

PLEASE INDEX AS

OTHER DOCUMENTS UPDATES

FILE No. TP/99/0733

JAN. FEB. MCH. APL. MAY. JUNE JUL. AUG. SEPT. OCT. NOV. DEC

PART 1

PART 9

PART 2

PART 10

PART 3

PART 11

PART 4

PART 12

PART 5

PART 13

PART 6

PART 14

PART 7

PART 15

PART 8

PART 16

affordable housing has been explained earlier in this proof. I am advised that the developer's undertaking has failed this test in the following way:

(i) The Council's primary case is for on-site provision. No suitable scheme is forthcoming.

(ii) In the event that the proposed on-site provision is not taken up within 6 months of implementation, the developer undertakes to provide off-site a number of affordable housing units equal to one third of the number of dwellings to be erected on the site. This is secured in the proposed obligation by a "Grampian" style restriction requiring 50% off-site units to be provided before occupation of the last 5 market housing units, 75% before the last two are occupied and finally 100% before the last market housing unit is occupied. The registered social landlord is required to purchase these units at 150% of the Total Cost Indicators (TCI).

Comment: Even in the event that off-site provision were to be acceptable for this site, the developer's proposals would not achieve the Council's requirements. The Council would expect all off-site provision to be made before the last 50% of market housing is occupied. Furthermore, the purchase price, set at 150% of the TCI would render them unaffordable to a registered social landlord. This aspect will be dealt with in more detail by Stephen Rawlings of Notting Hill Housing Trust.

(iii) There is provision for the Council to request from the developer the sum of £997,500 in lieu of the on-site provision. In the case of off-site provision, where a property offered is not accepted or where contracts have not been exchanged within a given period, the developer can insist that either a payment in lieu is accepted by the Council (£47,500 per unit) or the developer's obligation is ended in respect of that unit.

Comment: The sums of £997,500 and £47,500 have not been negotiated with the Council as satisfactory gap funding. The method proposed of holding any payments in a joint account is unacceptable to the Council as is the requirement to consult the developer once payments in lieu have been made.

Other Schemes

- 4.6 The Council has been successful at negotiating (using planning policy) the provision of affordable housing as part of proposed residential developments at Russell Road, W14 (adjoining Olympia Underground Station) and the BRS site in Warwick Road, W8. The Council wishes to reproduce these examples of integrated housing throughout the Borough in line with Government policy.

Appeal Decisions

- 4.7 The Inspector is referred to a recent appeal decision (February 1999) (Appendix 19) in Christchurch, Dorset in which the appellant (Primetower Properties Ltd) failed to make proper arrangements for the provision of affordable housing by way of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990. In the proposed unilateral

obligation there was no mechanism to guarantee the delivery of affordable housing as required by Circular 6/98.

- 4.8 In an appeal decision (Crest Homes, November 1998, Appendix 19), the inspector concluded that failure to provide affordable housing in the development would harm the aims of development plan policies which seek to provide affordable housing to meet local needs (paragraph 13)

5.0 CONCLUSION

- 5.1 The absence of sufficient arrangements for the provision of affordable housing is a serious flaw in the proposed development and is contrary to the Government's policy of promoting affordable housing as part of new residential developments. It is also contrary to the Council's emerging policy approach as set out in its UDP Alterations.
- 5.2 In view of the above and the reasons set out in the foregoing sections, the Inspector is requested to uphold the Council's objection to the absence of affordable housing on the site which is a valid reason for refusal in itself.

THE REDEVELOPMENT OF WATER TOWER HOUSE AND THE
FORMER RESERVIORS
AUBREY WALK ROYAL BOROUGH OF KENSINGTON & CHELSEA

CLOSING SUBMISSIONS
ON BEHALF OF THE APPELLANTS 4 August 1999

Introduction

1. *"I do not have the luxury of looking at just one element. I have to look at the overall balanced view".*¹ Thus Mr Crossley encapsulated the issues between the several parties. The RBKC and the objectors approach is to concentrate on the secondary peripheral issues without accommodating the primary picture of the inevitability of development of this site. On any view, it cannot be good planning on this important site in the centre of London to sterilise it for a redundant utility use. Housing is appropriate. Thereafter the architect has to take an overview of what should be designed to harmonise with the surrounding area. He has to balance the brief – to provide housing on a site in a Conservation Area with listed buildings – with the lesser but understood concerns such as the embankment opposite the Church, tennis courts etc. Of course, those concerns are important to the parties proffering them but they should not be allowed to prevail in the exercise of balance against residential development on this key site.
2. The overall objective is valid – housing on a 'brown field' site. This area of Kensington is predominately residential. The non-conforming water utility use is there because of historical necessity and is now no more relevant than a gasworks would be in such a location. The height of the

¹ Crossley XX Philpott at day 3

land and the proximity to its market was the justification. The site must progress to the next stage. The pressures for housing of all types are so high that it is quite wrong to delay tidying up the issue any further.

3. The propriety of the scheme has been examined exhaustively during the negotiations on the planning application and at the Inquiry. Every party has been allowed to have input and has been accommodated wherever possible. It is perhaps only the Inspector who has the luxury of asking the fundamental question in an objective way – is this scheme appropriate for this location? It is perhaps understandable that the closer the issue has got to members of the Council and the public, the question has been distilled to do we want it or do we like it? Neither question is right. Some weight can be given to officer's views whether they are officers of RBKC or EH. Perhaps their approach emphasises that in principle the scheme is acceptable but unsurprisingly, there will never be unanimity on the fine tuning. It has to be said that there should be some circumspection about the advice of the RBKC's conservation witness who was instructed before RBKC had formed a view on the scheme. Perhaps more weight can be given to the view of the West London Architectural Society who in their letter of 22 December 1999 thought the principle was acceptable but the scheme at that time was not contemporary enough.
4. St James as applicant and developer is the vehicle through which development is proposed to take place. It is a company jointly owned with equal shareholdings held by Thames Water plc and the Berkeley Group plc. They have been assiduous at all stages to discuss their proposal from the outset with officers and public authorities and members of the public have been included. There has been a long running exhibition in Water Tower House with a detailed model and plans on display. Every point of criticism however small has been considered when raised by the several parties. Where a consensus has been found

changes have been undertaken. It is an irony that some of the changes have founded criticisms underlying the impossibility of a complete consensus. The architect Mr Crossley has had to take a decision using his skills and at the same time avoid a design by committee. His competence and that of his practice have not been criticised at the Inquiry. This proposal can be yet another major successful scheme in Kensington which will be looked at in future as an example of how such a proposal should be handled.

Policy Background

National Policy

5. It is of course right that "*particular weight should be given to the impact of development on existing buildings and on the character of ... Conservation Areas*"². It is also right however that "*local planning authorities should not attempt to impose a particular architectural taste or style arbitrarily*"³. Alongside that approach is the pressure identified in February 1997 via PPG1, to use already developed areas in the most efficient way⁴ and allocating the maximum amount of housing to previously developed sites within existing larger urban areas which have access to a range of transport and other facilities whilst protecting open space and green spaces in cities and towns⁵. Even the 1992 PPG3

² PPG1 para 18

³ *ibid*

⁴ *ibid* para 5

⁵ *ibid* para 24

anticipated the emphasis on reusing derelict and under used land⁶. The combination of emerging policy (draft PPG3), the Urban Taskforce Report and common sense indicates that previously developed land must increasingly be at the forefront of development options.

