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1.0.0 **INTRODUCTION**

1.1.0 **Qualifications and Experience**

1.1.1 My name is Robert Mark Sellwood and I am the Principal of Sellwood Planning, Chartered Town Planners and Chartered Surveyors. I have a degree in Social Science and a post Graduate Diploma in Town Planning. I am also a member of the Royal Town Planning Institute and a Fellow of the Royal Institution of Chartered Surveyors.

1.1.2 I have twenty five years experience as a town planner in both public and private practice. This has included eight years with Essex County Council and sixteen years with G L Hearn and Partners. For the eleven years prior to the establishment of Sellwood Planning in 1998, I was a Partner in G L Hearn.

1.1.3 I have advised a wide range of public, private and institutional clients in respect of land use issues on a national basis. This has involved appearing and giving evidence at Structure Plan EIP's, Local Plan Inquiries, Appeals, the Lands Tribunal and Crown Court proceedings. I was also a participant in the South Eastern Regional EIP which took place in May and June 1999.

1.1.4 I can confirm that this evidence has been prepared in accordance with RICS Practice Notes 'Surveyors Acting as Expert Witnesses'. As such, the evidence reflects my independent professional opinion on all matters of relevance to the determination of these appeals.

1.2.0 **Scope and Nature of Evidence**

1.2.1 In order to clarify the scope and nature of my evidence it might be of assistance briefly to outline the structure of this proof. Section 2 provides a brief analysis of both the site and the wider area in which it

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is situated. This is followed in Section 3 by an evaluation of the planning and operational history of the site, a description of the appeal proposals and an explanation of the detailed discussions which took place with the Council following the submission of the applications.

- 1.2.2 Having provided the background to the case in Sections 1 to 3, the main planning issues which are of relevance to the scope of my evidence are dealt with in Sections 4 to 6. Section 4 considers national, regional and UDP policy advice on the provision of housing and the objective of maximising the dwelling yield from previously developed land in urban areas. This is followed in Section 5 by an analysis of policy guidance on recreation/open space issues and how they apply to the unusual circumstances of the appeal site. Section 6 considers the provision of on site affordable housing and in the context of the guidance in Circular 6/98 as well as the policies of both the adopted and emerging UDP.

- 1.2.3 Section 7 considers a range of other issues which are primarily considered in the evidence of other witnesses but touch, in part, on my evidence. These include conservation policies, transportation and the new facilities for the Tennis Club.

- 1.2.4 Section 8 draws together all the main strands of argument contained in my evidence and concludes that there is a compelling argument in favour of allowing both the planning and conservation area consent appeals.

2.0.0 ANALYSIS OF THE SITE AND THE SURROUNDING AREA

2.1.0 Analysis of the Locality

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2.1.1 The appeal site is located at the top of Campden Hill towards the geographical centre of the Royal Borough of Kensington & Chelsea. Since the historical development of the area and the character of the Conservation Area will be described in the evidence of other witnesses, my evidence will concentrate on the land use characteristics of the area.

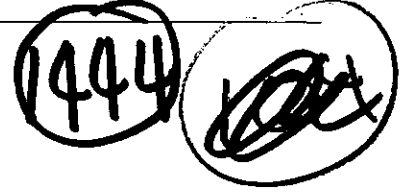
2.1.2 One of the most notable features of the area is its proximity to many of the services and facilities provided by Central London and the proximity to public transport which can facilitate access to them without the use of the car. Plan RMS1 shows the site in its wider Central London context and discloses how, for example, the site is;

- (a) 5 kilometres (3.2 miles) west of the Houses of Parliament
- (b) 4 kilometres (2.5 miles) south west of Oxford Circus
- (c) 7.5 kilometres (4.7 miles) west of the Bank of England
- (d) 6 kilometres (3.75 miles) east of Junction 1 of the M4
- (e) 20 kilometres (12.5 miles) east of the M4/M25 junction.

2.1.3 Public transport into Central London and to main line termini is exceptional with a range of bus routes on Holland Park Avenue and Kensington High Street as well as the following underground stations;

- (a) Notting Hill Gate (600 metres) : Central, Circle and District Lines

(b) Holland Park (500 metres) : Central Line



(c) High Street Kensington (900 metres) Circle and District Lines.

2.1.4 In terms of land use, the predominant character of the area is residential. The exceptions to this are the range of A1/A2/A3/B1 uses on Holland Park Avenue and Kensington High Street, some B1 uses on Campden Hill Road and higher education institutions such as Kings College. In this context, the Water Utility use of the appeal site is not consistent with the general residential character of the area and simply reflects the fact that this elevated site was selected by the Water Companies in the middle of the last century as the most suitable location to supply the drinking water needs of the local area.

2.2.0 **The Appeal Site**

2.2.1 The appeal site occupies an area of just over 1.54 hectares (3.8 acres) bounded by Aubrey Walk to the north, Campden Hill Road and Kensington Heights to the east, Holland Park School to the south and the grounds of Aubrey House to the west (See Plan RMS 2). Effectively, the whole site has been developed previously and is now either occupied by buildings, car parking/access ways or embankments. However, the trees and vegetation on the embankments give the site a sense of being less developed than is the reality.

2.2.2 The largest structure on the site is the brick building containing the two reservoirs. This has a roof area of 0.876 hectares (2.16 acres) and was constructed in the middle of the last century. The building has an internal floor to roof height of 7.84 metres (26 feet) and a volume of 68,728 cubic metres. The apparent external height of the reservoirs is less than 7.84 metres since the structure is partially sunken below ground level. Thus, the roof of the reservoir is between 3 and 4 metres



above ground level, depending on whether it is viewed from Aubrey Walk or Holland Park School.

2.2.3 In some locations the height and bulk of the reservoirs is partially obscured by the earth embankments which in some cases have become colonised by trees and shrubs. This is particularly apparent on the western boundary with Aubrey House and the southern boundary with the school. The boundary to Aubrey Walk is further masked by 3-13 Aubrey Walk, Thames Water related car parking areas and a LEB sub station. There are, however, four fine TPO'd trees along the Aubrey Walk frontage which will be retained. The final boundary is to the east with Kensington Heights. In this case Kensington Heights itself is raised on a podium and hence its first floor (which is the lowest floor of apartments) is at a similar level to the roof of the reservoir.

2.2.4 Since 1884 the roof of the reservoir has been used by the Campden Hill Lawn Tennis Club. The Tennis Club has laid an artificial green playing surface on the roof of the reservoir and the area is surrounded by wire netting and contains floodlighting columns for the four floodlit courts. 9 Aubrey Walk comprises the Club House, bar and changing facilities for the Campden Hill Lawn Tennis Club. At the present time the Club has a lease from Thames Water which can be terminated at six months notice.

2.2.5 To the east of the reservoirs there is the main access into the reservoir complex. This provides an access route both to the rear of the reservoir (via an access track adjacent to Kensington Heights) and to the former Pump House. The Pump House was stripped of its original machinery many years ago and in recent years has largely been used as a depot and stores by Thames Water.

2.2.6 To the east of the Pump House is Water Tower House which was constructed in the early 1970's as flats and offices for Thames Water.



This part of the site was originally occupied by the water tower which formed part of the Pump House. Between the Pump House and Water Tower House is a parking area for the tenants and Thames Water vehicles. This area has a poor visual aspect due to the combination of the rear of Water Tower House, the car parking area and the truncated eastern end of the Pump House where it originally connected with the water tower. Water Tower House is described in the Council Proposals Statement for the Kensington Conservation Area as “a dreadful building in all respects” (p.31).

