

1 Battersea Bridge Road

Closing Submissions on behalf of the Appellant

Introduction

1. The application site is no “ordinary” Wandsworth site.
2. The proposal provides the potential to make a unique series of statements.
3. A statement that the planning system is fit, flexible and bold enough to embrace the pressing imperative to deliver buildings of innovation and quality in London.
4. A statement that the value generated by one of the best located London addresses is capable of being harnessed to host a mixed and balanced community including (a remarkable) 50% affordable housing for those least able to compete in the housing market and a statement that fundamental shifts in government policy which are meant to have a significant on the ground impact are, in fact, having that effect and are being acted upon.
5. Your fellow inspectors at the EiP specifically recognised that (in order properly to conform with the London Plan tall building policies as interpreted by the Courts) there had to be appropriate room for opportunities for tall building proposals not within identified tall building zones (or at heights beyond those contemplated by such zones) to be considered on their merits against the carefully constructed checklist of impact criteria contained in those tall building policies.
6. The extent of scrutiny at this inquiry over the form and quality of this Farrells building, its actual impact, on experienced townscape, on the significance of heritage assets and into the range and depth of its benefits has been greater than any previous potential consideration of such matters.
7. This can only be entirely consistent with what was expected by the Panel in relation to any consideration of such out of zone “opportunities” when they required the modifications adding flexibility to the policy.
8. That thorough consideration of the actual merits in which we have engaged in this case thus justifies and directly flows from the position adopted by the Court (which is binding on us anyway) and the position of the Panel in requiring a major modification.
9. Because, what that exercise establishes, after all, is that when the proposal is judged against those comprehensive impact criteria carefully and professionally, it would represent a new building of the highest quality at an extraordinary location, a location worthy of celebrating and would also at the same time meet London’s most structurally pressing needs in a truly symbolic and apposite form.
10. The bones of that exercise required of us all by the combination of Court and Panel are set out below.

Proposition 1 – The existing building harms both the setting of the listed Battersea Bridge and the local and wider townscape at this important location

11. One cursory site visit (much less many careful ones) would be sufficient to understand the accuracy of this proposition.
12. It is the starting point for any proper assessment of the heritage or townscape impact of the proposal which must of course have regard to the existing state and function of the site and the heritage and townscape contribution it makes.
13. Mr Eley failed properly to make any proper assessment of the townscape contribution made by the existing site. That was clear from his written and oral evidence. This is a substantial omission, particularly where the council's only substantive reason for refusal relies on townscape impact of the proposal.
14. In heritage terms the one-paragraph-assessment of the existing site in his Proof as a neutral contributor to the heritage setting and significance of the listed Bridge in the planning benefits section of his proof is terse, absent significant detail and plainly incorrect.
15. The judgment of council officers, consistently since 2018 and in formal pre-application meetings, has been that the existing condition of the appeal site and its buildings and spaces both harm the setting of the Listed Bridge **and** the relevant townscape of the area. And that redevelopment offers a clear opportunity for enhancement of both heritage and townscape at a gateway location which was a suitable place for a landmark.
16. Mr Eley chose not to refer the Inspector to these important previous formal conclusions of his client in his written evidence and in oral addition in-chief simply said that those officers were mistaken on both counts and at all times.
17. They were not.
18. The careful and considered conclusion of both Mr Barbalov and Dr Miele on these matters, namely that the existing building harms the setting and significance of the bridge and the townscape hereabouts, is consistent with officers' clear consistent and accurate judgments on these matters.
19. And it's not difficult to see why.
20. The site and the existing building lie in a prominent and important riverside location. The site is located alongside the Thames Path, an important national trail. Millions of people walk this path every year, and it is one of the most important public rights of way in the country. This proposal offers the opportunity to improve the experience of these many people along the area's crown jewel.
21. Relevant also to the townscape context, the site is located within the Ransome's Dock Focal Point of Activity, where policy¹ seeks the creation of vibrant and active places, and high-quality and well-designed public spaces with good access to form new destinations so as to make full use of the amenities offered by the riverside.

¹ Policy LP59 of the Local Plan.

22. Ms Chambers suggestion that the Focal Point of Activity had “nothing to do with development or buildings” simply cannot be right. If a Focal Point of Activity is to be properly understood and experienced, then it helps significantly if its form follows its function. Character and use are intertwined. This does not mean that a particular type of built form is necessary to achieve the focussing of activity (though it must be deliverable) but it does mean a building which is “forlorn”,² mediocre and empty will be unlikely to fit the bill.
23. Indeed, the existing building is inimical to the concept of a Focal Point of Activity. The planning system must do better. Interestingly at this location the character assessment section of the Urban Design Study (UDS) calls for the redevelopment of this bank of the River with “*remarkable landmarks*”.³ That is because it recognises that the focal point of activity should be reflected in architecture fit to serve its function.
24. The Albion Riverside development is a building which correctly reflects the focal point of activity’s role in architectural terms. It bristles with activity (if not usual ground floor active uses) and its architecture announces, reflects and supports this focal point vibrancy. That development is a significant townscape benefit of the area which now deserves some further support in this regard (particularly in relation to ground floor active uses).
25. The existing blank-eyed office building, at the obvious and natural entry point to the Focal Point of Activity on the other hand is a sad hymn to a lost, closed and futile **absence** of activity. It is the focus of nothing.
26. The public realm associated with site is also failing and creates a hostile and unpleasant environment. The Thames Path to the north fails to comply with accessibility standards, containing steep steps and ramps, with unused space along the frontage resulting in a poor contribution to the public realm.
27. In **heritage terms** the existing building lies within the immediate setting of the Grade II listed Battersea Bridge, and is the closest building on the approach to the bridge. The existing building and its associated spaces are bland, ugly and pay no attention to their listed neighbour. As a result, the proposal harms the very heritage function of the bridge which is and always has been to celebrate the function of crossing.
28. The Bazalgette Victorian structure of robustness and engineering wonder is met by a lost and out of place building of no quality other than the contrast in value in comparison to the bridge and of which as a result we should collectively be a little bit ashamed.
29. The existing building within the close and immediate setting of Battersea Bridge also harms the appreciation of the significance of Battersea Bridge and as a result harms that setting.
30. Redevelopment of the site offers a unique opportunity to remove the existing heritage and townscape harm, and to provide real improvement and remarkable focus in this important location.
31. The **opportunity** for enhancement is of course only part of the story.

² As accepted by Mr Eley in cross-examination.

³ CD 5.16, page 63.

32. The opportunity needs to be acted upon to make good this point in full, and any new building must embrace and secure the enhancement of its townscape and setting.
33. That is what the rest of this closing will establish.
34. But if, as a party to the process of considering change at this location you are not prepared even to see that there is an opportunity to seize here then, your analysis of the success of the parti which seeks to achieve that enhancement is unlikely to be accurate.
35. In short, if like Mr Eley you cannot see what is wrong with the existing position your judgment as to what is required to remedy the position will be significantly flawed.

Proposition 2 – This location can accept a tall landmark building

36. The ability of the site to accept a landmark proposition is agreed by all parties. It is also consistent with the aims of the UDS for the B2 Battersea Riverside character area.⁴
37. As inspectors have emphasised in past tall building cases, the proper question to ask is not whether the area has been identified as needing a tall building. That would be to “approach the question from the wrong direction”. Rather the starting point for assessment of a tall building proposal on a case-by-case basis “put simply is whether the site is worthy of that gesture” (per Inspector Griffiths).⁵
38. When that question is properly put the answer for this site and this proposal on proper and full analysis is a resounding “yes, it is so worthy”.
39. It is of course a truism to state that a landmark building does not as a matter of principle have necessarily to be tall. But, in townscape terms a tall building can as a matter of fact serve an appropriate townscape landmark function proportionate to the importance of the point being marked. And just because a townscape landmark function can be served by a smaller building (if deliverable), that does not mean that a smaller landmark building is always the right approach. Neither does that observation mean a tall building cannot fulfil that function. The proper approach to the consideration of a proposed tall landmark is to assess its impacts in the round and to ask whether such an approach is appropriate.
40. The suitability of this location for a tall building is a matter which has been approached carefully and diligently by the architects of this scheme. Sir Terry Farrell and Farrells have been involved in mapping and understanding the shape of London for decades and as a practice they have a unique understanding of the way in which the townscape of London has evolved. Sir Terry’s “Shaping London” might not be a formal policy document but there is not an architect or Conservation Officer worth their salt in London who would not have known, marked and inwardly digested its contents.
41. It was Sir Terry Farrell himself, before his loss of health, who was the driving force for Farrells’ initial justification and opportunity for a landmark tall building at this specific riverside location. He worked on the appeal scheme from the earliest stages, exploring

⁴ See page 63 of the UDS at CD 5.16 where the design guidance states: “New development should have a distinctive character that creates remarkable landmarks. It should provide excellent and inviting public realm as part of a coherent strategy rather than spaces between buildings. Active frontages to the Thames Path should be provided.”

