41-49 and 49-59 Battersea Park Road, London SW8 5AL

OPENING SUBMISSIONS

ON BEHALF OF THE APPELLANT

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1. This appeal should never have been necessary. The Appellant will demonstrate that the Proposed Development is entirely acceptable, in accordance with both National and Development Plan policy and represents sustainable development in accordance with the key objectives of the NPPF. It received the support of the Council's planning officers, whose conclusions regarding the policy alignment of the scheme accord with those the Appellant will present to this Inquiry.

2. The Council's position in this Appeal is truly remarkable. It has provided a Statement of Case in which explains that it will present evidence to establish that planning permission for the Proposed Development should be refused. It outlines the argument that it intends to make by reference to that evidence. In the event, the Council has chosen not to produce any evidence to support its position that planning permission should be refused. It has to be remembered that the Council's statement of case is not evidence. Since the Council has not substantiated its case in any evidence, the assertions in its statement of Case must be rejected from the outset for being without evidential foundation.

The Context for the Scheme

3. The Appeal Site is located in the Nine Elms ward at the western end of the Vauxhall Nine Elms Opportunity Area (VNEB). The Appeals site is one of a number which are critical to realising the vision of the Opportunity Area (VNEB) through large-scale planning applications, involving the intensification and densification of areas of land in accordance with the aspirations of the Development Plan and

London Plan. Nine Elms has undergone a period of transformation, with significant redevelopment delivering many tall developments.

4. As Mr Fletcher shows in the first drawing in his Appendix A, the Appeal Site is bounded by Battersea Park Road to the north. Sleaford Street and Viridian Apartments to the West. To the South lie Simper Mansions and Arden Mansions (part of the recently completed and occupied New Mansion Square development). To the east lies the New Covent Garden Market Entrance Site (which has the benefit of an Outline Planning Permission but detailed approvals).

The Scheme Design

5. The Appellant will show that the Proposed Development is the product of effective engagement between applicants, their award winning architects, communities, local planning authorities, and other interests throughout the application process, which is essential for achieving sustainable development (NPPF para 131). A huge amount of effort has gone into the design process, as Mr McCartney will explain, resulting in a scheme that garnered the strong support of the Council's Design Review Panel and of Officers.

6. Notwithstanding the years of hard work pursued in relation to its design, the Scheme did not find favour with Members, who, rejecting the advice of officers, resolved that had they retained jurisdiction, they would have refused planning permission. The Appellant will submit that the resolution passed by members of the London Borough of Wandsworth's Planning Committee in January 2025 was adopted on a basis that was entirely inappropriate and indeed unlawful - they resolved that they would have refused planning permission for the Proposed Development without first identifying reasons for so doing, without identifying any breach of planning policy, and without having regard to the Development Plan. The Appellant intends to explore the evolving nature of the Council's case since the Member's resolution.

7. In its Statement of Case, the Council referred to draft Policy 28 of the Partial review of the Wandsworth Local Plan. The Appellant will contend that the Partial Review of the Local Plan (CDC.05) is a matter that should be given no weight in the planning balance, given the approach required by paragraph 49 of the NPPF. That requires regard to be had to the stage the Plan has reached and the extent to which there are outstanding objections to the draft policies in it. It will be argued that the Council, in adopting its position, has not applied NPPF paragraph 49, has not disclosed the matters it is required to disclose to enable the Inquiry to apply paragraph 49 and has not identified that any particular level of weight should be given to the draft Local Plan.

8. The Appellant notes that the Appeal Site benefits from an extant planning permission (ref: 2015/6813) ("the Extant Permission) which was granted on 28 March 2019 in respect of the Site for a mixed use development involving buildings of between 5 storeys and 18 storeys and containing 307 residential units. A Certificate of Lawfulness of Existing Use or Development ("CLEUD") was issued on 22 August 2023, confirming that the Extant Permission has been lawfully implemented. The Appellant will contend that, since the New Mansion Square planning permission and the New Covent Garden Market Entrance Site outline planning permission were granted prior to the Extant Permission, the Extant Permission represents an appropriate benchmark of a form and nature of development that the Council considers acceptable. As a result, it is a matter to which significant weight should be ascribed.

The Issues

9. You identified at the CMC the following issues as arising in this appeal:

    1. The effect on the living conditions of occupiers of properties at New Mansion Square;

2. Whether the proposal is acceptable in land use terms, paying regard to housing need;

3. Consideration of the planning balance.

1) IMPACT UPON LIVING CONDITIONS

10. The SOCG formulates the issue between the Appellant and the Council in relation to impacts upon living conditions as follows:

"Whether the impacts of the appeal scheme on living conditions at neighbouring properties would be acceptable. having regard to Part D of Policy H6 (Housing quality and standards) of the London Plan and Part B Criteria 2,3 and 4 of Policy LP2 (General Development Principles (Strategic Policy)) of the Local Plan. Such neighbouring properties are as follows and are set out in more detail in the topic-based Statement of Common Ground:

- Simper Mansions (Block A3 of New Mansion Square)
- The amenity space of New Mansion Square
- The two podium deck amenity spaces forming part of the New Covent Garden Market development (the "Entrance Site" development zone). "

11. The Topic Specific SoCG identifies that the effects of the appeal development on noise, levels, air quality and on levels of sunlight and daylight at neighbouring properties are not in dispute. The matters which are identified to be in dispute are

- The effects of the appeal development on outlook and privacy from dwellings at 'Simper Mansions' (Building 'A3' of Phase 4A of the Battersea Power Station development) that face the appeal development.

