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floor area of Water Tower House is 2340 sqm, whereas the new block would be approaching double that size at 4000 sqm;

- (v) Mr. Thomas stated (2.4.11.6 proof) that St. George's has a great deal of historic interest and described it as a "rare example" and "landmark" (App. RT15). He accepted that the main public view is of the south elevation and that it should remain the sole landmark in the locality. He claimed that the height of the proposed block "relates well" to the tower of the Church (proof para. 8.7.5). The Council submits that a comparison between those two elements alone is obviously incomplete;
- (vi) Both Mr. Crossley and Mr. Thomas agreed that the proposed new block should be acceptable in its own right. They agreed that it is not sufficient that the replacement building is simply less harmful than the existing building. The Council submits that the proposed block will be harmful to the setting of the nearby listed buildings, indeed as regards the proximity of the proposed increase in bulk, more harmful;
- (vii) Mr. Thomas encapsulated the developer's approach to the proposed block in para. 7.3.6 of his proof:

"A building of considerable mass and rigorous modelling is positively needed to stand up to the assertive 'west' front of St. George's."

There is no reason why the proposed building should seek to compete with a listed building which is a landmark and the setting of which is to be preserved;

- (viii) The Council also submits that the setting of the Church and 2-6 Aubrey Walk is also harmed by the removal of the existing treed banks opposite. They form part of the setting and the proposed replacement planting will not produce the same effect;
- (ix) The adverse effect of the proposed block on the listed buildings is also a sufficient ground in itself for refusal of permission.

7. Effect of the proposed development on the character and appearance of the Conservation Area

7.1 There are two main aspects, (a) the loss of open space and (b) the bulk and layout of the proposed development.

Loss of open space

7.2 In summary:-

- (i) Mr. Thomas agreed that the acceptability of the proposed development depends upon its effect upon the "near setting" of the site and not its "far setting". If the development is harmful to that "near setting" that would constitute a reason for refusal in itself;
- (ii) Mr. Sellwood accepted that Policy CD21 and 2.26 to 2.27 of the UDP fall within that part of the Conservation Chapter (Council's App. 4) which is aimed at protecting areas of "local character" (see para. 2.23 et seq). He accepted that the UDP affords as much protection in CD21 to private open space as to public open space. One reason is given in para. 2.27, namely that such areas contribute to visual amenity. It is agreed that there is a shortage of public open space in the Borough and that that is compensated for by private open space (see UDP para. (iv) on p. 193, STRAT 35 on p. 194, para. 3.1 on p. 198 and para. 3.7 on p. 199 - Council's App. 5). Although access may be restricted, private open space makes up  $\frac{2}{3}$  of all open space in the Borough. It is agreed that private open spaces serve to "break up the oppressive urban form" and that such space is an important factor in maintaining the high residential quality of the Borough;
- (iii) Open space is defined in the glossary of the UDP (p. 276) and the treed embankments and open tennis courts clearly fall within that definition. The UDP Inspector recommended that the UDP should be amended so as to refer to the 1992 Open Space Survey in order to add weight to para. 3.1 of the UDP (see McCoy rebuttal App. F,

paras. 9.1.2 to 9.1.4). The description in that Survey of the tennis courts and the embankments as "private open space" accords with the definition of that term in the UDP. Accordingly, these areas are protected by CD21;

- (iv) Mr. Sellwood accepted that the embankment, trees and tennis courts help to give a sense of openness but he argued that the courts did not constitute open space because they have a synthetic surface, were laid on top of a structure (the reservoir) above the surrounding ground level and there is a lack of public access. As to the last point he did however accept that the lack of public access does not prevent the space from being protected under CD21. He also accepted that the site is overlooked by a significant number of properties in Kensington Heights and from the upper floors of houses in Aubrey Walk. From Kensington Heights it is possible to see across to the grounds of Aubrey House and Holland Park. This produces a substantial visual break in the built up part of the urban area. Mr. Sellwood accepted that this is a case where the effect of the proposed development upon views from those properties is a material consideration, applying the policy in para. 64 of PPG1. That is reinforced by para. 5.12 on p. 60 of the UDP. Mr. Thomas was also of the opinion that views from private properties are relevant to the effect of the proposal on the conservation area (proof para. 4.3.4 and cross-examination). In these circumstances, Mr. Sellwood agreed that the fact that the playing surface is raised above street level did not detract from the significance of the open space in views from residential properties. As to the perception of openness at street level he also agreed that the synthetic nature of the playing surface was immaterial. In reality, there is no proper basis for arguing that the tennis courts do not constitute private open space;
- (v) Mr. Sellwood agreed that the only open tennis courts which will remain (the western 6 courts) make no contribution at present to

openness as perceived from public viewpoints and that will not change in the future. He also agreed that after the development those courts will not be a significant amenity in views from private properties. He therefore accepted that those courts should be excluded when calculating the effective loss of open space;

- (vi) When properly analysed it is submitted that the loss of open space is very substantial as regards public and private views, represented by the loss of 6 tennis courts and surrounding area, together with treed embankments;
- (vii) The only replacement proposed is the square, open to view from Aubrey Walk. Mr. Crossley stated that the developer did not want to encourage the provision of public seating. The Council submits that there is unlikely to be any significant public usage. Mr. McCoy has demonstrated that the square is too small and is out of character with the Conservation Area. The developer's approach is very confused. Although Mr. Crossley said that Mr. Sellwood had been wrong to draw on Campden Hill Square as a reference point, Mr. Thomas attempted to support that argument. As Mr. McCoy demonstrated the proposed square bears no comparison with the layout of Campden Hill Square. Mr. Crossley suggested that he had taken Tor Gardens as his reference point. That simply related to the private gardens of some post-war Council flats off Campden Hill Road. The proposed open square is no wider than the space between the houses in Bedford Gardens. It has the proportions of a road between grand houses, rather than a square appropriate to this Conservation Area;
- (viii) It is submitted that the loss of open space and the provision of a "square" which is too small and dominated by grand houses, larger than those in Aubrey Walk, would be harmful to the character and appearance of the Conservation Area.

### 7.3 The bulk and layout of the proposed development

In addition to the submissions set out above on the effect of the proposal on the listed buildings, the density of its three main elements and the loss of open space:-

- (i) Mr. Crossley and Mr. Thomas accepted that the proposed buildings should have a correct relationship with not only the listed buildings, but also the properties in Aubrey Walk, the 2 storey Victorian housing on the north side of Kensington Place and 25 Campden Hill Gardens;
- (ii) Mr. Crossley stated in cross-examination that there was a difficulty in trying to produce a design for the Campden Hill Road block which had a correct relationship not only with Kensington Heights but also with Aubrey Walk. However, he also accepted that of those two relationships it was more important that the design should respect Aubrey Walk, including its listed buildings;
- (iii) It is submitted that the model, drawings and montages (even with their imperfections) show that the proposed block is too large in relation to Aubrey Walk and 25 Campden Hill Gardens.

