41-49 and 49-59 Battersea Park Road, London SW8 5AL

CLOSING SUBMISSIONS

ON BEHALF OF THE APPELLANT

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1. As I explained in opening, the evidence has established that the Proposed Development is entirely acceptable and in accordance with both National and Development Plan policy. The proposed development represents sustainable development in accordance with the key objective of the NPPF as I shall explain.

The Genesis of the Scheme

2. The NPPF identifies effective engagement between applicants, communities, local planning authorities and other interests throughout the application process as essential for achieving sustainable development (NPPF para 131).

3. Local planning authorities are required to make appropriate use of tools and processes for assessing and improving the design of development and to engage the local community, design advice and review arrangements. The NPPF makes it clear that these are of most benefit if used as early as possible in the evolution of schemes, and are particularly important for significant projects such as large scale housing and mixed use developments. In assessing applications, local planning authorities are required to have regard to the outcome from these processes, including any recommendations made by design review panels (NPPF para 138).

4. The history of this scheme stems back to December 2020 when the first pre-application discussions took place with Officers. Originally, a solely PBSA scheme was proposed. Through discussions with the Council who doubted PBSA need in the Borough, it was agreed to include C3 affordable units even though this was not

required by any Development Plan policy. There were five formal pre-application meetings with Officers at the Council which covered a full range of matters. Further to this, two pre-application meetings were held with the Greater London Authority ("GLA") in March 2021 and February 2022 and the emerging proposals were presented to the Wandsworth Design Review Panel in April 2022.

5. Following the submission of the Application in April 2022 (registered by LBW in May 2022), various responses were received from Officers and other stakeholders which resulted in amendments to the Application being made. Prior to submission of these amendments, eight design workshops were held with LBW from August 2022 to March 2023, alongside two further presentations to the Design Review Panel in June 2022 and February 2023. A meeting was also held with the GLA in March 2023. Amendments to the Application were formally submitted in April 2024 and in August 2024.

6. Mr. McCartney listed the vast number of design-related meetings with stakeholders at his paragraph 2.2.2, including three Design Panel Reviews (9 March 2022, 8 June 2022, 6 February 2023) and two meetings with the GLA.

7. There has been extensive consultation with the public (see SOCG paragraph 1.12 and following) including a dedicated consultation website launched on 21 January 2022 and in person events. A specific maildrop to the residents of the Viridian Apartments and New Mansion Square was undertaken in 2024 as Mr Stackhouse explained in his evidence in chief[1].

8. The DRP in its first response of April 2022 (CDK.01) stated that "the Panel appreciates the design team's overarching vision. We generally support the height and massing proposed and welcome the use of high-quality pre-cast for these buildings." This was repeated in July 2022 (CDK.02) and by the final DRP response of February 2023, the Panel raised no concerns regarding the height or massing of

[1] See CDA.44 paragraph 1.18 and following.

the scheme. Nor did they identify any issues regarding the relationship of the proposed development to neighbouring properties. As Mr McCartney explained in his evidence in chief, his experience is that DRPs will raise issues relating to outlook, privacy, overlooking and whether buildings will be overbearing where they perceive these issues to arise. The fact that they were not raised must mean that they were satisfied with the relationship of the Proposed Development with neighbouring properties. The DRP concluded:

"We are very pleased how the scheme has evolved and applaud the applicant and client through their team of consultants for responding positively to the officer's and Panel's feedback. The revised vision and strategies presented for the landscape have transformed the scheme and promise a high-quality development. Continuity through the delivery stage is important and for that reason we would encourage the client to engage the team as the scheme proceeds."

9. The process of engagement was thus extensive, effective and resulted in a design outcome that was lauded by the DRP. The proposed development has thus effectively engaged in a consultative and collaborative approach to design entirely in accordance with the NPPF.

10. The Appellant entered into an update of a fourth PPA agreement in July 2024 that set out that the Application would be heard at the August Planning Committee. That did not materialise. A further agreement in September 2024 was reached to the effect that the Application would be heard at the November 2024 Planning Committee. That did not materialise. The Appellant then asked for an assurance that the Application would be determined in the near future. The LPA refused to provide this, and as a result, the Appellant submitted an appeal against non-determination in December 2024.

11. It is remarkable, then, that the LPA, having been unable to even indicate a date when the Application could be considered in December suddenly found itself able

to consider it at the very next Committee Meeting in mid January 2025, just a few weeks after the Appeal was lodged. No explanation for this behaviour has ever been provided. Indeed, this position is all the more remarkable when it is understood that the Council's Officers agree with the Appellant's approach on all policy matters and recommended approval.

The Officer's Report

12. The Officer's Report to Committee ("the OR" - CDJ.01), of course, recommended that the Proposed Development should be granted planning permission. Paragraph 25.21 of the OR concludes that:

"...the proposal is in general conformity with the NPPF and the Development Plan when taken as a whole. No other material considerations have been identified which indicate a different decision should be made. In accordance with Section 38(6) of the Town and Country Planning Act and had an appeal against non-determination been lodged, the application would have been recommended for approval."

Planning Committee

13. It is highly instructive to read the transcript of the Planning Committee meeting. Much of the debate was focused not upon an appraisal of the proposed development against the relevant national and development plan policies, but rather what Councillors wanted the site to come forward for. For example, one Councillor wanted family-friendly residential units and not foreign students (CDF. 05, page 12). Another Councillor considered that general housing needs were greater than student accommodation needs, thus implicitly inviting refusal on the basis that the Scheme should come forward for a different form of development. (CDF.05 page 28).

14. Indeed, much of the discussion involved Members casting around trying to identify potential reasons for refusal, but without regard or consideration to what

the relevant NPPF or Development Plan policies actually say. It is submitted that this rather reveals the reality – this application was refused by Councillors who believed that they could lawfully refuse planning permission in order to require an alternate form of development to come forward on this site. This position was adopted without any regard to either relevant law and without regard to any of the relevant planning policies. In relation to impacts, there was no consideration of any actual evidence relating to overlooking or privacy. No particular views out of or into the Proposed Development were identified or considered.

15. Further, the resolution that the Committee would have refused planning permission had it retained jurisdiction was actually made without any specific reasons for refusal being identified. Indeed, immediately after the vote the Chair said (CDF.05 page 32):

    "Now please come up with the words. And by the way, when you feel like it, which ones of you are going to volunteer to appear at the inquiry on behalf of the council?"

16. So it is the case that the Council resolved that it would have refused permission without any reasons for so doing.

17. Another Councillor then came up with some words relating to potential reasons and the Committee voted upon those. Those words were:

    "In terms of the quantitative height and use of buildings, the increase in height and the impact on the adjoining properties, in particular the Peabody, the change of use in effective from the ground floor from residential to predominantly student accommodation, no longer is the balance of land use and housing need, and the housing need in particular."

18. These words do not even make sense as a matter of English.

19. By the time the Minutes were approved, these garbled words had been changed, so the Committee was recorded as having resolved that.

"had an appeal not been lodged against non-determination, the Committee was minded to refuse planning permission, for the following reasons:

• The quantum height, and of the increased height of the proposal was excessive compared to the extant scheme.

• As a consequence of the increase in height and close proximity there would be an impact on the adjoining properties, in particular the Peabody site. There would be a loss of amenity and outlook for the adjoining blocks, with an impact of overlooking the existing gardens as well in the amenity space on the Peabody site. There would be an overbearing impact on the neighbouring sites, particularly the homes in the Peabody site.

• Due to the change of use from being wholly residential to being overwhelmingly for student use with some residential. There was a balance between need and demand and this was the wrong balance for land use, and for this site, given the demand and need for housing, and affordable housing in particular, was greater here.

20. Of course, these words do not reflect what the Committee had in fact resolved (as set out in the transcript) and do not record the words which were the subject of a vote. But further, they too, are insufficient in indicating a lawful basis for a refusal of planning permission.

21. Local planning authorities are required to have regard to the Development Plan (section 70(2) TCPA 1990) and to determine applications in accordance with the development plan unless material considerations indicate otherwise. Further when refusing planning permission LPAs are required to "state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision" (Article 35 of the TCP(Development Management Procedure) Order 2015).

22. The Minutes do not identify any conflict with any Development Plan policy. Indeed, they do not refer to a single policy. That chimes with the transcript. Members did not in fact identify any conflict with any policy within the Development Plan when they resolved to refuse this application nor when they subsequently identified some garbled reasons for refusal. Members then cannot have determined this application in accordance with the legal duties placed upon them by section 70(2) TCPA 1990 and section 38(6) of the 2004 Act. They resolved that they would have refused permission without any reference to the development plan whatsoever and without identifying any breach of any development plan policy. It is an unlawful and frankly wholly unacceptable way for a public body to conduct its business.

23. But they also failed to have regard to the DRP process. The conclusions of the DRP are not even mentioned by Councillors during the debate. Local planning authorities are required to have regard to the outcome from these processes, including any recommendations made by design review panels (NPPF para 138). But Members paid that no heed to the advice of the Council's own design review panel in their haste to adopt a position of refusal. There is no point in requiring these processes if Councillors simply ignore them.

24. The Council then wrote to PINS on the 29th January 2025. The reasons for putative refusal were amended again in this letter.

"As a result of its height and close proximity to the neighbouring buildings and the amenity space located at New Mansion Square, the proposed development would result in an overbearing impact upon the residential occupiers of the neighbouring buildings, detrimentally affecting their outlook and increasing overlooking opportunities that would reduce the residential amenity experienced by these neighbouring occupants. Furthermore, the predominant student use as proposed is not considered to be the most appropriate use on the site given the greater demand and need for housing (including affordable housing) in the area. For these reasons, the proposal is considered to be contrary to adopted Council policy LP2

and the Wandsworth Housing Needs Assessments dated December 2020 and December 2024."

25. This introduced the suggestion in the reasoning that the proposed development was not "the most appropriate use" of the site, a point to which I shall return. This also introduced the first reference to a breach of development plan policy, namely policy LP2.

26. The reference to a breach of the Council's 2020 and 2024 Housing Needs Assessments is certainly strange. As Mr Stackhouse explained in his evidence in chief, neither of these documents contains any statement of policy, and they do not form part of the Development Plan. Further, the Council has not explained in its subsequent Statement of Case in what respect the proposed development is said to be contrary to these Assessments. Indeed, the point is not pursued in any issue identified as outstanding in the SoCG. As a result, the Appellant is wholly unable to engage with the point. On that basis, it is submitted that the Council has not substantiated any alleged "breach" of the Housing Needs Assessments and that allegation must be rejected.

The Council's Statement of Case

27. The Council's case evolved yet again when it provided its Statement of Case on 26 February 2025. At paragraph 1.4 the Council explained that the letter sent to PINS on 29 January "omitted in error reference to planning policies that the Council's evidence will show the appeal development conflicts with. The omitted policies are:
    - Policy H6 (Housing quality and standards) of the London Plan 2021.
    - Policy H15 (Purpose-built student accommodation) of the London Plan 2021.
    - Policy LP28 (Purpose-Built Student Accommodation) of the Local Plan 2023."

28. It is to be noted that Policy H6 is not the policy in the London Plan which relates to Housing Quality and standards. Policy H6 is a policy relating to affordable housing. It is Policy D6 which relates to housing quality and standards. So even

here the Council was unable to correctly refer to the policies it was identifying as giving rise to a breach of the Development Plan.

29. It is to be noted that:

    a. The Council's Statement of Case thus does not identify in any respect how it is said the Proposed Development gives rise to conflict with Policy D6.

    b. Policy H15 is referred to in the Council's Statement of Case where at 5.17 the Council states:

       "The absence of demonstrated need for the proposed student accommodation, and the absence of an agreement with a HEP represents a conflict with those parts of policies LP28 of the Local Plan and H15 of the London Plan, which require a nomination agreement to be in place. "

    c. Policy LP28 is referred to in paragraphs 5.13-14 of the Council's Statement of Case. The allegation of breach is set out at paragraph 5.17 (see above) and relates to an alleged requirement for a nomination agreement to be in place.

The Draft Local Plan Partial Review

30. Wandsworth Council is currently conducting a Partial Review of the Local Plan (CDC.05). It commenced a Regulation 19 consultation which ran between 13 January 2025 and 24 February 2025. The Partial Review of the Local Plan seeks to update six policies, along with revisions to supporting and other text. The policies affected are Policy LP23: Affordable Housing, Policy LP24: Housing Mix, Policy LP28: Purpose-Built Student Accommodation, Policy LP29: Housing with Shared Facilities, Policy LP30: Build to Rent and Policy LP31: Specialist Housing for Vulnerable People and for Older People. According to the Local Development Scheme (January 2025), the Council anticipates an independent examination of the Plan in Summer/Autumn 2025 and adoption in Spring 2026.

31. The weight that should be attached to the Local Plan Partial Review is a matter of uncommon ground and thus in issue.

32. The NPPF provides at paragraph 49 that:

> Local Planning Authorities may give weight to relevant policies in emerging plans according to:
>
> a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
> b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

33. Mr Stackhouse explained in his evidence (p21 para 5.70 and following) by reference to paragraph 49 that the proposed amendments to the above policies are yet to be scrutinised through independent examination and will unlikely be so scrutinised before the Appeal Scheme is determined. Furthermore, there are a number of unresolved objections following the consultation at the Regulation 19 stage, including objections in principle to draft Policy LP28 from the Appellant and objection from the GLA, but presumably many others[2].