⁵ See Ealing decision of Inspector Griffiths at Dr Miele, Appendix 2, paragraph 19 (internal page 8 of the appendices).

options, guiding thought process and attending the first pre-application meeting. In many ways, this building represents his last work.

42. That work has been carried on and “owned” and developed by Mr Barbalov whose project this now is. His experience of tall buildings on the Thames is now second to none. He was a clear, calm, straightforward and obviously very talented architect-witness.
43. And all of that knowledge, experience and research counts for much. Of course, it does not mean by itself that the proposal before the inquiry is the right one, but it does mean that that the selection of a tall building parti for the site is not a careless or thoughtless one.
44. And the evidence supports that proposition.
45. The main features of the townscape which speak to the ability of the location to support a tall building here are felt most viscerally when on site. We do little justice to this holistic experience with words. But they include:
 - a. The monumentality of the horizontal and dual reaches of the bending Thames at this location. It is a powerful and ever-changing presence which can accept height.
 - b. The robust engineered horizontality of the masterful bridge, its exquisitely proportioned “form-follows-function” spans and understated decoration. This is a building of strength not easily bullied.
 - c. The extent, length and scale of the almost processional approaches to the bridge which serve the function of directing the eye towards the place of crossing to hint at its existence.
 - d. The varied townscape in the area (described by Dr Miele), and which the UDS identified meant that the Battersea Riverside B2 area has a “low sensitivity to change”.⁶
 - e. The deliberately huge scale of the component pieces of the Albion Riverside development which commands its environment but which at present lacks a bankside counterpoint and,
 - f. The associated importance of the location as a literal front door into Wandsworth and one of its most important Focal Points of Activity, and on a very busy road which the UDS highlights as being the only crossing in the borough relating to the wider national network.⁷
46. Accordingly, a tall landmark building is in principle entirely appropriate and justified for this location and its context.
47. And we are not alone in that view.
48. Mr Barbalov explained that it was only once he and Farrells had reached this view that he saw the previous advice from officers in 2018. It had reached exactly the same conclusion, with officers stating that:

⁶ CD 5.16, page 59.

⁷ CD 5.16, page 24.

“A tall building in this location next to Battersea Bridge - a gateway to the borough- would act as a landmark and reference point. This location is therefore considered appropriate for a tall building.”⁸

49. Tellingly, as again explained by Mr Barbalov and Dr Miele (both of whom were present at pre-application meetings for the appeal scheme, unlike the Council’s witnesses to this inquiry), Council officers even post adoption of the plan continued to acknowledge the site’s strategic position as a gateway to the borough and consistently recognised that a tall building could be justified on this site- albeit because of the tall building zone they took the view that the applicant should justify it through D9C and LP4 criteria.⁹

Proposition 3 – The proposal will enhance both the important Thameside townscape character and the setting of the Listed Bridge.

Townscape

50. The proposed development will substantially improve the character and appearance of the area and the way in which its townscape functions.
51. Mr Barbalov’s evidence was that Farrells have designed this building at three scales: a metropolitan (city) scale, a local scale and detailed scale. This building performs successfully at all levels of townscape.
52. Importantly, the reason for refusal on townscape terms in this case asserts harm to the local townscape which it asserts is predominantly low-rise. This closing begins therefore with the local context.
53. First, the existing and relevant character of the area is compellingly not low rise. Albion Riverside is a tall and large scale building. On the downstream side of the bridge, it forms with the bridge itself the most important townscape context for the proposal.
54. Both elements are huge townscape interventions of quality.
55. Second, even if the existing context were predominantly low rise as alleged, that would NOT be a cogent reason to require development at this location to replicate existing low rise character. The NPPF has moved significantly in this regard making clear that existing context must not be a bar to appropriate densification or changes of typology and that the development of brownfield sites such as this should be granted permission (or dealt with positively in a plan making process) unless substantial harm is occasioned (see further below).
56. In truth, in the local environment the only development which could be identified as ‘predominantly low rise’ is Morgan’s Wharf. This low density, low quality, more mundane than urbane piece of townscape is not a development of which the planning system should be proud. It represents in one place a criminal waste of a brownfield site, an

⁸ Appendix B of Mr Marginson’s proof.

⁹ Para 6.0.2 of Mr Barbalov’s proof, para 3.13 of Dr Miele’s proof and Mr Barbalov and Dr Miele’s answers in evidence.

inward facing seemingly architect-free zone of suburbia in the heart of central London. And on that point, there is unanimity and common ground.

57. If this is the predominantly low-rise character which reason for refusal one seeks to protect, then little weight should be given to that ambition.
58. Indeed, in the local impact relied upon in the reason for refusal, the proposal performs particularly well. In short it represents a huge advance on the existing townscape experience.
59. The base of the building creates a positive relationship with the ground and public realm. The design incorporates strong detailing with a contextual design, with arches and colonnades which gently reference the span on the bridge. The colonnaded frontage on the river (with a river-facing café) will create an active and welcoming edge, with the base of the building pushed back to enable views under and through the colonnade. The five-arched colonnade that incorporates active uses along Battersea Bridge Road gives a sense of arrival and creates interest for users moving towards or from the bridge.



60. The proposals will deliver vastly improved high quality public realm.¹⁰ Pedestrian and cycle routes will be strengthened and remove the conflicts that currently exist. The enhancements to the nationally important Thames Path will ensure it is safe and accessible for everyone. There will be a generous riverside space which will bring people to the water and help establish a strong sense of place.

¹⁰ See the image at page 54 of Mr Barbalov's proof.

61. Further afield the two-part massing of the new building is contextually sensitive to the Ransome's Dock area, with the lower block relating directly to the mid-rise height of Albion Riverside and the RCA development.
62. The tower element addresses the river and is experienced as part of the broad expanse of the bending river. It provides the marker for this location. The tower has a slender, vertical form, with the orientation of the tower reflecting the alignment of the bridge. Its curvilinear bow contextually responds to curves of Albion Riverside, the bridge and the bend of the river.
63. Dr Miele, (who has spent a career considering and drawing up LVMF guidance for river prospects and strategic views (as well as redrafting the listing citations for the relevant bridges in this case)), and notwithstanding the fact that the reason for refusal relates essentially to an alleged incompatibility with local predominantly low height context, has also analysed the effects of the proposal by reference to the wider metropolitan contexts. Dr Miele identified four contexts of examination, the (most important) River, the bridge approaches, Battersea Park and the residential hinterland to the south.
64. The logic of this selection of contexts and approach was emphasised by the use of the self-same contexts to frame Mr Eley's oral evidence in chief. The inspector has thus in the same format a comprehensive comparative assessment with which to assess true townscape impact.
65. The scheme performs well in townscape terms when experienced from all the contexts assessed and does not cause townscape harm much less substantial townscape harm on any assessment.
66. We summarise the exercise in closing.

