

**ROYAL BOROUGH
OF
KENSINGTON & CHELSEA**

DOCUMENT SEPARATOR

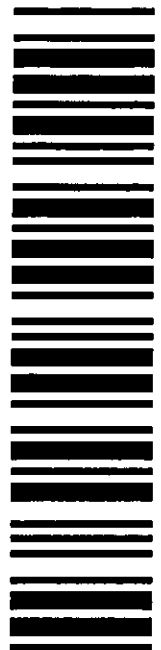
DOCUMENT TYPE:

APPEAL



APPE

APPE





Office of the
Deputy Prime Minister

Creating sustainable communities

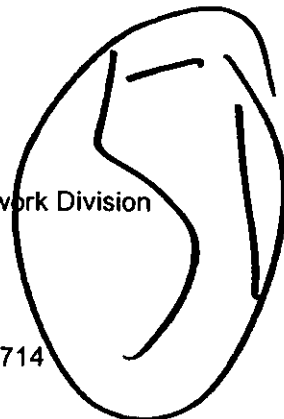
Douglas Evans
Addleshaw Goddard
Alder Castle
10 Noble Street
London EC2V 7JW

RECEIVED

22 DEC 2005

LAW & ADMINISTRATION

Elizabeth Sealey
Decision Officer
Planning Central Casework Division
Zone 3/J1
Eland House
Bressenden Place
London SW1E 5DU
Direct Line: 0207 944 8714
Fax: 0207 944 5929



Web Site: www.odpm.gov.uk

Our Ref: APP/B3438/V/04/1160563
Your Ref: LDB/PR/LON003/002

20 December 2005

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION AND APPEAL BY CIRCADIAN
LAND AT SOUTH SIDE OF CHELSEA CREEK, LOTS ROAD POWER STATION**

The Planning Inspectorate informed you in a letter dated 10 May 2005 that the Secretary of State would determine this case on or before 30 November 2005. I am writing to notify you of a variation in the timetable for the determination of this case.

As you know, the Secretary of State subsequently referred back to inquiry parties on post-inquiry correspondence received (see his letters of 24 October and 23 November 2005). The reference back exercise meant that the 30 November 2005 decision date could not be met.

The reference back exercise has now concluded. I am writing to let you know that the First Secretary of State will now issue a decision on or before 31 January 2006.

I am copying this letter to all persons listed at Annex A.

Yours faithfully,

E. A. Sealey

Elizabeth Sealey

ANNEX A

Addleshaw Goddard	For Circadian Limited
Howard Carter	Head of Law, GLA
Ms Julie Breden	Senior Planning Officer, Transport for London
Mr Andrew Beresford	Assistant Head of Legal Services, London Borough of Hammersmith and Fulham
Gifty Edila	Director of Law and Administration, Royal Borough of Kensington and Chelsea
Mr Adrian Cole BA MSc	Associate Director, Colin Buchanan and Partners, for Chelsea Harbour Residents' Association
Mrs A Dixon	The Hammersmith and Fulham Historic Buildings Group
Melyssa Stokes/John Pringle AADipl RIBA	Lots Road Action Group
Mr David Le Lay	Chairman, The Chelsea Society
Mr Roger Weston	The West London River Group
Mr Richard Sharp FRICS	The Cheyne Walk Trust
Mr James Wilson	Interested Person
Cllr Brendan Bird	Interested Person
Cllr Jennifer Kingsley	Interested Person
Mr John Putnam	The Fulham Society
Cllr Greg Hands	Interested Person
Cllr Frances Stainton	Interested Person
Ms Christy Austin BIDA MCSD	Interested Person
Mr Harvey Heath	The Battersea Society
Mr Ray Moxley FRIBA RWA DiplArch	Interested Person
Mr Peter Eversden	Chairman, The London Forum of Amenity and Civic Societies
Mr James Wooster	Interested Person
Miss Annie Edwards	Campaign for Fair Play Residents' Association
Mr John Rawnsley	Interested Person
Lady Dido Berkeley	The River Thames Society
Mr David Fisher, QC	Chairman, Paultons Square Residents' Association
Mr Arthur Tait	Chairman, Friends of Brompton Cemetery
Cllr Keith Cunningham	Interested Person
Mrs Kate Phillips	Ashburnham Parent and Toddler Group
Cllr Steven Redman	Interested Person

DUPLEX



94 7913

RECEIVED

20 DEC 2005

LAW & ADMINISTRATIVE

31 Hill Street London W1J 5LS DX: 82988 Mayfair
Tel: 020 7863 8333 Fax: 020 7863 8444 Email: mail@forsters.co.uk

VAT REGISTRATION NO. 714 5709 36

NAME: Royal Borough of Kensington and Chelsea (F.A.O: Heidi Titcombe)

ADDRESS: The Town Hall, Horton Street, London W8 7NX

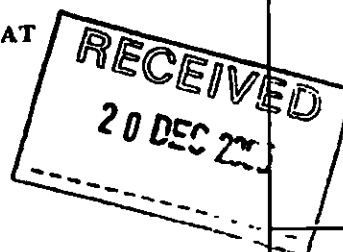
253457

FILE NUMBER: 25339.4

YOUR REF:

DATE (TAX POINT:) 16.12.05

PERIOD	PROFESSIONAL SERVICES RENDERED	FEES AND DISBURSEMENTS £	VAT RATE %	VAT £
05.2005 - 12.2005	To our professional services in connection with continuing advice following close of the Planning Inquiry in relation to the development proposals by Circadian Ltd for development of land at Lots Road Power Station and Chelsea Creek, Lots Road London SW10 and in particular advising in relation to revisions made to the Environmental Statement and discussing those in meetings and correspondence			
	Michael Cunliffe 8 hours 50 minutes at £270 per hour)	2,384.10	17.5%	417.22
	Disbursements subject to VAT			
	Couriers	29.40	17.5%	5.15
	Travel	30.20	17.5%	5.29
	Disbursements not subject to VAT			
	Land Registry fees	14.00		
	Company searches	9.00		
		2,466.70		427.66
		£ 2,894.36		



Forsters LLP is a limited liability partnership registered in England with no. OC306185 whose registered office is at the above address.

Regulated by the Law Society.

A list of members is available for inspection at the principal place of business at which service of documents will be effective.

References to partners means members of Forsters LLP.

REMITTANCE ADVICE

ALL INVOICES ARE PAYABLE ON PRESENTATION

Please return this remittance advice when making payment

PLEASE SEE REVERSE FOR IMPORTANT NOTICE

From:

Ref: MDC

File No. 25339.4

Amount: £2,894.36 Date: 16.12.05

To: Forsters LLP, 31 Hill Street London W1J 5LS

54

**COUNSEL'S FEES
PAYMENT AUTHORISATION**

Business Support to complete:

Instructing fee-earner: *HT*

Date fee-note passed
to Instructing fee-earner: *28/12/05*

Instructing fee-earner to complete:

File number:

Exp. code: P4341 54510 LB/

Payment authorised? YES / NO

Signed:

Date fee-note
returned to Business Support:

Business Support to complete:

Date fee-note rejected or
sent for Manager's approval:

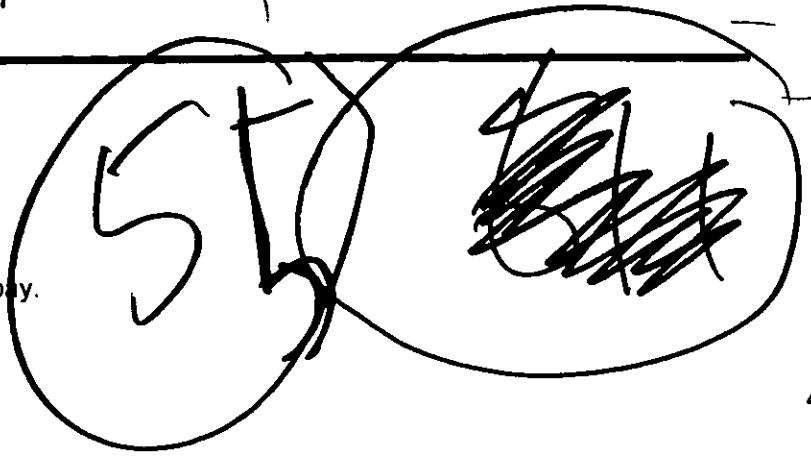
02) 1324

French, Michael: PC-Plan

From: French, Michael: PC-Plan
Sent: 03 January 2006 12:48
Subject: Titcombe, Heidi: CP-Legal
Lots Road

Re. your memorandum of 3 January 2006, yes, OK to pay.

Michael J. French,
Executive Director, Planning and Conservation.
020 7361 2944



**LAW AND ADMINISTRATION
INTERNAL MEMORANDUM**

TO: Mike French, Executive Director
Planning and Conservation

ROOM NO:

CC:

FROM: Heidi Titcombe

ROOM NO: 230 2

TELEPHONE: 020 7361 2617

FAX: 020 7361 3665

EMAIL: heidi.titcombe@rbkc.gov.uk

DATE: 03 January 2006

REF: HT/10031874

SUBJECT: LOTS ROAD

Dear Mike

LOTS ROAD

Before Christmas we exchanged e-mails in relation to a possible invoice to be received from Michael Cunliffe. I have now received the invoice for £2,466.70 plus VAT and disbursements. Can you let me know if you are happy for me to arrange for this to be paid. I only returned to the office today after a couple of weeks leave so it would be very helpful if you could let me know this week so that I can approve the invoice within the usual Council timescale.

Whilst writing I also enclose a copy of a letter from the Office of the Deputy Prime Minister confirming that the decision on Lots Road is now expected to be issued on or before the 31st January 2006.

Many thanks

pp Sue Billington

Heidi Titcombe
Senior Solicitor
Planning and Property
for Director of Law and Administration

*Yes,
OK Henry*

[Handwritten signature and initials]



Claim Form (CPR Part 8)

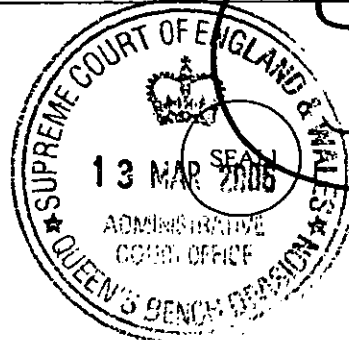
In the High Court of Justice
Queens Bench Division

Claim No.

CO/2214/06

Claimant

River Thames Society
28 Beaumont Road, Windsor, Berkshire SL4 1JP



Defendant(s)

- (1) First Secretary of State, c/o Treasury Solicitor, One Kemble Street, London WC2B 4TS
- (2) Royal Borough of Kensington and Chelsea of Town Hall, The Town Hall Hornton Street, London W8 7NX (attn: Ms H. Titcombe)
- (3) London Borough of Hammersmith and Fulhamd of Town Hall, King Street, Hammersmith, London, W6 9JU (attn: Mr A. Beresford, Legal Services)
- (4) Circadian Ltd. c/o Addleshaw Goddard, 150 Aldersgate Street, London EC1A 4EJ (Attn D. Evans)

Does your claim include any issues under the Human Rights Act 1998?

☐

Yes

☒

No

Details of claim (*see also overleaf*)

1. The claimant challenges the appeal decisions dated 30 January 2006 (Ref: APP/K5600/A/04/1146268 and APP/H5390/V/04/1148781) of the First Defendant First Secretary of State granting planning permissions to the Third Defendants in relation to site(s) at Lots Road Power Station, London SW10 and land to the south of Chelsea Creek, London SW10 as more particularly set out in the decision letter dated of 30.1.06 filed herewith.

