



Neutral Citation Number: [2024] EWHC 3326 (Admin)

Case No: AC-2024-LON-000956

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/12/2024

Before :

**MR JUSTICE MOULD**

Between :

**SAVE OUR SOUTHBANK**

**Claimant**

- and -

**(1) SECRETARY OF STATE FOR HOUSING,  
COMMUNITIES AND LOCAL  
GOVERNMENT**

**(2) LONDON BOROUGH OF LAMBETH  
(3) MEC LONDON PROPERTY 3 (GENERAL  
PARTNER) LIMITED**

**(4) COIN STREET COMMUNITY BUILDERS  
& COIN STREET SECONDARY HOUSING  
CO-OPERATIVE**

**Defendants**

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**JACK PARKER** (instructed by **Richard Buxton Solicitors**) for the **Claimant**  
**ROBERT WILLIAMS** and **RUCHI PAREKH** (instructed by **Government Legal**

**Department**) for the **First Defendant**  
**RUPERT WARREN KC** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**)  
for the **Third Defendant**

The Second and Fourth Defendants did not appear and were not represented.

Hearing dates: 16-17 October 2024

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**Approved Judgment**

This judgment was handed down remotely at 10:30am on Friday 20<sup>th</sup> December 2024 by circulation to the parties' representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

## MR JUSTICE MOULD :

### Introduction

1. This claim concerns the validity of the decision of the First Defendant to grant planning permission for redevelopment of the London Television Centre, the former headquarters of ITV at 60-72 Upper Ground London SE1 [**“the site”**]. The First Defendant issued his decision on 9 February 2024. The claim was issued on 20 March 2024. On 7 May 2024, Lang J gave the Claimant permission to bring the claim.

### Background facts

2. The site has a substantial and prominent frontage on the south bank of the River Thames, adjacent to the IBM building to the west and to Prince’s and Gabriel’s Wharf to the east. Further west along the river frontage is the Royal National Theatre and beyond Waterloo Bridge, the Royal Festival Hall. Further to the east are the Oxo Tower and Sea Containers House. This section of the South Bank between Waterloo Bridge and Blackfriars Bridge is graced by the spacious Queen’s Walk, which runs along the river frontage and provides a greatly valued amenity both to Londoners and visitors to the attractions of the South Bank.
3. The site accommodates one building, comprised of two elements. Fronting Upper Ground there is a 25-storey tower block known as Kent House. On the river frontage, there is a 4-storey podium building which housed television studios. ITV closed its operations at the site in 2018. Thereafter, the site was used as office accommodation and for locally based creative activities. The site has been vacant since 2021.
4. In May 2018, planning permission was granted for a scheme of redevelopment of the site. It was a mixed-use scheme, including office accommodation, television studios, over 200 residential units and some retail use. The scheme proposed demolition of the existing building and its replacement with two new buildings of 14 and 31 storeys in height. That planning permission was not implemented and has since lapsed.
5. On 2 July 2021, the Third Defendant, MEC London Property 3 (General Partner) Limited, made a fresh application for planning permission to redevelop the site. The proposed scheme [**“the scheme”**] is described as the demolition of the existing building and phased redevelopment to provide new buildings for office, culture and innovation hub, retail, food and beverage uses with cycle parking, hard and soft landscaping and associated works and plant, each phase being an independent act of development. The scheme comprises a 14-storey building fronting onto Queen’s Walk and the river and a 25-storey building fronting onto Upper Ground. A 6-storey raised podium would link these two buildings. The scheme does not propose residential use.
6. The local planning authority, the Second Defendant, had been minded to grant planning permission for the scheme. On 31 August 2022, however, the First Defendant gave a direction under section 77 of the Town and Country Planning Act 1990 [**“the 1990 Act”**] calling in the planning application for his own determination.
7. On 6 December 2022, a planning inspector appointed by the First Defendant opened a local inquiry into the planning application. The inquiry sat for 12 days, closing on 25

January 2023. The inspector reported to the First Defendant on 9 May 2023. She recommended that planning permission be granted for the scheme.

8. On 9 February 2024, the First Defendant issued his decision letter [**“the DL”**] granting planning permission.

### **The claim**

9. The Claimant applies under section 288 of the TCPA to challenge the validity of the First Defendant’s decision. The Claimant is an unincorporated association formed in 2022 as a group of local stakeholders, including individuals and organisations, whose stated objective is that they wish to see the appropriate development of the site. The Claimant was granted “Rule 6 status” to appear at the local inquiry before the inspector. Rule 6 status was also granted to the Fourth Defendant. The Claimant appeared at the local inquiry objecting to the grant of planning permission for the scheme.
10. By this claim, the Claimant contends that the First Defendant’s decision is unlawful on four grounds. In summary –
  - (1) The First Defendant failed to provide any or any adequate reasons as to whether the scheme would preserve the heritage significance of St Paul’s Cathedral, Waterloo Bridge and five conservation areas.
  - (2) The First Defendant misinterpreted relevant development plan policy and so failed to understand that there was a policy requirement to deliver housing as a component of redevelopment of the site.
  - (3) The First Defendant failed to understand that the policies of the London Plan 2021 [**“the London Plan”**] required consideration of the prospects of retaining the existing buildings on the site, to deliver housing as part of the Circular Economy.
  - (4) The First Defendant failed properly to apply Policy Q26 of the Lambeth Local Plan 2020-2035 [**“the Local Plan”**] which states the policy requirements for assessment of planning applications proposing the development of tall buildings.

### **The legal framework**

11. The effect of sections 70(2) and 77(4) of the 1990 Act was to require the First Defendant to determine the planning application for the scheme having regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. The development plan consisted of the London Plan, the Local Plan and the Southbank and Waterloo Neighbourhood Plan 2019.
12. By virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004, the First Defendant was under a duty to determine the planning application in accordance with the development plan, unless material considerations indicated otherwise.
13. In order to fulfil these duties, the First Defendant was required both to identify and properly to understand the relevant policies of the development plan. His decision is open to challenge, if it is shown that he has failed to have regard to a policy of the development plan which is relevant to the planning application or has failed properly

to interpret that policy: City of Edinburgh Council v Secretary of State for Scotland [1997] 1 WLR 1447, 1459D.

14. The correct interpretation of a policy of the development plan is ultimately a matter for the court to determine. Such a policy should be interpreted objectively in accordance with the language used, always read in its proper context: Tesco Stores Limited v Dundee City Council [2012] PTSR 983 at [18].
15. The application of the relevant policies of the development plan was a matter for the First Defendant to determine in the exercise of his planning judgment. It is important to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy: Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] 1 WLR 1865 at [26]. Provided that the First Defendant did not lapse into *Wednesbury* irrationality, the weight to be given to policies of the development plan and to other material considerations was for him to determine: Tesco Stores Limited v Secretary of State for the Environment [1995] 1 WLR 759 at 780F-H.
16. The First Defendant was required to give proper, adequate and intelligible reasons for his decision. His reasons must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But his reasons need refer only to the main issues in the dispute, setting out his conclusions on the “principal important controversial issues”, not to every material consideration: South Bucks District Council v Porter (No 2) [2004] 1 WLR 1954 at 1964B-G.
17. The First Defendant’s decision (and the underlying reasoning in the inspector’s report) is to be read fairly and in a reasonably flexible way. It is not to be construed as if it were a statute. It has been written principally for parties who know what the issues raised at the local inquiry were and what evidence and argument was deployed in relation to those issues: Seddon Properties v Secretary of State for the Environment (1981) 42 P&CR 26 at 28.
18. These and other familiar principles of judicial review of planning decisions made by the First Defendant are authoritatively stated by Lindblom LJ at [6] in St Modwen Developments Limited v Secretary of State for Communities and Local Government [2018] PTSR 746.

## **Ground 1 – Heritage**

### *The issue*

19. The issue is whether the First Defendant failed to provide adequate reasons as to whether the scheme would preserve the heritage significance of St Paul’s Cathedral, Waterloo Bridge and five conservation areas, namely Old Barge House Alley, Whitefriars, Waterloo, Temple and Strand Conservation Areas. St Paul’s Cathedral is designated as a Grade 1 listed building. Waterloo Bridge is designated as a Grade 2\* listed building.

### *Special duties – listed buildings and conservation areas*

20. The law imposes special duties on those determining planning applications which may affect listed buildings and conservation areas.
21. By virtue of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 [**“the LBA 1990”**], in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or (as in this case) the First Defendant *“shall have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”*.
22. By virtue of sections 72(1) and (2) of the LBA 1990, in determining a planning application with respect to any building or other land in a conservation area *“special attention shall be paid to the desirability of preserving or enhancing the character or appearance”* of the conservation area.
23. The practical effect of these duties in the determination of applications for planning permission in which they arise was stated by Sullivan LJ at [29] in Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2015] 1 WLR 45 –  
  
*“...Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise”*.

#### *Heritage impacts – the inspector's approach and findings*

24. In paragraph 14.04 of her report [**IR14.04**], the inspector identified the effect of the scheme on the setting and significance of a series of listed buildings and conservation areas as one of the main considerations arising in the determination of the planning application. In IR14.05 the inspector explained how she would approach that question. She would consider each listed building and conservation area in turn. She would consider those factors which contributed to their setting, then assess the scheme's impact on that setting, and finally draw her conclusion on any resulting harm. In any case in which she found that the scheme would cause less than substantial harm to the significance of the listed building or conservation area, she would weigh that harm against the public benefits of the scheme. That approach accorded with the policy stated in paragraph 202 of the then current edition of the National Planning Policy Framework [**“the Framework”**].
25. Having carried out that assessment in IR14.07 to IR14.61, the inspector stated her conclusions on *“heritage harm”* in IR14.62 to IR14.66. She found that there would be harm to the settings of three listed buildings, the Royal National Theatre, the IBM building and Somerset House. In policy terms, in each case she judged the resulting harm to the significance of the *“designated heritage asset”* to be less than substantial.
26. Perusal of her assessment of the impact of the scheme on the listed buildings and conservation areas to which the Claimant refers in ground 1 shows that in each case, the inspector found that no harm would result to the setting or significance of the designated heritage asset.

