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FILE No. TP/99/0733

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

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9. Notwithstanding the questionability of Clause 5.2 of the draft undertaking the negotiations between the owner and the registered social landlord would be outside the control of the Council and bearing in mind the proposed definition of Implementation, once the 12 month period has expired without an exchange of contracts the owner's "cascade" approach would be triggered, depriving the Borough of the benefit of an on site provision. The owner may be encouraged in this course because of the significant difference in values between the development with on site affordable housing and the value without such provision. It is conservatively estimated by the Borough Valuer that the owner would profit by an extra £700,000 were the affordable housing not provided on site. This projected saving to the developer does not include any additional benefits resulting from the increased value in market housing where there is no on site affordable housing. In the absence of on site provision there is also the additional benefit of additional service charge payments (17x £3,750 = £63,750 per annum).

10. Circular 6/98 sets out government policy in relation to affordable housing and paragraph 21 clearly states that it should be provided as part of a proposed development. That paragraph states:

"the release of a site, where a local planning authority has decided that an element of affordable housing should be pursued, without ensuring the provision of that housing on the land in question, may undermine the objectives of the policy".

This site is particularly suitable for affordable housing in accordance with the terms of paragraph 10 of the circular in that it benefits from "the proximity of local services and facilities and access to public transport". Draft PPG3 at para. 15 states that in such cases "there is a **presumption** that the affordable housing should be provided as part of the proposed development".

11. Paragraph 22 of Circular 6/98 deals with off site provisions. The words "it is nonetheless preferable" should be construed in the light of the preferred on site provision in paragraph 21, ie it is not a green light to put provision off site. There must be some cogent reason for an exception to it. Therefore there must be an inherent factor against on site provision. An example of this would be a block of purpose built flats which would, if divided between market and affordable housing, give rise to management difficulties which could not readily be resolved. This is inapplicable in the present case which is concerned with a stand alone block of affordable housing.

12. Council and NHHT can give evidence that there are no foreseeable funding difficulties in relation to this site.

13. Clause 5.3 of the agreement should be deleted.

14. **Other matters excluding affordable housing**

* Points of difference

- ① TCI ✓ at 100%
- ② Service charge £250 agreed (also Nolding Hill)
- * ③ Period of notice 12 mths — they want to know why, as there is no contract, they can't have 12 mths? They were said 6, now 12 to allow everything to be in place
[2 shots - preallocation] [etc to speak to Steve R.]
- ④ Agreed 'Plan coloured Yellow'
- ⑤ Off-site trees (3.1.4 p6 in org)
— to be done in £2,000 segments to price a ceiling
- ⑥ ~~£47,500~~ — need to agree the figure as acceptable
- ⑦ figure of 22 units agreed as all site program
— SZ now doesn't accept the figures

THIS UNILATERAL OBLIGATION is made the day of One
thousand nine hundred and ninety nine

BY

- (1) **KENNET PROPERTIES LIMITED** whose registered office is at 14 Cavendish Place
London W1M 0NU ("the Owner")

- (2) **THAMES WATER UTILITIES LIMITED** whose registered office is at Gainsborough
House Manor Farm Road Reading Berkshire RG2 0JN ("the Lessee")

IN FAVOUR OF

- (3) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON
AND CHELSEA** of the Town Hall Hornton Street London W8 7NX ("the Council")

WHEREAS

A The Council is the local planning authority for the administrative area of the Royal
Borough of Kensington and Chelsea for the purposes of the Town and Country Planning
Act 1990 ("the Act")

B The Owner is registered at HM Land Registry with freehold Title Absolute in respect
of the Land

~~C The Developer has the benefit of [?]~~

D The Club has the benefit of a lease 27 January 1994 and an agreement for a lease dated
25 September 1998 both granted by Thames

E The Planning Application was made to the Council

F The Council has failed to determine the Planning Application within the appropriate

period

G St James Homes Properties Limited has by notice of appeal dated 14 May 1999 appealed to the Secretary of State against the said failure of the Council to determine the Planning Application and the Owner and the Lessee have agreed to enter into this unilateral obligation to make provisions for regulating the Development and for securing the matters herein referred to