2. The grounds of challenge are annexed hereto and form part of this claim form.

Defendant's
name and
address

First Secretary of State
c/o The Treasury Solicitor
One Kemble Stree
London WC2B 4TS

£

Court fee	£400.00
Solicitor's costs	
Issue date	

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the case number.

N208 Claim form (CPR Part 8) (10.00)

Peapod Solutions Ltd.

Claim No.

58

Details of Claim (*continued*)

Statement of Truth

I believe that the facts stated in these particulars of claim are true

Full name Richard Buxton

Name of claimant's solicitor's firm Richard Buxton

signed



position or office held

Partner

(if signing on behalf of firm or company)

Richard Buxton
19B Victoria Street, Cambridge CB1 1JP
tel: 01223 328933
fax: 01223 301308
email: rmb@richardbuxton.co.uk

Claimant's or claimant's solicitor's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

DETAILS OF CLAIM

59

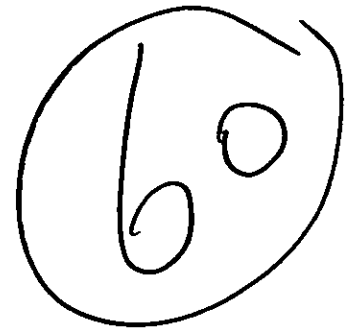
Introduction

1. This is an application under section 288 of the Town and Country Planning Act 1990 ("the TCPA 1990") to quash the planning permission granted by a letter of the Secretary of State dated 30 January 2006 ("the decision letter") for various forms of development on a site located near Chelsea Creek, London.

Background

2. The site straddles the boundary of two boroughs: the Royal Borough of Kensington and Chelsea ("RBKC") and London Borough of Hammersmith and Fulham ("LBHF") and accordingly applications for planning permission were made to each borough by the developer, Circadian Ltd. Following a refusal by RBKC to grant planning permission, Circadian Ltd appealed under section 78 of the TCPA 1990 to the First Secretary of State ("FSS"). The application for planning permission to London Borough of Hammersmith and Fulham was called in by the FSS under section 77 of the TCPA 1990. (The section 77 call-in and the section 78 appeal will hereinafter be jointly referred to as "the appeal")
3. The FSS appointed an Inspector, John L. Gray, to hold a public inquiry and to prepare a report. In his report dated 17 August 2005 ("the Inspector's report"), the Inspector recommended that planning permission be refused and the appeal dismissed. By his decision letter, the FSS declined to follow the recommendation of the Inspector, and decided to allow the appeal and grant planning permission for a range of forms of development on a site situated around the Lots Road Power station in Chelsea, London ("the development proposal").

Section 288 of the Town and Country Planning Act 1990



4. Section 288 of the TCPA 1990 provides that:

(1) *If any person-*

...

(b) *is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds-*

- i. that the action is not within the powers of this Act, or*
- ii. that any of the relevant requirements have not been complied with in relation to that action;*

he may make an application to the High Court under this section

...

(3) *An application under this section must be made within 6 weeks from the date on which the order is confirmed...or, as the case may be, on which the action is taken.*

(4) *This section applies... to any such action on the part of the Secretary of State as is mentioned in subsection (3) [of section 284]*

(5) *On any application under this section, the High Court-*

...

(b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action.

5. The actions specified in section 284(3) of the TCPA 1990 include at subparagraph (a) "any decision on a planning application referred [to the Secretary of State] under section 77" and at subparagraph (b) "any decision on an appeal under section 78".

6. Accordingly, section 288 applies to an appeal against such action by virtue of section 288(4).

7. The power of the Court under the predecessor to this section was described by Lord Denning M.R. in **Ashbridge Investments Ltd. v. Minister of Housing and Local Government** [1965] 1.W.L.R. where he stated:

61

"Under this section it seems to me that the court can interfere with the minister's decision if he has acted on no evidence; or if he has come to a conclusion which on the evidence he could not reasonably have come; or if he has given a wrong interpretation to the words of the statute or if he has taken into consideration matters which he ought not to have taken into account or vice versa. It is identical with the position when the Court has power to interfere with a decision of a lower tribunal which has erred in a point of law."

Ground 1: Error of Law

8. In his call-in letter, the FSS indicated that among the matters on which he wished to be informed were:

(b) The relationship with the proposed development to the relevant policies and provisions of the London Plan, in particular those concerned with development affecting the river Thames.

9. Section 38 of the Planning and Compulsory Purchase Act 2004 provides:

(1) A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).

(2) For the purposes of any area in Greater London the development plan is—

(a) the spatial development strategy, and

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

10. Section 38(5) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be).

11. The Unitary Development Plans of RBKC and of the London Borough of Hammersmith and Fulham ("LBHF") were adopted in 2002 and

2003 respectively. The London Plan was published in 2004. Together these documents comprise the development plan for the area in which the development proposal is located.

62

12. Pursuant to section 38(5) of the PCPA 2004, if to any extent, a policy contained in the London Plan conflicts with another policy contained in either of the UDPs, the policy in the London Plan must prevail, being the later to be published.
13. Paragraphs 19.157 to 19.167 of the Inspector's report address the application of the Blue Ribbon Network policies contained in Part 4C of the London Plan to the development proposal.
14. Paragraphs 19.158-19.159 of the Inspector's report state:

19.158 *First of all, this proposal has a long history. There is a planning permission on the LBHF site, for phase two of the Chelsea Harbour development, dating back to the 1980s. The site is identified for development in both the RBKC and LBHF UDPs, adopted in 2002 and 2003 respectively, but obviously having undergone a long preparation period before that. In both, a residential-led scheme is anticipated. There is nothing in either UDP to suggest that water-based uses should be preferred, even for parts of the site.*

19.159 *The London Plan was published in 2004. If one starts from the UDP proposals, then the strategic policies in the London Plan that seem most applicable to this site and its anticipated development are "A.1 (sustainability criteria), 4B.3 (maximising the potential of sites), 3A.5, 3C.1 and 3C.2 (all to do with integrating transport and development). The proposal satisfies all of those.*

19.160 *At the same time, the London Plan also introduces, in its own chapter, the concept of the BRN. I do not believe that the BRN policies, cross-cutting though they may be, can have the effect of negating proposals already adopted in UDPs for major development on a site on the bank of the Thames. It is not uncommon for development proposals to create tension between development plan policies, some of which will pull in one direction, others in another. Here, the tension created by a proposal for residential development*

would equally be created if the site were proposed for river-based uses- in particular, its loss for substantial residential development would be contrary to the housing strategy of the plan."

63

15. The FSS stated, at paragraphs 81-82 that:

"81. The Secretary of State agrees with the Inspector at IR19.158 that the planning history of this site since the 1980s indicates that a residential-led scheme has been anticipated and that there is nothing in either Council's UDP to suggest that water-based uses should be preferred.

82. The Secretary of State also agrees with the Inspector at IR19.160 that the BRN policies do not negate the proposals already adopted in the Council's UDP for residential-led development"

16. The Inspector identified that there was a "tension" between the UDP policies anticipating a residential-led scheme which "pull in one direction" and the policies in the London Plan which "pull in another". In the language of section 38 of the PCPA 2004, the Inspector identified there was a "conflict" between the policies.
17. The proper application of section 38(5) of the PCPA 2004 requires that that conflict should have been resolved in favour of the latest policies to be published, namely the Blue Ribbon Network policies in the London Plan. In fact, the Inspector stated that he "did not believe that the BRN policies, cross-cutting though they may be, can have the effect of negating proposals already adopted in UDPs for major development on a site on the bank of the Thames". The Inspector and the Secretary of State, in agreeing with the Inspector, failed to make any to resolve the conflict in favour of the policies adopted in the London Plan as required by section 38(5) of the PCPA 2004 and thereby made an error of law.

Ground 2

64

18. Further or alternatively, the Inspector and the Secretary of State, failed to have regard, or any adequate regard to a material factor, namely the effect of section 38(5) on an identified conflict between policies in the development plan.

Ground 3- no adequate regard to policies in the development plan

19. Section 38(6) of the PCPA 2004 provides that

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

20. Part 4C of the London Plan sets out the Blue Ribbon Network policies and supporting text. The following are of particular relevance (emphasis added):

*4.74 The Blue Ribbon Network has an essential role to play in delivering all the key elements of the Mayor's vision of an exemplary, sustainable world city. Water is a valuable and scarce asset within London and **its use must be set within sustainable limits which prioritise those uses and activities that need a waterside location.** The Mayor has a visionary approach to the Blue Ribbon Network, **taking the water as the starting point for decision-making.** This approach is encapsulated by the following Blue Ribbon Network Principles, which reflect the objectives set out in the Introduction, and **which should structure relevant decision-making***

*...
4.76 The Blue Ribbon Network Principles have been developed and refined from the five functions of the Thames and the objectives that were identified in RPG3b/9b. One fundamental change is that the **water is not seen as merely a setting for development. Rather, this plan promotes the use of the water-related spaces.** Types of sustainable use are many and varied but include water transport, water recreation, waterside open space, natural habitats and flood storage or protection.*

65

Policy 4C.1 The strategic importance of the Blue Ribbon Network

The Mayor will, and boroughs should, recognise the strategic importance of the Blue Ribbon Network when making strategies and plans, when considering planning applications and when carrying out their other responsibilities. Other agencies involved in the management of the Blue Ribbon Network should recognise its strategic importance through their policies, decisions and other activities.

*All agencies involved in the management of the Blue Ribbon Network should seek to work collaboratively to ensure a co-ordinated and cohesive approach to land use planning, other activities and the use of the Blue Ribbon Network. **Decisions should be based upon the Blue Ribbon Network Principles.***

21. . At paragraph 19.159 of the Inspector's report (quoted in full above), the Inspector stated that:

"if one starts from the UDP proposals, then the strategic policies in the London plan that seem most applicable to this site and its anticipated development are...[various policies are then listed]"

22. The Inspector then went on to state that :

"I do not believe that the BRN policies, cross cutting though they may be, can have the effect of negating proposals already adopted in the UDPs..."

23. Paragraph 4.74 of the London Plan requires decision makers to take the water as the starting point for decision making. The Inspector took the UDPs, which envisaged residential development with little or no connection with the water as his starting point.

24. Further or alternatively, policy 4C.1 requires decisions to be based on the Blue Ribbon Network principles. The Inspector did not base his decision on the Blue Ribbon Network principles. As such he failed properly to determine the appeal in accordance with the development plan.

Ground 4- Wrong approach to policy 4C.12

bb

25. Policy 4C.12 of the London Plan states:

Policy 4C.12 Sustainable growth priorities for the Blue Ribbon Network

*The uses of the Blue Ribbon Network and land alongside it should be prioritised in favour of those uses that specifically require a waterside location. These uses include water transport, leisure, recreation, wharves and flood defences. For sites that are **not suitable** or **not needed** for these priority uses, developments should capitalise on the water as an asset and enhance the Blue Ribbon Network in order to improve the quality of life for Londoners as a whole, as well as for the users of the development.*

26. The Inspector stated at paragraph 19.163 of his report that

"... Policy 4C.12 (sustainable growth priorities for the BRN) says that uses should be prioritised in favour of those specifically requiring a waterside location (including transport, leisure and recreation). But there is no water based use which could reasonably be expected to occupy the site, or part of it, if this scheme did not go ahead- and thus no use to which priority might reasonably be given in terms of Policy 4C.12- Notwithstanding the adoption of the Thames Strategy- Kew to Chelsea as supplementary planning guidance by LBHF, it is difficult to see the objection as more than a desire by the objectors that the land should be available for any such use, should a firm proposal emerge. (That said, I find the desire understandable, given the valid point that there are very few opportunities even to moor a boat along this stretch of the river.)"