#### *Heritage impacts – the First Defendant's conclusions*

27. The First Defendant set out his reasons and conclusions on the issue of the scheme's impact on the settings of listed buildings and on conservation areas in DL23 to DL28 inclusive.

28. In DL23 and DL24, the First Defendant said that he agreed with the inspector's findings on the impact of the scheme on the listed Royal National Theatre and IBM buildings and on the grade 1 listed Somerset House –

*“23. ....[The Secretary of State] agrees that there would be less than substantial harm to the setting of the RNT and the IBM buildings, at the lowest level within the spectrum of harm (IR14.63 and IR14.166), and conflict with policy Q20(ii) of the LP as well as LonP policy HC1(C) (IR14.166).*

*24. For the reasons given at IR 14.37- 14.39 and IR 14.166, the Secretary of State agrees that there would be less than substantial harm to the setting and significance of the Grade 1 Listed Somerset House, at the lowest level within the spectrum of harm (IR14.166), and conflict with LonP policy HC1(C) and policy Q20(ii) of the LP (IR14.166)”.*

29. In DL25 and DL26, the First Defendant considered the effect of the scheme on Roupell Street Conservation Area and South Bank Conservation Area. He reached a different conclusion to the inspector in relation to the effect of the scheme on these designated heritage assets. He explained why –

*“25. The Secretary of State has noted the Inspector's conclusions at IR14.55-14.58 in respect of the Roupell Street CA, as well as her comments on Historic England (HE) 's views at IR 14.65- 14.66. The Secretary of State agrees in this respect with HE, the council and the rule 6 parties that there would be harm to the character and appearance of the CA (IR8.138, IR9.80-81). He considers there would be a low level of harm to the CA, within the overall less than substantial spectrum of harm.*

*26. The Secretary of State notes the Inspector's assessment of the impact of the proposal on the South Bank CA at IR14.41- 14.49, and notes her assessment at IR14.45 that the application proposals would create a welcoming and attractive entrance to this part of the CA. In some respects, including via the introduction of active frontages and the other public realm improvements, he agrees. However, the Secretary of State has set out his concerns about the proposed scale and massing, materials and townscape impact at paragraphs 20-22 above. Overall, he considers that there would be harm to the character and appearance of the CA, at the lower end of the less than substantial scale, and therefore some conflict with LP policy Q22. He further considers that there is some conflict with LP policy PNI(H)(vii) and (viii), and LonP policy D9(C)(1)(d)”.*

30. At DL27, the First Defendant turned to other listed buildings and conservation areas, including those which are the focus of the Claimant's contentions on ground one –

*“27. The Secretary of State notes the Inspector's approach as set out in IR14.05-14.06. He notes the Inspector's position that for the reasons given at IR14.07- 14.14, the proposal would have no adverse impact on the setting of the Grade 1 Listed St Paul's and there would be no heritage harm arising as a result of the application proposal. He further notes the Inspector's position that for the reasons given at IR14.29-14.34, there would be no harm to the setting of the Grade 1 Listed Royal Festival Hall*

*(IR14.34), and that for the reasons given at IR14.35-36 there would be no harm to the setting of the Grade 2\* Listed Waterloo Bridge. The Secretary of State notes the Inspector's conclusions, for the reasons given at IR14.50- 14.61, in respect of the impact on the Old Barge House Alley CA as a whole, the Waterloo CA, the Temple CA and the Whitefriars CA”.*

31. In DL28 the First Defendant stated his overall conclusion on the scheme's impacts on heritage assets –

*“28. Overall, the Secretary of State considers that harm to the setting and significance of the RNT, the IBM building and Somerset House, and the harm to the South Bank CA and the Roupell Street CA carries great weight”.*

In DL36, he repeated that overall conclusion in his evaluation of the planning balance for and against the scheme –

*“36. Weighing against the proposal is the less than substantial harm to the significance of the designated heritage assets of the RNT, the IBM building, Somerset House, the South Bank CA and the Roupell Street CA, which carries great weight”.*

#### *The Claimant's submissions*

32. For the Claimant, Mr Jack Parker submitted that in order lawfully to fulfil his duties under section 66(1) and section 72(1) of the LBA 1990, the First Defendant was required to state his own findings in respect of the scheme's impact on each of the listed buildings and conservation areas which had been identified and assessed by the inspector as potentially affected by the scheme. The First Defendant had failed to do so. In DL27, he had simply noted the inspector's position in respect of the lack of adverse impact on the setting of St Paul's Cathedral and Waterloo Bridge. The First Defendant had also simply noted the inspector's conclusions in respect of the impact on the character and appearance of the Old Barge Alley, Waterloo, Temple and Whitefriars Conservation Areas. He had not mentioned the Strand Conservation Area at all.
33. It was submitted that noting the inspector's findings and conclusions on these heritage assets shed no light at all on the First Defendant's own findings and conclusions. It fell to the First Defendant, not to the inspector, to discharge the special duties under sections 66(1) and 72(1) of the LBA 1990.
34. In support of his argument, Mr Parker emphasised the apparent inconsistency of approach of the First Defendant in DL23-DL28. In the case of each of the heritage assets considered in DL23-DL26, the First Defendant had stated his own conclusions on the impact of the scheme on the settings of those listed buildings or conservation areas. In the case of the Royal National Theatre, the IBM buildings and Somerset House, he had stated his finding that the scheme's impact would be harmful, as he had also done in the case of the Roupell Street and South Bank Conservation Areas. Yet inexplicably he had failed to state his finding in relation to the heritage assets mentioned in DL27 (nor in relation to the Strand Conservation Area). That inconsistency of approach reinforced the conclusion that his reasoning in DL27 was inadequate.



35. In Mordue v Secretary of State for Communities and Local Government [2016] 1 WLR 2682 at [26], the Court of Appeal rejected the argument that the duty to give reasons in a case which involved the duty under section 66(1) of the LBA 1990 imposed a higher standard for adequacy than that stated at [36] in South Bucks District Council v Porter (No 2) *supra*. Mr Parker, however, placed some reliance on Horada v Secretary of State for Communities and Local Government [2016] PTSR 1271 at [36]-[39], where Lewison LJ observed that previous case law suggested that in a case in which the First Defendant is disagreeing with an inspector's reasoned and considered recommendation, a fuller explanation than simply stating that disagreement may be required in order to fulfil the duty to give adequate reasons.
36. It was submitted that there had been detailed representations from the Claimant and other interested parties contending for the harmful impact of the scheme on the setting of St Paul's Cathedral, Waterloo Bridge and the conservation areas mentioned by the First Defendant in DL27. The absence of any finding by the First Defendant on that contention meant that neither the Claimant nor other objectors knew the First Defendant's conclusions on those principal important controversial issues. Applying the established approach, the First Defendant's reasons were inadequate and fell below the requisite legal standard.

### *Discussion*

37. The principle is well established that, for the purposes of sections 66(1) and 72(1) of the LBA 1990, the desirable object of preserving a listed building or its setting, and of preserving or enhancing the character or appearance of a conservation area, is achieved by development which leaves the listed building, or its setting, or the character or appearance of the conservation area, unharmed. See South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141, 150.
38. That principle remains the foundation for national planning policy on considering the potential impacts of proposed development on designated heritage assets. In paragraph 202 of the Framework as published in December 2023, that policy is stated in the following terms –
- “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”.*
39. The first question, therefore, is whether the proposed development will have an adverse impact on the significance of the designated heritage asset. If it will not do so, the question of the extent and degree of resulting harm does not arise. The stated need to give “*great weight*” to the asset's conservation properly reflects the statutory duties imposed by sections 66(1) and 72(1) of the LBA 1990 (and the explanation of those duties in Barnwell Manor and many other authorities).
40. In the present case, there was substantial disagreement between the parties as to whether the scheme would give rise to any harm to designated heritage assets. The inspector summarised the extent of that disagreement in IR14.05 –

*“...The parties have expressed differing views on the heritage assets and the extent to which, if any, the contribution that the setting makes to the overall significance and the extent to which this may be affected by the application proposal.... I deal with each of the assets in turn, firstly in terms of the factors which contribute to the setting, then the assessment of impact on the setting as a result of the proposal and finally the assessment of harm arising (where relevant)....”*

41. In DL23-DL28, the First Defendant responded to the assessment undertaken by the inspector. He founded that response on the inspector’s conclusion on the question whether, in the case of each of the heritage assets which had been raised for consideration by the parties, there would be a harmful impact. In the case of listed buildings, he responded to the inspector’s conclusion on the question whether the scheme would harm the setting of the building and thereby diminish its significance. In the case of conservation areas, the First Defendant responded to the inspector’s conclusion on the question whether the scheme would harm the character or appearance of the conservation area.
42. DL23-DL26 concern those heritage assets to which the First Defendant found that the scheme would cause harm. They included three listed buildings and two conservation areas. In each case, the First Defendant found that the scheme would harm the significance of the heritage asset. However, his judgment did not align with that of the inspector in every case. He clearly thought it appropriate to explain why he differed from the inspector in the case of the Roupell Street and South Bank Conservation Areas. His approach was in accordance with the guidance given at [36]-[39] in Horada.
43. However, in DL23-DL26 the First Defendant had a further purpose. As well as indicating where and why he disagreed with the inspector’s conclusions, he went on to explain the degree of harm that he found to result to each of the heritage assets adversely impacted by the scheme. In each case, he found that degree of harm to be less than substantial; but he went on to indicate where within the spectrum or scale of harm the resulting harm to each listed building or conservation area lay.
44. It was necessary for the First Defendant to form a judgment as to the degree of harm which the scheme would cause to each of the heritage assets discussed in DL23-DL28, since national planning policy draws a distinction between “*substantial*” and “*less than substantial*” harm.
45. In a case where the proposed development is found to result in “*substantial harm*” to a designated heritage asset, the policy in paragraph 207 of the Framework states –

