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## Appeal Decisions

Site visit made on 26 February 2024

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 July 2024**

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### **Appeal A Ref: APP/E5330/W/22/3295519**

#### **Trafalgar Tavern, Park Row, Greenwich SE10 9NW**

- 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 Trafalgar Tavern Lease Limited against the decision of Royal Borough of Greenwich Council.
  - The application Ref 21/3807/F, dated 22 October 2021, was refused by notice dated 2 February 2022.
  - The development proposed is the erection of a terrorist mitigating balustrade.
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### **Appeal B Ref: APP/E5330/Y/22/3295525**

#### **Trafalgar Tavern, Park Row, Greenwich SE10 9NW**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Trafalgar Tavern Lease Limited against the decision of Royal Borough of Greenwich Council.
  - The application Ref 21/3808/L, dated 22 October 2021, was refused by notice dated 2 February 2022.
  - The works proposed are the erection of a terrorist mitigating balustrade.
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### **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Application for costs**

3. An application for costs was made by Trafalgar Tavern Lease Limited against the Royal Borough of Greenwich Council. This application is the subject of a separate Decision.

### **Procedural Matters**

4. I have taken the descriptions of the development and works from the application forms but have simplified them to remove any superfluous or unnecessary wording. The Council's reasons for refusal refers to the planters that are atop the balustrade and I have considered these as an integral part of the development and works.
5. The application forms and the Council's reason for refusal both describe the development and works as being retrospective. The term 'retrospective' is not development for the purposes of the Town and Country Planning Act 1990 (the

1990 Act) but I have considered the applications on the basis that the development/works described have already been carried out.

6. The appellant criticises the Council's handling of the applications that led to these appeals, including the information requested to validate the applications. The appellant also alludes to the handling of the applications as being inconsistent with those submitted by other applicants. That criticism cannot form any part of my consideration of these appeals, which must be determined purely on the merits of the development and works.

### **Reasons**

7. The Trafalgar Tavern is a Grade II Listed Building within the Greenwich Park Conservation Area and the Maritime Greenwich World Heritage Site (WHS). The south elevation of the Trafalgar Tavern fronts onto Crane Street, the eastern section of which is within the East Greenwich Conservation Area, albeit the development and works are only within the Greenwich Park Conservation Area. The site also adjoins the grounds of the Old Royal Naval College (ORNC), a Grade I listed building and a Scheduled Monument.
8. In determining these appeals, in accordance with sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess and paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Additionally, in line with paragraph 205 of the National Planning Policy Framework (the Framework), I have given 'great weight' to the assets' conservation. The more important the asset, the greater the weight that I attach to it.

### ***Special interest and significance: listed buildings***

9. The List Description indicates that the appeal property was constructed in 1830<sup>1</sup>. The building comprises three storeys with, on the elevation fronting the River Thames, prominent bay features resting on a retaining wall to river below.
10. The special interest and significance of this designated heritage asset derives, in part, from its historic fabric as well as its clear nautical association and from being the work of a well-known architect, Joseph Kay, who also designed Greenwich Hospital. But it also derives in part from its location on a prominent and exposed position on a knuckle of the River Thames, and its location in relation to other listed buildings within the Maritime Greenwich World Heritage Site. The sense of openness of this location, including views of and from the River Thames, provides the setting of the listed building and those nearby. This setting is an important component to the significance of the Trafalgar Tavern as a designated heritage asset.
11. The special interest and significance of the ORNC as a Grade I listed building derives from its exceptional historical and architectural interest, in particular as an example of the work of esteemed architect Sir Christopher Wren. The setting of that listed building fronting the River Thames, with all the historical associations of that relationship, forms an important part of the significance of that designated heritage asset.