27. The Secretary of State agreed with the reasoning of the Inspector at paragraph 82 of the decision letter.

28. Policy 4C.12 requires that the use of BRN and of the land alongside it should be prioritised in favour of those uses specifically requiring a waterside location. The only proviso to that requirement is if the land is *not required* for such uses, or the land is *not suitable* for such uses.

67

29. The Inspector, in the parenthetic last sentence of paragraph 19.163, acknowledged the need for opportunities to moor boats (and implicitly of the need for sites providing other facilities for river users). He clearly did not take the view that the site was not required for such uses. Similarly, he did not find that the site was unsuitable for use for water-based activities.
30. Indeed, the second half of policy 4C.12 which is applicable to sites which are neither required or suitable for water based uses was not considered by the Inspector, further indicating that he considered that the site was both required and suitable for water-related uses, and that the second half of the policy accordingly did not fall to be considered.
31. The Inspector's view that priority should only be given to uses requiring a waterside location if there was a "firm proposal" in place for an alternative use for the site is not derived from the terms of the policy. There is no stipulation that priority be given to the said uses only where alternative firm proposals are in place.
32. In the light of paragraph 4.74, in which it is said that:

"Water is a valuable and scarce asset within London and its use must be set within sustainable limits which prioritise those uses and activities that need a waterside location. The Mayor has a visionary approach to the Blue Ribbon Network, taking the water as the starting point for decision-making..."

It is apparent that the Inspector's gloss on the policy is a frolic of his own and is untenable.

33. Indeed if the Inspector's approach is correct, it entitles a developer who presents a proposal which fails to prioritise water based uses in

accordance with Blue Ribbon Network Policy, to rely on that very failure to contend that policy 4C.12 is inapplicable. It was open to the developers to make proposals which used the site for uses requiring a water-based location. The fact that they did not do so does not render policy 4C.12 inapplicable, rather it serves to underline that the proposals they did make are not in line with policy.

68

34. For all these reasons, it is apparent that the Inspector, and in following the Inspector, the FSS, failed to properly apply policy 4C.12 and thereby failed to determine the appeal in accordance with the development plan.

Ground 5; Wrong approach to policy 4C.20

35. The Inspector stated at paragraph 19.162 of his report that

"I take Policy 4C.20 (design- starting from the water) to be, as its title and the title of the sub-section suggest, purely a design policy - not one which addresses the suitability in principle of a proposed use for a riverside site"

36. Policy 4C.20 provides, in so far as relevant:

Policy 4C.20 Design – starting from the water
The Mayor will, and boroughs should, seek a high quality of design for all waterside development. All development, including intensive or tall buildings, should reflect local character, meet general principles of good urban design and improve the quality of the built environment. **In addition, development should integrate successfully with the water space in terms of use, appearance and physical impact and should in particular:**

- include a mix of uses appropriate to the water space, including public uses and open spaces, to ensure an inclusive accessible and active waterside and ground level frontage

37. Policy 4C.20 is concerned not just with "appearance and physical impact", but with use of a site. It is not purely concerned with design. It is all the more apparent that the policy is concerned with use when taken in the context of the whole of the Blue Ribbon Network policies and supporting text.

38. The Inspector misunderstood policy 4C.20 and/or failed to adequately consider whether the development proposals were in accordance with it. In particular, the Inspector failed to consider:

- i. whether the development integrated with the water space in terms of use; and
- ii. whether the development included a mix of uses ensuring an inclusive, accessible and active waterside frontage.

39. The FSS, in adopting the reasoning of the Inspector (at paragraph 82 of the decision letter) equally failed to consider a material factor.

Ground 6: Failure to adequately consider post-inquiry representations

The Environmental Impact Assessment Directive

40. Article 1(2) of Directive 85/337/EEC ("the EIAD") as amended by Directive 2003/35/EC defines "the public concerned" as:

the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

41. Article 6(4) of Directive 85/337/EEC provides:

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.



Post-inquiry Procedure

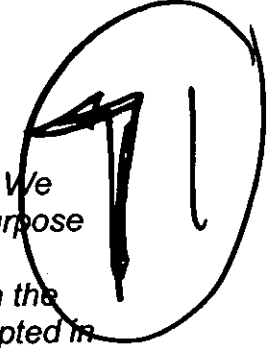
42. On 12 May 2005, after the end of the Inquiry, the FSS made a regulation 19 request, pursuant to which Circadian Ltd submitted an updated Environmental Statement on 29 June 2005. It is understood that this was copied to all the rule 6 parties. It is further understood (from the letter of Addleshaw Goddard to the Office of the Deputy Prime Minister dated 13 October 2005) that RBKC took issue with the adequacy of the update and in response to that, further replacement pages were issued. Additionally, a new non-technical summary was issued on 23 October 2005. On 24 October, the FSS invited further correspondence from the parties. That letter stated:

"5. The Secretary of State wishes to emphasise that representations on the above issues are to enable him to take a fully informed decision..."

7. The Secretary of State does not propose to allow a lengthy series of cross-representations and further comments... The Secretary of State is inviting comments only on the particular issues set out at paragraphs 2 to 4 above and he does not regard this as an opportunity to address other issues raised at the inquiry..."

43. In response to that request, on 07 December 2005 Lady Berkeley, on behalf of the River Thames Society, wrote to the Secretary of State stating her concerns about the procedure in the following terms:

We remain very troubled by the submission of revisions to the Environmental Statement and of late changes to the evidence after the end of the Inquiry. We have not had the opportunity to fully analyse the effect of these late ad hoc changes to the revised Environmental Statement nor have we had the opportunity to obtain



ad hoc Counsel's advice as to the legality of this procedure. We would nevertheless remind the Secretary of State that the purpose of an Environmental Statement is to allow the public to have effective access to the information necessary to comment on the proposals. It is difficult to see how the ad hoc procedure adopted in this case can be consistent with that objective. The Secretary of State has rightly expressed a wish to make a fully informed decision, but without adequate assessment of the River and without proper and effective consultation of the public on the late changes it is difficult to see how an informed decision can be made.

While we are not in a position to comment on the technical legal position, we remain of the view that the procedures in this case are not in accordance with the purpose of the Environmental Impact Assessment Directive. We do not feel that the procedures in relation to the late changes have led to adequate and fair or effective consultation with the public.

44. At paragraph 8 of the decision letter, the FSS purports to have considered the further correspondence on the Environmental Statement. Nowhere does he address the concerns raised in Lady Berkeley's letter set out above.
45. The compliance of a procedure with the demands of the EIAD are a material consideration. It would appear that this matter was not considered by the FSS.

Ground 7: Breach of the EIA Directive

46. It is submitted that the *ad hoc* procedure adopted did not comply with the demands of the EIAD. "The public concerned" were given neither an early, nor an effective opportunity to comment. Far from being early, the opportunity to comment on the Environmental Statement, did not come until the very end of the process. Nor was it an effective opportunity. The terms on which comments could be made were restricted to those set out at paragraphs 2 to 4 of the letter of the Secretary of State dated 24 October 2005. There was no opportunity

to comment on the effect of the amendments in a manner which took account of wider effects of the amendments on the development as a whole. There was no opportunity to present evidence, nor to cross examine witnesses for the promoters.

72

47. Furthermore, it cannot realistically be maintained that there was effective consultation of the wider public. Even if the amendments were advertised in accordance with the regulations, there was no opportunity for early and effective consultation on them, nor was there any opportunity for effective participation by the public in the environmental decision making process at that stage.

48. Accordingly, it is submitted that the requirements of the EIAD were not complied with.

AND THE CLAIMANT CLAIMS

- (1) An order quashing the said decision
- (2) Further or other relief
- (3) Costs

Alex Goodman
Atlas Chambers
3 Field Court
Gray's Inn
London WC1R 5EP

12 March 2006



Elizabeth Sealey
Decision Officer
Planning Central Casework Division
Zone 3/J1
Eland House
Bressenden Place
London SW1E 5DU

73

Mr D. Evans
Addleshaw Goddard
Alder Castle
10 Noble Street
London
EC2V 7JW

Direct line: 020 7944 8714
Enquiries: 020 7944 2421
Fax: 020 7944 5929
Elizabeth.Sealey@odpm.gov.uk

Our ref: APP/K5600/A/04/1146268 and
APP/H5390/V/04/1148781
Your ref:

30 January 2006

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 77 AND 78

**APPLICATION BY CIRCADIAN LTD TO THE LONDON BOROUGH OF
HAMMERSMITH AND FULHAM
APPEAL BY CIRCADIAN LTD AGAINST THE DECISION OF THE ROYAL
BOROUGH OF KENSINGTON AND CHELSEA**

PLANNING APPLICATIONS: 2002/03132/FUL and PP/02/01324

1. I am directed by the First Secretary of State to say that consideration has been given to the report of the Inspector, John L Gray DipArch MSc Registered Architect who held a public inquiry on 1-4, 8-11, 15-18 and 22-25 February and 25-26 April 2005 into your client's application for planning permission for the demolition of buildings ancillary to the former Lots Road Power Station; the provision of 382 residential units by means of the erection of a residential tower with a ground floor gymnasium plus six other buildings; car parking spaces, cycle parking, children's playspace, servicing, landscaping and associated works to Chelsea Creek and Chelsea Basin, including the construction of three pedestrian bridges across the creek (2002/03132/FUL), and your client's appeal against the decision of the Council of the Royal Borough of Kensington and Chelsea (RBKC) to refuse planning permission for the demolition of parts of the former Lots Road Power Station; the provision of 420 residential units by means of conversion of the former power station building to include residential units, retail, business and community, a doctor's surgery and restaurants, the erection of a residential tower with a ground floor gymnasium and the erection of two other residential buildings (one to incorporate a nursery and business uses); car parking spaces, cycle parking, servicing, landscaping and works to Chelsea Creek and Chelsea Basin, including the construction of three pedestrian bridges across the creek (PP/02/01324).

2. On 19 April 2004, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that application 2002/03132/FUL be referred to him instead of being dealt with by the local planning authority, the London Borough of Hammersmith and Fulham (LBHF).

74

Procedural matters

3. The Secretary of State agrees with the Inspector at IR 1.4 that the matters on which the Secretary of State wished to be informed for the purpose of his consideration of the LBHF application (as set out at IR 1.3) apply equally to the RBKC appeal, subject to the amendments at IR 1.4.
4. The Secretary of State referred back to parties on 24 October 2005 and 23 November 2005 on post-Inquiry correspondence, in the interests of natural justice. A schedule of correspondence received is at Annex B. The Secretary of State has taken this correspondence into account in reaching his decision.
5. The Secretary of State agrees with the Inspector at IR 19.5 that the application and appeal proposals must be viewed as a single scheme, and like the Inspector has considered the proposals on this basis.

The Planning Obligations

6. The Secretary of State has considered the three planning obligations (listed at page 130 of the Inspector's Report), signed versions of which were submitted after the close of the inquiry, and the Inspector's commentary on the obligations at IR 17.5 to IR 17.6. The Secretary of State requested on 25 January 2006 by letter sent to the parties that a dated copy of the Section 106 agreement between London Borough of Hammersmith and Fulham, Transport for London, Circadian Limited, Circadian (CH) Limited and London Underground Limited be provided, and this has now been received. The Secretary of State considers that the three obligations are satisfactory, and will deliver the benefits set out at IR 17.5 to 17.6.