6. PPG13 favours sites which will be of less encouragement to the use of motorcar. There is no dispute that the appeal site is in an established residential area "*accessible to all local amenities*"⁷. Shops are five minutes away in Kensington High Street. Three tube stations are within walking distance as are buses to destinations all over London. Schools, library and council offices are nearby. There is an abundance of employment opportunities at local stores, hotels, restaurants and commercial organisations⁸.
7. In short, this is a sustainable, accessible site wholly in accordance with the broad thrust of current and emerging government policy. Those characteristics on their own amount to major advantages in the balance.

Regional Policy

8. It is not enough for planning authorities to invoke UDPs prepared in the early 1990s and say that is all they have to do in respect of housing provisions. The LPAC figures proffered in 1994 "*should be regarded as the minimum net additional completions over the period to be proposed within the UDP and tested against the policies of this guidance in further UDP Inquiries*"⁹. The urgent search for sites in central London jointly sponsored by LPAC/GOL/ DETR¹⁰

⁶ PPG3 para 17

⁷ Rawlings proof para 13

⁸ *ibid*

⁹ RPG 3 @ 4.8

¹⁰ Sellwood Appendix 20

identified the appeal site in the Halcrow Fox Report. The strategic impetus has been driven to the level of being site specific.

Local Guidance

9. The broad strategy of the RBKC UDP of August 1995 is to maximise the residential capacity for the Borough¹¹. If there is a policy designed to reduce the densities UDP para 3.11 and H11 it must be looked at in the cross-examination that there was "*very strong*" policy support for housing on this site. He said it was urgent.
10. RBKC identify in their emerging draft alterations for the UDP that the application site is a major site with development opportunities for residential including affordable housing, tennis courts, and open space. **The policy regime is not going to allow the luxury of a development below the density which is reasonable having regard to the conservation issues and the surrounding housing pattern.**

ISSUE 1

11. The impact of the proposals on the character and appearance of the conservation area and setting of nearby listed buildings.
12. The analysis requires special regard to be had to the desirability of preserving the setting of the listed buildings round the site¹². There is no suggestion of involving the fabric of a listed building, or any features of

¹¹ STRAT 13 to 16

¹² Listed Buildings Act S.66

special architectural or historic interest which it possesses. The issue for the Conservation Area is of course the desirability of preserving or enhancing the appearance of that area¹³.

13. The latter is extraordinarily large with a number of disparate areas and individual components¹⁴. The areas local to the appeal site are 6 and 10 of the CAPS document. The main theme is residential with much variety of age, form, height, building sizes and configuration. There is no consistency between single household housing and multi occupation. Similarly there is the range from blocks of tall modern flats down to single unit properties. The value of the properties is high and there is a generally high standard of maintenance and care. The south side of Aubrey Walk is "*compromised by the less than sympathetic modern housing*" (p.23) and Thorpe Lodge "*completely sidelined by recent developments*" (p.27). Water Tower House "*is a dreadful building in all townscape respects*" (p. 31).
14. There does not appear to be any dispute between the parties that the proposal can provide a residential development of the highest quality. That quality is consistent with what is presented walking round the streets of the Conservation Area. Given the variety of the surrounding area, it has been thought proper to have a disparate architectural style in the several components. There is not any dispute with officers and English Heritage at least that there can be a block on the frontage with Campden Hill Road, a terrace of building fronting Aubrey Walk and a town square at the eastern tennis court¹⁵.

Campden Hill Block

¹³ ibid section 72

¹⁴ see Kensington Conservation Area Proposal Statement (CAPS)

¹⁵ Sellwood Appendix 18 para 4.86

15. The ugly and discordant Water Tower House is the subject of universal agreement. It is the wrong shape size and style. It has to go. Any replacement must reflect, in architectural terms, the need to bridge the gap between Kensington Heights and 25 Campden Hill Gardens. It is also desirable to provide a 'stop' to the view up from Campden Hill Gardens avoiding the ugliness of the hinterland behind Water Tower House and the view of Kensington Heights. The architect has proposed a descent from six storeys in the south to four storeys in the north. Mr McCoy understood that as a philosophy of approach which was actually being achieved, but did not like the scale in its achievement. The appellants were advised that officers were broadly happy with the height and scale of the earlier design of the CHR block¹⁶. The contemporary design was a point of care for Mr Crossley. His approach was corroborated by the assent of RBKC officers. The external detailing is "*modern and well detailed with well articulated facade which will contribute visual interest and variety to the streetscape*"¹⁷. Even Mr McCoy is able to accept "*the elevational treatments (sic) of the three different elements of the scheme is carefully considered and not inappropriate*"¹⁸. The Inspector is asked to give weight to the apparent acceptance by a number of officers both in pre application discussion and in the report to committee that important key elements of the scheme were acceptable.
16. So it is agreed the existing building must go. Contemporary style is acceptable. Seeking to link between Kensington Heights and No. 25 Campden Hill Gardens is acceptable. The outstanding issue articulated by Mr McCoy is the scale of the link. On the 5th day of the inquiry he proffers his amateur architectural effort which fails to address some of the

¹⁶ Sellwood App 6 para 7(c) iii

¹⁷ Sellwood APP 18 para 4.74

¹⁸ Proof RBKC 1.1 at para 10.1

fundamentals. On the eastern elevation the link is not achieved in a way to reduce the impact of Kensington Heights which is still substantially exposed.[contrast the existing and proposed views in photomontage A].

On the western elevation there is a repeat of the failings of WTH with none of the easing of the introduction to Aubrey Walk which is the characteristic of Mr. Crossley's scheme.

Aubrey Walk Building

17. Unlike the larger scale of Campden Hill Road, Aubrey Walk has a lesser context with a varied northern frontage. St George's Church is accepted as an influential important building. Thereafter given the principle of development is acceptable any scheme must complement the current architectural style. Again English Heritage and officers have no difficulty with the layout¹⁹. Officers concede in the Report to Committee that the Aubrey Walk block would satisfy CD53 and would be compatible with the character scale and pattern, bulk and height etc of the conservation area.²⁰ The only issue as far as officers were concerned was the loss of bank of shrubs²¹.
18. That area of embankment had expanded beyond its true proportion. It is only about 40 metres long, between 2 metres to 4 metres in wide, and about 2½ metres high.²²
19. The physical scale does not diminish the perception of it for the residents. Their perception does not accommodate the proper planning balance. It is no more than a summer screen of the emasculated plant room. Site inspection reveals comparatively young trees so it is a reasonable assumption that this is not a long standing screen. Sir Brian Neill accepts

¹⁹ Sellwood Appendix 18 para 4.63 and English Heritage letter 28 April 1999

²⁰ Sellwood Appendix 18 para 4.74

²¹ ibid

²² Crossley day 2 re-ex

they were not there in 1965 and he did not perceive the bank before 1991.

In Winter, there is a stark revelation of the bank and the pump house. Mrs. Lascelles claim that the loss of it will stem the increasing congegation of St. George's Church is an unworthy exaggeration. To give this bank an over inflated status, is to ignore the proper planning balance.

Prevention of housing here means pressure for housing elsewhere. The major concern nationally is pressure on green field sites - countryside. Loss of this area of bank in that overall context is de minimis. A green effect can still continue with the existing street trees and opportunity to consolidate with further planting.