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<sup>1</sup> Statutory Address: The Trafalgar Tavern, Park Row SE10 List Entry Number: 1078950

***Special interest and significance: conservation area***

12. The significance of the Greenwich Park Conservation Area as a whole is largely derived from the collection of nationally important buildings within it, including the ORNC, the National Maritime Museum and the Royal Observatory. These buildings are of exceptional architectural and historical interest and are set amidst the open space of Greenwich Park. The conservation area includes some of London's most defining views, including the iconic view of Queen's House through the ORNC, this being part of the symmetry of the buildings arranged around the 'Grand Axis'. The spacious and disciplined forms of the institutional buildings contrast markedly with the intimacy of the streets on either side.
13. In relation to these appeals, by virtue of its historic and architectural integrity, the Trafalgar Tavern positively contributes to the character and appearance of the Greenwich Park Conservation Area as a whole and thereby to its significance as a designated heritage asset. In this respect, the Trafalgar Tavern is one of the principal buildings in this conservation area<sup>2</sup>.

***Special interest and significance: Maritime Greenwich World Heritage Site***

14. The Masterplan for the WHS identifies its Outstanding Universal Value (OUV) and thus significance as being a number of key attributes that together help tell the story of Britain at sea, and of world time-keeping, navigation and exploration. The key attributes of the WHS include architecture, the masterplan of buildings and designed landscape, The Grand Axis and the relationship with the River Thames. The WHS is a designated heritage asset of the highest significance.

***Special Interest and Significance: Scheduled Monument***

15. The buildings and grounds of the ORNC are designated as a Scheduled Monument in recognition of their historic, architectural and artistic importance. Scheduled Monuments are identified within the Framework as designated heritage assets of the highest significance<sup>3</sup>.

**Appeal A**

16. The main issues are:

- whether the development preserves a Grade II listed building, namely the Trafalgar Tavern, Park Row, Greenwich SE10 9NW, or its setting or any features of special architectural or historic interest which it possesses.
- whether the development preserves or enhances the character or appearance of the Greenwich Park Conservation Area
- the effect on the Outstanding Universal Value of the WHS
- whether it has been shown that the balustrade is necessary as a deterrent from potential terrorist attacks, and
- whether the balustrade prejudices the safe and unrestricted access for vehicles, pedestrian and cyclists.

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<sup>2</sup> Specifically identified as such in the Greenwich Park Conservation Area Appraisal

<sup>3</sup> I note that the effect on the Scheduled Monument forms no part of the reasons for refusal and it is included here only for completeness.

### ***Listed buildings***

17. The balustrade, with the planters atop, is already in situ and introduces visual clutter to this otherwise largely open location. This interrupts, and erodes, the openness of the setting of the Trafalgar Tavern. Consequently, the development affects how the designated heritage asset is experienced and the ability to appreciate its significance. Because openness is such an important component of that setting, the erosion of the openness is harmful to the significance of the heritage asset.
18. I recognise that planning permission was granted in 2004 for various external works, including a balustrade (in a different position) and the placing of tables and chairs in connection with the use of the Trafalgar Tavern (the 2004 permission). I have not been provided with details of the 2004 permission and therefore have no information as to whether the balustrade granted planning permission included planters atop. In any event, the balustrade granted by the 2004 permission is also in situ and runs parallel with the host property. Consequently, the balustrade and planters are primarily viewed against the backdrop of the Trafalgar Tavern, as opposed to obstructing views of the River Thames in one direction and the ORNC in the other.
19. By contrast, the balustrade subject to these appeals is sited perpendicular to the host building. Consequently, the balustrade with planters atop is prominent in views from Park Row towards the River Thames, as well as in views from the Thames Path towards Park Row. In both views, the balustrade with planters atop unacceptably erodes the openness of the setting to the Trafalgar Tavern, and therefore harms the significance of this listed building.
20. The 2004 permission also included the placement of benches adjacent to the Trafalgar Tavern itself. These benches introduce clutter into this area. In granting planning permission for the seating area, the Council accepted a partial obstruction of the view of the River Thames and some loss of openness to the locality. However, as the Council points out, the 2004 permission only granted the placing of tables and chairs during specific times of the day and year, with the specific aim to retain that generally spacious context. By contrast, the balustrade with planters atop is a permanent feature and causes harm to the designated heritage asset and its setting all year round.
21. When this seating is occupied by customers, those people will be of a greater height than the railings. However, the customers are transient, not only in terms of times of the day, but also times of the year and/or the prevalent weather conditions. For much of the time, in all seasons and all weather conditions, the seating area will be entirely devoid of customers (for example, when the public house is not open) or otherwise with only a few customers present. There are likely to be very few occasions when the presence of customers would obscure the view of the river and result in a loss of openness.
22. Moreover, the clutter created by these benches is confined to a lower level than the balustrade with planters atop. The planning permission for the placement of these benches also only relates to the area immediately adjacent to the Trafalgar Tavern. Consequently, these benches do not erode or disrupt the openness of the space in front of Trafalgar Tavern to anywhere near the same extent as the balustrade with planters atop. For these reasons, the 2004 permission does not provide justification for the balustrade with planters atop subject to this appeal.