7.4 The Council submits that both the loss of open space and the excessive size of the Campden Hill block are harmful to the Conservation Area and that each of these matters justifies refusal of permission.

### 8. The effect of the proposed development upon residential amenity

8.1 The Council's objection concerns two aspects, loss of open space and the overall increase in vehicular and pedestrian activity.

#### 8.2 Loss of open space

The Council relies upon the submissions made in section 7 above. In addition, Mr. Sellwood accepted that the proposed east and west terraces would obstruct the current views across open space from Kensington Heights and Aubrey Walk. Taking into account also the loss of the sense of openness at street level, including

the loss of the treed embankments, and the sheer scale of the overall development proposed, it is submitted that there would be serious harm to visual amenity to a substantial number of properties. In addition, there is no reason why the developer should not make the modest adjustments to the south elevation of the Campden Hill Road block indicated by Mr. Ney in order to overcome the significant adverse effects in daylighting for the interiors of two properties in Kensington Heights (see the letter from Miss Laing which has been accepted by the Appellant).

### 8.3 Activity and disturbance

The Inspector is asked to assess this objection by looking at the combined effect of the various consequences of the development, including the following:-

- (i) The main activity on the site at present is the tennis club, which is a relatively low key usage for much of the year; -
- (ii) No weight can be attached to activity from fall-back rights on the residue of the site, including the B8 floorspace;
- (iii) There is a high degree of parking pressure in the area throughout the daytime and in the evening. Local residents also point out that normally (outside the main holiday periods) there is congestion in the Aubrey Walk area, particularly during the peak hours;
- (iv) The Tennis Club and the developers believe that the new facilities will be of a high quality. Hence, they will be attractive. The Council submits that there will be a significant increase in overall tennis club usage throughout the year;
- (v) The tennis club has no parking provision and a substantial proportion of members use cars. Because of the parking pressure there will be an increase in the number of vehicles circulating through the narrow roads in the immediate vicinity looking for spaces;
- (vi) There will also be a significant increase in traffic attributable to the residential development;

- (vii) The overall effect will be harmful to the existing residential environment.

9. Conclusions

The Inspector is asked to dismiss the appeals. The future of the site is best dealt with by a development brief, where the feasibility of all options for the future of site can be properly considered in conjunction with the public.

David Holgate Q.C.

4 Breams Buildings  
London EC4A 1AQ  
4 August 1999



**CAMPDEN HILL RESERVOIRS, KENSINGTON W8**

APP/K5600/A/99/1022704  
APP/K5600/E/99/1016054

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**CLOSING SUBMISSIONS  
ON BEHALF OF THE  
LOCAL RESIDENTS**

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**INTRODUCTION**

1. The decision to be made is as to whether *this* scheme is acceptable, it is not, as the Appellant contends, a stark choice between this scheme or effective sterilisation of the site, ~~but rather it is a decision~~. There is no evidence to suggest <sup>Wp</sup> that this is the only viable means of redeveloping the site. It has been earmarked as a major development site in the Consultation Draft UDP and there is no reason to believe that if this scheme is refused no alternative proposals will emerge.
2. The acceptability of this scheme therefore falls to be assessed on its own merits in the usual way, and not as the only possible alternative to sterilisation. That assessment requires, as a first step, an analysis of the site itself and of the surrounding area. It is only against the background of that analysis that this scheme and its effects can properly be assessed. When the characteristics and

function of this unusual site are properly understood, and seen in the context of the sensitive surrounding area, the problems with this scheme become readily apparent. These problems are multi-faceted, but all stem from one central flaw - that the scheme would result in the overdevelopment of the site.

3. In the light of that suggested approach, my closing submissions will be divided into two main parts. The first part, by way of background, will address the nature, appearance and function of the site itself. I will then move to examine the appeal proposals, focusing on four principal matters:

(a) the effect on the character and appearance of the Conservation Area;

(b) the effect on the setting of the nearby listed buildings;

(c) the effect on residential amenity; and

(d) the loss of open recreational space.

#### **THE SITE**

4. This is an unusual site. As will have become apparent to you on your site visit and during the course of this Inquiry, it is a site that defies simple categorisation. The Appellant is right, of course, to point to the existence of the reservoirs and to say

that this is not a 'greenfield' site, but is one on which a substantial structure has been built in the past. To suggest that, aside from a 'vener' of green, this is therefore a 'brownfield' site suitable for complete redevelopment, is to present too simplistic an analysis. The site, as it exists today, serves several beneficial purposes, both visual and functional. It functions as open space in the City, providing a break in the built landscape as well as a valuable and long standing area for outdoor recreation. Simple categories, crudely applied, are inadequate analytical tools for the task of assessing this site. A more sophisticated approach is required.

5. The findings of the Inspector in the appeal decision provided as LRI are relevant here. That appeal involved another covered reservoir which the appellant wished to develop for housing, relying on recent Government guidance on housing.

Having discussed the relevant guidance, the Inspector said:

*"Nevertheless, RPG3 makes clear that achievement of additional housing provision should not be at the expense of other environmental objectives and all policies of the UDP need to be taken into account. Moreover, although in one sense the reservoir site meets the definition of a 'brownfield site', as it has been previously developed, I also accept that it is an unusual site in that category. Apart from the now demolished 'cottage' and related structures, and minor access and vent structures related to the reservoir, all other built development is buried underground so that the site has the appearance of undeveloped open space." (para. 42, p 11)*

6. There are five key features of the site:

(1) The Reservoirs

The reservoir structures themselves may be substantial, but one only appreciates the scale of them from inside. Much of their bulk is below ground level and makes no visual impression at all. The remainder is, as Mr Crossley suggested, 'camouflaged' and 'well disguised' (Proof, para. 8.6, p 10., para. 13.10, p 16) by the landscaped embankments and the strong screen of existing trees. Those elements of the built structure which are visible, i.e. parts of the walls, are in an attractive and suitable brick, have to a large extent become overgrown, and have belended in well to their surroundings.

(2) The Tennis Courts

One of the key features of this site, though not one that the Appellant's witnesses chose to emphasise, is the presence of twelve open air tennis courts. These courts, occupying an area of some 7,845 square metres (RBKC Open Space Survey, Appendix 2) have been a permanent and beneficial feature of the site since 1882. From Kensington Heights and the upper floors of a large number of adjacent properties the existence of the reservoir structure beneath the tennis courts is

hardly perceptible. Instead a view is afforded over open air tennis courts, to the historic buildings, gardens and parks surrounding the site.