20. There is a consensus that the access is acceptable²³. It has the advantage of eliminating two of the three cross-overs. All responsible analysis contradicts Mrs. Lascelles suggestion that it is dangerous. On the contrary the improved geometry and visibility would make it less so.
21. Mr. McCoy for RBKC produces two schemes he claims as acceptable which are less refined. His last minute scheme proposes a lump added behind the frontage block. That will be visible from the road and will take up open space on the scheme. Further he supports the crude 'affordable housing alternative' with its extra access through the frontage at the top of Hillsleigh Road and surface car parking. Neither of these is as good as the appeal scheme and proves its quality.

The Square

22. Again pre-submission discussions persuaded the applicants that their proposal for the square was acceptable²⁴. The Planning Committee were advised by Officers that there was no issue as to layout and external

²³ Sellwood App18 4.106

²⁴ English Heritage 28:4:99

detailing²⁵.

²⁵ Sellwood Appendix 18 - 4.63,4.83-4.87

23. The proposal here is balanced and reasoned. There is a deliberate design which is traditional but does not intend to replicate a particular style. Mr. Crossley has deliberately defined them as grand and substantial but with numerous variations²⁶. He sees them as representative of the best traditions in London Town houses smaller than the largest houses in Camden Hill Square and larger than the smallest houses in Aubrey Walk²⁷.
24. The Council's concern is that the square is not typical and the houses are too large. It was conceded there is no such thing as a definitive London Square and the scheme had advantages of being traffic free and full public access²⁸. This will read as an attractive asset to the area. It can co-exist uncriticised with the major listed building in the area - Aubrey House. It is universally conceded that the houses will be attractive for the market. Whatever the criticisms, the market is exactly the same as for the existing houses.
25. The size and height are in balance with the space. That is the test of how they will be viewed in the context. They are not seen alongside Aubrey Walk but from AW. They will become a highly valued feature of the area.

Listed Buildings

26. The Listed Buildings around the site are 118 Campden Hill Road, St. George's Church, 226(even) Aubrey Walk, 15-19 Aubrey Walk, Aubrey House and Thorpe Lodge. RBKC grounds of refusal invoke concerns only about St. George's Church and Thorpe Lodge. Mr. McCoy (and

²⁶ Crossley proof 20.59

²⁷ *ibid* 20.60

²⁸ McCoy xx day 6

nobody else) is concerned about 118 Campden Hill Road.

118 Campden Hill Road

27. The setting is comprised of the substantial building in Campden Hill Road. It thrives as an attractive and contrasting building in its current context. Even the modern Melbourne House next door to it does not affect its setting. Water Tower House is in its wider setting and must be a diminution of it. It is a positive enhancement to remove this ugly building and replace it with something much better.

St. George's Church

28. The Victorians set St. George's Church alongside an active waterworks. In the mid to later half of the twentieth century at least, the environs of the Church have not remained static. The church itself has been substantially changed as a result of bomb damage and refurbishment. The substantial water tower and paraphernalia have been replaced by Kensington Heights and Water Tower House. Running west from Campden Hill Road the south side of Aubrey Walk is comprised of the ugly and diminishing Water Tower House, the ugly back environs of Water Tower House, the emasculated pump house, embankment, modern ugly housing and the redundant reservoir. That is a poor context for a fine Church in a residential area. Its setting will be substantially enhanced by the removal of Water Tower House and substituting a building of merit; and replacement of the remaining intrusions with a complementary low rise building on the south side of Aubrey Walk. It is the policy of CAPS to enhance " *the sense of enclosure throughout*

Aubrey Walk."²⁹ Site inspection will reveal a distinction between the Aubrey Walk context for the Church and Campden Hill Road. That distinction is emphasised by the break of the roadway of Campden Hill Gardens to the North and the site access South. If that is wrong, the design of the Campden Hill block which seeks deliberately to turn the corner in a complementary fashion must be an improvement over existing.

29. Fundamental issue is taken with the approach of Mrs Lascelles. Her case on behalf of St. George's Church is to claim " *..these proposals threaten the growth of our congregation*"³⁰. The principal objections declared are the siting of the entrance and the removal of the bank. The claim that those elements are a disincentive to worship is simply hyperbole. That is shown by the Bishop of Kensington writing on 21 December 1998 from Campden Hill Square that the then current scheme was concerning him about his car parking in CH Square. Quite rightly he said nothing about the disincentive to worship. Indeed Mr McCoy's acceptance that the bank was no more than a screen which if substituted by a building could be an enhancement, is an opposite and more sensible view as to the efficacy of the bank³¹.

Thorpe Lodge

30. Thorpe Lodge has not been well served by its surroundings in the 20th century. Any perception which remains of its historical setting may be to the south in its gardens as a foreground to the lodge. There is none to the north. The further context of the school is not a happy one and is euphemistically described as "neutral" in the CAPS document³². It is a correct description "*Thorpe Lodge is completely sidelined by recent*

²⁹ CAPS p 20 C7

³⁰ letter 21 June 1999 page 4

³¹ McCoy xx day 6

³² CAPS p 27

*developments*³³. Mr. McCoy's notion of a "*campus*" is no more than descriptive of the presence of the school; it is not a qualitative description.

Nevertheless it is right for Mr. McCoy to agree that the Lodge lies in a bowl - in its own context. What happens outside the bowl is of limited importance.

31. Even Mr. McCoy concedes "*the Lodge is an unassertive rambling two storey property with a shallow pitched slated roof*"³⁴. It is a one time residential building which is of no great apparent merit externally but of some importance internally³⁵. If the land to the north is the setting, it is diminished by this very large reservoir structure. It cannot have its northern garden back - that was lost 150 years ago. The best possible neighbour now will be housing of high quality, classically derived design at a height which is intrinsically in balance with the remainder of the square yet does not have the feel of the scale of Kensington Heights and Airlie gardens. Even Mr. McCoy's crude design accepted some facades at the southern alignment of the scheme. Mr. Crossley's design will be complemented by the remaining trees which are on the Thorpe Lodge land and the opportunity to retain the trees on the appeal site.

Open Space Issues

32. Despite the blandishment and assertion of the Open Space Survey in past correspondence by an officer and from residents, that is an informal document - not one of policy. There was no public consultation. It was a desk top exercise to see what there was in the Borough. It is also incorrect as a document of description -

³³ *ibid*

³⁴ proof 2.9

there is no "public access" to the tennis court³⁶.

33. In short there is no policy designating the appeal site as open space. Nevertheless, the UDP is protective of recreational provision and existing public and private open space (LR1 and LR7). Mr. McCoy conceded in cross examination that there was not a deficiency of public open space in the area. That is consistent with the analysis of the Kings College Development Brief A 3.2.
34. Thames Water have sought to be fair with their tennis club tenants. TW are in a position to remove tennis use from the site within 6 months. If the amount of business in Aubrey Walk caused by the tennis use was genuinely thought to be a concern, TW could have removed the issue at a stroke. On the same basis the very recreational element is precarious. In circumstances where there is a refusal, Thames Water are bound to receive advice that the planning analysis in future should be uncluttered - upon the basis that there are no uses on site which will hinder its development.
35. Under this scheme the Tennis Club will have security of tenure, excellent facilities and a long term contribution to recreational needs.

