant's repeated invocation of the previous Inspector's decision, it departs entirely from his findings by contending that no harm whatever would arise to heritage assets. The Applicant and the GLA have wholly inconsistent positions on harm and the only party with a consistent and clear view is the Council. The local community also largely does not support this scheme, with

over 600 objections. Many objectors attended the inquiry and presented their views which should also be given significant weight.

THE RELEVANT TESTS TO BE APPLIED

168. Two important and strong statutory presumptions apply to the present application. The first is that planning permission should be granted for development that is in accordance with the development plan unless material considerations indicate otherwise. The corollary is a presumption that development that fails to accord with the applicable plan should be refused. The 2019 Local Plan has very recently been examined and found to be sound. It is common ground that the relevant development plan for this application is up to date and therefore carries full weight[29].

169. The second presumption is that where development fails to preserve a listed building or its setting, planning permission should be refused. In this context, preserve means "*do no harm to*". This is reflected in paragraph 193 of the Framework, which requires great weight to be given to an asset's conservation. It gives rise to a strong presumption against the grant of planning permission where there is harm to a heritage asset. Where less than substantial harm is found, paragraph 196 of the Framework requires the great weight to be balanced against the public benefits of the proposed development.

POLICY CONTEXT

The London Plan

170. Policy 7.4 emphasises the importance of respecting local character when proposing new development. Policy 7.6 requires development to be of the highest architectural design and quality. Policy 7.7 deals with tall buildings and it is clear that the emphasis is on the boroughs to identify appropriate, sensitive and inappropriate locations for tall buildings. In this regard it is of significance that the application site falls within a buffer zone set out in the *Building Height* SPD, which is highly sensitive to tall buildings. The impact of tall buildings in sensitive locations, such as the buffer zone, must be considered especially carefully (***CD 5.2, paragraphs 4.5-4.6 and figure 4***).

171. Policy 7.8 protects the city's heritage assets. Contrary to the position expressed by the GLA, once there is harm to significance it is not possible to accord with Policy 7.8, even if public benefits ultimately outweigh that harm when the balancing exercise is undertaken. The inclusion of that balancing exercise in the supporting text does not make it part of the policy, which makes it clear that significance should be conserved.

The 2019 Local Plan

172. The Local Plan contains a number of policies that govern the pattern, scale and quality of development along similar lines to the London Plan policies referred to above, including Policies CL1, CL2, CL11 and CL12. Policies CL3 and CL4 seek to preserve and enhance the borough's heritage assets. As with Policy 7.8 in the

[29] This was agreed by both Mr Green and Mr Rhodes in cross-examination by Ms Sheikh.

London Plan, the balancing test in paragraph 196 of the Framework is not incorporated into the policy. Where a proposal causes harm to heritage assets or to the setting of a listed building it would not comply with the policy.

173. Policy CV11 sets out a vision for Notting Hill Gate in 2028. It states in terms that opportunities set out in the Notting Hill Gate SPD will have been taken to refurbish or develop outdated 1950s buildings. Requirements set out in the SPD in relation to the pattern and scale of development in Notting Hill Gate are therefore incorporated into the policy by reference. There is no other instruction within the policy box as to how any refurbishment or redevelopment should take place. This policy now forms part of the development plan and the proposal must comply with it or be found in breach of it. This policy is also materially different to the previous vision for Notting Hill Gate as was set out in policy CV16 in the 2012 Local Plan, which did not refer to the SPD.

Supplementary planning documents

174. It was accepted by the Applicant and the GLA that the Framework and the Building Height SPD and the NHG SPD are relevant material considerations[30]. However, during the course of the inquiry the Applicant appeared to suggest that certain parts of the SPDs would not constitute material considerations to be taken into account in the planning balance. This was particularly where those SPDs do not set out or address environmental, social, design and economic objectives. This is wrong as a matter of law. Documents that are adopted as local development documents, but which do not fall within the requirements of regulation 5 of the *Town and Country Planning (Local Planning) (England) Regulations* 2012, are still material in planning decisions. They fall into a category described in the case law as residual local development documents[31].

175. In any case, it has been no part of the Applicant's case during the inquiry to identify parts of either SPD that it does not consider capable of constituting a material consideration. Neither SPD has ever been the subject of a legal challenge and both have formed part of the Council's suite of guidance documents for a considerable period of time. Indeed, as noted above, both the GLA and the Applicant rely on these as material considerations along with various other SPDs in relation to other matters. There is no reasonable basis for trying to avoid the guidance in the SPDs other than because the Applicant realises that its scheme is in contradiction to it.

AFFORDABLE HOUSING

176. The amount and mix of affordable housing in the proposed development is policy compliant and there is no in-principle objection on that ground. The planning conditions and planning obligations would, for the most part, be necessary to make the development acceptable. However, there are some outstanding concerns (***Documents INQ 6; INQ 26A***).

[30] This was agreed by Mr Green and Mr Rhodes in cross-examination by Ms Sheikh.
[31] *R (Miller Homes Limited) v Leeds City Council* [2014] EWHC 82 (Admin); *R (RWE Npower Renewables Limited) v Milton Keynes Borough Council* [2013] EWHC 751 (Admin).

177. The Applicant has failed to consider whether more on-site units could be provided through a late stage review, rather favouring any additional money going to offsite units. However, the residential units provided onsite would be tenure-blind and the Applicant has demonstrated consistently that it is able to flip units with ease. This would also be policy compliant in line with the order of preference set out in GLA's own *Affordable Housing and Viability Supplementary Planning Guidance* (***Document CD 6.2, paragraph 3.65***).

178. There is no transparency to the Applicant's approach as to the value or quality of the offsite units that would be provided. The delivery of the maximum reasonable affordable housing is an ongoing obligation which does not cease with the grant of permission and the approach adopted by the Applicant and GLA to the provision of any further units where required by a late stage review would not be appropriate or compliant with the Borough's or Mayor's policies on affordable housing.

179. The Applicant now agrees that the provision of the unconnected affordable housing units in the London Borough of Hillingdon should be given no weight as they do not meet the relevant statutory tests. They do not therefore constitute a benefit that can be part of the planning balance for the purpose of determining this application.

HERITAGE

180. As explained in the *Leckhampton Green Land Action Group Limited* judgement, the effect of the statutory and policy tests is to create a presumption or tilt in favour of the refusal of planning permission where the significance of a heritage asset is not conserved[32]. This presumption applies regardless of the level of the harm to significance, although the greater the significance of the asset the more weight must be given to its conservation. In *South Lakeland* it was held that conserving the significance of a heritage asset means doing it no harm[33]. Accordingly, when discussing the "*great weight*" to be given under paragraph 193 of the Framework, the courts have, in *Palmer* and *Barnwell Manor Wind Energy Ltd*, interchangeably referred to great weight being given to the preservation or conservation of the significance of the asset and to any harm to the heritage asset[34]. Being unduly semantic in terms of the purported distinction between the need to conserve an asset and not do it harm is misplaced and a distinction without a difference (***Documents INQ 34C, paragraph 49; CD 11.2, page 150; Document CD 11.5, paragraph 5; Document CD 11.7, paragraphs 17, 22***).

181. This position was accepted by the GLA[35]. It stands in stark contrast to the Applicant's surprising and concerning views that there was no tilt to be applied to the consideration of harm to the significance of heritage assets; or if there was, such a presumption only applied where the statutory duties in section 66(1) and 72 of the Listed Buildings Act 1990 were engaged. This stance is

[32] *R (Leckhampton Green Land Action Group Limited) v Tewkesbury Borough Council* [2017]
[33] *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 A.C. 141.
[34] *Palmer v Herefordshire Council* [2016] EWCA Civ 1061 and *Barnwell Manor Wind Energy Ltd v East Northants District Council* [2014] EWCA Civ 137.
[35] This was agreed by Mr Brookes and Mr Green in cross-examination by Ms Sheikh.

reflective of the generally flawed approach taken by the Applicant, which significantly underestimated the weight to be given to heritage impacts.

182. The GLA attempted to assert that, notwithstanding their own clear assessment of harm, they considered their position to be more closely aligned to that of the Applicant in this context rather than the Council. This was notwithstanding that the Applicant found no harm to heritage assets whatsoever and the GLA found harm to all the same heritage assets as the Council, save for one Conservation Area and one listed building grouping (***Document INQ 1***).

183. The courts in the case of *James Hall and Company Limited* made very clear that the important distinctions in terms of the assessment of the impact on heritage assets of proposed development are between no harm, less than substantial harm and substantial harm. There is no de minimis threshold for heritage harm, and once any harm is found it must be given great weight[36]. Any gradations within the categories of less than substantial harm and substantial harm are far less important. Properly considered, the Council's position in finding less than substantial harm to a number of heritage assets is aligned with that of the GLA, the previous Inspector and Historic England, while the Applicant stands entirely alone in finding no harm whatever to any of the identified heritage assets (***Document INQ 34C, paragraphs 34-35***).

The approach to the assessment of harm

184. The GLA accepted that the correct approach to the assessment of heritage harm had been taken[37]. Ultimately, the concerns boiled down to an unsubstantiated fear that undue weight had been placed on views or the impact on setting when considering the effect of the proposed development on heritage assets. However, when the policy framework is properly understood it is clear that the correct approach was taken in the assessment of harm. In this regard, it is important to note that the Glossary to the Framework indicates that significance derives both from physical presence and from setting. This is reinforced by the corresponding definition of setting, which indicates that elements of the setting may make a positive or negative contribution to the significance of an asset. Clearly, if a particular element of the setting contributes to its significance, for example the ability to appreciate gaps between buildings, a change to that setting is highly relevant for the assessment of harm to significance.

185. Similarly, views are an important aspect of the surroundings in which a heritage asset is experienced. They are clearly capable of demonstrating how the significance of a heritage asset may be affected through change to its setting. The points taken by the Applicant go nowhere and are self-defeating once the above is understood and applied. It is also worth noting that to the extent that the Applicant sought to challenge the approach to assessing the sensitivity of heritage assets, this same approach was also rightly evident throughout the GLA's evidence (***Document POE 4, paragraphs 2.16, 5.46, 5.79, 5.83***).

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[36] *R (James Hall and Company Limited) v City of Bradford Metropolitan District Council* [2019] EWHC 2899 (Admin).

[37] In cross-examination by Ms Sheikh, Mr Brookes accepted that Ms Buckingham had taken the correct approach in section 4 of her proof of evidence.

186. By contrast, the Applicant's position is completely untenable. It is the only party involved in assessing the heritage dimension that finds no harm to any of the identified assets. It has adopted a muddled and uncritical approach without having regard to how the proposed development would be considered on the ground. By requiring that any impact must be seen in the context of the whole of a heritage asset it is ultimately almost impossible to ever find any harm. This means that regardless of the harm to any important element of the setting, if that can be offset against the entire designated heritage asset, the impact can be diluted. Therefore, the larger the asset, the more unlikely it is to find any harm. This is obviously wrong and condones harm to important parts of the heritage asset through development in its setting by simply contending that other parts would not be harmed. This is a thoroughly bad approach that undermines the very purpose of protecting designated assets and their settings.

187. The Applicant's approach of considering whether anything in the conservation area appraisals or the listings would have to change if the proposal were built was also flawed. Harm, and in particular less than substantial harm, is not assessed in this manner. Even so, there would be certain changes that would need to be made to certain appraisals, such as the reference to rooflines in the Ladbroke Conservation Area Appraisal. This underlines the seriousness of the harm that would ensue. The Applicant's approach also does not work as a matter of principle. If one of the important views or vistas were negatively affected by new development, it would not necessarily cease to be an important view or vista or be deleted from the appraisals map of views and vistas. Again, the Applicant's approach fails to properly take into account the effect of proposed development on the ground. The appraisals provide guidance as to how to assess if a proposal would cause harm. The Applicant has failed to apply that guidance in any reasonable manner.

Effect on the heritage assets

188. Apart from the Kensington Conservation Area, within which the previous Inspector identified some of the greatest harm occurring to Hillgate Village, and 10 and 11 Pembridge Square, the assessment accords with that of the GLA. The assessment was not substantively challenged other than its compatibility with that of the previous Inspector. However, a previous Inspector's decision is not binding, and it is entirely reasonable to reach a different planning judgement.

189. From the Ladbroke Conservation Area, the proposed development would have a negative presence in the skyline as a taller, dominant, district scale building. It would be incompatible with the high-quality historic townscape and its prevailing building typology. It would disrupt rooflines and diminish the ability to appreciate the skyline. The effect of the existing Newcombe House is significantly more modest and in some views it is not visible at all. There would be a moderately harmful effect on significance, which would be less than substantial for the purposes of the Framework (***Document POE 1, paragraphs 6.4.1-6.4.16***).

190. From the Kensington Palace Conservation Area, the proposed development would result in a more conspicuous and prominent element in the background to 19 and 20 Kensington Palace Gardens. It would be incompatible in terms of scale, height and silhouette compared to the established character of the street

and would erode the gap between 19 and 20 Kensington Palace Gardens. It would close some existing views by introducing a landmark on the horizon. Overall, while the development would not be a visually widespread addition to the setting of the Kensington Palace Conservation Area the quality of the townscape in the Conservation Area is of high heritage significance. There would be a moderately harmful effect on the significance of the Conservation Area, which would be less than substantial for the purposes of the Framework (***Document POE 1, paragraphs 6.4.17-6.4.25***).

191. From Hillgate Village, which is a sub-area of the Kensington Conservation Area, the proposed development would be more prominent, dominant and conspicuous than the existing Newcombe House. It would detract from the quaint and domestic character and its over-scaled appearance would contrast harmfully with the modest architecture of the townscape. The development would be distracting as a landmark building and would diminish the ability to appreciate the high-quality character of the Conservation Area by becoming the focal point. By comparison, the impact on the setting of the Conservation Area by Newcombe House is significantly less and in some views Newcombe House is not visible at all. The proposed development would have a moderate to major harmful effect on significance, but still less than substantial harm under the Framework (***Document POE 1, paragraphs 6.4.26-6.4.38***).

192. From the Pembridge Conservation Area, the proposed development would tower over the southern fringe, becoming the focal feature in the setting. It would be prominent, conspicuous and dominant in terms of its height, which would be significantly greater than that of the wider townscape. Its modern appearance would distract from the elegance of classical stucco elevations and would disrupt the harmony of the uniform terraces and rooflines. Any screening effect in the summer months would not in itself make the scheme acceptable. The proposed development would have a moderate-major harmful effect on significance which would be less than substantial for the purposes of the Framework (***Document POE 1, paragraphs 6.4.39-6.4.55***).

193. From the Royal Parks Conservation Area, the proposed development would appear higher than any other building within the setting in certain views. This would begin to erode the background setting to the Conservation Area and could lead to further urbanisation on the fringes of the Park with tall buildings. It would appear above the tree lined setting in the view from the eastern side of the Round Pond where there are currently no punctuating features above the tree canopy other than the Grade II* listed St Mary Abbots Church spire. The collective magnitude of the impact of the proposed development would be a minor harmful effect on significance, which would be less than substantial for the purposes of the Framework (***Documents POE 1, paragraphs 6.4.56-6.4.63; POE 11, view 40***).

194. Kensington Gardens is a Grade I Registered Park and Garden and Kensington Palace is a Grade I listed building. The proposed development would breach the unspoilt skyline and erode the quality of the setting of Kensington Palace Gardens which itself forms the setting of Kensington Palace. Both heritage assets are of national importance. Allowing one tall building could over time lead to a cluster of a similar height. Given the distance of the tall building from the

heritage assets the harm would be minor on the scale of less than substantial harm (***Document POE 1, paragraphs 6.5.6-6.5.8***).

195. 19 and 20 Kensington Palace Gardens are Grade II* and II listed buildings respectively. The increased height and increased bulk at high level would result in the proposed development being more conspicuous and prominent than the existing Newcombe House in the setting of both listed buildings. It would reduce and erode the existing quality of the gap and space between the buildings which is fundamental to their significance. It would detract from the silhouette of the chimneys of 20 Kensington Palace Gardens and be visually distracting in relation to the buildings in general. Given the distance of the tall building from these heritage assets the harm would be moderate on the scale of less than substantial harm (***Document POE 1, paragraphs 6.5.9-6.5.11***).

196. 1-5 Pembridge Gardens is a Grade II listed terrace. The proposed development would significantly harm the classic townscape in which the listed terrace is situated by dominating the backdrop to the buildings and detracting from their uniform roofscape. It would effectively become the focal feature of their setting and would distract from the elegance and regularity of the classic elevations. The level of harm would be moderate-major within the range of less than substantial harm (***Document POE 1, paragraphs 6.5.1-6.5.5***).

197. 10 and 11 Pembridge Square are Grade II listed buildings. The projection and building silhouette of the proposed development would disrupt the attractive and historic roof profile of 10 Pembridge Square and its pairing with 11 Pembridge Square. It would be an intrusive background addition. The fact that it would be screened by trees for part of the year does not in itself make the scheme acceptable. The harm would be low in the range of less than substantial harm (***Document POE 1, 6.5.13-6.5.15***).

198. As the proposed development would cause less than substantial harm to heritage assets, it would not accord with Policy 7.8 in the London Plan or Policies CL3 and CL4 in the 2019 Local Plan. It would also engage the presumption against the grant of planning permission drawn from section 66 of the Listed Buildings Act 1990 and paragraphs 193-196 of the Framework. Great weight must be given to that harm when conducting the planning balance. Historic England did not give the scheme a clean bill of health either. Rather, having considered the heritage assets of the highest sensitivity, it is plain from their later letter that they left the detailed assessment to be conducted by the Council's own in-house expertise (***Document CD 2.3***).

TOWNSCAPE

199. The policies in the 2019 Local Plan demonstrate the special importance accorded to the resonance of new development with local character and context, including the prevailing building heights and the high quality, valued and protected townscapes. In this regard there is specific guidance for the application site in the NHG SPD, which is incorporated by reference into Policy CV11. If Newcombe House is to be redeveloped this allows a modest increase in height, subject to an architecturally excellent building that does not have a harmful impact on views. The Applicant and GLA accepted that the proposed 55% increase in

height would not, in height terms, be modest[38]. There was no evidence to support the extraordinary assertion by the GLA that the proposal would have no harmful impact on views[39]. The high sensitivity of the site to taller buildings is underlined by the fact that it is in a buffer zone around designated heritage assets (***Documents CD 5.2, paragraphs 4.5-4.6 and figure 4; CD 5.3, paragraph 4.17***).

200. In terms of its relationship to the prevailing buildings heights, the proposed development would also be at the highest end of the district landmark category. Landmarks which are any taller are inappropriate in the Borough and will be resisted. Whilst the Applicant and GLA made much of the purported need for a local landmark, limited justification was given for the substantial added height of the tower. In this regard, the height of the tower cannot be justified by the provision of the additional affordable housing units. It remains as in the previous scheme, which provided no on-site affordable housing. (***Document CD 5.2, paragraphs 3.9-3.10***).

201. When considering the impact of the proposed development, a contextual approach must be taken, rather than just considering the development against what is currently on the site. Newcombe House is not considered a positive asset and is described as an eyesore in the Building Height SPD. However, this does not mean that it can be replaced with another building that is even more out of context with the local area. As is clear from the history of this application, the Applicant has been readily able to alter the proposed development in order to deal with planning concerns, including the lack of affordable housing. This is despite protestations that this was the only possible option. It is no argument to say that a harmful building is acceptable just because the building currently onsite has a negative impact on townscape. The proposed development must be judged on its own merits and not simply in relation to the quality of the building it replaces (***Document CD 5.2, paragraphs A1.19***).

Assessment of townscape views

202. The Applicant and GLA did not substantively challenge the townscape assessment, which related to a number of views, which were agreed by the main parties. They pointed out that it did not accord with that of the previous Inspector. However, the previous Inspector focussed unduly on the improvement in design by comparison with Newcombe House, thereby failing to have sufficient regard to the impact of the proposed development on the townscape and the character and appearance of the surrounding areas (***Document POE 11***).

203. *Along Kensington Park Road opposite the junction with Ladbroke Square* (view 16). The significance of this townscape and the surrounding area is that it is possible to appreciate the original 19th Century townscape as intended to be appreciated by those who designed and developed it. This view shows the overbearing mass of the central form, and the slip between the east and central

[38] This was agreed by Professor Tavernor and Mr Green in cross-examination by Ms Sheikh.
[39] Mr Green said this in oral evidence but in cross-examination by Ms Sheikh he was unable to find any specific reference to the effect on individual views in his written evidence apart from a more general reference in paragraphs 8.29 and 8.34 of his proof (***Document INQ 8***).

forms would be barely visible in this location. The central form would read as a single mass rising behind the terraced housing in the foreground of the view. The flat, unarticulated volume of the central form would emphasise the bulk of the building. The additional levels would be out of scale with the context and at odds with the townscape character. The height of the building would have a significantly harmful impact on the skyline and scale in the local townscape context and character (***Documents POE 1, paragraphs 6.31-6.33; POE 11, pages 82-85***).

204. *From Pembridge Gardens outside No 6* (view 38). The upper six or so floors of the 18 storey central block would assertively tower over the historic townscape. It would be prominent, conspicuous and dominant in terms of its height and would be significantly higher and more visible than Newcombe House. Its physical presence would distract from the elegance and regularity of the classical stucco elevations and this would disrupt the harmony of the uniform terrace and its roofline. The development would be incompatible with established local scale and the more urban modern character of Notting Hill Gate and would encroach on the streetscape. This would dilute the current distinction between two different types of townscape and erode the historic quality of the townscape. It would have a significantly harmful impact on the skyline and scale in the local townscape context and character (***Documents POE 1, paragraphs 6.2.34-6.2.38; POE 11, pages 192-199***).

205. *At the junction of Wycombe Square and Aubrey Walk* (view 23). The proposed development would be a bold, alien feature on the skyline with no regard to context. Both the east and central blocks of the tall building would be visible appearing in isolation above the rooftops. However, the slip between the two forms would not be pronounced enough in this view and the central form would appear as one mass. The building would appear conspicuous and distracting compared with the modest, local scale of Kensington Place. The development would make an incongruous statement as an inelegant addition to the skyline, with an adverse effect on townscape character (***Documents POE 1, paragraphs 6.2.39-6.2.43; POE 11, pages 116-123***).

206. *Hillgate Place outside no 1* (view 28). Both blocks of the tall building would be visible and the overall increased height, scale and massing would result in a prominent and highly conspicuous development dominating the local established scale of Jameson Street at close quarters. In this view, the slipped form of the massing does little to mitigate the impact of the structure. The central form rises as a single mass through its mid and upper sections. Again, the architect relies on a change in the fenestration to add interest and break down the mass of the building. The impact would be a distracting, over-assertive and incompatible with the local context (***Documents POE 1, paragraphs 6.2.44-6.2.46; POE 11, pages 140-147***).

207. *Kensington Park Road by Kensington Temple* (view 17). 11 storeys of development would be visible above the defined roofscape. This would result in the development being even more prominent, dominant and conspicuous and distracting than Newcombe House. The relative change in scale between the prevailing 3 storey building heights and the height of the central block would be an uncomfortable and stark transition. The central form would be seen as one mass and its blocky form would detract from the skyline. The proposal would

have a harmful impact on the character of the townscape and local context (***Document POE 1, paragraphs 6.2.47-6.2.50; POE 11, pages 86-93***).

208. *Hillgate Place by Hillgate Street* (view 25). Newcombe House currently projects above the parapet of the terrace in the mid ground of the view and forms an awkward backdrop that harms the setting in the view. However, it is still subordinate to the foreground as it sits below the 3 storey corner building on Hillgate Place and Hillgate Street which dominate this view. By contrast the proposed central block would be about 10 storeys above the defined parapet height in the mid-ground of the view and would proportionally read as double the scale of the mid-ground buildings. The new development would, due to the increased height, be more prominent, dominant and conspicuous than Newcombe House and other development in the context of Hillgate Village. The angled view of the building would reveal the full width of the slipped form of blocks, making the proposed development as wide as, and taller than, the existing structure in this view. The proposal would have a harmful impact on the character of the townscape and local context (***Documents POE 1, paragraphs 6.2.51-6.2.55; POE 11, pages 128-131***).

209. In conclusion, the proposal would fail to accord with Policy 7.4 in the London Plan and Policies CL1 and CL2 in the 2019 Local Plan as it would not respond sufficiently to local context by reason of its height, scale and massing. It would conflict with Policy CL11 as it would interrupt, disrupt and distract from important local views, gaps and the skyline. The height of the tower would not be supported by Policy 7.7 in the London Plan or Policy CL12 in the 2019 Local Plan as it would have a harmful impact by reason of its scale and massing on the surrounding townscapes. It would also not be supported by Policy CV11, which incorporates the NHG SPD and therefore only envisages a modest increase in height for development on the Newcombe House site.

DESIGN

210. The proposed tower would read as a flat, unarticulated block, and the design materials chosen for the proposed development would not respond positively to local context. Contrary to assertions made by the Applicant, it is not agreed that the materials would be acceptable. The current Framework places a much greater emphasis on good design, which is now described in paragraph 124 as fundamental. Local planning authorities are told in paragraph 129 to make use of local design guides and take into account as material considerations the recommendations made by design review panels. This emphasis is carried through in the recently issued *National Design Guide* which sets out detailed factors to be considered when designing new development.

211. Another factor emphasised by the current Framework is that good design helps to make development acceptable to communities. In relation to the proposed development, it is telling that there have been a large number of objections to the proposal, which form a high proportion of the total number of comments on the planning application. Local residents spoke out forcefully at the inquiry on the poor quality of the design. This demonstrates that the design is clearly not of sufficient quality to make the development acceptable to local residents.

212. The Applicant's positive assessment of the design quality of the proposal stands

in stark contrast to that of the Architectural Appraisal Panel who considered the scheme before the previous Inspector. The proposal has not substantially changed since then in terms of design. The Panel considered that the brick colour did not respond well to the Borough context and were surprised by the use of white Corian. The height of the proposed tower would be hard to justify in the Notting Hill context and the way that the existing building sits quietly within the existing landscape was commended. The complex form of the tower would make it stand out more and the compositional quality of the façade designs would be fractured and poor. Overall, the architecture would be undistinguished. Clearly, the Panel did not consider that the proposal would have the wholly positive effect required to justify its height pursuant to policy CL12 (***Document CD 10.11, 2016 Minutes***).

213. Two of the main elements relied on by the Applicant in its assessment of the building as a landmark were its wayfinding role for Notting Hill Gate station and its book-ending effect with Campden Hill Towers. These matters were expressly rejected by the Architectural Appraisal Panel as appropriate design justifications. Despite the Applicant's attempt to underplay the role of the Panel, paragraph 129 of the Framework expressly requires the recommendations of design review panels to be taken into account in decision making. Such conflict undermines the Applicant's own assessment of the proposal and significantly reduces the weight to be given to its evidence (***Document POE 10, paragraph 2.18, 3.16iii***).

214. The proposal would not be of the highest architectural quality and design. It therefore would not comply with Policy 7.6 in the London Plan and Policy CL2 in the 2019 Local Plan. It would also fail to respond to local context and character and therefore would conflict with Policy 7.4 in the London Plan and Policies CL1 and CL2 in the 2019 Local Plan. The insufficient quality of design mean that the height of the proposed development cannot be justified in this location, and it would therefore conflict with Policy 7.7 in the London Plan and Policies CL12 and CV11 in the 2019 Local Plan.

BENEFITS

215. Many of the planning benefits relied on by the Applicant and the GLA are given significant weight merely because they comply with the development plan or deliver some of its aspirations. The justification for doing so is that it reflects the proper approach of a plan-led system and gives applicants an incentive to deliver development in line with the objectives of the plan. This approach is seriously flawed for the following reasons:

    a. The development plan and the statutory duty are the framework for determining a planning application. The weight to be given to a benefit which complies with the development plan will be taken into account when determining whether an application complies with the development plan. If there was sufficient compliance with the development plan, this would justify the application being granted in itself.

    b. Planning permission is likely to be refused for development that does not comply with the development plan by meeting its requirements, including those to which the Applicant and the GLA ascribe significant weight. Indeed, planning permission was expressly refused by the previous Inspector on the

basis that no affordable housing was being provided in conflict with the requirements of the development plan. That decision was not challenged, and the Applicant has now included a policy compliant level of affordable housing within the proposed development. That step merely brings the development to the basic threshold of complying with a policy requirement of the development plan, which is a pre-requisite to meeting the section 38(6) test.

c. The planning benefits which are secured by the S106 Agreement are expressly stated by all main parties to be necessary in order to make the development acceptable. The corollary is that without them the development would be unacceptable and planning permission should not be granted. There is therefore no justification for giving these benefits elevated weight.

d. It is entirely right to note that any development would bring these planning benefits. That is because any scheme is required to comply with the development plan. It is not a question of whether there is another scheme or alternative scheme. Any proposal that came forward on this site would, as a minimum, be required to meet these policy requirements. If it did not, it would not meet the requirements of the development plan. That is exactly what happened previously. The failure to provide affordable housing benefits did not lead to a lessening of benefits such that the scheme was nonetheless acceptable. The site is obviously attractive to the Applicant as is shown by the fact that a different scheme has come forward since the previous inquiry in 2017.