(3) Water Tower House

Water Tower House, situated at the north-eastern corner of the site, is a thoroughly unattractive building, though small in scale compared to other buildings on Campden Hill Road, and from most vantage points on Aubrey Walk west of St George's Church it is largely screened by the existing bank of trees.

(4) The Pump House

The architectural merits of the pump house, and the positive contribution it makes to the character and appearance of this part of the Kensington Conservation Area, are matters I will turn to in greater detail in due course.

(5) The trees and embankments

These cover a substantial part of the site, have become grassed over and support a variety of trees and shrubs, and play an important role in screening substantial parts of the site from its neighbours. Their significance in terms of the character and appearance of the Conservation Area is a matter I will address in more detail below.

## **The function of the site**

7. A significant part of the site functions as open space. It provides a strong element of inter-visibility, a characteristic of this part of the conservation area, and has done since the reservoir was first developed.
  
8. The reservoirs, by virtue of their low level and green embankments, constitute a break in the urban form. From a number of perspectives, a view is afforded over the raised open space. These viewpoints are not confined to the multitude of private views over the site, but include views at ground level from Aubrey Walk and parts of Campden Hill Road. It is simply not true to say that one is unable to perceive the extent of the open space from these views and that there is no depth of view. From Aubrey Walk the trees on the southern and western boundaries, as well as the buildings on the south-eastern boundary, are visible and mark out the extent of the courts.
  
9. Reliance has been placed by the Appellant upon the guidance to be found in the Draft PPG3, and a substantial section of Mr Sellwood's Proof of Evidence was devoted to the task of distinguishing this site from the exceptions given in that guidance to the definition of "previously developed land" (paras. 4.1.12 to 4.1.18).

10. You will have to form your own view as to the extent to which it can be said that the reservoirs have blended into the landscape. Mr Crossley felt that they were well disguised and camouflaged, and I would suggest that it a fair and accurate description. One is certainly not aware of the existence of a 'hypermarket' size structure, or anything like it, from any significant public or private viewpoint above ground. The tennis court surface is not visible from any public vantage point, and from the private vantage points adjoining the site its artificial nature is not readily apparent or particularly significant.

11. Whether six indoor courts can fairly be said to constitute a satisfactory replacement for six outdoor courts is something I will return to later in my submissions. More generally, however, the Appellant's arguments on these exceptions pay insufficient attention to the purpose underlying them. The purpose of making those exceptions is, as is made clear in the current version of PPG3, the need:

*"... to distinguish between sites which need to be retained for recreation, amenity or nature conservation purposes, and areas which are genuinely suitable for development."*

12. In terms of the purpose which the exceptions are designed to serve, there is simply no logical rationale for distinguishing between cleared sites and those on which structures remain. If a site has been put to an amenity use and cannot be regarded

as requiring redevelopment, it makes no difference whether the site has been cleared.

### **THE APPEAL PROPOSALS**

#### **(a) The effect on the character and appearance of the conservation area**

##### **(i) What is the character and appearance of the conservation area?**

13. In respect of this proposal, the most important and probably most sensitive part of the surrounding conservation area is Aubrey Walk. The proposed development would face onto Aubrey Walk and each of its component parts will be clearly visible from that street.
  
14. Aubrey Walk is a backwater, a less heavily developed street that provides, as Mr Crossley said, a contrast to and relief from the relentless urbanity of much of the surrounding area. It has an eclectic character as a result of the mixture of land uses and architectural styles. It is also fragmented and informal. The built structures are interspersed with substantial banks of trees and views over open space.
  
15. The trees in Aubrey Walk are planted, or have sown themselves, in a haphazard fashion. Of particular interest are the trees that have established themselves successfully in the embankment opposite St George's Church and numbers 2-6



Aubrey Walk. The fact that they are self-sown, as Mr Sellwood accepted, can make no difference to the significance of the visual impression they give. The strength of that visual impression is immediately apparent from the moment one steps into Aubrey Walk from the east, and can be appreciated for most of its length.

16. In this small street the bank of trees occupies over 40m along the south side. The visual impression they give is accentuated because of their elevated position and because of their collective appearance as a block of greenery. It is an important feature of the street scene and adds a great deal to its unusual quiet and informal character.
  
17. There was some suggestion made by Mr Crossley that these trees would be unlikely to survive in any event. This was not, as he conceded, the view of an expert in the field, or even an opinion based on any particular knowledge of these particular trees, or the soil and conditions in which they grow. It was simply because they are in an embankment and are self-sown. The fact of their being in an embankment is neither here nor there, most of the trees on the site (including those subject to TPO's) have established themselves on embankments perfectly satisfactorily. The trees are self-sown, but that is how trees are designed to reproduce. It is a method of reproduction that has served them very well for millions of years. I would ask you to treat Mr Crossley's uninformed off-the-cuff view on this matter with considerable caution.

18. Aubrey Walk's buildings are of widely varying styles, materials, periods and heights. There is no uniformity, none of the houses (Aubrey House aside) could be described as 'Grand', and this is not, as Mr Crossley accepted, a Grand Street. Neither is it a village as such, but that word has been used by many, including English Heritage, to describe the scale of the street. The buildings are relatively small and irregular, the road is little more than a lane leading to Aubrey House, there are a good number of irregularly planted or self-sown trees and more of the sky is visible than is usual in this part of London.

(ii) Would the appeal proposals preserve or enhance that character and appearance?

19. The effect this development would have on the character and appearance of this part of the conservation area was well summarised by Sir Brian Neill in his Proof of evidence (para. 2.7):

*"If allowed to proceed on the scale proposed it would transform at a stroke an important part of this conservation area and destroy for ever the special nature of the summit of Campden Hill and Aubrey Walk."*

20. Important features within the street which currently make a positive contribution to the character and appearance of the area would be lost. The bank of trees

and the unusual and highly valued sense of openness in Aubrey Walk in particular. This sense of openness has always been an important feature of this street, it has never been fully developed along both sides, and the high degree of intervisibility and high quality of outlook are both well established components of the character of this area.

21. How do the main elements of the proposed development relate to the character and appearance of the conservation area? The short answer is that they are almost completely out of keeping in terms of their size and design.

#### The square of houses

22. These are “undeniably grand and substantial” houses, with a “strictly disciplined elevational composition” (Proof of Mr Crossley, para. 20.59, p. 32). They bear no relationship to any part of Aubrey Walk and indeed their large scale, grand style and formality are completely at odds with the quiet, *unassuming and informal* architecture which characterises the area.

#### The Aubrey Walk Block

23. Quite how uniform and uninspiring this building would be is best appreciated by studying the Appellant’s own images of them. In PC12, view 15 the long straight line of the roof, contrasting with the irregularity of roof heights which characterise

the street, is starkly apparent. Photomontage viewpoint E illustrates the bulk of the structure, the municipal character of the landscaping and the unflattering contrast both with the buildings opposite and with the existing situation.