2.2.7 In February 1998 the Department for Culture Media & Sport advised the Appellants that the Reservoirs had been considered for inclusion in the list of buildings of special architectural or historic interest. However, it was decided not to include them in the list because “English Heritage commented that this brick built vaulted reservoir of 1869 appears to be a fairly standard example for the period, and a number of others survive. The building was therefore not considered to be of the special architectural and historic interest to warrant listing” (Appendix 1).

2.2.8 Subsequent to this, the Appellants applied for a ‘Certificate of Immunity from Listing’ on the 3rd December 1998. This was granted by the Department for Culture Media & Sport on the 23rd March 1999. A copy of this Certificate also forms Appendix 2.

3.0.0 PLANNING HISTORY & CURRENT DEVELOPMENT
PROPOSALS

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3.1.0 Operational & Planning History

3.1.1 The evidence of James Thomas provides full details of the establishment of the reservoirs on this site in the nineteenth century and how the site and its immediate surroundings have evolved since that time. I enclose as Appendix 3 a letter from Margaret Grey of Thames Water concerning the company's occupation of the site. In view of this, I will limit my evidence to those aspects which touch on the main issues covered in this proof of evidence.

3.1.2 As the evidence of Mr Thomas notes, the appeal site and adjoining land has been in Water Utility use since 1845 and prior to 1869 the reservoirs were not enclosed by a roof. However, following the Metropolitan Water Supply Act 1852, the reservoirs were partially reconstructed in the form of the enclosed and roofed structures which can be seen on site today. There is no record of any recreational use of the roof of the reservoir prior to the establishment of the Campden Hill Tennis Club in 1884.

3.1.3 It should perhaps be pointed out that whilst the Club is called a "Lawn Tennis Club" there is no record of the roof of the reservoir having anything other than either a shale or synthetic surface. This view has been supported by Thames Water Engineers who advise that since the primary purpose of the site was to supply drinking water, the creation of a layer of turf and associated sub soil would have been strongly discouraged by the water company.

3.1.4 The Water Utility use of the site continued largely unchanged until the early 1960's when the Metropolitan Water Board undertook a reassessment of the site. In May 1963 an outline application was

submitted to erect offices and twelve flats on the site of the water tower at the corner of Campden Hill Road and Aubrey Walk. This was approved in July 1963. The consent contained a condition that the offices should only be used in connection with the functions of the Metropolitan Water Board. (Appendix 4)



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- 3.1.5 A second application was submitted in relation to this site in December 1967. This was described as a four storey building containing a Water Rate Office and depot, twelve residential units and an underground garage. Whilst there was a condition restricting the amount of office space to that specified in the Office Development Permit, its use was not limited to the Metropolitan Water Board. This application was granted consent in March 1968 and it is understood that the building (Water Tower House) was constructed in the early 1970's. (see Appendix 4)
- 3.1.6 The east reservoir site had also become redundant by the early 1960's and an outline planning consent was granted in September 1963 to erect 65 flats, a caretaker's flat and a club house. This was followed by a further consent in May 1969 to erect a six storey block containing 83 flats, five three storey houses, 92 private parking spaces and a further 277 space car park. The Council's records show that this scheme (Kensington Heights) was completed in November 1974.
- 3.1.7 As is noted in the Thames Water Statement (my Appendix 3), problems with contamination of the water supply led to abandonment of the west reservoir in 1994. This was due to water leaking into the reservoir from the tennis courts above. Whilst the middle reservoir was retained in use for a short while after 1994, this reservoir became redundant once the new Thames Water Ring Main around London was completed.

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3.1.8 As a result of the above, Thames Water took the decision to 'abandon' the Middle Reservoir and then 'discontinue' both reservoirs under the terms of the Reservoirs Act 1975. The Inquiry site visit will include an internal inspection of the reservoirs and this will demonstrate how these massive brick structures are now empty and entirely redundant.

3.1.9 Whilst the reservoirs are redundant, Thames Water is continuing to make a limited use of the site as a result of the Holland Park Pipetrack Scheme. This is a £10 million scheme to replace and bypass eight water mains beneath Holland Park Avenue which have a history of unpredictable and disruptive fractures. It is intended to replace the eight mains by two which will be placed within a 50m deep tunnel which runs the 1.2km between the Shepherd's Bush Roundabout and Campden Hill. From Campden Hill onwards the existing exit mains from the reservoirs will be used.

3.1.10 Access will be obtained to the new tunnel via a new 8.5 metre diameter shaft which is currently under construction on the appeal site. Since this shaft will remain on site and there will be a continuing need to provide access for periodic maintenance, this has acted as a constraint on the form of the development. This is explained in more detail in Mr Crossley's evidence. The Pipetrack project is currently programmed for completion in the Autumn of 2000.

3.2.0 **The Development Proposals**

3.2.1 Since the reservoirs are now redundant for their original purpose, Thames Water commenced discussions with the Royal Borough of Kensington & Chelsea in late 1997 regarding the development potential of the site. In response, the Borough Council wrote to Thames Water on the 23rd January 1998. A copy of this letter forms my Appendix 5. In essence, this letter advised;

- (a) ... " given the situation that the existing reservoirs are redundant and would cost a great deal to preserve as they are, some changes are inevitably going to occur on this site."
- (b) whether Conservation Consent would be forthcoming for the demolition of the reservoirs "would depend upon assessment of the impact on the character and appearance of the area and the existence of an approved scheme for the development of the site."
- (c) The main UDP considerations are "(a) the retention of open space on the site, and preserving (or enhancing) the contribution that the existing open space makes to the character and appearance of the Conservation Area, and (b) the minimisation of impact upon local residential amenity by virtue of increased noise, vehicular activity and other disturbance."
- (d) The redevelopment of Water Tower House would be favourably considered, lower density housing to the rear "might be accepted" and houses or flats on the remainder of the site "would be looked upon on its merits in the light of regional guidance and UDP policies, but it would not necessarily be acceptable in view of the likely impact on the Conservation Area, and the surrounding area".
- (e) "Affordable housing should be sought for a site of this size under UDP policy, but in this case I accept that the constrictions upon development of the site would dictate that provision of this on site would be extremely difficult to achieve. Therefore, a contribution to development located off site is likely to be acceptable in this case".

- (f) The tennis club should be retained but leisure activities should not present "a significant increase" beyond those currently existing.

3.2.2 I think this letter is of great assistance in acknowledging that;

- (a) the redundancy of the reservoirs means some changes are inevitably going to occur.
- (b) that residential development was not precluded on any part of the appeal site.
- (c) a contribution towards off site affordable housing was likely to be acceptable.
- (d) the test of the scheme would be to balance the open space/conservation/residential amenity arguments against the redundancy of the reservoirs and the residential potential of the site.

3.2.3 This officer guidance encapsulates the essence of the debate at this Inquiry in that whilst the status quo is not an option, the ultimate scheme must preserve or enhance the character and appearance of the Conservation Area.

3.2.4 In 1998 the control of the scheme was passed from Thames Water to St James Homes Ltd, which is a company jointly owned by Thames Water and the Berkeley Group. St James commissioned Broadway Malyan to prepare a scheme. This first draft scheme was presented to the Chief Planning Officer of the Borough Council and the case officer in June 1998. In broad terms this scheme proposed the basic elements of what was to become the appeal proposal. It therefore comprised;

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- (a) an apartment block at the junction of Campden Hill Road and Aubrey Walk. This would step down from Kensington Heights to Aubrey Walk.
- (b) three storey apartments fronting on to Aubrey Walk.
- (c) a new three sided Kensington Square of large town houses opening on to Aubrey Walk.
- (d) all car parking located in a basement under the whole site.

3.2.5 In July 1998 I was instructed by St James Homes and became involved in the evolution of the scheme through the summer. On the 30th September 1998 a further meeting took place with Mr French (Chief Planning Officer) and Mr Taylor (the Case officer). Essentially the broad structure of the scheme remained as tabled in June 1998. At the meeting Peter Crossley of Broadway Malyan explained that a more modern design was being proposed for the Campden Hill building due to the mixed and more commercial character of the street. It was agreed that the scheme had now got to a stage where a planning application should be submitted to test public reaction.

