Department for Levelling Up,
Housing & Communities

Our ref: APP/E5900/W/19/3225474

Miss Georgina Redpath
DP9 Ltd
100 Pall Mall, London
SW1 5NQ

18 November 2021

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WESTFERRY DEVELOPMENTS LIMITED
LAND AT FORMER WESTFERRY PRINTWORKS SITE, 235 WESTFERRY ROAD, LONDON E14 3QS
APPLICATION REF: PA/18/01877/A1

This decision was made by the Minister for Rough Sleeping and Housing on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Prentis BA BPl MRTPI, who held a public local inquiry between 7 and 22 August 2019, and 9 September 2019, and then a reopened inquiry from 18-26 May 2021, into your client's appeal against the failure of Tower Hamlets London Borough Council to give notice within the prescribed period of a decision on your client's application for planning permission for a comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafes, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1), car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works, in accordance with application PA/18/01877/A1, dated 24 July 2018.

2. On 10 April 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 14 January 2020. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 20 May 2020. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 14 January 2020 decision letter.

Department for Levelling Up, Housing and Communities
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Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed.

5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to dismiss the appeal. Copies of both Inspector's reports (IR) are enclosed. The initial Inspector's Report dated 20 November 2019 will be referred to as IR.A. The subsequent Inspector's Report dated 25 June 2021 will be referred to as IR.B. The Secretary of State has taken the conclusions of IR.A into account, except where they have been superseded for the reasons set out in IR.B. All references to paragraph numbers, unless otherwise stated, are to those reports.

Environmental Statement

6. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry opened by way of addendum to the Environmental Statement. Having taken account of the Inspector's comments at IR.B.7, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the 2021 inquiry

7. A list of general representations received by the Secretary of State since the close of the 2021 inquiry is at Annex A. The Secretary of State does not consider that these general post-inquiry representations raise any matters that would require him to refer back to the parties for further representations on them prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

8. On 10 August 2021, the Secretary of State wrote to the main parties to afford them an opportunity to comment on whether the revised National Planning Policy Framework ('the Framework') which came into force on 20 July 2021, includes new information which may be material to the appeal. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 6 September 2021. A list of representations received in response to this re-circulation are also at Annex A.

9. The Secretary of State's conclusions on the matters raised are set out below. Copies of all representations received may be obtained on request to the email address at the foot of the first page of this letter.

Changes since the original inquiry

10. The Secretary of State notes at IR.B.12 that at the time of the original inquiry in August and September 2019, and when the original Inspector's Report (IR.A) was written, the development plan comprised the London Plan 2016 (LonP 2016), the London Borough of Tower Hamlets Core Strategy 2010 (CS), the London Borough of Tower Hamlets Managing Development Document 2013 (MDD) and the London Borough of Tower Hamlets Adopted Policies Map 2013. He further notes at IR.B.12 that since then:

- the London Borough of Tower Hamlets Local Plan 2031 (LP 2031) was adopted on 15 January 2020;
- the CS and MDD were revoked by the Council on 15 January 2020;
- the London Borough of Tower Hamlets CIL Charging Schedule 2020 was adopted on 15 January 2020 and came into effect on 17 January 2020;
- the London Plan 2021 (LonP 2021) has been made and was published on 2 March 2021; and
- the Isle of Dogs Neighbourhood Plan (NP) was passed by referendum on 6 May 2021.

Policy and statutory considerations

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

12. In this case the development plan consists of the LonP 2021, the LP 2031, the London Borough of Tower Hamlets adopted Policies Map 2020 and the NP.

13. The Secretary of State considers that relevant development plan policies include those set out at IR.B.13-IR.B.30.

14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Council's Planning Obligations Supplementary Planning Document (SPD), the Mayor of London's Isle of Dogs and South Poplar Opportunity Area Planning Framework and the Mayor's Affordable Housing and Viability Supplementary Planning Guidance (SPG). For clarity, the Framework references within this letter have been amended from those in the IRs to the revised Framework numbering where necessary.

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

Matters set out in the Secretary of State's letter of 21 December 2020

The implications of the adoption of LP 2031

16. For the reasons given at IR.B.198-200 the Secretary of State agrees that the inclusion of a site specific requirement to maximise the provision of family homes in the development plan is a material change of policy (IR.B200). However, for the reasons given he agrees that there have not been other changes that are important in the context of this appeal (IR.B.201).

The impact of the adoption by the Council of a CIL charging schedule

17. For the reasons given at IR.B.202-205 the Secretary of State agrees with the Inspector at IR.B.205 that very little weight should be given to the CIL payment as a public benefit in the planning balance and further agrees that whilst the CIL payment would be substantial, that is a function of the scale of the appeal scheme (IR.B.206). He agrees (IR.B.206) that there has been a change of circumstances insofar as CIL would not have been payable at the time of his original decision, though on the basis that the payment of CIL attracts very little weight, he considers that does not materially change the balance of the case.

Implications of progress on LonP 2021

18. For the reasons given at IR.B.207-209 the Secretary of State agrees that the change of wording between the Draft London Plan and the Plan as adopted relating to the provision of family housing gives greater emphasis to the need for family housing in the development plan. For the reasons given at IR.B.211-212, the Secretary of State agrees that changes to design policies between LonP 2016 and LonP 2021 do not alter the overall balance of issues.

19. For the reasons given at IR.B.213-215, the Secretary of State agrees that changes to heritage policies in LonP 2021 do not alter the balance of the issues. For the reason given at IR216, the Secretary of State agrees that the adoption of LonP 2021 Policy H5 on affordable housing is a material change in circumstances.

20. He agrees for the reasons given at IR.B.217 that Conditions 41 and 43 would satisfactorily deal with changes to fire policy in LonP 2021.

21. His conclusions on the implications of changes to the policies set out above are set out below in his consideration of those issues.

Implications of these and other changes on viability

22. The Secretary of State agrees, for the reasons given at IR.B.218-220 and IR.B.254 that following the introduction of Borough CIL and agreement on the inputs to viability modelling, that the appeal scheme would be viable with the current affordable housing offer of 21%.

Other matters

Housing Delivery Test and housing land supply

23. The Secretary of State notes that there has been a material change of circumstances in that the Council can no longer demonstrate the five year supply of housing sites required by the Framework (IR.B.222). For the reasons given at IR.B.223-224 the Secretary of State agrees that while this is a material change that weighs in favour of the appeal, only limited weight should be attached to it.

24. For the reasons given at IR.B.225 he agrees that there has not been a change to the need for affordable housing of such significance as to affect the planning balance.

Economic impact of the pandemic

25. For the reasons given at IR.B.226-230, the Secretary of State agrees with the Inspector at IR.B.230 that whilst the economic impact of the pandemic is a material consideration,

in this case it does not lead him to alter the weight to be attached to the economic benefits described.

Isle of Dogs Neighbourhood Plan

26. The Secretary of State agrees with the Inspector's analysis at IR.B.231-233 of the implications of the adoption of the NP. He further agrees that the proposal would not accord with NP Policies D1, D2, ES1, SD1 and 3D1. However, for the reasons given he attaches only limited weight to this conflict (IR.B.233).

Consented scheme

27. The Secretary of State notes that both the appellant and the Council (at IR.B.106) are in agreement that a consented scheme remains as a material fallback against which to assess the impacts and benefits of the appeal scheme. For the reasons given at IR.A.417-418 and at IR.B.280 the Secretary of State agrees with the Inspector that the consented scheme should be treated as a fallback and that there is a reasonable prospect that the consented scheme would be implemented if the appeal is dismissed (IR.A.419 and IR.B.280).

28. He further agrees with the Inspector's approach of treating the consented scheme as a fallback in his assessments, both in relation to harms and benefits (IR.B.280) and agrees with the Inspector's comparative analysis of impacts and benefits in both IR.A and IR.B.

29. For the reasons given at IR.B.281, the Secretary of State agrees with the Inspector that the appeal scheme would not provide any additional benefits in respect of a number matters identified there.

The main issues

30. The Secretary of State considers the main issues in this case to be those identified by the Inspector at IR.B.234.

Effect on the character and appearance of the surrounding area

31. The Secretary of State has given careful consideration to the Inspector's analysis at IR.A.420-435 and IR.B.235-240 and IR.B.302 in relation to the effect of the scale, height and massing of the proposed development on the character and appearance of the surrounding area. For the reasons given at IR.B.235-236 and IR.B.302 the Secretary of State agrees that the appeal scheme would be harmful to the character and appearance of the area (IR.B.302).

32. The Secretary of State agrees with the Inspector's assessment at IR.A.436 that the spacing between the proposed towers and the way materials and the detailed design of the facades would bring texture and variety to the appearance of the buildings. However, for the reasons given at IR.B.235-236, the Secretary of State further agrees that the appeal scheme would result in a proposal of excessive height, scale and mass which would fail to respond to the existing character of the place. He further agrees that it would not enhance the local context by responding positively to local distinctiveness and, like the Inspector, considers that the proposal would conflict with LonP 2021 Policy D3 (IR.B.236).

33. For the reasons given at IR.A.436-438 and IR.B.237, the Secretary of State agrees that although the site is within a Tall Buildings Zone (TBZ) as identified in the development

plan, the scale, height and mass of the proposal is such that it would not make a positive contribution to the skyline nor the local townscape or achieve an appropriate transition in scale to buildings of significantly lower height. He further agrees that it would not reinforce the spatial hierarchy of the local and wider context, and would cause harm to the significance of heritage assets, would harm the ability to appreciate a World Heritage Site (WHS) and would compromise the enjoyment of an adjoining water space (IR.B.237). He further agrees at IR.A.436 that the proposal would not be well related to the street scene of Westferry Road (IR.A.436). For the reasons given, he agrees that the proposal would conflict with LonP Policy D9. He also agrees at IR.B.238 that the proposal would conflict with LP 2031 Policy S.DH1 because it would not be of an appropriate scale, height, mass, bulk and form. He further agrees, for the reasons given at IR.B.239, that the proposal would conflict with Policy D.DH6.

34. The Secretary of State further agrees that for the reasons given at IR.B.240, the proposal would not accord with the design principles set out in site allocation 4.12 (Westferry Printworks) of the LP 2031 and would therefore conflict with site allocation 4.12.

35. For the reasons given, the Secretary of State agrees with the Inspector at IR.B.302 that overall, the proposal would not represent high quality design which responds to its context. He further agrees that significant weight should be attached to the harm to the character and appearance of the area because of the degree of harm that would be caused and the wide area over which that harm would be experienced (IR.B.302).

36. The Secretary of State has taken in to consideration the appellant's representation of 27 August 2021, including that the proposal is representative of the highest quality design and appearance and that the development would deliver an attractive well-designed landscape masterplan that is easily accessible for pedestrians and cyclists; that trees are integral to the proposed streetscape; and that the proposals will deliver a safe, secure and attractive environment. The appellant considers that the proposed development is compatible with the emphasis in the revised Framework for building and places to be beautiful and sustainable. The Secretary of State has also taken into account the Council's representation of 26 August 2021. This considers that the amended Framework and the requirement to consider the National Design Guide further reinforces and strengthens the Council's case, and sets out where the Council considers that the proposal does not align with the principles in the National Design Guide.

37. For the reasons given in this letter, the Secretary of State considers that overall, the appeal scheme does not reflect local design policies or government guidance on design, and is not in accordance with paragraph 134 of the Framework. This view is further reinforced by his conclusions on heritage issues, below. He considers that the shortcomings of the proposal in terms of the failure to accord with the provisions of the revised Framework carry significant weight against the proposal.

Effect on strategic views and the settings of the Martime Greenwich WHS and Tower Bridge

Strategic views

38. For the reasons given at IR.B.241, the Secretary of State agrees with the Inspector's analysis and conclusions that the effect of the proposal on strategic views from Greenwich Park would be a neutral factor, and that thus the proposal accords with LonP 2021 Policy HC4 (IR.B241).

Listed buildings and the Maritime Greenwich WHS

39. The Secretary of State agrees, for the reasons given at IR.A.447-456 and IR.B.242 that the proposal would fail to preserve the setting of the Old Royal Naval College because it would distract from the ability to appreciate the listed building in certain views from Greenwich Park, and that the resulting harm to the significance of the Grade I building would be less than substantial (IR.B.242). He further agrees that given that the Old Royal Naval College is an important component of the WHS, harm to its setting also represents harm to the setting of the WHS and to Attribute 1 of its Outstanding Universal Value (the architectural ensemble that includes the Old Royal Naval College).

40. For the reasons given at IR.A.461-469, the Secretary of State further agrees at IR.B.243 that the proposal would fail to preserve the setting of Tower Bridge because it would distract from the ability to appreciate the Grade I listed building in views from London Bridge, and that the resulting harm to the significance of the listed building would be less than substantial.

41. For the reasons given at IR.B.244-IR.B.245, he agrees at IR.B.244 and IR.B.293 that the proposal has failed to avoid harm by integrating heritage considerations early on in the design process. He further agrees that it would compromise the ability to appreciate the integrity of one of the attributes of the Outstanding Universal value of the Maritime Greenwich WHS, and that the scheme would conflict with LonP 2021 Policies HC1 and HC2 (IR.B.244) and would conflict with LP 2031 Policies S.DH3 and S.DH5 (IR.B.245).

42. For the reasons given, the Secretary of State agrees with the Inspector at IR.A.472 and IR.B.301 that the proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge and would fail to preserve the setting of the Maritime Greenwich WHS. He further agrees that these are matters of considerable importance and weight (IR.B.301). Like the Inspector (as set out at IR.A.596), in reaching his conclusions he has taken into account the extent to which the consented scheme would affect the settings of the heritage assets in question. He has weighed the additional benefits of the appeal scheme (relative to the consented scheme), together with the benefits from the increased CIL payments that would arise now, subject to the view that limited weight should be given to them, against the harm. Taking this into account, the Secretary of State agrees that the consented scheme would also have some impact but the degree of impact of the appeal scheme would be much greater (IR.A.596).

43. For the reasons given at IR.A.469 and IR.B.10 he considers that there is no impact on the significance of any other heritage assets or their settings.

Effect on the recreational use of Millwall Outer Dock

44. The Secretary of State agrees with the Inspector's analysis of effects on sailing conditions in the Millwall Outer Dock at IR.B.246-253, 294 and 303, including that there would be a significant adverse effect on sailing conditions in the Millwall Outer Dock for novice and inexperienced sailors, which would represent a significant disadvantage of the proposals (IR.B.246).

45. For the reasons given at IR247-251, he agrees with the Inspector's conclusion at IR.B.251 that the Unilateral Undertaking (UU) provisions in relation to mitigation of this

impact do not meet the tests set out in the CIL regulations, and hence no weight should be attached to the mitigation measures set out in the UU.

46. He agrees at IR.B.252 that the proposal would conflict with LonP 2021 Policies SI 16 and SI 17 and would also conflict with LP 2031 Policy S.OWS2 and D.OWS4.

47. The Secretary of State agrees that the effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme, that there is a reasonable propect that the adverse effect on sailing quality would occur in any event and consequently that only limited weight should be attached to the policy conflicts relating to this matter (all at IR.B.303).

Housing Delivery Test and housing land supply

48. The Secretary of State has noted above that there has been a material change of circumstances in that the Council can no longer demonstrate the five year supply of housing sites required by the Framework (IR.B.222). However, he agrees with the Inspector's analysis at IR.B.223-224 and 282 that the total amount of housing land supply in Tower Hamlets is very large and the shortfall against the requirement is small. For the reasons given, he further agrees that whilst the shortfall is a change that weighs in favour of the appeal, he attaches only limited weight to it (IR.B.224 and 282). As the Council's most recent Housing Delivery Test (HDT) figure is below 75% and there is no five year supply of housing sites, the presumption in favour of sustainable development is triggered – this is dealt with further at paragraphs 65-70 below.

The mix of market and affordable housing in terms of numbers, size and tenure

49. The Council, The GLA and the appellant have revisited their respective viability assessments in the knowledge that the scheme is now liable for a CIL payment of around £43 million. The Secretary of State agrees, for the reasons given at IR.B.218-220 and IR.B.254, that following the introduction of Borough CIL and agreement on the inputs to viability modelling, that the appeal scheme would be viable with the current affordable housing offer of 21% (IR.B.220).

Payment of CIL at the outset

50. The Secretary of State agrees with the Inspector's analysis in relation to payment of CIL at the outset at IR.B.255-IR257.

Whether a Mid Stage Review is required

51. He further agrees, for the reasons set out at IR.B.258-262, that the appeal scheme should properly be regarded as a 'larger phased scheme' for the purposes of Policy H5. He agrees that as the UU does not provide for a mid-stage review (MSR), to this extent there is conflict with the policy (IR.B.262).

The implications of not providing for MSR

52. For the reasons given at IR.B.263-268, the Secretary of State agrees that the absence of provision for MSR is an important matter. He further agrees that the proposal fails to take the opportunity to move closer to the policy target over the lifetime of the development, and that in the absence of MSR it is unlikely that anything above 21% affordable housing would be achieved on site (IR.B.268). He agrees that the proposal conflicts with LonP Policy H5. He further agrees that while the lack of provision of 35% affordable housing is

justified on viability grounds at the outset, it is not justified over the life of the development; the proposal would therefore conflict with LP 2031 Policy S.H1 and Policy D.H2 (IR.B.268). In reaching his conclusions on this matter, the Secretary of State has taken into account the Inspector's comments at IR.B.269. He agrees that as further evidence has been put forward within the scope of the matters that the Secretary of State asked to be informed about, and as Policy H5 is now part of the development plan, the Inspector is correct to consider this matter, notwithstanding the appellant's arguments that MSR is not a new matter, and that the UU before the first inquiry did not provide for MSR (IR.B.269).

Other concerns and changes relating to the UU

53. The Secretary of State agrees with the Inspector's conclusions as to concerns relating to the UU at IR.B.270-273; and further agrees that the changes to the UU set out at IR.B.274 represent improvements on the previous UU.

Mix of tenure types and unit sizes

54. For the reasons given at IR.B.275, the Secretary of State agrees with the Inspector at IR.B.276 and IR.B.283 that the proposal would conflict with LonP 2021 Policy H10 and LP 2031 Policies D.H2 in that it would not make adequate provision for family housing, and would also conflict with LP 2031 site allocation 4.12 in that it would not maximise the provision of family homes.

55. The Secretary of State agrees with the Inspector at IR.B.283 that the failure to maximise the provision of family homes remains as a significant disadvantage of the scheme, and carries increased weight now that the policies set out in paragraph 54 above now have development plan status. He has taken this into account when assessing the overall weight to be attributed to the provision of housing.

56. The Secretary of State notes at IR.B.304 that the Inspector has considered the additional benefits of the appeal scheme in relation to the consented scheme, which represents a fallback position. For the reasons given at IR.B.286, he agrees with the Inspector at IR.B.304 that the delivery of additional housing (including affordable housing) should attract moderate weight.

Provision of public open space

57. The Secretary of State notes the Inspector has reviewed his original findings regarding provision of public open space in light of the recently adopted development plan. For the reasons given, he agrees with the Inspector's analysis and conclusions at IR.B.278-279 regarding the effect of the proposal on the provision of public open space.

Public benefits of the scheme

58. The Secretary of State agrees with the Inspector's assessment of the public benefits set out at IR.B.281, which the Inspector considers would yield the same or similar public benefits that would flow from the consented scheme. For the reasons given at IR.B.282-

286, he agrees that the delivery of housing, including affordable housing, should attract only moderate weight in the planning balance (IR.B.286).

59. For the reasons set out at IR.B.202-206 he agrees that very little weight should be given to the CIL payment as a public benefit in the planning balance.

60. For the reasons given at IR.B.287, the Secretary of State agrees with the Inspector's analysis of economic benefits of employment during construction, as compared with the consented scheme. He agrees with the Inspector at IR.B.287 and IR.B.304 that in relation to the consented scheme the social and economic benefits of additional employment during construction attract moderate weight.

Planning conditions

61. The Secretary of State has given consideration to the Inspector's analysis at IR.B.192-196, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

62. The Secretary of State has had regard to the Inspector's analysis at IR.B.8-9, IR.B.202-206, IR.B.247-251, the s106 agreement dated 21 May 2021, and the revised Unilateral Undertaking dated 25 May 2021, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended.

63. The Secretary of State concludes that the Unilateral Undertalking, except as noted below, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework (IR.B.9). The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR.B.247-251 that the obligation relating to mitigation for the effect of the proposal on the recreational use of Millwall Outer Dock does not comply with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework, and as such has not taken it into account in reaching his conclusions. The s106 Agreement has no function but to withdraw the two previous Unilateral Undertakings dated 6 September 2019 and 29 September 2020, but for the avoidance of doubt the Secretary of State concludes that it complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.

Planning balance and overall conclusion

64. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies D3, D9, HC1, HC2, SI 16, SI 17, H5 and H10 of the London Plan 2021 nor in accordance with policies S.DH1, S.DH3, S.DH5, S.H1, S.OWS2, D.DH6, D.H2, D.OWS4 and 4.12 of the Local Plan 2031, nor NP Policies D1, D2, ES1, SD1 and 3D1, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

65. As the Council's most recent Housing Delivery Test (HDT) result is less than 75% of the requirement and also because a five year housing land supply can no longer be demonstrated, paragraph 11(d) of the Framework indicates that planning permission

should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

66. Weighing in favour of the proposal are the provision of housing (including affordable housing) which attracts moderate weight, the social and economic benefits during construction which also attract moderate weight and the Council's housing shortfall which attracts limited weight. The payment of CIL is afforded very little weight.

67. Weighing against this is the failure to preserve the settings of the Old Royal Naval College and Tower Bridge, both Grade I listed, and the Maritime Greenwich WHS, which attracts considerable weight. The harm to the character and appearance of the area attracts significant weight. Further significant weight is afforded to the failure to accord with the provisions of paragraph 134 of the Framework. The harm to sailing quality attracts limited weight.

68. The Secretary of State has considered whether the identified 'less than substantial' harm to the settings of the Maritime Greenwich WHS, the Old Royal Naval College and Tower Bridge is outweighed by the public benefits of the proposal. He considers that the public benefits of the scheme are the delivery of additional housing (including affordable housing), the CIL payment and the social and economic benefits of additional employment during construction.

69. Overall the Secretary of State agrees with the Inspector at IR.B.290 that the benefits of the appeal scheme are not collectively sufficient to outbalance the identified 'less than substantial' harm to the settings of the Maritime Greenwich WHS, the Old Royal Naval College and Tower Bridge. He considers that the balancing exercise under paragraph 202 of the Framework is therefore not favourable to the proposal.

70. Consequently, under limb (i) of the test at Framework paragraph 11(d) the Secretary of State considers that the policies of the Framework that protect designated heritage assets provide a clear reason for refusal. The presumption in favour of sustainable development is therefore disapplied.

71. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.

72. The Secretary of State therefore concludes that the appeal should be dismissed.

Formal decision

73. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafes, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1), car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works, in accordance with application ref PA/18/01877/A1, dated 24 July 2018.

Right to challenge the decision

74. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

75. A copy of this letter has been sent to Tower Hamlets London Borough Council, the Greater London Authority and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

This decision was made by the Minister for Rough Sleeping and Housing on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Tower Hamlets London Borough Councillor Gold and Councillor Wood	16 July 2021

Representations received in response to the Secretary of State's letter of 10 August 2021

Party	Date
Greater London Authority	12 August 2021
Greater London Authority	27 August 2021
Tower Hamlets London Borough Council	26 August 2021
Westferry Developments Limited	27 August 2021

Representations received in response to the re-circulation of responses received to the Secretary of State's letter of 10 August 2021

Party	Date
Greater London Authority	13 September 2021
Tower Hamlets London Borough Council	13 September 2021
Westferry Developments Limited	13 September 2021

The Planning Inspectorate

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

by David Prentis BA BPl MRTPI

an Inspector appointed by the Secretary of State

Date: 20 November 2019

TOWN AND COUNTRY PLANNING ACT 1990

THE COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS

APPEAL MADE BY

WESTFERRY DEVELOPMENTS LIMITED

Former Westferry Printworks Site, 235 Westferry Road, London E14 3QS

File Ref: APP/E5900/W/19/3225474

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File Ref: APP/E5900/W/19/3225474
Former Westferry Printworks Site, 235 Westferry Road, London E14 3QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Westferry Developments Limited against the Council of the London Borough of Tower Hamlets.
- The application Ref PA/18/01877/A1 is dated 24 July 2018.
- The development proposed is a comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafes, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1), car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works.

Summary of Recommendation: That the appeal be dismissed

PRELIMINARY MATTERS

1. The Inquiry sat for 11 days between 7 and 22 August 2019 and for one further day on 9 September 2019. There was an accompanied site visit on 23 August. By agreement with the parties, my visits to various off-site locations referred to in the evidence were carried out on an unaccompanied basis. All of these viewpoints were in the public realm. I carried out unaccompanied visits before and during the course of the Inquiry.

2. The appeal was recovered by the Secretary of State by letter dated 10 April 2019 for the following reason:

   The reason for this direction is that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

3. The Council resolved that, had it been in a position to determine the application, planning permission would have been refused for 5 reasons. These are set out in full in the Overarching Statement of Common Ground (SoCG)[1]. They may be summarised as follows:

   1) The height and mass of the development would not be proportionate to its position outside the Canary Wharf major centre and would not provide an appropriate transition in scale to the lower rise buildings of the existing townscape. The development would be overbearing, unduly prominent and would detract from the local context of the Isle of Dogs, the Canary Wharf Skyline of Strategic Importance and the Greenwich Maritime and Tower of London World Heritage Sites including the Grade I listed Tower Bridge.

   2) The development would increase adverse effects on wind climate and sailing conditions in Millwall Outer Dock beyond those to be mitigated by the Wind Mitigation Contribution agreed in 2016. This would further jeopardise recreational use of the dock, particularly for young and novice sailors.

[1] CD46

3) An affordable housing offer of less than 35% would fail to meet the minimum requirements of the Tower Hamlets Local Plan.

4) An affordable housing offer that fails to provide a satisfactory ratio between social rent and intermediate housing would conflict with the London Plan, Tower Hamlets Core Strategy and Tower Hamlets Managing Development Document.

5) The dwelling mix would fail to provide a satisfactory range of housing choice due to an overemphasis on two-bedroom units and insufficient family homes.

4. In respect of reason (1), the Council subsequently confirmed that it would not pursue any objection in relation to the setting of the Tower of London World Heritage Site. The Council's objection in relation to Tower Bridge was maintained.

5. The proportions of social rent and intermediate housing were altered during the Inquiry to address the Council's concern. Although the Council did not formally withdraw reason (4), no objection on these grounds was pursued at the end of the Inquiry. The Council did not formally withdraw reason (5). However, its closing submissions did not argue that this should be a free-standing reason for refusal. Rather, it was argued that this is a matter which should reduce the weight to be attached to the benefit of providing market housing.

6. Revisions to the proposed development were submitted to the Council in March 2019, prior to the appeal being made, in response to an objection from London City Airport. Those revisions reduced the height of the tallest proposed building (T4) by two storeys, with a consequential change in the proposed number of residential units from 1,540 to 1,524. The revised description of development is set out in the SoCG and reflected in the heading to this report. The appeal was submitted shortly thereafter and the Council did not carry out any further consultations. Nevertheless, at the end of the Inquiry, there was no suggestion that there has been any prejudice to interested parties. Given that, in the context of the scheme as a whole, the change was small and could only reduce any impacts, I share that view. I have based my assessment and recommendation on the revised proposals.

7. At the time of the application the appellant proposed that 35% of the housing (measured by habitable rooms) would be affordable. The appellant's viability assessment was updated for the appeal and a revised offer of 21% was put forward in the proofs of evidence. The proportions of social rent and intermediate housing were also subsequently altered to address one of the Council's concerns. At the end of the Inquiry there was no suggestion from any party that any prejudice would arise if the Secretary of State were to determine the appeal on the basis of these amendments. Nor were any concerns expressed in terms of environmental information and the Environmental Statement (ES). I see no reason to take a different view and I have based my assessment and recommendation on the revised proposals.

8. The appellant submitted a signed Unilateral Undertaking (UU) at the Inquiry[2], the main provisions of which may be summarised as follows:

[2] WDL35

Financial contributions:

- employment and training – construction phase;
- employment and training – end user phase;
- sailing centre mitigation;
- Crossharbour station improvements;
- cycle hire facilities;
- bus facilities and capacity;
- Preston Road roundabout improvements;
- carbon offsetting; and
- monitoring fee.

Non-financial obligations:

- phased delivery of 21% affordable housing with 70% affordable rent and 30% intermediate;
- late stage affordable housing review;
- no on-street parking permits for residents;
- travel plans;
- phased delivery, maintenance and retention of public open spaces and pedestrian routes;
- provision of a school site in accordance with the terms of an existing s106 Agreement;
- provision of health centre, community centre and creche;
- provision of affordable workspace;
- local employment and procurement of goods and services during construction; and
- provision of apprenticeships during construction.

9. The Council submitted a Community Infrastructure Levy (CIL) Regulations compliance statement[3] which set out its view as to whether the obligations would accord with Regulation 122 of the CIL Regulations. The Council and the appellant agreed that many of the obligations would meet the relevant tests. The amount of affordable housing and affordable housing review mechanisms, the sailing centre mitigation contribution, and provisions relating to the school were however controversial matters. The obligations are discussed further below.

[3] LBTH22

10. The application was accompanied by an Environmental Statement (ES). I have taken the environmental information into consideration in my assessment and recommendation.

11. The Greater London Authority (GLA) was given Rule 6 status and was represented at the Inquiry.

12. Amendments to Planning Practice Guidance were published on 1 September 2019. The parties at the Inquiry agreed that these amendments did not alter any of the evidence that had previously been given[4].

Submissions received after the close of the Inquiry

13. The Council received the Inspector's report on the examination of the Tower Hamlets Local Plan (THLP), together with a schedule of main modifications, on 20 September 2019. In addition, the Council had received a draft report (for fact-checking) from the Examiner of the Council's CIL Draft Charging Schedule on 12 September 2019. The Council anticipates that the THLP and the CIL Charging Schedule will be adopted on 15 January 2020. At the same time, the Council anticipates that the Tower Hamlets Core Strategy 2010, the Tower Hamlets Managing Development Document 2013 and the Proposals Map would be withdrawn.

14. The Council made some comments on these documents in its initial letter and also provided a Supplemental Note in respect of the THLP[5]. The appellant submitted responses in relation to the reports on the THLP and the CIL Charging Schedule and the GLA confirmed that it did not wish to comment[6].

15. The GLA advised that the Isle of Dogs and South Poplar Opportunity Area Planning Framework had been adopted in September 2019. The GLA further advised that the document was not materially different from the draft that was discussed at the Inquiry[7]. The Council and the appellant had no further comments.

16. The report of the Examination in Public of the London Plan 2019[8] was published in October 2019 and the Council, the appellant and the GLA were invited to comment. Comments were received from the appellant and the GLA[9].

17. The GLA submitted comments on the appellant's response to the report of the Examiner of the Council's CIL Draft Charging Schedule[10]. All parties were given a final opportunity for any responses to comments on the above matters. I have referred to submissions made after the close of the Inquiry at the end of the

[4] Confirmed in writing by the Council (LBTH24) and the appellant (WDL34); confirmed orally by Ms Murphy for the GLA on Day 12
[5] PID1 – the Council's letter; PID2 – the Inspector's report on the THLP; PID3 – Appendix of main modifications; PID4 – Report of Examiner of CIL Charging Schedule; PID5 – the Council's Supplemental Note
[6] PID6, PID7 and PID8
[7] PID9 - Email from the GLA; PID10 - Isle of Dogs and South Poplar Opportunity Area Planning Framework (September 2019)
[8] PID11 (extract)
[9] PID12 and PID13
[10] PID14

sections of the report covering the cases of the appellant, the Council and the GLA.

THE SITE AND SURROUNDINGS

Location and description

18. The site and surroundings are described in the evidence and in the SoCG. The site extends to an area of 5.08 hectares and was formerly occupied by a printworks. The industrial buildings have been demolished and construction works are in progress, including the excavation of a large basement and the provision of utilities. The site is bounded on its southern side by the Millwall Outer Dock, beyond which are predominantly residential areas in the southern part of the Isle of Dogs. The area to the north of the site is also predominantly residential, although there is also a leisure centre on Tiller Road and the Barkantine District Heating Energy Centre on Starboard Way. The scale of development in this area varies, with two storey housing adjoining the site at Claire Place, 3 to 6 storey buildings along Tiller Road and some taller buildings at Starboard Way.

19. The site is bounded to the west by Westferry Road, which is the main route around the Isle of Dogs. Greenwich View Place, which comprises an estate of data centres and commercial buildings, is located to the east of the site. Other uses in the locality include the Arnhem Wharf Primary School on the opposite side of Westferry Road and the Docklands Sailing and Watersports Centre (DSWC) which is located close to the south west corner of the site.

20. The Isle of Dogs has seen considerable change since the 1980s when an Enterprise Zone was designated covering the West India, East India and Millwall Docks. Since that time Canary Wharf has been transformed into an internationally important business hub. New residential and commercial buildings have been developed to the south of Canary Wharf, including in the vicinity of Marsh Wall and Millharbour. The pace of change continues with various tall buildings planned and under construction.

Planning history

21. The former Westferry Printworks was constructed in the mid-1980s. A planning application for the redevelopment of the site was submitted in 2015. The proposals included 722 residential units, a secondary school, retail, restaurants, cafes, drinking establishments, offices, community uses, car and cycle basement parking, landscaping and public realm works. The application was called in by the Mayor of London and planning permission was granted (the consented scheme). An associated s106 Agreement would provide (amongst other matters) for 20% affordable housing, the delivery of the secondary school and a financial contribution to the DSWC intended to mitigate the impact of the scheme on sailing conditions.

22. Subsequently, approval has been given to a non-material amendment relating to the basement and various conditions have been discharged. The consented scheme was implemented in February 2017.

Designated heritage assets and views

23. There are no designated heritage assets within the site. The closest listed building is the Grade II listed former St Paul's Presbyterian Church, approximately 260m away. The Chapel House Conservation Area lies to the south east, beyond modern housing on the southern side of Millwall Outer Dock.

24. The site is located about 1.4 km from the Greenwich World Heritage Site (WHS) which contains a number of individually listed buildings. It is visible in the panorama view from London View Management Framework (LVMF) Assessment Point 5A.1 Greenwich Park. The proposed development would be visible from numerous other locations within the WHS.

25. The site is located about 4.5 km from LVMF Assessment Point 11B.1 (River Prospect: London Bridge). The proposed development would be visible in the view from London Bridge towards the Tower of London WHS and the Grade I listed Tower Bridge.

PLANNING POLICY

26. The development plan comprises the London Plan 2016 (LonP), the London Borough of Tower Hamlets Core Strategy 2010 (CS), the London Borough of Tower Hamlets Managing Development Document 2013 (MDD) and the London Borough of Tower Hamlets Adopted Policies Map 2013[11].

27. The examination of the draft new London Plan began in January 2019[12]. At the close of the Inquiry the Inspectors' report was not yet in the public domain. The examination of the draft London Borough of Tower Hamlets Local Plan 2031 (THLP) began in 2018 and the Council consulted on main modifications to the plan in March to May 2019. Both emerging plans have progressed since the close of the Inquiry, a matter I return to below.

28. Both the Council and the Mayor of London have produced supplementary planning guidance/documents which are listed in the SoCG. The Isle of Dogs and South Poplar Opportunity Area Planning Framework (OAPF), which was subject to consultation in 2018[13], was a draft document at the time of the Inquiry but has now been adopted[14].

London Plan 2016

29. The Isle of Dogs is identified as an opportunity area in Map 2.4. Policy 2.13 states that proposals should seek to optimise residential and non-residential output and meet or exceed the minimum guidelines in Annex 1, which are to be tested through OAPFs. Annex 1 indicates a minimum of 10,000 new homes in the Isle of Dogs.

30. Policy 3.3 states that, in their Local Development Frameworks (LDF), Boroughs should seek to achieve and exceed the housing targets set out in the LonP. Policy 3.4 states that development should optimise housing output within the density

[11] CD2, CD4, CD5 and CD3 respectively
[12] CD90
[13] CD10
[14] PID10

ranges set out in Table 3.2, taking account of other planning considerations. However, the density ranges are not to be applied mechanistically. Policy 3.6 seeks to provide for children and young people's play and recreation. Policy 3.7 encourages proposals for large residential developments in areas of high public transport accessibility. Sites capable of accommodating more than 500 dwellings should be progressed through a plan-led process to encourage higher densities and co-ordinate the provision of infrastructure and the creation of neighbourhoods with a distinctive character.

31. Policy 3.8 seeks to promote housing choice, including through the mix of housing sizes and types and the provision of accessible and adaptable dwellings. Policy 3.11 sets a London-wide target for delivery of affordable homes and provides the context for affordable housing policies in LDFs. Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual schemes, having regard to various factors including the need to encourage rather than restrain residential development.

32. Policies 7.4, 7.5 and 7.6 promote high quality design, including in respect of the public realm. Policy 7.6 refers to tall buildings which it states should not cause unacceptable harm to the amenity of surrounding land and buildings in relation to privacy, overshadowing, wind and microclimate. Policy 7.7 deals specifically with tall and large buildings, setting out a range of criteria. These include that such buildings should relate well to the scale and character of surrounding buildings and should improve the legibility of an area by emphasising a point of civic or visual significance. The impact of tall buildings in sensitive locations, which may include the settings of listed buildings, should be given particular consideration.

33. Policy 7.8 states that development affecting the setting of heritage assets should conserve their significance by being sympathetic to their form, scale, materials and architectural detail. Policy 7.10 states that development should not cause adverse impacts on WHS or their settings. Appropriate weight should be given to WHS Management Plans when considering planning applications.

34. Policy 7.11 identifies a list of strategic views that help to define London at a strategic level and states that the Mayor has prepared supplementary planning guidance on the management of the designated views. Policy 7.12 deals with the implementation of the LVMF. It states that development in the foreground or middle ground of a designated view should not be overly intrusive, unsightly or prominent to the detriment of the view. Development in the background of a view should give context to landmarks and not harm the composition of the view as a whole. River prospect views, such as the view from London Bridge, should be managed to ensure that the juxtaposition between elements can be appreciated within their wider London context.

35. The Blue Ribbon Network comprises London's strategic network of water spaces including rivers, canals and docks. Policy 7.27 seeks to enhance the use of the network. It states that proposals resulting in the loss of facilities for waterborne sport and leisure should be refused unless suitable replacement facilities are provided. Development should protect and improve existing access points to the network, including from land into water. Policy 7.28 states that development proposals should restore and enhance the Blue Ribbon Network. Policy 7.30 states that development alongside London's docks should, amongst other objectives, promote their use for water recreation.

Tower Hamlets Core Strategy

36. Policy SP02 seeks to deliver 43,275 new homes from 2010 to 2025. It states that new housing should optimise the use of land and that density levels should correspond to public transport accessibility and the wider accessibility of the location. It requires 35-50% affordable housing on sites of 10 units or more, subject to viability. It sets out an overall strategic tenure split for affordable housing of 70% social rented and 30% intermediate. It also requires a mix of housing sizes and a target of 30% of new housing to be suitable for families (three-bed plus).

37. Policy SP04 seeks to deliver a network of open spaces, including high quality, usable and accessible water spaces. Policy SP10 seeks to protect, manage and enhance the settings of the Tower of London WHS and the Maritime Greenwich WHS through the respective WHS Management Plans. It also seeks to protect and enhance the settings of listed buildings and other heritage assets. Policy SP12 seeks to improve, enhance and develop a network of sustainable, connected and well-designed places across the borough.

38. The CS sets out a vision for Millwall, which recognises the continued transformation of the north of Millwall, providing opportunities for employment and housing and integration with Canary Wharf. Areas in the south of Millwall are to retain a quieter feel, being home to conservation areas and revitalised housing. The design principles include an intention that taller buildings in the north should step down to the south and west to create an area of transition from the higher-rise commercial area of Canary Wharf to the low-rise predominantly residential area in the south.

Tower Hamlets Managing Development Document

39. Policy DM3 states that development should maximise affordable housing in accordance with the tenure split set out in the CS. The policy also seeks a balance of housing types, including family homes, with 20% of market sector housing to be three-bedroom or larger. Policy DM4 sets standards for amenity space and child play space.

40. Policy DM12 states that development adjacent to the Blue Ribbon Network should improve the quality of the water space and provide increased opportunities for access, public use and interaction with the water space. Policy DM23 states that development should be well-connected with the surrounding area. The policy seeks to improve permeability and ensure that the design of the public realm is integral to development proposals. Policy DM24 promotes high quality design that is sensitive to local character.

41. Policy DM26 states that building heights will be considered in accordance with the town centre hierarchy which is illustrated in figure 9. According to this hierarchy the appeal site would be in '*areas outside of town centres*' where figure 9 indicates the lowest building heights. The policy also contains criteria for tall buildings, including in relation to design, skylines, heritage assets, amenity space and microclimate. Policy DM27 seeks to protect and enhance the settings of heritage assets and Policy DM28 seeks to protect the outstanding universal value of the Tower of London WHS and Maritime Greenwich WHS.

42. The appeal site comprises the greater part of site allocation 18, which is for a comprehensive mixed-use development to include a strategic housing development, a secondary school, public open space and other compatible uses. The design principles for the site include that it should acknowledge the design of the adjacent Millennium Quarter and continue to step down from Canary Wharf to the smaller scale residential to the north and south.

Isle of Dogs and South Poplar Opportunity Area Planning Framework

43. Figure 3.2 of the Isle of Dogs and South Poplar OAPF[15] sets out the emerging character of residential development in broadly defined locations. It identifies a '*secondary tall buildings cluster*' at Millwall Inner Dock which includes the appeal site. The OAPF also contains an indicative masterplan for Millwall Waterfront – an area encompassing the Millwall Inner and Outer Docks and the south west quadrant of the Isle of Dogs. The masterplan shows an Outer Dock Park in the eastern part of the appeal site which would also incorporate part of Greenwich View Place. This is intended to provide a direct line of sight from Millharbour to the waterfront. The masterplan also includes a new east/west route through the appeal site, as an extension to Millharbour, a new school and enhanced public realm along the dockside.

Emerging policy

44. Both the draft LonP and the draft THLP contain a number of policies which are broadly similar to equivalent policies in the adopted plans. As noted above, matters have moved on since the close of the Inquiry. The report of the Examination in Public of the LonP was published in October 2019[16]. The GLA anticipates that an "*intend to publish*" version of the plan will be sent to the Secretary of State by the end of 2019.

45. Policy H1 and Table 4.1 of the draft LonP sets out a ten-year housing target for Tower Hamlets of 35,110 dwellings (2019/20 to 2028/29). The report recommends that the target be reduced to 34,730 dwellings. Policy H6 sets out a threshold approach to proposals which trigger affordable housing requirements. Applications which meet a minimum threshold of 35% affordable housing may follow a fast track route which does not require viability testing. Where an application does not meet the threshold, it will follow a viability tested route. Such schemes will be subject to an early stage viability review, (if implementation does not take place within two years), a late stage viability review and mid-term reviews for larger phased schemes. Policy H12 states that schemes should generally consist of a range of unit sizes. However, it goes on to say that Boroughs should not set prescriptive area-wide dwelling size requirements for market and intermediate homes.

46. Other relevant policies are:

- Policy SD1 - growth and regeneration potential of opportunity areas;
- Policy G4 - open space;
- Policy D1 – design-led approach;

[15] PID10
[16] PID11

- Policy HC1 – heritage assets;
- Policy HC2 – world heritage sites; and
- Policy HC4 – strategic views.

47. The Council has received the Inspector's report on the examination of the THLP, together with a schedule of main modifications. The Council anticipates that the THLP will be adopted on 15 January 2020. At the same time, the Council anticipates that the CS, MDD and the Proposals Map would be withdrawn.

48. Policy D.DH6 of the emerging THLP states that tall buildings will be directed towards designated Tall Building Zones (TBZ), as shown on figure 7. The Millwall Inner Dock TBZ is shown extending southwards from Canary Wharf, to the east and west of the Millwall Inner Dock. The TBZ covers Greenwich View Place and the appeal site. The design principles which apply to this TBZ state that building heights should significantly step down from the Canary Wharf cluster to be subservient to it. Building heights in the Millwall Inner Dock cluster should also step down from Marsh Wall.

49. Other relevant policies are:

- D.SG5 – developer contributions;
- S.DH1 – delivering high quality design;
- S.DH3 – heritage and the historic environment;
- D.DH4 – shaping and managing views;
- S.DH5 – world heritage sites;
- S.H1 – meeting housing needs;
- D.H2 – affordable housing and housing mix;
- S.OWS2 – enhancing the network of water spaces;
- D.OWS4 – water spaces; and
- Site allocation 4.12 – Westferry Printworks.

50. The Council has received a draft report from the Examiner of the CIL Draft Charging Schedule. The Council anticipates that the CIL Charging Schedule will be adopted on 15 January 2020.

THE PROPOSAL

51. The proposal is described in the Design and Access Statement and the application drawings[17]. The application sought permission for a mixed use redevelopment of 1,524 residential units together with a range of commercial and community uses. The non-residential floorspace would be at ground floor level and would amount to 8,195m^2. The site of the proposed secondary school is not included in the application. The appellant intends that the school would be built under the extant planning permission for the consented scheme.

[17] The Design and Access Statement is at CD36 and the application drawings are at CD70

52. The layout would broadly follow that of the consented scheme, with 4 towers spaced along the dockside. Mid-rise buildings would define an east/west boulevard and north/south pedestrian routes. These buildings would also enclose and face onto public open spaces and communal courtyards. The main differences between the appeal scheme and the consented scheme are the introduction of an additional tower (T5) in the north east corner of the site and a general increase in building heights across the scheme. Together, these would enable the number of residential units to be substantially increased from the previous total of 722. Other changes proposed in the appeal scheme include re-siting T4, splitting the former Building B6 into two, design changes to the residential units and a redesign of the public spaces.

53. The heights of the 5 towers would be:

- T1 – Ground plus 18 floors (73.1m above ordnance datum (AOD))
- T2 – Ground plus 22 floors (85.9m AOD)
- T3 – Ground plus 31 floors (114.7m AOD)
- T4 – Ground plus 43 floors (155.3m AOD)
- T5 – Ground plus 31 floors (114.6m AOD)

The other buildings (B1 to B7) would generally be ground plus 6 to 8 floors, although B1 (adjacent to Westferry Road) would be ground plus 12 floors and B6 would step down to ground plus 2 floors at the northern site boundary.

54. Vehicular access is proposed from Westferry Road and Millharbour. These accesses would be connected by a new street, access to which would be limited to vehicles related to the development. In addition, there would be pedestrian access from Millwall Dock Road, Starboard Way and from the dockside walkway. The proposed development would adopt the basement of the consented scheme with 253 residential car spaces, a proportion of which would be suitable for disabled badge holders. Residential cycle storage would be provided at ground and basement level for 2,612 cycles.

55. The application was supported by a Transport Assessment which found that the proposals would generate over 2,000 person trips across the AM and PM peaks with over 90% undertaken by sustainable modes. The projected increase in public transport use would affect the capacity of buses and the Docklands Light Railway (DLR). Transport for London (TfL) has confirmed that increased usage of the DLR could be accommodated by committed capacity improvements. The UU would make provision for improvements to Crossharbour DLR station to increase the capacity of the station to handle additional passengers. The bus network along Westferry Road is operating at capacity. The UU would make provision for a contribution to increase bus capacity which TfL has confirmed would be sufficient. In addition, the UU would provide for improvements to the Preston Road Roundabout in order to improve facilities for pedestrians and cyclists.

56. Local highway improvements in Westferry Road would include a new zebra crossing, pavement widening outside Arnhem Wharf Primary School, bus stop improvements and a reduction in the scale of the access into the site from Westferry Road.

57. As part of the energy strategy for the development it is proposed to supply heating and cooling through dock water source heat pumps. The effect of abstracting water for use in the heat exchange system, and discharging heated water into the dock, has been assessed in the ES. Abstraction and discharge would be subject to a licence issued by the Environment Agency which would secure design mitigation and monitoring. Effects on fish and other species in the dock are assessed as being of negligible significance. The effect on dissolved oxygen levels would be minor adverse during warmer summers but should meet water quality standards for coarse fisheries.

MATTERS AGREED BETWEEN THE COUNCIL AND THE APPELLANT

58. The matters agreed between the Council and the appellant are set out in the SoCG[18]. They include the following:

- the principle of a residential-led mixed use scheme and the amount of non-residential uses at ground floor level;
- the community centre, creche and healthcare facility would represent a public benefit;
- the Council can demonstrate a 5-year supply of housing sites;
- the site is located in an area identified in the CS for very high growth over the plan period;
- the residential units would be of high quality and would meet or exceed minimum space standards and policy objectives for inclusive design;
- in respect of the proposed dwellings, there would be a high degree of adherence to Building Research Establishment daylight criteria;
- 95.7% of main living rooms tested would receive direct sunlight for part of the year;
- there would be no unacceptable impacts on residential amenity for neighbouring properties in terms of sunlight and daylight, with any isolated breaches of guidelines being acceptable in this urban context;
- the proposals would provide communal semi-private courtyard space which would be of good quality and significantly in excess of policy requirements;
- the proposals would provide children's play space and public open space in excess of policy requirements;
- the network of streets would create a permeable and high-quality public realm;
- the site is acceptable in principle for tall buildings as established by the consented scheme;
- there would be no unacceptable impact on residential amenity for neighbouring properties in terms of separation distances and privacy;

[18] CD46

- further details of wind mitigation within the site could be secured by a planning condition;
- the proposed development is acceptable in terms of trip generation and transport impacts, subject to planning conditions and s106 contributions;
- the proposed development is satisfactory in terms of flood risk although, to improve flood resilience, finished floor levels should be controlled by a condition;
- the proposed development complies with Civil Aviation Authority requirements;
- biodiversity features could be secured by a condition and the proposals comply with policy in this regard;
- the proposals follow the principles of the Mayor's energy strategy and, subject to securing a carbon offset payment to achieve the zero-carbon target for residential development, would be policy compliant;
- the relocation and modification of the Barkantine Energy Centre flues, which could be secured by a condition, would have a minor-moderate beneficial effect on air quality; and
- overall, subject to appropriate conditions, the proposals would be policy compliant in terms of air quality, noise, waste and archaeology.

59. The GLA submitted a review of the SoCG[19] which indicated that it did not agree with all of the above statements. The areas of disagreement relate to public open space, the design of the public realm, strategic views and heritage assets. The GLA's case on these matters is set out below. No other significant areas of disagreement were identified.

60. A separate SoCG on financial viability matters was submitted at the Inquiry[20]. The matters agreed included various revenue inputs, construction costs (for the appeal scheme), various cost inputs and programming assumptions. Appendix 1 to the SoCG provides the respective figures for those inputs that were in dispute.

THE CASE FOR THE APPELLANT – WESTFERRY DEVELOPMENTS LIMITED[21]

61. At the outset of the Inquiry, the appellant submitted that the appeal proposal is of the highest architectural quality. It would build on the qualities of the consented scheme and double the contribution made to meeting London's housing and affordable housing needs. It would also deliver a significantly better public realm. It would be fully in accordance with the National Planning Policy Framework (the Framework) and the emerging policy framework for Millwall Dock. At the end of the Inquiry the appellant submitted that all of those propositions had been made good.

[19] CD46B
[20] ID10
[21] The full closing submissions, which are summarised here, are at WDL/36

Reason for refusal 1

62. At the heart of the first reason for refusal is an allegation that the scheme demonstrates clear symptoms of over-development and excessive height. It is also alleged that:

    - The height and mass of the development is not proportionate to the site's position outside the Canary Wharf Major Centre and outside the Crossharbour District Centre.
    - The proposals fail to provide an appropriate transition in height between Canary Wharf and the lower rise buildings of the existing townscape.
    - The scale, height and massing would be unduly prominent in local and more distant views and would detract from the Canary Wharf Skyline of Strategic Importance.
    - The development would detract from the Maritime Greenwich WHS.
    - The development would detract from the Tower of London WHS including the Grade I listed Tower Bridge.

Clear symptoms of overdevelopment

63. Policy 3.3(A) of the LonP identifies a pressing need for more housing Consequently, increased density is generally regarded as a good thing unless it reaches the point where it causes identifiable harm to some other interest. Mr Ross (the Council's planning witness) acknowledged that density on its own is rarely a reason for refusal. Moreover, the appeal site is identified as a strategic housing site within the Isle of Dogs Opportunity Area. The LonP[22] describes opportunity areas as the capital's major reservoir of brownfield land with significant capacity to accommodate new housing. Policy 2.13 encourages the Council to achieve or exceed the policy guidelines for growth.

64. The Council's committee report identifies matters which could be symptoms of overdevelopment[23] but only finds harm in relation to character and appearance, visual amenity and views. No harm is alleged in relation to:

    - unacceptable adverse impact on the sunlight or daylight which would be enjoyed by adjoining residents;
    - unacceptable sense of enclosure, loss of outlook or undue overlooking of existing residential properties, or within the scheme itself;
    - adverse impact on the development of surrounding sites;
    - deficiency in the size of the dwellings;
    - insufficiency in the amount of open space or external amenity space;
    - unacceptable increase in traffic generation; or

[22] CD2, paragraph 2.58
[23] CD41, paragraph 11.25

- detrimental impact on local social and physical infrastructure.

65. Moreover, the donation of a site for the new secondary school and the provision of open space and children's play space over and above policy requirements would benefit the wider community. In the Marsh Wall decision, these factors were central to the Inspector's rejection of arguments about overdevelopment[24]. The same is true here. These points strongly support a conclusion that the proposal would optimise the use of the site and provide a high quality living environment.

Proportionality to the site's position outside the Canary Wharf Major Centre and outside the Crossharbour District Centre

66. This appears to relate to Policy DM26(1) and DM26(2)(a) of the MDD which require building heights to be considered in relation to the town centre hierarchy illustrated in Figure 9[25]. However, these parts of the policy should no longer carry any weight because:

    - Non-compliance was not regarded as a sound basis for objecting to the consented scheme, even though T2, T3 and T4 would all have qualified as tall buildings[26].
    - The Council's Tall Buildings Study identifies Policy DM26 as a "*blunt tool*" for assessing applications for tall buildings[27]. In his oral evidence Mr Nowell (the author of the Tall Buildings Study) described DM26 as a "*crude policy*".
    - The draft OAPF places the appeal site within the Millwall Inner Dock Cluster, which is described as a secondary tall building cluster[28].
    - The emerging Local Plan shows the site as lying within a Tall Building Zone (TBZ), towards which tall buildings are specifically directed[29].

67. The emerging policy framework now directs tall buildings to the appeal site, notwithstanding the fact that it is inconsistent with DM26(1) and the corresponding part of DM26(2)(a). Mr Nowell accepted that these parts of the policy no longer represented the Council's position and that they could not be relied upon to support a reason for refusal. Mr Ross was reluctant to go that far but did agree that DM26(1) had been replaced by D.DH6(1), which is significantly less prescriptive. It is obvious that Mr Nowell was right. The fact that the appeal site is not in a town centre is therefore no longer a sustainable basis for objecting to the tall buildings which form part of the appeal scheme.

[24] CD50 paragraph 35
[25] CD5, page 70
[26] CD48, paragraph 10.105 and following table at item (a)
[27] CD16, page 28
[28] CD10, page 35
[29] CD6, see page 40 and Policy D.DH6. Paragraph 3.64 advises that buildings of more than 30 metres, or those which are more than twice the prevailing height of surrounding buildings, will be considered to be a tall building for the purposes of this policy.

Failure to provide an appropriate transition in height between Canary Wharf and the lower rise buildings of the existing townscape

68. This appears to relate to the design principles for MDD site allocation 18[30], which state that development should acknowledge the design of the adjacent Millennium Quarter and continue the step down from Canary Wharf to the smaller scale residential to the north and south. The requirement to step down is carried over into Policy D.DH6 of the emerging Local Plan, which advises that building heights in the Millwall Inner Dock Cluster should significantly step down from the Canary Wharf cluster to support its central emphasis and should be subservient to it. In addition, building heights should step down from Marsh Wall and ensure that the integrity of the Canary Wharf cluster is retained on the skyline.

69. Policy D.DH6(2) also states that development should have regard to the Tall Buildings Study, which comments on the need to:

    prevent the loss of the recognisable silhouette and skyline and the creation of a wall of tall buildings extending down the Isle of Dogs with the consequent loss of the symbolic form and character of the cluster and impact on views both from Greenwich Park, along the river and locally within the borough.

    The Tall Buildings Study states that the main cluster should remain clearly visible, and that development should be no higher than two thirds of the height of the main Canary Wharf cluster (implying a maximum height of 160m AOD) and must step down as it moves away from the centrality of One Canada Square[31]. In all these documents the key justification for stepping down is the protection of the central emphasis of the Canary Wharf cluster. This is covered below in the section on the Skyline of Strategic Importance. This section concentrates on what stepping down means and the extent to which the appeal proposals would represent an appropriate transition to the residential areas to the north and south.

70. It is common ground that the policy references to stepping down are not to be applied in a purely linear fashion. This is obvious because:

    - The lie of the land between One Canada Square and the southern parts of the TBZ are such that any form of tall building on the appeal site would necessarily step back up from the low-rise residential development immediately to the north.
    - In its comments on the consented scheme, the Council recognised that there was a justification for the 30 storey T4, even though it involved a step up at the southern-most end of the TBZ.
    - The Tall Buildings Study explicitly acknowledges the scope for variation in height within a cluster. The relevant diagrams have been incorporated in the emerging Local Plan[32].

[30] CD5, page 149
[31] CD16, section 7.3
[32] CD16, page 205, Figure 7.5 and CD6, page 41, Figure 8

- The Inspectors determining the appeals at 225 Marsh Wall and 45 to 59 Millharbour both rejected the notion that stepping down was a purely linear concept.

71. The Marsh Wall Inspector observed[33]:

Transition is not just a matter of height. Rather, these primarily residential towers have more space around them than the close-packed commercial buildings of Canary Wharf, providing a transition in urban grain and use between the major centre and the older residential areas to the south-east.

72. The 45 to 59 Millharbour Inspector commented that a jump up from 8 to 30 storeys would not necessarily be harmful. Moreover, he found that the step down approach would not necessarily preclude isolated tall buildings, providing that the policy principle is not unreasonably compromised[34]. Although the Council was aggrieved by this decision[35], it was not challenged. The Council's witnesses accepted the Inspector's reasoning, if not his judgement. In any event, the Council is now promoting a TBZ at Millwall Inner Dock and the guidelines in the Tall Buildings Study (which have been carried over into the text of the emerging Local Plan) expressly acknowledge the need for variation in height in order to maintain identity.

73. It cannot be said that the proposed tower blocks are unacceptable simply because they involve a step back up from existing development immediately to the north. In order to constitute a reason for refusal, there would need to be some identifiable harm which flowed from that. The proposals would provide a transition in urban grain from the more closely packed development on Millharbour to the residential areas to the south and south-west. Moreover, T3 and T5 as proposed would be only marginally taller than T4 of the consented scheme. Only the proposed T4 would be materially higher. However, it would still be below the 160m restriction identified in the Tall Buildings Study and therefore within the overall guidance.

74. The Council argued that the appeal site does not mark a site of civic importance, a factor which might justify taller buildings. However, Mr Nowell's evidence is inconsistent with the Council's position on the consented scheme. Officers concluded that the consented scheme would improve the legibility of the area, emphasising the visual significance of the north side of the dock. Their assessment was that the increase of height and scale towards the south eastern corner of the site would provide a visual marker when viewed south along Millharbour[36]. Mr Nowell gives no reason for departing from that conclusion.

75. Moreover, the scale of the appeal site allows the creation of a point of civic importance, where currently there is none. The appeal scheme would create a dockside destination, with a park, cafes and shops which would attract both existing and future residents. The Council recognised this in 2016, commenting that the design of the consented scheme aimed to create an urban destination.

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[33] CD50, paragraph 23. See also the description at paragraph 27 of the proposal in that case as part of an "*irregular but progressive stepping down*"
[34] CD51, paragraphs 21 and 22
[35] LBTH25, the Council's closing submissions, paragraph 21
[36] CD48, paragraph 10.103, paragraph 10.105 and following table at item (a)

This aspiration is consistent with the description of the proposed Outer Dock Park in the OAPF as the focal point of a leisure hub for the island[37].

76. The Council suggested that T4 would create a precedent for an even taller building on the Greenwich View Place (GVP) site. However, the OAPF and the emerging Local Plan allocation for GVP show the southern part of the GVP site as open space. Consequently, there should be no building on the immediately adjoining land and T4 would be the correct location for a tall building to mark the Outer Dock Park. In any event, Civil Aviation Authority restrictions would preclude a building taller than T4 at GVP.

77. The appeal proposal respects the need for a transition to the residential areas to the north by placing the tallest buildings on the waterfront. Buildings B6 and B7 have been set back further from the northern site boundary than their counterparts in the consented scheme. No issue is taken with B6 and B7 in terms of sunlight/daylight or overlooking. These buildings have been carefully located to respect the residential properties to the north, in particular by locating the games area for the school and the courtyard area of B6 at the closest points.

78. Designation as a TBZ expressly envisages that there will be a significant difference between the height of buildings on the appeal site and the surrounding residential areas. This is because "tall building" has the meaning given to it in the LonP, namely, a building which is substantially taller than its surroundings, causes a significant change to the skyline, or exceeds the thresholds set for reference to the Mayor[38]. The appellant's evidence shows that the existing character of the Isle of Dogs is one of significant changes in height, with juxtapositions of tall buildings and low-rise blocks[39]. Moreover, the OAPF envisages the growth of mid-rise buildings in Millwall, outside the TBZ[40]. It would be wrong to assume that the existing character of the area to the north of the site will stay the same.

79. The Council does not dispute that, in townscape terms, the southern part of the appeal site is the appropriate place to locate taller buildings. Millwall Outer Dock is some 100m wide, which is a considerable distance from the residential properties to the south of the dock. The towers would be slender and generously spaced. Although the proposals would change the outlook of existing residents, that is no more than is to be expected given that the appeal site is in a designated TBZ.

80. For all these reasons, the appellant considers that the appeal proposals respect the stepping down principle as it has been understood and applied by the Council and in previous appeal decisions. The proposals would provide an appropriate transition to the lower rise buildings of the existing townscape.

[37] CD10, page 104
[38] CD2 paragraph 7.25
[39] Mr Polisano's proof of evidence, page 27, section 2.9 and Figure 2.37
[40] CD10, pages 34 to 35, Figure 3.2 and associated text

Prominence in local and more distant views and impact on the Canary Wharf Skyline of Strategic Importance

81. A key rationale for the stepping down principle is protection of the central emphasis of the Canary Wharf cluster and avoidance of competition with views of the Canary Wharf Skyline of Strategic Importance. The Skyline of Strategic Importance is protected by six views in the LVMF. It is common ground that the only view in which the appeal scheme would appear is London Panorama 5A from Greenwich Park[41]. However, T1, T2, T3 and T4 would sit well to the west of the Canary Wharf skyline in that view and would not in any way interfere with it[42]. Moreover, it is common ground that the viewer would readily appreciate that the appeal site is much closer than Canary Wharf. It would be seen as part of a separate cluster[43].

82. It is also agreed that the appeal scheme would not affect the borough designated viewpoints identified in Policy D.DH4 and Figure 6 of the draft THLP[44] which lie to the north of Canary Wharf. Policy D.DH6 refers to views of Canary Wharf from places and bridges along the River Thames. Other than the view from the Old Royal Naval College, to which the above comments on London Panorama 5A apply, Mr Nowell does not identify any such place. The two local views about which he complains are Mudchute and Millwall Park. Dr Miele's evidence shows that the impact on these views would be acceptable and would not impair the ability to appreciate and identify Canary Wharf. In any event, these are not identified in policy or guidance as views of any importance and it should be remembered that both the appeal site and GVP lie within the TBZ defined in the draft THLP.

Impacts on heritage – preliminary matters

83. The LonP contains separate policies for heritage assets generally (Policy 7.8), WHS (Policy 7.10) and the LVMF (Policies 7.11 and 7.12). Both Policy 7.8 and 7.10 can give rise to considerations which are not addressed by the LVMF. In carrying out their duties under the Listed Buildings Act, it is necessary for the Secretary of State to have regard to those matters. Nonetheless, the four policies are not hermetically sealed and there is a relationship between them. In particular, the LVMF:

    - is prepared having regard to views that contribute to the ability to recognise and appreciate the authenticity, integrity, significance and Outstanding Universal Value (OUV) of WHS[45];
    - is drawn up in full knowledge of the heritage assets in each view, with View Management Guidance having regard to the need to protect the settings of such assets; and
    - recognises that it is neither desirable nor necessary to preserve in stasis every aspect of a designated view[46].

[41] Accepted by Mr Nowell in cross-examination
[42] See View 1 of Dr Miele's Accurate Visual Representations (WDL/3/C, Appendix 9)
[43] Mr Nowell's proof of evidence, paragraph 4.3.46
[44] CD6, page 35
[45] CD2, Policy 7.11(D)
[46] CD12, paragraphs 57 and 63

84. It is accepted that satisfying LVMF guidance is not an automatic passport to compliance with Policies 7.8 and 7.10. Nevertheless, the guidance provides a gateway test, which, if passed, means a proposal has complied with the most sensitive consideration in the view. The extent of any further analysis will depend on the facts of the case. The LonP states that the effects of distance and atmospheric or seasonal changes should be taken into account[47] when dealing with background impacts. These factors were not addressed adequately in the evidence of Mr Froneman or Dr Barker-Mills (the heritage witnesses for the Council and GLA respectively).

85. The LonP states that the Mayor will work with boroughs to identify locations where tall and large buildings might be appropriate, noting that opportunity area planning frameworks can provide a useful opportunity for carrying out such joint work[48]. In this case the draft OAPF places the Westferry site within a tall buildings cluster. This does not remove the need to assess individual proposals against policies such as 7.8, 7.10 and 7.12. However, it is not the intention that the assessor should reinvent the wheel. The assessment should commence on the basis that tall buildings are in principle compatible with the LonP and the duties under sections 66 and 72 of the Listed Buildings Act.

86. It follows that the assessment of impact on the OUV of Maritime Greenwich, or on the setting, and ability to appreciate the significance of the Grade I listed Tower Bridge, must take into account the fact the development plan anticipates that there will a noticeable change to settings of those assets in the strategic views. The appellant considers that the evidence of Mr Froneman and Dr Barker-Mills has failed to take this necessary context into account. In this regard, Dr Miele drew attention to LVMF 27, which protects the view out from Parliament Square across the Westminster WHS. The background contains the Waterloo Opportunity Area. The management plan sets out a specific quantifiable threshold and a requirement for architecture of the highest quality.

Impact on the Maritime Greenwich WHS

87. Neither Historic England nor the GLA has objected to the impact of the proposal on the Maritime Greenwich WHS. Given the international importance of the asset concerned, that is a matter to which the Secretary of State should attach significant weight. The reasons for this position are obvious, given the longstanding policy framework which has promoted tall buildings on the skyline immediately behind the Old Royal Naval College. Whilst the Council argued that Historic England's response was not detailed, it is not reasonable to infer that the response was ill considered, particularly given the international importance of the WHS.

88. The Council's evidence starts from the somewhat surprising premise that the Canary Wharf skyline has all been a dreadful mistake which has materially harmed the WHS[49]. It is argued that the appeal site, as the last surviving unspoilt part, should now be preserved. The position of Mr Froneman is inconsistent with over a decade of established planning policy which the Council (together with the

[47] CD2, Policy 7.12(C)
[48] CD2, paragraph 7.28
[49] Mr Froneman's proof of evidence, paragraphs 2.53, 3.4, 4.13 and 4.29 (LBTH/2/B)

GLA) has itself promoted[50]. This inconsistency extends to the consented scheme. The Council did not object to the height of T4 but Mr Froneman considers it to be harmful[51]. Given that starting position, it is not surprising that Mr Froneman considers the appeal scheme to be harmful. However, that is simply not a credible place to begin.

89. Whilst there is need for a degree of subjective assessment, the planning system is built on consistency. Mr Froneman (unlike Dr Miele) has no prior experience of advising on tall buildings on the Isle of Dogs. He was unable to point to any decision of the Council where the harm which is his starting point has been recognised. Nor could he identify any point at which Historic England or UNESCO have raised concerns about a wall of development in the backdrop to LVMF view 5A. On the contrary, the LVMF guidance refers to:

    the cluster of taller buildings at Canary Wharf across the River providing layers and depth to the understanding of the panorama[52]

90. The key attribute of OUV which is appreciated from LVMF view 5A is the symmetry of the architectural composition, arranged around the Grand Axis. Symmetry is referred to repeatedly in this section of the Maritime Greenwich WHS Management Plan and the Grand Axis is itself one of the attributes of OUV[53]. The LVMF advises that:

    The composition of the view would benefit from further incremental consolidation of the clusters of tall buildings on the Isle of Dogs and the City of London. However, any consolidation of clustering of taller buildings on the Isle of Dogs needs to consider how the significance of the axis view from the Royal Observatory towards Queen Mary's House could be appreciated[54]*.*

91. The appeal scheme would not affect the appreciation or understanding of the Grand Axis. Although it would be visible, it would not obscure or interfere with the view. When One Canada Square was planned it was set to the east of the Grand Axis so as not to dominate the view from the Wolfe statue[55]. The proposed T4 would be a similar distance to the west of the Grand Axis. The Inspector for the 225 Marsh Wall appeal found that a tall building proposed on that site would make a positive contribution to the panorama[56]. There is no reason why the appeal scheme should not do the same.

92. The Maritime Greenwich WHS Management Plan expressed a concern that, as seen from view 5A, continuing expansion of the tall building cluster westwards could result in a table top effect, thereby undermining the significance of Wren's

[50] CD4, Policy SP01 (Canary Wharf identified as an important major centre); page 62 where it is identified as a major office location; page 80 where it is shown as a tall building location; and Policy SP10, where the same policy promotes protection of the WHS and tall buildings at Canary Wharf
[51] Mr Froneman's proof of evidence, paragraph 4.13 (LBTH/2/B)
[52] CD12, paragraph 144
[53] CD22, paragraphs 2.4.5.1 and 2.4.7.3 and section 2.4.7
[54] CD12, paragraph 146
[55] CD22, paragraph 5.8.3.6
[56] CD50, paragraph 39

Grand Axis and the setting of the WHS[57]. However, that westward expansion has already taken place. What matters now is that:

- the tapered form of the proposed T1, T2, T3 and T4 would be the antithesis of the table top effect which the Management Plan seeks to avoid;
- the gaps between the towers would be clearly visible and would not represent a wall of development;
- concerns that the proposal could set a precedent for the creation of a wall of development are unfounded given the angle of view, the limited depth of the TBZ and the presence of the river beyond it; and
- the proposal would help to balance the existing, sharply asymmetrical backdrop to the WHS.

93. Mr Froneman accepts that there is no obvious relationship between the Canary Wharf cluster and the historic axial view and that Canary Wharf is an off-centre cluster of tall buildings that can be appreciated as separate from and unrelated to the WHS[58]. The same reasoning would apply to the appeal scheme. It too would be appreciated as separate from and unrelated to the WHS. Mr Froneman refers to other aspects of view 5A, in particular the ability to appreciate the horizon line beyond the appeal site[59]. This is not a factor identified in any guidance. The concern expressed is inconsistent with the Council's position because any development on the appeal site, or at GVP, as envisaged by the draft THLP, would result in the loss of such views.

