

# GREATER**LONDON**AUTHORITY

## PROOF OF EVIDENCE OF RICHARD GREEN

<b>Application by:</b>	Notting Hill Gate KCS Limited
<b>At:</b>	Newcombe House, 45 Notting Hill Gate, 39-41 Notting Hill Gate and 161-237 (odd) Kensington Church Street
<b>Local Planning Authority:</b>	The Mayor of London (the GLA)
<b>The Council:</b>	The Royal Borough of Kensington & Chelsea (RBKC)
<b>Council reference:</b>	PP/17/05782
<b>GLA reference:</b>	GLA/3109a
<b>PINS reference:</b>	APP/G6100/V/19/3225884

**OCTOBER 2019**

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**PERSONAL**

This Proof of Evidence (POE) has been prepared by

**Richard Green BSc (Hons) MA**

- i. I hold a Bachelor of Science Honours Degree in Geography and a Masters Degree in Town Planning that I obtained at South Bank University in London. I have over 16 years' experience in planning, gained in both public and private practice.
- ii. I am a Town Planner employed by the Greater London Authority (hereafter referred to as 'the GLA') as a Special Projects Manager in the Development Management service within the Development, Environment & Enterprise Directorate. I advise the Mayor of London on strategic planning issues arising from applications referred to him under the Town and Country Planning (Mayor of London) Order 2008 ("the 2008 Order"). I manage a caseload of complex planning appeals and Mayoral and Secretary of State 'call in' planning applications.
- iii. Prior to this, I was employed as a Strategic Applications Planner at the London Borough of Croydon primarily working on a significant infrastructure project and, before that, I was Service Manager at the London Borough of Sutton responsible for overseeing and managing the performance of the Development Management service in all town planning related functions including urban design, heritage, trees and planning enforcement. I have worked within Local Government for 11 years.
- iv. I was also a Senior Planner within a planning consultancy for nearly five years working for various private clients and Local Planning Authorities on a variety of development proposals and appeals.
- v. I am familiar with the locality within which the application site is located and I am providing this evidence on behalf of the Mayor of London, Sadiq Khan.

## **1.0 INTRODUCTION AND SCOPE OF EVIDENCE**

- 1.1 A Holding Direction was issued by the Secretary of State (SoS) on 29 November 2019, preventing the Mayor from granting planning permission following a Representation Hearing on the 18 September 2018 where the Mayor resolved to grant planning permission in line with the recommendation of GLA officers. The SoS called in the application for his determination on 14 March 2019. It remains the Mayor's view that planning permission should be granted subject to conditions and the completion of a S106 agreement.
- 1.2 The application proposal is described as the "Demolition of existing buildings and redevelopment to provide office, 55 residential units, retail uses, and a flexible surgery/office use, across six buildings (ranging from ground plus two storeys to ground plus 17 storeys), with two-storey basement together with landscaping to provide a new public square, ancillary parking and associated works."
- 1.3 I examine the national, regional and local planning policy and guidance context within which GLA officers, on behalf of the Mayor, made the resolution to grant planning permission. I give a detailed explanation of the reason why this application proposal was considered acceptable by the GLA having regard to the relevant planning balance.
- 1.4 My evidence should be read with that of the other GLA witnesses, consisting of: the expert opinion and analysis of Mr Richard Brookes and Ms Lucinda Turner. My evidence does not seek to repeat the evidence of others, but focuses on the interpretation and application of development plan policy and guidance and considers the planning balance having regard to all other material considerations. The evidence of Ms Turner discusses transport matters arising from the application scheme whilst my evidence addresses the overall planning balance which transport aspects form part. The evidence of Mr Brookes provides expert advice as to the heritage impact of the proposal, whilst I consider relevant policy and guidance and consider the heritage impact in terms of the overall planning balance.