3.2.6 Although the Council officers referred to testing public reaction, St James had already started an informal consultation exercise with local residents, community organisations and local Members. As part of this process a meeting took place with residents of Aubrey Walk on the 1st October 1998. At the meeting the local residents primarily expressed concerns about;

- (a) the modern design of the Campden Hill building

- (b) the Aubrey Walk building being too high and too close to the street
- (c) that there should be no access direct on to Aubrey Walk

3.2.7 St James carefully considered these comments. With regard to point (c) it was not possible to obtain access on to Campden Hill Road due to the proximity to the junction with Aubrey Walk. It was also decided to leave the Aubrey Walk apartment building unchanged as this had been positively commented on in meetings with planning officers. However, it was decided to redesign the Campden Hill apartment building so that it had a more traditional appearance.

3.2.8 On completion of these amendments duplicate planning and conservation area applications were submitted on the 4th November 1998. These were registered on the 13th November 1998 and given the following reference numbers;

- (a) planning application : 98/2126
- (b) conservation area consent application : 98/2129
- (c) duplicate planning application : 98/2128
- (d) duplicate conservation area consent application : 98/2127

3.2.9 The design details of the applications as submitted in November 1998 will be described in the evidence of Mr Crossley, however, it may be of assistance briefly to analyse the main elements;

- (a) 21 town houses in a three sided square
- (b) 12 flats in a building fronting Aubrey Walk

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- (c) 29 flats in a building fronting Campden Hill Road
- (d) the construction of six open air tennis courts and six enclosed courts at a lower level
- (e) 92 car parking spaces.

3.2.10 Once the applications had been submitted, St James Homes commenced a more extensive public consultation exercise. This entailed;

- (a) a static exhibition for members of Campden Hill Lawn Tennis Club.
- (b) a public exhibition in Kensington Church Street from the 10th to the 12th December and from the 18th to the 19th December 1998.
- (c) a public exhibition on site (in Water Tower House) between the 14th and the 18th December 1998.

3.2.11 In order to provide some clarity on the issue concerning whether any of the buildings on the appeal site were worthy of listing as being of architectural or historic interest, a Certificate of Immunity from Listing was submitted by Jeffrey George Associates on the 3rd December 1998. The intention was that this could be processed in parallel with the consultation on the planning and conservation area consent applications but be determined by the Department of Culture Media & Sport prior to the applications coming before Members of the Borough Council.

3.2.12 On the 23rd December 1998 a meeting took place at the offices of the Borough Council. This was attended by myself, a representative from St James and Broadway Malyan, Derek Taylor (the Case Officer) and Steve Davies (Design & Conservation). I attach as Appendix 6 a copy of my letter (7-1-99) to Mr Taylor following the meeting and my meeting note. My letter asks for comments if any aspect of the minute was inaccurate. The Council has not advised me of any inaccuracies.

3.2.13 It will be apparent from the meeting note that the discussions were very positive. The main points were;

- (a) the Transportation section was broadly content with the TIA.
- (b) some concern was expressed regarding the relationship between the south eastern corner of the "Town Square" and Kensington Heights. I agreed to consider this and provide the sunlight/daylight report.
- (c) officers did not like the gates to the scheme.
- (d) the Aubrey Walk building appeared to 'turn it's back' on the street. This should be remedied so that the building was fronting on to Aubrey Walk.
- (e) officers were disappointed that the Campden Hill building was not more contemporary in design, however its height and scale were broadly acceptable.
- (f) it remained the case that affordable housing would be provided off site.

3.2.14 In order to maintain a dialogue with officers but also to have a "fall back" position, one set of planning and conservation area consent applications were appealed on the grounds of non determination on the 13th January 1999. These were registered by the Planning Inspectorate

on the 14th January 1999 and given the references APP/K5600/E/99/1016054 and APP/K5600/A/99/1016055.

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A further meeting took place with the Planning & Conservation Officers of the Council on the 19th January 1999. I prepared a minute of this meeting which was sent to the Council on the 28th January 1999 (Appendix 7) with a request that I should be advised if there were any inaccuracies. The meeting was again very positive and the main points were;

- (a) officers suggested the deletion of one house in the southern terrace of the square. This would allow the whole terrace to be moved further away from Kensington Heights.
- (b) officers remained unconvinced at the "traditional" design of the Campden Hill building. However, the height and bulk was acceptable.
- (c) officers approved of the design of the Aubrey Walk building but suggested it should be moved closer to Aubrey Walk.
- (d) officers suggested that the northern end of the western terrace of town houses should turn the corner and face on to Aubrey Walk.
- (e) officers suggested that the square should be carried right up to Aubrey Walk.
- (f) officers commented that the balance between housing and open space was "just about acceptable".
- (g) officers advised that at the Committee meeting on the 11th January 1999 Members had adopted an interim policy on affordable housing. This now created a "strong preference" for provision to be on site.

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3.2.16 This new policy approach to the provision of affordable housing was further explained in a letter from the Borough Council dated the 20th January 1999 (Appendix 8). The letter stated;

"Increasing concern has been voiced by this authority, over the last year, as to the fact that relatively little affordable housing has actually been provided in the Royal Borough, and that where commuted payments for off site provision have been accepted they have generally been unsuccessful at enabling such provision to take place. With very few available sites in the Borough, where sites do come up, such as the reservoir site, the need to ensure that those sites are used to provide affordable housing is all the more important."

3.2.17 I responded to this letter on the 15th February 1999 (also Appendix 9). This letter expressed surprise at the change of stance by the Borough Council and notes that given the integrated nature of the whole development the issue of service charges would inevitably arise. However, with that one caveat I advised that St James would be willing to provide on site affordable housing in the proposed new building facing on to Aubrey Walk.

3.2.18 Following the positive discussions with Planning & Conservation officers in December 1998 and January 1999, I was provided with a consultation response from English Heritage dated the 21st January 1999 which was critical of the scheme. I enclose a copy of that letter as my Appendix 10. Since this appeared to contradict some of the comments made by the Borough Councils own officers I sought an urgent meeting to clarify matters. Because of holiday leave, this resulted in two separate meetings, one with the Conservation Officer (S Davies) on the 19th February and one with Mr French, Mr Taylor and Mr McDonald on the 25th February 1999. Minutes of these meetings form my Appendices 11 and 12.



3.2.19 At the meeting on the 19th February we tabled amendments to the scheme to delete one unit on the southern terrace of houses, putting either a dual aspect house or two flats at the northern end of the western terrace, changes to the Aubrey Walk building and a more contemporary design for the Campden Hill building. Mr Davies approved of the general direction of these changes but suggested that the Aubrey Walk building should be located closer to the road and the lift shafts should be incorporated within the building.

3.2.20 At the meeting with Mr French on the 25th February 1999, the scheme changes which had been put to Mr Davies were explained. The officers echoed Mr Davies views that the scheme was still evolving in "the right direction". I also advised that an updated public exhibition at Water Tower House had opened on the 22nd February 1999.

3.2.21 As a result of four months of productive dialogue I submitted a consolidated set of amendments to the existing application on the 19th March 1999. On the same date I also submitted a new application in exactly the same form.

3.2.22 Although I had been attempting to meet with English Heritage ever since the receipt of their consultation letter of late January 1999, this could not be arranged until the 24th March some days after the amendments and new application had been submitted. A copy of my minute of the meeting forms my Appendix 13. This note discloses how the amended scheme was explained to David Stabb of English Heritage. Whilst he made some optimistic comments about the changes, he reserved his position until he had sufficient time to review the plan and write a considered letter. Since Mr Taylor was also at the meeting, I took the opportunity to advise that a first draft of the affordable housing S106 would soon be with him and I was anxious to arrange a meeting to discuss the issue in April.