216. *Market housing* must be seen in the context of the Borough being able to demonstrate a five-year housing land supply, which indicates that the strategy for the delivery of housing is working successfully. The 2019 Local Plan has been adopted very recently and paragraph 74 of the Framework makes clear that the presumption in favour of sustainable development in paragraph 11d) would not apply. 45% is the delivery threshold under the transitional arrangements and the 2019 Housing Delivery Test shows that delivery against need is 57%. The Local Plan Inspector considered the buffer in great detail at the examination and concluded that 5% was the appropriate figure to apply. The Council has a plan-led housing land supply and the housing provision from this scheme can therefore only attract moderate weight (***Document INQ 43***).

217. *Affordable housing* is a public benefit, but this can only be given moderate weight as a modest number of units would be provided. Furthermore, this is merely policy compliant. The weight should not be increased due to the fact that other developments have not delivered affordable housing. This is largely on account of viability appraisals, which are enabled by Government guidance. Regrettably it is why so much affordable housing fails to be provided. Indeed, the Applicant did exactly the same thing at the previous inquiry in 2017. It was only the scepticism of the previous Inspector that has forced the Applicant to now do its duty.

218. The Council has no private interest in section 106 contributions either in terms of the late stage review or otherwise. The contributions are purely expended in the public interest. There are several projects in the pipeline to deliver high quality affordable housing. The Applicant's proposal to avoid the proper

application of the late stage review by flipping market units would not be transparent and would result in a loss of market housing. It would also not be possible to know whether the Applicant would be gaining a financial benefit. Compliance with affordable housing policy to provide the maximum reasonable amount of affordable housing is an ongoing requirement by the application of the later reviews. The Applicant's suggested approach does not enable a proper understanding of compliance. There is no good reason for the Applicant to avoid the application of the full late stage review at the proper time. Its position also undermines the weight that can be given to the provision of affordable housing.

219. *Step-free access* would not render Notting Hill Gate underground station truly accessible, as there would only be access to one platform of the District and Circle lines. Accessibility is a binary matter and the station is either accessible or it is not. Whilst the proposed development would go some way to securing accessibility it would not be a full solution. The policy imperatives of the Mayor to reduce journey times and bring equality for all would not be met and, in the absence of a full solution, the GLA agreed that the weight to be given should be reduced to some extent[40]. Furthermore, it is not known if or when any other works on the other platform would be provided. For these reasons this benefit attracts only moderate weight.

220. *The Farmers' Market* was operating from the site and has only been displaced as a result of the anticipated construction works for the proposed development. The inclusion of the Farmers' Market within the proposed development would simply maintain the status quo. The Applicant agreed that a failure to provide for the Farmers' Market in a redevelopment of the site would be a disbenefit[41]. There is therefore no justification for giving it significant weight and it should be given moderate weight. Indeed, local people considered the new development likely to undermine the nature of the products sold at the market.

221. *Office, retail space, the doctor's surgery and the new public square* are all policy requirements or aspirations for the site and so should only attract moderate weight.

OVERALL CONCLUSION AND PLANNING BALANCE

222. The balanced evidence provided by the Council is to be preferred and given the greatest weight. The strength of local opinion against the proposal is also significant, demonstrating the failure of the scheme to address local context. The scheme would simply not be good enough and ought not to be permitted. It would not take the appropriate opportunities to improve the environment or present exceptional design or result in good place making, which is fundamental. It would cause harm to the setting of heritage assets of the highest significance. The mere fact that it would replace an unattractive building, which itself is a detracting feature, is not a justification for an unexceptional and harmful proposal in its stead.

[40] Ms Turner agreed in cross-examination by Ms Sheikh that the weight to be given to the provision of step-free and stair-free access should be reduced to some extent as a full solution was not being provided.
[41] This was agreed by Mr Rhodes in cross-examination by Ms Sheikh.

223. The proposed development would conflict with a large number of important policies that govern the pattern, scale and quality of development in the Borough and make provision for conservation of the built and historic environment and are thus strategic policies for the purposes of paragraph 20 of the Framework. It would therefore not accord with the strategy of the development plan and could not accord with the plan as a whole. Pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, there is a presumption that planning permission should be refused.

224. Furthermore, the presumption against granting planning permission set out in section 66 of the Listed Buildings Act 1990 and paragraphs 193-196 of the Framework is engaged and great weight must be given to the harm to heritage assets when balancing them against the planning benefits of the proposed development. When the moderate weight to be accorded to these benefits is balanced against the great weight to be accorded to the less than substantial harm to the large number of heritage assets of high sensitivity that surround the site, it is clear that they would be incapable of outweighing that harm or displacing the presumption against granting planning permission.

225. The proposed development would therefore conflict with the adopted development plan and cause harm to heritage assets. The proposed public benefits would not be sufficient to outweigh this serious conflict or the heritage harm. The proposed development would not represent sustainable development and, in particular, would fail to meet its environmental and social limbs. Planning permission should be refused.

OTHER ORAL REPRESENTATIONS TO THE INQUIRY

226. It is to be noted that many of the representations made included written material that related to the previous proposal for the redevelopment of the site. Whilst in many respects this was similar to the current scheme it has already been considered at a public inquiry. It is a reasonable assumption that the previous Inspector had this material before him and took it into account in reaching his decision. For the avoidance of doubt, I have not included this material when reporting the representations made below. I have however included any attached written material that relates to the current application.

227. **Ms E Dent Coad** is the Member of Parliament for Kensington and a Borough Councillor. She is a longstanding member of the Planning Committee and objects strongly to the application proposal. Her submission is at ***Document INQ 10***.

The main points are:

228. Early on, Members of the Planning Committee were lobbied about the benefits of step-free access to be delivered at the underground station as part of the proposed development. However, this showed disdain for people with disabilities or those with shopping, small children or luggage. The Committee was told that disabled travellers could travel right round the Circle Line in order to get off again or to Edgeware Road and back again.

229. The rough sleepers who lived in the 20 bedsits at Royston Court have now been moved elsewhere. Although the proposal would include slightly more social

rented floorspace, there would be a reduction of 5 sorely needed social rented units. There would be 23 affordable units, but this would only be some 25% of the overall residential floorspace and so well below target levels. When re-provision of the existing units is taken into account, the net additional affordable floorspace would be just under 15%. The Applicant is using viability assessment to absolve the responsibility to comply with target levels in the face of very real need. In addition, these homes would be entered by a visually separated poor door, which is contrary to policy and human dignity.

230. As an architectural historian Ms Dent Coad indicated that she cares about good architecture and planning. The architectural heritage of this area goes back to the 18th century, with the beautiful Pembridge and Norland Conservation Areas and the unspoilt Hillgate Village, which is a rare example of small-town planning in a big city. Newcombe House stands back from the street and respects its neighbours. It provides public space and a meeting place with sculpture, trees to improve air quality and reduce wind and benches provided by a local campaign group. This would all be removed, there would be no public interface with the street and Notting Hill Gate would be degraded for generations.

231. It is estimated that private units would cost about £10-15m. They would not serve any local need. Market forces across London and the UK are very much against this kind of development. In the post-Grenfell Tower fire environment potential buyers do not want to invest in high rise buildings. The demand from the overseas market for premium flats in London is faltering and many luxury developments remain unsold. They are withdrawn from the market to keep prices high, which in a time of severe housing shortage is an aberration. The market is moving to sensitive re-use and to low or mid-rise development. The proposal is thus out of place and time and contrary to policies in the development plan.

232. **Dr S Ramsden** is Senior Partner at Pembridge Villas Surgery and has been a GP there since 1987. He has 10,000 patients on his roll. **Dr P Chin** is Senior Partner at Westbourne Grove Medical Centre where she has been a GP since 1999. She also has a large practice of 8,000 patients. Their practices would merge with the full support of the NHS West London Clinical Commissioning Group and move to the new medical facility to be provided as part of the development. The doctors strongly support the application proposal. They made a joint submission, which is at ***Document INQ 9***. There was also a written representation to the appeal and photographs at ***Document CD 13.8***.

The main points are:

233. The search for alternative premises has been going on for a long time due to the shortcomings of the buildings that presently house the respective practices. These are on 4 floors with stairs and no lift and insufficient space to accommodate patients or staff properly, including those with disabilities. The new facility would provide a modern, high quality, disability compliant primary care facility over 3 floors. It would allow the delivery of the highest quality of general practice to patients and additional NHS services, including physiotherapy and counselling. It would be a base for the new integrated care teams that are starting to radically improve the quality of care that can be offered to elderly and vulnerable patients in their own homes.

234. The location would fit well with existing catchment areas and there are very good public transport links for patients. Buses stop outside the development and there would be a dedicated parking space for disabled patients in the basement with a dedicated lift up to the surgery. Ambulances and emergency service vehicles would be able to access the ground floor entrance from the new square. This would have sufficient space for a staffed desk to assist patients and help them navigate to the clinic floors.

235. An agreement has been signed for a 25-year lease with protected rights to renew. The rent would be set by the District Valuer rather than the landlord. A service charge cap has been agreed. The fit-out would be fully funded by the developer, to the specification of the NHS design team. No additional NHS funding or approval would be required. The proposal would be a major benefit to the local community.

236. **Councillor R Freeman** has been a Borough Councillor for the Campden Ward since 1998 and has lived locally for most of his life. He objects strongly to the application proposal.

The main points are:

237. Newcombe House and Campden Hill Towers were built in the 1960's and whilst the latter building has been well maintained the former has not. This is the highest point in Kensington and the new building would dominate its surroundings. The current application is similar to the previous proposal, which was refused planning permission by the Council. The architectural merits of the development are questionable.

238. This is a sensitive location which adjoins 4 conservation areas. The Applicant's visual representations do not reflect the impact that the development would have on the Grade I listed Kensington Palace. The views are static and do not reflect how the area is experienced. The proposal would also dominate the Victorian Coronet Theatre. Hillgate Village has a character area that has cohesiveness and charm and attracts many tourists. Newcombe House is relatively inoffensive but the proposed development would be intrusive, insensitive and cause irreparable damage.

239. The step-free access to the underground station would be a benefit but only offers half the solution. It would be insulting to those with disabilities as it would not allow access for the return journey. The doctor's surgery would be on the upper floors and it is difficult to see how the lift access would work in practice.

240. **Ms F Fleming Brown** is the Secretary of the Pembridge Association. She is a long-standing local resident, and also works locally. She and her family are patients at the Westbourne Grove Medical Centre. She is a co-founder of the Notting Hill Gate Improvement Group. She is vociferously opposed to the application proposal and her submission is at ***Document INQ 8*** with attached shadow drawings.

The main points are:

241. The Pembridge Conservation Area is very diverse. There are grand stucco mansions, some of which have been subdivided into bedsits and hostels. There

are also modern developments on sites that were subject to wartime bomb damage. There is a mix of socio economic and ethnic groups and a rich cultural and artistic identity. Objections have been made from many viewpoints.

242. Newcombe House and the strip along Notting Hill Gate is not within a conservation area. The Notting Hill Gate Improvement Group was founded by the Pembridge Association in 1990 to raise money and carry out improvements to the 1950's and 1960's urban fabric that had largely been neglected. The Group soon became a coalition of conservation societies, residents' groups, local businesses and local councillors. Trees were planted, benches and art works were installed, and many other improvements were undertaken. Place making and reflecting the needs and priorities of local people were at the forefront of the strategy. The plane tree and bench that would be removed to make way for the development was one of the first projects. This background helps to explain the depth of opposition to the current proposal

243. The NHG SPD was subject to consultation with residents and conservation groups. It sought to instil high design standards to improve the quality of the urban environment. The much-loved post-modern building designed by Piers Gough in Westbourne Grove was commissioned by the Notting Hill Gate Improvement Group and is now in public ownership. It combines essential amenities with wonderful landscaping and public realm space.

244. This is in contrast to the application proposal, which would be ugly and undistinguished. The 50% increase in height would obscure views of the surrounding conservation areas and dominate the pastel terraces of Hillgate Village. It would throw a dark shadow over homes in the Pembridge Conservation Area and Linden Gardens. Shadowing can exacerbate seasonal depression. The proposal would dominate the important junction of Notting Hill Gate and Kensington Church Street. A striking building is needed on the site to bookend the magnificent folly that is the Coronet Theatre. Instead what is proposed would have no meaningful reference to its surroundings. Despite public consultation, the Applicant would not listen to informed local opinion or environmentally respectful counter proposals. The real concern was with its investors and profit margin.

245. The benefits do not withstand scrutiny. Others will talk about the step-free access and affordable housing. In respect of the proposed doctors' surgery, the existing facility in Westbourne Grove is well located, being close to a densely developed local authority residential estate. The existing premises are not difficult to navigate and could be improved with relatively small sums of additional expenditure. There is a convenient bus stop and a pharmacy is close at hand. A substantial number of patients would have to travel further to the new development. The facilities in the existing surgery are quite satisfactory and there is no evidence of imminent rental increases that could not be met from current NHS funding.

246. The Notting Hill Gate Improvement Group was instrumental in attracting the Farmers' Market to its present location. It is a lively social place occupied by independent local traders. Diverse communities are brought together. It would be difficult for the high-end retailers occupying the new shops in the square to co-exist with the market. Similar problems have occurred with the nearby

Portobello market as gentrification increases.

247. The development would make no contribution to the local community and it is likely that the luxury apartments would be investment properties and not occupied as homes.

248. **Mr D Ginsberg** spoke on behalf of the Governors of Fox Primary School in Edge Street, which has about 400 pupils aged between 4 and 11 years. He is strongly opposed to the application scheme.

The main points are:

249. Kensington Place is a one-way street and is used as a rat run. The main concern is about increased traffic and the effect it would have on the children attending the school. This relates especially to the construction period but also afterwards, with deliveries, and so forth, to the new development. The Mayor has highlighted the effect of fumes and pollution within this area, but the consultation does not mention the impact that it would have on the health of the children.

250. **Ms T Alfillé** is a founder member of the Hillgate Village Residents' Association (HVRA) and a resident of Hillgate Village, which immediately adjoins the application site. She raises strong objections to the proposal and her submission is at Document INQ 12, which also has various attachments. These include a letter of objection from the Residents' Association to the Mayor. This generally includes the same points as made by Ms Alfillé, although there are more detailed comments about potential benefits, which I have added.

The main points are:

251. The HVRA is a community group that was originally set up to represent the views and interests of local people living in this area, which immediately borders the application site. It now includes supporters from further afield and in total includes some 530 people. On account of engagement and consultation with its members and supporters it can claim to be representative of the community it serves.

252. Hillgate Village is in the heart of London but has the feel of a village. Those that live there are proud to be part of its vibrant and mixed community. They care deeply about their environment, which is why this application has attracted a record number of objectors, many of whom have taken the time to attend the inquiry and make clear their views.

253. A legal opinion was sought about the weight to be given to the previous appeal decision, which the Applicant has indicated is a consideration of particular importance and weight. However, the current proposal is clearly distinguishable from the previous appeal scheme. Even if it were not, the decision-maker must exercise their own judgement and, provided account is taken about consistency in decision making and provided adequate reasons are given for any disagreement, a different decision can lawfully be made[42].

[42] The legal opinion from Mr Douglas Edwards QC, is attached to Ms Alfillé's submission.

254. There is no disagreement that the application site is in need of redevelopment or refurbishment and that this should contribute to the regeneration of Notting Hill Gate. However, it is not sufficient to replace a tall and discordant building with one that is even taller and more out of place in the townscape.

255. There has been widespread expert criticism of the architectural design of the tower. The Architects Appraisal Panel described it as undistinguished and neither elegant nor accomplished. Expert evidence commissioned by the HVRA for the previous appeal referred to this as "anywhere" architecture[43]. The Planning Officer's Report said that the architecture was insufficiently compelling for this high-profile location. The design is at best mediocre and falls far short of delivering a building of exceptional design and architectural quality. The application proposal represents a missed opportunity (***Document CD 10.11***).

256. The Applicant wishes to define Notting Hill Gate with the tower. However, it should not be defined with a tower that is so discordant with its surroundings. The new building would be significantly taller than Campden Hill Towers, which is currently the tallest building in Notting Hill Gate. If it is permitted there is the risk of other tall buildings being introduced into the area. The tower would loom over the modest 2-3 storey cottages in Hillgate Village and be an overbearing presence. Newcombe House is currently seen from many parts of the village but a building 50% higher would dominate the view, blot out more sky, infringe daylight and increase the sense of enclosure and overlooking.

257. There is deep concern about the negative impact on important local views and nearby heritage assets. Objections have been raised by the Royal Parks and Historic Royal Palaces relating to detrimental impacts on the settings of the Grade I Kensington Gardens and Kensington Palace. These representations were not before the previous Inspector. They reflect the concerns of Historic England. The Residents' Association has commissioned an independent assessment of the Applicant's heritage material that supported the planning application[44]. This criticised the methodology used and the over reliance on static views rather than the way heritage assets and their settings are experienced kinetically.

258. The 55 residential units would only result in a net increase of 35 new homes. They would not help alleviate housing need for Londoners as they would cost millions of pounds and many would be bought by investors and left empty. The contention that the facilities, including balconies and winter gardens would encourage permanent residents is not logical. This would be a high-rise, high value development that would make no contribution to the local community. Although the scheme would now include affordable housing, the provision would be insufficient, particularly the failure to replace the social rented housing for rough sleepers that was provided by Royston Court. This building has now been

[43] This was Design and Heritage evidence produced by Mr N Deely of the Metropolitan Workshop on behalf of the HVRA in connection with the previous appeal. It does not seem that Mr Deely appeared at the inquiry although presumably his written submission was before the previous Inspector for consideration. It is attached to Ms Alfillé's representation.
[44] This was a letter from Mr S Handforth of Bidwells and is attached to Ms Alfillé's representation.

left empty for several years when it could have continued to provide for those in need of homes. The scheme would provide the wrong sort of housing that would not promote mixed and balanced communities.

259. The Applicant has claimed that the appeal scheme would result in a number of benefits. The step-free access would only be a partial solution, especially as David Game House has recently been refurbished. The stair-free access to the Central Line includes a further set of stairs to the eastbound platform. The new health facility would involve a relocation of two existing GP practices and so would not meet any deficiency. Indeed, it would make access more difficult for existing patients. The 65 car parking spaces would be excessive and would be contrary to the Mayor's Transport Strategy in such an accessible location. In any event these factors would be insufficient to outweigh the significant harms that would arise.

260. **Ms S Massey-Cook** is the Chair of the HVRA and she is a longstanding resident of Hillgate Village. She and her family are patients at the Pembridge Villas Surgery. Her submission is at ***Document INQ 13***. Attached to it is a booklet of the 29 slides that Ms Massey-Cook spoke to at the inquiry. These included a number of computer-generated images, produced by Mr R Graves and his CV and methodology are also attached. There is also an appended copy of the petition commissioned by the Skyline Campaign in respect of the previous proposal. There was also a written representation to the appeal and photographs at ***Document CD 13.8***.

The main points are:

261. The HVRA was formed as a result of the threat to the community that would be most affected by the proposals for Newcombe House. There is a clear mandate from members to oppose the current proposal. Many are elderly people who have lived in the village for a long time. They are not wealthy individuals and have neither the money nor the time to act as a Rule 6 Party. Nevertheless, they do feel passionate about protecting their neighbourhood. The Applicant has failed to properly engage with the HVRA or discuss issues raised by it.

262. The scale would be disproportionate with its surroundings as is shown by the double decker bus on slide 2. Nothing in the design would be relevant to the location. Indeed, the choice of grey brick, Portland stone and white Corian would have no affinity to the locality and this development could just as well be located anywhere.

263. There are concerns with the Applicant's visual assessment, which is not considered to give an accurate or fair representation of the impact of the tower on its surroundings due to the choice of lens, the use of wire-line outlines and trees in leaf. Views 42a, 42b and 42c are from the Broad Walk looking towards Kensington Palace and the listed statue of Queen Victoria. These views are enjoyed by many thousands of tourists each year. The alternative images presented are considered to be more realistic in terms of what actually would be experienced in the winter months. They use a 50mm lens and solid rendering (slides 5-10).

264. Additional views were also commissioned by HVRA. It is accepted that these

have not been verified. Nevertheless, they seek to show places where the tower would clearly be seen against the open sky. It is questioned why the Applicant has chosen those views where the tower would be largely hidden by trees (slides 12-14). Kensington Palace is a Grade I listed Royal Palace and designated scheduled monument. The Orangery is also Grade I listed. Kensington Gardens is a Grade I Registered Park and Garden. This is therefore a highly sensitive site where the effects of the scheme have not been properly considered. It is also very important to the local economy with half a million paying visitors to the Palace and many more admiring it from the outside.

265. Another example of the misleading visual impact through the use of a 24mm wide-angle lens is seen in view 17 from Kensington Park Road where a 50mm lens would more accurately represent what would be seen by the human eye (slides 15-17). Views 25 and 28 are from Hillgate Village and show the unattractive and imposing façade rising above the 2 and 3 storey houses. It is accepted that a 24mm lens is appropriate for these close-up streetscape views (slides 18-19). Slide 20 shows the tower from a number of angles and demonstrates its lack of aesthetic merit. There are several images that show the inappropriate scale and disproportionate impact of the proposed development from various viewpoints, including Kensington Gardens where there are many embassies who have objected on privacy and security grounds (slides 20-28). The final slide is the incredible view that would be likely from the penthouse and demonstrates the benefit of the few at the expense of the many.

266. The proposal has caused a great deal of stress and suffering to many long-term residents, including elderly people and families. The online petition against the previous proposal organised by the Skyline Campaign in early 2016 was signed by over a thousand people, most of whom were local residents. The articulate statements made clearly demonstrate the feeling of dread and revulsion that people feel about this development.

267. **Mr A Rawlinson** is a local resident and Fund Manager and endorsed the evidence of Ms Massey-Cook and Ms Fleming Brown. He indicated that from his own knowledge, the appeal premises are for sale off-market. There is a viable alternative to remodel and reface the building and provide social housing. Kensington Church Street is one of the most polluted streets in London. The proposed demolition would have a huge effect on carbon footprint. The development would set a precedent for high rise development in the area, which would not comply with policies in the development plan.

268. **Mr P Mishcon** is representing the Ladbroke Association as a Committee member and the Kensington Society as a Trustee. For many years he was a Committee member of the Notting Hill Gate Improvement Group. He is a longstanding local resident and also a practising architect. He indicated that the Ladbroke Association and Kensington Society do not often support high-rise schemes in Kensington but have made an exception in this case. He did though accept that some members hold a different view on what is a controversial scheme. His submission is at ***Document INQ 15***.

The main points are:

269. Site owners have considered many alternative proposals, including a lower

tower and greater spread of development across the site. However, the conclusion has been reached that no scheme without the proposed high-rise element could meet the constraints of the site whilst providing the very significant public benefits, which will help underpin the vitality and viability of the district centre. They are what the Notting Hill area has needed for a long time and the Council is not in a position to provide them. There is very great concern that if the proposal is not permitted these much-needed benefits would be lost permanently.

270. Design is highly subjective. However, the quality of the architecture and materials and the height of the tower were rigorously explored during the previous inquiry. Many community organisations have tried unsuccessfully to engage with previous owners who wished to develop the site. In contrast, the present owners have undertaken unprecedented consultation with local amenity groups and the public over the last 6 years. They have been responsive to suggestions and made a number of changes and improvements to the scheme.

271. **Mr and Mrs J Cook** are long term residents of Hillgate Village and pointed out that local opinion is invited as part of the planning process. This is important because those living locally will have to live with the consequences of the decision made on the planning application. Their submission is at ***Document INQ 11***. They also wrote to the Mayor at application stage and this submission is at ***Document CD 1.77***. There was also a written representation to the appeal and photographs at ***Document CD 13.8***.

The main points are:

272. Local opinion is against this proposal by 4:1 and this has been particularly vociferous in relation to the tower due to its height and dominating effect. Many of those in favour of the development were keen on the doctors' surgery. However, that could be provided with a more modest scheme. The response to the present application was very high and of the 2,000 people notified just under 1,000 responded. The planning departments of the GLA and the Council have generally been in favour of the scheme. The Planning Committee have twice sided with residents.

273. The Mayor can only call-in applications of potential strategic importance. GLA officers advised the previous Mayor that there was no sound planning justification for intervening in respect of the previous application. The present Mayor was given the opposite advice without explanation and notwithstanding that the only difference related to the addition of the affordable housing units. This is inconsistent and undermines confidence in the planning system. The intervention by the Secretary of State is welcomed so that the key issues can be re-visited. If the Mayor's decision were to be upheld it would set an unintended precedent that the call-in rules could be ignored, leading to a proliferation of tall towers in unsuitable locations. The public square would be a long, thin space that would diminish what already exists. At present the Farmers' Market has 4 rows of stalls and in the proposed scheme this would be reduced to 2 rows. They would be outside the new shops, which may well not want them there.

274. **Mr J Zamit** has lived nearby for over 40 years but is a frequent visitor to Notting Hill Gate and knows the area well. He is the Chair of the SE Bayswater

Residents' Association and a Committee member of the Bayswater Residents' Association. These local groups are in the adjoining London Borough of Westminster and have some 1,500 members between them.

275. He is not opposed to development in principle, but it needs to respect the views of local residents and the surrounding conservation areas. He is strongly opposed to the application scheme, which would spoil views from Kensington Gardens and would be the only tall building when looking in a westerly direction. Although the existing Newcombe House is an eyesore, it is set back from the road with public space in front. The new building would be close to the road frontage and so it would be seen from the south and the public space would be lost. It would not fit in with the village atmosphere of Notting Hill but would tower over the skyline and be out of keeping with surrounding buildings.

276. **Mr J Renton** represents Action Disability Kensington and Chelsea, which seeks to improve opportunities, including accessibility, for those with disabilities within the Borough.

The main points are:

277. Access and inclusion are absolute and there are no half measures for disabled people. Disabled people have to endure a lot of barriers to movement and despite many promises of improvement this has not materialised.

278. In this case the step-free access would allow travel in one direction only. It would send out the wrong message that disabled people can leave but not return. In practice it is unlikely to make a great deal of difference to disabled people who would be disinclined to use it if they could not easily get back again. It would not make the station accessible but would rather send out a token message. If the intention was really to improve accessibility for the disabled, resources would be focused on those stations that could easily be made fully accessible.

279. There would be a lack of affordable housing and no proper consultation had taken place with the most vulnerable who live in North Kensington within the shadow of Grenfell Tower.

280. **Ms B Weiss** is co-founder of the Skyline Campaign in 2014 at the start of an unprecedented skyscraper boom that threatened to change the capital's skyline and alter many historical views and neighbourhoods. This has supporters from every professional discipline in the built environment as well as members from the general public from many backgrounds. It was stressed that the organisation does not object to tall buildings as a matter of principle. Rather it objects to tall buildings of poor quality and in the wrong location.

281. Ms Weiss has her own architectural practice and many projects involve listed buildings and conservation areas. She has written and lectured widely on the subject of tall buildings and contributed to the policies in the emerging New London Plan on tall buildings. She has fought against a number of tall buildings, most notably the 72 storey Paddington Pole, which was withdrawn eventually following her campaign. She has sat on the Design Review Panels for the Commission for Architecture and the Built Environment and acted as a Civic Trust Assessor for 10 years. Her full curriculum vitae and representation are at

Document INQ 14 and is accompanied by a number of photographs of tall buildings.

The main points are:

282. There is currently a large pipeline of tall buildings and many are vanity projects built as money boxes in the sky. The loosening of the Mayor's policy in 2014 has led to the trend of building as tall as possible in the name of modernity, excitement and the fallacious claim that building tall will help resolve the housing crisis. Tall buildings are expensive to build and maintain, spatially inflexible, environmentally challenged and not family friendly. They do not belong to London's DNA and will leave an embarrassing legacy for future generations. The market is moving away from them and towards other typologies, including mid-rise developments. It is unanimously agreed in architectural circles that the majority of tall buildings are of very inferior architectural quality.

283. The Skyline Campaign became involved with the proposed redevelopment of Newcombe House in 2016 with the organisation of a petition, which gained over 1,000 signatures[45]. It is accepted that this part of Notting Hill Gate needs regeneration but not by a development that would be objectionable because of its height and design quality. The existing building is preferable in architectural terms to its proposed replacement. Although it would not receive planning permission today, it is reasonably honest and un-prepossessing and is helped by being set back from the pavement.

284. The NHG SPD judged the site to be suitable for a modest increase in height if the replacement building was excellent architecture. The proposed tower would not meet these provisions but would be arrogant, greedy and its repositioning would exacerbate its height in relation to the context. The extra 6 floors would deliver 6 luxury flats with views over west London. They would be totally gratuitous and spoil forever the character of the adjoining conservation areas and parks. A lower, denser scheme could be achieved and there are many potential massing options. The proposal would breach Policies 7.4, 7.6 and 7.7 in the London Plan, local plan policies and the NHG SPD.

285. The Architects Appraisal Panel lambasted the proposal in no uncertain terms. The scheme is clumsy, generic and out of keeping with its context. Its materials and detailing are prosaic and unsophisticated, and the proportions of the public realm are dubious and most likely insufficient for the Farmers' Market.

286. The Framework stresses the importance of engagement with communities. There has been no consultation with the HVRA, the Skyline Campaign or anyone who is critical of the scheme. This has caused anger and frustration to those who would be most affected by the outcome. This omission is all the more serious following the immense trauma caused by the Grenfell Tower disaster.