³⁵ See Listing :Thomas Appendix 2

³⁶ page 6 item 135

36. It is agreed between the principal parties that there will be no loss of sports and recreational provision³⁷. The apparent concern of the residents that the quality of tennis provision in the future is not as good in indoor courts as outdoor courts is contrary to the advice of Sport England³⁸. There is no loss of existing public and private open space which meets leisure and recreational needs (LR 1,LR7)³⁹. There could also have been agreement on LR9 (wider use of private open space) and LR13 (provision of public open space). The major and usual elements of open space are thus removed from contemplation. RBKC is forced to descend to the secondary argument of visual amenity under their open space claim.
37. The embankments are invoked despite concession there is no ecological issue in them. Their mere presence is claimed to be sufficient to found open space objection. That is sought to be coupled with views both public and private over the structure of the reservoir. The highest RBKC can put their case is that in some way the perception of open space is a characteristic of the conservation area. That approach appears to be contrary to the approach of the CAPS Statement that seeks eg: to *“enhance the sense of enclosure throughout Aubrey Walk”*⁴⁰
38. Ultimately the issue of whether or not there are public and private views capable of making significant contributions to the conservation area is a matter for the site inspection. It is the appellant’s case there are limited views of the application site from public vantage points and none is so significant in the circumstances of balance in the case to require retention. Mr. McCoy conceded in cross examination that they only amounted to views from the south side of Aubrey Walk and oblique views from Airlie Gardens.

³⁷ agreed statement para 12

³⁸ Sellwood Appendix 18 and Sellwood XX Day 2

³⁹ agreed Statement Paragraph 12

⁴⁰ CAPS 50 C7

39. Similarly the private views from elevated buildings are no more than that. They are not facets of the conservation area characteristic that must be retained. Mr. Scott concedes that the loss of outlook from his flat in Kensington Heights " *is not a planning consideration*"³⁹. In reality it is not a private view which he and the other residents are entitled to. They are all subject to the head lease, by which they agree to allow, in effect, development of the appeal site which will obstruct their view. Dr Margaronis and those living west of him in Aubrey Walk will have their views south unaffected due to the retention of the western courts. That is another plus in the balance.
40. On balance, it is far more important to have an architecturally valuable and attractive development on site than preserve the historical anomaly. It should not be forgotten that this is operational land which is 100% developed. There has been freedom of operation over the years to build structures, dig huge holes and operate as a water works. It is an increasingly discordant feature in the townscape as time has passed. The invocation of views amounting to visual amenity is inappropriate though understandable opportunism. It has little weight in the planning balance. It should be remembered Mr McCoy told in cross examination that 43% of the site would remain open space even on his figures.

Affordable Housing

41. It is UDP Policy at H21,H22 to welcome and seek affordable housing in residential developments. Subsequent to that, Circular 6 /98 reinforces the approach and recognises the "cascade approach". The emerging draft alterations to the UDP follows through that similar cascade. On the

³⁹ proof 4.3

advice of Mr. Rawlings, the development director of Notting Hill Housing Trust, this is an urgent issue. The affordable housing shortage for all types of social housing will rise from 7,100 in 1999 to 8,100 in 2001.

42. There are only two potential sites that Mr. Rawlings' office was able to identify as coming forward for affordable housing. The Appellants are offering everything Mr. Rawlings' seeks as to the components of affordable housing provision on site. Nothing is outstanding. That is at a very substantial cost to the applicants as the Borough Valuer has helpfully shown⁴⁰. The only outstanding issue was whether there should be the cascade solution according to policy and emerging policies. The simple approach of the Appellants was to offer every opportunity for the Council and a registered social landlord to provide to take up what the Appellants will provide on site. Thereafter the burden was completely with the Council. If they wished to take up that which was offered there will be 17 valuable units of social housing in Aubrey Walk on terms already agreed. If they were recalcitrant or there was some force majeure such as national change policy as to funding etc, then it would have been quite wrong for the Appellants to be at risk. No reasonable contractual position does not have an end date. The Council sought a proposal without an end date and that was unacceptable.
43. Now RBKC suggest delivery of the affordable housing by a *Grampian* style condition. The Appellants have compromised further by accepting the draft. Now there is even more likelihood of the advantages of affordable housing being delivered. The weight of affordable housing gain in the balance of advantage is increased even more.

⁴⁰ letter 28th July 1999

Residential Amenity

Daylight and Sunlight

44. There is no standard approach which is to be applied in every case. There are guidelines but they are to be interpreted flexibly "*because natural lighting is only one of many factors in site layout design*"⁴¹. The daylighting of an existing building may be adversely affected if: "*The vertical sky component measured at the centre of an existing main window is less than 27% and less than 0.8 times its former value;*"⁴²-(emphasis added).
45. There is agreement that there are only two rooms which satisfy the combination of less than 27% VSC and 80% - both on the north side of Kensington Heights. One bedroom is reduced to 79.72% of existing which is at the very margin and as a bedroom has less acute need than a living room. The other reduction to 62.4% is in the context of an oversailing balcony. No other daylight analysis showing a worst position is argued for by any expert. The Ney analysis is not one of concern. It is extraordinary in the context of this substantial development in a central London residential area that there is so little influence on daylight. The approach of the Inspector in the NCP Carrington Street decision is instructive (Ney 3.7). The advantages of living in Central London outweigh consequential disbenefits which would include less than ideal standards of daylight and sunlight. The instant case there are not less than ideal standards of daylight and sunlight.
46. Mr Ney reveals there to be no issue as to sunlighting and he was unchallenged upon the point. That is corroborated by the advice to

⁴¹ BRE Guide p 1

⁴² BRE p 7

members in the Committee Report.

47. For the avoidance of doubt, there is an agreed position also that there would not be any loss of privacy to nearby property that would justify a refusal of planning permission. Similarly save for assertion of visual impact upon the area there was no significant environmental implication argued for. The floodlighting proposed could probably be an improvement.

48. Highways issues -

(i) There are three potential sources of traffic relevant to this site. First the existing use, second the tennis court use and third the proposed residential use. There has been a large number of discussions between Mr Parry and his firm and representatives of RBKC. That has achieved agreement.

(ii) As to the first, the existing reservoir and ancillary facilities can be expected to generate up to 19 additional trips in peak hours¹⁸. Inevitably implicit in that agreement is acceptance that there is a reasonable prospect of the potential uses taking place. It is not open to RBKC now to impugn the Agreement. It appears from the 4th March 1968 planning consent¹⁹ that the site can be used for a water rate office and depot unconstrained by a condition restricting it to a personal user. The site has also accommodated a distribution depot for a number of years with some 20 staff based there. The site was used as a base for up to 15 vehicles used for repairs and customer liaison in the local district: *"Given the central location however it is likely if the planning application is unsuccessful that the company would continue*

¹⁸ Agreed statement 28

¹⁹ Sellwood App 4

*use of this part of the site for a beneficial purpose in the short term*⁴⁶

In short, Thames Water have used, and could use, this site for beneficial commercial purposes and traffic will be generated. If not them, common sense indicates somebody will.

(iii) Thereafter the issue with RBKC is the increased generation they claim of vehicular and pedestrian activity arising from the use of the tennis court if it is to have indoor facilities in future. There is absolutely no evidence as to current concerns in respect of pedestrian access or any justification of future concerns.