#### The Campden Hill Block

24. This is a building designed to relate primarily to Kensington Heights with its “brash commercial modernism” (Proof of Mr Crossley, para. 20.11, p 28), and to a lesser extent to Melbourne House (Proof of Mr Thomas, para. 7.3.7, p 50).
25. It is not designed to reflect or respect the very different character of Aubrey Walk, but to contrast with it (Proof of Mr Crossley, para. 20.79, p34). The “considerable mass and vigorous modelling” of this building (Proof of Mr Thomas para. 7.3.6, p. 56) is overpowering in its relationship to Aubrey Walk and does nothing to preserve or enhance its small scale, fragmented and eclectic character.
26. The Appellants, by looking for inspiration to the bulky and unattractive buildings on Campden Hill Road and turning their backs on Aubrey Walk, have produced a building which, whilst commercially attractive for St James, fails satisfactorily to address the question of how to replace Water Tower House.

The Pump House

27. In order to implement the appeal scheme, it would be necessary to demolish the attractive nineteenth century Pump House. Consent for that demolition should not be given, following the approach set out in Policy CD51 of the UDP (p.59), unless:

(a) the building or part of the building structure makes no positive contribution to the character or appearance of the area; or

(b) the condition of the building is proved to be such that refurbishment is not possible; and

(c) a satisfactory scheme for redevelopment has been approved.

28. The Appellant advances no evidence in respect of (b). The question, therefore, is whether the Pump House, or part of it, can truly be said to make “no positive contribution” to either the character or appearance of the area.

29. As a starting point it should be noted that the Kensington Conservation Area Proposals Statement (“CAPS”) does not show the Pump House as either a ‘neutral’ or a ‘detracting’ building (Area 10 map, page 31). It might reasonably be

inferred that if the building was not considered to be either detracting or neutral, it must have been felt to make at least some positive contribution.

30. Unfortunately, no-one has so far taken the trouble to undertake a proper assessment of this building's contribution to the character and appearance of this part of the Conservation Area. Mr Crossley did claim, at paragraph 8.8 of his Proof (page 10), that

*"They [the Pump House and other machinery] have been reviewed by English Heritage (their letter to Jeffrey George Associates dated 25th February 1998) and found not to be of merit or worthy of retention."*

31. That turned out to be wrong. The letter referred to (see James Thomas's Proof Appendix 14.2) said nothing of the sort, and nor was it likely to given that it was addressing a different matter altogether, i.e. whether the building was "of the special architectural or historic interest required to warrant listing". There was no judgment made as to whether the Pump House was "of merit", or as to whether it was "worthy of retention". Mr Crossley did accept this, and said that he had - in his words - "taken a leap".

32. It should be noted that Mr Thomas' 'assessment' of the Pump House relies upon a reference to the same letter, from which he draws exactly the same conclusions (Proof, page 33, para. 4.2.2).

33. In re-examination of Mr Crossley we heard - for the very first time - that English Heritage had given what was referred to as 'informal approval' for the Pump House's demolition. Three things should be noted about this. Firstly, in the absence of any written corroboration (or details as to which member of English Heritage's staff was supposed to have volunteered this view) this is the very weakest sort of hearsay evidence. Secondly, if English Heritage really had expressed that view to Mr Crossley, why did he fail to mention it when dealing with the issue in his Proof of Evidence and in cross-examination, and why did he not (as one would have expected) ask for the view to be confirmed in writing? Thirdly, even if English Heritage did express this view, there has been no explanation as to why they came to that conclusion. I would suggest that little, if any, weight can be accorded to this claim.

34. The proper assessment of an unlisted building's contribution to the character and appearance of a conservation area requires a careful and systematic approach. Well established and clear guidelines exist (English Heritage, Conservation Area Practice, RBKC App. 12, page 3), though Mr Crossley made no reference to them when considering the Pump House. No criticism was made of those guidelines, indeed Mr Crossley commended it as being "a good guide", and I would therefore ask you to adopt the approach set out therein as the basis for making your own assessment.

35. English Heritage suggest that:

*"In assessing whether or not unlisted buildings make a positive contribution to the special architectural or historic interest of a conservation area the following questions should be asked:*

...

*\* does it relate by age, materials, or in any other historically significant way to adjacent listed buildings and contribute positively to their setting?*

*\* does it, individually or as part of a group, serve as a reminder of the gradual development of the settlement in which it stands, or of an earlier phase of growth?*

...

*\* does it reflect the traditional functional character of, or former uses within, the area?*

..."

36. There appears to be consensus between Mr Crossley and the local residents in respect of the answers to the last two of those questions I have set out. As a part of the water utility use which started here in the Nineteenth Century in order to serve the growing population of this part of West London, the Pump House serves as a reminder of the gradual development of the settlement in which it stands, and



of an earlier phase of growth. For the same reason it also reflects the traditional functional character of, and former uses within the area.

37. In the local residents' view, the first question set out above should also be answered in the affirmative. The positive contribution it makes to the setting of St George's Church is something I will address in due course. There is no doubt that the Pump House is of a very similar age to St George's. If you were to conclude that the Pump House contributes positively to the setting of either St George's Church and/or the Georgian Terraces, then a third of the characteristics on the English Heritage checklist would have been established.
38. The view expressed in the English Heritage document, of course, is that "any one of these characteristics could provide the basis for considering that a building makes a positive contribution to the special interest of a conservation area, provided that its historic form and qualities have not been seriously eroded by unsympathetic alteration."
39. When considering whether its historic form and qualities have been *seriously* eroded by unsympathetic alteration, you should - as Mr Crossley accepted - take account of the fact that the building is truncated only on its Eastern side. From the north, west and south the building remains substantially unaltered. The alteration to the eastern end is visible primarily from behind Water Tower House and from a limited position at the eastern end of Aubrey Walk.

40. Those parts of the building which are visible from the listed buildings of St George's and 2-6 Aubrey Walk, and from views further west along Aubrey Walk, have not been materially altered. The building is well proportioned, and those facades retain their historic form and qualities. With its classical style, slate roofs and round arch headed windows between brick piers underneath a powerful cornice (Mr Thomas' Proof (para. 4.2.2, pages 32-33)), it remains a good example of Nineteenth Century industrial architecture, attractive and appropriate in its setting. It should also be borne in mind that the building contributes to the area by its lack of obtrusiveness. As a relatively low building it contributes to the high degree of intervisibility across the area. The Residents in Kensington Heights, for example, can see over the building to St George's Church.
41. The UDP, it should be remembered, provides protection when "part of the building structure" makes a positive contribution to the character or appearance of the area.