3.2.23 Following the meeting, a letter was received by the Borough Council from English Heritage dated the 8th April 1999. This forms Appendix

14. The letter contained three points. The first was a statement that "the scheme is a massive improvement to that on which you invited comments on the 23-11-98." The second and third points dealt with detailed points concerning boundary treatment and a suggestion that the square should be treated less formally. It was agreed with the Borough Council that the boundary treatment could be dealt with as a condition and that the submitted scheme now had an appropriate landscape approach.

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3.2.24 Since Sport England (formerly the Sports Council) had not formally been consulted on the applications, a meeting was set up between representatives of Sport England and the Appellants to discuss the application. This took place on the 16th April 1999. The Sports Council enthusiastically endorsed the proposals and indicated that a supporting letter would be sent to the Borough Council. I enclose as Appendix 15 a copy of the letter from Sport England to the Borough Council dated the 2nd June 1999 which states;

"We are of the opinion that net benefit to sport (tennis) outweighs any potential loss of open space. Sport England recognises the huge benefits to the sport by the provision of indoor courts and for this reason we are inclined to support this application."

3.2.25 It will be recalled that when the original scheme had been submitted, it had been assumed that the Borough Councils suggestion of an off site affordable housing contribution would prevail. When the Borough Councils position changed, I suggested that it could be provided in the self contained Aubrey Walk building. The disadvantage of this approach was that the units in this building were designed as twelve large (around 120m²) private apartments. However, if this block was to provide 25% affordable houses the number of units in the building needed to be increased from 12 to 17. Fortunately this could be achieved within the existing building envelope and with no changes to

the elevations. A further advantage was that the smaller units would be more attractive to a Housing Association. In order to regularise this position I submitted amendments (plan 7650/P113/B) to both the remaining "original" application and the application submitted on the 19th March 1999. A copy of this letter (dated the 21st March 1999) forms my Appendix 16.

- 3.2.26 This letter was handed to officers of the Borough Council at a meeting to discuss affordable housing on the 22nd April 1999. At the meeting the St James team sought to explain the "sequential" or "cascade" S106 approach to affordable housing. This was rejected by the Council on the basis that they wanted to know whether the affordable housing would be on or off site prior to the issue being determined by Members.
- 3.2.27 Between the date of the meeting referred to above and the Committee meeting on the 8th June 1999, a number of drafts of an affordable housing S106 agreement have been sent to the Council and there has been a concerted approach to arrange meetings to explore how the issue can be resolved. However, the Council has consistently refused to meet the Appellants unless the S106 guarantees affordable housing on site. For the reasons explained in Section 6 of this proof, I do not consider this to be a helpful attitude on the part of the Council.
- 3.2.28 In order that the March 1999 scheme would be the subject of this public Inquiry, an appeal on grounds of non determination was submitted on the 14th May 1999. This related to the application originally submitted on the 19th March 1999. This was registered by the Planning Inspectorate and given the reference APP/K5600/A/99/1022704. Following confirmation of this, the Appellants solicitors withdrew the original planning appeal (reference APP/K5600/A/99/1016055). As a consequence, the appeals which remain before this Inquiry are;

- (a) Conservation Area Consent Appeal : K5600/E/99/1016054

(b) Planning Appeal : K5600/A/99/1022704

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3.2.29 Immediately prior to the committee meeting I was advised that one of the proposed reasons for refusal related to the entrance gates. In order to resolve this, I wrote to the Borough Council on the 4th June 1999 agreeing to delete the gates (Appendix 17). Whilst no revised plan has been submitted, it has been agreed with the Borough Council that this can be dealt with by condition.

3.2.30 On the 8th June 1999, Members of the Borough Council considered a report (Appendix 18) on both the planning application and application for Conservation Area consent which remained before them for determination and the applications which are the subject of this Inquiry. All the applications were recommended for refusal on the following grounds;

- (a) The proposed redevelopment would result in the loss of a significant amount of the existing open space on this site, reducing the value of this site as a visual amenity to be enjoyed by residents of nearby property, and harming the character and appearance of this part of the Kensington Conservation Area. As such, the proposal is contrary to policies of the Unitary Development Plan, in particular STRAT 1, STRAT 35, and Policies CD21, CD48, and CD52.
- (b) The bulk and layout of the proposed development in particular the bulk of development and the restricted dimensions of the central open space, would result in a densely developed site that relates poorly to the character scale or form of its surroundings. It is considered that the proposed development would result in harm to the character and appearance of this part of the Conservation Area, contrary to Policies of the

Unitary Development Plan, in particular STRAT 5, STRAT 6, and Policies CD25, CD52, CD53, and H11.

- (c) Given that the existing site provides a valuable contribution to the character and appearance and residential amenity of this part of the Conservation Area, and in the absence of an acceptable scheme for the future development of the site, it is concluded that the proposed demolition of the reservoirs is premature, and contrary to Policy CD51 of the Unitary Development Plan.
- (d) The proposed southern terrace of new houses would appear dominant and overbearing in its relationship with Thorpe Lodge, and the development along Aubrey Walk would significantly affect the setting of St George's Church, harming the setting of these Listed buildings contrary to Policy CD61 of the Unitary Development Plan.
- (e) The existing site generates a relatively low intensity of vehicular and pedestrian activity through the year, busiest in the summer but relatively quiet in the winter months. The proposed development will generate greater levels of such activity throughout the year, with the largest difference being in the presently quieter winter months. As such, the proposed development will lead to a significant reduction in the levels of amenity presently enjoyed by those who reside near the site, contrary to Policies of the Unitary Development Plan, in particular STRAT 1, and Policy CD52.
- (f) The use of pedestrian and vehicular gates at the entrance to the site would restrict access to the development, separating the site from the surrounding area, contributing little to the amenity of the area, and being out of character with the predominant form of development locally where residential streets are generally accessible to all and at all times. As such, the proposed gated

community is contrary to Policies of the Unitary Development Plan, in particular STRAT 1, STRAT 5 and CD52.

- (g) The site is considered suitable for the inclusion of affordable housing, which has not been secured by appropriate planning obligation as part of the proposed development. As such, the proposals are not considered likely to achieve the provision of affordable housing on this site, and would be contrary to Policies of the Unitary Development Plan, in particular H22 and the proposed draft alterations to this Policy, and fail to respect the advice presented in Circular 6/98.

3.2.31 Following discussion, Members concurred with the officers report and refused the two applications which were formally before them and indicated that they would have refused the two applications which are before this Inquiry for the reasons given.

3.3.0 Conclusions

3.3.1 The purpose of explaining the discussions with officers at some length is to emphasise the productive dialogue which took place over a period of some six months from the submission of the November 1998 applications. Having attended almost all of the meetings with planning officers I can confirm their positive tone and how they generated a number of suggestions on how to improve the scheme which were subsequently adopted by St James Homes. Since the final scheme reflected all the officers comments of substance I was surprised that the report criticised the layout and design on a number of grounds which had not been raised during the previous six months.

3.3.2 The remaining sections of my evidence and the evidence of other witnesses appearing on behalf of St James will consider these reasons for refusal in detail and conclude whether the scheme strikes the correct planning balance between conservation and amenity and the

redevelopment potential of this largely redundant and previously developed site.

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4.0.0 THE PROVISION OF HOUSING

4.1.0 National Policy

4.1.1 Both the present and the previous Government have placed the objective of moving towards a more sustainable pattern of development at the heart of national planning policy. However, in PPG1 "General Policy & Principles" the Government emphasises that sustainability comprises not only environmental matters, it also includes social and economic considerations.