(iv) (iv) The concern as to vehicular activity is vitiated by the Agreement at para 31 *"The maximum vehicular activity associated with the proposed tennis courts would be likely to be no higher than the present peak*⁴⁷". There is only one analysis before the enquiry - that of Mr Parry. His advice was that the increase in traffic flows is insignificant in the context of existing traffic being very small. The flow to the tennis court in future will be no worse and if anything there may be a reduction in the summer⁴⁸. On that basis, the spare car parking capacity revealed in TPK's on-street analysis will not get any worse and if anything will be improved.

(v) Much of the concern about the activity at the Club is ill founded. The Club has been there for more than 100 years without planning restriction. There could be very much more

⁴⁶ Sellwood App 3 page 4 Thames Water letter

⁴⁷ agreed statement para 31

⁴⁸ Parry re-examination Day 4.

use of the facilities in all facets without meeting arguments that intensification has occurred amounting to a change of use. For the first time there is the opportunity to bring the operation into a controlled regime. Another bonus of the proposal which outweighs the concerns expressed by some locals. For completeness, there is no concern about any other environmental implications (committee report para 4.124). The EHO has been silent.

49 Public access is not an issue of substance which has prevailed as a criticism. It is proposed there be no pedestrian gates on the scheme and that there will be full pedestrian public access to the site confirmed by the unilateral obligation offered by the appellants. That again is a bonus of the scheme: there is more public access to open space than there is currently.

50. *Conclusion.*

There is the impression that the RBKC have been led by articulate and influential residents opposed to the scheme when officers were much more receptive. The accommodation of residents views is wrong though understandable. 'No development' is not an option. The sterilisation of this important redundant site would be a planning scandal. Happily there is an emerging acceptance of that. The transition to housing has national and emerging local approval. It would be equally inappropriate to delay the delivery of urgently needed housing at an appropriate density particularly of the affordable category. A high quality architectural solution is proffered reflecting and respecting the style of the area. The perception of it will immediately be as a permanent complementary feature of the Conservation Area and in the long term the elements of the scheme are more likely to be listed than most of the existing unlisted

buildings. The Appellants invite the Inspector to allow this excellent scheme to proceed.

Patrick Clarkson QC
1 Serjeants' Inn, London EC4Y 1NH

4th August 1999

Closing submissions on behalf of the
Royal Borough of Kensington and Chelsea

1. Introduction

The issues in this appeal are addressed under the following headings:-

- (i) Reason for refusal 3;
- (ii) Fall-back rights and liabilities;
- (iii) Provision of housing;
- (iv) Provision of affordable housing;
- (v) Effect of the proposal on the setting of Listed Buildings;
- (vi) Effect of the proposed development on the character and appearance of the Conservation Area as regards (a) the loss of open space and (b) the bulk and layout of the proposed development;
- (vii) The effect of the proposed development on residential amenity as regards (a) loss of open space and (b) disturbance caused by an increase in vehicular and pedestrian activity.

2. Reason for refusal 3 in the Report to Committee on 8 June 1999

In cross-examination Mr. Sellwood accepted that:-

- (i) The advice in PPG15 para. 4.27 and UDP policy CD51 should be applied to the appeal site;
- (ii) Accordingly, unless the Inspector concludes that the proposed housing scheme is acceptable in all respects, the proposal to demolish the reservoirs is premature and conservation area consent for demolition should be refused.

3. Fall-back rights and liabilities

- 3.1 The Appellant has sought to rely upon (a) existing planning use rights which are available in the event of the appeal being dismissed and (b) the responsibility of Thames Water to decommission the redundant reservoirs. The latter leads on to a third aspect, (c), the future of the Tennis Club if the appeal is dismissed.

(a) Fall-back rights

3.2 In Snowden v. Secretary of State for the Environment [1980] J.P.L. 749 the High Court held that it is relevant to compare the effects of a proposed development with those which flow from existing use rights provided that, in the event of the appeal being dismissed, there is a "real likelihood" that those use rights will in fact be relied upon. In the present case the only information from Thames Water is the letter from the Property Development Director of 24.6.99 (Sellwood App. 3). No witness has been made available to give evidence and answer questions.

3.3 Mr. Sellwood in cross-examination confirmed that:-

- (i) The reservoirs are redundant for the purposes of any utility company;
- (ii) The pump room and ancillary facilities are also redundant for those purposes. If the appeal should be dismissed Thames Water would use this part of the site for temporary purposes only. There would be no longer term usage by Thames Water. The depot previously on the site has been relocated to Cricklewood in North London and would not return to the appeal site. Thus, in the longer term, the whole of the appeal site is redundant for water utility purposes;
- (iii) It is common ground that the Water Tower House is ripe for redevelopment and is capable of being redeveloped independently for residential purposes. Accordingly, no allowance should be made for fall-back office uses in that building because they are unlikely to occur;
- (iv) Within the Pump House any office space is ancillary to the B8 or depot use. The fall-back argument raised by the Appellant is therefore limited to that area of B8 floorspace and the ancillary external area used for the parking of vehicles.

As to point (iv) the Appellant has called no evidence (eg. from a commercial agent) to show that in the market there is a real likelihood of B8 floorspace of this quality

and in this location being taken up. Accordingly, no weight should be attached to the reliance upon fall-back rights.

(b) Fall-back liabilities

3.4 This refers to the liabilities which Thames Water currently has in respect of the reservoirs (see pp. 3 and 4 of Sellwood App. 3). Thames Water states that:-

- (i) The two reservoirs are subject to the controls in the Reservoirs Act 1975 as "large raised reservoirs". Consequently, under section 2(2) and (3) of the Act RBKC is the local authority responsible (a) for maintaining a register of such reservoirs in its area and (b) for securing that Thames Water complies with the requirements imposed upon it by the 1975 Act. By section 2(6) RBKC is an "enforcement authority" for the purposes of the Act;
- (ii) Thames Water's policy normally is to "abandon" and "discontinue" all redundant reservoirs. Abandonment is the procedure covered by Section 14 and requires Thames Water to obtain a report from an independent engineer (appointed from the section 4 panel of engineers) as to certain safety measures which ought to be taken and thereafter to comply with those measures. (In this case, the section 14 report appears at the end of Sellwood App. 3). Discontinuance is dealt with under section 13 under the supervision of the independent engineer;
- (iii) Keeping the reservoirs in their current state involves ongoing maintenance costs and therefore the company normally prefers to demolish redundant reservoirs;
- (iv) Under section 2(3) of the Water Industry Act 1991, the Director General of Water Services is required to exercise his statutory powers and duties so as to ensure that certain objectives are achieved, including the promotion of "economy and efficiency" on the part of a water undertaker such as Thames Water. On that basis the company asserts that it could not simply leave the reservoirs as "a

significant maintenance obligation"; instead "it must...ensure that the asset is re-used as efficiently as possible and this can be achieved by re-development of the site or residential use (p. 4 Sellwood App. 3). The Inspector is asked to note that the word used was "can", not "can only" or "must".

