The Planning Inspectorate

Appeal Decision

Inquiry Held on 27-31 January and 3-7 February 2020
Site visit made on 20 January 2020

by David L Morgan BA (Hist) MA (T&CP) MA (Build Con IoAAS) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th August 2020

Appeal Ref: APP/K5600/W/19/3228820
Heythrop College, 23-24 Kensington Square, London W8 5HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Leopard UK Kensington Propco Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref: PP/18/05313, dated 3 September 2018, was refused by notice dated 10 May 2019.
- The development proposed is reinstatement of three townhouses (Class C3), (part of 23 and 24 Kensington Square); refurbishment of college building (part of 23 Kensington Square) and use as an extra care facility (Class C2). Demolition of all other buildings on site. Erection of deck over adjacent London Underground line and construction of 5 buildings (ranging between 1 and 8 storeys in height) for use as an extra care facility including units, communal facilities and services areas, community hall and on-site affordable housing and associated access parking, servicing and landscaping.

Decision

1. The appeal is allowed, and planning permission is granted for reinstatement of three townhouses (Class C3), (part of 23 and 24 Kensington Square); refurbishment of college building (part of 23 Kensington Square) and use as an extra care facility (Class C2). Demolition of all other buildings on site. Erection of deck over adjacent London Underground line and construction of 5 buildings (ranging between 1 and 8 storeys in height) for use as an extra care facility including units, communal facilities and services areas, community hall and on-site affordable housing and associated access parking, servicing and landscaping at Heythrop College, 23-24 Kensington Square, London W8 5NH in accordance with the terms of the application, Ref: PP/18/05313, dated 3 September 2018, subject to the conditions set out in the schedule at the end of this decision.

Procedural matters

2. The description of development set out above is the one subsequently amended and agreed by the local planning authority. This differs from the description set out in the application form in that relevant use class references are added. This description is preferred as it affords greater clarity.

3. The Royal Borough of Kensington and Chelsea (RBKC) were minded to grant planning permission for the proposed development but were Directed to refuse the scheme by the Mayor of London (pursuant to the provisions of article 5(1) (b) (i) of

the Town and Country Planning (Mayor of London) Order 2008. On this basis RBKC determined to present evidence in respect of condition 10 of the Officer's Report, which secured unrestricted access through the site from Kensington Square (in addition to the access at South End) alone. RBKC also presented evidence in respect of Community Infrastructure Ley compliance and the amendment of conditions.

4. A formal accompanied site visit was undertaken prior to the opening of the Inquiry on the 20 January 2020 with representatives of all the main parties present. A subsequent accompanied site visit was made to the Appellant's apartment show facility with representatives of RBKC and GLA on the 7 February 2020. I also undertook, at the request of the Kensington Square Residents Association (KSRA) (Rule 6 Party), a nocturnal visit to Kensington Square and the surrounding environs on the 5 February 2020. Furthermore, I undertook unaccompanied visits to other previously identified development sites in Young Street and Dovehouse Street during the course of the Inquiry.

5. A series of draft s.106 agreement documents were submitted during the course of the Inquiry covering a range of areas of mitigation and, principally, the mechanisms for a review of the affordable housing provision in light of an identified increase in gross development value and the provision of a financial contribution towards the provision of step free access to Kensington High Street Tube station. As both matters are material to the main issues in respect of the provision of affordable housing the s.106 agreement is considered in some detail below.

6. The application for planning permission was accompanied by a tandem application for listed building consent. Upon the receipt of the direction by the GLA to refuse the application for planning permission and an indication that the application for listed building consent was also likely to be refused, the then Applicant (now Appellant) withdrew the latter application. There is therefore no consideration of any works to any listed buildings under section 16 of the Act[1], nor indeed, for the sake of clarity, is there an appeal to be considered under the terms of section 20 of the same. Equally for the avoidance of doubt though, it remains for the proposals to be considered against section 66 of the Act, which makes clear that 'when considering whether to grant planning permission for development which effects a listed building or its setting, …the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. Again, for the avoidance of doubt, the duty required under section 72 of the Act in respect of the Kensington Square Conservation Area (KSCA) is also engaged.

Main Issues

7. As the application was directed for refusal by the GLA on the basis of sub-optimal delivery of affordable housing and the inadequacy of review mechanisms in anticipation of a grant of permission by RBKC, it might seem reasonable that these substantive matters be dealt with first. However, having heard and considered all the evidence in respect of the case it seems more appropriate to address the other main issues first. This is because, in part at least, some (for example the construction of the deck) have a significant bearing on the viability issues that inform the level of affordable housing provision. This also means that the matter of the review mechanism, framed within the s.106 agreement, sits more

[1] Planning (Listed Buildings and Conservation Areas) Act 1990.

comfortably next to related s.106 matters at that point in the decision letter. As the matter of any benefits the scheme may bring is addressed comprehensively as part of the heritage balance below, I do not repeat them as a separate main issue but incorporate my conclusions in the final planning balance. Having determined thus I consider the main issues in this case to be:

8. The main issues in this case are:- a) whether the proposed development would preserve designated heritage assets on the site or any features of special architectural or historic interest that they possess, b) whether the proposed development would preserve the character or appearance of the Kensington Square Conservation Area (KSCA), c) the effect of the proposed development on the character and appearance of the area through the loss of trees on the site, d) whether the proposed development would result in an increase in the volume of traffic detrimental to the safety and free-flow of traffic on the local highway network, e) the effect of the proposed development on the living conditions of adjacent occupiers and the safety of highway users as a result of construction traffic to and from the site, f) whether the proposed unfettered openness to the site (through access from Kensington Square and South End) would result in an increase in crime in the area, g) whether the proposed development would result in the loss of social and community uses on the site, h) whether the proposed development would provide an appropriate mix and balance of development on the site i) whether or not the appeal scheme, which is unable to provide 35% of the housing as affordable housing, can demonstrate that the maximum reasonable affordable housing would be provided and j) whether there is a sufficient viability review mechanism in the s.106 agreement to ensure that the continued maximum reasonable affordable housing is delivered on the appeal site.

Reasons

Context

9. The appeal site comprises a chronologically multi-phased complex for buildings and open space formally occupied as a theological collage. As the site address makes clear, the initial focus of the complex is the three former town houses and subsequent elements of the conventual buildings facing onto Kensington Square. This definitive form of metropolitan urban fabric is a justly celebrated mix of domestic architecture of exceptionally strong and distinctive character and of which the appeal buildings form an intrinsic and significant part. The principal means of access to the site (other than pedestrian) could not be in more contrast, leading off as it does from the tight intimate spaces of South End, a mix of artisan and institutional architecture that further enriches and diversifies the character of the area as a whole. The remainder of the site is an enclosed space formed by a mix of different phased historic structures comprising the former convent, later utilitarian educational buildings, areas of hard standing and mature landscaping. This space is dominated by mature deciduous trees of sufficient stature to give the site a distinctive green presence when viewed form over the railway line to the west. This railway, accommodated in a deep and broad cutting, is a stark and uncompromising intervention in the urban fabric that severs the site from its urban context to the west and remains a significant disrupter to the otherwise tranquil and verdant character and appearance of the area. Kensington Square, the approaches at South End and the body of the site itself all lie within the Kensington Square Conservation Area (KSCA).

The Proposals

10. The proposals for the site, even by west London standards, are ambitious, by common consensus going beyond the expectations of the Heythrop College Planning Brief Supplementary Planning Document 2016 (HCPBSPD). The package offers a bespoke Extra Care facility incorporating a range of accommodation, related functional facilities, specifically associated facilities, publicly accessible uses (community hall and café) and extensive public and private landscaped areas. The scheme incorporates the refurbishment and part demolition of the former college complex, the reinstatement of three former town houses, the erection of a structural deck over a section of the London Underground track, the creation of a double basement, provision of five new buildings of differing forms and scale, car parking spaces and five units of affordable housing. The description of the development is further summarised in the signed and dated Statement of Common Ground (SoCG)[2].

Effect on Listed Buildings

11. Notwithstanding the commentary in the committee report and the identification of harm to listed buildings (and the KSCA) by Historic England (HE), RBKC raise no objection to the proposals in their evidence. Harm to listed buildings and the KSCA are however identified by The Kensington Society, Victoria Road Resident's Association, Kensington Court Residents Association (KS/VRRA/KCRA) and these focus on No 23 Kensington Square and the associated conventual buildings (listed at Grade II) and the associated St Andrews Hall and Cottage, afforded statutory protection by virtue of being within the curtilage of the No 23 and the greater college structure. Each issue is addressed in turn below.

12. It is right for KS/VRRA/KCRA to affirm that in respect of the listed buildings and the CA HE identify harm, and that this is a matter to be apportioned weight. However, this needs to be measured with care. They do not venture to identify the magnitude of harm nor do they seek to measure this against any public benefit, instead reminding RBKC to consider the justification for it and to undertake the balancing exercise against public benefit. This stops short of a stated objection to the scheme or indeed a recognition that such harm (if found) may merit the refusal of the proposals. Moreover, HE's comments in respect of the works associated with the listed building consent application need to be read in that context, especially as some of the concerns in respect of fixtures and their retention at least could well be addressed through detailed conditions attached to any decision notice.

13. HE, unlike KS/VRRA/KCRA, take no issue with the loss of St Cecilia's Gallery, the corridor added to the front of the C19 terraced houses in 1925 to link the main entrance to the college with the later conventual buildings to the west. Indeed, in their letter HE refers to the restoration of the lost entrance porches on the square frontage after demolition of the 1920s corridor, a tacit acceptance of the merits of this intervention to the frontage of the listed building. Indeed, a similar indication of acceptance of the alterations to the interior of the former town houses is also made here.

14. It is reasonable for KS/VRRA/KCRA to make the point that this early C20 addition speaks of the adaptation of the former houses to conventual use, and their physical linkage to the purpose-designated range to the west. Thus far, therefore, it does contribute to the narrative of the building's evolution over time. However, despite or

[2] ID24.

rather because of its rather plain Neo-Baroque flourishes, it sits incongruously with the plain late Neo-Classical elevation of the houses above it and the self-conscious Gothic of the chapel to the east and convent range visible to the west. Its removal would not constitute a material diminution of the special interest of the building, whilst the reinstatement of the domestic façade would give back an integrity currently lacking to the pair of former town houses, and the settings of those with which they form a group in the square, as the list description reasons for designation advises. Similarly, the interiors of both former houses have been significantly degraded and the intention to both preserve surviving detail and reinstate lost plan form would serve to significantly better reveal the significance of this element of the designated heritage asset. It follows that, in respect of the exterior of the buildings, such benefits would also accrue to the character and appearance of the KSCA (see below).

15. The proposals also entail extensive alterations to the interior of the conventual range, including the subdivision of some of the primary communal spaces and the potential loss of internal fixtures. Again, the surviving plan form of this range speaks clearly of its former communal use and although plain, the interior fixtures, consistent with the architectural vocabulary of the standing structure, both add to the special architectural interest of the complex as a whole. That being the case, the loss of integrity to the primary spaces and loss of carpentry fixtures would diminish the special interest and significance of the complex as a whole. However, much of the interior is utilitarian in character and some areas, such as the basement spaces, have evidently been extensively altered. Also, to be set against the losses are the removal of later utilitarian additions and extensive investment in the standing fabric of the buildings, in some locations addressing areas of evident neglect.

16. There is consensus that St Andrews Hall and the attached cottage can be considered as listed buildings by virtue of their authorship and functional and associative relationship with the main College complex. There is also an acceptance on behalf of the Appellant that it retains and expresses a degree of architectural and historic interest. That is a conclusion with which I readily agree. Indeed, as elaborated by KS/VRRA/KCRA, the relationship with the main group is a tangible one, both in their consistency of architectural detail and the role they play in establishing a degree of enclosure to the complex as a whole. Although the focus of the proposed demolition of these buildings has been on the KSCA, it is necessary also to consider their loss as statutorily protected structures. Whilst they are undoubtedly articulated in less elaborate terms, the low-key ecclesiological Gothic detailing clearly marks their stylistic relationship with the greater complex, whist their educational function adds resonance to the purpose of the college and its historic interest. I readily conclude therefore that the loss of these buildings would (self-evidently) fail to preserve them, nor the special architectural interest of the former conventual complex as a whole.

17. Drawing all aspects of the effects on the listed buildings together, it is clear that there are some considerable benefits to key and important components of the site, including the former town houses and indeed the former convent buildings themselves. Indeed, in respect of the former, these are clearly preserved, and the latter buildings, despite the robust and significant intervention implied in the scheme, would also, on the finest of balances, be so. However, the loss of St Andrews Hall and The Cottage, representing a total loss in themselves and a diminution in the special interest of the group as a whole, would fail to preserve the listed building. Such an outcome would fail to meet the requirements of

section 66 of the Act and is a matter that readily garners considerable importance and weight when considered in the heritage planning balance. It means that the proposals would fail to accord with the expectations of paragraph 193 of the National Planning Policy Framework (the Framework), which anticipates great weight being given to conservation of designated heritage assets. The proposals would also, it follows, conflict with local development plan policy, specifically CL4 of the RBKCLP, that seeks to support and underpin these national statutory and policy objectives.

18. Although the loss of the hall and cottage would be significant, taking into account its relatively limited special architectural and historic interest, and degree of degradation of architectural detail, and in turn its relatively limited interest in relation to the sum of that of the complex as a whole, I would characterise this magnitude of harm as less than substantial. Paragraph 196 of the Framework requires (anticipating that less than substantial harm does not necessarily equate to less than substantial planning objection, particularly where the statutory test has not been met) this harm to be measured against any public benefits the proposed development would bring. This I set out below, having accounted for any further effects on designated heritage assets as a result of the proposal.

Effect on the Conservation Area

19. No one disputes the architectural and historic interest and so significance of the KSCA, a designation with added significance as one of the earliest such designations in the country[3]. The initial designation included the former convent and thus appeal site from the outset, reflecting the current view that whilst the Square forms the focus of the area, its character and appearance are very much the sum of its different parts. Although somewhat after the fact of designation, and postdating the HCDBSPD for the site by 18 months, the Kensington Square Conservation Area Appraisal (KSCAA) offers a succinct but measured assessment of its attributes and significance.

20. The focus of the effect of the proposed development on the KSCA has been the loss of St Andrew's Hall and The Cottage, structures that the KSCAA rightly identify as making a 'very important contribution the character of South End, the former convent close and the wider conservation area'. This substantial ecclesiological structure stands at the termination of South End at the point it narrows, so serving as a marker for the end of the secular realm and as the entrance to the former convent precinct beyond. The loss of these structures would loosen the focus of the entrance to the former convent, and rob South End of its key defining architectural reference point. In so doing the character and appearance of South End would be diminished, as would that of the former convent complex beyond and thus that of the KSCA as a whole.

21. The whole of the former convent grounds lies within the KSCA and will be subject to comprehensive redevelopment. The existing arrangement with its lawns, paths, trees and planting has an established, though jaded institutional charm. However, these have to be seen in concert with the areas of car parking, hard landscaped recreational areas and most significantly the institutional accommodation buildings erected by the college in the mid C20. The KSCAA is kind to these structures, describing them as neutral in terms of their contribution to the character of the area. These structures are at least some distance from the listed buildings and are

[3] Paragraph 1.5 Kensington Square Conservation Area Appraisal 2017 CD B17.

relatively discreet in terms of their visibility from outwith the KSCA (baring elevated views across the railway). However, they are dull utilitarian structures in the extreme and manifestly detract from the otherwise low-key picturesque landscape grounds of the site. Whilst there may be legitimate debate to be had about what replaces them, there must honestly be very few who would lament their loss.