## **2.0 THE APPLICATION SITE AND ITS SURROUNDINGS**

- 2.1 The 0.52-hectare application site is bounded by Notting Hill Gate to the north, Kensington Church Street to the east, Kensington Place to the south, and the Circle and District line and a London Underground Limited substation to the west. The site currently contains several linked blocks and a surface car park of 61 spaces to the rear of the buildings. The surface car park, which is situated between Newcombe Street and the western boundary of the site is also used by a farmers' market.
- 2.2 There are a number buildings on the site which, for the most part, are in poor condition and not listed, including:
- Newcombe House, a 12-storey office building, with plant above, set back from Notting Hill Gate behind a podium accessed by concrete stairs from Notting Hill Gate;
  - 207-237 Kensington Church Street, a 1-2 storey linear block of shops and restaurants; and,
  - Royston Court (161-199 Kensington Church Street), a 5-storey building with ground floor retail situated on the corner of Kensington Place and comprising 20 vacant residential studio flats, owned by Notting Hill Genesis and previously used as bedsit accommodation for rough sleepers.
- 2.3 It is agreed between parties that the existing buildings on site are of a tired appearance and detract from the surrounding character of the area. The buildings' architecture is off its time and comprises pre-cast concrete and glass buildings with the glazing offering little articulation to the massing. The existing massing is a typical mix of mainly low and medium blocks with a singular taller element, Newcombe House at 12 storeys, which sits above its podium. Newcombe House is set back from Notting Hill Gate and its entrance, via concrete stairs, currently creates an unattractive and hard edge to the road. The Notting Hill Gate frontage is currently set back providing some public space, however, this is at odds with the prevailing streetscene where shopfronts open up onto the road in a more traditional layout. The existing public space does not create a particularly pleasant environment.

- 2.4 Notting Hill Gate is designated as a district shopping centre in the London Plan and is primarily commercial in character, with a mixture of building types, heights and styles. Dating from the late 1950s, the buildings and open space on the site are part of a larger post war urban intervention that involved the widening of the roadways along, and immediately adjacent, to Notting Hill Gate. It also included the redevelopment of stretches of street frontage buildings running from the Czech Embassy adjacent to Kensington Palace Gardens to the east through to Campden Hill Towers in the west.
- 2.5 Newcombe House along with the residential Campden Hill Towers, is one of two high-rise buildings within Notting Hill Gate. The 19-storey (plus roof plant) Campden Hill Towers, is situated diagonally opposite Newcombe House and is orientated side-on to the main road. Both towers are from the same period and by the same architects, Cotton Ballard and Blow; and landmark, the main commercial core of the town centre.
- 2.6 The site is within a wider context of traditional streets and buildings that dates mainly from the mid to late Victorian period, with some Edwardian and early 20th Century buildings. The wider area has a distinct domestic scale and character, with the 2 to 3-storey and more artisan character of Notting Hill Village to the immediate south contrasting with the 3 to 4-storey residential terraces of Ladbroke and Pembridge, and the grander townhouses and villas of Kensington Palace Gardens to the east and Holland Park further to the west.
- 2.7 The site is within an area of archaeological importance, but not in a conservation area (CA). The surrounding townscape, however, is largely designated as a heritage asset, dominated by the conservation areas of Kensington, Ladbroke, Pembridge and Kensington Palace Gardens. The surrounding area also contains many statutorily listed buildings, including the adjacent underground station and nearby Grade II Listed Gate and Coronet cinemas and the Grade II terraced housing of Pembridge Gardens and Square. To the east of the site is the Grade I listed Kensington Palace and its Grade I registered gardens and both Newcombe House and Campden Hill Towers are visible above the tree-line in the backdrop of Kensington Palace.
- 2.8 The nearest section of the Strategic Road Network (SRN) (Notting Hill Gate) bounds the site, whilst the Transport for London Road Network (TLRN) is 1.5 kilometres away

(A3220 Holland Park). The site is served by eight high frequency bus routes with stops adjacent or within 200 metres on Notting Hill Gate and Kensington Church Street. The entrance to Notting Hill Gate London Underground station is approximately 50 metres from the site. Accordingly, the site records a Public Transport Accessibility Level (PTAL) range of 6a to 6b (on a scale of 0 to 6b) which is considered excellent.

- 2.9 It is anticipated that a Statement of Common Ground will be provided prior to the Public Inquiry setting out the agreed description of the site.