34. In particular, the Appellant has identified significant shortcomings in the Local Plan Partial Review which are considered to undermine the delivery of housing, at a time when the Council's objectively assessed local housing need has increased to 4,328 homes per year – a 319% increase above the Council's Local Plan housing

[2] It is deeply unsatisfactory that the Council has failed to explain to the Inquiry the extent or nature of the objections to Policy LP28 given that this information is only known to it and is directly relevant to the determination of the weight to ascribe to that Policy as a result of NPPF para 49.

target. The letter contends that the policies go beyond the London Plan and are contrary to recent regional publications such as the PBSA LPG (Nov, 2024) and the Accelerating Housing Delivery Practice Note (Dec, 2024). In particular, the increase in the threshold for developments to qualify for the Fast Track Route and the inclusion of a late-stage review for such applications will discourage developers from taking this route and it is likely to result in more viability-tested applications. This will undoubtedly slow down the determination of planning applications and also result in less affordable housing being delivered. The proposed amendments to Policy LP28 fail to acknowledge PBSA as a valid contributor to housing needs and the benefit it provides in freeing up conventional housing elsewhere, including Paragraph 71 of the NPPF and Paragraph 041 (Ref ID: 68-041-20190722) of the NPPG. It also fails to recognise PBSA as an enabler of conventional affordable housing. Finally, it will undermine the prospects of meeting the London Plan target to deliver 3,500 PBSA bed spaces per year.

35. Further, the GLA has raised objection to the draft plan. In its letter dated 24 February 2025 (CDM.07), it states that: "It is the Mayor's opinion that as currently written the draft Plan is not in general conformity with the London Plan due to the proposed approach to affordable housing."

36. I shall explain further below, draft Policy LP28 is formulated by reference to an approach to PBSA needs which is entirely flawed, contrary to London Plan Policy and the NPPF policy (paragraph 61) that specialist housing needs should be identified and met.

37. As a result, Mr Stackhouse was correct not to ascribe any weight to the Local Plan Partial Review Consultation Document (Regulation 19). A similar approach is also followed in the Officer Report (CDF.01) at Paragraph 3.10 which states that:

"It should be noted that the Local Plan is currently the subject of a review, which is focusing on updates to Policy LP23 (Affordable Housing) and other policies with a view to strengthening the provision of the affordable housing tenure split

70%:30% in favour of social rent homes. Whilst it is acknowledged that this is an aspiration of the Council, the emerging policy is yet to be tested at Examination and therefore carries **limited** material weight. The application has therefore been assessed in accordance with adopted Local Plan policy LP23 as it stands."

38. In contrast to Mr Stackhouse's approach, the Council refers to draft policy LP28 in its Statement of Case (CDG.02 p13 para 5.18), but it does not identify the weight to ascribe to this policy or the draft Plan. It does not refer to paragraph 49 of the NPPF, nor has it appraised the draft Local Plan Partial Review against the criteria set out therein. The Council has not produced any evidence to assist you with the extent to which the draft Local Plan is the subject of objection, nor has it sought to assist you with any information regarding the extent to which those who object raise issues concerning conflict with the NPPF. In short, whilst it has refused to agree with its own Officers' and Mr Stackhouse's assessment of the weight that the draft Partial Review should have, it has not proffered any evidence whatsoever to support an alternate view. The views of Mr Stackhouse are to be accepted, and the draft Local Plan Partial Review should be given no weight in the determination of this Appeal.

39. If, notwithstanding the above submissions, you reach the view that draft Policy LP28 should be given some weight, Mr Stackhouse accepted that the Proposed Development conflicts with draft Policy LP28. Given the paragraph 49 considerations, even if you do ascribe some weight to such a conflict, it can only be very limited weight. As I shall explain further below, this could not possibly justify a refusal of planning permission, given the substantial weight to be given to other material considerations in the planning balance and the support of the NPPF.

The Extant Planning Permission

40. As you are aware, the Appeal Site benefits from an extant planning permission (ref: 2015/6813) ("the Extant Permission) which was granted on 28 March 2019 in

respect of the Site for a mixed use development involving buildings of between 5 storeys and 18 storeys and containing 307 residential units. A Certificate of Lawfulness of Existing Use or Development ("CLEUD") was issued on 22 August 2023 confirming that the above permission has been lawfully implemented.

41. One of the areas of uncommon ground relates to "the weight that should be attached to the extant planning permission at the site when considering the matters in dispute between the parties in the case of this appeal." (CDH.01 para 5.15th bullet point).

42. Council's Statement of Case at paragraph 5.22 commented in relation to the Extant Permission that:

"Whilst some harmful impacts on neighbouring living conditions were identified in the case of the consented scheme, the development was found acceptable in the overall planning balance because its benefits were considered to outweigh those impacts."

43. If by this the Council intended to suggest that the Extant Permission was granted on a basis that that scheme would have caused harm to the occupiers of adjoining sites, then that is factually incorrect. The Officer's report in relation to the Extant Permission scheme explained at paragraph 17.12 (CDM.02)

"It has been demonstrated that the living conditions of future occupiers of adjoining sites with extant planning permissions would not be significantly affected in respect of outlook, privacy and access to daylight/sunlight or overshadowing to amenity areas. The scheme broadly complies with the BRE criteria and any minor technical deviations would be considered acceptable in line with the overall intentions of the BRE criteria."

44. Thus, the grant of the Extant Permission was on the basis that no unacceptable harm would be caused to neighbours in respect of outlook, privacy or overshadowing, and on the basis that there was no conflict with policy in respect of these issues.

45. As a matter of fact, the New Mansion Square planning permission and the New Covent Garden Market Entrance Site planning permission were granted prior to the Extant Permission. As a result the acceptability of the form and impact of the development proposed in the Extant Permission were considered in that context. The impact upon these developments is considered in the Officer's Report. As such the Extant Permission scheme represents an appropriate benchmark of a form and nature of development that the Council considered acceptable and policy compliant. It's suggestion to the contrary in its Statement of Case must be rejected.

46. Accordingly, Mr Stackhouse was correct to conclude that significant weight should be given to the Extant Permission as a benchmark of acceptability. Although the Council refused to agree this position in the discussions which lead to the signing of the Statement of Common Ground it has not presented any evidence to justify why Mr Stackhouse's view is incorrect. Nor has the Council has presented any evidence to explain the weight that it considers should be ascribed to the Extant Permission.

47. Since Mr Stackhouse's view is plainly correct and is unchallenged by any evidence before this Inquiry it is to be accepted.

The Issues

48. You identified at the CMC the following issues as arising in this appeal:

    1. The effect on the living conditions of occupiers of properties at New Mansion Square;

2. Whether the proposal is acceptable in land use terms, paying regard to housing need;

3. Consideration of the planning balance.

1) IMPACT UPON LIVING CONDITIONS

49. The SOCG formulates the issue between the Appellant and the Council in relation to impacts upon living conditions as follows:

"Whether the impacts of the appeal scheme on living conditions at neighbouring properties would be acceptable, having regard to Part D of Policy H6 (Housing quality and standards) of the London Plan and Part B Criteria 2,3 and 4 of Policy LP2 (General Development Principles (Strategic Policy)) of the Local Plan. Such neighbouring properties are as follows and are set out in more detail in the topic-based Statement of Common Ground:

- Simper Mansions (Block A3 of New Mansion Square)
- The amenity space of New Mansion Square
- The two podium deck amenity spaces forming part of the New Covent Garden Market development (the "Entrance Site" development zone)."

50. The Topic Specific SoCG identifies that the effects of the appeal development on noise, levels, air quality and on levels of sunlight and daylight at neighbouring properties are not in dispute. The matters which are identified to be in dispute are:

- The effects of the appeal development on outlook and privacy from dwellings at 'Simper Mansions' (Building 'A3' of Phase 4A of the Battersea Power Station development) that face the appeal development.

- The effect of the appeal development on the enjoyment of open spaces serving Phase 4A of the Battersea Power Station development.

- The effect of the appeal development on the future enjoyment of proposed deck amenity spaces serving the consented New Covent Garden Market development through overshadowing.

51. The reference to Part D of Policy H6 of the London Plan within the SoCG is an error. It repeats the error in the Council's SoCG at paragraph 5.21. Policy H6 relates to affordable housing and does not have a part D. It is Part D of Policy D6 (Housing quality and standards) of the Local Plan (CDC.01) which is the intended reference. This states that:

"The design of development should provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context, whilst avoiding overheating, minimising overshadowing and maximising the usability of outside amenity space."

52. In the Council's opening at paragraph 18, the Council sought to broaden the scope of its case by referring for the first time, not to Part D of Policy D6 but to Part B and to Table 3.2. It is alleged without any evidential support for the allegation nor any reference within the Council's Statement of Case that the Proposed Development fails to satisfy the qualitative aspects set out in Table 3.2 of the London Plan with respect to privacy. This enlargement of the Council's case was and remains a wholly unacceptable way to proceed in an inquiry.

53. Part D of Policy D6 states:

"Qualitative aspects of a development are key to ensuring successful sustainable housing. Table 3.2 sets out key qualitative aspects which should be addressed in the design of housing developments."

54. Of course, since Part B of Policy D6 is not referred to in the Council's Statement of Case, there is no explanation as to the qualitative aspects in table 3.2 relating to privacy that it is alleged have not been addressed. So we are left to guess at what

the Council's newly broadened case might be. The only reference to privacy matters in Table 3.2 is at iii):

"The site layout, orientation and design of individual dwellings and, where applicable, common spaces should… provide privacy and adequate daylight for residents."

55. So Policy D6 Part B relates to the design of the building being considered in the application and references protecting the privacy of residents within the proposed development. It is not a policy that relates to the protection of privacy in neighbouring properties. However, the Council's case is confined to concerns for existing residents of the New Mansion Square development. As such, this policy has no relevance whatsoever to the issue relating to privacy that the Council maintains.

56. In terms of Part D of Policy D6, the Council has agreed in the SoCG that the Proposed Development would retain appropriate levels of daylight and sunlight (SOCG CDH.01 p17 para 4.34). The Council has not alleged that the proposed development creates any issues in terms of overheating. Thus, the only aspect of Policy D6 to be considered is that relating to minimising overshadowing and maximising the usability of outside amenity space. I shall return to these aspects of policy when addressing the issues raised relating to alleged impacts upon the amenity space of existing and proposed developments further below.

57. Part B of Policy LP2 (General Development Principles (Strategic Policy)) states that development proposals must not adversely impact the amenity of existing and future occupiers or that of neighbouring properties, or prevent the proper operation of the uses proposed or of neighbouring uses. It states that proposals will be supported where the development:

> "…2. Avoids unacceptable levels of overlooking (or perceived overlooking) and undue sense of enclosure onto the private amenity space of neighbouring properties;

3. is not visually intrusive or has an overbearing impact as a result of its height, scale, massing or siting, including through creating a sense of enclosure;

4. Would not compromise the visual amenity of adjoining sites…"

58. Thus, for a breach of Policy LP2 to arise one would have to conclude that the Proposed Development gives rise to unacceptable levels of overlooking, undue sense of enclosure onto private amenity space, would have a visually intrusive or overbearing impacts and/or would compromise the visual amenity of adjoining sites.

59. The Mayor's Housing SPG 2016 (CDB0.7) provided guidance on the implementation of housing policies in the now superseded version of the London Plan. Notwithstanding that it is somewhat out of date, it is submitted that the SPG still provides a useful guide in identifying key development control considerations pursuant to proposals for new development. Paragraph 2.3.36 suggests "a minimum distance of 18 – 21m between facing homes". It explains that these distances can be "useful yardsticks for visual privacy, but adhering rigidly to these measures can limit the variety of urban spaces and housing types in the city, and can sometimes unnecessarily restrict density." In other words a minimum distance between facing homes of 18m will be acceptable but lesser distances can also be acceptable, depending upon the context and urban character of the area under consideration.

60. The Council's adopted Housing SPG, sets out guidance at local level to inform good quality design. Paragraph 2.34 of the SPG states that "visual privacy, outlook and Official amenity space are important to the overall quality and "liveability" of homes. In respect of new development, it makes the point at paragraph 4.24 that in dense urban areas there is always going to be a degree of mutual overlooking. No numerical standard has been formulated in respect of acceptable separation distances (between habitable rooms windows) in the guidance and the SPG states

that each case should be assessed on its merits and upon specific site circumstances. (see ORCDF.01 paragraph 11.6).

61. It follows that, to appraise the potential impact of a development in terms of its acceptability in relation to issues such as potential overlooking, privacy and sense of enclosure, it is necessary to undertake a careful and detailed assessment of the proposed development, its context and the relationship to surrounding development. This was understood by Officers, who arranged for the Council to secure its own independent technical advice and who presented a careful appraisal in the OR and concluded that the Proposed Development would be acceptable.