287. The introduction of affordable housing in this scheme would not outweigh the harm to the wider area. The Mayor promised to take a more discerning approach to tall buildings and yet is now siding with the developer against a

[45] See the representations of Ms Massey-Cook above.

thriving local community. Redeveloping Newcombe House is an opportunity and privilege and should be reserved for the very best architects, maybe through open competition. It could be refurbished, for example, as has been done at Centre Point.

WRITTEN REPRESENTATIONS

RECEIVED PRIOR TO THE CALL-IN BY THE MAYOR

*The representations received before the call-in are at **Document CD 1.77** and are summarised in the Committee Report (**Documents CD 3.2, paragraph 10.9** and **CD 3.3**). The main points are:*

288. There were 185 representations supporting the application proposal. Other than those who spoke at the inquiry these included the Campden Hill Residents' Association, Pembridge Association, London Farmers Market and NHS West London Clinical Commissioning Group and many local residents. Many of the points made have already been recorded in the previous section and will not be repeated. Additional points are:

    a. Development would provide an economic boost to the area and secure jobs.

    b. Many other residents of Hillgate Village fully support the scheme. The HVRA is not representative of all residents' views.

    c. Management details for the new Farmers' Market need to provide proper provision for emergency vehicles.

289. There were 738 representations objecting to the proposal. Other than those who spoke at the inquiry these included Westbourne Park Villas Residents' Association, Hawksdown House School, Bethesda Baptist Church, Essex Unitarian Church, The Royal Parks, Councillor C Faulks and many local residents. Many of the points made have already been recorded in the previous section and will not be repeated. Additional points are:

    a. There would be a disrespectful encroachment on the space surrounding the Bethesda Baptist Church and disturbance to its congregation.

    b. The proposed level of affordable housing would not be acceptable.

    c. Affordable housing should not be incorporated into the scheme but provided elsewhere in the vicinity.

    d. There would be an additional strain on local businesses. Valuable local shops and businesses would be lost. The proposed retail provision would not be what is needed to revive the area.

    e. There would be a negative impact on tourism as the new building would be out of keeping with the quaint streets and colourful houses that Notting Hill Gate is famous for.

    f. Disruption through noise, dust and traffic during construction, which would cause chaos for years to those living, working, visiting or attending schools locally.

g. There would be a loss of amenity for nearby residents through overlooking and overshadowing and loss of light.

h. The tall building would cause a great increase in wind gusting and create a wind tunnel.

i. There are no firm assurances or commitments in place regarding the proposed doctors' surgery.

j. There would be an increase in congestion and air pollution due to the increased population. Cars entering the car park would cause constant noise and vibration.

k. There would be inadequate access and servicing arrangements.

l. Underground parking conflicts with London policy and its construction would be dangerous. A 2 storey basement would conflict with policy.

m. The new building would be a death trap after the tragedy at Grenfell Tower.

n. Possible damage to sewage and water pipes in surrounding streets.

o. Loss of an important street tree.

p. The letters from the Kensington Society and Campden Hill Residents' Association are not representative of their members' views.

q. The HVRA submitted a review of the viability Report. This concluded that construction costs had been overstated and values understated. The existing use value was too high. More affordable housing units could be provided.

RECEIVED FOLLOWING THE CALL-IN BY THE MAYOR

*The representations received following the call-in are at **Document CD 1.77** and are referred to in the Mayor's Hearing Report (**Document CD 3.12, paragraphs 94-98**) and Mayor's Addendum Hearing Report (**Document CD 3.20, page 1**). The main points are:*

290. Following the call-in various amendments were made to the application proposal. These have already been recorded above at paragraph 17 of this Report. The Mayor undertook a re-consultation exercise as a result of which 439 responses were received. 41 were in support, 3 were general responses and the remainder were in opposition. The representations generally re-iterated those already recorded above. It was not considered by objectors that the changes to the scheme addressed the concerns previously raised.

291. The Addendum Hearing Report recorded additional objections as follows:

a. The **Pembridge Association** now objects to the scheme on similar grounds already reported about scale, precedent, design and impact on the historic environment. It does not now consider that the benefits would be sufficient to justify approval.

b. The **Royal Embassy of Saudi Arabia** and the **High Commission of India** through the Foreign & Commonwealth Office expressed concerns about the privacy and security of the Ambassadors, their families and visitors due to

the height of the proposed tower. They wished the appropriate authorities to stop the development.

c. London Assembly Member **Ms C Pidgeon** did not consider that the affordable housing offer would be acceptable.

RECEIVED FOLLOWING THE CALL-IN BY THE SECRETARY OF STATE

*There were further representations of objection and support submitted to the Planning Inspectorate (**Documents CD 1.77 and CD 13.8**). Some included correspondence that had been sent into the Mayor or the Council prior to the Secretary of State's call-in. Most of the points raised have already been addressed in the preceding paragraphs but additional matters are recorded below:*

292. The **Kuwaiti Ambassador** refers also to the embassy of Saudi Arabia and the western side of Kensington Palace Gardens as being adversely affected. The objections on the grounds that privacy and security would be seriously compromised were reiterated.

293. A letter of support from the **Viscount Bridgeman** has been referred by **Mr Jake Berry MP**. He supports the proposed redevelopment, including the move of the two medical practices to state-of-the-art facilities in the new development. He welcomes the enhanced NHS services that would ensue and that the costs would be met solely by the developer. The proposal would meet the Mayor's request for more affordable housing and has the support of two important residents' associations and also TfL.

294. **Ms F Buchan MP** opposes the proposal on similar grounds to other objectors. She makes the additional point that when announcing the National Design Guide, the Secretary of State made it clear that there should be the right to oppose a planning application on the grounds of poor design and insensitivity to the immediate surroundings and that communities should be involved in planning decisions. Also, she considers that the proposal would not reflect the direction of travel in the architectural and environmental space. Here the green approach to building should be to prioritise retrofit in design and development (***Document INQ 33***).

CONSULTEE RESPONSES

*The Council is a Rule 6 Party and its case has been reported in detail above. Its internal consultation responses have not been recorded separately here but they can be found at **Document INQ 32**.*

*External consultation responses were submitted at various stages and most are in **Documents CD 1.77 and CD 13.8**. There are summaries in the Council's Committee Report (**Document CD 3.2, paragraph 10.9**) and Addendum Report (**Document CD 3.3**) and in the Mayor's Hearing Report (**Document CD 3.12, paragraphs 65-72, 77-94, 99-107**).*

The main points are:

295. **Thames Water** raised no objection in terms of sewerage or water infrastructure capacity. It comments that no piling should take place until a method statement has been submitted and approved.

296. **The Council of the City of Westminster** made no specific objection. It pointed out that due to the height, there would be an impact on the townscape to the east within the Borough. This includes the Grade I listed Historic Park and Garden of Kensington Gardens, which forms a substantial part of the Royal Parks Conservation Area. There are other adjoining conservation areas and a high number of listed buildings. The Westminster townscape within the vicinity of the site is thus of high significance. The previous Inspector found harm to the Royal Parks Conservation Area. A full understanding of this harm should be assessed, and the statutory duties and Framework policy adhered to. It is disappointing that there are still not winter views for many of the viewpoints in Kensington Gardens.

297. **Greater London Archaeological Advisory Service** is under the remit of Historic England and concluded that there would be unlikely to be a significant effect on heritage assets of archaeological interest.

298. **Historic England** reiterated its comments in respect of the previous appeal. It was considered that the visual impact in relation to the setting of the different conservation areas would range from neutral to beneficial in views where the existing building could be seen. Of the views where the existing building could not be seen, two were highlighted as resulting in increased visual impact to the setting of the Grade I listed Kensington Palace and Kensington Gardens. The harm to the appreciation and enjoyment of the assets would arise from the introduction of built form into the green setting with open sky. Whilst less than substantial in nature, such harm would be unwelcome, and could set a precedent for further erosion. The Council, to whom the consultation was directed, was advised that the public benefits would need to convincingly outweigh the harm, taking into account the significance of the assets affected. The proposal would include step-free access to the adjacent underground station. The Council would need to ensure that the proposal could be implemented without harm to the station (***Documents CD 2.3; CD 10.14***)

299. **Save Britain's Heritage** objected on the grounds that the proposal would not respect the character or appearance of the area and would cause substantial harm to the settings of listed buildings in Pembridge Gardens and Kensington Palace Gardens. It would also cause substantial harm to the Royal Parks Conservation Area by providing an intrusive background to Kensington Palace.

300. The **Georgian Group** was concerned about the impact on the listed Bethesda Baptist Church. To protect the historic structure and the congregation there should be a full survey and risk assessment to ensure that the historic fabric is not harmed and that the congregation can continue to meet during the construction period. The **Victorian Society** made no comment.

301. **The Royal Parks** objected to the proposal on the grounds that the tower would result in a considerable increase in height. It would be visible above the tree canopies from several viewpoints in Kensington Gardens, which is a Grade 1 Listed Registered Park and Garden, including east and south-east of the Round Pond and from along the Broad Walk. This would impinge on the open sky around the gardens and have a detrimental impact on its setting. The Royal Parks have to be protected from urbanisation for everyone to enjoy now and in the future. They offer refuge and relaxation to millions of visitors and the feeling

of separation is heightened by the absence of buildings seen outside their boundaries and above the trees.

302. **Historic Royal Palaces** is an independent charity that looks after Kensington Palace, amongst others and objects to the proposed development. This is Grade I listed and a designated scheduled monument. The Orangery building, sited to the north-east of the Palace, is also Grade I listed. Kensington Gardens, which is a Grade I Registered Park and Garden was originally laid out in the 1730's to provide long views of the Palace and formed its private gardens. Kensington Gardens, the surrounding area and skyline are important to the overall setting of the Palace. The proposed tower, due to its height, would have a significant detrimental effect on their setting, particularly when the trees are not in leaf[46].

303. The **NHS West London Clinical Commissioning Group** is the statutory body responsible for planning and commissioning health care services for West London. The proposal for a new surgery is strongly supported and the Applicant, the two medical practices and the Clinical Commissioning Group have been working closely together in the design and planning of the new facility. This would provide a high-quality surgery space to the benefit of the local community. The space has been independently tested and would meet all relevant NHS standards for a population of around 18,000 patients. The proposal would support the vision for primary care at scale, which is a key priority for the Clinical Commissioning Group. It would allow a significant improvement to the delivery of primary care and would represent a substantial public benefit[47].

304. The **London Fire and Emergency Planning Authority** did not respond.

305. **London Farmers' Market Ltd** operates the Notting Hill Farmers' Market every Saturday morning in the car park of the application site. It is a popular local event and has been running for the last 20 years. There has been a close working relationship with the Applicant and involvement in the design of the square to ensure that the market can continue its effective operation at the site. An agreement has been signed for a new tenancy and, if permission were to be refused, the market would face an uncertain future. A planning application has been made for temporary relocation off Kensington Church Street whilst construction takes place. The proposal is strongly supported.

PLANNING CONDITIONS

306. A list of planning conditions was drawn up by the main parties, which were discussed at a round table session of the inquiry. I have taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable (***Documents INQ 27, 31)***.

307. The conditions that I commend to the Secretary of State if he wishes to grant

[46] A copy of this representation is attached to Ms Alfillé's submissions (***Document INQ 12***).
[47] A copy of this representation is attached to Mr Rhodes' proof of evidence (***Document POE 18, appendix 3***).

planning permission are set out in Annex Three. The numbering does not accord with that within the aforementioned document as some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers used hereinafter concur with those in Annex Three.

308. I have had regard to the Government's intention that pre-commencement conditions should be avoided unless there is clear justification. Conditions 20, 22, 24, 25, 38 and 40[48] are pre-commencement conditions and have been agreed in writing by the Applicant (***Document INQ 30***).

309. **Condition 1** sets out the statutory implementation period, which seems appropriate in this case. **Condition 2** meets the requirement for the development to accord with the submitted drawings in the interests of precision and proper planning. As there are a large number of drawings with a rather complex numbering system, these have been listed separately in Annex Four to the Report.

310. **Condition 3** requires that the materials and detailing is of the highest quality throughout the development, including the tower. Sample panels were erected on the site in connection with the previous appeal and these would no doubt be re-used as the materials remain unchanged from this earlier scheme. **Condition 6** requires details of the landscaping and public realm to ensure that the external areas enhance their surroundings. Importantly details are required to ensure that these parts of the development are properly managed and maintained in perpetuity. Whilst landscaping drawings were submitted with the application these are not sufficiently detailed to ensure that a high-quality outcome is achieved.

311. **Condition 35** removes permitted development rights for individual satellite dishes. Whilst this condition is not included on the draft list submitted by the main parties, I discussed it at the inquiry and no objections were raised to its imposition. It seems to me necessary in order to protect the architectural integrity of the development. For similar reasons **condition 36** is necessary to ensure that there is not a proliferation of roof top structures other than those required to implement the drainage strategy. **Condition 33** requires details of a centralised system for satellite and terrestrial television that would be available to all occupiers. I was told that this is likely to be located at second floor level on the block adjacent to the underground station.

312. The buildings will need to be properly maintained in order to ensure their long-term resilience. Furthermore, the site itself will need to be carefully managed to accommodate the mix of uses and their various requirements, including servicing. Security and safety is a further matter that is key to a successful development, especially in respect of the public realm, which includes the square and pedestrian links. The Building and Site Management Strategy required by **condition 4** is necessary to ensure that a holistic approach is achieved although I have revised some of the wording to make the condition

[48] For the avoidance of doubt conditions 20, 22, 25, 38 and 40 in Annex 3 are conditions 23, 26, 48, 40 and 42 in ***Document INQ 31***. A condition on the Considerate Contractor's Scheme was proposed by me in the round table session and agreed to by the Applicant.

more concise and relevant. **Condition 9** limits vehicular access to the square to emergency and service vehicles. This is required to ensure a safe and attractive pedestrian environment.

313. **Conditions 30 and 31** require details of delivery and servicing arrangements for the commercial and residential uses respectively. This is to ensure that no unacceptable impacts on the adjoining road network would ensue. The Transport Assessment indicates that existing on-street servicing provision would continue to be used. A concierge service is envisaged to manage deliveries to homes within the development. The conditions require not only details of the number and types of trips to be made but also provisions for monitoring and review. **Condition 32** requires a management plan for the car park, which is to be located at the lower basement level. The Transport Assessment envisages an entrance from Uxbridge Street and egress onto Newcombe Street. The 25 spaces for the residential units and 5 spaces for the medical centre would be accessed by car lifts. The condition requires electric vehicle charging points to encourage the use of electric vehicles, amongst other things (***Documents CD 1.71-CD 1.73***).

314. There are a number of conditions that are required to encourage sustainable travel choices. **Condition 7** relates to cycle parking and requires the specifications for storage provision in the basement to be provided. The discretionary tailpiece in the suggested condition is not acceptable and has been removed. **Condition 8** requires an Office Travel Plan in accordance with the principles already submitted in the Interim Office Travel Plan, which was included in the Transport Assessment. This is necessary as on-site parking would not be available for office workers (***Document CD 1.75***).

315. **Condition 5** requires a drainage strategy in line with sustainable principles and to ensure that there is no risk of flooding to adjoining land. A management plan is also required to ensure that the strategy remains effective in perpetuity.

316. Due to the mix of uses it is necessary to ensure that the commercial and residential uses co-exist satisfactorily. **Condition 10** seeks to control the noise levels emanating from fixed external plant. **Condition 11** requires details of noise insulation to the residential units. The appeal site is within an Air Quality Management Area. Due to the existing levels of pollution the Air Quality Report submitted with the application recommended mechanical ventilation with appropriate filters to protect future occupiers as required by **Condition 16**. **Condition 31** controls the hours of use of commercial units and the square to allow residential occupiers to enjoy a quieter environment during night-time hours. Ventilation and extraction equipment and ducting can look unsightly and cause noise and vibration. **Condition 32** requires that details should be provided and approved in respect of the Class A1 and Class A3 uses (***Document CD 1.25-CD 1.26***).

317. In order to ensure sustainable design, the non-residential uses are required to meet BREEAM standards of excellent. This is the subject of **condition 12**. **Condition 13** requires compliance with the Energy Strategy and its Addendum submitted with the application. This seeks to accord with the carbon reduction targets and energy saving in the London Plan and policy CE1 in the 2019 Local Plan (***Documents CD 1.46-CD 1.49***). **Condition 17** requires that the CHP unit and

gas boilers operate in accordance with the emissions set out in the Air Quality Report. These would comply with the Mayor's *Sustainable Design and Construction Supplementary Planning Guidance* (***Documents CD 1.46-CD 1.49; CD 1.25-CD1.26***).

318. A study of the wind conditions that would be experienced around the development was submitted with the planning application. In particular, the amenity spaces such as terraces and courtyards were tested as well as entrances, pedestrian thoroughfares and public realm, including the square. Where there were localised concerns about windy conditions mitigation was recommended by means of additional tree planting. **Condition 15** requires the necessary provisions to be carried out (***Documents CD 1.63-CD 1.66***).

319. Policy 3.8 in the London Plan seeks to provide a mix of dwelling sizes and types to cater for a range of housing needs. In this regard it aims for 10% of new housing to meet Building Regulations requirement M4(3), which are dwellings designed to be wheelchair accessible and 90% to meet Building Regulations requirement M4(2), which are accessible and adaptable dwellings. Policy CH3 in the 2019 Local Plan requires new dwellings to be designed in accordance with the standards referred to above. **Condition 14** ensures these requirements are met.

320. The Initial Ecological Appraisal and Bat Survey Report recorded the site as being of low ecological value. No bat activity was found and the potential for roosts in existing buildings was considered low. Policy CE4 in the 2019 Local Plan requires opportunities to enhance biodiversity and this is also an objective in the Framework. **Condition 18** requires that the measures recommended in the Report, including installing green space and water features, should be carried out (***Documents CD 1.33-CD 1.35***).

321. The site is adjacent to the underground lines and electricity substation and previous manufacturing uses occupied the land. The proposal involves a relatively deep basement and significant soil extraction would take place. Also, bearing in mind the age of the current building and its method of construction it seems likely that contamination will be encountered. **Condition 19** sets out the necessary sequential approach to establish the extent of any contamination issue and the steps that will be needed to deal with it.

322. The street trees in Kensington Church Street provide an important amenity and contribute to the streetscape. In accordance with policy CR6 in the 2019 Local Plan, **condition 20** requires details to be provided to ensure their protection during the demolition process and construction period. For obvious reasons this has to be a pre-commencement condition. A development of this scale will require piling during the construction process. Thames Water comments that a method statement is necessary to ensure the no adverse impacts arise to sewerage or water underground infrastructure.

323. A development of this scale will undoubtedly cause disturbance and inconvenience to those living and working in the area as well as visitors and road users. There are thus several conditions that are necessary to control the development process and mitigate its impacts. **Conditions 22 and 23** require traffic management plans to be submitted for the demolition and construction

phases. They derive from the Council's experience of managing major construction projects in a densely populated and constrained Borough. **Condition 24** requires adherence to the Considerate Constructors Scheme. **Condition 25** relates to compliance with a Code of Construction Checklist and Site Construction Management Plan. The latter is a signed contractual document, which the Council can enforce in the event of a breach. It follows the Council's *Code of Construction Practice,* which was adopted in March 2019, following a period of consultation. Apart from condition 23 these conditions need to be discharged pre-commencement to be effective (***Documents INQ 27; INQ 40***).

324. Policy 5.15 in the London Plan seeks to protect and conserve water resources. To that end it sets a mains water consumption target of 105 litres or less per head per day, excluding an allowance of 5 litres for external water consumption. This is reflected in **condition 26**.

325. The safety of residential occupiers in case of fire is of paramount importance, especially in the case of tall buildings as was demonstrated so poignantly by the tragedy at Grenfell Tower. Whilst matters of compliance should be covered by the Building Regulations, the emerging New London Plan seeks to ensure that matters of fire safety are embedded as an integral part of the planning and design process. Draft policy D11, which has been supported by the Panel of Examining Inspectors, makes clear that construction should minimise the risk of fire spread with appropriate alarm systems, safety measures and evacuation strategies. Suitable access for the appropriate fire-fighting equipment is also required. All major development must produce a fire strategy drawn up by a suitably qualified independent assessor. The Fire Brigade has not responded to the consultation process thus far. However, the planning application was accompanied by a Fire Safety Strategy and Addendum, which address the points contained in the draft policy. This makes clear that during the detailed design and construction stage there will be discussions with the London Fire Brigade so that they become familiar with the development prior to occupation. **Condition 30** requires the measures within the strategy documents to be carried out.

326. The development includes a number of tall buildings, which could cause interference to wireless services to existing properties in the vicinity. It is therefore necessary to carry out an assessment and carry out mitigation if this is required. Whilst this condition is not included on the draft list submitted by the main parties, I discussed it at the inquiry and no objections were raised to its imposition. This would be actioned under the terms of **condition 34**. In order to prevent overlooking to houses in Jameson Street to the west, **condition 37** prevents the use of the flat roofs on the western perimeter building and the office cube building (WPB1 and WPB 2) from being used as amenity areas.

327. A stage 2 Road Safety Audit is necessary for the junction of Newcombe Street and Kensington Place. Whilst this would likely be a requirement of the Section 278 highway works it is important to ensure that the junction is safe for use by vehicles during the demolition process. The Fox Primary School and a nursery are close by so that **condition 38** needs to be a pre-commencement condition.

328. There would be a 2 storey deep basement under much of the site. Policy CL7 in the 2019 Local Plan includes a number of requirements for basement

development. Amongst other things its provisions seek to prevent sewer flooding and safeguard the structural stability of existing and neighbouring sites, including the underground tunnels. To this effect, **condition 39** requires a pumped device to be installed and **condition 40** requires supervision by a suitably qualified engineer, who will need to be on hand from the start, therefore necessitating a pre-commencement condition.

329. A great deal of emphasis has been placed on the design excellence of the application scheme and the tower in particular. The success of the scheme will require the detailing and finishes to be of the highest quality. In such circumstances it is therefore reasonable and necessary to ensure that the Council retains control of the architectural input during the detailed design process. Policy D2 in the emerging New London Plan has numerous provisions that seek to deliver good design. These include maintaining design quality through the ongoing involvement of the original design team although the Examining Inspectors recommended deletion of the clause in the supporting text that required retention of the Architects by means of a legal agreement. This was considered to be unduly onerous and **condition 41** includes the necessary flexibility accordingly.

330. The S106 Agreement covenants to implement and comply appended *Small Independent Retail Units Marketing Strategy*, which is appended to the Deed. This seeks to attract small and local businesses, including new space for those who already operate from units within the site, in line with Policy CF2 in the 2019 Local Plan relating to retail development in town centres. In order to achieve the desired mix of independent operators, the Strategy indicates that conditions will be applied to ensure that a tenant will not operate more than three retail units in the Borough and that there will be no amalgamation of ground floor retail floorspace. **Conditions 42 and 43** apply these requirements accordingly. The Strategy envisages a mix of 10 Class A1 units, 3 Class A3 units and one Class A1/ A3 unit. **Condition 44** provides the necessary requirement to ensure that the mix remains protected (***Document INQ 41, appendix 8***).

331. The plans show the space allocated for the doctors' surgery as a flexible use, including offices. That is not the intention and one of the benefits being advanced by the Applicant is the medical centre, which is also identified specifically for that purpose on the drawings attached to Appendix 6 of the S106 Agreement. **Condition 45** is necessary to make sure that the facility is delivered and that the plans are consistent with the intention in the proposal (***Document INQ 41, appendix 6***).

PLANNING OBLIGATIONS

332. The planning obligations are contained within two fully executed Deeds submitted with the planning application, both of which are dated 29 November 2019. The Main Agreement (S106 Agreement) is made by the Applicant, the GLA, the Council, TfL, London Underground Limited, Notting Hill Genesis, Natwest Markets PLC, and U and I Group PLC. The Supplemental Agreement (SA) is made by the Applicant, the GLA, Notting Hill Genesis, U and I Group PLC and Natwest Markets PLC to the Council. This relates specifically to matters that the Council was unable to sign up to, including the provision of off-site affordable housing and the terms of the late stage viability review. The S106

Agreement is at ***Document INQ 41*** and the SA is at ***Document INQ 42***.

333. The land ownerships are shown on the plan in Appendix 9 of the S106 Agreement. It can be seen that the majority of the site is within the freehold ownership of the Applicant. Royston Court is owned by Notting Hill Genesis who are also signatories to both Deeds. Natwest Markets PLC is the mortgagee and U and I Group PLC guarantees the financial provisions if they are not paid.

334. Clause 13 of the S106 Agreement contains a "blue pencil" clause whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with the Community Infrastructure Levy Regulations (CIL Regulations). Clause 12 of the SA confirms that its obligations will continue to be effective in the event that the Secretary of State concludes that they do not comply with the CIL Regulations. The Council has adopted a *Planning Contributions* SPD, which includes justification for the financial and other obligations that the Council seeks in order to support development within the Borough. The SPD has been subject to consultation and was adopted very recently (18 September 2019) (***Document CD 5.4***).

THE S106 AGREEMENT

335. There are 6 schedules, which contain the main covenants. Schedule 1 contains a description of the development and Schedule 5 contains the 6 plans. There are also 14 Appendices. The main provisions of the covenants are summarised below. A consideration of whether the obligations meet the statutory requirements and can be taken into account in any grant of planning permission, will be considered within my conclusions at Consideration Five.

Schedule 2: The Owners' Covenants

336. There are various covenants relating to the payment of ***financial contributions***:

a. Construction Traffic Management Plan Assessment Fee - £2,800

To be paid prior to the commencement of development

b. Demolition Traffic Management Plan Assessment Fee - £2,800

To be paid prior to the commencement of any demolition works

c. Construction Training Contribution - £108,500

To be paid prior to the commencement of development

d. Local Procurement Contribution - £8,300

To be paid not later than 10 working days prior to the commencement of development

e. Office Travel Plan Monitoring Fee - £1,200

To be paid prior to any occupation of the development

f. Legible London Contribution - £3,017

To be paid prior to any occupation of the development

g. Cycle Hire Contribution - £200,000

To be paid prior to any occupation of the development

h. Carbon Offsetting Contribution - £126,000

To be paid not later than 10 working days prior to the commencement of development

i. End-User Employment and Training Contribution - £1,073.33

To be paid prior to any occupation of any office floorspace or retail unit

j. Library Facilities Contribution - £1,386

To be paid prior to the occupation of any dwelling

k. Sports and Leisure contribution - £5,590

To be paid prior to the occupation of any dwelling

l. Air quality contribution - £74,030

To be paid prior to the occupation of any dwelling

m. Monitoring Fee - £11,013.73

To be paid on the date of the grant of planning permission

337. ***Other Covenants***:

a. Construction Training

A Training, Employment and Business Strategy for the construction period is to be submitted to the Council for approval and thereafter implemented. The opportunities for Borough residents should be advertised and promoted and those persons and businesses who have been recruited should be monitored and recorded.

b. Local Procurement

A schedule is to be submitted to the Council for approval to demonstrate how opportunities will be provided for local businesses to tender for the provision of goods and services during and after construction.

c. Public Art Strategy

A strategy is to be submitted to the Council for approval and subsequently implemented to show how public art will be commissioned and installed in the development. This is to cost between £100,000 and £150,000.

d. Highway Works

The highway works are set out in Appendix 2 and shown indicatively on Plan 2. They include resurfacing of existing footways around the site; removal and re-provision of street furniture, planters and trees; and amendment of

the layout of the Newcombe Street and Kensington Place junction. The covenants include a requirement to enter into an Agreement with the Council as Highways Authority under the Highways Act 1980. The costs of the works will be funded by the Applicant and provisions are included to ensure that the highway works are completed prior to occupation and that safe and suitable access has been provided.

e. London Underground Works

Before development commences, the Applicant and London Underground Limited are obliged to enter into a Development Agreement. This sets out the specification and timetable for carrying out the step-free access works. These are set out in Appendix 4 and shown on the plans in Appendix 5. In brief the obligations contain the requirements needed to provide a new lift between the street and the ticket hall at the underground station to allow step-free access to the southbound District and Circle lines. This should be available for public use prior to the occupation of the development.

f. Permit Free Provisions

There are 35 dwellings that would be designated as "permit free" and these are shown on the plans in Appendix 7. The occupiers of these dwellings are to be informed that they are not entitled to apply for a parking permit and leases are to be subject to a covenant accordingly. Those holding a disabled person's badge are exempted from this provision.

g. Public Square

The public square is identified on Plan 4. A Public Square Plan is to be submitted to the Council for approval and it is subsequently to be implemented and managed in accordance with the approved details. The plan will include maintenance arrangements, how the square could be used as a venue for public events and how the Farmers' Market will be encouraged to locate there once a week. A timetable for provision, including step-free access, is tied to the occupation of the office space and residential units. Unrestricted access is to be given to the general public other than on one day a year to prevent prescriptive rights of public access coming into effect. Temporary restrictions may be applied in case of emergency to enable maintenance, repair or prevention of danger to the public.

h. Small Independent Retail Units

This requires compliance with the strategy in Appendix 8 for the marketing of the retail units as referred to in paragraph 330 above.

i. Cycle Hire Docking Station

An area of land is shown on Plan 5 that would be safeguarded for this purpose. The Applicant would grant a 25-year lease to TfL of land adjacent to the substation in Uxbridge Street at a peppercorn rent in accordance with the Heads of Terms set out in Appendix 12.

j. Medical Centre

The covenants include the construction of a medical centre of at least 745m^2 on the upper floors of building WPB 3, with lift access as shown on the drawings in Appendix 6. Also, it is to be fitted it out at a minimum cost of £1.5m. In the event that the cost is less, the remainder will go into a sinking fund to pay for maintenance and upkeep. There will be 5 dedicated car parking spaces provided at basement level as shown on Plan 6. The Applicant also covenants to enter into a lease with Dr Reid and Dr Ramsden of the Pembridge Villas Surgery and Dr Chin of the Westbourne Grove Medical Centre prior to the occupation of any dwellings. The medical centre and its parking spaces are to be retained in perpetuity.

k. Car Club

Each dwelling will be provided with one free membership for a minimum of one year of occupation. The existence of the car club will be advertised appropriately.

l. Leasehold Interests

There are 2 leasehold interests related to existing shops fronting Kensington Church Street that are not signatories to the S106 Agreement. The covenant prevents development starting until these have expired, been surrendered or otherwise determined or until the leaseholder agrees to be bound by the terms of the Deed. London Power Networks PLC also has a leasehold interest relating to the site.