*“Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

- a) the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*

*c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*

*d) the harm or loss is outweighed by the benefit of bringing the site back into use”.*

46. Whereas in a case where the proposed development is found to result in “*less than substantial harm*” to a designated heritage asset, the policy in paragraph 208 of the Framework applies –

*“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.*

47. It may, therefore, readily be seen that the First Defendant’s reasons in DL23-DL26 were directed at three purposes. His first purpose was to identify those designated heritage assets which he judged to be harmed by the scheme. Secondly, insofar as he differed from the inspector in that judgment, to give his reasons for doing so. Thirdly, in accordance with the applicable policies of the Framework, to identify the degree of harm to each heritage asset so as to be in a position to decide whether he should proceed to determine the planning application for the scheme under paragraph 207 or 208 of the Framework.
48. The First Defendant reasoning and findings in DL23-DL26 provided the basis for his summary, in DL28, of his conclusions on the impact of the scheme on heritage assets. There was some debate before me as to whether DL28 should be read as a summary of the First Defendant’s findings and conclusions on that main issue. I have no doubt that it should be so read. It is expressed as an overall summary. It draws together the First Defendant’s findings that the scheme would result in harm to the setting and significance of the three listed buildings considered in DL23-DL24 and to the two conservation areas considered in DL25 and DL26. In each case, the harm is said to carry great weight. Finally, DL26 identifies paragraph 208 of the Framework as the applicable policy to be followed in the light of his findings that in each case, the resulting harm would be less than substantial harm for the purposes of determining the planning application for the scheme.
49. In my view, the natural inference to be drawn from the First Defendant’s reasoning and findings in DL23-DL26 and from his summary of the overall position in DL28 is that, in his judgment, the harm caused by the scheme to designated heritage assets was limited to the identified impacts on the three listed buildings and two conservation areas considered in those paragraphs. Given that he explained his findings of harm in relation to each of those five heritage assets in DL23-DL26, indicating as appropriate where he differed from the inspector, the obvious corollary is that he found no harm to arise in relation to other heritage assets raised by the parties and assessed by the inspector.
50. Does the First Defendant’s reasoning in DL27, upon which the Claimant founds its argument, undermine the clarity and focus of the First Defendant’s overall conclusion on heritage impacts in DL28? In my judgment, for the following reasons, it does not do so.

51. Firstly, the First Defendant's evident purpose in DL27 is to draw the reader's attention to the content of the various paragraphs in the inspector's report to which he specifically refers. He does so without qualification. On reading those paragraphs to which the First Defendant refers, it becomes obvious to the reader that they contain the inspector's explanation for her approach to the assessing whether the scheme causes harm to designated heritage assets (IR14.05-14.06); and her conclusions that harm would not be caused to the settings of St Paul's Cathedral (IR14.07-14.14), the Royal Festival Hall or Waterloo Bridge (IR14.29-14.34) or to the five conservation areas considered in IR14.50-14.61.
52. Mr Parker is correct in his submission that the First Defendant does not explicitly state that he agrees with the inspector's approach and conclusions in those specific paragraphs of her report. He says that he "*notes*" the inspector's approach and her position that there would be no harm caused either to the settings of those listed buildings or to those conservation areas. In my view, however, the far more telling point is the absence of any stated disagreement with the inspector's stated approach to assessment or to her conclusions that no harm would result to those heritage assets.
53. At [36] in Horada, Lewison LJ said –
- "Where the Secretary of State follows the inspector's recommendation it will be easy to infer that the Secretary of State has also adopted the inspector's reasoning".*
54. In my judgment, that approach is apposite in seeking to understand the First Defendant's reasoning in DL27. That paragraph is to be read in context. It forms part of a discrete set of paragraphs in which the First Defendant set out to explain his findings and overall conclusions on the question whether the scheme would result in harm to the settings of certain listed buildings and to certain conservation areas. Not only was that question relevant to the proper application of the development management policies set out in paragraphs 205 to 208 of the Framework; but also, it was necessary for him to do so for the purposes of discharging his duties under sections 66(1) and 72(1) of the LBA 1990. DL23-DL26 and DL28 raise no doubt as to the identity of those heritage assets which, in the judgment of the First Defendant, would be harmed by the scheme. The First Defendant's purpose, in drawing attention in DL27 to the inspector's conclusions in relation to other heritage assets which were of concern to the parties, may easily be inferred. That purpose was to indicate to informed parties that he accepted and agreed with the inspector's conclusions that no harm would result to those other heritage assets; and that, for the purposes of sections 66(1) and 72(1) of the LBA 1990, the settings of those listed buildings and the character and appearance of those conservation areas would be preserved.
55. Had the First Defendant's purpose in DL27 been to set out some disagreement with the inspector's findings and conclusions as to the absence of harm to the heritage assets mentioned in that paragraph, it might well have been necessary for him to say why: see Horada at [37]. The absence of any indication in DL27 of any point of disagreement with those paragraphs of the inspector's report therein noted, is a clear indication that the contents of those paragraphs were in fact accepted and agreed to by the First Defendant.

### *Conclusions*

56. In conclusion, I reject ground one. The Claimant has not established that the First Defendant's reasons in DL27 were legally inadequate. Read in the context of DL23-DL28 as a whole, DL27 adequately explains the First Defendant's acceptance of and agreement with the inspector's conclusions in her report that the scheme would not result in harm to the significance of St Paul's Cathedral, Waterloo Bridge, or to the Old Barge House Alley, Whitefriars, Waterloo, Temple or Strand Conservation Areas. The fact that the Strand Conservation Area is not named in DL27 does not affect that conclusion, since that heritage asset is one of those considered by the inspector in IR14.50-14.61: specifically, in IR14.53-4.
57. There is no inconsistency in the First Defendant's reasoning or conclusions in DL23-DL28. In particular, in accordance with both national planning policy and his duties under section 66(1) and 72(1) of the LBA 1990, his purpose in those paragraphs was to identify those designated heritage assets which would be harmed by the scheme and to form a judgment as to the degree of that harm in each case. He summarised his findings on those matters in DL28. The absence of an explicit statement in DL27 of his agreement with the inspector's conclusions that the scheme would not cause harm to the other heritage assets therein mentioned, does not raise any real doubt as to the fact that the First Defendant did accept and agree with those conclusions. On the contrary, the obvious and natural inference is that he did indeed accept them, leading to his overall conclusions on the main issue of the impact of the scheme on designated heritage assets being those stated in DL28.

## **Ground 2 – Interpretation of development plan policy**

### *Issue*

58. The issue is whether on a correct interpretation of their wording, the relevant policies of the London Plan and the Local Plan require that a planning application for development of the site must include delivery of an element of housing.

### *The inspector's approach*

59. The sixth main consideration identified by the inspector in IR14.04 was the extent to which the scheme is consistent with the development plan for the area, and the overall planning balance with regard to the Framework and any other material considerations. She considered the question whether the mix of uses proposed by the scheme complied with relevant policies of the development plan in IR14.160-14.163 (omitting cross-references) –

*“14.160 I have considered the mix of uses proposed and whether the mix of uses would accord with [London Plan] policy D3(A). The emphasis within the policy is on optimising site capacity through a design led approach, including site allocations. Optimising site capacity means ensuring the development is of the most appropriate form and land use for the site. There is a clear priority for office uses to be prioritised over residential development within this part of the [Central Activities Zone] as set out at policy SD5 of the [London Plan]. The delivery of high quality employment floor space is supported by both the evidence before the Inquiry as well as the development plan policies SD5, E1, E2 and E11 of the [London Plan] as well as policies P12 and P14 of the [South Bank and Waterloo Neighbourhood Plan]. Whilst I note concerns have been raised regarding the demand for new office floor space, there is no policy*

*basis requiring the demand for new office floor space to be justified as it accords with the development plan policies. In any event, the evidence before the inquiry is that there is demand for the floor space proposed.*

*14.161 My consideration of optimising the capacity of the site in the context of this policy wording is precisely what the application has achieved, taking into account the design led approach adopted and readily endorsed by both the [London Plan] and the Local Plan. The site is located within the CAZ and a priority area for employment generating uses. The site is also a key Riverside location within the Cultural Quarter. Whilst I acknowledge the importance of residential development in meeting housing needs, this does not in my view override other policy considerations which are relevant to the assessment of the application proposals. The proposal would deliver an appropriate balance and mix of uses which would accord with the development plan when taken as a whole.*

*14.162 In terms of the wording of site allocation 9, the site includes both the application site as well as the neighbouring Princes and Gabriel's Wharf up to the boundary of Bernie Spain Gardens. The preferred uses identified by the policy wording state mixed use including offices, residential and active frontage uses at ground floor level. Signalled as 'preferred' uses, the policy does not dictate uses in absolute terms, nor does it stipulate where these uses should be located across the allocation as a whole. The rationale that the remainder of the site could provide for some form of residential use, in the same way it could also provide a mixed use scheme is a reasonable and logical approach to take. There is also no merit in the suggestion that the development of the application site would mean the remainder of the site would need to ensure it delivered a residential scheme - the decision on any future development of that site is not a matter before me. The mere fact that the proposal does not include residential floor space does not render the proposal in conflict with this policy.*

*14.163 The development would deliver affordable workspace and cultural floor space in the form of the London Studios. There is clear policy support for both of these uses in the form of policies SD4, HC5 and ED13 of the [Local Plan] and the amount of affordable workspace provided by the scheme exceeds the policy requirements set out at policy ED2 of the [Local Plan] by some margin. In terms of the site allocation, the proposals would also accord with site allocation 9 of the [Local Plan] and policy PNI of the [Local Plan]"*

#### *The First Defendant's conclusion*

60. In DL34, the First Defendant found the scheme to be in compliance overall with site allocation 9 in the Local Plan and considered it to be in compliance with the development plan taken as a whole. The First Defendant neither added to nor otherwise commented on the inspector's conclusions reported at IR14.160-14.163 in her report.

