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TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL Lots Road Power Station and Chelsea Creek, London, SW10

I attach for your information a copy of the decision for the appeal on the above-mentioned premises.

EXECUTIVE DIRECTOR OF PLANNING AND CONSERVATION

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Creating sustainable communities

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

30 January 2006

Mr D. Evans
Addleshaw Goddard
Alder Castle
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EC2V 7JW

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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).

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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 IR 18.3. 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.

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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).

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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.

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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.

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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.

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 CABI 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.

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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.

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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

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

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.

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 CABI, 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.

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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.

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- 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.

- 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

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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 hour between 0700 and 2300 hours and 30dB

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

- 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.

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- 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.

- 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.



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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Correspondence on which Representations are Invited (24 October 2005)

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Date	From/To
29 June 2005	Addleshaw Goddard/ODPM
8 July 2005	The Chelsea Society/ODPM
22 August 2005	RBK&C/The Planning Inspectorate
25 August 2005	Addleshaw Goddard/The Planning Inspectorate
6 October 2005	RBK&C/The Planning Inspectorate
13 October 2005	Addleshaw Goddard/The Planning Inspectorate Addleshaw Goddard/ODPM
17 October 2005	Melyssa Stokes (Lots Road Action Group)/ODPM

Schedule of other Post-Inquiry Correspondence which the Secretary of State does not consider raises new issues, and is not included for further representations.

Date	From/To
1 July 2005	Addleshaw Goddard/ODPM
8 July 2005	A della Casa/ODPM
9 July 2005	Clare Pelham/ODPM
11 July 2005	Kate Phillips (Ashburnham Mother & Toddler Group)/ODPM Richard Brassey/ODPM
12 July 2005	Edwina Wynard/GOL (forwarded to ODPM)
28 September 2005	Melyssa Stokes (Lots Road Action Group)/ODPM
22 September 2005	Circadian/ODPM

Correspondence on which Final Representations are Invited (23 November 2005)

Date	From/To
7 November 2005	RBK&C/ODPM
14 November 2005	Addleshaw Goddard/ODPM
14 November 2005	Melyssa Stokes (Lots Road Action Group)/ODPM
14 November 2005	River Thames Society/ODPM
14 November 2005	Cllr Brendan Bird/ODPM

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Final Representations Received

Date	From/To
24 November 2005	RBK&C/ODPM
7 December 2005	Addleshaw Goddard/ODPM
7 December 2005	River Thames Society/ODPM
7 December 2005	David Le Lay (The Chelsea Society)/ODPM
13 December 2005	Melyssa Stokes (Lots Road Action Group)/ODPM

Correspondence received in response to the letter of 25 January 2006

Date	From/To
25 January 2006	Addleshaw Goddard/ODPM, enclosing 3 Section 106 agreements



Report to the First Secretary of State

by John L Gray DipArch MSc Registered Architect

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

Date: 17 August 2005

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THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

AND

THE LONDON BOROUGH OF HAMMERSMITH & FULHAM

APPEAL AND APPLICATION BY

CIRCADIAN LIMITED

Inquiry held on 1-4, 8-11, 15-18 and 22-25 February and 25-26 April 2005

Lots Road Power Station and land to the south side of Chelsea Creek, London SW10

File Refs. APP/K5600/A/04/1146268 and APP/H5390/V/04/1148781

File Ref. APP/K5600/A/04/1146268

Lots Road Power Station, Lots Road, London SW10

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Circadian Limited against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application, ref. PP/02/01324 dated 7 June 2002, was refused by notice dated 13 November 2003.
- The development proposed is: the demolition of parts of the former Lots Road Power Station; the provision of 420 residential units by means of conversion of the 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.

Summary of Recommendation: that the appeal be dismissed.

File Ref. APP/H5390/V/04/1148781

Land to the south of Chelsea Creek, Chelsea Harbour Drive, London SW10

- The application was called in for decision by the First Secretary of State by a direction made under section 77 of the Town and Country Planning Act 1990 on 19 April 2004.
- The application is made by Circadian Limited to the Council of the London Borough of Hammersmith & Fulham.
- The application, ref. 2002/03132/FUL, is dated 12 December 2002.
- The development proposed is: 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.
- The reasons given for making the direction were because the Secretary of State considered that the proposals 'could have significant effects beyond their immediate locality and may conflict with national and regional policies on important matters'.

Summary of Recommendation: that the application be refused.

1 PREAMBLE

- 1.1 The proposals are a single scheme which straddles the boundary between the Royal Borough of Kensington and Chelsea (RBKC) and the London Borough of Hammersmith & Fulham (LBHF). The application to RBKC was refused and an appeal lodged. The application to LBHF was called in and the RBKC appeal recovered, enabling both parts of the proposals to be considered at the same inquiry. The descriptions above are not those in the original applications but have been amended both to be more accurate and in the light of various amendments since the applications were originally submitted.
- 1.2 The inquiry opened on 1 February 2005, sat for four full weeks in February and was then adjourned to conclude on 25 and 26 April 2005. I made an accompanied visit to the site on 2 February 2005 and a more extensive accompanied site visit on 27 April 2005. I made unaccompanied visits to the area on various occasions before and during the inquiry and also during its adjournment.

- 1.3 On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the LBHF application:
- (a) the relationship of the proposed development to the relevant policies and provisions of the adopted London Borough of Hammersmith & Fulham UDP;
 - (b) the relationship of the proposed development to the relevant policies and provisions of the London Plan, in particular those concerning development affecting the Thames;
 - (c) whether the proposal is in accordance with national policy contained in PPG3 *Housing* in relation to questions of land use and the re-use of previously developed land, density, the desirability of facilitating a mix of land uses, the quality of the residential environment and the need to create mixed communities through the inclusion of affordable housing;
 - (d) whether the proposal is in accordance with national policy contained in PPG13 *Transport*, particularly with regard to:
 - (i) the impact of the proposal on traffic generation and overall travel patterns having regard to the desirability of achieving development that minimises the need to travel, particularly by private car;
 - (ii) the effect and adequacy of the proposed improvements to public transport;
 - (iii) the impact of the development on traffic congestion in the local area;
 - (iv) the proposed level of car parking;
 - (e) whether the proposal is in accordance with national policy contained in PPG17 *Planning for Open Space, Sport and Recreation* and 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;
 - (f) whether the proposal is in accordance with national policy contained in PPG1 *General Policy and Principles*, particularly in relation to design and urban design (as defined in para. 14 of PPG1);
 - (g) whether the proposal is in accordance with national policy contained in PPG15 *Planning and the Historic Environment* in so far as it affects the Sands End Conservation Area;
 - (h) whether the proposal is in accordance with national policy contained in PPG9 *Nature Conservation*;
 - (i) the relationship between the development of this site and proposals for the adjoining land in the Royal Borough of Kensington and Chelsea, including any relevant provisions of the adopted UDP for the RBKC;
 - (j) whether any permission should be subject to conditions and, if so, the form they should take, and
 - (k) any other relevant material planning considerations.
- 1.4 The call-in letter was directed at the LBHF application but the inquiry considered also the appeal against RBKC's refusal. Item (i) may thus be amended in line with item (a) as 'the relationship of the proposed development to the relevant policies and provisions of the adopted Royal Borough of Kensington and Chelsea UDP. On item (f), PPG1 has now been replaced by PPS1 *Delivering Sustainable Development*. The definition in para. 14 of PPG1 is not repeated in a similar form but paras. 33-35 of PPS1 address high quality and inclusive design.