The Environmental Statement

7. The Secretary of State has considered the Environmental Statement, and the Inspector's commentary on it at IR 18.1 to 18.6. By letter dated 12 May 2005 the Secretary of State invited Circadian to update the Environmental Statement in the manner suggested by the Inspector at IR18.3. That update was provided on 29 June 2005, and a new non-technical summary on 13 October 2005.
8. The Secretary of State has considered the further correspondence on the amendments to the Environmental Statement. He considers that the Statement, as amended, deals adequately with the environmental impacts of the proposals. In this respect, he does not agree with RBKC that it is necessary for the Environmental Statement to refer to all the obligations in the Strategic and Integrated Transport Improvements (SITS) package. The amendments have been commented on by the parties, and raise no new issues which would necessitate re-opening the inquiry.

Inspector's Conclusions and Recommendation

9. The Inspector, whose conclusions are annexed to this letter, recommended that the appeal be dismissed, and the planning application be refused. For the reasons given below, the First Secretary of State disagrees with the Inspector's recommendations, and has decided to allow the appeal and grant planning permission. All references to paragraph numbers, unless otherwise stated, refer to the Inspector's Report.

75

Policy Considerations

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals shall be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case, the Development Plan comprises the London Plan (2004), the Royal Borough of Kensington and Chelsea Unitary Development Plan (RBKC UDP 2002), and the London Borough of Hammersmith and Fulham Unitary Development Plan (LBHF UDP 2003). The Secretary of State agrees that the London Plan policies most relevant to the application and appeal are those listed at IR 3.3, that the most relevant RBKC policies are those listed at IR 3.4, and the most relevant LBHF policies are those listed at IR 3.6. The Secretary of State has also taken into account, as material considerations, the planning brief for the RBKC site adopted in July 1998, the supplementary planning guidance on residential development on the LBHF site, approved in 1994, and the Thames Strategy – Kew to Chelsea, published in 2002.

12. National guidance which the Secretary of State has taken into account as material considerations includes Planning Policy Statement 1 (PPS1) "Delivering Sustainable Development"; Planning Policy Guidance note 3 "Housing" (PPG3), Planning Policy Statement 9 "Nature Conservation" (PPS9), Planning Policy Guidance note 13 "Transport" (PPG13), Planning Policy Guidance note 15 "Planning and the Historic Environment" (PPG15), and Planning Policy Guidance note 17 "Planning for Open Space, Sport and Recreation" (PPG17). Planning Policy Guidance note 9 "Nature Conservation" was before the inquiry, and the Secretary of State considers that the cancellation of this and its replacement by Planning Policy Statement 9 "Biodiversity and Geological Conservation" does not raise any new issues that require a reference back to parties. The Secretary of State has had regard to the consultation draft of Planning Policy Statement 3, published on 5 December 2005. As this is a consultation draft which may be subject to change he has given this document little weight.

Main considerations

13. The Secretary of State considers that the main issues in this case are those identified in the call in letter and set out in IR1.3. The Secretary of State considers each of these in turn below, under the headings given by the Inspector from page 133 onwards of his report.

Relationship of the proposals to national policy contained in PPG3

Land Use

14. The Secretary of State agrees with the Inspector at IR 19.6, for the reasons given in that paragraph, that the land is suitable for housing.

Re-use of previously developed land

15. The Secretary of State agrees with the Inspector that the proposals would bring about the re-use of previously developed land, and that it is only the nature of the proposed redevelopment which is disputed (IR19.7).

76

Mix of Uses

16. The Secretary of State agrees with the Inspector at IR 19.8 for the reasons given in that paragraph that the proposals would bring about a mix of uses, although residential use would be by far the predominant one.

Affordable housing and mixed communities

17. The Secretary of State considers that the affordable housing on offer through the S106 agreements (39% on the RBKC site and 56% on the LBHF site) would help to create a mixed community and that the permeability of the redeveloped site would integrate the development into the surrounding area (IR 19.9). The Secretary of State gives significant weight to the provision of affordable housing to meet housing need in London in general, and in the two Boroughs concerned in particular. He has had regard to the fact that the quantum of affordable housing proposed is consistent with national policy, strategic policy in the London Plan, and local policy in the UDPs of the two Boroughs, and that the quantum is agreed by the principal parties (7.2, Statement of Common Ground).

Density

18. The Secretary of State agrees with the Developer and GLA at IR 19.11 that the fundamental question in determining whether or not the density is appropriate to the site is whether developing the site in the manner proposed would be in any sense unsustainable, and whether, for example, it would impose any undue strain on local infrastructure, services and facilities. The Secretary of State agrees with the Inspector at IR19.17, for the reasons given in that paragraph, that density should be calculated excluding the creek. He also agrees with the Inspector at IR 19.16, for the reasons given in that paragraph, that the appeal and application sites fit the definition of "urban", where density ranges of between 150 and 165 units per hectare would normally be expected (IR19.17). He agrees with the Inspector at IR 19.18 that this preliminary assessment indicates that the density may be rather too high (in terms of Table 4B.1 of the London Plan), for the area in which the site lies, but that it is appropriate for the reasons given by the Inspector in IR19.19 to consider the development against Policy HO7 in the LBHF UDP, which will permit higher density development, subject to it satisfying five criteria.

Conclusion on matter PTAL (public transport accessibility level) and PPG3

19. The Secretary of State agrees with the Inspector at IR 19.24 that the proposal accords with national policy in PPG3 in relation to land use, re-use of previously developed land, mix of land uses, the quality of the residential environment, and in the amount of affordable housing to be provided, and thus also accords with the development plan policies listed at IR 19.24.

20. The Secretary of State also agrees with the Inspector at IR 19.25 that the proposals do not comply with the development plan with regard to density, but that this is not a compelling objection in itself, and that a final conclusion must depend on whether the proposed density of development would cause harm in relation to the other call-in matters considered below.

71

Whether the proposal is in accordance with national policy in PPS1, particularly in relation to design and urban design

Whether the proposal is in accordance with national policy contained in PPG 15, in so far as it affects the Sands End Conservation Area

The design of the scheme – the power station

21. The Secretary of State agrees with the Inspector at IR 19.32, for the reasons set out in IR 19.29 to 19.32, that the conversion of the power station would make the building into a focal point for the surrounding area, and that the proposals have many merits.

The principles of layout and design

22. The Secretary of State agrees with the Inspector at IR 19.34 to 19.36, for the reasons given in these paragraphs, that the overall principles of the layout are impressive, making the riverside path, Chelsea Harbour and Imperial Wharf much more accessible to those living in the development and in the Lots Road triangle, and providing an attractive route through the site. In addition, the Secretary of State agrees that the merits of the overall layout outweigh the harm that the complete loss of one row of trees from the avenue of trees close to the Chelsea Harbour boundary and loss from open space of the other would cause (IR 19.36).

The buildings

23. The Secretary of State agrees with the Inspector at IR 19.44, for the reasons given in IR 19.37 to 19.43, that the design of the buildings and the principles of the layout would come together to create an accessible development and an attractive one in architectural and urban design terms, whilst noting that the Inspector makes this subject to his conclusions on the impact of the towers.

Views

24. The Secretary of State agrees with the Inspector at IR 19.48 that the weight to be given to the RBKC planning brief for the site is limited through its status as supplementary planning guidance and by the fact that LBHF took no part in its preparation.

25. Like the Inspector, the Secretary of State accepts the landmark quality of the power station building (IR19.47), although he notes that the power station is not listed. He agrees with the Inspector at IR 19.49 for the reasons in that paragraph that in bulk and height the proposed towers would ~~replace the power station~~ as the obvious landmarks. He agrees with the Inspector that the two key issues are whether the relationship between the towers and the power station, in particular the chimneys, would be acceptable, and whether buildings of this height are appropriate in the context of the river and the surrounding development (IR 19.50).

Development Plan policy on tall buildings

26. The Secretary of State agrees with the Inspector at IR 19.51 for the reasons in IR 19.51 to 19.52 that the key point to be satisfied on London Plan policy 4B.8 is whether the towers "would be acceptable in terms of design and impact on their surroundings". He agrees with the Inspector at IR 19.53 that taking into account the character and building heights of the surrounding area, there is nothing to indicate that a tall building is wrong in principle in this location. The Secretary of State also agrees with the Inspector at IR 19.52 that the existing tall buildings in the area do not form a visual cluster in terms of Policy 4B.9 of the London Plan, although there is an association between them that might, in visual or skyline/focal point terms, warrant a tall building on this site.

27. The Secretary of State agrees with the Inspector at IR 19.56 for the reasons given in IR 19.54 to 19.55 that the proposed towers will be appropriate if they satisfy London Plan policies 4B.8 and 4 B.9.

CABE and English Heritage views

28. The Secretary of State agrees with the Inspector at IR 19.57 that the supportive views of the proposals from CABE and English Heritage ought to weigh heavily in favour of the proposals. Whilst he agrees that their views are not necessarily determinative he considers they should be accorded significant weight.

Views from downstream

29. The Secretary of State does not agree with the Inspector at IR 19.60 to IR 19.69, based on the reasons given in those paragraphs, that the 37 storey tower would be too dominant and over-bearing, or unduly high.

30. In particular, he disagrees with the Inspector's conclusion in IR19.61 that the absence of anything else in the skyline suggests that a 37 storey tower is inappropriate; and with his conclusion in IR19.62 that the fact that the 37 storey tower would be significantly higher and thus more prominent than the power station chimneys and the World's End Towers is an indication that the 37 storey tower is too tall. Given the Inspector's conclusion in IR19.53 that there is nothing to say that a tall building is wrong in principle, the Secretary of State does not consider that the height of any new building should necessarily be restricted by the height of other buildings in the area.

31. In reaching this conclusion the Secretary of State has had regard to the Inspector's observation (IR 19.58 to 19.59) that the buildings would appear larger in reality than they do in the submitted photographs. He has made allowance for these concerns in his assessment.

32. The Secretary of State has also taken into account the views of CABE, English Heritage and the Mayor of London in support of the scheme. He notes that, although RBKC object to it, the 37 storey tower itself would be situated within the Hammersmith and Fulham site, and that LBHF find the tower acceptable, both as part of development on that site, and as part of the overall proposals (IR8.33).

33. The Secretary of State agrees with the Inspector at IR 19.70 that the setting of the Albert Bridge would not need to be protected from the introduction of the proposed towers.

79

Views from the opposite bank of the Thames

34. For the reasons set out in paragraphs 29-31 above, the Secretary of State does not agree with the Inspector's conclusions in IR 19.77 (for the reasons given in IR 19.71 to IR 19.76), that the 37 storey tower would be too tall or would dominate the scene in an overpowering way.

35. The Secretary of State notes the Inspector's observations in these paragraphs about the relationship of the towers to the existing power station. However, he also notes the Inspector's conclusion (IR19.88) that virtually any development of the site would leave the power station building barely visible. As explained in paragraph 42 below, the Secretary of State does not consider that if the power station is to be retained as a landmark, it is necessary that it should remain a landmark in all views after development has taken place around it (IR 19.48).

Views from the south bank west of the WLL bridge

36. The Secretary of State considers that the 37 storey tower conforms to London Plan policies 4B.8 (tall buildings - location) and 4B.9 (large buildings - design and impact), and agrees with the Mayor of London at IR7.45 that both towers would create attractive landmarks enhancing London's character at this point on the river, and that the towers would relate well both to the power station and to other tall buildings in the area.