#### *Development plan policies*

61. The site forms part of a larger site of 1.78 hectares allocated in the Local Plan as "Site 9 – ITV Centre and Gabriel's Wharf, Upper Ground SE1". The site allocation states that the allocated site was identified as a potential housing site in the strategic housing land availability assessment (SHLAA) in 2009. The site allocation identifies the following preferred uses –

*“Preferred use – Mixed-use including offices, residential and active frontage uses at ground-floor level”.*

62. The site lies within the area which has been designated in successive editions of the London Plan as the “*Central Activities Zone (CAZ)*”. Paragraph 2.4.1 of the London Plan states –

*“The CAZ is the vibrant heart and globally-iconic core of London. It is **one of the world's most attractive and competitive business locations**. It accommodates one third of London's jobs and generates almost 10 per cent of the UK's output. It contains the seat of national Government and is internationally renowned for its culture, night-time economy, tourism, shopping and heritage. It is also home to more than 230,000 residents”.*

(Emphasis in original text)

63. Policies SD4 and SD5 of the London Plan relate to the CAZ.

64. Policy SD4(A) of the London Plan states –

*“The unique international, national and London-wide roles of the CAZ, based on an agglomeration and rich mix of strategic functions and local uses, should be promoted and enhanced”.*

65. Policy SD5 includes the following statements of policy in relation to offices, other strategic functions and residential development in the CAZ –

*“A. New residential development should not compromise the strategic functions of the CAZ.*

*B Residential development is not appropriate in defined parts of the City of London and Northern Isle of Dogs ....*

*C. Offices and other CAZ strategic functions are to be given greater weight relative to new residential development in all other areas of the CAZ except –*

*1) the Vauxhall, Nine Elms, Battersea and Elephant and Castle Opportunity Areas, where offices and other CAZ strategic functions are given equal weight relative to new residential; and*

*2) wholly residential streets or predominantly residential neighbourhoods (with exceptions in appropriate circumstances – for example clusters of specialist CAZ strategic functions, Special Policy Areas and CAZ retail clusters).*

*....*

*F In areas where offices and other CAZ strategic functions are given greater or equal weight relative to new residential development (as defined in Part C), mixed-use office/residential proposals should be supported where there is an equivalent or net increase in office floorspace”.*

66. Paragraph 2.5.3 of the London Plan provides the following explanation of the “*principle of greater weight*” in policy SD5 –

*“Given their strategic importance, as a general principle, offices and other CAZ strategic functions are given greater weight relative to new residential development in the Zone (with exceptions set out in policy). The principle of greater weight is designed to ensure that the agglomerations of offices and other CAZ strategic functions are not compromised by new residential development. The principle should inform Local Plan preparation and development management”.*

67. The design policies of the London Plan include policy D1(B) - Planning for growth and policy D3 - Optimising site capacity through the design-led approach.

68. Policy D1(B) provides –

*“In preparing Development Plans, boroughs should plan to meet borough-wide growth requirements, including their overall housing targets, by:*

...

*3) following the design-led approach (set out in Policy D3 Optimising site capacity through the design-led approach) to establish optimised site capacities for site allocations. Boroughs are encouraged to set out acceptable building heights, scale, massing and indicative layouts for allocated sites, and, where appropriate, the amount of floorspace that should be provided for different land uses”.*

69. Policy D3(A) provides for “*the design-led approach*” –

*“All development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site”.*

70. Policy H1 of the London Plan is headed “*Increasing housing supply*”. Parts H1(B)(2) and (F) of policy H1 state -

*“B To ensure that ten-year housing targets are achieved, boroughs should:*

...

*2) optimise the potential for housing delivery on all suitable and available brownfield sites through the Development Plans and planning decisions...*

...

*F On sites that are allocated for residential and mixed-use development there is a general presumption against single use low-density retail and leisure parks. These developments should be designed to provide a mix of uses including housing on the same site in order to make the best use of land available for development”.*



71. Policy H1 of the Local Plan is headed “*Maximising housing growth*”. It essentially reflects the strategic policy stated in policy H1(B)(2) of the London Plan -

*“The council will seek to maximise the supply of additional homes in the borough to meet and exceed Lambeth’s housing requirement of 13,350 homes for the ten year period 2019/20 to 2028/29 by:*

*i) working with relevant partners to optimise the potential for housing delivery on all suitable and available brownfield sites...”.*

*The Claimant’s submissions*

72. Mr Parker submitted that properly interpreted, the relevant policies of the development plan required that a mixed-use development of the site must deliver housing. Housing was not included within the mix of uses proposed in the scheme. That omission resulted in a conflict with relevant policies of the development plan. In failing to recognise that conflict, the inspector and the First Defendant must be taken to have misinterpreted those policies.

73. That submission was founded upon the following analysis of the policies of the London Plan and the Local Plan to which I have referred above –

(1) Policies D1 and D3 of the London Plan require boroughs to establish optimised site capacities for site allocations by ensuring that development is of the most appropriate form and land use for the allocated site. These policies require site allocations in local plans to establish the most appropriate use or uses for each site allocation.

(2) In this case, the site forms part of a site allocation in the Local Plan, Site Allocation 9, which identifies the preferred use as mixed-use including offices, residential and active frontage uses at ground-floor level. Residential use thereby is identified as forming part of the most appropriate land use for the site.

(3) The stated objective of London Plan policy H1 is to increase the supply of housing. Without exception, borough councils are required to optimise housing delivery on all suitable and available brownfield sites through their plan allocations and planning decisions. It was not in dispute that the site was suitable and available for residential purposes as part of a mixed-use development.

(4) Policy H1(F) of the London Plan makes clear that sites that are allocated for residential and mixed-use development should be designed to provide a mix of uses including housing on the same site, in order to make the best use of land available for development.

(5) Policy H1 of the Local Plan also seeks to optimise housing delivery on all suitable brownfield sites. In the case of site allocation 9, the preferred uses were the product of identifying the most appropriate use of the site in accordance with policies D1 and D3 of the London Plan. Housing formed part of that preferred use.

74. In short, it was submitted that when interpreted objectively and in the context set by other relevant policies of the development plan, the site allocation must be understood to require the delivery of housing as part of a mixed-use development of the site.

### *Discussion*

75. It is appropriate to start with the cautionary words of Lord Carnwath JSC at [25] in Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] 1 WLR 1865 -

*“It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome.... Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local”.*

76. In this case, it was necessary for the inspector to consider whether the mix of uses proposed by the scheme was in accordance with the relevant policies of the development plan – principally, the London Plan and the Local Plan. Her starting point in IR14.160 was London Plan policy D3(A) and the emphasis given by that policy to optimising site capacity through a design-led approach, including site allocations. She acknowledged that optimising site capacity meant ensuring that the development of the site was of the most appropriate form and land use for the site.
77. On the Claimant’s own analysis of the framework of relevant policies of the development plan, by taking those policy objectives stated in London Plan policy D3(A) as her starting point, the inspector began in the right place.
78. The inspector then turned to the significance of the site’s location within the CAZ. Although the Claimant’s policy analysis takes a different route, I can see no reason to criticise the validity of the inspector’s approach. The strategic policy of the London Plan is that the international, national and London-wide roles of the CAZ should be promoted and enhanced. The fact that the site (and indeed site allocation 9 as a whole) was located within the CAZ was, on any reasonable consideration of the overall policy context set by the London Plan and the Local Plan, a key policy consideration.
79. As is clear from her reasoning in IR14.160-14.161, in judging whether the scheme fulfilled the policy objective of optimising the site’s capacity by delivering a development with the most appropriate land use for the site, the inspector gave significant weight to the London Plan’s policy priorities for development of sites within the CAZ. Those policy priorities were stated in policy SD5 of the London Plan. They included the principle of greater weight and the clearly stated priority for delivery of office and other CAZ strategic uses, such as cultural uses, over housing. The Claimant does not contend that the inspector misunderstood policy SD5 of the London Plan.
80. The Claimant’s complaint is really focused on the next stage in the inspector’s policy analysis, which is set out in the final two sentences of IR14.161 where she said –

*“Whilst I acknowledge the importance of residential development in meeting housing needs, this does not in my view override other policy considerations which are relevant to the assessment of the application proposals. The application would deliver an appropriate balance and mix of uses which would accord with the development plan when taken as a whole”.*