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2 THE SITE AND SURROUNDINGS

- 2.1 Lots Road Power Station, now decommissioned, stands on the north bank of the Thames. In fact, there being a bend in the river, it is actually the north-west bank – but I shall refer throughout this report simply to the north and south banks of the Thames. The combined application and appeal site straddles Chelsea Creek, a tributary of the Thames which acts as the boundary between RBKC and LBHF. The power station building itself stands in RBKC, on the north-east side of the creek, on the appeal site. The application site is in LBHF, on the south-west side of the creek.^A

The RBKC appeal site

- 2.2 The power station building, just over 100 years old, is one of the more prominent and dominant buildings in the area.^B It stands at the back of the Lots Road footway with a frontage of some 138m and a façade height of about 24m to the top of the parapet (rising to about 24.5m at the western end, given the slight fall along Lots Road).^C It is about 53.5m deep, the parallel boiler house (along Lots Road) and turbine hall (towards the river) giving double gables to the east and west elevations. The boiler house gables are about 23m deep and almost 30m to the ridge (at the eastern end); the turbine hall gables are over 30m deep and almost 42m to the ridge. The whole is built with a steel frame and brick cladding. There are two tall brick chimneys, about 83m high, just within the south wall of the turbine hall, circular above the roof, octagonal below. (There used to be two more rising from within the north side of the turbine hall.^D)
- 2.3 The Lots Road façade (of the boiler house) is sub-divided into 24 semi-circular arch-headed bays some 17m high. They are not all the same width, the two bays aligned with each chimney (four in total) being slightly narrower. The ground floor is essentially blank (save for one large doorway and one personnel door); the windows above in each bay, generally about 4.4m wide, are some 11m high to the arch keystone.^E
- 2.4 The south façade (of the turbine hall) also acts, for the most part, as the northern edge of Chelsea Creek. It is not only higher than the Lots Road façade but also to a grander scale, being sub-divided into just twelve bays. The chimneys are behind the third bay from either end. The form of the other semi-circular arch-headed openings (over 26m from ground level to keystone) is still clear but they are bricked in so that the entire façade is essentially blank.^F
- 2.5 There have been various later additions to the eastern gables – of three, four and five storeys, all brick built, with flat or lean-to roofs.^G They obscure or dilute the simplicity and clarity of the original gables. The western gable has not suffered to the same extent.

^A Document CD1 has the 'red line' boundaries of the appeal and application sites on p.2 and p.3 and a master plan for the proposals on p.12.

^B Document A/RT/A, prepared in support of the proposals, has various views taken for the Environmental Statement and subsequently which show the power station in its setting.
Document CD59 – Appendix C2 has a description of the power station (pp.11-18 and illustrations following) and all other standing buildings (p.22 *et seq*), with a key diagram at Figure 1 in Appendix CPM4.

^C Document CD1A comprises three drawings marked up to show the dimensions of the building.

^D Document A/TF/P/2 – p.50.

^E Document CD3 – p.35.

^F Document CD3 – p.35.

^G Document CD59 – plate 1.1 following p.21; also
Document A/TF/P/2 – p.116.

- 2.6 A range of buildings immediately to the east of the power station contained oil cooling plant, storage battery house, offices and stores.^A They are brick built and generally two and three storeys tall. There is a bridge connection to the buildings on the east gable of the power station. The land to the south is open and flat save for the water screens where water for cooling the turbines was extracted from the river.
- 2.7 Around 20m from the western gable of the power station, on the corner of Lots Road and Harbour Drive, stands the pump house and control room.^B It has a frontage of over 40m to Lots Road and is about 20m deep. A tall two-storey structure, it dates from the 1960s, is rectilinear in form and is clad mostly in profiled metal sheet, pale grey in colour.
- 2.8 More or less behind this building is another modern building, the Bulk Supply Point, which is **not** within the appeal site. It is the transformer in this building (plus others elsewhere in London) that now provides power for London Underground Limited (LUL) and has rendered the power station surplus to requirements. The building is near to 40m long but only around 10m deep, giving it a more slender appearance from Harbour Drive than the pump house and control room. It has brick walls, a modelled façade and a segmental curved roof set clear of a parapet line, all of which gives it an appearance rather more in keeping with the power station building.^C

The LBHF application site

- 2.9 There is just one building on the application site, the oil storage building, standing on the south bank of the creek.^D It is around 75m by 23m on plan and probably about 20m tall, clad almost entirely in corrugated sheet, industrial and utilitarian in appearance. To its west is the pressure reduction station, a roofed compound built in the 1970s. Otherwise, the site is open, flat (though on two slightly different levels), and unkempt.

Chelsea Creek

- 2.10 Falling within both sites, the creek has retaining walls on either side. The power station on its north side is built directly off the retaining wall, the oil storage building on its south side very nearly so. Though I describe it above (para. 2.1) as a tributary (which it originally was), the creek is more a man-made tidal canal. Cooling waters from the power station used to discharge into the creek and thence into the Thames. Without the cooling waters, the creek is virtually dry at low tide. Harbour Drive crosses the creek as a continuation of the north-south leg of Lots Road and the application and appeal sites include the basin to the west of the bridge, a derelict area with overgrown banks, difficult to see from the road and with no apparent access.^E A lock gate separates the basin from the now disused Imperial Wharf basin, to the west side of the West London Line (WLL) (see below); the lock gate is said to be inoperable, rendering that basin landlocked.

The surrounding area

- 2.11 The site is visible from long stretches of the Thames and its banks, from beyond Chelsea Bridge, over 2km downstream, and beyond Wandsworth Bridge, over 1.5km upstream (though it is primarily the power station chimneys that are visible beyond intervening

^A Document CD59 – Appendix C2, pp.22-29 and illustrations.

^B Document CD59 – Appendix C2, pp.32-33 and following illustrations.

^C Document CD59 – Appendix C2, plate 7.1 following p.37.

^D Document CD59 – Appendix C2, pp.30-31 and following illustrations.

^E Document CD62 – Appendix C to Appendix E is a photographic survey of the creek and basin at low tide; the high water mark can be judged from the coloration of the retaining wall below the power station.

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- buildings from upstream). Because of the bend in the river, the power station is prominent not only from the Chelsea, Albert and Battersea Bridges downstream but also from the whole length of the Chelsea Embankment and Cheyne Walk on the north bank of the river. From the south bank, the site is visible from the riverside walk between the Albert Bridge and the WLL bridge. South-west of that, public access to the river is restricted and views towards the site are obstructed by the WLL bridge.^A
- 2.12 The WLL acts as something of a physical as well as visual barrier. It crosses the Thames on a bridge and runs north-west on an embankment separating the Chelsea Harbour and Imperial Wharf developments before passing under King's Road and Fulham Road.^B
- 2.13 Lots Road is L-shaped, running west from Cremorne Road past the power station and then turning north towards King's Road. The area bounded by Lots Road, King's Road, Ashburnham Road and Cremorne Road is often referred to as the Lots Road triangle.^C It comprises primarily terraced housing on Lots Road, Ashburnham Road, Tadema Road and other residential roads. It is generally two-storey and three-storey housing, built a little before the power station, with a degree of rhythm and ornament typical of its time.^D Also within the Lots Road triangle are Westfield Park, the Heatherly School of Fine Art and Ashburnham Community Centre (both with façades to Lots Road opposite the west end of the power station), an adventure playground and a number of commercial uses (these last mainly on the north-south leg of Lots Road).
- 2.14 To the east of the power station on Lots Road is the SITA waste transfer station. It has an arched brick façade to Lots Road^E but, within the site, comprises mainly modern buildings, the equivalent of 2-2½ storeys high, clad in green profiled sheet. On the evidence of my site visits, plant and machinery within the site is a source of potentially disturbing noise. Though it is situated on Cremorne Wharf, no use is made of the river. HGVs access the site along Lots Road from Cremorne Road.
- 2.15 Chelsea Harbour, a predominantly residential development dating from the 1980s, abuts the LBHF site to its south-west and is contained on its other two sides by the WLL and the Thames. It comprises a series of buildings, varying from four and six storeys nearest to the application site up to eight or nine elsewhere, in a relatively compact and visually dense layout, centred around a marina and with the taller Belvedere Tower, towards the southern end of the development, as its focal point. The overall design, generally with brick or rendered facades and pitched roofs, is very much of its time.^F
- 2.16 Imperial Wharf, another mixed but predominantly residential development, still to be completed, lies on the opposite side of the WLL bridge and embankment from Chelsea Harbour.^G It continues the theme of visually fairly dense development, in a more modern and currently fashionable design idiom, with buildings generally a little taller

^A Document A/RT/A contains an agreed selection of views from downstream, upstream and the south bank.

^B Document A/RT/A – View RT3 on p.RT/3-30 shows the bridge; the line continues inland on an embankment at roughly the same level; the route of the line is clearly seen on the Context Plan at p.1 of Document CD1.

^C Document GLA/3/2 – Figure 2, though an A-Z extract rather than an OS base, shows the general area; Document CD1 – the plan at p.2, though not going as far as King's Road, is from an OS base.