23. One segment of the balustrade is directly affixed to the listed building itself (the Trafalgar Tavern). I have been provided with photographs that show the balustrade fixed to the listed building, and I took note of this on my site visit. However, I have not been provided with any technical details as to how this segment of the balustrade is affixed to the listed building. Whilst this is to some extent apparent from the photographs and my site visit, in the absence of drawings and/or a detailed description of how the balustrade is affixed to the building, I am not able to reach an informed conclusion on the effect, if any, on the historic fabric of this listed building. Consequently, I cannot discount the possibility that this causes harm to the fabric of the listed building.
24. Accordingly, I find that the development does not preserve the Grade II listed building, Trafalgar Tavern, or its setting or any features of special architectural or historic interest which it possesses. In doing so it harms the significance of this designated heritage asset.

### ***Conservation area***

25. For the reasons set out above, the Trafalgar Tavern is an important component to the significance of this designated heritage asset. The setting of this listed building derives from the sense of openness that surrounds the Trafalgar Tavern. It follows that the openness of this location forms an important part of the significance of this conservation area.
26. The balustrade with planters atop erodes and disrupts the sense of openness that surrounds the Trafalgar Tavern, one of the principal buildings in the Greenwich Park Conservation Area. The development therefore harms the significance of this designated heritage asset as a whole.

### ***The WHS***

27. One of the key attributes of the WHS, and one of the components of its OUV, is its relationship with the River Thames. The balustrade with planters atop harms the openness of this location at the very interface between the WHS and the River Thames. The openness at this location is an important feature of this interface. The erosion of the openness resulting from the balustrade with planters atop therefore harms the relationship between the WHS and the River Thames. This adversely affects the OUV of the WHS.

### ***Whether it has been shown that the balustrade is necessary as a deterrent from potential terrorist attacks***

28. The appellant refers to the terrorist attacks that took place in London and elsewhere during 2017, including outside the Palace of Westminster, on London Bridge and in Borough Market, and the attack on the Manchester Arena. The appellant also refers to the terrorist attack that took place in Belgium in March 2022, in which a car was driven into a crowd of people preparing for a carnival.
29. In the year following the attacks that took place in 2017, a report was published making recommendations to the emergency services and other agencies for public safety<sup>4</sup>. Amongst the recommendations made in that report

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<sup>4</sup> Harris Review into London's Preparedness to Respond to A Major Terrorist Incident: Progress Report – One Year On

was that there should be a comprehensive review of safety and security on the River Thames<sup>5</sup>.