37. The Secretary of State agrees with the Inspector at IR19.78 that the 37 storey tower would be little more than another tall building in the urban scene when viewed from the south bank west of the WLL bridge. He further agrees that there is little to count against the proposals when seen from this direction.

Views from Brompton Cemetery

38. The Secretary of State agrees with the Inspector at IR19.79 that the elevational treatment of the towers and the effect of distance would combine to render them incidents rather than distractions on the skyline beyond.

Views from the Lots Road triangle

39. The Secretary of State notes that the Inspector, in his consideration at IR19.80 to IR 19.81, concludes that Lots Road power station is already dominant in views from the triangle and that the proposed towers would rise above the power station and create a further overbearing impact on views. Having regard to the design and materials to be used, the Secretary of State considers that the development would comply with national policy as set out in PPS1, which asks for the design of development to be appropriate in its context and to take the opportunities available for improving the character and quality of an area and the way it functions. In reaching this conclusion he has taken into account the inquiry evidence and the views in support of the scheme.

Views from Chelsea Harbour and in the vicinity of Imperial Wharf

40. The Secretary of State agrees with the Inspector at IR19.82, for the reasons given in that paragraph, that the towers would not be out of place, and would appear as modern architecture in the context of modern architecture.

80

Night-time views

41. The Secretary of State considers that views of the proposed development must be acceptable both during the day and at night. He agrees with the Inspector at IR19.83 that the towers would be no more intrusive by night in riverside views than by day.

Old or new landmark

42. The Secretary of State agrees with the Inspector's conclusion that the redundancy of the power station and the benefits of redevelopment offer the opportunity for a change in townscape or urban design emphasis, that the power station building lacks the architectural merit to warrant the space around it being left largely open, and that a tall building or two need not be inappropriate in this location (IR19.88 to IR 19.89). The Secretary of State concludes that the preservation of an existing landmark, in the power station, is not an overriding concern which should prevent the opportunity for effective development of the site. Having studied the detailed plans of the scheme and the views expressed by bodies such as CABE and English Heritage, the Secretary of State does not agree with the Inspector that the proposed 37 storey tower would be too tall in this location and context.

Landmarks and gateways

43. The Secretary of State agrees with the Inspector at IR19.93, for the reasons given in paragraphs IR19.90 to 19.92 that there is no particular argument for a gateway or landmark building that could influence consideration of the proposal in its urban design context, although he agrees with the Mayor of London's view at IR 7.45 that the two towers would create attractive landmarks enhancing London's character at this point on the river.

Impact on conservation areas

44. The Secretary of State agrees with the Inspector at IR19.94 that there would not be any harmful effect on the character and appearance of conservation areas. He further notes with the Inspector at IR19.96 that no building of merit, in or out of any conservation area, is to be demolished, and agrees with the Inspector in that same paragraph that the character and appearance of the creek would be enhanced by the proposals.

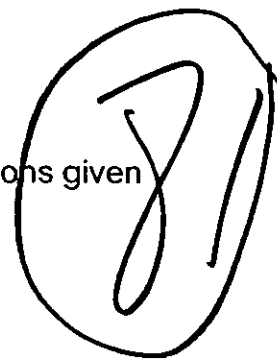
Impact on residential amenity

Daylight

45. The Secretary of State agrees with the Inspector's conclusions at IR 19.102.

Sunlight

46. The Secretary of State agrees with the Inspector at IR19.104 for the reasons given in that paragraph that the impact on sunlight does not seem unreasonable or unacceptable for what is a relatively densely developed urban area.



Overshadowing

47. The Secretary of State agrees with the Inspector at IR19.105 that the proposals would not cause overshadowing of individual properties sufficiently serious to warrant their rejection.

Solar glare

48. The Secretary of State agrees with the Inspector at IR19.106 that the orientation of the rhomboidal plan of the two towers would seem to limit the opportunities for harmful glare.

Pressure on local services and facilities

49. The Secretary of State agrees with the Inspector at IR19.107, for the reasons given in that paragraph, that the facilities to be provided are reasonable, and he concludes that King's Road West and Fulham Broadway, with the additional shops and services these provide, are within walking distance of the site for some people. The Secretary of State further agrees with the Inspector at IR19.108, for the reasons given at IR19.107 that although subject to objections at inquiry, the schemes' impact on local services and facilities is acceptable.

Overall conclusion on matters f and g

50. Unlike the Inspector, the Secretary of State does not consider the visual impact of the 37 storey tower is so significant that it justifies a conclusion (IR19.111) that this element of the scheme is contrary to London Plan policy 4B.8 by having an unacceptable impact on its surroundings, or to policy 4B.9 by not being suited to its wider context or to policy 4C.20 by failing to relate successfully to its context. Similarly, in the opinion of the Secretary of State, the 37 storey tower does not run contrary to two of the criteria of policy 4B.1 (failing to respect local context and thus failing to be attractive to look at). For the same reason the Secretary of State concludes that the 37 storey tower does not run contrary to LBHF UDP policy EN9, and RBKC UDP policy CD37.

51. The Secretary of State agrees with the Mayor of London that the towers would create attractive landmarks relating to other tall buildings in the area and that the development represents high quality design in an area which is not one of particular sensitivity to tall buildings (IR7.44-IR7.54)

52. The Secretary of State agrees that the EH/CABE joint guidance on tall buildings supports the construction of a tall building (or buildings) on this site in the context of the existing tall buildings in the vicinity. However, he does not agree with the Inspector that a 37 storey tower is just too tall to create a comfortable inter-relationship (IR19.112) nor that by virtue of its height the proposal fails criteria (i), (ii) and (iv) of this guidance, particularly given the strong support for the scheme expressed by both English Heritage and CABE.

Whether the proposal is in accordance with national policy contained in PPG13, particularly with regard to: the impact on traffic generation and overall travel patterns; the effect and adequacy of the proposed improvements to public transport; the impact of the development on traffic congestion in the local area; and the proposed car parking

Impact on traffic generation and overall travel patterns

53. In considering PPG13 issues, the Secretary of State, like the Inspector, has had regard to the transport impacts of other development planned in the area, both as discussed at the inquiry, and raised in the reference back exercise. The Secretary of State accepts the Inspector's conclusion at IR19.115 that car trips would be significantly fewer than trips by other modes for the reasons given in that paragraph.

Proposed improvements to public transport

54. The Secretary of State agrees with the Inspector at IR19.123, for the reasons given at IR19.117 to IR19.122, that the SITS package offers a constructive and satisfactory solution to raising the PTAL of the site to a high 3 or a low 4. He further agrees with the Inspector that the improved bus services would benefit the existing population in the area as well as the proposed development.

Impact on traffic congestion in the local area

55. The Secretary of State agrees with the Inspector at IR19.126 that so far as the immediate road network is concerned, the development would not generate traffic with which the local streets could not cope. He also agrees with the Inspector that the section 106 makes provision for the worst affected junction (that where Lots Road meets Cremorne Road) to be signalised, and that this may make it a preferable option to Tadema Road and Ashburnham Road at certain times of day.

56. At IR19.127, the Inspector does not consider that traffic generation at the junction of Lots Road with King's Road would be likely to change existing conditions to any significant extent, even if the pedestrian cycle were to be called more regularly than assumed.

57. The Inspector considers at IR19.128 that provision in the section 106 obligation for traffic calming could be used to deter rat-running in Lots Road, and the Secretary of State agrees with this assessment.

58. The Secretary of State agrees with the Inspector at IR19.129 that temporary road closures and pressure for parking when Chelsea FC is playing at home should not count against these proposals for housing development on a vacant brownfield site. The Secretary of State, like the Inspector, appreciates that local residents and road users must suffer considerable inconvenience when the first team is playing at home. However, he agrees with the Inspector that this happens no more than 40 times in a season.

Car parking provision

59. The Secretary of State agrees with the Inspector at IR19.130 that parking provision is in line with policy, and would be unlikely to generate demand for on-street parking in the Lots Road triangle.

60. The Secretary of State agrees with the Inspector at IR19.131 that some on-street parking would be removed from Lots Road to enable buses to pass along the street more easily and to facilitate the provision of new bus stops, but that the lost spaces would be replaced within the development.

61. The Secretary of State has considered the post-inquiry correspondence between Addleshaw Goddard for Circadian Limited, and the Royal Borough of Kensington and Chelsea, on the question whether the £1.5m contribution to car parking is strictly necessary, in view of the fact that the application makes provision for 40 places within the development. The Secretary of State notes RBKC's statement (letter of 7th November 2005) that if Circadian's position had been declared prior to the public inquiry, the Council may have advanced an additional reason for refusal of planning permission and called additional witnesses to give evidence on transportation matters.

62. In circumstances where the point may not have been fully canvassed at the inquiry, the Secretary of State does not have sufficient information to reach a concluded view on the question whether the £1.5m contribution was strictly necessary. However, since (irrespective of Circadian's formal position) the Section 106 agreement dated 27 April 2005, between RBKC, Circadian Limited, Transport for London and London Underground Limited, contains provision for this contribution in any event, the need for a contribution would not be a reason for the Secretary of State to refuse permission. Accordingly, the Secretary of State does not consider it necessary for him to determine the issue of necessity at this stage.

Overall conclusion on matter d

63. The Secretary of State agrees with the Inspector at IR 19.133, for the reasons given at IR19.132, that the proposed development would accord with policy in PPG13, and that it would also accord with development plan policy in this respect.

Whether the proposal is in accordance with policy contained in PPG17

Whether an adequate assessment has been carried out of the existing and future needs of the community for open space, sports and recreational facilities, justifying the scale of the development proposed

64. The Secretary of State agrees with the Inspector at IR19.135 that whatever the attraction that development would create, there must be adequate open space for the intended population of the site as well as those drawn to it from elsewhere.

65. The Inspector concludes at IR19.137 that the power station internal street should be excluded from the calculation of open space to be provided in the development, and the Secretary of State agrees with this assessment for the reasons given in that paragraph. He further agrees with the Inspector's conclusions regarding the assessment of what comprises open space on the site in the remainder of that paragraph.

66. For the reasons given at IR19.140, the Secretary of State agrees with the Inspector that the proposed publicly accessible open space would be acceptable.

67. In terms of provision of play space for younger children, the Secretary of State agrees with the Inspector's conclusion at IR19.142 that the proposed equipped play area should be large enough for the number of children in the age range to use it.

68. The Secretary of State agrees with the Inspector at IR19.145 that on balance, the quality of the layout, the site's location beside the river and astride the creek, the proximity (along the riverside path) of the proposed park to be created beyond Imperial Wharf and the contributions to be made to improving Westfield Park and Sports facilities in the Royal Borough of Kensington and Chelsea are enough, taken together, to make the proposals acceptable in terms of PPG17. He further agrees with the Inspector that the layout and setting are also enough to outweigh the fact that the private open space standards in the London Borough of Hammersmith and Fulham UDP would not be met.

Whether the proposal is in accordance with national policy contained in PPG9 Nature Conservation (now PPS9 Biodiversity and Geological Conservation)

69. For the reasons given at paragraphs IR19.146 to IR19.148, the Secretary of State agrees with the Inspector's conclusion that the proposals comply with policy in PPG9, are consistent with the designation of the creek and basin as part of a Site of Metropolitan Importance, satisfy the various development plan policies and would bring a significant enhancement in the appearance of the creek.

The relationship of the proposed development to the relevant policies and provisions of the adopted London Borough of Hammersmith and Fulham UDP

70. The Secretary of State agrees with the Inspector at IR 19.150, that the proposals accord with LBHF UDP policies on housing, transport, open space, enhancement of Chelsea Creek (Site 22), nature conservation and river development, and policies affecting the setting of listed buildings and development in conservation areas.