^D Document A/RT/A – Views CP33, CP36 and RT7 (pp. RT/3-22, 24 and 39) give the flavour. Document GLA/1/3 – Photo 11, though seemingly taken with a telephoto lens, shows the disparity in scale between the power station building and the housing on Lots Road.

^E Document GLA/1/3 – the SITA building is seen on the left side of Photo 11.

^F Document A/RT/A, Views CP13 and RT9 (p.RT/3-18 and 42), and

Document GLA/1/3, Photos 4-7, give the flavour of the Chelsea Harbour development.

^G Document A/RT/A – View RT3 (p.RT/3-30) shows Imperial Wharf under construction.

than in Chelsea Harbour but without the focal tower. To the south-west of the Imperial Wharf development will be a sizable area of public open space.

- 2.17 Several high buildings already stand close to the river. The Belvedere Tower is the focal point of the Chelsea Harbour development, a slender 20-storey tower with a distinctive pyramidal roof.^A World's End, inland of Cheyne Walk to the north-east, dates from the 1970s and comprises seven residential towers of 18/20 storeys plus mid-rise linking buildings, all primarily brick clad.^B On the south bank, Montevetro is an unashamedly modern design with a distinctive sloping profile, rising from a low point adjacent to the listed St Mary's Church up to 19 storeys at its northerly end. Near to it, away from the river, are two earlier towers, of similar height but much more mundane design, in the Somerset Estate.^C There are numerous other riverside developments, completed and under construction, giving the riverside a densely developed character; many buildings are several storeys high but none is more than about half the height of the Belvedere Tower, World's End or Montevetro.

Road and rail

- 2.18 The site sits in something of a cul-de-sac. Access to it is by one leg or the other of Lots Road, from Cremorne Road or King's Road. The WLL provides a barrier to the south-west. The only access to Fulham, to the west, is by an under-bridge from Harbour Avenue to Townmead Road, where a barrier is used to restrict traffic to Chelsea Harbour residents, buses and pedestrians. Chelsea Embankment and Cheyne Walk form part of a 'red route' (part of the Transport for London Road Network) coming west from the City along the north bank of the Thames before turning inland and north-westwards along Cremorne Road, part of Ashburnham Road, Gunter Grove and Finborough Road. Fulham Road, running south-westwards from Hyde Park Corner, is also a red route. King's Road, parallel to it but closer to the site, is not. Finborough Road, Gunter Grove and the northerly part of Ashburnham Road form the north-bound half of a one-way loop; Redcliffe Gardens and Edith Grove form the south-bound half, leading into Cremorne Road.^D While either end of Lots Road provides the only approach towards the site, there is the opportunity of leaving by way of the southerly part of Ashburnham Road or, roughly parallel to it, Tadema Road.
- 2.19 Though the WLL passes close to the site, there is presently no station serving the area. (A station is, however, proposed – and a contribution to the costs would be forthcoming if the appeal and application schemes were approved.) The nearest tube station is at Fulham Broadway, over 1km from the nearest point of the site (and a 13-minute walk at what was, for me personally, a comfortable pace).

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^A Document A/RT/A – the Belvedere Tower appears in Views CP5, CP7, CP8, CP13, RT3, RT4 and RT6.

^B Document A/RT/A – World's End appears in Views CP5, CP7, CP8, CP13, RT1, RT2 and RT3.

^C Document A/RT/A – Montevetro appears in Views CP5, CP7, RT4 and RT10; the two Somerset Estate towers can be seen at the left in View CP5 and one of them in View RT4.

^D Document GLA3/2 – Figure 1 is a diagram showing red routes; Figure 2 is an A-Z extract of the area; Document CD1 – the plans on pp. 2 and 3 are from an OS base.

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3 PLANNING POLICY

The policy references below should not be taken to be exhaustive. They are influenced by the principal issues debated at the inquiry and generally do not dwell on matters on which there was no dispute.

- 3.1 The Planning Statement of Common Ground^A sets out the national, regional and local policies agreed to be relevant to the application and appeal proposals. The London Plan, published in February 2004, became part of the Development Plan in September 2004, by virtue of the Planning and Compulsory Purchase Act 2004. The Royal Borough of Kensington and Chelsea Unitary Development Plan, adopted in 2002, (the RBKC UDP) forms the other part of the Development Plan for the appeal site, the London Borough of Hammersmith & Fulham Unitary Development Plan, adopted in 2003, (the LBHF UDP) for the application site.^B

National Planning Policy Guidance

- 3.2 From the list agreed by the parties, the following are particularly relevant:
- PPS1, Delivering Sustainable Development
 - PPG3, Housing
 - PPG9, Nature Conservation
 - PPG13, Transport
 - PPG15, Planning and the Historic Environment
 - PPG17, Planning for Open Space, Sport and Recreation

The London Plan

- 3.3 Regional Planning guidance is now to be found in the London Plan. In it, RBKC is on the western edge of Central London and LBHF is in the West London sub-region.^C The policies most relevant to the proposals come from Chapters 2A (The overall strategy), 3A (Living in London), 3C (Connecting London – improving travel in London),^D 3D (Enjoying London), 4B (Designs on London) and 4C (The Blue Ribbon Network).^E The list below differs slightly from that in the Statement of Common Ground:
- 2A.1 – sustainability criteria,
 - 3A.2 – Borough housing targets,
 - 3A.5 – large residential developments,
 - 3A.7 – affordable housing targets,
 - 3C.1 – integrating transport and development,
 - 3C.2 – matching development to transport capacity,
 - 3C.16 – tackling congestion and reducing traffic,
 - 3D.11 – open space strategies,
 - 3C.12 – biodiversity and nature conservation
 - 4B.1 – design principles for a compact city,
 - 4B.2 – promoting world-class architecture and design,

^A Document CD11, Section 5 (PPS1 and PPS6 have both been published since the Statement was finalised).

^B Documents CD174, CD199 and CD222 are, respectively, the London Plan and the RBKC and LBHF UDPs.

^C Document CD174 – respectively, chapter 5B (pp.227-239) and chapter 5D (pp.257-264).

^D Document GLA/2/2 contains a brief summary of the provisions of the 3C policies at pp.32/33.

^E The chapter 4C policies identified are not exhaustive – in particular, the River Thames Society argued that the BRN policies had been largely ignored (see para. 15.70 in the context of paras. 15.65-80).

- EN34A – access to the foreshore,
- EN37 – criteria for developments in the river (in as much as the creek is part of the river),
- TN2 – integration of transport and land use planning,
- TN5 – provision for pedestrians,
- TN6 – provision for cyclists,
- TN7 – impact on the Borough road network,
- TN11A – development and road traffic reduction,
- TN15 – parking standards (with Standard S18.1),
- TN21 – public transport improvement in connection with development,
- TN22 – public transport – bus services,
- TN26 – public transport – water,
- HO5 – affordable housing,
- HO7 – residential density (with Standard S2),
- HO8 – residential environment,
- HO12 – residential amenity space (with Standards S5A and S23.2),
- S3 – daylight and sunlight.

3.7 There is supplementary planning guidance on residential development approved in 1994,^A which includes guidance on children's play space, and also in the Sands End Conservation Area Character Profile.^B

The Thames Strategy

3.8 The Thames Strategy was prepared in 1995 for the Government Office for London. More specifically, the **Thames Strategy – Kew to Chelsea** was published in 2002.^C LBHF was one of the partners producing the latter; RBKC was not. In it, Character Reach No.6 is Wandsworth and Sands End, Character Reach No.7 is Chelsea and Battersea. An area including the site is identified in both as a development and regeneration hub and/or a focal point of activity. Chelsea Harbour and Creek are addressed in the section on Key Issues and Opportunities under Character Reach No.7.^D

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^A Document CD222A.

^B Document CD225.

^C Document CD284 is the Thames Strategy.

Document CD226 is the Thames Strategy – Kew to Chelsea.

^D Document CD226, pp. 4.88-89.