22. These proposals to replace them are, by any standards, in terms of spatial planning and architecture, both aspirational and ambitious. With the added footprint afforded by the part decking-over of the railway the arrangement incorporates additional new wings to the existing building, substantial mansion blocks (at their tallest 8 floors), pavilion and mews buildings arranged around formal and less formal areas of open space and strong axial access routes forthrightly connecting the site to its urban context.

23. The essential ground plan has evolved to form a consolidated core around the existing buildings with the primary open space enclosed to the west by the northern block and framed to the south by the primary block of the complex. With its emphasis on symmetry, geometric form and linear axis as generators of plan, coupled with the mannered classicism of the elevations, the ensemble has an almost Beaux-Art quality, expressing a confidence that both forms and dresses these civic spaces. Supported by a complimentary focus on detailing, quality of materials and landscaping, the development has the attributes to make a genuine and worthy contribution to the civic fabric of the KSCA and the borough more widely. In architectural and townscape terms therefore, the proposals have the capacity to enhance the conservation area as anticipated by section 72 of the Act and, as echoed by paragraph 200 of the Framework, which seeks to support development that better reveals its significance.

Effect on the Character and Appearance of the KSCA as a result of Loss of Trees

24. There is no dispute that the proposals will result in the loss of a significant number of trees on the site and some of these, being mature specimen Plains, make a significant contribution to the character and appearance of the KSCA. Under most circumstances the loss of such trees within such designated areas would be a matter of considerable concern and weight in any assessment of development proposals. That said, the tree mitigation strategy submitted as part of the proposals indicates an increase in the number of trees on the site from 31 to 100 and these include six new large-canopy trees to mitigate those lost as a result of the development. Moreover, the existing specimen trees adjacent to the railway line represent a seasonal risk to the functioning of the railway through leaf and branch fall and pose a longer-term risk to the integrity of the cutting retaining wall. It is possible that the former issue may be in part addressed through 'vigorous pollarding', though this in itself has significant implications for the visual amenity value of the trees and to the character and appearance of the KSCA. So, whilst the losses may seem on first appraisal significant, with the mitigation strategy in place supported by conditions attached to the permission, the overall effect on the character of the KSCA would be neutral in respect of trees.

25. The construction of the deck over the railway line on the south western margin of the site that facilitates the symmetric location of the northern and southern mansion blocks and a border of open space and residential gardens is a significant component of the scheme in relation to overall build costs and site capacity, and these matters are covered elsewhere in the decision. However, the deck is also a

significant consideration in assessing the effect of the development on the character and appearance of the area in general and in the context of this topic, its effect on the setting of the KSCA. The western boundary of the KSCA is defined by the eastern retaining wall of the railway cutting, in effect meaning that the deck element of the scheme falls outwith its designated area. It is therefore appropriate to consider the provision of the deck in relation to the setting of the KSCA against paragraphs 193, 194 and 200 of the Framework and policy CL3 of the RBKCLP (criteria a) which supports such an approach.

26. Many of the works of architecture and engineering that comprise the London underground railway are rightly admired. The cutting to the south of Kensington High Street station is not likely to be amongst them. At the time of its construction in the mid C19 this deep and wide excavation must have seemed especially brutal, whilst today it is rendered only less so by its relative enclosure and by the competing ugliness of the architecture immediately to its west. The profusion of utilitarian infrastructure it carries and the continual noise from its use detract further from the character and appearance of its environs and thus the immediate setting of the KSCA.

27. The area of the railway to be covered by the deck is extensive and would of itself mitigate considerably the adverse visual and auditory effects of the cutting and its use. It facilitates the formal layout of the scheme identified as one of its attributes and creates opportunities for further east west linkages across the railway. All of these can readily be identified as enhancements to the setting of the KSCA which accord with the expectations of Policy CL3 of the RBKCLP and paragraphs 193 and 194 of the Framework, which anticipates great weight being given to the conservation of designated heritage assets, including their setting. Insofar as this outcome would better reveal the significance of the KSCA, the proposals would also accord with paragraph 200 of the same.

28. The balance of effects on designated heritage assets in this case is therefore already complex, with some achieving the objective of preservation in accordance with statutory and policy expectations and some not doing so. The critical areas of harm lie in the loss of St Andrews Hall and The Cottage, both as a curtilage listed building and as a positive contributor to the KSCA. Here the dual expectations of the Act would not be met and neither the listed buildings nor the KSCA as a whole be preserved. It follows therefore that the proposals would cause harm to designated heritage assets, a view consistent thus far with that expressed by HE. That said, when these harms are considered in the context of the complex of listed buildings as an entity and the KSCA as a whole, I characterise the magnitude of this harm, as anticipated by paragraphs 195 and 196 of the Framework, as less than substantial. In this context it follows that these harms, having been so calibrated, should be assessed against any public benefits the development may bring.

The Heritage Balance

29. The Framework offers no definition of public benefit, although Planning Practice Guidance gives some insight, indicating they 'could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework'[4]. It then goes on to offer some examples of heritage benefits,

[4] Paragraph: 020 Reference ID: 18a-020-20190723.

which include 'sustaining or enhancing the significance of a heritage asset and the contribution of its setting'[5]. This is a good place to start such an assessment.

30. As noted above, the works of restoration to Nos 23 Kensington Square, including the removal of the later additions and reinstatement of porticos as well as the reinstatement of their integrity as houses (the purpose for which they were intended) is a considerable benefit to their character as buildings of special architectural and historic interest. The same approach to No 24 yields similar benefits to a long-degraded structure. Both outcomes can readily be viewed as heritage and therefore public benefits that weigh significantly in favour of the proposals. It follows that these benefits, particularly those relating to the restoration of the elevations of these listed buildings, represent not just a preservation but an enhancement to the character and appearance of the Kensington Square and thus the KSCA as a whole. In light of the significance of the KSCA itself and the central part the Square plays in defining that significance (the architecture of the Square gets over 20 pages of coverage in the KSCAA) these may also readily be deemed a heritage benefit and therefore a public one in the heritage balance; again I afford this substantial weight.

31. Because of the scale and scope of the redevelopment of the former convent site as a whole, including the loss of components of the historic structure and most significantly specimen trees, a judgement of overall effect on the KSCA is more nuanced. However, the boldness of the planning, the refinement of the architecture underpinned by the quality of detailing and materials, supported by ambitious landscaping, would deliver a very positive extension to the civic realm of the KSCA and borough more widely. This, coupled with unfettered public access to the principal elements of the site and the connectivity that it offers (see below also) represent a very significant heritage and therefore public benefit to the character and appearance of the KSCA and the way this part of it would be experienced, again therefore meriting substantial weight in the heritage balance.

32. The construction of the deck both builds the development capacity of the site but more importantly fulfils two key heritage related objectives, facilitating the more open formal plan of the development and mitigating the negative effects of the railway cutting and its use. The first underpins the enhancement of the KSCA already identified whilst the second squarely fulfils the expectations of paragraph 200 of the Framework, significantly enhancing the setting of the KSCA. These are also significant heritage, and so public, benefits meriting substantial weight in the balance.

33. There are further public benefits beyond those associated with heritage assets. Perhaps most closely related are the enhancement to the character and appearance of the wider urban context of the site, most significantly to the west, where the mitigating effects of the deck on the presence, both visual and auditory, of the railway, and these go beyond the extent of enhancing the setting of the HSCA. This, combined with the auditory benefits of mitigating railway noise, representing an improvement to the living conditions of local residents can again be viewed as a public benefit meriting moderate weight in favour of the proposals.

34. It is important to avoid any double counting of benefits in the balancing exercise. However, the provision of the open space and landscaping of the site is rightly identified as an enhancement to the KSCA. Moreover, such provision as accessible

[5] PPG Paragraph: 020 Reference ID: 18a-020-20190723.

open space, in addition to the areas of private green space for residents, do represent an addition to such provision in the locality and too may be recognised as a public benefit meriting moderate weight in the heritage balance.

35. The proposals would create permanently open pedestrian routes through an otherwise closed environment, this facilitates access from the Square south through South End to the network of quieter streets and roads beyond giving access to the wider borough. Whilst this is a public benefit in itself, the appeal to users of this route would be enhanced by the quality and security of the environment the route permeates. The opportunities for creating further secondary routes through the site to the west facilitated by the deck are at this stage aspirational. Nevertheless, they would provide such a bridgehead where one does not exist at present and this too may legitimately be viewed as a public benefit. These elements of the scheme combine to again offer significant public benefits to residents and visitors of the borough, with a value beyond the site itself. As such they attract substantial weight in the balance.

36. As I set out below, the proposals would deliver a considerable number of homes not just meeting the broader housing needs of the borough but the specific expectations of GLA and RBKC policy in respect of the provision of housing for older people. This view on policy compliance and the fulfilment of specific housing need remains supported by RBKC and the GLA, the latter confirming in evidence to the Inquiry that the level of extra care housing proposed is a significant public benefit[6]. These are well made, convincing arguments and ones that readily fit with one of the key aspirations of the Framework in delivering sufficient numbers and range of homes to meet the needs of present and future generations[7]. As such I too recognise such policy compliant provision as a significant public benefit and accord it substantial weight in the planning balance.

37. It should also be remembered that the HCPBSPD sets out the prospectus for the site that anticipated that it could accommodate a higher density of development notwithstanding its sensitivities and constraints. This tension is reflected in an acknowledgement that the existing access to the site is 'extremely limited' whilst at the same time indicating the feasibility of substantial new development (3-9 storeys) in the south of the site and thus delivering considerable development potential to meet the needs of the borough. This tension is graphically defined by the indicative layout for the site on page 11 which anticipates the loss of the buildings constraining access to the site at South End. It is a tacit acknowledgement (notwithstanding the conclusions of the KSCAA) that there may be a price to pay for yielding that benefit. And so it is in respect of these proposals in relation to the loss of St Andrews Hall and The Cottage. In order to yield the full scope of the public benefits in respect of the site as a whole, the loss of these heritage assets is required. This facilitation of unlocking the site may also rightly be viewed a public benefit meriting substantial weight in the heritage planning balance.

38. Drawing this all together then, there are clearly identified heritage harms as a result of the development, most significantly the loss of St Andrews Hall and The Cottage. The latter is compounded by the harm this loss would have on the character and appearance of the KSCA. Such outcomes are contrary to the expectations of the relevant sections of the Act[8], to those set out in paragraphs

[6] Paragraph 22 Appellant's closing submissions ID51.
[7] Sub paragraph b) paragraph 8 Achieving sustainable development, National Planning Policy Framework.
[8] Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

193 and 194 of the Framework and thus to local development plan policy that seeks to support these statutory and national policy objectives. There can be no ambiguity that these harms and policy breaches are matters to be accorded considerable importance and weight in the planning heritage balance anticipated in paragraphs 195 and 196 of the Framework.

39. However, set against these harms are a raft of public benefits, including enhancements to listed buildings and significant enhancements to the KSCA as a whole and to its setting. Added to these are wider townscape benefits, significant improvements to public access to the site and connectivity within the wider area. There are benefits in the form of additional green and open space and to living conditions of local residents through auditory mitigation. There is also the provision of a significant amount of homes for which there is an acknowledged need and the structural benefit of unlocking the site to yield that balance of all such benefits identified above.

40. When these respective factors are aggregated and set in the heritage balance, despite attaching considerable weight and importance to the identified heritage harms, it can be clearly and demonstrably seen that the combined public benefits outweigh the harm identified.

Effect on Highway Safety and the Free Flow of Traffic in the Environs of the Site

41. There is a measure of consensus on the level of vehicular activity the current (assumed active) use of the site would generate, although there is dispute as to the split of that activity in relation to South End and Kensington Square access points. The Rule 6 party advocates a more even split of attendance between both entrances (Kensington Square being the formal address of the site) whilst the Appellant maintains the focus for deliveries would be at South End, where porterage was located. The effect of a more even split is to reduce traffic levels in South End and its approaches, thus reducing the baseline figure against which any increase should be measured. Given the institutional character of the existing use it is reasonable to assume a fair degree of predictability to the pattern of attendance at the site and given that the reception facility was located at the South End entrance it is equally reasonable to assume the majority of deliveries would attend this location. On balance a higher baseline figure for the South End is preferred.

42. The substantive matter at issue here is, however, whether the proposals would generate a significant increase in traffic over and above current levels in relation to South End and its approaches, thus rendering it in conflict with the expectations of the HCPBSPD, more specifically Policy CL5 of the RBKCLP and with paragraph 109 of the Framework. These expectations are on the one had framed by the broad acknowledgement of the locational sustainability of the site, it being within reasonable walking distance of shops and services as well as public transport nodes, and on the other by its restricted vehicular access. It is apparent from an appraisal of the site, and which is made abundantly clear in the HCPBSPD, that vehicular access is by means of the single point at South End to its rear. As we have understood from the issues relating to St Andrew's Hall and The Cottage, this access is certainly constrained, and as in turn conjoined with St Alban's Grove and thence to Victoria Road forming the access to Kensington High Street. These are themselves relatively constrained residential streets characterised by dwellings, blocks of flats and attendant car parking. The small mews dwellings, especially

those on the north side of the approach to the site, are particularly sensitive to vehicular activity as their doors and garages access directly onto the carriageway.

43. There are significant differences between the Appellant and Rule 6 Parties on the scale of vehicular activity the development might generate. Broadly this can be characterised by a minimum of around six additional trips per hour (Appellant) or up to 18/23 trips per hour over a 12/10 hour period (Rule 6). Where both model a worst-case scenario, this suggests an increase of one additional trip every 3 or 10 minutes. The differences are accounted for by two key factors, the transport mode choices (and destinations) of occupiers and their propensity or otherwise to use transport modes other than a car. The first is predicated on an increased use of taxis by occupiers at 25% of trips undertaken, accounted for by a reduction in anticipated tube trips. This assumption by the Rule 6 party also anticipates nearly all such trips either starting or ending at the South End entrance. Such a conclusion is founded on the expectation that the socio-economic profile of wealthy residents would more likely rely on this privatised mode of transport in preference to using public transport. The second factor is that as occupiers would by definition, require a measure of care, their mobility and willingness to opt for non-car travel modes would be reduced, again increasing reliance on the car.

44. Both assertions have some initial appeal, if you had the money would you not call a cab, and if you were in need of care you would need bespoke transport to get you where you wanted to go? But they are bold assumptions. Given the proximity of local shops and facilities in the High Street and beyond and the ready access to bus and tube and the independence they offer there is a real likelihood that to some at least, this would appeal. Furthermore, it is a quick assumption that older people in need of care will be immobile. Such people, aware of the health benefits of an active lifestyle, with the support of active partners and carers, actively seek such opportunities. Moreover, there is every reason to anticipate that those residents living in the north of centre of the complex might prefer departure or arrival at the Kensington Square entrance, certainly a more direct one than the circuitous one along Victoria Road, St Alban's Grove and South End. Such countervailing considerations serve to at least lessen the higher levels of vehicular activity suggested by the Rule 6 parties. But that said, even if they were right and the difference in numbers was split and the increase drawn at one additional trip every 6.5 minutes this is not an increase that could in my judgement be considered 'significant' in the terms of the HCPBSPD or indeed 'severe' in the context of paragraph 109 of the Framework. Nor would it preclude the reasonable enjoyment of the use of buildings, gardens or other spaces the safeguarding of which is anticipated by criteria e of Policy CL5 of the RBKCLP, so being in compliance with it.