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1. **INTERPRETATION**

1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:-

WORDS AND EXPRESSIONS

MEANINGS

"AffordableHousing"	residential accommodation provided to meet the objectives of a Registered Social Landlord
"AffordableHousing Provision"	the provision described in the Second Schedule
"Covenantors"	the Owner and the Lessee
"Development"	the development referred to in the Planning Application and described in the First Schedule
"Drawing"	the Drawing numbered [] and annexed hereto
"Executive Director"	the Executive Director, of Planning and Conservation and shall be deemed to mean the officer for the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment

*

✓

"Land"	the land known as the former Campden Hill Reservoir Site, Kensington W8 which is registered at HM Land Registry under Title No. [] and is shown for identification purposes edged in red on the Plan
"Market Housing"	residential accommodation for sale on the open market
"Plan"	the plan annexed hereto
"Planning Application"	the application for planning permission under the Council's reference number TP/98/2126/D/12
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application and the appeal to the Secretary of State under DETR reference APP/K5600/A/99/1022704
"Residential Social Landlord"	an organisation registered under the Housing Act 1996 (or if such bodies cease to exist or be superseded then the nearest equivalent body whose objectives include the provision of Affordable Housing)

1.2 Words in this Deed importing the singular meaning shall where the context so admits include the plural meaning and vice versa

1.3 Words in this Deed of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

1.4 References in this Deed to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

1.5 Covenants made thereunder if made by more than one person are made jointly and severally

2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to Section 111 of the Local Government Act 1974, Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 and all other powers so enabling

2.2 This Deed contains a planning obligation made pursuant to the said Section 106 which is enforceable by the Council and which binds each and every part of the Land

2.3 The terms of this Deed (other than 4.1 and 4.2 below) shall come into effect upon the grant of the *Planning Permission*

2.4 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of their functions as Local Planning Authority and their rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed

2.5 If any provision in this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired

2.6 No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this

Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default

2.7 ⁱⁿ Nothing this Deed shall be construed as a grant of planning permission

2.8 The covenants herein shall be enforceable without any limit of time against the Covenantors and any successors in title and assigns of the Covenantors or any person claiming title through or under the Covenantors to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person PROVIDED THAT no person shall be liable (save for any antecedent breach) in respect of any breach once he has parted with the whole of his interest in the Land

3. THE COVENANTORS' COVENANTS

3.1 The Covenantors hereby jointly and severally covenant with the Council as follows:-

3.1.1 not to occupy or permit the occupation of any of the Market Housing to be provided in accordance with the Planning Permission until such time as the freehold of or long leasehold interest of not less than 125 years in the Affordable Housing Provision has been transferred or granted (as the case may be) to a Registered Social Landlord

3.1.2 the units of Affordable Housing shall not be occupied other than by households in need of Affordable Housing in the Council's area PROVIDED THAT this shall not prevent any tenant from exercising his right to acquire under the provisions of the Housing Act 1996

3.1.3 the Owner shall give to the Council 28 days notice in writing of its intention to

hand down
work to
STATUTORY RIGHTS

carry out any works of demolition site clearance diversion and laying of services and construction of the principal vehicular access road to serve the ~~land~~

3.1.4

the Owner shall pay to the Council within 14 days of a written demand the sum not exceeding £2000 representing the cost to the Council of taking appropriate measures within 28 days of the service of the notice referred to in clause 3.1.3 for the protection of the trees marked on the Plan and thereafter maintaining such protection until completion of the Development ~~PROVIDED THAT~~ after three years from the date of serving the said notice the Owner shall make such further payment in respect of tree protection as the Council by written demand shall reasonably require

OK

3.1.5

the communal footpaths footways and other areas shown coloured yellow on the Plan shall be accessible to the public on foot only at all times