62. In stark contrast, Members did not undertake that exercise when they were flailing around to find reasons to refuse this application, as can be seen from the nature of the debate at Committee. Indeed, the Council has been unable to even present a single witness to provide evidence which undertakes the necessary exercise to support its allegations of unacceptable impact. The simple fact here is that the Council has made a whole series of vague and generalised allegations in its Statement of Case which it has not attempted to substantiate in evidence. That can only be because the Council was unable to find a professional witness who was prepared to support its position.

63. But it is even worse than that. You will recall the Chair asking the Councillors that voted to refuse the application "which ones of you are going to volunteer to appear at the inquiry on behalf of the council?" - the Chair now has the answer – none of them. Not a single Member who refused this application has been prepared to come to this Inquiry to defend their decision. It is wholly unacceptable and indeed the very definition of unreasonable behaviour for a Council to adopt and maintain a position of refusal on appeal without providing any substantive evidential basis for so doing. The result is that the Council has not presented a shred of evidence to support its putative reasons for refusal. Not a shred.

64. In stark contrast, the Appellant has presented detailed evidence examining all of the relevant factors necessary to consider the issues. Paragraph 4.3.1 and 4.3.2 of Mr McCartney's evidence explained how the design of the Development builds on the principles of the Extant Permission whilst improving the relationship of the Development with the Viridian Apartments and New Mansion Square. In Paragraph 4.3.8, he explained how the design team rotated the northern tower of Plot 3 to pull it further away from the Simper Mansions with the intention of improving the amenity and aspect from the neighbouring building. In Paragraph 4.3.9, he also identified how the rotation afforded improved sunlight to fall onto the Site's central landscape and play space. In respect of Plot 1, he noted in Paragraph 4.5.5 that the building was rotated away from Sleaford Street to create an improved openness between the Appeal Scheme and the Viridian Apartments. Furthermore, the footprint of Plot 1 was reduced and the height of the building was lowered by three storeys from 15 storeys to 12 storeys. The height of the building lies comfortably within the range of up to 25 storeys as set out in the Site Allocation Policy NE2. Mr Barlow's point regarding the height of the building being contrary to the local character and to the Battersea Power Station Master Plan is thus entirely misconceived. The height accords with the Local Plan Site allocation aspirations for the high density redevelopment of this Site.

65. Overall, Mr McCartney concluded in Paragraph 4.5.24 that the massing strategy is not only appropriate but demonstrably enhances the Site's relationship with its surroundings. Furthermore, in contrast to the Extant Permission, the Appeal Scheme results in an often improved and acceptable relationship with neighbouring properties.

66. Accordingly, the unchallenged evidence of Mr McCartney (with which Mr Stackhouse agreed) was that the Proposed Development's relationship with neighbouring properties is acceptable within the context of the VNEB OA and the presence of similar separation distances and relationships between buildings experienced in the immediate area. The Appeal Scheme represents a materially

improved relationship with neighbouring properties compared to the Extant Permission.

67. In this regard, as I explain further below, whilst it is acknowledged that there are some greater impacts to some rooms within dwellings located in New Mansion Square, this is balanced against an improved position in relation to other rooms within the same buildings, such that the net position of the impact on neighbouring properties enables the view to be reached that overall there is no material difference in the overall level of impact when compared with the impacts of the Extant Permission, a level of impact which the Council has already considered to be acceptable.

68. The Officer Report comes to a similar view when comparing the Appeal Scheme and the Extant Permission. Officers concluded in paragraph 25.18 of the OR that:

"The impact on the north-east elevation of Arden Mansions in particular would be higher when compared to the extant consent, this is offset by the impacts on Viridian Apartments, which would be less than the impacts of the consented scheme. Furthermore, with regards to privacy and overlooking, the Officer Report notes in Paragraph 25.19 that: "It is considered that amenity impacts that would arise would be proportionate and consistent with tall building and high-density development in a location where such development is supported by planning policies"

Outlook from Simper Mansions

69. Simper Mansions is a part 8 / part 11 storey residential building. It is the 8-storey element of the building that is closest to the Appeal Site with the separation distance between it and Plot 3 constituting 10.1 metres at its nearest point and 20.3 metres at its longest point. This is a wider separation distance than the relationship between Simper Mansions and the Extant Permission which had a separation distance of 6.0 metres as illustrated by Figure 59 of Mr McCartney's

evidence. As such, compared to the Extant Permission, the separation distance between the buildings has almost doubled at its nearest point.

70. Simper Mansions contains a total of 61 dwellings and 14 of those dwellings have windows on their eastern elevation that face towards Plot 3. These windows are projecting angled windows with privacy glazing on one side and clear glazing angled to look out towards the north and south, rather than the east. An image of the windows is set out on Figure 61of Mr McCartney's evidence. As set out in Paragraph 8.2 of the officer report associated with the New Mansion Square development, this was an arrangement requested by the Council in order to not prejudice the redevelopment of the Appeal Site. The officer report also notes[3] that there was consequential enlargement of the balconies on the southern and northern elevations of the affected residential units as a compensatory measure.

71. Indeed, all of the 14 dwellings in question are dual aspect units with their main living rooms all having access to balconies on either the northern or southern elevation of the building. Those dwellings which face north overlook the proposed public realm of the Appeal Scheme whilst those dwellings which face south overlook the amenity space of New Mansion Square. Mr Stackhouse and Mr McCartney are unchallenged in their view that these dwellings have a good level of outlook from their principal elevations which is further enhanced by enlarged balconies as the New Mansion Square officer report points out.

72. Mr McCartney's evidence included detailed consideration of the outlook from Simper Mansions with the Extant Permission in place. In this regard, in Paragraph 5.1.56, he noted that the Appeal Scheme creates an improved view looking northwards from these dwellings compared to the Extant Permission due to the following reasons:

a. The Appeal Scheme's Plot 2 is set back and pulled further away from the window, creating an improved view into the proposed central landscape;

[3] CDF.01 para 11.11

b. From the fourth floor upwards the lower massing of Plot 2 allows a view to the sky, which is not present on the Extant Scheme; and

c. To the upper level apartments, the main mass of Plot 2 is set further back than is achieved by the Extant Permission's massing.

73. Mr Stackhouse and Mr McCartney are unchallenged in their conclusion that the outlook from the northern elevation of Simper Mansions is improved when comparing the Appeal Scheme with the Extant Permission.

74. In respect of the south facing dwellings of Simper Mansions which overlook the amenity space of New Mansion Square, Mr McCartney identified that the Appeal Scheme is not visible in these views and therefore would have no impact on the outlook from these dwellings. Of the 14 dwellings that have windows on the eastern elevation of the building, 7 dwellings contain projecting angled windows that look south towards Plot C which is at least 43 metres away when viewed directly from the affected windows. Given that distance between the buildings, the outlook from these dwellings will not be adversely impacted by the Appeal Scheme and Mr Stackhouse and Mr McCartney are unchallenged in this conclusion.

75. Mr McCartney's evidence also considered the potential differences in impacts as between the Appeal Scheme and the Extant Permission. At paragraph 5.1.71 he noted that the Appeal Scheme creates an improved outlook from these windows because:

    a. Where it can be seen, Plot 3 is set back over 20 metres from the window, over three times the distance when compared to the 6m setback to the Extant Permission, affording longer uninterrupted views from the window; and
    b. In locations closest to Simper Mansions, the Appeal Scheme Plot 3 is orientated away from the existing building at an oblique angle.

76. Mr McCartney's view, shared by Mr Stackhouse, that the Appeal Scheme creates an improved outlook from these windows compared to the Extant Permission must then be correct, and is in any event unchallenged by any evidence to the contrary.

77. The 7 dwellings that contain projecting angled windows that look north towards Plot C each contain two windows – a kitchen and a bedroom. The separation distance of window-to-window is at least 11.5 metres. Mr McCartney considered the outlook from these windows also. In comparison to the Extant Permission, Mr McCartney quite properly accepted that the Appeal Scheme results in some reduction to the openness of the view, a conclusion with which Mr Stackhouse agreed. Mr McCartney considered that the outlook from these windows would, however, remain acceptable on the basis that they are secondary windows to dual aspect dwellings that have good outlook from other elevations, including from the main living room. The secondary nature of these windows was accepted in Paragraph 11.9 of the Officer Report. This same approach was taken in the officer report associated with the New Mansion Square permission whereby officers accepted[4] the angled windows (with privacy glazing on side) in return for the consequential enlargements of balconies on the southern and northern elevations of the affected units.

78. Mr McCartney also referred to many examples of developments within 500 metres of the Appeal Site that have window-to-window separation distances between buildings which are materially less than the relationship between the Appeal Scheme and Simper Mansions, but which the Council has accepted in the past as acceptable. In Section 5.2 of his evidence, he identified habitable room window-to-window separation distances of 8 metres on the fifth floor of Plot C1 Nine Elms Parkside (Figure 67) and the third floor of 46 Ponton Road (Figure 68). In Mansion Square itself (Figure 71), there are window-to-window separation distances of 10.3 metres between main living rooms. As such, the outlook from the eastern

[4] CNM.01 paragraph 8.2.

elevation windows facing northwards of 11.5 metres is commensurate with the outlook from windows within Mansion Square itself and elsewhere in the locality, including between windows which serve main living rooms. In this instance, the window-to-window adjacencies are between Living, Kitchen, and Dining Rooms (LKDs) (in Plot 3) and kitchens or bedrooms (in Simper Mansions), not main living rooms.

79. Overall, whilst it is accepted that the outlook from the east-facing windows of 7 dwellings (of 61 dwellings in Simper Mansions and of 386 dwellings of New Mansion Square as a whole) is affected by the Appeal Scheme, Mr Stackhouse and Mr McCartney were correct to conclude in their unchallenged evidence, that the outlook from these dwellings would remain acceptable on the basis that the dwellings affected are dual aspect and have good outlook from their northern elevations which is where the main living room is located. Furthermore, the outlook enjoyed by residents is commensurate with that which has already been found to be acceptable in the locality, including at New Mansion Square, as part of the local area's designation within an Opportunity Area where high-density development is encouraged. Overall, it is submitted that the Appeal Scheme would not unacceptably compromise the visual amenity of adjoining sites and therefore complies with Part B of LP2 (General Development Principles (Strategic Policy)) in this regard.

80. Furthermore, when compared to the Extant Permission, it is accepted that the quality of the outlook from a very small number of windows on the eastern elevation of Simper Mansions is reduced as a result of the Appeal Scheme (namely those angled windows facing northwards which affects 7 dwellings), however, the windows affected are secondary in nature. The outlook from other windows of these dwellings on the eastern elevation (namely those angled windows facing southwards which affects 7 dwellings) is improved and the outlook from the windows on the building's northern elevation is improved due to the revised siting of Plot 2 together with an improved view into the proposed central landscape. Therefore, when considered overall, it is submitted that there

would be no additional harm arising from the Appeal Scheme to the outlook of residents of Simper Mansions compared to the Extant Permission.

Privacy and Simper Mansions

81. Mr McCartney followed the same approach to assess the effect of the Appeal Scheme on levels of privacy at Simper Mansions. In terms of the northern elevation of Simper Mansions, Figure 60 of Mr McCartney's evidence identified the windows of Plot 2 of the Appeal Scheme that would have a view towards the main living room window of dwellings at Simper Mansions. The separation distance between the windows is 21 metres and therefore, there would not be any adverse impact arising from a privacy perspective.

82. Mr McCartney also considered the change in outlook from Simper Mansions with the Extant Permission in place. In this regard, he noted in Paragraph 5.1.40 that the impacts on the privacy of Simper Mansions are improved compared to the Extant Permission because, amongst other reasons, the Appeal Scheme results in a greater separation distance between the building and Plot 2 and the omission of balconies from Plot 2. Mr Stackhouse agreed. Their unchallenged evidence on this point should be accepted.

83. In respect of the south facing dwellings which overlook the amenity space of New Mansion Square, Mr McCartney explained (Paragraph 5.1.71) that the Appeal Scheme is not visible in these views and therefore would have no impact on the privacy enjoyed from these dwellings.

84. In relation to the 7 dwellings that contain projecting angled windows that look south towards Plot C which is 43 metres away window-to-window, the Appeal Scheme would not have any material impact on the privacy of these windows due to the distance involved.

85. Mr McCartney's evidence included consideration of the impact of the Appeal Scheme and the impact of the Extant Permission (Paragraph 5.1.72). He concluded that the Appeal Scheme creates no overall material difference in levels

of privacy due to habitable rooms on the Appeal Scheme being set back over 21 metres from these windows and angled obliquely.

86. The 7 dwellings that contain projecting angled windows that look north towards Plot C each contain two windows – a kitchen and a bedroom. As noted above, the separation distance of window to window is at least 11.5 metres.

87. Due to the angled composition of these windows, the only view into these windows is from two windows per floor situated in the LKDs of the PBSA facing a westerly direction. These LKDs also have three windows on their northern elevations which look out towards the Battersea Power Station and therefore are not solely reliant on these western windows for outlook.

88. Furthermore, Mr McCartney (Paragraph 5.1.62) correctly identified that the view from the LKDs is from an acute corner of the living room which he considers is an area which is likely to experience minimum occupancy, thereby reducing the potential overlooking between the rooms.