94. Mr Froneman relies upon other views from within the WHS, in particular views in which the proposal would be visible above the roofline of the Wren buildings. In response, the appellant notes that:

- Mr Froneman does not allege harm to any key views identified as being important in the WHS Management Plan[60].
- The views relied upon were not considered important by the Council or Historic England when commenting on the screening of the ES. They are not identified anywhere as being of importance in relation to the ability to appreciate the OUV of the WHS or the setting of particular buildings.
- To the extent that there is concern about the silhouette of the Old Royal Naval College, the WHS Management Plan states that the important views are the "Canaletto" view from the north bank and similar silhouetted views from upstream and downstream approaches[61]. These views would be unaffected.
- There are already numerous views of buildings forming part of the Canary Wharf cluster above the roofline of the Old Royal Naval College. Mr

[57] CD22, paragraph 5.8.3.7
[58] Mr Froneman's proof of evidence, paragraph 4.29 on page 47 (LBTH/2/B)
[59] Mr Froneman's proof of evidence, paragraph 4.28 on page 39 (LBTH/2/B)
[60] CD22, paragraph 5.8.5.6; Plan 1 (page 122) and Plan 2 (Page 123)
[61] CD22, paragraphs 2.4.12.1 and 2.4.12.2

Froneman provides no explanation of why those impacts should have been regarded as acceptable but the appeal proposals should not.

- The concerns expressed by Mr Froneman do not feature in the officer's report on the application, nor are they mentioned in the Council's Statement of Case. These concerns appear to be his personal view rather than the view of the Council.

95. In summary, the appellant invites the Secretary of State to agree with the way the GLA has assessed the impact on the WHS[62]:

the proposed increase in scale would not impact on the viewers ability to appreciate the significance of the axial view from the Royal Observatory towards Queen Mary's House and in this regard the proposal accords with the view guidance within the LVMF SPG;

by virtue of their stepped form, as set out above, the proposed buildings would provide further layering and variation in scale in this view and when considered in the cumulative context would also create a more balanced background setting to the WHS; and

the buildings therefore address the guidance contained within the World Heritage Site SPG and MGWHSMP in respect of the Maritime Greenwich World Heritage Site and are not considered to adversely impact on the universal value, integrity, authenticity or significance of these important heritage assets.

Impact on the Tower of London WHS and Tower Bridge

96. It is common ground that the appeal proposals would not have any adverse effect on the Tower of London WHS. However, both the Council and the GLA argue that there would be an adverse impact on the setting of Tower Bridge. The proper starting point in considering that argument is the adopted policy framework, in particular the LVMF which identifies two viewing locations for Tower Bridge (11B.1 and 11B.2). It is agreed that the proposal would not be visible from location 11B.2. The LVMF guidance in respect of location 11B.1 is:

The viewer's ability to easily recognise Tower Bridge's outer profile should not be compromised[63]*.*

97. The meaning of this is clear. The obvious and logical distinction which is being drawn is between the outer and the inner profile. Even in relation to the outer profile, the guidance does not preclude development. Tower Bridge does not have a protected silhouette under the terms of the LVMF. The guidance simply states that the ability to recognise the outer profile should not be compromised. If the interpretation preferred by the GLA were correct, such that "*outer*" means both the inner and outer edge of each tower and the upper and lower edge of the walkway structure, then there would be no such thing as an inner profile and the reference to "*outer*" would be meaningless. That is not credible.

[62] CD42, paragraphs 60 and 62
[63] CD12, paragraph 202

98. Mr Froneman considers that it would be illogical to protect only the outer profile[64]. Nevertheless, that is precisely what the LVMF does. Dr Barker-Mills (the GLA's heritage witness) complains that the appellant's Townscape, Visual and Built Heritage Assessment has redefined the silhouette[65] whereas Dr Miele has simply applied the words used in the LVMF. The LVMF has been through several iterations. Historic England has been consulted at each stage. If it had been thought necessary to protect the inner profile, there would have been ample opportunity for the GLA and/or Historic England to say so. Whilst the appeal scheme would be visible within the inner profile of Tower Bridge, it would not project above or beyond the outer profile in views from LVMF assessment point 11B.1. The proposal therefore meets the LVMF guidance.

99. In response to concerns raised by Mr Froneman and Dr Barker-Mills in relation to the setting of Tower Bridge generally, the appellant notes the following:

- The LVMF has selected the pavement between 11B.1 and 11B.2 as the viewing location because, while there are other views of Tower Bridge, these are the best.
- Insofar as the bascules are an important aspect of Tower Bridge's significance, the movement of the bascules is likely to draw the viewer's attention in any view from London Bridge. In any event, there are far better places from which this can be appreciated. Dr Barker Mills' photographs are all taken from much closer[66].
- Insofar as the walkway contributes to the significance of Tower Bridge, this is best appreciated from the bridge or the walkway itself.
- Tower Bridge is a robust and striking structure, with a clear presence of its own. The LVMF describes it as the dominant structure in the view from London Bridge, including being dominant in relation to the Tower of London[67]. It is more than capable of standing out against development in the background some 4 kilometres away.

100. The complaints made by Mr Froneman and Dr Barker-Mills are in stark contrast to the pattern of development which has emerged under the GLA and the Council's own policies:

- The Canary Wharf cluster is clearly visible over the suspension cables from locations 11B.1 and 11B.2[68].
- Ontario Point (which is some 2km closer than the appeal site) is clearly visible through the gateway and over the southern suspension cables in views from the northern end of London Bridge[69]. Mr Froneman and Dr Barker-Mills are critical of this building, but at no stage has any concern been expressed that this is harmful to the setting of Tower Bridge.

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[64] Mr Froneman's proof of evidence, paragraph 5.15 (LBTH/2/B)
[65] Dr Barker-Mills' proof of evidence, paragraph 6.20 (GLA/1/B)
[66] Dr Barker-Mills' appendix 4 (GLA/1/C)
[67] CD12, paragraphs 200 and 201
[68] Dr Miele's appendix 9, views 3 and 4 (WDL/3/C)
[69] Dr Miele's appendix 9, view 29 (WDL/3/C) and Mr Froneman's appendices 7.1 to 7.6 (LBTH/2/C)

- Dr Barker-Mills starts from the basis that even the consented scheme is harmful in LVMF 11B.1, although that was not the GLA's position when it considered that scheme[70].

- Dr Barker-Mills' conclusion that the impact of the appeal scheme is at the upper end of less than substantial harm is impossible to reconcile with the Secretary of State's conclusion that the harm caused by the far more obvious presence of 20 Fenchurch Street (popularly known as the Walkie Talkie) in views of Tower Bridge would be "*extremely limited*", a view subsequently adopted by the GLA[71].

101. The LVMF advises that appearance and materials, atmospheric conditions and the effect of distance should be taken into account[72]. However, these factors have not been assessed by Mr Froneman or Dr Barker-Mills. The GLA officers' report on the consented scheme advised that the design was of the highest quality. No party has suggested that the appeal scheme is not of the same quality. Dr Miele's evidence explains that the slenderness of the towers, the choice of materials, the absence of reflective facades and the distance from Tower Bridge would combine to ensure that the proposal would not compete with or detract from the listed building.

102. For all these reasons, the appellant concludes that there would be no harm to the setting of Tower Bridge. If the Secretary of State finds that there is any harm at all, then – in the interests of consistency – that harm must logically be less than the "*extremely limited*" harm which was found to exist in the case of the Walkie Talkie building.

Reason for refusal 2: Impact on sailing conditions in Millwall Outer Dock

Context

103. Dr Stanfield (the Council's witness on wind conditions) refers to a number of policies. Whilst the wording varies, the general thrust is that development must not have an unacceptable impact on amenity (see LonP Policies 7.6(B) and 7.7(A)). MDD Policy DM12 is seemingly written in more absolute terms but Mr Ross (the Council's planning witness) accepted that it should not be interpreted literally and that the proper test is whether or not any adverse impact would be acceptable[73].

104. The following points relate to the policies referred to by Dr Stanfield:

- The design of the appeal scheme would make a positive contribution to a coherent public realm in the vicinity of the dock, consistent with LonP Policy 7.6A.

- The proposal would not result in any loss of facilities for waterborne sport and leisure, or any loss of open space on the Dock. The evidence of Mr Davis was that the proposal would not lead to the demise of DSWC. He

[70] CD49, paragraph 274
[71] See paragraph 9.3.7 of the Inspector's report (WDL16), paragraph 13 of the Secretary of State's decision (WDL17) and paragraphs 16 to 18 of a subsequent GLA report (WDL18)
[72] CD12, page 8, step 3
[73] Accepted by Mr Ross in cross-examination

said that "*because we are a charity … we will survive and adapt as we have in the past*"[74]. Consequently, there would be no conflict with LonP Policy 7.27 or CS Policy SP04.

- The Council and the GLA are promoting tall buildings on the appeal site. It follows that the site is not seen as an area which is sensitive to the impacts of tall buildings, such as to give rise to conflict with LonP paragraph 7.25 or Policy 7.7(E).
- The proposal would not adversely affect the habitat quality, hydrology, water quality or navigability of the Blue Ribbon Network. The proposed buildings would make a considerable contribution to restoration of the water space edge. The proposal therefore accords with MDD Policy DM12.
- The proposal would enhance public access to the dockside. There would be new north/south routes, a much wider footpath along the dock edge with seating areas and cafes, new dockside open spaces and an enhanced setting for the historic cranes at the western end of the site. The proposal therefore accords with LonP Policy 7.30A.

105. The Blue Ribbon Network and Millwall Outer Dock provide amenity in many different ways. None of the policies refer specifically to sailing. Rather, they refer to impacts on amenity, the Blue Ribbon Network and water-related uses generally. Impacts should therefore be considered in the round, alongside enhancements. Insofar as the ES identifies an adverse effect on sailing, the criteria against which this has been assessed are based on the requirements of young, novice sailors. More experienced sailors, who also use the dock, would not be affected in the same way.

106. Moreover, sailing is not the only activity undertaken on the water. There is a range of water sports, including dragon boat racing, kayaking, paddle-boarding, and windsurfing. No party has suggested that these activities would be affected. The recreational resource of the dock is not limited to water-based activities. The proposal would contribute to the recreational experience of those walking, cycling or playing alongside it.

107. The draft THLP places the site within a TBZ. Whether the consented scheme, the appeal scheme or some other proposal comes forward, the Council's policy is that it should be redeveloped. Alternative layouts have been considered. The only alternative which was found to have materially less impact on sailing conditions was one which had "*considerable downsides in the wider planning balance of the scheme*"[75]. These points were recognised by the GLA in 2016 when it concluded that the impact of the consented scheme on sailing would not be sufficient to warrant refusal, given the substantial mitigation package proposed and the substantial benefits of the scheme overall.

108. It is common ground that the consented scheme is a fallback. The contribution of the appeal scheme to housing and affordable housing would be approximately double that of the consented scheme. It would therefore be perverse to refuse

[74] Mr Davis' address to the Inquiry (OD15)
[75] CD49, paragraph 354

permission for the appeal scheme by reference to impacts on sailing, unless the impacts would be materially worse than the impacts of the fallback.

Analysis

109. The ES concluded that the proposal would make sailing conditions slightly worse than the consented scheme at a small number of locations at the western end of the dock but marginally better across the dock as a whole. The number of sailing days possible at the western end of the dock would be reduced to 58% of those possible with a cleared site, compared with a reduction to 61% as a result of the consented scheme. This is the only evidence before the Inquiry that demonstrates any adverse impact on sailing conditions.

110. Even on Dr Stanfield's evidence, the difference between 58% and 61% is at the lowest end of significance possible. In answer to a question from the Inspector, he said that a reduction to 59% or 60% would be insignificant. Mr Breeze (the appellant's witness on wind conditions) considers a difference of 3% to be insignificant. Dr Stanfield did not challenge the findings of the ES but argued that the assessment failed to take account of the potential effects of turbulence and that impacts at the western end of the dock should be given greater weight because this is where boats are launched.

111. However, Dr Stanfield was wrong in believing that there had been no testing which would indicate the effects of down draughts and turbulence. The wind tunnel tests were supplemented by visualisation tests which included blowing smoke through the model and tufting[76]. The results have been available to the Council's consultants for the last 3 years although it seems that Dr Stanfield was not aware of this. The evidence of Mr Breeze was that further tuft testing was undertaken to inform the design of the appeal scheme together with computational fluid dynamics (CFD) modelling. The results were not reported in the ES because they were not relevant to the agreed sailing criteria.

112. Dr Stanfield carried out further CFD modelling. However, this does not take the matter forward because:

- It is agreed that CFD should not be used as a standalone test. Wind experts need to apply a plausibility test when looking at the results.
- Dr Stanfield's CFD analysis considers only two wind directions (45° and 270°), neither of which is the prevailing wind direction, whereas the ES assessed the position at 10° intervals.
- Care is needed when interpreting the results of CFD. Dr Stanfield's before and after images are not a like-for-like comparison because they show different components of the wind.
- Dr Stanfield's CFD analysis is limited to a comparison between the appeal scheme and the cleared site. There is no evidence that the consented scheme would have less impact than the appeal scheme.
- Dr Stanfield confirmed, in answer to a question from the Inspector, that the CFD analysis indicates that the appeal scheme would reduce wind

[76] CD78, paragraphs 17.3.10 to 17.3.12

speeds over the dock. It follows that it is unlikely to increase the risk of capsize.

113. Taken at its highest, Dr Stanfield's conclusion was that his images

suggest that while down draughts may conceivably and plausibly reach ground level before moving onto the water with a principally horizontal trajectory, it is quite conceivable that regions may exist where a vertical component of wind over the water is non-negligible

That is scarcely a finding of material harm. Dr Stanfield and Mr Breeze agreed that down draughts are generally experienced at the base or corners of tall buildings. In this case they are expected to be deflected horizontally over the dock. When asked by the Inspector whether taller buildings were likely to make this any worse, Dr Stanfield replied that increasing the height of the buildings would not necessarily make any (or much) difference to the wind speeds experienced on the dock. Mr Breeze agreed.

114. Not all sailing requires novice sailors to sail away from the western end of the dock. Current training already involves towing lines of boats out while novices get used to the feel of the boats. Mr Davis' written evidence states that this is done sparingly, due to time constraints. However, his oral evidence suggested that this might take place, on average, for every other group[77]. Funding for additional safety boats would facilitate this. It would also make it possible to tow novices out to parts of the dock where wind conditions were more favourable.

115. The previous mitigation package was intended to address this. Amongst other matters, it was to be used to provide an additional pontoon which could be used to extend the existing pontoons. Alternatively, the pontoon could be towed to the eastern end of the dock to provide an additional launch point. The package could also fund additional safety boats and instructors, should these be needed. Dr Stanfield accepted that, as a non-sailor, he is not qualified to say whether the mitigation package would be effective or sufficient.

116. In summary, the appellant does not accept that the impacts of turbulence and down draughts have not been accounted for. Even if the criticism were valid, it would apply equally to the consented scheme. There is no evidence that the appeal scheme would be materially worse. Consequently, this cannot be a reason for refusal. Moreover, the draft THLP has identified the site as part of a TBZ where significant built form is anticipated so the impacts are likely to occur in any event.

The proposals for mitigation

117. Although the Council criticised Mr Breeze for not addressing the effectiveness of the mitigation, neither Dr Stanfield nor Mr Ross considered the matter either. This was despite the fact that paragraph 54 of the Framework requires planning authorities to consider whether mitigation can address adverse impacts. The mitigation proposed at the beginning of the Inquiry was identical to that secured

[77] OD12, page 2. See also images in WDL13. Inspector's note – in answer to a question from Mr Brown, Mr Davis said that "flagging", where boats are allowed to drift downwind before being towed back, could on average form part of the session for every other group depending on wind conditions.

by the s106 Agreement for the consented scheme. This was on the basis that the appeal scheme would not have a materially greater impact. Whilst that remains the appellant's position, there is no desire to see the end of sailing on Millwall Outer Dock. The appellant has listened to DSWC's request for the package to be increased and to the Council's complaint that the current package is inadequate[78]. In the light of that, and wishing to be a good neighbour to DSWC, the mitigation package has been increased to £1.139 million.

118. Mindful of the need to ensure that the mitigation package meets the requirements of the CIL Regulations, the offer is based on the list of mitigation measures which DSWC put forward in 2016[79]. The Council argues that there is no correlation between the increased sum and the list of costed items submitted by Mr Davis. However, the figure offered is the sum of that list and would be index-linked from April 2016[80]. It is surprising that the Council now argues that none of this is mitigation, given that many of the items are taken from the previous s106 Agreement which the Council signed. Moreover, it is clear that these items will assist:

- Mr Davis commented that the existing 4.5m movable pontoon (often moored at the eastern end of the dock) was not suitable for sailing but a larger, more easily towed, pontoon would assist. The measures suggested in 2016 included a 10m by 10m mobile VersaDock pontoon.
- Mr Young and Mr Davis both referred to the possible use of more robust dinghies.
- Mr Young indicated that one of the possible consequences of the change in sailing conditions would be the need to change the instructor/student ratio, for which additional safety boats and instructors would be needed. Mr Davis confirmed that this would be meaningful mitigation[81]. These items are therefore directly related to ensuring that DSWC would be able to continue teaching.
- Mr Davis referred to DSWC's aim of enabling sailing on the tidal Thames and his belief that this would provide an alternative place to teach people to sail when wind conditions affect sailing on the dock[82]. That might be done by a new pier or by improvement of the existing slipway. The unilateral undertaking seeks to address that by funding a feasibility study into the options.

119. If either option is feasible the mitigation package would be used to help bring it about. The lack of certainty regarding feasibility does not mean that exploring the options is not CIL compliant. Using the contribution in this way would be entirely consistent with the draft OAPF, which identifies the Outer Dock slipway as an opportunity for enhanced amenity on an important connection to the Thames which could support community activity.

[78] Mr Ross' proof of evidence, paragraph 8.34
[79] See email from Mr Davis of 12 April 2016 appended to OD15
[80] The e-mail suggests that the total is £994,000 but the appellant states that this is a mathematical error
[81] OD12, page 2
[82] OD12, page 2

120. Despite arguing that further measures are required, the Council has made no effort to discuss how the mitigation could be improved. This is unhelpful, given that the majority of the impacts on DSWC have already been accepted and would occur if the consented scheme is built. It is in everyone's interests to ensure that the mitigation is the best it can be. The appellant has taken DSWC's suggestions as its lead. If the Secretary of State does not agree that all of the amount offered is CIL compliant, reliance on the unilateral obligation can be discounted to that extent. However, that would simply mean that DSWC would get less which would be an undesirable outcome. The appellant considers that the mitigation is costed on the basis of reasonable measures suggested by Mr Davis, an experienced sailor with intimate knowledge of DSWC.

Reason for refusal 3: Quantum of affordable housing

Procedural matters

121. When the application was first submitted, it was accompanied by an offer of 35% affordable housing. This was in the hope that it might follow the GLA's fast track procedures. When it became clear that the Council was unlikely to grant permission and the appeal was lodged, that offer was withdrawn. Although the Statement of Case did not specify the revised offer, it made clear that it would be based on the maximum reasonable amount that the development could viably support and that this would be less than 35%. The appellant subsequently confirmed that the maximum viable amount was 21%. In addition, the appellant has confirmed that the affordable housing would accord with the Council's preferred tenure mix.

122. Neither the Council nor the GLA has objected to the Secretary of State considering the application on the basis of either of these changes. However, Mr Ross has referred to the need to ensure that no party would be prejudiced[83] and the GLA has referred to the need to be satisfied that this gave rise to no issues under the EIA regime. Neither party has commented further on these matters but the appellant addresses them for completeness.

123. The change in the level of affordable housing involves no amendment to the size, external appearance or number of units. The Council and GLA have been able to produce evidence in response to the appellant's position. Mr Ross agreed that the Council had not been prejudiced and no other party has raised any concerns. It is difficult to see how anyone might be prejudiced by the change in the tenure split, which addresses a reason for refusal.

124. Turning to EIA, the principal impact of the changes would be in relation to the socio-economic benefits of the affordable housing. The ES concluded that 35% affordable housing would be minor beneficial. The reduction in the number of affordable units is unlikely to alter this conclusion. There may be a small change in the total population and child yield but this is unlikely to have any material effect on the significance of effects as set out in the ES, particularly given that the proposal exceeds policy requirements for private, communal and public open space and children's play space. Moreover, changes in the quantum of affordable housing are a potential consequence of the review clauses which are now

[83] Mr Ross' proof of evidence, paragraphs 4.8 to 4.10

routinely sought by the Council and the GLA, without any suggestion that this would trigger a need for amendments to any ES.

125. In the circumstances, there is no procedural reason why the Secretary of State should not consider the scheme on the basis of the changes which have been proposed to the quantum and tenure mix of the affordable housing contribution.

Viability: Overview

126. Policy 3.12 of the LonP requires the maximum reasonable amount of affordable housing, subject to a number of criteria including viability and the need to encourage rather than restrain residential development. CS Policy SP02(3)(a) requires development to deliver 35-50% affordable housing, subject to viability. The proposal offers less than the Council's policy target but will be policy compliant if it would provide the maximum reasonable amount.

127. The offer of 21% affordable housing is based on the Financial Viability Assessment (FVA) undertaken by Mr Fourt, who was previously the adviser to the GLA when the consented scheme was being considered. His methodology is in accordance with National Planning Practice Guidance (NPPG) and professional guidance. He uses standardised inputs as required by NPPG. He has cross-checked his conclusions by reference to the benchmark land value (BLV) in the FVA for the consented scheme and by reference to adjusted market evidence.

128. He has also undertaken an appraisal of the consented scheme (the alternative use value)(AUV) in order to inform the BLV. He has performed sensitivity analyses for both his AUV calculation and his FVA of the appeal scheme, as recommended by RICS guidance and now mandatory under the RICS Professional Statement: Conduct and Reporting. The sensitivity analysis for the FVA demonstrates that the appeal scheme is close to but unlikely to exceed the target rate of return.

129. Mr Fourt has been wholly consistent in his approach, from that which he provided to the GLA in 2016, through the application process and at this Inquiry. Neither the Council nor the GLA questioned his original advice. His evidence demonstrates that the appeal scheme would not support a higher level of affordable housing at this time. Consequently, 21.0% is the maximum reasonable amount of affordable housing.

130. The appellant contrasts the above with the evidence of Mr Lee (the Council's witness on viability). Mr Lee:

- Has based his assessment on an internal rate of return (IRR) of 12%, when both Ms Seymour (the GLA's viability witness) and Mr Fourt agree that 14% is appropriate. Ms Seymour confirmed that 14% was consistent with evidence from other FVAs she had appraised.
- Began the inquiry arguing that 35% affordable housing was the maximum reasonable amount, based on a BLV of £6.36 million[84], notwithstanding the fact that he advised that the BLV was £35 million when reporting on the

[84] Mr Lee's proof of evidence, Table 4.3.1 (LBTH/3/B)

consented scheme in 2016[85] and that (when advising on the appeal scheme on 26th April 2019), BNPP advised that the BLV was £29 million[86]

- Initially prepared his AUV of the consented scheme on the basis of a profit on GDV calculation, even though his previous 2016 assessment had accepted that this should be done on the basis of IRR. Together with his (post exchange) reliance on the Turner and Townsend's (the GLA's advisors) construction costs for the consented scheme of £343 million, this resulted in a significant uplift in Mr Lee's AUV, to £21.3 million.
- In his updated appraisal, concluded that 35% affordable housing was the maximum reasonable level based on construction costs for the AUV of £343 million (as above) and £630 million for the appeal scheme. These figures differed significantly from those which he had originally assumed. At this point, the updated appraisal showed a residual land value of £21.95 million[87], which is only £650,000 more than Mr Lee's BLV of £21.3 million, from which it is clear that the scheme was on the margins of viability to support 35% affordable housing.
- Has not subsequently updated his assessment to reflect the fact that Turner and Townsend have since agreed a further reduction of the AUV costs to the £328.3 million advised by Cast (the appellant's cost consultants).
- Has not sought to independently verify his AUV of the consented scheme through the use of adjusted market evidence including that from other FVA's in accordance with paragraph 16 of the NPPG or as prescribed by professional guidance (and now a mandatory requirement).
- Has presented an updated appraisal in which the BLV has been flexed in order to maintain a constant IRR, even though the guidance makes it clear that BLV is a fixed input.

131. In summary, Mr Lee's evidence is reliant on cost estimates previously provided by Turner and Townsend which have now changed. No reliance can be placed upon either his updated appraisals or his conclusions. As Mr Lee has not re-run his appraisals, we do not know the precise effect the changes would have. There can be no doubt that they would be significant. Given that Mr Lee's updated appraisal was already on the margins of viability, a reduction of around £15 million in construction costs for the AUV can only mean that 35% affordable housing is no longer viable. There is no evidence to support the Council's position that 35% is the maximum reasonable amount of affordable housing.

132. The appellant makes the following points in relation to the position of the GLA:

- Ms Seymour has not stated what she believes to be the maximum reasonable level of affordable housing. This makes any direct comparison between the appellant's offer and the GLA's position impossible.

[85] Mr Lee's proof of evidence, paragraph 5.2 (LBTH/3/B)
[86] CD40, paragraph 5.1
[87] Mr Lee's updated appraisal, Table 1 (LBTH/14)

- When granting permission for the consented scheme, the GLA accepted that the BLV was £45 million and that this would also be appropriate (subject to indexing) for the purposes of viability reviews under the s106 Agreement.
- At the start of the Inquiry Ms Seymour argued that the scheme could offer more affordable housing based on a BLV of £28 million. This was based on an existing use value (EUV) plus a premium (EUV plus) because she considered the AUV of the site was minus £12 million. Ms Seymour did not carry out a reality check (as prescribed in the now-mandatory RICS guidance[88]) to ask whether it made sense that the consequence of implementing planning permission for the consented scheme was to wipe £56m off the site value.
- Ms Seymour's AUV position has been dependent on construction costs advised by Turner and Townsend. By the time of Ms Seymour's first update, construction costs for the consented scheme had reduced from £399 million to £343 million. Ms Seymour amended her AUV for the consented scheme to £23 million but, since this was still less than her EUV plus figure of £28 million, she continued to use the latter. Again, she did not stand back and ask whether it made sense that the result of implementing the consented scheme was to reduce the land value by £22 million. Nor was she troubled by the fact that her AUV had leapt from minus £12 million to £23 million – a discrepancy which cross-checking would have prevented.
- Following Turner and Townsend's agreement with Cast that the construction costs of the consented scheme were £328 million, Ms Seymour produced her second update, which now recognised that it was appropriate to determine the BLV by reference to the AUV of the consented scheme, which she now places at £31 million.
- The appellant's opening statement commented on Ms Seymour's surprising conclusion that the consented scheme has a negative value and said it was simply wrong. Ms Seymour now agrees.
- Ms Seymour's evidence now accepts a higher BLV and a consequential reduction in the surplus which she claims is still above the agreed target rate of return. However, there are unexplained discrepancies between this and Mr Fourt's figure. Since Ms Seymour has adopted a higher gross development value, but lower costs in relation to fees and insurance, her AUV should (other things being equal) be around £12.5m higher than his but it is not. Ms Seymour has declined to make her workings available in order to ascertain the reason for the difference.

133. The magnitude of the changes in the figures relied upon by the Council and the GLA is itself reason for treating their evidence with considerable caution. It underlines the importance of cross-checking, sensitivity testing and standing back to exercise judgment, as required by the NPPG and RICS guidance, as Mr Fourt has done.

[88] Mr Fourt's Appendix 6, paragraph 2.9 (WDL/5/C)

Benchmark land value

134. It is now common ground that BLV should be informed by an assessment on the basis of the AUV of the consented scheme. Mr Lee's AUV cannot be relied upon, since it is based on construction costs which are now agreed to be wrong. Ms Seymour now bases her BLV assessment exclusively upon a residual appraisal. This is neither robust nor consistent with guidance. The huge variation in the figures Ms Seymour has presented (from -£12 million to +£31 million) shows the dangers of relying on a purely mathematical process. This is why both the NPPG and RICS guidance refer to the need for cross-checking (through adjusted market evidence and BLVs from other FVAs), sensitivity testing and a "stand back" sense check of the outputs.

135. Only Mr Fourt has done all these things, arriving at a reasoned judgement for his BLV through:

- his AUV of the consented scheme, in accordance with paragraph 17 of the NPPG;
- sensitivity analysis of both his AUV and his FVA (asked to explain his approach to sensitivity analysis, he commented that any variance in costs and sales prices was likely to be small, resulting in a residual AUV outcome of around £45 million);
- the BLV from the FVA of the consented scheme (probably the most relevant FVA of all because it was agreed by the GLA and forms the basis for reviews under the s106 Agreement[89]); and
- adjusted market evidence on an average, median and selected comparable basis, in accordance with paragraph 16 of the NPPG.

136. In contrast, the only other FVA Ms Seymour has looked at was a BLV based on a storage use of the site, a scenario which does not reflect reality. Ms Seymour acknowledged that transactional prices should be the starting point for adjustments of sites with planning permission. She also argued that the FVA for the consented scheme was out of date, since construction costs have risen while sales values have not. However, Mr Fourt has index-linked the original BLV of £45 million, which is why his adjusted figure is £44.86 million[90].

137. In relation to Mr Fourt's adjusted market evidence, Ms Seymour argued that the assessment of AUV should be undertaken on the basis of a policy compliant level of affordable housing. That is not a realistic approach in circumstances where there is already a planning permission for the AUV scheme. The consented scheme would provide 20% of the units as affordable housing. That was considered to be policy compliant because it was the maximum viable amount[91]. If the appellant were to market the site today, the price which another developer would be willing to pay (and the minimum return at which a reasonable landowner would be willing to sell)[92] would reflect that fact. Unless the appeal scheme improves on the real-world value of the site, it would make no

[89] CD56, Schedule 3, part 3 at page 54
[90] Mr Fourt's proof of evidence, paragraphs 11.8 and 11.13 (WDL/5/B)
[91] CD49, paragraph 220
[92] NPPG, reference ID 10-013-20190509

commercial sense for the appellant to proceed with it. If the FVA for the appeal scheme does not capture and reflect that fact, it will be a meaningless exercise. The issues of circularity which were at the heart of the *Parkhurst* case simply do not arise.

138. Ms Seymour took issue with the adjustments which Mr Fourt made to his market evidence. The adjustments were explained during the Inquiry and are summarised in Appendix 4 of Mr Fourt's evidence. Although Mr Fourt arrived at a much higher land value from the comparable evidence (ranging from £60.42 million to £99.97 million) the figure he has actually taken as his BLV is a much more conservative £45 million. Moreover, the higher figures reflect sites with planning permission, whereas the BLV of £45m in the 2016 assessment was on the basis of a site without planning permission. Although permission has now been granted (for the consented scheme), Mr Fourt has applied the lower BLV in his appraisal for the appeal scheme. There is a generous margin for error.

139. Finally, Mr Fourt's BLV is still a very small component of total costs. As a proportion, it is well within the normal range. Moreover, his BLV is significantly less than the appellant has actually spent on site assembly[93]. The appellant acknowledges that the price paid for land is not a justification for failing to comply with relevant policies and that existing use value is not the same as the price paid[94]. However, it does not follow that the price paid is irrelevant. The Council asked for this information and the appellant has responded. The answer demonstrates that Mr Fourt has been conservative in his assessment.

Ground rents

140. Government has announced that there is to be legislation which will reduce future ground rents to a peppercorn. The appellant considers that ground rents should therefore be omitted from the assessment. If they are included, they should be heavily discounted. This point has been accepted by Mr Lee who has reduced his allowance for ground rents to £10 per unit per year. However, Ms Seymour continues to include ground rents in her assessment. This is unrealistic. The fact that the change is yet to happen does not prevent it from affecting values today. There is no evidence to support Ms Seymour's suggestion that any reduction in ground rents is likely to result in increased sales values for the units.

Professional fees and insurance

141. Mr Fourt considers that professional fees and insurance should be 12% of costs whereas Mr Lee and Ms Seymour believe they should be 10%. However:

- 12% was the figure agreed by all parties for the consented scheme[95].
- Mr Fourt provides an itemised break down[96] of known and forecast professional fees which shows a figure in excess of 12% (which has been adjusted downwards to reflect the standardised inputs of the NPPG).

[93] WDL/29
[94] NPPG, reference ID 10-014-20190509 and 10-016-20190509
[95] CD56, Schedule 3, part 3, paragraph 7(b) at page 54
[96] WDL/5/C, Appendix 13

- Neither Ms Seymour nor Mr Lee takes issue with any of the individual items on that list and the percentages set out are broadly consistent with those which Turner and Townsend (the GLA's consultants) have advised[97].
- Mr Fourt's figure of 12% is within the 8% to 12% range which Ms Seymour is accustomed to seeing. The appeal proposal is a complex scheme where a figure at the upper end of the range is to be expected. Relevant factors include tall buildings, a waterside location, a long build out period and the prospect of a number of different contractors working on different parts of the scheme at the same time.

142. Mr Fourt has allowed for insurance as a separate item whereas Ms Seymour and Mr Lee consider that insurance should be included in the overall figure for professional fees. Their approach would effectively reduce the figure for professional fees to 9%, which would be at the lower end of Ms Seymour's normal range. That would not be credible for a scheme of this complexity. Mr Fourt has been consistent in applying 12% professional fees plus insurance to his AUV and to his appraisal of the appeal scheme.

Management Space

143. Mr Fourt and Mr Lee agreed that the assessment should not include income from management space. Ms Seymour disagreed on the basis that, if such space were not provided within the scheme, it would have to be rented elsewhere. However, facilities for security, grounds staff and cleaners would need to be provided on site. There is no evidence that such space would command a rental value. Moreover, Ms Seymour's own evidence includes references to such uses as part of the back-up facilities of other schemes. Consequently, the views of Mr Fourt and Mr Lee should be preferred.

Response to the Council's criticisms of Mr Fourt

144. The Council's cross-examination of Mr Fourt suggested that, having previously advised the GLA, it was inappropriate for him to act for the appellant on the same site. However, when Mr Fourt was first approached by the appellant, he specifically checked with the GLA that they had no objection. Moreover, the GLA was present throughout the Inquiry and raised no issue in this regard.

145. The Council's second main point of criticism was that the appellant was offering 35% affordable housing, which was above the figure suggested by Mr Fourt's assessment, until the appeal was lodged. The basis of the fast track approach (under the Mayor's SPG) is that it offers the incentive of a quicker decision and a lighter touch in terms of subsequent reviews. The approach encourages developers to make affordable housing offers above the level that FVA may suggest. A developer may be willing to take that risk as a commercial decision. That is not a reason for impugning a viability appraisal carried out in accordance with NPPG. This point was recognised by the Inspector in the 49 to 59 Millharbour appeal[98] and is reflected in the judgment in *McCarthy & Stone*[99]. In this case the original offer was made on the basis that the application would

[97] See Mr Fourt's Appendix 13 (WDL/5/C) and Ms Seymour's Appendix 1, page 4 (GLA/2/C)
[98] CD51, paragraph 31
[99] CD65, paragraph 54

benefit from the fast track route. By the time of the appeal, it was apparent that it would not. That is why the offer of 35% was revised and no adverse inference should be drawn. There is no merit in either of these criticisms of Mr Fourt's evidence.

Response to a matter raised in closing by the GLA

146. In closing, the GLA argued that no weight should be attached to the delivery of affordable housing which is less than the policy target, relying on *Barrett*[100]. The facts of that case were quite different in that there was no consented scheme and no fallback position. The GLA submission is not supported by the Council, whose closing submissions were that moderate (positive) weight should be given to affordable housing which (in the Council's view) would be less than the maximum reasonable amount.

Conclusions on reason for refusal 3

147. Mr Fourt's assessment has been carried out fully in accordance with national guidance. The maximum amount of affordable housing the scheme can viably deliver is 21%. There is no evidence that the scheme can deliver 35%. There is no evidence of what could be delivered if the Secretary of State were to agree with the Council or the GLA on some of the detailed points outlined above.

148. There is no evidence of any other scheme which might come forward or what level of affordable housing it might deliver. The consented scheme is the fallback position. The appeal scheme would more than double the amount of affordable housing at this site. On any analysis, that would be a significant improvement. It would make no sense to dismiss the appeal on the basis of uncertainty as to whether the appeal scheme might have provided even more.

Reason for refusal 4: Tenure split

149. The initial affordable housing tenure split was 47% affordable rent and 53% intermediate. The appellant subsequently agreed to meet the Council's request for a 70:30 split. At the Inquiry, Mr Ireland (the Council's housing witness) confirmed that the putative fourth reason for refusal has been addressed. Although his note to the Inquiry[101] stated that the mix was still not fully in accordance with draft THLP Policy D.H2, he agreed that[102]:

- this would also have been true of the original offer but had not formed part of the reason for refusal;
- transferring the intermediate 3 bed units to affordable rent means that these units would be in the form of tenure where they are most needed; and
- consequently, the Council's remaining concern under this heading did not amount to a fresh reason for refusal. Rather, it was a matter affecting the weight to be attached to the benefit of the affordable housing.

[100] R. v. London Borough of Tower Hamlets, ex parte Barrett [2000] WL 281291 at [27-30] per Sullivan J (as he then was)
[101] LBTH/13
[102] Inspector's note – these points were agreed by Mr Ireland in cross-examination

150. It follows that the amendment addresses the previous reason for refusal. It also represents an improvement on the original application in relation to the distribution of the three-bedroom units.

Reason for refusal 5: The mix of market housing units

151. This reason for refusal states that the mix would fail to provide a satisfactory range of housing choice in terms of the mix of housing sizes. The evidence of Mr Ross is that the weight attached to the benefit of additional market housing should be "*moderated*" to reflect the limited number of three-bedroom (or larger) units[103]. At the Inquiry, Mr Ross confirmed that, in his view, this was not a substantive reason for refusal but merely a factor which reduced the weight to be given to the benefit of additional market housing. Consequently, it is not necessary to deal with this putative refusal reason in great detail.

152. MDD Policy DM3(7) requires provision to be made in accordance with the most up-to-date housing needs assessment. The Council's most recent assessment, (the results of which have been embodied in draft THLP Policy D.DH2) shows a significant increase in the need for two-bedroom units from 30% to 50%. Mr Ireland accepts that Policy D.DH2 represents the Council's current position and therefore supersedes the table in MDD Policy DM3[104]. There is therefore no force in the argument that the appeal scheme over-emphasises two-bedroom units, as alleged in the reason for refusal.

153. The Council's real concern is that there are not enough three-bedroom (or larger) family units. However, two-bedroom units in Tower Hamlets are widely occupied by families. Many three-bedroom units are not occupied by families but by multi-adult households who are house sharing[105]. In any event, emerging LonP policy expressly states that Boroughs should not set prescriptive dwelling size mix requirements. This is stated in an officer's report on an application in Whitechapel[106]. The evidence of Mr Goddard (the appellant's planning witness) shows that the Council has never applied its policies on housing mix mechanistically. Few of the schemes he identified came close to 20% three-bedroom (or larger) units[107].

154. In this context, Mr Ross was right to accept that this is not in itself a reason for refusal. The mix of market housing should be left to market forces. The appeal scheme is based on up-to-date market advice. Whether or not it matches the Council's policy, it would meet existing needs, including the need for family housing.

Response to the GLA – impact of T5 on open space

155. The effect of T5 on the new park envisaged in the OAPF did not form part of the Council's case at the Inquiry. The officer's report noted that, although the new park would be eroded by the addition of T5, the provision of 1.96ha of public

[103] Mr Ross' proof of evidence, paragraphs 9.21 to 9.23 (LBTH/6/B)
[104] Mr Ireland's proof of evidence, paragraph 3.20 (LBTH/4/B); also confirmed in cross-examination
[105] Mr Ireland's proof of evidence, paragraphs 1.15, 8.11 and 8.43 (LBTH/4/B)
[106] WDL/27, paragraph 9.127
[107] WDL/26

open space would be policy compliant[108]. The GLA does not disagree with this conclusion in a quantitative sense. Rather, the GLA's concern is that the illustrative masterplan for Millwall Waterfront shows the triangle of land on which T5 would stand as part of an area of parks and green space[109].

156. When the GLA approved the consented scheme, it was full of praise for the positive contribution which that scheme as a whole (not just Park East) would make to the public realm. The GLA[110]:

- strongly supported the three new publicly accessible open spaces that would offer amenity to existing and future residents and provide visual links through to the dock;
- supported the provision of the dockside promenade and strongly supported the aspiration of creating a vibrant and active waterfront;
- recognised that the scheme would meet or exceed the relevant strategic and local residential design standards (including standards for the provision of private and communal amenity space);
- strongly supported the overall approach to play and recreation which would exceed the needs of children from this development and help to address a wider need for open space on the Isle of Dogs; and
- recognised that the proposed layout would improve permeability and legibility.

157. With the exception of the area of land which would be taken up by T5, all of those benefits would remain as part of the appeal scheme. Moreover, these elements of the proposal would be enhanced. The Council acknowledged that the improved landscaping proposals would take all these things on a stage further[111]. The GLA argues that the loss of the open space occupied by T5 would be so damaging that it would eclipse the strong support previously expressed for all the other public realm benefits. A change of stance on this scale is simply not credible. Moreover, the GLA's position is not supported by existing or emerging policy:

- There is no conflict with LonP Policy 7.18(B) or draft LonP Policy G4(AB)(1)[112] because the proposal would not result in the loss of existing open space.
- The proposal would accord with Draft LonP Policy G4(AB)(2) which states that, where possible, development proposals should create publicly accessible open space, particularly in areas of deficiency.
- Neither the LonP nor the draft LonP identifies any quantitative level of open space which is to be provided at the appeal site. LonP Policy 7.18(C)

[108] CD41, paragraph 11.106
[109] CD10, page 107
[110] CD49, paragraphs 181, 233 to 235, 239 to 240, 248, 249, 251 and 255
[111] Inspector's note – in cross-examination Mr Nowell commented that the changes to landscape design would be positive
[112] CD90, following paragraph 8.3.3

delegates this to the London Boroughs. It is common ground with the Council that the relevant policies would be complied with[113].

- The proposal would create open space adjacent to Millwall Outer Dock and improve the public realm with active site edges along Westferry Road and Millharbour, all in accordance with the MDD and draft THLP site allocations.
- The proposal would exceed the requirement of the draft THLP site allocation to provide a minimum of 1 ha of strategic open space[114] (even if the central spaces on the north/south spines are not counted as public open space).
- The GLA has not produced any evidence to counter the Council's acceptance that the proposed 5,349 sqm of communal semi-private courtyard space would exceed the 1,546 sqm required by MDD Policy DM4[115].
- The GLA has not disputed that the proposed 5,365 sqm of children's play space would exceed the 2,680 sqm required by MDD Policy DM4.

158. In the light of the above, the GLA's case can only be qualitative. The GLA does not agree that the proposed development would create a high quality public realm[116]. However, that view cannot logically apply to any of the elements of open space and public realm (other than Park East) which were previously viewed so favourably. Although Park East would be reduced in size, the GLA does not explain why it would be of any lesser quality.

159. The evidence of Mr Ivers (the appellant's landscape witness) is that T5 would address the draft THLP requirement to promote active site edges along Millharbour[117]. It would also provide definition to the new public park and Boulevard. The GLA's current position contrasts with its pre-application response of 2017[118] when it commented that:

there may be potential to include a building to help define the northern edge of the park and funnel pedestrian movement towards the open green space

This response is consistent with Mr Ivers' view that, in the consented scheme, the East Park would be a "*leaky space*" and that greater definition is desirable.

Potential to extend Park East onto the adjoining site

160. The OAPF proposals for an Outer Dock Park have been the subject of objections from the owners of GVP who have stated that this proposal would blight the potential for redevelopment at GVP. That is not an unreasonable concern because GVP is occupied by a number of successful businesses on leases that have some years to run. Nos 1, 2 and 4 GVP have only recently been redeveloped to provide a new building, for which tenants are being sought. It is

[113] CD46, paragraphs 6.16 to 6.20
[114] CD6, page 204
[115] CD46, paragraph 6.16
[116] CD46b, paragraphs 1.7 and 1.10
[117] CD6, page 204
[118] WDL/24, paragraph 22

highly questionable whether there is any realistic prospect of realising the OAPF aspirations for an Outer Dock Park.

161. In any event, T5 would do nothing to inhibit the OAPF proposal to extend the park into GVP. All that would be required would be to take down the boundary wall. The evidence of Mr Ivers illustrates how easy this would be[119]. At the Inquiry the GLA suggested that T5 might compromise some alternative proposal for GVP. That argument is inconsistent with the GLA's primary case in that it would involve a significant departure from the OAPF. Moreover, it is an argument that could be deployed against any layout of the appeal site. There is no policy requirement for a comprehensive development and there are no current proposals for the redevelopment of GVP. The key point is that the appeal scheme would preserve the option to extend the park in the future.

Direct line of sight from Millharbour to the waterfront

162. The OAPF and the draft THLP site allocation seek to achieve a clear line of sight from Millharbour to Millwall Outer Dock. However, from the more northerly parts of Millharbour the only potential direct line of sight is currently terminated by buildings at GVP. The draft THLP allocation for GVP (described as Millharbour South) shows a linear extension of Millharbour as a strategic pedestrian and cycling route[120]. T5 would be located to the west of that line of sight and would not interfere with it.

163. Only at the southern end of Millharbour do potential views across the appeal site begin to open up. However, in the consented scheme, T4 would sit in the middle of those views. In the appeal scheme, a direct line of sight (along the existing line of Millharbour) would remain, between T5 and GVP[121]. There would also be a direct line of sight to the dock down the new access route, between B4 and T4[122]. References in the OAPF to a direct line of sight from Millharbour have to be read alongside the description of the Boulevard as an extension to Millharbour, running parallel to Millwall Outer Dock. Figure 5.4.5 of the OAPF shows the line of that extension. There would be lines of sight from the extended Millharbour at the northern end of Park East and at each of the north/south spine routes.

164. To conclude on the OAPF, even if it has been adopted by the time of the Secretary of State's decision, there would be no conflict with the guidance it contains.

Response to third party objections

165. Sir Robert Ogden Indescon Developments Ltd is concerned that the proposal may inhibit existing operations and/or future development at GVP. With regard to existing operations, the distance between the buildings at GVP and T4 and T5 is not unusual in London. Potential impacts during construction could be controlled by standard planning conditions[123]. Subject to the agreed conditions, the

[119] Mr Ivers' Appendices, Figure 58 (WDL/2/C)
[120] CD6, page 195, Figure 45
[121] Mr Ivers' rebuttal, Figures 02, 03 and 05 (WDL/2/D)
[122] Mr Ivers' Appendix 3, Figures 04 and 60 (WDL/2/C); Dr Miele's Appendix 9 (Accurate Visual Representations), View 13 Consented View and Proposed View (WDL/3/C)
[123] See conditions 3, 26 and 28 in Annex E

proposed retail and residential uses within T5 would not interfere with existing operations at GVP[124]. Any concerns about the impact of noise from the data centres on future residents of T5 would be addressed by the agreed condition requiring approval of noise attenuation for the new residential units[125]. With regard to potential future redevelopment, there are as yet no proposals for the GVP site. However, the evidence of Mr Goddard[126] demonstrates that there is no reason why development could not come forward on the GVP site without adverse impacts on the amenity of future residents of the appeal scheme.

166. Other issues raised by local residents include concerns about impacts on the biology and biodiversity of the dock, on public transport and on other infrastructure. The first of these is addressed by Mr Goddard's Appendix 5. The UU includes contributions towards public transport. Neither the Council nor TfL object on these grounds. The proposal would assist in delivering a new school and would include provision for a new health centre.

The Unilateral Undertaking

167. The arguments raised against the UU by the Council and the GLA are surprising given that the UU is based on the s106 Agreement for the consented scheme[127] (the extant Agreement) which they signed.

The school

168. MDD site allocation 18 states that the site is required to provide a secondary school, which should take priority over all other non-transport infrastructure requirements[128]. The school already has planning permission and the design is at an advanced stage. It would have been unnecessary duplication to include it within the appeal scheme. The UU would ensure that the school will be delivered. Indeed, it would improve the prospects for delivery by removing the appellant's right (under the extant Agreement) to make a £9 million payment in lieu if an agreement for lease has not been entered into within the agreed timescale.

169. In addition, the appellant would continue to be bound by the obligation to enter into the agreement for lease notwithstanding the passing of the specified negotiation periods in the extant Agreement. The obligation is further strengthened with a backstop which ensures that, whatever stage discussions between the appellant and the Council have reached, the site will be made available for the school.

170. The Council remains dissatisfied for reasons which are difficult to understand. With the exception of the surrender of the right to make a payment in lieu, the UU would bind the appellant to the same undertakings that were agreed by the Council under the extant Agreement. The appellant would be bound to enter into a long lease for the school site to the Council, subject to the Council being able to demonstrate that it is able to deliver the school by the agreed date. Alternatively, and with the Council's consent, the appellant would enter a lease with the Department for Education (DfE) or a school provider. Moreover, the UU goes

[124] See conditions 11 and 37 in Annex E
[125] See condition 22 in Annex E
[126] Mr Goddard's Appendix 4 (WDL/6/C)
[127] CD56
[128] CD5, page 148

further than the extant Agreement. Only the obligation to transfer to the Council would be subject to a caveat regarding ability to deliver a school. If the Council were not able to demonstrate that ability, there would still be an obligation to make the land available to the DfE.

171. The DfE has identified a potential school provider that would be able to enter into an agreement for lease with the DfE to ensure that the school opens for the academic year 2022/23. The Council is aggrieved that these discussions have been taking place. However, there is nothing in the extant Agreement which requires the appellant to give priority to the Council. Indeed, the extant Agreement allows the appellant to enter into an agreement for lease with the DfE or a school provider during the negotiation period, if the Council agrees.

172. The appellant considers that this is not a matter which need trouble the Secretary of State. MDD site allocation 18 identifies the need for a secondary school but says nothing about the body by whom that school should be provided. The Council may have a political objection to a Free School but, in planning terms, there is no distinction between alternative providers. What matters is that a secondary school is provided as quickly as possible. At the Inquiry, the Council's submissions to the UU session suggested that it would not be able to deliver a school in time for the start of the 2022/23 academic year. The UU would materially increase the prospects of delivery by that date. Far from being a ground of objection, this would be a benefit of the appeal scheme.

Substantial implementation

173. The GLA argues that the list of works comprising substantial implementation is insufficient. However, the purpose of the definition of substantial implementation is to discourage developers from land-banking permissions by requiring a level of works which represents a significant financial commitment. In this case, letting the piling contracts would be a very substantial commitment, marking a point of no return for the developer. The appellant's note on substantial implementation explains the significant amount of work that would be required to reach that point[129]. Neither the Council nor the GLA have identified any items in the note which they disagree with.

174. The UU provides for the period to be extended if substantial implementation has not occurred for reasons outside the control of the developer. This is because the works required, and the time allowed, are intended to incentivise the developer to progress the scheme to a point of no return within a tight (but achievable) time frame or risk a viability review. Such provisions are not intended to penalise a developer that has made every effort to progress a scheme but has been unable to do so for reasons outside its control, such as a failure to discharge conditions within an appropriate time. If such provisions were unachievable, they would become counterproductive. Developers would not be prepared to incur significant costs implementing a scheme in the knowledge that it was inevitable that a further viability review would be undertaken.

[129] WDL30

Late Stage Review

175. The UU makes provision for late stage review, but this would only be engaged if either:

- Policy H6 of the draft LonP has been adopted by the time of the Secretary of State's decision, or
- the Secretary of State otherwise concludes that a late stage review is required.

176. The Inspector for the appeal at 49 to 59 Millharbour concluded that "*in straightforward policy terms there is no requirement for a late review*"[130]. The appellant considers that nothing has changed since that decision which would justify a different conclusion. However, if the Secretary of State disagrees with the Millharbour Inspector, the UU is drafted such that a late stage review could be required. Consequently, the outcome of the appeal does not depend upon this matter.

Use of IRR for future reviews

177. The Council and the GLA argue that any viability review should be carried out on the basis of the template in the Mayor's Housing SPG. At the Inquiry all parties were agreed that the FVA should be prepared on the basis of IRR. It is appropriate that any future review is carried out on the same basis for the sake of consistency. This reflects the position with the consented scheme and the extant Agreement. Mixing and matching the two methods could result in an absurd situation where a developer actually loses money but still ends up having to make a payment in lieu.

CIL review

178. The appeal site is currently nil-rated for CIL but the Council is bringing forward a new charging schedule. If this has been adopted when permission is granted the appeal scheme would become liable (potentially at a rate of £280 per sqm). A local authority must be satisfied a proposed CIL rate would not render development across its area as a whole non-viable. National guidance makes it clear that the impact on strategic sites should be assessed[131]. At the UU session, the Council argued that nobody had any idea what impact the proposed CIL rate would have. If that is the case, the Council has not done what it should have done before seeking to introduce the new rate.

179. It is agreed that, if the charging schedule had been in place, it would have been a fixed cost in the FVA for the appeal scheme. There was no precise sum before the Inquiry and, in any event, the rate cannot be known at this stage because the CIL Examiner's recommendations are not yet available. Nevertheless, it is obvious that the new charging schedule has the potential to introduce a very considerable liability which could significantly affect the viability of the scheme[132].

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[130] CD51, paragraph 33
[131] NPPG, Reference ID 25-025-20190901 and 10-005-20180724
[132] The appellant refers here to Mr Goddard's figure of £50 million. Inspector's note – this figure was given by Mr Goddard during his oral evidence in chief.

180. Schedule 15 of the UU proposes a mechanism by which, should the appeal site have become liable to CIL by the date of the Secretary of State's decision, the new Borough CIL would be added into the appellant's FVA. The affordable housing contribution would then be adjusted to bring the IRR back to 13.1%, with all other inputs unchanged. This mechanism seeks to avoid the delay that would otherwise occur if a new charging schedule is adopted before the appeal is decided. Without Schedule 15, the Secretary of State would be bound to invite further representations on the impacts of CIL and it is possible that the Inquiry would have to be reopened, causing delay to housing delivery.

Conclusions on the Unilateral Undertaking

181. The appellant submits that the UU is compliant with the CIL Regulations and appropriate in all other respects. The Secretary of State is therefore requested to give full weight to it. However, if the Secretary of State disagrees, the UU provides for any offending provisions to be disregarded. If the Secretary of State is concerned that the UU does not go far enough, it may be appropriate to revert to the appellant on a "*minded to* …" basis before reaching a final decision.

Response to other matters raised by the Council and the GLA

182. The Council complained that the appellant had not engaged in discussions during the application process. However, the correspondence shows that the appellant sought to engage and it was the Council that was unwilling[133].

183. The GLA referred to the example of 20 Fenchurch Street as a "*cautionary tale*" in the context of assessing impacts on Tower Bridge[134]. It does not matter whether one likes or dislikes the Walkie Talkie building. The key point is that the Inspector and Secretary of State would have been aware of the impact a building of this scale would have in views of Tower Bridge. That impact was found to be limited because of the robustness of Tower Bridge itself and because of the layers of development in the panorama.

184. The Council criticised Mr Breeze for acting for the appellant when he had previously been employed by the GLA to advise on the previous application (now the consented scheme). However, experts are independent of the bodies that employ them. The GLA, who employed Mr Breeze, has made no complaint.

185. In closing, the GLA questioned whether the consented scheme represents a fallback because of a lack of market demand for family units. The comments referred to a report by Savills[135]. Those comments were made in relation to the appeal scheme which is much larger than the consented scheme. In any event, the submission was inconsistent with the evidence of Ms Seymour who worked on the basis of agreed sales values for the residential units. Closing submissions for the Council accepted that the appeal scheme is viable.

186. Although prematurity was not a reason for refusal, it was referred to in closing submissions for the Council[136]. However, it is clear from the evidence of Mr Ross

[133] WDL/21, WDL/22 and WDL/23
[134] GLA/16, Closing submissions, paragraph 19(c)
[135] GLA/16, Closing submissions, paragraph 81; Savills report at Mr Goddard's Appendix 3 (WDL/6/C)
[136] LBTH25, Closing submissions, paragraphs 121 to 123

that his complaint is one of conflict with the emerging development plan rather than prematurity. If the Secretary of State agrees that there is conflict (which the appellant disputes) the weight to be attached to such conflict will be considered in the overall planning balance. This point adds nothing to the substance of the matters in dispute at this appeal.

187. The Council disagrees with the approach of the UU to delivering the secondary school. It asks why, if the appellant is confident that the identity of the delivery body is not relevant, does the UU need to refer to the Council at all? The reason is simply that the UU is, of necessity, a unilateral document. It cannot unilaterally amend the extant Agreement. The appellant maintains that the identity of the delivery body is not a matter that the Secretary of State needs to consider.

Section 38(6) and the overall planning balance

188. The appellant invites the Secretary of State to conclude that, notwithstanding a degree of conflict with MDD Policy DM26 and the adverse impact on sailing, the appeal scheme is in accordance with the development plan as a whole. This would be in precisely the same way that the GLA concluded that the consented scheme was in accordance with the development plan. The principle of residential development, the introduction of tall buildings and the essential layout of the site have all been established by the consented scheme. In that context, the appellant asks the Secretary of State to conclude that:

- the appeal scheme would provide an appropriate transition from the Canary Wharf cluster to the surrounding residential development;
- there would be no adverse impact on the Maritime Greenwich WHS, the setting of Tower Bridge, or the Canary Wharf Skyline of Strategic Importance;
- the impact on sailing conditions would be no greater than that which has already been accepted in the context of the consented scheme, would be the subject of appropriate mitigation and would be counter-balanced by the significant improvements in the public spaces around the dock;
- the appeal scheme would deliver the maximum viable amount of affordable housing;
- the tenure mix is policy compliant;
- the appeal scheme would make a significant contribution to the number of family homes; and
- any displacement of open space from the footprint of T5 is compensated by improvements in the quality of open space elsewhere on the site and the redesign of the north/south spine routes.

Even if the final proposition is not accepted, any reduction in the quantum of public open space would not result in a conflict with policy.

189. If, contrary to the above, the Secretary of State concludes that the proposal would cause harm (over and above that caused by the consented scheme), such harm would be outweighed by the benefits of the scheme. In particular, the appeal scheme would deliver:

- the regeneration of a strategic brownfield site within the Isle of Dogs Opportunity Area;
- a vibrant, residential-led mixed use scheme;
- an uplift from 722 to 1,524 units of high quality residential accommodation[137] which would meet or exceed the minimum space standards set out in the Mayor's SPG (with more double aspect units and better internal layouts than the consented scheme);
- 5,349 sqm of communal private open space (against a policy requirement of 1,564 sqm[138]);
- an uplift from 140 to 282 affordable homes, in circumstances where there is a pressing need;
- a large quantum of high quality public realm, with over 400 trees and 7,000 sqm of lawn and planting, with 1.96 ha (or 39%) of the site delivered as publicly accessible open space, with 5,365 sqm of children's play space (against a requirement of 2,680 sqm) and with a significant improvement in the quality of the public open space compared with the consented scheme;
- greatly improved access to the dockside from the residential areas to the north and west of the site, with new all-inclusive public pedestrian and cyclist routes from Millwall Dock Road and Starboard Way directly into the development and to the waterfront;
- a community centre, health centre and crèche, which would meet the infrastructure needs of existing and future residents (any uncertainty in relation to the delivery of the school under the section 106 Agreement for the consented scheme would be removed);
- restaurant, retail and public uses at ground floor level to activate the water frontage and open spaces within the site, with enhancements (compared to the consented scheme) from relocating residential units which were at ground floor level in B6 and B7, thus avoiding issues of overlooking and privacy;
- an energy efficient design, utilising Millwall Outer Dock for sustainable heating and cooling and surface water drainage, and prevention of overheating through high-performing building envelopes and external solar shading (resulting in reduced localised air pollution when compared to the consented combined heat and power strategy or connection with the nearby Barkantine district heating network);
- 372 jobs on site associated with the provision for office space, financial and professional services, retail, restaurant and community use (excluding the school); and

[137] CD46, paragraph 6.12
[138] CD46, paragraph 6.16

- a development of exemplary design and urban design quality, providing a cohesive architectural and landscape solution that would have significant placemaking benefits.

190. Most of these benefits are not in dispute. The following comments relate to the weight to be attached to the benefits of delivering housing, affordable housing and improvements to open space.

Housing

191. It is agreed that the additional housing delivered by the appeal scheme would be a public benefit. The Council argues that the weight to be attached to that benefit should be reduced because it can demonstrate a 5-year housing land supply. However, paragraph 59 of the Framework refers to the government's objective of significantly boosting the supply of housing, paragraph 118 gives substantial weight to the value of using suitable brownfield land and paragraph 123 refers to the need to ensure that developments make optimal use of the potential of each site. Nothing in the Framework suggests that this support for housing delivery is reduced by the existence of a 5-year housing land supply.

192. LonP Policy 3.3[139] identifies a pressing need for housing and advises Boroughs to seek to achieve and exceed the relevant borough target and to seek to enable additional development capacity to be brought forward to supplement those targets. Policy 2.13[140] encourages boroughs to meet or exceed the minimum guidelines for housing in opportunity areas. Policy GG2 of the draft LonP advises boroughs to proactively explore the potential to intensify the use of land to support additional homes. Policy GG4 states that those involved in planning and development must ensure that more homes are delivered[141].

193. The Council's position also needs to be seen against the dramatic increase in the number of houses which will be required under the new LonP. The LonP of 2016 set a requirement of 49,000 additional homes each year[142]. The Inspector who examined the plan expressed concern that this was significantly less than the objectively assessed need and sought assurances that there would be an early review. The draft LonP identifies the need as 66,000 additional homes each year[143]. It is accepted that the draft LonP would reduce the annual target for Tower Hamlets from 3,931 to 3,511[144]. However, this is based on assessments of capacity rather than reflecting reduced need. The expectations for the Isle of Dogs have risen from 10,000 new homes in the LonP period[145] to an indicative 29,000 dwellings in the draft LonP[146].

194. Having regard to the above factors, there is no basis for reducing the weight to be given to the uplift in housing. The appellant considers that this is a significant benefit, which should be given significant weight.

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[139] CD2, pages 98 and 99
[140] CD2, page 65
[141] CD90, after paragraph 1.2.8 and after paragraph 1.4.7
[142] CD2, paragraph 3.16b
[143] CD90, paragraph 4.1.1
[144] Mr Ross' proof of evidence, paragraphs 7.15 and 7.16
[145] CD2, page 363
[146] CD90, Table 2.1 after paragraph 2.1.11

Affordable housing

195. The Council argues that, if 21% is the maximum viable amount of affordable housing, the weight to be attached should be reduced because this is below the 35% target. This overlooks the fact that, on the evidence of Mr Ireland, the need for more affordable homes in Tower Hamlets is dire. Moreover, the proposal would double the number of affordable homes compared with the consented scheme. It would be absurd not to recognise that as a material benefit attracting significant weight.

Open space

196. The GLA argues that improvements to the landscaping scheme should not be placed on the scales because details of the landscaping for the consented scheme are still to be determined. However, the drawings approved for the consented scheme include the originally submitted landscaping details. Given the strong support that scheme attracted from the GLA, it is difficult to see how the Council could refuse to agree details submitted in the same form.

Conclusions

197. Finally, the appellant notes that the Council and the GLA have not explained how the planning balance has been reappraised now that two of the original five reasons for refusal have effectively been withdrawn. In addition, the appellant submits that the position of the Council and the GLA is fundamentally flawed due to:

- the absence of any credible technical evidence to support the Council's concerns about impacts on sailing;
- the complete mismatch between the evidence of Mr Froneman and Dr Barker-Mills and previous decisions by the Council, the GLA and the Secretary of State on heritage issues;
- the failure of either authority to give appropriate weight to the doubling in the quantum of both market and affordable housing, given the levels of need; and
- the absence of any policy objection to the impact of T5 on the GLA's aspirations for an Outer Dock Park.

198. In the light of all the above, the appellant submits that none of the objections to the scheme holds water. The proposal is a scheme of the highest architectural quality which builds on the qualities of the consented scheme, whilst doubling the contribution the consented scheme would makes to meeting London's housing and affordable housing needs. The proposal would also deliver a significantly higher quality public realm. It is fully in accordance with the Framework and emerging policies for Millwall Dock. The Secretary of State is requested to allow the appeal and grant permission.

Further submissions following the close of the Inquiry[147]

199. The emerging THLP remains essentially the same as the document that was considered at the Inquiry. Whilst it may attract greater weight, following receipt of the report of the examination, it cannot attract full weight until such time as it is adopted. In any event, the appellant's case is that the proposal is in accordance with the emerging THLP. If greater weight is attached to the emerging plan that serves to strengthen the appellant's case. It is noted that modifications to D.SG5 (developer contributions) allow for flexibility in relation to allocated sites, to ensure that they remain deliverable. The appellant welcomes that approach which reflects its case at the Inquiry. The appellant's response to the Council's submissions on prematurity are not altered.

200. The work carried out for the Council in relation to the examination of the draft CIL charging schedule was generic, not site-specific, in relation to the four large allocated sites. The conclusions of the CIL examiner do not amount to an acceptance that the viability of the appeal scheme would not be affected by CIL. The examiner accepted the Council's assurance that, where CIL may affect viability, then a flexible approach would be taken to ensure that sites remain viable and deliverable.

201. The imposition of CIL on the appeal scheme would result in a very substantial additional cost which would have an impact on viability and deliverability. It is accepted by all parties that CIL is a relevant cost input for viability appraisals. The arrangements for a CIL appraisal set out in Schedule 15 of the UU are an appropriate mechanism for providing the flexibility and balance between CIL and affordable housing which the Council has sought and the CIL examiner has accepted. The appellant has presented evidence on the appraisal inputs that would be included in the CIL appraisal.

202. The appellant notes that the report on the Examination in Public of the London Plan accepts the principle of the late stage review provided for in emerging Policy H6[148]. However, there is no certainty that the London Plan will be adopted by the time the Secretary of State determines the appeal. Clause 3.8 of the UU sets out a mechanism whereby a late stage review may or may not be applied to the development by the Secretary of State.

THE CASE FOR THE LOCAL PLANNING AUTHORITY – THE COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS[149]

Introduction

203. The Council has an exemplary track record in the delivery of development with almost 15,000 homes having been built in the borough in the past 5 years. It is common ground that the policy requirement to have a 5-year housing land supply is being met, despite the Council having the highest housing requirement of all London boroughs. In this context the appellant seeks to more than double the number of residential units for which it obtained permission in 2016. The

[147] The full submissions are at PID6, PID7, PID12 and PID15
[148] PID11, paragraphs 198 to 201
[149] The full closing submissions, which are summarised here, are at LBTH/25

appellant promoted that scheme on the basis that it was the most appropriate and efficient design response in its context. Three years later, it is argued that the site can miraculously absorb an additional 802 units, a substantial proportion of them in an entirely new tower of 32 storeys that formed no part of the earlier scheme. Such an exponential increase in the height, volume and density of the previous scheme is wholly unrealistic and causes material harm.

204. The appellant has evolved the design without any meaningful engagement with the Council, in breach of National policy, despite this being one of the largest redevelopment sites in the borough. This is lamentable. The proposals raise a complex mix of issues that require discussion. During the Inquiry, the appellant has admitted that it had no interest in further discussion with the Council as soon as it realised that officers did not share its unrealistic vision for the site.

205. The proposal breaches virtually all the design principles identified in the development plan which should inform the development of this allocated site. None of these breaches is necessary, given the Mayor's judgment that the previously consented scheme can be built in accordance with the development plan. Nevertheless, the appellant argues either that the appeal scheme does still comply with these design principles, or that the principles are unimportant, despite the fact that they are carried forward in the emerging Local Plan. This is not credible.

206. The appellant's approach to affordable housing has been dictated by the desire of the appellant, not the public interest. A policy-compliant proportion of affordable housing (35%) was offered throughout the application process, notwithstanding the advice of its viability consultant that a lower contribution might be justifiable. Less than two months before the Inquiry started, the appellant revised its offer to a much reduced 21%. This volte-face was defended by the same viability expert whose advice had previously been rejected. Again, this is not credible. The scheme was conceived as an over-ambitious gamble, to be taken to appeal at the earliest opportunity. This is a misuse of the appeal jurisdiction and flies in the face of the Government's injunction that an appeal is intended to be a last resort.

Breaches of the development plan and other policies

Issue 1: Effect of the scale, height and massing of the proposal on the character and appearance of the surrounding area

207. Paragraph 127 of the Framework[150] states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. Policy 7.7(A) of the LonP[151] states that tall and large buildings should be part of a plan-led approach to changing or developing an area and should not have an unacceptably harmful impact on their surroundings. The policy goes on to say that such buildings should relate well to the form, proportion, composition, scale and character of surrounding buildings, urban grain and public realm, particularly at street level.

[150] CD1
[151] CD2

208. The CS[152] sets out a spatial vision for the Borough that includes identifying the Millwall sub-area as one of very high growth (over 3501 residential units). The vision for Millwall[153] includes continuing the transformation of the north of Millwall to provide opportunities for local employment and new housing whilst achieving greater integration with Canary Wharf. Three principles are set out, the third of which is critically important in this case:

Taller buildings in the north should step down to the south and west to create an area of transition from the higher-rise commercial area of Canary Wharf and the low-rise predominantly residential area in the south.

209. The taller buildings in the north are in the region of 200m high. If there is to be a successful transition to the low-rise predominantly residential area in the south, development proposed to the north of the Millwall Outer Dock should be significantly lower than 200m. The same step-down principle is identified as informing the development of Cubitt Town, the sub-area immediately to the east of Millwall.

210. Policy DM26 of the MDD[154] regulates building heights. It states that heights will be considered in accordance with the town centre hierarchy shown in Figure 9 and the criteria in paragraph 2 of the policy. In Figure 9, the appeal site is in the lowest of five tiers in the hierarchy by virtue of being an area outside a town centre. Under paragraph 2(a) of Policy DM26, proposals for tall buildings must be of a height and scale that is proportionate to their location within the town centre hierarchy and sensitive to the context of their surroundings. This is carried forward into the specific allocation of the appeal site (site allocation 18) to provide a comprehensive mixed-use development including a strategic housing development. The design principles[155] for the site allocation reinforce the importance of the step-down approach:

Development should respect and be informed by the existing character, scale, height, massing and urban grain of the surrounding built environment and its dockside location. Specifically, it should acknowledge the design of the adjacent Millennium Quarter and continue to step down from Canary Wharf to the smaller scale residential to the north and south.

211. The reference to the adjacent Millennium Quarter relates to site allocation 17, also a strategic housing development, comprising an area to the east of the appeal site which extends northward along Millwall Inner Dock. The design principles for this allocation include that development should:

Respect and be informed by the existing character, scale, height, massing and urban grain of the surrounding built environment and its dockside location; specifically it should step down from Canary Wharf to the smaller scale residential areas south of Millwall Dock.

212. The step-down principle is carried forward into the emerging THLP[156]. The design principles for site allocation 4.12 (Westferry Printworks), which is again an

[152] CD4, page 44
[153] CD4, page 123
[154] CD5
[155] CD5, page 149
[156] CD6

allocation for housing and employment, include that development will be expected to:

Respond positively to the existing character of the surrounding built environment and its dockside location. Specifically, buildings should step down from Marsh Wall[157] to the smaller scale residential properties within the southern part of the Isle of Dogs and to the west of Millharbour.

213. Analysis of the existing and consented townscape in Millwall shows that the step-down principle has been respected. As Mr Nowell explained, the key features of this townscape are:

- North of the site, in the area characterised by the appellant as Inner Millwall/Quarterdeck[158], development is comprised primarily of low-scale, residential development.
- West of the site, the area between Westferry Road and the River Thames, described by the Appellant as Westferry Road Riverside, is comprised predominantly of mid-rise residential development.
- South of Millwall Outer Dock, the prevailing character is low-scale residential development.
- Immediately east of the site, there is an office quarter/business park at Greenwich View Place.
- North of Greenwich View Place, on either side of the Millwall Inner Dock and extending up to, and along, the southern boundary of South Dock, is an area of high-density development that progressively steps up in height on the approach to Marsh Wall. The Appellant describes this character area as the South Quay/Millharbour/Marsh Wall East area[159].

214. Of all these areas, only South Quay/Millharbour/Marsh Wall East, comprised of land historically in employment use, is currently undergoing change. Importantly, no significant change is contemplated in the predominantly residential area immediately to the north of the site. This area is comprised of many hundreds of small land parcels in different ownerships. There is no prospect of any part of this area being redeveloped to provide an additional tall building in the foreseeable future. It follows that any redevelopment of the appeal site must respond to the low-rise residential context, immediately to the north, that is not changing.