3.5 Once again it is significant that Thames Water has chosen not to provide a witness for questioning, and has simply provided a written submission which leaves some gaping holes in the Appellant's case:-

- (i) Thames Water failed to refer to section 3 of the Water Industry Act 1991 ("General environmental and recreational duties"). Section 3(1) provides that it is the duty of (inter alia) the Director General and every water undertaker, when formulating or considering proposals relating to any function of an undertaker, to comply with the requirements of section 3(2) and (3). Those provisions include requirements "to have regard to the desirability of protecting and conserving buildings, sites and objects of...architectural and historic interest" and "to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or any such...buildings, sites or objects". Thus the legislation under which Thames Water operates does not require the company to strive for economy and efficiency only. The duty is balanced within the statute by environmental and amenity considerations;
- (ii) In any event, any responsibility to achieve the most valuable re-use of the site in commercial terms has to be constrained by what is achievable under the planning system. In particular, Mr. Sellwood accepted that policy LR7 of the UDP (quite apart from Government policy in PPG17) protects the valuable contribution to sport made by the longstanding tennis club use;
- (iii) Thames Water has given no estimate as to what the annual costs would be of maintaining the reservoirs in their existing condition, as

compared to the rent which Thames Water would receive from the Tennis Club (currently £50,000 p.a. for a tenancy with no security of tenure for the existing facilities only), assuming that no residential planning permission is granted for the reservoir part of the site;

- (iv) No information has been given by Thames Water as to the feasibility of other alternatives, such as the total or partial demolition of the reservoirs (including the cost of such work) so as to allow open air tennis to take place on the existing base level of the reservoirs. Such matters would need to be considered in a design study or development brief for the site in the event of the appeal being dismissed (see Conclusions).

In summary, the Appellant has produced no evidence to show that the long term future of the reservoirs and Pump House can only be dealt with by the redevelopment proposed in this appeal. Thus, although Mr. McCoy has accepted that the site taken as a whole cannot stay as it is, that begs the question as to how much of the site should be redeveloped over and above Water Tower House and what should be the form of that redevelopment.

(c) The future of the Tennis Club if the appeal is dismissed

- 3.6 It is clear from Sellwood App. 3 (pp. 5-6) that the Club will be granted a new lease for 99 years in respect of the proposed re-developed tennis courts if planning permission is granted. Clearly that arrangement would give the Club greater security of tenure than it now has. At the end of the letter from Thames Water dated 24 June 1999 it is said that "these benefits can only be secured with the current scheme proposals". As a matter of language those words merely refer back to the previous sentence which describes the agreement for a lease which would give the Club enhanced tennis court facilities. There is no doubt that those particular benefits relate solely to the physical form of development proposed in this appeal. However, it does not follow that if the appeal is dismissed, the Club is likely to have to vacate the site or is likely to suffer a reduction in its current facilities. The letter from Thames Water provides no information as to what alternatives it would

actually consider if the appeal were to be dismissed (see p. 5). There is no evidence before the inquiry to show that the only way in which the Club will be able to continue on site with at least 12 courts is if the present proposal is approved.

3.7 This analysis of the letter from Thames Water is confirmed by answers given by Mr. Foster in cross-examination.

- (i) The current lease is for a 20 year term from 1991 and was granted in 1994. Before that the Club had a long lease granted in 1969 with security of tenure under the Landlord and Tenant Act 1954;
- (ii) It was when the lease was renewed in 1994 that a 6 month break clause was introduced and the Court's approval obtained to the exclusion of 1954 Act protection. Effectively, the Club was put in the same position as a licensee pending redevelopment;
- (iii) Although the Club had no valuable property rights to use as a lever in the negotiations as to the form of the redevelopment, Thames Water's first offer in December 1997 was 6 courts over the western reservoir. The Club's strong opposition caused Thames Water to increase their offer to 4 indoor and 4 outdoor courts (March/April 1997). Because the Club also rejected that proposal, the offer was increased to 6 indoor and 6 outdoor courts;
- (iv) Mr. Foster accepted that an important negotiating card played by the Club in order to obtain this great improvement in the terms offered by Thames Water (better than twice as good as the initial proposal) was the UDP planning policies for the protection of the existing sports use.

There is no logical reason to think that if this appeal should be dismissed the weight to be attached to those policies would alter (whether under the planning system or by Thames Water itself) and hence no reason to think that the tennis usage of the site is likely to be lost or reduced in scale or quality. There is certainly no reason to think that it would be in the interests of Thames Water to give 6 months' notice to the Club. It would simply lose the rental income from the club and would be

in no better position to overcome the planning protection afforded to the existing recreational use. Furthermore there is no basis for the claim by Mr. Clarkson Q.C. that the Appellant's proposals are "generous" to the club or provide a significant planning benefit. Unless the Appellant had provided 6 indoor courts to offset the loss of 6 outdoor courts it knows that there would have been a sound and clearcut reason for refusal.

4. Provision of housing

4.1 Mr. Sellwood has placed considerable emphasis upon STRAT 14 and Policy H2 of the UDP which seek to maximise the residential capacity of the Borough (proof pp. 39-40). However, in cross-examination Mr. Sellwood accepted that:-

- (i) Policy H2 is subject to the other policies in the UDP;
- (ii) The policies in the UDP which are relevant to this appeal are up to date;
- (iii) A balance needs to be struck between seeking to maximise housing on the appeal site and the other policies of the UDP. It is important to look at the UDP to see how the plan strikes that balance;
- (iv) Although the Officer's report stated that in principle housing is acceptable on the appeal site (paras. 4.38 and 7.6), that acceptance is subject to the other policies of the UDP and to questions of quantum, location and form.

Balance between housing provision and other objectives

4.2 As to this issue of balance Mr. Sellwood accepted that:-

- (i) The Borough is primarily a residential area with a high quality residential environment. 70% of the Borough lies within one of the 35 Conservation Areas (para. 1.2 of UDP on p. 11);
- (ii) The Borough has some of the highest residential densities in the country but such high densities place a demand on the limited amount of open space available and "particular care" has to be given

to the protection of "light, privacy and outlook" (para. 1.11 of UDP on p. 13);

- (iii) The "overall aim" of the Plan is to "maintain and enhance the character and function of the Borough as a residential area..." (para. 1.15 of UDP on p. 14);
- (iv) The overall strategy of the UDP is set out on pp. 16-17. Although one objective is to seek to increase the supply of new housing, the Plan states "the high quality of the residential environment is [the Borough's] main contribution to the Region" and, hence, intensification of development which is likely to affect adversely that residential quality is to be resisted. Mr. Sellwood specifically accepted that the appeal site lies within a residential area with a high quality environment (see UDP paras. 4.3 and 4.5 on p. 16). Accordingly, new development on the appeal site should be required to protect or enhance the residential character of the area;
- (v) H2 is also subject to UDP policies which protect both public and private open space (see section ~~8~~⁷ below).

Although Mr. Sellwood pointed to the latest housing targets in the 1996 version of RPG3 and to the increased emphasis on the re-use of developed land, he did not point to any policy statement from the Government (or elsewhere) which suggested that less weight should now be given to the overall aim of the UDP to preserve and enhance the high quality of the residential environment of the Borough. There is no reason to think that the way in which the UDP strikes the balance, by giving more weight to that overall aim than to the maximisation of housing, is likely to change. Hence, considerable weight should be attached to the fact that when the Review of the UDP goes on deposit in August 1999, the same policies and approach are retained. It also follows that the maximisation of housing on the appeal site (including the provision of affordable housing) cannot override the environmental objections to the proposal.