Schedule 3: Affordable Housing

338. The covenants secure 23 dwellings as affordable housing units with 14 x one-bedroom units, 3 x two-bedroom units and 6 x three-bedroom units. 15 of the units will be London Affordable Rent and these are indicated on the plans at Appendix 13 to be in Building KCS 2. Eight of the units will be Intermediate Rented Units and these are indicated on the plans at Appendix 13 to be in Buildings WPB 1 and KCS 1. There is also provision for additional affordable housing if the Early Viability Review is triggered.

339. A delivery mechanism is included whereby no more than 25% of the market units and any office space may be occupied until the affordable homes have been constructed and transferred to a Registered Provider ready for occupation. Furthermore, the Registered Provider must have entered into a Nominations Agreement with the Council for all of the affordable housing, including additional units resulting from the viability review.

340. The Applicant has covenanted that service charges for all of the affordable housing will be capped and will not be more than the actual costs incurred.

Schedule 4: Viability Review

341. The Deed includes provisions for a review of viability to see if additional affordable housing can be provided. The trigger point is if substantial implementation of the development has not taken place within 30 months of the grant of planning permission. This excludes all demolition, piling works,

basement construction and construction to the floor slab. Also, a contract must have been let for the construction works. The GLA may extend the period if it considers there has been undue delay by the Council in discharging conditions.

342. In the event that an early viability review is triggered, the Deed includes provisions setting out how this will be undertaken, the information that will be required and the timescale within which it will be done. Two formulae are set out in the annex to the schedule that will be used to work out the surplus profit available and the additional affordable housing that would ensue. The role of each party is set out and in the event of a dispute regarding the outcome of the calculations, the arrangements for resolution are set out.

343. If a surplus profit is concluded to arise, additional affordable units will be provided through the conversion of some of the market units, up to a cap of 50% of the total dwellings as affordable. This is to be provided so that at least 50% by habitable room are at London Affordable Rent and the remainder at discounted London Living Rent levels. If there is surplus profit that is insufficient to provide a whole unit, then a financial contribution is to be made for offsite affordable housing within the Borough. An Additional Affordable Housing Scheme will be presented by the Applicant to set out which market units would be converted. No more than 25% of the market units and no office floorspace may be occupied until all of the additional affordable units have been constructed and any contribution towards offsite provision has been made.

Schedule 6: The Council's Covenants

344. There are various obligations relating to the holding, use and repayment of the financial contributions that it receives.

345. The Highway Works Agreement is to be entered into within 12 months of implementation, excluding site clearance and demolition, site remediation, construction of temporary access roads and the like.

346. The Nominations Agreement in relation to the affordable housing are to be entered into with the relevant Registered Provider.

THE SUPPLEMENTAL AGREEMENT (SA)

347. The provisions of the SA are explained in ***Document INQ 22***. There are 3 schedules. Schedules 1 and 2 contain the main covenants and Schedule 3 contains Plan 1 of the site and Plan 7 showing the Heathrow Northwest Runway scheme boundary map. There are also 8 Appendices. The main provisions of the covenants are summarised below. A consideration of whether the obligations meet the statutory requirements and can be taken into account in any grant of planning permission, will be dealt with in my conclusions at Consideration Five.

Schedule 1: Affordable Housing

348. The Applicant covenants to purchase 10 existing dwellings in the London Borough of Hillingdon within 3 years of the commencement of development. These will be refurbished and provided at London Affordable Rents and will comply with the various specifications and standards applied by Notting Hill Genesis and attached at Appendices 2 and 3 to the S106 Agreement. The

Council will be offered nomination rights on these dwellings. No more than 50% of the market housing units in the Corner Building (CB) may be occupied until the Registered Provider has acquired the off-site affordable units and the nomination rights have been granted to the Council or the GLA if it refuses. The relevant units are indicated on the plans in Appendix 14 to the S106 Agreement and comprise some 24, three and four-bedroom apartments.

349. The Deed allows the Applicant to purchase other housing units, entitled Supplemental RBKC Affordable Housing Units in the Deed, within the Borough. They would comply with the aforementioned specifications and standards in Appendix 2 and 3 to the S106 Agreement. Such purchases must be made before 50% of the dwellings in the development have been sold. If the purchases are made the provision will be taken into account when the late stage viability review takes place. These supplemental dwellings would become affordable housing in the Borough (***Document INQ 22, paragraph 31***).

Schedule 2: Viability Review

350. The late stage viability review would take place when 75% of dwellings have been sold. It uses formulae set out in the annex to the schedule to determine whether there will be surplus profit. If this is the case, 60% of this will go to provide more affordable housing.

351. The supplemental dwellings referred to above will be provided in advance of the late stage review. They will then be taken into account when the late stage review subsequently takes place. If they are provided at discounted London Living Rent or London Affordable Rent, they will offset the shortfall arising from the late stage review (***Document INQ 22, paragraph 30***).

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions

352. Taking account of the matters that the Secretary of State wishes to be informed about, the oral and written evidence to the inquiry and my site observations, the main considerations in this application are as follows:

- **Consideration one**: The effect of the proposed development on the character and appearance of the area, with particular reference to the height, scale and massing of the tower and the architectural quality of its design.
- **Consideration two**: The effect of the proposed development on the settings of nearby heritage assets, including the conservation areas and listed buildings.
- **Consideration three:** The benefits that would arise from the proposed development and the weight to be attributed to them
- **Consideration four:** Other matters
- **Consideration five:** Whether any conditions and planning obligations are necessary to make the development acceptable.

- **Consideration six:** Overall conclusions and planning balance to determine whether the proposal would be a sustainable form of development.

PRELIMINARY MATTERS

353. The development plan includes the London Plan, which was adopted in 2016 and the 2019 Local Plan, which was adopted very recently. There is no dispute that the Council can demonstrate a five-year supply of deliverable housing sites or that the Housing Delivery Test has been passed. There is also no contention that the most important policies for determining the application are out-of-date or inconsistent with policies in the Framework. This is not a case where any party has relied on the application of the "tilted balance" for decision-making [***22; 83; 216***].

354. The previous appeal decision is an important material consideration in the consideration of this application. The weight to be given to it is not agreed and the Council has claimed that the previous Inspector did not correctly consider the effect on heritage assets or the approach to design. I consider these matters further below, but it is relevant to note that this decision has not been subject to any form of challenge with regards to its lawfulness. Consistency in decision making is an important material factor that must be borne in mind. Nevertheless, the Council and objectors are correct that the Secretary of State is not bound by the previous Inspector's decision as long as cogent reasons are given for taking a different position [***100; 165; 253***].

355. It is quite clear that this is a very controversial proposal to which there has been a substantial amount of local objection. Local people feel very impassioned about the matter and this was particularly apparent from the oral representations made to me at the inquiry. In such circumstances I consider it necessary to make absolutely clear that I have made my own assessment of townscape and heritage matters following a very careful consideration of all of the evidence. Very importantly, I have relied on my own extensive visits, both accompanied and unaccompanied, to the site and the surrounding area.

356. There was criticism by the HVRA that the computer-generated images produced by the Applicant to aid the townscape and heritage assessments, were misleading. One of the complaints related to the absence of winter views in the vicinity of Kensington Palace and Kensington Gardens. I considered this to be a fair point and therefore asked for the Applicant to provide relevant winter views. This was done accordingly. Another concern was that the choice of lens for some of the panoramic views reduced the visual impact of the more distant features. However, the evidence indicates that the methodology used in the images produced on behalf of the Applicant complied with the Mayor's *London View Management Framework Supplementary Planning Guidance* and also guidelines produced by the Landscape Institute[49]. The visual representations produced by the HVRA were expertly produced, but the methodology was not made clear and the views had not been verified. In such circumstances, I am unable to conclude that the HVRA images are to be preferred or are more realistic of what would be seen with the development in place [***5; 263***].

[49] See ***Document POE 11, Appendices A4 and A5***.

CONSIDERATION ONE: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE CHARACTER AND APPEARANCE OF THE AREA, WITH PARTICULAR REFERENCE TO THE HEIGHT, SCALE AND MASSING OF THE TOWER AND THE ARCHITECTURAL QUALITY OF ITS DESIGN.

357. There is little dispute that the appeal site is in poor condition and in need of regeneration. It is part of a redevelopment that occurred in the early 1960's in association with the road widening of this part of Notting Hill Gate. Newcombe House and Campden Hill Towers are two high-rise slab constructions that dominate their surroundings and stand within a frontage that includes shopping parades of a similar era as well as remnants of historic architecture. Improvements are being made, such as the refurbishment and extension of David Game House, which is now a 4 storey development immediately to the west of the appeal site [***11; 13***].

358. Newcombe House is the lower of the two high-rise buildings, being 12 storeys in height in comparison with the 18 storeys of Campden Hill Towers. The latter has been better maintained but, in my opinion, remains a significant detractor in the built environment. Newcombe House also makes a negative contribution to the townscape in which it stands. Some commentators suggest that it is relatively benign and blends into its surroundings. Whilst its visual impact may be restricted in terms of where it can be seen in the surrounding area, I cannot agree with such an assessment. As a piece of built form, it has little to commend it and I would agree with the description in the Building Height SPD that it can be described as an eyesore. Whilst some objectors support its retention and refurbishment there is no planning justification to prevent its demolition. The important matter is whether the proposed redevelopment would be an acceptable replacement [***11; 201; 237; 238; 283***].

359. The main focus of dispute relates to the tower. However, it is also important to bear in mind that this is one element of a significantly more extensive scheme. The main difference between the built development in the present proposal and that considered by the previous Inspector is the increased height of one of the blocks on Kensington Church Street by one storey (KCS 1) and the block on the western side of the tower by 2 storeys (WPB 3). The Council's settled position at the inquiry was that it raised no objections to these changes in height. Furthermore, it was not concerned about the height, scale, massing or design of the built form other than the two central buildings, which would comprise the tower (CB central form and CB east form) [***17; 21; 119***].

Whether this is an appropriate location for a tall building

360. The definition of a tall building in the London Plan includes one that is substantially taller than its surroundings or causes a significant change to the skyline. Notting Hill Gate and its vicinity predominantly comprise development of between 2 and 5 storeys in height. Newcombe House therefore falls within the definition of a tall building as it is 12 storeys in height. Policy 7.7 in the London Plan indicates that boroughs should identify where tall buildings would and would not be appropriate in their development plans [***27; 30; 170***].

361. Policy CV11 in the 2019 Local Plan relates specifically to Notting Hill Gate but does not indicate whether the District Centre is or is not a suitable location for

such development. The Council pointed out that this is identified as a "buffer zone" to the surrounding conservation areas in the Building Height SPD. However, the guidance does not say that tall buildings are not appropriate in the Notting Hill Gate buffer zone. This would be a difficult conclusion to reach in view of the existence of Newcombe House and also the neighbouring Campden Hill Towers, which is 18 storeys high. Whilst the 2019 Local Plan does not address the matter of tall building location, it does indicate that tall buildings are very much the exception in the Borough [***50***].

362. Policy 7.7 envisages situations where sites are not locally identified. In such circumstances it indicates how proposals for tall buildings should be assessed. It advocates a criteria-based approach relating to architectural quality, locational accessibility and surrounding context, amongst other things. Policy CL12 in the 2019 Local Plan indicates that buildings significantly taller than the surrounding townscape should be resisted other than where the development has a wholly positive impact on the character and quality of the townscape. It envisages that such circumstances will be exceptionally rare. The design quality of the development and its impact on its surroundings are thus important factors when considering the acceptability of the tall building being proposed on the application site [***36; 199***].

363. The NHG SPD establishes various development opportunities, including on the site of Newcombe House. It indicates refurbishment as an appropriate option but also redevelopment as an alternative. In such circumstances it envisages a less bulky profile and a "*modest*" increase in height where a scheme proposes significant benefits and delivers an architecturally excellent building without harm to important views. Whatever else the new development could deliver, the proposed increase in height from the existing 12 storeys to 18 storeys could not, in my opinion, be described as modest. It is therefore clear that the application scheme would not comply with this element of the guidance [***52; 110; 111; 199; 209***].

364. The *Development Principles Plan (Option 1)* in the NHG SPD does though clearly indicate that a landmark building would be appropriate on the Newcombe House site. This is clearly a future aspiration as the plan also envisages a retail frontage on the western part of the site, which does not exist at present. It was generally agreed that the scale of the tower being proposed would put it in the character of a District Landmark, albeit at the upper end of that category. Policy 7.5 in the London Plan refers to the benefit of landmarks in the urban environment to help people find their way [***36; 51; 109; 170; 199; 200***].

365. The Council contended that the provisions of the NHG SPD have been incorporated into the development plan by virtue of policy CV11 in the 2019 Local Plan. This policy provides a forward-looking vision as to what will have been achieved in Notting Hill Gate by the end of the plan period. Whilst reference is made to the NHG SPD in the policy and the supporting text, this is on the basis that it provides the detailed guidance as to how the vision will be delivered. Although the policy is supported by the guidance, it is clear from Regulations 5 and 6 of the *Town and Country Planning (Local Planning) (England) Regulations* (2012) that an SPD has a specific role that cannot include policy making. Policy CV11 establishes what the Council wishes to achieve and the NHG SPD indicates how it will achieve it. These are linked but separate

functions and the NHG SPD cannot therefore be treated as statutory policy in its own right [***33; 52; 110; 173; 199***].

366. Drawing together the above points, I consider that there is no policy impediment in principle to the redevelopment of Newcombe House with a tall landmark building of the height proposed. The important consideration is whether the design is of sufficiently high quality and whether the impact on the surrounding townscape would overall be a positive one. The guidance also largely supports this position other than the one aspect of the NHG SPD relating to height. On the other hand, a landmark building would be supported on the site and one that falls within the category of a District Landmark would not seem inappropriate in a District Centre.

Architecture and design

367. The Framework states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. It indicates that good design is a key aspect of sustainable development. The importance that the Government places on good design is demonstrated by the recent publication of the *National Design Guide*. This is reflected in the development plan where policy requires the highest standards of architecture. From what I have adduced from the oral and written evidence, I have no doubt that the design of the development evolved following a careful consideration of the site and its context [***55***].

368. Whilst the tower is the most controversial element and the main focus of dispute, it is important to recognise that it is one element of a larger composition. The overall strategy has been to design a new urban quarter with a public square at its centre and pedestrian links to both Kensington Church Street and Notting Hill Gate. The square would be activated by perimeter buildings of between 3 and 5 storeys in height, providing retail uses at ground floor level and surveillance from upper floor flats. In my opinion this would have the potential to be a vibrant, attractive, safe and permeable amenity space for new occupiers as well as those living, working and visiting the area to enjoy. It would contrast sharply with what exists on the site at present [***18; 55***].

369. The two eastern perimeter buildings would also front onto Kensington Church Street and would replace the current poor-quality mix of shops and other premises. These would be well-designed buildings of sufficient height to provide a strong edge to this important frontage and reflect more closely the scale and massing of its surroundings. The brickwork and window pattern would complement existing buildings in the vicinity. There was some concern about the proposal to use grey bricks. However, having seen the sample panel on the site, I see no reason why they should not integrate successfully with the more mellow coloured brickwork found on many of the historic buildings [***18; 55; 262***].

370. In the north-western corner of the square the buildings would step up to 7 storeys (WPB 3). This would provide an appropriate transition between the lower perimeter buildings and the tower. It would house the medical centre on the upper floors. In the south-western corner would be the 3 storey office Cube (WPB 2). Although it would be similar in height to the perimeter buildings, it would distinguish itself by its boxy profile and its white Corian facing. This would

make a bold statement but one that would provide visual interest at this corner of the development and a distinctive feature within the square. The white facing material would reflect the front façade of the adjoining Grade II listed Bethesda Baptist Church. The blank rear elevation of the church is adjoined by a rather undistinguished single storey extension. The new development would significantly improve this part of the church's setting, which currently includes the shabby car park. There is no reason why the congregation should be disrupted as a result of the proposed development [***18; 19; 289; 300***].

371. The design strategy is to increase the height and massing of the development in a northerly direction to reflect the existing context. It seems to me appropriate to step up to a commercial scale fronting Notting Hill Gate. The frontage building (NHG) would be 4 storeys with large sections of glazing. Whilst its design would not mirror the adjoining David Game House, its height and alignment would provide continuity and to my mind it would successfully integrate with that recently refurbished development. It would also contain retail uses, thus providing an interesting and active frontage to the main thoroughfare unlike at present [***56***].

372. I appreciate that many local people have objected to the loss of the wide area of pavement with its large tree, bench seat and planters that currently lies in front of Newcombe House. Its formation into a community space was an early project carried out by the Notting Hill Gate Improvement Group. However, the set back of Newcombe House arose because at the time it was not considered possible to build above the pedestrian interchange tunnel of the underground station. This is not now considered to be an engineering constraint and there is no suggestion in the NHG SPD that the existing pavement width has to be retained. Whilst I appreciate that the community has made the best of this space, it is nevertheless overshadowed by the existing tall building and does not allow any continuity in the retail frontage at this important point [***15; 230; 242; 283***].

373. The highest building would stand at the north-east corner of the site signposting the junction with Kensington Church Street (CB central form and CB east form). This would provide a landmark building of District scale and this would have a wayfaring role in terms of the District Centre and the underground station. The height of the corner building would increase east to west from 14 to 18 storeys[50]. The 14 storey section would step back from the higher element in slipped plan form, which would break up the overall mass and scale into two distinct elements. On each façade there would be vertical bands of stone of differing widths separated by deep inset panels of metal and glass. This would produce effects of light and shade that would change at different times of the day thus providing variation and interest. The top corners of each slipped section would include larger glazed sections enclosing the winter gardens and these would provide a lighter element that would define the top of the building [***51; 53; 109; 200; 213***].

374. The slipped form of the tower, its articulated design and the consistency of materials would provide a balanced and well considered composition, in my

[50] It should be noted that although the tower would rise to 18 storeys in height, it would be significantly higher than Campden Hill Towers (***Document CD 1.11, pages 10-11***)

opinion. Whilst some have objected to the use of Portland stone, this was chosen to reflect the Barkers building, itself a landmark in Kensington High Street. I agree with the previous Inspector that the tower would be visually engaging, slender and elegant rather than unduly complex as some objectors have claimed. However, I also concur that from some directions the building, apart from the top part of the taller element, would appear bulkier and the two elements would appear less distinguishable [***53***].

375. I appreciate that many local people do not favour the design of the application development and have very strong objections to the tower in particular. The Skyline Campaign is also vehemently opposed and considers this to be a vanity project. The Architects' Appraisal Panel made comments on the previous appeal scheme and overall it considered that the architecture was not sufficiently elegant or accomplished to justify a building of this height and impact on the local skyline. In reaching my conclusions I have carefully considered all of these views along with those of a more supportive nature, including those of the Mayor, the previous Inspector and some community groups such as the Kensington Society and the Ladbroke Association[51] [***211-213; 242; 244; 252; 255; 261; 266; 282-286***].

376. I therefore turn now to consider the impact of the proposed development on the surrounding townscape.

Effect on townscape

377. When considering the effect of the appeal scheme it is also important to bear in mind what exists at present. It is obvious that a building that would be nearly twice as high as what presently exists would be seen from many more places. However, just because it would be seen does not mean that it would disrupt or detract from local vistas or views. The important matter when considering the effect on the townscape is whether the building would respond to its context in a positive way or not [***201; 202***].

378. The Applicant has undertaken a very thorough visual assessment and during my various site visits I observed the site from each direction and from all of the viewpoints that I was asked to visit. The focus of attention would undoubtedly be the tower because the lower elements of the scheme would generally have little or no impact on the townscape external to the site. I therefore concentrate on this in my assessment. From many places the tower would be seen but its effect would be marginal due to the distances involved or the intervening buildings and green infrastructure. The Council's main concerns relate to 6 of the 49 agreed views. I focus on these disputes below [***57; 133***].

Views from the north-west

379. Approaching along Kensington Park Road within the Ladbroke Conservation Area, the new building would be seen within the context of a variety of mainly historic built development, ranging from 6 storey mansion blocks to the 4 storey terraces of town houses. The upper levels of the side and front elevations of Newcombe House are apparent above the strong and consistent roofline of the 3

[51] It is appreciated that not all individual members of these two groups support the scheme.

storey terraces in Pembridge Road, which lie outside the conservation area.

380. The new development would project significantly higher and the slipped form would not be particularly apparent from here. Nevertheless, the well-articulated façades would create a much more elegant and attractive composition than the ugly flat façade that exists at present. In the kinetic sequence the observer moves closer to the site and the prominence of Newcombe House increases as would that of the new building. Although this is a largely historic townscape, other external influences from the commercial area do intrude, most noticeably the upper parts of Campden Hill Towers. Whilst the verticality and height of the proposed tower would contrast significantly with the strong horizontal roofline of the existing terrace, I consider that overall the effect on the townscape from the north-west would be neutral. In this respect I agree with the previous Inspector [***16; 17; 203; 207***].

Views from the west and south-west from Hillgate Village

381. Hillgate Village lies to the west of the application site. It comprises narrow streets fronted by terraces of mainly 2 and 3 storey cottages with strong parapet lines and painted elevations. This is a very attractive area with a village ambience. However, from my walk around this area I noted that there are relatively few public viewpoints from which the proposed development would be particularly noticeable. The land rises up to the west and from higher points such as Campden Hill Square for example, the tower would be seen as a distant feature behind a framework of buildings and intervening vegetation [***252***].

382. From Aubrey Walk there would be a clearer view and the two main elements of the tower above the parapet line of the cottages in Hillgate Place would be evident. However, this would be within the context of the foreground buildings, which appear taller due to their proximity and the elevation of the land. These provide a framework within which the tower would be seen at a distance. From this viewpoint the slipped form would not be particularly apparent, and the width and height of the tower would be seen. However, the quality of design would make it an interesting addition to the townscape without dominating its surroundings [***57; 205***].

383. Walking east along Uxbridge Street the western end of Newcombe House is apparent with its green netting, but the view is dominated by the imposing façades of Campden Hill Towers. This rises significantly above the parapet line of the 2 storey cottages. The proposed tower would be a higher but more elegant feature at the end of the view. Furthermore, Campden Hill Towers would continue to dominate the streetscape at this point.

384. The visual impact would be greatest in short distance views. At the junction of Hillgate Place and Hillgate Street the slipped form would not be appreciated, and the end and rear elevations of the tower would be seen. The quality of the architecture would be a great improvement on the existing situation, but the new development, due to its proximity, would be a much more assertive presence above the parapet line of the 2 storey terrace. Whilst the design, materials and articulation of the proposed tower would be beneficial, the bulk and mass would detract, and this would result in a negative effect on the streetscape overall [***57; 208***].

385. Jameson Street is immediately to the west of the site. It is relatively narrow with a strong and consistent parapet line above the 3 storey town houses. Many of the street trees have grown higher than the houses and when in leaf they screen much of Newcombe House from view. The west and south facades of the upper part of the 18 storey section of the tower would project well above the existing roofline and the corner of the 14 storey section would also be evident. From the junction with Hillgate Place much of the tower would be screened by the street trees in the summer months. However, the trees may not remain at this height in perpetuity and, in any event, the screening properties would be less effective during the winter. Bearing in mind that Newcombe House makes little impact from this viewpoint, the tower would be a largely new feature in the townscape. The quality of design is a matter to be taken into account. However, I am not convinced that the stone and glass exterior would result in a recessive feature when seen from here. Overall, the proximity and height of the tower would dominate the domestic scale of the existing architecture, which has very few extraneous detractors at this point [***57; 206; 256***].

386. Drawing together the above observations I agree with the previous Inspector that there would be positive improvements to appearance in those views where Newcombe House can be seen. However, there would also be negative effects from the increase in height and bulk in some closer views. The townscape of Hillgate Village is enclosed, intimate and largely unsullied by external detracting influences other than Campden Hill Towers. The harm from the proposal would be confined to only a few places and this also needs to be taken into account. Where the balance lies is a matter of judgement. However, in this case I conclude that there would be a minor adverse impact on the townscape of Hillgate Village and I do not therefore agree with the previous Inspector.

Views from the north

387. There would be glimpses of the new development from Pembridge Square, but the main views within the Pembridge Conservation Area would be from the western side of Pembridge Gardens. The southern end of this street is characterised by 4 storey terraces of stuccoed listed town houses. At this point though there are also modern influences from the District Centre. These include the recently refurbished David Game House along with the modern buildings on either corner with Notting Hill Gate. Parts of the side and front elevation of Newcombe House can be seen projecting slightly above the existing roofline of the very end of the terrace on the eastern side of Pembridge Gardens.

388. The new tower would present an elegant and slender composition from this angle and the vertical stonework would complement the existing stuccoed facades to some degree. Nonetheless the upper parts of the side and front of the taller corner building would rise significantly above and disrupt the existing roofline, which is a feature of this listed terrace and others in the vicinity. Even though it would only be seen from one side of the street, my balanced judgement is that there would be a minor adverse impact on the townscape, and this differs from the conclusion reached by the previous Inspector [***204***].

Views along Notting Hill Gate to the east and west

389. When travelling in an easterly direction the western end of the central element

of the tower would be seen with the 7 storey WPB 3 building in front. Whilst its height would be apparent it would be viewed as a recessive element within the context of the foreground buildings, especially Camden Hill Towers. Once past this building and in the closer distance view, the 18 storey tower would rise up behind David Game House. Its elegant proportions, slender form, articulation and high-quality materials would all be evident in this view. This would contrast with the rectangular block of Newcome House with its flat, unattractive façades that make no positive visual contribution to the commercial streetscape of the District Centre.

390. When travelling in a westerly direction from the direction of Kensington Gardens, the tower would be seen from the northern side of Notting Hill Gate. Whilst wider than the existing side elevation of Newcombe House, the detailing provided by the bands of stonework and glazing, the stepped height and slipped form, would break down the massing and provide an overall composition that would be elegant and interesting. Its verticality would contrast to the flat and somewhat brutal form of the 7 storey Czech Embassy in the foreground. Moving further westwards, the rather tired façade of Astley House comes into view, which again has a strong horizontal emphasis. I understand that a refurbishment scheme and extension has been permitted for this building, which will complement the recently improved David Game House. The application development would reinforce the improvements taking place elsewhere in the District Centre and would result in an enhancement to the streetscape of Notting Hill Gate.

Views from the south

391. The application site is at a high point, which is particularly apparent when travelling along Kensington Church Street. In more distant views the tower would be seen between mid-rise frontage buildings and appear recessive on account of the distance. Moving closer, the flat rear façade of Newcombe House is a negative feature at this important corner site within the District Centre. Whilst the scale of the proposed tower would be very apparent, it would be tempered by the stepped height, slipped form and contrasting bands of stone and glazing, which would be particularly evident from this direction. The perimeter buildings along the street frontage would also be seen and these would complement the existing development in terms of height. The grey brickwork of the perimeter buildings would contrast with the pale coloured stonework of the tower and overall the development would represent an improvement to the streetscape.

392. I saw the site from many other viewpoints to the south and south-east, including Kensington Palace Gardens and Kensington Gardens. The effects from these places are considered in the next section on heritage. Having regard to the distances involved and the intervening buildings and vegetation there would be a neutral effect on the more distant townscape overall.

Conclusions

393. From the evidence it is quite clear that the design of the application scheme has been informed by a careful analysis of the urban context. For the reasons I have given it would be a high-quality development that would represent a

considerable improvement on what currently occupies the site. The tower would be a tall and elegant landmark within the District Centre. There would be some parts of the townscape where the effect would be less benign, particularly to parts of Hillgate Village. However, the adverse impacts would be localised and minor in nature. Overall and taking a balanced view the development, and particularly the tower, would integrate successfully and positively with its surroundings.

394. In such circumstances, I conclude that the proposal would be in accordance with policies 7.4, 7.5 and 7.6 in the London Plan relating to local character, public realm and architecture. It would also be in accordance with policy 7.7, which establishes the criteria for tall and large buildings in boroughs without specific locational policies. Amongst other things, the development would achieve the highest standards of architecture, improving permeability and legibility and contributing significantly to local regeneration. The application proposal would also comply with section 12 of the Framework, which seeks to achieve well designed places.