215. The appellant relies on an appeal decision (from December 2018) in relation to land at 49-59 Millharbour, 2-4 Muirfield Crescent and 23-39 Pepper Street[160] (the 49 Millharbour decision), in which planning permission was granted for two tall buildings of 26 storeys (90.05 m AOD) and 30 storeys (102.3m AOD). Whilst respecting the Inspector's decision, the Council was aggrieved by his planning judgment that the scheme could be reconciled with the step-down design

[157] Marsh Wall is the east/west street that runs south of South Dock, at the northern end of the Millwall sub-area
[158] CD32, page 53
[159] The locations of these character areas are shown on Figure 2.5 of Mr Nowell's proof (LBTH/1/B)
[160] CD51

principle in the development plan[161]. The Council considers that the 49 Millharbour decision marked a departure from the progressive step-down in the building heights permitted along the Millwall Inner Dock, from South Dock towards Millwall Outer Dock. Given the sharp transition from the 15, 14 and 8-storey schemes from 41 to 47 Millharbour to the 30-storey scheme (at its highest) at 49 Millharbour, the Inspector's view that the scheme would be seen as an extension of the cluster of high density residential schemes along the dockside[162] is not agreed.

216. Whether or not the Council is right in relation to 49 Millharbour, it is clear that the current appeal proposal would not be read as an extension of any other cluster. The proposed buildings would be read as an independent cluster with an obvious internal dynamic of stepping up towards the highest tower (T4), when the policy instruction is to achieve the contrary. To use the language of the 49 Millharbour decision, this appeal proposal would "*unreasonably compromise*" the "*general pattern of decreasing building heights away from the Canary Wharf cluster*"[163]. The harm that would be caused by breaching this design principle is more than a formal breach of policy. The proposed buildings would read as a separate cluster of tall buildings within the setting of the cluster of tall towers at Canary Wharf[164].

217. One Canada Square sits at the heart of the Canary Wharf cluster and is the most prominent building. The two tallest towers in the appeal scheme, T3 (32 storeys) and T4 (44 storeys), would compete with the predominance of One Canada Square to a much greater extent than the consented scheme. They would suggest that the overall design vision for the area, on the approach to the Millwall Outer Dock from the north, is to bring building heights back up to those of the Canary Wharf cluster, effectively book-ending the development that lies between. That would fly in the face of the primary purpose of the step-down principle, which is to preserve the visual predominance of the Canary Wharf cluster, in particular One Canada Square, in broader views.

218. The harm caused would be particularly apparent in views from Greenwich Park and the Royal Naval College[165]. The proposed buildings would read as a separate extension of the Canary Wharf cluster in a way that the consented buildings would not. There is no basis for such an extension in the development plan. The photomontages capture the practical consequence of increasing the heights of the consented buildings to the extent proposed, including a 40% increase in the height of T4. There is no justification for departing from a plan-led approach to this extent, particularly when it is agreed that the Council has a 5-year housing land supply and planning permission has already been granted for a more moderate scheme.

219. It has been suggested that the appeal scheme would bring some symmetry to longer views from the south east of the townscape of the Isle of Dogs, avoiding the table top effect of the current Canary Wharf cluster. This suggestion is

[161] See the photograph in Figure 2.11 of Mr Nowell's proof (LBTH/1/B), in which the 49 Millharbour site is in the extreme left of the view
[162] CD51, paragraph 19
[163] CD51, paragraphs 22 and 25
[164] CD32, see View 5 from Mudchute and View 23 from Millwall Park
[165] See Figures 4.24 to 4.27 in Mr Nowell's proof (LBTH/1/B)

unrealistic. The appeal cluster would be significantly closer than the Canary Wharf cluster to the foreground of the view. Seen in perspective, the proposed tall buildings would appear incongruously as a series of towers stepping up from west to east in the foreground of the view. There would be no development of similar scale and height to the east of T4, in the same building line, to provide a sense of balance or transition.

220. As seen from the southern side of Millwall Outer Dock, T4 would be taller than the Dock is wide. Its scale would be out of all proportion to its surroundings. This is shown vividly in the additional modelled views that Mr Nowell prepared using the programme VU.CITY after the appellant refused the Council's request to provide such views. These modelled views are devastating. The extreme disproportionality persists in views taken further south[166]. As Mr Nowell said in evidence, all three buildings (T2, T3 and T4) would appear "*fantastically high*" from this vantage point. They would be the definition of overbearing development.

221. For these reasons, the appeal proposal would be an overbearing design that would be unduly prominent in local and more distant views, detracting from the Canary Wharf cluster of tall buildings, the pre-eminence of which is protected by the extant and emerging development plan. This would result in multiple policy breaches, the most pertinent being paragraph 127 of the Framework, Policy 7.7 of the LonP and Policy DM26 and site allocation 18 in the MDD. Given the priority in both the development plan and national policy to achieving high-quality design that respects its context, substantial weight should be given to these policy breaches. Moreover, permitting a scheme of this vast scale, that fails to respect the character and appearance of the area, would have far-reaching and long-term consequences for the planning of the entire Isle of Dogs.

Issue 2: Effect of the proposal on strategic views and the settings of the Maritime Greenwich World Heritage Site and the Grade I listed Tower Bridge

222. Policy 7.8(D) of the LonP states that development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale and materials and architectural detail. Policy 7.10(B) states that development should not cause adverse impacts on a WHS or its setting, which would include not compromising a viewer's ability to appreciate its Outstanding Universal Value (OUV), integrity, authenticity or significance. CS Policy SP10(1)(a) states that the Council will protect, manage and enhance the setting of the Maritime Greenwich WHS by reference to the relevant WHS Management Plan. Policy SP10(2) states that it will also protect and enhance the settings of listed buildings and Local Landmarks. The design principles for site allocation 18 of the MDD (Westferry Printworks) include that development should protect and enhance the setting of the Maritime Greenwich WHS and other surrounding heritage assets.

223. Maritime Greenwich was added to the list of WHS for its concentration of high-quality buildings of historic and architectural interest in 1997. It is one of only four WHS in the whole of London. Greenwich became the site of a royal palace in the 15th century and was the birthplace of many Tudors, including Henry VIII and

[166] See Figures 4.6 to 4.11 in Mr Nowell's proof (LBTH/1/B). See also Figures 4.14 and 4.15 for viewpoints further to the south

Elizabeth I. The palace became dilapidated during the English Civil War and was rebuilt as the Royal Naval Hospital for Sailors by Sir Christopher Wren, becoming the Royal Naval College in 1873. The College offered military education until 1998, when the buildings passed to the Greenwich Foundation. The buildings have been open to the public since then. The OUV of the WHS relates not only to the built form and designed landscapes within it, but also to the long views that its topography provides. These long views were exploited in the design of the landscape and buildings, including the long view out to the Isle of Dogs.

224. The Council's heritage expert, Mr Froneman, explained that the appeal scheme would have several adverse impacts on the setting of the WHS, including:

- losing a critical gap in the view, centrally along the Grand Axis from the Old Royal Naval College, in the area between Queen Mary's Quarter and King William's Quarter, largely destroying the residual sense of historic openness in this view;
- extending the Canary Wharf cluster significantly westwards, making it almost inevitable that other developments would be promoted to fill the perceived gaps between the towers; and
- losing the remaining undisturbed historic roofline of the Old Royal Naval College, especially when seen from eastern viewpoints.

225. The appellant did not seek to argue that these harms would be suffered in any event as a consequence of the consented scheme. With that scheme in place, there would still be a residual sense of historic openness in some of the views along the Grand Axis, there would still be a depth of field in these views and it would still be possible to appreciate the horizon line and the largely uninterrupted silhouette and/or historic roofline of some of the most important buildings in the WHS, notably the Queen's House and the Old Royal Naval College.

226. Maritime Greenwich is the public body with responsibilities to conserve and maintain Maritime Greenwich WHS for the benefit of present and future generations in line with the principles set out in the 1972 World Heritage Convention. The detailed letter from the World Heritage Co-ordinator at Maritime Greenwich[167], which is independent from the evidence of Mr Froneman, made the following key points:

- Whilst the historic visual link along the axial view from the Royal Observatory through the Queen's House (the Grand Axis) between two key points in Greenwich and Limehouse has been lost, the proposed development has the potential to create a precedent for further development, giving rise to concerns about the continuing expansion of development to the west of the Canary Wharf cluster. This is likely to result in a 'table top' effect due to the blocking impact of height, mass and density, destroying an important part of London's skyscape for generations to come, creating a disconnect between the two banks of the River Thames and undermining the importance of the Grand Axis as a key attribute of the OUV of Maritime Greenwich WHS.

[167] LBTH19 – the comments are summarised here

- The proposed scheme would have a potentially adverse impact on the designated view from the General Wolfe Statue in Greenwich Park, (View 5A in the London LVMF), a key part of the Mayor's strategy to preserve London's character and built heritage.
- The prominence of the development is likely to dominate the setting of the WHS, constrain (although not interrupt) the Grand Axis and significantly impair the view of the remaining roofline to the west of the Queen's House and Old Royal Naval College as viewed from Greenwich Park.
- The overall effect is likely to reduce the ability of visitors and the local community alike to appreciate the historic environment and understand and interpret the wonder and significance of the Maritime Greenwich WHS.

227. Similar concerns to these were also expressed by the Royal Borough of Greenwich[168]. In response, Dr Miele (the appellant's heritage expert) put considerable emphasis on the lack of formal objection by Historic England. However, Historic England's consultation response is not an endorsement of the scheme. It raises a clear concern about the precedent that the appeal scheme would set in the context of buildings of the scale proposed not being plan-led and therefore not part of a positive, managed strategy for tall buildings, as Historic England's guidance advises.

228. Historic England's response is not detailed and does not analyse the qualities of the WHS, its history and its areas of sensitivity in the way that Mr Froneman and Maritime Greenwich have. Historic England could not be expected to know as much about the challenges facing the WHS as the public body (Maritime Greenwich) whose sole focus is the WHS. The Inquiry has the benefit of a detailed response from that body which should be given considerable weight.

229. Dr Miele nevertheless maintained that the conclusions of the Townscape, Visual and Built Heritage Assessment[169] were sound. Whilst agreeing that the proposal would be readily perceptible from within the boundaries of the WHS, he adopted the conclusions in the assessment that the susceptibility of the WHS to change is low to medium and that its sensitivity is medium. Bizarrely, the effect of the construction works for the proposal on the WHS was assessed to be minor beneficial[170]. Dr Miele accepted that this was a clear error and that it should have read negligible instead. However, based on a likely 6-year programme for developing the appeal scheme[171], it is not credible to suggest that the heavy construction activity associated with erecting buildings of this scale and height would have no more than a negligible impact on the setting of the WHS, particularly as perceived internally from the WHS itself.

230. Dr Miele's view that the appeal proposal would bring a minor benefit to the setting of the WHS, by completing the Canary Wharf cluster of buildings in views from the WHS, should be rejected for the reasons already given in relation to Issue 1 above. For the reasons explained by Mr Froneman, the proposal would

[168] Letter from the Royal Borough of Greenwich to the Council dated 1 March 2019 objecting to the application and a further letter to the Inspectorate dated 19 July 2019 (LBTH/20)
[169] CD32 - Volume 2 of the Environment Statement
[170] CD32, page 74
[171] See Mr Fourt's Appendix 4f (WDL/5/C)

result in less than substantial harm to the setting of the Maritime Greenwich WHS. Case law indicates that considerable weight should be given to this less than substantial harm in the final planning balance[172].

231. To avoid duplication at the Inquiry, the Council led on matters relating to Maritime Greenwich WHS and the GLA led in relation to Tower Bridge. The Council's closing submissions respect that division of labour. The Council fully endorses the GLA's case that the distinctive see-saw design of the Grade I listed Tower Bridge makes it not only one of the most recognisable landmarks of London, but the United Kingdom as a whole. It is arguably the most famous bridge in the world.

232. There are important views in the direction of Tower Bridge from London Bridge, enabling the silhouette of Tower Bridge to be appreciated. A tower permitted in the background at Ontario Point, Canada Water has intruded upon this silhouette in a manner that harms the setting of Tower Bridge. However, there is still an area, roughly in the centre of London Bridge, where Tower Bridge blocks out Ontario Point, enabling its silhouette to be seen against the sky without interruption.

233. The proposal would be distinctly visible within the silhouette of Tower Bridge, within some of the last remaining areas where the silhouette can still be seen without interruption. This, too, would cause less than substantial harm to which considerable weight should be given in the final planning balance.

Issue 3: Effect of the proposal on the recreational use of Millwall Outer Dock

234. Policy 7.7(D)(a) of the LonP states that tall buildings should not affect their surroundings adversely in terms of microclimate, wind turbulence and navigation (amongst other matters). Policy 7.27(A) states that development proposals should enhance use of the Blue Ribbon Network. Policy DM12(1) of the MDD states that development within or adjacent to the Blue Ribbon Network will be required to demonstrate that there is no adverse impact on the Blue Ribbon Network. Policy DM26(2)(h) of the MDD states that tall buildings must not adversely impact on the microclimate of the surrounding area.

235. The policy requirement is therefore to avoid an adverse effect on wind conditions within Millwall Outer Dock. It is accepted that a de minimis adverse effect would not be in breach but a material adverse impact would lead to a breach. In addition, Policy DM12(3) of the MDD imposes a positive obligation on those seeking to carry out development adjacent to the Blue Ribbon Network to identify how it will improve the quality of the water space and provide increased opportunities for access, public use and interaction with the water space. This accords with Policy 7.30(B) of the LonP which states that development proposals within or alongside London's Docks should protect and promote their vitality, attractiveness and historical interest by promoting their use for water recreation (amongst other matters). Plainly, any proposal that would reduce the opportunities for public use of Millwall Outer Dock would be in breach of these policies.

[172] South Northamptonshire DC v Secretary of State for Communities and Local Government [2015] 1 WLR 45 (the Barnwell Manor case)

236. Wind experts acting for the Council and the appellant met in June 2015 to discuss the methodology for the wind impact chapter of the ES[173]. Dr Stanfield, the Council's wind impact expert at this Inquiry, attended that meeting. The minutes record his concerns that the proposed wind impact assessment work would not be adequate to capture the likely impact of the proposal on turbulence within Millwall Outer Dock. He proposed tufting[174] the wind tunnel model to allow pragmatic and rapid verification of the degree of re-circulation and vorticity within the wind patterns across the dock. Dr Stanfield advised that the appellant's proposal to derive data about average wind speeds and average wind directions for measurement locations in Millwall Outer Dock would be inadequate. This rudimentary approach would not capture the extent of fluctuation in the wind direction at each measurement point that would be caused by the proposed buildings.

237. Nevertheless, the appellant sought planning permission for the 2016 scheme without remedying these deficiencies. As part of its assessment of the application, the GLA instructed Mr Breeze, of the consultancy BRE, to review the wind impact assessment work done by the appellant's consultant and the comments that Dr Stanfield had provided on that work. In March 2016 Mr Breeze wrote a detailed letter to the GLA[175] that, in essence, endorsed the concerns expressed by Dr Stanfield. The key points are:

- The assessment of sailing quality is not straightforward due to the large number of wind-related parameters that affect sailing.
- Factors which affect sailing quality include the strength and direction of the wind, turbulence, the rate of change of wind direction and the ability to sail a given course.
- Wind tunnel testing is generally commissioned by the developer.
- There is a commercial incentive towards testing a bare minimum of parameters, with a mutual interest in using sailing-related criteria that can enable a proposed development to take place.
- In principle any analysis method can be proposed and used to justify whether or not a proposed development has a significant effect upon sailing quality.
- The turbulence intensity at a given location on the water is directly related to the probability of capsize. Therefore, the testing undertaken has not considered all factors that are related to sailing quality.
- The impacts upon the DSWC are potentially greater than those evaluated in these studies. For example, the turbulence intensity, the ability to sail a given course and the ability to sail away from the launching location at the western end of the dock are not addressed.

[173] See minutes of the meeting at Appendix A to Dr Stanfield's proof (LBTH/5/B)
[174] Wind 'tufts' are small pieces of material used within physical wind models to enable the character of the wind impact at a particular location to be better understood
[175] CD63 – the key points are summarised here

238. The same Mr Breeze who wrote this letter to the GLA in March 2016 subsequently accepted instructions to act for the appellant in relation to the same development on the same site. Mr Breeze confirmed in cross-examination that he had not sought the GLA's consent before accepting instructions to act for the appellant[176]. The conflict of interest is self-evident and even starker in this case, given that Mr Breeze had made strong criticisms of the appellant's wind impact assessment work in his advice to the GLA. Despite this history, Mr Breeze considered it appropriate to accept instructions from the developer he had previously criticized, defending the adequacy of assessment work that he had previously described as having significant omissions and criticizing Dr Stanfield for seeking to make good those omissions. Mr Breeze had put himself in an untenable position. He accepted that this was profoundly regrettable. In the light of this concession, the weight that can properly be given to Mr Breeze's evidence, particularly his criticisms of Dr Stanfield's supplementary assessment work, is very substantially reduced.

239. The wind impact chapter of the ES for the appeal scheme drew heavily on the ES submitted in 2016. The sentence in the 2016 ES that Mr Breeze identified as encapsulating its limitations has survived in the 2019 ES, confirming that[177]:

The tests did not include measurement of the vertical component of the wind, or of the large scale turbulence or variation in the local wind, both of which might affect the handling of a dinghy.

240. Within these limitations, the ES assessed the impact of the larger development now proposed on wind conditions in Millwall Outer Dock. Two prevailing wind sectors were identified, from southwest to west and from the north east. This is consistent with the two main wind sectors identified by Dr Stanfield. It is the north easterly sector that is of the greatest concern. The technical work supporting the ES shows that "*the development wind conditions diverge from the existing cleared site conditions in a region directly south of the site*" with "*abrupt changes in wind speed and directions over this area, to a greater extent than is shown in the existing cleared site*"[178]. This lack of consistency in the speed and direction of wind is pronounced in the western half of the dock where sailing boats are launched. This is graphically depicted in the technical ES figures comparing wind speeds from various directions[179].

241. With a north easterly wind, conditions in the western half of Millwall Outer Dock would be considerably less steady than in its eastern half. Figure 17.12 of the ES shows the changes in sailing quality relative to the cleared site. The ES finds that there would be a reduction in sailing quality over the majority of the dock area, apart from the eastern end, as a result of the proposed development (with existing surrounding buildings). This reduction in sailing quality would be "*adverse and significant*"[180].

[176] Inspector's note – Mr Breeze recalled discussing the matter with a colleague at BRE and that this had satisfied him that he could properly act for the appellant
[177] CD31, paragraph 17.3.2
[178] CD31, paragraph 17.5.10
[179] See Figure 8 of CD35
[180] CD31, paragraph 17.7.1 and Table 17.5

242. Table 17.4 in the ES shows the average number of sailing days per month that would meet the sailing quality criteria in different scenarios. The key comparison is between scenarios C3 (2018 proposed development with cumulative surrounding buildings) and M1 (2016 consented scheme with existing surrounding buildings) in relation to the western dock. Whereas the consented scheme would result in an average 11 sailing days per month of an acceptable quality (a 39% reduction on the cleared site scenario), the appeal scheme would reduce this further to 10.3 days (a 42% reduction on the cleared site scenario). Mr Breeze agreed in cross-examination that:

- this would be a further deterioration in sailing quality even without allowing for the effects of vertical down draughts and turbulence intensity; and
- the 2018 ES does not capture the full extent of the potential impact of the appeal scheme because there are important components of that impact (vertical down draughts and turbulence intensity) that have not been included in the impact assessment.

243. At the Inquiry, the appellant suggested that an addendum to the 2016 ES proved that additional wind testing was in fact carried out in light of the concerns expressed by Dr Stanfield and Mr Breeze[181]. There is reference to additional tuft testing which had been recorded on video. The addendum states:

The video of the tuft tests captured by RWDI gives an indication [of] the flow unsteadiness for a complete range of wind angles in 10° increments. It can be seen that when the wind has a northerly component, the majority of the tufts fluctuate over a greater angle range, particularly those to the north edge of the dock.

Mr Breeze agreed that wind with a northerly component must include all directions in the northern half of the wind rose. The video shows that for half of all wind directions, the tufts fluctuate to an extent that is worth reporting. There is, therefore, potential for significant unsteadiness, not otherwise accounted for in the ES, for half of all possible wind directions including the north easterly wind sector which is the second most common wind sector for the site. North easterly winds are prevalent in April and May at the start of the sailing season, when novices typically commence their training in the western half of the dock.

244. When the Council submits that the ES does not contain an adequate assessment, it is not merely making academic points. The appellant's own additional technical work substantiates the Council's concern that the appeal scheme would have an additional, significant impact on turbulence intensity. Moreover, computational fluid dynamics (CFD) modelling commissioned by Dr Stanfield reinforces the concern about a greater, as-yet unassessed, degree of unsteadiness in wind conditions. This work models the behaviour of a north easterly wind, with and without the appeal scheme in place. In these images, the greater the variation in the colours shown within the dock, the greater the variation in wind speed and, therefore, the greater the potential for

[181] CD78, paragraphs 17.3.10 to 17.3.12

unsteadiness[182]. The much greater potential for unsteadiness in the western part of the dock is graphically illustrated.

245. The same point is made even more vividly in the comparative 3-D images. Again, the variation in the colours depicts the greater fluctuation in wind speed with the appeal scheme in place. As Mr Breeze accepted in cross-examination, the 3-D images also show the greater probability of vertical down draughts between towers T2 and T3 that would not dissipate horizontally on the land north of the dock before they reach the water. This is another aspect of unsteadiness that the appellant's wind impact assessment has failed to consider.

246. In summary, the appellant's wind impact assessment is seriously deficient because it fails adequately to assess two aspects of that impact, the effects of vertical down draughts and turbulence intensity. Further work carried out by both the appellant and the Council has confirmed that these two aspects cannot be left out of account if the assessment is to be adequate.

247. When the GLA's officers considered the 2016 scheme in their Stage 3 report, it was incorrectly stated that Dr Stanfield had advised the Council that the appellant's wind impact assessment was "*comprehensive*". As set out above, this was not the case. GLA officers concluded that the 2016 proposal would have a significant adverse impact on sailing quality in the north west corner of Millwall Outer Dock, in breach of policies 7.30 and 7.7(D) of the LonP and Policy DM26 of the MDD. However, the "*substantial mitigation package*" proposed by the Appellant meant that this impact was not, ultimately, found to be unacceptable[183].

248. The GLA report did not undertake a detailed analysis of the mitigation package. Only one measure was specifically commented upon and no component of the package was specifically tested against the criteria in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations). It follows that, if the GLA's officers were wrong to put as much weight on the 2016 mitigation package as they did, their main basis for concluding that the wind impact of that scheme would be acceptable evaporates.

249. A similar mitigation package is now relied upon in relation to the appeal scheme[184]. At the start of the Inquiry, a contribution of £756,000 was proposed (the Sailing Centre Mitigation Contribution). On the penultimate sitting day, the appellant increased this proposed contribution to £1,139,000. When asked in open Inquiry to explain how this uplift of £383,000 (a 51% increase) had been calculated, nobody in the appellant's team could do so, still less identify on what the additional funds would be spent. Indeed, to this day, the appellant has not explained how the underlying contribution of £756,000 was reached either.

250. The GLA did not have the benefit of the public inquiry process, or submissions by Counsel, when it assessed the mitigation package proposed in 2016. This Inquiry has enabled the latest package to be scrutinized with the rigour required by Regulation 122(2). The only proper conclusion is that the mitigation measures

[182] Dr Stanfield's proof, paragraph 3.28 onwards, comparative images on pages 22 and 23 and comparative 3-D images on pages 26 and 27 (LBTH/5/B)
[183] CD49, paragraphs 347, 355 and 358
[184] WDL35, see definition of Sailing Centre Mitigation Measures (page 18) and Schedule 8

are nothing of the kind. Instead, they are loosely-framed compensation measures intended to purchase the withdrawal of the DSWC's objection. It would be unlawful to give weight to such measures.

251. Dealing with each of the proposed measures in turn:

(i) *The provision or improvement of a pontoon or pontoons, that may be mobile or fixed*. Mr Davis, the Operational Director of DSWC, rejected this proposal as based on flawed premise, commenting that no testing appears to have taken place to demonstrate that the conditions in the east are suitable during the periods that the west is unusable. In addition, he complained that there had been no accounting for how to move large numbers of young people (90 plus in the summer) to the opposite end of the dock and no appreciation of how the time this takes would impact on the sessions and learning outcomes[185]. A measure that is rejected as unattractive and unrealistic by the people expected to use it cannot be said to be necessary to make the development acceptable in planning terms. Nor can it rationally be said to be fairly and reasonably related in scale and kind to the development if the wind impact of the development has not been adequately assessed and there is inadequate evidence that it will enable sailing to take place when the conditions in the west of the dock are bad.

(ii) *The cost of acquiring new vessels and/or other equipment where required as a consequence of the wind impacts of the Development.* No such vessels or equipment have been identified, nor is there any evidence either or both would be sufficient to enable sailing still to proceed when wind conditions in the western end of the dock are challenging. When asking questions of Mr Davis at the Inquiry, Counsel for the appellant drew on his own experience to suggest that weights could be added to boats to make them steadier. Mr Davis rejected this suggestion summarily[186]. There is no proper explanation of how these measures would mitigate the wind impact. They fail all three criteria in Regulation 122(2).

(iii) *The payment of additional staff costs associated with matters associated with wind impacts of the development on DSWC's activities*. This is the only element of the package that Mr Davis was willing to countenance as a mitigation measure in his email of 10 August 2019. However, the appellant has not identified what the additional staff costs would be. Mr Davis submitted an email from 2016 setting out the potential costs of some mitigation measures then being discussed[187]. On the question of staffing, he said little more than that he would require 50% more staff on a session if sailing activity were moved from the dock to the River Thames. However, there is no proper proposal to move sailing activity to the Thames. The

[185] Email from Mr Davis to the Planning Inspectorate of 10 August 2019 (OD12)
[186] Inspector's note – Mr Young (for the DSWC) had previously mentioned the possibility of boats being made more robust. Mr Brown asked Mr Davis whether that might refer to the use of heavier centreboards to reduce capsize risk. Mr Davis responded that this was not what Mr Young was referring to. He thought Mr Young was talking about boats that might withstand collisions.
[187] Email of 12 April 2016 attached to OD15

evidence does not demonstrate that the staff costs element of the package complies with Regulation 122(2).

(iv) *The payment of the costs associated with any training or apprenticeship scheme(s) relating to training required associated with wind impacts of the development on DSWC's activities*. In the email referred to above, Mr Davis identified potential staff training costs to be covered by the 2016 mitigation package. The courses identified appear to be those that would be undertaken by staff members of the Centre in any event. No explanation was given of how these costs would relate to the wind impact of the proposed development. The evidence does not demonstrate that this element complies with Regulation 122(2).

(v) *The funding of a study to assess the feasibility of sailing on the River Thames and the funding of measures arising from such a study.* This element is so lacking in specificity that it does not begin to provide a basis for compliance with Regulation 122(2). It is also objectionable in principle because it amounts to transferring to DSWC, a third party, investigation of the feasibility of mitigation required to reduce the impact of development. That is plainly the responsibility of the developer who wants to build the scheme.

(vi) *Such other measures as are considered reasonably required and appropriate by DSWC to mitigate impacts of the development on DSWC's activities including such consequential costs and expenses incurred by DSWC resulting from the wind impacts of the Development on DSWC's activities (including but not limited to works and/or reorganisation of the premises such as the provision of new indoor facilities or indoor classroom space, subdivision of space and reorganisation of storage and maintenance facilities to enable use of the site to respond to any impacts of wind*. This is unlawful on several counts. First, it defers to DSWC, rather than the Secretary of State as the decision-maker, the judgment as to whether the measures comply with Regulation 122(2). Secondly, as the identification of the measures is deferred to a future date, there is nothing that can be tested now against the relevant criteria. Thirdly, insofar as examples are given (such as provision of new indoor facilities), these are measures to enable DSWC to set up a new revenue stream focused on different activities. This would be compensation, not mitigation of the wind impact.

(vii) *And/or any other alternative measures that are demonstrated to provide mitigation for the wind impacts of the development on DSWC's activities*. The requirement to demonstrate that an alternative measure would provide mitigation appears to link to the power given to the Council, under Schedule 8, to approve mitigation measures proposed at a later date. This is unlawful for the same two reasons given in the previous paragraph, the only difference being that the error here is to defer to the Council (rather than the DSWC) to make the judgment on compliance with Regulation 122(2) when this is a matter solely for the Secretary of State when deciding whether to grant planning permission.

252. In conclusion, the impact of the appeal proposal on wind conditions in the western part of the dock would be significantly adverse. This is even without allowing for vertical down draughts and turbulence intensity, the additional

effects of which have not been adequately investigated despite their critical relevance. It would be contrary to Regulation 122(2) of the CIL Regulations to give weight to any of the suggested mitigation measures in the planning balance because they do not comply with the three mandatory criteria. Consequently, there would be unmitigated breaches of development plan policies relating to wind impact that need to be weighed in the final planning balance. Substantial weight should be given to these breaches given that DSWC is a treasured local resource, not only for its sporting achievements, but also for its mission of reducing social inequality on the Isle of Dogs by making what is commonly perceived to be an elitist sport accessible to disadvantaged children and young adults. The decision-maker should be in no doubt that the appellant's failure to mitigate the impacts of the proposal on the DSWC means that its activities would be severely constrained, at the very least, if the appeal scheme were built.

Issue 4: The mix of market and affordable housing in terms of numbers, size and tenure

253. During the course of the Inquiry, the appellant revised its affordable housing offer to provide a policy-compliant tenure split of 70% affordable rent and 30% intermediate housing. However, the overall offer of just 21% of the residential units being affordable housing was unchanged and is unacceptable. The proposed proportion of family homes in the market housing is also unchanged and is too low to be policy compliant.

254. Policy 3.12(A) of the LonP states that the maximum reasonable amount of affordable housing should be sought when negotiating on mixed use schemes, having regard to affordable housing targets adopted by the local planning authority; the need to promote mixed and balanced communities; the size and type of affordable housing needed in particular locations; the specific circumstances of individual sites and the priority to be accorded to the provision of affordable family housing. Policy 3.12(B) states that development viability is relevant in negotiations on affordable housing. Policy SP02(3)(a) of the CS requires sites providing at least 10 new residential units to provide at least 35% affordable homes (subject to viability) and Policy SP02(4) sets out a tenure split of 70% social rented and 30% intermediate. MDD Policy DM3(3) states that development should maximise the delivery of affordable housing on-site.

255. At the Inquiry Mr Fourt (the appellant's viability expert) confirmed that, if the appeal is allowed, the appeal scheme would be built and that, if the appeal is dismissed, the consented scheme would be built. In coming to this position, the appellant must have satisfied itself that the consented scheme is sufficiently viable to be built out. The planning statement that accompanied the application in June 2018[188] claimed that the proposal could only support 27.5% affordable housing (by habitable rooms). This was on the basis of the original financial viability assessment (FVA) prepared by Mr Fourt[189] which showed an offer of 27.5% affordable housing delivering an internal rate of return (IRR) of 12.7% and a profit of £121.6 million.

256. The Appellant instructed Mr Fourt only 2 months, at most, prior to the submission of the appeal application. No other expert was instructed. It follows

[188] CD67, paragraph 6.23
[189] CD27

that the appeal scheme was designed without any input from an expert on viability. This was a remarkably casual approach. Despite Mr Fourt's advice, the planning statement explained that the offer to provide 35% affordable housing was made in recognition of the urgent need to deliver affordable housing in London, the Mayor's procedure for fast-tracking applications when 35% affordable housing is offered and the appellant's view on the long-term housing market. From the outset, the appellant rejected the advice of its own viability consultant. It was content to provide 116 more affordable units than it was being advised was viable at that time because it was confident that the value of the units would increase over time.

257. In March 2019, Mr Fourt prepared an addendum to the FVA[190] following a reduction in the number of units. This stated that the maximum proportion of affordable housing that could be viably supported by the amended scheme was 24.2%, resulting in an IRR of 12.85% and a profit of £129 million. However, the appellant still offered 35%. The appellant's statement of case for this appeal[191] (submitted in April 2019) implied that a revised affordable housing offer would be made but did not give any indication of what it might be. On 7 May 2019, the appellant's agent stated that the offer would be less than 35% although the actual amount was subject to an updated viability assessment which would be "*shared in due course*". The appellant has provided no evidence of any analysis carried out between March and May 2019 to justify the decision made to reduce the offer. This is despite the need (in policy terms) to justify any inability to deliver a policy-compliant level of affordable housing.

258. In summary, the appellant accepted that the scheme could deliver the minimum 35% of affordable housing for nearly a year after it submitted its planning application. Then, in May 2019, the appellant announced that the scheme could not deliver 35% without giving any indication of the reduction or explaining the basis for the change. No evidence was provided to the Inquiry to justify the change between March and May 2019. On 10 June 2019, the appellant's agent submitted a Financial Viability Assessment: Information Update Summary[192]. This document showed the workings for an affordable housing contribution of 21% which would generate an IRR of 12.7% and a profit of £130 million. Since then, it has been the appellant's case that 21% is the maximum viable contribution. Mr Fourt is now asking the Secretary of State to place greater weight on his evidence than that of his counterparts acting for other parties. However, the appellant has consistently rejected Mr Fourt's advice, during the application process, on the maximum viable contribution that the scheme can make towards affordable housing.

259. The most recent of the six assessments carried out by Mr Fourt (his August 2019 addendum[193]) has identified an IRR of 13.1% and the greatest profit (£137 million) of all the offers made to date. This is almost £16 million more than the profit generated by the scheme as proposed in the application when the affordable housing offer was 35%. Mr Fourt's comment (in cross-examination) that these profit figures have no meaning was not credible, given that he himself

[190] CD28, paragraph 6.1
[191] CD43, paragraph 6.7
[192] CD54, Appendix 5
[193] WDL/12

had provided this information. Having significantly reduced its affordable housing offer, the appellant is now in a substantially better position than it was when it made a policy-compliant offer in its planning application. There has been no adequate explanation of why the appellant is unable to revert to the original policy-compliant offer.

260. The appellant's consistent rejection of Mr Fourt's advice for almost all the application and appeal process is not the only matter that substantially reduces the weight that can be given to his evidence. A highly irregular feature of this case is that Mr Fourt had previously advised the GLA when the application for the 2016 scheme was called in. In May 2018, Mr Fourt then accepted an instruction from the appellant to advise on the current appeal scheme. It is surprising that an experienced member of the RICS should have considered it appropriate to accept instructions from the developer when he had previously advised the planning authority charged with scrutinizing the same developer's previous proposal for the same site. Mr Fourt would have been privy to the GLA's internal discussions and then taken that knowledge with him when advising the appellant. Even though the GLA did not object, Mr Fourt put himself in the very rare position of being cross-examined by his former client.

261. At the Inquiry the GLA led on matters relating to the benchmark land value (BLV) and the affordable housing review mechanism. The Council's submissions respect that division of labour. In summary, the Council considers that the appellant's use of a BLV of £45 million based on the 2016 consented scheme is artificial. This is because, in this case, there would be no site acquisition costs before the appellant could carry out the proposed development. The site was bare and without constraint when the appellant formulated this latest proposal and the appellant has confirmed its intention to build out the scheme if this appeal is successful. In the real world, therefore, the viability tool of the BLV is meaningless.

262. Moreover, Dr Lee's evidence[194] shows that the combined returns generated by the appeal scheme with 35% affordable housing (£111.2 million) would be significantly higher than those generated by the consented scheme (£80.5 million). Although the appeal scheme would require a higher investment, it would also include a significantly higher number of market units with the potential for growth in value over the development period. As noted above, the appellant clearly considers that sales values will grow over the development period.

263. The Inspector is invited to reject the appellant's viability evidence. The appellant has not demonstrated that delivering a policy-compliant level of affordable housing is not viable. This results in a clear failure to provide the maximum level of affordable housing required by the policies identified above, all of which are breached by this proposal. Consequently, only moderate (positive) weight should be given, at best, to the provision of affordable housing in the appeal scheme.

Market family housing

264. Policy 3.8(B)(a) of the LonP states that decision-makers must ensure that new developments offer a range of housing choices, in terms of the mix of housing

[194] Dr Lee's Addendum Note of 12 August 2019 (as amended on 22 August) (LBTH/14)

sizes and types, taking account of the housing requirements of different groups. Policy SP02(5)(b) of the CS states that a mix of housing sizes is required on all sites providing new housing, with an overall target of 30% of all new housing to be of a size suitable for families (three-bed plus), including 45% of new social rented homes. Policy DM3(7) of the MDD states that development should provide a balance of housing types, including family homes, in accordance with the breakdown of unit types set out within the most up-to-date housing needs assessment. One of the design principles identified for site allocation 18 in the MDD is that development should deliver family homes.

265. The appellant's weak case on this matter did not improve during the Inquiry. Of the 1,242 market housing units proposed, studio and one-bed properties make up 47% of the total. Just 9% of the units would have three or more bedrooms, well below the development plan requirement of 20%. The site has been explicitly identified in the MDD as suitable for family homes. There is a range of community infrastructure for families in close proximity, including the Arnhem Wharf Primary School. The appeal scheme includes a crèche and community centre, green space and play space and land has been earmarked for a secondary school. Of all potential housing locations on the Isle of Dogs, the appeal site is uniquely well-placed to deliver family housing.

266. Over 80% of children in the borough live in flats, of which 49% have three or more bedrooms[195]. In July 2019 there were over 300 flats with three bedrooms or more being advertised for sale or rent on the Isle of Dogs. The consented scheme would deliver a much higher proportion (28%) of family units with three or more bedrooms. Mr Goddard (the appellant's planning witness) asserted in his oral evidence that the market would not support the number of three-bed (or larger) units that policy would require (around 250 units). However, delivery of the scheme would be phased over a period of almost six years, meaning that only around 40 family units would become available each year. There is no evidential basis for suggesting that there would be no market for a modest, phased contribution to the stock of family housing in the borough.

267. In summary, the provision of units with 3 or more bedrooms (11% of all units and 9% of the market units) would fall far short of the policy target of 30%. It is accepted that this is a borough-wide target, not one that applies to specific schemes. Nevertheless, to fall short of the target on a site that is so well suited to family life is inexcusable. It follows that the delivery of market housing should be given only moderate weight in the overall planning balance.

Other matters

The secondary school

268. The appellant has decided to exclude from the application the secondary school required by MDD site allocation 18, on the basis that the school will be provided pursuant to the planning obligation relating to the consented scheme. It is not reassuring for the developer to rely on an implemented (but not yet built out) planning permission to argue that the appeal scheme would represent the comprehensive development sought by the MDD.

[195] Mr Ireland's proof of evidence, paragraph 1.15 (LBTH/4/B)

269. The appellant seeks to meet the Council's concerns by cross-referring, in its unilateral undertaking, to the s106 agreement that relates to the consented scheme[196]. The Council is concerned that the appellant has made inadequate efforts, pursuant to that agreement, to lease the school site to the Council to enable a school to be delivered. In response, the appellant has now undertaken to forgo the option of paying a financial education contribution to the Council, in lieu of leasing the school site, if the lease negotiations are unsuccessful. This is subject to a backstop whereby, if a lease agreement has not been entered into within six months of the Secretary of State granting permission for the scheme, or (if later) 30 June 2020, the owner/developer will either enter into a lease agreement with the Department for Education (DfE) or refer any matters in dispute to an independent expert.

270. The history of the appellant's lack of engagement with the Council, in stark contrast to its pursuit of the DfE, shows that there is no prospect of a lease to the Council being agreed in this timescale. This arrangement has been set up to fail and it is virtually inevitable that the DfE would become the lessee of the school site. The appellant argued that, in planning terms, it is irrelevant whether the school was delivered by the Council or the DfE. If so, why does the appellant seek to make any provision for reaching a lease agreement with the Council at all? It has done so because it recognises that it would be arguably improper (and therefore unlawful) to use s106 of the Town and Country Planning Act 1990 in such a way as to bypass the Council's statutory duties and powers to plan the education of children in its area.

271. The Council asks that the effort made to reach agreement with it on a lease is genuine and realistic. The appellant has rejected the Council's request to extend the post-permission period for lease discussions beyond the unrealistic six month period. There is no real intention to give the Council a fair crack at reaching an agreement. This means that the convoluted provisions in Schedule 7, Part 1, of the unilateral undertaking are unworkable and should be given no weight. In summary, the appeal scheme would not, itself, provide a school. The unilateral undertaking would have the effect, almost inevitably, of excluding the Council from being able to deliver a school within its own area. This would be totally inappropriate.

Prematurity

272. Paragraph 49 of the Framework states that prematurity arguments are unlikely to justify refusal other than in limited cases where the emerging Local Plan is at an advanced stage and the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan. Mr Ross (the Council's planning witness) considered that this is a proposal for substantial development and that the emerging Local Plan seeks to guide development in terms of height and scale[197]. The appeal proposal meets the terms of this guidance.

[196] CD56, Schedule 7, part 1
[197] see paragraph 9.50, Mr Ross' proof

Overall planning balance

273. This proposal would lead to multiple, serious breaches of the development plan. The Council accepts that the proposal would have notable benefits, namely the provision of market and affordable housing (albeit tempered by the policy breaches identified above); the generation of employment; the development of a sustainable site and the provision of open space. The Council gives all of these matters moderate, positive weight in the planning balance. However, set against these four moderate positive weights are the following:

- substantial negative weight given to the impact on townscape;
- considerable negative weight given to the less than substantial harm caused to the setting of the Maritime Greenwich WHS;
- considerable negative weight given to the less than substantial harm caused to the setting of the Grade I listed Tower Bridge; and
- substantial weight given to the unmitigated impacts on wind conditions in Millwall Outer Dock (the negative weight to be given to this issue has increased significantly in the light of the evidence at the inquiry).

274. Applying, first, the heritage balance required by paragraph 196 of the Framework, the four moderate positive benefits do not collectively outweigh the two considerable negative weightings to be attached to the two instances of less than substantial harm identified above. Planning permission should therefore be refused on this basis alone.

275. However, even if the Secretary of State concludes that the proposal survives this heritage balance, it is obvious, on a full planning balance, that two substantial and two considerable negative weightings outweigh four moderate positive weightings. Accordingly, the proposal breaches the development plan as a whole and the Council invites the Secretary of State to dismiss this appeal.

Further submissions made after the close of the Inquiry[198]

276. The report on the examination of the THLP concludes that, subject to the main modifications, the plan would provide an effective strategy which would meet the criteria for soundness. The emerging plan should now attract very substantial weight, if not full weight. Moreover, given that the plan is now very advanced this is a case where national policy on prematurity[199] applies with even greater force and a refusal on the grounds of prematurity is justified. The comments made by the local plan Inspector about specific policies generally reinforce the Council's case at the Inquiry. In particular, the Inspector referred to the need for building heights to step down from the Canary Wharf cluster (Policy D.DH6) and to the need for a contextual approach to design, having regard to the scale, composition and articulation of building form. The Council concludes that planning permission should be refused due to conflict with the following policies of the emerging THLP:

[198] The full submissions are at PID1 and PID5
[199] The Framework, paragraph 49

- D.SG5 – developer contributions;
- S.DH1 – delivering high quality design;
- S.DH3 – heritage and the historic environment;
- D.DH4 – shaping and managing views;
- S.DH5 – world heritage sites;
- D.DH6 – tall buildings;
- S.H1 – meeting housing needs;
- D.H2 – affordable housing and housing mix;
- S.OWS2 – enhancing the network of water spaces;
- D.OWS4 – water spaces; and
- Site allocation 4.12 – Westferry Printworks

277. The report of the examiner of the Council's draft CIL charging schedule finds that the schedule would provide an appropriate basis for collecting CIL. Previously, four large allocated sites (including the appeal site) had been nil rated. The examiner concluded that, with generally improved viability, the large allocated sites could bear the CIL charging rates set out in the schedule. The examiner noted the main modification relating to emerging THLP Policy D.SG5 (developer contributions). This states that:

For site allocations the policies set out in this plan may be applied flexibly to ensure that sites are viable and deliverable.

278. The Council considers that there is a wide gap between the affordable housing offer of 21% and the policy requirement for 35%. This gap has not been justified by the evidence before the Inquiry or by the introduction of CIL.

THE CASE FOR THE RULE 6 PARTY – THE GREATER LONDON AUTHORITY[200]

Introduction

279. The appeal proposal bears the hallmarks of overweening ambition. Although described as optimising the capacity of the site, in fact the proposal seeks to maximise the amount of market housing. The Framework and accompanying PPG seek to boost housing supply but not at any cost. Making good places for people to live, protecting the historic environment and ensuring that the maximum reasonable amount of affordable housing is provided are central objectives of national policy. These objectives have not been respected by this proposal.

280. The GLA's three objections all have a strategic focus:

- seeking to protect the significance of the iconic Tower Bridge;
- ensuring proper place-making in the South Poplar and Isle of Dogs opportunity area; and

[200] The full closing submissions, which are summarised here, are at GLA/16

- resisting the application of an out-of-date approach to the affordable housing offer which incorporates unjustified assumptions.

281. At the Inquiry the GLA co-operated with the Council to minimise duplication. The GLA's submissions reflect that approach and focus on the issues which are contentious between the GLA and the appellant.

Tower Bridge

Significance as a heritage asset: Tower Bridge and its setting

282. Tower Bridge is a Grade I listed building, which means that it is a building of exceptional interest. That categorization accounts for only 2.5% of all listed buildings in this country. It is agreed to be of great importance and is described as "*one of London's most famous landmarks*" [201]. It has two list entries, one for the Southwark side (first listed in 1949) and one for the Tower Hamlets side (first listed in 1973). The appellant's heritage evidence contained the listing descriptions although they appear not to have been included within the ES[202].

283. The list entries set out what is special and important about Tower Bridge and Dr Barker-Mills (the GLA's heritage witness) gave evidence on these matters. The key aspects are:

- It is of architectural interest, in a Gothic style, with ashlar dressings and high-pitched slate roofs behind a stone battlemented parapet. It was designed to reflect its proximity to the Tower of London[203]. It has high level footbridges between the towers, incorporating spans and linking the whole bridge together as a continuous structure.

- It is of historic interest, as a Victorian feat of engineering, reflecting the architectural values of the day, responding to concerns about congestion caused by the lack of a river crossing for workers connecting Southwark with the city and the new railway termini and associated goods depots coming into the capital[204].

- Its engineering is of particular interest. It is a low-level bascule bridge with wider side spans hung from curved lattice girders and a central narrower opening section. Although the bascules were electrified in 1976, some of the hydraulic machinery and the steam pumping engines have been preserved under the south approach viaduct. At the time of its construction, Tower Bridge was the easternmost crossing of the Thames and the largest bascule bridge in the world[205].

- One of the most important ways to appreciate the significance of Tower Bridge is to watch its bascules in operation. Opening times are published and the operation of the bascules, which can be appreciated from many vantage points, draws crowds of tourists.

[201] Dr Miele's Appendix 6, page 55 (WDL/3/C)
[202] Dr Miele's Appendix 6, pages 24 and 30 (WDL/3/C)
[203] Dr Miele's proof of evidence, paragraph 8.11 (WDL/3/B)
[204] Dr Barker-Mills' proof of evidence, paragraphs 4.7 to 4.11 (GLA/1/B)
[205] Dr Barker-Mills' proof of evidence, paragraph 4.11 (GLA/1/B)

284. At the Inquiry, Dr Miele (the appellant's heritage witness) was right to concede that all parts of the towers, the walkways and the bascules are important. He also accepted that much of the interest of Tower Bridge lies in its inner structure, within the towers, including the rise and fall of the bascules[206]. This was an important concession given the way in which he sought to interpret the LVMF and in light of the appellant's attempt to treat compliance with the LVMF as sufficient to preserve the setting of the Grade I listed building.

285. The appeal site is within the setting of Tower Bridge. That setting contributes to the significance of Tower Bridge and is protected in law by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act). Dr Miele accepted in cross-examination that the appeal scheme would be readily distinguishable within the setting of Tower Bridge as seen from London Bridge. Historic England's Good Practice Advice in Planning Note 3 (GPA3) provides guidance on how the setting of a listed building may contribute to significance and how it may be affected by development. The evidence of Dr Barker-Mills explains that the contribution of setting to significance can be physical, perceptual and/or associational. GPA3 contains a checklist of the potential attributes of a development that may affect setting. Of particular relevance in this case is "*competition with or distraction from the asset*" [207].

286. The prominence of Tower Bridge is emphasised by its elevation over the Thames and the openness of the topography, with the riverine estuary providing a wide backdrop. Dr Barker-Mills explained that London Bridge is the best place to appreciate Tower Bridge in relation to that topography[208]. The experience is kinetic. It changes as one traverses the river, revealing the relationship of Tower Bridge with its setting in a series of views. For most of the time, Tower Bridge is seen in the context of tall development on the north and south banks of the river. There is one view of exceptional value towards the northern end of London Bridge where it is still possible to appreciate Tower Bridge with its silhouette intact. That is now the only position to experience the listed building in this way. It is illustrated in Dr Barker-Mills' Appendix 4 (photographs 6 and 7) and is north of viewpoint 11B in the LVMF. At the Inquiry Dr Barker-Mills said that, although viewpoint 11B is among the best views of Tower Bridge, there are other locations on London Bridge from which Tower Bridge can be appreciated[209]. From a little further north, you can see through the gateway without buildings in the background. These are equally important views in terms of appreciating the listed building in its setting.

The appellant's failure to consider Tower Bridge properly as part of the planning application process

287. The appellant failed to assess the significance of Tower Bridge as a listed building, and the contribution made to significance by its setting, at a time when such an assessment could have informed the design. The architects were

[206] Inspector's note – accepted by Dr Miele in cross-examination
[207] CD20, Assessment Step 3 Checklist on page 13
[208] Dr Barker-Mills' proof of evidence, paragraph 4.15 (GLA/1/B)
[209] Inspector's note – in cross-examination, Dr Barker-Mills commented that the LVMF identifies the best views of London as a world city.

misadvised and proceeded on the erroneous basis that the proposed buildings would only cause harm if they extended to the outer frame of the bridge[210].

288. The ES did not assess Tower Bridge as a heritage asset in its own right. Volume 2 of the ES deals with townscape, visual and built heritage assessment. The executive summary does not mention Tower Bridge. Table 4.1 identifies all the built heritage receptors that have been considered and those taken forward to full assessment but Tower Bridge is not listed[211]. The only treatment of Tower Bridge is in the context of an assessment of views, by reference to a single view in the LVMF. This was despite the fact that the Council's scoping opinion stated that:

it should be noted that whilst townscape, built heritage and views are interrelated, each aspect should be clearly defined and dealt with appropriately in order to comply with the current guidelines

289. At the time of the formulation and submission of the planning application, the design team had not been provided with advice about the significance of Tower Bridge and the contribution made by its setting to significance. This was because the ES does not follow the approach set out in the Framework[212]. The extent of the assessment is a single paragraph cut and pasted from a previous visual impact assessment (for the previous scheme) and four short paragraphs dealing with the impact of the appeal proposal in one viewpoint. These include the following glib assertions:

The magnitude of effect on the view as a whole is negligible, such that the proposals do not in any way alter the composition of the view <u>because they are set well below the skyline created by Tower Bridge</u>. The overall panoramic quality of the scene is maintained. (emphasis added)

290. The design team did not have a proper understanding of the constraint posed by Tower Bridge because the yardsticks for acceptability seem to have been:

- is the development set below the skyline created by Tower Bridge? and
- is the overall panoramic quality of the scene maintained?

This approach does not take account of the ability to appreciate the bascules or the fact that the setting of Tower Bridge could be harmed by introducing competing elements.

291. Dr Miele's proof of evidence provides the first assessment of the impact of the proposal on the setting and significance of Tower Bridge using the approach advised in GPA3[213]. He acknowledges that the "*proposals do occur mid-stream, in a potentially sensitive position relative to the river and the asset's relationship to it*". Nevertheless, he states that "*if the SoS finds harm (contrary to my evidence), such harm to designated assets in this case can only reasonably be at*

[210] Mr Polisano's proof of evidence, paragraph 3.20.12, confirmed in cross-examination (WDL/1/B)
[211] CD32, executive summary page 3 and paragraph 4.209 which introduces Table 4.1
[212] The Framework, paragraphs 189, 192, 193, 194 and 196
[213] Dr Miele's proof of evidence, section 8 (WDL/3/B)

the lower end of the impact spectrum". That is not a credible conclusion, as the evidence of Dr Barker-Mills shows.

292. The appellant has seriously downplayed the constraint posed by this important heritage asset. In cross-examination of Mr Froneman, (the Council's heritage witness), the appellant sought to argue that compliance with LVMF guidance would be synonymous with causing no harm to heritage assets. That was an untenable proposition which was not supported by Dr Miele when he was cross-examined. Subsequently, when it came to the evidence of Dr Barker-Mills, the point was put more gingerly. It was suggested to him that, if Historic England had been concerned that the LVMF guidance was not appropriate to protect an important part of setting in a view, it could have said so. In response, he explained that, whilst the LVMF is concerned with the protection of strategic views, setting is clearly a different matter. The two are parallel but not the same.

293. Dr Miele was right to jettison the conflation of strategic views and setting in his answers. The suggestion that compliance with the LVMF guidance equates to preserving the setting of a listed building is wrong in principle and would lead to legal error, for the following reasons:

- it ignores the duty to pay "*special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*" set out in section 66 of the 1990 Act;
- it ignores the fact that section 66(1) requires the decision-maker to give the desirability of preserving the building or its setting "*not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm*"[214];
- it ignores the fact that, in giving effect to that duty, the Court of Appeal has indicated that "*generally, a decision-maker who works through [the relevant paragraphs in the NPPF] in accordance with their terms will have complied with the section 66(1) duty*"[215];
- it ignores advice in the LVMF that, not only should changes to views be managed in a way that does not harm the composition of the view, but development should safeguard the setting of landmarks[216]; and
- it ignores the fact that the LonP has separate and distinct policies dealing with the protection to be afforded to heritage assets and the protection of strategic views[217].

294. The example of 20 Fenchurch Street (the Walkie Talkie) shows that serious harm can result when a decision maker has been persuaded to concentrate on views rather than on the significance of the heritage asset and its setting. The Inspector's report on that case contains only a limited analysis of the impact on

[214] East Northamptonshire District Council v Secretary of State for Communities and Local Government [2014] EWCA Civ 137; [2015] 1 WLR 45 per Sullivan LJ at [22]-[24]
[215] Jones v. Mordue [2015] EWCA Civ 1243 per Sales LJ at [28].
[216] CD12, paragraph 57
[217] CD2, Policies 7.8, 7.11 and 7.12 respectively

the setting of Tower Bridge[218]. The findings there may be contrasted with photographs 4 and 5 in Dr Barker-Mills' Appendix 4.

295. It is well established that previous decisions of the Secretary of State are capable of being material considerations[219] and that consistency in decision making is an important administrative principle. Even so, there is no strait-jacket on the decision-maker, particularly here where the developments are so different. The appellant's stout defence of the 20 Fenchurch Street decision, as if it should set a benchmark for acceptability, is surprising given that 20 Fenchurch Street has the unenviable distinction of winning the Carbuncle Cup. This decision should be seen as a cautionary tale rather than a precedent.

296. Finally, the appellant's interpretation of the LVMF guidance as it relates to Tower Bridge is so narrow that it would discount the effect of any development that did not compromise "*the viewer's ability to easily recognise its outer profile*". In cross-examination, Dr Miele insisted that "*outer profile*" means the top, outer edge of the structure, thus giving no protection to the ability to distinguish the bascules, the walkway, and the towers themselves. For all these reasons, no decision-maker should treat compliance with the LVMF as sufficient to discharge the section 66 duty. The appellant's assessment has not been adequate. The harmful impact the scheme would have on Tower Bridge shows why it is important to have a sound understanding of all relevant design constraints when formulating a development proposal.

Impact on significance

297. The appellant's visual material takes two viewpoints, view 3 (which is approximately the same as LVMF 11B.1) and view 29 at the northern end of London Bridge. View 29 is new, appearing for the first time in Dr Miele's evidence. The bascules are closed in both illustrations. Dr Miele accepted in cross-examination that, in view 3, the appeal buildings would be higher than the consented scheme and the built form would be wider. The GLA considers that the proposed buildings would distract from the view of Tower Bridge. In particular, they would distract from the sweep of the bascules, which the shape of the appeal buildings in their stepped form would compete with. This was not an impact created by the consented scheme[220].

298. At the Inquiry Dr Barker-Mills explained that, in relation to view 3, there would be a considerable amount of development readily appreciable where there is now clear sky. In particular, the southern bascule would swing up in front of the development. The ability to see the bascule move against a backdrop of sky would be lost. In his view, those factors would cause harm to the contribution of setting to significance.

299. In assessing the impact Dr Barker-Mills compared the appeal proposal with the consented scheme[221]. He noted in his written evidence that the consented scheme would have an impact on the setting of Tower Bridge which the GLA had regarded as acceptable. In his cross-examination there seemed to be a

[218] WDL16, paragraph 9.3.7
[219] North Wiltshire DC v Secretary of State for the Environment (1993) 65 P. & C.R. 137
[220] Compare Dr Miele's Appendix 9, page 30 with page 33 (WDL/3/C)
[221] Dr Barker-Mills' proof of evidence, paragraph 5.1 (GLA/1/B)

suggestion that, because he acknowledged that the consented scheme had some harmful impact, his entire assessment was wrongly calibrated and thus unreliable. That was a flimsy attack which should be rejected. He was entitled to form a judgment about the impact on significance caused by the appeal proposals, in the knowledge of a permission in relation to the earlier scheme.

300. Turning to view 29, Dr Barker-Mills considered that the proposed buildings would rise significantly above the arched suspension section of the bridge and distract from the north tower. He pointed to Ontario Point as illustrative of the effect the appeal proposal would have between views 3 and 29[222]. Dr Miele said the appeal proposal wouldn't be as bad as Ontario Point because of the detailed design and materials proposed. This faint praise amplifies the GLA's concern that the appeal proposal would create harmful visual competition with Tower Bridge in views from London Bridge.

Implications of a finding of heritage harm

301. The GLA submits that:

- great weight should be given to the asset's conservation because Tower Bridge is of the very highest importance;
- there would be heritage harm which, although less than substantial, would be at the higher end of the scale;
- there has been no clear and convincing justification for that harm as required by the Framework; and
- in giving considerable importance and weight to the desirability of preserving the setting of Tower Bridge, significant weight should be given to the harm to that setting in carrying out the balance[223].

302. Where there is a finding of harm, that creates a strong presumption against planning permission being granted[224].

London View Management Framework

303. At the Inquiry Dr Barker-Mills dealt with questions about the LVMF. He accepted that if "*outer profile*" means the outer edges of the bridge, then the scheme complies with the LVMF in this regard. It seems unlikely that the LVMF would seek to protect only the outer edges of the bridge, when distinguishing its parts is important to appreciating its form and significance. However, if the appellant's view on this point is accepted it becomes all the more important that the assessment of the contribution of the setting to the significance of Tower Bridge is both rigorous and comprehensive.

304. Mr Green gave evidence on behalf of the GLA in relation to the impact on designated view 11B.1. He took the "*outer profile*" of Tower Bridge to mean its

[222] Ontario Point appears centrally in view 29 on page 193 of Dr Miele's Appendix 9, (WDL/3/C)
[223] The Framework, paragraphs 193, 194 and 196
[224] In R (On the application of Forge Fields) [2014] EWHC 1895 (Admin), Lindblom J (as he then was) reviewed the implications of Barnwell Manor (at [49]) (relevant extract at paragraph 27 of GLA/16)

outer edges, which would include both sides of the towers and the bascules, not just the top of the structure. LonP Policies 7.11 and 7.12 identify strategically important views. Development should not harm these views and, where possible, should make a positive contribution to the characteristics, composition and landmark elements of the views. Mr Green explained that the increased height and bulk of the appeal scheme would be more perceptible than the consented scheme in view 11B.1. It would read as a standalone cluster in the backdrop of Tower Bridge, partially filling a section of open sky. He found that to be harmful, in conflict with Policy 7.12[225]. Moreover, he concluded that the proposal would not comply with the LVMF because it would compromise the viewer's ability to recognise the outer profile of Tower Bridge.

Proper place-making in the Isle of Dogs and South Poplar opportunity area

The draft Opportunity Area Planning Framework

305. The draft OAPF reflects careful thinking about good growth. This is necessary because the Isle of Dogs and South Poplar opportunity area is the epicentre of growth amongst a cluster of opportunity areas in East London. The baseline growth scenario is 31,000 homes and 110,000 jobs and there are also higher growth scenarios[226]. Commitments such as the consented scheme are accounted for but there is no assumption about increasing density on those sites.

306. The need for a focus on place-making is paramount given the significant level of growth that is planned. That central concern has not been overtaken by anything said during the Inquiry. MDD site allocation 18 specifies that public open space should be located adjacent to Millwall Outer Dock and should be of a usable design for sport and recreation. The draft OAPF post-dates the site allocation and reflects a mature understanding of the demands being placed on the Isle of Dogs. The Isle of Dogs is constrained, with limited opportunities to provide green and other infrastructure.

307. The draft OAPF focuses on proper place-making in order to ensure the success and cohesion of its new and existing communities. It seeks to ensure that redevelopment will deliver lasting benefits for the area by identifying a substantial park at Millwall Outer Dock. This is seen as a key open space where the draft OAPF seeks[227]:

- to work across site boundaries to create a new waterside local park which will be the focal point of a new leisure hub for the island;
- to open up a visual connection between Millharbour and the waterfront; and
- to allow residents and locals a usable public place in which to enjoy the dock.

308. The draft OAPF has been jointly promoted by officers from the GLA, TfL and the Council. Public events and workshops were held with key stakeholders to identify issues of importance to the local community and to agree ways in which

[225] Mr Green's proof of evidence, paragraph 8.32 (GLA/4/B)
[226] CD10, section 1.3
[227] CD10, section 2.1 and paragraph 5.4.5

the OAPF could address those issues. The draft OAPF was then the subject of public consultation and participation. It was formulated with the local community, rather than being foisted upon them. The consented scheme respects the place-making objectives articulated in the draft OAPF. However, the appeal scheme places a 32-storey tower (T5) on land earmarked for a public park in the draft OAPF. Although there had been a building in broadly the same location in the previous scheme, it was omitted to increase the size of the park in response to feedback from the community, the Council and the GLA[228]. T5 is not the result of any community-led process, quite the contrary.

Loss of part of the park to T5: does it matter?

309. The original eastern park included a large grassed area, a multi-use games area (MUGA),play space, seating areas and planting. It created an inviting entrance from Millharbour, allowing a line of sight through to the dock[229]. As seen from Millharbour, with a footpath leading into the park, it would be apparent that the development was intended to be accessed by the public. In the appeal scheme, T5 (together with its private amenity space, servicing and access requirements) would take a large chunk out of the space identified for the park. The park sought by the draft OAPF would be provided in a very compromised form.

310. Cross-examination of Mr Richards (the GLA's witness on place-making) suggested that the draft OAPF had not specified the location on Millharbour at which a line of sight was to be created. It is obvious that the purpose of creating a line of sight is to draw people into the scheme, through the park to the waterside, thus ensuring that the place would be perceived as welcoming. The appeal scheme would fail to deliver on that objective.

311. View 13[230] shows the approach from Millharbour with T5 acting as a visual barrier. It would not be obvious where the footway next to the building led. There is no visual marker that the path leads to a public space or to the dockside. It is accepted that, when GVP is redeveloped, a line of sight could be created there. However, that is no answer to the GLA's criticism of the appeal scheme. The appeal site occupies a large proportion of the dockside and there is an opportunity to create a successful public park here. The lack of a visual draw through to the dockside reduces the likelihood of the park becoming the focal point that the draft OAPF envisages.

312. The evidence of Mr Ivers shows the loss of open space arising from the introduction of T5[231]. His diagram identifies the footprint of T5 and adds in space within the north/south spine roads as if that would be equivalent in terms of quality. His written evidence states that the ground floor footprint of T5 is around 1,478 sqm and the usable space within the spines is also around 1,478 sqm[232]. In cross-examination he stated that the figure for T5 includes the podium as well as the tower. On that basis, the loss of open space would be qualitative rather than

[228] CD55, section 2.7 design evolution
[229] Mr Ivers' Appendix 3, Figure 01 (WDL/2/C); Dr Miele's Appendix 9, view 13 (consented), page 102 (WDL/3/C)
[230] Dr Miele's Appendix 9, view 13 (proposed), page 103 (WDL/3/C)
[231] Mr Ivers' Appendix 3, Figure 08 (WDL/2/C)
[232] Mr Ivers' proof of evidence, paragraph 3.5 (WDL/2/B)

quantitative for the scheme as a whole. Nevertheless, the reduced area of the park makes it less likely that it would become the focal point of a new leisure hub. Instead, it would be a smaller space, hemmed in by buildings.

313. Turning to the qualitative analysis:

- Mr Ivers relied on open space within the north/south spine roads as adequate compensation for the loss of space due to T5. Although he claimed in his written evidence that car parking and traffic have been restricted, in cross-examination he accepted that there has been no formal process by which that has happened. Arrangements for parking, servicing, refuse collection and other vehicular access have not yet been settled beyond what is shown in the application documents.
- The Delivery, Servicing and Waste Management Plan shows that the north/south spine roads are designed to be used for residential and non-residential deliveries and waste collection. Total trip attraction for the residential, retail, office, restaurant, healthcare and flexible management/ community use is of the order of 392 trips per day[233].
- Mr Ivers confirmed that, to his knowledge, the appellant had made no attempt to disaggregate the trips so as to understand the traffic using the spine roads.
- It is obvious that the space within the spine roads would not be used by children in the way that the space in the eastern park would have been. Nor would it be as attractive for anyone else because passing vehicles would be so close to those areas.

Self-serving comparison of the consented scheme with the appeal scheme

314. The appellant argued that the appeal proposal improves on the consented scheme in various respects. However, the claimed improvements should attract no weight in the planning balance because:

- with regard to flood defence[234], Mr Ivers accepted in cross-examination that there is no defect in terms of the safety of the consented scheme;
- with regard to the removal of railings and fences, Mr Ivers accepted that moving a MUGA or reducing the amount of railings and/or fencing could be done within the scope of the consented scheme (the landscaping condition having yet to be discharged); and
- with regard to claimed improvements to planting, landscaping and equipment, there is no express budget provision in either scheme and nothing in the UU dealing with it.

315. The written evidence of Mr Ivers criticised the consented scheme. However, at the Inquiry Mr Polisano (the appellant's architect) accepted that the consented scheme would include blocks with active frontages[235] around the park, would create passive surveillance and would create an appropriate sense of

[233] GLA13, page 17, Figure 3.2, Figure 3.3 and Table 3.11
[234] Mr Ivers' proof of evidence, paragraph 4.2.1 (WDL/2/B)
[235] Block B4 with a gym and T4 with a restaurant

enclosure[236]. The Design and Access Statement for the consented scheme presented the eastern park as a particular benefit, emphasising the line of sight between the entrance from Millharbour and the water in Millwall Outer Dock[237]. At the GLA Stage 3 meeting the appellant's planning consultant said that "*the applicant has been determined to deliver a high quality design that can transform this part of the island*"[238]. There was no suggestion then that the scheme failed to provide a proper sense of enclosure or was otherwise deficient in its design.

Failure to provide the maximum reasonable amount of affordable housing

316. There was a large volume of material before the Inquiry relating to viability and affordable housing. The GLA's submissions seek to focus on key matters of dispute rather than attempting to repeat all of that evidence.

317. The evidence of Mr Ireland describes the extent of the need for affordable housing across London and specifically in Tower Hamlets. There is a very significant need for affordable housing in London. In Tower Hamlets, that need is acute. The Council relies on allocated sites to deliver policy compliant levels of affordable housing. The GLA's evidence shows that the delivery of affordable homes in the Borough fell well short of the strategic target in the years 2014 to 2016[239], even though the target for total completions was almost met. This underlines the need for each site to make the maximum reasonable contribution to the delivery of affordable homes.

318. Where affordable housing is provided below the level required by policy that should not be regarded as a benefit. On the contrary, the failure to provide policy compliant affordable housing is a planning harm[240]. Allocated sites are relied on to provide policy compliant levels of affordable housing. If they do not do so then an opportunity has been lost. If the Secretary of State concludes that this proposal has failed to provide the maximum reasonable amount of affordable housing, it would not then be correct to say that it is nevertheless beneficial because it would provide more units than the consented scheme. Something cannot be both harmful and beneficial at the same time.

The importance of this case: a major London development following changes to the NPPG

319. This is one of the first substantial appeals following major changes to NPPG guidance on viability. The appellant's case relies on market evidence in relation to a very high (£45 million) BLV, thereby limiting the ability to provide affordable housing. This is the same BLV that was attributed to the site in 2016 in a different policy/guidance context. The new NPPG, published in May 2019, signalled a move away from the circularity of market evidence, with good reason. If such market evidence is accepted in this case, it will be back to business as

[236] Inspector's note – these points were accepted by Mr Polisano in cross-examination by Miss Murphy for the GLA
[237] CD55, Volume III, Figure 30 and page 25
[238] Mr Ross' Appendix D, page 136, (LBTH/6/C)
[239] Mr Green's proof of evidence, paragraphs 8.13 to 8.14 (GLA/4/B)
[240] R v London Borough of Tower Hamlets, ex parte Barrett [2000] WL 281291 at [27-30] per Sullivan J (as he then was))

usual. The NPPG's laudable efforts to promote policy compliant levels of affordable housing would be undermined.

Affordable housing and viability policy requirements

320. There is an overall strategic target of 50% affordable homes (CS Policy SP02) which will be achieved by requiring 35% to 50% affordable homes on sites capable of providing 10 or more dwellings. The overall strategic tenure split from new development is required to be 70% social rented and 30% intermediate. The LonP has three policies of particular relevance:

- Policy 3.9 promotes the creation of mixed and balanced communities by tenure and household income, through incremental small scale as well as larger scale developments which foster social diversity, redress social exclusion and strengthen communities' sense of responsibility for, and identity within, their neighbourhoods. This reflects a concern to ensure that there should be no segregation of London's population by housing tenure.

- Policy 3.11 sets a target of at least 17,000 affordable homes per year across London, with a 60:40 split of social/affordable rent to intermediate housing.

- Policy 3.12 seeks the "*maximum reasonable amount of affordable housing*", having regard to eight specific factors including the current and future requirements for affordable housing, the need to encourage rather than restrain development, the need to promote mixed and balanced communities, and the specific circumstances of individual sites.

321. The written evidence of Mr Green addresses emerging policy. Draft LonP Policies GG4, H5, H6 and H7 are worthy of particular note[241] and are considered below in the context of the UU.

Viability – justification for reduced provision of affordable housing, sufficiency of information and resolution of doubt

322. The Framework states that planning applications which comply with up-to-date policies should be assumed to be viable. There is no assumption that a viability assessment will always be needed. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage[242]. The Framework goes on to say:

All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available. (emphasis added)

323. The appellant's initial offer was 35% affordable housing. This changed to 24% in the Statement of Case and now stands at 21%. This changing position suggests that, initially, the appellant had sufficient confidence to take a pragmatic approach. Only when an appeal was brought was a harder line taken. It also shows that viability assessment is more art than science. The assessment

[241] Mr Green's proof of evidence, pages 22 to 24 (GLA/4/B)
[242] The Framework, paragraph 57

of development costs and values includes numerous elements, many of which rely on an element of judgment. The exercise is inherently imprecise and apt to shift over time. Consequently, the Secretary of State should be slow to accept that 21% is the maximum level of affordable housing that the scheme can support.

324. The Framework states that it is for the appellant to demonstrate the justification for engaging in the viability exercise. Moreover, it is the appellant who is seeking planning permission without providing affordable housing at the level set out in the plan. Case law[243] shows that, whilst the appellant may not be under a specific legal burden of proof, the effect in forensic terms is similar:

The decision-maker will still be looking for the party identified by the policy to adduce evidence of the kind prescribed by the policy to the standard set by the policy… In such a case, it is permissible for an Inspector to reject that party's case as lacking sufficient cogency to satisfy the policy… Thus, a policy requirement can give rise to an evidential burden…

325. It is for this appellant to adduce evidence to demonstrate that the maximum reasonable amount of affordable housing is being provided. If that evidence lacks cogency, then any doubt should be resolved against the appellant.