Effect on Living Conditions of Adjacent Occupiers and Highway Safety as a Result of Construction Traffic

45. It comes as no surprise that the practical logistics of the clearance, infrastructure provision and redevelopment of this site have figured very prominently in the thinking of all those with an interest in the site's future. The single point access at South End and its limitations was identified as a factor effecting the scale of development in the HCPBSPD. This document also conspicuously identified the need for a Construction management Plan to 'ensure the works be undertaken in a considerate manner in line with the Code of Construction Practice policy for major projects'. There can also be little doubt that in the minds of the drafters of the brief, given the extent of demolition and increased development they anticipated, that the practical logistics of any such undertaking were going to be considerable.

This was of course without accounting for the provision of the decking-over of the railway and the significant broadening of the scope and scale of development (and logistical provision) this would entail. And so the practical necessities of delivering this proposal have proved, with a construction period running over five years utilising a single route through a network of residential streets before linking to the greater metropolitan network beyond. This approach is also optimally constrained, there simply being no alternative to its course through South End, St Alban's Grove and Victoria Road (with returning vehicles using the westerly Prince of Wales Terrace to access Kensington Road). Aside from its length and circuitous path the route to the site is further constrained by on street parking, narrow carriageway widths, acute changes of direction and the presence of pedestrians, school children and a range of other road users who share the space. Even by the standards of recent substantial redevelopment projects in this part of the Borough the scale of this project and its logistical tail is both large and very long.

46. The core concern with these circumstances is the volume and frequency of construction traffic traversing the route over the course of the construction period. The basis for an understanding of these vehicle movements (encompassing all construction traffic not just HGVs) is identified in the Demolition, Deck and Development Construction Report (DDDCR) supplied by the Appellant and used to inform the measures in both the draft demolition and construction management plans subsequently prepared[9]. Whilst there is some dispute about the full extent of vehicle movements KSVRARAKCRA refers to c100 total trips at peak and the DDDCR acknowledges a peak movement of 94 movements (70 of which would be of HGVs) or one every 3.5 minutes, which is pretty close to that. It is accepted this peak would occur in the first quarter of year 3 of construction and this maximum would be shouldered by four quarters (two each side) of flows of between 56 and 76 per day. By any standards these are high numbers of an extended period and unsurprisingly demand complex measures and responses to mitigate any adverse effects in relation to traffic flow, highway safety and air quality. This of course is the purpose of the dual demolition and construction management plans, presented in draft to the Inquiry though these would need to be ultimately determined through the submission of final plans subject to conditions.

47. In order that this logistical programme could be maintained a series of measures are proposed, including the provision of an initial holding area at the head of the route, selective parking bay suspensions along its length and the provision of marshals and road crossing patrols to ensure the safe flow of construction traffic at all times. In recognition of the frequency and duration of the operation mitigation of effects on air quality is also a factor addressed in the plans and in other conditions.

48. Although details about the location of the initial holding arrangement would require finalising, and the constraints do not fully account for nuances such as wing mirror widths, there is no compelling evidence that this route, despite its constraints, could not physically accommodate the traffic anticipated. Such a position is supported by swept path analysis, the scope of parking bay suspensions required for specific plant delivery and the provision of egress to the site through demolitions. Despite the constraints of the route I am satisfied, as are RBKC and the GLA, that it would be able to serve as the means of servicing the site, and that it would be appropriate that the provisions necessary to mitigate any harmful

[9] Appendix E Proof of Evidence Mr M Savage.

effects could be effectively secured through conditions attached to a planning permission. That assurance is offered by adherence to the principles of the Code of Construction Practice anticipated RBKC, the track record of AIA Consulting in delivering metropolitan development logistics, the provisions of the draft plans and the draft conditions that would secure them[10]. Critically, if the holding area is appropriately secured, parking bay suspensions implemented appropriately, the appointed marshals authoritatively manage the dispatch and management of the traffic and the crossing patrol fully safeguards the movement of children during term time, adverse effects might be avoided. It is my view that with the provisions of the plans and other conditions in place and properly refined, the effects of construction traffic would be effectively mitigated.

49. Similarly, the justified concerns over the effect on local air quality would be appropriately addressed through the provision of low emission technology on all vehicles and plant servicing the site. Compliance with this mitigatory approach can be achieved through the attachment of appropriately worded conditions, which are addressed below.

50. I consider this a reasoned and balanced conclusion based on the evidence before the Inquiry but that in no way diminishes the importance of the efficacy or otherwise of these provisions were the proposed development to proceed, especially for local residents. Even the highly regulated management of this process would have a significant effect on the pattern of their lives, whilst an unregulated or ill-managed approach would have very serious implications for the quality of people's daily lives over a number of years. Moreover, for the Appellant this highly managed system would simply have to work. Not only would its efficacy be under the closest of scrutiny, as would potential enforcement be if found deficient, but the scheduling and delivery of the development would be critically dependent on it anticipated successful operation. In short, a very great deal depends on the system being able to work effectively. To underpin the importance of securing compliance, both demolition and construction plans would need to be submitted to and approved by RKBC prior to any such works commencing on the site. With these measures in place and rigorously complied with, I am assured that the safety and living conditions of local residents, road users, visitors and school children would be safeguarded in accordance with policies of the RBKCLP, specifically CL7 (criteria k thereof), which relates to the basemented element of the proposals, CL5 (criteria e thereof) which seeks to safeguard living conditions of adjacent occupiers and CT1 (criteria b thereof) which relates to mitigating traffic generation.

Whether the Proposals would Result in an Increase in Crime

51. Through the application of a condition or conditions, RBKC seeks to ensure that the newly created pedestrian entrance to the site from Kensington Square remains unrestricted at all times (excepting its closure one day a year to avoid the route being potentially recognised as a Public Right of Way). The purpose of this measure, along with the uncontested access to the site from South End to the south, is to assure the permeability of the site and establish and reinforce pedestrian routes through it and its broader environs in accordance with development plan policy.

[10] Ibid.

52. Although generally supportive of the proposed development, the Kensington Square Residents Association (KSRA) object to the imposition of condition 10 of the initial officer report and the same condition now included in the schedule in the Planning Statement of Common Ground (PSoCG) requiring that unfettered access to the site from Kensington Square be maintained 364 days per year. It is their view that allowing access to the site at all hours, especially night-time, would only encourage criminal activity, already a present issue in the Square. Such an outcome, they argue, would in fact be counter to the intention of development plan policy which seeks to 'design-out crime'. At the Inquiry I heard of examples of such anti-social and criminal activity occurring before and indeed during the course of the event. Moreover, the KSRA's objection also reflects, they maintain, the views of the Designing out Crime Officer for the Metropolitan Police and the Met crime data that underpins it[11]. Whilst setting out the context to criminal activity in the borough (the St Anne's Ward is rated 13th out of a total of 18 in terms of recorded crime allegations) the conclusions are forthright. The officer states that 'Permeability of a development is proven to promote criminal opportunity', that 'A public access route is a crime generator' and that 'More permeability means more crime'.

53. The Appellant also objects to the unrestricted access to the site facilitated by the condition. However, during the Inquiry the Appellant offered a modified approach that would specify the times of the closure of the Kensington Square entrance, including allowing for variation necessitated by the intended use of the proposed community hall facility. RBKC, notwithstanding their established position requiring unrestricted access, suggested a modified linked condition applying times of closure and the submission of details by which the closure of the site would be secured[12].

54. It is right that people's everyday experience of crime should be taken into account, and development management decisions should seek to avoid any circumstances that would lead to an increase in criminality and anti-social behaviour. It is also right that the views of an officer of the Metropolitan Police, who's job title indicates a specific area of policing expertise, should not be lightly disregarded in relation to development proposals. It is, however, incorrect to say that the proposed development would be entirely 'gated' or effectively 'privatised', as the primary entrance at South End would remain open. Moreover, the Kensington Square entrance would be open during the day and until the mid-evening (under the terms of the modified conditions) and access to the site whilst the community hall is in use would be similarly secured.

55. However, it is equally not right to conflate people's apprehension or fear of escalating criminal activity with the actual likely effects of components of a development scheme. Similarly, whilst specialist officer views should be taken into account, it is difficult to escape the uneasy logic that limiting the permeability of a site, optimising the privatisation of others and perhaps consequently fostering a desire to limit permeability where it already exists, would lead to a realm much more starkly segregated and publicly limited than at present. To take such a mono-focused view would be to exclude the wider planning benefits such permeability of the site would offer to the wider public and one that would genuinely constitute a public benefit of the scheme.

[11] KSRA Statement of case Appendices 1 and 2.
[12] Page 2 ID47.

56. Stepping back from the 'crime issue', the purpose of Policy CR1 is to ensure that any new development proposals seek to enmesh themselves in the existing urban fabric (of streets and buildings) forming their context. This is to integrate them within a wider public domain that we should all be allowed to feel safe in. Of course, detailed design must seek to minimise the opportunity for criminal activity, and the Met officer's letter, under 'considerations', outlines some factors which serve to mitigate such activity. The axial nature of the well-lit primary routes through the site and their passive oversight from a range of diverse uses all militate against encouraging such nefarious activity.

57. More tellingly however, is that this access from Kensington Square is what effectively renders the site permeable. In order to fulfil the public policy objective of fully enmeshing the new development into its surrounding physical and social fabric it needs to be seen emphatically to achieve this purpose. Encountering the gate closed on occasion or open at variable times, in addition to the very physical infrastructure of its closure, would send a clear semiotic message that these were indeed barriers to access. At the very least they may sow the belief that they were, so deterring those patterns of behaviour and habit that would give real substance to the development's full and desired objective of enmeshment with its context. For all these reasons therefore I conclude the proposals, with condition 10 imposed, would accord with both Policy CL1, criteria g thereof (integration of development into surrounding street network), Policy CL2, criterion vi and vii thereof (designing out crime and securing access for all) and with Policy CR1 criterion a, b, c, e and f thereof (optimal connectivity, legibility, new links and removal of barriers, resistance of gated communities and minimising the opportunities for crime).

58. I have considered the other examples of development identified by KSRA but do not consider them to be sufficiently analogous to the particular circumstances of this case to merit anything more than limited weight as some forms of precedent. In reaching this conclusion I realise this will come as a disappointment to residents. However, I have arrived at them on the basis of the evidence before me and what I consider to be the overriding importance of the adopted development plan policy objectives. In unchanged circumstances, any further application to modify or remove the condition would reasonably be resisted. If, however, circumstances change and evidence suggests that an alternative approach may be reasonable and necessary then the decision maker would need to take that into account.

Whether the Proposals would result in the Loss of Community Uses

59. Heythrop College ceased to function as an educational institution in 2018. The proposed development, if permitted, would effectively end the possibility of that function being renewed on the site. It is right to say therefore, as KS/VRRA/KCRA argue, that the proposals would result in the loss of an educational facility. Moreover, they argue, the Appellant has not, as required by policy, demonstrated there is no ongoing or future demand for such facilities. It follows, they argue, the proposals are in conflict with Policy 3.18 (c) of the London Plan (LP) and Policy S3 (c) of the London Plan (Intend to Publish) 2019 (LPitP). This policy conflict is acknowledged by RBKC in their officer report, though is not explicitly accounted in their *Issues and balancing* section of the same[13]. This is perhaps a reflection of the observation made in the same document that 'the Mayor's Stage 1 response raises

[13] Paragraph 6.36 & 6.299-6.306 Appendix 1, Pre-Inquiry Statement (CD D9).

no objection to the principle of the proposed development', a position which remains unchanged in the Mayor's Stage 2 Report[14]. Despite the apparent conflict with criterion (c) of policies 3.18 and S3, the GLA, reflecting the focus of the Parts 1&2 Stage Reports, concluded inter alia that 'the proposals comply with London Plan Policies 3.16 and 3.18, (and) Draft Policies S1 and S3'[15]. The GLA go on to conclude that the proposals are in compliance with RBKCLP Policy CK1 and the HCDBSPD.

60. It is a matter of fact that the College as an educational facility would be lost as a result of the proposals. It is also accepted that the Appellant has not demonstrated there is no ongoing or future demand for it as such. On the face of it, therefore, there is some cogency to the argument of a London Plan policy breach. Why then should it not then be carried through as such in the planning balance? The answer lies in my view in the consideration of the current and proposed predominant use of the site within Class C2 of the Use Class Order. In this context the proposed development engages Policy CK1 of the RBKCLP which sets out a sequential test to safeguard or enhance social and community uses, of which the character of the current educational facility and the proposed extra care facility (see more below) are both consistent. Such an approach is also supported by reading Policy 8.18 (c) as a whole. Here development proposals which enhance educational provision will 'be supported, including new build, expansion of existing or change of use to educational purposes'. It concludes by stating that 'proposals which result in the net loss of educational facilities should be resisted, unless it can be demonstrated that there is no ongoing or future demand'. The latter limb omits any reference to the invocation of a change of use. In this context it is right therefore when the development plan policies are read together that the primary focus should be on the detailed sequential considerations of RBKCLP Policy CK1. Nevertheless, it remains difficult to accept, as RBKC acknowledge, the conflict the proposals have with the letter of the latter limb of Policy 3.18. There will be a de facto loss of educational facilities and demand, ongoing or future, has not been demonstrated. Notwithstanding the above therefore, I give this breach of policy modest weight, which merits legitimate consideration in the planning balance.

Mixed and balanced communities

61. The forgoing two paragraphs then frame consideration of the proposals under Policy CK1 of the RBKCLP, a necessary requirement of which is to consider the nature and character of the existing and proposed uses.

62. The first proposition is whether or not the extra care purpose of the main component of the proposed development can be reasonably considered a 'social and community use'. KS/VRRA/KCRA are correct to point out that 'extra care housing' is not included within the list of social and community uses listed in CK1. However, this is a very narrow basis to exclude this function from any such definition. It is accepted that the list is not a closed list as such, and ignores the obvious core element of 'care' in the title of the proposed use. The specific definition of 'extra care housing' in the RBKCLP glossary also expressly refers to residents having access 'to a wide range of 24-hour care on site'. Such provision is identified both in the physical arrangements for the development and within the provisions of the s.106 agreement which frames the requirements for such care and their provision. Moreover, whilst the wording within the glossary may have been

[14] Appendix 2 Ibid.
[15] Paragraph 5.2PoE Mr N Ray GLA (CD G4).

amended through the revisions to the RBKCLP, it is acknowledged that the explicit wording, and more importantly, the terms of reference for Policy CK1 have not. Given this, and the relative novelty of this specialist use in the UK, it is a reasonable judgement to make that such a use may fall within the ambit of the open list in CK1. Such a conclusion is given force by the degree to which RBKC and the GLA jointly refer to the proposed development as 'specialist older people's housing' in both RBKCLP, LP and LPitP policy and other policy documents[16]. Such an approach is consolidated in the HCPBSPD, which makes clear that 'extra care housing, offering a sufficient level of care for residents, would also fall under Class C2', and goes on 'Policy CH2(c) encourages extra care housing in C2 use' and concludes that '(t)his benign use would complement other uses on the site'[17].

63. KS/VRRA/KCRA make a striking point that 'financial barriers to entry', in this case the high price point of the units in the development proposed, are a relevant consideration as to whether the development may be considered a 'social or community use'. Their focus here is on the supporting text of parts of Chapter 10 of the RBKCLP which identifies social and community uses[18]. There is clear moral force to this supporting text, that seeks to safeguard social and community uses within the borough, recognising the relentless pressure on such sites for high value residential redevelopment. However, a selective reading, as KS/VRRA/KCRA advocate in relation to the 'social and community use' definition in the glossary, limits the traction of the text in relation to these proposals. In particular, paragraph 18.2.2, which sets out the first part of the approach to applying the planning system to the protection of such uses, makes no reference to facilities such as Heythrop College. Moreover, whilst KS/VRRA/KCRA advocate other uses more compatible with the social and community definition, such as education, they apply no such 'financial barrier to entry' principle to education, where they readily include the option for independent fee-paying schools.