~~OK~~
OK

3.2

Subject to Clause 3.3 of this Deed notwithstanding Clause 2.8 of this Deed Clause 3.1.2 of this agreement shall not be binding upon the following in the circumstances set out below:-

3.2.1

the mortgagee of the Registered Social Landlord or any receiver of such mortgagee or any persons deriving title under them in the event that the mortgagee of the Registered Social Landlord seeks to dispose of the Property or any part thereof (as to such part) pursuant to its power of sale exercised pursuant to default of the terms of the mortgage or any such receiver seeks to dispose of the property or any part thereof (as to such part)

3.2.2

an occupant of an Affordable Housing Unit who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise ("the Occupant") or any person other than a Registered Social Landlord deriving title under that Occupant

3.2.3

the mortgagee of the Occupant or any receiver of such mortgagee or any person deriving title under them in the event that the mortgagee of the Occupant seeks

to dispose of the Affordable Housing Unit pursuant to its power of sale exercised pursuant to default of the terms of the mortgage or any such receiver seeks to make a disposition

3.3 In the event that a mortgagee of a Registered Social Landlord wishes to exercise its power of sale or such receiver wishes to dispose of the Property or any part thereof such person shall first use reasonable endeavours to sell the Property to another Registered Social Landlord PROVIDED THAT if after a period of 2 months (having used all reasonable endeavours as aforesaid) such person shall not have sold the Property to another Registered Social Landlord the mortgagee of the Registered Social landlord or such receiver shall thenceforth be under no obligation to sell the Property to a Registered Social Landlord and shall be entitled to exercise its powers of sale or make a dispositions as the case may be free of any restrictions under this agreement which shall thereupon determine and be of no further effect

3.4 the Owner and the Lessee covenant not to Implement the Planning Permission unless and until vacant possession is obtained in respect those parts of the property which are subject to:-

3.4.1 a lease dated 27 January 1994 and made between the Lessee and Campden Hill Lawn Tennis Club ("the Club")

3.4.2 an agreement for a lease dated 25 September 1998 and made between the Lessee and the Club

~~Robert Robert Waterhouse~~ dealt with

4. FURTHER TERMS

4.1 The covenants in this Deed shall be treated and registered

- (a) as local land charges for the purposes of the Local Land Charges Act 1975 and
- (b) in the Charges Register of the registered titles of the Owner(s) at HM Land Registry

4.2 Any notice to be served on and any payment (by cheque made payable to the Royal Borough of Kensington and Chelsea) shall be served on or delivered to the Executive Director at the Town Hall aforesaid

FIRST SCHEDULE

DESCRIPTION OF THE DEVELOPMENT

Redevelopment to provide nineteen houses and forty eight apartments plus twelve tennis courts (six in lower level and six open courts) plus a practice court, basement car parking, new access points for pedestrians and vehicles and landscaping in accordance with Council drawings numbered TP/98/2126 and TP/98/2126/A

and Applicant's drawings numbered P099, P100A, P101A, P102A, P103A, P104A, P105A, P106A, P107A, P108A, P109A, P110A, P111A, P112A, P113A, 8809 sheet 3,4,5,9029

sheet 1,3,4,5,6
67 units

- 33% = 22

17 = 23%

SECOND SCHEDULE

AFFORDABLE HOUSING PROVISION

1. The provision of 17 number units of Affordable Housing to be provided on the land edged in [blue] on the Plan in accordance with the Planning Permission together with 5 number underground parking spaces.
2. The cost per unit of Affordable Housing to be paid to the Owner by a Registered Social Landlord shall not exceed one hundred per cent of the Total Cost Indicators applied by the Housing Corporation at the time of transfer or grant of the Affordable Housing Provision net inclusive of all land costs and shall be constructed to Housing Corporation standards

52 net additional units
17 = 33%

301

IN WITNESS of which this Deed has been executed on the first date before written

The COMMON SEAL of KENNET)
PROPERTIES LIMITED was hereunto)
affixed in the presence of:-)

THE COMMON SEAL of THAMES)
WATER UTILITIES LIMITED was)
hereunto affixed in the)
presence of:-)