89. Notwithstanding the above, Mr McCartney properly acknowledged (Paragraph 5.1.61) that there would be potential for overlooking arising from the relationship between the two windows per floor of the LKD associated with Plot 3 of the PBSA and the two northeastern facing gable windows of Simper Mansions, which contain a kitchen and bedroom. Whilst there are relatively simple ways in which residents of Simper Mansions could protect their privacy if such residents considered that this was necessary (e.g. through use of blinds or curtains and/or room layouts), it is accepted that this cannot be controlled through the planning system and therefore cannot be relied on as mitigation.

90. However, it is also correct to acknowledge that these sorts of relationships between windows are quite normal and accepted in a dense urban environment such as is experienced in this existing building and within the locality generally. As noted in Paragraph 6.170, Mr McCartney identified examples of developments within 500 metres of the Appeal Site that have window-to-window separation

distances between buildings which are materially less than the relationship between the Appeal Scheme and Simper Mansions. As such, the level of privacy afforded to the north-east facing windows on the eastern elevation of Simper Mansions is still commensurate with that which has been permitted as acceptable elsewhere in the VNEB Opportunity Area

91. Finally, it is very important to place the scale of these issues being considered here into their full context. The impact under consideration relates to secondary windows in two rooms of a total of 7 dwellings in Simper Mansions which contains 61 dwellings. Moreover, the wider New Mansion Square development as a whole comprises 386 dwellings. As such, the level of impact is isolated to a very few dwellings (11.4% of dwellings in Simper Mansions and 1.82% of dwellings in New Mansion Square) - dwellings which all have dual aspect in which their main living rooms are not impacted by overlooking.

92. Overall, when considered in the context of the local area's Opportunity Area designation and remember that the level of impact is to a degree which has been found acceptable elsewhere in the area, it is submitted that any harm arising would not amount to an unacceptable level of overlooking or loss of privacy.

93. Consequently, it is submitted that the Appeal Scheme complies with Part B of LP2 (General Development Principles (Strategic Policy)). Indeed, the Council's professional officers agree. Paragraph 11.12 of the Officer Report agrees and states that:

"*...it is considered that the proposed scheme has been designed in a manner which has a mutually acceptable form of development to ensure that the living conditions of both the existing occupiers located at Phase 4A and the future occupiers are of an acceptable standard*."

94. Furthermore, when compared to the Extant Permission, Mr Stackhouse accepted that privacy from some rooms on the eastern elevation of Simper Mansions is reduced as a result of the Appeal Scheme (namely those angled windows facing

northwards which affects 7 dwellings), however, the extent of overlooking from other windows on the northern elevation of the building is reduced through the greater separation distance between the building and Plot 2 and the omission of balconies from Plot 2. Indeed, the impact on privacy on the eastern elevation (namely those angled windows facing southwards, which affect 7 dwellings) is broadly similar. Therefore, when considered collectively, it is submitted that there will not be any additional harm arising from the Appeal Scheme on the outlook of residents of Simper Mansions compared to the Extant Permission. Thus, the impact of the Proposed Development will be comparable to that which the Council has already determined to be acceptable when it permitted the Extant Scheme. The Appeal Scheme will thus accord with the relevant Development Plan policies.

Enjoyment of Open Spaces Serving Phase 4 of the Battersea Power Station Development

95. The Council formulated an issue in the Topic Specific SoCG in relation to the Open Spaces serving Phase 4 of the Battersea Power Station Development as being "the effect of the appeal development on the enjoyment of open spaces serving Phase 4a of the Battersea Power Station development." That impact on "enjoyment" is said in the SoCG to give rise to a breach of Part D of Policy D6 of the London Plan and/or a breach of Policy LP2 of the Local Plan. The matter is addressed in a single sentence in the Council's Statement of Case (CDG.02 para 5.27):

"The additional height proposed, given the proximity of the building, would add to an overbearing impact on the amenity space at 'Phase 4a', reducing the enjoyment of the residents who rely on it."

96. It is important to note that it is agreed in the topic-specific SoCG on living conditions that there is no unacceptable overshadowing impact arising in relation to this amenity space (CDH.02 last bullet of paragraph 3.1).

97. Mr McCartney has carefully examined the potential impact of the Proposed Development upon the amenity space in issue here. New Mansion Square contains two principal open spaces that run in a linear arrangement through the centre of the site. The eastern open space is located on top of the health centre and is primarily hard landscaped. The western open space is at ground level and is primarily soft landscaped. The eastern open space is located most closely to the Appeal Site and whilst the amenity space of Plot 3 would adjoin it, it would be separated by a raised boundary wall that prevent views between the amenity spaces. The separation between the amenity spaces is further enhanced by the proposed green roof on the PBSA amenity space that would be inaccessible to students.

98. As such, both Mr McCartney and Mr Stackhouse concluded that the proximity of the proposed amenity space of Plot 3 would not give rise to an unacceptable impact on the enjoyment of the open spaces serving New Mansion Square.

99. It can be seen from Figure 73 and Figure 75 of Mr McCartney's evidence that windows associated with Plot 3 of the Appeal Scheme will look out towards the open space of New Mansion Square (both the eastern and western open space). Whilst this is an arrangement that is not experienced currently by residents using the open space of New Mansion Square, the future presence of buildings to the east of New Mansion Square has been long established by the Site Allocation and such a relationship was established as acceptable by the Extant Permission.

100. Furthermore, whilst Plot 3 will increase the number of windows that look out onto the open space of New Mansion Square, the open space is already overlooked and enclosed by dwellings within New Mansion Square that are in closer proximity. As such, the extent to which those within the open spaces serving New Mansion Square will be affected in their enjoyment of the space is governed more by the proximity of the buildings within New Mansion Square scheme itself rather than the Appeal Scheme. On that basis it is submitted that the Appeal Scheme will not lead to an unacceptable level of overlooking or undue sense of enclosure onto the

open space associated with New Mansion Square. As such the Appeal Scheme complies with Part B of LP2 (General Development Principles (Strategic Policy)).

101. Mr McCartney's evidence includes a comparison of the impacts of the Appeal Scheme on the open spaces of New Mansion Square compared to the Extant Permission. He concludes (Paragraph 5.3.10) that "Taken together, these design choices demonstrate that the Appeal Scheme in my opinion, does not result in an unacceptable impact on outlook, overlooking, or sense of enclosure when compared to the Extant Permission. On the contrary, it introduces refinements that reduce overlooking and maintain a well-balanced and coherent relationship with the amenity space." Mr Stackhouse (paragraph 6.194) agreed with Mr McCartney's assessment that the Appeal Scheme does not result in a greater impact on the enjoyment of the open spaces serving New Mansion Square when compared to the Extant Permission. Officers did not disagree with this view in the Officer report, and it was not a matter raised by the DRP at any point.

102. The only reasonable conclusion then is that the proposed development will reflect similar spaces already permitted with this part of the VNEB Opportunity Area, will not be overbearing compared to the Extant Scheme and will not adversely affect existing residents' enjoyment of this outdoor amenity space to any material extent.

<u>Overshadowing of Deck Amenity Spaces of the Outline New Covent Garden Market Scheme</u>

103. In its Statement of Case (paragraph 5.29) the Council asserted:

"The Appellant has prepared an overshadowing assessment of the impacts of the appeal scheme on the adjacent New Covent Garden Market scheme, based on the amenity spaces identified within the outline planning permission for that development. The assessment identifies that the two podium deck amenity spaces forming part of the New Covent Garden Market scheme would fall short of the BRE target of 2 hours of direct sunlight over 50% of the amenity space during the day. "

104. The New Covent Garden Market (NCGM) development was granted part outline and part detailed planning permission (2014/2810) on 11 February 2015. The part of the New Covent Garden Market development that is relevant to the Site is the "Entrance Site" Development Zone which is located on the eastern side of New Covent Garden Market Access Road.

105. The Entrance Site currently contains a temporary flower market but benefits from an outline planning permission for residential-led development. Condition 14 of the outline planning permission restricts the total GEA of the Entrance Site Development Zone to 44,324 sqm and the parameters plans restrict the maximum height of development to range between 6 and 17 storeys, depending on its location on the site. As all matters were reserved in respect of access, appearance, landscaping, layout and scale, an indicative scheme based on the maximum parameters was prepared to determine the acceptability of the scheme for outline planning permission to be granted. The maximum parameters show two perimeter style blocks each with their own podium amenity space.

106. The Entrance Site does not benefit from reserved matters approval nor has an application been submitted at the time of writing. As such, the effect of the appeal development on the future enjoyment of the illustrative proposed deck amenity spaces is hypothetical as it is based on the illustrative scheme and not a fully consented development.

107. It follows that there is no detailed scheme to assess the impact of the Proposed Development against. The Council has not explained why as a matter of law or policy it is appropriate to refuse planning permission of the Proposed Development by reference to a form of development which does not even have detailed consent, since any reserved matters application would have to be determined by reference to relevant circumstances and planning policy relevant at the date of that determination. This means that such reserved matters applications have to respond to changes to the environment that arise subsequent to the grant of outline planning permission.

108. The real question is whether the Proposed Development would prejudice the ability to obtain reserved matters approval on the NCGM site as a result of overshadowing i.e. would it preclude an acceptable form of development coming forward at all. The Council has not addressed this question in its Statement of Case and presents no evidence in relation to it. Accordingly, there is no evidential basis before this Inquiry upon which it can be concluded that the Proposed Development would prejudice the ability to gain a detailed consent on the NCGM site for a form of development within the constraints imposed by the outline planning permission for that site.

109. Indeed, given that outline planning permission was granted 10 years ago, planning policy, legislation, and both housing and commercial needs, alongside the site's surroundings, have changed since it was granted. Any form of development coming forward for reserved matters approval would thus have to reflect current policy and current viability constraints before development could be delivered. Mr Stackhouse was correct to conclude that the potential impact of the Proposed Development via overshadowing upon the inchoate NCGM scheme could only ever be given limited weight in this context.

110. This is the position which Officers adopted also (CDM.05 Page 174) where the officer assesses the level of direct sunlight to each of the proposed amenity areas based on the maximum parameters and notes that:

> "As this assessment is of the maximum massing proposed the effect to each of these areas are likely to be less with the final detailed scheme in place. It may also be possible to redesign the landscape plan to relocate these amenity spaces with low sunlight at the detailed design phase. Appropriate massing in sensitive areas at detailed design stage and relocation of amenity space will result in effects ranging from negligible to minor adverse."

111. However, even if the matter is considered on the basis of the treating the maximum parameters of the NCGM scheme as if it were a consented position, Mr Stackhouse considered the consequential levels of direct sunlight of the podium

deck amenity spaces against the Appeal Site (as existing), the Extant Permission, and the Appeal Scheme based on the evidence provided by Mr Fletcher.

112. The Appeal Site (as existing) is of low massing such that the presence of the existing buildings (Bookers warehouse and the now demolished BMW Garage) would not have materially impacted upon the levels of sunlight the podium deck amenity spaces received. Notwithstanding this, the Daylight, Sunlight and Overshadowing Assessment associated with the New Covent Garden Market development concluded that the northern podium deck would receive 2 hours of direct sunlight for 40.78% of the area on 21 March against the BRE guidelines of 50%. The southern podium deck would receive 2 hours of direct sunlight for 74.20% of the area. Thus, any issues relating to overshadowing of the amenity decks are as a result of the maximum parameter NCGM scheme itself rather than the result of the Proposed Development. Mr Fletcher explained (Paragraph 13.12 of his evidence) that:

"Of course, the principal course of the overshadowing of the courtyard is due to the blocks along southern edge of each podium…"

113. The position is also recognised in the Officer Report in which Paragraph 11.53 states that: "… it is acknowledged that both amenity areas have been designed with limitations on the amount of sunlight reaching these spaces meaning it would be more difficult to accord with the BRE guidelines, which is similar to the impact of the consented scheme."

114. Elsewhere across the New Covent Garden Market planning permission, as set out in the Daylight and Sunlight Assessment (CDM.14), there were even greater transgressions against the BRE Guidelines with Area 1 (within the Northern Development Zone) receiving direct sunlight for 4.64% of the amenity space and Area 5 (within the Apex Development Zone) receiving direct sunlight for just 1.20% of the amenity area. Despite this relatively low level of compliance, the development was still considered to be acceptable by the Council. There are also

examples of other schemes in the VNEB OA in which direct sunlight levels to amenity spaces have been accepted below the BRE Guidelines. Mr Fletcher identified amenity space in schemes such as Battersea Gardens; 46 Ponton Road; The Residence; Embassy Gardens; and Riverlight which range between 3% and 35% direct sunlight area coverage.

115. Mr Fletcher's evidence also compared the impact that the Proposed Development would have on the maximum parameter scheme for the Entrance Site, against the impact that the Extant Permission would have on the maximum parameter scheme. In respect of the Extant Permission, 39% of the northern podium deck would receive 2 hours of direct sunlight on 21 March against the BRE guidelines of 50%. It would receive direct sunlight for 50% of the area on 28 March. The southern podium deck area would receive 2 hours of direct sunlight to 26% of the area and would receive direct sunlight for 50% of the area on 5 April. Against the Appeal Scheme, 25% of the northern podium deck would receive 2 hours of direct sunlight on 21 March against the BRE guidelines of 50%. It would receive direct sunlight for 50% of the area on 4 April. The southern podium deck area would receive 2 hours of direct sunlight to 14% of the area and would receive direct sunlight for 50% of the area 26 April.