64. That said, it is very difficult to avoid the sense of dissonance between the sentiments expressed in relation to community use and what is, no one can dispute, a development tailored to cater for those at the very upper end of the income scale. The RBKCLP is right to say that it is a key role of the planning system to protect the uses that have lower land values and it is right to warn that where policy safeguards have been ineffective such uses have been lost to higher land values uses. However, Policy CK1 makes no reference to economic value in relation to 'financial barriers to entry', and this is in light of an awareness of the advent of 'extra care housing' in the review of the RBKCLP. However tempting it might be to seek to apply economic criteria to planning decisions in the interest of greater socio-economic equality, in the context of this case, there is no development plan policy basis for doing so. Accordingly, I conclude there is no basis for excluding the proposed use from social and community uses, and indeed that it would maintain and contribute to the mixed and balanced community within the borough.

65. Policy CK1 of the RBKCLP is framed to ensure that community and social uses are protected, though as the supporting text acknowledges, the needs of communities change and so the continued protection of all existing social and community facilities may in fact inhibit that change. To manage this CK1 comprises three components, the provision of new facilities, the permitting of new and expanded facilities that predominantly serve borough residents. To this they apply a sequential approach to

[16] Paragraphs 6.43-6.46 RBKC Officer Report (CD D9) and paragraph 5.2 p16, PoE Mr N Ray GLA CDG4.
[17] Paragraph 3.16 p12 CDB5.
[18] In particular paragraphs 18.3.2, 18.2.1 and 18.3.4 p128 RBKCLP CDB1.

protecting existing uses, seeking to balance benefits to borough residents against a change of such use and considering enabling development to support social and community uses. The application of the sequential test set out in the second limb requires a determination of what form of residential use the proposals in this case would most reasonably fall into, Class C2 or C3[19]. This is an issue KS/VRRA/KCRA pursue at some length, arguing, with the support of case law, that each of the proposed units is, to all intents and purposes, a single planning unit and that having regard to the provisions of the s.106 agreement, there is a lack of scope and traction necessary to define the proposal as a residential care use.

66. It is right that this judgement is called, and the deliberation of RBKC in the officer report, and KS/VRRA/KCRA's challenge to the C2 use in closing, testify to the nuanced position Extra Care has in development management terms at the present moment. As the officer report points out, such a proposal, on initial appraisal of its physical attributes, and without the assurances of levels of care necessary to qualify it as such, could be viewed as a complex offering C3 accommodation. However, on closer consideration, the physical development itself and the care package presented in the Extra Care Accommodation Operation Policy (submitted with the application) and the securing provisions of the s.106 agreement (including the provision of an Extra Care Facilities Management Plan to be approved by RBKC) all in my view determine the proposals, as a package, may reasonably be adjudged a C2 use. Aside from the communal facilities present in the plans, the provision of nursing stations on each floor throughout the complex, the dimensions of the public and private spaces designed to reflect non-ambulant needs and even the details of the fit-out for the apartments (a matter of detailed discussion in respect of development costs and supported by evidence at the Inquiry) all suggest physical attributes of a care-focused facility. Whilst KS/VRRA/KCRA refer to the minimum levels of care identified in the care provisions, this goes beyond the 2.5 hours of care threshold, with provision of emergency support, care package review, a meal requirement and others. This ignores the higher levels of care on offer that anticipate the physical provisions of the development already identified above. Taken together therefore, on the evidence before me, I conclude the main body of the proposed residential development falls comfortably within Class C2 of the Use Class Order.

67. If the nuanced position of Extra Care within the development management context needed further definition this is provided by the decision of the Inspector in the case of the Lodge Road Appeal submitted by KS/VRRA/KCRA after the close of the Inquiry and circulated to the parties for comment [20]. Here the Inspector concluded the Extra Care fell within Class C3. Whilst it is difficult to draw too many conclusions from such a decision in the absence of all the key evidence that supported it, it can offer some insight into the Extra Care picture in inner London. Whilst the proposals may seem superficially similar, it is apparent that the management models differ, there is a difference in the level of associated facilities offered and there are no assurances that the detailed design considerations identified above are duplicated in that scheme. The Inspector properly came to a view on the nature of the use in that case based on the evidence before him. I am equally confident on the basis of the characteristics of this development and its use that it lies within the C2 Class. The Lodge Road Appeal therefore provides very limited weight in persuading me otherwise.

[19] Paragraphs 6.11 & 6.12 ibid.
[20] Appeal Ref: APP/X5990/W/19/322984.

68. In this context therefore it falls for the proposals to be considered against criterion b) and c), sub criteria ii thereof, both of which anticipate any development delivering significant benefits to borough residents or a greater benefit to the borough.

69. In simple terms it can be readily accepted the former use of the site as a higher educational facility was a social and community use (within the C2 class) that benefited the community. The cache of an academic institution, the comings and goings of students adding conviviality to the area, and their local spend in local shops and pubs could all be said to benefit the community. But this can be easily over-estimated. Only the minority of attendant students were resident, and the institution was, to all intents and purposes, a closed one. Aside from access to the hall and the all-weather play area by a local school, the site was not available to the public. On balanced reflection, the actual matter of loss of a social or community facilities as a result of these proposals is a matter that garners only limited weight in this decision.

70. KS/VRRA/KCRA set out the case that even if the proposals are accepted as C2, they cannot be held to comply with Policy CK1 on the basis that they would neither serve nor provide significant benefits to borough residents, nor be a greater benefit to the borough. This is largely predicated on the argument that the price of the units would be to a great extent exclusory. This was a point conspicuously not taken by the GLA who, notwithstanding their direction of refusal, acknowledged the extra care use as policy and Housing SPG compliant and that it would provide needed social infrastructure and assist in the delivery of specialist older people's housing in the borough as identified in the RBKC officer's report[21]. The KS/VRRA/KCRA relied on financial modelling of local demographic groups and income/asset value to demonstrate the degree of exclusion which the indicative prices of the units would determine. Whilst unchallenged, these arguments, unsupported by more robust and convincing assessments of actual values and costs, are of limited help. It also reintroduces the chimeric consideration of economic affordability, which has no basis in the policy framework, and which could again equally be applied to other social and community uses (private education for example) that KS/VRRA/KCRA pray in aide. Whilst the cost of a product may exclude our access to it, and this may raise legitimate questions of social justice (which in turn may determine the mechanics of planning policy) this is not the case here. Accordingly, I am able to only afford such arguments limited weight insofar as they engage the relevant limbs of Policy CK1.

71. The fact is that as an extra care facility (with other complimentary uses) the proposals sit comfortably within their established use class. They would replace a community use, which despite its fit within that use class, was actually of limited benefit to borough residents or to the borough as a whole. Moreover, and as I have set out above in more detail, the scheme would deliver a range of significant benefits to borough and residents, including the provision of specialist older people's housing (for which there is an acknowledged demand and which enable collateral benefits), in so doing contribute to the supply of housing generally in the borough, provide genuinely accessible community facilities, including community hall and landscaped open space, and deliver a creditable extension of the borough's civic urban realm. On this basis the proposals comply with Policy CK1 of the RBKCLP, criteria b and c(ii) thereof and with the policy objectives of the HCDBSPD.

[21] Paragraph 6.42. Ibid.

72. It is a matter of fact that the proposals will result in the loss of the Multi-Use (sports pitch) Games Area (MUGA) and there are no proposals for its re-provision on the site. As the London Plan advises, such loss of sports facilities, read as social infrastructure, in relation to Policies 3.16 and 3.19, should be resisted. So understood such a loss would conflict with both policies. It is right therefore, as KS/VRRA/KCRA point out, that this conflict be weighed in the balance against the proposals. That said, the existing facility looked to be in rather degraded condition and was of course only ever intended as an activity area for residents and members of the college. Whilst it is understood it has been made available to a local private school, by any standards its value as a community facility or social infrastructure as anticipated and defined by the LP is limited. So, although a loss of such infrastructure and a breach of the policies of the LP and being worthy of inclusion in the planning balance against the proposals, the weight to be apportioned that breach is very limited.

Affordable Housing Provision

73. There is an up to date policy framework at a local and strategic level in respect of the delivery of Affordable housing. This is established by the LP Policy 3.12 and RBKCLP Policy CH2. The draft new LPItP, is agreed to merit substantial weight; it also sets out robust policies, H4 and H5, to secure affordable housing through a Viability Tested Route. Policy CH2, consistent with the higher tier policies, makes clear in sub-paragraph i) that an applicant must demonstrate that the maximum reasonable amount of affordable housing is provided, and that this is demonstrated through the provision of an open book financial viability assessment. Moreover, as the GLA eloquently put it (without challenge), in the face of a significant or even acute level of need, the delivery of more affordable homes is 'plainly the right thing to do'. Indeed, this is the case for its quickly understood social purpose, but also for the economic and cultural wellbeing of London, and indeed as a model for the country as a whole. In this context of acute need and a robust policy framework, it is right therefore that the GLA require scrutiny of a scheme for 150 units which provides five (or 2%) affordable homes.

74. The Viability Tested Route and the open book financial viability assessment require, as the supporting text to Policy CH2 makes clear, a methodology to ensure that planning decisions are based on 'robust and consistent evidence'. And so is the case here, where the three key pillars of assessment are commonly identified and the inputs to them informed by professional knowledge and understanding, and they have then been assessed to measure the capacity of the site to deliver affordable housing to policy expectations. The three main components of any such assessment are Benchmark Land Value (BLV), the Development Costs of the scheme (DC) and its Gross Development Value (GDV).

75. To be clear at the outset these headline figures, agreed between the Appellant and the GLA, are for BVL: Appellant: £90,000,000, GLA: £61,084,170; for DC; Appellant: £281,579,407; GLA: £244,428,680; and for GDV: Appellant: £546,247,073; and GLA: £596,774,351[22].

76. Each of these principal elements comprise sub-components, each with potentially differing values. With each of these sub-components capable of different value outcomes depending on the approach taken, there is the capacity for a divergence

[22] These are the headline figures set out in table 1 attached to the explanatory note (ID48) submitted at the end of the Inquiry.

of opinion between the parties in numerous critical areas of interest. To deal with these technically complex issues it is both pragmatic and sensible to adopt systematic approach to this assessment. This allows a clear and incisive opportunity to identify, depending on the inputs to any key area, where the tipping-point between deficit and surplus, and thus the capacity for delivery or otherwise of additional affordable homes, in greatest likelihood lies.

77. Such an approach starts with the identification of the GLA's headline numbers, the Residual Land Value (RLV), identified as being £75,344,620[23] and the aforementioned BLV, this being identified as £61,084,170[24] with the residual amount being that remaining when the latter is deducted from the former. The balance here is therefore £14,260,450. This number is appropriately described by the Appellant as the GLA's 'headroom' or alternatively the capacity of the proposed development to potentially deliver a greater quantum of affordable housing on the site than that argued by the Appellant. Whilst by most of our individual expectations this is a considerable sum of money, as a proportion of the anticipated GDV of the scheme, identified by the GLA as £596,774,351, it is a small percentage, defined as approximately 2% of GDV or around approximately 6% of the identified development costs of the scheme as assessed by the GLA[25].

78. Once this parameter is understood, it becomes clear that if the conclusions of the GLA on any of the key factors, or indeed a number of sub-factors, that determine the final assessment are wrong even by a limited degree this surplus, or margin, may be quickly lost. Put another way, as the summary note and the range of unagreed inputs set out in the tables (specifically table 3, lines 4 and 5) in ID48 demonstrate, for me to endorse the GLA's primary argument that the scheme has not provided the maximum reasonable amount of affordable housing, I would need to accept their arguments on GDV in full, their conclusions on BLV and those on development costs. Looking at it again from the perspective of the decision-maker, if one if these arguments were to fail (in the case of that relating to development costs) then the GLA's case would fail. Considering this issue through that lens, and in light of the reasoning set out in relation to design, heritage and other public benefits set out above, it is to the specific matter of development costs that I now turn.

79. In the context of development plan policy and the acknowledged imperative to deliver the maximum reasonable quantum of affordable housing it is understandable that the GLA choose to scrutinise each aspect of the viability assessment and each of their constituent components. Such an approach is adopted in relation to costs, where the GLA argue, supported by their own SPG, a 'cost/value assessment' should be applied[26]. The GLA's essential approach in this regard is that the Appellant has failed to reasonably to align cost and end value in the scheme and that this may be more properly achieved through a significant reduction in costs in key areas of construction, principally in relation to the costs of the deck, residential fit-out, professional fees and other development costs.

80. At a macro level it has been asserted by both KS/VRRA/KCRA and the GLA that the construction of the deck and the considerable burden this brings to the overall cost of the development, cannot be justified, either against development plan

[23] The figure identified in ID43 derived from a deduction of all agreed development costs (profit and finance and other costs) from the initially determined GDV of £596,774,351.
[24] The figure identified in table 1 of ID48, with corrected calculations for the GLA.
[25] Ibid.
[26] CDB8 Mayoral SPG.

policy, the KSDBSPD or the debilitating effect it has on the ability to provide affordable housing. Whilst the removal of the deck and its associated cost would significantly reduce construction costs, it is no simple matter to do so because of the consequent impacts this would have on other key factors, such as the quantum of development achievable on the site and any final yield in terms of GDV. The absence of the deck within the scope of the KSDBSPD is not a basis to assume its unacceptability and of itself it offends no policies of the development plan. In any event, the deck is integral to the scheme before me and, as set out above, delivers a range of significant public benefits that more than justify its inclusion within the proposals and thus, for the proposes of viability, the factors that it brings to that assessment.

81. In that context therefore, as matters stand, the Appellant identifies overall development costs at £281,579,407, whilst the GLA assess them at £244,428,680, the difference between the two being £37,150,727. To underpin the conclusion that such a process is an iterative one informed by professional judgement, both these assessments have varied over the course of the cost planning process, through the appeal procedure and indeed up to the close of the Inquiry. The Appellant's estimate has risen by £9,894,407 over the 18-month cost planning period, whilst the GLA's assessment has risen by £45,993,000 in the evidence preparation period for the Inquiry.

The Deck Costs

82. By common consent over half the cost difference between the main parties is that relating to the deck. These being agreed at £21,736,856[27]. This is based on a headline deck cost figures of £58,773,181 by the Appellant and £37,036,325 by the GLA[28]. Whilst there is a measure of consensus on the costs of the measured works for the deck, which the GLA accepts can be readily quantified, there remain four specific sub-areas of disagreement, a) productivity costs; b) preliminaries; c) overheads and profit and d) risk and contingencies. Both main parties question the basis for the justification of the figures in these areas and, in part, this begs the question of who makes the most plausible case and offers the greatest assurance of their opinion.

83. The Appellant's costs for the construction of the deck are based on an initial report by Arup[29] and an independent reviewed by Mott Macdonald[30], both recognised specialist surveying practices in rail/infrastructure projects. A key premise for the divergence in subsequent cost analysis is the essential characterisation of the works. The GLA assess them a complex engineering operation ('not the most complex deck ever built over a railway') whilst the Appellant characterises them a rail infrastructure, a different, more complex order of magnitude. This is critical, as the greater the complexity of the actual construction operation, the higher the cost contingencies in the sub-areas become, with their associated implications for the viability calculations.