The River Prospects

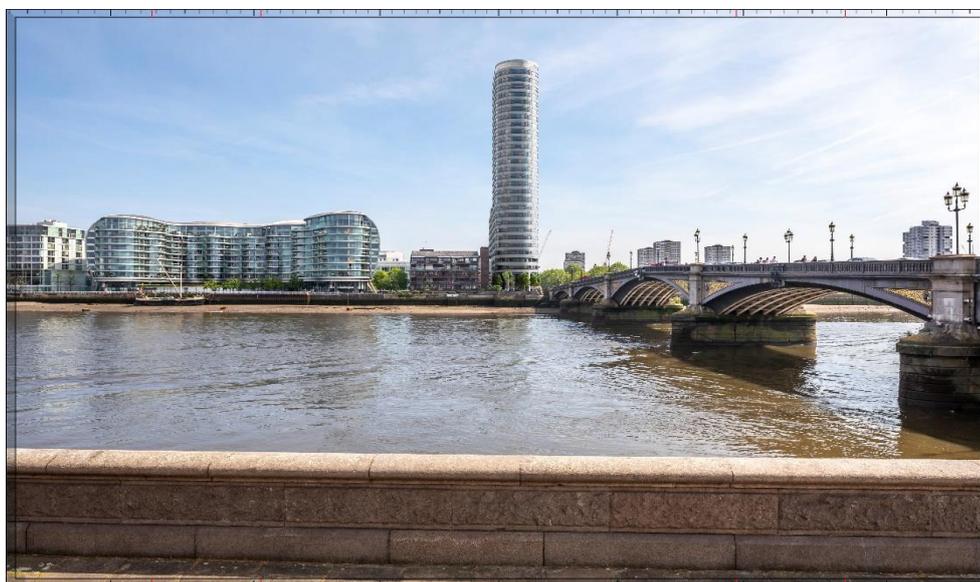
67. None of the formal River Prospects is alleged to be harmed by the proposal. This is an important starting point.
68. Further, the GLA confirms that it has no issues with the strategic impact of the proposal in cross boundary strategic river views.¹¹
69. A comprehensive assessment of these and other River views has been undertaken by Dr Miele. He has had the benefit (as has the inquiry) of a myriad of site visits, and a series of still and moving images. This closing cannot recreate those, but the representative images contained herein represent a small sample of that information to assist exposition.
70. From Chelsea Bridge (see view 12), it is the Thames which predominates. At this location and at this distance Mr Eley describes the Thames as the central object in views, with its influence as expansive, deep and open,¹² and that is right. The proposal would be 1.6km distant and that distance would be appreciated by the human eye in a way which cannot

¹¹ CD 11.08, para 38.

¹² Parad 3.51 and 3.52 of Mr Eley proof.

be replicated in 2D images. The verdant edges of Battersea Park and Embankment are a strong feature, framing the river and holding the gaze and attention of those who pause to reflect on the experience. The proposed tower is part of the upstream reach, after Albert Bridge, and understood in that context.

71. The upstream skyline includes as a matter of fact and character several taller elements, most noticeably the Word's End Estate which is recognised in the RBKC Character Study as a valued townscape feature due to its distinctive architecture and design.¹³
72. The proposal does not, and frankly at this distance cannot, overwhelm or dominate the townscape view. The proposal is visible but is an incidental component of a very distant view. Visibility does not equate to harm and that elision is not accurate here.
73. From the north of the site, (view 11) the townscape interaction between the River frontage of the Focal Point of Activity, Battersea Bridge and the proposal can be fully appreciated.



74. The tower will form an attractive visual townscape composition with the bridge and will certainly not overdominate or harm its townscape. A number of matters are relevant here in townscape terms:
 - a. First, there is a juxtaposition of height (but not of scale) which has the effect of emphasising and celebrating the crossing and the function and form of the bridge. The juxtaposition of the best of the old with the best of the new is a recognised townscape benefit of life in the World City.
 - b. Second, the bridge stretches away from the eye across the full length of the River. A 2D image does not fully represent the sense of perspective which distance provides to the bridge's presence but the Inspector has the benefit of site views also. Here all of the spans of the bridge are visible, and its engineering guts are on full display. The proposal's main architectural moves, its tripartite structure of base, middle and crown, its slenderness and curvilinear nature are also apparent but do not detract

¹³ CD 5.24, page 66.

or distract from the townscape benefit of the bridge. Read together the buildings complement each other and do not create townscape harm. Rather the juxtaposition “inspires, excites and delights”.

c. The location of the building off axis and set back from the landing/launching point of the bridge emphasises the different elements of the townscape while still allowing for the celebration of the location referred to above.

d. The heritage benefits to the setting of the bridge are dealt with below.

75. From Cremorne Road, the main element of the view is the juxtaposition between the colourful and characterful house boats which eat up most of the view of the river (but in a pleasant way) and the truly awful brown brick and suburban hipped roofs of the Morgan’s wharf housing estate in Wandsworth.



76. Albion Riverside, recognised as a positive contributor in townscape terms, (see above) sits behind Battersea Bridge and starts to help identify the function of the area as a Focal Point of Activity. The existing building clearly detracts. The proposal changes the view in a significant way but shifts the balance of the townscape experience away from the diminutive estate towards the bridge and the Area of Activity. The full extent of the length of Albion Riverside will be apparent and the conversation between the Foster building and the Farrells building will clearly be positive, interesting and intriguing.



Views from the approaches.

77. The view running along Beauford Road is a designed townscape, with a pair of identical late Victorian buildings deliberately framing the approach to the bridge. Their intention is to prepare the user for the long straight road leading to the crossing, drawing the eye to the existence of something important along the "processional" approach.



78. The proposal does not interfere at all with this townscape gesture. Rather it respects and enhances that obvious move by placing a different marker with vertical emphasis and elegance into the experience.
79. The length and straightness of the approach means that that enhancement on axis remains largely constant and proportional to the height and scale of the approach road.
80. Dr Miele exclaimed that this townscape experience set his heart racing. It is easy to see why.
81. More prosaically all these matters help ensure that the townscape elements of policies D9C and LP4 relating to townscape matters are met. The southern approaches are dealt with below.

Battersea Park.

82. The impact of the proposal on Battersea Park as a heritage asset is dealt with below.
83. In townscape terms, there was extensive VuCity analysis to identify the most sensitive views. The SOCG records the discussion in relation to all of the views. It came as a surprise when Mr Eley suggested that that was not the case. He said he thought that more and different views had been asked for but could not locate the request. Dr Miele and Mr Barbalov were very clear that there was no such request.
84. The inquiry should proceed on the verified views which have been provided as well as the experienced position from the site visits.
85. View 13 was identified as the likely most sensitive view. It establishes very clearly that the proposal does not cause meaningful, and certainly not substantial, townscape harm.





86. The balance of Battersea Park has been characterised as a Park with no material views of the modern world muchless tall buildings. You will know this not to be the case, as the Conservation Area Appraisal makes clear, large scale modern buildings are visible particularly but not exclusively to the east of the Park, as is Battersea Power Station which is a real reminder that this is an urban London Park.
87. There is no specific guidance requiring new building in the wider vicinity of the Park to be invisible from the Park or from any part of it. And mere visibility of a building would not in any event constitute harm. The question in townscape terms would be whether and to what extent any new proposal dominates or harms an appreciation of the Park as a remarkable piece of historic landscape. Mr Eley could not explain how the amenity of the park or its heritage significance is eroded or undermined by the very minor appearance of the building above the tree line, and over more than 900 metres. That is because there would be no such erosion.
88. In townscape terms there is no townscape harm here muchless substantial townscape harm.
89. Further the approach of Mr Eley (here most egregiously but also elsewhere) to the effect that any tall building which is visible constitutes an intrusion and should be seen as a reservoir¹⁴ of pre-existing townscape harm requires very great care before being adopted. In heritage terms, the concept of specific cumulative impact on designated assets and settings is accepted as one which might in particular circumstances apply.¹⁵ That is a matter of judgment in each case. But in townscape terms particularly where buildings have been part of the existing and settled established character of an area, sometimes for decades and where there is no consensus at all as to the particular townscape impact

¹⁴ Dr Miele's metaphor.