### **3.0 RELEVANT PLANNING HISTORY**

- 3.1 Whilst it is anticipated that the planning history will be set out within the Statement of Common Ground, the site's planning history is of particular relevance to this current application and is therefore discussed further below.
- 3.2 The relevant planning history for this site relates to a previous application (RBKC ref: PP/15/07602 & GLA ref: D&P/3109 – CD/10.1 to 10.14) for a proposal which was substantially similar to the application currently being considered. The main difference was that it included 46 residential units compared to the 55 of the current proposal. The only external alterations between the previous and current proposals are an increase in one storey to building KCS1 and an increase by two storeys to WPB3. The changes between the previous and current applications are considered in more detail within section 4.
- 3.3 Prior to the submission of application PP/15/07602, GLA officers provided pre-application advice between February 2013 and August 2015 which was supportive of the principle of a mixed-use development, including re-provision of office space, retail and residential uses. The application was subsequently referred to the former Mayor in January 2016, and an initial consultation Stage I report was issued on 28 January 2016, which supported the principle of development, but requested that outstanding strategic planning concerns relating to affordable housing, housing, urban design, climate change and transport be addressed. The Financial Viability Assessment submitted with the application concluded that either a contribution of £2.5 million or four on-site units could be provided within the scheme. RBKC decided that a contribution would be the preference. In addition, a payment in lieu of £7,060,549 (or £9,601,685 if the health centre reverted to office use) for off-site affordable housing was secured. On 17 March 2016, against officer recommendation, RBKC Planning Committee decided that it was minded to refuse planning permission and on 15 April 2016 it advised the former Mayor of this decision. The minutes from the Council's Planning Committee and draft decision notice cited the following reasons for refusal:

1. The height of the tall building would be significantly taller than the existing building and the surrounding townscape. The architecture of the proposed tall



building would be of insufficient high design quality and would not have a wholly positive impact on the townscape. It would result in harm to the setting of nearby listed buildings and conservation areas, including important local views and would result in substantial harm to those heritage assets. The proposals are contrary to policies of the London Plan, in particular policies 7.4, 7.6 and 7.7, and Local Plan policies CL1, CL2, CL3, CL4, CL11 and CL12. The public benefits would be insufficient to outweigh those harms.

2. The proposals result in the loss of social rented floorspace within the Royal Borough, contrary to policies of the London Plan, in particular policy 3.14, and the Local Plan, in particular policy CH3.
3. In the absence of agreed Section 106 obligations, and provisions under Section 16 of the General Powers Act, which would secure the necessary mitigation measures and infrastructure which are necessary to make the development acceptable, the proposal would be contrary to policies of the London Plan, in particular policies 3.12 and 3.16, the Local Plan, in particular policy C1, CT1 and CH2.

3.4 Whilst the Mayor's Stage II report stated that the scheme accorded with the London Plan policies in respect of tall buildings, design, housing, affordable housing and transport, it concluded that there were no sound planning reasons for the Mayor to intervene. On 25 April 2016, the Mayor informed RBKC that he was content to allow the Council to determine the case itself. RBKC refused permission by notice dated 29 April 2016.

3.5 Subsequently the applicant appealed the Council's decision and following a Public Inquiry held between 14 – 17<sup>th</sup> February 2017 the appeal was dismissed by the Planning Inspectorate on 12 June 2017. The appeal had reference APP/K5600/W/16/3149585 and the Inspector's decision is attached at CD/10.10. The single ground for dismissing the appeal related to the lack of affordable housing without sufficiently robust viability evidence to justify otherwise. The Inspector made the following important observations in his appeal decision for a scheme which, as discussed above, is substantially similar to the current proposal:

- I. The previous proposal did not result in substantial harm to any heritage asset.  
(paragraph 41)