4.3 In paragraphs 4.4.3 to 4.4.5 Mr. Sellwood produced figures derived from an LPAC's document issued in 1998 (based on figures ending in 1996) in order to show that housing completions in the Borough fell short of minimum targets by either 28% and 48% and hence the Council is "struggling" to even approach the minimum figure set down by the Secretary of State. However, in cross examination Mr. Sellwood accepted:-

- (i) The shortfall of 48% was based upon the superseded version of RPG3 (1989) and looked at the period from 1987-1991 only;
- (ii) The correct approach is to look at the 1996 version of RPG3 which sets a target of 7750 new dwellings for the period starting on January 1992 and running to 2006;
- (iii) He also accepted the Council's figures on completions for the period to end June 1998 (Hughes' rebuttal) which shows a shortfall of just 1% (Actual completion of 3319 compared to a pro-rata requirement figure of 3360).

Thus there is no basis for the last sentence of para. 4.4.5 of Mr. Sellwood's proof, which called for "even greater weight" to be given to the maximisation of housing provision.

Schedule of Major Development Sites

4.4 In the draft review of the UDP (April 1999) the appeal site has been included in this schedule (Sellwood App. 23 p. 282). The schedule reads "Residential including affordable housing, tennis courts, open space." Mr. Sellwood stated in his proof that the Council proposes "a mix of land uses which precisely conforms with the mix proposed in appeal proposals." However, he accepted in cross examination that:-

- (i) This was a site-specific policy proposal, unlike those parts of the plan which seek to embody final versions of Government policy in UDP policies;

- (ii) The inclusion of the site in the schedule has not yet been the subject of public consultation and remains to be tested through the UDP process as well as through planning applications;
- (iii) The schedule gives no indication as to the amount and location of the housing which may be acceptable;
- (iv) The schedule requires both open space and tennis courts to be provided.

Halcrow Fox report (Sellwood App. 20)

4.5 Mr. Sellwood gave emphasis to this study at pages 35 to 37 of his proof. But in cross examination he accepted that the report had involved no more than the first stage of a sieving process. He also accepted the points made in Mr. Hughes's rebuttal (pp. 1-2) about the weight to be given to the report.

4.6 Density policies

The Council has made it clear (Mr. McCoy's evidence and the officer's report to Committee) that it does not rely upon conflict with the density policies in the UDP as a reason for refusal in itself. Nevertheless, the present proposals do clearly conflict with H11 (referred to in part of reason for refusal 2) and this supports the Council's case that the proposals involve substantial over-development of the site. That over-development manifests itself in the *specific objections* raised to particular aspects of the design. Nevertheless, given section 54A of the TCPA 1990, it is necessary to record how the proposal measures up to the UDP's policies on density. Mr. Crossley accepted in cross-examination:-

- (i) The approach in 3.11 of the UDP (p. 85 of the Council's App. 6), namely that lower densities should be sought than the very high densities of C19 development in the Borough, so that excessive pressure is not placed on existing facilities such as open space and so as to maintain the quality of the existing environment. The UDP stated that "it will be particularly important to design to lower

densities, and make adequate provision for open space, in schemes suitable for occupation by families with children";

- (ii) For the purposes of applying the density policies and comparing the development with other sites, that part of the appeal site which will provide 6 open tennis courts should be excluded (ie. the calculation should relate to the land area to be devoted to residential use). On that basis the agreed density is 342 hrh (para. 23 of Agreed Statement);
- (iii) H9 normally resists very low density development (ie. less than 175 hrh). H10 normally requires housing suitable for occupation by families with children to be designed to a "lower density" (175-250 hrh). H11 normally resists housing at "higher densities" (ie. 250-350 hrh) except in 3 defined circumstances. H12 normally resists very high densities unless "necessary for townscape reasons" to comply with conservation policies (above 350 hrh);
- (iv) The appeal proposal (taken overall) is at the top of the range covered by H11 and almost within H12.

4.7 The Appellant has now agreed with the Council a plan which shows how the residential development site should be subdivided so as to enable the densities of the 3 main elements of the site to be expressed. In summary the results are as follows:-

- (i) The Campden Hill Road block has a density of 390 hrh and therefore conflicts with H12 unless justified on townscape grounds. The main block of Kensington Heights has an agreed density of 388 hrh but the critical difference is that the Appellant's proposed block has substantial elevations (north and to some extent the western elevation) which relate to Aubrey Walk where densities are much lower, not to Campden Hill Road. This evidence, along with such information as building heights, supports the Council's objection that the proposed block has been designed so as to relate to the blocks in

Campden Hill Road, such as Kensington Heights, not to the lower scale development of Aubrey Walk;

- (ii) The west, east and south terraces have a density of 331 hrh (even if virtually the whole of the proposed open square is ascribed to that element) and is therefore at the top of the range covered by H11. None of the 3 exceptions specified in H11 is applicable. The houses are not designed predominantly for small households, there is no evidence to show that that level of density is required so that affordable housing may be provided and the site is not an "infill scheme" (defined at p. 276 of the UDP as a gap between earlier buildings) where a higher density is necessary;
- (iii) Even the Aubrey Walk block has a density of 269 hrh, placing it at the lower end of the range covered by H11, but that is acceptable because of the requirement to provide affordable housing in that building;
- (iv) Thus the Council's main conservation, listed building and amenity objections coincide with those elements of the proposal which are in clear conflict with the density policies, namely the Campden Hill Road block and the 3 terraces.

5. Affordable housing

5.1 Mr. Sellwood accepted in cross-examination that:-

- (i) The revised policies on affordable housing in the Review of the UDP (Council's App. 7) drawn up in the light of Circular 6/98 are appropriate for this Borough;
- (ii) It is physically possible to provide the appropriate number of affordable housing units on site without any adverse effect on the viability of the scheme;
- (iii) Accordingly, paras. 21 and 24 of Circular 6/98 would justify the refusal of the scheme unless the affordable housing is provided on-

site. The clear preference in the Circular is for on-site provision instead of payments in lieu;

- (iv) The only issue between the Appellant and the Council upon the exchange of proofs was whether a service charge of up to £4,000 should be levied for each affordable housing unit. Mr. Sellwood accepted that such a charge would make it impossible for any RSL to provide rented accommodation on site. In this Borough the primary need for affordable housing relates to accommodation for renting;
- (v) Accordingly, Mr. Sellwood accepted that a cap on the level of service charge set at £250 p.a. per unit (index-linked) was a necessary and appropriate planning restriction, in order to overcome what would otherwise be a reason for refusal.

It is submitted that this shows that the offer of the cap cannot be regarded as a "generous" gesture (as it was described in the Appellant's opening). Instead, it is a necessary planning restriction in order to enable affordable housing to be provided in a Borough with the highest residential land values in the country.

5.2 It is also agreed by the Appellant that the appropriate number of affordable housing units for the scheme proposed is 17 and that they should be provided in the Aubrey Walk block. The Council accepts that the provision of 17 affordable units is an important benefit of the scheme but Mr. McCoy explained that that was outweighed by the substantial disadvantages of the scheme. The environmental price which has to be paid in order to obtain the 17 units is too great, namely, the adverse effects on the Conservation Area (eg. loss of open space and over-development) the adverse effect on the setting of several listed buildings, the loss of open space and the adverse effects upon residential amenity.

5.3 Furthermore, Mr. McCoy demonstrated in a sensitivity analysis that it is possible to obtain a significant amount of affordable housing even with a much reduced scheme.