Viability overview: identification of matters in dispute and indication of the difference those points make

326. Each party has carried out a residual appraisal of the 2019 scheme. The Viability SoCG[244] provides a comparative summary of the inputs relied upon so the differences between the parties can be readily understood. They are as follows:

Appeal scheme revenue

- Commercial rents for management floorspace: the GLA includes a rent of £20/sqft (at a yield of 7%); Gerald Eve (GE) for the appellant attributes no value
- Ground rent: the GLA includes £450 per unit (at a yield of 4%); GE attributes no value

Appeal scheme costs

- NHBC insurances: the GLA includes within professional fees; GE adds as an extra £3 million
- Project insurance: the GLA includes within professional fees; GE adds an extra 0.5% (£3.15 million)
- Professional fees: the GLA includes 10%; GE includes 12%

[243] Parkhurst Road Limited v. Secretary of State [2018] EWHC 991 (Admin) at [47 to 48] citing the judgment of HHJ Gilbart QC (as he then was) in the case of Vicarage Gate Limited v First Secretary of State [2007] EWHC 768 (Admin) at [48] and [54]
[244] ID10

- Benchmark land value: the GLA included £28 million at the time the SoCG was written, this was subsequently increased to £31 million; GE includes £45 million

327. As discussed below, GE did not initially carry out a residual appraisal of the consented scheme to establish a BLV for the appeal scheme. On the subsequent residual appraisal of the consented scheme, the differences between the parties are as follows:

Consented scheme revenue

- Affordable rent capital value: the GLA attributes £215/sqft; GE uses a figure of £257/sqft
- Commercial rents for management floorspace: the GLA includes a rent of £20/sqft (at a yield of 7%); GE attributes no value
- Ground rent: the GLA includes £450 per unit (at a yield of 4%); GE attributes no value

Consented scheme costs

- There had been a difference in relation to construction costs. This was resolved after the SoCG, save for a query regarding sprinklers[245]
- NHBC insurances: the GLA includes in professional fees; GE adds as an extra £1.4 million
- Project insurance: the GLA includes in professional fees; GE adds an extra £1.6 million
- Professional fees: the GLA includes 10%; GE includes 12%

328. On the assumption that weight can be given to a BLV of the consented scheme, (as an input to the assessment of the appeal scheme), it is necessary to understand the net effect of the differences. Mr Fourt did not dispute the following net impacts[246]:

- Commercial rents for management floorspace: £1 million
- Affordable rent capital value: £2 million to 3 million
- Ground rents: £6 million
- BLV: £14 million

If the Secretary of State were to find that the appellant has overstated the BLV, the scale of the difference is such that this issue alone is capable of leading to a conclusion that the scheme has failed to provide the maximum reasonable amount of affordable housing.

[245] GLA14, paragraphs 2.3 and 3.3
[246] Inspector's note – in cross-examination by Ms Murphy, Mr Fourt agreed the net impacts in relation to management floorspace and ground rents. He said he could not comment regarding affordable rent capital value

329. The net effect of differing assumptions about insurance and professional fees was not the subject of evidence, but is estimated by the GLA to be:

- NHBC insurances: £1.6 million
- Project insurance: £1.55 million
- Professional fees: around £16 million

Disputed inputs – approach to BLV

330. Relevant policy and guidance have undergone significant change in recent years. In 2012, the Framework stated[247]:

To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.

331. The 2014 version of NPPG included guidance on land value, stating that the most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected[248]. It then set out that in all cases, land or site value should:

- *reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- *provide a competitive return to willing developers and landowners…;*
- *be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise*.

332. The Framework (2012) and the NPPG (2014) are in line with the RICS guidance Financial Viability in Planning (2012) which states that[249]:

site value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan.

333. The 2019 version of the Framework does not contain the text quoted above. The NPPG, which was updated in May 2019, takes a very different approach. It says that to define land value for a viability assessment, a BLV should be established on the basis of the EUV of the land, plus a premium for the landowner[250]. BLV can be based on alternative use value only in certain circumstances. The context for this change is important. There had been public unease about the use of viability appraisals to justify providing affordable housing

[247] The Framework (2012), paragraph 173
[248] GLA12, Appendix 1b; NPPG reference ID 10-023-20140306
[249] Mr Fourt's Appendix 5, page 12, section 2.3 (WDL/5/C)
[250] CD84, reference ID 10-013-20190509

at levels below that sought in the development plan. The Parkhurst judgment[251] considered the circularity of the market value approach, which was making it less likely that policy compliant levels of affordable housing would be provided.

334. When asked about the Parkhurst judgement, Mr Fourt accepted that a planning inspector had described the circularity issue arising from the possible effect of inputting purchase prices based on a downgrading of the policy expectation for affordable housing on the outcome of an FVA. The judge commented that:

It does not follow that, merely because an analysis is based upon a substantial amount of market evidence, the conclusions drawn will be untainted by the circularity problem. That will depend on whether the transactions in the data base adequately reflected, for example, the requirements of relevant planning policies and, if not, the adequacy of the steps taken, if any, to adjust that information to overcome that problem.

335. A postscript to the judgement asked whether the time had come for the RICS to revisit its 2012 guidance so as to address the circularity issue. Mr Fourt was the viability witness for the appellant in the 2017 Parkhurst Inquiry. He was therefore aware of the judicial concern about whether the 2012 RICS guidance is fit for purpose. As such, the suggestion in his written evidence that the site value section (of the 2012 RICS guidance) is helpful in the assessment of AUV is not appropriate.

336. The NPPG offers no support for market value to be used as the principal method of valuation. It states that[252]:

Existing use value should be informed by market evidence of current uses, costs and values. Market evidence can also be used as a cross-check of benchmark land value but should not be used in place of benchmark land value… This evidence should be based on developments which are fully compliant with emerging or up to date plan polices, including affordable housing requirements at the relevant levels set out in the plan.

337. The other permissible use for market evidence is as a cross-check when identifying the premium element of EUV plus[253]. Such market evidence can be used only where it identifies the adjustments necessary to reflect the cost of policy compliance. Policy compliance is carefully defined to mean "*including any policy requirements for contributions towards affordable housing requirements at the relevant levels set out in the plan*". In this context, "*relevant levels*" means the target level in policy, not overall compliance following viability assessment, which would introduce its own circularity.

Mr Fourt's analysis of BLV

338. The FVA submitted with the application (July 2018) assumed a BLV of £45 million based on market value. It derived from the NPPG (2014) and application of the site value section of the RICS guidance (2012)[254]. In addition, four matters were taken into account:

[251] Ms Seymour's Appendix 9d, paragraphs 11 and 16 (GLA/2/C)
[252] CD84, reference ID 10-014-20190509
[253] CD84, reference ID 10-016-20190509
[254] CD27, page 42 paragraphs 11.2 to 11.3

- historical viability assessments (which had varied between £35 million and £45 million);
- the site value contained in the s106 Agreement (£45 million);
- the extant scheme (which seems to have been an assessment of market value); and
- what was said to be comparable evidence of land transactions.

339. GE did not carry out any residual appraisal of the consented scheme. There is no evidence that the market comparables relied upon were adjusted for policy compliance. Ms Seymour was right to say that the FVA pre-dated the updated NPPG and was not properly evidenced[255]. GE's addendum to the FVA[256] (March 2019) did not revise or update the £45 million BLV. The first time Mr Fourt carried out a residual appraisal of the consented scheme (in support of the £45 million figure) was in his proof of evidence. The resulting BLV was unchanged from the 2018 FVA. Mr Fourt's proof also referred to land transaction prices for four specific sites which sought to justify the same BLV.

340. Mr Fourt considers that the EUV was extinguished when the planning permission was implemented. This is not necessarily so. Ms Seymour's evidence is that the land could be used for storage[257]. In any event, Mr Fourt's approach of applying a full site value to the premium element of EUV plus is a straightforward example of market value by the back door. This approach is expressly forbidden by the NPPG quoted above which states that market value should not be used in place of benchmark land value.

341. Mr Fourt claims that taking account of the BLV set out in the s106 Agreement is consistent with the NPPG. His approach here is based on a misapprehension of what "*policy compliance*" means. He argues that, because the consented scheme has planning permission, it has been accepted that the maximum reasonable amount of affordable housing would be provided. This is not consistent with the new NPPG definition, which requires full compliance with the "*relevant levels*" set out in the plan. Mr Fourt has not adjusted the BLV set out in the s106 Agreement of 2016 so as to comply with the NPPG. As such, it can be given no weight.

342. The GLA makes the following comments on the market evidence relied on by the appellant[258]:

- It is based on the same misunderstanding about what "*policy compliance*" means (referred to above).
- The adjustments that have been carried out are not transparent. The effect of excluding the affordable units and dividing the purchase price by the number of market units is to increase the price per unit. Using the example of London City Island, the effect of Mr Fourt's adjustment for policy compliance is to increase the price per unit from £44,768 to £48,646

[255] Ms Seymour's proof of evidence, pages 14 and 15 (GLA/2/B)
[256] CD28
[257] Ms Seymour's proof of evidence, paragraphs 9.11 and 9.12 (GLA/2/B)
[258] Mr Fourt's Appendix 4b (WDL/5/C)

whereas any such adjustment could reasonably be expected to reduce overall value.

- The price per unit is then multiplied by the number of units proposed in the appeal proposal. That approach is unwarranted because the acceptability of the proposal (in terms of the number of units) is not a given. The consented scheme has been judged to have acceptable impacts. Multiplying Mr Fourt's adjusted price per unit by the 582 private units in the consented scheme would result in a comparable market value of £28.3 million. That would be much closer to Ms Seymour's BLV (£31 million) than Mr Fourt's BLV (£45 million).

343. The written evidence of Mr Fourt included data regarding the relationship between site value and total GDV. This data is reproduced without change from GE's April 2016 report and is accepted as being historic. There is no detail about the schemes included within it and there has been no adjustment to reflect policy compliance. As such, it can carry no material weight.

344. It is necessary to consider whether the consented scheme can be taken account of (consistent with NPPG[259]) as forming the basis of a BLV. The NPPG includes three separate questions, including whether it can be demonstrated that there is market demand for an alternative use. Mr Fourt argued that the implementation of the consented scheme is evidence of market demand. The consented scheme would include 28% three bed units. However, a report from Savills (dated July 2019) states that it would not be viable to deliver even 20% of the scheme as family units because there is insufficient market demand[260]. That report remains part of the appellant's evidence to the Inquiry. As such, it does not appear that there is market demand for the consented scheme.

345. GE did not include a residual appraisal of the consented scheme in the FVA submitted with the application. The first time that was done was in Mr Fourt's proof of evidence where he made a mistake about the amount of commercial floorspace in the scheme. That had to be corrected in his rebuttal proof, resulting in a large reduction in the BLV from £45.2 million to £36.8 million (the central figure in the sensitivity analysis at Table 2) [261]. Undaunted, Mr Fourt continued to rely on the £45 million figure, which has not changed since 2016. In fact, even leaving aside the other dispute inputs, this corrected appraisal does not support a BLV of £45 million. It is closer to Ms Seymour's BLV of £31 million.

Ms Seymour's analysis of BLV

346. Ms Seymour's approach to EUV plus is consistent with NPPG because the site could potentially be used for open storage. Her EUV plus of £28 million takes account of similar cleared sites. If the Secretary of State concludes that no weight can be placed on the AUV scheme, as a result of the Savills report, this would be the only reliable assessment of site value before the Inquiry.

[259] CD84, reference ID 10-017-20190509
[260] Mr Goddard's Appendix 3 (WDL/6/C)
[261] Mr Fourt's rebuttal, paragraphs 2.15 to 2.17; see Table 2 for sensitivity analysis (WDL/5/D)

347. A large amount of information relating to the construction costs for the consented scheme was made available during the Inquiry. That information should have been provided sooner. Nevertheless, following agreement on most of those costs, Ms Seymour revised her previous assessment and concluded that a residual appraisal of the consented scheme would result in a positive AUV. This resulted in a BLV of £31 million and an IRR of 20.83%, far in excess of the target rate of 14%[262]. It follows that her EUV plus valuation and her AUV valuation both lead to a conclusion that the appeal scheme could make a much more significant contribution to affordable housing than is currently proposed.

Disputed revenue inputs

348. The management floorspace in the development would have a value. If it were not to be provided on site, it would have to be paid for. There is therefore no justification for GE's approach of leaving that value out of the FVA.

349. The appraisal of both schemes has been carried out on a current costs/current values basis. There may be proposals to change the law in relation to ground rents but, as matters stand, ground rents are charged. In particular, the evidence of Ms Seymour shows that the comparable schemes relied on by Mr Fourt have charged ground rents on leases sold within the last 3 years[263]. In seeking to ignore this revenue, Mr Fourt is being inconsistent with the current costs/current values approach and with his own evidence.

350. Turning to the capital value of the affordable rent units, Mr Fourt accepted that he attributed a value of £187/sqft when advising the GLA on the consented scheme[264]. He now attributes a greatly increased sum of £257/sqft (for the consented scheme). He conceded in cross-examination that the scheme has not changed since 2016, the units have not changed and there has not been a significant increase in value. He was unable to explain the difference between the figures[265]. The effect is to overstate the value of the AUV scheme, which has the potential to reduce the ability of the appeal scheme to contribute to affordable housing.

Disputed cost inputs - insurances and professional fees

351. The evidence of Ms Seymour was that NHBC insurances and project insurance are normally included in the fees budget. Mr Fourt did not explain why standard practice should not be followed in this case.

352. The written evidence of Mr Fourt stated that his assumption for professional fees (at 12% of costs) was at the upper end of the normal range[266]. However, in cross-examination he accepted that 12% would be at the top of the range and that, as such, it would require justification. Ms Seymour pointed out that, in her view, this is not a site which is unusual or exceptional. Moreover, she considered that there would be substantial economies of scale arising from the consistent

[262] GLA/14, page 5
[263] GLA/14, paragraph 4.2 and Appendix 4
[264] Ms Seymour's Appendix 7, final page (GLA/2/C)
[265] Inspector's note – Mr Fourt accepted these points in cross-examination by Ms Murphy. When asked to explain the increase he stated the £257 was the rate he had been advised to apply.
[266] Mr Fourt's proof of evidence, paragraph 12.17 (WDL/5/B)

design across various blocks. The "breakdown" of fees relied on by Mr Fourt[267] is nothing of the sort. It is simply estimated proportions of overall costs which may be incurred as fees in the future. The circumstances of this case do not support the high fees suggested by the appellant.

Section 106 and review mechanisms

353. The final version of the UU addresses two matters of concern to the GLA[268]. Nevertheless, given the definition of substantial implementation that has been used, it is highly unlikely that an early review would ever take place. This would be so even if there were to be a substantial delay following any grant of planning permission. Any late stage review would follow the approach set out in the appellant's evidence on viability and affordable housing. For all the reasons set out above, this would reduce the likelihood of any further affordable housing provision.

354. Policy 3.12(B) of the LonP states that negotiations on affordable housing should take account of provisions for re-appraising the viability of schemes prior to implementation, including the use of contingent obligations. Contingent obligations are defined (in the LonP glossary) as mechanisms for the reappraisal of the viability of schemes which are likely to take many years to implement. The Mayor's Affordable Housing and Viability SPG is aimed at ensuring that the maximum reasonable amount of affordable housing is secured over the lifetime of the project in circumstances where there is an improvement in viability[269]. The SPG has been found to be consistent with the LonP [270]. The appeal scheme would take many years to complete and, without effective review mechanisms, the proposal is inconsistent with the Mayor's SPG. Consequently, the scheme does not comply with LonP Policy 3.12 because the decision-maker cannot be satisfied that it would make the maximum reasonable contribution to affordable housing over the lifetime of the project.

355. Schedule 15 of the UU amounts to an indemnity to the developer in respect of a CIL charging schedule which does not yet exist. It is a review clause which could reduce the level of affordable housing. This is objectionable in principle because risk to the developer in relation to future events is accounted for in developer's profit. In this case there is no written evidence dealing with the content of the Council's proposed CIL schedule. No questions were asked of the Council or GLA witnesses about it. Aside from a throwaway remark made by Mr Goddard there was no oral evidence on the subject. Schedule 15 is not compliant with Regulation 122 because it is not necessary to make the development acceptable in planning terms.

Conclusion on affordable housing and viability

356. Given the many instances in which the GLA's evidence has shown that costs have been overstated and revenues understated, it is clear that the scheme can

[267] Mr Fourt's Appendix 13 (WDL/5/C)
[268] WDL35, GLA comments that paragraph 3.8(b) has resolved an issue regarding the timing of the London Plan and paragraph 4.1 of Schedule 3 has been amended to address a concern regarding additional affordable housing.
[269] CD15, page 18
[270] R (On the application of McCarthy and Stone) v GLA [2018] EWHC 1202 (Admin)

support more affordable housing than the 21% now offered. The appellant has failed to demonstrate that the maximum reasonable amount of affordable housing would be provided. As such there is conflict with LonP Policy 3.12.

Overall conclusions

357. The proposed development would result in harm to the setting of Tower Bridge. Although the harm would be less than substantial, it would be at the higher end of the scale. That impact would not result from a development which is necessary in order to deliver the redevelopment of the Westferry Printworks site. The consented scheme is said to be a realistic fallback. That scheme would secure the redevelopment of the site without causing the heritage harm resulting from the appeal proposal.

358. The fact that the proposal contravenes the guidance in the LVMF constitutes a freestanding conflict with policy and is a further objection to the appeal. The conflict with the draft OAPF is indicative of a scheme which is very much developer-led, having set aside the combined efforts which led to an acceptable scheme in 2016. The fact that the appellant has failed to provide the maximum reasonable amount of affordable housing means that the countervailing benefits in this case are comparatively slight. In combination, the case for dismissing the appeal is compelling.

Further submissions following the close of the Inquiry[271]

359. The Isle of Dogs and South Poplar OAPF has been adopted and should now be given significant weight in decision making.

360. The report of the Examination in Public of the London Plan was published on 21 October 2019. The GLA anticipates that an "*intend to publish*" version of the plan will be sent to the Secretary of State by the end of 2019. The changes to the text recommended by the panel are not significant in relation to the policies relevant to this appeal. Policy H1 and Table 4.1 set a 10 year housing target for Tower Hamlets (2019/20 to 2028/29) of 35,110. The report recommends that this be reduced to 34,730.

361. The report supports the approach of emerging policy H6 to early and late stage viability reviews. Consequently, significant weight can be attached to Policy H6. In general, the policies relevant to the appeal have been found to be justified and consistent with national policy. The plan is now at an advanced stage so the policies should carry significant weight.

362. The appellant has suggested that the report of the CIL examiner supports the CIL appraisal mechanism contained in Schedule 15 of the UU. The GLA disagrees. This would be a downwards review mechanism, contrary to NPPG[272]. Moreover, it would build in disputed inputs to the viability model, reduce the amount of affordable housing (or remove it altogether) and fundamentally change the balance of planning considerations without any recourse to the Inspector or the Secretary of State. There was no information before the Inquiry as to the actual effect of CIL on the delivery of affordable housing.

[271] Full submissions at PID8, PID9, PID13, PID14
[272] Reference ID: 10-009-20190509

OTHER PARTIES WHO APPEARED AT THE INQUIRY

Sir Robert Ogden Indescon Developments[273]

363. Sir Robert Ogden Indescon Developments holds a 200-year lease on the Greenwich View Place Estate. A number of the units are occupied as data centres and offices on long leases. Tower T5 would be 2.5m from the boundary and 5m from Unit 8. T4 would be 16m from Unit 6. These buildings operate 24 hours a day and there would be conflicts with residential occupiers so close due to noise from plant, deliveries and servicing. Greenwich View Place is an allocated site and the impact on its development potential is an important matter. T5 would erode an area allocated for open space and block views to the waterfront. This would increase the pressure on future developments to make up the shortfall in open space, harming the viability of such development. T4 and T5 are likely to cause microclimatic impacts on future occupiers and amenity spaces at Greenwich View Place.

Councillor Peter Golds

364. Tower Hamlets is set to receive the largest amount of growth in Greater London although it is the 4th smallest borough. The consented scheme was subject to a great deal of consultation and was of a scale that fitted in to the Isle of Dogs. The proposals would be overbearing and would overshadow green spaces. There is a consensus amongst local Councillors that the policy of stepping down is important. The DSWC does admirable outreach work and there was great concern about impacts on sailing when the consented scheme was considered. The affordable housing offer would fail to meet the CS, LonP or national policy. The increase in population would put pressure on health facilities, transport and public open spaces. The need for housing is understood but the consented scheme, at 722 units, was acceptable. The appeal proposal would double that number. It would not represent sustainable development.

Mr Dootson

365. The consented scheme was a foot in the door and the appellant is now seeking to push through a bigger scheme without consultation. The views of local people have not been listened to. There are big questions over water supply with low pressure affecting use of showers and washing machines. There is not enough room in the Isle of Dogs to double the population at this site. The Crossharbour District Centre will add a further 2,000 residents. Buses are already delayed by congestion and the Canary Wharf underground station is regularly closed due to overcrowding. The appellant proposes twice as many homes but the proportion of affordable homes has only gone up by 1%. The appeal proposals would make a mockery of planning policy.

Martin Young[274]

366. Mr Young is the Chair of the DSWC Trust. The DSWC brings a sport, which is sometimes seen as elite, to the whole community. Youth club members are able to take control of a boat out on the water. DSWC objected to the consented scheme. Funding of mitigation would have assisted, but not solved, problems for

[273] This is a summary of the comments made orally by Ms Carney and her note at OD10
[274] This is a summary of the comments made orally by Mr Young and his note at OD11

young and novice sailors resulting from adverse and turbulent winds. DSWC is concerned about the effects of down draughts caused by tall buildings. The evidence of Dr Stanfield shows that there would be an impact from down draughts. If this reduces the ability to sail in the period March to October then additional mitigation would be needed. DSWC is concerned about the warming effect of dock water source heat pumps which could increase the risk of an algae bloom. This would discourage people from using the water and could cause skin irritation. There is also a concern about risks to water quality from surface water drainage into the dock. DSWC staff need to be involved in water quality monitoring and request access to monitoring data.

367. A further letter from DSWC was submitted to the Inquiry[275] after the above comments were made. It stated that DSWC cannot be certain about the likely disruption to sailing, especially for novices. DSWC welcomes the increased sailing centre contribution in the UU but does not want to be tied to the specific costs set out in the schedule provided by Mr Davis (see below). It is suggested that the costings be regarded as indicative with payments being drawn down as circumstances require. DSWC expects to have the results of an initial feasibility study into use of the river shortly.

Councillor Mufeedah Bustin

368. Awareness of the appeal scheme within the community is at a low level due to the appellant's minimal engagement. The residents speaking at the Inquiry were those who were particularly well informed. Councillor Bustin sought to speak for residents who were not able to engage with the process, such as those living in overcrowded homes waiting for affordable housing. There is a particular shortage of family sized homes in the borough. The commercial units would not be aimed at small businesses. There is a need for affordable workspaces. Similar units at the Arena Tower development are lying empty, whereas small local businesses at Pepper Street are thriving. The young people of the area have a great affection for the waterways. The sailing centre raises the aspirations of young people who take part in its activities. The wildlife in Millwall Outer Dock is very important and there are concerns about the effect of the development on water quality.

Councillor Andrew Wood

369. The consented scheme had a number of advantages, the main disadvantage being the impact on wind conditions. These impacts could have been mitigated by an alternative layout and design. The planning principle of stepping down from Canary Wharf is a long-established planning policy in the Isle of Dogs, dating from the year 2000. The appeal scheme represents the 'Manhattenisation' of the Isle of Dogs. The development of tall buildings in the Isle of Dogs has been exceptional, with several projects in excess of 50 storeys. If approved, this scheme would open up a whole section of the Isle of Dogs for towers. The Infrastructure Funding Study identified gaps in funding of £161 million to £197 million over a 25-year period. That study assumed 722 dwellings on the appeal site. Increasing the density would only increase the size of the funding gap.

[275] OD17

370. A further letter from Councillor Wood was submitted to the Inquiry[276] after these comments were made. The letter supported the terms of the UU insofar as they relate to the school site. It questioned the commitment of the Council to delivering a school at the appeal site and argued that the DfE is already looking for school sites in the area. The letter suggests that leasing the school site to the DfE should be the first option with the Council as a backup.

Ralph Hardwick

371. Tall buildings at the appeal site would harm strategically important views from Greenwich. The whole borough is an Air Quality Management Area. The appeal scheme may be car-free but it would generate 12 delivery vans per property per month. This would have a significant negative impact on air quality. The Barkantine Energy Centre flues result in exceedance of air quality limits. This would need to be mitigated. There has not been adequate assessment of the proposal to use dock water for heating/cooling. This would be a vast development and, together with other proposals, its cumulative impacts would exceed the Island's environmental limits.

Ruth Bravery[277]

372. The appeal scheme proposes 10 buildings that would be 9 floors or over and 4 would be taller than the existing Barkantine towers. This should be regarded as a 10-tower scheme. The proposals do not follow the stepping down policy. The towers would be out of proportion and would create a cliff edge along the dockside. People living in the area would be dwarfed and overwhelmed. There is a dramatic difference in the height of buildings north and south of Glengall Bridge. To the north, the tall and tightly spaced buildings are hemming in the dock and casting public areas into deep shade. Rather than creating a cluster, as promoted by planning policy, the proposal would create a ribbon of tall buildings. The Barkantine towers, in contrast, are widely spaced and are not overwhelming.

373. Westferry Road is the main north/south route. It has narrow pavements which get very crowded, particularly near the primary school, and is only 10 paces wide. It is already very congested and large vehicles frequently get stuck. The site has poor public transport accessibility. Even if additional buses are provided, there is not the road space to accommodate them. There is a lack of green space in Millwall. Sir John McDougall Park is very small and Millwall Park is too far away to use daily. The proposal would rule out the new park proposed in the OAPF. Older developments reduce in height closer to the dock to protect wind conditions for sailing. The proposals would not protect recreational use of the dock, contrary to the OAPF.

Trevor Bravery[278]

374. There is another development which is currently using dock water for cooling and one application, relating to a nearby data centre, is currently being considered. That application indicates a significant degree of heating of the water returned to the dock. There has been no assessment of the cumulative effects of

[276] OD18
[277] This is a summary of the comments made orally by Ms Bravery and her note at OD13
[278] This is a summary of the comments made orally by Mr Bravery and his note at OD14

all three schemes. Water from the docks flows into the Thames via the lock gates so any heating will also affect the river environment. Docks and lakes around the UK experience outbreaks of harmful blue green algae. Any increase in water temperature must increase the risk of the dock being closed to recreational use for an extended period. The dock also contains fish and a great variety of birds.

Alan Jolly

375. Council documents have highlighted the need for water and electricity infrastructure in the Isle of Dogs. Thames Water has identified a need for additional sewerage capacity. Bus capacity is overstretched and there is no scope to provide more. The new schools will only add to the problems already experienced. Development on the scale proposed needs to address these infrastructure issues.

Benjamin Davis[279]

376. Mr Davis is the Centre Director at DSWC. The Centre was set up in 1988 by the London Docklands Development Corporation. Initially funded by local authority grants, it has grown into a social enterprise with zero funding for its charitable programmes. These programmes have immeasurable benefits for children and young people, in terms of confidence, progression to national/world sailing events and employment opportunities. In 2015 DSWC delivered more level one and two sailing courses than any other facility in the country. The expected changes in wind and the ability to sail would make DSWC unviable if it were a commercial enterprise. Because it is a charity it will adapt and survive.

377. The appellant's mitigation measures do not address the severity of the problem. The appellant has based its mitigation on using the area further up the dock when conditions dictate. However, when the wind is in the north east the eastern end of the dock is not useable due to the buildings that line the dock edge. There is also a real issue of space, given the numbers of children on the water. DSWC has consistently emphasised the importance of the western end of the dock and the inadequacy of improved access to the eastern end. The western end is where the boats are launched, reassuringly close to base and an ideal width for a beginner session. Providing more robust boats would not assist younger sailors.

378. Real mitigation can only come from access to the River Thames where there is space unaffected by development. Sailors would be rewarded for sticking through the tough times, when they are starting out and conditions are poor, with the excitement and thrill that the river provides once they have developed their skills. The email of 12 April 2016[280] sets out the measures that would enable access to the river, such as a pier, works to the slipway, moorings and provision for the maintenance costs and equipment that would be needed to support activities on the tidal river.

379. The movable pontoon currently moored in the eastern part of the dock is used as a platform to allow separation of training groups, particularly windsurfers.

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[279] This is a summary of the comments made orally by Mr Davis, including his answers to questions from Mr Brown and the Inspector, and his notes at OD12 and OD15
[280] The email is appended to OD15

Sailing dinghies are occasionally left there at lunchtime but this is infrequent. Small dinghies for beginners are sometimes towed in a line (flagging) but this is typically done on a first session to allow young people to get accustomed to the boats. It is time-consuming. If 90 or more young people had to be transported to the eastern end of the dock this would impact on the length of the sailing sessions and the learning outcomes. The only element of the 2016 Agreement package that provides real mitigation is the payment of additional staff costs. (Mr Davis also signed the further letter from DSWC referred to above in the comments of Mr Young).

Antony Lane

380. The Isle of Dogs needs another high school with playing fields. Land has been earmarked for a high school since 1996. Building heights should be kept low with roofs used for playing fields.

Gary O'Keefe

381. The former industrial buildings to the west of Millwall Dock have been replaced with a dog's dinner of modern architectural styles. The Barkantine Estate is a model of taste and restraint by comparison. The community has had enough of statement architecture. A visit to Alpha Grove shows the impact of disturbingly ugly looming towers close to existing residential areas. The height and density of the new buildings is excessive, creating a valley effect. Very high buildings should not be allowed to spread into the southern part of the Isle of Dogs. The infrastructure cannot cope and people are regularly locked out of Canary Wharf station.

Peter Fordham[281]

382. Mr Fordham is an architect who has lived on the Isle of Dogs for over 30 years. He is also a trustee of the 13 ha Mudchute Park and Farm, which provides over half of the open space on the island and is located 500m to the east of the appeal site. The appeal site is of critical importance to the community. The consented scheme is already excessive and was only granted by the Mayor after being rejected by the community and local officers. The proposal would increase the height of the towers to 19, 23, 32 and 46 storeys with a 211% increase in the number of units. All of the Council's reasons for refusal are supported. This is one of the country's most deprived boroughs in terms of the quantity of open space. In 2017 there was 0.89 ha of open space per 1000 residents compared with the standard of 1.2 ha. This figure is being reduced every year. The application does not cater for any community need. This would be a massive overdevelopment of the site, leading to the surrounding area being overlooked and overshadowed. It would have a visual impact that would dominate most views throughout the entire southern part of the Isle of Dogs and should be totally rejected.

Ahmed Hussain

383. Mr Hussain speaks for residents of the Barkantine Estate. The estate has some 2,500 residents. The proposal is too dense, too high and would not provide enough family accommodation. The applicants rejected an invitation to discuss the proposals with the community. If the scheme is being doubled in size there

[281] This is a summary of the comments made orally by Mr Fordham and his note at OD16

should be a doubling of community space too. GP provision is scattered and there is pressure on local surgeries. Buses and the DLR are over capacity and journeys to work on and off the island are very difficult and time-consuming. The proposed development would leave chaos for many years. If approved, it would encourage housing associations to increase height and density in the locality.

Arthur Coppin

384. Mr Coppin has lived on the Isle of Dogs for nearly 40 years. There is an established sense of community. The community has hung on to the step down policy for 20 years. It is a policy that is essential to the identity of the island. If the step down policy is broken it will be open season for developers in the southern part of the island.

Sonya Ball

385. The impact of this proposal cannot be overstated. It would have an overwhelming effect, blocking out the sky and creating wind tunnels. This is an established community. People need an area to call home. The scheme would bring traffic noise and air pollution. Parking within the scheme may be limited but there would be many more deliveries and taxis. Traffic in Westferry Road causes mayhem, particularly during term time when people are dropping off children and parking in every available space.

WRITTEN REPRESENTATIONS

386. The officer's report lists the responses from statutory consultees, other relevant bodies and members of the public[282]. In terms of the public responses, the report notes that there were 52 objections and 2 supporters. The objectors mostly considered that the scale of the proposal would be excessive and that it would impact negatively on a community that already suffers from inadequate infrastructure and services. The material grounds of objection listed in the report are generally related to matters that have been covered above. The supporters commented that the scheme would be a nice fit on the Isle of Dogs and that the commercial units would bring life to the development.

387. The Royal Borough of Greenwich objected to the proposals, for reasons which have been summarised above in the case for the Council. Historic England commented that[283]:

Whilst these proposals alone do not warrant significant concerns from Historic England, we have some reservations about the precedent that tall building development on this scale might set for this area, in particular the creep of tall building development towards Maritime Greenwich WHS and within the background of the Tower Bridge.

388. Written representations were made in response to the appeal. These included:

- Royal Borough of Greenwich – maintains its objection, commenting that the proposals would detract from, rather than consolidating or contributing

[282] CD41, pages 36 to 54
[283] The full responses are in the documents: Royal Borough of Greenwich (LBTH/20) and Historic England (LBTH/21)

to, the Canary Wharf cluster, would be contrary to the LVMF in respect of the strategic view from the WHS, would undermine the significance of the Grand Axis (Attribute 3 of the OUV) and would harm the setting of the WHS;

- Maritime Greenwich – objects for reasons which have been summarised above in the case for the Council[284];
- Historic England – in the light of further information received, considers that archaeological interests could be appropriately protected by a pre-commencement condition; and
- Thames Water – seeks restrictions on the implementation of the development pending improvements to waste water and water supply infrastructure, (amongst other conditions).

389. Other written responses to the appeal were generally related to matters that have been covered above.

CONDITIONS

390. By the end of the Inquiry there was agreement between the Council and the appellant on all but one of the conditions (condition 40). This is recorded in the schedule of suggested conditions[285]. I have considered the suggested conditions in the light of NPPG. I have adjusted some detailed wording in the interests of clarity. I have deleted unnecessary wording requiring the local planning authority to consult with specified bodies when discharging conditions. However, the conditions set out in Annex E are in substance the same as those suggested. Conditions 13, 26, 28 and 33 require matters to be approved before development commences. This is necessary because these conditions address impacts that would occur during construction. The appellant has provided written agreement to these pre-commencement conditions[286].

391. Condition 1 is the standard time condition. Condition 2 requires development to be carried out in accordance with the approved plans in the interests of clarity and to ensure that the scheme is consistent with the environmental impacts that have been assessed. Conditions 3 and 4 would control hours of working during construction and, (for the commercial units) during operation. They are needed in the interests of protecting the living conditions of nearby residents. Condition 5 would secure provision of refuse storage and recycling facilities in the interests of sustainable development.

392. Condition 6 would secure the provision of the car parking shown on the plans, in the interests of making proper provision for the vehicles of the occupiers of the development, and Condition 7 would secure the provision of accessible parking. I have deleted reference to the future ownership of parking spaces from both conditions to ensure that the conditions relate to land use matters only.

393. Condition 8 would secure the provision of adequate cycle parking in the interests of sustainable transport. Condition 9 would ensure that 10% of the

[284] The response is also at LBTH/19
[285] ID14
[286] WDL33

residential units would be wheelchair user dwellings to ensure that sufficient accessible housing is provided. Condition 10 would control finished floor levels in the interests of managing flood risk. Condition 11 sets noise and vibration limits for mechanical plant in the interests of protecting the living conditions of nearby residents. Condition 12 would prevent removal of historic dockside features in the interests of protecting non-designated heritage assets.

394. Condition 13 requires the ground contamination remediation strategy to be updated and Condition 14 requires the updated strategy to be implemented. These conditions are necessary in the interests of managing pollution risks and the health and safety of future occupiers of the site. Condition 15 would restrict the amalgamation of the commercial units to ensure that the needs of small and medium enterprises are met in the interests of local employment. Condition 16 would remove certain permitted development rights. This is necessary, in relation to telecommunications equipment, to ensure that the architectural quality of the buildings is protected in the interests of the character and appearance of the area. It is necessary, in relation to changes of use of commercial units, to ensure that a satisfactory mix of commercial uses is maintained.

395. Condition 17 would secure implementation of the approved Delivery and Servicing Plan and Waste Management Plan to ensure that adequate arrangements are in place and in the interests of highway safety. Condition 18 would secure the phased delivery of the residential units. This is necessary to ensure that the increase in residential population at the appeal site is aligned with planned increases in the capacity of the Docklands Light Railway.

396. Condition 19 requires approval of facing materials and Condition 20 requires approval of shopfronts, in the interests of the character and appearance of the area. Condition 21 requires approval of wind mitigation measures to ensure that there is an acceptable pedestrian environment. Condition 22 requires approval of sound insulation, which is necessary in the interests of the living conditions of future occupiers of the residential units. Condition 23 requires approval of water efficiency measures in the interests of sustainable development.

397. Condition 24 requires approval of a revised surface water drainage strategy, in the interests of managing risks of pollution and flood risk. Condition 25 requires approval of a study of CO_2 savings relating to the proposed dock water source heat pumps in the interests of sustainable development. Condition 26 requires approval of a Construction Management Plan in the interests of protecting the living conditions of nearby residents, managing pollution risks and highway safety. Condition 27 requires approval of a method statement relating to the use of cranes during construction. This is necessary for aviation safety.

398. Condition 28 requires approval of a piling method statement in the interests of protecting the living conditions of nearby residents and managing risks to below ground infrastructure. Condition 29 requires approval of measures to achieve Secured by Design accreditation in the interests of community safety. Condition 30 requires television interference studies to be carried out to ensure that appropriate mitigation is identified. I have amended the suggested condition such that studies would be done for each phase of the development, due to the long time period envisaged for the delivery of the whole scheme.

399. Condition 31 requires approval of landscaping and Condition 32 requires approval of biodiversity enhancements. These conditions are necessary in the

interests of biodiversity, sustainability and the character and appearance of the area. Condition 33 requires approval of an updated Archaeological Written Scheme of Investigation in the interests of protecting the archaeological potential of the site. Condition 34 requires approval of a Car and Cycle Parking Management Plan to ensure that inclusive, safe and adequate provision is made for the transport requirements of the scheme.

400. Condition 35 would secure the implementation of mitigation measures that were identified in the ES to protect air quality. Condition 36 would require the non-residential elements of the development to achieve not less than BREEAM "*Very Good*" in the interests of sustainable development. Condition 37 requires approval of extraction and ventilation equipment for the commercial units in the interests of protecting the living conditions of nearby residents and future occupiers of the development. Condition 38 requires the approval of life-saving equipment along the dockside in the interests of community safety. Condition 39 requires approval of external lighting in the interests of community safety and protecting the living conditions of nearby residents.

401. Condition 40 would secure the implementation of highway improvements. These are necessary in the interests of highway safety and to meet the transport needs of the development, including in relation to pedestrians and improvements to bus stops. The appellant suggested alternative wording which would have the effect of deferring works in the vicinity of the site access to Westferry Road until a later stage of the development. However, the development is expected to take many years to complete and the transport needs would arise in the first phase. I therefore agree with the Council's suggested wording.

402. Thames Water seeks restrictions on the implementation of the development pending improvements to waste water and water supply infrastructure. However, I agree with the appellant that it would not be reasonable to constrain the development pending delivery of infrastructure (which is to be provided by a statutory undertaker) outside of the control of the developer. Accordingly, I do not consider that this condition should be imposed.

403. If the Secretary of State is minded to allow the appeal, I recommend that the conditions set out in Annex E should be imposed.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets [n] refer to earlier paragraphs in this report

404. Taking account of the oral and written evidence, the Secretary of State's reasons for recovering the appeal and my observations on site, the main considerations are:

- the effect of the scale, height and massing of the proposed development on the character and appearance of the surrounding area;
- the effect of the proposal on strategic views and the settings of the Maritime Greenwich World Heritage Site and the Grade 1 listed Tower Bridge;
- the effect of the proposal on the recreational use of Millwall Outer Dock,
- the mix of market and affordable housing in terms of numbers, size and tenure, and
- the effect of the proposal on the provision of public open space.

Policy context

The development plan

405. The development plan comprises the London Plan 2016 (LonP), the London Borough of Tower Hamlets Core Strategy 2010 (CS), the London Borough of Tower Hamlets Managing Development Document 2013 (MDD) and the London Borough of Tower Hamlets Adopted Policies Map 2013. In addition, the Council and the Mayor of London have produced relevant supplementary planning guidance/documents. [26, 28]

406. The LonP identifies the Isle of Dogs as an opportunity area where Policy 2.13 states that proposals should seek to optimise residential and non-residential output. Other relevant policies include:

- Policy 3.3 - encourages boroughs to exceed housing targets;
- Policy 3.4 - development should optimise housing output;
- Policy 3.6 – seeks to provide for children and young people's play and recreation;
- Policy 3.7 - encourages proposals for large residential developments in areas of high public transport accessibility;
- Policy 3.8 - promotes housing choice;
- Policy 3.11 - sets a London-wide target for delivery of affordable homes;
- Policy 3.12 - states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual schemes;
- Policies 7.4, 7.5 and 7.6 - promote high quality design;
- Policy 7.7 – sets out criteria for tall buildings;
- Policy 7.8 – seeks to protect the setting of heritage assets;

- Policy 7.10 - seeks to protect World Heritage Sites (WHS) and their settings;
- Policy 7.11 - identifies strategic views of London;
- Policy 7.12 – provides guidance on the implementation of the London View Management Framework (LVMF);
- Policy 7.27 - seeks to enhance the use of the Blue Ribbon Network;
- Policy 7.28 – seeks to restore and enhance the Blue Ribbon Network;
- Policy 7.30 – promotes the use of London's docks for water recreation.

[29 – 35]

407. CS Policy SP02 seeks to deliver 43,275 new homes from 2010 to 2025. In addition, it seeks to optimise the use of land, requires 35% to 50% affordable housing on sites of 10 units or more, sets out a tenure split for affordable housing of 70% social rented and 30% intermediate, requires a mix of housing sizes and sets a target of 30% of new housing to be suitable for families. Other relevant policies include:

- Policy SP04 - seeks to deliver a network of open spaces;
- Policy SP10 - seeks to protect the settings of the Tower of London WHS, the Maritime Greenwich WHS, listed buildings and other heritage assets; and
- Policy SP12 - seeks to develop sustainable, connected and well-designed places.

408. The CS sets out a vision for Millwall which recognises the continued transformation of the north of Millwall. Areas in the south are to retain a quieter feel, being home to conservation areas and revitalised housing. Taller buildings in the north should step down to the south and west to create an area of transition from the higher-rise commercial area of Canary Wharf to the low-rise predominantly residential area in the south. [36, 37, 38]

409. The appeal site comprises the greater part of MDD site allocation 18, which is for a comprehensive mixed-use development to include a strategic housing development, a secondary school, public open space and other compatible uses. The design principles for the site include that it should acknowledge the design of the adjacent Millennium Quarter and continue to step down from Canary Wharf to the smaller scale residential to the north and south. Other relevant policies include:

- Policy DM3 - seeks to maximise affordable housing and also seeks a balance of housing types, including family homes, with 20% of market sector housing to be three-bedroom or larger;
- Policy DM4 – sets standards for amenity space and child play space;
- Policy DM12 – seeks to increase access to and public use of the Blue Ribbon Network;
- Policy DM23 – seeks to improve permeability;

- Policy DM24 - promotes high quality design that is sensitive to local character;
- Policy DM26 – sets out criteria for tall buildings;
- Policy DM27 - seeks to protect the settings of heritage assets; and
- Policy DM28 - seeks to protect the outstanding universal value (OUV) of the Tower of London WHS and Maritime Greenwich WHS. [39 – 42]

The Isle of Dogs and South Poplar Opportunity Area Planning Framework

410. The Isle of Dogs and South Poplar Opportunity Area Planning Framework (OAPF) has now been adopted by the Mayor of London. It identifies a secondary tall buildings cluster at Millwall Inner Dock which includes the appeal site. It also contains an indicative masterplan for Millwall Waterfront which shows an Outer Dock Park in the eastern part of the appeal site which would also incorporate part of Greenwich View Place. The masterplan also includes a new east/west route through the appeal site, as an extension to Millharbour, a new school and enhanced public realm along the dockside. [43]

Emerging policy

411. The examination of the draft new London Plan began in January 2019. At the close of the Inquiry the Inspectors' report was not yet in the public domain but it was subsequently published in October 2019. The emerging policies that were highlighted at the Inquiry were:

- Policy H6 - applications which meet a minimum threshold of 35% affordable housing may follow a fast track route (which does not require viability testing), otherwise schemes will be subject to viability reviews; and
- Policy H12 - schemes should generally consist of a range of unit sizes although Boroughs should not set prescriptive area-wide dwelling size requirements for market and intermediate homes. [44, 45]

412. Other relevant policies include:

- Policy SD1 - growth and regeneration potential of opportunity areas;
- Policy G4 - open space;
- Policy D1 – design-led approach;
- Policy HC1 – heritage assets;
- Policy HC2 – world heritage sites; and
- Policy HC4 – strategic views. [46]

413. The examination of the draft London Borough of Tower Hamlets Local Plan 2031 (THLP) began in 2018 and the Council consulted on main modifications to the plan in March to May 2019. The Council has now received the Inspector's report on the examination of the plan and anticipates that it will be adopted on 15 January 2020. At the same time, the Council anticipates that the CS, the MDD and the Proposals Map would be withdrawn. [47, 276]

414. Policy D.DH6 of the draft THLP states that tall buildings will be directed towards Tall Building Zones (TBZ), including the Millwall Inner Dock TBZ which covers Greenwich View Place and the appeal site. The design principles for this TBZ state that building heights should significantly step down from the Canary Wharf cluster to be subservient to it. Building heights in the Millwall Inner Dock cluster should also step down from Marsh Wall. [48]

415. Other relevant policies include:

- D.SG5 – developer contributions;
- S.DH1 – delivering high quality design;
- S.DH3 – heritage and the historic environment;
- D.DH4 – shaping and managing views;
- S.DH5 – world heritage sites;
- D.DH6 – tall buildings;
- S.H1 – meeting housing needs;
- D.H2 – affordable housing and housing mix;
- S.OWS2 – enhancing the network of water spaces;
- D.OWS4 – water spaces; and
- Site allocation 4.12 – Westferry Printworks [49]

416. The Council has also received a draft report from the Examiner of the Council's CIL Draft Charging Schedule. It is anticipated that the Charging Schedule will be adopted on 15 January 2020. [50]

Preliminary matter – fallback position

417. A planning application for the redevelopment of the appeal site was submitted in 2015. The proposals included 722 residential units, a secondary school and other uses. The application was recovered by the Mayor of London and planning permission was granted (the consented scheme). Approval has since been given to a non-material amendment and various conditions have been discharged. The consented scheme was implemented in February 2017. In closing, the Greater London Authority (GLA) questioned whether the consented scheme should be regarded as a fallback. The GLA referred to a report by Savills which commented on the market demand for family units. The GLA suggested that this called the viability of the consented scheme into question. [21, 22, 344]

418. The planning permission for the consented scheme has been implemented. On my site visit I saw that substantial works have been undertaken including the excavation of a large basement. The appellant's position at the Inquiry was that, if the appeal is dismissed, then the consented scheme would be implemented. That position was not challenged in evidence and, indeed, was expressly accepted by the Council. Moreover, all three witnesses on viability considered it appropriate to use the consented scheme as a basis for assessing an alternative use value (AUV). Had they doubted that there would be market demand for the

consented scheme they would not have done that. In any event, for reasons discussed below, I attach limited weight to the Savills report. [108, 185]

419. For all these reasons I consider that there is a reasonable prospect that the consented scheme would be implemented if the appeal is dismissed. I have therefore treated it as a fallback in the assessments that follow.

The effect of the scale, height and massing of the proposed development on the character and appearance of the surrounding area

Context and approach

420. Planning permission has already been granted for tall buildings at the appeal site. As noted above, the consented scheme represents a fallback position. Accordingly, I have kept in mind the impacts of that scheme in my assessment of the appeal proposals. LonP Policy 7.7 states that tall buildings should be part of a plan-led approach to changing an area. The vision for Millwall, which is contained in the CS, sets out some design principles. These include that taller buildings in the north should step down to the south and west. Having regard to the vision diagram (Figure 65), I take "*the north*" to mean, broadly, the area around Marsh Wall and the northern part of Millharbour. The concept of stepping down is also found in site allocation 18 of the MDD. [208]

421. The appellant argues that the key justification for the step down policy is to maintain the central emphasis of the Canary Wharf cluster. However, whilst that is indeed part of the rationale, it is not the only consideration identified in the development plan. The CS refers to the creation of an area of transition from the higher-rise commercial area of Canary Wharf to the low-rise predominantly residential area to the south. The MDD also refers to the smaller scale of residential development to the north and south of the Westferry Printworks site allocation, stating that development should continue to step down to that smaller scale. [69]

422. The Isle of Dogs and South Poplar OAPF, (which has now been adopted), identifies a secondary tall buildings cluster at Millwall Inner Dock. This designation includes the appeal site.

423. Emerging policy includes the identification of Tall Building Zones (TBZ). One such TBZ, described as Millwall Inner Dock, also encompasses the appeal site and its frontage to Millwall Outer Dock. Policy D.DH6 of the draft THLP states that development of tall buildings will be directed towards TBZs. Whilst the designation of the TBZ represents a material change in relation to the appeal site, it is important to note that there is continuity with adopted policy in relation to the concept of stepping down. The design principles for the Millwall Inner Dock TBZ require building heights to step down significantly from the Canary Wharf Cluster (and be subservient to it), as well as stepping down from Marsh Wall. Emerging policy is not part of the development plan. Nevertheless, I consider that the emerging TBZ is a factor to which weight should be attached, not least because it is consistent with the development management decision that has already been taken in respect of the consented scheme.

424. MDD Policy DM26 deals with tall buildings. The first part of the policy states that building heights will be considered in accordance with the town centre hierarchy. As the appeal site is not in a town centre it is on the lowest rung of

that hierarchy so the policy would indicate that tall buildings would not be appropriate. The appeal scheme is therefore in conflict with DM26(1). However, the consented scheme would also have been in conflict with this part of the policy. Even so, in its observations to the Mayor regarding the consented scheme, the Council did not object in relation to Policy DM26. [66]

425. Policy DM26 is referred to in the Council's putative reason for refusal (1). However, at the Inquiry it was not suggested that conflict with DM26(1) should, in itself, be regarded as an important matter. Having regard to the consented scheme and the draft THLP, I share that view. Accordingly, I attach limited weight to the conflict with DM26(1). [67, 210]

426. My attention has been drawn to two recent appeal decisions in which the concept of stepping down was discussed. The Inspector at 225 Marsh Wall, which is well to the north of the appeal site, was considering a proposed ground plus 48 storey building. He observed that transition is not just a matter of height but that space around buildings, urban grain and land use are also relevant. The Inspector at 49 to 59 Millharbour, which lies to the north east of the appeal site, was considering a proposal that included a 26 storey building and a 30 storey building. He concluded that a jump up from 8 storeys would not necessarily be harmful, observing that (at that Inquiry) it had been accepted that the step down principle would not be offended by variations in height if the trend of reducing overall height remained clear. [71, 72]

427. The conclusions of both Inspectors turned on site-specific factors, including the locations of those sites in relation to the Canary Wharf cluster and other tall buildings in the locality. The appeal site is further south and is therefore not directly comparable with either of them. Whilst the Council disagreed with the judgement of the Inspector at 49 to 59 Millharbour, it did not suggest that the approach of either Inspector to the step down policy was wrong. At the Inquiry it was agreed that the step down policy does not require a linear approach and that variations in height can be considered. I also agree with the general approach to transition and variations in height reflected in those decisions. [215, 216]

Assessment of the appeal scheme – broad scale

428. The appeal scheme would create a new cluster of 5 towers, two of which would be at ground plus 31 storeys and one at ground plus 43 storeys. The scheme is conceived as a coherent composition, rising up to T4 which would be the tallest building. The way that composition would be seen in relation to other tall buildings would vary according to the location of the viewpoint. For example, as seen from Millwall Park (view 23[287]) the appeal scheme would be seen as a significant southward extension to the Canary Wharf cluster. Due to the effect of distance, the scale would appear comparable to the Canary Wharf cluster, although it would not look as densely developed due to the spacing between the towers. Seen from the west bank of the Thames at Greenland Dock (view 25), the spacing between T1, T2, T3 and T4 would not be apparent. The heights of T3, T4 and T5 would, in combination, make a very strong feature on the skyline. Although T4 would in fact be around 2/3 the height of Number One Canada

[287] Unless stated otherwise, the viewpoints described in this report are all from the Accurate Visual Representations, Appendix 9 (bound separately) to Dr Miele's proof of evidence (WDL/3/C)

Square[288], due to the effects of distance it would appear to be of a comparable scale in this view. It would not be subservient to the Canary Wharf cluster. Whilst the consented scheme would also be apparent in this view, the additional height of the appeal scheme and the introduction of T5 would significantly increase the impact. [216, 217]

429. Sir John McDougall Gardens is a riverside public park to the north west of the appeal site. Although the nearby towers within the Barkantine Estate can readily be seen, I agree with local residents who commented that these point blocks are generously spaced and do not impact unduly on the sense of openness. The view to the south east is of trees and sky (view 18). Whilst the consented scheme would be glimpsed above the trees, it would not be dominant. In contrast, B1, T1, T2, T3 and T4 of the appeal scheme would, collectively, dominate the outlook in this direction. [372, 381]

430. The above viewpoints are just examples of the many locations, within the Isle of Dogs and beyond, from which the appeal scheme would be visible. My overall assessment is that the proposal would be a very dominant presence in many of those views. In some it would be seen as an extension of the Canary Wharf cluster whilst in others it would be emphatically a new and separate cluster. Either way, it would be a marked step up in height, mass and scale at the southern end of the Millwall Inner Dock TBZ. This would not be consistent with the step down approach contained in the development plan and emerging policy. [216, 217, 382]

Assessment of the appeal scheme – transition to adjoining development

431. The residential estates to the south of Millwall Outer Dock are characterised by low-rise buildings. The scale of the Canary Wharf cluster is readily apparent from these estates but there is a degree of separation. The scale and openness of the dock is a defining feature of the character of this locality. The proposed T4 would be taller than the dock is wide. Seen from the south of the dock (view 11), T1, T2, T3 and T4 would combine to dominate the water space. They would appear overbearing and would create a stark transition to the low-rise housing fronting the dock[289]. [220, 372]

432. The appellant argues that the proposal respects the need for a transition to residential development to the north by placing the tallest buildings on the waterfront. However, T5 (which was not part of the appeal scheme) would be ground plus 31 storeys in height. Unlike the other towers, it would not be on the waterfront but would be located towards the north east corner of the site, relatively close to low-rise residential development. This would also create a stark transition in scale. [77]

433. As seen from Tiller Road, to the north of the site, view 14 shows how the consented scheme would handle a transition in scale across the site from Starboard Way to the waterfront. In the proposed scheme, the combined impact of B7 (ground plus 8 storeys) and T3 would create a much more intensive feel. At the western end of the site, B1 (ground plus 12 storeys) would be sited close to

[288] Number One Canada Square itself will no longer be visible from this direction when the consented development has been completed
[289] See Site Cross Section E-E, drawing WPF-PLP-MPA-XX-DRG-A-P-0054 in CD70

Westferry Road (view 20B). The height and mass of this building, combined with absence of any significant setback or intervening lower-rise development, would result in a very dominant building that would be poorly related to the prevailing scale of this part of Westferry Road.

434. The appellant suggests that the designation of the TBZ means that significant changes in building heights are to be expected in any event. That may be so but, to my mind, it is a matter of degree. Designation of a TBZ does not mean that buildings of any height will be acceptable in any particular location. The draft THLP, which must be read as a whole, applies the stepping down approach to the TBZ. The consented scheme was judged to be acceptable in terms of building heights. It does not follow that much taller buildings would also be acceptable. [78]

435. The Council and the appellant disagreed as to whether the appeal site marks a location of civic importance, such as might justify taller buildings. I note that, when commenting to the Mayor on the consented scheme, the Council considered that the increase in height in the south east corner of the site would provide a visual marker in views south along Millharbour. However, insofar as a visual marker is needed at this point, I consider that the need would be met by the consented scheme's T4 (ground plus 29 storeys). [74]

Conclusions on character and appearance

436. I take account of the spacing between the proposed towers and the way materials and the detailed design of the facades would bring texture and variety to the appearance of the buildings. Nevertheless, I consider that the scheme as a whole, considered in the round, would represent a marked step up in height, mass and scale at the southern end of the Millwall Inner Dock TBZ. It would not step down, as required by the CS, nor would it support the central emphasis of the Canary Wharf cluster. Moreover, it would fail to create a satisfactory transition in scale to the adjoining residential areas to the north of the site and to the south of Millwall Outer Dock. It would not be well related to the street scene of Westferry Road.

437. I conclude that the proposal would be harmful to the character and appearance of the area. It would conflict with LonP Policies 7.4, 7.6 and 7.7, which together require development to have regard to scale, proportion and the character of surrounding buildings. It would conflict with the vision for Millwall set out in the CS which requires development to step down to the south and west. It would conflict with CS Policy SP12 which seeks to achieve well-designed places. The proposal would also conflict with MDD Policy DM24, which promotes place-sensitive design, with Policy DM26, which requires development to be sensitive to its surroundings, and with site allocation 18 in respect of the step down approach.

438. With regard to emerging policy, I consider that the proposal would conflict with emerging THLP Policy D.DH6 and site allocation 4.12 in respect of the step down approach. It would also conflict with emerging THLP Policy S.DH1 and emerging LonP Policy D1B in that it would not be of an appropriate scale, height, mass, bulk and form and would not enhance the local context.

The effect of the proposal on strategic views and the settings of the Maritime Greenwich World Heritage Site and the Grade 1 listed Tower Bridge

The strategic view from Greenwich Park

439. LonP policy 7.11 explains that the Mayor has designated a list of strategic views that help to define London at a strategic level. The Mayor has prepared supplementary planning guidance on the management of the views, the London View Management Framework (LVMF). The appeal scheme would be within the panorama seen from LVMF assessment point 5A.1, the General Wolfe statue in Greenwich Park. LonP Policy 7.12 states that development in the foreground or middle ground of a designated view should not be overly intrusive, unsightly or prominent to the detriment of the view.

440. Assessment point 5A.1 is in an elevated location and provides a view over the Queen's House, National Maritime Museum and Old Royal Naval College along the central axis around which the buildings are symmetrically arranged (the Grand Axis). As discussed further below, the Grand Axis is one of the attributes of the OUV of the Maritime Greenwich World Heritage Site (WHS). [90, 91]

441. The LVMF guidance for 5A.1 includes the following:

> *The low rise nature of the axial view to Greenwich Palace in the front and middle ground should be preserved with the cluster of taller buildings at Canary Wharf across the River providing layers and depth to the understanding of the panorama.*
>
> It goes on to suggest that the composition of the view would benefit from some consolidation of the clusters of tall buildings on the Isle of Dogs. However, any such consolidation would need to consider how the significance of the axis view from the Royal Observatory towards Queen Mary's House could be appreciated.

442. It is important to note that the panorama has changed since that guidance was written and will continue to change. The photograph in the LVMF shows the Canary Wharf cluster to the right of the axis, with the axis itself largely clear of tall buildings. View 1 (post-demolition view) shows that the Canary Wharf cluster now spreads across the axis, although there is dip in the skyline on the line of the axis. View 1 (consented and cumulative) shows that several tall buildings have been permitted in the Canary Wharf cluster close to the axis. View 1 (proposed and cumulative) shows the appeal scheme in the context of existing buildings together with those that have been permitted and/or are under construction.

443. The Council of the Royal Borough of Greenwich (RB Greenwich) comments that the proposed buildings would appear as distinct and isolated additions to the skyline. RB Greenwich considers that the appeal scheme would be overly intrusive and would detract from, rather than consolidating, the Canary Wharf cluster, contrary to the LVMF guidance. It is not apparent from view 1, which is a two-dimensional image, that the appeal site is much closer to the viewpoint than Canary Wharf. However, in reality this would be appreciated by the viewer. At the Inquiry, the appellant agreed that the appeal scheme would be seen as part of a separate cluster and my observations on site confirmed that assessment. [81]

444. As seen from assessment point 5A.1, the appeal scheme would appear to the left of the Grand Axis. Insofar as the Canary Wharf cluster adds layering and

depth to the view along the axis, that effect would be unchanged. From this vantage point the stepped form of the five proposed towers, their proportions and their spacing would combine to create an attractive composition. Whilst they would certainly form a prominent new element in the panorama, in my opinion they would not be unsightly or prominent to the detriment of the view. [91]

445. I agree with RB Greenwich that the appeal scheme would not consolidate the Canary Wharf cluster because it would be a distinct and separate cluster of tall buildings. For the same reason, I disagree with the appellant's suggestion that the scheme would actually improve the appearance of the Canary Wharf skyline of strategic importance. I consider that it would be a neutral factor in relation to the strategic view of Canary Wharf. [92, 218]

446. I conclude that, in respect of this assessment point, the proposal would not conflict with LonP Policy 7.12 or with guidance in the LVMF.

The Maritime Greenwich WHS and associated listed buildings

447. The WHS is a complex heritage asset of the highest significance[290]. It includes an assemblage of listed buildings which are highly significant assets in their own right, such as the Grade I listed National Maritime Museum (the former Queens House and the colonnades) and the Grade I listed Old Royal Naval College. These buildings form a symmetrically arranged ensemble reflecting two centuries of Royal patronage and representing a high point of the work of the architects Inigo Jones and Christopher Wren. The Queen's House is considered to be the first Palladian building in Britain and the Old Royal Naval College is regarded as the outstanding complex of baroque buildings in Britain.

448. The attributes of OUV include the architectural ensemble of the buildings described above, the masterplan of buildings in a designed landscape and the Grand Axis. For the individual listed buildings, and for the WHS as a whole, it is clear that setting is very important to their significance as heritage assets.

449. Maritime Greenwich and RB Greenwich consider that the proposal would be harmful to the setting of the WHS because of its effect on the strategic view, because a precedent would be set for further tall buildings to the west of the Canary Wharf cluster and because of impacts on the ability to appreciate the remaining roofline to the west of the Queen's House and the Old Royal Naval College as viewed from Greenwich Park. [226, 227]

450. For the reasons given above, I do not consider that the appeal scheme would harm the ability to appreciate the Grand Axis in the view from the General Wolfe statue. The issue of precedent was also raised as a concern by Historic England, although no objection to the current proposal was raised. However, as described above, the westwards expansion of the Canary Wharf cluster has already happened. I accept that, if the appeal scheme were allowed, it could affect future planning judgements regarding the height of buildings at Greenwich View Place, if that site were to come forward. However, the section of TBZ fronting Millwall Outer Dock is mainly comprised of the appeal site. Consequently, I do not think that precedent should be a significant factor in this case. The appeal scheme should be decided on its merits. [92]

[290] The WHS is described more fully in the Maritime Greenwich WHS Management Plan (CD22)

451. The effect on views of the roofline of the listed buildings from other locations in Greenwich park was considered by Mr Froneman, the Council's heritage witness[291]. For example, in Mr Froneman's view 5[292], the proposed towers T3 and T4 would appear between the twin domes of the Old Royal Naval College. This would distract from the ability to appreciate the two domes as a symmetrical pair. In my view that would be harmful to their significance. In Mr Froneman's view 7, T4 would distract from the ability to appreciate the western dome against a background of clear sky. This would also be harmful. In both cases, the consented scheme would also have an effect although to a lesser degree because the buildings would not be as tall. These views are examples and there are other locations where similar effects would be seen. [224]

452. The appellant argued that the views considered by Mr Froneman had not been identified as important in any policy document, had not been identified by the Council or Historic England when the ES was screened and had not appeared in the Council's officers' report or Statement of Case. It was also argued that there are many buildings with the Canary Wharf cluster which have been approved despite appearing above the roofline of the listed buildings and that the WHM Management Plan identifies other, more important, views of the silhouette of the Old Royal Naval College. [94]

453. The appellant is right to say that the views considered by Mr Froneman do not appear to have been identified by the Council or Historic England prior to the preparation of evidence for this Inquiry. However, the Old Royal Naval College is a listed building to which the duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) applies. The decision-maker is thus bound to consider the effect on its setting whatever may have gone before. That duty is not confined to views that have been identified in a policy document. Whilst there are indeed viewpoints in the park where the domes are already seen against the backdrop of the Canary Wharf cluster, that does not alter the fact that this proposal would diminish the ability to appreciate the heritage asset from some locations. There was little evidence before the Inquiry as to how heritage matters were factored in to planning decisions regarding other tall buildings in the Isle of Dogs.

454. The views of the Old Royal Naval College identified by Mr Froneman are not as important as some other views, such as the famous Canaletto view from the Isle of Dogs and views from riverside paths identified in the WHS management plan. There are very many views of the heritage assets in question, both from within and around the WHS. Nevertheless, it does not follow that the views identified by Mr Froneman are unimportant. In particular, to my mind view 7 (from the colonnade) is of some importance because it is likely to be experienced by many people visiting the Queen's House. [94]

455. In conclusion, I consider that the proposal would fail to preserve the setting of the Old Royal Naval College because it would distract from the ability to appreciate the listed building in certain views from Greenwich Park. In the terms

[291] The views described here are illustrated in the appendices to the proof of evidence of Mr Froneman (LBTH/2/C)
[292] Inspector's note – these are comparative visualisations based on VU.CITY and should not be regarded as verified images. The appellant did not object to the use of Mr Froneman's visualisations.

of the Framework, I would characterise the resulting harm to the significance of the listed building as less than substantial.

456. Given that the Old Royal Naval College is an important component of the WHS, I consider that harm to its setting also represents harm to the setting of the WHS and to attribute 1 of its OUV (the architectural ensemble that includes the Old Royal Naval College).

The strategic view of Tower Bridge from London Bridge

457. As noted above, the LVMF provides a framework for the implementation of LonP Policies 7.11 and 7.12. The appeal scheme would be seen in the strategic view down river from the centre of London Bridge (assessment point 11B.1). This is one of the River Prospects identified in the LMVF. The guidance for this assessment point is:

Tower Bridge should remain the dominant structure in the view when seen from the centre of London Bridge…the viewer's ability to easily recognise its outer profile should not be compromised.

458. View 3[293] shows that the appeal scheme would be seen in the view from London Bridge, appearing within the rectangle defined by the two towers, the deck and the upper walkway of Tower Bridge. At the Inquiry the GLA argued that "*outer profile*" should be interpreted as the outer edges of the towers and upper walkway. I do not agree. As the appellant pointed out, on the GLA's interpretation there would be no inner profile and reference to "*outer*" would be meaningless. On a straightforward reading of the text, I consider that the outer profile is defined by the upper walkway, the tops of the towers and the suspension cables on either side. [97, 303, 304]

459. That interpretation is consistent with the purpose of the guidance, which is to support the implementation of the LonP. Policy 7.12 states that development in the background of a designated view should give context to landmarks and not harm the composition of the view as a whole. For River Prospects:

views should be managed to ensure that the juxtaposition between elements, including the river frontages and key landmarks, can be appreciated within their wider London context

It seems to me that the focus of the LonP is on the composition of the view as a whole, and the juxtaposition between elements, rather than on a detailed consideration of individual elements in the view.

460. As may be seen from view 3, the appeal scheme would not compromise the viewer's ability to recognise the outer profile of Tower Bridge. Nor would it harm the ability to appreciate the juxtaposition of elements of the view such as the Tower of London, the river banks and Tower Bridge itself. I conclude that, in respect of this assessment point, the proposal would not conflict with LonP Policy 7.12 or with guidance in the LVMF.

[293] View 3 in Accurate Visual Representations, Appendix 9 (bound separately) to Dr Miele's proof of evidence (WDL/3/C)

Effect on the setting of Tower Bridge

461. Tower Bridge is a Grade I listed building. It is therefore a heritage asset of the highest significance. The factors contributing to its special interest include its architectural interest, in that it was designed in a Gothic style reflecting its proximity to the Tower of London. It is also of historic interest, reflecting the architectural values of the day and responding to concerns about congestion. It is a feat of Victorian engineering, having been (at the time of its opening) the largest bascule bridge in the world. The setting of Tower Bridge is of great importance to the ability to appreciate the form and function of the listed building. [282, 283]

462. Within that setting, London Bridge offers a sequence of views which enable the viewer to see the whole asset in profile, understand its historic context and appreciate the feat of engineering that it represents. I consider that these are particularly important views of the heritage asset. Moreover, they are not confined to the views identified in the LVMF. The relationship between Tower Bridge and its background changes as the viewer crosses London Bridge. From many locations Tower Bridge is seen against a backdrop of tall buildings. However, there is a viewpoint, (to the north of LVMF assessment point 11B.1), where the towers and central span can be appreciated in profile against a clear sky and a distant wooded ridge[294]. [286]

463. The appellant accepted that the appeal scheme would be readily distinguishable in the setting of Tower Bridge, as seen from London Bridge. This can be seen in view 3 where the appeal scheme would appear to the left of the southern tower, extending almost to the upper walkway. The potential impact of buildings in the background of the long view along the river can be seen in view 29, where Ontario Point appears in the centre of Tower Bridge. Ontario Point is not as tall as the appeal scheme would be but, being considerably closer to the viewpoint, would appear to be a similar height. These are fixed points and a sequence of views would be experienced by a viewer crossing London Bridge. [285, 300]

464. View 29 shows how Ontario Point has harmed the ability to appreciate the view of Tower Bridge from the northern part of London Bridge through competition with, and distraction from, the listed building. This effect was confirmed by my site visit. The appellant argues that Ontario Point must have been thought to be acceptable when planning permission was granted for it. However, there was no information before the Inquiry on how heritage considerations were taken account of in any planning decisions relating to Ontario Point. My assessment is based on the evidence before the Inquiry and on what I saw. In my opinion the appeal proposal would be harmful in a similar way, albeit from a different viewpoint. There would be harm to the ability to appreciate the view of Tower Bridge from locations around the centre of London Bridge through competition with and distraction from the listed building. [100]

465. The consented scheme would also have an impact and the appellant points out that the GLA did not object to that proposal on heritage grounds. Nevertheless, it can be seen from view 3 (consented plus cumulative view) that the consented

[294] Appendix 4 to the proof of evidence of Dr Barker-Mills, photographs NPBM6 and NPBM7 (GLA/1/C)

scheme would have significantly less impact than the appeal scheme because the buildings would not be so tall. [100, 299]

466. Tower Bridge is a striking structure which draws the eye. Moreover, the effect of factors such as distance and detailed design are relevant. No doubt there would be times when weather conditions would render the proposed buildings indistinct in views from London Bridge. It appears that Ontario Point has been constructed in reflective materials which emphasise its presence (as seen from London Bridge) when it catches the sun. The approach to facing materials and the layering of the facades in the proposed buildings would be unlikely to have such an effect. Even so, the height and bulk of the appeal scheme would be such that it would have a harmful effect for much of the time. [101]

467. Moreover, it is important to note that this harmful effect would be particularly apparent from locations to the north of the centre of London Bridge where the distinctive profile of the two towers, the upper walkway and the deck of Tower Bridge can be seen against a backdrop of clear sky and a distant wooded ridge[295]. Although this is not the same as LVMF assessment point 11B.1, (which was selected for a different purpose), I consider that this is a particularly important viewpoint in terms of the ability to experience and understand the listed building in its physical and historic context. This is because it is the only viewpoint in which the asset can be experienced in this way.