395. Turning to the 2019 Local Plan, the proposed development would comply with the vision for Notting Hill Gate set out in policy CV11. It would also be in accordance with policies CL1 and CL2 by taking opportunities to improve the existing context and being of the highest architectural and design quality, amongst other things. However, the wording of policies CL11 and CL12 require *enhancement* of views and gaps that contribute to the character of an area and that tall buildings have a *wholly* positive impact on the character and quality of the townscape. As I have identified some neutral effects and minor harm, albeit of a limited nature, I consider that there would be some conflict with these two policies [***209; 214***].

CONSIDERATION TWO: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE SETTINGS OF NEARBY HERITAGE ASSETS, INCLUDING THE CONSERVATION AREAS AND LISTED BUILDINGS.

396. The description of a heritage asset in the Framework includes a building, monument, site, place or area of landscape identified as having a degree of significance meriting conservation in planning decisions because of its heritage interest. The application site is not within a heritage asset and does not contain a heritage asset. It is though in close proximity to a number of heritage assets, including several conservation areas, listed buildings and a Registered Park and Garden. These are all classed as designated assets by the Glossary of the Framework. In such circumstances its location is a sensitive one and there is no dispute that it is lies within the setting of these designated heritage assets [***12; 60***].

397. The only statutory duty to protect the setting of heritage assets concerns listed buildings, where section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires special regard to be paid to the desirability of preservation. Although section 72 of this Act states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas this does not include their setting. However, the Framework makes clear that the significance of any heritage asset can be affected by a change in its setting, which is defined as the surroundings in which

it is experienced. This means that as a matter of policy it is also necessary to consider the effect on setting in relation to the conservation areas and the Registered Park and Garden [***70; 71***].

398. It is the significance of the heritage asset that enjoys protection. This is described in the Framework as its value and, in this case, such value derives mainly from the architectural and historic interest of the various assets. The Framework identifies harm as being substantial or less than substantial. Until after the application had been called-in the Council maintained that the proposal would cause substantial harm to heritage assets. This was revised following legal advice and the settled position of all main parties is that any harm that would arise would be of a less than substantial nature. The extent of such harm within the less than substantial spectrum may vary, and the Planning Practice Guidance indicates that this should be made clear. Nevertheless, whatever the level of harm may be, the Framework indicates that great weight should be given to the asset's conservation [***45; 59; 61; 72; 136; 139; 180; 183***].

399. It is important at this stage to address two points of principle. The first point is that the requirement is to consider the effect on the significance of the asset as a whole and not just a part of it. The use of views is a useful tool in the heritage analysis. However, it is not an end in itself and, in my opinion, the Council made the mistake of being overly reliant on the effect on views rather than considering the effect on significance of the asset overall. This is particularly relevant in relation to the particular conservation areas here because they are extensive and varied in character. This may mean that findings of harm will be more difficult to substantiate. Nevertheless, that is the approach that is required, and it must be followed. The second point is that it is relevant to consider any enhancement that may arise from the development and balance this against any harm to arrive at a judgement on the net effect on significance [***60; 62; 65-67; 140; 141-145; 184-186***].

400. The previous Inspector clearly undertook a detailed consideration of the effect on heritage assets. From reading his decision I do not consider that he failed to apply the proper tests either in terms of statute or policy. However, I have carried out my own assessment and my conclusions have also been informed by detailed visits to each of the relevant assets and experiencing them kinetically. As already mentioned, I requested additional visual representations of the winter views from Kensington Gardens and these provided useful additional information not available to the previous Inspector [***5; 47; 165***].

401. My assessment has focused on the heritage assets where there are disputes between the main parties. However, I have also included consideration of Notting Hill Gate Underground Station (Listed Grade II), the Coronet Theatre (Listed Grade II) and the Arch in Linden Gardens (Listed Grade II), which I consider to be of relevance.

The Conservation Areas

402. In the case of the Kensington, Pembridge and Ladbroke Conservation Areas there are detailed *Conservation Area Appraisals* that provide assistance to the consideration of what determines their significance and value. In respect of the Kensington Palace Conservation Area there is no similar document although the

Proposals Statement is an old-style appraisal that provides useful information. The Royal Parks Conservation Area also has no formal appraisal but there is a *Mini Guide* that has been helpful [***38***].

Kensington Conservation Area

403. This conservation area lies to the south and west of the application site. It has a very detailed appraisal, which indicates that it comprises 10 sub-areas. These were separate conservation areas that were joined together in around 1976. This helps explain why the Kensington Conservation Area is very large and its character diverse. This means however that its overall significance is not specifically attributable to the character of any one part. Rather, it lies in the solidly developed streets, urban form and scarcity of green space. Whilst there has been change over time, including large modern blocks of flats, the area is typified by residential development from the Victorian period. The appraisal records that the conservation area is generally well maintained with high historic and architectural significance.

404. Hillgate Village is immediately to the west of the application site. It comprises 2 and 3 storey brick and stucco Victorian terraces of artisan's cottages with consistent parapet lines. These features give this sub-area a strong visual coherence. The appraisal refers to Newcombe House and Campden Hill Towers appearing in the backdrop of views and projecting above the historic roofscapes and small-scale historic terraces especially in the northern part of the conservation area. There is no doubt that this sub-area has high value as a set piece, but I cannot conclude that the significance of the Kensington Conservation Area as a whole would be harmed by the proposed development in its setting [***191***].

Pembridge Conservation Area

405. This conservation area lies to the north of the application site. Its detailed appraisal notes that the area is primarily residential in character but with distinct commercial elements along Notting Hill Gate to the south, Westbourne Grove to the north and Pembridge Road to the west. Away from these routes the streets are quiet and attractive with buildings dating from the late Georgian and Victorian period. There is a variety of architecture with formal terraces in places such as Linden Gardens and large detached and semi-detached houses in Pembridge Square, for example. Heights vary between modest 2 storey terraces and more substantial 5-7 storey buildings. A sense of coherence comes from brick, stucco and stone elevations, timber sash windows and coherent rooflines and parapets [***241***].

406. The proposed development would be most apparent at the southern end of Pembridge Gardens, close to where it meets the commercial part of Notting Hill Gate. In my conclusions on townscape I have found that there would be a net negative effect due to the height of the tower above the roofline of the listed terrace. I also conclude below that there would be a minor adverse effect on the significance of the listed buildings. These buildings are reflective of the value of the conservation area overall and its coherent features. Notwithstanding the deleterious effect of Newcombe House, I consider that, on balance, there would be less than substantial harm to the significance of the conservation area that

would arise from the tower within its setting. This would be at the lower end of the spectrum, but I differ from the previous Inspector who concluded that the effect would be neutral [***192***].

Ladbroke Conservation Area

407. This conservation area lies to the north-west of the application site. The appraisal records its distinctive character as a speculative estate built between the 1820's and mid 1870's. Terraces are half or fully stuccoed with unbroken parapet lines and elaborate detailing. Pairs or trios of villas provide special interest along with the end of terraces often designed to appear as a symmetrical detached house. The spacious setting and gaps between buildings is a particular feature, along with the communal gardens to the rear.

408. There are relatively few places where the proposed development would affect the setting of this large conservation area. In such views it would replace the flat, ugly façade of Newcombe House, which is an intrusive feature above the lower rooflines of the historic terraces. The proposed tower would be a taller but more elegant and a well-articulated replacement within the setting. Overall, the proposed development within this part of the setting of the conservation area would not harm the significance of the Ladbroke Conservation Area as a whole. I do not therefore agree with the previous Inspector that there would be a small negative effect [***188; 189***].

Kensington Palace Conservation Area

409. This conservation area lies to the south and east of the application site. It does not have a formal appraisal but does have a *Conservation Area Proposals Statement*, which is an old-style form of appraisal. The most significant elements of this conservation area lie on its eastern side and include the tree-lined street of Kensington Palace Gardens. This includes grand houses standing well back from the road within a verdant setting. Beyond this is the Grade I listed Kensington Palace, which stands within Kensington Gardens. This is a Grade I Registered Park and Garden, part of which is within this conservation area.

410. Other parts of the conservation area have a more varied character. On the western side are the Victorian stucco terraces. These were planned as a grand estate, but the influence of different builders resulted in considerable variation in terms of the detailing and grandeur. Moving towards Kensington High Street the conservation area has a more commercial character as do the sections close to Kensington Church Street and Notting Hill Gate.

411. From some western parts of the conservation area close to Kensington Church Street the width of the existing slab form of Newcombe House is a very unattractive and prominent feature. As I have indicated in my comments on townscape, the tower would be seen with the new perimeter buildings in the foreground. Whilst its height would be significant, its slipped form, elegant profile and articulated facades would result in an improvement to this part of the streetscape. Further away the tower would be more of a recessive feature and in some parts would not be seen at all.

412. Kensington Palace makes a very important contribution to the significance of the

conservation area. For the reasons I have given below, there would be minor harm to this heritage asset. For that reason, notwithstanding that the conservation area as a whole has considerable variation, I consider that on balance there would be less than substantial harm to the significance of the conservation area that would arise from the tower within its setting. This would be at the lowest end of the spectrum, but I differ from the previous Inspector who concluded that the effect would be neutral [***190***].

The Royal Parks Conservation Area

413. This conservation area is in the London Borough of Westminster and its western boundary is formed by the boundary with Kensington and Chelsea. It comprises the eastern part of Kensington Gardens and the linked green spaces of Hyde Park, Green Park, St James's Park and Buckingham Palace Gardens. It therefore covers an extensive area. Originally the whole area was a deer park used for hunting by Henry VIII. Kensington Gardens was separated out and formed into the private pleasure grounds for Nottingham House, which later became Kensington Palace. In the early 18th century the gardens had been improved with the creation of the Round Pond and the Long Water.

414. The *General Information Leaflet: Royal Parks Conservation Area* records that the parks are part of the Picturesque landscaping tradition of the mid-18th to mid-19th centuries. They are well wooded and are said to provide the lungs and playgrounds of Central London and a beautiful and natural setting for the buildings surrounding them, which are considered generally to enhance the Parks. From most parts of the conservation area the proposed development would have no impact at all. However, for the reasons I have given in paragraph 433 below, the proposed tower would cause minor harm to the significance of Kensington Gardens. This is only one part of the Royal Parks Conservation Area, but it makes an important contribution to the value of the whole. There would therefore also be less than substantial harm to the significance of the conservation area that would arise from the tower within its setting. This would be at the lowest end of the spectrum [***75; 193; 295; 298; 300***].

The Listed Buildings

415. When considering the significance of the listed buildings the list entry is a good starting point, although this is usually relatively brief.

1-5 Pembridge Gardens (Grade II)

416. These houses are at the southern end of a longer 4 storey terrace of stuccoed town houses. Features include pillared entrance porches, a pattern of well-proportioned and regular fenestration and a strong unbroken parapet above which are small flat roofed dormer windows set within a mansard roof. Whilst they were probably once individual houses, the gaps have been infilled and they form a unified composition. Their significance is particularly derived from their group value, which reflects the other terraces that front onto Pembridge Gardens. At this end of Pembridge Gardens, the influence of the 1960's architecture along Notting Hill Gate is clearly experienced.

417. David Game House frames the view looking southwards and there are modern developments on either corner with Notting Hill Gate. Furthermore, when seen

from the western side of Pembridge Gardens, Newcombe House rises above the end part of the roofline and is a detractor in the view. The 18 storey tower would project significantly higher above a greater length of the roofline of these listed properties and would be more prominent on the skyline. On the other hand, it would be a more elegant, articulated and high-quality building than the existing slab construction. Its vertical stone panels would complement the stone facades. Nevertheless, the disruption to the unified roofline would have a negative effect on the significance of these listed buildings, in my opinion. After taking account of the external influences at this end of the street, improvements that would arise through design and the limited places that the changes would be appreciated, I consider that overall the harm to significance would be minor on the scale of less than substantial harm. Nevertheless, this conclusion is at odds with that of the previous Inspector who considered that the effect would be neutral [***78; 196; 299***].

19 and 20 Kensington Palace Gardens (Grade II and Grade II)*

418. These are large detached houses on the western side of the exclusive tree-lined street. No 19 is a palazzo-style villa built in the mid-19th Century by the office of Sir Charles Barry. It has a five-bay central section with a grand entrance porch and 3 storey square towers at each end. The front façade is stone with brick elevations to the rear. No 20 is a large house dating back to around the same time and also from the office of Barry. The roof profile is distinctive on account of the finials at parapet level and the grouping of chimney stacks. Both buildings enjoy a spacious and leafy setting, being well set back from the road and with generous landscaped rear gardens.

419. Newcombe House sits at a distance within the gap between Nos 19 and 20 and the slab construction of its rear elevation is an unwelcome intrusion, albeit that coniferous trees hide one end of it from view. The tower would be a taller feature behind the trees and the top of the higher element would project above the roofline. On the other hand, its more elegant slipped form would be evident with its well-articulated elevations and high-quality materials replacing the flat, drab façade that exists at present. Overall, I do not consider that the spacious setting would be eroded or that the effect on the skyline would affect the significance of these two high quality listed houses [***77; 195; 299***].

10 and 11 Pembridge Square (Grade II)

420. These grand detached 3 storey villas are classically proportioned with a shallow flight of steps up to a central entrance flanked by bay windows on 2 storeys. There are decorative dormer windows at roof level. These houses are within a group of similar buildings that line the southern side of the square. Their significance is as fine individual examples of mid-19th century architecture but also as part of a unified and harmonious group. A small part of the top of the 18 storey tower would be seen above the roofline of these two properties. It would be mainly apparent from the northern side of the square and when approaching from Pembridge Place. However, due to the distance it would be a recessive element and also largely screened by the abundant vegetation within the square, especially during the summer months. In such circumstances I consider that the significance of the listed buildings would be preserved [***79; 197***].

Linden Gardens Mews Arch (Grade II)

421. The delicate stucco arch provides an inviting gateway to Linden Mews behind Linden Gardens. It has a moulded architrave, pilasters and pediment and its single storey height contrasts with the 4 storeys of the terraces to which it is linked. The gap above the arch is currently dominated by the flat and unattractive façade of Newcombe House. This would be replaced by the taller but more attractive and well-articulated tower. Views of the sky would be diminished but the quality of the replacement would be far higher. Overall, I consider that the effect would be a neutral one and that the significance of the listed arch would be preserved.

Notting Hill Gate Underground Station (Grade II)

422. The listing description refers to the brick retaining walls and elliptical arched glazed and wood panelled roof. The station was built in the mid-19th century and is a relatively well-preserved example of an underground platform of the cut and cover type. The evidence indicates that the original station was lost as part of the 1950's road widening works and that only the platforms, walls and arched form of the roof survives. The modern external cladding means that the significance of this listed building is best appreciated from the station platforms of the District and Circle Lines.

423. The proposed development would include 3 storey buildings on the western perimeter of the site. The evidence suggests that originally a terrace of houses occupied this position and that there would be no diminution of light to the platforms or visual changes arising from the application proposal. The provision of step-free access would allow access to the southbound platform to people who had previously been unable to appreciate it. In this respect the heritage value would be better revealed, and an enhancement to significance would ensue [***149***].

The Coronet Theatre (Grade II)

424. The theatre was built in 1868 and stands on the corner of Notting Hill Gate and Hillgate Street and within the Kensington Conservation Area. The elaborate exterior with rhythmic bays of painted stone and the tall and distinctive cupola are particular external features of note. It is also a rare example of a London suburban theatre designed by the important theatre architect WGR Sprague [***11***].

425. The side elevation and parts of the front elevation of Newcombe House are seen at a distance looking east behind other modern development, including David Game House. Insofar as the application site is within the setting of the Coronet Theatre, the replacement of the existing slab construction with a better designed, well-articulated and more elegant replacement would be a benefit. Its height would make it more prominent but overall, I consider that the significance of the listed building would remain unaffected [***238; 244***].

Kensington Palace and Kensington Gardens Registered Park and Garden *(both Grade I)*

426. The effect on these two heritage assets will be considered together as they are

very closely linked in terms of their significance. However, I will reach a separate conclusion on each, not least because Kensington Palace and its setting is protected by statute.

427. Kensington Palace was originally a more modest country house known as Nottingham House. It was enlarged and extended by Sir Christopher Wren and had become an important royal residence by the late 17th century. Its significance is derived from its historic associations, its form and fabric and striking silhouette against the skyline. There is also group value emanating from the associated Grade I Listed Orangery and various other protected structures, including the statue of Queen Victoria adjacent to the Broad Walk. The significance of the Palace is further derived from the important setting from which it is experienced.

428. Kensington Gardens was originally part of Hyde Park. It was hived off and laid out as part of the private pleasure grounds for Nottingham House, and subsequently the Palace. In the early 18th century the Gardens were improved with the creation of the Round Pond and the Long Water. The Gardens were laid out with lawns, plantations, promenades and vistas. By the early 19th Century they were opened to the public and remain a valued amenity today.

429. The Gardens have a visual and functional relationship with the Palace. Their formal vistas, walks and avenues are interconnected and orientated to allow planned views towards and away from the Round Pond. These Grade I heritage assets are of national importance, high sensitivity and great significance. I made an extensive visit and observed and experienced the Palace and Gardens moving from one viewpoint to another. The views looking westwards from the vicinity of the Round Pond are particularly sensitive to change. This is a planned vista and the silhouette of the Palace is seen against the sky and a backdrop of trees. Apart from the tall spire of St Mary Abbots church and the top of the Kensington Gardens Hotel the views are largely uninterrupted by outside influences, especially when the trees are in leaf. This green backcloth also gives this part of the Gardens a sense of peace and rurality, notwithstanding the proximity of the urban area to its boundaries.

430. From the vicinity of the Round Pond, the very top of the tower would be visible above the treeline. However, in my opinion the features most apparent when viewing the Palace from this direction would continue to be the church spire and the hotel. The latter is a more proximate feature that is a rather unattractive and intrusive feature, in my opinion.

431. Moving closer to the Palace and approaching along the Broad Walk, the existing trees largely screen Newcombe House and Camden Hill Towers. However, the winter views show that these buildings are visible through the framework of branches. The top corner of the tower is likely to be evident above the trees in summer but due to its height this would be more apparent in the winter, albeit behind the framework of branches. This seems to me where the relationship between the tower and the Palace would be most evident.

432. Moving along the Broad Walk there is a position where the tower could be seen directly behind the statue of Queen Victoria. In the summer it would be behind the trees but in winter it would be visible behind the intervening bare branches.

Nevertheless, it would be seen as a recessive feature within the context of other development within the built-up area. It would also be a fleeting view in the kinetic sequence.

433. Drawing the above points together it seems to me that from a limited number of viewpoints, and especially during the winter months, the tower would be more evident on the skyline and through gaps in the vegetation in comparison with what exists at present. This would fail to preserve the setting of the Palace. The tower would be an additional modern development in the setting of Kensington Gardens. It would diminish slightly the experience of being in a peaceful green space but mainly in the winter months when the urban area is more evident outside the boundaries of the Gardens anyway. My conclusions have taken account of the objections of the Royal Parks, Historic Royal Palaces and Save Britain's Heritage, which may not have been before the previous Inspector. For all of these reasons I find less than substantial harm to the significance of each of these heritage assets, albeit of a relatively minor nature [***76; 194; 257; 263-266; 296; 298; 299; 301-302***].

Conclusions

434. For all of the above reasons I have found that there would be harm to the significance of heritage assets by virtue of development within their setting. In each case this would be at the low end of the spectrum of less than substantial harm. Heritage assets are considered individually and the less than substantial harm to several heritage assets cannot be added up to result in a higher level of harm overall. In summary, there would be less than substantial harm to the significance of the Royal Parks, Kensington Palace and Pembridge Conservation Areas; Kensington Palace the 1-5 Pembridge Gardens listed buildings; and Kensington Gardens Registered Park and Garden [***148***].

435. The statutory duty only applies to the harm to the setting of the listed buildings, where the strong presumption against harmful development applies. Paragraph 193 of the Framework makes clear that when considering the impact of a proposal on the significance of a heritage asset great weight should be given to the asset's conservation. In the case of less than substantial harm to significance the harm should be weighed against the public benefits [***169***].

436. Having regard to approach it was found in the case of *Mordue*[52] that if the decision-maker works through the relevant paragraphs in the 2012 Framework, including paragraph 134, the duty under section 66(1) will usually have been complied with. Whilst the 2012 Framework has now been replaced by the 2019 version, the wording of paragraph 196 is almost identical to paragraph 134. The public benefits are considered in the next section and the balancing exercise is undertaken thereafter [***41; 121***].

437. On the face of it the proposal would conflict with policy 7.8 in the London Plan and policies CL3 and CL4 in the 2019 Local Plan, because there is no specific reference therein to balancing harm with public benefits. However, the local

[52] *Jones v Mordue, the Secretary of State for Communities and Local Government and South Northamptonshire Council* [2015] 2 AC 141 (***Document CD 11.4***).

plan policies in particular were adopted very recently, and the Examining Inspector indicated in his Report that their approach was consistent with section 12 of the Framework. In such circumstances it is reasonable to surmise that the public benefits balance is inherent to the policies. If that were not the case, then they would not be consistent with national policy [***138; 171; 172; 198***].

CONSIDERATION THREE: THE BENEFITS THAT WOULD ARISE FROM THE PROPOSED DEVELOPMENT AND THE WEIGHT TO BE ATTRIBUTED TO THEM

438. There is no dispute that the application scheme would deliver a number of benefits. The disagreement relates to the significance of these factors and what weight should be attributed to them. Before considering each individually there is a point of principle to address. This concerns whether the weight should necessarily be reduced if the benefit in question complies with the development plan. It is the Council's position that it should be [***215***].

439. I do not agree with this proposition. It is difficult to understand why a benefit should be downgraded just because it is delivering an objective that the development plan considers to be important and in the public interest. That approach would not allow the exercise of judgement by the decision-maker that some benefits are more important than others on account of the circumstances of the case. It also allows for the possibility that a benefit that does not have development plan support could be given greater weight than one that is compliant. This does not seem logical [***81; 129; 152***].

440. On the point that the benefits being offered would be ubiquitous, there is no evidence that any alternative form of development exists that would deliver them. In addition, there is no evidence that they could be delivered independently of this development. In such circumstances I consider that the benefits should be considered as unique to this scheme and that the weight to be given to them should be attributed accordingly [***54; 81; 151; 269; 272***].

441. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale: limited, significant very significant, substantial and very substantial.

Housing

442. There is no dispute that the Council has a five-year supply of deliverable housing sites as endorsed in its recently adopted Local Plan. However, in common with all London boroughs, the housing requirement is based on capacity and is expressed as a minimum. If it were to be based on need the requirement would be much higher. The Housing Delivery Test has been passed, but this is only set at 45% at this stage of the transitional period. The evidence suggests that the rate of housing delivery has not been very good over the last few years [***83; 84; 125; 126***].

443. Policy 3.3 in the London Plan and policy CH1 in the 2019 Local Plan seek to meet and exceed minimum housing targets. This is also endorsed by the Framework, which aims to significantly boost the supply of homes. Even though the Borough is protected from the application of a 20% buffer by virtue of the recent adoption of its Local Plan that does not, in my opinion, mean that its delivery record is satisfactory. Indeed, in view of the considerable level of

unmet need within the Borough it does not seem to me that the Council's strategy for delivering housing is working terribly well. The letter from the Secretary of State to the Mayor about the poor rate of delivery of housing London-wide is further evidence of the very serious problem that currently exists. I consider that the 55 homes to be provided in this scheme would be a matter of very significant weight [***83; 84; 125; 126; 216***].

444. A number of objectors raised concerns about the cost of many of the market units and that it was unlikely that Borough residents would be able to afford them. Indeed, it was feared that they would be purchased by investors and left empty. The Applicant did not consider that this would be the case and pointed to features such as the winter gardens and other amenities that had been included to make them into desirable homes for permanent residents. Whatever the truth of the matter, who purchases the private dwellings and how they would be occupied is not a matter within planning control and is not a material factor that the planning system can take into account [***231; 247; 258***].

Affordable housing

Existing affordable housing on the site

445. Royston Court is on the south-eastern side of the site and formerly provided 20 social housing bedsits for rough sleepers. The dismissal of the 2017 appeal was primarily because it would have resulted in the loss of this social housing and would not have made any on-site provision. Many local people, including the Member of Parliament, objected strongly to the loss of the accommodation in Royston Court and the fact that it has been standing vacant for several years [***40; 229; 258***].

446. However, I understand that Notting Hill Genesis[53], who owns a long lease on the premises, arranged for alternative housing in the Borough for all former residents who wanted it. I was also told that the accommodation in Royston Court was only ever intended as a halfway house but that some of its residents had lived there for several years. I saw for myself that the units were packed together and comprised a bedsitting room and a small kitchen and bathroom with no amenity space. Whilst I am sure they served a social purpose at the time it appears that there were serious management issues and problems with antisocial behaviour. I was told that Notting Hill Genesis, the Registered Provider, would have ceased using Royston Court anyway because it was not considered fit for purpose [***229; 333***].

Need and delivery

447. The Council has a poor record of affordable housing delivery against a very large need. The Examining Inspector of the 2019 Local Plan reported that there was an annual need in the Borough for 1,171 affordable homes a year. There are over 3,000 households on the Council's Housing Register with 2,300 households living in temporary accommodation. The average annual delivery of affordable homes in the Borough over the last 5 monitoring years has been 76 units, against targets in the previous and current Local Plans of 200 and 293

[53] This was formerly known as Notting Hill Housing Trust.

respectively. The situation in terms of delivery against need is clearly getting worse year on year [***85; 86; 127***].

Proposed on-site provision

448. Policy 3.12 in the London Plan seeks to secure the maximum reasonable amount of affordable housing subject to viability. Amongst other things, Policy CH2 in the 2019 Local Plan seeks a minimum of 35% of all residential floorspace as affordable housing with 50% as affordable rent and 50% as intermediate, subject to viability. The application proposal would provide 23 affordable units, which would be 25% of total residential floorspace and 42% of total residential units. It is agreed in the overarching SCG by all of the main parties that the proposal would comply with the aforementioned policy requirements. At the inquiry the viability evidence was not explored because it was not the subject of dispute. However, the Applicant's unchallenged evidence indicates that the affordable housing offer would considerably exceed the floorspace that could be viably provided on the basis of achieving a developer profit of 16.4% on Gross Development Value [***89; 127; 229***].

449. The affordable housing would be provided in the 2 perimeter blocks facing Kensington Church Street and in the block on the western side of the square (KCS 1, KCS 2 and WPB 1). Buildings KCS 2 and WPB 1 would provide affordable accommodation only whilst KCS 1 would provide a mix with market homes. It is the case that there would only be a small net increase in the number of affordable units provided on the site. However, in terms of floorspace the increase would be over 264%. Furthermore, the existing bedsits in Royston Court would be replaced with a mix of one, two and three bedroomed homes. The quality of these new units would be incomparable, and I have no doubt from the evidence that they would be genuinely indistinguishable from the market dwellings. There would be no "poor doors" and all residential units would benefit from the same high-quality internal fixtures and fittings. This would be a genuinely integrated community [***87; 88; 90; 229***].

450. All of the affordable housing would be at discounted rental tenures because discounted sale products would not be affordable in this Borough, which has one of the highest house prices in the UK. There would be an even split in terms of floorspace, with 15 units at London Affordable Rent and 8 units at Discounted London Living Rent. There is no dispute that this would reflect housing need within this Borough. London Affordable Rent is based on social rent levels and it would be likely that occupiers would be on Housing Benefit. By example, the rent of a one-bedroom market unit would be about £424 per week and a London Affordable Rented unit would be about £144 per week. This would amount to a 66% discount and be about half of the Local Housing Allowance [***84; 87; 89***].

451. Discounted London Living Rent is an intermediate rental product and the rents are set by the Mayor. They are area-specific and based on discounted average household incomes in the Borough. There is also the provision for an additional discount, which the Applicant has agreed to apply. It would be delivered through the S106 Agreement. By example, the rent of a one-bedroom unit would be £323 per week, which would be a 24% discount of the aforementioned market rent. The evidence indicates that there are over 7,000 households in the Borough who would qualify for this type of housing and 471 in the local ward

alone. Due to the costs of housing in the Borough these households would not be able to afford to rent on the open market but would also not be eligible for affordable rented tenures [***87; 89***].

Viability reviews

452. As discussed above, it is agreed that the affordable housing provision would be the maximum that could be provided on viability grounds at the present time and that it would therefore be policy compliant. However, the proposed provision would not be sufficient in terms of floorspace to meet the minimum 35% level in policy CH2 of the 2019 Local Plan. In order to achieve the maximum reasonable amount of affordable housing in terms of policy 3.12 in the London Plan it is reasonable to require a viability review if development does not start expeditiously. The 2019 Local Plan also includes provisions for a review mechanism where viability assessments show that the targets in policy CH2 cannot be met. The reappraisal of viability before development commences would be in accordance with the formulae in the Mayor's *Affordable Housing and Viability Supplementary Planning Guidance* [***341-343***].