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4 PLANNING HISTORY

- 4.1 Apart from the present proposals, there is no relevant planning history for the RBKC site. The power station ceased operation in November 2002 and decommissioning was completed in August 2003.^A Thus, the appeal scheme, in its evolution up to the inquiry, is the first serious proposal for redevelopment of the site.
- 4.2 The bulk of the LBHF site (excluding an area of land alongside the creek) has the benefit of an extant planning permission as Phase 2 of the Chelsea Harbour development (for 173 dwellings, none of which would be affordable housing). The original permission was granted in 1986 and an appeal decision in 2003 confirmed that Phase 2 remained capable of lawful implementation.^B The application scheme, as it has evolved, is the first proposal for the whole of the LBHF site.

^A Document CD54 – the updated ES notes at para. 1.12 the date that the power station ceased operating;
Document CD27 – the letter gives the date decommissioning was completed.

^B Document CD13 has documentation on the original permission and the appeal decision;
Document CD11 – section 3 of the Statement of Common Ground sets out full details of the planning history.

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5. THE PROPOSALS

- 5.1 What is proposed is a comprehensive scheme for the overall site, which comprises 2.08ha in RBKC and 2.50ha in LBHF. The scheme stands or falls as a single entity. It is historical accident that part of the site is in RBKC and part in LBHF, necessitating two separate applications for planning permission. There is no intention to pursue one part of the scheme but not the other, were one part to be thought acceptable but the other not. Nevertheless, it is simplest to describe the proposals by reference to what is proposed for the two parts of the site.^A

The RBKC site^B

- 5.2 The later additions to the power station would be demolished and the original building (identified on the plans and elsewhere as Building KC3^C) would be converted to provide Class A, Class D1 and community floorspace on the ground floor, set around a full-height atrium, Class B1 floorspace on the first floor and 260 residential units, all but thirteen on the floors above (nine storeys from ground level in the former boiler house, thirteen in the former turbine hall). The existing building on the corner of Lots Road and Harbour Drive would be demolished and replaced by a nine-storey building (KC4) providing 50 residential units. The buildings to the east of the power station would also be demolished and the whole area redeveloped to provide a further 110 residential units in a 25-storey tower (KC1) at the easternmost point of the site, close to where the creek joins the river, in a nine-storey circular building (KC2B) between the tower and the power station and in a third building (KC2A) three storeys high on the Lots Road frontage rising in steps to eight storeys within the site. KC1 would have a residents' gymnasium at ground floor level. KC2A would have a nursery and workshop space at ground level. The area around KC2B and fronting the creek would be publicly accessible open space. Vehicular access would be from Lots Road via a ramp in KC2A to basement car parking. There would be no ground level vehicular access into the site save for emergency vehicles.

The LBHF site^D

- 5.3 The existing buildings would be demolished and the site redeveloped to provide a total of 382 residential units in several buildings. A 37-storey tower (Building HF1) would stand close to where the creek joins the river. A seven-storey building (HF2) would stand close to the tower, alongside the creek. At the opposite end of the river frontage a building (HF5) generally five storeys, but with a ten-storey tower closest to the river, would run back from the river, parallel to the most easterly Chelsea Harbour building. Enclosing a riverside square between HF1 and HF5 would be an L-shaped building (HF4), part seven storeys and part eight. Alongside the creek, three buildings (HF3-A, HF3-B and HF3-C) would vary from five storeys (HF3-C, away from the creek) up to ten (HF4, on Harbour Drive, close to the road bridge over the creek). In addition to the Riverside Square, Creekside Park would be a landscaped space alongside the creek, leading into Creekside Park, a roughly triangular space contained by HF3-C on one side, HF2 and HF4 on the other, and thence past a children's playspace on the route to the existing Chelsea Harbour development. Vehicular access would be from Harbour Drive,

^A Document CD11 – Section 4 in the Statement of Common Ground describes the proposals fully.

^B Document CD3 comprises the application plans for the RBKC site at A3 size.

^C Document CD1 – the Landscape Masterplan at p.12 identifies the buildings by their RBKC and LBHF numbers.

^D Document CD2 comprises the application plans for the LBHF site at A3 size.

between HF3B and the existing Chelsea Harbour building to basement car parking via a ramp in HF3C. As with the RBKC site, there would be no ground level vehicular access into the site save for emergency vehicles.

The creek and riverside

- 5.4 Three pedestrian bridges would cross the creek as part of proposals to make the whole area (from Lots Road through the site to the riverside path past Chelsea Harbour and Imperial Wharf) more accessible to the public. The creek and basin would see major improvement and enhancement, for nature/ecological conservation reasons rather than transportation ones, as part of the overall landscaping of the site. The riverside path would be extended from Chelsea Harbour to the mouth of the creek, which it would cross by one of the three bridges. Existing development to the east of the site prohibits further effective progress on the riverside path but a right of way would be granted through the RBKC site to Lots Road pending the opportunity of extension.

6 THE CASE FOR CIRCADIAN LIMITED

I give here the gist of the case for Circadian Limited, which is both applicant (LBHF) and appellant (RBKC). It is drawn primarily from the opening and closing submissions and elaborated upon, where appropriate, by reference to the proofs of evidence and to what was said at the inquiry. Closing submissions were made in the order in which I had indicated to the inquiry that I would write this report.

Introduction

- 6.1 Lots Road Power Station is no longer a factory of power. The land around it is derelict. It is the last in a sequence of sites on this stretch of the River Thames where regenerative development has come forward. Circadian's proposal seeks to complete this period of change with contemporary architecture of the very highest standard. And Circadian does not hesitate to make that claim for the proposals subject of the inquiry.
- 6.2 London changes. It always has. Those now responsible for its strategic land use planning intend that it should go on doing so, indeed that it must. And because London is a constantly changing city, much of its townscape is characterized by modern and historic elements standing side by side. That can particularly be said of the embankments and environs of the River Thames. The juxtaposition of new and old is an essential and defining characteristic in this as in other aspects of the metropolitan scene.
- 6.3 So it should be. If London is to mature and thrive as the nation's capital city – and as a world city – it must take the lead in the urban renaissance. When large and prominent sites become available for redevelopment, their regeneration must set an example for others to follow. They must show how London can become a more sustainable and a more compact city. With this evolution will come further change – change to the character and quality of the urban environment, change to the composition and character of the townscape and riverscape, change to the skyline, change to views, vistas and panoramas, and change to, and for, London's communities. All of this is inevitable if the physical and social fabric of London are to retain their vitality.
- 6.4 Nobody at the inquiry has denied that change may come to the site of this redundant power station. All have said that it must. Ideas differ as to the kind of change that would be suitable, but the First Secretary of State has only to decide whether there is any objection that can be sustained to the change that the applicant proposes. If not, this appeal and this application should succeed.
- 6.5 These proposals would bring to this site development of an outstandingly high quality of design. Decisions to approve them would carry at least three important messages for those involved in one way or another in the urban renaissance in London.
- 6.6 Firstly, it would make plain that the Secretary of State remains prepared to welcome the contribution that can be made to the urban regeneration of London by development incorporating well-designed tall buildings. Secondly, it would be clear that achieving a more sustainable and more compact city, involving the erection of more tall and very tall buildings, is not a phenomenon that is to be led by a handful of super-tall commercial buildings in and around the City of London – it can and should include high density residential schemes on suitable sites elsewhere. It would also be clear that there is no embargo preventing such development coming forward on sites beside the River Thames. And thirdly, the Secretary of State would also be showing his encouragement to the role

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of the leading British architects of the day, as well as their celebrated colleagues from overseas, in championing the urban renaissance in London. There is, after all, no dispute – nor can there be – that Sir Terry Farrell has earned his place in that company.

- 6.7 Those three messages would be sound. They would be appropriate. And they would also be consistent with what the Secretary of State has said in his recently issued 'minded to grant' letter on the Vauxhall Tower proposal.^A
- 6.8 That development, which will include a very much taller residential building than either of the towers proposed here – in fact, the tallest residential building in London – will have impacts not only on views of and from several conservation areas but also on the World Heritage Site at Westminster. The Secretary of State has judged those impacts to be acceptable, leaving only the issue of affordable housing for further consideration. The 'minded to grant' letter is important. It shows that the First Secretary of State wants to do what he can not only to push forward the urban renaissance in London, supporting contemporary architecture of high quality, accepting the principle that tall buildings may be developed on riverside sites and in locations where there will be consequences for the historic scene, but also to see such schemes bring forward substantial quantities of new housing, and affordable housing. The letter displays a sensible and robust approach to issues in Vauxhall that arise also at Lots Road.