4.1.2 Paragraph 5 of PPG1 summarises the key elements of a sustainable planning framework which are;

- "provide for the nations needs for commercial and industrial development, food production, minerals extraction, new houses and other buildings, while respecting environmental objectives;
- use already developed areas in the most efficient way, while making them more attractive places in which to live and work;
- conserve both the cultural heritage and national resources (including wildlife, landscape, water, soil and air quality) taking particular care to safeguard designations of national and international importance; and
- shape new development patterns in a way which minimises the need to travel".

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4.1.3 Having clearly established that the provision of new housing is a legitimate part of a sustainable planning strategy, it is the intent of national policy that wherever possible this housing should be provided within urban areas, on previously developed land and in locations where the need to travel can be minimised. Paragraph 24 of PPG1 notes that one of the key objectives for the allocation of housing land is;

“...to make effective use of land within urban areas, by allocating the maximum amount of housing to previously developed sites within existing larger urban areas, which have access to a range of transport and other facilities, whilst protecting open space and green spaces in cities and towns”.

4.1.4 PPG3 “Housing” carries forward this same strong thrust of policy by emphasising that the full potential of urban areas should be maximised, consistent with the protection of areas of environmental importance;

“In order to meet the requirement for new housing and at the same time maintain conservation policies, it is important that full and effective use is made of land within existing urban areas. Experience has shown that there are many opportunities arising from conversions, improvement and redevelopment, for bringing into use neglected, unused or derelict land, and sites suitable for small scale housing schemes.”

4.1.5 The preamble to the 1993 PPG3 highlights for particular attention the four main changes from the 1988 version of PPG3. The first of these was;

“to put increased emphasis on reusing land, particularly derelict or underused land, as a means of relieving pressure on the countryside”.



4.1.6. The issue of relieving pressure on the countryside is combined with the objective of urban regeneration in paragraphs 17 as follows;

“It is essential that the planning system should continue to identify and realise the development potential of derelict, underused and waste land in urban areas, both to assist urban regeneration and to reduce pressure for development in the countryside.”

4.1.7 Planning policies to promote sustainable development have been steadily evolving since the 1987 World Commission on Environment & Development, which set the Brundtland definition of sustainable development. As a consequence, PPG3 which dates from March 1992 only advocated the “full and effective use of urban land” whereas five years later in February 1997 PPG1 is starting to move towards a “priority” or “sequential” approach;

“...preferring the development of land within urban areas, particularly on previously developed sites, provided that this creates or maintains a good living environment, before considering the development of greenfield sites” (para.7).

4.1.8 Clearly, the maximisation of urban housing potential has to be balanced with concerns to prevent ‘town cramming’ and the loss of open land. However, PPG3 emphasises that careful scrutiny is required to subdivide open land into those sites which need to be kept open and those which can be developed;

“Policies which seek to make maximum use of vacant urban land for housing will need to distinguish between sites which need to be retained for recreation, amenity or nature

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conservation purposes, and areas which are genuinely suitable for development.” (para. 27)

- 4.1.9 Over the last year policies have continued to develop towards a more explicit sequential approach. In February 1998 the Secretary of State published “Planning For The New Communities of the Future”. The Introduction to this document states;

“One of the most testing challenges we face as we approach the Millennium is how to create a more sustainable environment and more sustainable communities. Both are essential if we are to have more thriving towns and cities and to protect our countryside. This will mean finding environmentally sensitive long-term solutions to our housing requirements. Planning for thriving new communities on previously used sites will be central to our approach, as we plan for the new households that people will establish” (para.1).

- 4.1.10 To achieve this the Document proposes;

“.....a sequential and phased approach to the development of all sites, which means there will be a general preference for building on previously developed sites first, especially in urban areas” (para. 4).

- 4.1.11 This concept of a sequential approach to housing is spelt out in greater detail in the draft revisions to PPG3 which were published in late March 1999. The draft PPG3 puts in place a series of options that need to be considered prior to the release of greenfield sites;

“The Government recognises the need for Local Planning authorities to determine the phasing of release of development sites. It does not expect greenfield sites to be released for

development until the following options have been considered for providing additional housing;

- Using those previously developed sites within the urban area that can use existing physical and social infrastructure and which have ready access by non-car modes to jobs, shops and other services;
- Exploiting fully the potential for better use and conversion of existing dwellings and non residential premises;
- Raising density of development in and around existing centres and in other areas with good public transport accessibility;
- Releasing land held for alternative uses, such as employment which exceeds likely realistic requirements; and
- Identifying areas where, through land assembly, area wide redevelopment or renewal can be promoted" (para.25).

4.1.12 Given that the use of "previously developed land" is now at the core of the draft PPG3, it helpfully provides a definition in Annex B;

"Previously-developed land is that which is or was occupied by a permanent (non-agricultural) structure, and associated fixed surface infrastructure. The definition covers the curtilage of the development. Previously-developed land may occur in both built-up and rural settings. The definition includes defence buildings, and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures.

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The definition excludes land and buildings that have been used for agricultural purposes, forest and woodland, and land in built-up areas which has not been developed previously (e.g. parks, recreation grounds, and allotments – even though these areas may contain certain urban features such as paths, pavilions and other buildings). Also excluded is land that was previously developed but where the remains of any structure or activity have blended into the landscape in the process of time (to the extent that it can reasonably be considered as part of the natural surroundings), or has subsequently been put to an amenity use and cannot be regarded as requiring redevelopment.”

- 4.1.13 This clearly needs some interpretation in terms of this site. Dealing initially with the first part of the definition, there can be no doubt that the continued existence of two massive elevated brick reservoirs on the site makes the site “previously developed land”. It is interesting to note that this conclusion would apply even if the reservoirs had been demolished.
- 4.1.14 There are a series of exclusions from this definition and two require closer scrutiny;
- (a) “land that was previously developed but where the remains of any structure or activity have blended into the landscape in the process of time (to the extent that it can be regarded as part of the natural surroundings)”.
 - (b) “or has subsequently been put to an amenity use and cannot be regarded as requiring redevelopment”.

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- 4.1.15 Dealing first with point (a), "blended into the landscape," it is the case that some of the embankments around the reservoirs are grassed and contain trees, but this is not more than a veneer of green around what is effectively a large brick box with a volume of almost 70,000 cubic metres. The artificial tennis court surface on the roof of the reservoir extends over 8760m² (2.16 acres). It will be apparent from the site visit that the roof of the reservoir has not blended into the landscape in any sense whatsoever. It remains a large and entirely artificially surfaced area. This is clearly very different in character and appearance from the natural garden area of Aubrey House or Holland Park itself.
- 4.1.16 Turning to the "amenity use" in point (B) the key to the interpretation of this exception is at the start of the sentence where it is stated that "Also excluded is land which was previously developed but where the ...". This indicates that if a structure has been demolished and the cleared site has been subsequently put to an amenity use, redevelopment is then not essential. Clearly this does not apply to the reservoirs.
- 4.1.17 A counter argument may be put forward that the exclusion applies to buildings which have been put to an amenity use. Whilst I do not accept that this is the intention of the definition, my response is that the only "amenity" use which the site has been put to is the recreational use of the tennis courts. This positive "amenity" use is being retained and enhanced by the construction of the twelve replacement courts. Since the new tennis courts allow part of the site to be released for development, the current appeal proposals fulfil both parts of the balance sought by the government in both retaining the recreational role of the site whilst achieving the residential redevelopment of this previously developed site.
- 4.1.18 Detailed debate over the precise meaning of the definition in annex B is probably unnecessary in view of the Borough Council's return to the

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DETR covering the National Land Use Database regarding this site. My Appendix 19 contains a letter from the Borough Council dated the 8th June 1999 which confirms;

“... that this Authority has made a return to the DETR concerning the National Land Use Database, and that this site was included in that response. The site is included in Category 5 (other previously developed land or buildings where it is known there is potential for redevelopment but the site to not have any allocation or planning permission)”

4.1.19 In concluding my comments on the draft PPG3: it is apparent that, in common with the advice in PPG1 and the current PPG3, the draft PPG3 recognises that there is potential tension between the objective to maximise the use of previously developed sites and the need to avoid “Town Cramming” or the loss of important open space;

“The Government does not wish to encourage ‘Town Cramming’. It is committed to preserving valuable open space within urban areas. Nonetheless, urban land can be significantly under used” (para. 36).