- The effect of the appeal development on the enjoyment of open spaces serving Phase 4A of the Battersea Power Station development.

- The effect of the appeal development on the future enjoyment of proposed deck amenity spaces serving the consented New Covent Garden Market development through overshadowing.

12. The effect of the Proposed Development upon living conditions at all buildings other than Simper Mansions is agreed to be acceptable (CDH.02 para 3.1 4th bullet).

13. Part D of Policy D6 (Housing quality and standards) of the Local Plan (CDC.01) states that the design of development should provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context, whilst avoiding overheating, minimising overshadowing and maximising the usability of outside amenity space.

14. The Council has agreed in the SoCG that the Proposed Development would retain appropriate levels of daylight and sunlight (SOCG CDH.01 p17 para 4.34) at all neighbouring buildings and does not raise objection to the proposed development on that basis. It is noted that some objectors have raised concerns regarding potential infringement upon "rights to light". In order for such rights to arise they must have been either expressly granted or acquired through prescription (over at least a 20 year period). Such rights cannot arise in relation to newly constructed and occupied development in the absence of an express grant. Further and in any event, the courts have held that purely private interests such as rights to light do not warrant protection by the planning system. In *Brewer v Secretary of State for the Environment [1988] J.P.L. 480* (David Widdicombe QC, sitting as a Deputy High Court Judge) the court held that the existence or absence of private rights of light was an irrelevant consideration in determining a planning application.

15. The Council has not alleged that the proposed development creates any issues in terms of overheating.

16. Thus, the only aspect of Policy D6 to be considered is that relating to minimising overshadowing and maximising the usability of outside amenity space.

17. Part B of Policy LP2 (General Development Principles (Strategic Policy)) states that development proposals must not adversely impact the amenity of existing and future occupiers or that of neighbouring properties. It states that proposals will be supported where the development "avoids unacceptable levels of overlooking (or perceived overlooking) and undue sense of enclosure onto the private amenity space of neighbouring properties… is not visually intrusive or has an overbearing impact as a result of its height, scale, massing or siting, including through creating a sense of enclosure… Would not compromise the visual amenity of adjoining sites…"

18. It will be argued that the Proposed Development does not give rise to unacceptable levels of overlooking, undue sense of enclosure onto private amenity space, would not have a visually intrusive or overbearing impacts and would not compromise the visual amenity of adjoining sites. Mr McCartney will present a careful appraisal of these issues in his evidence to this Inquiry.

19. He will point to a number of matters including the improvements to the relationships between buildings that the Appeal Scheme will deliver compared to the Extant Scheme. He will also point to the nature of existing relationships between elements of existing buildings within the locality that have been found to be acceptable in the past. It will be argued that when properly considered in context, the impact of the Proposed Development upon overlooking, privacy and/or sense of enclosure is acceptable and reflects similar approaches that have already been deemed acceptable by the Council. It will be argued that, accordingly, the Proposed Development accords with Policy.

20. In respect of the allegations of unacceptable impact arising from overshadowing of elements of the outline New Covent Garden Market Entrance Site scheme, it will be argued that the deck amenity spaces referred to by the Council do not have

reserved matters approval. As such, the detailed design of the Entrance Site scheme remains inchoate. Further, it will be contended that the BRE guidance has to be applied flexibly and by reference to the context in this location. Mr Fletcher will present detailed evidence on these matters. He will say that the Proposed Development will not give rise to any unacceptable degree of impact, given the urban context here. He will also explain that the Proposed Development will not cause any material prejudice to any future reserved matters applications that may come forward on the New Covent Garden Market Entrance Site.

2) WHETHER THE PROPOSAL IS ACCEPTABLE IN LAND USE TERMS?

21. The Council has argued in its Statement of Case that the Proposed Development is not the "most appropriate" use of the Appeal Site. The Appellant will submit that there is no requirement as a matter of law or policy for the use of the Appeal Site to be the "most appropriate" use. It will be argued that there is no Planning Policy which seeks to prioritise conventional housing over PBSA. The Appellant will refer to the Blount Street Appeal Decision (CDE.07) for support in this. Further, and in any event, Mr Stackhouse will explain that the Appeal Scheme would contribute the equivalent of 502 dwellings, which is far more than a conventional housing scheme on this Site ever could.

22. It will also be submitted that there is no legal justification for the approach advocated by the Council. Indeed, its approach is unlawful. It will be submitted that it is not open to you to refuse planning permission for the Proposed Development on the basis that it is not "the most appropriate in relation to alternative land uses."