453. The mechanism for an early stage review is set out in Schedule 4 of the S106 Agreement and is agreed between the three main parties. The supplementary planning guidance indicates that the trigger point would be within 2 years of the grant of planning permission. However, in this case due to the substantial basement works required to carry out the works at the underground station, a trigger requiring substantial implementation within 30 months is considered reasonable. Substantial implementation is defined in the S106 Agreement and would include the letting of the contract for the construction of the development. If surplus profit is found to arise on-site at this stage, provision would be made by conversion of one or more of the market units to affordable units. If the surplus profit was insufficient to provide a whole unit there is provision for a commuted payment. The early review mechanism would encourage timely implementation, and, in the event of delay, it would capture enhanced values in the public interest [***341-343***].

454. Draft policy H6 in the emerging New London Plan includes provisions for late stage viability reviews. Draft policy H6 was endorsed by the Panel of Examining Inspectors and is likely to be adopted in its current form. Schedule 2 of the SA provides the mechanism for a late stage review, including the trigger point of when 75% of dwellings have been sold. The formulae for the viability assessment are in accordance with the Mayor's supplementary planning guidance. Any increase in profitability would normally be captured by a financial contribution. However, in this case the Applicant has proposed a different approach, which is endorsed by the GLA but not by the Council. This is considered in the next section [***31; 35; 350***].

Supplemental off-site provision[54]

455. The SA includes covenants whereby the Applicant could choose to buy

[54] The Council's position is set out in ***Document INQ 6, section 2***. The Applicant's position is set out in ***Document INQ 22, paragraphs 26-46***.

residential dwellings in the Borough before 50% of the dwellings in the proposed development have been sold. They would be subject to specific standards and specifications and would be refurbished and delivered as affordable housing with nomination rights offered to the Council. This would mean that affordable housing would be provided well in advance of the trigger point of the late stage review. The covenants would allow this provision to be taken into account when the late stage review subsequently takes place [***332; 350***].

456. The Council objects to provision in this way because it would result from converting existing market dwellings and would therefore result in no additionality. Furthermore, it is not considered transparent because the value and quality of the homes would be unknown. It therefore considers that the conventional route of a financial contribution should be followed, if this is found to be justified by the late stage review. The Council referred to its New Homes Programme where there is an ambition to build 600 new homes, including at least 300 for social rent. However, this is a long-term objective and 5 sites have initially been identified for around 89 homes. The evidence suggests that planning applications have yet to be submitted for any of these sites [***177; 178; 218***].

457. The homes to be provided through this programme would clearly be a beneficial addition to the affordable housing stock. However, they would not resolve the huge issue that the Council faces in respect of its affordable housing need and are not an alternative to provision through the planning system. Furthermore, the New Homes Programme is expected to be self-financing rather than using the contributions from S106 Agreements. It therefore seems likely that contributions arising from viability reviews would be used by the Council to purchase existing properties to convert rather than new build. This would be exactly the same approach as the Applicant intends to follow through the provision of the supplemental off-site affordable homes[55] [***218***].

458. I can see no impediment to this approach in development plan policy, the Council's *Planning Contributions* SPD or the Mayor's *Affordable Housing and Viability Supplementary Planning Guidance*. It was explained that one of the reasons for proposing it is that the Applicant considers that it would be more favourable to funders. This is because it would engender a greater degree of certainty and thus lower the risk by providing a quicker and more expedient route that would be within their control. It would therefore be more likely that the scheme would be delivered overall with all of the other affordable housing benefits it offers. It would also guarantee some additional affordable housing at an earlier stage when the late stage review could result in none at all. I consider this to be a material consideration of significant weight.

459. However, I do not consider that these obligations would comply with Regulation 122 of the CIL Regulations. This is because it cannot be determined by the time that the obligation becomes effective whether or not a late-stage review will be

[55] The information on the Council's house building programme is at Document INQ 29. Its clarification and the Applicant's response were provided following the close of the inquiry at ***Documents INQ 37-39***.

required. The additional affordable housing will therefore have been provided even though it may not be necessary on the grounds of enhanced values.

Off-site nomination rights[56]

460. The SA also secures the delivery of 10 off-site affordable homes in the London Borough of Hillingdon. These would be market homes to be purchased by Notting Hill Genesis and refurbished as London Affordable Rented units from the proceeds of the sale of Royston Court to the Applicant. The Council will be offered nominations for those on its housing waiting list. This honours a longstanding informal agreement between the Council and Notting Hill Genesis relating to nomination rights when Royston Court is sold. This is legally secured through the SA and no more than 50% of the market units in the corner building could be occupied until this happens. The GLA will be granted the nomination rights in the event the Council refuses them.

461. The Applicant accepts, and I agree, that these obligations would not comply with Regulation 122 of the CIL Regulations and therefore cannot be determinative in the grant of planning permission. The Council does not consider that the off-site nominations fall within a policy compliant means of delivering affordable housing. This is because they would relate to a different borough and would offer no additionality. Rather they would be removing market homes from the supply in order to provide the affordable housing. In addition, the Council is concerned about a lack of transparency and suggested that those on its housing register often do not want to move outside the Borough.

462. Whilst I can understand that the Council would rather be offered nominations in its own Borough it is also the case that the purchase of 10 homes would be very challenging bearing in mind house prices. It is also evident that it is the sale of Royston Court to the Applicant that would enable Notting Hill Genesis to purchase the dwellings in Hillingdon. It would formalise a longstanding but informal agreement with the Council that has no legal effect at present in terms of implementation. There does not seem to me to be any specific policy impediment and whilst it may be a somewhat unconventional approach it would mean that the Council would be able to offer a home to 10 households on its housing register. I can appreciate that some would not wish to move out of the Borough due to family connections, for example. However, there is no evidence that there are not households on the Council's waiting list who would be prepared to make the move if it means benefiting from a home. I consider that the off-site nomination rights are a material consideration to which I attribute some weight.

Conclusions on affordable housing

463. For all of the above reasons I consider that the affordable housing that would be provided on the site would be a benefit that should be given very substantial weight in the planning balance.

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[56] The Council's position is set out in ***Document INQ 6, section 1***. The Applicant's position is set out in ***Document INQ 22, paragraphs 13-25***.

464. Neither the supplemental off-site provision nor the off-site nomination rights would comply with Regulation 122 in the CIL Regulations and are therefore not determinative in any grant of planning permission. However, that does not though mean that they cannot be taken into account as a material consideration. The "blue pencil" clause does not apply to the obligations in the SA, which means that they would remain effective regardless of Regulation 122 of the CIL Regulations.

465. For the reasons I have given, I consider that these off-site provisions are material considerations of some weight that contribute further to the very substantial affordable housing benefit referred to above. Notwithstanding my conclusions on the matter, the Secretary of State may not agree that the supplemental off-site provision should be taken into account in the late stage viability review. If that were the case it would be necessary to modify the relevant planning obligations in the SA before granting any planning permission. If such circumstances were to arise, the Applicant has asked that the Secretary of State issues a "*minded to grant decision*", specifying the requisite changes[57].

Step-free and stair-free access to the underground station

466. Notting Hill Gate underground station is heavily used and part of a strategically important public transport interchange. It provides access to the District and Circle lines and the deeper Central Line as well as being proximate to step-free bus services. In order to get down to the station's ticket hall the passenger has to negotiate a flight of stairs. From there it is possible to access the southbound platforms of the Circle and District Line on the level and to get down to the Central Line platforms by escalator. Whilst the PTAL rating attributed to the application site is 6b, which is the highest level of accessibility, for those with disabilities who cannot manage stairs the station is inaccessible [***8; 55***].

467. Policy 6.1 in the London Plan seeks to ensure that Londoners can use all parts of the public transport system safely, easily and with dignity, including by securing step-free access where appropriate and practicable. Policy CT1 in the 2019 Local Plan also encourages sustainable travel modes and requires new developments to contribute towards step-free access to ensure delivery at rail and underground stations where there is a redevelopment opportunity. The Mayor's *Transport Strategy* and the NHG SPD also support the provision of step-free access when the opportunity arises. It is clear from the evidence that making the underground system accessible is a longstanding aspiration at both the strategic and local levels but that there are many technical challenges, with funding a major obstacle to be overcome [***24; 32; 36; 37; 106; 153; 154***].

468. The step-free proposal includes new lifts from street level to the underground ticket hall. Walkways to the southbound platform of the District and Circle lines would pass through the application site at basement level. The cost of the project would be around £7m and would be fully funded by the Applicant. As it would involve land within the application site the provision of the step-free access could only be delivered by the proposed redevelopment. For the first time it would allow those who are unable to use the stairs, including those with

[57] See ***Document INQ 22, paragraph 52 and footnote 1***.

disabilities, to gain access to the underground system. It would reduce journey times and also allow stair-free access to the Central Line by means of the escalators. This would be an advantage to those with heavy shopping, parents with buggies and the elderly who find stairs difficult to negotiate but can manage an escalator [***97; 99; 156***].

469. The proposal would only allow step-free access to one of the platforms, which would mean that people needing to use it could only travel in the southbound direction. In order to return to the southbound platform and take advantage of the step-free facilities, the passenger would have to make a rather convoluted journey. There was considerable criticism from objectors, including the representative of Action Disability Kensington and Chelsea on the grounds that it was a token gesture and that resources would be better employed at those stations that could be made fully accessible [***98; 219; 239; 259; 277-278***].

470. I appreciate that the proposal would only provide a partial solution in terms of providing step-free access to the underground network. Nevertheless, it is all the Applicant could reasonably be expected to do, given that the land needed for such a facility on the northbound platform is outside its control. David Game House has recently been refurbished and it is probable that a much larger redevelopment scheme would be required to provide the necessary funding in order to achieve the whole solution. This is unlikely to happen in the short term but securing a partial outcome would make the overall delivery more likely in the longer term. If opportunities like this are not taken because they are sub-optimal, it will not encourage developers to make similar investments in appropriate circumstances [***97; 155; 157; 219***].

471. For all of the above reasons, the provision of step-free and stair-free access would be a factor of considerable importance. However, the weight to be attributed should be tempered by the fact that it would only provide a partial solution in terms of securing accessibility to the underground station. The benefit therefore attracts very significant weight in the planning balance.

Medical Centre

472. The proposed new medical centre would be on the fourth, fifth and sixth floors of the 7 storey building WPB 3. This would accommodate the Pembridge Villas Surgery and the Westbourne Grove Medical Practice, which are large practices with some 10,000 and 8,000 patients respectively. The doctors have been searching for new premises for a long time because they consider that their existing premises are not fit for purpose. I appreciate that some objectors consider that the existing surgeries are satisfactory and have the advantage of being in the centre of the communities they serve. However, the doctors spoke to the inquiry about the cramped conditions with inadequate space to properly care for patients or incorporate the NHS services that are so valuable to local communities. Accessibility is also an issue with steep stairs and no lift to the upper floors[58] [***19; 21; 93; 94; 233; 245; 259***].

473. The new medical facility would provide a modern primary care facility that would

[58] Photographs were provided with the written representations (***Document CD 13.8***).

be fully accessible for those with disabilities. It would allow a range of associated NHS services, including counselling and physiotherapy. The NHS West London Clinical Commissioning Group is strongly supportive of the scheme, which promotes one of its key priorities of delivering primary healthcare at scale. It considers this to be a significant improvement in achieving this objective and an important public benefit. The Commissioning Group has been working with the two medical practices and the Applicant on the design and planning of the new facility and is satisfied that all relevant NHS standards for around 18,000 patients would be met. [***93; 233; 303***].

474. The medical centre would be in a good location for its catchment population and highly accessible by public transport. There would be access to emergency services from the new public square and a dedicated parking space for disabled patients in the basement car park. Although the facility would be on the upper floors it is proposed to have a staffed desk in the ground floor lobby to direct patients to their destination. The medical centre would be served by 2 dedicated lifts from the basement and ground floor levels [***94; 234; 239***].

475. The doctors have signed a 25-year lease with protected rights and the fit-out would be fully funded by the Applicant to NHS specifications. The Section 106 Agreement includes covenants relating to the provision of the medical centre, including monies for its fit-out and the provision of 5 dedicated car parking spaces. A planning condition controls the delivery and subsequent retention of the medical centre. Its provision would be a very important public benefit to which I attribute substantial weight [***235; 289; 331; 337***].

Farmers' Market

476. This is clearly a very popular amenity that has been operating from the existing car park for several years and is greatly valued by those who live locally. There have been discussions with the market organisers who strongly support the scheme and have contributed to the design of space where the market would be re-located following redevelopment. Indeed, an agreement has been signed for a new tenancy with the Applicant. The market organisers have submitted a planning application to relocate to church grounds off Kensington Church Street. However, they have stated that their preference is to move back to the application site following redevelopment [***96; 288; 305***].

477. The new provision would be a great improvement on the existing situation where traders operate in the carpark at the back of Newcombe House. There would be provision for stalls, space for storage in the basement and plug in electricity. I appreciate that some local objectors consider that the market's character derives from its current eclectic appearance and operation and that the new shopkeepers may not welcome its presence next to their high-quality outlets. I also note comments that the space in which it would operate would be less generous in size. However, the market only takes place on a Saturday morning and from its representations it welcomes what is being proposed in the new scheme. It clearly draws in customers which I would have thought would be welcomed by the permanent retailers. There is no reason why it should not continue as the same lively, vibrant place and considerably enhance the attractiveness of the public square [***8; 96; 220; 246; 273; 285; 305***].

478. The proposal is to re-provide a facility that currently exists, but to a far higher standard. The market could have found premises elsewhere and, indeed, it has found an alternative site that it will move to during the construction period. Nevertheless, it is keen to move back to the redeveloped site and the Section 106 Agreement includes a covenant requiring the steps that the Applicant will take to encourage the Farmers' Market to re-establish. In such circumstances I consider that this would be a benefit of very significant weight in the planning balance [***220***].

Other Benefits

Offices

479. Newcombe House is an office building, although much of it is now empty. There would be a small decrease in office floorspace from 5,206m^2 to 4,765m^2 (GIA). The offices would be provided in a dedicated building at the southern end of the public square (WPB 2 Cube) and as a mix of uses in the buildings closest to Notting Hill Gate (WPB 3, CB central and east forms, NHG). The vision in policy CV11 in the 2019 Local Plan includes that the District Centre will continue to be a major office location and enhancing office provision is an overarching aim. The NHG SPD points out that the area is particularly attractive to businesses in the creative and media sectors although it is not a prime location for offices, which is reflected in returns [***18-21; 33; 36***].

480. Newcome House contains outdated and poor-quality floorplates. The new offices would be far superior in quality with a range of flexible and modern floorplates. Office workers would be able to take advantage of the excellent accessibility and an Office Travel Plan would be secured by planning condition to encourage sustainable travel. The office provision would be a benefit of very significant weight [***91; 159; 314***].

Retail

481. There is a range of relatively poor-quality retail units along Kensington Church Street. These would be replaced with new retail units on the ground floor of mixed-use buildings around the new public square and along Kensington Church Street and Notting Hill Gate. These frontages would be activated by high-quality retail uses that would be a considerable improvement on what presently exists. There would be a small increase in retail floorspace but more importantly such investment, which is difficult to achieve in the high street, would undoubtedly enhance the vitality and viability of the District Centre. This would be in line with the vision in policy CV11 in the 2019 Local Plan as well as the NHG SPD where the frontages referred to above are envisaged for retail and mixed-use purposes [***9; 18-21; 33; 35; 92***].

482. I have already considered the point made by some objectors about the co-existence of the permanent retailers and the Farmers' Market. There have also been concerns about competition with local shops and businesses. In accordance with Policy CF2 in the 2019 Local Plan, the S106 Agreement includes a planning obligation to comply with a marketing strategy that seeks to attract small and local businesses. This will include existing retailers operating on the site. There are also planning conditions that prevent a tenant from operating

more than three retail units in the Borough and do not permit the amalgamation of retail units. The retail provision would be a benefit of very significant weight [***32; 246; 273; 289; 330***].

Public square

483. At present, apart from the unattractive wind-swept podium, the site includes no public open space apart from the drab car park to the rear which is open to the public on Saturday mornings for the Farmers' Market. The only access to this from Notting Hill Gate is the intimidating and potentially unsafe passageway and steps beneath the existing building [***95***].

484. The new public square would be at the heart of this regeneration project. Remodelling of land levels would provide high-quality pedestrian links at grade between the square and adjoining streets, including Notting Hill Gate. There would be 2 walkways from Kensington Church Street, the southern of which would align with Kensington Mall [***18***].

485. The square would have the potential to become a lively and vibrant amenity space activated by ground floor retail uses, including restaurants and cafes. It would be a place where those living, working and visiting Notting Hill Gate would be able to socialise and enjoy and would host the Farmers' Market. It would be a pedestrian environment with vehicular access restricted to servicing and emergency vehicles, which would be managed through a delivery and servicing plan controlled by planning condition. The S106 Agreement includes a requirement to submit a plan indicating maintenance arrangements and how public events will be organised, amongst other things. It also provides for unrestricted public access other than in emergency situations and on one day a year to prevent prescriptive rights of public access coming into effect [***80; 95; 313; 337***].

486. In the supporting text to policy CV11 in the 2019 Local Plan, improvement of the public realm is both an overarching aim and priority in terms of the vision for Notting Hill Gate by 2028. The NHG SPD indicates that redevelopment or refurbishment proposals for Newcombe House should provide improved public space, including the area to the rear of the building. To my mind the proposal would be a benefit of very significant weight in the planning balance [***95***].

Overall conclusion

487. The application proposal would deliver a considerable number of benefits. I have considered these individually and ascribed weight to them accordingly. Some are more important than others, but they also have value as an overall package, which in my judgement can be given very substantial weight in the planning balance. I return to this in Consideration Six below.

CONSIDERATION FOUR: OTHER MATTERS

488. Some local objectors were concerned that if planning permission were granted for the proposed tall building it would result in a precedent for others in the area. I consider this unlikely. The tall building would be one element of a larger mixed-use scheme that offers a number of important benefits. Furthermore, it is on a site that already contains a tall building that is a considerable detractor and

eyesore. It seems to me that the factors involved here are specific and perhaps unique and unlikely to be replicated elsewhere. As far as I am aware there are no proposals in Notting Hill Gate in the pipeline for tall buildings on other sites [***135; 256; 267***].

489. The proposal would include 25 car parking spaces for residential occupiers. I questioned whether these would be acceptable on a development that enjoys the highest level of accessibility. It was pointed out that 61 spaces currently occupy the site and that the new provision would amount to a ratio of 0.45 spaces per residential unit. This would be well below the maximum of one space per dwelling in policy 6.13 in the London Plan. No parking space would be provided for the office or retail uses and the Office Travel Plan, planning obligation requiring 35 of the dwellings to be permit-free and cycle parking provision would encourage occupiers of the development to travel by modes other than the car. The GLA and the Council's Highway Officers are content with the proposed parking provision and, in the circumstances, it is considered acceptable [***259; 289; 337***].

490. Local objectors are concerned about the effect of the proposed development on their living conditions. Undoubtedly the application proposal would result in a considerable change in outlook. However, although the tower would be significantly higher it would also be a great improvement in terms of the quality of design to what exists at present. Inevitably personal opinions will differ, and some residents will welcome it whilst others will not. The Applicant's report on sun and daylight concluded a high degree of compliance with BRE standards. Within a densely developed urban area such as this it is not reasonable to expect the levels of privacy that may be achieved in more spacious suburban locations. Overlooking already occurs from the existing tall building and inevitably there would be similar effects from the new flats in the tower. I note that overall the Council, GLA and previous Inspector did not consider that the effect on living conditions would be a determinative issue and I agree [***289***].

491. There was objection from a number of diplomatic residences and embassies on the grounds of privacy and security. These are mainly located in Kensington Palace Gardens and the concerns related primarily to the accommodation in the tower facing in this direction. I can appreciate that this is a sensitive issue, but the distances would be considerable with intervening trees that would provide screening, especially in the summer months. There is already a tall building on the site with a large accessible roof area at the top. There are also more proximate buildings of 5-7 storeys to the west. Overall, I do not consider that further unacceptable detriment would be likely to arise on account of the application proposal [***265; 291; 292***].

CONSIDERATION FIVE: WHETHER ANY CONDITIONS AND PLANNING OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE.

PLANNING CONDITIONS

492. The planning conditions are at Annex Three and the justification is provided in paragraphs 309-331 of the Report and also in various parts of my conclusions.

493. It is considered that the conditions are reasonable, necessary and otherwise

comply with Paragraph 55 of the Framework and the provisions of the Planning Practice Guidance.

THE PLANNING OBLIGATIONS

494. The planning obligations are contained within two fully executed Deeds submitted with the planning application. The S106 Agreement was fully executed on 29 November 2019. The SA was also fully executed on that date and includes the covenants that the Council was unable to agree. The two Deeds were discussed fully at the inquiry and I am satisfied that they are legally correct and fit for purpose. A summary of their main provisions is provided at paragraphs 336-351 of the Report.

495. Policy 8.2 in the London Plan indicates that strategic as well as local priorities should be addressed through planning obligations. Policy C1 in the 2019 Local Plan seeks to ensure that there is adequate infrastructure to support development. Mitigatory measures will be sought through the use of planning obligations to address impacts deriving from the development in order to make it acceptable in planning terms. The Council has recently adopted a *Planning Contributions* SPD, which includes justification for the financial and other obligations that are sought in order to support development within the Borough.

496. In considering whether the obligations in the two Deeds can be taken into account in any grant of planning permission, it is necessary to consider whether they would meet the statutory requirements in Paragraph 122 of the CIL Regulations and the policy tests in Paragraph 56 of the Framework. These are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question.

497. It is noted that the S106 Agreement contains a "blue pencil" clause. This means that its obligations are conditional on the Secretary of State finding that they comply with the statutory requirements. The SA has no such clause, which means that any obligations would remain effective whether or not they complied with Regulation 122. The Secretary of State has specifically been asked to issue a "*minded to grant decision*" if he only has concerns about the approach to the late viability review. I have explained this in paragraph 465 above.

498. The three main parties have provided a CIL compliance statement for the S106 Agreement and the Applicant and the GLA have produced a similar document for the SA[59].

Monitoring and assessment

499. There are a number of fees relating to this matter as follows:

    a. The 2019 CIL Regulations now exempt monitoring fees from the Regulation 122 tests, provided the fees fairly and reasonably relate to the proposed development and do not exceed the Council's estimate of the cost of monitoring the development over its lifetime. In this case there would be a general monitoring fee of £74,030. The fee relating to the financial

[59] These can be found at ***Document INQ 26A*** and ***Document INQ 26B***.

obligations is based on 2.5% of their value and this is explained in the Planning Obligations SPD. I was told that the percentage is based on an average derived from past experience of the time taken to undertake the monitoring. The GLA commented that this is fairly typical of the charge made by other London boroughs. Some schemes will be more complex than others, but the value of the obligations should give some idea as to how time consuming the monitoring exercise will be. In this particular scheme the obligations and conditions are numerous and complex, and I suspect that the monitoring cost will exceed the 2.5% of value that is to be paid.

b. The justification for the fee for the monitoring and review of the Office Travel Plan, which is required by condition 8, is explained in the Planning Obligations SPD. The justification for the fee for air quality monitoring is also explained in the SPD. It is worked out in accordance with a formula relating to the amount of commercial floorspace. The site is in an Air Quality Management Area and there are various conditions that impact on the issue.

c. The fees relating to the Construction and Demolition Traffic Management Plans are less easy to endorse. These plans are required by conditions 22 and 23. Whilst the fees are said to be for the purposes of assessment of the Management Plans, no reference is made to them in the SPD. Whilst I am sure that the plans, which contain many detailed provisions, will take time for the Council's officers to check, this could be seen as a normal part of the development management function. Even if that were not the case, I find no transparency as to how the sums in question have been worked out.

d. The Monitoring Fee, Office Travel Plan Monitoring Fee and Air Quality contribution are fair and reasonable. However, the Construction Management Plan Assessment Fee and the Demolition Management Plan Assessment Fee do not comply with the tests in Regulation 122 of the CIL Regulations.

Local procurement, employment and training

500. Policy 4.12 in the London Plan seeks to improve opportunities for Londoners and remove barriers to employment. Policy 5.3 relates to sustainable construction and, amongst other things, aims to secure sustainable procurement of materials using local suppliers where feasible. The Planning Contributions SPD outlines a number of measures that can be taken to implement these policy imperatives, including developing opportunities for local employment and training. The covenants relating to the submission of a strategy and schedule for these purposes would meet these objectives.

501. The Deed also includes financial contributions to support the recruitment and training programme and the use of local suppliers. These contributions have been worked out in accordance with formulae in the SPD. All of these obligations are justifiable for the reasons given and comply with Regulation 122 of the CIL Regulations.

Highways and accessibility

502. The highway works that would be undertaken are outlined in paragraph 337 of the Report. They are necessary in order to ensure safe pedestrian movement

within the vicinity of the site.

503. In order to carry out the step-free access works, the Applicant is obliged to enter into a Development Agreement with London Underground Limited. This sets out the specification for the works and the timetable to ensure that the facilities are available for public use prior to the occupation of the development. I have found the accessibility improvements to be an important public benefit. However, they are also necessary so that all those living and working in the development have access to the underground network. Whilst the works only offer a partial solution they will do as much as is reasonably possible to deliver an environment that is inclusive for all in accordance with policy 6.1 in the London Plan.

504. A safeguarded area for a cycle hire docking station in Uxbridge Street is to be provided to TfL by the Applicant on a 25-year lease. A contribution of £200,000 will be made to supply bicycles for public use and I was told that this was directly related to the cost of provision. Whilst there would be cycle parking facilities within the basement of the development itself, this additional facility would encourage others to use this travel mode on a more occasional basis.

505. TfL has produced a wayfaring system that supports walking journeys across London. This is to be endorsed as a means of encouraging sustainable travel. However, I am not satisfied that the contribution of £3,017 towards Legible London signage has been adequately justified in terms of this particular development.

506. Policy CT1 in the 2019 London Plan aims to improve alternatives to car use, including limiting car parking and permit-free provision. The 20 bedsit units in Royston Court were eligible for parking permits, which is why only 35 of the dwellings would be permit-free. This means that they would not be entitled to apply for a permit within the controlled parking zone. The covenants are made under section 16 of the Greater London Council (General Powers) Act 1974 and provide an undertaking that is not subject to consideration under Regulation 122 of the CIL Regulations. Each dwelling also has one year's free membership to a car club scheme, and this is to be advertised to all occupiers. These are reasonable and necessary provisions that seek to promote behavioural change and discourage car ownership in this location. There are several car club bays within the immediate vicinity and once residents are familiar with the facility, the expectation is that they will continue to use it.

Social infrastructure

507. Policy CK1 in the 2019 Local Plan seeks to ensure that social and community uses are protected or enhanced. The library contribution will be used for new provision, improvements to existing facilities, new library books and IT equipment. The Community Infrastructure Levy funds library provision for residential but not commercial uses. The SPD indicates that about 20% of library users are from outside the Borough. The contribution is worked out in accordance with the formula in the SPD and based on the number of people who will be working at the site. The nearest facility is the Notting Hill Gate library on the corner of Pembridge Gardens and Pembridge Road and there is another at Kensington Town Hall.

508. The Council's *Community Sport and Physical Activity Strategy 2018-2023* seeks to promote health and wellbeing by encouraging increased physical activity. The SPD indicates that developments such as offices and retail uses do not pay the Community Infrastructure Levy charge but nonetheless increase pressure on sports and leisure facilities. The contribution is worked out in accordance with a formula in the SPD based on the number of people working on the site and would be put to provision within the locality in accordance with the strategy.

509. The provision of a new primary healthcare centre within Notting Hill Gate is referred to in the NHG SPD and is one of the priorities in the supporting text to policy CV11 in the 2019 Local Plan. The covenants include the construction and fitting out of the medical centre in building WPB 3. A contribution of £1.5m is made for this purpose and any monies left over will be able to be used for maintenance and upkeep. 5 dedicated car parking spaces are also to be provided. I have considered the medical centre further in paragraphs 472-475 above. The obligations relating to its provision are reasonable and necessary for the reasons given.

510. Public art can promote local distinctiveness and a sense of place. It is supported by policy CR4 in the 2019 Local Plan, which requires all major developments to provide high quality public art, which can be located within the public realm. In this case it is likely that the artwork would be positioned in the square. The SPD indicates that public art should be up to 1% of the value of the development. The obligation indicates that between £100,000 and £150,000 will be spent. This is justifiable and likely to fall well within the percentage value in this case.

Other provisions

511. The importance of the retail element of the scheme has been addressed in paragraphs 481-482 above. The obligation requires the marketing strategy attached to the Deed, which focuses on small, independent retailers to be implemented and this is justified for the reasons given.

512. The importance of the public square has been addressed in paragraphs 483-486 above. The obligations cover matters such as the maintenance and management arrangements, which are particularly important as this is intended as a pedestrianised area but will have to also accommodate servicing and emergency vehicles.

513. There are some outstanding leasehold interests that are not bound by the Deed and it is necessary to prevent development beginning before these have been surrendered or otherwise determined.

514. A contribution towards carbon offsetting has been made in accordance with policies in the London Plan and 2019 Local Plan to reduce carbon emissions. The Energy Strategy submitted with the planning application indicates that carbon savings can be made on-site. However, in order to meet the carbon reduction targets in the London Plan a one-off carbon offset payment will need to be made. The SPD sets out the formula for this calculation.