71. The Secretary of State disagrees with the Inspector that the proposals would fail to satisfy criteria b) and c) of Policy EN8 (design of new development), Policy EN9 (high buildings), and Policies EN31 (important views along, across and from the river, and EN 31X (design of development within the Thames Policy Area). In reaching this conclusion, the Secretary of State has given weight to LBHF's view that the proposals are acceptable in terms of the proper planning of the area, and having regard to all material considerations (IR8.1), and that there is no element of the scheme, either by itself, or in combination with other elements, which justifies the refusal of planning permission (IR 8.2).

72. The Secretary of State agrees with LBHF that subject to the appropriate detailing, the local area, including the riverside, would be enhanced by the appeal proposals (IR 8.11). He agrees with LBHF (IR 8.12) that the towers would not detract from the grandeur of the river, and that there would be some visual linkage with existing tall buildings in the area (IR 8.13). The Secretary of State agrees with LBHF's judgement (IR 8.14) that taken in the overall balance, the development would enhance the character and appearance of the conservation area and the riverside. The Secretary of

State has also had regard to the views of CABE, English Heritage, and the Mayor of London, in reaching these conclusions.

85

The relationship of the proposed development to the relevant policies and provisions of the adopted Royal Borough of Kensington and Chelsea UDP

73. The Secretary of State agrees with the Inspector at IR 19.152 that the proposals meet RBKC UDP policies on housing, transport, open space and play space (with the exceptions of failing to meet the aims of Policies LR2 and LR40 on site, but that this failure is offset by the S106 obligation and the proximity of the proposed park at Imperial Wharf). The Secretary of State also considers that the proposals meet RBKC policies on settings of listed buildings, character and appearance of conservation areas, and parks and gardens, and on ecological management and nature conservation.

74. The Secretary of State disagrees with the Inspector that the proposals fail the riverside, design of development, and tall buildings policies at IR 19.152, although he agrees, for the reasons given by the Inspector, that the constraint on height imposed by Policy CD6 is not justified for this location. In reaching these conclusions, the Secretary of State has also given particular weight to the views of CABE and English Heritage and their support for the proposals.

The relationship of the proposed development to the relevant policies and provisions of the London Plan, in particular those concerning development affecting the Thames

75. The Secretary of State agrees with the Inspector at IR 19.154, for the reasons in that paragraph, that the proposals meet London Plan policies on housing, integrating transport and development and other transport matters, open space strategies, heritage and conservation, and biodiversity and nature conservation. He also agrees with the Inspector at IR 19.154 for the reasons in that paragraph, that the proposals would satisfy Policy 4B.5 (creating an inclusive environment).

76. The Secretary of State agrees with the Inspector at IR 19.155, for the reasons in that paragraph, that there is no objection in terms of the caveat against large-scale development in central London outside the Central Activities Zone (CAZ).

77. The Secretary of State disagrees with the Inspector that the proposals conflict with some criteria in Policy 4B.1 (design principles for a compact city), and with Policy 4B.8 (tall buildings-location), 4B.9 (large-scale buildings-design and impact), and Policy 4C.20 (design-starting from the water). In reaching this conclusion, the Secretary of State has taken into account the Mayor's view that the entire scheme conforms to the policies of Chapter 4B of the London Plan. The Secretary of State agrees with the Mayor's view at IR 7.45 that the towers would create attractive landmarks at this point on the Thames and would relate to other tall buildings in the area.

78. The Secretary of State agrees with the Mayor at IR 7.46 that RBKC UDP Policy CD6 does not conform to the requirements of either the English Heritage or CABE guidance on tall buildings and is in conflict with Policy 4B.8 in the London Plan, and at IR 7.47 for the reasons in that paragraph, that the "Thames Strategy – Kew to Chelsea" also does not meet the requirements of Policy 4B.8. The Secretary of State agrees

with the Mayor at IR 7.54 that where aspects of the development plan do not accord with the London Plan, then the provisions of the London Plan should prevail.

86

79. The Secretary of State agrees with the Mayor at IR 7.52, for the reasons given in that paragraph, that the scheme conforms to the criteria in Policy 4C.20.

80. In reaching these conclusions, the Secretary of State has also taken into account the support of English Heritage and CABE (IR 7.49 and IR 7.52).

The Blue Ribbon Network (BRN) policies

81. The Secretary of State agrees with the Inspector at IR19.158 that the planning history of this site since the 1980s indicates that a residential-led scheme has been anticipated, and that there is nothing in either Council's UDP to suggest that water-based uses should be preferred.

82. The Secretary of State also agrees with the Inspector at IR19.160 that the BRN policies do not negate the proposals in the already adopted UDPs for residential-led development.

83. The Secretary of State agrees with the Inspector, for the reasons given in IR19.162 to IR19.164 that the appeal proposals do not offend against the BRN policies listed.

84. The Secretary of State agrees with the Inspector's conclusion at IR19.166 that use of the creek by the Westminster Boating Base for canoeing and kayaking ought not to be impeded by new bridges giving the same clearance as the road bridge.

85. The Secretary of State agrees with the Inspector at IR19.167 that given that the Environment Agency is content with the flood storage capacity offered by the appeal scheme, there is no reason to take a different view.

Other relevant material planning considerations

The fallback position

86. The Secretary of State agrees with the Inspector at IR19.168 that a potential fallback clearly exists in that there is an extant planning permission for what is known as Chelsea Harbour Phase 2. The Secretary of State notes that this scheme does not provide affordable housing or public transport improvements, and agrees with the Inspector at IR19.168 that, if implemented, it would be noticeably out of kilter with present-day policy and practice.

87. The Inspector, at IR19.171, does not give much weight to the prospect of the Chelsea Harbour Phase 2 planning permission being implemented should these proposals be rejected. The Secretary of State agrees with the Inspector for the reasons given at IR19.169 to IR19.170.

The benefits claimed for the scheme

88. The Inspector concludes at IR19.172 that the manner of the retention of the power station building is a clear benefit of the scheme and the Secretary of State agrees.

Whether any permission should be subject to conditions and, if so, the form they should take

89. The Secretary of State agrees with the Inspector at IR 19.173, that planning permission should be subject to the conditions set out in Annex C, with conditions for the RBKC site, and for the LBHF site.

Overall conclusion

90. The Secretary of State concludes that both proposals are in broad compliance with the UDPs of both boroughs and that although there is conflict with RBKC's Policy H12 he agrees with the Inspector that this policy is not compliant with the more recent London Plan and with the guidance in PPG3 and it should therefore be given little weight (IR 19.152). Similarly he agrees that RBKC's policy CD6 should be given little weight because it also is in conflict with the London Plan (IR 19.182).

91. He considers that the proposals will provide many important benefits including the redevelopment of a brownfield site and will aid the regeneration of the area in a sustainable way as well as improving public transport provision and providing both market and affordable housing in two London boroughs with a high degree of housing need. In common with the Inspector and many of those who gave evidence to the inquiry the Secretary of State considers that the scheme's overall design is of a high standard.

92. The Secretary of State has given careful consideration to the objections raised with regard to the height of the 37 storey tower and its visual impact, particularly on views from Lots Road Triangle and the river and those contending that the mass of the two towers would result in an adverse visual impact on the local area, including the riverscape. On this issue, the Secretary of State disagrees with the Inspector that the height of the towers is unacceptable. If and to the extent there might be any harm, the Secretary of State considers that it is outweighed by the overall benefits of the scheme.

93. In forming this view the Secretary of State has given particular weight to the Inspector's conclusion that the proposed towers will be appropriate if they satisfy London Plan policies 4B.8 and 4B.9 (IR 19.56). For the reasons given in paragraphs 75 to 80 above, he has concluded that the towers are compliant with these policy requirements and, in reaching this conclusion, he has accorded substantial weight to the endorsement given to the towers by CABE, English Heritage and the Mayor of London. He also acknowledges the broad support for the proposals by LBHF. Accordingly, the Secretary of State has decided to allow the appeal made in respect of the application made under reference PP/02/01324, and to grant planning permission for the application made under reference 2002/03132/FUL.

Formal decision

94. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations. He hereby:

- Allows your clients' appeal against the decision of the Royal Borough of Kensington and Chelsea to refuse planning permission
- Grants your clients' application to the London Borough of Hammersmith and Fulham for planning permission subject in both cases to the conditions at Annex C.

95. An applicant for any consent, agreement or approval required by condition of this permission and for the agreement of the reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally, or if the local planning authority fail to give notice of their decision within the prescribed period.

96. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

97. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

98. A copy of this letter has been sent to The London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea and those who appeared at the inquiry.

Yours faithfully

E. A. Sealey

Elizabeth Sealey
Authorised by the First Secretary of State
to sign in that behalf

ANNEX C: CONDITIONS

APPEAL REF. APP/K5600/A/04/1146268 – RBKC

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) The development hereby permitted shall be implemented in accordance with the drawings listed in Inquiry Document A/15.

3) Notwithstanding the details shown on the approved drawings, the construction of any new building shall not begin until the following in respect of that building have been submitted to and approved in writing by the local planning authority:

- (i) details and samples of all materials to be used in the construction of the external surfaces;
- (ii) samples of the glass to be used in the façades;
- (iii) details of any blinds, including their colour, within the glazing cavities of the façades of Building KC1;
- (iv) details of materials for paved areas immediately associated with the building;
- (v) details of any external lighting and security surveillance equipment to be fixed to the building.

Development shall be carried out in accordance with the approved details.

4) Notwithstanding the details shown on the approved drawings, works for the conversion of the power station building shall not begin until the following in respect of that building have been submitted to and approved in writing by the local planning authority:

- (i) details and samples of all new materials to be used in the external surfaces;
- (ii) details of the window designs in new or existing openings and samples of the glass to be used;
- (iii) details of new doors and door openings, including sill levels, and including the loading bay door;
- (iv) full details of the internal street, including paving materials, ground wall and shopfront materials, wall materials and windows on all upper floors, new and retained structural elements and roof glazing;

Development shall be carried out in accordance with the approved details.

5) Construction works on any building shall not begin until a scheme to protect occupants of the dwellings within that building has been submitted to and approved in writing by the local planning authority. The scheme shall achieve internal noise levels no higher than 35 dB $L_{Aeq, 16 \text{ hour}}$ between 0700 and 2300 hours and 30dB $L_{Aeq, 8 \text{ hour}}$ between 2300 and 0700 hours. Works forming part of the approved scheme shall be completed before occupation of any of the dwellings.

6) Notwithstanding the details shown on the approved drawings, development shall not begin until full details of the proposed vehicular access to the site have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before occupation of any part of the development.

7) No development shall take place until full details of both soft and hard landscape works have been submitted to and approved in writing by the local planning authority. Details shall include proposed finished levels, planting plans (including specifications and plant schedules), means of enclosure, hard surfacing materials, means of access throughout the site for disabled people, street furniture and any play equipment. All landscape works shall be carried out in accordance with the approved details prior to the occupation of any building or in accordance with a programme first agreed in writing by the local planning authority.

8) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved in writing by the local planning authority prior to the occupation of any building in the development. The landscape management plan shall be carried out as approved.