**(b) The effect on the setting of the nearby Listed Buildings**

St George's Church and 2-6 Aubrey Walk

42. The features which constitute the setting of St George's Church do not appear to be in dispute, nor does there appear to be any real doubt as to what would have formed the setting of this building when Bassett Keeling designed it. What is in issue is the contribution those features make to the setting and whether or not the proposal could be said to 'preserve' that setting as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
43. It is important, when assessing the contribution the existing features make to the setting of the building, that the setting is analysed from a historical perspective, and we should be slow to conclude that elements of the historical setting can be destroyed.
44. The very helpful and interesting analysis of 'setting' by Simon Colcutt ("The setting of Cultural Heritage Features", [1999] JPL 498 (LR 5)), introduced to this inquiry by Mr Thomas, provides the following first step:

*"As a matter of common language, therefore, the term "setting" strongly implies intent, whether on the part of the original "setter" or on that of the "setter" of some later feature impinging upon the setting of the original feature. Whilst the intent of persons in the past is a difficult*

*parameter to assess, we, in the present, are not free to redefine the setting according to our own tastes alone. This point is important and, in the absence of an authoritative definition of a special meaning, must (pending any alternative judgment by the courts) constrain the proper planning usage."*

45. The historical maps of the site and surroundings attached to Sir Brian Neill's Proof as Appendix 1 show very clearly that in 1871 St George's Church was facing an embankment, the Pump House and a reservoir. It is also apparent that in 1862 these key features were already in place. Mr Crossley accepted that when Bassett Keeling designed St George's he would have envisaged it fitting into that setting and that if the 'physical character' of those features harm the setting of that building, that must have been the case from the beginning of its life. It is precisely that anachronistic approach, used to justify the destruction of the historical setting, which the statutory scheme for protecting the setting of listed buildings was designed to prevent. The definition of a listed building's setting by an historical assessment of its surroundings is an approach endorsed by the Government in PPG15 (para. 2.17) and it one the local residents ask you to adopt in this case.

46. Preserving the embankment and the Pump House as features which make a material contribution to the setting of St George's Church is all the more important because of their close approximation to the original setting. They are a point of historical reference and create an appropriate and attractive visual link to the period of growth which led to the Church being built. The preservation of those

features is important not only for aesthetic reasons, but also because they help to place the Church in its proper historical context.

47. Under the appeal proposal these important features of the historical setting are not to be preserved, rather they are to be destroyed. The embankment is to be dug out and levelled, and the Pump House is to be demolished.
48. By comparison, the bank of trees are, for the most part at least, relatively recent additions. They have grown up probably over the last 20-30 years. Nevertheless, they make a significant and attractive contribution to the setting of the Church (a contribution valued not only by the local residents but also by those responsible for the Church itself (Angella Lascelle's Statement, paras. 2, 6, 7) and to the sense of tranquillity it enjoys (Angella Lascelle's Statement, para. 2), and to the setting of numbers 2-6 Aubrey Walk.
49. As Simon Colcult states in a passage from his article (a passage Mr Thomas did not take issue with):

*"The most obvious cases of undesirable development impact are subtractive, in that some important element of the setting would be destroyed ...*

*However, undesirable impact may often be additive, in cases where it would be impossible to ignore the proposed development feature itself as a*

*new element within the general visual envelope of the setting.*" (LR 5,p. 507)

50. Here we have both. Important and attractive elements of the setting would be lost. They would be replaced with a vehicular entrance to an underground car park, and two large blocks of flats.
51. The monotonous and bland formality of the Aubrey Walk flats in the context of the variety and informality of Aubrey Walk is a matter I have already addressed in some detail, but it is worth noting the inappropriate contrast to the quirky and 'roguish' architectural design of Bassett Keeling.
52. One only has to stand outside St George's Church, facing the bank of trees, to appreciate the absurdity of the suggestion that the setting of this building is in some way harmed by their presence, or that it would be improved by their replacement with a view of the ramp down to the underground car park.
53. It is the relationship between the Campden Hill Block and St George's Church that is perhaps the most troubling aspect of the scheme in listed building terms. The Campden Hill Block is a massive building, its bulky appearance exacerbated by the addition of large perspex sheets on top of each storey. In terms of its mass, style and bulk it is completely alien to St George's and the listed terrace beside it. As Mr Crossley accepted, the need for 'matters of style' to be overridden (Proof,

para. 20.85) only arises here because the style of the building is so alien to anything on Aubrey Walk.

54. In his Proof of evidence (at para. 20.75) Mr Crossley made a detailed comparison between the height of the Aubrey Walk Block and St George's Church, but nowhere was that exercise carried out in respect of the Campden Hill Road Block and St George's. This is the case despite Mr Thomas's expressed view that it would be within the setting of St George's and would need to be assessed in relation to it (Proof of Mr Thomas, para. 7.3.6).

55. It is hard to believe that the failure to make any detailed assessment of the relationship between the two buildings is an oversight. That explanation seems even less satisfactory when one looks at the photomontages (over which so much care and attention was lavished) and the coloured illustrative drawings, and sees that representations of this relationship are avoided there too. The careful choice of viewpoint E, at a point just west of where the Campden Hill Road Block would have come into view, illustrates the point perfectly.

56. The reasons for avoiding the issue in this way are not hard to find. When one looks at the model it is clear that the relationship would be one of 'dominance', i.e.:

*"... a marked scalar disparity between a large development feature and small heritage features, leaving the latter visually insignificant in the overall scene." (LR 5, p. 507)*

and one of 'discordance' i.e.:

*"... marked incongruity of style, materials or other relevant qualities between development and heritage feature." (LR 5 p.507)*

57. The combination of the destruction of key positive elements of the existing setting and their replacement with those wholly inappropriate features would fail to preserve the setting of these listed buildings. That result on its own would, in my submission, be sufficient reason for this scheme to be refused.

#### Aubrey House

58. It is fair to point out, as the Appellant did, that adverse effect on the setting of Aubrey House was not a matter raised by the local residents either in their rule 6 statement or in evidence. The effect on the setting of Aubrey House has, however, been agreed between the main parties to be a relevant consideration in this inquiry. The answers given by Mr Crossley in cross-examination are therefore relevant to your consideration of this appeal.



59. He accepted that the gardens of Aubrey House, located just to the west of the site, are a very important part of the setting of that building. Those gardens are screened to some extent by trees and shrubs, though these are mainly deciduous and will provide little cover during the winter. Under the appeal scheme the floodlights are to be moved from the eastern courts onto the western courts, significantly closer to the gardens of Aubrey House. This was not a matter Mr Crossley addressed in his proof because, in his words, he had not previously considered it and was not an expert on floodlighting.