Scenario (a)

Campden Hill Road Block

Removal of 4th storey +
alter floor plan to L shape
(with reduction in width of
elevation to Aubrey Walk and
increased separation from
St. George's Church) 20 units

Aubrey Walk block

Add 6 units at rear in vicinity
of Pump House 23 units

Total: 43 units

On that basis 12 units would be lost in Water Tower House and the net increase would be 31 units, giving rise to a requirement of 10 affordable housing units from those two elements alone. In terms of density, the Campden Hill Road block would decrease and the increase on the Aubrey Walk block would be at the rear and involve no change to the frontage to the highway. The change to the Aubrey Walk block would have no significant visual impact (McCoy re-examination).

Scenario (b)

Mr McCoy's evidence and the Council's case is that the existing tennis court area should be kept free of residential development so as to preserve residential amenity (ie. for Kensington Heights and Aubrey Walk) and the character and appearance of the Conservation Area. If, however, one terrace of houses were to be constructed it should be on a north-south alignment just to the east of the 6 open air tennis courts which are to be retained, in order to maximise the preservation of open space and amenity. On that basis 9 houses could be built but 3 existing units in Aubrey Walk would be lost. The net increase of 6 units would justify an extra 2 affordable housing units over and above the 10 referred to in (a) above.

Scenario (c)

If it were to be decided that two terraces of housing should be provided, the second terrace should be where the east terrace is currently proposed. The deletion of the southern terrace would help to preserve the setting of Thorpe Lodge. The east terrace could provide 7 units. Taking the west and east terraces together the net increase in the number of units in the tennis court area would be 13 (after allowing for the demolition of the 3 existing units on Aubrey Walk) and the total number of affordable housing units required would increase from 10 in scenario (a) to 14 in scenario (c). Mr McCoy also suggested that if one or two of such terraces is to be developed the size of those units should be reduced so as to respect the character of the dwellings in Aubrey Walk.

- 5.4 It is agreed between the parties that affordable housing has to be provided as a part of the development on site and that a negative condition is appropriate for that purpose. In order to give efficacy to the condition it is necessary to specify (a) the number of affordable housing units to be provided and (b) that part of the development which cannot be carried out or occupied before all those 17 units are built and transferred to an RSL. Because the number of affordable units is inextricably linked to the overall size of the development, it is submitted that the Inspector is not able to grant planning permission for anything less than the development proposed in this appeal. Any reduced form of development would have to be the subject of a fresh application.

6. Effect of the proposal on the setting of listed buildings

- 6.1 This issue was raised very clearly in reason for refusal 4 and in the officer's report at paras. 4.79 to 4.81. English Heritage have maintained their objection to the effect of the proposed south terrace on Thorpe Lodge. Although the Appellant has said that it did not receive a copy of the English Heritage letter of 28 April 1999 and was basing its evidence in response to English Heritage solely upon the latter's letters of 1.12.98, 21.1.99, and 8.4.99, it must have been clear to the Appellant from paragraph 5.4 of the officer's report that as at June 1999 English Heritage still

objected to the proposed south terrace for the specific reasons there given. What is so surprising is that the evidence of Mr. Crossley and, to a lesser extent, Mr. Thomas says so little about the actual objections to the proposal. Moreover, the "visual representations" produced by the Appellant do not address the key relationships between the development buildings and the listed buildings.

6.2 Thorpe Lodge

This demonstrates very clearly the developer's lack of sensitivity to serious conservation objections. In summary, the position is as follows:-

- (i) Both Mr. Crossley and Mr. Thomas accept that the setting of the listed building has already been harmed by tall development to the N.E. and E. (ie. Kensington Heights and Airlie Gardens) and by lower, but extensive development in the school grounds. They nonetheless accept that although the property has been listed primarily (not exclusively) for its internal features, and although the setting has already been harmed, what remains of that setting ought to be at the very least preserved;
- (ii) The Council submits that in a case where the setting has already been harmed special care is required to preserve what remains. The northern aspect of Thorpe Lodge is the only aspect where the property is not dominated by taller and more modern development. It is the only aspect with a view of vegetation;
- (iii) The proposal involves adding 2 storeys and a mansard level above the roof of the reservoir with an elevation which lies about 1m to the north of the existing entrance to the reservoir. The height of the top of the proposed parapet would be 52m above datum. The existing tennis court level is at 42.44m (AD), a difference of 9.56m. Similarly, the difference in ridge heights is over 10m. The distance between the elevations is about 25m. The proposed terrace is much wider than Thorpe Lodge. The overall effect of the terrace will be to dominate Thorpe Lodge on its front elevation and at the one location where

- there is still a degree of openness. The listed building will become hemmed in;
- (iv) The Council submits that the developer's approach to locate such a terrace on the appeal site is totally inappropriate;
 - (v) English Heritage raised a similar objection at point 5 of the letter dated 21.1.99. Mr. Crossley accepted that the only alteration made to the south terrace after that date was the deletion of 1 unit at the south eastern end for the purposes of reducing the effect upon the amenity of Kensington Heights. He said that that alteration only had a "marginal" significance for the setting of Thorpe Lodge. In reality the developer has made no change to the proposal in order to protect the setting of Thorpe Lodge. It should therefore come as no surprise to the developer that the English Heritage objection still stands;
 - (vi) The Appellant has responded to the letter from English Heritage of 28.4.99 (through cross-examination) by interpreting this as an acceptance of the location of the terrace. There is no suggestion that the architect has discussed this matter with English Heritage. The Appellant's gloss on the letter cannot escape the fact that the latter requires the height of the terrace to be reduced. The developer responds that to reduce the height of the south terrace would look odd in relation to the height of the east and west terraces. That only serves to show how the developer's approach remains to achieve the maximum possible amount of development on site rather than overcome legitimate concerns. If the developer cannot reduce the height of the south terrace for the reason given there are at least four options:- (i) reduce the height of all 3 terraces (ii) reduce the length of the square so as to move the south terrace towards Aubrey Walk, (iii) combine (i) and (ii), or (iv) delete the south terrace. The Appellant's evidence simply failed to address the concern of English Heritage and was even so bold as to claim that the proposed terrace would be an enhancement;

- (vii) -It is submitted that this objection is a sufficient reason in itself for the dismissal of the appeal.

St. George's Church

6.3 The reason for refusal refers specifically to this listed building, but 2-6 Aubrey Walk are sufficiently close and also modest in scale so that the effect of the development on these listed buildings also needs to be considered.

6.4 In summary:-

- (i) Mr. Thomas agrees that St. George's is the dominant feature in Aubrey Walk and that its setting should be protected. The Aubrey Walk façade is the main view of the building;
- (ii) From the Appellant's drawings it can be seen that the height of the tower to its eaves is 58.1m (AD) and the width is 5.3m. The width of the porch is 9m and overall width of the porch/tower frontage is 16m. The ridge of the nave is at 55.17m (AD) and the eaves of the porch is at 42.8m. By contrast Water Tower House is about 13m wide and the height of its flat roof is 52.07m (AD);
- (iii) The design of the northern half of the proposed Campden Hill Road block has been orientated so as to allow better views of 25 Campden Hill Gardens from Campden Hill Road looking north (Crossley para. 20.87). As the Council's App. 14 shows this has the effect of moving the bulk of that part of the building closer to St. George's Church. The height of the main parts of the building varies between 51.45 and 54.65m AD. The overall width of the building between its east and west elevations is about 23m to 25m. It is about 2½ times the width of the nave of the Church;
- (iv) The Council does not criticise the detailed treatment of the proposed elevations, but that design work cannot conceal the fact that the replacement building is much bulkier, taller and closer to the listed building than Water Tower House. Mr. Crossley accepted that the

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;