81. There can be no doubt that in acknowledging the importance of residential development in meeting housing needs, the inspector had in mind the policy objective of policy H1(B)(2) of the London Plan (and of the corresponding objective of policy H1 of the Local Plan). Moreover, it is clear from her reasoning that she accepted the relevance of those policies to her assessment whether the mix of uses proposed by the scheme complied with the policies of the development plan. In other words, she understood that policy H1(B)(2) of the London Plan supported the delivery of housing as part of a mixed-use development of the site.
82. The inspector did not, however, understand policy H1(B)(2) of the London Plan to require that housing must be delivered as a necessary component of a mixed-use development of the site. Instead, she saw the requirements of that policy as being capable of being overridden by the policy priorities which were engaged by the site’s location within the CAZ, in a priority area for employment generating uses and as a key riverside location within the cultural quarter.
83. There is force in the Claimant’s argument that, read in isolation, policy H1(B)(2) of the London Plan and policy H1 of the Local Plan required the delivery of housing on any suitable and available redevelopment site. If those policies alone informed the inspector’s judgment whether the scheme was in accordance with the development plan, her conclusions in IR14.161 might be difficult to understand. But that was emphatically not the position, for the following reasons.
84. The question of whether a mix of proposed uses which excluded housing was nevertheless in accordance with the development plan necessarily required consideration not only of policies H1 of the London Plan and of the Local Plan, but also of policy SD5 of the London Plan. It was necessary for the inspector to strike an appropriate balance between the competing objectives which those policies sought to achieve. The inspector struck that balance by giving greater weight to the priorities stated by policy SD5 than those stated by the housing policies.
85. In taking that approach and evaluating the relative weight that she should give to the housing policies of the development plan as against those which applied in relation to the CAZ, the inspector did not misinterpret either policy H1(B)(2) of the London Plan or policy H1 of the Local Plan. In my judgment, her conclusion in IR14.161, that the proposal would deliver an appropriate balance and mix of uses which would accord with the development plan as a whole, was founded upon the correct interpretation of those housing policies. She understood that those policies supported the delivery of housing on the site. But neither policy imposed a requirement for housing delivery on the site which overrode other relevant development plan policy objectives. On the contrary, as she correctly understood, this was a site where the policy priority was for offices and uses which aligned to CAZ strategic functions, rather than for the delivery of housing.

86. Her approach was entirely consistent with the stated objective of policy SD5, that new residential development should not compromise the strategic functions of the CAZ. Most importantly for the purposes of resolving the Claimant's contentions under this ground, it was an approach which involved no misinterpretation of policy H1(B)(2) of the London Plan. On the contrary, the inspector's approach was founded upon the clearly stated policy of SD5(C) of the London Plan that in the CAZ, offices and other CAZ strategic functions are to be given greater weight than new residential development.
87. Nor is there any force in the Claimant's argument that the inspector misunderstood policy D3(A) of the London Plan. It is clear from her reasoning in IR14.160 that she had the design-led approach to optimising site capacity well in mind. She recognised that in order to optimise the capacity of the site, it was necessary to ensure that development of the site delivered the most appropriate mix of uses. As is clear from IR14.161, her judgment was that the most appropriate mix of uses should be determined by giving effect to the policy priorities for the CAZ stated in policy SD5. Again, that judgment evinces no misunderstanding of the housing policies of the development plan. It simply gives greater weight to the delivery of a mix of uses which reflects the policy priorities for development of a site located in the CAZ.
88. The Claimant placed some reliance on the provisions of policy H1(F) of the London Plan. I do not think that particular policy assists the Claimant's argument. Its clear purpose is to avoid the supply of new housing on sites allocated in local plans for residential or mixed-use development being frustrated through single use, low density development, even in cases where the developer offers to contribute to the supply of new housing elsewhere. In this case, the scheme cannot sensibly be characterised as proposing low density development of the site. The issue before the inspector was not that a higher density of development could yield an element of new housing. It was whether on a design-led approach, the capacity of the site could properly be optimised without delivering a mix of uses which included new housing. The inspector's judgment was that development of the site for a mix of uses that did not include delivery of housing was nevertheless in accordance with the development plan, because it reflected the policy priorities for sites within the CAZ. That judgment was unaffected by the provisions of policy H1(F) of the London Plan.
89. I turn finally to the site allocation itself. The inspector set out her analysis of site allocation 9 in IR14.162. Her understanding of the term "*preferred use*" was that it neither dictated in absolute terms the uses to be delivered through development within the allocated site nor stipulated where, within the boundaries of that overall site, components of the preferred use should be delivered. In my view, she was clearly correct about that.
90. In my judgment, the underlying intention in identifying "*Mixed-use including offices, residential and active frontage uses at ground-floor level*" as the "*Preferred use*", was to allow an element of discretion and planning judgment to the developer and the planning decision-maker in designing a proposed development, whether for the allocated site as a whole or land situated within its boundaries. In particular, it allowed the developer flexibility to propose mixed use development which included some, but not necessarily all of the uses for which a preference is stated in the site allocation itself.

91. In the present case, the scheme proposed a mix of uses which was in accordance with the preference stated in the site allocation, at least insofar as it included offices and active frontage uses at ground floor level. The scheme did not include delivery of housing, and so to that extent did not reflect that preference. The inspector was of course correct to say that housing might be delivered in future elsewhere within the allocated site. But in any event, for the reasons I have already given, she was correct in concluding that, when judged in the context of wider development plan policy, the mix of uses proposed by the scheme was consistent with the policies priorities for development within the CAZ. Contrary to the Claimant's submissions, the inspector's correct interpretation of those policy priorities supported her conclusion in IR14.162, that the mere fact that the scheme does not include delivery of housing does not render the scheme in conflict with the site allocation policy in the Local Plan.

### *Conclusions*

92. In summary, for the reasons I have given I do not accept that on a proper interpretation of policies H1(B), H1(F) and D3(A) of the London Plan, read in combination with policy H1 and site allocation 9 of the Local Plan, there was a policy requirement that development of the site must include delivery of housing.
93. Those policies are to be understood and applied in the context of policy SD5 of the London Plan which set out clear policy priorities for the development and use of land in the Central Activities Zone (CAZ). In her assessment of the scheme's performance against those policies in IR14.160-14.163 of her report, it was reasonable for the inspector in the exercise of her planning judgment to follow that approach. In giving greater weight to the policy priorities for the CAZ, the inspector is not to be taken to have misunderstood the policy priorities for optimising housing delivery in policies H1 of the London Plan and the Local Plan. Nor did she misunderstand the policy objective of ensuring that the capacity of the site was optimised by delivering the most appropriate land use. Nor did she fail to give a proper contextual interpretation to the preferred use stated in site allocation 9 of the Local Plan. The presumption that she correctly understood the applicable development plan policy framework is shown to be justified. It follows that the First Defendant did not fall into legal error in founding his decision on the inspector's conclusions in IR14.160-14.163 of her report.
94. Ground 2 is rejected.

### **Ground 3 – Retention of the existing building**

#### *Issue*

95. The issue is whether the First Defendant misunderstood policies SI7 and D3 of the London Plan, when read in conjunction with the Mayor's London Plan Guidance on Circular Economy Statements [**“the Guidance”**] by failing to recognise that they required him to consider whether the existing building on the site could be retained to deliver residential uses as part of the Circular Economy.

#### *Development plan policy and guidance*

96. Policy D3(D)(13) of the London Plan states –

*“D Development proposals should:*

...

*13) aim for high sustainability standards... and take into account the principles of the circular economy”.*

97. Paragraph 9.71 of the London Plan defines a “*circular economy*” as an economy where “*materials are retained in use at their highest value for as long as possible and are then reused or recycled, leaving a minimum of residual waste*”.

98. Policy SI7 of the London Plan is headed “*Reducing waste and supporting the circular economy*”. It includes the following provisions –

*“A. Resource conservation, waste reduction, increases in material re-use and recycling, and reductions in waste going for disposal will be achieved by the Mayor, waste planning authorities and industry working in collaboration to:*

*1) promote a more circular economy that improves resource efficiency and innovation to keep products and materials at their highest use for as long as possible*

*2) encourage waste minimisation and waste prevention through the re-use of materials and using fewer resources in the production and distribution of products*

...

*B. Referable applications should promote circular economy outcomes and aim to be net zero waste. A Circular Economy statement should be submitted, to demonstrate:*

*1) how all materials arising from demolition and remediation works will be re-used and/or recycled*

*2) how the proposal’s design and construction will reduce material demands and enable building materials, components and products to be disassembled and re-used at the end of their useful life... ”.*

99. Table 2 of the Guidance sets out a hierarchy of design approaches for existing structures, which gives the highest priority to retention and re-use, followed by partial retention and refurbishment, disassembly and re-use and, finally, demolition and recycling of salvageable materials. Paragraphs 2.4.2-2.4.5 of the Guidance state the following approach to inform the design process for new development –

*“2.4.2 ... retaining existing built structures totally or partially should be prioritised before considering substantial demolition, as this is typically the lowest-carbon option.*

*2.4.3 The [Circular Economy] statement should set out the justification for whichever of the four approaches... is being proposed for the development. Proposals that are further down the hierarchy will require more detailed and compelling justification.*

*2.4.4 There may be other planning reasons that necessitate the demolition or retention of existing buildings, such as heritage considerations, which the process... cannot and does not override.*

2.4.5 *When assessing whether existing buildings are suited to the requirements for the site, applicants should robustly explore the options for retaining existing buildings (either wholly or in part)...*”.

*The inspector’s report*

100. At the local inquiry, objectors contended that by excluding housing from the mix of uses to be delivered by the scheme, the Third Defendant had failed to fulfil the objectives of policy SI7. Proper consideration could and should have been given to the opportunity to retain and convert the existing tower on the site, Kent House, for residential use.