¹⁵ It is certainly not a requirement even in cases involving protected settings see Historic England GPA3 guidance (page 2), saying that LPAs "may" need to consider cumulative change.

of a building (such as for example the Worlds end Estate), such an approach is not supported by any guidance, is methodologically challenging to say the least and unsurprisingly has not been adopted by any other organisation in considering this case.

The inland townscape to the South.

90. The area to the south of the bridge is a mixed one in townscape terms. It is of mixed height, scale and quality.
91. The proposal adds a building of quality to the views and where it can be seen its quality would be understood and appreciated.
92. The lower part of the building clearly relates to foreground scale of the RCA building while the curve of the upper part of the building makes it even more slender as appreciated by the human eye.



93. This is again not a harmful impact on the townscape much less a substantial harm.

Overall

94. For these reasons, the provisions of D9C and LP4 relating to townscape and spatial hierarchy are comfortably met.

Heritage

95. In relation to effect on the setting of heritage assets, the proposals have evolved and have been designed with skill and care to remove harm to setting of assets and to preserve significance of relevant assets. Dr Miele was involved in advising on the design of the scheme from the outset. In relation to historic assets:

- I. We begin with the Church of St Mary’s because it benchmarks the views of the Rule 6(6) party in terms of heritage impact. Dr Jubb was of the view that the harm to setting here was “at least upper end of less than substantial if not more”. Given that the appeal scheme would be largely screened and appear beyond Montevetro, Dr Miele more rationally explained that it would not distract from existing appreciation of the asset. Historic England identified no harm to its setting or significance. Further, the proposals will not interfere with the relationship between the Church and the river, which is the key component of its setting. HE again agrees.



- II. As referenced above, the existing building harms the immediate setting of the listed Battersea Bridge. The scheme will remove this harm, replacing it with a high-quality, contextually designed building. The proposals will not overwhelm the bridge but will work well in the conjunction with the bridge. The bridge is a substantial piece of infrastructure, and the scheme will not harm the ability to appreciate it, within its existing context. Indeed, the scheme, including its improved public realm and marking, will enhance the setting and enable a better appreciation of significance.
- III. The proposals will not diminish one’s ability to appreciate or experience the significance of Chelsea Royal Hospital. Views of the proposal would be at a distance, and peripheral to the main axis of the asset.
- IV. For the reasons already set out above in relation to townscape, the proposals will also not impact upon the ability to experience the design or historic significance

of Battersea Park, given the scale of the Park and the limited visual impact that proposal would have beyond the trees, and taking into account the other “London” development that is already visible. Visibility does not equate to heritage harm in this context.

- V. The introduction of a new element into the already modern development outside of the nearby Conservation Areas will also not undermine one’s ability to appreciate the significance of these CAs.
- VI. For the reasons set out in Dr Miele’s evidence as a whole, there would be no harm caused to other assets referred to.¹⁶

96. Dr Miele does identify a low level of less than substantial harm to Albert Bridge, due to some distraction arising from the appearance of the building. This harm should be given considerable weight and importance. Nonetheless, the impact has a clear and convincing justification, and this harm is comfortably outweighed by the public benefits thus meeting the heritage limb of both D9C and LP4.

97. The Council identifies a different level of less than substantial harm to heritage assets to the Appellant.¹⁷ Mr Eley’s assessment of harm in no case rises above medium less than substantial harm but on the 5 main impacts identified in the report to Committee as being of particular importance he takes a stronger view of harm than any other statutory consultees.

98. Nonetheless and notwithstanding that (and again giving considerable weight and importance to these harms) the Council at the decision-making stage (correctly) found that this greater level of less than substantial harm would be outweighed by the heritage benefits. Ms Chambers has carried out this assessment for herself at this inquiry, taking into account the level of heritage harm identified by Mr Eley, and she has consistently concluded that this heritage harm is outweighed by the public benefits even allowing only moderate weight to the general housing provision: a clear and obvious underscore (see below).

99. If the heritage harms are any less than considered by the Council (or the benefits greater), then the consequent outweighing by public benefits will inevitably be even more emphatic.

Proposition 4 – The proposal represents exemplary architecture at this location.

100. The architectural quality and materials of the building will be of an exemplary standard, in accordance with the requirements of the London Plan.¹⁸ The GLA does not allege any breach of this key requirement, and similarly the Council do not take issue with the high quality of the detailed architecture beyond its height.¹⁹

¹⁶ See also the Heritage Statement of Common Ground.

¹⁷ As to the assessment of harm by the R6 party, Dr Jubb’s assessment is out of kilter with every expert or expert body who has looked at these issues.

¹⁸ Policy D9.

¹⁹ CD 11.08, paras 42-44.

101. For the reasons set out above and not repeated here the proposal as a whole is also contextually exemplary. It will represent an adornment to the London Skyline.

102. This proposition needs no further elaboration in writing. The information, illustrative material and the architectural presentation presented to the inquiry is sufficient.

Proposition 5 – The local plan is: a) out of date if and insofar as it is used to seek to protect existing local density and character, b) is deliberately not to be read as a bar to tall buildings here and, c) seeks to protect heritage assets from harmful impacts of tall buildings but does so in a way which allows impact to be outweighed by public benefits.

The Urban Design Study, its derivation, use and “sensitivity” and “capacity” in the context of new advice directed to plan makers

103. It is common ground between the planning witnesses that the UDS is not itself policy and is not itself part of the statutory development plan. Rather, the UDS formed part of the evidence base for the Local Plan, which explored the capacity of sites in the borough and identified tall building zones. There are three points which are relevant to any consideration of the UDS, and how it fed into the Local Plan.

104. First, it is agreed between Mr Marginson and Ms Chambers that the authors of the UDS (and indeed the inspectors examining the Local Plan) obviously did not have any proposal for the appeal site before them. There was no site-specific consideration of a proposed scheme for this site, and the extent of scrutiny of sites, particularly those falling outside tall building zones, was necessarily limited. The high-level nature of the UDS was recognised by the Inspectors²⁰ who recognised that the UDS was an “*overarching*” document and that “*it would be unreasonable to expect it to provide in-depth and specific details for each site across the Borough that is not within such zones*”. This is one of the reasons why the Inspectors sought flexibility in the policy wording through their main modification (more on this and compliance with policy D9 below).

105. It follows in all of these circumstances that there is only so much assistance the UDS can provide in making an assessment now as to whether the appeal scheme is appropriate for this location, particularly when considered under D9C and LP4 which (as we will come onto discuss) as a matter of law deliberately engages flexibility to consider tall buildings on sites not included within the tall building zones.

106. Second, the UDS was based on the 2019 version of the NPPF. The NPPF has undergone four different iterations since this time, in which policy relating to the use of brownfield land, and the knock-on effect this has on optimising sites and responding to densities of surrounding areas, has materially changed.

107. The most radical changes (introduced in the December 2024 version of the NPPF) include paragraph 125(c) of the NPPF now provides that planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless

²⁰ Paragraph 112 of the Inspectors report at CD 6.11.

substantial harm would be caused. This change to national policy was intended to be and is a significant change. It cannot be wished away.