Precedent

- 6.9 Whenever schemes come forward in which tall and very tall buildings are proposed, a judgment on the intrinsic worth of each such scheme will have to be made. That is what should happen here – and it would have to happen with any other proposal for a tall building in London, whether on the riverside or elsewhere. This is the answer to those who complain that an unfortunate or unacceptable precedent would be set if the proposals are approved. There is hardly ever any force in such an objection. Each application for planning permission has to be considered on its own merits, having regard to the relevant provisions of policy and all other material considerations. If the scheme is a good one, it ought to be approved. If it sets a good example, that is a benefit. It can hardly be good in itself and set a bad precedent.

Decision on the proposals

- 6.10 Two applications have been necessary because the site on which the development would take place straddles the boundary between two administrative areas. However, it is not open to the First Secretary of State to grant planning permission on one of the applications before him and to refuse it on the other. To do so would not be consistent with the way in which the scheme has been conceived and the way in which it has been presented to the inquiry. In any event, the law does not allow the First Secretary of State to grant planning permission for EIA development (as defined by the 1999 Regulations) where he has no relevant and competent environmental statement (ES) before him. In this case a single, comprehensive ES has been prepared for the whole scheme. There is no ES relating only to the RBKC or LBHF components of the overall scheme.
- 6.11 Thus, the applications stand or fall together – for two reasons. Firstly, it bears upon the approach to be taken in deciding the fate of the proposals, in particular the approach to be taken to the interpretation and application of relevant policy. Secondly, the indivisibility

^A Document A/13(2).

of the scheme has a particular relevance in relation to the 'fall-back' option, available by virtue of the 1986 planning permission for the Chelsea Harbour development.^A

Support for and opposition to the proposals

- 6.12 English Heritage (EH) has written four times to support the proposals.^B It is plain that support is founded on the joint EH/CABE 'Guidance on Tall Buildings',^C which enabled it to welcome the principle of two high quality tall buildings as well as the conversion of the power station. It took into account views of the power station from Battersea Bridge, Albert Bridge and Chelsea Bridge, its landmark position on a bend in the river, views from Brompton Cemetery and its relationship to Chelsea Harbour, the World's End towers and the Montevetro building.
- 6.13 CABE has also written four times in support of the scheme,^D offering 'general support and enthusiasm' for the scheme and endorsing its 'central propositions'. CABE's support is significant, as is evident from the 'minded to grant' letter on Vauxhall Tower.^E In that case EH was objecting to the proposals; in this case it is supporting them.
- 6.14 The GLA has appeared at the inquiry to urge that the proposals be approved. It has consistently supported the scheme and acknowledges the strategic planning benefits it would produce in terms of regeneration and housing provision. The GLA's support, against the framework of the London Plan, is notable when the two local planning authorities have been unable to agree on the merits of the proposals and when their metropolitan significance is recognised.
- 6.15 Transport for London (TfL), as strategic authority for transport in London, is satisfied that the intended works will enhance the local transport infrastructure and will make the development acceptable in its implications for highway capacity and safety and for the functioning of public transport services in the locality of the site. Indeed, TfL acknowledges the benefits of the proposal for sustainable transport. Its position is recorded in the Transport Statement of Common Ground.^F
- 6.16 Against this strategic consensus of support, RBKC's objections at the inquiry have borne only a tangential relationship to its single reason for refusal of planning permission. There is no reference in the reason for refusal to the London Plan, to the Thames Strategy or to its own development brief for the site. There is no reference to harm to views of the power station – or to harm to the character of the Thames. The case has also roamed far and wide geographically – including, and despite LB Wandsworth offering no objection, to views from the south bank of the river. Also, one should not forget that the officers of RBKC supported the scheme and the members, having apparently chosen not to give evidence themselves, decided to introduce Mr McCoy as their witness. He, however, with commendable candour, offered a stream of concessions in the course of his cross-examination, some referred to below, which served wholly to undermine RBKC's reliance on the policies of its own UDP, CD6 and CD37 in particular. However broadly expressed the reason for refusal and however slender its connection with the resolution of

^A Document CD13.

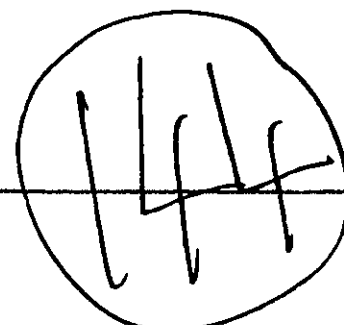
^B Documents A/AS/A (Appendices 7-9) and G/7.

^C Document CD151.

^D Documents A/AS/A (Appendices 4-6) and G/7.

^E Document A/13(2) – paras. 11, 21 and 52.

^F Document CD12.



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members (which referred simply to UDP Policies CD6 and CD37), there is no licence for the adventurous case that has been deployed.

- 6.17 The third party objections put forward during the inquiry, and in writing, do not justify a rejection of Circadian's proposals and the benefits they would bring. A basic fallacy – often apparent in cases in which the principal issue, or one of them, concerns the design of development – is that such matters are 'issues of personal opinion'. They are not. They are – or ought to be – issues of objective judgment, governed by the principles of good design stated in established policy and guidance. The decision should not depend on the personal preferences of the particular decision-maker, who should reject the proposals only if, judged by the relevant criteria in policy and guidance, they are found to be offensive to the public interest.
- 6.18 Indeed, this is one of the main reasons why bodies such as EH and CABE have been created. They are not self-appointed arbiters of good design. They have been given responsibility for providing informed and dependable judgments on matters of design, and to do so in the public interest. The First Secretary of State should be loathe to reject their advice. RBKC and others who have criticized the proposed design, whilst they have persisted bravely in their claim that the proposed towers are too big, have not succeeded in transforming subjective opinion into compelling objection.

General approach to determination

- 6.19 The two applications for planning permission have to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (by virtue of section 38 of the Planning and Compensation Act 2004).
- 6.20 The principal contentious issues between the opposing parties in this case have had to do with matters relating to design, the intensity of the development proposed and the adequacy and suitability of the infrastructure and facilities upon which it would rely. One can start by asking the simple and obvious question: 'Is there any good reason why permission for these proposals should not be granted?' That question leads to another two: 'Is there any reason relating to the visual or physical impacts of this development that tells decisively in the public interest against its being approved?' and 'If not, is there any overriding reason in policy terms why planning permissions should not be issued?'
- 6.21 Put simply, therefore, the crucial question is this: 'If the development would be acceptable in visual terms and if, taking into account the improvements to local infrastructure and facilities secured in the section 106 obligations, the impact of the development would in those respects be sustainable, why should policy stand against it? There is no good reason why it should.'

The development plan

- 6.22 The development plan in this case comprises the London Plan and the RBKC and LBHF UDPs. The provisions of the two UDPs, certainly as they relate to proposals for tall buildings, are very different and, plainly, in a degree of tension with each other. LBHF Policy EN9 requires judgment to be applied to any proposal for a tall building on the part of the site lying within its area. RBKC maintains that its Policy CD6 prohibits the development of tall buildings. However, that stark contention needs now to be seen in the light of the concessions given by RBKC's witness when asked about the provenance of that policy – concessions undermining RBKC's reliance on the policy and, thus, the entire basis of its opposition to the proposed development.

- 6.23 Overlying both authorities' policies for tall building proposals are the strategic policies in chapter 4B of the London Plan, which call for a sensible application of objective judgment to such proposals. There is no warrant in them for any embargo or moratorium on tall buildings, either generally or in any specified part of the metropolis.
- 6.24 The Courts have made clear that the approach to decision making does not involve a mechanistic assessment as to whether the proposal accords with each relevant policy.^A The London Plan, published only in February 2004, is the most recently approved element of the development plan as well as being the source of the overarching strategic policies applicable in this case. Section 38(5) of the Planning and Compensation Act 2004 allows that, in the event of conflict arising between the provisions of the different elements of the development plan, it is those of the London Plan that take precedence.
- 6.25 Moreover, where the site and proposal are of metropolitan significance, as here, and where distinct differences of approach are apparent between the two UDPs concerned and between the RBKC UDP and the London Plan, the supervening strategy of the London Plan should be regarded as the governing strand of policy.