101. The inspector considered this issue in IR14.57-14.159 –

*“14.157 Much of the criticism levelled at the scheme by [the Claimant] focuses on the fact that the assessment of the reuse of the tower did not consider alternative uses such as residential. However, there is no policy basis for requiring such an approach to be undertaken. The detailed analysis undertaken and endorsed by both the Council and the GLA follows the correct approach according to the Framework and the relevant development plan policies as well as the relevant SPGs on this matter.*

*14.158 The assessment of the reuse of the existing tower provides comprehensive evidence on the potential reuse of the tower including an analysis of the existing small floorplates and low floor to ceiling heights as well as detailed consideration of a number of refurbishment options within the document. This report demonstrates in some detail that the retention and conversion of the building would not be suited to the requirements of the site - that is to achieve the best use of land by following a design led approach which optimises site capacity in accordance with development plan policies. The proposal would not result in a building which would meet modern office floorspace needs. A summary of the comparison assessment also demonstrates that the whole life carbon assessment is very similar for both schemes, with a marginal whole life carbon benefit delivered by the new build scheme. This is primarily due to the inefficiencies in both the refurbishment of the existing tower as well as operational inefficiencies due in part to the limited storey heights.*

*14.159 Taking all of these issues together, the proposal would deliver high sustainability standards and take account of the principles of the circular economy. The application clearly demonstrates a policy compliant approach to meeting the circular economy objectives. The proposal would as a result comply with [London Plan] policies D3, SI5, SI7 as well as [Local Plan] policy EN4. For the same reasons, the proposal would also comply with [the Guidance]”.*

*The First Defendant’s conclusions*

102. At DL31 the First Defendant said –

*“For the reasons given at IR14.154-14.159, the Secretary of State agrees with the Inspector that the proposal would deliver high sustainability standards and demonstrates a policy compliant approach to meeting the circular economy objectives (IR14.159)”.*

*The Claimant's submissions*

103. Counsel acknowledged that this ground of challenge depended upon it being established that it was a requirement of development plan policy to deliver housing as part of a mixed-use scheme for development of the site. In other words, the Claimant's case on ground three was contingent upon their succeeding on ground two.
104. Nevertheless, it was submitted that on the basis that there was such a policy requirement, there was no answer to the argument that the First Defendant had failed to consider the case for retaining the existing tower on the site as part of a mixed use development which included the delivery of housing. My attention was drawn to the acceptance by the Third Defendant's architectural witness (recorded in IR8.29) that Kent House could in principle be re-used as part of a mixed-use scheme involving residential development. The principal justification for not incorporating the existing tower into the scheme was that it had been judged not to be suitable for refurbishment for modern high-grade office accommodation. An alternative, policy compliant mixed use scheme which did include delivery of housing must therefore explore the prospect for re-use of Kent House in order to comply with the policy objectives for a circular economy of both policies D3 and SI7 of the London Plan and of the hierarchy set out in the Guidance.

*Discussion*

105. In the light of my conclusions on ground two, the premise upon which this ground is founded has not been established. The First Defendant did not misinterpret the policies of the development plan in accepting the inspector's conclusion that delivery of housing was not required as a necessary element of the mixed-use development proposed by the scheme. For the sake of completeness, I should state that I can find no fault with the inspector's reasoning and conclusions on the issue of compliance with the circular economy policy set out in policies D3 and SI7 of the London Plan and explained in the hierarchy set out in the Guidance. On the premise that the mix of uses proposed by the scheme was in accordance with the development plan as a whole, the case against retention and re-use of Kent House for office accommodation was properly accepted by the inspector and the First Defendant.
106. Conversely, had I accepted the Claimant's contentions on ground two and concluded that, on a proper understanding of the policies of the London Plan and the Local Plan, there was a policy requirement that housing must be delivered as part of a mixed use development of the site, I should have accepted the argument that proper consideration must also be given to the case for retention and re-use of Kent House for the delivery of housing as part of such a development. It is clear that in that alternative scenario, such consideration would be needed in order to comply with policies D3 and SI7 of the London Plan and in the light of the Guidance. At the very least, the Claimant's case on this ground would have reinforced the case for granting relief on ground two and quashing the First Defendant's decision, had I found ground two to be made out.
107. In the event, I have rejected ground two. Ground three therefore also falls away.

**Ground 4 – tall buildings**

*Issue*



108. The issue is whether the First Defendant’s conclusion that the northern part of the site was an appropriate location for a tall building by reference to the requirements of policy Q26 of the Local Plan was irrational, inadequately explained or made without proper regard to his own findings that the tall building which scheme proposed in that location gave rise to conflict with policy Q26.

*Development plan policy*

109. Both the London Plan and the Local Plan include policies for the control of tall building development. Policy D9 of the London Plan states a detailed policy framework for the assessment of the impacts of proposals for tall buildings in London. Policy Q26 of the Local Plan follows a similar approach for the purposes of managing development schemes which propose tall buildings in Lambeth.
110. Policy Q26 applies to tall buildings proposed in north Lambeth in excess of 45 metres AOD in height. The policy is divided into two parts. Part A provides policy support for tall buildings proposed in locations identified as appropriate for such development in Annex 10 of the Local Plan. One such location at Waterloo is location W1, the former ITV tower – Kent House, for which a general building height of 100m AOD point block is given. Part A of policy Q26 provides –

*“A. Having particular regard to the international obligation to preserve the OUV of the Westminster World Heritage Site And taking into account the desirability of preserving the settings of heritage assets, proposals for tall buildings will be supported where they are in locations identified as appropriate for tall buildings in Annex 10 and where:*

- i. [they] will not adversely impact on strategic or local views;*
- ii. design excellence is achieved (form, proportion, silhouette, detailing and materials etc);*
- iii. the proposal makes a positive contribution to public realm and townscape including at street level, whether individually or as part of a group;*
- iv. where proposed near existing tall building groups, proposals should follow the established principles of group composition such as noticeable stepping down in height around cluster edges;*
- v. the proposal adequately addresses the criteria in London Plan policy D9C in terms of acceptable visual, environmental and functional impacts including micro climate, wind turbulence, noise, daylight and sunlight, reflective glare, aviation (including the safeguarded zones around Heathrow Airport, London City Airport, Battersea Heliport and the helipad at Kings College Hospital), Navigation and electronic communication or broadcast interference; and*
- vi. it can be shown that the site can accommodate the uses and quantum of development proposed in terms of meeting acceptable standards of amenity, access, transport accessibility and servicing”.*

111. In addition to meeting the requirements stated in paragraphs (i) to (vi) of Part A of policy Q26, proposals for tall buildings at locations other than those identified in Annex 10 of the Local Plan must satisfy the requirements of Part B of policy Q26 –

*“B. Outside the locations identified in annex 10 or as identified in site allocations, there is no presumption in favour of tall building development. Should tall buildings be proposed outside the locations identified in annex 10 or as identified in site allocations, the applicant will be required to provide a clear and convincing justification and demonstrate the appropriateness of the site for a tall building having regard to the impact on heritage assets, the form, proportion, composition, scale and character of the immediate buildings and the character of the local area (including urban grain and public realm/landscape features) and ensure points (a)(i)-(vi) are met....”.*

112. In the present case, the scheme proposed a tall building fronting Upper Ground [**“the south building”**] with a maximum height of 109.4 metres AOD in the location W1 in Annex 10 of the Local Plan. The policy requirements of part A of policy Q26 applied to the south building. The scheme also proposed a tall building on the riverside frontage of the site [**“the north building”**] with a maximum height of 60.1 metres AOD. The location of the north building is not identified in Annex 10 of the Local Plan. The policy requirements of both part A and part B of policy Q26 therefore applied to the north building.

*The inspector’s report*

113. In IR14.04, the inspector identified the effect on the townscape character and appearance of the area and design as the second main consideration arising in relation to the scheme. She addressed that main consideration in IR14.73-14.119, concluding that the scheme would have an acceptable effect on the townscape character and appearance of the area, respond positively to the local context and as a result, accord with relevant development plan policies, including policy Q26 of the Local Plan.
114. In IR14.85-14.92, the inspector examined the question whether the site was an appropriate location for a tall building. It is necessary to set out her reasoning and conclusions in those paragraphs in full –

***“Is the site an appropriate location for a tall building?”***

*14.85 The site is a significant and prominent Riverside site and the river forms an important part of that existing overall context. The proposed riverside building (north) would have a maximum height of 60.1m AOD and the proposed south building fronting Upper Ground would have a maximum height of 109.4m AOD. In this context, both buildings would meet the tall buildings threshold as set out within [London Plan policy] D9 and Q26 of the [Local Plan]. Both buildings are unified at their base through a six storey podium at 28.4m in height. The two towers are similar in height to the now lapsed planning permission on the site which provided for a 59m AOD tower on the river frontage and 108m AOD tower on the Upper Ground frontage.*

*14.86 The height of the podium has been dictated by the [London View Management Framework] strategic view 8A.1 which passes through the site from Westminster Pier to St Paul’s. As set out above in relation to design development, the scale and massing has also been informed by the previous planning permission for the site. The existing*

*Kent House, at 89.3m AOD in height forms an important part of the established character of the area. As with the previous lapsed permission for the site, the proposal increases the scale of the building fronting Queen's Walk.*

*14.87 In terms of the north building which would front Queen's Walk, this building has taken height references and horizontal datums from along the river frontage, for example Sea Containers House (approximately 60m AOD) and the Oxo Tower although the application site proposal is set back from Queen's Walk by some considerable distance when compared with these nearby buildings. This is explained in some detail through the [Design and Access Statement] and the review of immediate context. The height of the north building has also been informed by the previous consent for the site which sat at around 59.79m AOD (the proposals being 60.1m AOD). In this way, the north building clearly responds to the established local context and would provide a building of sufficient height to provide a strong edge to this important frontage which would be entirely in keeping with the scale and massing of its surroundings.*

*14.88 In terms of the south building, this would see the building step away from the river frontage to the boundary with Upper Ground, in much the same way as the existing Kent House. This also ensures that no canyoning effect is created along the river. Although taller than the existing tower, this appears to me to present an appropriate design response to this location, with the building's simple form and rectangular character relating well to the surrounding buildings along Upper Ground. The buildings would remain subservient to the Waterloo and Blackfriars tall buildings clusters. The scheme would also aid legibility and wayfinding marking this important and prominent riverside location.*