30. The appellant also refers to the 'Protect Duty' announced by the Government following the 2017 Manchester Arena bombing. Under the Terrorism Protection of Premises Bill, venues would have a legal duty to put in place security measures to protect the public from terror attacks.
31. The appellant indicates that in 2018 the Metropolitan Police advised that the Trafalgar Tavern was considered to be very vulnerable to terrorist attack, given the popularity of the pub and its immediate proximity to the riverside with vehicle exposure from Park Row. The appellant maintains that they were strongly advised by the Police to strengthen any perceived weaknesses that could help mitigate a terrorist attack.
32. The appellant has not provided a copy of that advice. Neither has the appellant set out the context in which that advice was given: for example, who gave that advice, their position in the Metropolitan Police and whether that advice was given in writing or verbally. In the absence of that supporting and corroborating information, I give the purported advice from the Metropolitan Police relied upon by the appellant only minimal weight.
33. Furthermore, in direct contradiction to the appellant's evidence, the Development Management Delegated Report for the application for Listed Building Consent for the same proposal indicates that the Metropolitan Police were consulted on these applications and in response confirmed that there is no specific threat on this site<sup>6</sup>. The consultation sought the views of the Metropolitan Police on the balustrade with planters atop that is now the subject of these appeals.
34. The Council advise that this consultation response from the Metropolitan Police is classified as 'Official – Sensitive'. I have been provided with a copy of that consultation response on a strictly confidential basis. The consultation response is highly detailed and comprehensive with the conclusion reached being very clear. That conclusion is accurately recorded in the Council's Development Management Delegated Report. Consequently, the Council's evidence in this respect is to be preferred.
35. Because of its classification as 'Official – Sensitive', the appellant has not had an opportunity to view and comment on the consultation response from the Metropolitan Police. As a result, I recognise that the appellant has not had an opportunity to comment fully on a matter which is one of the determining issues in this case. I also recognise that this may be perceived as being inconsistent with the principles of openness and fairness that underpin the work of the Planning Inspectorate.
36. However, the consultation response from the Metropolitan Police was accurately recorded in the Council's Development Management Delegated Report, provided with the appeal questionnaire. The comments of the Counter Terrorism Security Adviser were summarised in the Council's Appeal Statement. The appellant had the opportunity to comment on the Council's statement, and did do so. Consequently, whilst the appellant did not have the

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<sup>5</sup> Harris Review: Recommendations Aimed at the Mayor's Office, MOPAC and the London Fire and Emergency Planning Authority.

<sup>6</sup> Application Refs 21/3807/F and Ref 21/3808/L. Consultation response dated 13 December 2021.



benefit of seeing the detail of the consultation response from the Metropolitan Police, I am satisfied that the appellant was able to comment on the main point being made: namely that, in the view of the Metropolitan Police, that there is no specific threat on this site. I am therefore satisfied that the appellant has had a reasonable opportunity to make their case on the determining issue and has not been prejudiced by not having seen the consultation response from the Metropolitan Police.

37. Even if the Metropolitan Police were not aware of any specific terrorist threat at that time or since, the possibility of a terrorist attack on the Trafalgar Tavern cannot be entirely discounted. Given the role and expertise of the Metropolitan Police in this matter, I attach substantial weight to their view that there is no specific threat on this site as of December 2021. Subsequent events, such as the attack which took place in Belgium in March 2022, serve as a reminder that such attacks remain a possibility. Nevertheless, the appellant has provided no evidence to suggest that such an attack is likely to be made against the Trafalgar Tavern or any similar venue in this country. Consequently, on balance, on the evidence before me I consider that the likelihood of a terrorist attack on the Trafalgar Tavern itself to be low.
38. Moreover, even if such a terrorist attack was mounted against the Trafalgar Tavern, the appellant has not demonstrated that the balustrade would be effective in preventing or mitigating it. The appellant has not submitted a risk assessment to identify what form such a terrorist attack might take. No technical evidence on the structural integrity of the balustrade has been provided to demonstrate its resilience to any form of terrorist attack. Clearly, the balustrade would not be at all effective in preventing or mitigating an explosive device set off within the venue itself such as that at the Manchester Arena in 2017, or the personal attacks on individuals such as that which occurred at Borough Market that same year.
39. Moreover, I note that there is a row of bollards at the northern end of Park Row, where it meets the Thames Path. Those bollards would provide the primary defence in the event of a terrorist attack on the Trafalgar Tavern along the lines of that mounted outside the Palace of Westminster in 2017 or in Belgium in 2022<sup>7</sup>. The appellant has not demonstrated that the balustrade would even be required as a secondary line of defence in such an attack, or if so, how resilient it would be.
40. The appellant has adopted a broad-brush approach on this matter, citing terrorist attacks that clearly the balustrade is not designed to, and could not, prevent or mitigate<sup>8</sup>. The application is also short on detail and technical specification. However, the main issue is the effect of the development on a listed building, namely the Trafalgar Tavern, and its setting. The focus must therefore be on the need for, and effectiveness of, the balustrade in relation to that particular listed building. In that respect, I conclude that the appellant has not shown that the balustrade is necessary as a deterrent from potential terrorist attacks.
41. The Council cites Policy D11 of the London Plan 2021 and Policy CH1 of the Royal Greenwich Local Plan: Core Strategy 2014 (Local Plan) in the reason for refusal. These policies require, amongst other things, that all development