108. It was allied to the further change in December 2024 which was to remove paragraph 130 of the NPPF (2023) which specifically allowed the refusal of permission in circumstances where new density would be inappropriate “if the resulting built form would be wholly out of character with the existing area”.²¹ The removal of this element of the text in December 2024 sits consistently with para 125(c). Its removal was specifically stated to be to ensure that appropriate increases in density and introduction of new typologies were not to be discouraged.
109. Neither the UDS nor the Inspectors examining the Local Plan²² could have taken account of these important policy changes relevant to development planning.
110. It is simply unarguable to say that this important shift in emphasis made “no difference” to the approach of the inspectorate and would have had no impact on the capacity assessment for tall buildings carried out in the UDS. The UDS identified that tall buildings were only appropriate in very limited areas in the borough, and it did so by reference to a methodology for capacity for growth based on “sensitivity” and “probability” of change.²³ The sensitivity analysis was not at all framed by any reference to avoidance of substantial harm on brownfield sites. Instead, the methodology specifically included assessments such as whether scale of development would integrate with existing patterns of development.²⁴
111. As Mr Marginson put it, if a capacity study like the UDS were carried out today, the criteria would have to look very different.
112. The direction of travel of emerging national policy further illustrates and compounds this shift in approach. The emerging NPPF seeks to even further strengthen the presumption in favour of developing on brownfield land (applying the presumption to all developments within settlements).²⁵ It also seeks to require development proposals for residential and mixed-use development to contribute to an increase in the density of the area in which they are situated, whilst making clear that the existing character of an area should be taken into account but should not preclude development which makes the most of an area's potential.²⁶
113. Third, it is highly relevant to examine the reasons why the appeal site was not eventually included within the limited areas of tall building zones identified in the UDS. Especially when the draft which undertook a very similar methodological assessment placed the entire site within a tall building zone.²⁷

²¹ See paragraph 42 of the Appellant's Opening.

²² In 2023, and so also pre-dating the change in paragraph 125(c).

²³ Page 8 and Appendix C of the UDS at CD 6.15.

²⁴ Page 331 of CD 6.15.

²⁵ Draft paragraph S4.

²⁶ Draft paragraph L3.

²⁷ CD 5.15, page 183.

114. As a matter of principle, if and to the extent that the reason for excluding the appeal site from the tall building zones is no longer fully valid or justifiable, that must logically reduce the weight given to the site's exclusion from tall building zone.
115. In the draft UDS the appeal site was originally contained within the tall building zone along Battersea Riverside, within land "*identified as having the potential to accommodate clusters of tall buildings including landmarks along the riverside.*"²⁸ At this time there was no reference to buildings stepping down towards the listed Battersea or Albert Bridge. Indeed, at that time the guidance set out that "*Tall buildings may be more suited to corner plots to respond to the scale of the adjacent junctions.*"²⁹
116. The appeal site was then removed from the tall building zone in the later version of the UDS and placed within a sliver of land of a mid-rise zone, sandwiched (or wedged, to use the GLA's terminology³⁰) between two tall building zones.³¹ Apart from the appeal site and Albion Riverside, the land immediately to the west and east of the appeal site along the Battersea Riverside is contained within tall building zones.³²
117. Of course, the potential appropriate height of that tall building zone was (and continues to be) identified at significantly higher than that proposed by the application. But buildings above the suggested height (as well as those outside the zones) also fall to be tested on a case-by-case basis against the criteria applying Hillingdon.
118. And in this this borough (as in many others) taller buildings than those identified as appropriate in the tall building zones have been justified applying the D9C criteria. Take a walk around and look at The Ram Brewery site just on our doorstep.³³
119. A search for the explanation for the precise removal of the application site from the tall building zone produces no clear answer- since the methodology adopted was precisely the same. For other tall building zones the reasons for removal are stated clearly and emphatically.³⁴ All there is in the context of the removal of the appeal site from a tall building zone in the later version of the UDS is the statement that in this tall building zone "*Buildings should step down towards the approaches to the listed Battersea Bridge and Albert Bridge.*" Read fairly this is an issue substantially related to perceived heritage concerns. Even if a townscape element could be read into this reasoning, at the very least, heritage concerns are clearly a significant part of this new justification. That (i.e. concern with the settings of the bridges) was how in-chief the change in the UDS was explained by Mr Eley. That, before the consequence of this explanation was fully understood - before the penny dropped.

²⁸ CD 5.15, page 185. This defined tall buildings as 5 storeys or higher for the Battersea Riverside area.

²⁹ CD 5.15, page 185.

³⁰ CD 11.08, para 35.

³¹ Defined as 7-12 storeys, see CD 5.16, page 182.

³² CD 5.16, page 182.

³³ See too the evidence of Dr Miele at 3.22 and 3.23 and summary at xv and xvi for other cases.

³⁴ See page 180 of CD 5.16, where the removal of areas from TB-B1-05 was explained as follows: "The approach to the listed Battersea Bridge is excluded from the tall building zone to avoid creating a canyon effect and preserve positive views towards this historic river crossing."

120. We now know that when assessing this specific development proposal:

- (a) that the Council itself have found that there is in fact no unacceptable heritage harm caused by a building, even one which is significantly in excess of the tall building zone guidance on the appeal site, (including the alleged harmful impacts on Battersea Bridge and Albert Bridge which are accepted to be outweighed) and
- (b) that neither the authors of the UDS (nor the Inspectors examining the Local Plan) would not have known or anticipated this potential, and that now
- (c) We inhabit in a world where there is now, and for the first time, a requirement on plan-makers to identify and to deliver sites that can contribute to meeting housing need in Plans unless there can be demonstrated to be substantial harm in so doing.

121. This is a material change in circumstance which at the very least significantly diminishes the very reason why the appeal site was excluded from the tall building zone. This new and important analysis and conclusion by the Council clearly reduces the weight given to the site's exclusion from the tall building zone within the Local Plan when such matters are considered now against the policy matrix of D9C.

LP4 and D9. How do they work.

122. The High Court in Hillingdon³⁵ provides a definitive statement of the meaning of policy D9 for the purposes of this inquiry.

123. It established that the separate parts of the policy were not to be read as gateways to the subsequent parts of the policies and that therefore there was a requirement for the decision maker to have regard to and to test a tall building proposal against the policy as a whole including part D9C- even where a building is outside a tall building zone.

124. It would thus not be lawful to refuse planning permission for buildings outside tall building zones solely on the basis of part D9B3, without considering the balance of the policy, especially D9C as part of the question of the nature and extent of the compliance with the policy.

125. Once this is understood, the issue of how that exercise is undertaken is entirely a matter of planning judgment for a decision maker. It would be perfectly possible, and within the realms of reasonable planning judgment, to find compliance with policy D9 when read as a whole if the weight to be given to "policy D93B" on location were to be outweighed by the findings in relation to "D9C" in the terms of paragraph 84 of the judgment.

126. There is nothing in Hillingdon which makes that unlawful.

127. In fact, that is the structure of decision making envisaged by the Judge in paragraphs 83-85 of the judgment where D9B is identified as "a policy" going in one direction for buildings

³⁵ CD 13.07.

not in a TBZ and the potential for another part of the Plan (9C for example) to go in another direction is specifically referenced.³⁶

128. The ratio of the Judgment “In considering whether to grant planning permission for a tall building which did not comply with paragraph B3 because it was not identified in the development plan it would surely be sensible **and in accordance with the objectives of Policy D9 for the proposal to be assessed by reference to the potential impacts which are listed in Part C**” could not really be clearer.

129. It would **also** be perfectly possible within the realms of reasonable planning judgment to find that the proposal in such circumstances complied with the development plan when read as a whole (Ms Chambers position). And actually, in this case, the difference almost certainly makes no difference.

130. But, in circumstances where the balance between D9B(3) and D9C (and LP4 criteria) would likely be determinative and where both “policies” (the Court called D9B a policy in its own right and so in these terms is D9C) pointing in different directions all lie within the same overall multi-part policy, it is difficult to see why the logic which would allow such a finding of compliance with the development plan as a whole should not also apply to the policy when read as a whole.³⁷

131. Precisely the same principles apply to policy LP4 except that LP4 is even clearer that outside of tall building zones, the full force of the rest of the policy must apply in determining acceptability.³⁸

³⁶ 83. In my view, the context is critical to the interpretation. Policy D9 is a planning policy in a development plan. By section 70(2) TCPA 1990 and section 38(6) PCPA 2004, there is a presumption that a determination will be made in accordance with the plan, unless material considerations indicate otherwise. Thus, the decision-maker “will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it”: per Lord Clyde in *City of Edinburgh* at 1459G. Furthermore, the decision-maker must understand the relevant provisions of the plan “recognising that they may sometimes pull in different directions”: per Lindblom LJ in *BDW Trading Ltd* at [21], and extensive authorities there cited in support of that proposition. As Lord Reed explained in *Tesco Stores Ltd v Dundee City Council*, “development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another”.