84. ***Productivity costs*** relate to the need for certain operations to be undertaken outside normal working hours. The difference here is between £3,614,000 by the GLA and £8,355,000 of the Appellant, a difference of £4,741,000. Expressed as a percentage, the GLA indicate a tolerance of 20%, again predicated on the scope

[27] Table 1 ID48.
[28] Paragraph 112 page 39 Appellant's closings ID51.
[29] Appendix E PoE Mr Brearley (Appellant).
[30] Appendix D Ibid.

of the engineering works and an expectation that 'some' tasks may be required to be undertaken outside normal hours. The Appellant's greater figure of upward of 40% again reflects the characterisation of the works as rail infrastructure and apply 'standard industry norms' accordingly. Whilst a detailed breakdown of such exceptional working conditions is not provided (nor indeed is there a detailed counter argument as to why these would be limited) the complexities of working around a busy underground rail network should not be lightly underestimated. This relates to the high tolerances of safety required in the structure itself and the circumstances in which it is constructed. On balance, it is in my view reasonable to characterise the deck as rail infrastructure and so reasonable to apply 'industry norms' to the productivity ratios associated with it. Productivity costs approaching 40% or higher would accord with this characterisation and the Appellant's conclusions on these costs are therefore preferred.

85. In terms of ***preliminary costs*** there is a difference of £3,894,000 between the parties, and these flow as a percentage of other costs. The Appellant derives a number of 35%, again set against the characterisation of a rail infrastructure project impacting on an operational railway. Such operational components include the erection of access gantries, the creation of a fabrication or manufacture zone within the site and the physical task of the decking-over of the sections of rail track. The implications of this are set out in some detail in the Mott Macdonald Review of the Cost Plan and further include the need for increased supervision of works, additional temporary works, specialist plant and more[31]. Again, the context of the project reflects the characterisation in the Mott Macdonald's report and so their percentage approach, and thus upper cost assessment, is preferred.

86. ***Contractor's overheads and profit*** is a function of the costs of preliminaries and there is a difference of c.£2,000,000 here or between 5% and 10%. Again, the costs of preliminaries are accepted on the basis of the above and so increased margin of 10% for these provisions when this component of the scheme is characterised as a rail-related infrastructure project, which again Mott Macdonald characterise it as in their assessment and which I have previously accepted. The Appellant's high figure of £3,679,000 regard is therefore accepted.

87. There is a £9,311,000 difference in the costs identified for ***Risk/contingency***. This is again found in the differing characterisations of the scheme, this time as to whether it is at Concept Design stage or considered as being at Feasibility stage. Quickly understood, the more certainty there is over the scope of what is required to construct it, the less risk and, therefore, need for associated contingency provision is required. The GLA, seeing the scheme as substantially well defined in the context of a full planning application, apply a percentage of 25%. The Appellant on the other hand assesses the matter of the deck to be at more conceptual design stage and therefore ups the percentage risk to between 30%-40%, this being based on Transport for London (TfL) standard allowances for risk for infrastructure projects in TfL[32]. Whilst this is a document provided for their own purposes this does not diminish its utility in guiding assessment of rail infrastructure projects, which the deck has fairly been characterised as. Given the higher degree of complexity in such projects it is again reasonable to conclude a lot more detailed design and methodology for its construction would be required prior to works commencing. It is reasonable therefore to characterise the design stage for the deck as being at feasibility stage with the added burden of risk and

[31] Paragraph 3.2.2.1 PA-139 Appendix D Cast Proof of Evidence.
[32] Appendix L PoE Mr Brearley (Appellant).

contingency that carries. A percentage of 30%-40% is therefore justified and the Appellant's costs in this regard preferred.

88. Reviewing these numbers on deck costs (accounting for concessions made by the Appellant on professional fees associated with its construction), and with the acknowledgement that the Appellant's assessment is both relatively consistent over the cost planning period and resilient to independent review, it is clear that this cost difference alone at £21,736,856, comfortably exceeds the GLA's identified headroom of £14,260,450. Indeed with a difference standing at £7,476,406, there would have to be a significant over-estimation in one or all areas of the Appellant's assessment of deck costs for that headroom to be recovered, certainly one greater that the variation in their identified costs over the previous cost planning period. This is of course without addressing the construction and fit-out costs of the greater development, which, to cover any such significant potential margin, now required addressing.

Other Development Costs

89. The remainder of the difference in ***build costs*** comprises the internal fit-out, external detailing materials and landscaping and fees. The structural difference between the parties being that the GLA's view that these costs are inflated, are inadequately benchmarked and, with a cost/value assessment in mind, could be legitimately reduced to deliver on the affordable housing policy imperative. The Appellant on the other hand agues the costs are justified in relation to the very specific nature of the product, its urban place-making aspirations, and that they are adequately benchmarked and stand up to robust open book scrutiny in accordance with policy.

90. Much of the Appellant's justification for these costs is predicated on the cost profile of their sister development for the near complete extra care development in Dovehouse Street north of Kings Road in the Borough, although these have been benchmarked with other developments in evidence. But detailed benchmarking of this extra care product is problematic given its relative modernity and the limited range of directly comparative examples, especially within the context of west London. This being so, it is reasonable that the Appellant focuses on Dovehouse Street, not least because it is the same product, it sets a clear standard for the specification and is reasonably locationally proximate.

91. Having said that, it is understandable that the GLA may be sceptical and that Dovehouse Street may be considered an exception, or atypical of the product or indeed an 'outlier'. But there are compelling reasons for taking a different view. The marketing for Dovehouse Street is focused on a show apartment where the refined attributes of the premium assisted living model are shown. Layouts, specifications, technological infrastructure and built-in adaptability are all expressed in the constituent elements of each apartment. Premium values are also reflected in the quality of the external architecture detailing, present at Dovehouse Street but specifically so at Heythrop, where the materials of the façade treatment, fenestration and hard and soft landscaping reflect the sensitivity of the site's heritage context but also the aspirations of the development to consciously make a positive contribution to the Borough's urban fabric.

92. Thus, differences in mechanical engineering infrastructure (including pre-construction service agreements, preliminaries, lighting and IT) account for a c£7,313,000 differentiation. There is a difference of £2,230,000 in the costs of kitchens, with these being costed at Heythrop at £43,759 each, well within the benchmark comparator at 21 Young Street, though a scheme of different but nonetheless high-end specification. There is a difference of £1,500,000 in bathroom costs, reflecting again the specific requirements of an assisted living fit-out. There may indeed be a hazard in relying to a greater degree on one principal comparator for cost comparison purposes. And again, these fit-out costs might be reduced, for instance economies to be sought at fitout stage. But that said, the show apartment, coupled with the direct comparators of Dovehouse Street (with some of the benchmark references) do offer the conviction that the product, with its detailed specifics reflecting the assisted living model, do justify the costs attributed them by the Appellant. Again, even if the margin of c.£11,000,000 difference in these costs is too generous and the difference halved for example, that would still leave a significant additional cost to be added to the deck costs adding to the pressure on the GLA's 'headroom'.

94. Again, differences in the costs of elevational treatment and landscaping are in the order of c.£2,000,000. Whilst cheaper treatments might be possible, in my mind this would come at readily identifiable harm to the aesthetic qualities of the scheme. Such a utilitarian approach (not actually supported in Policy CH2 or indeed in its supporting text) runs the risk of diminishing the quality of the development and ultimately risking conflict with other policies of the plan which seek the preservation of designated heritage assets and the enhancement of the Borough's urban fabric. The costs underpinning architectural and landscape quality are justified in the particular circumstances of this case and this further supports the Appellant's viability picture. This consolidates the position set out above to a further degree.

Professional Fees

95. There is a difference between the main parties in relation to the percentage to be applied to professional fees. Whilst there is consensus that 12% is appropriate for the refurbishment element of the programme, in respect of other areas the GLA determine 10% whilst the Appellant maintains 12% is a more accurate reflection of fees. This is based on RICCS New Rules of Measurement and benchmarking against other projects. Whilst there is limited detail in these areas, my any standards the new build element of the project is ambitious and protracted in its duration. On a precautionary basis the higher figure is accepted. Even if the difference were again to be split between that parties on this matter it would have only limited effect on the overall construction cost outcomes.

Conclusions on development costs

96. This critical matter of whether the scheme delivers the maximum reasonable amount of affordable housing on the site turn on whether, as the GLA set out, it is able to yield a difference between the BLV of the site and its RLV when the development is complete. By their own agreed numbers, this margin stands at £14,260,450. For most of us this is a very considerable sum, though in the context of the GDV of the scheme it is modest, being approximatly 2% of GDV and 6% of its total costs. As the comparative tables in ID48 demonstrate, this 'headroom' is highly vulnerable not just to an interpretation of development costs but the other key underpinning values of GDV and BLV as well. As the tables

graphically reveal, the GLA would need to carry the day on all of these key viability components to prevail. Or if it were to fail on just one, this would mean the headroom being lost and so to the argument that the site could and should yield more affordable housing. As my reasoning on the costs of the development illustrates, on a firm acceptance of the Appellant's cost figures for the deck alone these significantly exceed the threshold of the GLA's calculations their headroom. Even if these were to be softened by easing some of the percentages on sub-items this would have to be generous to bring the headroom back to any surplus. And then there are the other remaining build costs, which only compound the deck cost picture and would further nullify any softening of the Appellant's numbers. It is clear to me therefore on the matter of development costs alone that the proposed development is in fact providing the maximum reasonable affordable housing and thus accords with the relevant policies of the development plan.

Other viability matters

BLV

97. Much time was taken during the Inquiry exploring, rightly, the other key pillars of viability assessment, BLV, the associated Existing Use Value (EUV) and the legitimacy of applying a premium to the latter. This serves as a good example of the sometimes-Delphic topic of property valuation and of the many nuances and factors that can be used to offer differing but informed professional views on the matter. This is best encapsulated by the approaches to evaluating the EUV, made more complicated here by the dearth of other C2 use sites (the existing planning use for Heythrop) and the decision by the Appellant to hybridize a proxy out of D1 of Sui Generis uses to compensate for this. Such an approach is understood to have its limitations, 'in that it may not in fact reflect the restricted market associated with C2 accommodation specifically'[33]. To compensate for this anomaly, which accounts for an assessment of a limited demand for such a property in what is considered a secondary location in the London context, the GLA adopts a 10% discount to the aggregated value of the C2 use.

98. Such an argument has some cogency as it attempts to mediate a comparison of apples and pears and may reflect a narrower demand for properties with such a planning use. But this does not address the evident high demand for student accommodation in London, especially at competitive rental prices, nor the apparent strong demand for educational type property (especially independent sector education) in such high value residential areas such as RBKC. Moreover, it is difficult to escape the conclusion that any buyer considering the site would look at the character of its former use as an educational institution, with its past mix of residential and visiting students and its teaching functions, and consider the compatibility of any other like use against it. And that is despite the clear 'C2 badge' the site has in use class terms.

99. Indeed, there is no clear or unambiguous evidence that such a 'C2 planning badge' would in fact depress the site's value, given its former function as an academic institution. Moreover, nor is it clear to me how such a perception would transparently translate into a hard 10% discount number. Conclusively, even if a discount were to be considered appropriate, though at less than the 10%

[33] CDG2 page 32 paragraph 13.3

identified, it would do little to assist the GLA's case in light of my critically determinative conclusions on development costs in relation to viability.

GDV

100. Similarly, considerable time was committed to assessing the GDV of the proposals, a factor equally critical to defining the RUV number and any surplus value in the development. The clear difference between the parties here is whether there should be a premium added to the market apartments to reflect their extra care status. The GLA argue this is justified and that any such premium should be applied at 10%. This is justified by the identification of the additional facilities provided in the development and the extra care package – an attractive lifestyle option for those at this stage in their lives with the income or capital to afford it. This is significant because this suggests that there is considerably greater value in the scheme, in fact exceeding the price per square metre agreed on the basis of sale prices for standard high-end residential accommodation.

101. However, the picture is complicated firstly by the limited number of direct extra care comparables in London and secondly that other high-end non-extra care residential developments also provide a range of additional facilities such as pools, gyms, libraries etc. that would tend to mitigate their unique value in the extra care context. This might lead to a conclusion that if a premium were to be applied for the residual extra care offer, this should be at a reduced percentage. Such a scenario was offered by the Appellant in rebuttal evidence[34]. However, this would represent half the GLA's £50,000,000 premium figure and would not be sufficient to carry the GLA argument on GDV. Again, in the light of my conclusions in respect of development costs, this cannot assist the GLA's case on the viability of the scheme.

102. However, such a conclusion still leaves the development making a considerable loss, and begs the question the GLA ask: then why proceed with the scheme and not sell the site on for another purpose? A reasonable question, but not one that development plan policy, nor indeed the planning system, asks of prospective development proposals. As the Appellant responds, proceeding on the hope the development may at a future point return a profit is a matter of commercial risk. Development plan policy demands an open book viability assessment, which has been undertaken. It has been accepted by RBKC and extensively tested during the course of this Inquiry and fund, in critical areas, to be robust. There is no substantive evidence to suggest that there is a degree of 'hidden' value in the scheme, either in a 10% premium on value identified by the GLA, or other uplifts based on KS/VRRA/KCRA's assertions for potential increase in value predicated on speculative modelling of Dovehouse Street sales which would justify the scheme providing more affordable housing. Even if there were to be say a 5% premium in sale value missed, this would still not be sufficient to alter that position.

103. That is not to say that the GLA's and KS/VRRA/KCRA's scepticism is entirely misplaced. The review mechanisms required in the s.106 agreement are both necessary and entirely justified, so as to ensure that any hitherto 'unseen' profit, above that equalising the deficit, is captured for the purpose of providing more affordable housing. It is also critical that the balance of any such mechanism recognises the need to continue to incentivise the development but at the same time ensure that the greater part of the windfall serves to boost affordable

[34] Appendix 6 Rebuttal PoE Mr Kut (Appellant).

housing provision. Whether that recovery mechanism set out in the s.106 has in fact the means to give such an assurance is a matter to which I now turn.

Section 106 Review Mechanisms

104. Schedule 3 of the agreement sets out the framework for a review of affordable housing to ensure that any uplift in GDV the scheme may produce is captured for the purposes of making further provision of affordable housing, preferably on site. This is a sophisticated mechanism incorporating both early and late stage reviews and formulae for calculating any such values. Such an approach is supported by both development plan policy and SPD at Mayoral and local level. Despite the structural differences between the parties there is a fair measure of consensus on some matters and the Appellant has agreed a number of amendments reflecting the GLA's initial concerns[35].

105. Despite this, key differences remain, specifically around GDV, 'breakeven' GDV, air rights costs and late review percentage profit share. The starting point in relation to GDV lies in the established positions of the main party's core evidence in respect of viability. The nub of this difference is the application of a 10% premium on the value of the extra care product identified by the GLA. This, in combination with the other values identified, determines that from the GLA perspective the scheme can yield a surplus. The Appellant argues on the other hand that the scheme yields a loss based on their assessment of values and the non-application of a 10% premium on the extra care product. This is justified on the basis that extra care as a new product and this represents an entrepreneurial risk they are willing to make. It is this position on GDV by which the Appellant justifies the Breakeven GDV significantly above (25% or £136,155,828 higher by the GLA's calculations) that identified in their main evidence, in effect covering the identified shortfall. I have concluded that the Appellant's arguments on viability are robust and that in respect of GDV that the 10% premium on the value of the extra care product cannot be justified. It follows therefore that the with all matters considered, there is an identified shortfall and therefore deficit. It is both logical and necessary for a Breakeven GDV to be identified so that actual profit above this margin can be identified and directed appropriately towards the provision of additional Affordable Housing. So given my conclusions on GDV above I consider it appropriate for the review mechanism to incorporate a Breakeven GDV at the level indicated.