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<sup>7</sup> Where a vehicle was driven at speed towards the venue and/or a crowd of people.

<sup>8</sup> The attacks on the Manchester Arena and at Borough Market

must consider community safety and that proposals should maximise building resilience and minimise potential physical risks, including in relation to terrorism. Insofar as the appellant has not shown the balustrade to be necessary or effective as a deterrent from potential terrorist attacks, the balustrade cannot be said to comply with those policies.

***Whether the balustrade prejudices the safe and unrestricted access for vehicles, pedestrian and cyclists***

42. The Council explains that the area to the west and in front of the Trafalgar Tavern is adopted highway<sup>9</sup>. The consultation response from the Council's Highway Team indicates that, under the provisions of the Highways Act 1980 (the 1980 Act), Maintaining Authorities are responsible for preserving the road and footpath. It is further indicated that Section 149 of the 1980 Act indicates that the Highway Authority may require that anything deposited on the public highway to be removed if it is considered to constitute a nuisance. As such, the Council's Highway Team require unrestricted access to maintain the upkeep of this part of the highway.
43. The appellant disputes this, claiming that it is factually incorrect. The appellant believes that the Council have no responsibility to maintain this area and that the seating area has been specifically licenced to the Trafalgar Tavern to use for seating, such that in effect it is no longer highway.
44. However, the appellant has provided no technical or legal evidence to support that. In the absence of that evidence, the appellant's statement remains just unsubstantiated opinion. The Council's evidence in this respect, which is supported with relevant documentation and reference to the relevant legislation, is therefore to be preferred.
45. I recognise that the seating adjacent to the Trafalgar Tavern benefits from the 2004 permission. However, the planning acts and the highways acts operate independently. Landowners are required to comply with both. Consequently, the seating provided under the 2004 permission is also subject to provisions within the 1980 Act. The 2004 permission is therefore no defence against this reason for refusal.
46. The positioning of the permanent balustrade is an obstacle that, aside from a small gap for pedestrian access, extends across the adopted highway at this point. The Council has not provided any details of the vehicles and/or equipment that the Highway Team employ for the maintenance of the adopted highway. Nevertheless, by reason of its design and construction, the balustrade would effectively prevent or seriously hinder access to the adopted highway by any vehicle, equipment and personnel. The Council's Highway Team considers that this prejudices the safe and free flow of highway traffic along this section of the highway<sup>10</sup>.
47. I conclude that the balustrade does prejudice the unrestricted access for vehicles, pedestrian and cyclists. I therefore conclude that the development is contrary to Policies T2 and T5 of the London Plan and to Policy IM(b) of the Local Plan. These policies require, amongst other things, that development promotes walking and cycling safety.

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<sup>9</sup> Shown shaded in red on a plan embedded within the Council's Development Management Delegated Report, and confirmed in the consultation response from the Council's Highway Team dated 23 December 2021.

<sup>10</sup> I take this to mean pedestrian and cyclist traffic.



## **Appeal B**

48. The main issues are whether the works:

- preserve a Grade II listed building, namely the Trafalgar Tavern, Park Row, Greenwich SE10 9NW, or its setting or any features of special architectural or historic interest which it possesses
- would preserve or enhance the character or appearance of the Greenwich Park Conservation Area

### ***Listed building***

49. All the same considerations set out above in relation to the effect on the setting of the Trafalgar Tavern apply equally to this appeal.