DATED

1999

KENNET PROPERTIES LIMITED

-and-

THAMES WATER UTILITIES LIMITED

UNILATERAL OBLIGATION

Made pursuant to Section 106 of
the Town and Country Planning
Act 1990 (as amended by the
Planning and Compensation Act 1991)

Re: Land at former Campden Hill
Reservoir Site Kensington W8

Kensington Heights

(details from micro-film 1969)

Podium deck (dwg. 2027/5) 25 hr

Floors x 4 (dwg. 2027/6) 48 hr

48 hr

48 hr

48 hr

Penthouse (2027/7)

28 hr

245 hab. rooms

At a (density) site area of 6,625 sq. ft.

this gives 393 hrh

DT

CAMPDEN HILL RESERVOIRS AND WATER TOWER HOUSE SITE AT

AUBREY WALK AND CAMPDEN HILL ROAD, KENSINGTON, W8

APPEAL BY ST. JAMES HOMES LIMITED

PRE-INQUIRY STATEMENT OF THE ROYAL BOROUGH OF

KENSINGTON AND CHELSEA

1.0 INTRODUCTION

- 1.1 This is an appeal against the Royal Borough's failure to determine, within the statutory period, an application for conservation area consent for demolition of the existing reservoirs, ancillary buildings, and two residential blocks, and an application for planning permission to redevelop the site to provide 19 houses, 48 flats, a tennis club with 13 courts, and underground parking for the houses and flats.
- 1.2 It is understood that the applications to be considered at the Inquiry are the applications the subject of the second appeal (Council's ref. PP/99/0733&4), the first appeal (Council's ref. TP/98/2126&7) having been withdrawn. This pre-Inquiry statement is prepared on that basis.
- 1.3 This pre-Inquiry statement is being submitted on a without prejudice basis as the appeal applications have yet to be considered by the Council's Planning Services Committee. This statement will be amended, if necessary, after the Committee's consideration of the application when it meets on 8th June 1999.

2.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 2.1 This site currently contains two, disused, brick built, covered Victorian reservoirs, with 12 tennis courts on their roof, with the structures themselves being partly above ground level and partly below. The reservoirs cover approximately 75% of the site area, and are partly above ground and partly recessed with the top of their ground slab at a height of 34.6m and their roof at a height of 42.5m.
- 2.2 The site also includes a block of 15 residential flats for water authority staff ("Water Tower House"), a further, smaller Water authority block of three flats at 3,5,7 Aubrey Walk, a pump room building (being the former engine house), and ancillary buildings of 625 sq.m, water authority offices of 702 sq.m, and trees and soft landscaping particularly around its perimeter. The water tower from which the block obtains its name was demolished in 1970.

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- 2.3 The greater site covers an area of 1.56 hectares, located to the West of Campden Hill Road. The site is bounded by the Aubrey Walk and Aubrey House to the North and West, Campden Hill Road and the flats of Kensington Heights to the East, and Holland Park School to the South.
- 2.4 If the tennis courts above the reservoirs roof structures are counted as "open space", then approximately 81% of the site is currently open space. The site is recorded in the Council's register of Open Space.
- 2.5 The height of the reservoir buildings is such that their upper deck level (the level of the tennis courts) is higher than surrounding street levels, with embankments along all sides including Aubrey Walk to the North. The embankment restricts many views into the site from street level.
- 2.6 The primary vehicular access to the site is currently from Aubrey Walk, at a point opposite Hillsleigh Road. Only water authority vehicles or other authorised vehicles may use this access. At the rear of Water Tower House, again from Aubrey Walk, is a vehicular access point for the cars of residents of Water Tower House, plus water authority vehicles. A third vehicular access to the site exists in physical form on it's eastern side, directly from Campden Hill Road, however this is used solely by the residents of Kensington Heights and the water authority or other owners of the application site do not have the right of access/egress to the site via this route.
- 2.7 No building upon the site is Listed, however there are Listed buildings close by to the North (St. George's Church and no.s 2-6 and 15-19 Aubrey Walk), to the West (Aubrey House), and to the South (Thorpe Lodge). The whole of the site is within the Kensington Conservation Area.
- 2.8 The Unitary Development Plan Proposals Map does not identify the site as having any nature conservation importance.
- 2.9 The site is not included in the Unitary Development Plan Schedule of Sites with Major Development Opportunities, and there is no planning brief for the site. The site is, however, included in the proposed draft alterations to the UDP Schedule, currently out to consultation.
- 2.10 The Council will refer to the contribution that the site presently makes to the character and appearance of this part of the Conservation Area, which will include reference to the Conservation Area Proposals Statement.