23. The relevance of alternative forms of development on the same site when determining a planning application was considered in ***R. (Mount Cook Land Ltd) v Westminster City Council*** [2004] 2 P. & C. R. 405 (CDE.08). In that case, the Court held that the existence of a possible alternative scheme which might be considered more beneficial in planning terms than that proposed in a planning

application is generally not a material consideration. In Paragraph 30, Auld. L.J accepted the following general propositions made by Mr Corner as correct statements of the law and a useful reminder and framework when considering issues such as this:

1) in the context of planning control, a person may do what he wants with his land provided his use of it is acceptable in planning terms;

2) there may be a number of alternative uses from which he could choose, each of which would be acceptable in planning terms;

3) whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any;

4) in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms;

5) where, as Mr. Corner submitted is the case here, an application proposal does not conflict with policy, otherwise involves no planning harm and, as it happens, includes some enhancement, any alternative proposals would normally be irrelevant;

6) even, in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.

24. The matter of alternatives was also considered in ***MR Dean & Sons (Edgware) Ltd v First Secretary of State*** [2007] EWCA Civ 1083 (CDE.09) where the Respondent, Sainsbury's, had advanced a scheme which it considered better met the

requirements of a high-quality design than the scheme that had been granted planning permission. In rejecting Sainsbury's challenge, Keene L.J. held at Paragraph 38 that:

"There is certainly no legal principle of which I am aware that permission must be refused if a different scheme could achieve similar benefits with a lesser degree of harmful effects. In such a situation, permission may be refused but it does not have to be refused. The decision-maker is entitled to weigh the benefits and the disbenefits of the proposal before him and to decide (if that is his planning judgment) that the proposal is acceptable, even if an improved balance of benefits and disbenefits could be achieved by a different scheme."

25. The position was further reinforced in ***Horsham DC v Secretary of State for Communities and Local Government*** [2015] EWHC 109 (Admin) (CDE.10) (see paragraph 59).

26. In summary, it will be submitted that there is no policy or legal justification to refuse the Appeal Scheme (which is compliant with the development plan when read as a whole) on the basis of some alternative scheme that the Council considers to be more appropriate. Indeed, the Council has not identified any particular form of development which could come forward on a basis which would be acceptable and which would meet housing needs to a greater extent. The Extant Scheme is certainly not such an example, given that it would meet a smaller proportion of housing needs than the Proposed Development. This means that the Council's point must be made by reference to an "inchoate or vague scheme" and without reference to any scheme which has been established by reference to evidence to have a real possibility of coming forward if planning permission for the Proposed Development is refused. On that basis, applying the approach in paragraph 6 of ***Mount Cook***, it will be argued that the Council's position must be rejected and can be given no weight in any event.

27. It will be submitted that PBSA is acceptable in principle on the Appeal Site, that the proposed use complies with Policy H15 (PBSA), Policy GG4 (Delivering the homes Londoners need), and Policy H4 (Delivering affordable housing) of the London Plan Policy LP28 (PBSA), and Part A of Policy LP2 (General Development Principles) of the Local Plan; and Site Allocation NE2.

The Need For PBSA

28. Mr Feeney's evidence will demonstrate that the Council's contention that there is an "absence of demonstrated need for the proposed student accommodation" is entirely misconceived. Mr Feeney will explain (his Paragraph 101) that the student to bed ratio in Wandsworth is 5.11: 1 which indicates that need amongst Wandsworth HEPs is higher than across London as a whole. He will also say that there is a significant unmet need for PBSA bed spaces to meet the London Plan target of 3,500 bed spaces per year at whichever geographical level one looks. The Appellant will contend that there is a structural undersupply of PBSA in London which manifests itself in a student to bed ratio of 2.99 :1 at a pan-London level, 5.05: 1 within a commutable distance of the Appeal Site, and 5.11: 1 within Wandsworth as a borough.

29. The Appellant will contend that the Council's allegation regarding a breach of Policy H15 due to the absence of a concluded nomination agreement prior to the grant of planning permission is wholly misconceived and unreasonable. The proposed s106 Planning Obligation makes appropriate provision for a nomination agreement to be in place prior to occupation as accepted by Officers and the GLA.

30. The Appellant will submit that none of the matters identified by the Council in its Statement of Case provides a reasonable basis for refusing planning permission. It will be argued that the only reasonable conclusion open to you on the evidence presented will be that the proposed development does not give rise to any conflict with Policy LP2, LP28, D6 or H15.

3) THE PLANNING BALANCE

31. Mr Stackhouse will present a careful assessment of the planning policy issues, which will conclude that the Proposed Development is compliant with the development plan as a whole. He will also identify a number of material considerations which, in combination, weigh heavily in favour of a grant of planning permission. It will be submitted that the Proposed Development complies with the Development Plan when read as a whole and that the material considerations, when examined overall, further weigh in favour of the Development.

32. Planning decisions are required to apply the presumption in favour of sustainable development. It will be argued that, in the present case, this means approving development proposals that accord with the development plan (NPPF paragraph 11). It will be submitted that the NPPF thus supports the grant of planning permission here **without delay**.

33. The result is that the Appellant will contend that, applying section 38(6) of the 2004 Act, planning permission should be granted and the appeal allowed.

29 April 2025

REUBEN TAYLOR K.C.

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