4.1.20 It is evident from the above that over the last seven years the Government has progressively sought to give greater and greater prominence to the reuse and redevelopment of previously developed land. This is particularly favoured in respect of sites within the major urban areas with good access to public transport such as the appeal site. This advice is reflected in the Borough Council’s return in respect of the National Land Use Database where it is accepted that the appeal site is both previously developed land and has potential for redevelopment.

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4.2.0 Regional Guidance

4.2.1 Regional Guidance for London is provided in RPG3 which was published in May 1996. Paragraph 1.14 contains ten objectives to guide the development of the capital. Of these, four are particularly relevant to the appeal proposal;

- (a) "encourage a pattern of land use and provision of transport which minimises harm to the environment and reduces the need to travel, especially by car, consistent with the principles of sustainable development."
- (b) "promote urban regeneration, particularly in areas requiring physical improvement or the enhancement of employment opportunities, within the objectives for the South East Region as a whole".
- (c) "maximise housing provision in London, consistent with maintaining environmental quality, to meet the changing needs of the population".
- (d) "maintain and improve the natural and open environment, including the Green Belt, Metropolitan Open Land and areas of national and international significance including the River Thames".

4.2.2 RPG3 accepts that the supply of land in London is limited and this leads to an imbalance between housing supply and demand (para.4.1). However;

"Boroughs should seek to make the maximum contribution to meeting the demands for housing in London and to encourage the provision of well designed housing of all types whilst

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safeguarding the quality of the environment. This will contribute to the implementation of policies for the more efficient use of urban land, the conservation of the Green Belt and the principles of sustainable development” (para. 4.1).

4.2.3 Table 4.1 of RPG3 sets out the guidance of LPAC on the dwelling provision in London as a whole and in individual Boroughs between 1992 and 2006. For London as a whole the figure is 234,100 additional dwellings and for the Royal Borough of Kensington & Chelsea it is 7,750.

4.2.4 However, it is important to note that this figure was the result of an assessment by LPAC and the Government was keen to emphasise that the figures should be regarded as the minimum acceptable. Paragraph 4.8 stated;

“Table 4.1 presents the additional net dwellings as proposed by LPAC in the 1994 Advice. In the light of the need to have regard to the principles of sustainable development, to ensure that as many as possible of London’s residents and workers are housed within the capital, and to respond to the continuing demand for housing as demonstrated in successive population and household projections, the figures in the table should be regarded as the minimum net additional completions over the period to be proposed within the UDP and tested against the policies of this Guidance in further UDP inquiries”.

4.2.5 The additional dwelling provision is made up of four components (para. 4.6);

- (a) new dwellings provided on sites redeveloped and made available from other uses, including a housing component in suitable mixed use schemes

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- (b) the adaptation of existing buildings in other uses for housing
- (c) the redevelopment of land used for housing to a higher density
- (d) the conversion of the existing housing stock for occupation by more than one household.

4.2.6 Although RPG3 is now three years old and does not fully reflect the sequential approach contained in "Planning For The New Communities of the Future" and the draft PPG3, its desire for a more sustainable and urban pattern of development combined with a housing provision which is expressed as a minimum are entirely consistent with the philosophy of these later documents.

4.2.7 Since the publication of RPG3 in 1996, LPAC has initiated further research into potential sources of future large housing sites in London. One particular research study which was jointly sponsored by LPAC/GOL/DETR was undertaken by Halcrow Fox (see Appendix 20) and published in July 1998 ("Possible Future Sources of Large Housing Sites in London [(Con 68)]. The brief was to;

"investigate the contribution that large sites could make to meeting the requirements for housing in London to 2016" (para. 1.1.1).

4.2.8 The context for the study is particularly relevant to this Inquiry,

"This study is part of the broader objective of achieving a sustainable future for London. Government and LPAC policy seeks to reduce the need to travel by producing more compact urban development served by public transport. This increases the emphasis on meeting development needs within existing

built up areas while maintaining and enhancing environmental quality. The capacity of these areas to meet housing requirements is critical to achieving a more sustainable urban form." (para. 1.1.2)

- 4.2.9 For the purpose of the report a "large site" is defined as being generally above one hectare, except in Central London where the threshold is half a hectare. On this basis the relevant size in Kensington & Chelsea is one hectare and above. Whilst the application site extends to one and a half hectares, the residential development site is just over one hectare. In view of this, the conclusions of the report are of direct relevance to the outcome of this appeal.
- 4.2.10 The report assessed a wide range of potential sources of land supply including industry/commerce, community services, vacant land and transport/utilities. Table 5.1 of the report discloses that 217 hectares of Water Utility land was identified as potentially available by the consultants. Having cross referenced this with Thames Water, this was reduced to 34 hectares when Green Belt, MOL and SSSI land is excluded.
- 4.2.11 The report notes;
- "Twelve hectares have no major policy constraints and with the resolution of access, services and layout, could be developed in the short term. A further 22 hectares are likely to become surplus to operational needs in the medium term. These sites are not subject to significant planning constraints but difficulties such as access might delay development. The precise location of sites is commercially confidential. Fifteen hectares of potentially surplus land (44%) are in Outer West London, while eleven hectares (32%) are in Inner East London." (para 5.3.6)

4.2.12

I have checked with Thames Water to ascertain whether the Campden Hill Reservoir site was put forward by them as part of this study. Thames Water have confirmed that the site was put forward and enclose a copy of their return to Halcrow Fox dated the 18th May 1997. (Appendix 21). The first table details the "schemes in progress" which total 12 hectares, these are subdivided into 9.43 hectares in Richmond (categorised as Outer West) and 2.14 hectares in Kensington & Chelsea and Westminster. The 2.14 hectares comprises the 1.5 hectares of the appeal site and 0.74 hectares of land at Gatliff Road, Westminster. Regrettably, they have been categorised as both being "central" when in fact the appeal site should have been categorised as "Inner West". This error is carried forward into Table 5.2 of the report. However, since these were the only Thames Water "schemes in progress" in 1997 there can be no doubt that the appeal site was put forward by Thames Water and included in the Halcrow Fox report.

4.2.13

Table 5.1 summarised the amount of Water Utility Land (217h) identified by Halcrow Fox and the 35 hectares identified by Thames Water. This information is then brought together in Table 8.2 which shows, on a Borough by Borough basis, the amount of land which could be developed on non industrial, warehousing and vacant land. It is not possible to identify from this table how the appeal site was categorised. However, for the purposes of this appeal the relevant conclusion are;

- (a) That LPAC (1998) view surplus and redundant Water Utility Land as a potentially significant source of large housing sites in London.
- (b) The Borough Council (in 1999) has advised the DETR as part of its return on the National Land Use Database, that the appeal

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site is both previously developed land and has potential for redevelopment (Appendix 19).