3.0 RELEVANT PLANNING HISTORY

- 3.1 There is no relevant planning history to this site.
- 3.2 In terms of more general history, use of the site to provide a water utility commenced in around 1810 as part of the original West Middlesex Water Works. The first reservoir was constructed in 1845 on the land now occupied by Kensington Heights and Water Tower House; this reservoir was demolished in

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the 1960s. The existing reservoirs and attendant buildings were built in the late C19th. The water tower itself was demolished in 1970.

4.0 THE APPEAL APPLICATION

- 4.1 The Council will describe the appeal proposal as being the redevelopment of the site to provide 19 houses, 48 flats, a tennis club with 13 courts, and underground parking for the houses and flats.

The Demolition

- 4.2 It is proposed to demolish all of the existing structures on the site, with the exception of the West retaining wall to the western reservoir, facing Aubrey House, and part of the northern retaining wall to that reservoir. The remainder of the reservoir structures, pump house and ancillary office and depot buildings, and Water Tower House, would be demolished, and large sections of embankment would also be removed from the northern (Aubrey Walk) boundary and the southern boundary.

General Arrangement and Orientation

- 4.3 It is proposed that the 19 houses are arranged around a central open space containing soft landscaping and trees at its centre. The flats are contained within two blocks, one fronting Aubrey Walk (the "Aubrey Walk block"), and the other fronting Campden Hill Road on the site of the present Water Tower House (the "Campden Hill block").
- 4.4 The built coverage of the site would take up approximately two thirds of the site area, excluding access roads etc, with approximately 30% remaining open space, either soft or hard landscaped.

Housing Mix

- 4.5 The 19 houses would all be four bedroomed family sized houses, each with its own garden.
- 4.6 Twenty-nine flats are proposed for the Campden Hill Road block, and seventeen for the Aubrey Walk block. Two more flats are located at the northern end of the West terrace to the proposed square. The 48 flats proposed comprise the following mix:

2 bedroom flats	34
3 bedroom flats	<u>14</u>
	48

- 4.7 Of this total, the following range of units comprise the "affordable housing" element:

2 bedroom flats	9
3 bedroom flats	<u>8</u>
	17

- 4.8 All of the units of affordable housing would be located in the Aubrey Walk block.

Density

- 4.9 The proposed houses and flats would comprise 366 habitable rooms on the site, resulting in a density of approximately 220 habitable rooms per hectare (hrh) over the whole of the application site. However, this figure takes no account of the site layout, where part of the site is set aside exclusively for the tennis courts and the remainder for housing. It is considered that the tennis court part of the site should be treated as separate from the housing part of the site for the purposes of density. On the housing site, the density would be approximately 327 hrh.

Recreational facilities

- 4.10 It is proposed that 13 tennis courts are provided to replace the existing 12. Six of the new courts, and a practice court, will be open to the elements, and six courts enclosed in a covered structure, effectively within the space of the existing western reservoir. The upper level of the courts would be the same as the existing, and the area occupied by the courts would be roughly half that of the existing court area on the reservoir roof.
- 4.11 The six upper level (outdoor) courts are each to be of championship standard, four of them floodlit.