106. In the definitions of the agreement 'Development Costs' is defined as 'the total cost of constructing the development (including the Step Free Access provision) with other development costs, all finance costs, marketing fees and other professional fees calculated at the % rates specified in the Statement of Common Ground'. Formula 3 of the Late Stage Review Contribution in Annex 1 to schedule 3 also identifies D= as 'Development costs incurred at the time of the review together with the amount of any costs incurred or to be incurred or payments made or to be made (or, if not paid as a lump sum, the capitalised value at the relevant date of calculation) by the Owner in connection with the rights to construct the deck'[36]. These references both suggest, as the GLA point out, that the acquisition of the air rights to build the deck of the underground track are to be included in the late stage review calculation. These costs, estimated by the Appellant to be no less than £8,000,000, had previously been

[35] These were set out in their initial note of the 23 January 2020 (ID6) and subsequently addressed in the Appellant's note of the 5 February 2020 (ID36).
[36] Page 55 signed and dated section 106 agreement.

omitted from the costs assessed as part of scheme viability. This cost is in my view effectively one paid for land and so was rightly excluded from the viability calculations and so should also be excluded from any review calculations. Any such Late Stage Review evaluation should expressly exclude this sum, or any such other sum negotiated prior to the review, as part of its consideration.

107. At paragraph 3.21 of the Appellant's 5 February 2020 note in respect of Late Stage Review it makes clear that any surplus arising at this stage should be split 60% (affordable housing) - 40% (Appellant), as suggested by the GLA. This balance was again codified in Formula 3 Late Stage Review Contribution in the draft agreement 'x0.6'[37]. In the signed and dated agreement this number had been amended to 'x0.5', suggesting that the split was now to be 50%-50% to each party. This change in split has not been explained or discussed and no explanation has been forthcoming once it had been identified by the GLA. In the absence of any justification for the change I remain of the view the split applied in any late stage review should be the one giving the greater balance of the surplus to further affordable housing provision. For the avoidance of doubt these numbers should reflect the initially agreed 60%/40% split.

108. In its substance therefore the provisions within schedule 3 for the review of affordable housing through means of early stage and late stage review are reasonable and necessary to make the development acceptable in planning terms. They are proportionate but only insofar as either of the review mechanisms take full account of the revisions identified and required above.

Other Section 106 matters

109. Schedule 2 of the Agreement sets out the owner's obligations, the first of which are the provisions of the extra care facilities. Aside from setting the parameters of these facilities it also assures the provision of an Extra Care Facilities Management Plan and the appointment of a health care provider to run them. Such provisions are entirely necessary to assure the continued operation of the facility as one for extra care, they are thus directly related to it, they are proportionate in their provisions and are necessary to make the development acceptable in planning terms. They are therefore afforded weight.

110. Schedule two also sets out the provisions for the affordable housing on the site which are identified as intermediate rented housing for the life of the development. With the quantum of affordable units set by the viability assessment set out above, I conclude such provision to be proportionate, it is on the site and it is necessary in the policy context set out above to make the development acceptable in planning terms. It is therefore afforded due weight.

111. There are also provisions to secure management plans for the Community Hall, the Café and open space and a safeguarded public route through the site. These are community facilities the provision and management of which are integral to the development and being directly related to, proportionate in scope and necessary to make the development acceptable in planning terms, they too are afforded due weight.

112. The largest financial contribution (£4,000,000) set out in schedule two of the Agreement relates to Step-Free Assess (SFA) to Kensington High Street Underground Station. Use of the station by residents of the scheme is a relevant

[37] Page 54 ID35.

consideration in assessing modal split of travel patterns in relation to trip generation. I am persuaded that a significant number of future residents, because of the proximity of the site to the station, would wish to use that convenient car-free mode of metropolitan travel. TfL have a fully costed scheme for the provision of SFA at the station with full project costs set at £11,239,000. RBKC are committed to setting aside capital match funding and the improvements are supported by local development plan policy. On a CIL Regulation and Framework compliance basis I conclude this contribution is directly related to the development, is proportionate and is necessary to make the development acceptable in planning terms. I give it significant weight accordingly.

113. Further contributions are secured for Local Procurement, Construction and Employment training on the site, ensuring construction skills are secured and enhanced through the life of the construction of the development adding to the skills base of the borough. These would be related to the site, are calibrated through SPD guidance and so proportionate and are necessary to make the development acceptable in planning terms, they are also afforded due weight.

114. Prevision is also made through a financial contribution for the continued support for the Dyslexia Training Centre currently on the site. Again, given its association with the site, its proportionality in relation to current provision and the necessity for its maintenance in order that the development be considered acceptable in planning terms, this contribution is also afforded due weight.

115. Contributions are also secured to cover the costs of validating and monitoring the Demolition and Construction Management and Travel Plans. These measures are essential to ensure the development is made acceptable in planning terms, are directly related to it and have been agreed as proportionate. They are given due weight accordingly.

116. Provision is also made for a financial contribution towards Carbon Offsetting to mitigate a shortfall in meeting carbon zero development targets. As a major development this is necessary in planning terms, proportionate and directly related to the development itself. It too is afforded weight accordingly.

117. Schedule 2 also makes provision for a financial contribution towards Public Art. Such an approach is consistent with the RBKC Public Art Strategy and is thus recognised as proportionate, it would be directly related to the site and as complimentary to architectural and landscape attributes of the scheme, it is necessary in planning terms. Due weight is afforded the contribution accordingly.

118. Within the second schedule there is also a provision for a financial contribution towards highway repairs. Given the duration of the project and the intensity of use this would represent to the local highway network, this is manifestly justified and therefore necessary to make the proposals acceptable in planning terms. Appropriately calibrated and directly related to the development, these too merit due weight.

119. Other provisions within the second schedule include an exclusion of residents from local parking permit schemes, provisions for a Development Agreement, the timing of occupancy for the market dwellings, definitions in relation to works to trees as a signifier of commencement, the formal adoption of highway land and associated stopping up of the highway. All are directly related to the development, are reasonable and proportionate in their provisions and are

necessary to make the development acceptable in planning terms. All are afforded due weight accordingly.

120. In summary therefore I conclude that all matters addressed in Schedule 2 of the agreement are in compliance with the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and thus also with paragraph 56 of the Framework and so are afforded due weight.

Other CIL matters

121. RBKC also note in their Officer Report[38] that, based on a floorspace calculation, the proposal would require a payment of approximately £7,496,501 towards funding additional infrastructure under the Borough's Community Infrastructure Levy, with a further payment of approximately £1,219,150 towards funding Crossrail under the Mayor for London's Community Infrastructure Levy.

Planning Balance and Conclusions

122. The GLA's direction of refusal of this case is founded on a view that in the face of a compelling and fully acknowledged need for affordable housing in London, this proposed development has failed to demonstrate that it has provided the maximum reasonable amount of affordable housing on the site. Where the value of such a development is so great and the provision of affordable housing so limited, it is understandable that the GLA wished to review such an outcome. Moreover, the GLA set about challenging this balance of provision in a thorough and tenacious manner, testing each of the key and sub-constituents of the viability model presented by the Appellant. It is very telling that after all the forensic analysis into BUV, DCs and GDV the margin for difference is relatively small, with the GLA establishing a financial 'headroom' for the scheme of £14,260,450, or approximatly 2% of GDV as determined by the GLA. Inevitable this margin means that differing conclusions in respect of any one of the key values in the assessment may erode or consume this margin. My assessment of the evidence establishes that such critical variations in the values do exist. On the particular matter of DCs I have found that these costs on their own are sufficient to consume the 'headroom' identified by the GLA. It is on these terms that the premise set out by the Appellant, and accepted by RBKC, that the scheme does deliver the maximum reasonable amount of affordable housing on the site is accepted. The proposals therefore accord with Policy CH2 of the RBKCLP, Policy 3.12 of the LP and Policies H4 and H5 of the draft new LP(ItP) which all parties agree may be afforded substantial weight.

123. Of course, there were a number of other matters before the Inquiry that were cogently and robustly made, not least amongst them the effect of the development on highway safety, the free flow of traffic and the amenity of local residents. It may sometimes be concluded that such issues, in the main raised by local residents, 'always attend such development proposals'. Given the scale, complexity, particular geographic circumstances and extensive duration of this scheme and its construction, I have not doubt as to the legitimacy of the concerns and apprehensions of local residents in respect of this endeavour. Mitigating the adverse effects of construction traffic in this regard is absolutely critical to addressing these concerns and after due consideration, I conclude that the securing of demolition and construction management plans through conditions is the appropriate approach to achieving this. There must be some

[38] Section 9 of Appendix 1 of RBKC's Pre-Inquiry Statement of Case CDD9.

assurance to all parties that these mitigation measures have to work, both to safeguard local residents and that the development can proceed in accordance with them – if it cannot, the project itself is at risk. Moreover, whilst the development may result in a modest increase in traffic to and from the site, this would not be significant nor severe. For these reasons and these set out in more detail above, the proposals would accord with Policies CL5, CL7 and CT1 of the RBKCLP, with the parameters of the HCPBSPD and paragraph 109 of the Framework.

124. Similarly, with regard to the threat of increased crime as a result of the development I have concluded that the full openness of the site, as secured through condition 10, would accord with policies CL1, CL2 and CR4 of the RBKCLP.

125. I have concluded that whilst in accord with Policy CK1 of the RBKCLP in respect of social and community uses and their appropriate mix on the site, the proposals would result in the loss of an education facility (without justification) and so conflict with Policy 3.18 of the LP and Policy S3 of the draft LP (intend to publish version). As a clear breach of development plan policy (though not one identified by the GLA) this requires a moderate degree of weight being apportioned against the proposals in the planning balance. The loss of the MUGA, as a conflict with development plan policy also merits modest weigh in the balance against the proposals.

126. The key remaining area of local and national policy, and statutory expectations relates to the effect of the development on designated heritage assets. As I set out above, there are clearly identified heritage harms as a result of the development, most specifically the loss of St Andrews Hall and The Cottage. The latter is compounded by the harm this loss would have on the character and appearance of the KSCA. Both outcomes are contrary to the expectations of the relevant sections of the Act[39], to those set out in paragraphs 193 and 194 of the Framework and thus to local development plan policy that seeks to support these statutory and national policy objectives. There can be no ambiguity that these harms and policy breaches are matters to be accorded considerable importance and weight in the planning heritage balance anticipated in paragraphs 195 and 196 of the Framework.

127. However, set against these harms are a raft of public benefits, set out in the heritage balance above, including enhancements to listed buildings and significant enhancements to the KSCA as a whole and to its setting. Added to these are very significant wider townscape benefits, significant improvements to public access to the site and connectivity within the wider area. There are benefits in the form of additional green and open space and to living conditions of local residents through auditory mitigation. There is also the provision of a significant number of homes and those specifically for older people for which there is an acknowledged need and finally the structural benefit of unlocking the site to yield that balance of all such benefits identified above.

128. When these respective factors are aggregated and set in the final planning balance, although I attach considerable importance and weight to the identified heritage harms, and appropriate weight to the breach of policy in respect of the loss of educational and sport facilities, these are clearly and demonstrably

[39] Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

outweighed by the very considerable combined public benefits the scheme would bring forward. On balance then, with the proposals according with the policies of the development plan as a whole, and for the reasons set out above, the appeal should succeed.

Conditions

129. The Appeal being allowed, I attach a range of conditions, the first two amongst which set the standard duration for the commencement of the development and a condition requiring that, unless where identified separately, the development be carried out in accordance with the submitted plans. Both are required to assure certainty.

130. Some conditions, for example 14 and 15 in respect of construction and demolition management plans addressing living conditions of local residents and the safety of highway users, have dual cross-cutting purposes and so are referenced repeatedly in the reasoning below. This is for completeness and to assure that reasoning for the application of all conditions is fully addressed.

131. Conditions 3, 4, 5, 6, 7, 8, 9, 13, 39 and 40 in respect of the detailed design and detailing of the residential blocks, the deck and landscape proposals are required to assure a satisfactory appearance of the development in the interests of the character and appearance of the area. Conditions 11, 12, 14, 15, 18, 20, 21, 22, 28, 29, 30, 31, 32, 33, 34, 46, 56 and 60 are required across a range of amenity issues, to safeguard the living conditions of existing residents both during and after construction, and future residents of the scheme. Conditions 14 and 15 securing demolition and construction management plans are required to fully mitigate the effects of all associated construction and demolition traffic, both in terms of highway safety, the free flow of traffic and safeguarding of present levels of air quality. Conditions 16, 17 and 18 are also required to ensure the safety of highway users and the free flow of traffic in the locality of the development during in the interests of existing local residents, future residents and other users of the highway network and. They will also assure of adequate provision of non-car transport options for residents and that parking is appropriately managed on the site. A specific condition, 19, is required to secure a method statement assuring the operational integrity of the London Underground network during and after the construction of the development. Conditions 21, 22, 23, 24, 25, 26 and 27 are also required across a range of matters associated with the development to safeguard air quality during and after the construction, both in relation to the living conditions of local residents (see also above) and in respect of safeguarding air quality within the borough more generally. Conditions 24 and 25 have also been modified to explicitly reference the relevant sections of the Air Quality Assessment submitted.

132. Condition 60 is required to ensure that a comprehensive code of construction is established for the development, in the interests of the sound and safe management of the local environment and to assure the safeguarding of living conditions of local residents during the extensive course of construction of the scheme.

133. Conditions 35 and 37 are required to assure the safeguarding of existing water management in the vicinity of the site and ensure the efficient management of water resources as a result of the development. Condition 36 is necessary to secure the submission of a Flood Risk Assessment and Drainage Strategy to fully

mitigate the risk of flooding that might arise as a result of the development. Conditions 40, 41, 42, 43 and 44 are required to safeguard landscape planting on the site secured through condition 39 (detailed landscape proposals) and to safeguard existing trees on the site both during and after construction, thus assuring their contribution to the character and appearance of the area. Condition 38 is required to safeguard and support current and future biodiversity on the site through the provision of nesting opportunities for birds and mammals on the site. Conditions 47 and 48 are necessary to secure levels of energy efficiency on the site in the interests of mitigating climate change and contributing to sustainable development. Conditions 49, 50, 51, 52, 53, 54 and 55 are required to properly mitigate the risk of ground contamination and any adverse effects this may have on current and future residents on the site. Condition 45 is required to ensure the effective management of refuse and recycling materials generated by the completed development in the interests of residents, users and adjacent occupiers, as well as waste management agencies.

134. Condition 46 is also required to secure a Site Waste Management Plan of the development. Given the scale and scope of the development proposed it is critical that the disposal of all waste material relating to both demolition and construction is comprehensively addressed in order to safeguard the local environment and living conditions of residents.

135. Condition 56, aside from a broad assurance that all living condition matters will be fully addressed during construction is necessary for securing the services of an appropriately qualified engineer, given the scope and complexity of engineering matters on the site and the need to ensure these diverse operations are effectively coordinated.

136. Condition 57 securing a fire strategy of the site is also a clear necessity given the scale, mixed use and specific occupancy characteristics of the proposed development, safeguarding the safety and wellbeing of all those on the site.

137. Condition 10 is dealt with in the paragraphs [51-58] relating to crime above.

138. Conditions 14, 15, 19, 20, 21, 22, 23, 41, 43, 44, 46, 50, 51, 56, 57, 58, 59 and 60 all require the submission of matters prior to the commencement of development on the site. Some of these relate to practical necessity whilst others are required to assure the regulation and management of the development from the outset because of the sensitivities relating to them. I am satisfied that there is, in all cases, a reasoned justification for each of these pre-commencement conditions. Other conditions (36, 49-55) allow for the commencement of demolition works prior to the submission of details prior to commencement of development. This too is a reasonable and necessary requirement.

139. Condition 60 is necessary in order to secure a Code of Construction Check List and Site Management Plan and to ensure copies are in place on the property record. This is to assure that the purposes of the plan safeguard living conditions of adjacent occupiers and assure the safety and convenience of highway users during the course of construction.