116. The Appeal Scheme therefore has a greater impact on direct sunlight to the two podium deck amenity spaces compared to the Extant Permission. Nevertheless, the residual levels of sunlight to the amenity spaces (25% and 14%) is still way above what was considered acceptable in the determination of the New Covent Garden Market development in relation to other amenity spaces (4.64% and 1.20%) and exceeds levels of sunlight received to other areas of amenity spaces in the wider VNEB OA. Furthermore, as Mr Fletcher explained, the levels of direct sunlight would meet the BRE Guidelines of 50% by 26 April at the latest meaning that the amenity spaces would receive the appropriate benchmark levels of sunlight for the summer months which is when they are most likely to be in use.

117. This point is recognised in the Officer Report too where Paragraph 11.54 states that: "Given the results for the sunlight reaching the Linear Park and the fact that the two podium deck amenity spaces would achieve the recommended 2 hours of direct sunlight to 50% of their areas by 21st April and 8th May[5] respectively (some 4 to 6 weeks later), it is not considered that the overshadowing concerns raised by the neighbouring developer could be sustained."

118. Mr Fletcher concluded (Paragraph 13.13 of his evidence) that "having tall southern blocks and relying on the appeal site remaining undeveloped or very low-rise is not a logical solution to the issue." Mr Fletcher demonstrated in Paragraph 13.12 that minor upper-level setbacks or reduced roof levels on the southern blocks would be sufficient to achieve direct sunlight to 50% of both podium deck amenity spaces which demonstrates that it is in the gift of the designer of the New Covent Garden Market development to ensure that the scheme that comes forward through reserved matters is designed to achieve an appropriate level of sunlight to its proposed amenity spaces. Moreover, the exercise demonstrates that it is not the Appeal Scheme that is disproportionately harming the level of sunlight that the podium deck amenity spaces receive.

119. Turning back to planning policy, whilst it is not appropriate to assess the compatibility of the Proposed Development and any future NCGM scheme by reference to the maximum parameters of the Entrance Site, the unchallenged analysis undertaken by Mr Fletcher means that the only evidence before this Inquiry establishes that an appropriate level of enjoyment of any proposed deck amenity spaces is capable of being achieved should a reserved matters approval for the New Covent Garden Market development be sought in the future.

120. Furthermore, whilst the levels of direct sunlight to the deck amenity spaces are reduced when comparing the impacts of the Appeal Scheme against the Extant

[5] These dates where 50% compliance is achieved are based off an assessment of the illustrative scheme and differ to the dates presented above (which were drawn from Mr Fletcher's assessment of the maximum parameters scheme). It is submitted that it is a robust position to focus on the maximum parameters scheme although Mr Fletcher's evidence covers both scenarios for completeness.

Permission, the residual daylight is still significantly greater than what was found acceptable elsewhere under the New Covent Garden Market development. It is then not open to the Council to suggest that the impact of the Proposed Development is unacceptable when much greater degrees of impact have already been accepted elsewhere.

121. Planning Policy reinforces the correctness of this position. Paragraph 130 Part C of the NPPF (CDB.01) which states that "...when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)." Further, Paragraph 1.3.45 of the Mayor's Housing SPG (CDB.07) states that "Guidelines should be applied sensitively to higher density development, especially in opportunity areas, town centres, large sites and accessible locations, where BRE advice suggests considering the use of alternative targets. This should take into account local circumstances; the need to optimise housing capacity; and scope for the character and form of an area to change over time."

122. On this basis, it is submitted that the Development is compliant with Part D of Policy D6 (Housing quality and standards) of the London Plan (CDB.02) in that it provides sufficient sunlight to surrounding housing appropriate for its context.

Sunlight/Daylight Impacts Generally

123. Notwithstanding the putative reasons for refusal adopted by resolution, the Council has confirmed that it is not taking any Daylight and Sunlight points in respect of neighbouring buildings at the Inquiry, and it agrees that no unacceptable impacts would arise. Mr Barlow appeared on behalf of some of the residents of neighbouring buildings and did pursue points in relation to rights to light. As I explained in Opening, in order for such rights to arise they must have been either expressly granted or acquired through prescription (over at least a 20 year period). Such rights cannot arise in relation to newly constructed and occupied development (like New Mansion Square) in the absence of an express

grant. Further and in any event, the courts have held that purely private interests such as rights to light do not warrant protection by the planning system. In *Brewer v Secretary of State for the Environment [1988] J.P.L. 480* (David Widdicombe QC, sitting as a Deputy High Court Judge) the court held that the existence or absence of private rights of light was an irrelevant consideration in determining a planning application.

124. The Daylight and Sunlight reports that accompany the planning application the subject of this appeal (see CDA.14, CDA.55 and CDA.56) conclude that;

    a. For the Viridian Apartments there will be improved levels of compliance both in terms of VSC and NSL assessed against the BRE guidelines, when compared to the Extant Scheme.
    b. That the Appeal Scheme will have a broadly comparable level of daylight and sunlight effect upon the New Mansion Square to that of the Extant Scheme.
    c. The daylight and sunlight provision to the neighbouring outline consented developments will remain commensurate for an urban development site within the VNEBOA. The neighbouring open spaces and amenity areas will have access to sunlight in March, with the principle linear park exceeding BRE guidance. As a result, the Appeal Scheme will not unduly prejudice the future implementation of those schemes in due course.

125. The Council's independent review of the Point 2 Daylight and Sunlight Report concluded that the assessment had been undertaken in accordance with the BRE guidelines.

126. The Planning Officers' Committee report at paragraph 11.55 concluded that "…the impacts of the proposed development in lighting terms in respect of impact upon neighbouring residential buildings is considered proportionate to the form of development and its location within a densely built-up setting with the Opportunity Area (VNEB) that does not depart significantly from the extant

scheme approved on the site. For these reasons, the objections raised on loss of light and overshadowing grounds are not therefore considered sustainable."

127. Mr Barlow also raised concerns relating to potential traffic generation. There is no reasonable basis for concluding that the Proposed development will give rise to unacceptable safety concerns or would otherwise give rise to severe impacts on the network. The development is car free with the exception of blue-badge spaces (5 spaces – 3 C3, 1 PBSA and 1 commercial). As the Officers report explains (Paragraph 14.8 (CDF.01) some 94% of residents will use active travel modes or public transport. Indeed, compared to the Extant Permission there will be a net reduction in trip rates (see Transport Assessment (CDA.46) – Figure 6.11).

128. The Proposed Development will also make appropriate contribution to Local Infrastructure. As Mr Stackhouse explained in his evidence in chief, PBSA has only a limited impact on public services such as schools, doctors, and libraries. Albeit he recognised that the proposed C3 housing would have some impact upon these services. The Development will result in a CIL payment of some £2.5 million which the Brough can direct towards infrastructure improvement. It will also deliver further local infrastructure improvements including:

    a. New Public Realm – 4,442 sqm
    b. New jobs – 280 full-time construction, 7-10 Apprentices, and up to 31 jobs (10.11 of Stackhouse evidence)
    c. Employment and Skills contribution of £130,831.25 (See Stackhouse paragraph 8.5)
    d. Children's play space contribution of £56,250
    e. TfL contribution of £458,088 – towards Healthy Streets and improvement of Battersea Park Road
    f. The introduction of affordable community space and commercial floorspace.

129. Accordingly, none of the matters raised by Mr Barlow indicate that planning permission should be refused.

130. Indeed, it is important at this junction to recall that paragraph 125 of the NPPF states that the reuse of brownfield land for housing should be approved unless substantial harm would be caused. The Proposed Development which reuses this brownfield Site in an Opportunity Area does not come anywhere near a threshold of "substantial harm". As such, it garners the support of Paragraph 125 of the NPPF.

2) WHETHER THE PROPOSAL IS ACCEPTABLE IN LAND USE TERMS?

131. The outstanding issue between the Appellant and the Council in relation to the principal of land use is described in the SoCG as:

> "Whether the proposed mix of uses is the most appropriate at the appeal site, in the context of identified need for 'traditional' housing vs student housing, and the absence of a Nomination Agreement for the development with a Higher Education Provider (HEP), having regard to Policy H15 (PBSA) of the London Plan and Policy LP28 (PBSA) of the Local Plan."

132. It is to be noted that the use of the phrase "most appropriate" cannot be found in the Committee resolution. Members simply referred to "the wrong balance for land use". It was not until the 29 January 2025 letter to PINS that the phrase "most appropriate" began to appear in relation to the Council's position.

133. The Council's position appears to be that there is some legal and/or policy requirement that the "most appropriate" mix of uses must come forward on this Site. However, it has not made any legal submissions to support this contention and has not identified any National or Development Plan policy in support of its position. The closest that we get is in Paragraph 5.19 of the Council's SoC (CDG.02) where the Council implies that if the site was delivered as student accommodation (for which it alleges that there is not a pressing need and which

is disputed), it would no longer be available to provide 'traditional' 35 homes (for which there is a need). To advance this argument, Paragraph 5.19 of the Council's SoC refers to draft Policy LP28 of the Local Plan Partial Review (CDC.05) which states that PBSA proposals will be supported where the development is proposed on a site which not suitable for conventional housing.

134. For reasons I have already explained, applying the approach in paragraph 49 of the NPPF, no weight is to be ascribed to the Local Plan Partial Review on the basis of its stage of preparation, the extent to which there are unresolved objections (including from the Appellant and the GLA) on the draft policies and because its policy approach is inconsistent with the National Policy requirement to meet the specialist accommodation needs of students. Indeed, the formulation of the issue in the SoCG I have referred to above, does not identify any policy basis for a requirement that the "most appropriate" mix of uses must come forward on the site. That is because no policy basis for this approach exists.

135. Turning to adopted development plan policy, there is no policy that seeks to prioritise conventional housing over PBSA so there is no policy requirement to assess which of the two land-uses is in greater need. This was the conclusion reached by the Inspector (Paragraph 44) in the Blount Street Appeal Decision (CDE.07) in which it was noted that:

"…. Although the proposal is not for traditional housing provision, there is no policy imperative for it on the site…"

The Inspector subsequently went on: "…and I have not been presented with any compelling argument that housing provision within the borough would be significantly compromised through the development of the site for PBSA."

136. Mr Stackhouse was clearly correct when he concluded that housing provision within the Borough would not be significantly compromised by the Proposed Development. Indeed, it is agreed in the SoCG (paragraph 4.12) that (following the

approach in paragraph 4.1.9 of the London Plan and Paragraph 025 (Ref ID: 68-034-20190722) of the PPG) 2.5 PBSA bedrooms contribute the equivalent of one single dwelling towards meeting housing needs and that PBSA studios are counted on a one for one basis. As Mr Stackhouse explained, on the basis of this ratio, the PBSA element of the Development would contribute the equivalent of 447 dwellings to Wandsworth's housing supply and when added to the 55 conventional affordable dwellings, the Appeal Scheme would contribute the equivalent of 502 dwellings.

137. In contrast, the Extant Permission, which is an entirely conventional (Class C3) residential development and of a broad scale to the Development, would deliver some 307 dwellings towards Wandsworth's housing supply. It would also only deliver 20 affordable rented dwellings, whereas the Proposed Development would deliver 55 affordable rented dwellings[6], even though the prevailing affordable housing need in Wandsworth being for affordable rented dwellings.

138. Therefore, even if the objective is to prioritise meeting housing needs, the unchallenged evidence based upon an agreed ratio demonstrates that an entirely conventional housing would be unlikely to contribute as positively to overall local housing needs as the Appeal Scheme. Applying the methodology in the London Plan and PPG, the PBSA element of the Development would release 447 self-contained dwellings back into the housing market, whereas a conventional housing development such as the Extant Permission would only contribute 307 dwellings to the housing market, as well as delivering less affordable rented dwellings, which is the form of affordable housing for which there is greatest demand.

139. Of course, the Councillors did not consider this exercise in their attempt to find a reason to refuse the Scheme and it is not even considered in the Council's Statement of Case. There is then no evidence before this Inquiry which

[6] Notwithstanding that C3 affordable housing is not required in PBSA schemes as a matter of policy.

establishes that refusal of the Proposed Development would result in the Scheme contributing to meeting housing needs to a greater degree. Rather, if this were the thinking behind the Councillors' approach, it is entirely wrong-headed because the very reverse position is true; the unchallenged evidence establishes that the Proposed Development would meet the housing needs to a greater extent than any conventional housing scheme.

140. There is also no legal justification for the approach advocated by the Council. Indeed, its approach is actually unlawful. It is not open to you to refuse planning permission for the Proposed Development on the basis that it is not "the most appropriate in relation to alternative land uses."