60. There is no analysis anywhere as to the effect this floodlighting would have on the gardens of Aubrey House. Mr Crossley was, understandably, not able to provide it because he is no expert on lighting. The extent to which the effects will be reduced by improved lights is unknown, though as a matter of common-sense the illumination of four championship size tennis courts a few metres away from the gardens might be expected to impinge upon the quality of the setting of this unique listed building. This will be all the more so in winter when there will be little or no foliage to screen the worst of the light.

#### Thorpe Lodge

61. The adverse effect on the setting of Thorpe Lodge has formed a central plank of the local authority's case and I shall not dwell on it in depth here. Suffice it to say that on the basis of the evidence as it has emerged during the course of this inquiry

it is readily apparent that the south terrace would be far too tall and overbearing in relation to it, and would shut off one of the few remaining open aspects this building enjoys. With that, a great deal of the light which currently illuminates its listed internal features would be lost.

(c) HARM TO RESIDENTIAL AMENITY

(i) Privacy

62. Good standards of privacy are, as the UDP makes clear (para. 3.16, p.47), a highly valued amenity. It is another unfortunate and unnecessary manifestation of the proposed overdevelopment of this site that it would result in a drastic reduction in privacy for those living nearby. Four points should be noted.
63. First, the approach set out in the UDP involves looking - as a first step - at the existing levels of privacy in that local environment. The extent to which they involve a significant and unreasonable worsening of overlooking when compared to those existing levels will need to be assessed (para. 3.17, p. 47). Here, as Mr Sellwood accepted in cross-examination, existing levels of privacy are very good for those living in Kensington Heights and the three houses at numbers 2-6 Aubrey Walk. The same could reasonably be said of a number of other properties on the north side of Aubrey Walk. As will have been clear to you when you visited those properties, they are currently not directly overlooked at all. As Charles Scott's

evidence to this Inquiry made plain, this is an amenity the local residents value very highly. It should be noted that the right of the residents of Kensington Heights to expect the planning system to protect that amenity (or any other relevant amenity) is in no way curtailed by the private law relationship between them and their landlord. That relationship is not a relevant consideration for this inquiry.

64. Second, the distance of 18m between habitable rooms is not an absolute figure.

The UDP states that

*"In considering development proposals the Council will not be seeking to ensure that they met any particular minimum or maximum standard."*

(para. 3.17, p. 47)

65. As is apparent from the BRE guidelines (para. 5.3, p.19), 18m is at the very bottom end of a scale that extends up to 35m. The Council have chosen the 18m figure for the pragmatic reason that most of the Borough is densely developed on both sides of the street and has always been so. In those parts of Kensington and Chelsea the use of the lower figure is a practical necessity. Sufficient flexibility has, however, been built into the UDP's approach to take account of the conditions in less densely developed parts of the Borough such as Aubrey Walk. Here the conditions are not typical, much of the south side of the street has never had residential development upon it, existing and historical levels of privacy are very high and to apply the 18m guide without regard to those matters would be inappropriate.

66. Thirdly, even if one does apply the 18m distance as a rough guide, even that low standard is breached. There would be a distance of just 16m between the Aubrey Walk Block and the front windows of numbers 2-6 Aubrey Walk, and a distance of just 12m between the closest part of the Western Terrace and the front windows of numbers 18 and 20 Aubrey Walk. The southern flank of the Campden Hill Road Block would be a mere 12.5 m from the north side of Kensington Heights. When one considers the existing levels of privacy those properties enjoy, the dramatic and claustrophobic effect of the proposed reductions in those levels can readily be envisaged.

67. The fourth and final matter relates to the ability of the proposed planting to mitigate that reduction in privacy. As we heard from Mr Crossley, little reliance can be placed on the illustrative presence of tree planting between the east terrace and Kensington Heights. The low level shrub planting and the two street trees in front of the buildings facing numbers 2-6 Aubrey Walk will provide little screening at the best of times. All of the proposed trees are to be deciduous and in the winter their bare branches will do nothing at all to protect the privacy of those affected.

68. The appeal proposal does not ensure sufficient visual privacy for nearby residents and is therefore contrary to policy CD30 of the UDP (p.48).

**(ii) Loss of daylight**

69. The correct approach to this issue is as set out in the UDP at Policy CD28 (p. 46) and at paragraphs 2.2.1 to 2.2.12 of the Conservation and Development Standards chapter (pp. 225-229), and in the BRE's "Site Layout planning for daylight and sunlight: a guide to good practice".
70. CD28 is "Normally to resist development which significantly reduces sunlight or daylight enjoyed by existing adjoining buildings and amenity spaces."
71. It is clear that a large number of properties would suffer a loss of daylight if this scheme were built. What is less clear is the number of properties that would be "seriously affected" following the approach in the BRE guidelines.
72. As the BRE guidelines make plain (Page 1, paragraph 2), the quality and quantity of natural light in an interior depend upon two main factors. One is the amount of sky available at a given point on the outside face of a window, the 'Vertical Sky Component' ("VSC"). The second is the design of the interior environment - the size and position of windows, the depth and shape of rooms, the colours of internal surfaces. This second factor is to be assessed using the 'no-sky line'.
73. The effect on VSC has been assessed by Mr Ney for both a number of properties in Kensington Heights and for numbers 2-6 Aubrey Walk (each breaching the 25

degree figure prescribed by the guidelines as triggering the need for further consideration). Subsequently Mr Ney and Ms Laing of Wilks Head and Eve have assessed the internal effect on one of the north facing flats in Kensington Heights. The result of that assessment was that the daylight to the flat's main habitable room would reduce to 62.41% of that which it currently enjoys. The rear 46.69% of the room area would, according to the BRE guidelines, appear dark and gloomy, and any operation which involved visual discrimination would require supplementary lighting. Ms Laing's conclusion was that, in her experience:

*"... the occupant of this flat would be conscious of a marked deterioration in the levels of daylight to the flat's only habitable room and in this situation my advice to a planning authority would be that losses of this extent are best avoided."*

74. From that analysis, and following the decision chart set out at page 7 of the BRE guidelines, it can be concluded that the daylighting for at least one flat in Kensington Heights is "likely to be seriously affected".

75. In respect of 2-6 Aubrey Walk, Mr Ney concluded that

*"An assessment of these three houses shows that the proposed new building will subtend to an angle of 24.8 [degrees] which is marginally below the 25 [degrees] given in the Guide." (Para. 5.3)*

76. The difference between the two figures was so marginal that Mr Ney felt it appropriate to make a more detailed check on the effect on daylighting and he therefore went to the next question on the BRE chart, which concerns VSC. Once a decision to carry out a more detailed check has been made, and the VSC stage has been reached, it is not possible to arrive at the end of the decision chart, let alone the box marked "Daylighting unlikely to be seriously affected" without first providing a negative response to the question "In any room, is area of working plane which can see sky less than 0.8 times area before?".
77. For numbers 2-6 Aubrey Walk no answer has been given to that question. It is an exercise that is not addressed by Mr Ney before he concludes (at para. 9.3) that:

*"The proposals do not significantly reduce ... daylight enjoyed by existing adjoining buildings ..."*.