*14.89 The approach adopted in terms of the Queen's Walk frontage building provides an active frontage and to my mind an appropriate balance in the context of the river walk beyond the appeal site, mirroring the existing arrangements of retail and restaurant uses 'spilling out' onto this area. This is a positive aspect of the proposal which would deliver public realm, townscape and wider benefits to this important riverside location.*

*14.90 There was much debate at the inquiry as to whether a point block would be a more suitable design response in this location. In particular, reference was made to the existing tall buildings located within the Blackfriars cluster. Notwithstanding the fact that there is no policy basis for such an approach, in my view, a point block here would be entirely at odds with the existing urban form, in particular the immediate neighbours of IBM and RNT. This is because these buildings would have strong horizontal emphasis and take up almost the full width of their plots. Furthermore, other tall buildings in the vicinity which form an important part of the established character such as the Shell Centre are significant in both height and width. The width of the proposal provides an appropriate and considered design response. The scale and mass of the proposal need to be set against the wider townscape.*

*14.91 In policy terms, policy Q26 of the [Local Plan] addresses the Lambeth approach to dealing with Tall Buildings. Part A of the policy advises that proposals for tall buildings will be supported where they are, amongst other things, in locations identified as appropriate within annex 10 and subject to other defined assessment criteria. The Former ITV Tower is identified at annex 10 as an appropriate location for a tall building. With reference to annex 10 of the [Local Plan], this refers to 100m as a*

*general building height. Paragraph 10.129 of the supporting text is clear that the heights identified should be considered as indicative as careful siting and massing informed by detailed site-specific analysis might show greater heights can be achieved without harm. the 100m is therefore no way defined as a maximum height and the explanation provided within the [Local Plan] makes this clear. Similarly, in terms of the site allocation and policy PN1, part E of the policy refers to promoting and supporting development and uses of an appropriate height, scale and form to reinforce Waterloo and South Bank's distinct identity, in accordance with [Local Plan] policy Q26 and annex 10.*

*14.92 Drawing these points together, the provision of a tall building in this location would accord with policy D9 of the [London Plan]. It would also accord with policy PN1, site allocation 9 of the [Local Plan] as well as policy Q26 of the [Local Plan]”.*

115. In IR14.93-14.97, the inspector assessed the scale and mass of the scheme. She concluded that the scheme would provide a development of an appropriate scale and massing, optimising the capacity and intensifying its use as a large brownfield development site.
116. In IR14.98-14.112 the inspector appraised the scheme's effects on the surrounding townscape, including a visual assessment from a series of viewpoints. In IR14.103, she considered the impact of the scheme from a number of viewpoints along the Embankment. She concluded that the scheme would provide “*an appropriate design response*” when viewed from that location, resulting in an overall neutral effect on the townscape.
117. In IR14.107-14.110 the inspector considered the impact of the scheme in the river prospect when looking upriver from the centre of Blackfriars Bridge. In IR14.110 she said –

*“14.110 The north building would clearly reference the scale and orientation of the river and the associated landscape, setting back the building line and being reflective of the prevailing height and scale as shown by Sea Containers House and the Oxo Tower. Both buildings, through their scale, form and massing would contribute to the richness of the skyline and would not dominate the relationship to the river. They would both relate to the established character of the area. When considered in the context of the view as a whole, the proposal would be an appropriate addition to the South Bank. Having regard to the width of the river, the distances involved as well as the dense tree cover along this route, the effect of the proposal on the townscape would be neutral”.*

118. In IR14.111-14.112, the inspector considered the impact of the scheme on local views. Her overall conclusion in IR14.112 was that –

*“...the proposal would provide a positive contribution to the townscape of the South Bank and would as a result accord with policies Q22, Q25, Q7 and Q26 of the [Local Plan]”.*

#### *The decision letter*

119. The First Defendant stated his reasons and conclusions on the scheme's design and effects on townscape, character and appearance of the area in DL17-DL22.

120. In DL17, the First Defendant noted the inspector's assessment of those matters at IR14.73-14.119 of her report. He said that his comments on the inspector's analysis and conclusions were set out the following paragraphs. Broadly speaking, his comments follow the order in which the inspector carried out her analysis. Thus in DL18 the First Defendant commented on the inspector's assessment of the development of the scheme's design; in DL19 he addressed her consideration of the question whether the site was an appropriate location for a tall building; in DL20 he considered scale and massing; in DL21 he commented on the inspector's assessment of the scheme's impact on townscape and views; and in DL22 he considered the architectural quality of the scheme.
121. It is necessary to set out DL19-DL22 in full –

*“19. The Secretary of State notes the Inspector's assessment of whether the site is an appropriate location for a tall building at IR14.85-14.92. He notes that policy Q26 Annex 10 of the [Local Plan] identifies the former ITV Tower as an appropriate location for a tall building and refers to 100m as a general indicative building height (IR14.91). He agrees with the inspector at IR14.88 that the south building would be an appropriate design response to this location. He has considered the justification which the Inspector cites for the height of the north building at 60.1m AOD, i.e. references from further along the river frontage and the previous (now lapsed) permission. However, he notes that the previous permission was granted in a different national and local policy context which for example did not have such a strong focus on high quality of design and beauty. Overall he agrees with the Inspector that the provision of a tall building in this location would accord with the policies cited at IR 14.92.*

*20. The Secretary of State notes the Inspector's assessment of scale and mass at IR14.93-IR14.97, including that the scale and massing are larger than the existing buildings on the site as well as the previous permission for the site (IR14.93). With particular respect to the scale and massing of the north building, he has reservations about the Inspector's conclusion at IR14.93 that the scale of the building and the proposed massing provides inappropriate response to the site. However, taking into account the site's allocation as a site 9 in the [Local plan], and its location within the Central Activities Zone and Waterloo Opportunity Area, as defined by the [London Plan] (where there is a high priority for intensification of the site as a large brownfield development site (IR14.97)) the Secretary of State overall agrees with the Inspector that there would not be conflict with the development plan in this respect.*

*21. The Secretary of State notes the Inspector's assessment of townscape at IR14.98-IR14.112. Taking into account his concerns at paragraph 20 above on the appropriateness of the scale and massing of the north building, he has very carefully considered the Inspector's conclusion at IR14.103 that in views from the Embankment the proposal would present an appropriate design response to this site, and that in views from Blackfriars Bridge (River Prospect View 14), the scale, form and massing of both buildings would not dominate the relationship to the river (IR14.110). He considers that in both these views, the proposal would have some negative impact rather than be neutral, as the Inspector concludes (IR14.110). Overall, the Secretary of State disagrees with the Inspector's conclusion that the proposal would provide a positive contribution to the townscape of the South Bank (IR14.112), particularly given the significance of this location and the prominence of the development's setting on the river. He considers that this carries moderate weight against the proposal. He*

*considers that in this respect there would be some conflict with [Local Plan] policy Q25(A) and [Local Plan] policy Q26(A)(i)-(iii), and [London Plan] policy D9(C)(1)(a)(i) and (ii).*

*22. The Secretary of State notes the Inspector's assessment of architectural quality and materials at IR14.113-14.116. Unlike the inspector at IR14.116, he does not consider that the proposed palette of materials and the aesthetic appearance of the building is appropriate for what is a very prominent and sensitive site. He disagrees with the Inspector with an attractive development would be delivered (IR14.116)".*

122. When the First Defendant came to draw the planning balance and to his overall conclusions in DL34-DL39, he said that for the reasons given in earlier paragraphs, he considered that there was “*some conflict*” with a number of policies of the London Plan and the Local Plan, including policy Q26(A)(i)-(iii). However, in DL34 he found that there was –

*“...overall compliance with the site 9 allocation in the [Local Plan], and considers that there is compliance with the development plan when taken as a whole”.*

#### *Submissions*

123. Mr Parker submitted that the First Defendant's conclusion that the north building was compliant with policy Q26 of the Local Plan was irrational, since it was fundamentally inconsistent with his findings in DL20-DL22 that led him to conclude that there was conflict with policy Q26(A)(i)-(iii).
124. That policy conflict was founded on the First Defendant's reservations about the scale and massing of the north building, which informed his finding that the scheme would have a negative impact in views from the Embankment and Blackfriars Bridge, and be harmful to the character and appearance of the South Bank Conservation Area. He had also found the architectural quality and proposed palette of materials to be inappropriate for this very prominent and sensitive site. Each of these adverse findings were directly relevant to the application of policy Q26 of the Local Plan. They explained his conclusion that there was conflict with the requirements stated in policy Q26(A)(i)-(iii). However, they were also directly relevant to the necessary assessment of the north building against the requirements of Q26(B).
125. Mr Parker submitted that the question whether a location was appropriate for a tall building within the policy requirements stated in parts A and B of policy Q26 could not sensibly be answered simply by reference to height. The policy demanded a much broader assessment of the north building's design, its effect on the townscape and its architectural quality. The First Defendant had addressed those matters in DL20-DL22. They should have informed the First Defendant's overall conclusion whether the north building was compliant with policy Q26. It was, however, not possible to understand, in the light of those findings, how he reached the overall judgment in DL19 that the north building was in compliance with policy Q26.
126. For these reasons, it was submitted that the First Defendant's conclusion that the north building complied with policy Q26 did not make sense. In the alternative, the First Defendant must be taken to have failed to have regard to his own findings in DL20-DL22. He does not grapple with the obvious and unexplained inconsistency between

those adverse findings in relation to the design, appearance and townscape impact of the north building, his finding of conflict with relevant requirements of policy Q26, and his conclusion that there was overall compliance with that policy. It followed that his reasons in DL19-DL22 in relation to the question whether the north building was in compliance with policy 26, and his conclusion that overall that building was so compliant, were inadequate.