50. In addition, as set out above in relation to Appeal A, one segment of the balustrade is directly affixed to the listed building itself (the Trafalgar Tavern). For the same reasons that are set out above, I cannot discount the possibility that this causes harm to the fabric of the listed building. At the very least it constitutes a physical intervention into the historic fabric of the listed building.

### **Conservation Area**

51. For the reasons set out above in relation to Appeal A, the balustrade fails to preserve or enhance the character or appearance of the Greenwich Park Conservation Area as a whole and in doing so harms the significance of this designated heritage asset.

### **Appeals A and B: Conclusion on the effects of the development and works to the listed building, the conservation area and the WHS**

52. I have found that the development and works subject to Appeals A and B respectively fail to preserve the Grade II listed building, its setting and any features of special architectural or historic interest which it possesses; and fail to preserve or enhance the character and appearance of the Greenwich Park Conservation Area. On that basis they do not meet the requirements of sections 66(1), 16(2) and 72(1) of the Act and harm the significance of these designated heritage assets. They also harm the OUV of the WHS, a designated heritage asset of the highest significance. I give this harm considerable importance and weight in the planning balance. That harm would be intrinsic within the development and/or works and could not be overcome or mitigated through the imposition of conditions.

53. The identified harm to the listed building does not result in a total loss of its significance. As such, the harm is less than substantial in terms of the Framework. Similarly, given the extent and nature of the proposal, I consider that the harms to the significance of the Greenwich Park Conservation Area and the WHS are less than substantial in terms of the Framework. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.

54. I have concluded that the appellant has not shown that the balustrade with planters atop is necessary as a deterrent from potential terrorist attacks. The Oxford English Dictionary defines 'necessary' as something that is required to be done or to be present. There is therefore a distinction to be drawn between

something that is necessary and something that is not necessary but which is nonetheless potentially beneficial. The balustrade falls into the latter category.

55. To that extent, the provision of the balustrade must be considered a public benefit in terms of the resilience to a terrorist attack along the lines of that mounted outside the Palace of Westminster in 2017 or in Belgium in 2022. However, on the evidence before me, including the confirmation from the Metropolitan Police that there is no specific threat on this site, I afford that public benefit only limited weight.
56. It is not suggested by the appellant that the development and works are necessary to secure the optimum viable use of the heritage asset as a public house. The area of seating adjacent to the Trafalgar Tavern could be used by customers irrespective of whether the balustrade is in situ or not.
57. For all the reasons set out above, I find that the harm to the significance of the designated heritage assets identified in Appeal A and Appeal B would not be outweighed by any public benefits of the proposals.
58. Overall, in relation to Appeal A, the development is contrary to Policies D3, HC1 and HC2 of the London Plan and Policies DH1 DH3, DH4, DH(h) and DH(i) of the Local Plan. Amongst other things, these policies provide that the heritage assets and settings of Royal Greenwich, including the WHS, will be protected and enhanced.
59. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
60. In relation to Appeal B, the works do not comply with Policies D3, HC1 and HC2 of the London Plan and Policies DH1 DH3, DH4, DH(h) and DH(i) of the Local Plan.
61. The proposals in both Appeal A and Appeal B also fail to accord with the provisions within the Framework which seek to conserve and enhance the historic environment.

#### *Other matters*

62. The Council has not raised any concerns in its reasons for refusal as to the effect of the balustrade with planters atop on the setting of the ORNC as a Grade I listed building. Nonetheless, I have a statutory duty to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. For that reason, I consider that matter briefly here.
63. The balustrade is clearly visible in views of the ORNC from the north, including from the seating area adjacent to the Trafalgar Tavern. The balustrade is also clearly visible in views from the grounds of the ORNC, from where it is viewed against the backdrop of the Trafalgar Tavern and the River Thames beyond. In these views, the balustrade erodes the openness of this location and its

relationship with the River Thames. This loss of openness harms the setting of this Grade I listed building, albeit that harm is limited.

64. My finding in this respect has neither altered nor influenced my conclusions set out above, which are based on the Council's reasons for refusal.

**Conclusion**

65. For the above reasons, I conclude that the appeals should be dismissed.

*Paul Freer*

INSPECTOR