141. The relevance of alternative forms of development on the same site when determining a planning application was considered in ***R. (Mount Cook Land Ltd) v Westminster City Council*** [2004] 2 P. & C. R. 405 (CDE.08). In that case, the Court held that the existence of a possible alternative scheme which might be considered more beneficial in planning terms than that proposed in a planning application is generally not a material consideration. In Paragraph 30, Auld. L.J accepted the following general propositions made by Mr Corner as correct statements of the law and a useful reminder and framework when considering issues such as this:

1) in the context of planning control, a person may do what he wants with his land provided his use of it is acceptable in planning terms;

2) there may be a number of alternative uses from which he could choose, each of which would be acceptable in planning terms;

3) whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any;

4) in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms;

5) where, as Mr. Corner submitted is the case here, an application proposal does not conflict with policy, otherwise involves no planning harm and, as it happens, includes some enhancement, any alternative proposals would normally be irrelevant;

6) even, in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.

142. The matter of alternatives was also considered in ***MR Dean & Sons (Edgware) Ltd v First Secretary of State*** [2007] EWCA Civ 1083 (CDE.09) where the Respondent, Sainsbury's, had advanced a scheme which it considered better met the requirements of a high-quality design than the scheme that had been granted planning permission. In rejecting Sainsbury's challenge, Keene L.J. held at Paragraph 38 that:

"There is certainly no legal principle of which I am aware that permission must be refused if a different scheme could achieve similar benefits with a lesser degree of harmful effects. In such a situation, permission may be refused but it does not have to be refused. The decision-maker is entitled to weigh the benefits and the disbenefits of the proposal before him and to decide (if that is his planning judgment) that the proposal is acceptable, even if an improved balance of benefits and disbenefits could be achieved by a different scheme."

143. The position was further reinforced in ***Horsham DC v Secretary of State for Communities and Local Government*** [2015] EWHC 109 (Admin) (CDE.10) in which Lindblom L.J. held at Paragraph 58 that:

"The suggestion that the inspector could not approve Barratt's scheme if he thought a better one might have been proposed is misconceived. That idea is not implicit in paragraph 64 of the NPPF (see paragraph 39 above). Nor, as I said at the outset, does it find support in planning law (see paragraph 1 above)."

144. In summary, it is submitted that there is no policy or legal justification to refuse the Appeal Scheme (which is compliant with the development plan when read as a whole) on the basis of an alternative scheme that the Council considers to be more appropriate. Indeed, the Council has not identified any particular form of development which could come forward on a basis which would be acceptable and which would meet housing needs to a greater extent. The Extant Scheme is certainly not such an example given that it would meet a smaller proportion of housing needs than the Proposed Development. This means that the Council's point must be made by reference to a "inchoate or vague schemes" and without reference to any scheme which it has established has a real possibility of coming forward. On that basis, applying the approach in paragraph 6 of Mount Cook, the Council's position can be given no weight in any event. This is a point that is entirely misconceived. It should never have been raised by Members or the Council and it was unreasonable to pursue it.

145. In conclusion, on this issue it is submitted that PBSA is acceptable in principle on the Site. The proposed use complies with Policy H15 (PBSA), Policy GG4 (Delivering the homes Londoners need), and Policy H4 (Delivering affordable housing) of the London Plan Policy LP28 (PBSA), and Part A of Policy LP2 (General Development Principles) of the Local Plan; and Site Allocation NE2.

The Need For PBSA

146. In recommending that planning permission should be granted for the Proposed Development, Officers explained to Members that "It is considered that there is a strategic need for student housing within London that the proposals would help to address." (CDF.01 para 1.22)

147. Members, however, rejected that advice and adopted a position that there is no need for student accommodation on this site and that to grant planning permission for the Proposed Development would result in a "significant oversupply" of student housing in Wandsworth Borough[7].

148. Of course, Councils that reject Officer advice are required to substantiate their position by reference to objective evidence. In the present case, the Council has not substantiated its position with any evidence whatsoever. It decided not to present any evidence relating to the need for PBSA nor the demand/supply position in Wandsworth. Bizarrely, the Council has not, however, chosen to withdraw on these points. Indeed, in its Opening, the Council maintains the points set out in the Statement of Case, notwithstanding that it has adduced no evidence to support them to this Inquiry.

149. In stark contrast, the Appellant has produced compelling evidence from one of the country's leading specialist consultants in the assessment of student need in the form of Mr Feeney. His evidence updated the evidence that had been previously provided to the Council and which formed the basis for the Officer's concluding that a strategic need for PBSA exists which the Proposed Development would meet.

150. The starting point for considering PBSA need is Policy H15 of the London Plan (CDB.02). This states that boroughs should seek to ensure that local and strategic need for PBSA is addressed. The supporting text of Policy H15 (Paragraph 4.15.2) states that London has a requirement for 3,500 PBSA bed spaces to be provided annually over the Plan period. Paragraph 4.15.3 of the supporting text states that the strategic need for PBSA is not broken down into borough-level targets as the location of this need will vary over the Plan period with changes in higher education providers' estate and expansion plans, availability of appropriate sites, and changes that affect their growth and funding. Thus, the London Plan does not

[7] Council's Statement of Case Paras 5.7, 5.8, 5.12 and 5.17.

recognise an approach that Boroughs are only required to meet PBSA needs arising within their administrative boundaries; rather, it adopts a London-wide approach to the consideration of PBSA needs.

151. Part C of Policy GG4 (Delivering the homes Londoners need) states that development should create mixed and inclusive communities and provide for identified needs, including for specialist housing. In this regard, PBSA is recognised in the London Plan as specialist housing. At a national level, Paragraph 61 of the NPPF (CDB.01) requires the needs of groups with specific housing requirements to be addressed, and Paragraph 63 states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. The PPG (Paragraph 004 Reference ID: 67-00420190722) also insists that strategic policy-making authorities need to plan for sufficient student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether it is on campus. Against the London Plan PBSA target of 3,500 homes per year, Paragraph 57 and Table 3 of Mr Feeney's Proof, demonstrates that delivery within London has fallen short every year. Indeed, in the 8 years between 2017/18 and 2024/25, London has only delivered 14,102 beds against a need of 28,000 beds – in other words only some 50% of PBSA needs is being met. As such, the only reasonable conclusion is that there is and remains a significant unmet need for PBSA against the London Plan target within London as a whole.

152. This position is reinforced by the reasoning in the 17-37 William Road Appeal Decision (CDE.06) in which the Inspector noted (Paragraph 202) that need:

"...needs to be seen in the context of the more recent London-wide annual target of 3,500 student bedspaces, which has been established through the London Plan. It seems clear that some Boroughs will be better placed to contribute towards the strategic level of supply than others".

153. The approach outlined above is also adopted in the officer report associated with the Palmerston Court PBSA scheme that the Council granted in 2021 in which the officer set out in Paragraph 3.10 (CDM.04) that:

"The quantum of units would provide a significant contribution to addressed identified student housing need across London and the borough and also meeting general housing needs as set out in LP Policy H1. The site is in an accessible location with good bus and rail links where the applicant's partner HEIs are located. "

154. Further, during the debate at Planning Committee, the Chair acknowledged that need should be seen in a wider context when Members discussed the acceptability of the Appeal Scheme at Planning Committee on 14 January 2025. In the transcript (CDF.05), he stated that: "I mean, we often talk about how meaningless borough and more particularly ward boundaries are in all kinds of things, like housing, for instance."

155. Indeed, the importance of housing delivery at a strategic level is also underlined by various appeal decisions including recovered appeals by the Secretary of the State. In a recovered appeal on 11 December 2023, in relation to two applications in Isleworth (Homebase, Syon Lane and Tesco, Osterley) (APP/F5540/V/21/3287726 and 3287727) (CDE.12), the Secretary of State agreed with the Inspector that substantial weight should be given to the delivery of homes towards the Borough's needs, but also the London-wide need and the recognised shortfall which exists. This was despite the Borough (Hounslow) being able to demonstrate a five year housing land supply. As such, it is clear that London boroughs cannot take a parochial borough view with regards to meeting housing needs.

156. Yet, notwithstanding all of that, the Council alleges that there is no need for PBSA **in Wandsworth** and that the Proposed Development would result in oversupply **in Wandsworth**.

157. In Paragraph 5.7 of the Council's SoC (CDG.02), the Council stated that it will demonstrate that there is sufficient PBSA accommodation proposed to support the majority of student accommodation requirements from the largest HEP's within Wandsworth. This entirely misunderstands the policy position, which directs PBSA to locations well-connected to local services by walking, cycling and public transport, rather than to locations where HEPS are located. This is reinforced in the supporting text (Paragraph 4.15.3) of Policy H15 which states that: "There is no requirement for the higher education provider linked by the agreement to the PBSA to be located within the borough where the development is proposed." For this reason, Mr Stackhouse was correct not to ascribe any weight to the suggested borough target in the Wandsworth Housing Needs Assessment of 35-70 bed spaces per annum.

158. The Council's approach derives from a calculation of Wandsworth only PBSA target figure which it has calculated for itself (see Council's SoC (Paragraph 5.10) (CDG.02)). The Council argues that its PBSA need over the plan period of 2023-2038 has been almost met with 95% of the units having already been either completed, commenced or permitted. This is based upon paragraph 31 of the Wandsworth Local Housing Needs Assessment (2024) (CDC.03) suggests that Wandsworth borough contains 1% of PBSA in London and around 2% of all students, so it contends that its share of the 3,500 bed spaces annual target based upon its current population would be 35-70 units per annum.

159. Firstly, the Council's approach is based upon applying a percentage of PBSA that represents the number of students in Wandsworth in a constrained "policy-on". There is no basis on which it can be appropriate to consider current supply as a benchmark to measure future need, particularly where supply is evidently constrained since only about 50% of need is currently being met across London as a whole. Accordingly, the Council's approach must be rejected since it does not and cannot represent an unconstrained, objectively assessed need for PBSA.

160. If the approach adopted by Wandsworth were adopted across London as a whole, some central London Boroughs simply could not expect to meet their student needs given the scale of education institutions located within them. By way of example, Mr Feeney looked at the position in Westminster which is home to a range of universities and other specialist providers. He noted that even assuming every bed available to students in Westminster was taken by a student at an institution in the Borough, up to 43,386 students would not be able to access PBSA, including up to 21,781 first year students.

161. The Council's disaggregated approach to PBSA need finds no support whatsoever in adopted planning policy within the London Plan. The approach in the London Plan specifically states (CDB.02 p222 para 4.15.3) that the strategic need for PBSA is not to be broken down into borough-level targets. Further, and where Policy H15 of the London Plan is clear that the annual target of 3,500 bed spaces is deliberately set to be London-wide to allow changing circumstances over time. Further, the GLA has objected to the draft Local Plan Partial Review including to draft Policy LP28 on the basis that it is not in general conformity with the London Plan (CDM.07).

162. Indeed, as Mr Stackhouse explained, as a matter of logic, if every Council across London adopted the same approach to assessing need as Wandsworth advocates this would mean that, in combination, the London Councils would identify a "need" of around 50% of the target figure identified in the London Plan. Accordingly, the Council's approach if adopted across London would thus ensure that student needs would not be met. Thus, the approach conflicts with the policy objective set in Policy H15 of meeting the overall 3,500 per annum figure across London as a whole. Further, the Council's approach is in conflict with the approach that specialist housing needs must be identified and met as required by the NPPF Paragraph 61.

163. Furthermore, even if it was accepted that the Borough was providing for the needs of the HEPs in its Borough, it would be failing in its duty to cooperate with all other

London boroughs to meet the unmet PBSA housing need across London. In this regard, Paragraph 24 of the NPPF (CDB.01) states that: "Effective strategic planning across local planning authority boundaries will play a vital and increasing role in how sustainable growth is delivered, by addressing key spatial issues including meeting housing needs, delivering strategic infrastructure and building economic and climate resilience. Local planning authorities and county councils (in two-tier areas) continue to be under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries." Further, NPPF paragraph 62 advises: "In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for." The Wandsworth approach does not allow for any needs for PBSA from neighbouring areas to be taken into account.

164. The entire basis of the 35-70 units a year calculation is founded upon a flawed statistic in any event. Mr Feeney provided unchallenged evidence that in the 2024/25 academic year, as a matter of fact 4% of all student beds in London are located in Wandsworth (Feeney Paragraph 70). Even using the Council's entirely misconceived methodology, this means that Wandsworth annual target should be 140 units per annum, rather than 35-70. Over 15 years that is an additional 1050 PBSA bedspaces that would be required. Thus, even if the council's wholly flawed approach is adopted, the Proposed Development cannot result in an oversupply of PBSA in Wandsworth.

165. However, even more compelling is the unchallenged evidence from Mr Feeney that:

    a. In respect of London overall, (Feeney Figure 12) for the 2022/23 academic year (the most recent year of data), there was a Demand Pool of 277,295 students yet only a supply of 92,382 beds – leaving 184,463 students with a requirement for a bed unable to access one in PBSA. This translates to a student to bed ratio of 2.99: 1.

b. In respect of institutions within a commutable distance of the Appeal Site, Mr Feeney explained (Paragraph 22) that students in London are generally willing to travel around 45 minutes to and from a place of study from a place of residence. My Feeney identified 15 HEPs within 45 minutes of public transport of the Site. In this scenario, there was a 2022/23 Demand Pool of 148,170 students yet only a supply of 29,343 beds – leaving 118,827 students with a requirement for a bed unable to access one in PBSA. This translates to a student to bed ratio of 5.05: 1.

c. In respect of institutions within Wandsworth, (Paragraph 78) since 2013/14, Wandsworth's institutions have been unable to house all students with a requirement for a bed in PBSA, with this shortfall growing markedly since 2019/20 to stand at 7,074 students on 2022/23. Importantly, 2,309 first year students with a requirement for a bed are unable to be housed. Based on previous growth trajectories, these figures have the potential to stand at 8,896 and 3,422 in 2024/25 respectively.

d. In respect of institutions within Wandsworth and its neighbouring boroughs, he identified a short fall of 17,666 in 2024/25. This translates to a student to be ratio of 3.31:1.