The 'fall-back' position

- 6.26 The law relating to the relevance of a developer's fall-back position to a development control decision is now settled and clear. If there is a reasonable – or realistic – prospect of a development for which planning permission already exists being carried into effect in the event that the proposal before the decision-maker is rejected, and that fall-back position is relied upon by the developer, then the test of materiality is passed; the weight to be given to the fall-back position is then a matter for the decision-maker.
- 6.27 There is no dispute that Circadian has available to it the benefit of the 1986 planning permission, which would enable it to complete the Chelsea Harbour development by building out the second and final phase of that scheme. What is contested is the materiality of that consent as a fall-back position. But the fall-back position is a real one, not merely a forensic stratagem or threat. It represents the only certainty and security that Circadian would have should the present application and appeal be unsuccessful. Six factors merit comment.
- 6.28 First, the site to which these proposals relate has been waiting for a very long time to be regenerated. The present proposals are not an opportunistic reaction to the chance to make a level of profit through the development of the site that would make the effort worth it. They represent the culmination of a lengthy process of consultation, option-testing and evolution in design.
- 6.29 Secondly, whilst Circadian has not sought to base its case on any viability appraisal – an exercise that would probably have entailed the thankless task of striving to prove a negative by means of residual valuation – the fact remains that no developer can sensibly sustain the cost of holding a site such as this one indefinitely and without some degree of assurance as to when and how a worthwhile return can be realized. That is no more than a glimpse of the obvious. It does not need evidence to prove it. If Circadian chose to hold on to the RBKC site, rather than selling it to somebody else, it might very well be prudent to take the value that can be realized on the LBHF site, rather than proceeding with a comprehensive development of the whole site.

^A See R v Camden London Borough Council and Others ex parte Laura Cummins & Others [2001] EWHC Admin 1116 at para. 161 – setting out what Sullivan J said in R v Rochdale MBC ex parte Milne (unreported).

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- 6.30 Thirdly, even accepting that some other form of development than that proposed would be viable, the First Secretary of State has before him only one scheme – and evidence only in relation to that one scheme. He is not in a position to make any comparison between that scheme and any other. Nor should he speculate about the merits, or comparative merits, of other proposals, which, in different circumstances, might have been put in front of him. Venturing down the path of conjecture is not open to the First Secretary of State. His task is simply to adjudicate on the present proposals.
- 6.31 Fourthly, the fall-back permission was granted nearly 20 years ago, since when there have been many changes in policy. Those changes affect the cost of developing sites such as this. Among them are the policies at national and strategic level, not in force in 1986, relating to the provision of affordable housing in private residential developments. In London, these policies are being enforced with increasing resolve and frequently lead to levels of affordable housing at or close to half of the total number of dwellings or habitable rooms in the development.
- 6.32 Fifthly, Circadian is faced with a situation in which RBKC seems resolute in resisting either part of the site – not only the RBKC site but also the LBHF site – being developed with buildings materially higher than those apparently allowed for by UDP Policy CD6. RBKC seemingly cannot be relied upon to support – or to withhold their objection to – any proposals that could be regarded as infringing that restriction. And this notwithstanding the fact that – as emerged in the course of Councillor Cunningham's cross-examination – in considering the development brief in July 1998, RBKC's Planning & Conservation Committee resolved that it should not 'preclude entirely the possibility of one tall narrow building as part of the development on this site'.^A It follows that, if these proposals were to fail, and if Circadian were to come back with modified proposals showing a reduction of only a few storeys in the riverside buildings, it might very well find itself embroiled in yet another protracted planning conflict.
- 6.33 And sixthly, the attitude that would be taken by other parties and stakeholders to any revised proposals cannot be known. If Circadian came back with a modified version of the fall-back development on the LBHF site, one might reasonably expect both LBHF and the GLA to look for a substantial proportion of that development to be in the form of affordable housing. On the other hand, if Circadian were to leave the fall-back development as it is and make a further application only for RBKC site, it is possible – indeed probable – that the GLA would seek a very high proportion of affordable housing within that development, no matter whether it retained the power station building or not, in order to compensate for the absence of such provision on the LBHF site. Either way, even for a developer as experienced and conscientious as Circadian, the prospect is hardly appealing. Nor can the position of CABE, English Heritage and other parties be confidently predicted.
- 6.34 The First Secretary of State is not invited to come to any definite conclusion about what would or would not happen if he rejected these proposals. He cannot reasonably do so. Nor does he have to. He can be sure, however, that there is at least a reasonable prospect of Circadian choosing to proceed with phase 2 of the Chelsea Harbour development.
- 6.35 Attractive though it might be to imagine that some sort of compromise between the opposing parties might emerge if the present proposals were rejected, there is, in truth, no sign of that being accomplished. As has become abundantly apparent in the course of

^A Document CD206A – para. A.10 of the minutes.

this inquiry, the main protagonists are a very long way apart. Circadian and those who support its proposals are completely satisfied that the proposals are exemplary, the very best in contemporary design, by one of the foremost British architects of the day. Most of those who oppose the development, whilst for the most part they have not criticized the intrinsic quality of Sir Terry Farrell's design, seem implacably opposed in principle to tall buildings of the heights proposed, or of anything approaching those heights. That said, the proposals are not presented on the basis that no other scheme would be viable, or on the basis that no other scheme might be more profitable. They are put forward as a project of sustainable regeneration for this important site, hostile to no interest of public importance and holding in prospect a range of planning benefits.

- 6.36 Substantial weight may be given to the six factors above. If the proposed tall buildings were thought to be too high, and if there were thought to be a possibility of amended proposals coming forward in answer to that criticism, it should be borne in mind that the consensus of strategic support might be lost, that the opponents of the proposals have no agreed or reliable view to express as to an acceptable limit on the height of buildings on the site and that RBKC, whilst relying on UDP Policy CD6, also have an extant resolution not ruling out a 'tower' but not defining an acceptable height for it. Of course, if the present scheme were thought fundamentally misconceived, then it should be rejected, no matter what the conclusion on the fall-back position.

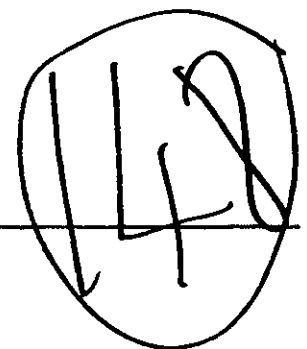
The benefits and advantages of the proposals

- 6.37 There seems to be little dispute, if any, that the proposals promise considerable planning benefits. If the proposals are found to be fundamentally flawed, they should be rejected, no matter what benefits would thus be turned away. If, however, the arguments against the design of the proposals have some force in them, the merits of the scheme in terms of sustainable urban regeneration and the provision of housing and affordable housing should be weighed in the balance against those arguments.

Mixed-use development and sustainability

- 6.38 The various benefits of mixed-use development are acknowledged in PPS1. Higher density mixed-use development promotes more efficient use of land, leading to more sustainable patterns of development and creating more vibrant places in which to live and work. They are the cornerstone of accommodating growth through the delivery of sustainable development. And PPS1 makes plain that sustainable development is the core principle underpinning planning.^A
- 6.39 This development would yield a mix of uses on the site: residential, employment, leisure, shops, restaurants, community and health facilities. All of these would add to the vitality and diversity of this part of Chelsea. In its re-use of previously developed urban land will be sustainability *par excellence*. The optimal use of the site demands a density of development as high as is compatible with its location. The development will achieve that. The proposed conversion to new uses of the power station building will serve to retain and maintain the only element of the existing development on the site that is worth keeping. They will conserve such historic value as the site possesses, even though it is not of such value as to have statutory protection.

^A Document CD120 (PPS1) – para. 3 and para. 27(ii), (vii) and (viii).



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Housing and affordable housing

- 6.40 The development would bring forward 802 new dwellings, of which 47% (378) would be affordable housing. The quantities and mix are agreed by the principal parties.^A The density of the development will be suitably high. There are very few sites as close to the heart of the metropolis as this one that would be able to produce so substantial an increase in London's housing stock.