Means of Vehicular and Pedestrian Access

- 4.12 An underground car park at basement level will provide 92 parking spaces, including 12 disabled spaces. This provides 2 spaces for each house, and one for each flat. 9 visitor spaces are proposed at 0.1 spaces per dwelling.
- 4.13 Access to the underground car park is provided through an on-site access road ramp, with the point of access/egress being 30m into Aubrey Walk from its junction with Campden Hill Road, in the same location as the existing access/egress to the parking area at the rear of Water Tower House. The existing vehicular access opposite Hillsleigh Road would be removed, and the access/egress to/from Campden Hill Road would not be used as part of the proposed development, but would remain for the use of Kensington Heights.

Form and Scale

- 4.14 The Campden Hill block is proposed to be of six storeys, with two main sections to the building linked by a central stair core and ground floor entrance foyer with pedestrian access to Campden Hill and also to the rear (into the site). The proposed roof form is a flat roof, stepping back on the sides above the third floor. It is proposed that the height of this block is at its greatest closest to Kensington Heights, being six storeys at that section, dropping to three storeys at its northern end where it turns the corner into Aubrey Walk. The main parapet height to Campden Hill Road would run at 14.2m above the pavement level of Aubrey Walk. The highest part of the roof would be 20.8m above Aubrey Walk pavement level.

- 4.15 The Aubrey Walk block is proposed to be of three storeys with a pitched roof. The roof would have a maximum height of 12.2m from Aubrey Walk pavement level at it's apex, with the main parapet running at a height of 10.2m.
- 4.16 The main terraces surrounding the central landscaped space would be of a basement, ground floor, and three upper floors including an attic storey. They would be four storeys from the new deck level, the deck level constructed over a basement parking area which would be constructed at the level of the existing reservoir slab. The roof form would be a traditional mansard, with chimneys on the party walls separating the properties. The main parapet of these houses would run at 11.6m above the finished level of the square, and the apex of the mansard roof would reach a height of 14.2m from the square.

Detailed Design

- 4.17 The terms of architecture the proposed development comprises three different design approaches, with the Campden Hill block, Aubrey Walk block, and the square of houses all taking different forms. The architectural style of the central houses is a traditional house style, with the detail of the Aubrey Walk block also traditional but simpler. The proposed flat block for Campden Hill Road is a modern building, utilising large areas of glazing and a contemporary design approach. .

Landscaping

- 4.18 The main landscaped area is proposed to be at the centre of the site, running South from Aubrey Walk and bounded on three sides by residential terraces.
- 4.19 This square would be just over 78m in length and 22.5m in width at its widest, containing up to 12 new trees and shrubs and other planting, and separated from the surface access road by metal railings.
- 4.20 Other landscaped areas front Aubrey Walk, face Thorpe Lodge at the southern boundary, front Campden Hill Road in front of the proposed Campden Hill block, and form a strip along the boundary with Kensington Heights. The existing planted embankment to Aubrey House, which runs the full length of the western site boundary outside the western reservoir retaining wall, would remain untouched.

5.0 POLICY CONTEXT

- 5.1 The statutory plan for the Royal Borough is the Unitary Development Plan which was adopted on 28th August 1995.
- 5.2 Reference may be made to the overall aim of the plan and the policy strategy.
- 5.3 The "Conservation and Development" chapter of the Unitary Development Plan may be referred to and the strategy and policies which are relevant to this appeal will be identified, in particular STRAT 1, STRAT 2, and policies CD21, CD25, CD28, CD29, CD30, CD34, CD35, CD51, CD52, and CD53.

- 5.4 The "Housing" chapter may be referred to, in particular STRAT 14, STRAT 15, STRAT 16, and Policies H2, H10, H11, H12, H15, H19, H22 and the revisions currently proposed to it, H23 and H28.
- 5.5 The "Leisure and Recreation" chapter may be referred to, in particular STRAT 34, STRAT 35, and Policies LR1 and LR7.
- 5.6 The advice of Central Government with regard to General Policies and Principles in PPG1, Planning and the Historic Environment in PPG15 and Transportation in PPG13 may be referred to. Reference may also be made to PPG17, Circular 6/98, and the consultation draft of the revised PPG3 issued in March 1999.
- 5.8 The published Conservation Area Proposals Statement for the Kensington Conservation Area may be referred to in assessing the quality and character of the area which would be affected by the appeal proposal.