127. On behalf of the Defendant, Mr Robert Williams submitted that the key to resolving the asserted inconsistency between DL19 and DL21 was to understand clearly what the First Defendant was assessing in DL19. In that paragraph, the First Defendant was responding to the inspector's analysis in IR14.85-14.92 of her report. In those paragraphs, particularly in IR14.82, the inspector was considering the question whether the proposed site for the north building on the riverside frontage was an appropriate location for a tall building. Mr Williams said that in order to address the question whether the site was an appropriate location for a tall building, the inspector had focused primarily on the height of the north building in the context of existing building heights along Queen's Walk. That was the First Defendant's approach. In agreeing with the inspector in DL19 that "*the provision of a tall building in this location*" would accord with policy Q26, the First Defendant was stating his view that the site of the north building was an appropriate location for a tall building. For the Third Interested Party, Mr Rupert Warren KC made similar submissions.

### Discussion

128. It is appropriate to begin by acknowledging that the First Defendant made a finding in DL21 that the scheme resulted in "*some conflict*" with policy Q26(A)(i)-(iii) of the Local Plan. That finding should be clearly understood. The specific requirements of policy Q26 with which he found there to be some conflict were that the proposed tall building should not adversely affect strategic or local views, should achieve design excellence and make a positive contribution to public realm and townscape.
129. It is clear from reading the First Defendant's reasons in DL20-DL22 why he found the north building to be in some conflict with those particular requirements. He had reservations about the scale of the north building and the proposed massing. He considered that the north building would give rise to some negative impact in views from the Embankment and Blackfriars Bridge; and would not make a positive contribution to the townscape of the South Bank. He judged the proposed materials and aesthetic quality of the north building not to be appropriate for a very prominent and sensitive site.
130. The First Defendant did not draw back from his clear finding on these matters when he came to the draw the planning balance. In DL34, he maintained his conclusion that the scheme would give rise to some conflict with policy Q26(A)(i)-(iii). In DL36, he placed in the balance weighing moderately against the scheme the fact that "*the proposal would not provide a positive contribution to the townscape of the South Bank*".
131. Yet in the final sentence of DL19, the First Defendant expresses his overall agreement with the inspector that "*the provision of a tall building in this location would accord with the policies cited at IR14/92*". Those policies include policy Q26 of the Local Plan. It is clear from the context that in the final sentence of DL19 the First Defendant is referring to the north building.

132. On the face of it, there is at least some tension between what the First Defendant says in the final sentence of DL19 and his later clear finding in DL21 that the north building gives rise to some conflict with the requirements of policy Q26. The question, therefore, is whether on a fair reading of the decision letter, in particular DL19-DL22, the last sentence of DL19 can sensibly be reconciled with the last sentence of DL21.
133. In order to answer that question, it seems to me that it is necessary to begin with policy Q26 itself. In its application to the north building, Q26 required not only consideration whether the scheme would fulfil the specific requirements of part A(i)-(vi), but also whether the site proposed for the north building was appropriate for tall building development in accordance with the requirements of part B of policy Q26.
134. Part B of policy Q26 requires a clear and convincing justification for the location of a tall building in Lambeth elsewhere than in one of the locations shown in Annex 10 of the Local Plan. That justification rests, at least in part, on "*the appropriateness of the site for a tall building*" being demonstrated, having regard to the impact of tall building development on that site when considered in its local context, including the historic environment and the character of the surrounding area.
135. It is of course the case that a tall building falling to be justified under part B of policy Q26 is also required to satisfy part A (i)-(vi) of the policy. Nevertheless, in my judgment, it is in accordance with the proper application of policy Q26 to consider whether the proposed site for the tall building is one which has been shown to be appropriate for tall building development in accordance with the contextual analysis required under policy Q26(B), before proceeding to consider whether the tall building proposed to be located on that site satisfies the requirements of part A(i)-(vi) of the policy.
136. That was the analytical approach followed by the inspector in her report. In IR14.85-14.92 she focused her assessment on the question whether the sites proposed for the south and the north buildings were appropriate locations for a tall building of the height and scale proposed by the scheme. The reasoning in DL19 contains the First Defendant's response to the inspector's analysis of the appropriateness of the site as a location for tall buildings. He expressly finds that paragraph on the inspector's assessment of whether the site is an appropriate location for tall buildings in IR14.85-14.92.
137. The site of the south building was identified in Annex 10 of the Local Plan. Therefore, the contextual assessment of the appropriateness of the site for tall building development under policy Q26(B) was not required.
138. In the case of the north building, the position was different. As the site of the north building was not identified in Annex 10 of the Local Plan as an appropriate location for a tall building, policy Q26(B) required it to be shown that it was an appropriate site for that purpose. The inspector addressed that question primarily in IR14.87. Her judgment that the site was appropriate for a tall building was primarily founded upon two factors. Firstly, that the now lapsed planning permission granted in May 2018 had authorised a tall building on the northern frontage of the site. Secondly, that the established local context of the river frontage was of tall building development including Sea Containers House and the Oxo Tower. The inspector stated her main reasons for finding the site to



be appropriate for a tall building of the height proposed for the north building in the final sentence of IR14.87 –

*“in this way, the north building clearly responds to the established local context and would provide a building of sufficient height to provide a strong edge to this important frontage which would be entirely in keeping with the scale and massing of its surroundings”.*

139. It is clear from the First Defendant’s reasons in DL19 that, unlike the inspector, he did not give significant weight to the now lapsed planning permission, given the subsequent changes in the national and local planning policy context since May 2018. However, it is also clear that the First Defendant shared the inspector’s judgment that the north building located on the river frontage of the site was justified as a response to the established local context.
140. In the light of this analysis of the First Defendant’s reasoning in DL 19 against the context of both policy Q26 and in response to IR14.85-14.92, I am satisfied that in agreeing with the inspector overall that *“the provision of a tall building in this location”* would accord with (inter alia) policy Q26 of the local plan, the First Defendant’s focus was on the policy question raised by policy Q26(B). Policy Q26(B) raised the question posed by the inspector – *“Is the site an appropriate location for a tall building?”*. The policy requires the appropriateness of a site for tall building development to be assessed by reference to the impact of such development on its local townscape context. That was the focus of the First Defendant’s reasoning in DL19. On a fair reading, his finding in that paragraph, that locating the north building on the river frontage of the site would accord with policy Q26, was a finding that the location had been shown to be appropriate for a tall building in accordance with the contextual assessment demanded by policy Q26(B).
141. Contrary to the Claimant’s submissions, there is no inconsistency with the First Defendant’s finding two paragraphs later in DL21 that there would be conflict with policy 26(A) for the reasons given in that paragraph. Policy Q26(B) explicitly requires not only that the site for the north building be justified as an appropriate location for a tall building in its local townscape context, but also that the north building satisfies the specific design requirements and avoids the adverse effects on the townscape stated in policy Q26(A)(i)-(vi). The First Defendant’s judgment may accurately be summarised as follows: although the location of the north building was appropriate for a tall building under policy Q26(B), the building’s design and townscape impact gave rise to some conflict with the specific requirements of policy Q26(A). His reasoning in DL19 and DL21 is readily explicable as a response to parts (B) and (A) of policy Q26 as they applied to the proposed north building.

### *Conclusion*

142. In my view, the final sentence of DL19 is not to be read as finding by the First Defendant that overall, the scheme is in accordance with policy Q26 of the Local Plan. On a fair reading, in that sentence the First Defendant made the more limited finding that the site proposed for the north building was an appropriate location for a tall building. It was necessary for the First Defendant to carry out an assessment of the appropriateness of that site for tall building development in accordance with policy Q26(B), as the site was not shown in Annex 10 of the Local Plan. In responding to the

inspector's approach to that question in DL19, the First Defendant focused on the site's established townscape context and character. That was the focus required by policy Q26(B).

143. Having found the site to be an appropriate location for a tall building, it remained necessary for the First Defendant to consider whether the north building satisfied the requirements of policy Q26(A). He did so in the immediately following paragraphs of his decision, concluding in DL21 that there would be some conflict with policy Q26(A)(i)-(iii). The First Defendant maintained that conclusion when he came to draw the overall planning balance in DL34-38.
144. The First Defendant's conclusion on the scheme's performance against policy Q26 of the local plan is therefore clearly stated and sufficiently explained. Although the location of the north building was appropriate for tall building development, the north building resulted in some conflict with policy Q26 by virtue of its design, visual impact and wider townscape effects. There is no inconsistency in these findings, when they are properly understood as a response to the various considerations raised by policy Q26. How those considerations were best addressed was a matter for the First Defendant. He chose to address them in the same order as the inspector in her report. That was a reasonable approach for him to take.
145. It follows, in my judgment, that the First Defendant's findings in DL 19-22 have not been shown to be irrational or internally inconsistent. Those findings are adequately explained. The First Defendant did not lose sight of his finding in DL21 that there would be some conflict with policy Q26 of the Local Plan. On the contrary, he drew the overall planning balance on the basis that the scheme gave rise to some conflict with that policy. The Claimant does not seek to challenge the First Defendant's judgment in DL34 that there was compliance with the development plan taken as a whole.

## **Disposal**

146. It may seem surprising to some that the First Defendant should find that a scheme which, in his view, would not deliver an attractive development of this very prominent and sensitive site on the South Bank should nevertheless be given planning permission. That, however, is a matter for the First Defendant's judgment as the planning decision maker in this case. For the reasons I have given, I have not been persuaded that any of the Claimant's grounds of legal challenge to that planning decision has been made out.
147. I am very grateful indeed to all counsel and those supporting them for the clear and careful manner in which this claim was both prepared for hearing and argued before me. For the reasons I have given, this claim must be dismissed.