140. Conditions 61 and 62, agreed as additions at the Inquiry, are also required to ensure that a programme of recording of historic structures on the site and below ground archaeology through the submission of respective schemes of

investigation. Both are required to safeguard areas of significance of the site that may be secured through record.

141. The Appellant, after the close of the Inquiry, asked that consideration be given to the attachment of a condition facilitating the phasing of the scheme, a matter not raised in any of the evidence before the Inquiry. Whilst on its own this may not appear problematic, the GLA raised the pertinent point that this may have a collateral effect on the balance of values in the viability assessments and so could potentially materially affect outcomes. These effects may relate to both the balance of the viability arguments themselves and to the review mechanisms contained in the s.106 agreement. On a precautionary basis therefore, I determine not to attach the condition to safeguard the evidence before me and my reasoning that flows from it.

Conclusion

142. For all the reasons set out above and having considered all matters raised in evidence and during the Inquiry, I conclude the appeal should be allowed.

David Morgan

Inspector

Schedule of Conditions

1. **Time Limit** The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2. **Compliance with approved drawings** Except as required by Conditions 3 - 10, 12, 16, and 39 the development shall not be carried out except in complete accordance with the details shown on submitted plans PA-001 REV 0; PA-002 REV 0; PA-003 REV 0; PA-005 REV 0; PA-007 REV 0; PA-009 REV 0; PA-098 REV 0; PA-099 REV 0; PA-100 REV 0; PA-101 REV 0; PA-102 REV 0; PA-103 REV 0; PA-104 REV 0; PA-105 REV 0; PA-106 REV 0; PA-107 REV 0; PA-108 REV 0; PA-201 REV 0; PA-202 REV 0; PA-203 REV 0; PA-204 REV 0; PA-205 REV 0; PA-207 REV 0; PA-250 REV 0; PA-251 REV 0; PA-252 REV 0; PA-253 REV 0; PA-254 REV 0; PA-255 REV 0; PA-256 REV 0; PA-257 REV 0; PA-258 REV 0; PA-259 REV 0; PA-260 REV 0; PA-261 REV 0; PA-262 REV 0; PA-263 REV 0; PA-265 REV 0; PA-266 REV 0; PA-267 REV 0; PA-268 REV 0; PA-269 REV 0; PA-270 REV 0; PA-300 REV 0; PA-301 REV 0; PA-302 REV 0; PA-303 REV 0; PA-304 REV 0; PA-305 REV 0; PA-306 REV 0; PA-307 REV 0; PA-246 REV 0; PA-245 REV 0; PA-244 REV 0; PA-243 REV 0; PA-242 REV 0; PA-241 REV 0; PA-240 REV 0; PA-008 REV 0; PA-006 REV 0; PA-004 REV 0;

3. **Submission of details - 23 and 24 Kensington Square (Buildings 1A, 1B, and 2)** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: For Building 1A (a) Boundary wall, gates, and door details fronting Kensington Square and onto rear central gardens; (b) Detailed design of gatehouse structure between Buildings 1A and 2; (c) Detailed design for the reinstatement of the front facade at lower floor levels including stuccoed masonry; and (d) Detailed design of the passageway beneath Building 1A from Kensington Square. For Building 1B (e) Detailed design of the portico including stairs and entrance door; (f) First floor balcony, including railings; (g) Reinstatement of the front facade at lower levels, including stuccoed masonry (including sections at 1:5) (h) Rear terrace at lower ground floor, including boundary and party walls and gates; and (i) Boundary details of communal private gardens attached to rear terrace. For Building 2 (j) Detailed design for any new openings, doors, and windows to flank wall; (k) Boundary wall, gates, and door details fronting Kensington Square; All details should be submitted at a scale of 1:5 or 1:20 or as appropriate.

4. **Submission of details - Building 3 ONLY** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: (a) Detailed elevations, plans and sectional drawings of external windows (including reveals, cills, lintels, and canopies) at a scale of 1:20; (b) Detailed elevations, plans and sectional drawings of external doors (including the main entrance doors and entrance doors for services and associated louvres) at a scale of 1:20; (c)

Detailed drawings of all metalwork; (d) Elevation drawings showing details of all external finishes; (e) Samples, including sample panels, provided and retained on site until completion of the development for inspection of all external finishes including mortar, brickwork (including bonding, jointing and pointing), stonework (including precast and fluted), textured brickwork, slate, and other roofing finishes.

5. **Submission of details - Building 4 ONLY** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: (a) Detailed elevations, plans and sectional drawings of external windows (including reveals, cills, lintels, and canopies) at a scale of 1:20; (b) Detailed elevations, plans and sectional drawings of external doors (including the main entrance doors) at a scale of 1:20; (c) Detailed drawings of all framing, thresholds, the new pitched roof form and ceiling; (d) Elevation drawings showing details of all external finishes; (e) Samples, including sample panels, provided and retained on site until completion of the development for inspection of all external finishes including glazing, framing, ceiling and roof finishes.

6. **Submission of details - Building 5 ONLY** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: (a) Detailed elevations, plans and sectional drawings of external windows (including reveals, cills, lintels, and canopies) at a scale of 1:20; (b) Detailed elevations, plans and sectional drawings of external doors (including the main entrance doors and entrance doors for services and associated louvres) at a scale of 1:20; (c) Detailed drawings of all metalwork; (d) Elevation drawings showing details of all external finishes; (e) Samples, including sample panels, provided and retained on site until completion of the development for inspection of all external finishes including mortar, brickwork (including bonding, jointing and pointing), stonework (including precast and fluted), slate, and other roofing finishes.

7. **Submission of details - Building 6 ONLY** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: (a) Detailed elevations, plans and sectional drawings of external windows (including reveals, cills, lintels, and canopies) at a scale of 1:20; (b) Detailed elevations, plans and sectional drawings of external doors (including the main entrance doors and entrance doors for services and associated louvres) at a scale of 1:20; (c) Detailed drawings of all metalwork; (d) Elevation drawings showing details of all external finishes; (e) Samples, including sample panels, provided and retained on site until completion of the development for inspection of all external finishes including mortar, brickwork (including bonding, jointing and pointing), stonework (including precast and fluted), slate, and other roofing finishes.

8. **Submission of details - Building 7 ONLY (including entrance loggia)** Notwithstanding Condition 2, the relevant part of the development shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved: (a) Detailed elevations, plans and sectional drawings of external windows (including reveals, cills, lintels, and canopies) at a scale of 1:20; (b) Detailed elevations, plans and sectional drawings of external doors (including the main entrance doors and entrance doors for services and associated louvres) at a scale of 1:20; (c) Detailed drawings of all metalwork and brasswork; (d) Elevation drawings showing details of all external finishes; (e) Samples, including sample panels, provided and retained on site for inspection of all external finishes including mortar, brickwork (including bonding, jointing and pointing), stonework (including precast and fluted), glazed terracotta, brass, slate, and other roofing finishes.

9. **Submission of Details - Public Deck Access** Notwithstanding Condition 2, no development shall commence on the construction of the deck until the detailed design of new public staircases, lifts, and other access from garden to deck level, including materials, treads, risers, anti-slip devices, and lighting have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved.

10. **Amended Details Required - Kensington Square Public Entrance** Notwithstanding Condition 2, prior to occupation of the Extra Care Facility, revised drawings of the public entrance to the site from Kensington Square, demonstrating that the entrance is ungated and accessible at all hours for 364 days a year, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter maintained.

11. **Terrace Screening Details** Prior to occupation of the Extra Care Facility, full details of the proposed screening for roof terraces shall be submitted to and approved in writing by the local planning authority. The screening shall be installed and maintained in accordance with the details so approved. The extra care facility shall not be occupied until the approved screening scheme has been fully implemented.

12. **No Floodlighting Approved** Notwithstanding Condition 2, no floodlighting equipment is to be attached to the buildings or placed within the landscaping and used to floodlight the buildings without the submission of a separate application and express consent of the local planning authority.

13. **Rooftop Plant** No rooftop plant, water tank, lift motor room, or other structure or appliance, shall be erected upon the roof except as in accordance with Condition 2.

14. **Demolition Traffic Management Plan (DTMP)** No development shall commence until a Demolition Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should include: a) routeing of demolition, 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 preparation, demolition, excavation and construction work associated with the development; h) work programme and/or timescale for each phase of preparation, demolition, excavation and construction work associated with the development; i) details of measures to protect pedestrians and other highway users from construction activities on the highway; j) a strategy for coordinating the connection of services on site with any programme work to utilities upon adjacent land; and k) where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, position of nearby trees in the highway or adjacent gardens, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements. The development shall be carried out in accordance with the approved Demolition Traffic Management Plan.

15. **Construction Traffic Management Plan (CTMP)** No development (save for demolition) shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The statement should 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 preparation, excavation and construction work associated with the development; h) work programme and/or timescale for each phase of preparation, demolition, excavation and construction work associated with the development; i) details of measures to protect pedestrians and other highway users from construction activities on the highway; j) a strategy for coordinating the connection of services on site with any programme work to utilities upon adjacent land; and k) where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, position of nearby trees in the highway or adjacent gardens, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements. The development shall be carried out in accordance with the approved Construction Traffic Management Plan.

16. **Scooter and Cycle Parking** Notwithstanding Condition 2, prior to commencement of works on the superstructure of the Extra Care Facility, details of all scooter and bicycle storage facilities across the site including the storage and the allocation of the spaces to the uses across the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved amended drawings.

17. **Car Park Management Plan** Prior to the first use of the basement car park in the Extra Care Facility, a Car Park Management Plan should be submitted to, and approved in writing by the local planning authority. This should

include: a)details of the layout of the car park, demonstrating the final allocation of car, cycle and scooter spaces for the different uses; b) the provision of 20% of car parking spaces with electric charging points, a further 20% with a passive energy supply for future use, c)details of the controls of means of entry to the car park; and, d) a proactive regime of car lift maintenance. The development shall be carried out, and the car park subsequently managed, in accordance with the details approved.

18. **Delivery and Service Management Plan** Prior to the occupation of the Extra Care Facility a final Delivery and Service Management Plan (including hours of servicing) shall be submitted to, and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved, and so maintained thereafter.

19. **LUL Infrastructure Protection** No development shall commence (save for works to Building 1A, 1B, and 2) until a detailed method statement which accommodates the location of the existing London Underground structures has been agreed with London Underground Limited and has then been submitted to and approved in writing by the local planning authority. The statement shall include details of all foundations, basement and ground floor structures and any other structures below ground level, including piling (temporary and permanent). The development thereafter shall be carried out in accordance with the approved design and method statements.

20. **Considerate Constructors Scheme (CCS)** No development shall commence until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.

21. **Demolition Environmental Management Plan (DEMP)** No demolition works shall commence until a site-specific Demolition Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The plan should include methods to mitigate any adverse impacts to air quality from demolition traffic, a dust risk assessment and the appropriate mitigation measures to minimise dust and emissions based on the Mayor's SPG 'The Control of Dust and Emissions during Construction and Demolition'. This should include an inventory and timetable of dust generating activities; dust and emission control methods, measures to control vehicle emission and where appropriate air quality monitoring. The development shall be carried out only in accordance with the Plan so approved

22. **Construction Environmental Management Plan (CEM**P) No development, save for demolition, shall commence until a site specific Construction Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan should include methods to mitigate any adverse impacts to air quality from construction traffic, a dust risk assessment and the appropriate mitigation measures to minimise dust

and emissions based on the Mayor's SPG 'The Control of Dust and Emissions during Construction and Demolition'. This should include an inventory and timetable of dust generating activities; dust and emission control methods, measures to control vehicle emission and where appropriate air quality monitoring. The development shall be carried out only in accordance with the Plan so approved.

23. **Low Emission Strategy** No development shall commence until a low emission strategy has been submitted to and approved in writing by the local planning authority. The strategy shall detail how the impacts of the development to existing receptors are to be mitigated and include a comparison of emissions against London Plan emission benchmarks for buildings and transport and Band B emission standards for combustion plant. This shall include all traffic and combustion plant emissions generated by the development and include measures to reduce emissions from the operational development. The strategy shall detail the emission reduction strategies to be incorporated including proposals for boiler /plant abatement equipment. Measures for transport emissions should include electric charging facilities in parking areas, permit free, a travel plan, and a delivery and service plan. The development shall be carried out only in accordance with the strategy so approved.

24. **Combustion Plant (Pre-Installation)** Prior to installation or use of any combustion plant, details of the selected combustion plant (including abatement equipment if required), their emissions and maintenance schedules shall be submitted to and approved in writing by the local planning authority. The details shall include evidence to show that any chimney stack/flue will be located so that it is away from ventilation intakes or accessible areas and at a sufficient height and discharge velocity to disperse the exhaust emissions (a minimum of 3m above accessible areas and neighbouring buildings). The CHP and the Boilers shall have NOx emissions not exceeding that as reported in Section 7.2 the Air Quality Assessment (ARP-REP-A-02 Issue 3, 24 August 2018). The development shall be carried out only in accordance with the details so approved.

25. **Combustion Plant (Pre-Occupation)** Prior to occupation of the Extra Care Facility, evidence that emissions from CHP and boilers comply with limits in Section 7.2 of the Air Quality Assessment (ARP-REP-A-02 Issue 3, 24 August 2018) shall be submitted to and approved in writing by the local planning authority. Evidence shall include a test certificate and an equipment maintenance schedule.

26. **Non-Road Mobile Machinery Non-Road Mobile Machinery (NRMM)** The machinary shall not be used on the development site unless details of all NRMM to be used are submitted to and approved in writing by the Local Planning Authority. All NRMM shall meet as minimum the Stage IIIA emission criteria of Direction 97/68/EC and its subsequent amendments unless it can be demonstrated that Stage IIIA equipment is not available. An inventory of all NRMM shall be registered on the NRMM register https://nrmm.london/user-nrmm/register. All NRMM shall be regularly serviced and service logs kept on site for inspection. Records shall be kept on site which details proof of emission limits for all equipment.

27. **Ventilation Scheme** No development shall commence on the superstructure of the Extra Care Facility until details of a system of mechanical ventilation, with filtration to remove airborne pollutants, for receptor locations as recommended in the Air Quality Assessment (ARP-REP-A-02 Issue 3, 24 August 2018) has been submitted to and approved in writing by the local planning authority. Filtration should ensure that the national Air Quality Objectives for Nitrogen Dioxide (NO2) and Particulate Matter (PM10) are not exceeded in receptor locations and shall be supported with dispersion modelling to check compliance. The approved system shall be installed before occupation of the Extra Care Facility. The system shall be checked and maintained annually, filtration media replaced as necessary and an annual report submitted to the local planning authority for approval. The development shall be carried out only in accordance with the details so approved.

28. **Noise from building services plant and vents** Noise emitted by all external mechanical service plant, or from any louvre or ventilation grill, when operating in combination or individually, shall be -10dB(A) below the lowest existing measured background LA90(15min) level measured or predicted at 1.0m from the nearest residential window and/or at a height of 1.2m above any adjacent residential garden, terrace, balcony or patio at any time when the plant is operating. Where the noise is tonal it shall be -15dB(A) below. The plant shall be serviced regularly in accordance with manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is unable to comply with this Condition, it shall be switched off and not used again until it is able to comply.

29. **Supplementary Acoustic Report** No plant shall be installed until a supplementary acoustic report has been submitted to and approved in writing by the local planning authority. The report shall demonstrate compliance with condition 28 (noise from building services and plant) and the plant noise emission limits as detailed in Section 4.3.3 and Table 10, page 22, and Section 7, page 34, of the Planning Noise and Vibration Report (prepared by Sandy Brown Associates LLP, dated 24 August 2018, ref. 17430-R04-H). The development shall be carried out only in accordance with the details so approved.