84. The drafter of Policy D9, and the Defendant who is the maker of the London Plan, must have been aware of these fundamental legal principles, and therefore that it was possible that the policy in paragraph B(3) might not be followed, in any particular determination, if it was outweighed by other policies in the development plan, or by material considerations. It seems likely that policy provision was made for such cases, given the importance of the issue.

85. In considering whether to grant planning permission for a tall building which did not comply with paragraph B(3), because it was not identified in the development plan, it would surely be sensible, and in accordance with the objectives of Policy D9, for the proposal to be assessed by reference to the potential impacts which are listed in Part C.

³⁷ The Council through Ms Chambers is in fact remaking a submission made by Hillingdon and rejected by the Court (at para 73) namely that the policy “does not permit the [decision-maker] to claim any policy support for overriding the location of tall buildings at the plan making stage”.

³⁸ See the second sentence of LP4B which says “Planning applications for tall buildings will be assessed against the criteria set out in Parts C and D of the London Plan Policy D9 and those set out below as follows:”

132. In other words, there is no direct equivalent of policy D3B in policy LP4. There is an acceptance in terms that the criteria-based test should directly apply to all tall building applications within or outwith tall building zones. See LP4B and the various criteria which clearly and unambiguously apply to ALL tall building applications either within or outwith the zones and of whatever height.³⁹

Weight to be given to B3B “breach” for out of zone applications.

133. The weight to be given to a breach of D93B for cases outside tall building zones has been raised.

134. That weight would of course be a matter of judgment for the decision maker in each case. That is self-evident and testable.

135. So, in circumstances where a local planning authority had not identified tall building zones at all, the weight to be given to the absence of a site being within a tall building zone would likely be very limited. It would be a matter of planning judgment but D9C would clearly be likely to be determinative in such circumstances.

136. By the same logic the fact that a local planning authority had been told to remove the text tall buildings “will not be permitted” outside tall building zones and required to increase flexibility in order to meet the test of soundness by allowing a case-by-case assessment would also be a powerful material consideration in determining weight to that element of the policy. It would be unlikely by itself to result in a refusal.

137. The case-by-case element of the assessment required by that change when read alongside Hillingdon would primarily have been undertaken by reference to the comprehensive provisions of D9C and its impact tests.

138. In such circumstances, a proposal which passed or substantially passed the D9C criteria tests as to impact would fall to be weighed against the fact that it is not in a tall building zone (as Mr Marginson accepted) **and in particular against any land use planning harms which flowed from that fact which hadn't already been taken into account in the D9C consideration establishing compliance.**

139. Any other approach would simply mean that a development could be found to be entirely positive in its impacts but somehow it could be argued that it should be refused permission simply because (notwithstanding that finding) it was in the wrong zone (even if that did not bring any actual land use planning consequences at all).

140. This can be best tested in the circumstances of this case by examining the concept of spatial hierarchy. The concept of spatial hierarchy is clearly at the heart of the creation of tall building zones generally. Where a specific proposal is put forward but it is NOT in a tall building zone, then its impact is tested against the spatial hierarchy elements of the criteria-based policies (e.g. LP4 part C7 and D9C b). If a particular proposal thus tested were acceptable in spatial hierarchy terms via the criteria it would be nonsensical to refuse it on spatial hierarchy terms simply because it was not within a tall building zone

³⁹ As agreed by Ms Chambers in cross-examination.

as originally defined; there would need to be another land use planning harm caused beyond those found to be acceptable by the testing of the criterion based matters.

141. Reliance now on the Direction issued by the Secretary of State as somehow giving further and different weight to D9B⁴⁰ does not assist in this regard either and were rejected in terms and flatly by the Court in paragraph 82 of the judgment, where the Court made it clear that the Direction actually had no bearing on the proper interpretation of the policy.

142. Further and separately, in the circumstances of the present case and for the reasons set out above and not repeated here, other matters which apply to the weight to be given to the fact that a proposal is not in a tall building zone include:

- a. whether the creation of the Zones continued to comply with the new NPPF and its provisions and
- b. whether the reason for excluding the site remained defensible in the light of new evidence. (see above for both).

Relitigating the EiP.

143. The Rule 6(6) party in terms utilised this term to suggest that the Appellant was in effect rearguing points which had been conclusively determined by the Panel.

144. On examination, the council (though more subtly) are actually arguing the same thing.

145. The opposite is the truth when the facts are examined.

146. The flexibility **required** of the local authority by the panel to consider each tall building case on its merits having regard to the provisions of D9C (which has been described by the examiners of the London Plan as a “long and ...prescriptive” but “which together... comprise a London expression of national advice”⁴¹) via the main modification, in fact called for and recognised and anticipated the need to allow the approach of an application based on D9C adopted by the Appellant in this case.

147. And, as Mr Barbalov and Dr Miele explained, on the adoption of the plan with its modification the Appellant and council officers’ attention turned to the issue of whether the proposal could be justified on that basis.

148. And further once the decision of the Inspectors had been to require this alteration to allow this case by case course it is perfectly reasonable in the circumstances where there was no proposal on the site (or other analysis of non-tall building zone sites in the UDS) that they were content that that flexibility could be utilised and did not consider it necessary to deal with submissions made in and premised upon the “shall be refused “ world.

149. As to the prospects of success of such site-by-site consideration, the Inspectors were appropriately non-committal recognising that each case would be considered on its merits. Their very high-level position was that they did not believe that in the

⁴⁰ See Ms Chambers answers in cross-examination.

⁴¹ Para 306

circumstances that the case-by-case approach gave rise to a free-for all. The rigours of D9C as were fully understood in that regard.

150. This application on a proper interpretation acts upon the position adopted by the Panel and does not relitigate it.

The views of others

151. The views of others are of course material considerations but as the Court pointed out in Newcastle⁴² for example, there is no way in which such views can or should bind a decision maker especially in cases where live evidence is given and tested and where those parties are not the subject of the testing regime.

152. In any case in the circumstances of this case, the council has come to its own conclusions in relation to heritage which identify higher harm in most relevant cases that Historic England (HE) and still find that the proposal is acceptable in those terms. HE's representation is NOT an objection. It identified that it did not support but has not undertaken a balance. When it does OBJECT it says THAT.

153. RBKC do not identify at all the range of heritage harms in accordance with the NPPF or engage in any balancing exercise, while the council which has done this exercise, finds harms in both boroughs to have been outweighed.

154. It is common ground that the policy D4 of the London Plan process requiring consideration and addressing of the DRP panels comments has been undertaken in accordance with the policy.⁴³

Proposition 6 – The application site is unique in both its location and context which as a result produces and allows the provision of an appropriate residential tall building AND the provision of much needed 50% affordable housing.

155. Mr Marginson was right when he said that there are very few opportunities like this site, which allow the delivery of a landmark building on the River in a highly accessible location, with 110 residential units of which 54 (i.e. 50%⁴⁴) are affordable housing all at social rent levels, consisting of three and four bed family homes.

156. The outstanding location of the site allows private residential values to be generated in such a way that supports this impressive level of affordable housing. This was understood by the architects as a fundamental part of the proposals from the outset. The scheme has been specifically designed to optimise value so as to harness the opportunity to provide this level of affordable housing as a tenure blind proposal, in order to achieve a truly mixed-tenure development. This was an aspect of the scheme which the Council consistently encouraged throughout the collaborative design process.

⁴² Newcastle upon Tyne City Council v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 2752 (Admin), at paras 74-78.

⁴³ See Main Statement of Common Ground at CD 7.01 at para 10.36.