166. Accordingly, the unchallenged evidence before this Inquiry is that whether one looks at London as a whole, Wandsworth with Lambeth and Southwark, or Wandsworth in isolation, higher education institutions within these areas are unable to house all students with a requirement for a bed in PBSA and this shortfall continues to grow markedly.

167. There is no reasonable evidential basis whatsoever for concluding that there is no PBSA need for the Proposed Development, nor that, if granted, it would result in an oversupply of PBSA; rather, the evidence has established that there is a very significant undersupply of student accommodation at every single geographical

level and that even with the proposed Development operating that undersupply will remain very significant indeed.

168. Officers were entirely correct in accepting this position when they advised members of the Planning Committee in January this year. The Member's insistence to the contrary was and is wholly unreasonable. The Council has utterly failed to substantiate its case that there is no need for PBSA in Wandsworth. It has utterly failed to substantiate its case that the Proposed Development would result in an oversupply of student accommodation. Indeed, the vague, generalised and inaccurate assertions regarding the need for PBSA and oversupply of PBSA in the Statement of Case are unsupported by any reasonable objective analysis. The Council's position is the very definition of unreasonable and that is why the Appellant has made a costs application for its costs in dealing with this element of the Council's case.

169. In summary, the Site's location is appropriate for PBSA because of its good connections to local services by walking, cycling and public transport. Furthermore, as set out in the evidence of Mr Feeney, there are 15 Higher Education Institutions with a reasonable commuting time of the Site, three of which have expressed their interest in acquiring the majority of bedspaces should planning permission be granted.

170. Further, highly accessible sites such as the Appeal Site are wholly appropriate in locational terms for PBSA to help meet the need identified in Policy H15 and Policy GG4 of the London Plan. In the 7-15 Blount Street Appeal Decision (CDE.07), the Inspector concluded that the provision of 106 PBSA bed spaces would make "a valuable contribution to student housing provision." At 762 bed spaces, the Appeal Scheme would deliver over seven times more beds than this scheme. At the very least, it must be concluded that the Appeal Scheme would make a valuable contribution towards addressing the current significant undersupply of student housing provision in Wandsworth, in the boroughs surrounding

Wandsworth and in London as a whole. This is a matter which should attract substantial weight in the planning balance.

Policy and Nomination Agreements

171. At paragraph 5.16 of its Statement of Case, the Council alleged that the Proposed Development conflicts with policies LP28 of the Local Plan and H15 of the London Plan "which require a nomination agreement to be in place. ". Thus the Council contends that policy requires a nomination agreement to be in place prior to the grant of planning permission in order for there to be compliance with these policies.

172. This was totally incorrect and a wholly unreasonable position to have adopted. It is also an approach which the Council did not require of the Palmerston Court scheme in March 2021.

173. Part A of Policy H15 states that boroughs should seek to ensure that "the majority of the bedrooms in the development including all of the affordable student accommodation bedrooms are secured through a nomination agreement for occupation by students of one or more higher education provider" .

174. Paragraph 4.14.4 of the supporting text of Policy H15 which states that "…the borough should ensure**, through condition or legal agreement**, that the development will, **from the point of occupation**, maintain a nomination agreement or enter a new nomination agreement with one or more higher education provider(s) for a majority of the bedrooms in the development, for as long as it is used as student accommodation."

175. This is also echoed in the supporting text (Paragraph 17.36) of Policy LP28 of the Local Plan (CDC.01) which states that "Proposals for new student accommodation will support London's HEPs, and therefore proposals for student accommodation must either be operated directly by a Higher Education Provider (HEP) or the majority of the bedrooms in the development **must have an**

agreement in place from initial occupation with one or more HEPs, to provide housing for its students, and to commit to having such an agreement for as long as the development is used for student accommodation in accordance with London Plan Policy H15."

176. The policies are to be interpreted with regard to their explanatory text. There is no reasonable basis on which Policy H15 and/or LP28 can possibly be interpreted as requiring a nomination agreement to be in place prior to the grant of planning permission; rather they require the imposition of controls either by way of condition or planning obligation to ensure that a nomination agreement is in place prior to occupation.

177. Bizarrely that is precisely the position that the Council accepted precisely when approving the Palmerston Court development in 2021. In that case, the Council considered it sufficient for the developer to provide evidence of its track record and relationships with HEPs at the time planning permission was granted. Paragraph 3.15 of the officer report (CDF.01) stated in respect of Policy H15 that:

"The aim of this policy is to encourage developers to partner with established HEI, to reduce the potential for speculative development of student housing which might otherwise be able to bypass the need to comply with affordable housing and general housing amenity standards. In this instance, Urbanest have provided evidence of their track record of delivering and managing this type of accommodation, having developed several other similar schemes and having established close ties with some of London's major universities including King's College, the London School of Economics and University College London."

178. The Proposed Development goes further than this. The Proposed Development is supported by three separate letters of support from UCL, University of London, and the London School of Economics and Political Science (LSE). Since these letters of support were received, the Appellant has moved forward and is in the process of agreeing Heads of Terms with LSE as set out in Appendix 2 of Mr

Stackhouse's evidence. As such, the need for PBSA has been demonstrated appropriately and there is no conflict with policy in this regard.

179. Further, there are good reasons why the Policies only require a nomination agreement to be in place prior to occupation and not prior to grant. Mr Feeney explained (Paragraph 84) that

"whilst the London Plan requires an agreement to be in place for a PBSA development to be operational, it is usual for such agreements to be entered into following the securing of planning permission. This allows a university to be more confident that a scheme will be delivered and so that they can more properly plan for when bed spaces will be available."

180. He also referred to the Mayors PBSA LPG to validate his point which states in Paragraph 3.2.1 that: "HEPs are unlikely to enter into such agreements until plans and, indeed, construction are sufficiently advanced that they can rely on bedspaces being available when needed (e.g. for the start of a particular academic year). However, any Planning Authority will want to ensure a reasonable prospect of compliance with this policy criterion post permission."

181. Therefore, there is no conflict with criterion 3 of Policy H15 of the London Plan, or Criteria 1 of Part A of Policy LP28 of the Local Plan. This is the position that Officers agreed with[8] and noted that the GLA agreed with it too. They recommended approval subject to appropriate provision in the Heads of Terms for the proposed s106 Planning Obligation. Such a clause was included in the first draft s106 planning obligation produced by the Council's solicitors.

182. Thus, not only was the Council's position on this point contrary to Officer and GLA advice, but given that the policy does not require a nomination agreement to be in place prior to occupation, the Council's position that an agreement had to be in

[8] CDF.01 para 1.33 to 1.36 – specifically referencing the need for the provision now made within the S106 Planning Obligation. See also OR CDF.01 page 131 Heads of Terms for Planning Obligation.

place prior to grant was as untenable as it was unreasonable. It simply does not reflect the real world, policy or guidance. Despite requests to do so, it did not drop this point until the presentation of its Opening and after a costs application had been made, to which it offers no defence. Once again, the Council driven by Members operating in the face of sensible advice from their Officers, has acted in an utterly unreasonable way.

CONCLUSION ON THE PUTATIVE REASONS FOR REFUSAL

183. It is submitted that for all of these reasons, none of the matters identified by the Council in its Statement of Case comes close to substantiating a reason for refusing planning permission for the Proposed Development. The Members determination to refuse this scheme even before they could even identify any reasons for doing so has not been supported by any substantive evidence. To pursue these matters to Inquiry, to fail to withdraw when asked to do so by the Appellant, to choose not to present any evidence whatsoever to defend the position adopted is utterly unacceptable and totally unreasonable. It is something that I have never previously witnessed or encountered in 35 years at the Planning Bar. If as an LPA you choose not to produce evidence to defend your position then you must withdraw your objection. To do otherwise is the very definition go unreasonable behaviour. The Council's behaviour driven by the Members of the planning committee is to be deprecated.

184. The only reasonable conclusion open to you on the evidence presented is that the proposed development does not give rise to any conflict with Policy LP2, LP28, D6 or H15 as alleged.

3) THE PLANNING BALANCE

185. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 (CDB.10), an assessment must be made to whether the Development is compliant with the development plan when read as a whole.

186. Mr Stackhouse, in his careful and compelling evidence, concluded that the Development is compliant with the development plan as whole. The Council has presented no evidence to this Inquiry which substantiates any other conclusion.

187. The Development delivers a mix of uses consistent with the Site's adopted Site Allocation and complies with the key design principles within the allocation. It also makes best use of previously developed land, will address a significant need for PBSA and conventional housing (including affordable), delivers new employment opportunities, provides premises for local community groups, makes a positive improvement to local townscape, and brings public realm and place-making benefits. From an environmental perspective, the Proposed Development will deliver a biodiversity net gain significantly in excess of policy, as well as compliance with policies relating to carbon reduction, urban greening, circular economy and drainage.

188. Indeed, Mr Stackhouse (Paragraph 10.2) identified compliance with a very long list of Policies within the Development Plan, which he considered to be the most important for determining the Application.

- London Plan Policy D3 (Optimising site capacity through the design-led approach);
- London Plan Policy D4 (Delivering good design);
- London Plan Policy D6 (High quality and standards);
- London Plan Policy D9 (Tall Buildings);
- London Plan Policy GG2 (Making the Best Use of Land);
- London Plan Policy GG4 (Delivering the homes Londoners need);
- London Plan Policy H1 (Increasing Housing Supply);
- London Plan Policy H4 (Delivering Affordable Housing);
- London Plan Policy H6 (Affordable Housing Tenure);
- London Plan Policy H15 (Purpose Built Student Accommodation);
- Local Plan Policy SDS1 (Spatial Development Strategy 2023-2038 (Strategic Policy));
- Local Plan Policy LP1 (The Design-led Approach (Strategic Policy));
- Local Plan Policy LP2 (General Development Principles (Strategic Policy));
- Local Plan Policy LP4 (Tall and Mid-Rise Buildings);
- Local Plan Policy LP20 (New Open Space);

- Local Plan Policy LP23 (Affordable Housing);
- Local Plan Policy LP27 (Housing Standards);
- Local Plan Policy LP28 (Purpose Built Student Accommodation);
- Local Plan Policy LP55 (Biodiversity);
- Local Plan Policy LP62 (Planning Obligations); and
- Local Plan Site Allocation ref. NE2.

189. These policies are prayed in aid in the determination of whether the proposed Development accords with the Development Plan as a whole. Consistent with his careful assessment, Mr Stackhouse drew attention to two aspects where he identified technical conflict with development plan policy:

a. ***Part 4 of Policy H15 (PBSA) of the London Plan (CDB.02)***: the Application proposes 25% affordable student accommodation rather than 35% affordable student housing and the under provision has not been justified by a viability assessment. This shortfall in affordable student accommodation, however, is mitigated by the provision of conventional affordable housing and which provides the outstanding balance to ensure that the Development provides 39.55% affordable housing overall and is compliant with fast-track policy target set out in the London Plan. This issue is not identified as basis for refusal by the Council. The GLA has also supported this approach. Indeed, the Council has been supportive of this approach since the early discussions of the Scheme in late 2020, with Paragraph 1.38 of the Officer Report noting that "Prioritisation of conventional affordable housing delivery provides a legitimate alternative pathway for student accommodation proposals to provide maximised affordable housing." The position is agreed in the SoCG (paragraphs 4.15-4.20).

b. **Policy LP27 (Housing Standards) of the Local Plan) (CDC.01):** The quantum of private amenity space for Building 1 falls short of the policy by 251sqm. This is mitigated by the quantum of communal amenity space within the proposed public realm which could be used by residents as well

as residents having access to other areas of open space in the neighbourhood area including the Power Station Park, the River Thames, the Linear Park and Battersea Park that provide alternative external amenity for residents. The under-provision is also outweighed by Policy LP1 (The Design-led Approach) and Policy LP20 (New Open Space) of the Local Plan which promote good design, place-making and an integrated approach to landscape design – a position endorsed by Paragraph 25.11 of the Officer Report which states that "It is accepted that there is a shortfall in the provision of communal amenity space that weighs against the scheme, but it is considered that this is compensated by the plans to provide a high quality and landscaped public realm at ground floor level." Finally, it is material to note that the quantum of private amenity space is still compliant with Policy D6 (Housing Quality and Standards) of the London Plan.

190. Mr Stackhouse was correct to conclude in his unchallenged evidence that the weight to be attached to these two conflicts when accounting for the mitigating factors is limited. Therefore, when considered in the context of the other Development Plan polices, not least the Site Allocation, the unmet for conventional affordable housing, and the need to optimise accessible brownfield sites within the VNEB Opportunity Area, it is submitted that the Development is compliant with the Development Plan when read as a whole.