468. The appellant argued that the assessments offered on behalf of the GLA and the Council are inconsistent with the views of the Inspector and the Secretary of State in relation to 20 Fenchurch Street (the Walkie Talkie). As a preliminary point, that decision was made in 2007, before the publication of the Framework and before the judicial authorities highlighted by the GLA. In any event, the circumstances are very different. The view referred to in relation to 20 Fenchurch Street is a view from Butlers Wharf[296] in which Tower Bridge is seen against the backdrop of buildings within the City of London. It is quite unlike the view that would be impacted by the appeal proposal. In my view the Secretary of State's decision in respect of 20 Fenchurch Street is of very little relevance to this appeal. [100, 295]

469. My overall assessment is that the proposal would fail to preserve the setting of Tower Bridge because it would distract from the ability to appreciate the listed building in views from London Bridge. In the terms of the Framework, I would characterise the resulting harm to the significance of the listed building as less than substantial.

Other designated heritage assets

470. Other listed buildings and conservation areas have been identified and considered in the evidence. There were no other instances where any party considered that there would be harm to any of these other heritage assets or to the settings of such assets. I see no reason to take a different view.

[295] Appendix 4 to the proof of evidence of Dr Barker-Mills, photographs NPBM6 and NPBM7 (GLA/1/C)
[296] Appendix 4 to the proof of evidence of Dr Barker-Mills, photographs NPBM5 (GLA/1/C)

Conclusions on strategic views and the settings of heritage assets

471. I conclude that the proposal would not harm the relevant strategic views identified in the LVMF. Nor would it conflict with LonP Policy 7.12 or guidance in the LVMF. For the same reason it would not conflict with emerging LonP Policy HC4 or emerging THLP Policy D.DH4. Whilst there is some overlap between this finding and the consideration of individual heritage assets, it does not follow that compliance with the LVMF is sufficient to discharge the duty under s66 of the 1990 Act.

472. For the reasons given above, I conclude that the proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge. This is a matter to which considerable importance and weight should be attached. The proposal would conflict with LonP Policy 7.8, CS Policy SP10 and MDD Policy DM27 which seek to protect heritage assets and their settings. In respect of the Maritime Greenwich WHS, the proposal would also conflict with LonP Policy 7.10 and MDD Policy DM28 which seek to protect WHS and their settings.

473. With regard to emerging policy, the proposal would conflict with emerging LonP Policy HC1 and emerging LBTH Policy S.DH3, which seek to protect heritage assets, and emerging LonP Policy HC2 and emerging THLP Policy S.DH5 which seek to protect WHS and their settings.

474. The Framework requires harm to designated heritage assets to be weighed against the public benefits of the proposal. I return to that balance in the overall conclusions to this report.

The effect of the proposal on the recreational use of Millwall Outer Dock

Introduction

475. This section of the report deals with the recreational use of the water area at Millwall Outer Dock. The ability to access the dockside and to enjoy the use of public spaces adjacent to the water is considered in the section on public open space. The ES assessed the effect of the proposal on sailing. However, sailing is not the only water-based activity that takes place on the dock. Other activities include kayaking, paddle-boarding and dragon boat racing. At the Inquiry, no party suggested that these other activities would be materially affected by the proposal. [106]

476. Use of the dock is managed by the Docklands Sailing and Watersports Centre (DSWC), a social enterprise which provides access to sailing and other water-based activities for children, young people and adults. The considerable social benefits of making these activities available, in particular to children and young people, were described at the Inquiry and accepted by all parties. [366, 376]

477. The DSWC is based at the western end of the dock, adjacent to the appeal site. In addition to the shore-based facilities, it is here that boats are stored, rigged and launched. There is a moveable pontoon which was moored in the eastern dock at the time of the Inquiry. This is used to separate training groups, particularly windsurfers. Although the DSWC is quite close to the tidal River Thames, its activities are currently confined to the enclosed water of the dock. [377, 379]

The approach of the ES

478. The construction of tall buildings at the appeal site would affect wind conditions, and hence sailing quality, within the dock. There are no established guidelines for measuring sailing quality. The approach of the ES for the consented scheme was to develop a set of criteria applicable to novice and inexperienced sailors. The criteria relate to wind speed and the degree of change in wind speed and direction between adjacent locations within the water area. The ES for the appeal scheme took the same approach. The measure of significance adopted in the ES is the reduction in the number of days per month when these criteria would be met.

479. The GLA's report for the consented scheme identified that there would be a significant impact on sailing quality in the north west corner of the dock. This was considered to represent a negative impact on recreational use rather than an outright loss of a facility for water-based activity[297]. Subject to financial mitigation measures, secured by the extant Agreement, and having regard to the planning benefits of the scheme, the GLA considered that the impact would not be such as to warrant refusal of the application.

480. The ES for the appeal scheme found that in the current situation (with a cleared appeal site) the quality criteria in the western part of the dock would be met on 17.9 days per month. With the proposed buildings in place, the criteria would only be met on 10.3 days per month (a reduction to about 58% of the current situation). The ES finds this to be an adverse and significant effect in the western part of the dock, although there would not be a significant adverse effect at other locations.

481. Given that it is the western part of the dock where sailors rig and launch the boats, I agree with the finding of the ES that there would be a significant adverse effect on sailing conditions for novice and inexperienced sailors. I appreciate that other water-based activities would not be affected. Nevertheless, having regard to the acknowledged social benefits of the current sailing activities and the scale of the reduction in sailing opportunities, I consider that this would represent a significant disadvantage of the proposals. [109, 241]

Comparison with the fallback scheme

482. With the consented scheme in place, the ES finds that the criteria would be met on 11.0 days per month (a reduction to about 61% of the current situation). Mr Breeze, the appellant's witness on wind conditions, considered that the difference between 61% (for the consented scheme) and 58% (for the appeal scheme) is not significant. Dr Stanfield, (the Council's witness on wind conditions), conceded that this difference was at the lowest level of significance. In my view the use of the agreed criteria to describe sailing quality is a valid approach. However, sailing quality is an inherently imprecise concept. The outputs of the method should be regarded as a general indication of sailing quality rather than a precise quantification. In this context, I do not consider that a difference of 3 percentage points is significant. [110, 242]

[297] CD49, paragraphs 355 to 358

483. Based on the methodology adopted in the ES, I conclude that the effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme. Both schemes would have a significant adverse effect on sailing quality in the western part of the dock.

The Council's criticisms of the ES

484. The Council criticised Mr Breeze on the basis that he had previously advised the GLA on the consented scheme, identifying some criticisms of the ES methodology at that time. It was argued that this amounted to a conflict of interest. However, the GLA (the recipient of that advice) raised no concern on this point at the Inquiry. I see no reason to doubt that Mr Breeze gave his true and professional opinions to the Inquiry, as confirmed in his proof of evidence. [238]

485. The Council's substantive criticisms of the ES methodology related to assessing the variability of wind conditions and the effects of down draughts caused by tall buildings. The ES compares average wind speed and direction at adjacent assessment points distributed across the water space, this being the basis of the sailing quality criteria referred to above. However, the Council's evidence did not provide any alternative assessment of the overall impact on sailing quality. Nor did it provide any comparison between the consented scheme and the appeal scheme.

486. With regard to variability, the appellant drew attention to an addendum to the ES for the consented scheme. This showed that visualisations of wind variability, including tuft testing, were carried out as part of the overall assessment. The results were not reported in the ES itself because they did not relate directly to the agreed criteria. [111, 240]

487. Dr Stanfield carried out computational fluid dynamics (CFD) modelling for selected wind directions. This showed how tall buildings can create down draughts which are deflected laterally when they reach the ground. Dr Stanfield and Mr Breeze agreed that down draughts are strongest close to the base of the tall building in question. In answer to my question, Dr Stanfield agreed that his CFD modelling of the appeal scheme showed that it would reduce wind speeds over the water space. There is thus no evidence that down draughts (if significant) would increase capsize risk. Moreover, although Dr Stanfield did not model the consented scheme, in answer to my question he commented that the differences in height between the consented scheme and the appeal scheme would not necessarily make much difference to the wind speed experienced over the dock. [112, 113, 245]

488. For the reasons given above, I consider that the ES methodology is a valid approach although its outputs should not be treated as precise quantifications. The outputs reported in the ES were those relevant to the sailing quality criteria. To my mind the Council's evidence does not demonstrate that the ES methodology was flawed. I therefore accept the findings of the ES that both the appeal scheme and the consented scheme would have a significant adverse effect on sailing quality in the western part of the dock.

The proposed mitigation

489. The Unilateral Undertaking (UU) would provide for a sailing centre mitigation contribution of £1.139 million. Application of the funds would be governed by Schedule 8. A list of 6 potential mitigation measures is set out in the definitions section of the UU. However, before considering the individual items it is convenient to start with two overarching points. [8]

490. First, the drafting of Schedule 8 is such that the deployment of the funds would be subject to approval by the Council. At the point of decision, the decision-maker could have no certainty that all items, or any particular item, would actually be delivered. This lack of precision is compounded by item (vi) which includes "*such other measures as are considered reasonably required and appropriate*…" (a list of some potential measures is then provided) and "*any other alternative measures that are demonstrated to provide mitigation for the wind impacts of the development on DSWC's activities*". Consequently, there is nothing to prevent the use of substantial funds for purposes which have not yet been identified. To my mind, it is not possible to be satisfied that the obligation is necessary to make the development acceptable in planning terms in these circumstances. [251]

491. Second, at the start of the Inquiry the amount of the contribution was £756,000. This was consistent with the extant Agreement. The sum increased by around 50% during the course of the Inquiry, despite the appellant's confirmation in closing that (in the appellant's view) the impact of the appeal scheme would be no different to that of the consented scheme. The fact that the appellant is seeking to respond to DSWC and wishes to be a good neighbour is not in itself a demonstration of compliance with Regulation 122(2). [117, 249]

492. The appellant's rationale for the amended sum is the list of items set out in an email from Mr Davis (dated April 2016)[298], who is now Centre Director at DSWC. However, that list was available when the consented scheme was under consideration. It is not new information. In my view there was no credible explanation for the significant increase in the amount of the contribution. Consequently, it has not been shown that the obligation is directly related to the development. [118, 249]

493. Before turning to the individual items, it is important to have in mind the impact that the proposed measures are intended to address. The impact identified in the ES is a significant reduction in the number of days per month which would be suitable for novice and inexperienced sailors. In other words, there would be a loss of sailing opportunity for this specific group.

494. The list set out in the email from Mr Davis includes river-based infrastructure, such as a pier and moorings, river-based equipment, a river works licence, staffing, staff training and maintenance costs. The list appears to be wholly or mainly directed to DSWC's objective of gaining access to the river for water-based activities. The potential UU measures include funding for a study to assess the feasibility of sailing on the river. It seems unlikely that providing river-based infrastructure would be a straightforward matter due to the need to obtain necessary consents and to carry out construction works in a tidal environment. At

[298] The email is appended to OD15

present there is no evidence that running DSWC activities on the tidal Thames would be feasible so this cannot be relied on as mitigation. In any event, there is no evidence that access to the tidal river would benefit novice and inexperienced sailors. The evidence of Mr Davis is that access to the river would benefit sailors once they have developed their skills. [119, 120, 251, 378]

495. Mr Davis explained that the provision of pontoons within the dock would not mitigate the loss of sailing opportunity for novice and inexperienced sailors. This is because of the practicalities of transporting young people to the eastern part of the dock and because there is no reason to think that wind conditions there would be any more suitable. I accept the evidence of Mr Davis on this point. With regard to new vessels and equipment, there was no credible evidence before the Inquiry of what vessels and/or equipment (suitable for use within the dock) might offer mitigation. The evidence in relation to staff costs and staff training appears to relate to potential operations within the river. There was no evidence of what additional staff or training costs might be incurred for operations within the dock. [251, 379]

496. Drawing all the above together, I conclude that it has not been demonstrated that the package of mitigation measures would be directly related to the development or necessary to make the development acceptable in planning terms. Accordingly, I have not attached weight to these obligations in reaching my recommendation.

497. I am mindful of the fact that (aside from the amount of the contribution) the terms of the UU in relation to this matter are broadly similar to those of the extant Agreement. Both the Council and the GLA were parties to that agreement. Nevertheless, it will be for the Secretary of State to conclude on the tests of Regulation 122(2) on the facts of this case. The Secretary of State will not be bound to follow the approach of the Council and/or the GLA in respect of the extant Agreement. [118]

Conclusions on recreational use of Millwall Outer Dock

498. I conclude that there would be a significant adverse effect on sailing quality for novice and inexperienced sailors. I appreciate that other water-based activities would not be affected. Nevertheless, having regard to the acknowledged social benefits of the current sailing activities and the scale of the reduction in sailing opportunities, I consider that this would represent a significant disadvantage of the proposals. For the reasons given above, I attach no weight to the mitigation measures set out in the UU.

499. The proposal would be contrary to LonP Policy 7.7(D), which states that tall buildings should not affect their surroundings adversely in terms of microclimate and wind turbulence, Policy 7.27(A) which states that proposals should enhance the use of the Blue Ribbon Network and Policy 7.30(B) which seeks to promote the use of London's water space for recreation. It would be contrary to CS Policy SP04 which seeks to improve the usability of the environment of water spaces. It would be contrary to MDD Policy DM12, which states that there should be no adverse impact on the Blue Ribbon Network and that development should improve the quality of the water space.

500. With regard to emerging policy, the proposal would be contrary to THLP Policy S.OWS2, which promotes the use of water spaces for recreation, and Policy

D.OWS4 which seeks to prevent adverse impacts on water spaces and to increase opportunities for water-related sport and recreation.

501. The effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme. Both schemes would have a significant adverse effect on sailing quality in the western part of the dock. For the reasons given above, I consider that there is a reasonable prospect that the fallback scheme would be implemented if the appeal is dismissed. It follows that there is a reasonable prospect that the adverse effect on sailing quality would occur in any event. Consequently, I attach only limited weight to this factor.

The mix of market and affordable housing in terms of numbers, size and tenure

Introduction

502. The acute need for affordable housing in Tower Hamlets is described in the evidence and was not disputed. [317]

503. Policy 3.12(A) of the LonP states that the maximum reasonable amount of affordable housing should be sought when negotiating on mixed use schemes, having regard to various factors which are set out in the policy. Policy SP02(3)(a) of the CS requires sites providing at least 10 new residential units to provide at least 35% affordable homes (subject to viability) and CS Policy SP02(4) sets out a tenure split of 70% social rented and 30% intermediate. These percentages are carried forward into Policies S.H1 and D.H2 of the emerging THLP.

504. The UU would provide for 21% of the development (by habitable rooms) to be affordable housing, with 70% of that being affordable rent and 30% being intermediate. The appellant considers that this would be the maximum reasonable amount of affordable housing. The Council considers that the scheme could deliver 35% affordable housing, in compliance with policy. The GLA considers that 21% is not the maximum reasonable amount but has not provided an alternative figure for what the maximum reasonable amount should be.

505. Discussions between the parties on viability matters continued during the course of the Inquiry, including in relation to the construction costs of the consented scheme. The viability Statement of Common Ground (SoCG)[299] identifies agreements reached on various inputs to the viability modelling, including residential sales values, commercial rents and yields and the construction costs of the appeal scheme. The construction costs of the consented scheme were largely agreed at a later date. The evidence on viability was updated during the Inquiry as a result of these discussions. The SoCG also identifies those inputs where agreement was not reached.

506. The three viability witnesses who appeared at the Inquiry were Mr Fourt (for the appellant), Ms Seymour (for the GLA) and Dr Lee (for the Council). The closing submissions for the Council note that the GLA led on matters relating to Benchmark Land Value (BLV) and the affordable housing review mechanism at the Inquiry. The following comments on the viability evidence will therefore focus mainly on the differences between the evidence of Mr Fourt and Ms Seymour, although I have had regard to all the evidence.

[299] ID10

Approach to Benchmark Land Value

507. National Planning Policy Guidance (NPPG) states that viability assessments should follow the recommended approach set out therein. It goes on to say that, to define land value for any viability assessment, a BLV should be established on the basis of the existing use value (EUV) plus a premium for the landowner (EUV plus). Market evidence can be used as a cross-check of BLV but should not be used in place of BLV. Market evidence should be based on developments which are fully compliant with emerging or up to date policies, including affordable housing requirements at the relevant levels set out in the plan. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan[300].

508. NPPG goes on to consider the circumstances where an alternative use value (AUV) might be used instead of EUV when establishing a BLV. It states that AUV may be informative in establishing a BLV. Any alternative uses considered should be limited to those which would comply with up to date development plan policies[301].

509. In this case there is an alternative scheme which has planning permission (the consented scheme). By the end of the Inquiry all three viability witnesses agreed that it would be appropriate to establish the BLV for the appeal scheme by reference to a residual appraisal of the consented scheme, thereby deriving an AUV for the site. The financial viability appraisal (FVA) submitted with the application did not include a residual appraisal of the consented scheme. However, Mr Fourt included a residual valuation of the consented scheme in his proof of evidence.

510. Ms Seymour's proof of evidence established a BLV following the EUV plus approach, on the assumption that the cleared site could be used for open storage. Ms Seymour also presented a residual appraisal of the consented scheme in her proof of evidence but, on the information available to her at that time, that indicated a negative land value. Following subsequent agreements on construction costs, Ms Seymour also established a BLV based on the AUV of the consented scheme.

511. I agree that, in the particular circumstances of this appeal, the approach of establishing a BLV based on the AUV of the consented scheme is appropriate and consistent with NPPG.

The appellant's assessment of BLV

512. The FVA submitted with the application adopted a BLV of £45 million, derived from a market value approach. Mr Fourt's proof of evidence included an AUV of the consented scheme which produced a residual value of £45.22 million. He also considered adjusted market evidence from other development sites (which indicated a value of £60.42 million) and had regard to the site value of £45 million which is fixed in the extant Agreement[302]. In accordance with the extant Agreement, the fixed site value is to be indexed in line with the house price index

[300] Reference ID: 10-010-20180724, 10-013-20190509 and 10-014-20190509
[301] Reference ID: 10-017-20190509
[302] See the summary table at paragraph 11.13 of Mr Fourt's proof of evidence (WDL/5/B)

for Tower Hamlets, resulting in a reduction to £44.86 million. Having taken account of all of the above, Mr Fourt adopted a BLV of £45 million for his appraisal of the appeal scheme.

513. Mr Fourt's rebuttal proof of evidence corrected an error relating to floor areas for commercial floorspace. His revised residual value for the consented scheme was £36.8 million. He then carried out a sensitivity test and took account of the adjusted market evidence and site value from the extant Agreement, concluding that a BLV of £45 million would still be appropriate[303]. This conclusion was unchanged by Mr Fourt's subsequent addendum to his evidence.

514. The GLA argued that it was not appropriate to take account of the site value fixed in the extant Agreement in this way. I agree because that value was established at a time when the 2014 NPPG took a different approach to establishing a BLV. NPPG now requires comparable evidence to be based on developments which are fully compliant with emerging or up to date policies, including affordable housing requirements at the relevant levels set out in the plan. [137, 330, 341]

515. Stepping back from the detail, it is relevant to consider whether it seems likely that a residual appraisal conducted today would yield the same result as an appraisal done in 2016. Ms Seymour pointed out that, in general terms, values have largely remained static whilst construction costs have increased[304]. On that basis it seems likely that an appraisal done now would show a lower residual site value. For all the above reasons, I consider that very little weight should be attached to the land value fixed by the extant Agreement.

516. The GLA was also critical of the way in which market evidence was used in Mr Fourt's analysis. NPPG requires viability assessments to be transparent. In my view the adjustments made by Mr Fourt to the market evidence from other developments were not transparent. Moreover, his methodology involved deriving a site value per market residential unit (from the comparator sites) which was then multiplied by the number of market residential units in the appeal scheme. To my mind that is not an appropriate approach. First, because it disregards value attributable to other land uses. Second, because it assumes that the number of residential units now proposed will be acceptable in planning terms. [342]

517. The appellant's response to these points was to say that the figure derived from market evidence was well above the BLV that Mr Fourt ultimately adopted, leaving a generous margin for error. However, I consider that Mr Fourt's approach to market evidence was flawed. Very little weight should be attached to it, regardless of the actual figure it generated. [138]

518. In summary, I find that very little weight should be attached to the factors Mr Fourt has relied on in adopting a BLV greater than his final AUV of £36.8 million.

The GLA's assessment of BLV

519. Ms Seymour's proof of evidence adopted a BLV of £28 million, having followed an EUV plus approach. She had also carried out a residual appraisal of the

[303] Table 2 in WDL/5/D
[304] Paragraph 6.30 of Ms Seymour's rebuttal proof (GLA/2/D)

consented scheme based on cost information provided by the GLA's consultants. This resulted in a negative land value (- £12 million). Ms Seymour's first update increased her AUV to £23 million, which was still below her EUV plus value. Following agreement (during the Inquiry) on the construction costs of the consented scheme, Ms Seymour's revised AUV was £31 million. [347]

The disputed inputs to the assessments of AUV

520. Mr Fourt attributed a capital value of £187/sqft to the affordable rent units when advising the GLA on the consented scheme. He now attributes a value of £257/sqft to the same units in the same scheme. When questioned on this point at the Inquiry, Mr Fourt was not able to identify any reason for this significant increase. I therefore consider that the Ms Seymour's capital value (£215/sqft) is to be preferred. [350]

521. Ms Seymour included revenue from private residential ground rents in her assessment. The appellant argued that the government has announced that there will be legislation to reduce future ground rents to a peppercorn so potential revenue should not be included. However, it is not known when or how such a change may take place, nor what transitional arrangements there may be. Ms Seymour provided evidence that ground rents have been charged on comparable developments in the last 3 years. Viability assessments are normally carried out on the basis of current costs and current values. I see no reason to depart from that approach and I agree that it is appropriate to have regard to potential ground rents. [140, 349]

522. Turning to disputed cost inputs, Ms Seymour and Mr Fourt agreed that professional fees are typically allowed for as a percentage of construction costs ranging from 8% to 12%. Ms Seymour adopted a figure of 10%, in the middle of that range. Mr Fourt adopted a figure of 12%, at the top of the range. Although the appeal scheme is large, and would be implemented over a long period, that would be reflected in the construction costs on which the fees are based. There are consistencies of design across the blocks and I accept the GLA's point that this would provide economies of scale in relation to fees. Whilst I note the itemised breakdown of fees provided by Mr Fourt, breaking the global figure into numerous elements does not assist when it comes to comparing the fees with what has been allowed for elsewhere. Overall, I do not think that a figure at the top of the range has been justified and I accept the GLA's mid-range figure of 10%. I also accept Ms Seymour's evidence that project insurances are typically included in the professional fees budget. [141, 142, 351, 352]

523. There were two other disputed inputs, a cost input relating to sprinklers and a revenue input relating to management floorspace. However, these are small items in the context of the overall assessment, such that they are unlikely to have a material effect on the outcome. [143, 347, 348]

The disputed inputs to the assessment of the appeal scheme

524. The disputed inputs for the assessment of the appeal scheme related to ground rents, management floorspace, professional fees and insurances and BLV. All of these have been discussed above and the same comments apply.

The appellant's criticisms of Ms Seymour's evidence

525. The appellant emphasised the magnitude of the changes in Ms Seymour's residual appraisals of the consented scheme, suggesting that her conclusions should therefore be treated with caution. I do not share that concern. A large amount of information on construction costs was only made available to the GLA during the Inquiry. Ms Seymour was right to revisit her conclusions in the light of that new evidence. To my mind, the fact that Ms Seymour was open to making significant changes to her assessment of BLV adds to the credibility of her evidence rather than diminishing it. [132, 133, 347]

526. It was suggested that, unlike Mr Fourt, Ms Seymour had not carried out cross-checks to validate the conclusions of her residual appraisal. However, whilst NPPG allows for cross-checks, this is not a policy requirement. Ms Seymour did carry out a sensitivity test, consistent with RICS guidance. In any event, insofar as Mr Fourt carried out cross-checks, I have attached very little weight to that exercise for the reasons given above. [136]

527. The appellant complained that the GLA had not offered its own assessment of what the maximum reasonable amount of affordable housing should be. The question which follows from Policy 3.12(A) of the LonP is whether or not the appellant's offer of 21% affordable housing represents the maximum reasonable amount of affordable housing. I consider that the GLA's evidence addresses that question. [132]

528. It may be that there are differences between the assessments of Ms Seymour and Mr Fourt which could be explained by differences in the viability models they used rather than by differences in the inputs that have been discussed above. However, there was very little evidence before the Inquiry on this point. Ms Seymour used Argus, which is a widely used tool for this type of work. [132]

The Council's criticisms of Mr Fourt's evidence

529. The Council was critical of the fact that, in 2016, Mr Fourt had advised the GLA in relation to the consented scheme. It was suggested that this represented an unacceptable conflict of interest. However, Mr Fourt obtained the agreement of the GLA before taking on instructions from the appellant. The GLA itself raised no concerns on this point at the Inquiry. [144, 260]

530. The Council also pointed out that the application for the appeal scheme offered 35% affordable housing. The appellant maintained this stance for over a year, despite the fact that Mr Fourt's assessment was indicating a lower level of provision. Nevertheless, it is clear that the appellant was responding to the Mayor's fast-track approach. This incentivises developers to offer 35% affordable housing, even where an FVA may be indicating less. I do not consider that the fact that the appellant took a commercial view on that basis is, in itself, a reason for reducing the weight to be attached to the FVA. Consequently, although I have not accepted some of Mr Fourt's evidence for other reasons, the Council's criticisms on these matters have not affected the weight I attach to his evidence. [145, 255, 258]

Inspector's conclusions on viability assessments and affordable housing

531. I conclude that very little weight should be attached to the factors Mr Fourt relied on in adopting a BLV greater than his final AUV of £36.8 million. Ms

Seymour's final AUV was £31 million. To the extent that the differences between the respective assessments of AUV result from the disputed inputs, I consider that the evidence of the GLA is to be preferred to that of the appellant for all the reasons given above. I reach the same conclusion in relation to the disputed inputs to the assessments of the appeal scheme. Overall, I attach greater weight to the GLA's viability evidence than to that of the appellant. I have also taken account of the Council's evidence on these matters but this does not alter my conclusions.

532. The GLA's assessment of the appeal scheme concludes that, with 21% affordable housing, it would achieve an internal rate of return (IRR) of 20.83%. This is well above the target rate of 14%. This conclusion on IRR has been subject to sensitivity testing. I conclude that, on the balance of the available evidence, it is likely that the scheme could provide more affordable housing and that the offer of 21% does not therefore represent the maximum reasonable amount. [347, 356]

The UU and viability reviews

533. Policy 3.12(B) of the LonP states that negotiations on affordable housing should take account of provisions for re-appraising the viability of schemes prior to implementation. The Mayor's Affordable Housing and Viability SPG is aimed at ensuring that the maximum reasonable amount of affordable housing is secured over the lifetime of a project in circumstance where there is an improvement in viability. The SPG states that schemes should be subject to an early stage review where an agreed level of progress has not been reached within two years of permission being granted. Substantial implementation is described as including ground preparation, construction of foundations and construction of the ground floor. [354]

534. Whilst the UU makes provision for an early stage review (at Schedule 3), the definition of substantial implementation is significantly less stringent than that indicated in the SPG. In particular, the commencement of piling for Plot 1 (rather than the construction of the ground floor) would amount to substantial implementation. The appellant argues that, in this case, there would need to be a significant amount of work required to reach this point. Whilst that may be so, in my view the drafting reduces the chances of an early stage review taking place. Moreover, the UU provides for the implementation period to be extended in various circumstances. All of this makes it unlikely that an early stage review would be triggered. [173,174, 353]

535. Even if the early stage review was triggered, it would be subject to the principles which are set out in Part 2 of Schedule 3. Those would require the review to adopt inputs (such as site value and professional fees) consistent with the appellant's evidence. As discussed above, I have found those inputs not to be justified. Consequently, Part 2 would further reduce the prospect of the review mechanism delivering any additional affordable housing. [353]

536. The SPG also calls for a late stage review once 75% of homes have been sold or let. This is consistent with Policy H6(E) of the draft LonP. Clause 3.8 of the UU makes the late stage review contingent upon either:

- Policy H6 being adopted as part of the development plan, or
- the Secretary of State determining that a late stage review would meet the tests in Regulation 122(2).

537. At the time of writing Policy H6 had not been adopted as part of the development plan. The report of the Examination in Public of the London Plan finds in favour of the late stage review set out in Policy H6. It therefore appears likely that H6 will become part of the development plan in due course. Moreover, the appeal scheme would take several years to implement, during which time values may increase. In this respect it would differ from the scheme under consideration at 49 to 59 Millharbour[305]. The affordable housing offer is well below the level sought by the development plan. These factors indicate that a late stage review would be appropriate in this case. If the Secretary of State is minded to allow the appeal, then I would recommend that his decision should indicate that a late stage review would meet the tests in Regulation 122(2). That said, whilst the late stage review provided for by the UU would be of some benefit, I do not think it would be very effective because it would incorporate inputs that (in my view) are not justified. [175, 176, 202, 354, 361]

538. Schedule 15 would make provision for the appellant's viability assessment to be re-run in the event that the appeal scheme becomes liable for Community Infrastructure Levy (CIL). The amount of affordable housing would be adjusted such that the IRR remained at 13.1%, as in the current appraisal. Following the receipt of the report of the examination of the Council's proposed Charging Schedule, it seems likely that the appeal scheme will become liable for CIL. [13, 180, 277]

539. The adjustment is likely to reduce the amount of affordable housing. Whilst there was no appraisal of the impact of such an adjustment before the Inquiry, the appellant submitted that it could significantly alter the viability of the scheme. Consequently, with Schedule 15 in place, the decision-maker could not be assured that 21% affordable housing would be delivered. Indeed, the decision-maker would not know what level of affordable housing might emerge from such a review. This would inevitably affect the weight to be attached to the delivery of affordable housing in the planning balance. [178, 179, 200, 201, 355, 362]

540. Clause 3.10 of the UU provides that, if the Secretary of State finds that an obligation does not meet the tests of Regulation 122(2), then that obligation shall not have effect. In my view Schedule 15 is not necessary to make the development acceptable in planning terms. If the Secretary of State is minded to allow the appeal, then I would recommend that he makes a finding to that effect.

541. The appellant argues that, in the absence of Schedule 15, it would be appropriate to seek further representations on the impact of CIL. That would be a matter for the Secretary of State to consider, in the light of his overall assessment of the evidence. [180]

[305] CD51, paragraph 32

Mix of tenure types and unit sizes

542. The Council's putative reason for refusal (4) referred to the proportion of social rent and intermediate units within the affordable housing offer. That ratio was amended during the Inquiry to the 70/30 split required by MDD Policy DM3. The Council did not raise any subsequent objections in relation to this matter. I consider that the amendment (which is reflected in the UU) would resolve the Council's concern and achieve compliance with the development plan on this matter.

543. The Council's putative reason for refusal (5) referred to dwelling mix within the market housing, suggesting that there would be an overemphasis of two bedroom units and insufficient family homes. At the Inquiry, the Council accepted that its latest assessment of housing need showed a significant increase in the need for two bedroom units. The Council remained concerned that only 9% of the market units would have three or four bedrooms, whereas emerging THLP Policy D.H2(3) requires 20% of units to be of this size. However, the Council did not submit that this should amount to a free-standing reason for refusal. Instead it was suggested that the lack of provision for family accommodation should reduce the weight that might otherwise be attached to the delivery of market housing in the planning balance. [151, 265]

544. The appellant's written evidence included a report which suggested that there would not be sufficient market demand for 20% of the market housing to be three bedroom units[306]. That evidence was not relied on with any force in the appellant's closing submissions. I attach limited weight to this report which, to my mind, did not take account of the long time period over which the appeal scheme would be delivered. I attach greater weight to the appellant's stated commitment to build out the consented scheme (which would deliver 28% three bedroom units) if the appeal fails. In my view that is clear evidence that larger market units could be delivered successfully in this location. [266]

545. At the end of the Inquiry, the appellant's response on this matter was that emerging strategic policy (draft LonP Policy H12(C)) is that boroughs should not set prescriptive area-wide mix requirements for market homes. Moreover, it was argued that, in practice, the policy on mix has not been applied mechanistically in Tower Hamlets, that families do occupy two bedroom units and that not all three bedroom units are occupied by families. [153, 154]

546. Whilst the draft LonP seeks to avoid area-wide targets, it does allow for a preferred housing mix to be set out as part of a site allocation. In this case, site allocation 4.12 of the emerging THLP states that the scheme should maximise the provision of family homes. The locality of the appeal site is suited for family housing due to the proximity of primary schools and the location of the proposed secondary school. Other facilities, including local open space, would be provided in the scheme. Given that this is a particularly large site, I consider that there is a good case for arguing that it should contribute more to the delivery of larger units than this appeal scheme would do. [265]

547. I accept that not all larger market units would necessarily be occupied by families. Nevertheless, the appeal scheme would not maximise the provision of

[306] Appendix 3 to Mr Goddard's proof of evidence (WDL/6/C)

family homes as required by the draft THLP. I agree with the Council that this would be a significant disadvantage of the scheme. The benefit to be attributed to the delivery of market housing in the overall planning balance should reflect that conclusion.

Conclusions on the mix of market and affordable housing in terms of numbers, size and tenure

548. I conclude that it is likely that the scheme could provide more affordable housing than the offer of 21% (by habitable rooms) provided for in the UU. The proposal would not therefore provide the maximum reasonable amount of affordable housing and in this respect would conflict with LonP Policy 3.12 and with CS Policy SP02. It would also conflict with emerging THLP Policy S.H1.

549. The affordable housing element would be split 70% affordable rent and 30% intermediate and, in this respect, would accord with CS Policy SP02, MDD Policy DM3 and emerging THLP Policy D.H2.

550. The proposal would not provide the balance of market housing types sought by MDD Policy DM3 and emerging THLP Policy D.H2, nor would it maximise the provision of family homes as required by site allocation 4.12 (Westferry Printworks) of the emerging THLP.

The effect of the proposal on the provision of public open space

Introduction

551. There are differences between the layout of the open spaces in the appeal scheme and in the consented scheme. The most significant difference is the proposal to site a tower (T5) with a podium in the triangular northern section of an area designated as a park in the consented scheme. However, in many respects the general disposition of open spaces is similar to that which has already been approved. When considering the consented scheme, the GLA was supportive of the contribution that it would make to the public realm, including three new public open spaces, the provision of a dockside promenade, the approach to play and recreation and improvements to permeability and legibility. I see no reason to take a different view in relation to the merits of the consented scheme. [156]

552. The phased delivery of the public realm, together with arrangements for public access and future management, would be secured through the UU (Schedule 6).

553. The appeal scheme would provide 1.96 ha of public open space. The statement of common ground between the Council and the appellant notes that this would represent 39% of the site area and would comply with the policy objectives of site allocation 18 in the MDD and with the emerging THLP. The appeal scheme would also provide 5,365 sqm of play space for children, (compared with a policy requirement of 2,680 sqm), and 5,349 sqm of communal semi-private courtyard space (compared with a policy requirement of 1,564 sqm). The Council and the appellant agreed that the open space provision would comply with MDD Policy DM4 and LonP Policy 3.6. [58, 157, 189]

554. The GLA did not dispute these quantitative assessments. However, it did object to the quality of the proposed open space, particularly in relation to the OAPF objective of creating an Outer Dock Park in the eastern part of the appeal site, with scope to expand into Greenwich View Place (GVP) if/when that site is redeveloped. The GLA emphasised the place-making role of the OAPF which envisages the new waterside park becoming a focal point of a leisure hub for the Island, with a direct line of sight from Millharbour to the waterfront. The GLA argued that the placing of T5 would remove a large section of the park. [307, 309]

The effect of T5 on the park

555. Notwithstanding the strong support for the layout of the consented scheme when that scheme was considered, the appellant's evidence suggested that the layout contains weaknesses which the appeal scheme sought to address. In particular, the space was said to be "*leaky*" in urban design terms, such that it would benefit from greater definition by buildings. I do not share that concern. In my view the approved layout would provide strong definition to the park, through the siting of T4, B4 and B6. Those buildings also contain some active frontages and the park would be overlooked from residential accommodation on the upper floors. There is no suggestion in the assessments from that time that any party found that the design of the park would be unattractive, uninviting or unsafe. [159, 315]

556. The footprint of T5 and its podium would result in the loss of 1,478 sqm of space from the park. The appellant argued that an equivalent area of public open space would be created elsewhere in the scheme, within the north/south spines. Whilst that might make up the area in quantitative terms, I do not consider that such space would have equivalent recreational value. It could, no doubt, be visually attractive. However, these would essentially be incidental spaces within a street used by pedestrians and service vehicles. They would not have the same recreational value (either for adults or children) as space comprised within a park. Moreover, the proposed space would be confined between two tall buildings (T4 and T5). To my mind it would not feel as extensive and generous as the park in the consented scheme. [312, 313]

557. View 13[307] (consented and cumulative) shows how, in the consented scheme, there would be an inviting view from the southern end of Millharbour. Whether or not the water space itself was in view, the viewer would be aware of the openness of the dockside. The clearly visible path, leading towards T4, would denote this as part of the public realm with a legible route to the dockside. In contrast, view 13 (proposed and cumulative) shows that the tower and podium of T5 would not draw the visitor into the scheme in the same way. The public route to the dockside would only become apparent once the viewer had proceeded further into the scheme. [311]

558. The appellant argued that the quality of the park would be enhanced by the removal of a multi-use games area and associated fencing. However, I regard this as a minor matter in the context of the factors discussed above. I see no reason to think that, if removal of this feature were thought to be desirable, it

[307] Accurate visual representations – Appendix 9 to Dr Miele's proof of evidence (WDL/3/C) (bound separately)

could not be removed from the consented scheme when landscaping details are considered. It was also suggested that there would be a general enhancement to the specifications for paving and planting. Landscaping details would need to be approved pursuant to conditions under both the consented scheme and the appeal scheme. I see no reason to doubt that both schemes could provide the basis for an attractive detailed design. [314]

559. My overall assessment is that the park proposed in the appeal scheme would be smaller than that of the consented scheme and that the quality of the space and its recreational value would be reduced.

The Opportunity Area Planning Framework

560. The appeal scheme would create a park linked to the waterfront at the eastern end of the site. The appellant demonstrated that the proposed park could be extended onto the GVP site, if that site comes forward for redevelopment. The OAPF seeks to create a direct line of sight from Millharbour to the waterfront. If this was to be along the existing line of Millharbour, (approximately north/south), then this objective would not be achievable until such time as GVP is redeveloped. [161, 162]

561. The OAPF contains an indicative masterplan which shows the section of the park within the appeal site in more or less the same position as in the consented scheme. Clearly, the siting of T5 would conflict with that masterplan. However, the OAPF makes clear that the masterplan is not intended to be prescriptive. The appeal scheme reflects other elements of the masterplan, such as an extension to Millharbour running roughly parallel to the dock, a public space on the Westferry Road frontage and a dockside promenade with public spaces opening off it. Having regard to the totality of the open space and public realm proposed in the appeal scheme, I consider that it would generally accord with the design objectives of the OAPF. It would not preclude the potential for the GVP site to contribute further to those objectives at a later date, including through provision of a line of sight from Millharbour.

Conclusions on public open space

562. I conclude that the appeal scheme would provide public open space, play space and communal semi-private space in accordance with MDD Policy DM4 and LonP Policy 3.6. It would accord with MDD Policy DM23 which seeks to improve permeability. The public open space and public realm enhancements would generally accord with the design objectives of the OAPF and site allocation 4.12 of the emerging THLP.

563. The new public open spaces, dockside promenade, and improvements to permeability and legibility would represent significant benefits to the wider area. However, the consented scheme would offer greater benefits in this regard. Although policy compliant, the park proposed in the appeal scheme would be smaller than that of the consented scheme. The urban design quality of the space would not be as high and its recreational value would be lower than that of the consented scheme.

The Unilateral Undertaking

564. I have commented above on the provisions relating to affordable housing and sailing centre mitigation. In summary, I have found that the amount of affordable

housing proposed would not be the maximum reasonable amount. Moreover, I consider that the early and late stage reviews would offer only a limited prospect of delivering any further affordable housing. I do not think that Schedule 15 (CIL Appraisal) is necessary to make the development acceptable in planning terms. Other than Schedule 15, I consider that the provisions relating to affordable housing accord with Regulation 122(2) of the CIL Regulations 2010 and I have taken them into account in my recommendation. I have concluded that the obligations relating to sailing centre mitigation (Schedule 8) do not meet the tests of Regulation 122(2).

565. The other controversial matter within the UU was the secondary school. MDD site allocation 18 requires the provision of a secondary school. The school already has planning permission under the consented scheme and it was not included in the planning application for the appeal scheme. Schedule 7 of the UU carries forward provisions in the extant Agreement relating to the delivery of a secondary school. The appellant would be bound to enter into a long lease for the school site to the Council. This would be subject to the Council being able to show that it could deliver the school by the agreed date. Alternatively, the appellant would enter a lease with the Department for Education (DfE) or an alternative school provider. [170]

566. There was a dispute as to whether the appellant has made adequate efforts to lease the site to the Council under the extant Agreement. The Council considers that the timescales in the UU are "*set up to fail*" and that there is no real intention to give the Council a fair opportunity to reach agreement. The practical effect (it is suggested) would be to rule out the option of the school being delivered by the Council. [269, 270, 271]

567. The nub of the Council's concern is that the school may well be delivered by an alternative provider. However, that is also a possibility under the extant Agreement. The policy requirement, under MDD site allocation 18 and the emerging THLP, is for a secondary school to be delivered. The ways in which new schools are delivered are dealt with in other legislation. Provided that the Secretary of State, as decision-maker for this appeal, is satisfied that a school would be provided, I do not think there is a land-use planning reason to attach reduced weight to these obligations. [171, 172, 187]

568. The appeal scheme would not itself provide a secondary school. However, the UU would ensure that the obligations given in connection with the consented scheme would be carried forward. I do not regard this as a material improvement because I see no reason to think that, in the absence of the appeal scheme, the consented scheme would not deliver a school. The outcome would be the same, so I regard this as a neutral factor in the planning balance.

569. The following obligations were not controversial at the Inquiry:

Financial contributions:

- employment and training – construction phase;
- employment and training – end user phase;
- Crossharbour station improvements;
- cycle hire facilities;

- bus facilities and capacity;
- Preston Road roundabout improvements;
- carbon offsetting; and
- monitoring fee.

Non-financial obligations:

- no on-street parking permits for residents;
- travel plans;
- phased delivery, maintenance and retention of public open spaces and pedestrian routes;
- provision of health centre, community centre and creche;
- provision of affordable workspace;
- local employment and procurement of goods and services during construction; and
- provision of apprenticeships during construction.

The Council provided a CIL compliance statement setting out how each of the above obligations would meet the requirements of Regulation 122(2). No party at the Inquiry disputed those assessments and I see no reason to disagree. Accordingly, I have taken these obligations into account in my recommendation. [8, 9]

Other matters

Transport

570. Local residents have expressed concern about congestion, both in relation to roads within the Isle of Dogs and in relation to the capacity of bus services and the Docklands Light Railway (DLR). The Council's officer's report on the application notes that the proposal would generate some 2,000 person trips across the AM and PM peaks, over 90% of which would be undertaken by sustainable modes. Delivery of the residential units would be phased to align with planned DLR capacity increases. There would also be local highway improvements at Westferry Road, including bus stop enhancements and a pedestrian crossing. These matters would be the subject of conditions. [166, 372, 373, 381]

571. In addition, the UU would make provision for DLR station improvements at Crossharbour, improvements to bus facilities and capacity, cycle hire facilities, improvements to the Preston Road roundabout, travel plans and arrangements to prevent future residents from applying for on-street parking permits. The Council, the Mayor of London and TfL are satisfied that these mitigation measures would adequately address the transport impacts of the appeal scheme. I share that view.

Relationship with Greenwich View Place

572. Proposed tower T5 would be located close to the site boundary with GVP, which is occupied by data centres and office uses. Potential impacts on the occupiers of GVP during the construction phase would be mitigated by conditions requiring submission of a construction management plan and a piling method statement. New residents of the appeal site would be protected from traffic and plant noise associated with GVP by a condition requiring sound insulation of the new flats. [165, 363]

573. There were no proposals for the redevelopment of GVP before the Inquiry. However, the appellant has carried out a sunlight and daylight study of a hypothetical scheme which demonstrated that, with the appeal scheme in place, good to reasonable levels of sunlight and daylight could be maintained at GVP. I conclude that potential impacts on GVP could be adequately mitigated by conditions and that there is no reason to think that potential redevelopment of the site would be prejudiced by the appeal scheme. [165]

Water quality – Millwall Outer Dock

574. DSWC expressed concern about effects on water quality arising from the use of dock water source heat pumps for heating/cooling the development and from the discharge of surface water to the dock. These effects are considered in the ES[308] which found that the overall change in water temperature was predicted to be negligible. Whilst there is predicted to be a minor adverse effect on dissolved oxygen, this would not be likely to harm the fish species present in the dock. Abstraction and discharges would be subject to licences under the Environmental Permitting Regulations which would control matters such as the design of intakes (to mitigate potential entrainment of fish) and temperature gain of discharged water. Discharge of surface water to the dock has now been approved for the consented scheme, having been supported by the Council and the Environment Agency. Mitigation measures would include filtration of particulate matters in granular filled swales. The proposals for the appeal scheme are not materially different from what has been approved. I am satisfied that impacts on water quality have been assessed and that appropriate controls would be in place. [166, 366]

Infrastructure and services

575. Local residents expressed concern about the pressure on local infrastructure and services, including primary health care. The UU would secure a proportionate contribution to social infrastructure, making provision for a health centre, community centre and creche within the scheme. [383]

Prematurity

576. The Council argued that allowing the appeal would undermine the plan-making process in relation to the THLP. Whilst the development would indeed be very substantial, there is continuity between the policies of the development plan and the emerging THLP as they relate to this appeal site. The Council's case is that the proposal conflicts with both the emerging plan and the adopted development plan. The appellant's case is that the proposal accords with both the emerging

[308] WDL/6/C, Appendix 5

plan and the adopted development plan. In those circumstances I do not consider that the question of prematurity adds to the case against the appeal. [186, 199, 272, 276]

Environmental Statement

577. The application was accompanied by an Environmental Statement (ES). The Council is satisfied that the ES meets the requirements of the relevant Regulations and I see no reason to disagree. I have had regard to the environmental information in my assessments and recommendation.

Public Sector Equality Duty

578. There was no formal equalities impact assessment before the Inquiry. However, the duty under the Equality Act 2010 was addressed in the Council officers' report[309]. The report did not identify any conflict with the considerations set out in the Act. It noted that the buildings and access routes would be accessible to persons with a disability requiring use of a wheelchair and persons with limited mobility. This would be a positive impact in that it would advance equality of opportunity for persons sharing a relevant protected characteristic.

579. The proposal would have an adverse effect on the recreational use of Millwall Outer Dock for sailing. I consider that this would have a particular impact on children because an important aspect of the activities run by DSWC is enabling children to learn to sail. I have had regard to this impact in my assessment and I am satisfied that there is adequate information before the Secretary of State for him to have due regard to it in his decision.

The public benefits as presented by the appellant

580. The appellant set out its assessment of the public benefits resulting from the appeal scheme in closing submissions. As I noted in my preliminary matters, I consider that there is a reasonable prospect that the consented scheme would be implemented if the appeal is dismissed. I have therefore treated it as a fallback in my assessments, both in relation to harm and benefits. [189]

581. The appeal scheme would enable the regeneration of a strategic brownfield site within the Isle of Dogs Opportunity Area with a residential-led mixed use scheme. The same is true of the consented scheme, so the appeal scheme does not offer any added benefit in this regard.

582. The appeal scheme would provide an uplift from 722 to 1,524 units of residential accommodation. The appellant has explained that the internal layouts of the residential blocks would be an improvement on the consented scheme. However, there is no evidence that the approved layouts are substandard or would provide poor living conditions. The inclusion of more double aspect units would be a beneficial change. On the other hand, the proposal would not provide the balance of market housing types sought by MDD Policy DM3 and emerging THLP Policy D.H2, nor would it maximise the provision of family homes as required by site allocation 4.12 of the emerging THLP. I regard that as a significant disadvantage of the scheme. [189]

[309] CD41, paragraph 11.327

583. With regard to affordable housing, the appeal scheme would provide an uplift from 140 to 282 affordable homes. The affordable housing would be split 70% affordable rent and 30% intermediate and, in this respect, would accord with MDD Policy DM3 and emerging THLP Policy D.H2. On the other hand, the affordable housing offer of 21% is well below the policy target of 35%. I have concluded that it would not provide the maximum reasonable amount of affordable housing and would conflict with LonP Policy 3.12, CS Policy SP02 and emerging THLP Policy S.H1.

584. It is agreed that there is a pressing need for affordable housing in Tower Hamlets. The GLA argued that no weight should be attached to affordable housing which is below the level required by policy, relying on *Barrett*. In response, the appellant distinguished the facts of *Barrett* on the basis that there was no fallback scheme in that case. In this case the consented scheme does provide a fallback and would deliver 140 affordable homes. I therefore consider that an increase on that figure should be regarded as beneficial. However, I note that this is a large allocated site and it is therefore important to ensure that it makes an appropriate contribution to meeting housing needs. The appeal scheme would not do that. [146, 318]

585. Drawing all of this together, I consider that the delivery of housing, including affordable housing, should attract only moderate weight in the planning balance.

586. I have found that the appeal scheme would provide new public open spaces, a dockside promenade, and improvements to permeability and legibility that would represent significant benefits to the wider area. However, the consented scheme would offer greater benefits in this regard, particularly in relation to the proposed park. The appeal scheme would comply with MDD Policy DM4 and LonP Policy 3.6. It would generally accord with the design objectives of the OAPF and site allocation 4.12 of the emerging THLP. Consequently, this is not a factor which weighs against the appeal. However, the appeal scheme does not offer any added benefit as compared with the consented scheme.

587. The UU makes provision for a community centre, health centre and creche. The extant Agreement for the consented scheme would also make provision for these facilities. Whilst the unit sizes would be increased in the appeal scheme, the need would be greater, due to the increased population. I do not consider that there would be any added benefit as compared with the consented scheme.

588. The appellant argues that the provision of restaurants, retail units and public uses at ground floor level would activate the waterfront and public spaces. Comparison of the ground floor plans of the appeal scheme and the consented scheme shows that the latter would also have extensive provision of public uses at ground floor level, particularly along the waterfront. Unlike the appeal scheme, the consented scheme includes some residential accommodation at ground floor level. This would be mainly along the north side of the boulevard, set back from the street by a landscaped area. I see no reason to think that this would be harmful, either in terms of the living conditions of future occupiers or the activation of the public realm. Whilst I note that the arrangement of land uses is different, I do not regard this as providing a material public benefit.

589. The appellant drew attention to measures to reduce energy use and to supply heating and cooling by dock water source heat pumps and a photo voltaic array. These measures respond to the requirements of MDD Policy DM29 which seeks to

achieve reductions in CO_2 emissions. The shortfall to meeting zero carbon would be offset by a financial contribution secured through the UU. I therefore conclude that the measures are no more than is necessary to achieve compliance with the development plan. They would mitigate impacts arising from the development, rather than being a public benefit in their own right.

590. The appeal scheme is predicted to generate 372 jobs on site associated with the provision for office space, financial and professional services, retail, restaurant and community use (excluding the school). The consented scheme would also generate employment during the operational phase from a similar mix of uses. [189]

591. The UU would make provision for contributions to employment and training, affordable workspace, local employment/procurement and apprenticeships. The extant Agreement contains similar provisions. Given that the appeal scheme would be larger, and the construction period would be longer, the economic benefits of employment and training during construction are likely to be commensurately greater. Overall, I attach moderate weight to the social and economic benefits of additional employment during construction, as compared with the consented scheme.

592. Finally, the appellant argues that the design quality of the scheme should be regarded as a benefit. Whilst I agree that the design includes attractive features, including the attractive composition of the five towers when seen from a distance, design must be considered holistically. I have concluded that the height, mass and scale of the proposal would be harmful to the character and appearance of the area. In that context, design quality cannot be counted amongst the benefits of the appeal scheme.

593. In summary, many of the benefits associated with the appeal scheme would also be delivered by the consented scheme. I consider that the appeal scheme would provide greater benefits than the consented scheme in respect of housing, including affordable housing, and employment during construction. For the reasons given above I attach moderate weight to those benefits.

Conclusions

594. My conclusions will start with the balance required by the Framework in circumstances where there is harm to the significance of designated heritage assets. I will then consider the proposal in relation to the development plan and emerging policy. Finally, I will identify whether there are other considerations that indicate that the appeal should be determined other than in accordance with the development plan.

Heritage assets – application of the Framework

595. I have concluded that there would be harm to the settings of the Old Royal Naval College, the Maritime Greenwich WHS and Tower Bridge. In the terms of the Framework, the degree of harm would be less than substantial harm in all cases. Paragraph 196 of the Framework requires the harm to be weighed against the public benefits of the proposal. NPPG advises that public benefits are not

limited to heritage benefits, they may include anything that delivers economic, social or environmental objectives[310].

596. In this case there is a fallback position which would deliver many of the public benefits that the appeal scheme would provide, without the harmful effects on the heritage assets. I have therefore weighed the additional benefits of the appeal scheme (relative to the consented scheme) against the harm. In each case the consented scheme would also have some impact but the degree of impact of the appeal scheme would be much greater. To the extent that the consented scheme would affect the settings of the heritage assets in question, I have taken this into account.

597. It is convenient to consider the Old Royal Naval College and the Maritime Greenwich WHS together, as the substance of the harm is the same. I consider that the proposal would fail to preserve the setting of the Old Royal Naval College (and the WHS) because it would distract from the ability to appreciate the listed building in certain views from Greenwich Park. The impact relates to a Grade I listed building which has a very high level of significance. The public benefits to weigh against that are the delivery of additional housing (including affordable housing), to which I attach moderate weight, and additional employment during construction, to which I also attach moderate weight. I conclude that the benefits are not sufficient to outweigh the harm, so the proposal would conflict with the Framework as it relates to the historic environment.

598. Turning to Tower Bridge, I consider that the proposal would fail to preserve the setting of Tower Bridge because it would distract from the ability to appreciate the listed building in views from London Bridge. The impact relates to a Grade I listed building which has a very high level of significance. The public benefits, and the weight to be attached, are the same. I conclude that the benefits are not sufficient to outweigh the harm, so the proposal would again conflict with the Framework as it relates to the historic environment.

The development plan

599. The development plan includes the LonP, the CS and the MDD. I consider that the proposal would be harmful to the character and appearance of the area, such that it would conflict with LonP Policies 7.4, 7.6 and 7.7, which together require development to have regard to scale, proportion and the character of surrounding buildings. It would conflict with the vision for Millwall set out in the CS which requires development to step down to the south and west. It would conflict with CS Policy SP12 which seeks to achieve well-designed places. The proposal would also conflict with MDD Policy DM24, which promotes place-sensitive design, with Policy DM26, which requires development to be sensitive to its surroundings, and with site allocation 18 in respect of the step down approach.

600. I consider that the proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge such that it would conflict with LonP Policy 7.8, CS Policy SP10 and MDD Policy DM27 which seek to protect heritage assets and their settings. In respect of the Maritime Greenwich WHS, the proposal would

[310] Reference ID: 18a-020-20190723

also conflict with LonP Policy 7.10 and MDD Policy DM28 which seek to protect WHS and their settings.

601. I consider that the proposal would be harmful to the recreational use of Millwall Outer Dock for sailing. The proposal would be contrary to LonP Policy 7.7(D), which states that tall buildings should not affect their surroundings adversely in terms of microclimate and wind turbulence, Policy 7.27(A) which states that proposals should enhance the use of the Blue Ribbon Network and Policy 7.30(B) which seeks to promote the use of London's water space for recreation. It would be contrary to CS Policy SP04 which seeks to improve the usability of the environment of water spaces. It would be contrary to MDD Policy DM12, which states that there should be no adverse impact on the Blue Ribbon Network and that development should improve the quality of the water space.

602. I consider that the proposal would not provide the maximum reasonable amount of affordable housing and would conflict with LonP Policy 3.12 and with CS Policy SP02. The affordable housing element would be split 70% affordable rent and 30% intermediate and, in this respect, would accord with CS Policy SP02 and MDD Policy DM3. However, the proposal would not provide the balance of market housing types sought by CS Policy SP02 and MDD Policy DM3. Overall, I consider that the proposal would conflict with these policies.

603. The proposal would accord with some development plan policies. In particular, I consider that it would not harm the relevant strategic views identified in the LVMF and would therefore accord with LonP Policy 7.12. It would also provide public open space, play space and communal semi-private space in accordance with MDD Policy DM4 and LonP Policy 3.6. It would accord with MDD Policy DM23 which seeks to improve permeability. The public open space and public realm enhancements would generally accord with the design objectives of the OAPF. More generally, the proposal would be consistent with the LonP insofar as it seeks to exceed housing targets and promote development in opportunity areas.

604. My overall assessment is that the conflicts with the development plan that I have identified are of such significance that the proposal should be regarded as being in conflict with the development plan as a whole.

Emerging policy

605. With regard to harm to the character and appearance of the area, I consider that the proposal would conflict with emerging THLP Policy D.DH6 and site allocation 4.12 in respect of the step down approach. It would also conflict with emerging THLP Policy S.DH1 and emerging LonP Policy D1B in that it would not be of an appropriate scale, height, mass, bulk and form and would not enhance the local context.

606. With regard to harm to the settings of heritage assets, the proposal would conflict with emerging LonP Policy HC1 and emerging LBTH Policy S.DH3 which seek to protect heritage assets and their settings. In respect of the Maritime Greenwich WHS, the proposal would also conflict with emerging LonP Policy HC2 and emerging THLP Policy S.DH5 which seek to protect WHS and their settings.

607. With regard to harm to the recreational use of Millwall Outer Dock, the proposal would be contrary to emerging THLP Policy S.OWS2, which promotes the use of water spaces for recreation, and Policy D.OWS4 which seeks to

prevent adverse impacts on water spaces and to increase opportunities for water-related sport and recreation.

608. Insofar as the proposal has failed to justify the proposed level of affordable housing it would conflict with emerging THLP Policy S.H1. The affordable housing element would be split 70% affordable rent and 30% intermediate and, in this respect, would accord with emerging THLP Policy D.H2. However, the proposal would not provide the balance of market housing types sought by emerging THLP Policy D.H2 and, in my view, would conflict with that policy as a whole. The proposal would not maximise the provision of family homes as required by site allocation 4.12 of the emerging THLP.

609. The proposal would accord with some emerging development plan policies. In particular, the public open space and public realm enhancements would accord with site allocation 4.12 of the emerging THLP. The proposal would also accord with emerging LonP Policy HC4 and emerging THLP Policy D.DH4 with regard to strategic views. More generally, the proposal would be consistent with the emerging LonP insofar as it seeks to enable the delivery of housing in opportunity areas.

Other material considerations

610. The proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge, which are grade I listed buildings. It would fail to preserve the setting of the Maritime Greenwich WHS. This is a matter of considerable importance and weight. The public benefits of the proposal would not outweigh the harm to these assets so the proposal would not accord with the Framework as it relates to the historic environment.

611. Whilst I have assessed the proposal against emerging policies, the substance of the harm I have identified is in essence the same as the harm I have identified in relation to the development plan. Consequently, the emerging policies do not indicate a decision other than in accordance with the development plan.

612. The effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme. There is a reasonable prospect that the adverse effect on sailing quality would occur in any event. Consequently, I attach only limited weight to the policy conflicts relating to this matter.

613. As noted above, I have considered the additional benefits of the appeal scheme in relation to the consented scheme, which represents a fallback position. These are the delivery of additional housing (including affordable housing), to which I attach moderate weight, and additional employment during construction, to which I also attach moderate weight. Allowing for the limited weight I attach to the conflict with policies relating to recreational use of water spaces, these benefits are still not sufficient to outweigh the conflict with the development plan that I have identified.

614. My overall assessment is that the other material considerations do not indicate that this appeal should be determined other than in accordance with the development plan. I therefore recommend that the appeal be dismissed.

RECOMMENDATION

615. I recommend that the appeal be dismissed.

616. If the Secretary of State considers that the appeal should be allowed, and planning permission granted, I recommend that:

a) Permission should be granted subject to the conditions set out in Annex E;

b) With regard to clause 3.8(b) of the Unilateral Undertaking, the Late Stage Review would meet the tests contained in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010; and

c) With regard to clause 3.10 of the Unilateral Undertaking, the obligations in Schedule 8 (sailing centre mitigation contribution) and Schedule 15 (Council CIL appraisal) would not meet the tests contained in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

David Prentis

Inspector

ANNEX A - APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sasha White Gwion Lewis	Queen's Counsel and of Counsel, instructed by London Borough of Tower Hamlets Legal Services
They called	
Hugo Nowell BSc MA MAUD CMLI	Urban Initiatives Studio
Nick Ireland BA(Hons) MTPl MRTPI	Iceni
Ignus Froneman BArch.Stud ACIfA IHBC	Heritage Collective
Dr Anthony Lee PhD MRTPI MRICS	BNP Paribas Real Estate
Dr Robin Stanfield BEng(Hons) MSc PhD	BMT
Asher Ross MA MRTPI	JLL

FOR THE APPELLANT:

Paul Brown	Queen's Counsel, instructed by Eversheds Sutherland
He called	
Lee Polisano Architect	PLP Architecture
Cannon Ivers CMLI MLA	LDA Design
Dr Chris Miele MRTPI IHBC	Montagu Evans LLP
Gordon Breeze MSc BSc CEng MICE	BRE
Robert Fourt BSc(Hons) MSc FRICS	Gerald Eve
Chris Goddard BA(Hons) BPl MRTPI MRICS	DP9

FOR THE GREATER LONDON AUTHORITY:

Melissa Murphy	of Counsel, instructed by Director of Legal, Transport for London, on behalf of the Greater London Authority
She called	
Dr Nigel Barker-Mills BA(Hons PHD DipConsAA IHBC FSA	Barker-Mills Conservation Consultancy

Darren Richards MRTPI	Greater London Authority
Jane Seymour MRICS	Greater London Authority
Richard Green BSc(Hons) MA	Greater London Authority

INTERESTED PERSONS:

Paula Carney	Planning Consultant for Sir Robert Ogden Indescon Developments
Cllr Peter Golds	Local Council Member
Mr Dootson	Local resident
Martin Young	Chair of the Docklands Sailing and Watersports Centre Trust
Cllr Mufeedah Bustin	Local Council Member
Cllr Andrew Wood	Local Council Member
Ralph Hardwick	Local resident
Ruth Bravery	Local resident
Trevor Bravery	Local resident
Alan Jolly	Local resident
Benjamin Davis	Centre Director at DSWC
Antony Lane	Local resident
Gary O'Keefe	Local resident
Peter Fordham	Architect and local resident
Ahmed Hussain	Local resident
Arthur Coppin	Local resident
Sonya Ball	Local resident

ANNEX B – ABBREVIATIONS USED IN THE REPORT

AOD	Above ordnance datum
AUV	Alternative use value
BLV	Benchmark land value
CFD	Computational fluid dynamics
CIL	Community Infrastructure Levy
consented scheme	The scheme permitted under reference PA/15/02216
CS	Tower Hamlets Core Strategy
DfE	Department for Education
DLR	Docklands Light Railway
DSWC	Docklands Sailing and Watersports Centre
ES	Environmental Statement
EUV	Existing use value
EUV plus	Existing use value plus a premium
extant Agreement	s106 Agreement relating to the consented scheme
Framework	National Planning Policy Framework
FVA	Financial viability assessment
GE	Gerald Eve
GLA	Greater London Authority
GPA3	Good Practice Advice Note 3 (Historic England)
GVP	Greenwich View Place
IRR	Internal rate of return
LDF	Local development framework
LonP	London Plan
LVMF	London view management framework
MDD	Tower Hamlets Managing Development Document
MUGA	Multi use games area
NPPG	National Planning Practice Guidance
OAPF	Opportunity Area Planning Framework
OUV	Outstanding universal value

SoCG	Statement of common ground
TBZ	Tall buildings zone
TfL	Transport for London
THLP	Tower Hamlets Local Plan
UU	Unilateral undertaking
WHS	World Heritage Site
1990 Act	Planning (Listed Buildings and Conservation Areas) Act 1990

ANNEX C- DOCUMENTS

Proofs of evidence

A. Westferry Developments Limited	
WDL/1/A	Summary of Lee Polisano
WDL/1/B	Proof of Evidence of Lee Polisano
WDL/1/C	Appendices of Lee Polisano
WDL/2/A	Summary of Cannon Ivers
WDL/2/B	Proof of Evidence of Cannon Ivers
WDL/2/C	Appendices of Cannon Ivers (Appendix C bound separately)
WDL/2/D	Rebuttal proof of Cannon Ivers
WDL/3/A	Summary of Chris Miele
WDL/3/B	Proof of Evidence of Chris Miele
WDL/3/C	Appendices of Chris Miele (Appendix C bound separately)
WDL/3/D	Rebuttal proof of Chris Miele
WDL/4/A	Summary of Gordon Breeze
WDL/4/B	Proof of Evidence of Gordon Breeze
WDL/4/C	Appendices of Gordon Breeze
WDL/4/D	Rebuttal proof of Gordon Breeze
WDL/5/B	Proof of Evidence of Robert Fourt
WDL/5/C	Appendices of Robert Fourt
WDL/5/D	Rebuttal proof of Robert Fourt
WDL/6/A	Summary of Chris Goddard
WDL/6/B	Proof of Evidence of Chris Goddard
WDL/6/C	Appendices of Chris Goddard
WDL/6/D	Rebuttal proof of Chris Goddard
WDL-X	Key Reference Drawings

B. London Borough of Tower Hamlets	
LBTH/1/A	Summary of Hugo Nowell
LBTH/1/B	Proof of Evidence of Hugo Nowell
LBTH/2/B	Proof of Evidence of Ignus Froneman
LBTH/2/C	Appendices of Ignus Froneman
LBTH/3/A	Summary of Anthony Lee
LBTH/3/B	Proof of Evidence of Anthony Lee
LBTH/3/C	Appendices of Anthony Lee
LBTH/4/B	Proof of Evidence of Nick Ireland
LBTH/4/C	Appendices of Nick Ireland
LBTH/5/B	Proof of Evidence of Robin Stanfield
LBTH/5/D	Rebuttal proof of Robin Stanfield
LBTH/6/A	Summary of Asher Ross
LBTH/6/B	Proof of Evidence of Asher Ross
LBTH/6/C	Appendices of Asher Ross

C. Greater London Authority	
GLA/1/A	Summary of Nigel Barker-Mills

GLA/1/B	Proof of Evidence of Nigel Barker-Mills
GLA/1/C	Appendices of Nigel Barker-Mills
GLA/1/D	Rebuttal proof of Nigel Barker-Mills
GLA/2/A	Summary of Jane Seymour
GLA/2/B	Proof of Evidence of Jane Seymour
GLA/2/C	Appendices of Jane Seymour
GLA/2/D	Rebuttal proof of Jane Seymour
GLA/3/A	Summary of Darren Richards
GLA/3/B	Proof of Evidence of Darren Richards
GLA/3/C	Appendices of Darren Richards
GLA/3/D	Rebuttal proof of Darren Richards
GLA/4/A	Summary of Richard Green
GLA/4/B	Proof of Evidence of Richard Green
GLA/4/C	Appendices of Richard Green
GLA/4/D	Rebuttal proof of Richard Green

Core Documents

A. NATIONAL POLICY	
CD/1	National Planning Policy Framework (February 2019)

B. DEVELOPMENT PLAN	
	Current
CD/2	The London Plan (March 2016)
CD/3	LBTH Adopted Policies Map (8 April 2013)
CD/4	LBTH Core Strategy (September 2010)
CD/5	LBTH Managing Development Document (April 2013)
	Emerging
CD/6	Local Plan Tower Hamlets 2031: Managing Growth and Sharing the Benefits (Main Modification consultation version, March-May 2019)
CD/7	Local Plan 2031 Proposed Modifications Policies Map
CD/8	Draft New London Plan showing Minor Suggested Changes (August 2018)
CD/9	Draft New London Plan further suggested changes for Matter 9: Good Growth.
CD/10	Isle of Dogs and South Poplar Opportunity Area Planning Framework (consultation version - May 2018)

C. SUPPLEMENTARY PLANNING GUIDANCE	
	LBTH Documents
CD/11	Development Viability SPD (October 2017)
	Greater London Authority Documents
CD/12	London View Management Framework (March 2012)

CD/13	London World Heritage Sites – Guidance on Settings SPG (March 2012)
CD/14	Housing SPG (August 2017)
CD/15	Affordable Housing and Viability SPG (2017)

D. OTHER POLICY RELATED DOCUMENTS	
	LBTH Documents
CD/16	Tall Buildings Study (February 2018)
CD/17	LBTH Five Year Housing Land Supply and Housing Trajectory Statement (January 2018)
CD/18	LBTH Strategic housing market assessment update 2017
CD/19	The Millennium Quarter Public Realm Manual (2008) - Revoked
	Other
CD/20	The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3, Historic England (2017)
CD/21	Historic England Advice Note 4 – Tall Buildings (December 2015)
CD/22	Maritime Greenwich World Heritage Site Management Plan (2014)
CD/23	Tower of London WHS Management Plan 2015
CD/24	UNESCO: The Operational Guidelines for the Implementation of the World Heritage Convention (2017)
CD/25	The 2017 London Strategic Housing Market Assessment (2017)
CD/26	Draft Isle of Dogs and South Poplar Development Infrastructure Funding Study, Final Report (Nov 2017)

D. REFERRED TO APPEAL DOCUMENTS	
	Planning Application Documents
CD/27	Gerald Eve Financial Viability Assessment in support of the Planning Application (July 2018)
CD/28	Gerald Eve Addendum to Financial Viability Assessment in support of the Planning Application (March 2019)
CD/29	Environmental Statement Volume 1, Chapter 11 – Water Resources and Flood Risk (July 2018)
CD/30	Environmental Statement Volume 1, Chapter 16 Pedestrian Wind Microclimate (July 2018)
CD/31	Environmental Statement Volume 1, Chapter 17 Wind and Sailing (July 2018)
CD/32	Environmental Statement Volume 2: Townscape, Visual and Built Heritage Assessment (July 2018)
CD/33	Environmental Statement Volume 4, Technical Appendix: 11.1 - 11.2 Flood Risk Assessment and Assessment of Dock Baseline and Cooling Water Impact (July 2018)
CD/34	Environmental Statement Volume 4, Technical Appendix: 16.1 Pedestrian Level Wind Mitigation Report (July 2018)

CD/35	Environmental Statement Volume 4, Technical Appendices: 17.1-17.3 Directional Wind Assessment (Sailing), Study of Sailing Quality Impact, Extracts of Reports for Consented Scheme
CD/36	Masterplan and Design Development (DAS) (July 2018)
CD/37	Landscape and Public Realm DAS (July 2018)
CD/38	ES Addendum, Heritage, Townscape and Visual Impact (27 February 2019)
CD/39	Westferry Printworks ES Interim Review Report: Responses
	Determination Stage Documents/Correspondence
CD/40	BNP Paribas Real Estate Review of "Financial Viability Assessment in support of the Planning Application" Draft Report V3 (26 April 2019)
CD/41	LBTH Committee Report & Update (14 May 2019)
CD/42	Mayoral Stage I referral report (17 December 2018)
	Appeal Documents
CD/43	WDL Statement of Case
CD/44	LBTH Statement of Case
CD/45	GLA Statement of Case
CD/46	Overarching Statement of Common Ground
CD/46B	GLA Review of the Overarching Statement of Common Ground
CD/47	*Not used*

E. SUPPORTING DOCUMENTS	
	WDL Supporting Documents
CD/48	LBTH Committee Report for Consented Scheme at Former Westferry Printworks Site (PA/15/02216) (12 April 2016)
CD/49	GLA Stage 3 Report for Consented Scheme at Former Westferry Printworks Site (PA/15/02216)
CD/50	225 Marsh Wall Appeal Decision (APP/E5900/W/17/3190531)
CD/51	Glengall Quay – 49-59 Millharbour, 2-4 Muirfield Crescent and 23-39 Pepper Street - Appeal Decision (Ref: APP/E5900/W/18/3194952) (10 December 2018)
CD/52	LBTH Committee Report – 82 West India Dock Road (Ref: PA/18/01203) dated 25 October 2018
CD/53	Digital Video of Scheme Walkthrough (stored within WDL/1/B)
CD/54	Gerald Eve Financial Viability Assessment Update (June 2019)