4.3.0 Kensington & Chelsea UDP

4.3.1 The Kensington & Chelsea UDP was adopted in August 1995. As a consequence, the plan predates the final version of RPG3 and the 1997 PPG1. The preamble to the housing section of the UDP expresses some concern about the implications of the proposed housing provision in the emerging RPG and what this would mean for the Borough;

“A new housing capacity figure for the Borough will be included in revised Regional Planning Guidance 3 to be published in 1995. Whilst the Council will endeavour to ensure this level of additional provision is achieved, there are a number of constraints. The number of sites with potential for residential development is declining, as is the number of properties suitable for conversion, and there is an increasing demand for limited on street parking space. Kensington & Chelsea is already an intensively developed inner city borough with little available development land. If the housing capacity figure as proposed to be included in RPG3 is to be met, a high priority must be placed on allocating all development land for residential use, except where there is a history of employment generating uses and the site is unsuitable for housing. This is all the more necessary because of the diminishing number of suitable properties for conversion.” (paragraph (v) pages 79 & 80). (see Appendix 22)

4.3.2 By way of context, this extraordinarily strong statement in favour of promoting residential development was written in response to the 1994 LPAC document “Advice on Strategic Planning Guidance for London”, which assessed the residential capacity of the Borough (1992 – 2006) as 7,750. Whilst the figure was retained in the

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published RPG3 it was transformed from being regarded as the "maximum housing provision with the context of environmental principles" (LPAC para. 4.9 p.52) to the "minimum net additional completions" in RPG3 (para. 4.8). Thus the test on the UDP to maximise all potential residential opportunities is now even more onerous than when the UDP was adopted.

4.3.3 The sentiment of paragraph (v) is carried forward in the four strategic policies of relevant to housing

STRAT 13 "TO ENSURE THE CONTRIBUTION OF THE ROYAL BOROUGH TO THE DWELLING STOCK OF LONDON IS NOT DIMINISHED AND IS INCREASED WHEREVER APPROPRIATE."

STRAT 14 "TO SEEK TO MAXIMISE THE RESIDENTIAL CAPACITY OF THE BOROUGH IN LINE WITH STRATEGIC GUIDANCE FOR LONDON".

STRAT 15 "TO ENCOURAGE AN ADEQUATE AND CONTINUING SUPPLY OF LAND FOR NEW HOUSING THROUGH THE DEVELOPMENT OF VACANT AND UNDER USED LAND FOR RESIDENTIAL USE IN APPROPRIATE LOCATIONS".

STRAT 16 "TO SEEK AN INCREASE IN THE AMOUNT AND RANGE AND SIZE AND TYPES OF DWELLINGS TO MEET THE NEEDS OF THOSE SEEKING PERMANENT ACCOMMODATION IN THE ROYAL BOROUGH, WHILST MAINTAINING THE OVERALL QUALITY OF THE RESIDENTIAL ENVIRONMENT".

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4.3.4

The strong statement in favour of maximising residential development in paragraph (v) of the UDP is given policy status in Policy H2. This states

“TO SEEK THE DEVELOPMENT OF LAND AND BUILDING FOR RESIDENTIAL USE UNLESS:

(A) A SATISFACTORY RESIDENTIAL ENVIRONMENT CANNOT REASONABLY BE ACHIEVED BY REASON OF EXCESSIVE NOISE, INAPPROPRIATE LOCATION OR GROUND CONTAMINATION; OR

(B) THE LAND IS REQUIRED FOR THE PROVISION OF SOCIAL OR COMMUNITY FACILITIES TO MEET LOCAL NEEDS; OR

(C) THE DEVELOPMENT IS FOR THE REPLACEMENT ON THE SAME SITE OF EXISTING COMMERCIAL FLOORSPACE WHICH HAS NOT GIVEN RISE TO ENVIRONMENTAL OR TRAFFIC PROBLEMS”.

4.3.5

This policy is of particular importance to the assessment of the current appeal proposal, and I propose to consider each of the three “exception” criteria in turn. In the context of criterion (a) it has never been suggested during my discussions with planning officers that a satisfactory residential environment cannot be achieved because of noise or ground contamination. Given the enclosure of the site by residential development on three sides and a school on the south, a residential redevelopment would be wholly appropriate.

4.3.6

Turning to criterion (B), the existing tennis courts will be relocated and there will be no loss of a recreational facility. Whilst the historic reservoir use may be regarded as a utility use which supported the local

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community, this has now been superseded by the completion of the London Ring Main. Thus the main purpose of the site has now become redundant.

4.3.7 Criterion (C) only applies to cases where existing commercial floorspace is proposed to be replaced. This does not apply in this case.

4.3.8 On this basis, the appeal site does not fulfil any of the exception criteria in Policy H2. As a consequence, the full rigour of Policy H2 "to seek the development of land and buildings for residential use" applies to the appeal site.

4.3.9 This would also appear to be the view of the Borough Council since paragraphs 4.37 and 4.38 of the Committee report (Appendix 18) state;

"Applying the criteria of Policy H2, it is considered that criterion (A) does not provide cause for concern when considering the principle of housing on this site, given that the site is located firmly in a residential part of the Borough and actually includes housing already. The amount and form, that housing on this site should take is, however, another matter and this is returned to shortly. Criterion (B) is met, as the role the site plays in providing a community facility (the tennis club) is preserved. Criterion (C) does not present an objection given the redundancy of the existing use of the site.

It is concluded that there can be no objection to the principle of some residential provision on this site, subject to other policies of the plan. However the question of how much housing, where it is to be positioned, and what form it should take, remain to be examined in the context of these other Policies".

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- 4.3.10 Once again we return to the issue of 'balance' which is at the centre of this appeal.
- 4.3.11 Having set out this strong policy statement in favour of the principle of maximising residential development in policy H2, the remainder of the housing policies (H3 to H28) of the UDP articulate the detailed development control policies applying to residential development in the Borough.
- 4.3.12 The Borough Council has started the preparation of Alterations to the UDP which will roll the plan forward to 2011. The draft Alterations were published for public consultation up to the 11th June 1999. The consultation responses have not yet been reported to Committee.
- 4.3.13 The proposed Alterations to the Housing Chapter are very limited and there are no proposed changes to the text of Policy H2 which was referred to above. Whilst there are some changes to the affordable housing policies, these are considered in Section 6 of my evidence.
- 4.3.14 Of more relevance to this Inquiry is the decision of the Council to include the appeal site within a "Schedule of Major Development Sites" (page 282 see Appendix 23). The appeal site is listed as "New Site - Campden Hill Reservoir, 97 Campden Hill Road - Residential including Affordable Housing, Tennis Courts, Open Space - H15, H23 apply".
- 4.3.15 It is clearly relevant that the Council now acknowledges the development potential of this site and proposes a mix of land uses which precisely conform with the mix suggested in appeal proposals.

4.4.0 Achievement of The Housing Provision

- 4.4.1 Whilst both PPG3 and RPG3 emphasise that five year land supply assessment should not apply in London, it is relevant to consider the extent to which the Borough Council is "on track" to achieve the minimum provision of 7,750 new dwellings between 1992 and 2006.
- 4.4.2 The latest information on this issue is contained in the LPAC document ADV53 "London's Housing Provision 1987 - 1996" which was published in May 1998 (Appendix 24) This provides an analysis on a Borough by Borough basis of the achievement of the housing provision in both the 1989 guidance (covering the period 1987 - 2000) and RPG3 (covering 1992 - 2006). This is considered in terms of approvals and completions.
- 4.4.3 Tables 3 and 4 of Appendix 24 show the position first of all in terms of the 1989 guidance covering the period to 2001. This shows that whilst Kensington & Chelsea had a provision of 3,850 between 1987 and 1991, only 2683 units had received an approval. This was a shortfall of 30%. However, table 5 discloses that the position for completions was far worse with only 2015 units built; a shortfall of 48%.
- 4.4.4 Turning to the figures relating to RPG3 the same pattern emerges. The pro rata RPG3 housing provision for the four years 1992 - 1996 is 2,583 units. Whilst the number of approvals is only marginally below this figure, the number of completions was only 1,869. This represents a shortfall of 714 units or 28%.
- 4.4.5 Whilst it would not be correct to interpret these figures as if they were a shortfall on a five year land supply exercise, it must be a concern that even in the context of the reasonably recent RPG3 housing provision the Borough is struggling to even approach the minimum figure set down by the Secretary of State. In these circumstances, even greater

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weight must be given to maximising the housing provision on suitable sites in the Borough, such as the appeal site.