The Material Considerations

191. In addition to an assessment of the Proposed Development against the Development Plan, there is also a requirement to have regard to material considerations. Again, Mr Stackhouse considered these very carefully and fairly, ascribing a weight to each factor whether weighing in favour of a grant of planning permission or against.

192. Notwithstanding the agreed position that the sunlight/daylight impacts of the Development on surrounding development are acceptable, he recognised that

there are some existing residential habitable rooms at Viridian Apartments and New Mansion Square in particular that will experience a reduction in daylight levels as a result of the Proposed Development. Notwithstanding the fact that this reduction is of scale which is acceptable in policy terms, Mr Stackhouse considered it appropriate to attribute limited adverse weight to this factor.

193. He also considered there to be a degree of harm arising from the impact of the Appeal Scheme on secondary windows of 7 dwellings in Simper Mansions due to the effect of the scheme upon outlook and the potential for overlooking from adjacent LKDs of Plot 3. However, given that these dwellings have alternative aspects which benefit from an attractive outlook over the public realm and which are not overlooked, he considered that the overall amenity of these dwellings would still be acceptable within their context. Whilst the degree of impact did not result in a breach of policy, Mr Stackhouse, nevertheless, considered it appropriate to attribute limited adverse weight to this factor in the planning balance.

194. Mr Stackhouse also attributed limited adverse weight to the small shortfall in affordable student housing against Policy H15 of the London Plan.

195. He did not ascribe any adverse weight to the shortfall in private amenity space against Policy LP27 of the Local Plan because it is still compliant with the London Plan policy and is mitigated by the quantum of communal amenity space within the proposed public realm. Further, there is access to other areas of public open space and external amenity in the area, including the Power Station Park, the River Thames, the Linear Park and Battersea Park – all of which are within a maximum of 800 metres of the Site.

196. Importantly, in the context of Paragraph 125 of the NPPF (CDB.01) which states that applications for the reuse of brownfield land for housing should be approved unless substantial harm would be caused, the negative impacts of the Development would certainly not get anywhere near the level of substantial harm. Certainly, the Council has not asserted that this would be the case.

197. Further to these matters, Mr Stackhouse identified a number of material considerations that weigh in favour of the Development:

a. The making best use of suitable allocated brownfield land for new homes in accordance with a site allocation - **substantial weight**;
b. The delivery of 55 affordable homes in a borough that has a proven track record of under-delivery against its affordable housing policy target, is unable to demonstrate through its latest housing land capacity assessment that it can come close to achieving its affordable housing target of 677 homes per year (50% of the annual target of 1,354 homes) in the immediate future, and has a current unmet affordable housing need for 6,087 households – **substantial weight**;
c. The delivery of 502 homes (equivalent) contributing significantly to LBW's housing annual target of 1,354 homes per year and its local housing need of 4,328 dwellings per annum. – **substantial weight**;
d. The delivery of 762 student bedrooms contributing urgent supply to the existing student to bed ratio shortfall of 5.05 students to 1 bed within commutable distance of the Site – **substantial weight**;
e. A new public realm providing 4,442 sqm of high quality public realm for use by new residents and the existing community, including the provision of play space in excess of policy standards for ages 0-11 – **significant weight**;
f. A BNG uplift of 147% and the planting of 73 new trees (with no existing loss) – **significant weight**;
g. A development which reflects local design policies and government guidance on design - **significant weight**;
h. Economic benefits including the creation of 280 full time construction jobs, including 7-10 apprenticeships and the creation of up to 31 jobs once the Development is operational, as well as local business spending by new residents on retail, leisure and F&B expenditure – **moderate weight**;
i. The provision of ground floor commercial and community uses on the ground floor of the Development providing local amenities to future and

neighbouring residents, creation of jobs and active frontage – **moderate weight**;

j. The provision of an affordable commercial and community use on the ground floor of Plot 1 that will be available at a peppercorn rent to provide opportunities for start-ups and local community groups – **moderate weight**; and

k. The Proposed Development will result in a demonstrable improvement to the existing appearance of the Site and function of the local townscape and have no impact upon the setting or significance of heritage assets nearby – **moderate weight**.

198. The NPPF is also a material consideration. The Council did not identify (in any of the versions of its reasons for refusal) any conflict with any provision within the NPPF. The Council's Statement of Case does not identify any conflict with the NPPF. The SoCG does not identify any issue of uncommon ground in which the Council contends the proposed Development conflicts with the NPPF. Indeed, in their report to Committee Officers concluded (Paragraph 25.21) that "the proposal is in general conformity with the NPPF". The fact that the Proposed Development accords with the NPPF is a factor which weighs heavily in favour of a grant of planning permission.

199. Paragraph 139 of the NPPF states that significant weight should be given to development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary documents such as design guides and codes. The Council has not identified any conflict with paragraph 139 nor any local design policy or guidance nor government guidance on design. It follows that, applying this paragraph, significant weight is to be given to the Proposed Development as Mr Stackhouse explained (Paragraphs 6.134-137).

200. The SoCG identifies that the Council was not prepared to agree the weight to be attached to the benefits associated with the Proposed Development in the

planning balance nor the weight that should be attached to the delivery of homes or student bedrooms. Paragraph 5.31 of the Council's Statement of Case states:

"The evidence of the Local Planning Authority will recognise the benefits that would be brought forward by the appeal development and will explain the weight that should be afforded to those benefits in the planning balance. It will conclude that the harms of the appeal scheme outweigh the benefits."

201. Of course, in the event the Council has chosen not to present any evidence to defend its position, but it has maintained its view that permission should be refused. It has not explained which elements of Mr Stackhouse's assessment of weight are not accepted nor why. The Council has presented no evidence whatsoever to justify its position that the harms of the appeal scheme outweigh the benefits. In terms of the weight to be ascribed to the benefit of delivering housing and student accommodation, the need for these elements of the scheme has been demonstrated beyond peradventure in the Appellant's evidence. There is no evidence which supports any conclusion as to the weight to be ascribed to these factors different to that identified by Mr Stackhouse. Mr Stackhouse's unchallenged evidence must therefore be accepted.

202. The reality is here that there are many material considerations of varying weight, that weigh heavily in favour of a positive determination. In contrast, such factors as can be identified as weighing against the Proposed Development are of a much lesser degree of weight in comparison. Overall, the only reasonable view is that the material considerations weigh strongly in favour of a grant of planning permission.

Wandsworth – A Pro-Growth Authority?

203. In the face of its behaviour in the determination of the application and its conduct in this appeal, the Council suggests in its Statement of Case that:

"The evidence of the Local Planning Authority will identify that the Council is 'progrowth' and has taken bold action to deliver growth to meet identified need for development in the Borough."

204. It is important when making such statements in litigation to ensure that they can in fact be substantiated. The suggestion that this Council has behaved in a manner that can be described as pro-growth in relation to this application for a much-needed and very high-quality scheme is frankly risible.

205. This Council was unable to adhere to the decision making timetable agreed in two PPAs. When the application was finally considered by the Council some 33 months after it was made (and following the appeal for non determination being made), the Councillors voted to refuse it even though Officers strongly recommended in favour of a grant of planning permission. Indeed, members voted to refuse it **prior to even identifying reasons for doing so**. That was wholly unacceptable and indeed unlawful conduct. When the Councillors did eventually identify some words relating to refusal after casting around for quite some time, the words identified did not even make any sense and did not even refer to any planning policy which the scheme was said to conflict with. So Councillors did not even have regard to the Development Plan when they refused this scheme planning permission. They failed to apply the statutory duty they were under in section 70(2) TCPA 1990. They also cannot have applied section 38(6) of the 2004 Act. These are basic legal requirements for lawful decision-making in Planning. It is disgraceful that they were not adhered to.

206. Those reasons then went through two further iterations, ultimately raising matters. The Statement of Case finally promised that the Council would provide evidence, but in the event, no witness (not even any Councillors) could be found, and no evidence has been presented. But, even without evidence, the Council still refused to change its position, still refused to agree with its officers or the DRP, still refused to accept that the Proposed Development should be granted planning permission.

207. The Council chose to maintain points relating to impacts upon sunlight and daylight until after the CMC. It chose to maintain points relating to an alleged requirement for the "most appropriate" form of development to come forward on the site (i.e. housing) in the face of the fact that the Appeal Scheme will make a greater contribution to meeting housing needs than a conventional housing scheme can, in the face of established legal authority and in the face of a reasoned requested from the Appellant's solicitors to withdraw the point. It chose to maintain points relating to an alleged requirement for a nomination agreement to be secured prior to the grant of planning permission when the Development Plan makes clear that this is not the case, again, even after the Appellant had requested in a reasoned letter that it withdraw on the point and when its very own drafting in the S.106 Agreement contradicted this point.

208. These are not the actions of a pro-growth Council. They are the actions of a Council determined to delay and refuse development on any basis that can be found.

209. But it is not just in relation to the present case that the Council's attempt to anoint itself as pro-growth can be questioned. As Mr Stackhouse explained (Paragraph 7.10):

    a. Since the adoption of the London Plan in 2021, the Council's five-year housing land supply has decreased from 8 years in 2021/22 to 7 years in 2023/24, in which time the Council has also adopted its Local Plan.

    b. In the Planning Committees since Labour came to power in May 2022, it has overturned officer recommendations to approve the equivalent of 1,254 homes (including the Appeal Scheme) and has approved only 1,113 homes.

    c. In 2024, the Council was the only borough in London to refuse more homes than it permitted (440 refused vs 181 consented). As the 440 home refusal

included 50% affordable housing, it also means that the Council refused more affordable housing than the total number of homes of all tenures it approved the rest of the year.

d. On 6 January 2025, LBW published a statement mutually ending its partnership with Taylor Wimpey pursuant to the estate regeneration of the Winstanley and York Road estate which was granted outline planning permission in 2020 for up to 2,550 homes, improved community facilities and a new park. Only 139 homes, a new school and church have been delivered to date despite the JV being formed in 2017 and there is no clarity on when the remaining homes will be built.

e. The Council's SoC (CDG.02) references the grant of the Extant Permission as an example of it being pro-growth yet the permission was granted in 2019 following a committee resolution in October 2016. The application was therefore resolved almost 10 years ago and under a different political administration.

f. The Local Plan Partial Review (CDC.05) draft policies now seek to raise the Fast Track Route higher than the 35% private land threshold in Policy H5 of the London Plan (CDB.01). The GLA has formally objected to this and notes that this risks the successful implementation of the London Plan threshold approach, can slow down the planning process and can also result in lower levels of affordable housing being secured.

g. The Council commenced consultation on its Local Plan Partial Review in January 2024 and has a undertaken a review of policies that relate to housing. In doing so, it has not reviewed its policies in the context of the revised NPPF (CDB.01) and the new standard methodology. As Wandsworth's local housing need has increased significantly over and above the Local Plan housing target (from 1,950 to 4,328 per year), it is clear that the Council will need to undertake an early review of the Plan, including a review ahead of the next mandatory review in 2028 (as it will be

five years on from the adoption of the current Local Plan). Given that these will have a direct impact on housing delivery, one could have expected that a Partial Review of a Pro-Growth authority would at the very least include a review of additional housing sites to meet the Council's objectively assessed local housing need. This is particularly the case because it is required to do so by the NPPF if local housing need has changed significantly. However, surprisingly, the Local Plan Partial Review does not recognise or even take into account Wandsworth's increased housing need.

210. If this Council genuinely has pretensions to be pro-growth, it must change its behaviour and change it very significantly; otherwise it is in danger of being perceived as the very thing that the Government is railing against – of being perceived as a blocker to development, rather than as the facilitator of development to address the desperate shortfall of accommodation to meet housing and specialist needs.

211. The Council should not have sought to delay its consideration of this Scheme. It should not have resolved to object to it when it had no evidential basis for so doing. It should not have behaved in the entirely unreasonable way it has in dealing with this Scheme. It is precisely behaviour like this from Members that brings the planning system into disrepute and which the Government is trying to stamp out.

212. The simple reality is that the Proposed Development is a carefully designed and high-quality scheme that optimises the extent to which this important site within the Opportunity Area contributes to meeting housing needs. It will make a highly successful addition to housing stock and to much-needed PBSA. It will deliver an important level of affordable housing. It is to be lauded and supported. It is precisely the sort of scheme which should have been permitted without delay.

CONCLUSION

213. The only reasonable conclusion that can be reached on the evidence is that identified by Mr Stackhouse in his careful and exemplary evidence to this Inquiry, namely that the Proposed Development is compliant with the Development Plan when read as a whole and that the material considerations, when examined overall, further weigh in favour of the Development.

214. Planning decisions are required to apply the presumption in favour of sustainable development. In the present case, this means approving development proposals that accord with the development plan (NPPF paragraph 11). The NPPF thus supports the grant of planning permission here **without delay**.

215. The result is that, applying section 38(6) of the 2004 Act, planning permission is to be granted and the appeal allowed.

2 May 2025

REUBEN TAYLOR K.C.

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