78. Mr Ney explained in cross-examination that he did not undertake that analysis because he did not have access to numbers 2-6. He did not say that it was not necessary or appropriate. That is not only an unsatisfactory explanation for the failure to complete the assessment, it is no explanation at all for the subsequent failure to make reference to the importance ascribed to that assessment in the BRE Guidelines, and to qualify his conclusions accordingly.

79. The BRE Guidelines, as is apparent from the decision chart at page 7 *require* an assessment to be made of the interior of existing buildings before any conclusion can be reached. As a matter of common-sense such buildings will often be in the ownership and control of third parties. Clearly if all reasonable efforts had been made to obtain access to these properties but without success, Mr Ney's failure to follow this important part of the process prescribed by the guidelines (though not his failure to draw attention to it) would be understandable. That is not the case here. When asked whether he had made any attempt to gain access to the properties he answered that he had not.
80. In so far as this issue affects numbers 2-6 Aubrey Walk, you have not, in my respectful submission, been given enough information to support the conclusion that their daylighting is unlikely to be seriously affected.
81. When that factor is added to the serious effect on the two properties in Kensington Heights, the serious effect on Thorpe Lodge, and the adverse effect on a large number of other properties, it can only be concluded that this is a development which - in the words of Policy CD28 - significantly reduces daylight enjoyed by existing adjoining buildings.
82. These reductions in daylighting to adjoining properties are not the inevitable result of redeveloping the site, they arise because this scheme is too big. It has become apparent, for example, that relatively small alterations to the design of the



Campden Hill Block could significantly reduce the loss of daylighting to the properties on the north side of Kensington Heights.

**(iii) Noise**

83. The impact of noise from the Tennis Club must be appreciated in context. The clubhouse is at a very narrow point in the street, within a few metres of the windows of the houses opposite. Any noise has very little distance to travel and, outside of the peak traffic hours, there is little background noise to mask its impact.
84. The existing situation causes problems for those living nearby, as Dr Margaronis (who lives opposite the club) makes clear (Proof, para. 5). The question for this inquiry is whether the redeveloped facilities would either make the problem worse or extend it to times which are currently not affected.
85. One matter is clear. If there are 10 courts capable of being used in the dark instead of 4, the capacity for people to play tennis in the evenings will increase by 150%. Evening tennis is very popular at this club, and evenings are the very time when noise is at its most noticeable and has the most damaging effect on residential amenity. The unwelcome noise associated with the current activities at the club can be expected to increase accordingly and to occur on wet days when previously no-one would have been able to play tennis.

86. As to whether there will be more evening functions, the Tennis Club say that these events are not profitable and that they would prefer to raise their fees to pay for the increased running costs associated with their new facility. They are, however, clearly keen to avoid the imposition of any conditions which might limit their capacity to hold an increased number of evening functions. In addition, they express a wish to maintain the social mix within the club, an important element of which they acknowledged to be the suppression of fee increases. You might find it hard to believe that the club will not wish to explore the fund raising potential of its new facility, a very different, more capacious and attractive venue for functions than the rather confined space of the existing club house. That is certainly the view of the local residents.

**(iv) Traffic and parking**

Parking

87. I will deal with parking only briefly. There are four points to note. First, it is apparent from the Appellant's parking survey that parking levels on Aubrey Walk and many of the surrounding streets are at saturation levels, with illegal parking a regular occurrence. These problems are at their worst in the evenings when they will cause the greatest inconvenience. Second, this problem is likely to be

exacerbated if the proposal goes ahead by an element of 'overspill' from the residential development (Proof of Dr Margaronis, para. 4.9). Third, the redevelopment of the Tennis Club will lead to an increased demand for parking from Tennis players on days when there is currently none, and at times when there are currently only four courts available. Fourth, parking is not just an amenity issue, it has implications for the character and appearance of the conservation area (Proof of Mr Thomas, para. 12.28, p 75).

### Traffic

88. It should be noted, as a first step in approaching the issue of traffic, that there is no evidence to suggest that the 'fallback' uses which produce the 'net' figures for the site's traffic generation, are likely to come about if this appeal is refused. That was made abundantly clear by Mr Sellwood in the answers he gave in cross-examination by the local authority on the very first day of this inquiry. It is well established as a matter of law that for a fallback suggestion to be relevant there must be finding of an actual intended use as opposed to a mere legal or theoretical entitlement (see e.g. PF Ahern Ltd v. SoS [1998] JPL 351, at p. 357). The 'net' figures therefore fall to be discounted and the figures for actual current traffic generation must be compared to that generated by the appeal proposal.
89. When that is done, an increase of 17 for the am peak and 24 for the p.m. peak (a maximum increase of 16.4%) are shown. This is above the 10% figure

recommended by the IEA guidelines for 'specifically sensitive areas' (LR 4, p 24).

There can be no doubt that if the Appellant had followed the advice at para. 2.5 (LR4, p 17) and drawn up a check list to identify particular groups and locations which might be sensitive to changes in traffic conditions, it would have had no choice but to identify Aubrey Walk as a 'specifically sensitive area'. The evidence of Councillor Buckmaster as to the number of schoolchildren crossing the eastern end of Aubrey Walk each day only serves to emphasise this point.

90. This matter must be seen in the context of the full methodology of the IEA guidelines. The inadequacy of the approach adopted by the Appellant - namely identifying peak flows and applying them to the suggested percentage figures - is apparent in the light of the advice contained at paragraphs 3.7 to 3.10 of the guide, particularly that:

*"... a Traffic Engineer undertaking a traffic impact assessment will frequently concentrate on producing traffic estimates designed to test the ability of key highway intersections to accommodate additional traffic. This may involve the projection of peak hour traffic levels at some time well beyond the commencement of the project. Such values may be insufficient for the environmental assessment which has differing objectives, and where it may be important to illustrate periods of 'greatest change' rather than 'highest impact'.*

*While it may be valuable to know the environmental impact of a development at the peak hour traffic levels, it is likely that the greatest environmental impacts may occur at other times. ...Similarly, the greatest*

*impact of traffic on pedestrians may occur when schools close in mid-afternoon. In such circumstances the environmental assessor may need to provide the traffic engineer with a much more specific list of requirements for traffic projections. ..."*

91. The assessment that was carried out has revealed a significant increase in terms of impact upon amenity. It is not, however, an assessment made following the IEA guidelines, and it provides no satisfactory answer to the question of how great the environmental impact of the proposed increase in traffic would be.