Townscape and riverscape

- 6.41 CABE and EH have recognized, in effect, that the scheme complies with government policy for good design.^B The proposals for both the new buildings and the conversion of the power station are of high architectural quality. They would complement the Chelsea Harbour and Imperial Wharf developments and sit comfortably with other components of the local townscape, including the historic frontage of the Chelsea Embankment. The development has been conceived in accordance with sound principles of urban design. It would help to create a new urban quarter. It would serve to integrate the several pieces and faces of regenerative development that have taken place over the last 20 years or so on this stretch of the riverside and its hinterland. Whether it is right to regard this final phase of the regeneration of this part of West London as being a catalyst or merely as completing the urban renaissance in this part of Chelsea, it would hardly deter further investment in the area in the future. It would be bound to reinforce confidence in the local communities and establish in this area a strong sense of place.

Social and community benefits

- 6.42 The new urban quarter, perhaps unlike the development at Chelsea Harbour, would be socially inclusive. It would provide a balanced mixture of private and affordable housing, including accommodation for 'key workers' and it would have shops, premises suitable for small businesses, publicly accessible open space and community facilities open to all. This would not be an enclave of very expensive flats. Provision is made within the converted power station for space for a community facility, which in the first instance will be offered to the Ashburnham Community Association. Provision is also made for a doctors' surgery in the power station, with a temporary facility initially provided in LBHF.^C
- 6.43 In place of an expanse of land that currently lacks beneficial use and is shut off from public access, the proposals would invite the public in; they would create open spaces that the public would be encouraged and attracted to use; and they would provide variety and vitality in the uses that would come to the converted building. Access to the riverside, by way of a number of new routes for pedestrians, would be greatly enhanced.

Environmental benefits

- 6.44 Regeneration of the site would involve much by way of improvement to the quality and appearance of the local environment. The site itself would no longer be derelict and depressing in appearance, detracting from the general image of this part of Chelsea. The buildings would look good. So would the public spaces. The proposed improvements to Chelsea Creek would bring ecological gains. Biodiversity would be increased.

^A Document CD11 – para. 7.2.

^B Document CD120 (PPS1) – paras. 33-39; also Documents CD146 and CD151.

^C Document A/16 – clauses 38 and 41 of the obligation with RBKC and clause 44 of the obligation with LBHF.

Transportation

- 6.45 The measures proposed for the improvement of public transport infrastructure would be enjoyed not only by residents of the new homes on the site and workers in the new jobs but also by the wider community as a whole.

Advantages of these proposals by comparison with the fall-back development

- 6.46 The credentials of Circadian's scheme as a project of sustainable regeneration are manifest. They clearly go far beyond those of the fall-back development.^A That is no accident. It is the consequence of Circadian's proposals having come forward in a different era of planning and a different era of design. As a result, the planning benefits Circadian is committed to deliver on implementation of the proposals are also advantages. For that reason they should carry added weight in the planning balance.

Call-in issue (c) – PPG3

Government policy

- 6.47 The government's advice in PPG3 has been supplemented by publication of further policy documents, in particular an annex on affordable housing.^B The prevailing theme of this part of government policy is that delivery of new housing should be maximized, consistent with the objective of maintaining the quality of the environment, and that, in particular, it should be maximized on previously developed land. Paragraph 3 of PPG3 states that one of the roles of the planning system is to ensure that new homes are provided in the right place and at the right time, whether through new development or through the conversion of existing buildings. The aim is to provide a choice of sites both suitable and available for the building of housing. There was no dispute between the main parties at the inquiry that this site is both available and suitable for such development. The UDPs of both LBHF and RBKC promote such development on the site. Neither authority has sought to dispute the principle of residential use being the dominant constituent of the proposed mix of uses. The GLA, too, has supported this.
- 6.48 None of this is surprising. Policy 4B.3 of the London Plan,^C under the heading 'Maximising the potential of sites', requires development proposals to achieve the highest possible intensity of use compatible with local context, the design principles in Policy 4B.1 and public transport capacity. It is indicated that the Mayor will refuse permission for strategic referrals that, taking into account the context and potential transport capacity, under-use the potential of a site.
- 6.49 The LBHF UDP is consistent with the objectives of Policy 4B.3. Policy G5^D requires that the quantity of the borough's housing stock be increased and its quality improved, ensuring a choice of accommodation, including accommodation for those on low incomes. The strategic targets in the UDP have been superseded by the London Plan, which indicates a requirement in LBHF for 8,040 additional homes in the period 1997-2016.^E The provision of 382 dwellings on the LBHF site would make a significant contribution to the meeting of that target.

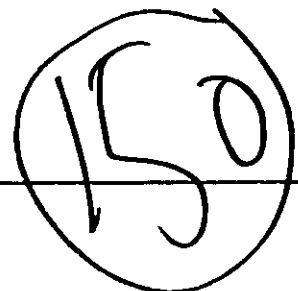
^A Document A/AS/P – para. 6.10 identifies eight disadvantages for the fall-back scheme by comparison with the inquiry proposals.

^B Documents CD124 and CD125.

^C Document CD174 – p.176.

^D Document CD222 – p.19.

^E Document CD174 – Table 3A.1 on p.56.



- 6.50 The proposal is also consistent with the RBKC UDP which, as with the LBHF UDP, must now be applied in the light of the strategic policies in the London Plan. Policies H12 and H15^A are the policies of principle relevance and it has been no part of RBKC's case that there is any conflict with either.
- 6.51 Policy H15 requires a substantial proportion of housing to be provided on Major Development Sites, including this one. It needs now to be applied in the light of the strategic housing target in the London plan – 10,800 for the period 1997-2016.^B The proposed development will contribute 420 new dwellings on the RBKC site, a significant contribution to the meeting of the strategic targets. One may conclude, therefore, that the proposal is consistent with RBKC UDP Policies H2 and H3.^C

Density

- 6.52 Different approaches have been taken in calculating the density of the proposed development.^D For the purposes of Circadian's case, it matters not which approach is adopted. On either of the two main approaches, it can be concluded that the density proposed is appropriate to the site and its context. It is common ground between the main parties that the overall density of the scheme is 223 units per hectare (u/ha) if the creek is excluded, 175u/ha if it is included. It is agreed by Circadian and the Mayor that the overall number of habitable rooms per hectare (hr/ha) for the whole site, including the creek, is 559.
- 6.53 PPG3^E stresses the importance of avoiding the inefficient use of land. It mentions the fact that historic rates of land take have been very high, and unsustainable. This provides a context, at the level of national policy, for considering the appropriateness of the density of development proposed in a particular scheme.
- 6.54 Circadian's intention is to provide a high density design of development with a view to achieving the efficient and sustainable use of the site. There can be no sensible dispute that this aim has been achieved. Such dispute as there has been relates partly to the methodology of the calculations and partly to the consequences of adopting one methodology or another for the purposes of fitting the scheme into the density matrix in the London Plan.^F But it is necessary to stand back from those issues and ask to what degree they bear on the acceptability of the proposal in terms of its size and its impacts on local infrastructure. In the light of Circadian's evidence, the conclusion ought to be that the density of development proposed is compatible with the location and setting of the site, no matter whether its proper definition for the purposes of Table 4B.1 is as a central or an urban site. Practicalities carry more weight here than definitions. CHRA concentrates on methodology and mathematics. Ultimately, however, that is of secondary significance as providing helpful, though not determinative, guidance on the issue of alleged overdevelopment.
- 6.55 Put simply, the question of real significance is whether developing the site in the manner proposed would be in any practical sense unsustainable – whether, for example, it would impose any undue strain on local infrastructure, services and facilities. If the answer to

^A Document CD199 – p.113 and p.115.

^B Document CD174 – Table 3A.1 on p.56.

^C Document CD199 – pp.108/109.

^D Document CD12 – pp.32/33 and Appendix 4.

^E Document CD124 – paras. 57/58; see also Document A/AS/P – p.10.22-24.

^F Document CD174 – Table 4B.1 on p.177.

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that question is 'no', then it cannot reasonably be concluded that the density of the proposed development is too high. Conversely, if the development would not be sustainable, because it would impose demonstrable stress on local infrastructure, or for any other reason, the fact that the density of the development would be 'x' rather than 'y' would be immaterial. In this case, the practical tests of strategic policy are met.^A

- 6.56 LBHF concludes that the proposal accords with London Plan Policy, UDP Policy HO7 and national guidance. RBKC seems to take the view that, if the density of the development would not result in any practical harm such as to justify refusal of planning permission, it could not, of itself, provide a tenable reason for refusal.^B And no mention is made of UDP Policy H12 in RBKC's reason for refusal. In the circumstances, not only is it acceptable to develop the site in the manner proposed, it is actually necessary to do so if the imperatives of PPG3 and the London Plan are to be satisfied.