- 90
- 9) Notwithstanding the details shown on the approved drawings, development shall not begin until full details of what should eventually become the proposed riverside walk, which shall be not less than 6.0m wide, have been submitted to and approved in writing by the local planning authority. An access strip not less than 5.0m wide along the River Thames frontage shall be left free of permanent development, including ventilation grilles, lighting columns, planting and changes in level, unless otherwise agreed in writing by the local planning authority.
 - 10) The walkway adjacent to the River Thames, including the bridge nearest to the mouth of Chelsea Creek, shall be accessible by members of the public on foot, by wheelchair and by bicycle for 24 hours in each day for 364 days in each year. Pedestrian, wheelchair and, if appropriate, bicycle access to all other publicly accessible areas shall be available, at minimum, between the hours of 0800 and 1600 from 1 November to 31 March and 0800 and 2200 between 1 April and 31 October.
 - 11) The development hereby permitted shall cause no net loss of tidal storage volume below a flood defence level of 5.41m ODN, calculated in accordance with methodology and a degree of siltation of Chelsea Creek both agreed with the local planning authority.
 - 12) Development shall not begin until a scheme for the treatment of Chelsea Creek has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the construction and subsequent maintenance of the inter-tidal terraces, of the marginal and aquatic species to be planted and of the location and design of mooring posts, boat-landing and access facilities and health and safety measures to be provided. Development shall be carried out in accordance with both the approved details and a programme of implementation first agreed in writing with the local planning authority.
 - 13) There shall be no storage of materials within 8.0m of the River Thames and 4.0m of Chelsea Creek except when development works hereby permitted within those areas are being carried out.
 - 14) Notwithstanding the details shown on the approved drawings, no works for the construction of any of the three bridges shall begin until full details of the design of that bridge, including a soffit level not lower than the existing footbridge, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 15) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification), the Class B1 units identified on the approved drawings shall be used only for purposes falling within Use Classes B1(b) and B1(c) and for no other purpose unless otherwise agreed in writing by the local planning authority.
 - 16) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification), the ground floor unit in Building KC2A shown as a nursery shall be used solely as a Use Class D1(b) crèche or day nursery unless otherwise agreed in writing by the local planning authority.
 - 17) Ground floor unit KC3.0-16 on drawing LRTW4/PTAL/05-004-G shall be used solely as a retail convenience foodstore within Use Class A1 of the Town and

Country Planning (Use Classes) Order 1987 unless otherwise agreed in writing by the local planning authority.

91

- 18) Ground floor units KC3.0-3, KC3.0-4, KC3.0-5 and KC3.0-6 on drawing LRTW4/PTAL/05-004-G shall be used solely as retail shops within Use Class A1 of the Town and Country Planning (Use Classes) Order 1987 unless otherwise agreed in writing by the local planning authority.
- 19) Ground floor unit KC3.0-8 on drawing LRTW4/PTAL/05-004-G shall be used solely as a transport management office and reception point/waiting area for group transport pick-up unless the local planning authority has agreed in writing to the use of an alternative equivalent ground floor area for that purpose.
- 20) The gymnasium on the ground floor of Building KC1 shall be available for use solely by residents of the development hereby permitted unless otherwise agreed in writing by the local planning authority.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no external aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted unless the local planning authority has first given its written consent.
- 22) Notwithstanding the details shown on the approved drawings, details of the areas for and design of cycle parking provision for each building shall be submitted to and approved in writing by the local planning authority. Provision in respect of each building shall be completed in accordance with the approved details before the occupation of that building.
- 23) The vehicular parking accommodation shown on the approved drawings shall be provided in respect of each building before the occupation of that building and shall thereafter be retained permanently for that purpose for the benefit of occupiers and users of the dwellings.
- 24) No more than four of the off-street parking spaces within the development shall be used by occupiers of the Class B1 units and no more than 36 (not including any allocated for a car club) for public car parking.
- 25) No development shall take place until the applicant, or its agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 26) Construction of any building shall not begin until details of the arrangements for the storage of refuse or waste for that building, including the storage of recyclable materials, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before occupation of that building.
- 27) Development shall not begin until a scheme for the investigation and recording of contamination on the site has been agreed with the local planning authority and a report detailing such contamination as has been found, proposals for its removal, containment or otherwise being rendered harmless and measures to verify the adequacy of decontamination work has been submitted to and approved in writing by the local planning authority. The approved works of decontamination and

verification shall be carried out before development begins or in accordance with a programme first agreed in writing by the local planning authority. If any contamination not previously identified is encountered during development, whether from a different source or of a different type to that addressed in the approved details or in an area expected to have been uncontaminated, then a revised scheme to deal with that contamination, including a programme of work, shall be submitted to and approved in writing by the local planning authority and carried out in accordance with that approval.


- 28) No dismantling, demolition, excavation or construction work shall take place outside the hours of 0800-1800 on Mondays to Fridays, 0800-1300 on Saturdays or at any time on Sundays or bank or public holidays, unless the local planning authority has given its prior written consent.
- 29) Development shall not begin until a scheme for the inclusion of renewable energy technologies has been submitted to and approved in writing by the local planning authority. The aim of the scheme shall be to achieve a 'good' rating for Building Research Establishment EcoHomes assessment purposes and shall address the use of renewable energy sources, thermal insulation, natural ventilation, double glazing and the use of energy efficient devices. Development shall be carried out in accordance with the approved scheme.
- 30) Noise emitted from building services plant, including any mechanical ventilation plant, shall not increase existing background noise levels, subject to a minimum level of 35 dB L_{Aeq} . Noise levels shall be measured in accordance with BS 4142:1997 at a position 1.0m from the façade of the nearest noise-sensitive premises.

APPEAL REF. APP/H5390/V/04/1148781 – LBHF

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) The development hereby permitted shall be implemented in accordance with the drawings listed in Inquiry Document A/15.
- 3) Notwithstanding the details shown on the approved drawings, the construction of any individual building shall not begin until the following in respect of that building have been submitted to and approved in writing by the local planning authority:
 - (i) details and samples of all materials to be used in the construction of the external surfaces;
 - (ii) samples of the glass to be used in the façades;
 - (iii) details of any blinds, including their colour, within the glazing cavities of the façades of Building HF1;
 - (iv) details of materials for paved areas immediately associated with the building;
 - (v) details of any external lighting and security surveillance equipment to be fixed to the building.Development shall be carried out in accordance with the approved details.
- 4) Construction works on any building shall not begin until a scheme to protect occupants of the dwellings within that building has been submitted to and approved in writing by the local planning authority. The scheme shall achieve internal noise levels no higher than 35 dB $L_{Aeq, 16 \text{ hour}}$ between 0700 and 2300 hours and 30dB

LAeq 8 hour between 2300 and 0700 hours. Works forming part of the approved scheme shall be completed before occupation of any of the dwellings.

- 93
- 5) Notwithstanding the details shown on the approved drawings, development shall not begin until full details of the proposed vehicular access to the site have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before occupation of any part of the development.
 - 6) No development shall take place until full details of both soft and hard landscape works have been submitted to and approved in writing by the local planning authority. Details shall include proposed finished levels, planting plans (including specifications and plant schedules), means of enclosure, hard surfacing materials, means of access throughout the site for disabled people, street furniture, play equipment and also 'green' and 'brown' roofs, high roosts and nesting boxes. All landscape works shall be carried out in accordance with the approved details prior to the occupation of any building or in accordance with a programme first agreed in writing by the local planning authority.
 - 7) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately-owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any building in the development. The landscape management plan shall be carried out as approved.
 - 8) Notwithstanding the details shown on the approved drawings, development shall not begin until full details of the proposed riverside walk, which shall be not less than 6.0m wide, have been submitted to and approved in writing by the local planning authority. An access strip not less than 5.0m wide along the River Thames frontage shall be left free of permanent development, including ventilation grilles, lighting columns, planting and changes in level, unless otherwise agreed in writing by the local planning authority.
 - 9) Development shall not begin until a scheme for access to the river wall on the landward side of Chelsea Creek adjacent to Building HF3A has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 10) The development hereby permitted shall cause no net loss of tidal storage volume below a flood defence level of 5.41m ODN, calculated in accordance with methodology and a degree of siltation of Chelsea Creek both agreed with the local planning authority.
 - 11) Development shall not begin until a scheme for the treatment of Chelsea Creek has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the construction and subsequent maintenance of the inter-tidal terraces, of the marginal and aquatic species to be planted and of the location and design of mooring posts, boat-landing and access facilities and health and safety measures to be provided. Development shall be carried out in accordance with both the approved details and a programme of implementation first agreed in writing with the local planning authority.
 - 12) There shall be no storage of materials within 8.0m of the River Thames and 4.0m of Chelsea Creek except when development works hereby permitted within those areas are being carried out.

- 
- 13) Notwithstanding the details shown on the approved drawings, no works for the construction of any of the three bridges shall begin until full details of the design of that bridge, including a soffit level not lower than the existing footbridge, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) The gymnasium on the ground floor of Building KC1 shall be available for use solely by residents of the development hereby permitted unless otherwise agreed in writing by the local planning authority.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no external aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted unless the local planning authority has first given its written consent.
- 16) Notwithstanding the details shown on the approved drawings, details of the areas for and design of cycle parking provision for each building shall be submitted to and approved in writing by the local planning authority. Provision in respect of each building shall be completed in accordance with the approved details before the occupation of that building.
- 17) The vehicular parking accommodation shown on the approved drawings shall be provided in respect of each building before the occupation of that building and shall thereafter be retained permanently for that purpose for the benefit of occupiers and users of the dwellings.
- 18) No development shall take place until the applicant, or its agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 19) Construction of any building shall not begin until details of the arrangements for the storage of refuse or waste for that building, including the storage of recyclable materials, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before occupation of that building.
- 20) Development shall not begin until a scheme for the investigation and recording of contamination on the site has been agreed with the local planning authority and a report detailing such contamination as has been found, proposals for its removal, containment or otherwise being rendered harmless and measures to verify the adequacy of decontamination work has been submitted to and approved in writing by the local planning authority. The approved works of decontamination and verification shall be carried out before development begins or in accordance with a programme first agreed in writing by the local planning authority. If any contamination not previously identified is encountered during development, whether from a different source or of a different type to that addressed in the approved details or in an area expected to have been uncontaminated, then a revised scheme to deal with that contamination, including a programme of work, shall be submitted to and approved in writing by the local planning authority and carried out in accordance with that approval.

- 95
- 21) Development shall not begin until a scheme for the clearance of vegetation from the site, taking into account the findings of a survey to identify nesting birds, has been submitted to and approved in writing by the local planning authority. Clearance shall be carried out in accordance with the approved scheme.
 - 22) No dismantling, demolition, excavation or construction work shall take place outside the hours of 0800-1800 on Mondays to Fridays, 0800-1300 on Saturdays or at any time on Sundays or bank or public holidays, unless the local planning authority has given its prior written consent.
 - 23) Development shall not begin until a scheme for the inclusion of renewable energy technologies has been submitted to and approved in writing by the local planning authority. The aim of the scheme shall be to achieve a 'good' rating for Building Research Establishment EcoHomes assessment purposes and shall address the use of renewable energy sources, thermal insulation, natural ventilation, double glazing and the use of energy efficient devices. Development shall be carried out in accordance with the approved scheme.
 - 24) Noise emitted from building services plant, including any mechanical ventilation plant, shall not increase existing background noise levels, subject to a minimum level of 35 dB L_{Aeq} . Noise levels shall be measured in accordance with BS 4142:1997 at a position 1.0m from the façade of the nearest noise-sensitive premises.