30. **Facade Insulation** No development shall commence on the construction of the superstructure of the Extra Care Facility until full facade construction details of all buildings, including glazing, with commensurate composite sound insulation performance predictions, shall be submitted to and approved in writing by the local planning authority. The approved details shall show that noise levels within habitable rooms shall comply with the recommendations of BS8233: 2014 'Guidance on sound insulation and noise reduction for buildings', and the indoor ambient noise levels for dwellings as detailed in Table 4 of the Standard. The recommendations contained within Section 6 of the Planning Noise and Vibration Report (prepared by Sandy Brown Associates LLP, dated 24 August 2018, ref. 17430-R04-H) shall also be adopted and implemented in full. The development shall be carried out only in accordance with the details so approved.

31. **Re-Radiated Noise Limits and Mitigation Re-radiated noise** Noise as a result of vibration from the passage of underground trains affecting the

development, should not exceed 35dBLAmax(s) within the Extra Care Facility. Where it is predicted that noise from this source will exceed 35dBLAmax(s) then proposals to mitigate re-radiated noise to acceptable levels shall be submitted to and approved in writing by the local planning authority prior to occupation of the Extra Care Facility. The development shall be carried out only in accordance with the details so approved.

32. **Vibration Dose Values Vibration Dose Values (VDV's)**, as defined in BS 6472:2008, shall not exceed those of Table 1 of BS 6472:2008 for 'low probability of adverse comment'. The measured or calculated VDV's, generated as a result of vibration from the London Underground railway tracks affecting the site shall be adjusted as necessary to allow for transfer functions from the ground to the foundations and to upper floors of the proposed development. Where it is predicted that VDV's will exceed the values of Table 1 of BS 6472:2008 for 'low probability of adverse comment' then proposals to mitigate VDV's to acceptable levels shall be submitted to and approved in writing by the local planning authority prior to occupation of the Extra Care Facility. The development shall be carried out only in accordance with the details so approved.

33. **Sound Insulation Between Uses** Prior to commencement of the superstructure of the Extra Care Facility, a scheme of sound insulation, designed to prevent the transmission of excessive airborne and impact noise between the proposed extra care dwellings and the adjacent plant rooms, gym, delivery gates and delivery bay areas shall be submitted to and approved in writing by the local planning authority. The sound insulation shall be installed and maintained only in accordance with the details so approved. The Extra Care Facility shall not be occupied until the approved scheme has been fully implemented.

34. **Anti-vibration mounts for air-conditioning/ extraction equipment** The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

35. **Waste and Water Capacity** The Extra Care Facility shall not be occupied until confirmation has been provided to the local planning authority that either: - all water network upgrades required to accommodate the additional flows from the development have been completed; or - a housing and infrastructure phasing plan has been agreed with the local planning authority to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

36. **Flood Risk Assessment and Drainage Strategy** No development shall commence (save for demolition and temporary works) until a revised Flood Risk Assessment and Drainage Strategy has been submitted to and approved in writing by the local planning authority. The assessment/strategy shall include: a) The specification and location of suitable pump devices to protect the development against sewer flooding; b) The reduction/slowing of surface water run-off rates through SuDS; c) Further information about the proposed SuDS, their structure, specification, maintenance, and final details, including profile and species of green roofs; d) Confirmation / agreement from Thames

Water regarding the acceptability of the proposed total discharge rate (surface water and foul flows) into the combined sewer. The development shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy e) Further information regarding foul water flow rates and connection, and surface water attenuation and connections. The development shall be carried out only in accordance with the details so approved.

37. **Water Efficiency** The dwellings shall achieve compliance with optional requirement G2 (2) (b) and none shall be occupied until Building Regulations approval has been issued for it certifying that these criteria have been achieved.

38. **Artificial Nesting Opportunities** The Extra Care Facility shall not be occupied until details of a scheme of 'artificial nesting opportunities' have been submitted to and approved in writing by the Local Planning Authority. These details shall incorporate bird and bat boxes. The details to be submitted to the local planning authority for approval shall include a timetable for provision and shall be implemented in accordance with the approved timetable and thereafter retained in accordance with the approved details.

39. **Trees and Landscaping – Extra Care Facility and Public Gardens** Notwithstanding Condition 2, prior to commencement on the relevant part of the development a scheme of landscaping for the following areas, to include all existing trees and shrubs and proposed trees (including full details of all tree pits) and shrubs, hard and soft landscaping including pathways and their steps and slopes, lighting, signage, wayfinding signage, enclosures, bins, seating and other furniture, and public art, shall be submitted to and approved in writing by the local planning authority, and the development shall only be carried out and maintained in accordance with the details so approved: (a) All publicly accessible gardens including central garden square, activity lawn, public deck gardens; (b) Communal courtyard areas; (c) Rooftop terraces and gardens; (d) Green roofs; (e) Private gardens for Building 1A; (f) Landscaping of communal private gardens attached to rear terrace for Building 1B; and (g) Private gardens for Building 2;

40. **Planting and Replanting** All tree and shrub planting forming part of the plans and details approved through this planning permission shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner. Any trees or shrubs which, within a period of five years from the first planting and seeding season referred to above, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

41. **Protection of Trees During Construction – Details Required** No development shall commence until full particulars of the method(s) by which all existing trees on the site and adjacent land are to be protected during site preparation, demolition, construction, landscaping, and other operations on the site including erection of hoardings, site cabins, or other temporary structures, shall have bene submitted to and approved in writing by the local planning authority and the development shall be carried out only in accordance with the details so approved.

42. **Trees - Lopping and Topping** For the duration of works the tree(s) existing on the site at the date of this permission shall be protected so as to prevent damage above and below ground, and no tree shall be lopped, topped, or felled, or root pruned, without the prior written approval of the local planning authority.

43. **Trees – Pre-commencement Meeting Condition** Prior to the commencement of development, a pre-commencement meeting shall be held on site and attended by the developer's appointed arboricultural consultant, the manager/foreman, and a representative from the local planning authority to discuss details of the working procedures and agree either the precise position of the approved tree protection measures to be installed or that all tree protection measures have been installed in accordance with the approved tree protection plan.

44. **Trees – Arboricultural Site Supervision** Prior to commencement of the development (including any ground clearance, tree works, demolition or construction), details of all tree protection monitoring and site supervision by a suitably qualified tree specialist, who will submit written reports to the local authority Tree Officer at intervals agreed in writing, shall be submitted to and approved in writing by the local planning authority. The development thereafter shall be implemented in strict accordance with the approved details.

45. **Refuse and Recycling** Prior to occupation of each of the market housing, the affordable housing, and the extra care facility, details of the refuse storage arrangements for those buildings, including provision for the storage of recyclable materials, shall be submitted to and approved in writing by the local planning authority. None of the buildings shall be occupied until the approved refuse storage arrangements for that building are in place and all approved storage arrangements shall thereafter be retained.

46. **Site Waste Management Plan (SWMP)** No development shall commence until a SWMP has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

47. **Energy Performance** Prior to occupation of the residential townhouses and affordable homes, confirmation shall be provided to the local planning that the homes achieve 35% improvement over Part L of the 2013 Building Regulations in relation to energy performance.

48. **BREEAM Rating - Extra Care Facility** The Extra Care Facility shall achieve a BREEAM rating of 'Very Good' and within six months of occupation of the facility and a Post Construction Review Certificate shall be issued for it certifying that a BREEAM rating of 'Very Good' has been achieved.

49. **Contamination – Preliminary Risk Assessment Report** No development shall commence (save for demolition or the refurbishment of the existing buildings) until a Preliminary Risk Assessment Report comprising: (i) a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; (ii) information from site inspection; (iii) a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and

(iv) a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials, has been prepared in accordance with CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing, and submitted to, and approved in writing by, the local planning authority.

50. **Contamination – Site Investigation Scheme** No development shall commence (save for demolition or the refurbishment of the existing buildings) until a Site Investigation Scheme has been prepared in accordance with CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing, and has been submitted to, and approved in writing by, the local planning authority.

51. **Contamination – Site investigation and quantitative risk assessment** No development shall commence (save for demolition or the refurbishment of the existing buildings) until a site investigation has been undertaken in compliance with the approved Site Investigation Scheme and a Quantitative Risk Assessment Report has been submitted to, and approved in writing by, the local planning authority.

52. **Contamination – Remediation Method statement** No development shall commence (save for demolition or the refurbishment of the existing buildings) until a Remediation Method Statement to address the results of the Site Investigation Scheme has been submitted to, and approved in writing by, the local planning authority.

53. **Contamination – Verification report** Prior to occupation of the Extra Care Facility the approved Remediation Method Statement shall have been carried out in full and a Verification Report confirming: (i) completion of these works; (ii) details of the remediation works carried out; (iii) results of any verification sampling, testing or monitoring including the analysis of any imported soil; (iv) classification of waste, its treatment, movement and disposal; (v) and the validation of gas membrane placement, has been submitted to, and approved in writing, by the local planning authority.

54. **Contamination – Unexpected** If during development, contamination not previously identified is found to be present at the site, development work shall cease and not be recommenced until a report indicating the nature of the contamination and how it is to be dealt with has been submitted to, and approved in writing by, the local planning authority. The approved measures shall be implemented in full.

55. **Contamination – Long-erm Monitoring Methodology Report** Development shall not be commenced (save for refurbishment of the existing buildings) until a Long-term Monitoring Methodology Report has been submitted to and approved in writing by the local planning authority where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. Upon completion of any such approved monitoring work, a Verification Report demonstrating that no residual adverse risks exists shall be submitted to and approved in writing by the local planning authority.

56. **Professional management of engineering works** No development shall commence until a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed to supervise the construction works throughout their duration and their appointment confirmed in writing to the Local Planning Authority. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer of the afore-described qualification 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 is at that time currently appointed and their appointment has been notified to the local planning authority.

57. **Fire Strategy** No development shall commence until a Fire Strategy has been submitted to, and approved in writing, by the local planning authority. The strategy shall, as a minimum, set out the following (including detailed fire strategy drawings to support an overall fire strategy): (i) details of building construction, methods, products and materials including manufacturers details; (ii) means of escape for building users including suitable stair cores, escape for building users who are disabled or require level access, and evacuation strategy; (iii) features to reduce risk to life including fire alarms, passive and active fire safety measures and management and maintenance plans; (iv) access for fire service personnel and equipment including; how this will be achieved during evacuation, water supplies, provision and positioning of equipment, firefighting lifts, stairs and lobbies, any fire suppression and smoke ventilation, ongoing maintenance and monitoring of these; (v) how provision will be made within the curtilage of the site to enable fire appliances to gain access to the building; (vi) details of how any future modifications to the building will take into account and not compromise the base build fire safety and protection measures.

58. **Recording and Historic Analysis** No demolition of existing buildings or structures shall take place until the implementation of a programme of recording and historic analysis of the buildings and structures which considers structure, architectural detail, has been undertaken. The record shall be submitted to the local planning authority for placing on the application file or other suitable archive as may be agreed in writing with the local planning authority.

59. **Archaeological Work** No development shall take place until completion of a programme of archaeological work in accordance with a written scheme of investigation to have been submitted to, and approved in writing by, the local planning authority, and the development shall take place only in accordance with the detailed scheme so approved.

60. **Code of Construction Checklist and Site Construction Management Plan (SCMP)** No development shall commence until a Code of Construction Checklist and Site Construction Management Plan (SCMP) for the development shall have been approved in writing by the local planning authority and copies of the approved Checklist and Plan, and their written approval, have been submitted to the local planning authority to be placed on the property record.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Izabella Tafur (of Counsel)

She called

Mr Joseph Whitworth BA MPlan

FOR THE GREATER LONDON AUTHORITY:

Ms Morag Ellis (Queen's Counsel) and

Ms Sarah Sackman (of Counsel)

She called

Mr Bernard Duffy MRICS

Mr Dudley Holme-Turner MA MRICS FNARA

Ms Jane Seymore MRICS

Mr Nicholas Ray BA MA

FOR THE APPELLANT:

Mr Lockhart-Mummery
(Queen's Counsel) and

Mr Zack Symonds (of Counsel)

He called

Mr John Bushell Dip Arch RIBA

Mr Michael Savage MSc (Hons) MILT MIHT

Mr Neal Brearley BSC (Hons) MRICS

Mr Nicholas de Lotbiniere BSc Mphil MRTPI MRICS

Ms Emma Cleugh BSc (Hons) MRICS

Mr Neil Armstrong BSc MA MRICS

Mr Jacob Kut MRICS

FOR THE RULE 6 PARTIES (i) (The Kensington Society, Victoria Road Resident's Association, Kensington Court Residents Association) (KSVRRAKCRA):

Mr James Burton (of Counsel)

He called

Mr Michael Bach BSc MSc MS

Mr John Gau CBE

Mr Joseph P Cook

FOR THE RULE 6 PARTIES (ii) (Mrs Lisle-Mainwaring):

Mr Scott Lyness (of Counsel)

He called

Mr Michael Hibbert MSc Dip CE MCIT MIHT MILT

FOR THE RULE 6 PARTIES (iii) (Kensington Square Residents Association):

Ms Mariela Pissioti

INTERESTED PERSONS:

Mr Daniel Moylan

List of Documents (IDs) submitted During the Inquiry

1. Notification of Inquiry time and venue letter
2. Appearances for the Appellant and the Greater London Authority (GLA)
3. Revised Inquiry programme
4. Draft s.106 agreement (version 1)
5. Additional site plans
6. GLA comments on draft s.106 agreement
7. Revised core document list
8. Annex to Ms J Seymour rebuttal
9. Table of values in relation to ID8
10. National Planning Policy Guidance paragraphs on viability

11. Appellant's Opening Statement
12. Royal Borough of Kensington and Chelsea (RBKC) Opening Statement
13. GLA Opening Statement
14. The Kensington Society, Victoria Road Resident's Association & Kensington Court Resident's Association Opening Statement
15. Mrs Lisle-Mainwaring Opening Statement
16. Statement of Common Ground (viability) (GLA/Appellant)
17. A3 Appendix additions NB Appendix A-415-6
18. Financial Viability Assessment Review Addendum Gerald Eve (also CD61)
19. Addendum report – Existing use Value Knight Frank
20. Letter from Gerald Eve on Existing use value
21. Technical rebuttal Addendum J Cook
22. Note on discussions with TfL on Air Rights Acquisition
23. Revised floor plan KF NB PoE Addendum
24. Signed dated SoCG (planning)
25. X3 technical transport papers (Mr Lyness)
26. A3 slideshow companion document (Mr Bushall)
27. Amended wording to condition 10
28. Email from Mr Gau to Appellant February 2018
29. Costed plan for step-free access to Kensington High Street tube station
30. Further information on cost comparables, Mr Duffy's evidence
31. TfL correspondence on trees on the site
32. Details of lease at Aurens
33. Email Mr Gua to Appellant
34. Correspondence to RBKC
35. S.106 Agreement (2nd Draft)
36. Appellant's note on s.106 agreement
37. Correspondence VRARA
38. RBKC CIL compliance schedule
39. List of Consultants
40. Corrections PoE NdeL E7a
41. Draft s.106 agreement GLA comments

42. Rebuttal proof update (PoE Mr D H-T)
43. Updated scheme Appraisal GLA (Ms JS)
44. Closing submissions Mrs Lisle-Mainwaring (Mr Lyness)
45. Closing submissions KS, VRARA &KCRA (Mr Burton)
46. Closing submissions RBKC (Ms Tafur)
47. Amended Conditions
48. Appraisal of effect of unagreed inputs Appellant/GLA
49. Update on GLA comments on s.106 agreement
50. Closing submissions GLA
51. Closing submissions Appellant