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4.5.0 Conclusions

4.5.1 This section of my evidence has considered national, regional and UDP planning advice on the principle of maximising the housing potential of sites, such as the appeal site, which are embedded within the urban area and have been previously developed. This analysis has demonstrated how national policy has rapidly moved from a position where previously developed sites should be used "wherever possible" to one where previously developed sites represent the "preferred" (PPG1 para. 7) or "priority" (draft PPG3 para. 4) in the sequence of land release.

4.5.2 The 1997 PPG1, the RPG3 housing guidelines and the draft PPG3 all both post date the adoption of the Kensington & Chelsea UDP and further emphasise the clear statement in the UDP that "a high priority must be placed on allocating all available development land for residential use, except where there is a history of employment generating use and the site is unsuitable for housing" (UDP para. (v) pages 79/80). As the UDP notes, the supply of suitable sites is very limited and this situation is not going to get any easier over the next few years.

4.5.3 The draft Alterations to the UDP, the Borough Council's returns in respect of the National Land Use Database and the recent Committee report have all helped to clarify the attitude of the Borough Council to the appeal site. It would now appear to be accepted that, in principle, this is a previously developed site with potential for residential development. The draft Alterations go one step further in recognising the site as a major "development site" to comprise housing, affordable housing, tennis courts and open space. Since this is the precise mix proposed by the Appellants, it is evident that it is only the future

balance and disposition of uses on this site which remains in
contention between the parties.

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5.0.0 RECREATIONAL SPACE / OPEN SPACE ISSUES

5.1.0 National Policy

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5.1.1 The main policy document detailing Government policy on recreation and open space issues is PPG17 "Sport & Recreation". Paragraph 4 confirms that this guidance applies to all forms of open space of "public value".

5.1.2 The document commences with a broad based comment about the value of open space;

"Local Planning Authorities need to take into account the value of open space not only as an amenity but also as a contribution to the conservation of the natural and built heritage of the area. Policies for open space have to be set within a planning framework which takes full account of the community's need for development and conservation of all kinds; local planning authorities should therefore balance very carefully the competing claims of different land uses and the community's long term requirements for open space" (paragraph 4).

5.1.3 Having established the importance of a planning framework and the need for a balanced approach, PPG17 puts forward some specific requirements of Local Plans and UDP's. They should; (para.13)

- (a) identify local needs
- (b) identify deficiencies
- (c) protect open space and other land with recreational or amenity value
- (d) give reasonable certainty to developers, landowners and residents.

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5.1.4 The assessment of local needs and deficiencies is a critical element in this process. However, the Government considers that this should be a local process and not imposed at a central level;

“The Government does not consider that it would be helpful to prescribe national standards of recreational provision. Circumstances differ greatly from one area to another. It is for local planning authorities to identify deficiencies in public open space and recreational provision, and to justify the amount and location of new provision against other competing pressures for the use of land” (para.16).

5.1.5 In recognition of the fact that applications will be submitted which propose the development of recreational and amenity open space, the PPG suggests that local plans and UDP’s should provide a clear policy base for decision making. In particular;

“Designation of land as urban open space on the proposals map and in the policies of the Local Plan will help to ensure that it’s amenity and recreational value to the community are taken fully into account in considering any proposals for development. Plans will need to distinguish on the proposals map between:

- open spaces which in the authorities’ view will need to be protected from development for as far ahead as can be foreseen;
- sites which are temporarily allocated to recreational use; and
- unused open land which may be suitable for development.”

5.1.6 The next subsection of my evidence considers the adopted Kensington & Chelsea UDP and the confusion which has arisen in the minds of local residents about the precise status of the appeal site. In my opinion,



this confusion has arisen from the failure of the UDP Proposals Map to identify areas of deficiency or areas of protected open space or recreational space, despite the clear guidance in PPG17.

5.1.7 Having set the correct approach for the preparation of UDP's, PPG17 then outlines the two tests for the assessment of applications involving open or recreational space;

“In their planning decisions, local planning authorities should seek to achieve a reasonable balance between the need to make adequate provision for development in urban areas and the need to protect open space from development. Undeveloped land which has a recreational or amenity value should be protected by the planning system if it can be demonstrated that there is, (or would be), a deficiency in accessible public open space in the area. Development control decisions that would reduce open space should take into account the relevant development plan policies, and whether it is to be replaced with alternative provision with similar community benefit” (para. 27).

5.1.8 Having established the policy tests required by PPG17, it is instructive to consider their implications for the development of the appeal site;

- (a) the site cannot be regarded as undeveloped land (PPG17 para. 27) since the whole site has been developed since the middle of the last century and the massive brick structure of the reservoirs remain on site. Even the embankments represent past engineering operations to provide stability to the reservoir structure.
- (b) notwithstanding the fact that the appeal site is not “undeveloped land”, it has to be accepted that this part of the site which is occupied by the Tennis Club has a recreational

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function as all weather artificial out door tennis courts. The difficulty in interpreting the guidance in PPG17 is that it did not foresee a situation where synthetic tennis courts would be provided on the roof of a large brick structure some three to four metres above the prevailing ground level.

- (c) is the appeal site in an area deficient in accessible public open space (PPG17 para. 27). As will be explained later in this section of my evidence the UDP Proposals Map does not identify areas of deficiency in the Borough. However, the 1992 Open Space survey confirms that the reservoirs are not in an area of deficiency. The boundary of the deficiency area runs along the eastern boundary of the reservoirs. Thus the Pump House and Water Tower House are in an area of deficiency. However, the Council do not contest the suitability of this part of the site for residential development.

- (d) is there to be replacement provision of similar community benefit (PPG17, para. 27). In this case the existing twelve tennis courts and one practice court will be provided on site in a higher quality facility. This will include six indoor courts, thus providing more flexible accommodation.

5.1.9 In the context of PPG17 the following conclusions can be drawn about the appeal proposal,

- (a) the site is not undeveloped land.

- (b) the site has a role as a recreational space but all the current recreational facilities will continue to be provided on site.

- (c) the site of the reservoirs is not in an area of open space deficiency.

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5.1.10 Paragraph 27 of PPG17 requires a balancing exercise to be undertaken between legitimate development needs and the need to protect open space. However, since the appeal site does not neatly fit into any of the conventional categories it is appropriate to consider the various characteristics of open/recreational space and then assess how many are appropriate to the appeal site. In my view the potential characteristics are;

- (a) undeveloped land
- (b) natural green space
- (c) nature conservation
- (d) recreational use
- (e) "sense of openness"/inter visibility

5.1.11 The application of the criteria suggests a spectrum of sites exist. At one extreme is the natural cricket field which is undeveloped, is a 'natural' green space, may have nature conservation interest, is used for recreation and has a sense of openness due to the open visibility across the site. Close to the other extreme is that part of the current appeal site which is occupied by the reservoirs. This is developed, it is not a natural green space (other than vegetation on some of the peripheral embankments), and it has no recorded nature conservation role. Whilst it is in recreation use, it has limited intervisibility from public view points because the courts are raised some three to four metres above the prevailing ground level.

5.1.12 In view of these factors, the only sense of 'openness' derives from the fact that the four metre high roof of the reservoirs is lower than the height of the other properties in the area, thus allowing greater proportion of the sky to be seen than is normal in a developed part of London.