F.	LBTH Supporting Documents
	Title
CD/55	Design and Access Statement for Consented Scheme at Former Westferry Printworks Site (PA/15/02216)
CD/56	Section 106 Agreement for the Consented Scheme dated 4 August 2016 between the Greater London Authority (GLA), the London Borough of Tower Hamlets and Northern and Shell Investments No. 2 Limited
CD/57	South Quay Masterplan SPD (2015)
CD/58	Housing White Paper Fixing our Broken Housing Market 2017
CD/59	Tower Hamlets Borough Profile – Population and Housing Sections
CD/60	Environmental Statement Interim Review Report (Temple Group)
CD/61	Environmental Statement Final Review Report (Temple Group)
CD/62	Interim Review Report for the Statement of Conformity (Temple Group)
CD/63	Westferry Printworks – Wind/Sailing Assessment, Building Research Establishment, 21 March 2016, ref: P103887B.
CD/64	Implementing reforms to the leasehold system in England: A consultation (October 2018) MHCLG
CD/65	High Court decision - McCarthy and Stone Retirement Lifestyles Ltd and others v Mayor of London on behalf of the Greater London Authority (2018)
CD/66	LBTH Planning Obligations SPD 2016

G	Further WDL Supporting Documents
	Title
CD/67	Planning Statement (July 2018)
CD/68	Energy Statement (July 2018)
CD/69	Sustainability Statement (July 2018)
CD/70	Application Drawings (as listed in the Overarching Statement of Common Ground) March 2019
CD/71	Application Form March 2019
CD/72	TfL consultation response (email dated 29th January 2019 from Clare Seiler to Andy Ward)
CD/73	Correspondence between LBTH and London City Airport (email dated 18 March 2019 from Jack Berends to Richard Humphreys)
CD/74	GLA Letter of Objection to Appeal (22 May 2019)
CD/75	Decision Notice of Consented Scheme at Former Westferry Printworks Site (4 August 2016) (PA/15/02216)
CD/76	Drawings of the Consented Scheme approved under planning permission PA/15/02216
CD/77	Environmental Statement of Consented Scheme PA/15/02216
CD/78	Addendum to Environmental Statement of Consented Scheme PA/15/02216
CD/79	Building Research Establishment (BRE) Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice 2011
CD/80	Environmental Statement Volume 4, Technical Appendices 15.1-15.9 Daylight, Sunlight and Overshadowing

CD/82	Environmental Statement Volume 1, Chapter 15 Daylight and Sunlight (July 2018)
CD/83	The Draft London Plan Topic Paper Housing Density (2017)
CD/84	National Planning Practice Guidance: Viability

H	**Legislation**
CD/81	Town and Country Planning (Environmental Impact Assessment) Regulations 2017

I	**GLA Supporting Documents**
CD/85	Managing Significance in Decision Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning Note 2 (March 2015)

J	**Additional Core Documents**
CD/86	Note on secondary school – Eversheds Sutherland (12 June 2019)
CD/87	Note on secondary school – London Borough of Tower Hamlets (23 July 2019)
CD/88	Supplemental note on secondary school - Eversheds Sutherland (25 July 2019)
CD/89	Letter from Paula Carney (for Sir Robert Ogden Indescon Developments Ltd) (22 May 2019)
CD/90	The Draft London Plan (incorporating post EIP session changes) (July 2019)

Documents submitted at the Inquiry

Submitted by the appellant	
WDL/10	Opening statement
WDL/11	Draft Unilateral Undertaking inclusive of plans
WDL/12	Robert Fourt's Addendum
WDL/13	Photos of Millwall Outer Dock pontoon
WDL/14	Lee Polisano's presentation slides
WDL/15	Cast review – comments on Turner and Townsend report
WDL/16	20 Fenchurch St – Inspector's report to the Secretary of State
WDL/17	20 Fenchurch St – Secretary of State's decision
WDL/18	20 Fenchurch St - GLA planning report
WDL/19	Cannon Ivers' Presentation Slides
WDL/20	Draft UU Schedule 15 with Council comments
WDL/21	Letter from Jerry Bell dated 18/12/2017
WDL/22	Letter from Jon Marginson dated 12/01/2018
WDL/23	Letter from Jerry Bell dated 6/02/2018
WDL/24	GLA Pre-application letter dated 14/12/2017
WDL/25	Summary table of housing mix in comparable schemes from Appendix 9C of Robert Fourt's Evidence

WDL/26	Summary of % 3+ bedroom units from schemes in Asher Ross' proof of evidence
WDL/27	LBTH Committee Report – Varden Street, Whitechapel
WDL/28	Draft Unilateral Undertaking 20/08/2019
WDL/29	Land Assembly Note
WDL/30	Substantial implementation period – workstream justification
WDL/31	Draft Unilateral undertaking
WDL/32	View 33 – Glengall Quay and Arena Tower identified
WDL/33	Letter from DP9 dated 6/09/19 – agreement to pre-commencement conditions
WDL/34	Email from Georgina Redpath (for the appellant) 6/09/19
WDL/35	Signed Unilateral Undertaking dated 6/09/19
WDL/36	Closing submissions

Submitted by the Council	
LBTH/10	Appearances
LBTH/11	Chronology
LBTH/12	Opening statement
LBTH/13	Nick Ireland's note 08/08/2019
LBTH/14	Anthony Lee – Updated appraisal results
LBTH/15	Chronology of appellant's affordable housing offer
LBTH/16	DP9 Letter dated 7/05/19
LBTH/17	DP9 Email dated 10/06/19
LBTH/18	Comparison of maximum storey height changes
LBTH/19	Maritime Greenwich letter of 10/07/19
LBTH/20	Royal Borough of Greenwich letter of 19/07/19
LBTH/21	Historic England letter of 25/09/18
LBTH/22	CIL compliance statement
LBTH/23	Thames Water response to Inspector's questions
LBTH/24	Email from Richard Humphreys of 06/09/19
LBTH/25	Closing submissions

Submitted by the GLA	
GLA/10	Appearances
GLA/11	Opening statement
GLA/12	Jane Seymour's viability update of 12/08/19
GLA/13	Delivery, Servicing and Waste Management Plan
GLA/14	Jane Seymour's further viability update of 20/08/19
GLA/15	Update to Appendix 9 of Jane Seymour's Proof of Evidence Relating to Viability Reviews
GLA/16	Closing submissions

Inquiry documents	
ID/10	Viability Statement of Common Ground
ID/11	Draft conditions
ID/12	Table from Transport Assessment referenced in Condition 18
ID/13	Inspector's initial questions on draft Unilateral Undertaking submitted 13/08/19 (WDL11)

ID/14	Suggested conditions 21/08/19

Other documents	
OD/10	Note of address to Inquiry - Paula Carney
OD/11	Note of address to Inquiry -Martin Young
OD/12	Email from Benjamin Davies of 10/08/19
OD/13	Note of address to Inquiry - Ruth Bravery
OD/14	Note of address to Inquiry - Trevor Bravery
OD/15	Note of address to Inquiry - Benjamin Davies
OD/16	Note of address to Inquiry - Peter Fordham
OD/17	Letter from Martin Young and Benjamin Davis of 4/09/19
OD/18	Email from Cllr Wood of 28/08/19

Submissions received after the close of the Inquiry

PID1	Letter from the Council of 4 October 2019
PID2	Inspector's report on the examination of the THLP
PID3	Schedule of main modifications to the THLP
PID4	Draft report of the Examiner of the Council's CIL Draft Charging Schedule
PID5	The Council's Supplemental Note on the Inspector's report on the examination of the THLP
PID6	Letter from Eversheds Sutherland (for the appellant) of 22 October 2019 regarding the Inspector's report on the examination of the THLP
PID7	Letter from Eversheds Sutherland (for the appellant) of 22 October 2019 regarding the draft report of the Examiner of the Council's CIL Draft Charging Schedule
PID8	Email from Richard Green (GLA) of 14 October 2019 confirming no comments on THLP
PID9	Email from Richard Green (GLA) of 21 October 2019 regarding adoption of the Isle of Dogs and South Poplar Opportunity Area Planning Framework
PID10	The Isle of Dogs and South Poplar Opportunity Area Planning Framework (September 2019)
PID11	Report of the Examination in Public of the London Plan 2019 (extracts)
PID12	Letter from Eversheds Sutherland (for the appellant) of 30 October 2019 regarding the report of the Examination in Public of the London Plan 2019
PID13	Email from Richard Green (GLA) of 30 October 2019 regarding the report of the Examination in Public of the London Plan 2019
PID14	Email from Richard Green (GLA) of 30 October 2019 commenting on the appellant's comments on the draft report of the Examiner of the Council's CIL Draft Charging Schedule
PID15	Email from Georgina Redpath (for the appellant) commenting on the GLA's representations

ANNEX D – SCHEDULE OF APPLICATION PLANS

Drawing Title	Drawing No.	Rev	Scale	Size
Site Location Plan As Existing	WFP-PLP-MPA-RP-DRG-A-P-0011	0	1:1250	A1
Block Plan - Proposed Site Plan	WFP-PLP-MPA-RP-DRG-A-P-0009	0	1:1000	A1
Site Location Plan As Proposed	WFP-PLP-MPA-RP-DRG-A-P-0010	0	1:1250	A1
Basement +1.00m AOD	WFP-PLP-MPA-B1-DRG-A-P-0040	0	1:1000	A1
Basement +2.20m AOD	WFP-PLP-MPA-B1-DRG-A-P-0041	0	1:1000	A1
Ground Floor Masterplan	WFP-PLP-MPA-GF-DRG-A-P-0042	1	1:1000	A1
Ground Floor Mezzanine	WFP-PLP-MPA-M1-DRG-A-P-0042-M	0	1:1000	A1
Roof Masterplan	WFP-PLP-MPA-RF-DRG-A-P-0043	0	1:1000	A1
Site Long Section A-A	WFP-PLP-MPA-XX-DRG-A-P-0050	1	1:1000	A1
Site Long Section B-B	WFP-PLP-MPA-XX-DRG-A-P-0051	0	1:1000	A1
Site Long Section C-C	WFP-PLP-MPA-XX-DRG-A-P-0052	0	1:1000	A1
Site Cross Section D-D	WFP-PLP-MPA-XX-DRG-A-P-0053	1	1:1000	A1
Site Cross Section E-E	WFP-PLP-MPA-XX-DRG-A-P-0054	1	1:1000	A1
Masterplan South Elevation 01	WFP-PLP-MPA-XX-DRG-A-P-0060	1	1:1000	A1
Masterplan South Elevation 02	WFP-PLP-MPA-XX-DRG-A-P-0061	0	1:1000	A1
Masterplan North Elevation	WFP-PLP-MPA-XX-DRG-A-P-0062	1	1:1000	A1
Masterplan East Elevation	WFP-PLP-MPA-XX-DRG-A-P-0063	1	1:1000	A1
Masterplan West Elevation	WFP-PLP-MPA-XX-DRG-A-P-0064	1	1:1000	A1
Basement-Plantroom & Parking Layout	WFP-PLP-BAS-B1-DRG-A-P-0910	0	1:500	A1
B 01 - Lower Ground Floor Plan	WFP-PLP-B1X-GF-DRG-A-P-0100	0	1:200	A1
B 01 - Ground Floor Plan	WFP-PLP-B1X-M1-DRG-A-P-0100-M	0	1:200	A1
B 01 - Typical Floor Plan-Levels 01-12	WFP-PLP-B1X-ZZ-DRG-A-P-101	0	1:100	A1
B 01 - Roof Plan	WFP-PLP-B1X-RF-DRG-A-P-0150	0	1:100	A1
B 02 & T 01 - Ground Floor Plan	WFP-PLP-B2X-GF-DRG-A-P-0100	0	1:200	A1
B 02 & T 01 - Ground Floor Mezzanine Plan	WFP-PLP-B2X-M1-DRG-A-P-0100-M	0	1:200	A1
B 02 - Typical Floor Plan - Level 01-08	WFP-PLP-B2X-ZZ-DRG-A-P-0101	0	1:100	A1
B 02 - Level 09 Floor Plan	WFP-PLP-MPA-M1-DRG-A-P-0016	0	1:100	A1
B 02 - Roof plan	WFP-PLP-B2X-RF-DRG-A-P-0150	0	1:100	A1
B 03 & T 02 - Ground Floor Plan	WFP-PLP-B3X-GF-DRG-A-P-0100	0	1:200	A1
B 03 & T 02 - Ground Floor Mezzanine Plan	WFP-PLP-B3X-M1-DRG-A-P-0100-M	0	1:200	A1
B 03 - Cores A & B-Typical Floor Plan-Levels 01-08	WFP-PLP-B3AB-ZZ-DRG-A-P-0101	0	1:100	A1
B03 - Cores A & B-Typical Floor Plan-Level 09 Floor Plan	WFP-PLP-B3AB-09-DRG-A-P-0109	0	1:100	A1
B 03 - Cores A & B-Roof Plan	WFP-PLP-B3AB-RF-DRG-A-P-0150	0	1:100	A1
B 03 - Core C - Typical Floor Plan-Levels 01-08	WFP-PLP-B3C-ZZ-DRG-A-P-0111	0	1:100	A1
B 03 - Cores C-Typical Floor Plan-Level 09 Floor Plan	WFP-PLP-B3C-19-DRG-A-P-0119	0	1:100	A1
B 03 - Core C - Roof Plan	WFP-PLP-B3C-RF-DRG-A-P-0151	0	1:100	A1
B 04 & T 03 - Ground Floor Plan	WFP-PLP-B4X-GF-DRG-A-P-0100	0	1:200	A1
B 04 & T 03 - Ground Flr Mezzanine Plan	WFP-PLP-B4X-M1-DRG-A-P-0100-M	0	1:200	A1
B 04 - Cores A & B-Typical Floor Plan-Levels 01-08	WFP-PLP-B4AB-ZZ-DRG-A-P-0101	0	1:200	A1
B 04 -Cores A & B- Roof Plan	WFP-PLP-B4AB-RF-DRG-A-P-0150	0	1:100	A1
B 04 - Cores C & D - Roof Plan	WFP-PLP-B4CD-RF-DRG-A-P-0151	0	1:100	A1
B 04 - Cores A & B-Level 09 Floor Plan	WFP-PLP-B4AB-ZZ-DRG-A-P-0109	0	1:100	A1

B 04 - Cores C & D-Levels 01-08 Floor Plan	WFP-PLP-B4CD-ZZ-DRG-A-P-0111	0	1:100	A1
B 04 - Cores C & D - Level 09 Floor Plan	WFP-PLP-B4CD-09-DRG-A-P-0119	0	1:100	A1
B 06 - Basement Floor Plan	WFP-PLP-B6X-B1-DRG-A-P-0099	0	1:200	A1
B 06 - Ground Floor Plan	WFP-PLP-B6X-GF-DRG-A-P-0100	0	1:200	A1
B 06a - Typical Floor Plan - Levels 01-02	WFP-PLP-B6A-ZZ-DRG-A-P-0101	0	1:100	A1
B 06a - Typical Floor Plan - Levels 03-06	WFP-PLP-B6A-ZZ-DRG-A-P-0103	0	1:100	A1
B 06a - Level 07 Floor Plan	WFP-PLP-B6A-07-DRG-A-P-0107	0	1:100	A1
B 06a - Roof Plan	WFP-PLP-B6A-RF-DRG-A-P-0150	0	1:100	A1
B 06b - Typical Floor Plan - Levels 01-02	WFP-PLP-B6B-ZZ-DRG-A-P-0111	0	1:100	A1
B 06b - Typical Floor Plan - Levels 03-06	WFP-PLP-B6B-ZZ-DRG-A-P-0113	0	1:100	A1
B 06b - Level 07 Roof Plan	WFP-PLP-B6B-07-DRG-A-P-0117	0	1:100	A1
B 06b - Roof Plan	WFP-PLP-B6B-RF-DRG-A-P-0151	0	1:100	A1
B 07 - Ground Floor Plan	WFP-PLP-B7X-GF-DRG-A-P-0100	1	1:200	A1
B 07 - Typical Floor Plans-Levels 01-06	WFP-PLP-B7X-ZZ-DRG-A-P-0101	0	1:100	A1
B 07 - Typical Floor Plans-Levels 07-08	WFP-PLP-B7X-ZZ-DRG-A-P-0107	0	1:100	A1
B 07 - Level 09 Floor Plan	WFP-PLP-B7X-09-DRG-A-P-0109	0	1:100	A1
B 07 - Roof Plan	WFP-PLP-B7X-RF-DRG-A-P-0150	0	1:100	A1
T 01 - Typical Floor Plan-Levels 01-16	WFP-PLP-T01-ZZ-DRG-A-P-0101	0	1:100	A1
T 01 - Level 17 Floor Plan	WFP-PLP-T01-17-DRG-A-P-0117	0	1:100	A1
T 01 - Level 18 Floor Plan	WFP-PLP-T01-18-DRG-A-P-0118	0	1:100	A1
T 01 - Level 19 Floor Plan	WFP-PLP-T01-19-DRG-A-P-0119	0	1:100	A1
T 01 - Roof Plan	WFP-PLP-T01-RF-DRG-A-P-0150	0	1:100	A1
T 02 - Typical Floor Plan-Levels 01-20	WFP-PLP-T02-ZZ-DRG-A-P-0101	0	1:100	A1
T 02 - Level 21 Floor Plan	WFP-PLP-T02-21-DRG-A-P-0121	0	1:100	A1
T 02 - Level 22 Floor Plan	WFP-PLP-T02-22-DRG-A-P-0122	0	1:100	A1
T 02 - Level 23 Floor Plan	WFP-PLP-T02-23-DRG-A-P-0123	0	1:100	A1
T 02 - Roof Plan	WFP-PLP-T02-RF-DRG-A-P-0150	0	1:100	A1
T 03 - Typical Floor Plan-Levels 01-19 & 21-28	WFP-PLP-T03-ZZ-DRG-A-P-0101	0	1:100	A1
T 03 - Level 20 Floor Plan	WFP-PLP-T03-20-DRG-A-P-0120	0	1:100	A1
T 03 - Level 29 Floor Plan	WFP-PLP-T03-29-DRG-A-P-0129	0	1:100	A1
T 03 - Level 30 Floor Plan	WFP-PLP-T03-30-DRG-A-P-0130	0	1:100	A1
T 03 - Level 31 Floor Plan	WFP-PLP-T03-31-DRG-A-P-0131	0	1:100	A1
T 03 - Roof Plan	WFP-PLP-T03-RF-DRG-A-P-0150	0	1:100	A1
T 04 - Ground Floor Plan	WFP-PLP-T4X-GF-DRG-A-P-0100	0	1:200	A1
T 04 - Level 01 Floor Plan	WFP-PLP-T4X-01-DRG-A-P-0101	0	1:200	A1
T 04 - Typical Floor Plan - Level 02-17 & 19-39	WFP-PLP-T4X-02-DRG-A-P-0102	1	1:100	A1
T 04 - Levels 18 Floor Plan	WFP-PLP-T4X-18-DRG-A-P-0118	0	1:100	A1
T 04 - Level 40 Floor Plan	WFP-PLP-T4X-40-DRG-A-P-0140	0	1:100	A1
T 04 - Level 41 Floor Plan	WFP-PLP-T4X-41-DRG-A-P-0141	0	1:100	A1
T 04 - Level 42 Floor Plan	WFP-PLP-T4X-42-DRG-A-P-0142	1	1:100	A1
T 04 - Level 43 Floor Plan	WFP-PLP-T4X-43-DRG-A-P-0143	1	1:100	A1
T 04 - Level 44 Floor Plan	WFP-PLP-T4X-44-DRG-A-P-0144	1	1:100	A1
T 04 - Roof Plan	WFP-PLP-T4X-RF-DRG-A-P-0150	1	1:100	A1
T 05 -Ground Floor Plan	WFP-PLP-T5X-GF-DRG-A-P-0100	0	1:200	A1

T 05 - Level 01	WFP-PLP-T5X-01-DRG-A-P-0101	0	1:200	A1
T 05 - Level 02 Floor Plan	WFP-PLP-T5X-02-DRG-A-P-0102	0	1:100	A1
T 05 - Floor Plans	WFP-PLP-T5X-ZZ-DRG-A-P-0103	1	1:100	A0
T 05 - Level 20 Floor Plan	WFP-PLP-T5X-20-DRG-A-P-0120	0	1:100	A1
T 05 - Level 29 Floor Plan	WFP-PLP-T5X-29-DRG-A-P-0129	0	1:100	A1
T 05 - Level 30 Floor Plan	WFP-PLP-T5X-30-DRG-A-P-0130	0	1:100	A1
T 05 - Level 31 Roof Plan	WFP-PLP-T5X-31-DRG-A-P-0131	0	1:100	A1
T 05 - Level 32 Roof Plan	WFP-PLP-T5X-31-DRG-A-P-0132	0	1:100	A1
T 05 - Roof Plan	WFP-PLP-T5X-RF-DRG-A-P-0150	0	1:100	A1
B 01 -Elevations	WFP-PLP-B1X-ZZ-DRG-A-P-0201	0	1:200	A0
B 01 -Sections	WFP-PLP-B1X-ZZ-DRG-A-P-0250	0	1:250	A1
B 02 - Elevations	WFP-PLP-B2X-ZZ-DRG-A-P-0201	0	1:200	A0
B 02 -Sections	WFP-PLP-B2X-ZZ-DRG-A-P-0250	0	1:250	A1
B 03 -Elevations	WFP-PLP-B3X-ZZ-DRG-A-P-0201	0	1:200	A0
B 03 -Courtyard Elevations	WFP-PLP-B3X-ZZ-DRG-A-P-0202	0	1:200	A0
B 03 -Sections	WFP-PLP-B3X-ZZ-DRG-A-P-0250	0	1:250	A1
B 04 -Elevations	WFP-PLP-B4X-ZZ-DRG-A-P-0201	0	1:200	A0
B 04 -Courtyard Elevations	WFP-PLP-B4X-ZZ-DRG-A-P-0202	0	1:200	A0
B 04 -Sections	WFP-PLP-B4X-ZZ-DRG-A-P-0250	0	1:250	A1
B 06 -Elevations	WFP-PLP-B6X-ZZ-DRG-A-P-0201	0	1:200	A0
B 06 -Elevations	WFP-PLP-B6X-ZZ-DRG-A-P-0202	1	1:200	A0
B 06 -Sections	WFP-PLP-B6X-ZZ-DRG-A-P-0250	0	1:250	A1
B 07 -Elevations	WFP-PLP-B7X-ZZ-DRG-A-0201	0	1:200	A0
B 07 -Sections	WFP-PLP-B7X-ZZ-DRG-A-0250	0	1:250	A1
T 01 -Elevations	WFP-PLP-T1X-ZZ-DRG-A-P-0201	0	1:200	A0
T 01 -Sections	WFP-PLP-T1X-ZZ-DRG-A-P-0250	0	1:250	A1
T 02 -Elevations	WFP-PLP-T2X-ZZ-DRG-A-P-0201	0	1:200	A0
T 02 -Sections	WFP-PLP-T2X-ZZ-DRG-A-P-0250	0	1:250	A1
T 03 -Elevations	WFP-PLP-T3X-ZZ-DRG-A-P-0201	0	1:200	A0
T 03 -Sections	WFP-PLP-T3X-ZZ-DRG-A-P-0250	0	1:250	A0
T 04 - Elevations	WFP-PLP-T4X-ZZ-DRG-A-P-0201	1	1:200	A0
T 04 -Sections	WFP-PLP-T4X-ZZ-DRG-A-P-0250	1	1:250	A0
T 05 -Elevations	WFP-PLP-T5X-ZZ-DRG-A-P-0201	0	1:200	A0
T 05 -Elevations	WFP-PLP-T5X-ZZ-DRG-A-P-0202	0	1:200	A0
T 05 - Sections	WFP-PLP-T5X-ZZ-DRG-A-P-0250	0	1:250	A0
SITE WIDE PUBLIC REALM GENERAL ARRANGEMENT PLAN	33561-LDA-LAP-GF-DRG-L-0100	A	1:1000	A2
SITE WIDE PODIUM AND ROOF TERRACES GENERAL ARRANGEMENT PLAN	33561-LDA-LAP-GF-DRG-L-0101	A	1:1000	A2
SITE WIDE PUBLIC REALM GENERAL KEY	33561-LDA-LAP-GF-DRG-L-0103	A	1:1000	A2
SITE WIDE TREE REMOVAL PLAN	33561-LDA-LAP-GF-DRG-L-0110	A	1:1000	A2
PUBLIC REALM DETAIL PLAN SHEET 1 OF 5	33561-LDA-LAP-GF-DRG-L-0200	A	1:500	A3
PUBLIC REALM DETAIL PLAN SHEET 2 OF 5	33561-LDA-LAP-GF-DRG-L-0201	A	1:500	A3
PUBLIC REALM DETAIL PLAN SHEET 3 OF 5	33561-LDA-LAP-GF-DRG-L-0202	A	1:500	A3
PUBLIC REALM DETAIL PLAN SHEET 4 OF 5	33561-LDA-LAP-GF-DRG-L-0203	A	1:500	A3
PUBLIC REALM DETAIL PLAN SHEET 5 OF 5	33561-LDA-LAP-GF-DRG-L-0204	A	1:500	A3
PUBLIC REALM DETAIL KEY 1:500	33561-LDA-LAP-GF-DRG-L-0205	A	1:500	A3

ANNEX E - CONDITIONS

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

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the attached Schedule .

3) Unless otherwise specified by a section 61 consent granted under the Control of Pollution Act 1974, the building operations required to carry out the development allowed by this permission must only be carried out within the following times and not at all on Sundays and Public Holidays:-

   08.00 to 18.00 Monday to Friday

   08.00 to 13.00 on Saturdays

   Any hammer driven piling or impact breaking out of materials pursuant to this permission shall be carried out only between the hours of 10.00 and 16.00 Monday to Friday and shall not take place at any time on Saturdays, Sundays or Public Holidays.

4) The Class A3/A4 and D1 units hereby permitted shall not be open to customers outside the following times:

   08.00 to 00.00 Monday to Saturday and on Public Holidays;

   10.00 to 23.00 on Sundays.

5) The refuse storage and recycling facilities for a building shown on the approved plans shall be provided prior to the occupation of that building and thereafter made permanently available for the occupiers of the development.

6) The car parking spaces for a building shown on the approved plans shall be provided prior to the occupation of that building, shall be maintained and made available for car parking and shall be used for no other purposes throughout the lifetime of the development. No residential or commercial parking space comprised within the development shall be used by anyone other than an occupier of a residential unit or a commercial unit within the development.

7) The accessible residential and commercial car parking spaces for a building shown on the approved plans shall be provided prior to the occupation of that building, shall be maintained and made available for Blue Badge holders only and shall be used for no other purposes throughout the lifetime of the development. No accessible residential or commercial parking space comprised within the development shall be used by anyone other than an occupier of a residential unit or a commercial unit within the development.

8) The long stay and short stay cycle parking facilities (including their associated facilities) for a building shown on the approved plans shall be

provided prior to occupation of that building and thereafter retained for the lifetime of the development.

9) Ten percent (10%) of the residential units in both the market and affordable housing sectors across a range of units shall meet Building Regulation requirement M4(3) "*wheelchair user dwellings*" in accordance with the approved residential schedule.

10) Finished floor levels to habitable accommodation shall be set above the 2100 breach flood level of 4.97m AOD.

11) a) Mechanical plant and equipment within the development shall be designed and maintained for the lifetime of the development so as not to exceed a level of 10dB below the lowest measured background noise level ($LA_{90,\ 15\ minutes}$) as measured one metre from the nearest affected window of the nearest affected neighbouring residential property. The plant and equipment shall not create an audible tonal noise nor cause perceptible vibration to be transmitted through the structure of the buildings.

b) A post completion verification report including acoustic test results and confirming that the above maximum noise standards have been complied with in a building shall be submitted to the local planning authority for written approval prior to the expiry of the period of 3 months from first occupation of that building within the development.

12) The historic cranes and mooring points alongside Millwall Outer Dock within and adjoining the site shown on Drawing No WFP-PLP-MPA-RP-DRG-A-P-0011 "*Site Location Plan As Existing*" shall not be removed without the prior approval in writing of the local planning authority.

13) Prior to any construction works being undertaken pursuant to this planning permission, the ground contamination Remediation Strategy dated February 2018 by WSP reference WFP-WSP-MPA-XX-RPT-S which was approved by the local planning authority on 17 July 2018 (Reference PA/18/01286) shall be updated to reflect the development hereby permitted and the construction programme and such updated Remediation Strategy shall be submitted to and approved in writing by the local planning authority.

14) a) The Remediation Strategy approved under condition 13 shall be carried out. If during the remediation or development new areas of contamination are encountered which have not been previously identified, then prior to occupation of that part of the development, the additional contamination shall be fully assessed and a remediation scheme shall be submitted to and approved in writing by the local planning authority and fully implemented thereafter.

b) A Verification Report produced on completion of the remediation works to demonstrate effective implementation of the remediation strategy for each part of the development shall be submitted to and approved in writing by the local planning authority. The content of the report(s) shall comply with best practice guidance and shall include details of the remediation works carried out, results of verification sampling, testing and monitoring and all waste management documentation showing the classification of waste, its

treatment, movement and/or disposal in order to demonstrate compliance with the approved remediation strategy.

15) The commercial units shown on the approved drawings shall not be amalgamated unless otherwise agreed in writing by the local planning authority.

16) Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) or any equivalent Order revoking and re-enacting that Order, the following development shall not be undertaken without prior specific express planning permission in writing from the local planning authority:

a) The installation of any structures or apparatus for purposes relating to telecommunications on any part the development hereby approved, including any structures or development otherwise permitted under Part 16 "*Communications*".

b) The change of use of retail units from Use Class A1 (shops) to Use Class A3 (cafe/restaurant) otherwise permitted under Part 3 "*Change of Use*".

17) The approved Delivery and Servicing Plan and the Waste Management Plan prepared by Royal Haskoning DHV (July 2018) shall be implemented on first occupation of the development and remain in force for the lifetime of the development unless any variation is approved in writing by the local planning authority.

18) The residential units shall be delivered no sooner than as set out in the programme detailed within Table 4.5 and Figure 4.1 of the Transport Assessment dated July 2018 by Royal Haskoning DHV.

19) Prior to the commencement of superstructure works for a building hereby permitted, full details (including samples) of all external facing materials of that building shall be submitted to and approved in writing by the local planning authority. The submitted details shall include:

a) Mock-up panels of the external cladding and glazing;

b) All external facing materials for the relevant building including glazing, balustrades, balcony screening, spandrel panels, cladding, masonry, concrete and metalwork;

c) 1:20 drawings of ground floor curtain wall glazing, fins and canopies and upper floor glazing, reveals, balconies, balustrades, metalwork, vents and louvres/brise soleil; and

d) 1:75 drawings of rooftop layout, showing plant, machinery and equipment required for the functioning of the buildings.

Development shall be carried out in accordance with the approved details.

20) Prior to the commencement of superstructure works for a relevant building hereby permitted, full details of the design and materials of the proposed shopfronts and signage for that building shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

21) Prior to the commencement of superstructure works for a building hereby permitted, full details of wind mitigation measures for that building, including the balconies, entry points and adjoining open spaces, shall be submitted to and approved in writing by the local planning authority. The mitigation measures shall ensure that the development provides an acceptable level of pedestrian environment when measured against the relevant standards set out in the Lawson's Comfort Criteria. Development shall be carried out in accordance with the approved details.

22) Prior to the commencement of superstructure works on a building hereby permitted, a scheme detailing measures to reduce exposure to external noise for the residential units in the building shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

23) Prior to the commencement of superstructure works on a building hereby permitted, details of water efficiency measures to be incorporated into that building shall be submitted to and approved in writing by the local planning authority. The water efficiency measures shall ensure that the water usage of the residential development is limited to 105 litres per person, per day. Development shall be carried out in accordance with the approved details and the approved measures shall be completed prior to the occupation of the building and shall thereafter be retained for the lifetime of the development.

24) Prior to the commencement of any superstructure works, a revised Surface Water Drainage Scheme based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development shall be submitted to and approved in writing by the local planning authority. The scheme shall include:

    a) peak discharge rates;

    b) associated control structures that shall aim to achieve the greenfield run-off rate;

    c) safe management of critical storm water storage up to the 1:100 year event plus 40%; and

    d) details of agreed adoption, monitoring and maintenance of the drainage and SUDS features.

    Development shall be carried out in accordance with the approved scheme and retained as such for the lifetime of the development.

25) Prior to the commencement of any superstructure works, a detailed study that demonstrates that the dock source heat pumps can achieve the anticipated CO_2 savings within the submitted Energy Strategy (AECOM July 2018) shall be submitted to and approved in writing by the local planning authority.

26) No construction shall take place until an updated Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The plan shall provide for:

a) vehicle parking for site operatives and visitors;

b) details of the site manager, including contact details (phone, facsimile, email, postal address) and the location of a notice board on the site that clearly identifies these details;

c) loading and unloading of plant and materials;

d) storage of plant and materials used in constructing the development;

e) measures to avoid conflict between the movement of construction vehicles and the opening and closing times of Arnhem Wharf Primary School, Westferry Road;

f) erection and maintenance of security hoardings;

g) measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage, loading and unloading of plant and materials and similar construction activities;

h) measures to ensure that the access from the emergency exits is safe and not obstructed during the works;

i) wheel washing facilities;

j) measures to control the emission of dust and dirt during construction;

k) a scheme for recycling/disposing of waste resulting from construction works;

l) details of proposed surface water arrangements to ensure that no surface water (either via drains or surface water run-off) or extracted perched water or groundwater shall be discharged into the docks during the construction/enabling works, unless treated to a standard that has first been approved in writing by the local planning authority;

m) capping off of any existing surface water drains connecting the site with the docks at the point of surface water ingress and at any outfall to the waterway for the duration of the construction works; and

n) all non-road mobile machinery used in connection with the construction of the development hereby approved shall meet the minimum emission requirements set out in the Mayor of London's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance 2014.

27) No cranes or scaffolding shall be erected on the site until a construction methodology and diagrams presenting the location, maximum operating height, radius, lighting and start/finish dates for the use of cranes and/or scaffolding during construction has been submitted to and approved in writing by the local planning authority.

28) No works for the construction of a building hereby approved involving impact piling shall be carried out until a Piling Method Statement has been submitted to and approved in writing by the local planning authority. The method statement shall include the type and depth of piling to be undertaken, the methodology by which such piling will be carried out, a

Hydrogeological Risk Assessment, measures to prevent and minimise the potential for damage to subsurface water, sewerage or other infrastructure and a programme for the works for that building. The works shall be carried out in accordance with the approved method statement.

29) Prior to the commencement of superstructure works on a building hereby permitted, details to demonstrate that the building can achieve full Secured by Design accreditation shall be submitted to and approved in writing by the local planning authority. Each building or part of a building must achieve Secured by Design accreditation. The approved security measures shall be implemented in accordance with the approved details prior to the first occupation of the building and retained thereafter for the lifetime of the development.

30) Prior to the commencement of any superstructure works in each Plot identified by Drawing No WFP-PLP-MPA-XX-DRG-A-P-0017 within Schedule 2 of the Unilateral Undertaking dated 6 September 2019, a first television interference study shall be undertaken by a body or person approved by the Confederation of Aerial Industries or by the Office of Communications and shall be submitted to and approved in writing by the local planning authority. The study shall:

a) identify the area within which television signal reception might be interfered with by the development within that Plot;

b) measure the existing television signal reception within the study area before development has been commenced; and

c) provide contact details for the developer and the local planning authority such that any persons whose television reception may be affected by the development within that Plot can provide notice that their reception has been so affected.

Within one month of practical completion of the buildings in that Plot, a second television interference study shall be undertaken that assesses the impact of the development on the television signal reception of those in the study area. Appropriate measures to mitigate such effects so that the signal shall be of at least the same quality as that before the development was undertaken shall be carried out within one month of reception interference being notified or identified.

The developer shall remain responsible for such mitigation works for notifications made to the developer or to the local planning authority before the expiry of 12 months from the practical completion of development within that Plot.

31) The overall concept, layout, extent and type of hard and soft landscaping for the development shall accord with the plans hereby approved and the "*Landscaping and Public Realm*" June 2018 landscape masterplan by LDA Design. Prior to the commencement of any superstructure works in each Plot identified by Drawing No WFP-PLP-MPA-XX-DRG-A-P-0017 within Schedule 2 of the Unilateral Undertaking dated 6 September 2019, the following additional details of the landscaping scheme for each Plot shall be submitted to and approved in writing by the local planning authority:

a) the location, species and sizes of proposed trees, as well as details of any trees to be retained along with necessary protection measures;

b) soft planting, grassed/turfed areas, shrubs and herbaceous areas to include species;

c) enclosures including type, dimensions and treatments of any walls, fences, screen walls, barriers, railings and hedges;

d) hard landscaping, including samples of ground surface materials, kerbs, edges including the use of durable material to the edge of Millwall Dock, ridge and flexible pavements, unit paving, steps and, if applicable, any synthetic surfaces;

e) street furniture;

f) children's play space equipment and structures, including key dimensions, materials and manufacturer's specifications;

g) any other landscaping features forming part of the scheme, including amenity spaces and green roofs;

h) a statement setting out how the landscape and public realm strategy provides for disabled access, ensuring equality of access for all, including children, seniors, wheelchairs users and people with visual impairment or limited mobility;

i) a wayfinding and signage strategy; and

j) a landscape management plan for the public and private areas to include a maintenance schedule for all landscaped areas.

All landscaping shall be completed/planted in accordance with the approved scheme during the first planting season following practical completion of the development in each Plot or in accordance with a programme agreed with the local planning authority. The landscaping and tree planting shall have a two year maintenance/watering provision following planting and any trees or shrubs which die, are removed, or become seriously damaged or diseased within five years of completion of the development in each Plot shall be replaced with the same species or an approved alternative in the next planting season, to the satisfaction of the local planning authority. The development shall be carried out in accordance with the details so approved and shall be maintained as such thereafter.

32) No superstructure works shall occur until full details of biodiversity enhancements have been submitted to and approved in writing by the local planning authority. The biodiversity enhancements across the development shall include the following:

a) at least 0.185 hectares of biodiverse roofs, the details of which should include the location and total area of biodiverse roofs, substrate depth and type, planting including any vegetated mat or blanket (avoiding sedum mats) and any additional habitats to be provided such as piles of stones or logs;

b) at least 0.52 hectares of predominantly native tree, shrub (to include common and/or alder buckthorn) and wildflower planting, details of which should include locations, species and planting plans, as well as the total area of this planting which will be native woodland and length of mixed native hedgerow;

c) landscaping to include a good diversity of nectar-rich plants to provide food for bumblebees and other pollinators for as much of the year as possible, details of which should include species lists and planting plans;

d) at least 36 bat boxes and 54 nesting features for appropriate bird and invertebrate species, including black redstart, house sparrow, house martin, swift and bees, details of which should include number, locations and type of boxes.

The approved biodiversity enhancements within each Plot shall be implemented in full prior to the occupation of each Plot and shall thereafter be retained as such for the lifetime of the development.

33) No development shall take place until an update of the Archaeological Written Scheme of Investigation approved under PA/18/00513 dated 23 April 2018 has been submitted to and approved in writing by the local planning authority. For land that is included within the Archaeological Written Scheme of Investigation, no development shall take place other than in accordance with the agreed Archaeological Written Scheme of Investigation, the programme and methodology of site investigation and the nomination of a competent person(s) or organisation to undertake the agreed works. The Archaeological Written Scheme of Investigation shall accord with the appropriate Historic England guidelines and include:

a) a statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;

b) a programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material; and

c) steps for archaeological outreach and public heritage interpretation during the works and in the finished scheme.

The Archaeological Written Scheme of Investigation shall be prepared and implemented by a suitably qualified professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London.

34) Prior to the occupation of the development, a Car and Cycle Parking Management Plan detailing how the approved parking spaces will be allocated, used and managed throughout the operation of the development shall be submitted to and approved in writing by the local planning authority. The Plan shall include details of wheelchair accessible car parking spaces and the installation of electric vehicle charging points in accordance with London Plan parking standards and how the Sheffield type stands and the lower tier cycle stackers will be allocated to those with mobility problems requiring adapted or recumbent cycles.

The car parking, electric vehicle charging points and cycle parking shall be provided and managed in accordance with the approved strategy for the lifetime of the development.

35) a) The development shall not be occupied until back-up boilers and pollution arrestment equipment meeting at least the manufacturer's specifications as set out in the submitted Air Quality Impact Assessment (Environmental Statement Volume 1 July 2018) have been installed. The boilers and pollution arrestment equipment shall be maintained to such specifications or better for the lifetime of the development.

b) Full details of the flues to be installed at the northern perimeter of the site to be utilised by the Barkantine District Heating System shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation of Building 7 in accordance with the manufacturer's specifications and shall thereafter be permanently retained to such performance during the lifetime of the Barkantine Energy Centre.

36) The non-residential elements of the development hereby permitted shall be constructed to achieve not less than BREEAM "*Very Good*" in accordance with the relevant BRE standards (or the equivalent standard in such measure of sustainability for non-residential building design which may replace that scheme). The developer shall within six months of occupation of the non-residential floorspace submit final certification to the local planning authority demonstrating that not less than 'Very Good' has been achieved.

37) No units within Use Classes A3 and A4 shall be occupied until full details (including external appearance and technical specification) of any necessary extraction and ventilation systems for that unit have been submitted to and approved in writing by the local planning authority. The extraction and ventilation systems shall be installed in accordance with the approved details before the use commences and maintained in accordance with the manufacturer's recommendations for the duration of the use.

38) Prior to any occupation of the development, details of life-saving equipment to be installed alongside the edge of Millwall Outer Dock shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

39) Prior to occupation of any building hereby permitted details of:

a) CCTV;

b) general external lighting;

c) security lighting; and

d) access control measures for residential core entrances

on or around the building and within the adjoining public realm shall be submitted to and approved in writing by the local planning authority. The details shall include the location and specification of all lamps, light levels/spill, illumination, cameras (including view paths) and support structures including type, materials and manufacturer's specifications. The

details should include an assessment of the impact of any such lighting on the surrounding residential environment and the environment of Millwall Outer Dock. Development shall be carried out in accordance with the approved details and maintained as such thereafter for the lifetime of the development.

40) No development above grade shall take place until the details of and specification for highway works consisting of:

a) the realignment of Westferry Road along the frontage of the site;

b) works to connect the development's estate road to Millharbour;

c) works to connect the development to Millwall Dock Road;

d) works to connect the development's estate road to Westferry Road;

e) the widening of the pavement outside Arnhem Wharf Primary School;

f) the creation of a new bus cage for northbound services, adjacent to the Arnhem Wharf Primary School and the removal of the existing northbound bus cage and shelter;

g) the provision of yellow lines;

h) the provision of a new zebra crossing on Westferry Road adjacent to the site;

i) the reduction in the scale of the access junction to the site from Westferry Road; and

j) the extension of the existing southbound bus stop adjacent to the Docklands Sailing and Watersports Centre, together with consequential and ancillary works, and any other highway works that are necessitated by the development

have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved highway works (and any agreed consequential and ancillary works) have been carried out and completed pursuant to an agreement or agreements made with the relevant highway authority or highway authorities, including TfL, under Section 38 and/or Section 278 of the Highways Act 1980 .

End of schedule of conditions

The Planning Inspectorate

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

by David Prentis BA BPl MRTPI

an Inspector appointed by the Secretary of State

Date: 25 June 2021

TOWN AND COUNTRY PLANNING ACT 1990

THE COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS

APPEAL MADE BY

WESTFERRY DEVELOPMENTS LIMITED

FURTHER REPORT RELATING TO THE REOPENED INQUIRY

Inquiry reopened on 18 May 2021

Former Westferry Printworks Site, 235 Westferry Road, London E14 3QS

File Ref: APP/E5900/W/19/3225474

CONTENTS

File Ref: APP/E5900/W/19/3225474
Former Westferry Printworks Site, 235 Westferry Road, London E14 3QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Westferry Developments Limited against the Council of the London Borough of Tower Hamlets.
- The application, Ref PA/18/01877/A1, is dated 24 July 2018.
- The development proposed is a comprehensive mixed-use redevelopment comprising 1,524 residential units (Class C3), shops, offices, flexible workspaces, financial and professional services, restaurants and cafes, drinking establishments (Classes B1/A1/A2/A3/A4), community uses (Class D1), car and cycle basement parking, associated landscaping, new public realm and all other necessary enabling works.
- The appeal is to be redetermined following a decision of the High Court.

Summary of Recommendation: That the appeal be dismissed

PRELIMINARY MATTERS

1. In August and September 2019 I held an Inquiry into an appeal by Westferry Developments Limited relating to a proposal for a comprehensive mixed-use development at the former Westferry Printworks Site. I submitted my report, dated 20 November 2019 (IR), to the Secretary of State recommending that the appeal be dismissed. On 14 January 2020 the Secretary of State issued a decision letter (DL) disagreeing with that recommendation, allowing the appeal and granting planning permission.

2. The DL was subject to a legal challenge by the Council. The Secretary of State subsequently accepted that the DL was unlawful and it was quashed by a Consent Order dated 20 May 2020[1]. A separate challenge had been made by the Greater London Authority (GLA). The Consent Order notes that the GLA agreed that this claim had been rendered academic by the Council's challenge, so permission to bring it was refused. The GLA's agreement to this outcome was without prejudice to its position that the Secretary of State had erred in the ways alleged in the GLA's claim.

3. As a result of the Consent Order, the decision falls to be re-determined by the Secretary of State. On 11 August 2020 the Secretary of State invited the parties to make written representations for the purposes of his further consideration of the appeal[2]. Having considered those representations, he issued a letter (dated 21 December 2021[3]) stating the Inquiry would be reopened to consider the following matters:

    a) the implications of the adoption of the London Borough of Tower Hamlets Local Plan 2031;

    b) the impact of the adoption by the London Borough of Tower Hamlets of a CIL Charging Schedule which took effect on 17 January 2020;

    c) the implications of progress on the London Plan;

[1] CD113
[2] CD98
[3] CD100

d) the implications for the proposal of these changes and any other changes of circumstances on the viability of the proposal; and

e) any material change in circumstances, fact or policy, that may have arisen since his decision of 14 January 2020 was issued and which the parties consider to be material to the Secretary of State's further consideration of the appeal.

4. There was no challenge to the IR, which remains before the Secretary of State together with all of the evidence given at the first Inquiry. The reopened Inquiry was focussed on the matters identified by the Secretary of State. This is a further report on those matters which sits alongside, and is to be read together with, the IR. It is necessary for me to revisit my conclusions on the development plan because the development plan is now different. However, in undertaking that exercise, I have not revisited the planning judgements recorded in the first report except where this is made necessary as a result of material changes in circumstances, fact or policy.

5. I have noted the terms of the Consent Order. Having regard to the reason why the DL was found to be unlawful[4], I have not attached weight to any findings within the DL.

6. The reopened Inquiry sat for six days between 18 May and 26 May 2021.

7. The application was accompanied by an Environmental Statement (ES). I asked the appellant to review the environmental information and consider whether it should be updated in any way. The appellant submitted an addendum to the ES which identified some changes to baseline conditions. The review did not identify any changes to the assessments of environmental effects. I have had regard to the further environmental information.

8. A s106 Agreement was submitted at the reopened Inquiry. This withdraws two previous Unilateral Undertakings, dated 6 September 2019 and 29 September 2020, such that they are of no further effect[5]. A revised Unilateral Undertaking (UU)[6] was also submitted. This carries forward many of the obligations contained in the first UU, as described at paragraph 8 of the IR. In respect of the financial obligations, there would be increases in the amounts of the contributions relating to carbon offsetting and monitoring and there would be a new development co-ordination and integration contribution. These changes reflect the Council's recent Supplementary Planning Document (SPD) on planning obligations which has replaced the guidance that was in place at the time of the first Inquiry[7].

9. Like the previous version, the new UU provides for the delivery of 21% affordable housing (by habitable rooms) with 70% affordable rent and 30% intermediate housing. There are various changes in the detailed arrangements for the delivery of affordable housing which are discussed further below. Whilst the overall effectiveness of those arrangements was a controversial matter, no party suggested that the obligations themselves would be inconsistent with the tests

[4] CD113, paragraph 6 of the Schedule
[5] ID17, the Agreement has the sole function of withdrawing the previous Unilateral Undertakings
[6] ID19
[7] CD106

set out in the Community Infrastructure Levy (CIL) Regulations. The other non-financial obligations are the same as those described at paragraph 8 of the IR. The Council submitted an updated CIL Regulations compliance statement[8] which set out its justification for the new/increased contributions. These matters were not disputed and I see no reason to take a different view. I have taken account of the new/increased contributions in my assessment.

10. The site and surroundings are as described at paragraphs 18 to 25 of the IR. The ES Addendum identified a locally listed building that had not been considered in previous assessments. However, no party suggested that there would be any impact on the significance of this non-designated heritage asset. I agree that there would be no such impact due to its separation from the appeal site and the presence of intervening development.

11. The appellant submitted a note on the approach to fire safety[9]. This was submitted at my request, in view of Policy D12 of London Plan 2021 which requires the submission of Fire Statements. This requirement was not previously part of the development plan.

PLANNING POLICY

12. When the IR was written, the development plan comprised the London Plan 2016 (LonP 2016), the London Borough of Tower Hamlets Core Strategy 2010 (CS), the London Borough of Tower Hamlets Managing Development Document 2013 (MDD) and the London Borough of Tower Hamlets Adopted Policies Map 2013. Since then:

    - the London Borough of Tower Hamlets Local Plan 2031 (LP 2031) was adopted on 15 January 2020;
    - the CS and MDD were revoked by the Council on 15 January 2020;
    - the London Borough of Tower Hamlets CIL Charging Schedule 2020 was adopted on 15 January 2020 and came into effect on 17 January 2020;
    - the London Plan 2021 (LonP 2021) has been made and was published on 2 March 2021; and
    - the Isle of Dogs Neighbourhood Plan (NP) was passed by referendum on 6 May 2021.

    The development plan now includes the LonP 2021, the LP 2031, the London Borough of Tower Hamlets adopted Policies Map 2020 and the NP. The policies that I consider to be most relevant to the matters discussed at the Inquiry (and the reopened Inquiry) are described below, although there are other policies that are also material.

London Plan 2021[10]

13. The LonP 2021 is informed by six objectives for Good Growth, which aim to ensure that growth is socially and economically inclusive and environmentally

[8] LBTH27
[9] WDL39
[10] CD101

sustainable. These include GG2, making the best use of land, which amongst other matters seeks to explore the potential to intensify the use of land to support additional homes and workspaces, particularly in accessible locations, applying a design-led approach to determine the optimum development capacity of sites.

14. Policy SD1 sets out the actions that the Mayor will take, and that Boroughs should take, to fully realise the growth and regeneration potential of Opportunity Areas. The Isle of Dogs is identified (in Table 2.1) as an Opportunity Area with potential for 29,000 homes[11] and 110,000 workspaces.

15. Policy D1 states that Boroughs should define the characteristics, qualities and values of places within the Plan area to understand the capacity of different areas for growth. The policy sets out the scope of area assessments which will inform the identification (through preparation of development plans) of suitable locations for growth, the scale of growth, the need for improvements to infrastructure and the optimum capacity of allocated sites.

16. Policy D3 seeks to optimise site capacity by following a design-led approach. It sets out a range of design criteria relating to the form and layout of development, the experience of the environments that would be created and the quality and character of places. Policy D5 seeks to achieve the highest standards of accessible and inclusive design, Policy D6 sets out quality and space standards for housing and Policy D7 requires provision of accessible housing. Policy D8 sets out design criteria for the public realm.

17. Policy D9 states that Boroughs should determine if there are locations where tall buildings may be appropriate and that tall buildings should only be developed in locations that are identified as suitable in development plans. The policy sets out criteria for assessing the impacts of tall buildings in visual, functional and environmental terms. Policy D12 seeks to achieve the highest standards of fire safety, including through the submission of Fire Statements.

18. Policy H1 sets ten-year targets for net housing completions that Boroughs should plan for. For Tower Hamlets, the target for 2019/20 to 2028/29 is 34,730. Policy H4 sets a strategic target of 50% of all new homes across London being genuinely affordable. The measures to achieve this include requiring major developments to provide affordable housing through the threshold approach. Policy H4 also states that affordable housing should be provided on site. Off-site provision, or a financial contribution, should only be made in exceptional circumstances.

19. Policy H5 sets out the threshold approach whereby applications which meet a minimum threshold of 35% affordable housing may follow a fast track route. Schemes which do not provide the threshold level (such as the appeal scheme) will follow the Viability Tested Route. These schemes will be subject to an Early Stage Viability Review, if sufficient progress is not made within two years, and a Late Stage Viability Review when 75% of the units have been let or sold. Larger phased schemes will also be subject to a Mid Term Review.

[11] Based on the 2017 Strategic Housing Land Availability Assessment capacity from 2019 to 2041

20. Policy H10 states that schemes should generally consist of a range of unit sizes. Amongst other matters, decision makers should have regard to local evidence of need, the requirement to deliver mixed and inclusive neighbourhoods, the need for additional family housing and the role of one and two bedroom units in freeing up existing family housing.

21. Policy HC1 sets out how development plans should demonstrate an understanding of the historic environment to inform the integration of London's heritage in regeneration. Development proposals should conserve the significance of heritage assets and cumulative impacts should be actively managed. Policy HC2 states that development proposals in the settings of World Heritage Sites (WHS) should conserve, promote and enhance their Outstanding Universal Value. Policy HC3 identifies Strategic Views that help to define London at a strategic level. Policy HC4 states that development proposals should not harm, and should seek to make a positive contribution to, the characteristics and composition of Strategic Views. Criteria for managing various types of view are set out.

22. Policy G4 states that proposals should not result in the loss of protected open spaces and, where possible, should create areas of publicly accessible open space. Policy G5 states that major proposals should include urban greening as a fundamental element of site design. The policy sets out an approach to calculating an urban greening factor.

23. Policy SI 16 states that proposals should protect and enhance waterway infrastructure. Proposals should also protect water-related educational and community facilities. Policy SI 17 states that proposals along London's canals and docks should respect their character and contribute to active water-related uses.

London Borough of Tower Hamlets Local Plan 2031[12]

24. Policy D.SG5 states that developers will be expected to pay any applicable CIL charges and to enter into s106 agreements to provide affordable housing and to mitigate the impacts of development. For site allocations, policies may be applied flexibly to ensure that sites are viable and deliverable.

25. Policy S.DH1 states that development should meet the highest standards of design, respecting and responding positively to its context. Policy D.DH2 seeks to ensure that development contributes positively to the public realm, improving connectivity, permeability and legibility. Policy S.DH3 seeks to preserve, or where appropriate enhance, heritage assets in a manner appropriate to their significance. Policy D.DH4 sets out criteria for shaping and managing views and skylines, including in relation to Strategic Views and WHS. Policy S.DH5 states that development should safeguard WHS and should conserve and enhance their Outstanding Universal Value.

26. Policy D.DH6 sets criteria for assessing proposals for tall buildings. Tall buildings will be directed towards Tall Building Zones (TBZ) and must apply the design principles relevant to such zones. The appeal site is within the Millwall Inner Dock TBZ where the design principles state that building heights should significantly step down from the Canary Wharf cluster to support its central emphasis and

[12] CD102

should be subservient to it. In addition, building heights should step down from Marsh Wall to retain the integrity of the Canary Wharf cluster on the skyline.

27. Policy S.H1 seeks to secure the delivery of 58,965 new homes between 2016 and 2031. It sets an overall target of 50% of all new homes to be affordable. This is to be achieved by various means including requiring a minimum of 35% affordable housing on larger sites (subject to viability) with a mix of rented and intermediate tenures. Policy D.H2 seeks to maximise the provision of affordable housing on site with a 70% rented and 30% intermediate tenure split. Off-site affordable housing will only be considered in specific circumstances that are set out in the policy. Policy D.H2 goes on to say that there should be a mix of unit sizes in accordance with local housing need. For market housing, 20% should be 3 or 4 bedroom units.

28. Policy S.OWS2 seeks to support the creation of a network of high quality, usable and accessible water spaces, including through promoting recreational activities. Policy D.OWS4 sets out criteria for development adjacent to water spaces, including that it does not have an adverse impact on existing active water uses. Policy D.OWS3 states that strategic development should contribute to the delivery of publicly accessible open space.

29. The appeal proposals fall within site allocation 4.12 which covers the whole of the former Westferry Printworks site. The allocation sets out design principles for the site, including that buildings should step down from Marsh Wall to the smaller scale residential properties within the southern part of the Isle of Dogs and to the west of Millharbour. The design principles also include requirements to maximise the provision of family homes, to improve walking and cycling connections to Millwall Outer Dock and to improve the public realm.

Isle of Dogs Neighbourhood Plan[13]

30. Policy D1 states that applications for high density residential development should be supported by an Infrastructure Impact Assessment. Policy D2 requires such developments to specify how they comply with the GLA's Housing Supplementary Planning Guidance (SPG). Policy ES1 requires applications for strategic development to provide information about potential "*meanwhile*" uses of the site, in the event that development is delayed. Policy SD1 seeks to ensure that developments meet the highest levels of design and environmental standards. Policy 3D1 requires a 3D model to be submitted with strategic applications.

Supplementary Planning Guidance/Documents

31. Both the Council and the GLA have published Supplementary Planning Guidance/Documents. These are listed in the Supplemental Statement of Common Ground (SSoCG)[14]. They include the Council's recent Planning Obligations SDP, the Mayor of London's Isle of Dogs and South Poplar Opportunity Area Planning Framework and the Mayor's Affordable Housing and Viability SPG.

[13] CD105
[14] CD111, paragraph 3.6

MATTERS AGREED BETWEEN THE COUNCIL, THE APPELLANT AND THE GLA

32. The matters agreed at the time of the first Inquiry are described at paragraphs 58 to 60 of the IR. The SSoCG includes a timeline of events following the close of the first Inquiry. It records the agreement of the Council, the appellant and the GLA that the scope of the reopened Inquiry should be as described in my note of the case management conference held on 22 March 2021[15].

33. The SSoCG records agreement that progress on the NP does not result in any new material implications which would require reassessment of the proposal. It is no longer agreed that the Council is meeting the need to demonstrate a five year housing land supply. It is agreed that the latest Housing Delivery Test (HDT) measurement for Tower Hamlets is 74%, which is below the requirement of 75% over the last three years. Consequently, paragraph 11 of the National Planning Policy Framework (the Framework) now needs to be considered. This is agreed to be a material change in circumstances.

34. The SSoCG states that where reference is made in the original SoCG[16] to "*development potential ought to be maximised*", this should instead be read as "*development potential ought to be optimised*". With that amendment, the original SoCG remains in place, as modified by the SSoCG.

35. An Updated Viability SoCG was submitted for the reopened Inquiry. This records agreement on various inputs to the viability model, in the light of findings in the IR. Having re-run the appraisal with the agreed inputs (including the addition of Tower Hamlets CIL) the Council, the appellant and the GLA agree that if the appeal scheme includes 21% affordable housing (split 70% affordable rent and 30% intermediate) no significant surplus or deficit is generated when compared to the agreed target internal rate of return (IRR) of 14%. On that basis, it is agreed that 21% affordable housing is currently the maximum reasonable level of provision.

THE CASE FOR THE APPELLANT – WESTFERRY DEVELOPMENTS LIMITED[17]

36. The submissions are structured to reflect the matters identified in the Secretary of State's letter of 11 August 2020.

(a) The implications of the adoption of the London Borough of Tower Hamlets Local Plan; and (c) The implications of progress on the London Plan

37. The answer to these two questions is essentially the same. At the time of the IR, both the emerging Local Plan and the draft London Plan were at an advanced stage. The reports of the Inspector examining the Local Plan and the Panel examining the new London Plan post-dated the Inquiry. However, all parties had the opportunity to comment on the reports and those comments were taken into account in the IR and the Secretary of State's decision.

38. With one exception, which is discussed below, the wording of the policies has not changed. The substantive issues raised have already been taken into account. Although both plans now enjoy the full weight of the development plan, it does

[15] Paragraphs 8 to 13 of the note which is at Appendix B of CD111
[16] CD46, paragraph 6.8
[17] This is a summary of the closing submissions. The full submissions are at WDL40.

not follow that this makes any material difference, either to the Inspector's recommendation or to the balancing exercise which needs to be carried out. The Inspector will know what weight he gave to particular issues and the extent to which his conclusions focused on the substance of the issues, rather than the status and/or detailed wording of the policies concerned. However, on the basis of the reasoning set out in the IR, it is difficult to see how the transition from emerging plan to adopted plan could materially affect the conclusions reached, or the weight to be attached to them. The Inspector observed that, whether assessed against the emerging policies or the development plan, "*the substance of the harm I have identified is in essence the same*"[18].

39. At the start of the Inquiry both the Council and the GLA argued that the new plans strengthened their case in relation to heritage, townscape/design and the provision of family housing. However, Ms Malik (the Council's planning witness) accepted that there was no material difference in relation to heritage and it was more accurate to say that the position had not changed. The Council's closing submissions moved away from its starting position in relation to both heritage and townscape/design policies, accepting that "*the substance of the policies are virtually identical*"[19]. Only the GLA still contends that there is any material distinction in relation to these two matters.

Heritage policies

40. Mr Green (the GLA's planning witness) argued that the heritage policies in the new development plan have strengthened the objections to the appeal scheme[20]. However, both the LonP 2016 and the CS had policies which required development to conserve the significance of heritage assets and avoid adverse impacts on WHS, having regard to settings and Outstanding Universal Value[21]. Whilst the wording of the new policies is different, the essential requirements are the same. It is irrelevant that the need to protect heritage assets and WHS finds its way into the LonP 2021 through the tall buildings policy[22] as well as policies HC1 and HC2. The same was true of LonP 2016 Policy 7.7 which dealt with tall buildings. Moreover, development plans must be read as a whole, so the tall buildings policy would have been read alongside the heritage policies in any event. Harm does not become greater simply because the need to avoid it is found in more than one policy.

41. Mr Green's argument also overlooks the fact that the development plan was only part of the framework in which the IR assessed impacts on heritage assets:

- as Grade I listed buildings, the settings of both Tower Bridge and the Old Royal Naval College are protected by the statutory duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- the Framework states that Grade I listed buildings and WHS are assets of the "*highest significance*"[23];

[18] CD97, IR611
[19] LBTH30, paragraph 27
[20] GLA5B, paragraphs 5.5 and 5.11
[21] CD2, Policy 7.8 and 7.10
[22] CD101, Policy D9(C)(d) and (e)
[23] The Framework, paragraph 194

- the IR recognised that the WHS is an asset of the "*highest significance*", and that the Old Royal Naval College is also a "*highly significant asset*"[24];
- the IR recognised that Tower Bridge is an asset of the "*highest significance*"[25]; and
- the Secretary of State paid "*special regard*" to the desirability of preserving Tower Bridge and the Old Royal Naval College and attached "*considerable importance and weight*" to the less than substantial harm which the Inspector had found would be caused to both[26].

42. Mr Green accepted that the LonP 2021 does not impose a higher test than that imposed by s66 or the Framework. It is therefore fanciful to suggest that changes in the wording of the LonP 2021 could result in greater weight being attached to the harm to heritage assets in this case. There is a factual change but this has no substantive impact on the conclusions reached or the weight which should be given to them.

Townscape and design policies

43. Both the old and the new plans have policies requiring high quality design[27]. Although the wording is different, the gist is the same. Moreover, the text of the new policies was before the Inspector and the Secretary of State so the substance was expressly taken into account. The GLA's contention that LonP 2021 sets a higher standard than its predecessor is wrong. LonP 2016 Policies 7.2, 7.5 and 7.6 required the highest standards of accessible and inclusive design, including landscaping, street furniture, materials and architectural quality. There is no higher standard than "*highest*". The argument that the new policies strengthen the GLA's case because they are more detailed does not withstand scrutiny. Although they are longer, all of the points of detail listed in Mr Green's proof[28] can be found in LonP 2016, sometimes even in identical wording[29].

44. The GLA's case emphasised references in LonP 2021 to a design-led approach and to the abandonment of the old density matrix. This point is not new. At the first Inquiry, the cross-examination of Mr Polisano (the appellant's architect) sought to show that, in seeking to maximise the number of residential units, the design had started with the pursuit of numbers, rather than a proper appreciation of the context of the site. That line of cross-examination would have been meaningless if a design-led approach had not already been rooted in the LonP 2016. In fact the criticism was incorrect and Mr Polisano's proof explained how the appeal scheme was design-led.

[24] CD97, IR447 and 597, IR453 recorded that the duty under s66 applied
[25] CD97, IR461 and 598
[26] CD97, DL21, 24 and 27
[27] MDD Policy DM24, LonP 2016 Policies 7.2, 7.4B, 7.5A and B, 7.6A and B(a), LonP 2021 Policy D4
[28] GLA5B, paragraphs 4.2 to 4.10
[29] Appendix 1 to the closing submissions (WDL40) contains a table setting out where in the LonP 2016 the appellant considers that the issues which Mr Green identified are referred to

45. It is not enough to say that the LonP 2021 is more detailed or has more criteria. Detail on its own does not add weight, it merely lengthens the list of matters that might need to be taken into account. Mr Green accepted in cross-examination that he had not identified a new criterion which gave rise to an issue that had not already been considered in the IR. The IR should be updated where new policies have been adopted. However, there is no need for any change to the Inspector's overall conclusions on the impact of the appeal scheme on townscape, the quality of the design or the weight to be given to these matters.

Provision of market family housing

46. The provision of market family housing is the one area where there has been a change in the wording of the policies since the IR and the Secretary of State's decision. Policy H10(A)(9) of the LonP 2021 requires decision-makers to "*have regard to … the need for additional family housing and the role of one and two bed units in freeing up existing family housing*". The Council argued that this change, together with the adoption of the LP 2031, was sufficient to turn what was previously a matter going only to the weight to be attached to the delivery of market housing[30] into a free-standing objection. The appellant considers that this makes no sense for these reasons:

    - The Council's position at the first Inquiry took into account the latest assessment of housing need which showed a significant increase in the need for two-bedroom units. Ms Malik did not argue that this position had changed.
    - The IR took account of emerging policy D.H2(3), which required 20% of market units to be three or four bedrooms. The wording of that policy has not changed.
    - The amendment to Policy H10 does not alter this because it merely requires decision-makers to have regard to the need for additional family homes. The draft LonP allowed local authorities to set out a preferred housing mix as part of a site allocation. The draft allocation 4.12 did that, stating that the scheme should "*maximise the provision of family homes*". The IR makes clear that the Inspector and Secretary of State have already had regard to this factor, so the change to Policy H10 adds nothing[31].
    - The Inspector concluded that it was a "*significant disadvantage of the scheme*" that it did not maximise the provision of family homes[32], indicating that significant weight was given to this matter. The transition of D.H2 from draft to adopted policy does not materially affect this.

Conclusions on the Secretary of State's matters (a) and (c)

47. The IR should be updated to make clear that the policies of the old development plans are no longer in play and to identify the new policies which are relevant. However, the IR noted that the policies of what were then the draft LonP 2021 and the draft LP 2031 were "*broadly similar to equivalent policies in the adopted*

[30] CD97, IR543
[31] CD97, IR546
[32] CD97, IR547

plans"[33]. There have been no material changes since then which give rise to any new issues. The IR also stated that the substance of the harm which the Inspector identified was "*in essence the same*" whether one looks at the old development plan or the new[34]. There is no basis for the claims that there has been any increase in the weight to be attached to any objections to the scheme.

(b) The impact of the adoption by the London Borough of Tower Hamlets of a CIL Charging Schedule which took effect on 17 January 2020

48. If permission is granted for the appeal proposal, the development would be liable to pay CIL of around £43 million in accordance with the Council's charging schedule. This payment towards infrastructure in the Borough is self-evidently a benefit compared with what was on offer at the time of the Secretary of State's decision. Mr Uddin, (the Council's viability witness) accepted this. However, the GLA argued that this would not be a public benefit because the CIL payment is required to mitigate the impacts of the appeal scheme. The GLA referred to an appeal decision at Warburton Lane, Trafford[35] where the Inspector did not count a CIL payment as a public benefit because it was found to be necessary to deliver local services and infrastructure to support the new development.

49. However, while CIL can be used to provide infrastructure which is directly related to particular proposals, that is not invariably the case. The whole point of CIL is that it enables local planning authorities to fund infrastructure, even where there is no such link. That distinction is crucial in this case because, at the date of the Secretary of State's last decision, the appeal site was not subject to CIL. Consequently, any necessary mitigation could only be achieved through conditions or a s106 obligation. That is exactly what the first UU sought to do.

50. Since then, no contributions have been removed from the UU and some have been increased to reflect the Council's recent SPD. The impact of the appeal scheme today would not be any greater than it would have been in 2020. It follows that the latest version of the UU continues to provide the contributions that are necessary to mitigate the impacts of the appeal scheme. Unlike the situation at Warburton Lane, the CIL payment is not required to mitigate the impacts of the development itself. The Council would be free to spend it on infrastructure anywhere in the Borough, even though that would have no connection with the appeal scheme. The total amount of CIL collected by the Council over the last three years is £83 million[36]. The scheme CIL payment of £43 million would be equivalent to more than one and a half years of the total CIL collected. This would be a significant public benefit.

51. The Inspector asked Mr Marginson (the appellant's planning witness) about advice in National Planning Practice Guidance (NPPG) relating to local finance considerations[37]. That advice has to be read alongside s70(2) of the Town and Country Planning Act 1990 (the 1990 Act), which states that, when dealing with an application for planning permission, decision-makers shall have regard to "*any local finance considerations, so far as material to the application*". Local finance

[33] CD97, IR44
[34] CD97, IR611
[35] APP/Q4245/W/19/3243720, attached at GLA5E
[36] LBTH28
[37] Paragraph 21b-011

consideration is defined so as to include "*sums that a relevant authority has received, or will receive, in payment of Community Infrastructure Levy*". Any argument that CIL is not a relevant consideration flies in the face of the statute. Any contention that it can be taken into account but must be given no weight would make a nonsense of this provision.

52. The second consequence of the payment of CIL is the effect on the adequacy of the affordable housing contribution. This is dealt with under matter (d) below.

(d) The implications for the proposal of these changes and any other changes of circumstances on the viability of the proposal

53. It is common ground that the appeal scheme remains viable with 21% affordable housing. Unlike the position previously reported to the Secretary of State, it is now agreed that this is currently the maximum reasonable contribution that the scheme can afford.

(e) any material change in circumstances, fact or policy, that may have arisen since the Secretary of State's decision of 14 January 2020

54. The appellant considers that there are three material changes in circumstances, all of which favour the grant of permission. They are:

- compliance with affordable housing policies;
- the Council's performance against the housing delivery test and the absence of a five year housing land supply; and
- the economic impact of the pandemic.

55. In the light of the submissions made by the Docklands Sailing and Watersports Centre (DSWC), there is a fourth possible change in circumstances. Interested parties raised the question of the school site, although the appellant does not suggest that this is a matter which has changed.

Compliance with affordable housing policies

56. The appellant has considered whether it should revise the affordable housing offer in the light of the need to pay CIL of around £43 million, taking account of the conclusions of the IR as to whether 21% was the maximum reasonable amount in a no-CIL world[38]. It has concluded that it should not revise the offer. All parties have reviewed their previous viability assessments, taking on board the findings of the IR in relation to the appropriate inputs. The inputs are therefore now agreed and it is common ground that, if CIL is paid on the commencement of development, 21% is the maximum amount of affordable housing which the scheme can reasonably provide[39].