⁴⁴ 50% by habitable room, equating to 30% of the residential footprint

157. The Council's position at this inquiry to the weight to be given to housing and affordable housing is unreasonable and out of step with government policy. The Council and Ms Chambers stance that only 'moderate' weight should be given to housing, and Ms Chambers statement during her evidence that "*it is not the Council's responsibility to contribute to London's wider need*"⁴⁵ was staggering and we fear wrong-headed.
158. There are several matters which are fundamental to a conclusion that the delivery of market and affordable housing should each separately be given substantial weight in the planning balance.
159. Starting with the London Plan, the London-wide housing needs assessment identified a need for 66,000 additional homes every year across the London housing market area. London was identified as "a single housing market area"⁴⁶ to ensure that the capital was able to make the best use of its brownfield site and that London authorities (like Wandsworth) would not be able to say they had done their bit, while letting well-located brownfield sites remain underutilised.
160. The London Plan did not set its targets by reference to these objectively assessed needs, but rather by reference to a capacity-based assessment, with an acknowledgment that a review would need to take place. As Mr Marginson explained, the Panel expressly only found the entire plan to be sound on the basis of the requirement for an early review given the gap between objectively assessed needs and capacity. There has been no such review and the housing position in London has worsened considerably.
161. At present London is not coming anywhere close to achieving even these capacity-based figures. London housing need has continued to rise, and this was reflected in the London housing need figure being raised to 88,000 net additional homes per annum in London as confirmed in Towards the London Plan.⁴⁷
162. Mr Marginson spoke about the dramatic decline in housing delivery in Wandsworth and London. Housing completions, starts and projections for London and Wandsworth all point towards the Council not meeting its future housing targets and failing the Housing Delivery Test, as well as a declining five-year housing land supply position.⁴⁸
163. **As a result of this Wandsworth's housing supply requirement (and other London authorities also) are deliberately expressed as being "a minimum" (see SDS 1⁴⁹).**
164. The housing crisis across London led the Government and the Mayor in October 2025 to announce a series of emergency measures to support housebuilding in London, in response to the 'perfect storm' that housing in London was facing.⁵⁰
165. Just yesterday the Government and the Mayor have announced a final package of measures to support housing building in the Capital, recognising the particularly acute

⁴⁵ Ms Chambers answer in cross-examination.

⁴⁶ Para 4.1.2 of the London Plan.

⁴⁷ CD 5.51.

⁴⁸ See paras 5.37-5.58 of Mr Marginson's Proof.

⁴⁹ CD 5.02.

⁵⁰ CDs 5.48-5.50.

need in London to provide more families with safe and secure homes, and the significant challenges housebuilding in the capital has faced over recent years.

166. In light of all of this, the weight to be given to housing provision must be substantial and the Secretary of State is expecting decision makers to so find.
167. The fact that the local authority can (just) demonstrate a five-year housing land supply (based on completion rates which are now nowhere near capable of being repeated) does not reduce the weight to be given to housing.⁵¹
168. Five-year housing land supply targets are not intended to act as a cap or ceiling on housing delivery or to delimit the public benefit which can be ascribed to its provision. This is an error of the first order in the circumstances of this case. The Council's approach in this case is exactly the kind of approach the London Plan, with the treatment of London as a single housing market seeks to prevent.
169. For all the reasons set out above, Ms Chambers weighing of only moderate weight is simply unsustainable, and tellingly Ms Chambers could not point to a single Secretary of State or Mayoral decision which supported her view that only moderate weight should be given.
170. Ms Chambers also sought to give reduced weight to the affordable housing being provided by the scheme, on the basis that she questioned the delivery of this affordable housing. The Council's case here is entirely unevidenced, based on pure conjecture and is not right as a matter of law.
171. As a matter of law, the appeal scheme is for 50% affordable housing. There is no other scheme before the inquiry and the affordable housing provision is secured and tightly controlled by a s.106 with which the council is content. That is the scheme that is for determination at this inquiry, not some other hypothetical scheme.
172. As set out in the evidence, the Council from the outset consistently encouraged the provision of 50% affordable on the site, and the scheme was accordingly designed specifically to meet this fundamental objective.⁵²
173. At no point did officers raise any concern about the delivery of this level of affordable housing, either during the application process or in the report to Committee.
174. It is only for the first time during this appeal process just days before the CMC, that the Council, through Ms Chambers via the Statement of Case has questioned deliverability. There is no evidential basis for this position, and the Council has not produced any of its own evidence to substantiate its concerns or to suggest that its s.106 is insufficient to protect its position.
175. In response to the position now taken by the Council the Appellant has submitted a letter setting out its clear intention to deliver the project on a reasonable commercial basis⁵³

⁵¹ This means the tilted balance is not engaged, but nevertheless the weight given to housing in the circumstances of this case must surely be substantial.

⁵² See the letter at Appendix A of Mr Marginson's Proof.

⁵³ Appendix A of Mr Marginson.

and has produced expert evidence from Mr Levine at DS2⁵⁴ as to the reality of this location with 70% of its floor area provided as prime market offer being deliverable. He also refers to interest from registered providers. This is entirely unchallenged expert judgment evidence.

176. A Financial Viability Assessment is not required by policy in this case,⁵⁵ and at no point has the Council requested any viability information (whether through the s.106 prior to commencement or otherwise). The absence of a full formal FVA does not mean that the weight to be given to an integral part of the planning application should or can be reduced.

177. The logic of reducing the weight of the benefit from the 50% from substantial to significant is similarly unfathomable. The application is for 50% affordable housing and that is what is secured and can be required as a matter of law by the s.106 agreement. That is the proposition which falls to be weighed in the balance in this case.

178. The affordable housing proposition is physically integral to the proposed building's very form. There is no evidence that a section 73 application could or would be made in the future. The allegations that such a route will be taken unproved and, in any event, is a wholly immaterial planning consideration, given that any future section 73 application (if it were ever even possible) would be determined on its merits and at that time and would represent a freestanding planning permission.

179. Accordingly, there is no reason to reduce the weight to be given to affordable housing forming part of this appeal. The planning balance must be based on the proposal before the inquiry which offers and the agreed s.106 obligation which secures 50% affordable housing.

180. As set out by Mr Marginson the scale of affordable housing need in the borough and in London is huge. The Council's latest Housing Needs Assessment identifies an "extremely high need for affordable to rent housing such as social or affordable rent". On a net zero migration scenario, a total need for up to 17,223 social rent dwellings by 2038 is identified.⁵⁶

181. In the context again of the housing crisis currently facing London and the dramatic decline in housing starts and completions, which will also inevitably affect affordable housing delivery, the provision of 54 social rent homes in this case must be given substantial weight.

Proposition 7 – There are no other planning issues which require the refusal of this brownfield regeneration which brings substantial benefits.

182. Paragraph 125(c) of the NPPF provides that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs, and that such proposals should be approved unless substantial harm would be caused. The direction of travel set out in the emerging NPPF is intended to further strengthen this imperative.

⁵⁴ Appendix G of Mr Marginson.

⁵⁵ See paragraph 5.17 of Mr Marginson's proof.

⁵⁶ Paragraph 5.43 of Mr Marginson proof, see also CD 5.39.

183. The issues raised by the Battersea Society and third parties have all been fully addressed in the comprehensive evidence before this inquiry (including written and oral evidence at the roundtables), as well as in the report to committee. On an examination of the evidence it is clear that none of these additional issues result in any material breaches of policy, do not constitute or contribute to any ‘substantial harm’ for the purposes of paragraph 125(c) of the Framework, and as such do not amount to any reason to refuse a grant of permission. The Appellant’s case on these matters is set out in Appendix 1 to these closing submissions.

Conclusion.

184. For all these reasons, permission for this sustainable development should be granted.

185. It will establish the seriousness and responsiveness of the planning system to meet the ever-growing structural needs of these challenging times.

Russell Harris KC

Anjoli Foster

Landmark Chambers

26 March 2026

Appendix 1: Other matters

1. By way of introduction in relation to all of these matters, it is common ground with the Council (as set out in the main Statement of Common Ground at CD 7.01) that these matters do not result in any material breaches of policy, do not constitute or contribute to any 'substantial harm' for the purposes of paragraph 125(c) of the Framework, and as such do not amount to any reason to refuse a grant of permission.