Affordable housing and viability review

515. The justification for the various obligations relating to affordable housing and

viability reviews in the S106 Agreement and the SA has been given in paragraphs 445-465 above. For the reasons I have given, I consider that all of the relevant planning obligations in the S106 Agreement are reasonable and necessary and comply with Regulation 122 of the CIL Regulations. However, the obligations in the SA, which relate to the off-site nomination rights and the supplemental off-site provision do not meet the requirements for the reasons I have given. As the latter is to be factored into the late stage review, it also follows that this is also not CIL compliant. I return to this matter below in my final conclusions.

Conclusions

516. Drawing together the above points, I conclude that all of the planning obligations other than those specifically referred to in the paragraphs above constitute a reason for granting planning permission in accordance with Regulation 122 of the CIL Regulations.

517. For the avoidance of doubt, I do not consider that the following obligations meet the statutory tests in Paragraph 122 of the CIL Regulations or the policy tests in paragraph 56 of the Framework. They have not been taken into account in my recommendation to the Secretary of State:

    a. The Construction Traffic Management Plan Assessment Fee (£2,800).

    b. The Demolition Traffic Management Plan Assessment Fee (£2,800).

    c. The Legible London Contribution (£3,017).

    d. The off-site nomination rights and the supplemental off-site provision.

    e. The permit-free car parking provision because it is not a planning obligation under S106 as it does not relate to the use of the land.

CONSIDERATION SIX: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSALS WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT.

518. For the reasons given in Consideration Two there would be harm to the significance of some heritage assets by virtue of the application development being within their setting. Such harm would occur to the Royal Parks, Kensington Palace and Pembridge Conservation Areas, the Grade I Listed Kensington Palace, the Grade II listed 1-5 Pembridge Gardens and the Grade I Kensington Gardens Registered Park and Garden. In each case the harm would be less than substantial in nature and at a minor level within that spectrum.

519. However, in this case there would be a package of benefits that would arise from the development to which I have attributed very substantial weight. In relation to the covenants in the SA, I have concluded that they are not compliant with Regulation 122 of the CIL Regulations or paragraph 56 of the Framework. They cannot therefore be taken into account in the grant of planning permission. Nevertheless, for the reasons I have given the approach to the late-stage viability review, whilst unconventional, would deliver at least as much additional affordable housing as the more normal route of a financial contribution. In fact, it would have the potential to deliver more. In such

circumstances I consider that the provisions in the SA would be a material factor that would add further weight to the affordable housing benefit.

520. In applying paragraph 196 of the Framework I am mindful that the balance is not even, and great weight must be given to the conservation of the heritage assets, some of which are of the highest significance. Nevertheless, in my judgement the package of public benefits is of such importance that it would outweigh the harm that would arise to the significance of the heritage assets in this case. In such circumstances the proposed development would be in accordance with policy 7.8 in the London Plan and policies CL3 and CL4 in the 2019 Local Plan.

521. For the reasons I have given, the site would be an appropriate location for a tall building. In terms of the overall height of the tower it would substantially exceed that of Newcombe House and therefore in the terms of the NHG SPD could not be considered as a "modest" increase. Nevertheless, the development would result in a substantial improvement on this important corner site by replacing the ugly 1960's rectangular slab with an elegant and slender slipped form tower. It would provide a worthy landmark within the District Centre and close to the underground station. Whilst there would be some small negative impacts on the townscape, particularly to the north and west, overall the effects would be neutral to beneficial. The development would thus comply with policies 7.4, 7.5, 7.6 and 7.7 in the London Plan and policies CV11, CL1 and CL2 in the 2019 Local Plan.

522. The affordable housing that would be provided would be in accordance with policy 3.12 in the London Plan and policy CH2 in the 2019 Local Plan. The improvements to the accessibility of the underground station would be in accordance with policy 6.1 in the London Plan and policy CT1 in the 2019 Local Plan. For the reasons I have given, there would be conflict with policies CL11 and CL12. However, I have no doubt that the application proposal would comply with the development plan when considered as a whole. There is no dispute that the development plan, insofar as it is relevant to the appeal proposal, is up to date. In accordance with paragraph 11 of the Framework the appeal proposal should therefore be permitted without delay.

523. Even if that conclusion is not accepted, in this case there are material considerations of sufficient weight and importance to indicate that the decision could be made otherwise than in accordance with the development plan. These include the substantial package of public benefits to which I have referred above. In addition, there are other factors to which significant weight can be given in the planning balance, including the high quality of the application development and the removal of the eyesore that is Newcombe House.

INSPECTOR'S RECOMMENDATION

524. For all of the above reasons, my recommendation is that planning permission should be granted, subject to the conditions in Annex Three.

Christina Downes

INSPECTOR

ANNEX ONE: APPEARANCES

FOR THE APPLICANT: NOTTING HILL GATE KCS LIMITED

Mr Christopher Katkowski	Of Queen's Counsel
Ms Katherine Olley	Of Counsel, both instructed by Herbert Smith Freehills LLP
They called:	
Professor R Tavernor BA DipArch PhD RIBA	Director of the Tavernor Consultancy Limited
Mr I Froneman BArch.Stud ACifA IHBC	Founder of Cogent Heritage
Ms C Dickinson BSc DipTP MRTPI	Director of Quod
Mr J Rhodes OBE BSc MRICS	Director of Quod
*Mr D Brown	Managing Director, Head of Asset Management of Brockton Everlast
*Mr M White	Partner of Herbert Smith Freehills LLP
*Ms G Thomson MRTPI	Associate of Quod
*Mr A McIntyre	Director of Barbrook Developments Ltd

**Participated in the conditions and/ or planning obligations sessions only*

FOR THE GREATER LONDON AUTHORITY

Mr Rueben Taylor	Of Queen's Counsel, instructed by Ms A Clarke, Director of Legal, Transport for London
He called:	
Mr R Brookes BSc(Hons) Dunelm MTP(UC) IHBC MRTPI	Director of Turley
Ms L Turner BA(Hons) MSc	Director of Spatial Planning at Transport for London
Mr R Green BSc(Hons) MA	Special Projects Manager at the Greater London Authority
*Mr J Wacher MRTPI	Strategic Planning Manager at the Greater London Authority

*Mr T Goode	Partner and Head of Planning and environment at Ashurst LLP
*Mr B Cheung	Associate at Ashurst LLP

**Participated in the planning obligations session only*

FOR THE RULE 6 PARTY: THE COUNCIL OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Ms Saira Kabir Sheikh	Of Queen's Counsel, instructed by the Director of Law at the Council of the Royal Borough of Kensington and Chelsea
She called:	
Ms S Buckingham MRTPI FSA	Conservation and Design Team Leader with the Council of the Royal Borough of Kensington and Chelsea
Mr M Kiely BTP MBA MRTPI	Proprietor of Mike Kiely Planning and Regeneration Ltd
*Mr C Todman	Senior Solicitor and Deputy Team Leader in the Bi-borough Legal Services
*Ms C Saverus MRTPI	Senior Planning officer the Council of the Royal Borough of Kensington and Chelsea

**Participated in the conditions and planning obligations sessions only*

INTERESTED PERSONS:

Ms E Dent Coad	Borough Councillor of the Golborne Ward and Member of Parliament for Kensington
Councillor R Freeman	Borough Councillor for the Campden Ward in which the application site is located
Dr S Ramsden	Senior Partner at Pembridge Villas Surgery
Dr P Chin	Senior Partner at Westbourne Grove Medical Centre
Ms F Fleming-Brown	Secretary of the Pembridge Association and a founder of the Notting Hill Gate Improvements Group
Mr D Ginsberg	Speaking on behalf of the Governors of Fox Primary School
Ms T Alfillé	Founder member of the Hillgate Village Residents' Association
Ms S Massey-Cook	Chair of the Hillgate Village Residents' Association
Mr A Rawlinson	Local resident
Mr P Mishcon	Committee member of the Ladbroke Association and Trustee of the Kensington Society
Mr J Cook	Local resident

Mrs L Cook	Local resident
Mr J Zamit	Chair of the South-East Residents' Association and Committee member of the Bayswater Residents' Association
Mr J Renton	Action Disability Kensington and Chelsea
Ms B Weiss	Co-Founder of the Skyline Campaign
Mr S Dunkley	Local resident

ANNEX TWO: DOCUMENTS AND PLANS

CORE DOCUMENTS
Application Documents

1.1	Application Form	September 2017
1.2	Schedule of Interests	September 2017
1.3	CIL Information Form	September 2017
1.4	Covering Letter September 2017	September 2017
1.5	Covering Letter (amendments) July 2018	July 2018
1.6	Planning Statement	September 2017
1.7	Planning Statement – Appendices	September 2017
1.8	Planning Statement – Addendum	July 2018
1.9	Planning Statement – Addendum Appendices	July 2018
1.10	Design and Access Statement	September 2017
1.11	Design and Access Statement – Appendices	September 2017
1.12	Design and Access Statement – Addendum	July 2018
1.13	Design and Access Statement – Addendum Appendices	July 2018
1.14	Drawing Issue Sheets	July 2018
1.15	Drawings – Demolition	July 2018
1.16	Drawings – Existing	July 2018
1.17	Drawings – Proposed	July 2018
1.18	Drawings – Landscaping	July 2018
1.19	Townscape, Heritage and Visual Impact Assessment	September 2017
1.20	Townscape, Heritage and Visual Impact Assessment – Appendices	September 2017
1.21	Townscape, Heritage and Visual Impact Assessment – Addendum	July 2018
1.22	Townscape, Heritage and Visual Impact Assessment – Addendum Appendices	July 2018
1.23	Historic Buildings and Conservation Areas Assessment	September 2017
1.24	Historic Buildings and Conservation Areas Assessment – Appendices	September 2017
1.25	Air Quality Report	July 2018
1.26	Air Quality Report – Appendices	July 2018
1.27	Archaeological Desk Based Assessment	September 2017
1.28	Archaeological Desk Based Assessment – Appendices	September 2017
1.29	Archaeological Evaluation Report	September 2017
1.30	Basement Construction Method Statement	September 2017
1.31	Basement Construction Method Statement – Appendices	September 2017
1.32	Basement Construction Method Statement - Addendum	July 2018
1.33	Initial Ecological Appraisal and Bat Survey Report	September 2017
1.34	Appendix A – Bat Survey Report	2015
1.35	Technical Report Summary, including updated bat survey	July 2018
1.36	Construction Traffic Management Plan	September 2017
1.37	Construction Traffic Management Plan – Appendices	September 2017
1.38	Construction Traffic Management Plan – Addendum	July 2018
1.39	Cumulative Effects Report	September 2017
1.40	Cumulative Effects Report – Addendum	July 2018
1.41	Daylight and Sunlight Report	July 2018
1.42	Daylight and Sunlight Report – Appendices	July 2018

1.43	Drainage Statement	September 2017
1.44	Drainage Statement – Appendices	September 2017
1.45	Drainage Statement – Addendum	July 2018
1.46	Energy Strategy	September 2017
1.47	Energy Strategy – Appendices	September 2017
1.48	Energy Strategy – Addendum	July 2018
1.49	Energy Strategy – Addendum Appendices	July 2018
1.50	Environmental Noise and Vibration Strategy	September 2017
1.51	Environmental Noise and Vibration Strategy – Appendices	September 2017
1.52	Environmental Noise and Vibration Strategy – Addendum	July 2018
1.53	Financial Viability Report	September 2017
1.54	Financial Viability Report – Supporting Information Pack	September 2017
1.55	Financial Viability Report – Review by BNP Paribas	September 2017
1.56	Financial Viability Report – Addendum	July 2018
1.57	Fire Safety Strategy	September 2017
1.58	Fire Safety Strategy - Addendum	July 2018
1.59	Flood Risk Assessment	September 2017
1.60	Flood Risk Assessment – Addendum	July 2018
1.61	Miller Hare Animation 1	September 2017
1.62	Miller Hare Animation 2	September 2017
1.63	Pedestrian Level Wind Microclimate Report	September 2017
1.64	Pedestrian Level Wind Microclimate Report – Appendices	September 2017
1.65	Pedestrian Level Wind Microclimate Report – Addendum	July 2018
1.66	Pedestrian Level Wind Microclimate Report – Addendum Appendices	July 2018
1.67	Statement of Community Involvement	September 2017
1.68	Sustainability Statement	September 2017
1.69	Sustainability Statement – Appendices	September 2017
1.70	Sustainability Statement – Addendum	July 2018
1.71	Transport Assessment	September 2017
1.72	Transport Assessment – Appendices	September 2017
1.73	Transport Assessment – Addendum	July 2018
1.74	Transport Assessment – Interim Residential Travel Plan	September 2017
1.75	Transport Assessment – Interim Office Travel Plan	September 2017
1.76	Listed Building Consent – Decision Notice	September 2019
1.77	Pack of consultation responses	November 2019
Post Submission Correspondence		
2.1	Validation Letter	September 2017
2.2	Site Notice	September 2017
2.3	Historic England letter 03.10.2017	October 2017
2.4	Mayor's Stage 1 Report	November 2017
2.5	Mayor's Stage 2 Report	March 2018
2.6	RBKC Letter to SoS Requesting Call-In 05.10.2018	October 2018
2.7	HSF Letter to SoS 19.10.2018	October 2018
2.8	HSF Letter to SoS 30.11.2018	November 2018
2.9	Holding Direction Letter From MHCLG 29.11.2018	November 2018
2.10	GLA Acknowledgement of Holding Direction 30.11.2018	November 2018
2.11	HSF Letter to SoS 22.01.2019	January 2019
2.12	Secretary of State's Call-In Letter to Applicant 14.03.2019	March 2019

2.13	Secretary of State's Call-In Letter to Mayor 14.03.2019	March 2019
2.14	HSF Letter to RBKC 05.07.2019	July 2019
2.15	RBKC Letter to HSF 22.07.2019	July 2019
2.16	HSF Letter to RBKC 30.07.2019	July 2019
2.17	RBKC Letter to HSF 14.08.2019	August 2019
2.18	HSF Letter to RBKC 27.08.2019	August 2019
2.19	RBKC Letter to HSF 05.09.2019	September 2019
2.20	RBKC Letter to PINS withdrawing Objection 2 18.09.2019	September 2019
2.21	RBKC Letter to PINS withdrawing objection to KCS1 10.10.19	October 2019
2.22	Letters from interested persons following the call-in	
Committee/Hearing Documents		
3.1	RBKC Committee Agenda	January 2018
3.2	RBKC Committee Report	January 2018
3.3	RBKC Committee Addendum Report	January 2018
3.4	RBKC Post-Committee Memorandum	January 2018
3.5	RBKC Committee Minutes	January 2018
3.6	RBKC Committee Agenda (Post Mayoral Call In)	August 2018
3.7	RBKC Committee Report (Post Mayoral Call In)	August 2018
3.8	RBKC Committee Minutes (Post Mayoral Call In)	August 2018
3.9	RBKC Pre-Committee Memo (Post Mayoral Call In)	August 2018
3.10	RBKC Post-Committee Memo (Post Mayoral Call In)	August 2018
3.11	GLA Representation Hearing Agenda	September 2018
3.12	GLA Representation Hearing Report	September 2018
3.13	RBKC Committee Report (post SoS Call In)	May 2019
3.14	RBKC Post-Committee Memorandum (post SoS Call In)	May 2019
3.15	RBKC Committee Minutes (post SoS Call In)	May 2019
3.16	RBKC Committee Report (post Local Plan Adoption)	September 2019
3.17	*Unused*	
3.18	RBKC Post-Committee Memo (post Local Plan Adoption)	September 2019
3.19	GLA Representation Hearing - Audio	September 2018
3.20	GLA Representation Hearing (Stage 3) Addendum report	September 2018
Inquiry Documents		
4.1	Applicant's Statement of Case	June 2019
4.2	Mayor's Statement of Case	June 2019
4.3	RBKC's Statement of Case	June 2019
4.4	Statement of Common Ground Tri-Party Agreement	October 2019
4.5	Statement of Common Ground Tri-Party Agreement – Appendices	October 2019
4.6	Statement of Common Ground – Affordable Housing & Viability	October 2019
4.7	Statement of Common Ground Bi-Party Agreement	October 2019
4.8	Statement of Common Ground Bi-Party Agreement - Appendices	October 2019
4.9	Statement of Common Ground – Built Heritage Bi-Party Agreement	October 2019
RBKC Policy Documents		
5.1	Revised Local Plan (Extracts)	2019
5.2	Building Height SPD	2010
5.3	Notting Hill Gate SPD	2015

5.4	Planning Contributions SPD	2019
5.5	Transport and Streets SPD	2016
5.6	Kensington Conservation Area Appraisal	2017
5.7	Kensington Conservation Area Map	2014
5.8	Ladbroke Conservation Area Appraisal	2015
5.9	Ladbroke Conservation Area Map	2014
5.10	Kensington Palace Conservation Area Map	2014
5.11	Kensington Palace Conservation Area Proposals Statement	1996
5.12	Pembridge Conservation Area Appraisal	2017
5.13	Pembridge Conservation Area Map	2014
5.14	Local Plan Proposals Map	2019
5.15	RBKC Strategic Housing Market Assessment	2015
5.16	Intermediate Rent Tenancy Policy	2017
5.17	Draft Housing Strategy	2019
Mayor of London Policy Documents		
6.1	London Plan	2016
6.2	Homes for Londoners: Affordable Housing and Viability SPG	2017
6.3	Mayor's Housing SPG	2016
6.4	Mayor's Transport Strategy (Extracts)	2018
6.5	Mayor's Housing Strategy (Extracts)	2018
6.6	London Annual Monitoring Report 14 2016/2017	2018
6.7	London and the UK A Declaration of Interdependence	2019
6.8	London Strategic Housing Market Assessment (SHMA) (Extract)	2017
6.9	Mayor's Equality, Diversity and Inclusion Strategy (Extract)	2018
6.10	London Plan Annual Monitoring Report 15 (2017/18)	2019
National Policy Documents		
7.1	National Planning Policy Framework (NPPF)	2019
7.2	NPPG – Design: Process and Tools	2019
7.3	NPPG – Conservation and Enhancing the Historic Environment	2019
7.4	NPPG – Housing and Economic Land Availability Assessment	2019
7.5	NPPG – Housing and Economic Needs Assessment	2019
7.6	NPPG – Housing Supply and Delivery	2019
7.7	NPPG – Planning Obligations	2019
7.8	NPPG – Use of Planning Conditions	2019
7.9	NPPG – Effective Use of Land	2019
7.10	NPPG – Viability	2019
7.11	Historic England Advice Note 2: Managing Significance in Decision-Taking in the Historic Environment	2015
7.12	Historic England Advice Note 3: The Setting of Heritage Assets	2015
7.13	Historic England Advice Note 4: Tall Buildings	2015
7.14	Historic England – Conservation Principles Policies and Guidance	2008
7.15	DCMS – Principles of Selection for Listing Buildings	2010
7.16	National Design Guide, Planning practice guidance for beautiful, enduring and successful places, Ministry of Housing, Communities & Local Government	2019

Other Relevant Policy, Guidance and Docs		
8.1	WCC City Plan – Extracts (Policy S11 and Policy S26)	2013
8.2	WCC Saved UDP Policies – 2010 (Policies DES3, DES15, ENV14 &DES12)	2013
8.3	WCC Revision Booklet 15: Heritage, Views and Tall Buildings	2015
8.4	Consolidated Local Plan (Extracts)	2015
8.5	Kensington Gardens Management Plan 2016-2026	2016
8.6	Hallfield Estate Conservation Area Audit SPD	2008
8.7	Royal Parks Conservation Area Mini Guide	2004
8.8	Landscape Institute and the Institute of Environmental Management and Assessment – Guidelines for Landscape and Visual Impact Assessment (3rd edition, 2013)	2013
8.9	Metropolitan Views Draft SPD	2007
8.10	WCC Westbourne Conservation Area Audit	2002
Emerging Policy		
9.1	Draft London Plan Consolidated Suggested Changes Version	July 2019
9.2	Panel Report and recommendations	October 2019
Previous Application – Relevant Documents		
10.1	Mayor's Stage 1 Report	January 2016
10.2	Mayor's Stage 2 Report	April 2016
10.3	Mayor's Stage 2 Report Addendum	April 2016
10.4	RBKC Committee Report	March 2016
10.5	RBKC LBC Committee Report	March 2016
10.6	RBKC Committee Minutes	March 2016
10.7	RBKC Pre-Committee Memo	March 2016
10.8	RBKC Post-Committee Memo	March 2016
10.9	Refusal Letter	April 2016
10.10	Decision of Inspector David Nicholson	June 2017
10.11	Architectural Appraisal Panel Minutes - Dated 11 Dec 2013, 27 May 2015 & 22 Jan 2016	2013, 2015 & 2016
10.12	Donald Insall Associates' Historic Buildings, Environment and Townscape Assessment (HBETA)	November 2015
10.13	Donald Insall Associates' Historic Buildings, Environment and Townscape Assessment (HBETA) - Appendices	November 2015
10.14	Historic England Letter 19.01.2016	January 2016
10.15	Corner Building Comparative Analysis - Proportions	February 2017
Relevant Court Cases		
11.1	Bedford BC v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin)	2013
11.2	South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141	1992
11.3	Bath Society v Secretary of State [1991] 1 WLR 1303	1991
11.4	Jones v Mordue, SoS CLG, South Northamptonshire Council [2015] EWCA Civ 1243l	2015
11.5	R (Pugh) v SoS CLG [2015] EWHC 3	2015
11.6	Palmer v Herefordshire Council [2016] EWCA Civ 1061	2016
11.7	Barnwell Manor Wind Energy Limited v (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary of State for Communities and Local Governments, Case No: C1/2013/0843	2014

11.8	McCarthy and Stone v The Greater London Authority EWHC 1202 (Admin)	2018
Legislation		
12.1	Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990	1990
12.2	Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990	1990
Miscellaneous		
13.1	Local Plan Partial Review, Inspector's Report	2019
13.2	Inspector's Report into the Partial Review of the Core Strategy for RBKC Conservation and Design Review	2014
13.3	Notting Hill Gate District Centre Framework	2009
13.4	Planning and Borough Development Monitoring Report 2018	2019
13.5	Letter from the SoS to the Mayor of London on the London Plan and NPPF	2018
13.6	Government Response to the Draft Revised NPPF Consultation	2018
13.7	Step-free access diagram	
Relevant Decisions		
14.1	Secretary of State Decision Letter and Inspector's Report (Shell Centre)	2014
PROOFS OF EVIDENCE		
Rule 6 Party: Council of the Royal Borough of Kensington and Chelsea		
POE 1	Proof of evidence and appendices of Ms Buckingham	
POE 2	Proof of evidence and appendices of Mr Kiely	
POE 3	Rebuttal proof of Mr Kiely	
Greater London Authority		
POE 4	Proof of evidence and appendices of Mr Brookes	
POE 5	Proof of evidence of Ms Turner	
POE 6	Appendices to Ms Turner's proof	
POE 7	Rebuttal proof of Ms Turner	
POE 8	Proof of evidence of Mr Green	
POE 9	Rebuttal proof of Mr Green	
Applicant: Notting Hill Gate KCS Ltd		
POE 10	Proof of evidence and appendices of Professor Tavernor	
POE 11	Appendix RT2 to Professor Tavernor's proof	
POE 12	Appendix RT3 to Professor Tavernor's proof	
POE 13	Rebuttal proof of Professor Tavernor	
POE 14	Proof of evidence and appendices of Mr Froneman	
POE 15	Rebuttal proof of Mr Froneman	
POE 16	Proof of evidence and appendices of Ms Dickinson	
POE 17	Rebuttal proof of Ms Dickinson	
POE 18	Proof of evidence and appendices of Mr Rhodes	
POE 19	Rebuttal proof of Mr Rhodes	
DOCUMENTS SUBMITTED AT THE INQUIRY		
INQ 1	Table showing the main parties' position on heritage impact (submitted by Ms Sheikh)	
INQ 2	Covering note to accompany the draft Planning Obligations (submitted by Mr Katkowski)	

INQ 3	Note on the length of the construction period (submitted by Mr Katkowski)
INQ 4	Note on the access arrangements to the medical centre (submitted by Mr Katkowski)
INQ 5	National Planning Policy Framework 2012 (submitted by Mr Katkowski)
INQ 6	Note on the draft Planning Obligations (submitted by Ms Sheikh)
INQ 7	Professor Tavernor's response to the booklet submitted by the Hillgate Village Residents' Association at Document 13
INQ 8	Oral submission made by Ms Fleming-Brown
INQ 9	Oral submission made by Dr Ramsden and Dr Chin
INQ 10	Oral submission made by Ms Dent Coad MP
INQ 11	Oral submission made by Mr and Mrs Cook
INQ 12	Oral submission by Ms Alfillé and attached previous correspondence by the Hillgate Village Residents' Association
INQ 13	Oral submission by Ms Massey-Cook and attached explanation of the CGI images and accompanying booklet on behalf of the Hillgate Village Resident's Association and petition comments on behalf of the Skyline Campaign
INQ 14	Oral submission made by Ms Weiss and accompanying photographs
INQ 15	Oral submission made by Mr Mishcon
INQ 16	Site visit information
INQ 17	Note on car parking provision at the site (submitted by Mr Taylor)
INQ 18	Note on car parking provision at the site (submitted by Mr Katkowski)
INQ 19	Booklet showing winter views (submitted by Mr Katkowski)
INQ 20	Booklet of the screen presentation made by Professor Tavernor in his evidence-in-chief
INQ 21	Note on play space provision (submitted by Mr Katkowski)
INQ 22	Response by the GLA and Applicant to the Rule 6 Party note on draft Planning Obligations at Document INQ 6
INQ 23	Table showing the differences between Historic England and the main parties on heritage impact (submitted by Mr Katkowski)
INQ 24	Historic England: *The Setting of Heritage Assets* (submitted by Mr Katkowski)
INQ 25	Report on the examination Inspector on the *Royal Borough of Kensington and Chelsea Local Plan Partial Review* (submitted by Mr Katkowski)
INQ 26A	Statement of compliance with Regulation 122 of the CIL Regulations – Planning Obligation by Agreement (submitted by Mr Katkowski)
INQ 26B	Statement of compliance with Regulation 122 of the CIL Regulations – Supplemental Planning Obligation (submitted by Mr Katkowski)

INQ 27	Suggested planning condition on a Demolition Traffic Management Plan, Construction Traffic Management Plan and Considerate Constructors Scheme (submitted by Ms Sheikh)
INQ 28	List of the proposed dwellings that would be permit-free (submitted by Mr Katkowski)
INQ 29	Note on the Council's forthcoming house building programme and details of sites (submitted by Ms Sheikh)
INQ 30	Written confirmation of pre-commencement conditions (submitted by Mr Katkowski)
INQ 31	Draft planning conditions
INQ 32	Consultation responses (submitted by Mr Taylor)
INQ 33	Written submission by Ms Buchan, Conservative Parliamentary Candidate for Kensington
INQ 34A	Ms Sheikh's opening submissions
INQ 34B	Ms Sheik's closing submissions
INQ 34C	Caselaw attached to Ms Sheikh's closing submissions
INQ 35A	Mr Taylor's opening submissions
INQ 35B	Mr Taylor's closing submissions
INQ 36A	Mr Katkowski's opening submissions
INQ 36B	Note relating to supplementary planning documents attached to Mr Katkowski's opening submissions
INQ 36C	Mr Katkowski's closing submissions
Documents submitted following the close of the inquiry	
INQ 37	Clarification Note on the Council's forthcoming house building programme (see Document INQ 29)
INQ 38	Joint response by the Applicant and the GLA to the Council's note on its forthcoming house building programme (see Document INQ 29)
INQ 39	Council's final comments by email dated 20 November 2019 on its forthcoming house building programme
INQ 40	Council's comments on the Code of Construction Practice condition
INQ 41	Planning Obligation by Agreement dated 29 November 2019
INQ 42	Supplemental Deed dated 29 November 2019
INQ 43	Correspondence relating to the 2019 Housing Delivery Test results from the Applicant and the Council

ANNEX THREE: SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall be commenced within three years from the date of this permission.

2. The development hereby permitted shall be carried out in accordance with the approved plans in Annex Four.

3. Notwithstanding the details shown on the submitted plans, no development above ground floor slab level shall be carried out until:

   a. Details and samples of the materials to be used for the external surfaces of the buildings and hard surfaced areas shall be submitted to and approved in writing by the local planning authority; and

   b. Sample panels shall be constructed on site of building materials and hard surfacing, to be inspected and approved in writing by the local planning authority.

   c. Details of the following features and elements of the scheme shall be submitted to and approved in writing by the local planning authority:

      - Brick bonding and brick and cladding detailing shown on annotated plans at a scale of not less than 1:20;
      - External windows, balconies, winter gardens, doors, screens, louvres and balustrading shown on annotated plans at a scale of not less than 1:10;
      - Depth of window reveals, colonnades and soffits shown on annotated plans at a scale of not less than 1:20;
      - Rainwater goods shown on annotated plans at a scale of not less than 1:10;
      - External plant;
      - Shop fronts, entrances and openings shown on annotated plans at a scale of not less than 1:20.

      The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby permitted approved and thereafter retained.

4. Prior to the first occupation of the development hereby permitted, a Building and Site Management Strategy (BSMS) shall be submitted to and approved in writing by the local planning authority.