57. This has significant consequences for the assessment of the appeal scheme. The IR concluded that the appeal scheme was in conflict with Policy 3.12 of the LonP 2016 and Policy SP02 of the CS because it was likely that 21% was not the maximum reasonable contribution. Mr Uddin (for the Council) accepted that this policy conflict has been removed. Ms Seymour (for the GLA) accepted that the

[38] CD97, IR548
[39] CD110, paragraph 4.2

appeal scheme is now "*consistent*" with that part of LonP 2021 Policy H5 and LP 2031 Policy S.H1 but did not accept that the affordable housing offer is policy compliant. Reference was made to NPPG which states that[40]:

"*Policy compliant means development which fully complies with up to date plan policies*" and

"*Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be clear agreement of how policy compliance can be achieved over time*".

58. The appellant considers that once it is accepted that the proposal is consistent with the relevant development plan policies, the distinction between "*consistent*" and "*compliant*" is academic. The question of compliance can only be answered by looking at the wording of the policies. Policy H5 provides for two separate routes to the grant of permission. Development can either provide 35% affordable housing, under the fast track route, or go down the Viability Tested Route (VTR). Either route enables permission to be granted in accordance with the policy and neither is given precedence. It is a misuse of language to say that a scheme which obtains permission under the VTR does not comply with Policy H5. The same applies to Policy S.H1, which explicitly allows the provision of less than 35% affordable housing where this is justified by viability.

59. All that the guidance quoted by Ms Seymour says is that development must comply fully with up to date policies. Policy H5 is an up to date policy. Subject to securing the necessary reviews, a scheme which provides the maximum reasonable amount of affordable housing complies with it. The second reference is to cases where contributions are reduced to provide flexibility in the early stages of a development. In this case, the contribution has not been reduced below the maximum reasonable amount. The 21% contribution has been accepted because the scheme would not be viable with a 35% contribution, not to allow flexibility in the early stages of the development.

60. In any event, the meaning of a policy is a question of law. The relevant policies are clear and the appeal scheme complies, subject only to the question of review mechanisms. However, even before we get to review mechanisms, the fact that the baseline offer of 21% is now agreed to be the maximum reasonable amount is a significant change since the Secretary of State's decision.

61. Ms Seymour suggests that 21% might not be the maximum reasonable amount, if CIL were to be paid in stages. However, under the CIL Regulations, that would only be possible if this was a "*phased planning permission*". The planning permission would have to provide expressly for the development to be carried out in phases. This would require a condition which either identified distinct phases or required the appellant to submit a phasing plan. The appellant raised the possibility of such a condition at the end of the first Inquiry. That was objected to by the Council and the GLA and the point was not pursued.

62. The GLA now submits[41] that the objections to a phasing condition were based simply on the timing of the suggestion. The appellant disagrees. In particular, the

[40] CD84, paragraph 9, reproduced at paragraph 8.2 of GLA6B
[41] GLA20, paragraph 41(b)

Council's objection was on the basis that the staged payment of CIL was not necessary to make the development acceptable. In any event, it is open to any party to suggest conditions. Neither the Council nor the GLA has requested a phasing condition at the reopened Inquiry.

63. The assessments reflected in the Updated Viability SoCG were made on the basis that CIL would be paid in full on the commencement of development. It is accepted by all parties that this would not be a phased permission for the purposes of the CIL Regulations. It could only become a phased permission if the appellant were to make an application under s73 of the 1990 Act to include a phasing condition, in which case the Council could require a new viability assessment and s106 obligation. To put that point beyond doubt, and to address the GLA's concerns, clauses 3.12 and 5.1(d) of the UU would ensure that the appellant would not seek to treat this as a phased scheme for the purposes of the CIL Regulations without making a s73 application.

64. It would not therefore be possible for the appellant to engineer the payment of CIL, such that an unexpected profit could be made without reviewing the affordable housing contribution. Ms Seymour's hypothetical example of a situation where a phased scheme would not be delivering the maximum reasonable amount of affordable housing could never arise. There is no reason to dislodge the agreed position set out in the Updated Viability SoCG. A significant conflict with policy has therefore been removed, a factor that can only count in favour of the appeal scheme.

65. There are further material changes relating to the affordable housing offer:

- The IR expressed concerns that the Early Stage Review (ESR) provisions were unlikely to be triggered, due to the definition of substantial implementation[42]. A revised definition has now been agreed, such that ESR is more likely to be triggered if development is delayed. There is now a meaningful incentive for the appellant to get on with the scheme.
- The IR expressed concerns about the efficacy of ESR because it relied upon inputs which had been found to be inappropriate[43]. The inputs which would be used for the ESR are now agreed, so there is no reason to doubt its effectiveness.
- Similarly, the IR expressed concerns about the efficacy of Late Stage Review (LSR)[44]. Again, there is now agreement on the inputs to be used.
- The Council's concerns about the 75% trigger for the LSR are no longer pursued, so this matter is now agreed[45].
- Although not the subject of comment in the IR, the cap on on-site provision which can be required pursuant to the ESR has been raised (from 35% to 50%) and the share of any surplus which would be payable to the Council at LSR has been raised from 50% to 60%.

[42] CD97, IR534
[43] CD97, IR535
[44] CD97, IR537
[45] Inspector's note – this was accepted by Mr Uddin in answer to questions from Mr Brown. Mr Uddin agreed that paragraphs 5.10 to 5.12 of his proof (LBTH9A) should be disregarded

66. Mr Uddin (for the Council) accepted that all these changes represent an improvement over the previous offer. As a result, the Secretary of State can now have much greater confidence that the review mechanisms would be effective, ensuring that the appeal scheme would continue to deliver the maximum reasonable amount of affordable housing if viability improves. This is relevant to the question of policy compliance because Policy H5 requires ESR and LSR for schemes which do not offer 35%. This should add to the weight to be given to the affordable housing offer.

67. The Council and the GLA continue to raise complaints about the following matters:

- provisions of the UU which would postpone the substantial implementation trigger for ESR in the event of "*Force Majeure*" or unreasonable delay by the Council in discharging conditions;
- the absence of a Mid Stage Review (MSR); and
- the absence of a definition of ineligible costs.

68. None of these are new issues. They were all features of the UU which was before the Secretary of State, as were the arguments about them. Logically, they cannot alter the previous recommendations. In any event, there is nothing to these criticisms for the following reasons.

Force Majeure

69. Mr Uddin was wrong to say that there is no precedent for the Force Majeure provisions[46] because there are similar clauses in the s106 Agreement for the consented scheme and in a s106 Agreement relating to Poplar Gasworks[47] (signed by the Council in 2018). In any event, as Ms Seymour explains, the purpose of ESR is not to give the planning authority another "*bite of the cherry*" but to "*provide an incentive for the developer to proceed with construction as soon as consent is granted*". If the ESR provisions serve that purpose, then the review would not be triggered. Ms Seymour also comments that, even where an ESR is triggered, it is less likely to result in a surplus because of the short period until the review[48]. Any potential loss of the opportunity for ESR needs to be understood in that light.

70. An incentive is only relevant to the extent that a developer is able to do something about it. The Force Majeure provisions, like those relating to unreasonable delay by the local planning authority, relate to circumstances that would be beyond the developer's control. A developer should not be faced with ESR for reasons beyond its control. Neither of these provisions offends the purpose of ESR. The criticism of them is unjustified.

Mid Stage Review

71. This is not a new point. In common with the current UU, the UU that was before the Secretary of State made no provision for MSR. The Council made no objection

[46] LBTH9A, paragraph 5.6
[47] Appendix to rebuttal evidence of Mr Marginson
[48] GLA6B, paragraph 8.56

on this point at the first Inquiry. Mr Uddin explained that it was not considered to be a "*pressing matter*". It is only raised now because the appellant has resolved all the Council's other objections. The fact that this objection is one of the last men standing is not something which can increase its importance.

72. The Council and the GLA argue that the UU should make provision for MSR because this might lead to a greater contribution to on-site affordable housing. The Council submitted that it was:

"*the duration of construction that determines the need for mid stage review, not, as the appellant submits, the formalistic issue of whether a scheme is phased or not*."[49]

73. This places the cart before the horse. Where a local planning authority intends to secure planning obligations, the Framework and NPPG make clear that the requirements should be set out in policy[50]. Both LonP 2021 Policy H5 and the Council's SPD are clear that the requirement for MSR only arises in the case of phased developments. Under policy H5, it only arises in relation to "*larger phased schemes*". Thus, the scheme must be both "*large*" and "*phased*". Both words must be given their meaning. The Council and the GLA focussed on the fact that the appeal scheme is large. Mr Uddin argued that the appeal scheme should be caught because of its unusual scale. If that was all that mattered, Policy H5 need not have included the word "*phased*".

74. Ms Seymour argued that the scheme is phased because it would be built out in stages and because there are conditions and s106 obligations which would apply at certain points. The first argument would be true of almost any housing scheme that did not involve a single building. The second argument confuses the date by which certain mitigation measures are required with the order in which development is required to take place across a site. For example, suggested Condition 18 would control the delivery of plots in order to align the number of new residents with improvements to the Docklands Light Railway. That is a far cry from a phasing condition, which would typically control the commencement and order of construction.

75. There needs to be certainty as to what Policy H5 requires. The only way to achieve that is to interpret the reference in the policy to "*larger phased schemes*" in the same way as the CIL Regulations. This is not borne out of any desire to bring Policy H5 itself into line with the CIL Regulations. It is a function of the need to have a clear and workable definition. On that basis, in the absence of a phasing condition, this is not a phased permission.

76. The Inspector asked whether it would be open to the Secretary of State to impose a phasing condition. The appellant considers that, in the abstract, it would. However, conditions should only be imposed where they are necessary in order to make development acceptable. At no stage in the process has the Council or the GLA suggested that a phasing condition is necessary in order to mitigate any impacts of the proposal. The matter only arose in the context of discussions about MSR. In this case, imposing such a condition would not bring about a MSR because there is no provision for one in the UU. All the condition

[49] LBTH30, paragraph 37
[50] The Framework, paragraph 55 and NPPG, paragraph 23b-004

would do is to create a conflict with Policy H5(F)(2)(c) where, at present, there is no conflict. That would be a perverse outcome and such a condition could not be necessary in order to make the development acceptable.

77. In any event, MSR is not a new point. Although raised by the GLA, the IR did not deal with it as a principal controversial issue. At most, it remains as a residual respect in which the scheme is not fully compliant with Policy H5. That cannot detract from the respects in which the amount of affordable housing and the revised review mechanisms do now comply with policy. The review mechanisms are now far more likely to be effective. That represents a significant improvement on the position previously reported to the Secretary of State.

Ineligible costs

78. There is no need for the UU to identify a list of "*ineligible costs*" for the purposes of the review provisions. The UU defines Development Costs by reference to the Application Stage Viability Appraisal. The potential ineligible costs which the GLA has identified are not included in that Appraisal. If there was ever an attempt to include such costs, the Council would be entitled to reject them. The UU makes clear that only reasonable and proper costs may be claimed. If there is any argument about that, there is provision for resolution by an independent expert. The GLA argues that the suggested list of ineligible costs would do no harm. However, that is not the test. The question is whether or not the absence of such a list weakens the effectiveness of the UU. In the appellant's view it does not.

Housing Delivery Test and five year housing land supply

79. The HDT 2020 shows that housing delivery in Tower Hamlets over the last three years has fallen below 75%, "*substantially below*" the delivery requirement set out in the Framework. Moreover, the Council is required to add a 20% buffer to its five year housing land supply. On this basis, it is agreed that the Council cannot demonstrate an adequate supply. It is common ground that the presumption in favour of sustainable development is triggered[51]. Planning permission should therefore be granted unless either:

    - policies that protect designated heritage assets provide a "*clear reason*" for refusal; or
    - the adverse impacts would "*significantly and demonstrably*" outweigh the benefits, when assessed against the policies in the Framework as a whole.

80. The Council seeks to downplay this factor, suggesting that its housing delivery (at 74%) was only just below the threshold of 75%. However, the target is 100% and actual delivery was 26% below that. The 74% figure was only achieved with the benefit of a reduction in the requirement to allow for the effects of the pandemic. Moreover, even if the Council's HDT result had met the 75% threshold, the tilted balance would still have been engaged due to the need for a 20% buffer in the housing land supply. Mr Heywood (the Council's housing witness) suggested that the HDT result for 2021 may rise to 81%. However, that would still not be enough to avoid the need for a 20% buffer so the tilted balance would still apply. This outcome could only be avoided if there was a further

[51] The Framework, paragraph 11(d)

reduction in HDT targets (to account for the pandemic) but there is no indication that this is likely to happen[52].

81. In any event, the HDT result is in marked contrast to the rosy picture reported to the first Inquiry, where the Council stated that it "*has an exemplary track record in the delivery of development*"[53]. At the first Inquiry the appellant drew attention to the acute need for housing in London, submitting that very substantial weight should be given to the increases in the amount of market and affordable housing, as compared with the consented scheme. That position has not changed. Indeed, the HDT result, and the absence of a five year housing land supply, can only enhance the weight that should be given to the substantial uplift in market and affordable housing.

82. With regard to market housing:

- Mr Heywood comments that the pandemic is likely to have had a serious dampening on housing delivery in 2020/21, with a forecast 34% drop across London as a whole[54];
- The pandemic will not have reduced the scale of the need. If anything, lower delivery will simply mean that there is even more pent-up demand; and
- Although the Secretary of State has not prevented publication of the London Plan, his correspondence expresses serious concerns about the shortfall between housing need in London and the homes which the London Plan delivers[55].

83. With regard to affordable housing:

- The Council's witnesses have stressed the scale of the need for affordable housing;
- Mr Heywood describes the position in London as acute, with a 7.5% increase in households in the priority bands for housing since 2018, commenting that affordable housing delivery in London has "*been very low in recent years*" [56]; and
- Mr Green notes that the number of people sleeping rough in London in 2019/20 was 21% higher than the year before, while the number of homeless households living in temporary accommodation in London was 7% up on March 2019[57].

84. Ms Malik (the Council's planning witness) argues that the increase in affordable units (142) is not proportionate to the increase in market housing (660). However, the point is misconceived because the Council and the GLA require affordable housing to be calculated on the basis of habitable rooms. The increase in the number of affordable units is proportionally lower because the scheme is

[52] LBTH8A, paragraphs 4.27 to 4.32
[53] CD97, IR203
[54] LBTH8A, paragraph 4.29
[55] CD121
[56] LBTH8A, paragraphs 5.9 and 5.13
[57] GLA5B, paragraph 4.18

providing more affordable family homes, in accordance with the Council's preferences. Ms Malik also seeks to disparage the affordable housing offer by putting it in the context of the London-wide need. However, if a large scheme such as this meeting 0.065% of the London-wide need for affordable housing is characterised as a "*dismally low achievement*", it is difficult to see how any market development could be described as beneficial. These are not meaningful criticisms of the affordable housing offer.

85. It is important to note that the impact of CIL on affordable housing was raised at the Examination into the Council's CIL charging schedule. The CIL Examination Report records that:

"*the Council is prepared to take a balanced view about the priority that should be put on providing much needed essential infrastructure versus the continuing need for the delivery of affordable housing. The policy decision to be flexible, to ensure that development of the site allocations is viable, is being written into the Local Plan that I understand is on the verge of adoption*."[58]

86. The policy referred to is now LP 2031 Policy D.SG5 which states that, for site allocations, the policies set out in the plan may be applied flexibly to ensure that sites are viable and deliverable. Given the agreed position on viability, it is clear that we are at the point where flexibility is required. The Council should be standing by the assurances it gave to the CIL Examiner and acknowledging that the 21% affordable housing offer is a consequence of its own decision to prefer CIL over affordable housing.

87. Ms Malik acknowledged that the uplift in the number of homes which the appeal scheme would deliver is significant[59]. Given that the Council's delivery of housing has slumped, and that the need for both market and affordable housing has become even greater, that significant contribution should be given even greater weight. It is ironic that the Council and the GLA are so ready to dismiss the benefits of more than doubling the amount of affordable housing compared with the consented scheme. The GLA seeks to resurrect an argument made at the first Inquiry based on the High Court decision in *Barratt*[60]. That argument was considered and rejected in the IR. Nothing has changed to disturb that reasoning[61].

The economic impacts of the pandemic

88. The report by Hatch Associates[62] shows that the pandemic has been the greatest peacetime global economic shock on record, with a predicted 11% drop in economic output accompanied by significant increases in unemployment in London. In Tower Hamlets, there has been a 165% increase in the number of claimants seeking unemployment benefit. Mr Heywood commented that there has been a serious dampening impact on housing delivery across London. The Prime Minister and the Secretary of State have both promised that the planning system will deliver a transformative "*new deal*" for the economy. They have promised to

[58] CD115, paragraph 87
[59] LBTH7B, paragraph 9.79
[60] GLA20, paragraph 52
[61] CD97, IR584 and 585
[62] WDL7B, appendix D

"*build bigger better*" to ensure that the economy is more resilient and that private and public services can recover, restoring a sense of normality and security.

89. The Council says that the appellant has not identified any appeal decisions which suggest that greater weight should be given to economic benefits as a result of the pandemic. In fact, that is exactly what the Inspector did in the appeal at Warburton Lane, Trafford[63]. The GLA argues that any response to the pandemic should be plan-led. However, the response is needed now. There is no adopted development plan which provides such a response, nor is there any prospect of one for some years.

90. The appeal site sits ready, waiting to make its contribution. Work on the basement area, which is common to both schemes, has proceeded to the point where the appellant now needs to know which scheme it can progress. Once that decision is made, the development is ready to proceed. At twice the overall size, the appeal scheme will deliver far more economic benefits than the consented scheme. The significance of that is far greater today than it was 16 months ago.

Sailing on the dock

91. The IR found that the appeal scheme would have a significant adverse effect on sailing conditions on the Outer Dock although the impact would not be materially different from that of the consented scheme. The IR also concluded that the £1.139 million financial contribution proposed in the UU could not be regarded as mitigation because, amongst other matters, there was no certainty that DSWC's aspirations to provide a new pier, which would enable the club to sail on the River Thames, were feasible and because there was no evidence that access to the tidal river would benefit inexperienced and novice sailors[64].

92. The reopened Inquiry heard further evidence from DSWC concerning the progress it has made towards the objective of constructing a pier and about how river access would benefit novice and inexperienced sailors. DSWC explained that, if more experienced sailors were able to sail on the river, this would free up capacity on the Outer Dock for novice and inexperienced sailors. Moreover, novice and inexperienced sailors would be able to crew for more experienced sailors venturing out onto the tidal river. The appellant considers that this further evidence shows that the financial contribution provided for in the UU would now meet the tests set out in Regulation 122 of the CIL Regulations. The policy conflict identified in the IR is thus reduced, if not removed[65].

The school

93. Although this is not a matter that has changed, concerns have been raised by interested parties. At the first Inquiry, it was explained that there is no absolute obligation to deliver the school site under the s106 Agreement for the consented scheme. That Agreement contains an option under which the appellant could pay the sum of £9 million instead. However, that is not the intention and information has been provided to the reopened Inquiry on the progress being made in

[63] GLA5E, paragraph 145
[64] CD97, IR482, 483 and 494
[65] CD97, IR499 and 500

relation to the transfer of the site to the DfE[66]. Under the latest UU, the obligation to deliver the school site is unequivocal. To the extent that it is relevant, that should count in favour of the appeal scheme.

Implications for the Secretary of State's decision: accordance with the development plan and planning balance

Accordance with the development plan

94. Mr Marginson (the appellant's planning witness) explained how he has considered this issue in the light of the IR and DL. He considers that the conflict with affordable housing policies has now been removed. Nevertheless, he has concluded that the appeal scheme does not accord with the development plan, when read as a whole. The appellant therefore accepts that the Secretary of State would need to be satisfied that there are other material considerations which justify any grant of permission. It was unfair of the Council to describe this as an about-face. All parties agreed that the purpose of the reopened Inquiry was to pick up from the IR. It was therefore inevitable that Mr Marginson would revisit Mr Goddard's previous conclusions[67].

95. The Council and the GLA argue that, having considered compliance with affordable housing policy at the first stage of s38(6) (accordance with the development plan) it is double counting to place the benefits of affordable housing on the scales at the second stage (other material considerations). That argument misunderstands how Mr Marginson has gone about the first stage, which is concerned simply with the question of whether the proposal complies with particular policies. In that regard:

    - none of the applicable townscape/design or heritage policies contains any provision for balancing harm against the benefits of a scheme;
    - compliance or non-compliance with those policies says nothing about the nature or scale of the harm; and
    - compliance with affordable housing policies says nothing about the scale of the benefits which are secured by that compliance.

96. For example, if a scheme were to provide no affordable housing, justified on viability grounds, it would comply with the relevant policies. However, it would not deliver a benefit in terms of affordable housing provision. Weighing harms and benefits is a separate exercise, conducted at the "*other material considerations*" stage.

Other material considerations

97. The first point that needs to be addressed is paragraph 11 of the Framework (and footnote 7). Having regard to the 2019/20 HDT, it is common ground that "*the policies which are most important for determining the application*" are to be

[66] WDL38

[67] Mr Goddard was the appellant's planning witness at the first Inquiry. The appellant also submitted that the Council was wrong to say that the appellant persisted with the contention that the scheme accorded with the development plan up to the February 2021 Statement of Case.

treated as "*out-of-date*". Planning permission should be granted unless either paragraph 11(d)(i) or 11(d)(ii) is engaged.

98. In the light of the Inspector's conclusions relating to Tower Bridge, the Old Royal Naval College and the Greenwich Maritime WHS, this leads into the balancing exercise in paragraph 196 of the Framework. The IR concluded that the benefits of the scheme did not outweigh the harm to heritage assets. Although the Secretary of State disagreed, the appellant does not expect the Inspector to change his conclusion, based on the circumstances at that time. However, that conclusion must now be revisited in the light of changed circumstances. The appellant considers that, for the reasons set out above, the benefits of the appeal scheme should now be given greater weight, such that they do outweigh the less than substantial harm which has been identified. Applying paragraph 11 of the Framework, planning permission should be granted. The same would be true, even if paragraph 11 did not exist and the Secretary of State was simply carrying out the balancing exercise required by s38(6).

Conclusions

99. At the start of the reopened Inquiry the appellant observed that the purpose of the event was to consider what had changed since the Secretary of State's decision. Given that this was agreed, it is ironic that the argument about MSR, which has occupied the greatest amount of time, is not new. Even if the submissions of the Council and the GLA on MSR are accepted, the most they can amount to is that the appellant has not completely closed the door on compliance with affordable housing policy. However, that cannot detract from the fact that it is now common ground that 21% is the maximum reasonable contribution to affordable housing that the scheme can afford. Moreover, there have been important changes to the review provisions in the UU. Those provisions are now more likely to be engaged and, if they are engaged, are more likely to be effective.

100. Beyond this, the appellant has identified three additional matters which make a material difference:

- the Council has failed to meet the HDT and does not have a policy-compliant five year housing land supply (this engages paragraph 11 of the Framework, moreover it has significant implications for the weight to be attached to the uplift in housing, whether or not the presumption in favour of sustainable development is triggered);
- the appeal scheme will generate a payment of £43 million in CIL; and
- the impact of the pandemic on the economy of London in general, and Tower Hamlets in particular.

The appellant considers that these are all compelling reasons why permission should be granted.

101. Finally, one thing which has not changed since the last Inquiry is the status of the consented scheme as a fallback. Throughout the progress of the current application, up until this reopened Inquiry, the appellant has continued work on site on elements which are common to both schemes. It has now reached the point of decision and needs to know which scheme it can take forward. The appellant has been very clear that, if this appeal is dismissed, it will deliver the

consented scheme. If it does that, the Council, the GLA and the Secretary of State will forgo the benefit of an additional 660 market units and 142 affordable homes, on a brownfield site in a TBZ in one of London's most important Opportunity Areas. That is the stark choice before the Secretary of State. It is on that basis that we ask him to allow the appeal, and grant permission.

THE CASE FOR THE LOCAL PLANNING AUTHORITY – THE COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS[68]

The approach of the local planning authority

102. The Council takes its statutory responsibility to plan for its area incredibly seriously. Throughout the consideration of this application, the Council has been determined to find an appropriate solution for this site. That is why it opposed the first appeal, made a successful s288 challenge to the Secretary of State's DL and why it continues to oppose the redetermined appeal.

103. This site should come forward for development, but not for a proposal which is accepted to be contrary to the development plan. The proposal breaches many of the requirements of up to date policies encapsulated in the two most recent development plans. The appellant has failed to show other material considerations, beyond the development plan, which justify the grant of planning permission.

The legal and policy framework for the determination of the appeal

104. In updating the IR for the Secretary of State, the Inspector has to carry out three balancing exercises, in accordance with law and policy:

- the heritage balance: whether the harm caused to the significance of the heritage assets impacted would be outweighed by the public benefits of the proposal (paragraph 196 of the Framework);
- the statutory balance: whether multiple breaches of the development plan would be outweighed by any other material considerations (s38(6) of the Planning and Compulsory Purchase Act 2004); and
- the tilted balance: whether the adverse effects of granting permission would significantly and demonstrably outweigh the benefits (paragraph 11 of the Framework, unless disengaged by footnote 6 and paragraph 196).

105. The IR concluded that both the heritage balance and the statutory balance came down firmly against the proposal. The tilted balance was not then engaged. However, if the heritage harm alone outweighed the public benefits of the proposal, it seems highly likely that the Inspector would have found that the multiple harms that he had identified significantly and demonstrably outweighed the benefits. The challenge for the appellant is to show that the evidence justifies the Inspector reaching materially different conclusions when carrying out these balancing exercises in May 2021.

[68] This is a summary of the full submissions which are at LBTH30

The extensive matters that are now agreed

106. Mr Marginson (the appellant's planning witness) accepted that there is considerable agreement as to the current state of play:

- the appeal scheme is identical to the scheme considered in the IR (November 2019);
- the consented scheme remains as a material fallback against which to assess the impacts and benefits of the larger scheme now proposed;
- the Secretary of State's previous DL is quashed and of no effect, the High Court having endorsed the agreement of all three main parties and the Secretary of State that it was infected by apparent bias;
- the IR is not compromised in any way by the High Court proceedings and is still before the Secretary of State; and
- the appellant does not seek to challenge any of the policy interpretations or planning judgments reached in the IR, other than in relation to affordable housing.

Therefore 6 of the 7 impacts identified in the IR remain undisturbed. They should also remain undisturbed in terms of weight.

107. The appellant's lack of challenge to the IR means that there has been very little to debate at the reopened Inquiry. The Inspector can record that his previous conclusions in relation to six principal impacts of concern, including judgments about the degree of harm, are accepted by the appellant. There is no basis for revisiting these judgments:

- Impact 1 - The proposal "*would represent a marked step up in height, mass and scale at the southern end of the Millwall Inner Dock TBZ*", failing to "*step down*" and failing to "*support the central emphasis of the Canary Wharf cluster*" as required by the development plan. It would also "*fail to create a satisfactory transition in scale to the adjoining residential areas to the north of the site and to the south of Millwall Outer Dock*" and fail to relate well to the street scene of Westferry Road. As a result, the scheme "*would be harmful to the character and appearance of the area*"[69].
- Impact 2 - The proposal "*would fail to preserve the setting of the Old Royal Naval College because it would distract from the ability to appreciate the listed building in certain views from Greenwich Park*", resulting in less than substantial harm to the significance of the asset[70].
- Impact 3 - As the Old Royal Naval College is "*an important component*" of the Maritime Greenwich WHS, harm to its setting "*also represents harm to the setting of the WHS*"[71].

[69] CD97, IR436 and 437
[70] CD97, IR455
[71] CD97, IR456

- Impact 4 - The proposal "*would fail to preserve the setting of Tower Bridge*" because it would "*distract from the ability to appreciate the listed building in views from London Bridge*". This harm would be "*less than substantial*" harm to the significance of Tower Bridge[72].

- Impact 5 - The proposal would have "*a significant adverse effect on sailing quality for novice and inexperienced sailors*", amounting to "*a significant disadvantage of the proposals*"[73].

- Impact 6 - The proposal "*would not maximise the provision of family homes*" as required by (then) emerging policy, which was another "*significant disadvantage*". Account should be taken of this when assessing the benefit to be attributed to the delivery of market housing[74].

108. These unchallenged conclusions, considered in the round, weigh very heavily against the grant of planning permission, whichever of the three balancing exercises is carried out.

The key issues that need to be considered now

109. There are only three issues that need to be revisited:

- do the new development plans materially affect any of the balancing exercises?

- does the previous impact 7 (provision of affordable housing) now switch to a benefit? and

- are the four benefits identified by Mr Marginson sufficient to outweigh the six impacts identified in the IR?

Do the new development plans affect the weighting of any impacts or benefits?

110. Save for the technical debate in relation to the HDT, the current development plan is up-to-date and different from November 2019. The LP 2031 was adopted in January 2020, the LonP 2021 was adopted in March 2021 and the Isle of Dogs Neighbourhood Plan became part of the development plan in May 2021. There is no tension between the development plan and national policy, such that the weight to be attached to the development plan should be reduced.

111. The appellant accepts that the proposal conflicts with the new development plan. This is the complete opposite of the appellant's evidence at the first Inquiry, where it was maintained that the proposal complied with the development plan[75]. Mr Marginson's evidence for the reopened inquiry finally conceded the clear

[72] CD97, IR469
[73] CD97, IR498
[74] CD97, IR547
[75] CD67, (the appellant's Planning Statement of April 2018) at paragraph 8.5; the proofs of evidence of Mr Goddard (July and August 2019) and WDL36 (closing submissions of September 2019) at paragraph 153. Inspector's note – the Council's closing submissions also refer to the appellant's statement of case for the reopened Inquiry (CD107) in this context, although this reference appears to have been in error

conflict that should have been accepted upon receipt of the IR. It is noteworthy that there was no reference in the appellant's opening to this significant change of position. The new development plan has reinforced the conclusions of the IR, forcing the appellant to abandon its case of compliance with the development plan.

112. This is a very significant concession, given the primacy of the development plan in law and policy. The Secretary of State's DL referred to the statutory position that proposals for development must be determined in accordance with the development plan unless material considerations indicate otherwise[76]. This is reinforced by the Framework, which confirms that the presumption in favour of sustainable development "*does not change the statutory status of the development plan as the starting point for decision-making*". This means that where an application conflicts with an up-to-date development plan, "*permission should not usually be granted*". The Framework goes on to say that the planning system should be genuinely plan-led[77].

113. Given that all parties now agree that the proposal conflicts with the development plan, it would be surprising if the Inspector found that it complies. The appellant's change of position cannot be explained by changes in the substance of the most relevant policies. The substance of the policies is virtually identical. The only change of note is the new requirement to "*maximise*" the provision of family housing in site allocation 4.12 of LP 2031, which militates further against the proposal. This was a complete about-face in the appellant's overarching assessment of compliance with the development plan. The only explanation for this change is that the appellant finally accepted that the IR's finding of conflict with the development plan was the only conclusion properly to be reached on the evidence. This should have been the appellant's own conclusion from the outset.

Is the provision of affordable housing now a benefit?

114. The IR found that 21% affordable housing was not the maximum viable amount that could be provided. The Council and the GLA accept that 21% is the maximum viable amount that the scheme can support now, taking account of the liability to pay CIL. However, it is inconceivable that this change alone would lead to a materially different outcome on any of the three balancing exercises. The IR considered the additional benefits of the appeal scheme compared with the consented scheme, including "*the delivery of additional housing (including affordable housing)*" but concluded that these benefits were not sufficient to outweigh the conflict with the development plan[78].

115. There is no basis for a different conclusion today. To the contrary, the affordable housing offer remains problematic due to the appellant's unprincipled refusal to make provision for MSR. Policy D.SG5 of LP 2031 states that developers will be expected to

"*enter into Section 106 agreements to provide affordable housing and make provision to mitigate the impacts of the development where necessary or*

[76] CD97, DL paragraph 9
[77] The Framework, paragraphs 12 and 15
[78] CD97, IR613

appropriate, having regard to any relevant supplementary planning documents or guidance".

116. For large residential development projects, where construction takes several years, MSR is necessary. It is the duration of construction that determines the need for MSR, not the formalistic issue of whether a scheme is phased or not. Not all schemes that take a long time to be built are formally phased, so it would be illogical to require formal phasing before being able to conclude that MSR is necessary. There is a reasonable likelihood that the viability of the appeal scheme could improve, possibly substantially, during the 10 year construction period. It is therefore necessary to take the opportunity to make up the substantial deficit in the affordable housing offer against the targets in the development plan. The facts are these:

- the proposal (for 1,524 units) is one of the largest residential schemes currently proposed in Greater London;
- the combined value of the properties to be sold is expected to be over £1 billion[79];
- the affordable housing offer is 21% against a policy target of 35% in LonP 2021 Policy H5 and LP 2031 Policy S.H1(2)(a)(iii);
- whilst 21% is accepted to be the maximum viable amount with the scheme as designed, at this point in time, there is a very substantial need for more affordable housing in the Borough and London generally[80];
- it is extremely unlikely that viability will remain static over a 10 year period; and
- the UU provides for ESR and LSR, leaving a lengthy period when the viability of this vast proposal would not be open to consideration.

117. The Council considers that there is a clear basis for requiring MSR. The overriding consideration here is the policy target of a minimum 35% affordable housing. LonP 2021 Policy H5(F) states that VTR schemes will be subject to

"*Mid Term Reviews prior to implementation of phases for larger phased schemes*"

This is to ensure that affordable housing delivery is maximised as a result of any future improvement in viability[81].

118. The substantial deficit against the development plan target means that a requirement for MSR would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. These statutory tests have a higher status than the Council's Planning Obligations SPD.

119. The appellant reads the SPD as suggesting that only formally phased schemes should be subject to MSR. However, it is necessary to interpret such guidance

[79] LBTH9A, Appendix 1
[80] LBTH8A, paragraph 5.13
[81] CD101, Paragraph 4.5.14

purposively, there being no suggestion in the SPD that all residential schemes that take a long time to be built are necessarily phased. The key question is whether MSR is necessary on the facts of the case. This is made clear in the SPD itself which states that

"*Viability review mechanisms will be triggered and undertaken according to the circumstances in each case*…"[82]

120. NPPG supports the need for MSR, in addition to ESR and LSR, by stressing that review mechanisms are intended

"*to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project*"[83].

The evidence before the Inquiry shows that there is a reasonable likelihood of a considerable increase in residential values over the construction period[84].

121. The Council's position on the need for MSR is strongly supported by the GLA. On the other hand, the appellant has been unable to advance any credible or principled justification for resisting MSR. Such a review would cause no prejudice to the appellant because, if it showed that the viability of the scheme had not improved, there would be no requirement to provide more affordable housing. If viability had improved, there would be no justification for not providing more, particularly in the context of the substantial deficit against the development plan target. The appellant's inexplicable failure to make provision for MSR serves only to confirm that no more than moderate weight should be given to the provision of housing (including affordable housing) in the planning balance.

Do the benefits now relied on outweigh the development plan?

122. The appellant argues that the benefits have materially increased since November 2019, such as to justify a finding contrary to the development plan. This does not withstand scrutiny for two fundamental reasons.

123. First, Mr Marginson can only conclude that other material considerations outweigh the development plan by double counting the benefits accruing through the provision of market housing, affordable housing and economic benefits. Those matters are in the development plan. They cannot then be carried through to a second weighting in the context of other material considerations. Mr Marginson accepted that those matters were considered in the development plan, explicitly in the case of market and affordable housing and implicitly in terms of economic benefits.

124. Three of the appellant's four material considerations are already weighed in the s38(6) balance. The only way they could be weighed again at the second stage would be if the six harmful impacts were also taken into account. The appellant has not done that. An approach that double counts benefits but only counts harmful impacts once is flawed and predetermined to find in favour of the appellant.

[82] CD106, paragraph 4.23
[83] NPPG, Ref ID: 10-009-20190509
[84] LBTH9A, paragraph 6.49

125. Second, it remains the case that the consented scheme would be developed if the appeal were dismissed. The focus in this case must be on the additional benefits, over and above those of the consented scheme, that would be achieved by allowing this appeal. Then, one needs to consider the four benefits now relied on by the appellant.

Market housing

126. This matter is addressed in the development plan and the Council does not accept it should be another material consideration. There is no reason to give greater weight to this factor now than the moderate weight the Inspector gave to it in November 2019[85]. To the contrary, site allocation 4.12 of the LP 2031 now contains a more onerous policy requirement to "*maximise*" the provision of family housing. This reinforces the planning judgment to give only moderate weight to this consideration because the failure to comply with policy must have an impact on weighting. Mr Heywood explained that the HDT target of 11,002 homes was missed by just 146 homes. The Council's action plan identified that delivery in Tower Hamlets is unusually reliant on large high density buildings. This can result in an uneven pattern of delivery. The identified supply of sites deliverable within five years is 20,170 homes. Allowing for a 20% buffer, this still represents a supply equivalent to 4.84 years[86]. In any event, it is wrong in principle to treat the provision of housing as a material consideration that is extraneous to the development plan when the provision of housing is one of the main functions of the development plan. The provision of market housing should only be given moderate weight at best.

Affordable housing

127. The need for affordable housing is not of a different order from the need in February 2019. In an appeal decision at Cambridge Heath Road, London[87], the Secretary of State accepted that reduced, "*moderate*" weight should be given to the provision of affordable housing when the percentage offered falls short of the policy expectation, even if that reduced percentage is accepted to be the maximum viable at the point the decision is made. The appellant's resistance to MSR reinforces the judgment that no more than moderate weight should be given to this consideration. In any event, it is again wrong in principle to treat the provision of affordable housing as a material consideration extraneous to the development plan, when the development plan contains several policies dealing specifically with it. The provision of affordable housing should be given only moderate weight at best.

Economic benefits

128. These are matters that underpin the whole development plan. They have not changed since November 2019 and there has been no expression of policy by the Council (or by the Secretary of State) to suggest that greater weight should be given to them now. The appellant has not identified any appeal decision which

[85] CD97, IR585
[86] LBTH8A, paragraphs 4.10 to 4.31 and 4.32 to 4.34. Inspector's note – the figure of 4.84 years was confirmed by Mr Heywood in response to my question
[87] LBTH6C, Appendix C, paragraphs 20 and 21

makes such a suggestion. Consequently, there is no justification for giving more that moderate weight to this consideration.

CIL payment

129. The payment of CIL is a legal requirement and should not be characterised as a benefit. In a recent appeal decision at Warburton Lane, Trafford[88] the Inspector recognised that CIL may generate significant revenue but, as it was "*necessary to deliver local services and infrastructure to support the new development*", she attributed only negligible weight to it as a claimed benefit of the scheme. There is no expression of policy that suggests that weight should be given to CIL payments, however large the financial contribution. If very large CIL payments are allowed to trump a conflict with development plan policy, as the appellant is suggesting here, that would effectively neuter the aspirations for a plan-led system. It is ironic that the appellant should now claim that the payment of CIL is a benefit when it previously sought to avoid the CIL liability altogether. The CIL payment should be given no weight in the planning balance.

130. In summary, three moderate benefits do not come close to setting aside the presumption in favour of the development plan. This is particularly so where the development plan is completely up-to-date and factors relied on are themselves part of the development plan.

The primacy of the development plan must be determinative

131. The planning system should be plan led and permission should not normally be granted if the proposal is contrary to the development plan[89]. Returning to the three balancing exercises required, the Inspector is invited to conclude:

- on the heritage balance, that the harm to the significance of heritage assets would not be outweighed by the public benefits of the proposal, having particular regard to the level of harm identified in the IR and the importance of the assets in question, a WHS and two Grade I listed buildings. It is difficult to think of more important or sensitive receptors than Tower Bridge, the Old Royal Naval College and Maritime Greenwich which are fundamental to Britain's DNA;
- on the statutory balance, that the multiple breaches of the development plan would not be outweighed by any other material considerations; and
- that the tilted balance is disengaged because of footnote 6 of the Framework. The harm to heritage assets provides a clear reason for refusing the development proposed and consequently paragraph 11(d)(ii) is not engaged.

If, contrary to the Council's position, the tilted balance is found to be engaged, then the adverse effects of granting permission would significantly and demonstrably outweigh the benefits.

132. To answer the question posed by the appellant in opening, nothing material has changed. If anything has changed, it must be the appellant's new position on

[88]APP/Q4245/W/19/3243720, attached at GLA5E, paragraph 150
[89] The Framework, paragraphs 12 and 15

the development plan. On any sensible approach, that change of position makes granting planning permission more difficult rather than easier. Accordingly, the Inspector is invited to confirm his previous recommendation that the appeal should be dismissed.

THE CASE FOR THE RULE 6 PARTY – THE GREATER LONDON AUTHORITY[90]

Introduction

133. The reopened Inquiry took place in the context of the concession that the previous Secretary of State's decision was tainted by apparent bias. As a result, the decision was quashed and the reasoning contained within the DL can form no part of the subsequent decision. The appeal scheme has been considered at Inquiries in 2019 and now in 2021, so there is a significant body of information which requires assessment. The GLA relies on its oral and written evidence to both Inquiries and on the conclusions in the IR. Even so, the issues before the Secretary of State[91] are remarkably simple. The decision should turn on the following points:

- It is agreed that the scheme would cause harm to Tower Bridge (a Grade I listed building), the Old Royal Naval College (a Grade I listed building) and the Maritime Greenwich World Heritage Site. These are heritage assets of the highest national and international importance[92].
- Notwithstanding the existing planning permission for tall buildings, it is agreed that the appeal scheme causes such harm to the character and appearance of the area (as a result of its height, scale and mass) that it is contrary to relevant policies.
- It is agreed that 21% affordable housing is the maximum viable amount based on current costs/values, on the basis that CIL is paid at the outset[93]. The appellant has opted to arrange the scheme in such a way that CIL would not be phased. It has not provided for a proper suite of review mechanisms in the UU.
- The appellant accepts that the proposal is contrary to the statutory development plan[94]. Whilst accepting that the development plan has primacy, the appellant argues that material considerations indicate that planning permission should nonetheless be granted, relying on factors which have already been taken into account in concluding on the development plan.
- There is an implemented planning permission in place, which would deliver the redevelopment of the Westferry Printworks site and the majority of the benefits the appeal scheme promises. It would do so

[90] This is a summary of the full submissions which are at GLA20
[91] CD113, paragraph 6 of the Consent Order confirms that this will be a different Secretary of State
[92] Note of case management conference (at appendix B of CD111), paragraphs 8 to 13. All parties agreed to the approach set out.
[93] CD110
[94] WDL7A, paragraph 8.13

without causing the heritage and other harms which make the appeal scheme unacceptable[95].

134. The issues identified by the Secretary of State are addressed in the following order. First, issues 1 and 3 - the changed components of the statutory development plan; second, issues 2 and 4 – CIL, viability and affordable housing; and third, issue 5 – material changes in circumstances.

Issues 1 and 3 – the changed components of the statutory development plan

135. The GLA's submissions concentrate on the LonP 2021. However, Mr Green (the GLA's planning witness) explained that the LP 2031 now forms part of the statutory development plan and that the proposal would conflict with Policies S.DH1, S.DH3, S.DH5, D.DH6, S.H1, D.H2 and site allocation policy 4.12 of that plan[96].

136. The IR reported on the policies of the LonP 2016, which was then part of the development plan. It is now superseded by the LonP 2021 which was an emerging plan at the date of the quashed DL. It is necessary to consider the changed status of policies that are now part of the development plan and the changed content and approach between the 2016 and 2021 versions.

Changed status

137. Whether a requirement is contained in emerging policy (or supplementary planning guidance), or within the statutory development plan, makes a material difference to the weight to be attached to it. For example, the previous UU made provision for LSR (in relation to affordable housing) but this was conditional[97]. LSR would have taken effect if, by the date of the decision, draft Policy H6 had become part of the statutory development plan[98]. Mr Marginson (the appellant's planning witness) accepted that, as far as the appellant was concerned, the publication of the new LonP 2021 made a material difference to the weight that should be attributed to its policies. In fact, it was the difference between there being a requirement for LSR or not. The suggestion that the question of status is not a matter of significance is belied by that history.

138. This is not an academic point. At the time of the DL, the requirement for MSR was contained within guidance and emerging policy. It has since been enshrined in Policy H5 of LonP 2021. Mr Marginson is wrong to suggest that there has been no change in relation to MSR since that date[99].

Changes in content and approach

<u>Changes to the London Plan - design</u>

139. There is a complete change of approach in LonP 2021 from prioritising "*optimising site potential*", with an expectation of a certain density of development, to schemes being "*design-led*". This change was explained in the

[95] GLA5B, paragraph 6.22
[96] GLA5B, paragraph 3.8
[97] WDL28, paragraph 3.8; CD97, IR537
[98] Or if the Secretary of State determined that the requirement was compliant with Regulation 122
[99] Rebuttal proof of Mr Marginson, paragraph 2.14

GLA's submissions relating to the London Plan Inspectors Panel Report[100], and in Mr Green's evidence to the reopened Inquiry. LonP 2016 expressly prioritised housing output, explaining that "*a rigorous appreciation of housing density is crucial to realising the optimum potential of sites*"[101]. It linked density to the Public Transport Accessibility Level and expected proposals to optimise delivery.

140. The appellant's Statement of Case for the first Inquiry explained the rationale for its review of the consented scheme[102]. The approach was to "*maximise the amount of housing that can be delivered*", having regard to the site's good level of transport accessibility. Dealing with design principles, the statement emphasised that it had sought to mitigate the effect on neighbours while realising the "*full potential of the site to provide more housing*".

141. In LonP 2021 the prioritisation of density and output has made way for a "*design-led*" approach. This can be seen in the Good Growth objectives. Policy GG2(D) applies a design-led approach to determine the optimum development capacity of sites. Policy D3 seeks to optimise site capacity through the design-led approach. In determining the most appropriate form of development, design is now the foremost consideration. Mr Marginson seriously underplayed this marked change of approach, although he conceded that there had been a change in emphasis that was "*intended to make a material difference*"[103].

142. The London Plan Report of the Examination in Public addressed concerns about the loss of the density matrix, saying that its retention would:

"*fundamentally conflict with the design-led approach now advocated, which bases density on local context, infrastructure capacity and connectivity*"[104].

The report commented on what is now D9 (tall buildings), saying that the policy forms part of a novel and ambitious approach (the design-led approach). The appellant's resistance to the idea that this deliberate change in approach should make any material difference to decision making is untenable. The appeal scheme was expressly output-led, maximising the amount of housing delivered on the site. That was flatly contrary to the design-led approach now advocated.

143. The outcome was that the height, scale and mass of the proposal failed to respond to the site's surroundings and would cause harm to the character and appearance of the area[105]. The policy conflict is even more marked now than it was and greater weight should be attributed to it. Mr Green is right to attribute significant weight to this issue[106], having regard to the heightened importance of the design-led approach in LonP 2016 and in national policy.

[100] CD95
[101] CD2, Policy 3.4, density matrix table 3.2
[102] CD43, paragraph 6.3
[103] Inspector's note – in answer to my question, Mr Marginson said that the new policies were intended to make a material difference although the old plan also had policies on design
[104] CD116, paragraph 280
[105] CD97, IR592
[106] GLA5B, paragraph 5.22 to 5.24

Changes to the London Plan – heritage

144. There have been no changes in national policy on heritage, as set out in the Framework, or in the relevant statutory duties since the date of the DL. The issue between the GLA and the appellant is whether the heritage policies in the LonP 2016 are, as intended, more robust. Whilst that may not change the framework for decision making, the changes cannot be ignored and will influence the weight attributed to the heritage harms identified in the IR.

145. LonP 2016 Policy 7.10B applied to planning decisions affecting WHS, seeking to guard against adverse impacts. LonP 2021 Policy HC2 is different in that it sets positive requirements. Development should not only "*conserve, promote and enhance their OUV…*", it should "*support their management and protection*". In this respect Policy HC2 is more demanding than its predecessor. The GLA's position is supported by the Panel Report which acknowledged that the old policy was not totally effective and that the new policy would require development to "*actively protect*" WHS[107].

146. The Department of Culture, Media and Sport relied on the new policies on WHS and tall buildings in its response to concerns expressed by the World Heritage Committee about London's WHS[108]. The response made particular mention of the review of the London Plan, commenting that "*the updated plan includes further guidance on the effective management of WHS and their settings*". Unless one assumes that this endeavour has been wholly ineffective, it should be concluded that WHS policy is now more robust and demanding. Causing harm to the Maritime Greenwich WHS assumes even greater significance in this context.

147. LonP 2021 Policy HC1(C) states that:

> "*development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process*".
>
> The appellant's failure to assess the constraint posed by Tower Bridge and its setting assumes greater importance in this context. The GLA's criticism of the ES is recorded in the IR[109]. The ES did not assess the impact of the appeal proposals on the setting of Tower Bridge, concentrating only on protected views[110]. This failure was in conflict with Policy HC1(C). Mr Marginson suggested that the views assessment in the ES was the equivalent of an assessment of the impact of the proposal on the significance of the heritage asset. This was an attempt to re-run an argument that the appellant dropped at the first Inquiry. However, the point is newly relevant in the context of the more demanding Policy HC1(C), which seeks to avoid harm by integrating heritage considerations early on in the design process. Clearly that did not happen in this case.

148. Mr Marginson accepted that less than substantial harm to heritage assets does not equate to a less than substantial objection. He agreed that such harm gives

[107] CD116, paragraphs 330 and 331
[108] CD125, Executive Summary
[109] CD97, IR287 and 288
[110] CD32, paragraph 4.209 and table 4.1. See also the ES Addendum, CD141, paragraph 4.1, which does not add any heritage receptors other than a locally listed building

rise to a presumption that planning permission should be refused. Although his written evidence referred to "*any heritage harm*"[111], he did not seek to disagree with the conclusions of the IR that the proposal would cause harm to the outstanding universal value of the Maritime Greenwich World Heritage Site and harm to the significance of both the Old Royal Naval College and Tower Bridge.

Issues 2 and 4 – CIL, viability and affordable housing

CIL and affordable housing

149. In June 2019 the affordable housing offer, with no CIL, was 21%. In May 2021, with a CIL liability of some £43 million, the affordable housing offer is still 21%. Mr Vaughan-Jones (the appellants viability witness) accepted that the scheme has absorbed some £43 million of costs. When the appellant's team told the Inquiry in 2019 that the scheme could not support any more affordable housing, that was wrong to the tune of £43 million. When this point was put to Mr Vaughan-Jones at the reopened Inquiry, he launched a surprise attack on the agreed benchmark land value of £28 million, unsupported by any written evidence. He suggested that £28 million might not be "*appropriate*", although he said it remained agreed for the purpose of the appeal[112]. Nevertheless, on the basis of the agreed inputs to the viability modelling, it remains the case that with £43 million of CIL the scheme can support 21% affordable housing. It could not be clearer that the Inspector was right to reject the appellant's viability evidence in 2019.

Viability and affordable housing

150. The appellant claims that the affordable housing offer is policy compliant and that there is now no conflict with affordable housing policy. Both contentions are wrong. The proposal is not policy compliant in the terms of NPPG because it does not provide affordable housing at the level required in the development plan[113]. At application stage, Policy H5 of LonP 2021 sets 35% as the policy compliant level. For fast track schemes that requirement never changes (subject only to ESR). If ESR is triggered by a delay in implementation, then the strategic target of 50% applies[114]. This target applies to all reviews. Mr Marginson accepted that the requirement is 50% for VTR schemes[115]. That is the level at which there is policy compliance for schemes such as this proposal.

151. In an appraisal with agreed inputs, no significant surplus or deficit is generated when compared with an IRR of 14%. On that basis, it is agreed that the scheme is providing the maximum reasonable amount of affordable housing[116]. Even so, the appellant's assertion that the proposal is policy compliant is not well founded.

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[111] WDL7A, paragraph 8.23
[112] Inspector's note – in answer to questions from Miss Murphy, Mr Vaughan-Jones said he was prepared to agree a figure below what is appropriate for the purposes of reaching agreement on the maximum level of affordable housing. He accepted that no alternative figure had been put to the GLA's witness. The figure of £28 million is recorded as agreed in the Statement of Common Ground on Viability (CD110), paragraph 3.1, table 2 and no alternative figure was put before the reopened Inquiry.
[113] GLA6D, paragraphs 4.4 and 4.5
[114] Policy H4; CD15, pages 18 and 19 and Annex A, paragraph 6
[115] CD15, page 19, footnote 10
[116] CD110, paragraph 4.2

Policy H5(B) sets relevant thresholds. A scheme that does not provide 35% at application stage follows the VTR and H5(F) applies. This has two requirements:

- provide the maximum viable amount of affordable housing at the date of the decision; and
- make proper provision for viability reviews, through the use of s106 planning obligations.

152. Mr Marginson accepted that a failure in relation to the second requirement would amount to a conflict with policy. He was right to do so because NPPG advises that agreements should be used to achieve policy compliance over time[117]. It is the GLA's case that the failure to provide MSR addressing the need to get the scheme to 50% affordable housing (or as near as possible) is itself a conflict with policy. Mr Vaughan-Jones accepted that the absence of MSR, where required by policy, could amount to a reason for refusal and that it would be open to the Secretary of State to refuse planning permission for the appeal scheme on that basis. Mr Marginson accepted that (depending on the conclusions reached) another option open to the Secretary of State could be to issue a "minded-to" letter, inviting the revision of the UU.

A phased scheme within the meaning of Policy H5 of the London Plan

153. The intention of LonP 2021 is to have comprehensive review mechanisms put in place where schemes do not meet the target levels[118]. Policy H5(F)(2)(c) states that "*viability tested schemes will be subject to (c) Mid Term Reviews prior to implementation of phases for larger phased schemes*". Ms Seymour (the GLA's witness on viability) advised that, in terms of the number of units, the proposal is among the very largest schemes in London. For example, it is in the top 6% of schemes considered by the Mayor between 2018 and 2020[119]. Mr Vaughan-Jones' concession that this was a "*larger*" scheme in the terms of the policy was a sensible one.

154. There are four points to note at the outset in relation to the reference in H5 to phased schemes:

- Whether a scheme is phased will usually be decided before there is a finalised list of planning conditions. This is because the conclusion will typically inform negotiations on a s106 planning obligation. Any requirement to have a condition dealing expressly with phasing would be a triumph of form over substance. Moreover, it would often be impractical.
- There is nothing wrong in principle with the question being resolved as a matter of judgment. That is how a conclusion is reached about whether a scheme is a "*larger*" one.
- The reference serves a practical purpose, in that there should be a marker in the delivery of the scheme for when MSR would take place. In

[117] GLA6D, paragraph 4.5, reproduces the relevant NPPG extract
[118] CD101, paragraph 4.4.3
[119] GLA6B, paragraphs 8.21 and 8.22

this case, the end of the first phase ("*package 5*")[120] would be an appropriate point. It is important that this opportunity is created during the course of longer phased schemes. This is because (unlike LSR) MSR would apply any surplus to the provision of affordable housing on site. Moreover, no assumption would be made in relation to a split of the surplus.

- There is no reason to treat the reference to "*phased*" as if it adopts or reflects the CIL regulations. CIL was introduced in the Planning Act 2008 and brought into being by the CIL regulations 2010 (with changes in 2014 allowing phased payments in relation to full planning permissions). There were phased planning permissions prior to 2010. Such permissions have existed independent of CIL. The CIL regulations should not be regarded as setting a definition of phased development which has wider effect than in relation to the operation of the CIL regime.

155. The LonP 2021 does not contain a definition of a phased scheme but the NPPG includes the following guidance in relation to phasing conditions:

"*Where the circumstances of the application make this necessary and the six tests will be met, conditions can be imposed to ensure that development proceeds in a certain sequence. Conditions may also be used to ensure that a particular element in a scheme is provided by/at a particular stage or before the scheme is brought into use*." [121]

This shows that a phasing condition can ensure that development proceeds in a certain sequence. Unlike the CIL regulations[122], the planning permission need not expressly provide for development to be carried out in phases in order for a scheme to be a phased scheme as understood within the NPPG and the LonP 2021. This is not a new approach. The RICS Information Paper 12 explained that larger schemes are likely to be phased over time and that phasing of distinct elements of a complex site may be as a result of planning requirements. The Information Paper makes no suggestion that there needs to be an express reference to phasing within the conditions for a scheme to constitute a phased scheme.

156. Condition 18 fits the bill for the purposes of Policy H5 and the NPPG. It states that:

"*The residential units shall be delivered no sooner than as set out in the programme detailed within Table 5.1 of Environmental Statement Volume 1 Addendum dated April 2021 unless otherwise agreed in writing with the local planning authority*."

Table 5.1 of the ES Addendum can be compared with Ms Seymour's Figure 3[123]. It can be seen that:

- package 1a is comprised of buildings B6, B7 and T4;

[120] GLA6B, page 21, figure 3
[121] NPPG Ref ID 21a-008-20140306
[122] GLA6B, paragraph 6.12
[123] CD140, page 13, table 5.1 and GLA6B, page 21, figure 3

- package 1b is comprised of buildings B4 and T5;
- package 2 is comprised of buildings T3, B3 and T2; and
- package 3 is comprised of buildings B1, B2 and T1.

The condition ensures that the development would proceed in a certain sequence and there is no suggestion that it does not meet the six tests. There is no overlap between the packages. Ms Seymour considers this to be a phasing condition. This conclusion is supported by the IR which notes that Condition 18 "*would secure the phased delivery of the residential units*"[124].

157. Ms Seymour's written evidence covered the question of phasing (for the purposes of Policy H5) in detail. The following points are highlighted. Ms Seymour was not challenged on her statement to the reopened Inquiry that her agreement that the use of IRR for viability testing (and the 14% level selected) were appropriate was based upon this being seen as a larger phased scheme[125]. The Thameside West scheme referred to by Mr Vaughan-Jones provided 39% affordable housing by habitable room. It had two MSRs (although he only referred to one in his proof). Ms Seymour explained that the construction programme in that case would result in MSRs at the five and eight year points[126]. For this appeal scheme, MSR could take place at a comparable time after phase 1 (package 5), at around five years.

158. The absence of MSR in the UU is an important issue for the GLA. The appellant's argument is that MSR is only required by policy where the planning permission contains an express condition controlling phasing. In effect, the appellant's approach would enable it to veto MSR by describing its phases as "*packages*". Evidence from the GLA and the Council shows that, in reality, this scheme would be delivered in phases in line with the plans and programme used by all parties to assess viability. Ms Seymour has modelled a range of forecasts of growth in values and construction costs. This shows that, with an annual average growth of 3% in values and costs, the scheme could achieve 31% affordable housing[127]. MSR is essential in order to secure more affordable housing on site if viability improves over time. The failure to provide it in the UU puts the scheme in conflict with Policy H5.

Opting to pay all local CIL at the outset

159. Ms Seymour gave evidence that the appellant's decision to pay CIL at the outset has a significant impact on the IRR[128]. This evidence was not challenged. Indeed, Mr Vaughan-Jones said that he had advised his client that paying CIL in phases would significantly improve the IRR, meaning that more affordable housing could be provided. Ms Seymour's evidence was that around 59 additional affordable units could be provided[129]. The only explanation for the appellant's approach seemed to be that there is no phasing condition at the moment and,

[124] CD97, IR395
[125] Ms Seymour's proof for first Inquiry and WDL5B, paragraph 12.14
[126] GLA6D, paragraph 4.28
[127] GLA6B, table 6
[128] GLA6B, paragraph 7.2
[129] GLA6B, paragraph 7.4

when such a condition was suggested at the first Inquiry, it was resisted by the Council and the GLA.

160. The reason for that resistance was the timing of the appellant's suggestion, immediately before the conditions session, leaving the other parties no time to consider the issue properly. The appellant has not explained why it has not revisited that matter. At the reopened Inquiry, the relationship between the current UU and the possibility of a new express phasing condition being introduced was discussed. This included consideration of whether the appellant (or a subsequent developer) could apply later on for CIL to be paid in phases, without providing any additional affordable units.

Other concerns regarding the UU

Delay to the ESR trigger

161. Policy H5(F)(2) says that VTR schemes will be subject to ESR if an agreed level of progress on implementation is not made within two years of the permission being granted. The purpose of ESR is to enable more affordable housing to be provided. LonP 2021 states that ESR, MSR (where appropriate) and LSR should be applied "*to ensure that affordable housing delivery is maximised as a result of any future improvement in viability*"[130].

162. This is consistent with the approach in NPPG, which focuses on enabling local authorities to ensure policy compliance and optimal public benefits over time:

"*plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles*"

and

"*where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time*"[131]

Mr Marginson suggested that "*providing flexibility*" did not apply where a scheme provides less than the requirement on the basis of viability. That was plainly wrong. NPPG expects that s106 agreements will be used to get schemes to policy compliant levels of affordable housing if that is not possible at the outset but becomes possible over the lifetime of the development.

163. The Mayor's Affordable Housing and Viability SPG identifies the role of reviews in maximising affordable housing due to the potential for changes in values as well as incentivising delivery[132]. Both purposes are important. In this context, the GLA objects to the delays to the ESR[133] provided for in the UU. A range of circumstances have been incorporated making it less likely that the review would ever be triggered. The appellant sought to justify this approach by reference to

[130] CD101, paragraph 4.5.14
[131] NPPG, Reference ID: 10-009-20190509
[132] CD15, paragraphs 3.53 to 3.56
[133] Referred to as the Updated Viability Review in the UU

the s106 Agreement for the consented scheme. That Agreement is now very dated in terms of the development of policy. It pre-dates the Mayor's SPG (2017) and the current development plan.

Ineligible costs

164. The UU sets out principles for viability reviews, including that:

"*any and all costs that have actually been incurred and/or are known and fixed at the time of the relevant Appraisal shall be used for the purposes of the relevant review*"

and

"*the reasonable and proper costs incurred in the delivery of the development works on the land… shall be allowed*".[134]

These clauses are very broad, allowing what might typically be treated as ineligible costs to be included as part of the review appraisal.

165. The definitions within the UU do not resolve the matter:

- "*Appraisal*" means an appraisal submitted as part of the "*Updated Viability Review Statement*" and/or "*the Late Stage Review Statement*";
- both review statements allow the inclusion of "*Development Cost*"; and
- "*Development Cost*" is broadly defined as "*the total costs of delivering the Development including Build Costs with reference to the items included in the Application Stage Viability Appraisal*".

166. Although the application stage viability appraisal is appended, development costs are not limited to those contained within that appraisal. Costs can be included "*with reference*" to that appraisal, creating uncertainty over what should be included. The GLA has provided a list of ineligible costs[135]. Although the appellant's stated intention is that those costs should not be included, it has drafted the UU such that the question of eligible/ineligible costs is unresolved. The dispute mechanism is not satisfactory in these circumstances. The effect of including additional costs would be to reduce the amount of affordable housing which would ultimately be provided.

Issue 5 – material changes in circumstances

Housing Delivery Test

167. Mr Green addressed the housing delivery test in his evidence[136]. Although delivery has fallen just below the 75% threshold, the tilted balance set out in paragraph 11 of the Framework is not triggered because the application of heritage policies provides a clear reason to refuse planning permission. Mr Green accepts that the delivery of additional market housing is a benefit to which moderate weight attaches. In reaching that conclusion, he took account of the fact that the market housing would be unaffordable and out of reach for all but

[134] ID19, Schedule 3, Part 2, paragraphs 6 and 9
[135] GLA18
[136] GLA5B, pages 40 to 41

the tiniest proportion of residents (just 4% in Tower Hamlets and 3% in London)[137].

Affordable housing

168. The affordable housing offer is contrary to policy. Mr Green explained that this is a planning harm, in that development of this allocated site without making an appropriate contribution to meeting affordable housing needs has an adverse impact on the Council's ability to meet those needs[138]. Mr Vaughan-Jones conceded that the failure to provide for MSR was capable of being a reason for refusal because granting permission for a non-compliant scheme gives rise to the opportunity cost of a compliant scheme. The appellant's attempt to distinguish *Barratt* was seriously undermined by these concessions. The appellant has no current intention to make a further planning application. However, Mr Marginson accepted that, if the appeal were dismissed, the appellant would have to review that decision and consider its options. He also accepted that whether it would be appropriate to refuse the scheme and await a policy compliant version it is a matter of planning judgment for the Secretary of State.

CIL

169. The GLA agrees with the Council's submissions that the payment of CIL is not properly to be regarded as a benefit capable of outweighing conflict with the development plan. In addition to the Council's points, the GLA notes that the payment of CIL is a requirement of LP 2031 Policy D.SG5 1(a). The appellant's case on this matter is not coherent. CIL was not claimed as a benefit in the Statement of Case, it was raised in Mr Marginson's written evidence. In cross-examination, he rejected the proposition that the CIL payment was proportionate to the development's effects. When the Inspector asked about NPPG[139] (in relation to local finance considerations), he recognised that whether payment of CIL is material will depend on whether it could help to make the development acceptable in planning terms. NPPG emphasises that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body (planning permission cannot be bought). Negligible weight should be attributed to this factor[140].

Covid and economic benefits

170. The appellant contends that it is well known that the planning system is relied upon to "*build bigger better*". However, there has been no Government guidance that planning decisions should be taken other than on the normal basis. In particular, there has been no suggestion that the primacy of the development plan is to be watered down. Mr Green explained that decision-makers should be cautious about attributing greater weight to one factor in the planning balance (such as economic benefits) without addressing how the effects of the pandemic should be taken into account more widely. The Secretary of State's decision on

[137] GLA5B, paragraph 5.31
[138] GLA5B, paragraph 5.19; CD131, R v London Borough of Tower Hamlets, ex parte Barratt [2000] WL 281291, paragraphs 28 to 30
[139] NPPG, Reference ID 21b-011
[140] The GLA considers that this would be consistent with the decision at Warburton Lane, Trafford (APP/Q4245/W/19/3243720), GLA5E, paragraph 150

the Citroen case attached little weight to the construction, economic activity and regeneration benefits, although that decision was taken in September 2020[141].

171. Mr Green points out that the proposed employment uses would be similar to those in the consented scheme[142]. Moreover, those uses would not be operational until after 2022, when it is hoped that there will be a recovery to pre-Covid levels of economic activity[143]. As such, it would not be logical to attribute additional weight to these benefits.

Overall planning balance

172. These submissions have reflected upon the matters which have changed since the DL of 14 January 2020. The Secretary of State is invited to draw the conclusion that, overall, the case for refusing planning permission has strengthened considerably. In particular:

- There is now a more robust suite of policies aimed at the preservation of the historic environment. In circumstances in which it is accepted that the scheme causes harm to assets of the highest national and international importance, this is a matter of considerable importance.
- In line with the national prioritisation of design, there is a focus on "*good growth*", insisting upon a design-led approach to development. It is accepted that the proposal would harm the character and appearance of the area. In seeking to maximise the density of development, this is an anachronistic scheme. It is now out of date, not only because of changes to London Plan policy, but because national policy now places greater emphasis on design.
- The incorporation of Mayoral guidance on affordable housing reviews into policy means that the appellant's resistance to providing the full range of viability reviews is contrary to the London Plan. Even now, the drafting makes the reviews either less likely to happen (ESR) or less effective (ESR and LSR), although the appellant has been aware of the need to ensure that the obligation is fit for purpose since the receipt of the IR.
- The main parties all agree that the scheme is contrary to the development plan taken as a whole. Planning permission should be refused unless material considerations indicate otherwise. In this case, the factors relied upon to outweigh conflict with the development plan come nowhere near doing so.

173. The appeal should be dismissed.

[141] GLA5B, paragraph 5.42, referring to CD137, paragraphs 15.62 to 15.63
[142] GLA5B, paragraph 5.43
[143] WDL7B, appendix D, paragraph 1.32 of the Hatch Associates report states that, under a central scenario, recovery would occur by the end of 2022

OTHER PARTIES WHO APPEARED AT THE REOPENED INQUIRY

Councillor Kyrsten Perry[144]

174. The proposal is over development of a site which is situated in a relatively low-rise area. Although this is now a TBZ, buildings should still be proportionate to their surroundings. The sheer scale of this proposal is so large that it would be detrimental to the fabric and feel of this place. The concept of building heights stepping down from Canary Wharf has been eroded over the last few years. If we keep on agreeing to such large developments, we will lose the charm and beauty of the Isle of Dogs. The consented scheme was less cramped, with more green space and more porous walkways, creating more of a sense of place. One of the wonderful things about Millwall Outer Dock is the sailing centre. The contribution agreed for the consented scheme should be ring-fenced because this proposal will have a detrimental effect on the wind and people's ability to sail.

Councillor Andrew Wood[145]

175. The consented scheme is supported but not this larger scheme, which will set a precedent for even more tall buildings. This will not lead to sustainable development. The Isle of Dogs already contains some of the most densely populated areas in the UK and there are many more large proposals in the pipeline. The future of the school is critical. Nothing has happened on site yet, despite Canary Wharf College Secondary School occupying a converted office building that lacks sports facilities and play space. Residents are concerned that the developer will delay signing the lease so that the College fails, in the hope that they can get the land back in the future. Any planning permission for the appeal site should be conditional on the school lease being signed first.

176. Preparation of the NP has been a lengthy process and it has now been approved at referendum with 86% of eligible votes. The Council is wrong to say that the proposal complies with the NP. Not everything is negative. Community engagement during construction of the basement has been better than on other sites. However, the application is silent or non-compliant in other respects. Policy D1 requires submission of an Infrastructure Impact Assessment (LonP 2016 Policy D2 has similar objectives). This has not been done.

177. Information relied on by the appellant refers to utility connections but says nothing about the capacity of infrastructure networks. The Isle of Dogs and South Poplar Integrated Water Management Plan (October 2020) notes that the scale of growth poses a significant challenge for water services infrastructure, much of which is at or close to capacity. Responding to a nearby application for 2,000 homes, Thames Water commented that there was a lack of water infrastructure to serve that development. No Infrastructure Impact Assessment means that the impact of this larger scheme is unknown. This is contrary to NP Policy D1 and the proposal should be rejected until the assessment has been done.

178. Policy ES1 is designed to encourage the active use of land when development stalls, as schemes often do. This policy should be implemented. Policy SD1 requires sustainable design. The applicant's letter was silent on the Home Quality

[144] This is a summary of the comments made orally by Cllr Perry and in her note at OD19
[145] This is a summary of the comments made orally by Cllr Wood and in his note at OD27

Mark which provides impartial information on a new home's quality and sustainability. Policy 3D1 refers to the need for a three dimensional electronic model to help assess the impact of the scheme.

179. If the Minister decides to approve this scheme, he will need to intervene directly regarding the delivery of new infrastructure. Much of the money that has been raised through s106, CIL and New Homes Bonus in the last 20 years has not been spent on infrastructure in the Isle of Dogs.

Martin Young[146]

180. Mr Young is the Chair of the Docklands Sailing Centre Trust. He said that greater weight should be given to the provision of recreational activity led by sailing at DSWC. As a result of the pandemic, the community will need more sailing, not less. More capacity is needed for all, with safe sailing for beginners. The steps DSWC has taken since August 2019 demonstrate that there is a real possibility of being able to access the River Thames for sailing from the Millwall slipway. If the consented scheme remains a realistic fallback then the funding for mitigation provided for by that scheme should be available to DSWC in connection with the appeal scheme.

181. DSWC has reviewed how to deal with the problem of the loss of 11 sailing days a month, should either scheme proceed. Access to the river for more experienced sailors would enable the dock to be used more by novice sailors because more time could be allocated to them. There has been a material change in circumstances in this regard and the provision of sailing from a new river access is sufficiently realistic to form the basis of a planning obligation that complies with Regulation 122. DSWC has put forward drafting proposals (for insertion into the UU) which aim to address the concerns identified in the IR regarding compliance with Regulation 122.

Ben Davis[147]

182. All parties agree that the proposal would cause considerable detriment to the recreational use of the dock. The impact is hard to quantify and it is impossible to define corrective actions that will work in perpetuity. It cannot be known, with certainty, what measures will be needed and that is why the extant s106 Agreement and the UU have been drafted with flexibility. For any sport to recruit and retain participants there must be a pathway to follow and motivation to follow it. The retention of proficient sailors is vital to the continuation of sailing at DSWC. This would also benefit beginner sailors. A better sailing area on the river would retain proficient sailors. Beginners would be able to crew for them, thereby improving their skills and creating an upward spiral of enthusiasm and motivation.