Public transport accessibility level (PTAL)

- 6.57 The site's PTAL index is given in the Statement of Common Ground as between 14.63 and 15.17, equating to a PTAL from a high 3 to a low 4.^C Mr Walker's calculation for Circadian^D is that the package of public transport improvements (the SITS) would increase the PTAL to 4 on the standard calculation methodology. Whichever approach is taken, the proposals, including the SITS package, would result in an appropriate level of public transport accessibility for this high density scheme.
- 6.58 The essential point to grasp is that the PTAL methodology is a guide to inform an assessment of a site's public transport accessibility – it is not a tool to be applied mechanistically. There are a number of weaknesses with the methodology. In particular, the evidence is that local underground stations and bus services which are excluded under the standard PTAL methodology are, in fact, used – and would be used by residents of the proposed scheme. These services should not be ignored when considering the accessibility of the site.

Sustainable communities

- 6.59 The proposed development will contribute to the improvement of housing choice in this part of central London, in accordance with national and strategic policy.^E In other words, in qualitative terms, as well as in the mere increase in the local housing stock, the development will be successful and beneficial. It would advance the objectives of London Plan policy for improving housing choice^F and the housing mix would satisfy both LBHF UDP Policy HO6^G and RBKC Policies H18, H19 and H21.^H

^A Document CD174 – Policy 4B.3 on p.176 – addressed in Document A/AS/P at paras. 9.4.8-11.

^B Document CD19 – para. 7.6.1 in particular.

^C Document CD12 – calculated in accordance with Document CD291.

^D Document A/HW/P – paras. 2.33-50 – analysis of PTAL in the context of strategic and local policy.

^E Document CD124 (PPG3) – para. 10.

Document A/AS/P at paras. 10.5-6 and Document A/AS/A at Appendix 10.

Document CD11 – Appendix 2 tabulates the mix of dwelling types in the two parts of the scheme.

^F Document CD174 – Policy 3A.4 on p.58.

^G Document CD222 – p.206 – addressed in Document A/AS/P, pp.34-35, with reference to Document CD35 – see also Documents CD232 and CD232a..

^H Document CD199 – pp.116-118 – addressed in Document A/AS/P, pp.76-77 – see also Document CD213.

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Affordable housing

- 6.60 It is hardly necessary to say that the government sets great store by the provision within a large residential development scheme of an ample amount and appropriate mix of affordable housing. The affordable housing yield of a major development must appropriately be related to an up-to-date assessment of local housing needs.^A In this case, Circadian's proposal for affordable housing represents the outcome of discussion and negotiations with RBKC, LBHF and the GLA, all of whom confirm that there is no issue to be resolved. Thus, there should be no need to revert to Circadian to seek a revised mix of affordable housing. If, however, the First Secretary of State were to take a different view, he is invited, consistent with his approach in the Vauxhall Tower case, to come back to Circadian before issuing his final decision.
- 6.61 Strategic policy, and the text explaining it, indicate a flexible approach to the provision of affordable housing, having regard to the overall 50% target across London.^B Circadian's approach has been consistent with the principle of negotiating the 'maximum reasonable amount of affordable housing',^C as acknowledged in the GLA officer's report.^D On the LBHF site, 213 of 382 dwellings (56%) will be affordable; on the RBKC site, 165 of 420 dwellings (39.3%) will be affordable.^E These are significant proportions of affordable housing, close to the 50% London-wide target, which is a target relating to all sources of provision, not merely to new development. They are also consistent with LBHF UDP Policy HO5 and RBKC UDP Policy H23.^F
- 6.62 It can be concluded that the proposed development is consistent with all relevant strands of policy relating to affordable housing – at national, strategic and local levels. Though shortly expressed, this conclusion is highly significant in the overall planning balance. In the absence of any cogent or constructive criticism of the design of the development by those who oppose it, the First Secretary of State should not spurn the very substantial contribution which this scheme could and would make to enhancing the provision of housing for those who cannot afford to buy it. The proposal is bound by the provisions of the section 106 obligations, which ensure that the affordable housing would come forward at the appropriate time in each phase of the development, and in the specified quantities and mix.

Conclusion on call-in issue (c)

- 6.63 The proposed development is consistent with government policy as expressed in PPG3 – and consistent, too, with development plan policy seeking to give effect to the principles of national guidance. The main themes of PPG3 relate to the maximisation of the delivery of housing on previously developed land and the mix of housing and affordable housing – but full account has been taken of other aspects of the guidance.^G In all respects, as well as in relation to the main themes, Circadian's proposal accords with PPG3. Not least among its attributes is its compliance with the principle of 'Designing for Quality' and, in particular, the encouragement given to authorities and developers

^A Document A/13(2) – para. 42 emphasises this.

^B Document CD174 – Policies 3A.1-3A.5 (pp.54-60) deal with housing provision generally, Policies 3A.6-3A.8 (pp.60-66) with affordable housing – see Document A/AS/P (paras. 9.2.1-16) for Circadian's analysis.

^C Document CD174 – the wording used in Policy 3A.8.

^D Document CD189 – paras. 14 and 19.

^E Document CD11 – Appendix 2.

^F Document A/AS/P has Circadian's analysis – paras. 8.3.2-7 and 8.3.11 for LBHF, paras. 16.2.10-19 for RBKC.

^G Document A/AS/P – paras. 47, 52 and 54.

alike to 'think imaginatively about designs and layout which make more efficient use of land without compromising the quality of the environment'.^A

Call-in issues (f) and (g) – PPS1 and PPG15

General submissions

- 6.64 There has been no dispute about the need for the highest quality of design in any scheme of regeneration for this site. Nor has there been any fundamental criticism of the architectural aspects of the design. Such criticisms as there have been relate essentially to the decision to promote strikingly bold contemporary architecture in this location. So, the essential issue to consider is whether this is good architecture, but in the wrong place.
- 6.65 In relation to that concept, it is worth recalling the words of the Inspector who considered the Montevetro proposals at a public inquiry in mid-1995. He said this: 'In short, whilst there is an appreciation by objectors of the skills of an internationally famous architect and therefore of the quality of the design, the proposal is seen by them as a good building on the wrong site'.^B The difficulty with the concept of good architecture in the wrong place – or 'wrong buildings at this place, however august the architect'^C – is twofold: firstly, it can be seen as an excuse for taking an excessively historicist approach and, secondly, it tends to ignore the scope for good design to overcome or avoid deleterious impacts on the local scene and the historic environment.
- 6.66 One does not need to be a Londoner, or even a regular visitor to the capital, to be aware that a familiar and essential dynamic in the townscape of the city is the juxtaposition of old and new, historic fabric and buildings of vigorously contemporary design. Such contrasts abound. London is the better for them. Indeed, London would not be London without them.

Design – (i) evolution

- 6.67 The scheme as it now stands has evolved through a series of layouts and arrangements of structure.^D Sir Terry Farrell has worked on proposals for this site since 1996, nine years ago. Different ideas have been tested by his practice over that period.^E Sir Terry himself has been actively involved at all stages of the progression of the design. This is not a case in which a 'trophy' architect has been brought in at a late stage in order to confer credibility on somebody else's work.
- 6.68 The retention of the power station building was not regarded as a constraint limiting the means of achieving a satisfactory regeneration of the site.^F This is not to say that only by retaining the power station can a satisfactory development be achieved. However, it is a virtue of the present scheme that a high density development can be delivered without sacrificing that building and, indeed, with the benefit of converting it to new beneficial uses. From the beginning, the site was seen as presenting an unusual, if not unique, opportunity to create a development that would provide a focus and coherent river frontage for an area currently lacking those attributes, as well as a new urban quarter with

^A Document CD124 – para. 54.

^B Document CD279 – para. 96.

^C Document KC/3 – para. 21, repeated at para. 9.8 below.

^D Document A/TF/P/2 includes aspects of the evolution.

^E Document A/TF/P – section 2.

^F Document A/TF/P – para. 2.3.3.