LAW AND ADMINISTRATION
INTERNAL MEMORANDUM

96

TO: Mike French, Executive Director
Planning and Conservation
ROOM NO:
CC: Bruce Coey
Planning and Conservation – South Area
Mark Chetwynd
Highways and Transportation
FROM: Heidi Titcombe
ROOM NO: 230 2
TELEPHONE: 020 7361 2617
FAX: 020 7361 3665
EMAIL: heidi.titcombe@rbkc.gov.uk
DATE: Tuesday, 14 March 2006
REF: HT/10031874
SUBJECT: LOTS ROAD

Dear Mike

LOTS ROAD APPEAL

I enclose a copy of the Appeal which has been issued on 13th March on behalf of the River Thames Society against the First Secretary of State's ("FSS") decision on Lots Road.

This Council received clear advise from Russell Harris QC that it had no grounds to appeal on the basis of its single reason for refusal. I appreciate therefore, that this Council has taken the view that there are no grounds to challenge the Secretary of State's decision and that no more taxpayer's money should be spent on dealing with this case. I understand this completely. However, now that an appeal has actually be filed, I am required to advise that from a "technical" point of view the Council could support the appeal although I have reservations as to what its justifications would be, in light of our previous decision..

If the Council were minded to support the appeal it would need to file an Acknowledgement of Service with the High Court within 14 days, i.e. by 27th March 2006. This does not give us a great deal of time.

I enclose a copy of the Claim Form which includes 14 pages of the grounds of appeal which have been prepared by Alex Goodman of Counsel. Richard Buxton is representing the River Thames Society generally.

I am quite happy to send the Claim to Russell Harris Q.C to obtain his comments if the Council considers that it wants to be able to justify its reasons to the public at large.

97

In summary, the grounds of appeal are as follows:-

Ground 1 - That there has been an error of law.

The Claimant argues that Section 38(5) of the Planning and Compulsory Purchase Act 2004 provides where there is a conflict with the policy in a development plan for an area, with another policy the conflict must be resolved in favour of the policy which has been adopted the last, which in this case would be the London Plan, (adopted in 2004). The Claimant alleges that the Inspector and the FSS have failed to give precedence to the Blue Ribbon Network Policies ("BRN") set out in Section 4C of the London Plan (See paragraphs 19.158 to 19.159, of the Inspector's report). Particularly 19.160, where the Inspector concludes that the BRN policies do not negate the UDP proposals, which were adopted much earlier in 2002 and 2003 respectively. They consider this is an error of law.

Ground 2

That the Secretary of State failed to have a material regard to Section 38(5) of the PCPA 2004 for the reasons stated above.

Ground 3

That the Secretary of State failed to have adequate regard to the policies in the development plan as set out in Section 38(6) of the PCPA. In particular Part 4C of the London Plan which states that "the Mayor has a visionary approach to the BRN, by taking the water as the **starting point** for decision making."

The Inspector concluded at paragraph 19.160 of his report that "I do not believe that the BRN policies, cost cutting though they may be, can have the effect of negating proposals already adopted in the UDP". The Claimants contend that this conclusion is incorrect because the London Plan should have taken precedence.

Ground 4 – that the Inspector has failed to properly apply policy 4C.12 of the London Plan.

Policy 4C.12 of the London Plan requires that the use of the BRN and of the land alongside it should be prioritised in favour of those uses which specifically require a waterside location. The Inspector's conclusion on this point is at paragraph 19.163 of his report in which he concludes that as there are no water based uses which could reasonably be expected to occupy the site, no priority should be given. The Claimant also contends that the Inspector's view that a priority should only be given to such uses requiring a waterside location if there is a "firm proposal" in place or an "alternative use", is also incorrect.

Ground 5 - That the Inspector and the Secretary of State have failed to properly apply policy 4C.20 of the London Plan

The Inspector allegedly failed to consider whether the development integrated with the water space in terms of use and whether the development included a mix of uses ensuring an inclusive accessible and active water side frontage.

Ground 6 – Procedural ground

The Claimants allege that the FSS fails to address the concerns raised by Lady Berkeley in the post Inquiry correspondence in relation to the Environmental Impact Assessment Directive.

98

Ground 7 – Procedural Ground that there is a breach of the EIA Directive

This is because the “public concerned” (i.e. the interested parties who were Rule 6 parties) were neither given an early nor an effective opportunity to comment on the further documentation produced by Circadian.

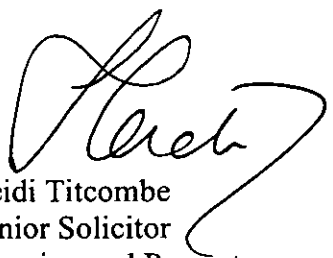
Grounds 1 – 5 inclusive all relate to issues raised by the River Thames Society. They are not matters which were raised by this Council, so we would need Counsel’s advice as to whether there is any merit to these grounds, if you want to pursue this. I appreciate you may want to avoid this.

Grounds 6 and 7 relate to procedural irregularities which the River Thames Society wishes to raise as an interested party. Again the Council has not raised any procedural point regarding the appeal and I am assuming that you would not want to do so now. I think the interested parties may have an issue as to the way in which the post- inquiry correspondence was conducted, because so many matters were dealt with after the inquiry closed, however this is a matter between them and the FSS.

If you would like me to obtain Counsel’s advice please let me know. As time is short it would be helpful if you could let me know as soon as possible because if the Council were minded to defend the application I would need to file an Acknowledgement of Service by 27th March 2006.

If you would like a short meeting to discuss this, please give me a call.

Kind Regards,



Heidi Titcombe
Senior Solicitor
Planning and Property
for Director of Law and Administration

enc



The Planning Inspectorate

4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line 0117-372 8949
Switchboard 0117-372 8000
Fax No 0117-372 8139
GTN 1371- 8949
e-mail: peter.pocock@pins.gsi.gov.uk
<http://www.planning-inspectorate.gov.uk>

PP10211324

Mrs R Townley
Planning Services Department
Royal Borough of Kensington & Chelsea
Room 328
Town Hall
Hornton Street
London W8 7NX

Your Ref:

Our Ref: APP/K5600/A/04/1146268
APP/H5390/V/04/1148781

Date: 25 October 2006

Dear Mrs Townley

APPEALS AT LOTS ROAD POWER STATION.

Please find enclosed as requested a copy of pages 8-9 of the Inspector's report.

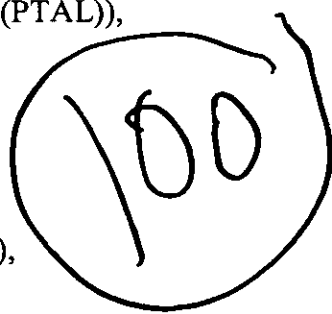
PLEASE DO NOT STAMP THE COPY OF THE REPORT.

Yours sincerely

Peter Pocock
Quality Assurance Unit

21

EX	HDC	T	CLU	AO
DIR				AK
R.B.	27 OCT 2006			PLANNING
K.C.				
P	C	S	APP	IO
ISS		ARB	FPLN	DES
				FEE

- 4B.3 – maximising the potential of sites (with Table 4B.1, which relates densities for residential development to public transport accessibility (PTAL)),
 - 4B.5 – creating an inclusive environment,
 - 4B.8 – tall buildings – location,
 - 4B.9 – large-scale buildings – design and impact,
 - 4B.11 – heritage conservation,
 - 4B.12 – historic conservation-led regeneration,
 - 4C.1 – the strategic importance of the Blue Ribbon Network (BRN),
 - 4C.3 – the natural value of the BRN,
 - 4C.10 – historic environment,
 - 4C.20 – design – starting from the water.
- 

The RBKC UDP

3.4 The site is identified as Site 17 in the Schedule of Major Development Sites. Around 20 of the 52 strategic policies are relevant but are not set out here. From the list in the Statement of Common Ground, the following, from the Conservation and Development (CD), Housing (H), Transportation (TR), Shopping (S) and Leisure and Recreation (LR) chapters, are particularly relevant:

- CD1 – views and vistas along the riverside,
- CD6 – waterfront character, physical and visual links to the rest of the Borough, and height of buildings,
- CD7 – riverside walk,
- CD25 – parks and gardens of special historic interest,
- CD27 – high design standards, sensitivity to surroundings,
- CD28 – physical and visual integration of development into its surroundings,
- CD33 – sunlight and daylight,
- CD37 – high building significantly exceeding the height of neighbouring buildings and which would harm the skyline,
- CD38 – open space designed and landscaped to a high standard,
- CD57 – preserving or enhancing the character or appearance of conservation areas,
- CD63 – effect on identified views,
- CD69 – the settings of listed buildings,
- H2 – seeking the development of land for residential use,
- H7 – provision of outdoor space,
- H12 – resisting very high density unless necessary for townscape reasons,
- H15 – provision of housing on Major Development Sites,
- H23 – provision of affordable housing on Major Development Sites,
- TR1 – locating high trip-generating development in areas well served by public transport,
- TR4 – new direct pedestrian routes and accesses,
- TR8 – cycle routes,
- TR12 – new stations on the West London Line (WLL),
- TR14 – new bus services and improvements to existing services,
- TR23 – increased use of the Thames,
- TR36 – resisting development which would result in a material increase in traffic or parking, or in congestion (on the roads or on public transport),
- TR37 – developer contributions to public transport improvements,
- TR42 – off-street parking,

- S10 – convenience shopping in appropriate development schemes,
- S11 – local shopping facilities to meet day to day needs of residents in south-west Chelsea ... ,
- LR2 – additional sports and recreation facilities,
- LR14 – open space provision,
- LR19 – improvement and completion of the Thames Path,
- LR20 – means of access to the foreshore,
- LR25 – ecological management of Sites of Nature Conservation Importance,
- LR26 – effect on nature conservation,
- LR38 – provision for active play and of areas of tranquillity,
- LR40 – communal play provision.

3.5 In addition, a planning brief for the site (that part in RBKC) was adopted in July 1998^A (published in 1999) and remains as supplementary planning guidance to the subsequently adopted UDP. It addresses residential use, affordable housing, employment use, social and community facilities, leisure and recreation opportunities, the riverside and creek, environment and landscape, contamination and transportation. It notes that, while the scale of the power station building is impressive, it is completely discordant with its hinterland, which it overwhelms. It considers that demolition offers greater potential for successful integration of the site into the local urban fabric but offers design guidance in the context of retention as well as demolition. Permeability is seen as important whichever course is followed.

The LBHF UDP

3.6 The site is identified in the UDP and on the Proposals Map in two parts – Site 22 (Chelsea Creek) for nature conservation and Site 22A (Chelsea Harbour 2) for residential use, open space and the riverside walk. Policy SP1 applies to proposals sites, permitting development only if the scheme includes the necessary services, facilities and infrastructure. From the extensive list in the Statement of Common Ground, the following UDP policies from the Environment (EN), Transportation and Accessibility (TN), Housing (HO) and Standards (S) chapters, are particularly relevant:

- EN2 – development in conservation areas,
- EN2B – effect of development on the settings of conservation areas,
- EN3 – protection of ... the settings of the listed buildings,
- EN8 – design of new developments,
- EN9 – high buildings,
- EN23 – new open space provision,
- EN23B – children's play areas (with Standard S7),
- EN25 – protection of trees,
- EN26 – planting of trees,
- EN27 – Nature Conservation Areas,
- EN29 – nature conservation on development sites,
- EN31 – important views along, across and from the river,
- EN31X – design of development within the Thames Policy Area,
- EN31A – the natural environment of the Thames
- EN32 – provision of water-based activity and uses in the river,
- EN34 – the riverside walk,

^A Document CD206.

Statutory requirements

102

Letter generated through Doc Con Special
PP/02/1627. Letter not sent to London
Ecology unit as this has merged with
GLA & doesn't req independent consultation