   The BSMS shall include:

   a. Details of security measures including the location of the security/ concierge office and the location and details of CCTV and security lighting, including an assessment of the impact of any such lighting on the surrounding residential environment;

   b. Details of the different controlled areas of the development and details of those occupiers who will have access to each of the identified zones;

   c. Details of the points of access and how access will be controlled;

d. Details of access arrangements for those with disabilities;

e. Details of refuse and recycling storage and collection;

f. Measures and procedures to discourage antisocial behaviour and crime; and

g. A scheme for the maintenance of the external fabric of the building.

The site shall be managed in accordance with the approved BSMS.

5. Prior to the commencement of development (other than site investigations, demolition, site clearance and groundworks), a drainage strategy shall be submitted to and approved in writing by the local planning authority.

   The drainage strategy shall include:

   a. A detailed analysis of surface water run-off (ensuring that surface water run-off is managed as close to its source as possible) and the attenuation volume (to achieve either greenfield run-off rates or as close to greenfield run-off rates as possible);

   b. Details of the proposed sustainable drainage system types, their location, appearance, attenuation capacity, specification (including section/profile drawings), structural integrity, construction, operation, access, and maintenance;

   c. Drainage plans to show how surface water run-off will be conveyed to the sustainable drainage systems and, if necessary, any connections to the sewer system. Evidence shall also be included to demonstrate that the off-site combined sewers are suitable to receive the runoff; and

   d. A management plan confirming routine maintenance tasks for all drainage components, including the sustainable drainage system, to demonstrate how it is to be maintained for the lifetime of the development.

   No building hereby permitted shall be occupied until the drainage strategy for the site has been fully completed in accordance with the approved details. The drainage strategy shall be managed and maintained thereafter in accordance with the approved details.

6. No development above ground floor slab level shall be carried out until a Landscaping and Public Realm Scheme (LPRS) for the public and private areas in the development has been submitted to and approved in writing by the local planning authority.

   The LPRS shall include:

   a. Details of children's play space equipment and structures;

   b. A statement setting out how the landscape and public realm strategy provides for disabled access, ensuring equality of access for all;

   c. A wayfinding and signage strategy;

   d. Confirmation that any materials for the areas maintained by the local planning authority are in compliance with its palate of materials;

e. A strategy for management and maintenance for the lifetime of the development;

All landscaping shall be completed in accordance with the approved LPRS, the approved landscaping drawings, the Landscaping Strategy, dated September 2017 (attached to the Design and Access Statement) and the Landscaping Strategy, dated July 2018 (attached to the Design and Access Statement Addendum), during the first planting season following practical completion of the development.

The landscaping and tree planting shall have a two-year maintenance and watering provision following planting. Any trees or shrubs which die within five years of completion of the development shall be replaced with the same species, unless otherwise agreed in writing by the local planning authority.

7. Details of the type of secure and/ or enclosed cycle parking spaces for the occupiers and visitors of the residential units, commercial units, retail units and doctors' surgery shall be submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to occupation of the relevant building, and thereafter retained.

8. Before any of the office accommodation is first occupied an Office Travel Plan shall be submitted to and approved in writing by the local planning authority. The Office Travel Plan shall be prepared in accordance with the principles of the Interim Office Travel Plan, dated September 2017. The Office Travel Plan shall be reviewed on each of the first, third and fifth anniversary of the first occupation of the offices and then at five-year intervals for the lifetime of the development. The office use shall be carried out in accordance with the approved Office Travel Plan.

9. The public square shall be accessible only to emergency vehicles, vehicles required for maintenance of the development, and vehicles necessary for the set-up and breakdown of events within the public square. The public square shall not be used by any other vehicles.

10. Any fixed external plant shall be designed and installed to ensure that noise emanating from such plant is at least 10 dB below the background noise levels when measured from the nearest sensitive receptors. All plant shall be installed in accordance with the approved plans. No further fans, louvres, ducts or other external plant shall be installed.

11. No development above ground floor slab level shall be carried out until details of the built fabric within the scheme has been submitted to and approved in writing by the local planning authority.

    The submitted details shall ensure that:

    a. The residential units are insulated against external noise, which achieves internal noise levels that do not exceed the guidelines values contained in table 4 of BS 8233:2014: *Guidance on noise insulation and sound reduction for buildings*;

    b. The residential units are insulated by noise insulation measures to provide effective resistance to the transmission of airborne and impact sound

horizontally and/or vertically between the residential units and the non-residential uses by at least 10 dB above the criteria in Approved Document E of the Building Regulations.

The approved measures shall be installed prior to the first occupation of the residential units and thereafter retained.

12. All non-residential uses shall meet the following requirements under BREEAM UK New Construction 2014 (or such equivalent standard that replaces this):

    a. Within 6 months of work starting on site, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Interim (Design Stage) Certificate, issued by the Building Research Establishment (BRE), shall be submitted to and approved in writing by the local planning authority to show that a minimum 'Excellent' rating will be achieved.

    b. Within 3 months of first occupation of the building, a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be retained for the lifetime of the development.

    c. Prior to commencement of the fit-out of the building, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Interim (Design Stage) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to show that a minimum 'Excellent' rating will be achieved.

    d. Within 6 months of first occupation, a BREEAM A Refurbishment and Fit-out 2014 Parts 3 and 4 Final (Post-Construction) Certificate, issued by the BRE, shall be submitted to and approved in writing by the local planning authority to demonstrate that an 'Excellent' rating has been achieved. All the measures integrated shall be maintained for the lifetime of the development.

13. The development shall be built in accordance with the submitted Energy Strategy, dated September 2017 and the Energy Strategy Addendum dated July 2018 and the measures shall be maintained thereafter in accordance with the manufacturer's instructions.

14. A minimum of 10% of all dwellings shall be built to requirement M4(3) wheelchair user dwellings contained within Part M volume 1 of the Building Regulations, as identified on the approved plans and shall be retained thereafter. All other dwellings shall be built to requirement M4(2) accessible and adaptable dwellings contained within Part M volume 1 of the Building Regulations and shall be retained thereafter.

15. Prior to the first occupation of the development the mitigation measures identified in section 33 of the *Pedestrian Level Wind Microclimate Assessment* by RWDI dated 6 September 2017 and the Addendum dated July 2018, shall be implemented in full and thereafter retained.

16. Details of the ventilation system, designed to supply clean air into the residential units and residential amenity space that does not exceed the national Air Quality Objectives for Nitrogen Dioxide (NO2) and Particulate Matter (PM10), shall be submitted to and approved in writing by the local planning authority before any residential unit is first occupied.

    The ventilation system shall be retained in accordance with the submitted details and maintained in accordance with the manufacturer's instructions. Any replacement system shall also be designed to meet the agreed standards.

17. Prior to the first occupation of the development details of tests undertaken on the installed boiler and CHP systems shall be submitted to and approved in writing by the local planning authority. The tests shall demonstrate that the installed boiler and CHP systems meet, or improve on, the emissions rates and other parameters set out in the *Air Quality Report*, dated July 2018. The boiler and CHP systems shall be maintained thereafter to ensure that the emissions rates continue as approved for the lifetime of the development.

18. Prior to the occupation of the relevant building, details of the ecological enhancements as outlined in the *Initial Ecological Appraisal and Bat Survey Report*, dated September 2017, shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out in full and thereafter retained.

19. Prior to the commencement of works (excluding site investigations, demolition, site clearance and ground works):

    a. A contaminated land Phase 1 desk study report shall be submitted to and approved in writing by the local planning authority. Should the Phase 1 report, recommend that a Phase 2 site investigation is required, then this shall be submitted to and approved in writing by the local planning authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report shall include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary; and

    b. If required, a scheme for decontamination of the site shall be submitted to and approved in writing by the local planning authority prior to first occupation of the development.

    c. The local planning authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination and shall submit appropriate amendments to the scheme for decontamination to the local planning authority for approval in writing before any work on that aspect of the development continues.

    d. The agreed scheme for decontamination referred to in clauses b) and c) above, including amendments, shall be fully implemented and a written

validation (closure) report submitted to the local planning authority for approval.

20. No development shall commence until full particulars of the methods by which the retained street trees adjacent to the site on Kensington Church Street are to be protected during the preparation, demolition and construction, landscaping and other operations on the site including the erection of hoardings, site cabins, or other temporary structures, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

21. No piling work shall take place until a piling method statement has been submitted to and approved in writing by the local planning authority. This shall include details of the depth and type of piling, the methodology by which the piling will be carried out, measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure and the programme for the piling works. The development shall be carried out in accordance with the terms of the approved piling method statement.

22. No development shall take place until a Demolition Traffic Management Plan (DTMP) has been submitted to and approved in writing by the local planning authority. The DTMP shall include:

    a. Routeing of demolition vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;

    b. access arrangements to the site;

    c. the estimated number and type of vehicles per day/week;

    d. details of any vehicle holding area;

    e. details of the vehicle call-up procedure

    f. estimates for the number and type of parking suspensions that will be required;

    g. details of any diversion or other disruption to the public highway during preparation and demolition work associated with the development;

    h. work programme and/or timescale for each phase of preparation and demolition work associated with the development;

    i. details of measures to protect pedestrians and other highway users from demolition activities that affect the highway; and

    j. where works cannot be contained wholly within the site, a plan shall be submitted showing the site layout on the highway including the extent of hoardings, position of nearby trees in the highway, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

    The development shall be carried out in accordance with the approved DTMP. A one-page summary of the requirements of the approved DTMP shall be affixed to

the frontage of the site for the duration of the works at a location where it can be read by members of the public.

23. No excavation or construction works shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:

    a. Routeing of excavation and construction vehicles, including a response to existing or known projected major building works at other sites in the vicinity and local works in the highway;

    b. access arrangements to the site;

    c. the estimated number and type of vehicles per day/week;

    d. details of any vehicle holding area;

    e. details of the vehicle call-up procedure

    f. estimates for the number and type of parking suspensions that will be required;

    g. details of any diversion or other disruption to the public highway during the excavation and preparation work associated with the development;

    h. work programme and/or timescale for each phase of the excavation and construction work associated with the development;

    i. details of measures to protect pedestrians and other highway users from construction activities that affect the highway; and

    j. where works cannot be contained wholly within the site, a plan shall be submitted showing the site layout on the highway including the extent of hoardings, position of nearby trees in the highway, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

    The development shall be carried out in accordance with the approved CTMP. A one-page summary of the requirements of the approved CTMP shall be affixed to the frontage of the site for the duration of the works at a location where it can be read by members of the public.

24. No development shall commence until such time as the lead contractor of the site is signed to the Considerate Constructors Scheme and its published Code of Considerate Practice.

    The following details shall be clearly displayed on the site so that they can be easily read by passing members of the public and shall be retained on display throughout the duration of the construction works:

    a. membership details;

    b. contact details;

    c. working hours as stipulated under the Control of Pollution Act 1974;

    d. Certificate of Compliance.

25. No development shall commence until a Code of Construction Checklist and Site Construction Management Plan have been submitted to and approved in writing by the local planning authority.

26. Prior to the first occupation of the development, a completed Water Efficiency Calculator for New Dwellings shall be submitted to and approved in writing by the local planning authority. This shall show that internal potable water consumption for each of the dwellings will be limited to 105 litres per person per day (excluding an allowance of up to 5 litres for external water consumption) based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations. The development shall be carried out in accordance with the approved water efficiency details, which shall be retained thereafter for the lifetime of the development.

27. The development shall be carried out in accordance with the Fire Safety Strategy, dated September 2017, and the Fire Safety Strategy Addendum, dated July 2018, and the measures within these documents shall be retained thereafter for the lifetime of the development.

28. All ground floor commercial uses and events in the public square hereby approved shall not operate between 23:00 hours and 07:00 hours the following day.

29. Prior to the commencement of above ground works on each building, details of the ventilation and extraction equipment of the A1 and/ or A3 uses in that building, including ducting, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the A1 and/ or A3 uses in that building are commenced. The approved ventilation and extraction equipment shall be retained thereafter and maintained in accordance with the manufacturer's instructions.

30. A Delivery and Servicing Plan (DSP) for the commercial units, shall be submitted to and approved in writing by the local planning authority. The DSP shall cover the following matters:

    a. Deliveries and collections including vehicle sizes and number of trips;

    b. Servicing trips (including for maintenance);

    c. Monitoring and review of operations.

    No commercial unit shall be first occupied until the approved DSP is in place and its approved terms shall remain operable for the lifetime of the development.

31. A Delivery and Servicing Plan (DSP) for the residential part of the development shall be submitted to and approved in writing by the local planning authority. The DSP shall cover the following matters:

    a. Details of the management and receipt of deliveries and collections;

    b. Servicing trips (including for maintenance);

    c. Monitoring and review of operations.

No dwelling shall be first occupied until the approved DSP is in place and its approved terms shall remain operable for the lifetime of the development.

32. Prior to the first occupation of any residential unit or the doctors' surgery, a Car Park Management Plan (CPMP) shall be submitted to and approved in writing by the local planning authority. The CPMP shall include the following:

    a. Details of the layout;

    b. The proposed allocation of and arrangements for the management of parking spaces, including disabled parking bays serving the residential development;

    c. Details of the provision of Electric Vehicle Charging Points, including both active and passive provision for both the residential and office parking areas in accordance with adopted London Plan Guidance;

    d. Details of the controls of means of entry to the car park, and a proactive regime of car lift maintenance; and

    e. The safety and security measures to be incorporated within the development to ensure the safety of car and cycle parking areas.

    The car park shall be provided and managed in accordance with the approved CPMP for the lifetime of the development.

33. Prior to the construction of above ground works on each building, a scheme for the provision of communal or centralised satellite and television reception equipment and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme and timetable. The equipment shall thereafter be retained and maintained in accordance with the manufacturer's instructions and shall be made available for use by all occupiers of the development.

34. No above ground development shall be carried out (excluding demolition) until an assessment of the interference to existing television, radio and other telecommunications services has been submitted to and approved in writing by the local planning authority. The assessment shall include the method and results of surveys carried out, the measures to be taken to rectify any identified problems and a timetable for implementation. The development shall be carried out in accordance with the approved assessment and timetable.

35. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any future amendment to or re-enactment of that Order, no satellite dishes, shall be installed on the approved buildings other than as required by Condition 33.

36. No water tanks, plant, lift rooms or other structures, other than those shown on the approved drawings and those approved by Condition 5, shall be erected upon the roofs of the approved buildings.

37. The areas of flat roof on Buildings WPB 1 and WPB 2, adjacent to the western site boundary at second floor level, shall only be used as an emergency escape route

or for maintenance purposes and not as a roof terrace or amenity space at any time.

38. Prior to commencement of the development (other than site investigations) a Stage 2 (detailed design) safety audit of the junction of Newcombe Street and Kensington Place shall be undertaken and submitted to and approved in writing by the local planning authority.

39. No part of the development shall be occupied until a positively pumped device has been installed within the development to prevent sewer water flooding to the basement levels.

40. No development shall commence until:

    a. A Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MIStructE) has been appointed for the duration of the building works and their appointment confirmed in writing to the local planning authority; and

    b. The name and contact details of the person supervising engineering and construction on site for the duration of building works have been confirmed in writing to the local planning authority.

    In the event that either the appointed Engineer or appointed Supervisor cease to perform that role for whatever reason before the construction works are completed, those works shall cease until a replacement chartered engineer of the afore-described qualifications or replacement supervisor has been appointed to supervise their completion and their appointment confirmed in writing to the local planning authority. At no time shall any construction work take place unless an engineer and supervisor are at that time currently appointed and their appointment has been notified to the local planning authority in accordance with this condition

41. The application architects, or other such architects as approved in writing by the local planning authority, acting reasonably, shall be retained for the detailed design phase of the project.

42. The units annotated as "retail" on Drawing Nos: P-SITE-AA(0)011A and P-SITE-AA(0-)100A shall not be occupied by tenants that operate more than three other retail units in the Royal Borough of Kensington and Chelsea at the time of first occupation by the relevant tenant.

43. The units annotated as "retail" on drawing nos. P-SITE-AA(0-)011A and P-SITE-AA(0-)100A shall be constructed in accordance with the approved drawings and shall not be amalgamated at ground floor level thereafter.

44. The units annotated as "retail" on drawing nos. P-SITE-AA(0-)011 A and PSITE-AA(0-)100A shall be retained for purposes falling within Class A1 or Class A3 of the Town and Country Planning (Use Classes) Order 1987 only. At any time, a minimum of 10 such units shall be used for purposes falling within Class A1.

45. Notwithstanding condition 2, the areas annotated as 'Flexible Surgery/ Office' at fourth, fifth and sixth floor levels on approved drawings P-SITE-AA(0-)104 A, P-SITE-AA(0-)105 A and P-SITE-AA(0-)114, shall only be used as a health facility and not for any other use which falls within Class D1 of the Town and Country

Planning (Use Classes) (Amendment) (England) Order 2015 and any subsequent amendments to the Use Classes Order.

End of conditions 1-45

ANNEX FOUR: APPLICATION DRAWINGS

Existing Drawings

Drawing No.	Drawing Title	Scale	Size	Rev
P-SITE-XX(0-)001	Existing Location Plan	1:1250	A1	-
P-SITE-XX(0-)002	Existing Site Plan	1:500	A1	-
P-SITE-XX(0-)011	Existing Site Plan -1 Level	1:250	A1	-
P-SITE-XX(0-)100.1	Existing Site Plan Ground Floor	1:250	A1	A
P-SITE-XX(0-)101	Existing Site Plan 1st Floor	1:250	A1	A
P-SITE-XX(0-)102	Existing Site Plan 2nd & 3rd Floor	1:250	A1	A
P-SITE-XX(0-)103	Existing Site Plan 4th Floor	1:250	A1	A
P-SITE-XX(0-)104	Existing Site Plan 5th-11th	1:250	A1	A
P-SITE-XX(0-)105	Existing Site Plan Roof Plant	1:250	A1	A
P-SITE-XX(0-)106	Existing Site Plan Roof	1:250	A1	A
P-SITE-XX(0-)201	Existing Site Section 01	1:250	A1	-
P-SITE-XX(0-)202	Existing Site Section 02	1:250	A1	-
P-SITE-XX(0-)203	Existing Site Section 03	1:250	A1	A
P-SITE-XX(0-)204	Existing Site Section 04	1:250	A1	A
P-SITE-XX(0-)205	Existing Site Section 05	1:250	A1	A
P-SITE-XX(0-)301	Existing Site Elevation North	1:250	A1	-
P-SITE-XX(0-)302	Existing Site Elevation East	1:250	A1	A
P-SITE-XX(0-)303	Existing Site Elevation South	1:250	A1	A
P-SITE-XX(0-)304	Existing Site Elevation West	1:250	A1	A

Proposed Drawings

P-SITE-AA(0-)001	Proposed Location Plan	1:1250	A1	A
P-SITE-AA(0-)002	Proposed Site Plan	1:500	A1	A
P-SITE-AA(0-)011	Proposed -1 Level Site Plan	1:250	A1	A
P-SITE-AA(0-)021	Proposed -2 Level Site Plan	1:250	A1	A
P-SITE-AA(0-)100	Proposed Ground Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)101	Proposed 1st Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)102	Proposed 2nd Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)103	Proposed 3rd Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)104	Proposed 4th Floor Site Plan	1:250	A1	A

P-SITE-AA(0-)105	Proposed 5th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)114	Proposed 6th Floor Site Plan	1:250	A1	-
P-SITE-AA(0-)106	Proposed 7th - 11th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)107	Proposed 12th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)108	Proposed 13th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)109	Proposed 14th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)110	Proposed 15th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)111	Proposed 16th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)112	Proposed 17th Floor Site Plan	1:250	A1	A
P-SITE-AA(0-)113	Proposed Roof Site Plan	1:250	A1	A
P-SITE-AA(0-)201	Proposed Site Section1	1:250	A1	A
P-SITE-AA(0-)202	Proposed Site Section2	1:250	A1	A
P-SITE-AA(0-)203	Proposed Site Section3	1:250	A1	A
P-SITE-AA(0-)204	Proposed Site Section4	1:250	A1	A
P-SITE-AA(0-)205	Proposed Site Section5	1:250	A1	A
P-SITE-AA(0-)206	Proposed Site Section6	1:250	A1	A
P-SITE-AA(0-)301	Proposed North Site Elevation	1:250	A1	A
P-SITE-AA(0-)302	Proposed East Site Elevation	1:250	A1	A
P-SITE-AA(0-)303	Proposed South Site Elevation	1:250	A1	A
P-SITE-AA(0-)304	Proposed West Site Elevation	1:250	A1	A

P-KCS1-AA(0-)100	Proposed KCS1 Ground Floor & - 1 Floor	1:100	A1	A
P-KCS1-AA(0-)101	Proposed KCS1 First - Third Floor	1:100	A1	A
P-KCS1-AA(0-)102	Proposed KCS1 4tH Floor & Roof	1:100	A1	A
P-KCS1-AA(0-)201	Proposed KCS1 & WPB1 Section 1	1:100	A1	A
P-KCS1-AA(0-)202	Proposed KCS1 & WPB1 Section 2	1:100	A1	A
P-KCS1-AA(0-)203	Proposed KCS1 & WPB1 Section 3	1:100	A1	-
P-KCS1-AA(0-)301	Proposed KCS1 East Elevation	1:100	A1	A
P-KCS1-AA(0-)302	Proposed KCS1 North & South Elevation	1:100	A1	A
P-KCS1-AA(0-)303	Proposed KCS1 West Elevation	1:100	A1	A
P-KCS2-AA(0-)100	Proposed KCS2 Ground Floor & - 1 Floor	1:100	A1	A
P-KCS2-AA(0-)101	Proposed KCS2 First - Third Floor	1:100	A1	A
P-KCS2-AA(0-)102	Proposed KCS2 Roof Services - Roof	1:100	A1	A
P-KCS2-AA(0-)201	Proposed KCS2 Section 1 & 2	1:100	A1	A
P-KCS2-AA(0-)301	Proposed KCS2 East Elevation	1:100	A1	A
P-KCS2-AA(0-)302	Proposed KCS2 North & South Elevation	1:100	A1	A
P-KCS2-AA(0-)303	Proposed KCS2 West Elevation	1:100	A1	A
P-WPB1-AA(0-)100	Proposed WPB1 Ground Floor & -1 Floor	1:100	A1	A
P-WPB1-AA(0-)101	Proposed WPB1 1st Floor - Roof	1:100	A1	A
P-WPB1-AA(0-)301	Proposed WPB1 East Elevation	1:100	A1	A
P-WPB1-AA(0-)302	Proposed WPB1 West Elevation	1:100	A1	A

P-WPB2-AA(0-)100	Proposed WPB2 Ground Floor & -1 Floor	1:100	A1	A
P-WPB2-AA(0-)101	Proposed WPB2 1st Floor & 2nd Floor	1:100	A1	A
P-WPB2-AA(0-)102	Proposed WPB2 Roof	1:100	A1	A
P-WPB2-AA(0-)200	Proposed WPB2 Section 1 & 2	1:100	A1	A
P-WPB2-AA(0-)201	Proposed WPB2 Section 3	1:100	A1	A
P-WPB2-AA(0-)300	Proposed WPB2 East & West Elevation	1:100	A1	A
P-WPB2-AA(0-)301	Proposed WPB2 North & South Elevation	1:100	A1	A
P-WPB3-AA(0-)301	Proposed WPB3 North & East Elevation	1:100	A1	-
P-WPB3-AA(0-)302	Proposed WPB3 South &West Elevation	1:100	A1	-

P-CB-AA(0-)011	Proposed CB, NHG & WPB3 -1 Floor	1:100	A1	A
P-CB-AA(0-)100	Proposed CB, NHG & WPB3 Ground Floor	1:100	A1	A
P-CB-AA(0-)101	Proposed CB, NHG & WPB3 1st Floor	1:100	A1	A
P-CB-AA(0-)102	Proposed CB, NHG & WPB3 2nd Floor	1:100	A1	A
P-CB-AA(0-)103	Proposed CB, NHG & WPB3 3rd Floor	1:100	A1	A
P-CB-AA(0-)104	Proposed CB, NHG & WPB3 4th Floor	1:100	A1	A
P-CB-AA(0-)105	Proposed CB, NHG & WPB3 5th Floor	1:100	A1	A
P-CB-AA(0-)111	Proposed CB, NHG & WPB3 6th Floor	1:100	A1	-
P-CB-AA(0-)112	Proposed CB, NHG & WPB3 7th Floor	1:100	A1	-
P-CB-AA(0-)106	Proposed CB, NHG & WPB3 8th-11th Floor	1:100	A1	A
P-CB-AA(0-)107	Proposed CB, NHG & WPB3 12th & 13th Fl.	1:100	A1	A
P-CB-AA(0-)108	Proposed CB, NHG & WPB3 14th & 15th Fl.	1:100	A1	A
P-CB-AA(0-)109	Proposed CB, NHG & WPB3 16th & 17th Fl.	1:100	A1	A
P-CB-AA(0-)110	Proposed CB, NHG & WPB3 Roof	1:100	A1	A
P-CB-AA(0-)201	Proposed CB, NHG & WPB3 Section 1	1:100	A0	A
P-CB-AA(0-)202	Proposed CB, NHG & WPB3 Section 2	1:100	A0	A
P-CB-AA(0-)203	Proposed CB, NHG & WPB3 Section 3	1:100	A0	-
P-CB-AA(0-)301	Proposed CB, NHG & WPB3 North Elevation	1:100	A0	A
P-CB-AA(0-)302	Proposed CB, NHG & WPB3 East Elevation	1:100	A0	A
P-CB-AA(0-)303	Proposed CB, NHG & WPB3 South Elevation	1:100	A0	A
P-CB-AA(0-)304	Proposed CB, NHG & WPB3 West Elevation	1:100	A0	A
P-CB-AA(4-)400	Proposed CB Winter Garden Elevations &	1:50	A1	A
P-CB-AA(4-)401	Proposed CB Winter Garden Section CB1 &	1:50	A1	A
P-CB-AA(4-)402	Proposed CB Winter Garden Section CB3 &	1:50	A1	A
P-KCS1-AA(4-)400	Proposed KCS1 Winter Garden Bay West	1:50	A1	A
P-KCS1-AA(4-)401	Proposed KCS1 Winter Garden Bay Section	1:50	A1	A
P-KCS1-AA(4-)402	Proposed KCS1 Corner Bay South, East	1:50	A1	A
P-KCS1-AA(4-)403	Proposed KCS1 Corner Bay Sections 1, 2 & 3	1:50	A1	A

P-WPB2-AA(4-)400	Proposed WPB2 Cube Corner Bay Elevations	1:50	A1	A
P-WPB2-AA(4-)401	Proposed WPB2 Cube Corner Bay Sections	1:50	A1	A
P Doc 03DAS	Design and Access Statement Addendum	AS	A3	-
P Doc 04DAS	Appendices to DAS Addendum	AS	A3	-

Demolition Drawings

Drawing No.	Drawing Title	Scale	Size	Rev.
ARP-S-B1-ML-GA-8001	Demolition Extents, Existing Site Plan Roof	1:250	A1	P1
ARP-S-ZZ-ML-SX-8002	Demolition Extents, Existing Site Section 01	1:250	A1	P1
ARP-S-ZZ-ML-SX-8003	Demolition Extents, Existing Site Section 02	1:250	A1	P1
ARP-S-ZZ-ML-SX-8004	Demolition Extents, Existing Site Section 03	1:250	A1	P1
ARP-S-ZZ-ML-SX-8005	Demolition Extents, Existing Site Section 04	1:250	A1	P1
ARP-S-ZZ-ML-SX-8006	Demolition Extents, Existing Site Section 05	1:250	A1	P1
ARP-S-ZZ-ML-SX-8007	Demolition Extents, Existing Site Section 06	1:250	A1	P1
ARP-S-ZZ-ML-SX-8009	Demolition Extents, Existing Site Section 07	1:250	A1	P1

Landscape Drawings

Drawing No.	Drawing / Document title	Scale	Size	Rev.
0586.SK12	Hard Landscape Proposals Public Space Ground Level	1:125	A0	-
0586.SK13	Uxbridge Street Proposed Planting Adjoining LUL Building	1:100	A2	-
0586.SK14	Corner Building Intensive Garden Level 4	1:50 & 1:100	A1	-
0586.SK15	Landscape Levels Plan	1:125	A0	-
0586.SK16	WPB3 Intensive Garden Level G+6	1:50 & 1:100	A1	B

0586.SK17	Intensive Garden Level 14	1:100 & 1:150	A1	A
0586.SK18	Corner Building Winter Gardens	1:20 & 1:50	A1	-
0586.SK19	Corner Building Ground Floor Planters	1:50 & 1:10	A2	-
0586.SK20	Corner Building Winter Garden Hedge Planters	1:50 & 1:12.5	A3	-
0586.SK21	Planting Proposals: Public Space Ground Level	1:200	A1	-
0586.SK22	Silver Square: Tree Grille, Pit and Seating	1:25	A1	-
0586.SK23	KCS 1 Community Roof Garden	1:100 & 1:50	A1	-
0586.SK25	Draft Tree Protection Plan	1:200	A1	-
0586.Sk26	Outline Planting to Play Area	1:100	A1	-
0586.1.1	Tree Survey	1:200	A1	-

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.