183. The IR questioned the feasibility of the pier. Things have moved forward substantially in the last 18 months. An outline plan has been drafted and a Navigational Risk Assessment has been completed. The Port of London Authority, the EECF (as freeholder) and the Local Authority are supportive. The local

[146] This is a summary of the comments made orally by Mr Young and in his note at OD21
[147] This is a summary of the comments made orally by Mr Davis and in his note at OD20

authority is working up plans to redevelop the slipway into a riverside park and is engaging with DSWC to ensure there is synergy across both projects.

184. DSWC finds itself in a perverse legal position. The Inquiry has (rightly) focussed on the differences in impacts between the consented scheme and the appeal scheme. However, the entire mitigation package is being assessed, not just the uplift from £756,000 to £1,139,000. It is against natural justice to say that a further, albeit small, decrease in sailing quality is not material, whilst removing the mitigation that made the original impact acceptable.

185. The appellant has had 17 months since the IR was published. It has altered other aspects of the UU but has done nothing to address the deficiencies relating to mitigating impacts on sailing quality. The appellant must be instructed to make the mitigation compliant or face refusal.

Ruth Bravery

186. Following the Grenfell fire, Government has issued advice to owners of multi-storey buildings. This guidance would apply to the appeal scheme and should be taken into account. Many thousands of occupiers of tall buildings are currently being profoundly affected by bills for fire-watching and increased insurance premiums. Only a tiny fraction of applications for Government funding have been decided. Until building defects are remedied, many leaseholders are trapped in properties they cannot sell. The newest fire engines in the Borough are not based in the Isle of Dogs and would take 20 minutes to arrive. The horseshoe plan form of the dockside buildings proposed would not enable fire engines with tall ladders to get close. There was a recent fire in a modern multistorey building that spread between three floors, trapping residents in their homes for up to an hour, leaving 44 people in need of treatment. The Council's reports don't deal with fire safety and the building regulations have not changed. It would be wrong to approve a massive multi-storey development when all these challenges have yet to be resolved.

187. The pandemic has highlighted the lack of open space in the Isle of Dogs. With many more people staying at home it has been a challenge to walk along the pavements of Westferry Road. The available parks have been packed with people. The spaces in the appeal scheme would be far too small and in shade for much of the day. The lesson of the pandemic is that we should not build such high density neighbourhoods, exacerbating already cramped conditions. Pressures on young people have been particularly acute, with teenagers out of school and a lack of facilities for them. The proposal is not a sustainable form of development. If it were to be approved, attention should be given to infrastructure, fire safety guidance, provision of the new school and mitigation for impacts on DSWC.

Councillor Peter Golds[148]

188. There is a shortage of school places in this densely populated part of London. Provision of a new school was an important aspect of the s106 Agreement for the consented scheme. Concerns about delays have been raised with the relevant Minister. In March 2021 the Council's Director of Place confirmed that the Council

[148] This is a summary of the comments made orally by Cllr Golds and in his note at OD26

"*had served notice under the s106 for the DfE to step into the previous arrangement between the Council and developer*". In April 2021 the Minister confirmed that the Government's intention is to "*secure the site*". The Minister has concerns as to the speed of negotiations.

Councillor Mufeedah Bustin

189. The pandemic has resulted in increased unemployment, poverty and deprivation in the Borough. Increased unemployment has particularly affected sectors with low-paid and unskilled jobs. There must be some doubt that the proposed commercial units will be taken up. For example, some units within the Arena Tower development have been converted to residential use. The same is likely to happen here.

190. The Borough's Race and Equalities Commission has found clear links between inappropriate housing, overcrowded accommodation and health inequalities. There is a need for more social housing for black and minority ethnic residents. The lack of family housing proposed would fail to improve this situation and the affordable housing offer is poor.

WRITTEN REPRESENTATIONS

191. There were around 25 written representations in response to the consultation on the reopened Inquiry. Most of these were from objectors to the proposal, some of whom also made oral representations. The matters raised were, in the main, matters that have either been discussed above or were raised at the first Inquiry and covered in the IR.

CONDITIONS

192. Annex E of the IR set out the conditions that I recommended should be imposed if the Secretary of State was minded to allow the appeal. The Council, the appellant and the GLA agree that there is no need to change those conditions, or the reasons for imposing them, except in relation to three updated references. In Condition 18 (phased delivery of residential units), a reference to the construction programme in the ES would need to be amended to reflect the revised construction programme in the ES Addendum. Condition 30 (television interference studies) and Condition 31 (landscaping) contain references to the UU. It would be necessary to amend the date of the UU in each of those conditions.

193. Annex D to this report sets out the changes to the three conditions that would require updating. It also includes additional suggested conditions that were put forward at the reopened Inquiry[149]. The additional conditions reflect policies in the LonP 2021 and the LP 2031. With one exception (Condition 50) these were not controversial. I have considered the additional suggested conditions in the light of NPPG. Whilst I have adjusted some detailed wording, in the interests of clarity, the substance of the conditions in Annex D is the same as those suggested.

194. Condition 41 requires approval of details of fire evacuation lifts. Condition 43 requires approval of Fire Statements. These conditions are necessary in the

[149] The final iteration of the schedule is ID18

interests of fire safety. Condition 42 requires approval of details of infrastructure for public drinking water in the interests of sustainable development and waste minimisation. Condition 44 requires approval of an Air Quality Positive Statement in the interests of protecting and improving local air quality.

195. Condition 45 sets out a process for monitoring and reporting on energy performance and Condition 46 requires reporting of a whole life carbon assessment for each building. These conditions are necessary in the interests of sustainable development. Condition 47 requires approval of details of ducting space for digital connectivity in the interests of contributing to London's economy. Condition 48 requires approval of a Circular Economy Statement and Operational Waste Management Strategy and Condition 49 requires reporting of recycling and waste recovery. These conditions are necessary in the interests of maximising the re-use of materials and contributing to sustainable development. Condition 48 is a pre-commencement condition. It is necessary for it to be in this form because it relates to the construction phase. The appellant has agreed to this condition.

196. Condition 50 requires submission and approval of evidence to show that an urban greening factor of 0.21 will be achieved. The condition seeks to secure the level of urban greening that the Council and the appellant have agreed. The appellant expressed concern that this condition would duplicate Condition 31 (landscaping). However, under Condition 31, landscaping details would be submitted for each of the plots identified in the UU, whereas the urban greening factor is to be achieved across the scheme as a whole. I have adjusted the detailed wording of Condition 50 to make that clear. On that basis, I consider that Condition 50 would complement Condition 31 and would be necessary in the interests of improving urban greening.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets [n] refer to earlier paragraphs in this report. References to paragraphs in my previous report dated 20 November 2019 have the prefix IR (IRxx).

197. These conclusions begin with the matters set out in the Secretary of State's letter of 21 December 2020. I then return to the main considerations identified in the IR in the light of those matters, before considering the proposal against the development plan as a whole and carrying out the balancing exercises required by law and policy.

The matters set out in the Secretary of State's letter of 21 December 2020

The implications of the adoption of the London Borough of Tower Hamlets Local Plan

198. At the time of the IR, the development plan included the London Borough of Tower Hamlets Core Strategy 2010 (CS), the London Borough of Tower Hamlets Managing Development Document 2013 (MDD) and the London Borough of Tower Hamlets Adopted Policies Map 2013. Those documents have now been superseded and any references to conflicts to the policies they contained are no longer relevant. The IR noted that the draft Tower Hamlets Local Plan (draft THLP) contained a number of policies which were broadly similar to equivalent policies in adopted plans (IR44). The report of the Examination of the draft THLP post-dated the Inquiry but all parties were given an opportunity to comment on that report and the responses were taken into account in the IR. The Council submitted that the plan was, by then, at a very advanced state such that it should attract very substantial weight (IR276). [12, 37, 47]

199. At the reopened Inquiry, no party suggested that there were significant changes of substance between the Tower Hamlets Local Plan 2031 (LP 2031) and the previous development plan. The Council submitted that the substance is virtually identical, with the only change of note relating to the provision of family housing. Site allocation 18 of the MDD (which covered Westferry Printworks) included various design principles, one of which was that development should successfully include and deliver family housing. The equivalent site allocation in LP 2031 (site allocation 4.12) requires that development will be expected to maximise the provision of family homes. [113]

200. I agree with the Council that the inclusion of this site-specific requirement to maximise the provision of family homes in the development plan is a material change in policy. It is right to point out that the newly adopted policy was included in the draft THLP and was taken into account in the IR (IR547). Even so, the fact that the policy now carries the full weight of the adopted development plan is a material factor. The same is true of other policies which were emerging policies at the time of the IR. I shall return to the issue of compliance and/or conflict with such policies below. [137]

201. In terms of the substance of the polices, I agree with the parties that there have not been changes (other than as mentioned above) that are important in the context of this appeal.

The impact of the adoption by the London Borough of Tower Hamlets of a CIL charging schedule which took effect on 17 January 2020

202. It is common ground that the appeal scheme would be liable for Community Infrastructure Levy (CIL). In accordance with the Council's adopted charging schedule, the amount of CIL is agreed to be about £43 million. This figure has been included in the viability assessments that are discussed below. As of 14 January 2020, the date of the Secretary of State's decision (DL), CIL would not have been payable as the charging schedule had not then been adopted. The CIL payment is therefore a change in circumstances. The parties disagreed as to whether it should be regarded as a material factor in the planning balance. [48, 49]

203. The appellant argued that the CIL payment should be regarded as a significant public benefit because it would be used to fund infrastructure within Tower Hamlets. The Council and the GLA pointed out that the payment of CIL is a legal requirement, and also a policy requirement under LP 2031 Policy D.SG5 1(a), such that it should not be counted as a planning benefit. [129, 169]

204. National Planning Practice Guidance (NPPG) refers to s70(2) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act), which provides that a local planning authority must have regard to a local finance consideration so far as it is material. CIL is a local finance consideration. NPPG advises that:

"*Whether or not a 'local finance consideration' is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body*".

and

"*In deciding an application for planning permission or appeal where a local financial consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development*." [51, 169]

205. The question of connection to the development seems to me to be pertinent here. The appellant argued that there would be no such connection because the UU would provide the contributions needed to mitigate the impacts of the appeal scheme and the Council would be free to spend the CIL payment anywhere in the Borough. In any event, there was no evidence before the reopened Inquiry that the CIL payment would be used in any particular way. There was no evidence that the payment would make the development acceptable in planning terms, or that it would have any connection to the development. Consequently, having regard to NPPG, I consider that in this case very little weight should be given to the CIL payment as a public benefit in the planning balance. The payment is relevant to the question of viability and affordable housing, which is discussed below. [50, 51, 169]

206. Whilst I appreciate that the payment would be substantial, that is a function of the scale of the appeal scheme. I also note the appeal decision at Warburton Lane, Trafford. However, the facts there were different because the Inspector found that the payment was necessary to deliver services and infrastructure to

support the development. Finally, I note that there has been a change of circumstances insofar as CIL would not have been payable at the time of the DL. However, given my finding that very little weight should be attached to this factor now, it matters not whether it would have been payable then. [50, 129]

The implications of progress on the London Plan

207. At the time of the IR, the development plan included the LonP 2016. That plan has now been superseded and any references to conflicts to the policies it contained are no longer relevant. The IR noted that the draft LonP contained a number of policies which were broadly similar to equivalent policies in adopted plans (IR44). The report of the Examination in Public of the LonP was published in October 2019, after the close of the first Inquiry. However, all parties had an opportunity to comment on that report and the responses were taken into account in the IR. The London Plan 2021 (LonP 2021) has been made and was published on 2 March 2021. [12, 37]

208. One matter where there has been a change of policy wording since the DL is the provision of family housing. Policy H12(C) of the daft London Plan (as it then was) stated that Boroughs should not set prescriptive dwelling size mix requirements (in terms of number of bedrooms) for market and intermediate homes, although the draft plan did allow for a preferred housing mix to be set out as part of a site allocation (IR545 and IR546). Corresponding Policy H10(A)(9) of the LonP 2021 states that applicants and decision-makers should have regard to "*the need for additional family housing and the role of one and two bed units in freeing up existing family housing*".

209. The appellant argued that this change is of little significance because the IR took account of emerging Policy D.H2(3), which required 20% of market units to be three or four bedrooms (IR543). The IR found that the appeal scheme would not maximise the provision of family homes and that this was a significant disadvantage (IR547). Consequently, in the appellant's view, significant weight has already been given to this factor. Whilst the emerging policies were indeed taken into account in the IR, it seems to me that this change of wording in the LonP 2021 gives greater emphasis to the need for family housing in the development plan. [46]

210. The GLA argued that the policies of the LonP 2021 relating to design and heritage are more robust than equivalent policies in the LonP 2016, such that greater weight should now be attached to the conflicts with these policies than was identified in the IR. It was not suggested that the wording of the relevant policies had changed in a significant way compared with the draft plan that was referred to in the IR. Rather, it was argued that greater weight should be attached because the new policies are more robust and they are now part of the development plan. [137, 143, 144]

Design policies

211. The GLA submitted that the LonP 2021 represents a complete change of approach compared with LonP 2016, introducing a design-led approach to determining the optimum development capacity of sites (as stated in Policy GG2). The appellant argued that both the old and new plans required high quality design. The new policies are longer and more detailed than their predecessors. It is fair to point out, as the appellant did, that the GLA did not identify any wholly

new design criteria that had not been referred to (in some manner) in the old plan and considered at the first Inquiry. Nevertheless, it is clear that the Report of the Examination in Public of the London Plan did find that the suite of design policies (as a whole) represented a new approach. The report responded to concerns about the loss of the former density matrix by saying that retention of the matrix would have conflicted fundamentally with the design-led approach that was being advocated. The design policies of LonP 2021 cover a broadly similar set of considerations to the corresponding policies in LonP 2016. Nevertheless, I consider that the design-led approach represents a change of emphasis. I have no doubt that this change is intended to have consequences for development management. The fact that these policies now form part of the adopted development plan is a material change in circumstances. [37, 43, 45, 139, 141, 142]

212. With regard to my assessment, I previously attached significant weight to this factor due to the degree of harm that would be caused to the character and appearance of the area and the wide area over which that harm would be experienced. Whilst I have taken account of the new policies, they do not alter the overall balance of issues in my assessment.

Heritage policies

213. The GLA argued that LonP 2021 Policy HC1(C) includes a requirement to avoid harm to heritage assets by integrating heritage considerations early on in the design process. The GLA considers that did not happen in this case, for reasons discussed at the first Inquiry. With regard to WHS, the GLA considers that Policy HC2 of the LonP 2021 is more demanding than its predecessor because it requires proposals to support the management and protection of WHS rather than merely avoiding harm. The appellant pointed out that both the LonP 2016 and the CS contained policies to avoid harm to heritage assets and WHS. [40, 145, 147]

214. In relation to WHS, I note that the Examiners of the London Plan found that the old policy was not totally effective in preventing negative impacts whereas the new policy would actively protect the outstanding universal value of such sites. Moreover, the Department of Culture, Media and Sport has highlighted the guidance in the draft LonP 2021 (as it then was) on the effective management of WHS and their settings. This was in the context of a response to concerns expressed by the World Heritage Committee about the management of London's WHS. I agree that the heritage policies of the LonP 2021 provide a more effective framework for managing impacts on heritage assets, including WHS. The fact that these policies are now included in the development plan is a material change in circumstances. [145, 146]

215. With regard to my assessment, I have already attached considerable importance and weight to these matters for the reasons given in the IR (IR472). So, whilst I take account of the new policies, they do not alter the balance of issues as I see it. [41]

Affordable housing

216. At the time of the IR, the requirement for MSR (in appropriate circumstances) was contained in guidance and emerging policy. The fact that MSR is now addressed in LonP 2021 Policy H5, which is part of the adopted development

plan, is a material change in circumstances. I return to the question of compliance/conflict with Policy H5 below. [138]

Fire safety

217. Although fire safety was referred to in LonP 2016, Policy D12 of LonP 2021 includes significantly more detail and a new requirement for Fire Statements to be submitted with major development proposals. This requirement cannot be complied with now because the appeal application was submitted well before the policy came into effect. At the reopened Inquiry, this was not a controversial matter between the Council, the GLA and the appellant, although fire safety concerns were raised by an interested party. At my request, the appellant submitted a note setting out how fire safety had been considered during the development of the design. The Council, the GLA and the appellant agreed that suggested Condition 41, which would require approval of details of fire evacuation lifts, and Condition 43, which would require approval of Fire Statements for each building, would satisfactorily address this issue. I share that view. [11, 186]

The implications for the proposal of these changes and any other changes of circumstances on the viability of the proposal

218. The Council, the GLA and the appellant have revisited their respective viability assessments in the knowledge that the scheme would now be liable for a CIL payment of around £43 million. At the first Inquiry, several of the inputs to viability modelling were disputed. The parties have had regard to the findings on those matters set out in the IR (IR502 to IR532). All of the inputs to the modelling have now been agreed, as recorded in the viability statement of common ground. Although there was some suggestion by the appellant's viability witness that the agreed figure for benchmark land value might not be appropriate, that suggestion was not supported by any evidence and was not relied on in the appellant's closing submissions. [149]

219. The parties are in agreement that, having re-run the appraisals with the agreed inputs (including the addition of CIL), if the appeal scheme includes 21% affordable housing (split 70% affordable rent and 30% intermediate) no significant surplus or deficit is generated when compared against the agreed target IRR of 14%. [53, 114]

220. No other changes of circumstances have been identified that would have a bearing on the viability of the proposal. I conclude that the appeal scheme would be viable with the current affordable housing offer of 21%.

Any material change in circumstances, fact or policy, that have arisen since the DL of 14 January 2020 which the parties consider to be material to the Secretary of State's further consideration of the appeal

221. The appellant considers that there have been three material changes in circumstances, all of which it says weigh in favour of the appeal. They are compliance with affordable housing policies, the results of the housing delivery test (together with the implications for housing land supply) and the economic impact of the pandemic. I return to affordable housing policies later in this report. [54]

Housing Delivery Test and housing land supply

222. The 2020 Housing Delivery Test (HDT) result for Tower Hamlets indicated that delivery over the last three years was 74% of the requirement. In the terms of the National Planning Policy Framework (the Framework), anything less than 75% is regarded as being substantially below the requirement. This has two policy effects. First, as the HDT result is below 75%, paragraph 11(d) of the Framework is engaged, such that planning permission should be granted unless the circumstances set out in 11(d)(i) or 11(d)(ii) apply. Second, as the HDT result is less than 85%, it is necessary to add a 20% buffer when calculating the five year housing land supply. On that basis, the Council cannot demonstrate a five year supply. This also has the effect of engaging paragraph 11(d). This is a material change in circumstances since the time of the DL. The appellant argues that this is a change to which significant weight should be attached. [79, 80, 81]

223. The question of whether or not paragraph 11(d) is engaged is an objective test and the extent by which a requirement is met or not met is not relevant in this context. However, the extent of any shortfall can be relevant to the weight to be given to housing land supply in the planning balance. The Council sought to put the HDT result into context, pointing out that the three year delivery target of 11,002 homes was missed by only 146 homes. The Council's evidence that delivery in Tower Hamlets can have an uneven pattern due to reliance on large high density schemes was not disputed. I note that there was a downturn in delivery in two particular years but that there was a substantial increase in 2019/20. In terms of supply, the identified five year supply of 20,170 homes amounts to 4.84 years of the requirement. [80, 126]

224. The total amount of housing land supply in Tower Hamlets is very large and the shortfall against the requirement is small. Having regard to both delivery and supply data, I do not consider that the shortfalls are such that this should be a significant factor in the overall balance. Whilst this is a material change that weighs in favour of the appeal, I attach only limited weight to it.

225. The appellant argued that there is now a greater need for affordable housing, by reference to data relating to households in priority bands and numbers of people sleeping rough. However, there was no updated housing needs assessment before the reopened Inquiry. The IR notes that there was agreement that the need for affordable housing in Tower Hamlets was pressing (IR584). Whilst there is no evidence that the position has changed, the evidence before the reopened Inquiry does not demonstrate that there has been a change of such significance as to affect the planning balance in this case. [83, 127]

The economic impact of the pandemic

226. The appellant submitted a report by Hatch Associates which describes the effect of the pandemic on the economy at UK level, across London and in Tower Hamlets. The appellant argued that, as the appeal scheme is around twice the size of the consented scheme, greater weight should now be attached to the economic benefits associated with it because of the contribution it could make to economic recovery. [88, 90]

227. Whilst the economic impacts of the pandemic have been profound, they are not expected to be permanent. Economic output is expected to return to pre-pandemic levels. The Hatch Associates report notes that recovery is expected to

occur by the end of 2022. The IR concluded that, once operational, the appeal scheme is predicted to generate 372 jobs on site, associated with the provision of office space, financial and professional services, retail, restaurant and community uses. The consented scheme would also generate employment during the operational phase from a similar mix of uses (IR590). The construction programme set out in the ES Addendum identifies that work on infrastructure, utilities and basements would run until March 2023 with construction of the first buildings starting in August 2022. There is therefore no prospect of the new employment uses being operational until well after the post-pandemic recovery is expected to have occurred. [171]

228. The IR took account of the fact that the appeal scheme would result in greater benefits in terms of employment and training during the construction phase (IR591). However, these would be spread over the 10 years of the construction period. In 2021 and 2022 the focus would be on construction of infrastructure, utilities and basements. The layout of the two schemes is similar and there is no evidence that the economic benefits during this period would be materially different from those of the consented scheme.

229. The Inspector who considered an appeal at Warburton Road, Trafford found that the construction of housing proposed in that case would support post-pandemic economic recovery. However, the facts of that case were different, in that it was a greenfield site and there is no reference in the decision to a fallback scheme that would also deliver economic benefits. That appeal decision is of limited relevance to this appeal. [89]

230. I conclude that, whilst the economic impact of the pandemic is a material consideration, in this case it does not lead me to alter the weight to be attached to the economic benefits described in the IR (IR591).

Isle of Dogs Neighbourhood Plan

231. The Neighbourhood Plan (NP) has recently become part of the development plan. The NP contains policies which seek to inform the assessment of proposals for large and high density schemes and to mitigate the impacts of such schemes on infrastructure. Policy D1 requires proposals for high density development to be accompanied by an Infrastructure Impact Assessment. Policy D2 requires such applications to specify how they conform to the GLA's housing Supplementary Planning Guidance (SPG). Policy ES1 requires applications for strategic development to include a feasibility study for meanwhile uses, in the event that development is delayed. Policy SD1 seeks high design and environmental standards, including encouragement for residential buildings to meet the Home Quality Mark. Policy 3D1 requires a 3D model to be submitted with strategic applications. [30, 176 to 178]

232. These policies are directed to information that is to be submitted with applications. In this case, the application was submitted well before the NP became part of the development plan. The submitted information (which includes an ES) is extensive but not necessarily in the form now required by the NP. To this extent, the proposal does not comply with these policies. The Council, the GLA and the appellant have agreed in the supplementary statement of common ground that the progress of the NP does not result in any new material implications for consideration of the proposed development which would require reassessment of the proposal. I attach significant weight to that agreement. [33]

233. I consider that the proposal would not accord with NP Policies D1, D2, ES1, SD1 and 3D1. However, having regard to the information submitted with the application, the significant works to implement the consented scheme that have already taken place and the supplementary statement of common ground, I attach only limited weight to this conflict.

The main considerations identified in the IR

234. The main considerations identified in the IR are as follows:

- the effect of the scale, height and massing of the proposed development on the character and appearance of the surrounding area;
- the effect of the proposal on strategic views and the settings of the Maritime Greenwich World Heritage Site and the Grade I listed Tower Bridge;
- the effect of the proposal on the recreational use of Millwall Outer Dock,
- the mix of market and affordable housing in terms of numbers, size and tenure, and
- the effect of the proposal on the provision of public open space.

The effect of the scale, height and massing of the proposed development on the character and appearance of the surrounding area;

235. The IR concluded that the appeal scheme would be harmful to the character and appearance of the area, representing a marked step up in height, mass and scale at the southern end of the Millwall Inner Dock Tall Building Zone (TBZ). It would not step down, nor would it support the central emphasis of the Canary Wharf cluster. It would fail to create a satisfactory transition in scale to the adjoining residential areas to the north of the site and to the south of Millwall Outer Dock. Moreover, it would not be well related to the street scene of Westferry Road. (IR436 and 437 conclude on the assessments set out at IR420 to IR435).

236. Reviewing these conclusions in the light of the recently adopted development plan, I note that LonP 2021 Policy D3 seeks to optimise site capacity through a design-led approach, to ensure that development is of the most appropriate form for a site. In my view the appeal scheme would not do that. Instead, it seeks to maximise capacity, resulting in a proposal of excessive height, scale and mass which would fail to respond to the existing character of the place. It would not enhance the local context by responding positively to local distinctiveness. I consider that the proposal would conflict with Policy D3.

237. LonP 2021 Policy D9 relates to tall buildings. Although the site is within a TBZ as identified in the development plan, I consider that the scale, height and mass of the proposal is such that it would not make a positive contribution to the skyline. Nor would it make a positive contribution to the local townscape or achieve an appropriate transition in scale to buildings of significantly lower height. The proposal would not reinforce the spatial hierarchy of the local and wider context. For the reasons given below, it would also cause harm to the significance of heritage assets, would harm the ability to appreciate a WHS and

would compromise the enjoyment of an adjoining water space. I consider that the proposal would conflict with Policy D9.

238. I consider that the proposal would conflict with LP 2031 Policy S.DH1 because it would not be of an appropriate scale, height, mass, bulk and form. As such, it would not deliver high quality design which respects and positively responds to its context.

239. LP 2031 Policy D.DH6 relates to proposals for tall buildings, which should apply the design principles for individual TBZs that are set out in the policy. The proposal would fail to step down from the Canary Wharf cluster to support its central emphasis, as required by the design principles for the Millwall Inner Dock TBZ. Moreover, the height, scale and mass of the proposal would not be proportionate to the role and function of the location. It would not take account of the surrounding context or enhance the character and distinctiveness of the area. Nor would it provide a positive contribution to the skyline. I consider that the proposal would conflict with Policy D.DH6.

240. Site allocation 4.12 (Westferry Printworks) of the LP 2031 sets out design principles for the site. These include that buildings should step down from Marsh Wall to the smaller scale residential properties within the southern part of the Isle of Dogs and to the west of Millharbour. They also include that proposals should protect or enhance the setting of the Maritime Greenwich WHS. The proposal would not accord with these principles and would therefore conflict with site allocation 4.12.

The effect of the proposal on strategic views and the settings of the Maritime Greenwich World Heritage Site and the Grade I listed Tower Bridge

Strategic views

241. The IR concluded that the proposal would be a neutral factor in relation to the strategic view from Greenwich Park. The strategic view would not therefore be harmed. (IR446 concludes on the assessments set out at IR439 to IR445). It also concluded that the strategic view of Tower Bridge from London Bridge would not be harmed. (IR460 concludes on the assessments set out at IR457 to IR459). Reviewing these conclusions in the light of the newly adopted development plan, I consider that the proposal accords with LonP 2021 Policy HC4 which seeks to protect strategic views.

Listed buildings and the Maritime Greenwich WHS

242. The IR concluded that the proposal would fail to preserve the setting of the Old Royal Naval College because it would distract from the ability to appreciate the listed building in certain views from Greenwich Park. In the terms of the Framework, the IR characterises the resulting harm to the significance of the Grade I listed building as less than substantial. Given that the Old Royal Naval College is an important component of the WHS, the IR concluded that harm to its setting also represents harm to the setting of the WHS and to Attribute 1 of its Outstanding Universal Value (the architectural ensemble that includes the Old Royal Naval College). (IR455 and IR4356 conclude on the assessments set out at IR447 to IR454).

243. The IR concluded that the proposal would fail to preserve the setting of Tower Bridge because it would distract from the ability to appreciate the Grade I listed

building in views from London Bridge. In the terms of the Framework, the IR characterises the resulting harm to the significance of the listed building as less than substantial. (IR469 concludes on the assessments set out at IR461 to IR468).

244. Reviewing these conclusions in the light of the recently adopted development plan, I consider that the proposal would conflict with LonP 2021 Policy HC1 which seeks to conserve the significance of heritage assets by being sympathetic to the assets' significance and appreciation within their surroundings. Moreover, the proposal has failed to avoid harm by integrating heritage considerations early on in the design process. It would also conflict with Policy HC2 which seeks to conserve, promote and enhance the Outstanding Universal Value of WHS. It would compromise the ability to appreciate the integrity of one of the attributes of the Outstanding Universal Value of the Maritime Greenwich WHS.

245. I consider that the proposal would conflict with LP 2031 Policy S.DH3 which seeks to preserve or, where appropriate, enhance designated heritage assets in a manner appropriate to their significance. The proposal would fail to safeguard the significance of heritage assets and would not be appropriate in terms of height, scale and form in their local context. I consider that the proposal would conflict with Policy S.DH5 in that it would have a detrimental effect on the Outstanding Universal Value of the Maritime Greenwich WHS.

The effect of the proposal on the recreational use of Millwall Outer Dock

246. The IR agreed with the findings of the ES that there would be a significant adverse effect on sailing conditions in the Millwall Outer Dock for novice and inexperienced sailors. It acknowledged that other water-based activities would not be affected. Nevertheless, having regard to the acknowledged social benefits of the current sailing activities, and the scale of the reduction in sailing opportunities, the IR concluded that this would represent a significant disadvantage of the proposals. (IR481 concludes on the assessments set out at IR475 to IR480).

247. With regard to the proposed mitigation provided for in the UU, the IR made two overarching points before considering some of the details. First, the IR found that the deployment of the funds would be subject to approval by the Council. At the point of decision, the decision-maker could have no certainty that all items, or any particular item, would actually be delivered. There was nothing to prevent the use of substantial funds for purposes which had not yet been identified. The IR found that, in these circumstances, it was not possible to be satisfied that the obligation was necessary to make the development acceptable in planning terms (IR490). Second, the IR found that there was no credible explanation for the significant increase in the amount of the contribution between the extant Agreement for the consented scheme and the UU. Consequently, the IR concluded that it had not been shown that the obligation was directly related to the development (IR491 and IR492).

248. Although there is now a new UU, the provisions relating to mitigating impacts on sailing conditions are unchanged. The overarching points referred to above apply with the same force now as they did in the IR. Consequently, I consider that the UU provisions do not meet the tests set out in the CIL Regulations, regardless of the matters raised at the reopened Inquiry.

249. The IR noted that it is important to have in mind the impact that the proposed measures are intended to address. The impact identified in the ES is a significant reduction in the number of days per month which would be suitable for novice and inexperienced sailors. In other words, there would be a loss of sailing opportunity for this specific group (IR493). The Docklands Sailing and Watersports Centre (DSWC) is seeking to gain access to the river for water-based activities. At the reopened Inquiry, representatives of DSWC provided further information about a proposed river pier. They advised that access to the river for more experienced sailors would also benefit the novice and inexperienced sailors who sail on the dock. [92, 180 to 183]

250. With regard to the pier, matters have moved on since the IR in that there is now an outline plan, a navigational risk assessment has been carried out and there has been engagement with stakeholders. In my view, this information provides greater confidence that the project is likely to be technically feasible. That said, there is limited evidence that the pier would mitigate the loss of sailing opportunity on the dock for novice and inexperienced sailors. Some sailing capacity may be freed up within the dock and some novices may take the opportunity to crew for more experienced sailors using the river. However, at best, I consider that this could only be a modest level of partial mitigation. In any event, the UU would not secure the delivery of a pier so the proposed pier cannot be relied on as mitigation. [183]

251. As noted above, the IR concluded that there would be a significant adverse effect on sailing quality for novice and inexperienced sailors and that this would represent a significant disadvantage of the proposals. I have had regard to the additional information provided by DSWC but this does not alter the conclusion of the IR that the UU provisions do not meet the tests set out in the CIL regulations. Accordingly, I attach no weight to the mitigation measures set out in the UU.

252. Reviewing these conclusions in the light of the recently adopted development plan, I consider that the proposal would conflict with LonP 2021 Policy SI 16, which seeks to protect and enhance water related community facilities, and with Policy SI 17 which states that proposals adjacent to docks (amongst other types of waterways) should contribute to active water related uses. The proposal would also conflict with LP 2031 Policy S.OWS2, which requires proposals to promote water spaces for recreational and leisure uses, and with Policy D.OWS4 which requires proposals adjacent to water spaces to provide increased opportunities for water related sport and recreation.

253. The IR concluded that the effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme (IR501). That conclusion is unchanged.

The mix of market and affordable housing in terms of numbers, size and tenure

254. The UU would provide for 21% of the scheme (by habitable rooms) to be delivered as affordable housing. The amount of affordable housing would be the same as that offered previously. The difference, following the introduction of Borough CIL and agreement on the inputs to viability modelling, is that 21% is now agreed to be the maximum viable amount. [151]

Payment of CIL at the outset

255. The appellant intends to pay all of the Borough CIL at the outset. This is reflected in the viability assessments underpinning the viability statement of common ground. The GLA provided evidence that, if the CIL payments were to be phased, this would have a significant impact on the internal rate of return (IRR), such that more affordable housing could be provided. This evidence was not disputed. [63, 159]

256. The CIL Regulations allow for payment to be spread across phases where there is a planning permission which expressly provides for development to be carried out in phases. The appellant points out that this would not be a phased permission (for the purposes of the CIL Regulations) because no phasing condition has been put forward. The appellant argues that no phasing condition has been put forward because the Council and the GLA objected to such a condition when the appellant raised it at the first Inquiry. I do not accept that reasoning. The GLA's objection (at the first Inquiry) was essentially procedural, not substantive. In any event, all parties have had the opportunity to come back to the reopened Inquiry and make submissions for or against such a condition. No party did so. [61 to 63, 159, 160]

257. It seems to me that the appellant has simply chosen to pay all of the Borough CIL at the outset. There is no suggestion from any party that the appellant is not entitled to deal with its CIL liability in that way. Consequently, this is not a matter that needs further comment.

Whether a Mid Stage Review is required

258. LonP 2021 sets out a threshold approach for major development proposals. Schemes that meet a minimum of 35% affordable housing (and other criteria) will follow a Fast Track route. They are not subject to viability assessment at application stage although they are subject to an Early Stage Review (ESR) if not implemented within two years. Schemes that do not provide 35%, such as the appeal scheme, will follow the Viability Tested Route (VTR). VTR schemes will be subject to an ESR if not implemented within two years, a late Stage Review (LSR) when 75% of the units have been let/sold and "*Mid Term Reviews prior to implementation of phases for larger phased schemes*" (MSR)[150]. LP 2031 Policy S.H1 sets an overall target of 50% of all new homes to be affordable, with a minimum of 35% affordable housing on sites providing 10 or more units (subject to viability).

259. The UU provides for ESR and LSR. The GLA had some concerns about the provisions relating to those matters, which I return to below. The question of whether MSR is required under Policy H5 was a controversial matter which turns on whether the appeal scheme is to be regarded as a "*larger phased scheme*" for the purposes of the policy. The appellant argued that the matter should be determined by reference to the definition of a phased planning permission in the CIL Regulations, on the basis that this would provide a clear and workable definition. On that approach, in the absence of a phasing condition, this would not be a phased permission. [75]

[150] Although Policy H5 refers to "Mid Term Review" this was generally referred to as a "Mid Stage Review" at the reopened Inquiry, so I have used MSR as the abbreviation

260. However, I see no reason to import into the LonP 2021 a definition from legislation which serves a different purpose. If the authors of the LonP 2021 had felt the need for a definition they could have provided one. It is commonplace for terms to be used in planning policies without definitions being given. In this case, I see no difficulty with the words "*larger phased scheme*" being read in context and given their natural meaning by the decision-maker, as a matter of planning judgment. [154]

261. There are a number of factors to take into account. First, there is the overall scale and duration of the project. It would be amongst the very largest schemes coming forward in London and would be implemented over a 10 year period. Second, the construction programme set out in the ES Addendum shows that development would proceed in a series of packages. Each package would typically contain three buildings and they would be developed in sequence. To my mind it matters not whether the word "*package*" or "*phase*" is used. Third, as noted in the IR, Condition 18 would secure the phased delivery of the residential units to ensure that the increase in residential population at the appeal site is aligned with planned increases in the capacity of the Docklands Light Railway (IR395). Whether or not one regards Condition 18 as a phasing condition, it is one indication that this scheme would in fact be built out in a phased way. Fourth, all of the viability experts who have given evidence have based their modelling on the phasing and programming set out in the application documents. Indeed, that is why the experts agreed that the use of the IRR approach would be appropriate in this case. [74, 116, 153, 155 to 158]

262. These factors, taken together, indicate that the appeal scheme should properly be regarded as a "*larger phased scheme*" for the purposes of Policy H5. The UU does not provide for MSR so, to this extent, there is conflict with the policy.

The implications of not providing for MSR

263. LonP 2016 states that the purpose of reviews is to ensure that affordable housing delivery is maximised as a result of any future improvement in viability. In this respect the plan is consistent with NPPG, which advises that plans should set out how viability will be assessed over the lifetime of a development. NPPG goes on to say that:

"*where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time*"

The appellant suggests that this advice is not applicable in this case because 21% has been accepted as the maximum reasonable amount. However, in my view the advice is pertinent to the circumstances of the appeal scheme where an offer below 35% has been agreed on viability grounds. I consider that NPPG supports the approach of seeking to achieve 35%, or something closer to it, over time if viability improves. However, whatever view is taken on the interpretation of the NPPG, it is clear that the development plan is seeking to maximise affordable housing delivery through the construction period, not just at the point of a development management decision. [57, 59, 161]

264. This is particularly relevant where a development proposal would be implemented over a long period because there would be greater scope for values and development costs to change. The appeal scheme would have a 10 year

construction period and it seem unlikely that values and costs would remain static over such a long time. It is also particularly relevant in cases (such as this) where the initial level of affordable housing is well below the policy target. [116]

265. ESR would be triggered in the event that there was a delay in implementing the scheme. However, there are substantial below-ground works that are common to both the appeal scheme and the consented scheme. I saw that excavation of the basement was well advanced at the time of the first Inquiry. The appellant advises that works have continued since then, pausing only recently pending a decision on this appeal. Of course, it is possible that the scheme could yet stall, hence the need for the ESR provisions. However, having regard to the construction programme in the ES Addendum, it seems far more likely that substantial implementation would be achieved within two years. It follows that ESR would probably not be triggered in this case. [90, 101]

266. The consequence is that MSR is likely to represent the only opportunity to secure additional affordable housing on site. LSR would come towards the end of the process. Should viability have improved by then, any surplus value would be shared between the Council and the developer. That would support affordable housing elsewhere but would not deliver affordable housing on site. This is an important point because LonP 2021 Policy H4 states that affordable housing should be delivered on site, other than in exceptional circumstances. This is intended to help deliver mixed and inclusive communities. LP 2031 Policy D.H2 also requires development to maximise the delivery of affordable housing on site. [158]

267. The evidence indicates that there is a reasonable likelihood that viability would improve over the 10 year construction period. The GLA has modelled potential changes in both values and development costs using a range of projections. This evidence shows that, with mid-range growth in costs and values, the scheme would become capable of supporting around 30% affordable housing. This would be well above the 21% secured by the UU. [120, 158]

268. I conclude that the absence of provision for MSR is an important matter in this case. This is a very large scheme with an initial affordable housing offer that is well below the policy target (albeit justified on viability grounds). The proposal fails to take the opportunity to move closer to that target over the lifetime of the development. In the absence of MSR, it is unlikely that anything above 21% would be achieved on site. I therefore consider that the proposal conflicts with LonP Policy H5. It also conflicts with LP 2031 Policy S.H1 because it does not provide 35% affordable housing. Whilst that is justified on viability grounds at the outset, it is not justified over the life of the development. The proposal would conflict with Policy D.H2, insofar as that policy requires development to maximise the delivery of affordable housing on site.

269. The appellant argued that MSR is not a new matter. It is fair to point out that the UU before the first Inquiry did not provide for MSR and that emerging Policy H5 was taken into account. Moreover, the Council did not object to the lack of MSR at that stage. However, there was little evidence before the first Inquiry in relation to the implications of providing for MSR, or not. Further evidence has been provided to the reopened Inquiry, within the scope of the matters that the Secretary of State has asked to be informed about. In any event, Policy H5 is now part of the development plan. I am therefore bound to consider whether the

proposal complies with the policy, in the light of all the evidence before me. [71, 77]

Other concerns relating to the UU

270. ESR is required if substantial implementation does not occur within two years. The GLA expressed concern about provisions in the UU which would allow that period to be extended, for example in the event of "*force majeure*" or delay by the Council in discharging conditions. It was suggested that these provisions would reduce the likelihood of ESR being triggered. The appellant argued that ESR is intended to provide an incentive to get on with development and should not, therefore, be brought about by events outside the control of the developer. [69, 70, 163]

271. Whilst incentivising development is one objective of ESR, the LonP 2021 is clear that the purpose of reviews is to maximise the delivery of affordable housing. If development is delayed by more than two years, and viability has improved in that time, affordable housing would no longer be maximised. That is likely to be the case whatever the cause of the delay. I therefore consider that the provisions for extending the period before ESR is triggered would have the effect of reducing the likelihood of ESR taking place. This could result in a failure to maximise the delivery of affordable housing. [117]

272. I note that similar provisions were included in the s106 Agreement for the consented scheme and have also been included in at least one other Agreement to which the Council was a party. However, that does not alter my view of the effect the provisions would have in this UU. [69, 163]

273. The GLA also objected to the principles for viability reviews which, it was suggested, were drawn too broadly and may allow inappropriate costs to be included. A schedule of ineligible costs was suggested for inclusion in the UU. "*Development Costs*" are defined by reference to the "*Application Stage Viability Appraisal*" which is appended to the UU. To my mind, that would assist those involved in interpreting the UU in the future. If the Council was not satisfied with a viability review, due to the inclusion of ineligible costs, it could reject it. If further discussions failed to resolve the matter, then the dispute resolution provisions of the UU would be available to the parties. Whilst the GLA's suggested schedule would do no harm, I do not think that the absence of such a schedule undermines the effectiveness of the UU. [78, 164 to 166]

Other changes to the UU

274. The IR found that the definition of "*substantial implementation*" contained in the previous UU was drafted in a way that would make it less likely that ESR would be triggered. That definition has now been revised and agreed with the Council and the GLA. The inputs to the modelling that would be used in viability reviews have now been agreed in the viability statement of common ground. The cap on on-site provision of affordable housing (following ESR) has been increased from 35% to 50%. The Council's share of any surplus identified at LSR has been increased from 50% to 60%. These changes result from concerns raised by the Council and/or the GLA and from subsequent discussions. The Council agreed that these changes represent improvements on the previous UU. I share that view and have taken them into account. [65]

Mix of tenure types and unit sizes

275. The IR concluded that the proposal would not maximise the provision of family homes as required by the draft THLP (as it then was). This was found to be a significant disadvantage of the scheme. The IR commented that the benefit to be attributed to the delivery of market housing in the overall planning balance should reflect this conclusion. (IR547 concludes on the assessments set out at IR543 to IR546).

276. Reviewing these conclusions in the light of the recently adopted development plan, I consider that the proposal would conflict with LonP 2021 Policy H10 and LP 2031 Policy D.H2 in that it would not make adequate provision for family housing. It would also conflict with LP 2031 site allocation 4.12 (Westferry Printworks) in that it would not maximise the provision of family homes.

277. As in the previous UU, the affordable housing element would be split 70% affordable rent and 30% intermediate. It would accord with LP 2031 Policy D.H2 insofar as that policy deals with the tenure split of affordable housing.

The effect of the proposal on the provision of public open space

278. The IR concluded that the proposal would provide public open space, play space and communal semi-private space and would improve permeability in accordance with the policies of the development plan (as they then were). The public open space and public realm enhancements were found generally to accord with the design objectives of the Opportunity Area Planning Framework and site allocation 4.12 of the draft THLP (as it then was).

279. Reviewing those conclusions in the light of the recently adopted development plan, I consider that the proposal would accord with LonP 2021 Policies D3 and G4 insofar as those policies require development to provide conveniently located green and open spaces. It would accord with Policy D8 which requires proposals to create new public realm that is safe, well-designed and engaging. It would accord with LP 2031 Policy D.OWS3, which states that strategic development should contribute to the delivery of new publicly accessible open space, and with Policy D.DH2 and the design principles of site allocation 4.12, insofar as they relate to securing improvements to permeability and the public realm.

The public benefits as presented by the appellant

280. There is a reasonable prospect that the consented scheme would be implemented if the appeal is dismissed. This position is unchanged from the IR. I have therefore treated the consented scheme as a fallback in my assessments, both in relation to harm and benefits. [101, 106]

281. The IR identified that the appeal scheme would yield a number of public benefits which would be the same as, or similar to, public benefits that would flow from the consented scheme (IR581 and IR586 to IR590). Consequently the appeal scheme would not provide any additional benefits in these regards. The matters identified were:

- regeneration of a strategic brownfield site within the Isle of Dogs Opportunity Area;

- provision of new public open spaces, a dockside promenade, and improvements to permeability and legibility;
- provision for a community centre, health centre and creche;
- provision of restaurants, retail units and public uses at ground floor level that would activate the waterfront and public spaces; and
- employment associated with the provision of office space, financial and professional services, retail, restaurant and community uses.

Those findings are unchanged.

282. The IR concluded that the appeal scheme would provide an uplift from 722 to 1,524 units of residential accommodation (IR582). The inclusion of more double aspect units was identified as a beneficial change. Those matters are unchanged. However, there has been a material change of circumstances in that the Council can no longer demonstrate the five year supply of housing sites required by the Framework. I have concluded above that the total amount of housing land supply in Tower Hamlets is very large and the shortfall against the requirement is small. Having regard to both delivery and supply data, I do not consider that the shortfalls are such that this should be a significant factor in the overall balance. Whilst this is a change that weighs in favour of the appeal, I attach only limited weight to it.

283. On the other hand, the failure to maximise the provision of family homes remains as a significant disadvantage of the scheme. The weight attributable to the conflicts I have identified with LonP 2016 Policy H10, LP 2031 Policy D.H2 and site allocation 4.12 (Westferry Printworks) is increased to the extent that these policies, which were emerging at the time of the IR, now have development plan status.

284. With regard to affordable housing, the appeal scheme would provide an uplift from 140 to 282 affordable homes. The affordable housing would be split 70% affordable rent and 30% intermediate and, in this respect, it would accord with LP 2031 Policy D.H2 insofar as that policy deals with the tenure split of affordable housing. On the other hand, the affordable housing offer remains at 21% which is well below the policy target of 35%. Although this is accepted to be the maximum reasonable amount of affordable housing now, it is unlikely to be the maximum achievable over the life of the development. I consider that the lack of provision for MSR is an important matter in this case. This is a very large scheme with an initial offer that is well below the policy target. In the absence of MSR, it is unlikely that anything above 21% would be achieved on site and the proposal would not contribute to the delivery of mixed and inclusive communities to the extent that it could.

285. There have been changes to some of the affordable housing provisions of the UU that would improve its effectiveness, compared with the previous UU. On the other hand, the UU still contains provisions for extending the period before ESR is triggered that would reduce the likelihood of ESR taking place. This could result in a failure to maximise the delivery of affordable housing. My overall assessment is that the proposal conflicts with LonP Policy H5. It also conflicts with LP 2031 Policy S.H1.

286. It is agreed that there is a pressing need for affordable housing in Tower Hamlets. The consented scheme provides a fallback and would deliver 140 affordable homes. I consider that an increase on that figure should be regarded as beneficial. However, this is a large allocated site and it is therefore important to ensure that it makes an appropriate contribution to meeting housing needs. The appeal scheme would not do that over the life of the development. Drawing all of this together, I consider that the delivery of housing, including affordable housing, should attract only moderate weight in the planning balance.

287. The IR concluded that the UU would make provision for contributions to employment and training, local employment/procurement and apprenticeships (IR591). The extant Agreement contains similar provisions. Given that the appeal scheme would be larger, and the construction period would be longer, the economic benefits of employment and training during construction are likely to be commensurately greater. Overall, the IR attached moderate weight to the social and economic benefits of additional employment during construction, as compared with the consented scheme. Whilst the economic impact of the pandemic is a material consideration, for the reasons given above, it does not lead me to alter the weight to be attached to these benefits.

Conclusions

288. My conclusions start with the balance required by the Framework in circumstances where there is harm to the significance of designated heritage assets. I then consider the proposal in relation to the development plan, before going on to identify whether there are other considerations that indicate that the appeal should be determined other than in accordance with the development plan.

Heritage assets – application of the Framework

289. I have concluded that there would be harm to the settings of the Old Royal Naval College, the Maritime Greenwich WHS and Tower Bridge. In the terms of the Framework, the degree of harm to the significance of the designated assets would be less than substantial harm in all cases. Paragraph 196 of the Framework requires the harm to be weighed against the public benefits of the proposal. NPPG advises that public benefits are not limited to heritage benefits, they may include anything that delivers economic, social or environmental objectives.

290. The IR set out my reasons for concluding that the benefits would not be sufficient to outweigh the harm to the designated heritage assets, such that the proposal would conflict with the policies of the Framework as they relate to designated heritage assets (IR596 to IR598). The benefits considered were the delivery of additional housing (including affordable housing), to which the IR attached moderate weight, and the social and economic benefits of additional employment during construction, to which the IR also attached moderate weight. For the reasons given above, the weight I attach to those factors has not changed. Accordingly, I reach the same conclusion. The benefits would not be sufficient to outweigh the harm to the designated heritage assets and the proposal would conflict with the policies of the Framework in this respect.

The development plan

291. The development plan now includes the LonP 2021 and the LP 2031. I consider that the proposal would be harmful to the character and appearance of the area. It would conflict with LonP 2021 Policy D3, which seeks to follow a design-led approach to optimising site capacity, to enhance local context and to respond positively to local distinctiveness. The proposal would conflict with LP 2031 Policy S.DH1 because it would not be of an appropriate scale, height, mass, bulk and form. As such, it would not deliver high quality design.

292. The proposal would conflict with LonP 2021 Policy D9 and LP 2021 Policy D.DH6 which relate to tall buildings. It would fail to step down from the Canary Wharf cluster to support its central emphasis, as required by the design principles for the Millwall Inner Dock TBZ. It would not make a positive contribution to the skyline. Nor would it make a positive contribution to the local townscape or achieve an appropriate transition in scale to buildings of significantly lower height. The proposal would conflict with LP 2031 site allocation 4.12 (Westferry Printworks) which states that buildings should step down from Marsh Wall to the smaller scale residential properties within the southern part of the Isle of Dogs and to the west of Millharbour.

293. The proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge. It would therefore conflict with LonP 2021 Policy HC1 and LP 2031 Policy S.DH3. These policies seek to preserve or, where appropriate, enhance designated heritage assets in a manner appropriate to their significance. Moreover, the proposal has failed to avoid harm by integrating heritage considerations early on in the design process. The proposal would conflict with LonP 2021 Policy HC2 and LP 2031 Policy S.DH5 in that it would compromise the ability to appreciate the integrity of one of the attributes of the Outstanding Universal Value of the Maritime Greenwich WHS.

294. The proposal would be harmful to the recreational use of Millwall Outer Dock for sailing. It would conflict with LonP 2021 Policy SI 16, which seeks to protect and enhance water related community facilities, and with Policy SI 17 which states that proposals adjacent to docks should contribute to active water related uses. The proposal would also conflict with LP 2031 Policy S.OWS2, which requires proposals to promote water spaces for recreational and leisure uses, and with Policy D.OWS4 which requires proposals adjacent to water spaces to provide increased opportunities for water related sport and recreation.

295. The proposal would conflict with LonP Policy H5 in that it does not make adequate provision for the viability reviews that are necessary to ensure that affordable housing delivery resulting from any future improvement in viability is maximised. It also conflicts with LP 2031 Policy S.H1 because it does not provide 35% affordable housing. Whilst that is justified on viability grounds at the outset, it is not justified over the life of the development. The proposal would conflict with Policy D.H2 in that it would not maximise the delivery of affordable housing on site, due to the absence of MSR.

296. The proposal would conflict with LonP 2021 Policy H10 and LP 2031 Policy D.H2 in that it would not make adequate provision for family housing. It would also conflict with LP 2031 site allocation 4.12 (Westferry Printworks) in that it would not maximise the provision of family homes.

297. The proposal cannot comply with LonP 2021 Policy D12, relating to fire safety, because the policy specifies information that is to be submitted with an application. I consider that the suggested conditions would satisfactorily address this issue. I have also identified conflict with Policies D1, D2, ES1, SD1 and 3D1 of the NP. However, for the reasons given above, I attach limited weight to those conflicts.

298. The proposal would accord with some development plan policies, including the following. I have concluded that it would not harm strategic views and would therefore accord with LonP Policy HC4. It would accord with LP 2031 Policy D.H2, insofar as that policy deals with the tenure split of affordable housing. It would accord with LonP Policies D3 and G4, insofar as those policies require development to provide conveniently located green spaces. It would accord with Policy D8, which requires proposals to create new public realm that is safe, well-designed and engaging. It would accord with LP 2031 Policy D.OWS3, which states that strategic development should contribute to the delivery of new publicly accessible open space, and with Policy D.DH2 and the design principles of site allocation 4.12, insofar as they relate to securing improvements to permeability and the public realm.

299. My overall assessment is that the conflicts with the development plan that I have identified are of such significance that the proposal should be regarded as being in conflict with the development plan as a whole.

Other material considerations

300. Paragraph 11(d) of the Framework is engaged because the Council's most recent HDT result is less than 75% of the requirement and also because a five year housing land supply can no longer be demonstrated. However, designated heritage assets are identified as assets of particular importance for the purposes of paragraph 11. In this case, the policies of the Framework that protect designated heritage assets provide a clear reason for refusing planning permission. It follows that paragraph 11(d) is not a consideration that weighs in favour of the appeal.

301. The proposal would fail to preserve the settings of the Old Royal Naval College and Tower Bridge, which are Grade I listed buildings. It would fail to preserve the setting of the Maritime Greenwich WHS. These are matters of considerable importance and weight.

302. The proposal would be harmful to the character and appearance of the area. It would fail to step down from the Canary Wharf cluster and Marsh Wall. It would fail to create a satisfactory transition in scale to adjoining residential areas. Overall, it would not represent high quality design which responds to its context. I attach significant weight to this matter because of the degree of harm that would be caused and the wide area over which that harm would be experienced.

303. The effect of the appeal scheme on sailing quality would not be materially different to that of the consented scheme. There is a reasonable prospect that the adverse effect on sailing quality would occur in any event. Consequently, I attach only limited weight to the policy conflicts relating to this matter.

304. I have considered the additional benefits of the appeal scheme in relation to the consented scheme, which represents a fallback position. These are the

delivery of additional housing (including affordable housing), to which I attach moderate weight, and the social and economic benefits of additional employment during construction, to which I also attach moderate weight.

305. My overall assessment is that the other material considerations do not indicate that this appeal should be determined other than in accordance with the development plan. I therefore recommend that the appeal be dismissed.

RECOMMENDATION

306. I recommend that the appeal be dismissed.

307. If the Secretary of State considers that the appeal should be allowed, and planning permission granted, I recommend that:

a) permission should be granted subject to the conditions set out in Annex E of the IR, as amended by Annex D to this report; and

b) with regard to clause 3.10 of the Unilateral Undertaking, the obligations in Schedule 8 (sailing centre mitigation) would not meet the tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

David Prentis

Inspector

ANNEX A - APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sacha White	Queen's Counsel and
Gwion Lewis	Queen's Counsel, instructed by London Borough of Tower Hamlets Legal Services
They called	
Joshim Uddin BSc(Hons) MRICS	London Borough of Tower Hamlets
Steven Heywood MSc MRTPI	London Borough of Tower Hamlets
Nelupa Malik BA(Hons) PgDiP	London Borough of Tower Hamlets

FOR THE APPELLANT:

Paul Brown	Queen's Counsel, instructed by Eversheds Sutherland
He called	
Alex Vaughan-Jones MSci MSc MRICS	Gerald Eve
Jonathan Marginson MA(Hons) MRTPI	DP9

FOR THE GREATER LONDON AUTHORITY:

Melissa Murphy	of Counsel, instructed by Director of Legal, Transport for London, on behalf of the Greater London Authority
She called	
Jane Seymour MRICS	Greater London Authority
Richard Green BSc(Hons) MTP	Greater London Authority

INTERESTED PERSONS

Cllr Kyrsten Perry	Borough Councillor
Cllr Andrew Wood	Borough Councillor
Martin Young	Chair of the Docklands Sailing Centre Trust
Benjamin Davis	Centre Director, Docklands Sailing and Watersports Centre
Ruth Bravery	Local Resident
Cllr Peter Golds	Borough Councillor
Cllr Mufeedah Bustin	Borough Councillor

ANNEX B – ABBREVIATIONS USED IN THE REPORT

CIL	Community Infrastructure Levy
CS	Tower Hamlets Core Strategy 2010
DL	Decision Letter by the Secretary of State, 14 January 2020
ES	Environmental Statement
ESR	Early Stage Review
Framework	National Planning Policy Framework
GLA	Greater London Authority
LonP 2016	London Plan 2016
LonP 2021	London Plan 2021
LP 2031	Tower Hamlets Local Plan 2031
HDT	Housing Delivery Test
IR	Inspector's Report dated 20 November 2019
IRR	Internal rate of return
LSR	Late Stage Review
MDD	Tower Hamlets Managing Development Document 2013
MSR	Mid Stage Review (also referred to as Mid Term Review)
NP	Isle of Dogs Neighbourhood Plan
NPPG	National Planning Practice Guidance
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SSoCG	Supplementary Statement of Common Ground
TBZ	Tall Buildings Zone
THLP (draft)	Draft Tower Hamlets Local Plan
VTR	Viability Tested Route
WHS	World Heritage Site
UU	Unilateral Undertaking dated 25 May 2021
1990 Act	Town and Country Planning Act 1990

ANNEX C – DOCUMENTS

The additional documents before the reopened Inquiry are listed below. All of the documents before the first Inquiry, which are listed in Annex C of the IR, remain before the Secretary of State.

Proofs of Evidence

Westferry Developments Limited	
WDL7A	Proof of evidence of Mr Marginson
WDL7B	Appendices of Mr Marginson
No reference	Rebuttal proof of evidence of Mr Marginson
WDL8A	Proof of evidence of Mr Vaughan-Jones
London Borough of Tower Hamlets	
LBTH7A	Summary of Ms Malik
LBTH7B	Proof of evidence of Ms Malik
LBTH8A	Proof of evidence of Mr Heywood
LBTH9A	Proof of evidence of Mr Uddin
Greater London Authority	
GLA5A	Summary of Mr Green
GLA5B	Proof of evidence of Mr Green
GLA5C	Appendices of Mr Green
GLA5D	Rebuttal proof of evidence of Mr Green
GLA5E	Appendices to rebuttal evidence of Mr Green
GLA6A	Summary of Ms Seymour
GLA6B	Proof of evidence of Ms Seymour
GLA6C	Appendices of Ms Seymour
GLA6D	Rebuttal proof of evidence of Ms Seymour
GLA6E	Appendices to rebuttal evidence of Ms Seymour

Documents submitted at the Inquiry

Westferry Developments Limited	
WDL37	Opening submissions
WDL38	Note on school
WDL39	Note on fire safety
WDL40	Closing submissions
London Borough of Tower Hamlets	
LBTH26	Opening submissions
LBTH27	CIL Regulations compliance statement
LBTH28	Note on CIL receipts
LBTH29	Note on Neighbourhood Plan
LBTH30	Closing submissions
Greater London Authority	
GLA17	Opening submissions
GLA18	Proposed definition of ineligible costs
GLA19	Note regarding appendix 9 of Ms Seymour's evidence
GLA20	Closing submissions
Inquiry documents	
ID15	Conditions schedule 18 May 2021
ID16	Draft S106 Agreement
ID17	S106 Agreement dated 21 May 2021
ID18	Final conditions schedule dated 24 May 2021
ID19	Unilateral Undertaking dated 25 May 2021
Other documents	
OD19	Address to Inquiry by Cllr Perry
OD20	Address to Inquiry by Mr Davis
OD21	Address to Inquiry by Mr Young
OD22	Note on DSWC pier proposal
OD23	Plan of DSWC pier proposal
OD24	Navigational Risk Assessment for DSWC pier proposal

OD25	Proposals for Millwall Lock Entrance Park
OD26	Address to the Inquiry by Cllr Golds
OD27	Address to the Inquiry by Cllr Wood

Core Documents

CD91	LBTH Letter regarding Examination of LBTH Local Plan 2031 (4 October 2019)
CD92	Supplementary note by LBTH on the Inspector's Report on the Tower Hamlets Local Plan 2031 (22 October 2019)
CD93	Letter from appellant regarding LBTH CIL Examination Report (22 October 2019)
CD94	Letter from appellant regarding LBTH Local Plan Examination Report (22 October 2019)
CD95	Email from GLA regarding London Plan Panel Report (30 October 2019)
CD96	Letter from appellant regarding London Plan Panel Report (30 October 2019)
CD97	Secretary of State DL dated 14 January 2020 inclusive of Inspector's Report dated 20 November 2019
CD98	MHCLG letter dated 11 August 2020
CD99	DP9 response letter to MHCLG on behalf of the appellant dated 25 August 2020
CD100	MHCLG letter dated 21 December 2020
CD101	London Plan 2021 (March 2021)
CD102	Tower Hamlets Local Plan 2031 (January 2020)
CD103	Tower Hamlets Proposals Map (January 2020)
CD104	Isle of Dogs and South Poplar Opportunity Area Planning Framework (September 2019)
CD105	Isle of Dogs Neighbourhood Plan 2019-2031 Referendum Version (19 May 2020)
CD106	LBTH Planning Obligations SPD (2021)
CD107	WDL Statement of Case – February 2021
CD108	LBTH Statement of Case – February 2021
CD109	GLA Statement of Case – February 2021
CD110	Statement of Common Ground on Viability
CD111	Supplementary Planning Statement of Common Ground
CD112	MHCLG Housing Delivery Test: 2020 Measurement
CD113	Quashing by Consent Order 21 May 2020
CD114	Examiner's Report on LBTH Local Plan 2031
CD115	LBTH CIL Examiner's Report
CD116	London Plan Panel Report
CD117	Davison v Elmbridge Borough Council [2019] EWHC 1409 (Admin)

CD118	Barnwell Manor Wind Energy Limited and (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary of State for Communities and Local Government, Case No: C1/2013/0843, 18 February 2014
CD119	R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895
CD120	Jones v Mordue [2015] EWCA Civ 1243
CD121	Secretary of State direction into the London Plan (13 March 2020)
CD122	Further Secretary of State direction into the London Plan (10 December 2020)
CD123	ICOMOS/ICCROM Reactive Monitoring Mission Report (June 2017)
CD124	World Heritage Committee Decision (41 COM 7B.55) into the 'Palace of Westminster and Westminster Abbey including Saint Margaret's Church' (July 2017)
CD125	Report of the Department for Digital, Culture, Media & Sport (DCMS) in response to the World Heritage Committee Decision (41 COM 7B.55) into the 'Palace of Westminster and Westminster Abbey including Saint Margaret's Church'
CD126	Housing in London 2020, the Evidence Base for the London Housing Strategy, GLA, October 2020 (updated March 2021)
CD127	ES Chapter 7 (appeal document)
CD128	Westferry Printworks 2021 Inquiry – Development Viability: Unilateral Undertaking Schedule of Areas of Agreement or Disagreement
CD129	Appellants draft UU dated March 2021
CD130	Appellant's signed UU dated 29th September 2020
CD131	R. v. London Borough of Tower Hamlets, ex parte Barratt [2000]
CD132	Corbett v Cornwall Council [2020] EWCA Civ 508
CD133	Unilateral Undertaking Update Note
CD134	LBTH Homelessness and Rough Sleeping Strategy 2018-2023
CD135	LB Tower Hamlets Household Income 2019
CD136	Secretary of State for Housing, Communities and Local Government decision for application made by L&Q relating to land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX (10 September 2020) (APP/G6100/V/19/3226914)
CD137	Inspector's Report to the Secretary of State for Housing, Communities and Local Government relating to an application made by L&Q relating to land at Citroen Site, Capital Interchange Way, Brentford TW8 0EX (11 June 2020) APP/G6100/V/19/3226914
CD138	Appeal Decision APP/V5570/W/16/3151698 – Former Territorial Army Centre, Parkhurst Road, Islington
CD139	Draft Unilateral Undertaking dated 4 May 2021
CD140	Environmental Statement Volume 1 Addendum April 2021
CD141	Environmental Statement Volume 2 Addendum - HTVIA April 2021

CD142	Environmental Statement Review – Transport April 2021
CD143	Final draft UU 14th May 2021
CD144	Note on UU and superseding dated 14 May 2021
CD145	Community Infrastructure Levy Guidance
CD146	Assessing Viability in Planning - RICS March 2021

ANNEX D – AMENDED AND ADDITIONAL CONDITIONS

This schedule is an addendum to Annex E of the IR.

The following conditions, which are included in Annex E to the IR, would need to be amended:

18) The residential units shall be delivered no sooner than as set out in the programme detailed within Table 5.1 of the Environmental Statement Volume 1 Addendum dated April 2021 unless otherwise agreed in writing with the local planning authority.

(*Updated to reflect revised construction programme in the ES Addendum*)

30) This condition would be unchanged other than by amending the date of the Unilateral Undertaking from 6 September 2019 to 18 May 2021.

31) This condition would be unchanged other than by amending the date of the Unilateral Undertaking from 6 September 2019 to 18 May 2021.

The following are additional conditions that were not included in Annex E of the IR:

41) Prior to the commencement of above ground works for a building, details for that building shall be submitted to and approved in writing by the local planning authority demonstrating that a minimum of at least one lift per core (or more, subject to capacity assessments) will be installed. The details shall demonstrate that the lifts are of a suitable size for fire evacuation purposes and suitable to evacuate people who require level access from the building. The development shall be carried out in accordance with these details and maintained as such in perpetuity.

42) Prior to above ground works, plans and details shall be submitted to and approved in writing by the local planning authority demonstrating the provision and future management of at least two free drinking water fountains within or adjacent to the public realm. The plans and details shall show the location and design of the proposed drinking water infrastructure, along with measures to ensure its future maintenance and management. The development shall be carried out in accordance with these plans and details prior to the occupation of Building 3 and drinking water made available to the public for free in accordance with the plans and details for the lifetime of the development.

43) Prior to the commencement of above ground works for a building, a Fire Statement for the relevant building, in the form of an independent fire strategy produced by a third party suitably qualified assessor shall be submitted to and approved in writing by the local planning authority. The statement shall detail how the development proposal will function in terms of:

a) the building's construction: methods, products and materials used, including manufacturers' details;

b) the means of escape for all building users: stair cores, escape for building users who are disabled or require level access, and the associated evacuation strategy approach;

c) features which reduce the risk to life: fire alarm systems, passive and active fire safety measures and associated management and maintenance plans;

d) access for fire service personnel and equipment: how this will be achieved in an evacuation situation, water supplies, provision and positioning of equipment, firefighting lifts, stairs and lobbies, any fire suppression and smoke ventilation systems proposed, and the ongoing maintenance and monitoring of these;

e) how provision will be made within the site to enable fire appliances to gain access to buildings; and

f) ensuring that any potential future modifications to the building will take into account and not compromise the base build fire safety/protection measures.

The development shall be implemented in accordance with the approved Fire Statement and retained as such for the lifetime of the development.

44) Prior to the commencement of above ground works, an Air Quality Positive Statement (AQPS) shall be submitted to and approved in writing by the local planning authority. The AQPS shall set out measures that can be implemented across the development that improve local air quality as part of an air quality positive approach, in line with the latest GLA Air Quality Positive Guidance. The measures set out with the AQPS shall be implemented in accordance with the details so approved, and thereafter retained, unless otherwise agreed in writing by the local planning authority.

45)

a) Within 8 weeks of the grant of planning permission, the owner shall submit to the GLA accurate and verified estimates of the 'Be seen' energy performance indicators, as outlined in the 'Planning stage' section/chapter of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it), for the consented development. This shall be submitted to the GLA's Energy Monitoring Portal in accordance with the 'Be seen' energy monitoring guidance.

b) Within 3 months of a building being occupied, the owner shall provide updated accurate and verified 'as-built' design estimates of the 'Be seen' energy performance indicators for each Reportable Unit of that building, in accordance with the methodology outlined in the 'As-built stage' chapter/section of the GLA 'Be seen' energy monitoring guidance (or any document that may replace it). All data and supporting evidence shall be uploaded to the GLA's Energy Monitoring Portal. The owner shall also confirm that suitable monitoring devices have been installed and maintained for the monitoring of the in-use energy performance indicators, as outlined in the 'In-use stage' of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it).

c) Upon completion of the first year of occupation for that building and for the following four years after that date, the legal owner (or managing agent) shall provide accurate and verified annual in-use energy performance data for all relevant indicators under each Reportable Unit of the building in accordance with the methodology outlined in the 'In-use stage' chapter/section of the GLA 'Be seen'

energy monitoring guidance document (or any document that may replace it). All data and supporting evidence shall be uploaded to the GLA's Energy Monitoring Portal within 3 months of the first year of occupation for that building and within 3 months of each of the following four years after that date. This part of the condition will be satisfied after the owner (or manging agent) has reported on all relevant indicators included in the 'In-use stage' chapter of the GLA 'Be seen' energy monitoring guidance document (or any document that may replace it) for at least five years.

d) In the event that the 'In-use stage' evidence submitted under Clause (c) shows that the 'As-built stage' performance estimates derived from Clause (b) have not been or are not being met, the owner (or managing agent) shall investigate and identify the causes of underperformance and potential mitigation measures and set these out in the relevant comment box of the 'Be seen' spreadsheet through the GLA's Energy Monitoring Portal. Within three months of the submission of evidence under Clause (c), an action plan shall be submitted for approval by the GLA, identifying mitigation measures and a proposed timescale for implementation. The action plan and measures approved by the GLA shall be implemented by the owner in accordance with the approved timescale for implementation.

46) Within 3 months of the occupation of a building the post-construction tab of the GLA's whole life carbon assessment template for that building shall be completed accurately and in its entirety in line with the GLA's Whole Life Carbon Assessment Guidance. The post-construction assessment shall provide an update of the information submitted at planning submission stage, including the whole life carbon emission figures for all life-cycle modules based on the actual materials, products and systems used. This shall be submitted to the GLA at ZeroCarbonPlanning@london.gov.uk, along with any supporting evidence in accordance with the guidance. Confirmation of submission to the GLA shall be submitted for approval by the local planning authority within 3 months of the occupation of that building.

47) Prior to commencement of above ground works, detailed plans shall be submitted to and approved in writing by the local planning authority demonstrating the provision of sufficient ducting space for full fibre connectivity infrastructure within the development. Development shall be carried out in accordance with the approved plans and shall be permanently retained as such thereafter.

48) No development shall take place until a detailed Circular Economy Statement and Operational Waste Management Strategy in line with the GLA's Circular Economy Statement Guidance has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

Within 3 months following occupation of a building, a Post Completion Report for that building, setting out the predicted and actual performance against all numerical targets in the relevant Circular Economy Statement,

shall be submitted to and approved in writing by the local planning authority. The Post Completion Report shall provide updated versions of Tables 1 and 2 of the draft Circular Economy Statement, the Recycling and Waste Reporting form and Bill of Materials.

49) No above ground development of a building shall take place until a completed Recycling and Waste Reporting table for that building has been submitted to and approved in writing by the local planning authority. The table shall accord with the policy targets of reusing/recycling/recovering 95 per cent of construction and demolition waste and putting 95 per cent of excavation waste to beneficial use.

The measures for meeting the targets shall be confirmed and shall be informed by a pre-demolition/refurbishment audit to determine opportunities for re-use and recycling. For any residual waste that is destined for landfill, written evidence shall be provided to demonstrate that the destination landfill(s) have the capacity to receive waste, along with a notification of the likely destination of all waste streams (beyond the Materials Recycling Facility) where known. Development shall be carried out in accordance with the details so approved.

50) Prior to the occupation of the development, details to show that the development as a whole will achieve an urban greening factor of at least 0.21 shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the details so approved and shall be permanently retained as such thereafter.

End of schedule of amended and additional conditions

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.