**(d) LOSS OF OPEN RECREATIONAL SPACE**

92. Policy LR7 is

*"to resist the loss of existing public and private open space which meets leisure and recreation needs."*

93. The purpose and importance of this policy must be seen in the light of two matters; the distinction drawn at both National and Local policy level between the provision of an adequate quantity of sport specific facilities and the protection of outdoor sports facilities, and the serious deficiency in outdoor recreational facilities in Kensington and Chelsea.

94. The distinction is apparent, as Mr Sellwood accepted in cross examination, in PPG17, paras. 1 and 15. He also accepted that this distinction was reflected in the UDP, where policies LR1 and LR7 were aimed at different objectives. LR1 is concerned with the provision of an adequate quantity of sport specific facilities, and envisages exceptions being allowed where alternative provision is being made elsewhere. The supporting text to LR7 (paras. 3.2 and 3.4) however, states that once built upon, open space is likely to be lost forever.
95. Perhaps the most important concessions Mr Sellwood made on this issue were that the purpose of LR7 is to preserve outdoor or open air recreational provision and that the purpose of preserving open air provision is for the benefit of the users of that space. Once those concessions have been made, the hollowness of any quibbling about whether or not this meets the definition of "open space" in the UDP's glossary becomes readily apparent.
96. The definition of 'open space' is immaterial. There are particular benefits to be had from outdoor recreation and for the user of the facility in question the experience of playing sports out of doors is, as Mr Sellwood accepted, different from that of using an indoor facility. That much is both a matter of common-sense, in that fresh air and sunshine are benefits specific to open air facilities, and is well documented in the evidence put before this inquiry by the Tennis Club. Those benefits are experienced irrespective of whether the facility is raised by a few metres above ground level. It was accepted that if these open air courts were

lost and were built upon, the replacements would not be outdoor and that this loss of outdoor facilities was the very consequence that policy LR7 seeks to avoid.

97. In re-examination Mr Sellwood was asked whether there would be more or less space available for tennis. It is to his credit that whilst he answered that the number of courts would be the same, he also felt obliged to add that six of them would be indoor. Having accepted the different purposes underlying LR1 and LR7, it was an important qualification for him to make. Again, when asked how he saw recreational needs being met in terms of Policy LR7, he answered that the recreational needs would be met, though less would be in the open. The need which LR7 is addressing, of course, is the need for outdoor recreation, and as the accompanying text to that policy makes clear:

*"Loss of open space may create new areas of deficiency and will only be justified if a replacement open space is provided."*

98. The second important factor is the availability or otherwise of outdoor recreational provision in Kensington and Chelsea, and the significance of the proposed loss of provision in that context.
99. Looking simply at the levels of outdoor tennis provision, the loss would be very significant. The Campden Hill Lawn Tennis Club is, as Mr Foster's Proof states:

"... the largest of only 3 tennis centres or clubs in the Royal Borough of K&C, the others being Holland Park LTC with 8 outdoor courts (including 4 grass courts used in the summer only) and Westway Sports Centre (run by RBK&C) with 4 indoor courts." (para. 8, page 4).

100. On the basis of those figures, the existing courts provide 12 of a Borough total of 20 outdoor courts. Four of the other eight are only available in the summer. The loss of six of those courts reduces the total provision by 30%, and the winter provision by 37.5%. The extra pressure on the Borough's remaining courts will be intense because, as Mr Foster said in re-examination 'people prefer to play outside when they can' and they will 'take their chances on the six outdoor courts' rather than play indoors.

101. Some, of course, will be able to play on outdoor courts out of the borough, such as the Queen's Club and the Hurlingham Club. For many of the CHLTC's members however, the very high fees and the distances involved in doing so would be prohibitive. Leaving people who wish to play out of doors little option but to use facilities out of the Borough would run directly contrary to Government Policy as enunciated in paragraph 25 PPG 17:

*"The Government attaches great importance to the retention of recreational and amenity open space in urban areas. Demand is concentrated there, and it is important that people - particularly children and elderly people - should have access to open space close to where they live."*



102. The dearth of open recreational space in Kensington and Chelsea is not confined to the provision of outdoor tennis courts, it is a much wider problem than that. The scale of the difficulty can be seen by reference to the lack of public open space in the Borough. Under the heading of "Open Space Provision: Existing Open Space", the UDP states:

*"With the exception of the City of London (2.1%) Kensington and Chelsea has been shown to have the least space as a proportion of land area in 1991 (2.8%). The overall Greater London Average is 11.1%. The ratio of open space to the population in Kensington and Chelsea is by far the lowest in London (1ha serving 3,867 population) followed by the London Borough of Islington (1ha serving 1,990 population)."*

103. When the Council carried out its Open Space Survey it was forced to scale down the NPFA standards to reflect the severe shortage of sizeable areas of open space in the Borough. Instead of setting the threshold for inclusion of spaces at 2 ha, it was necessary to start at 0.1 ha. (Open Space Survey, para. 5.2.1).

104. At page 47, para. 5.1.4 of his Proof of evidence, Mr Sellwood reproduced the following extract from paragraph 16 of PPG17:

*"The Government does not consider that it would be helpful to prescribe national standards of recreational provision. Circumstances differ greatly from one area to another."*

105. In that context, he accepted in cross-examination that Kensington and Chelsea must be placed at the worst case end of the spectrum.
106. These proposals are in breach of policy LR7. How much weight to attach to that breach is a matter for your planning judgment. In considering the weight to attach to this breach, I would ask you to bear in mind that in the context of the situation in this Borough, the consequences of that breach would be significant, and they would be irreversible. The Appellants rely on a letter from Sport England (Robert Sellwood App. 15), but it should be noted that that letter addresses the "net benefit to sport (tennis)", and weighs that against loss of open space. It does not address the question of outdoor recreational provision. In short, the letter addresses the purpose of LR1 and not that of LR7. The NPFA has now put the site on its list of Playing Fields at Risk (Proof of Councillor Buckmaster, Appendix 2).

### **Conclusion**

107. This proposal, by reason of its size, design and what it would destroy, fails to preserve or enhance the character and appearance of the conservation area. It would have a damaging impact upon the setting of the nearby listed buildings and cause significant harm to residential amenity. By removing 6 open air tennis courts it would have a devastating impact upon the Borough's meagre stock of outdoor recreational space and would put further pressure on the few remaining facilities.

It is not the only alternative to sterilisation, it is simply an unacceptable scheme and it should be refused.

108. This is a large, sensitive and important site. Its redevelopment raises a number of complex issues, not least of which is its relationship to the proposed redevelopment of the nearby King's College site. These matters should be considered together as part of the UDP process, with, we would suggest, a planning brief being prepared for the site. Such an approach would be in the interests of the proper and most effective planning of the area.

**HEREWARD PHILLPOT**

**2 Harcourt Buildings**

**4 August 1999**