Flood risk

2. The planning application was accompanied by a comprehensive flood risk assessment, and as agreed with the LPA,⁵⁷ the proposed development is acceptable in terms of flood risk management, sustainable drainage and flood defences, and is compliant with LP12 of the Local Plan, SI 12 of the London Plan and relevant parts of the NPPF on flood risk.
3. The position of the EA in relation to the issue of flood defences is, in reality, not an 'objection' to the development at all. Rather the EA's position, put at its highest, is that the development is unacceptable unless certain conditions are imposed. Their concerns, which essentially amount to a requirement for further general information gathering, would even on their own case be overcome by the conditions which they have proposed in the Statement of Common Ground between the Appellant and the EA (CD 7.07), and in the new amalgamated conditions the EA sent in prior to the conditions session. It follows that the scope of the debate here is whether the proposed conditions pass the test for planning conditions set out in paragraph 57 of the Framework.
4. It is the Appellant's firm position that these conditions do not pass the tests, because these conditions are not necessary, not relevant to the development to be permitted and are not reasonable.
5. The proposed development will not compromise the effectiveness or integrity of the flood defences, and will be safe for its lifetime without increasing flood risk elsewhere. It is agreed with the EA that the proposed development's basement and below ground level will be further set back from the flood defence when compared to the existing building on site.⁵⁸ The proposed development will not involve any works to the riverwall. It is also agreed that the flood defence meets the current height requirements of the TE2100 plan until the end of the century, and the proposed development will itself have a finished floor level above this level.⁵⁹ In addition, the flood defence will be protected from any damage during construction due to the Flood Risk Activity Permit (FRAP) regime. The development is acceptable without the need for the EA's suggested conditions.⁶⁰
6. The EA's concerns and suggested conditions relate to further surveys of the flood defences and strategies for future raising or remediation works. However, there is already in place a comprehensive legal regime which covers necessary works or repairs to flood defences. Under the legislation,⁶¹ the owners of the land on which flood defences are situated are responsible for carrying out works to maintain them, and the EA has the

⁵⁷ See the Statement of Common Ground at CD 7.01 and report to Committee at CD 3.01.

⁵⁸ Para 2.3 of CD 7.07.

⁵⁹ Para 2.7 of DC 7.07.

⁶⁰ Set out in CD 7.07.

⁶¹ Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879; Land Drainage Act 1991, by virtue of section 107 Water Resources Act 1991.

power to carry out the work itself and recover the expense of doing so where the owner fails to do so. The Appellant is not the flood defence owner, and the Appellant has no legal duty to maintain the riverwall, and has no ability to carry out or implement any works. As confirmed in the documents before the inquiry, the flood defence owners are the Thames Walk Residents Association Ltd.

7. The EA's proposed conditions are not necessary, not relevant to the proposed development and are unreasonable. Nevertheless, the Inspector can impose the EA's suggested condition to deal with their concern if that if that is felt necessary.

Living conditions

8. It is common ground with the Council, as set out in the Statement of Common Ground and in depth in the report to Committee, that the appeal scheme is acceptable in relation to daylight, sunlight, outlook and privacy, and is compliant with relevant policies.
9. In relation to daylight and sunlight, the Appellant's daylight, sunlight and overshadowing report by GIA provided with the application (CD 1.11) remains robust, transparent and reliable, and demonstrates that effects on neighboring properties are acceptable, in line with BRE guidelines. The retained levels of light at 6 Hester Road (which itself is obstructed by its own walkways), Thameswalk Apartments and Albion Riverside remain within the mid-teens range, which is commensurate with an urban London context and perform well when compared to relevant comparators. The impact on the amenity area for 6 Hester Road is acceptable, and moreover residents have access to many other public amenity spaces in the local area.
10. Neither DPDS nor Anstey Horne attended the roundtable session, and so they could not be further tested on their written representations. Nevertheless, GIA have provided a thorough response, both in writing⁶² and orally,⁶³ to these written representations. Mr Pagani explained that the criticisms made are without merit, and primarily arise from shortcomings in the methodology used by AH, including reliance on assumed room uses and internal layouts and assessment of an incomplete set of windows.
11. There is no unacceptable harm caused. Even if it were to be concluded that some harm resulted, this would be a very low level of harm which would only carry limited weight in the planning balance.
12. With regard to privacy impact on neighbouring building, there will be a change in the use of the building from office to residential, however overall the impact is not significantly different to the existing situation, and indeed a similar impact would inevitably result from any residential redevelopment of the site. Acceptable privacy for neighbouring occupiers would be maintained and living conditions would not be materially harmed.
13. As to outlook, there is no material impact. Again the impact for neighbouring residents will not be significantly different compared to the existing situation as to its impact on living conditions, and no material harm would be caused.

⁶² Appendix C of Mr Marginson's proof of evidence.

⁶³ During the roundtable session.

Construction and Highway Safety

14. The comprehensive transport assessment⁶⁴, prepared by Velocity, clearly demonstrates that the development, with regard to demolition, construction and operational phases, will not have an unacceptable impact on highway safety, nor will it have a severe impact on the road network. Accordingly, there is no highways basis for objection in line with paragraph 116 of the NPPF. This is all common ground with the local authority, and there is no objection from TfL. Mr Bush also reviewed the comments raised by interested parties, and he has set out⁶⁵ that these do not raise any reasonable or evidenced highways matters of concern, and do not change the accurate conclusions in the transport assessment.
15. The intended access for construction is on the public highway via Battersea Bridge Road, therefore issues related to the a private right of access over land owned by the adjoining owner are not material planning considerations. In any event, to the extent that many comments from interested parties related to construction, there will be a condition which will require a detailed construction management plan to be in place. As Mr Bush pointed out, it is right that detailed construction logistics matters are dealt with by condition, in order to take into account any changes to the highway network.
16. Further, there is no evidential basis whatsoever to suggest that the structural stability of any existing buildings or the bridge will be affected during construction (again, there has been no objection from either the local authority or TfL on this basis). As to the effect on living conditions of neighbouring residents during construction, this is an impact which will be temporary, inevitable with any redevelopment of the site, and will be appropriately managed through the logistics and construction management plan, secured by conditions.

Environment and climate

17. The assertions in the representations by DPDS (who did not attend the roundtable discussion and so could not be further challenged on their points) on this issue are entirely unevidenced. A wind microclimate assessment and wind technical note,⁶⁶ prepared by GIA, were submitted with the application, which concluded that there are no wind safety risks around the site or surrounding area. The design of the building has carefully and specifically incorporated wind mitigation measures. Mr Winchester further addressed these matters at the inquiry. He explained that all wind conditions are suitable for the intended use, and particularly the public realm in and around the site would be suitable for a mix of sitting and standing, appropriate for the riverside context. Indeed, many of the issues raised by residents relate to the existing condition, which the proposed development will not impact at all.
18. It is common ground with the Council that wind impacts in relation to the proposal are acceptable and there is no material harm caused in this regard.
19. Finally, it is agreed between the Council, the Appellant and the GLA that the development complies with the GLA's whole life carbon guidance and policies.⁶⁷ There is no dispute

⁶⁴ CD 1.20 and 1.21.

⁶⁵ Appendix D of Mr Marginson's evidence and at the roundtable.

⁶⁶ CD 1.23 and 1.24.

⁶⁷ See the Whole Life Carbon Assessment at CD 1.22 and the Circular Economy Statement at CD 1.31.

that it is not technically feasible or viable to retain the building. Mr Barbalov explained that Farrells explored retrofitting options for residential redevelopment. DS2 have also produced unchallenged evidence demonstrating that there is no reasonable prospect of the existing use, either with or without refurbishment, continuing. Ramboll have also reviewed the representations of interested parties on this matter, and have concluded that these do not change the sound and reliable position agreed by all parties.⁶⁸

⁶⁸ Appendix G of Mr Marginson's proof.