6.0 PLANNING CONSIDERATIONS

- 6.1 The Council will provide evidence to demonstrate that:-
- 6.2 The proposed redevelopment would result in the loss of a significant amount of the existing open space on this site, reducing the value of this site as a visual amenity to be enjoyed by residents of nearby property, and harming the character and appearance of this part of the Kensington Conservation Area. As such, the proposal is contrary to policies of the Unitary Development Plan, in particular STRAT 1, STRAT 35, and Policies CD21, CD48, and CD52
- 6.3 The bulk and layout of the proposed development, in particular the bulk of development and the restricted dimensions of the central open space, would result in a densely developed site that relates poorly to the character scale or form of its surroundings. It is considered that the proposed development would result in harm to the character and appearance of this part of the Conservation Area, contrary to Policies of the Unitary Development Plan, in particular STRAT 5, STRAT 6, and Policies CD25, CD52, CD53, H10, and H11
- 6.4 Given that the existing site provides a valuable contribution to the character and appearance and residential amenity of this part of the Conservation Area, and in the absence of an acceptable scheme for the future development of the site, it is concluded that the proposed demolition of the reservoirs is premature, and contrary to Policy CD51 of the Unitary Development Plan
- 6.5 The proposed southern terrace of new houses would appear dominant and overbearing in its relationship with Thorpe Lodge, the development along Aubrey Walk would significantly affect the setting of St. George's Church, harming the setting of these Listed buildings contrary to Policy CD61 of the Unitary Development Plan

- 6.6. The existing site generates a relatively low intensity of vehicular and pedestrian activity through the year, busiest in the summer but relatively quiet in the winter months. The proposed development will generate greater levels of such activity throughout the year, with the largest difference being in the presently quieter winter months. As such, the proposed development will lead to a significant reduction in the levels of amenity presently enjoyed by those who reside near the site, contrary to Policies of the Unitary Development Plan, in particular STRAT 1, and Policy CD52.
- 6.7 The use of pedestrian and vehicular gates at the entrances to the site would restrict access to the development, separating the site from the surrounding area, contributing little to the amenity of the area, and being out of character with the predominant form of development locally where residential streets are generally accessible to all and at all times. As such, the proposed gated community is contrary to Policies of the Unitary Development Plan, in particular STRAT 1, STRAT 5, and CD52.
- 6.8 The site is considered suitable for the inclusion of affordable housing, which has not been secured by an appropriate planning obligation as part of the proposed development. As such, the proposals are not considered likely to achieve the provision of affordable housing on this site, and would be contrary to Policies of the Unitary Development Plan, in particular H22 and the proposed draft alterations to this Policy, and fail to respect the advice presented in Circular 6/98.

7.0 DOCUMENTS

- 7.1 The following documents may be referred to or put in evidence at the Public Inquiry by the Council's witnesses.
- 7.2 Unitary Development Plan, and proposed draft alterations where relevant.
- 7.3 PPG1, PPG3, Consultation Draft for the Revised PPG3, PPG15, PPG17, and Circular 6/98.
- 7.4 The Conservation Area Proposals Statement for the Kensington Conservation Area.
- 7.5 Traffic surveys and reports.
- 7.6 The contents of planning files TP/98/2126, 2128, and PP/99/0733.
- 7.7 The Council reserves the right to refer to or produce any other documents should it prove necessary.

8.0 PUBLIC CONSULTATION

8.1 The Council may refer to public consultation carried out regarding the proposals, and the contents of the responses received.

9.0 WITNESSES

9.1 It is likely that the Council will be calling witnesses to deal with the planning issues presented by the proposals. If the matter of affordable housing is not resolved by the date of the Inquiry, the Council reserves the right to call witnesses in regard to this issue too.

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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 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

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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

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- 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.

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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;

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(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.

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4 August 1999

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