- II. There would be some harm in some views within the setting of both some of CAs, a listed building and a heritage asset although there would also be a high degree of enhancement while in several instances the effect would be neutral. (paragraph 41)
- III. The Inspector states that “Nevertheless, even combining the main harm to all the heritage assets, I find that the impact would be well below the hurdle for substantial harm.” (paragraph 43)
- IV. The Inspector concludes, having considered the planning balance, that “There would be some less than substantial harm to some designated heritage assets, including the Ladbroke CA and Royal Parks CA, for which there would be a small negative impact. In other CAs, the effects on some of the different views would pull in different directions so that there would be no overall harm to the settings or an enhancement. However, in each instance of harm, or even taken together, the substantial benefits of the scheme would clearly outweigh this. On balance, on the issues of settings the proposals would be supported by NPPF134. It would comply with London Plan policy 7.8 which expects development affecting heritage assets to conserve their significant.” (emphasis added) (paragraph 63)
- V. the quantum of the previous development was acceptable and would not result in overdevelopment of the site. (paragraph 14)
- VI. The proposal was of a high quality design, would result in a ‘convincing assemble’ and be of the highest standards of architecture. (paragraph 28)
- VII. The proposed tower would be ‘much more attractive when compared to Newcombe House’ and would have a positive impact on the character and appearance of the wider area. (paragraph 28)
- VIII. Limited weight should be given to setting a precedent for other tower blocks within the area. (paragraph 41)
- IX. The proposal would not impact on neighbouring amenity. (paragraph 61)
- X. the benefits of redevelopment as a whole would be substantial and be supported by a raft of development plan policies (emphasis added). (paragraph 59)

3.6 The other planning history of particular relevance to this current application relates to a Listed Building Consent (RBKC Ref: LB/19/03662) which was recently granted on 23.09.19 for the “Construction of new wall adjacent to wall of listed station building; associated flashing and rainwater collection guttering attached to listed wall. Creation of step free access safeguarding zone between platform level and ticket hall level involving

construction of walls abutting existing listed station building wall.” This application related to enabling works for the proposed development as part of this current application.

3.7 In addition to the above site planning history, it should also be noted that planning permission has been granted recently for applications on nearby sites, including:

- I. the re-development of 145 Kensington Church Street for a mixed-use development, involving the erection of a 5-storey building (PP/16/02615). This development is now complete;
- II. re-cladding and installation of additional floors at 92-120 Notting Hill Gate (United House), bringing the maximum height of the building to six storeys (PP/16/05299);
- III. alterations and extensions to the neighbouring 47-69 Notting Hill Gate (David Game House), resulting in an increase in the height of the building to five storeys (PP/17/07174);
- IV. re-cladding and extensions at 66-70 and 72-74 Notting Hill Gate (The Book Warehouse), involving the increase of the height of the building to five storeys (PP/15/05730); and,
- V. re-cladding and installation of an additional floor at 15-35 Notting Hill Gate (Astley House), resulting in an increase in the height of the building to five storeys (PP/16/05212).

3.8 It is anticipated that a Statement of Common Ground will be provided prior to the Public Inquiry setting out the agreed planning history for the site.

#### **4.0 THE CURRENT APPLICATION AND BACKGROUND**

- 4.1 On 29 August 2017, a pre-planning application meeting was held with GLA officers, which focused on strategic level London Plan issues for a mixed-use residential redevelopment of the site, involving the demolition of the existing buildings and the erection of buildings up to 18 storeys containing a mix of residential and commercial uses, comprising approximately 46 residential units. The meeting was attended by Planning Officers from RBKC.
- 4.2 Stage 1: On 15 September 2017, RBKC notified the Mayor that a planning application had been submitted that was of potential strategic importance, referring it under Category 1C to the Order “Development which comprises or includes the erection of a building that is more than 30 metres high and is outside the City of London.”
- 4.3 The application, as originally submitted to RBKC, sought full planning permission for the demolition of the existing buildings, and the redevelopment of the site to provide a residential-led scheme involving the erection of six new buildings ranging in height from 3 to 18 storeys, comprising a mixture of uses including: 46 residential units (Use Class C3); 4,390 sq.m. office (Use Class B1a); 2,871 sq.m. retail (Use Class A1-A3); 904 sq.m. of GP surgery floorspace (Use Class D2); and, associated parking and servicing. The proposed number of residential units included nine social rented residential units, equating to 17.3% by habitable room and 19.6% by unit.
- 4.4 On 29 November 2017, the Mayor considered a GLA Stage I planning report (GLA Ref: D&P/3109a – CD/2.4). This report advised RBKC that whilst the principle of the development was supported in strategic planning terms, the application did not fully comply with the London Plan and issues around climate change and transport should be addressed. Overall the redevelopment of the site was supported and considered to be compliant with the London Plan as the development would constitute residential-led mixed use redevelopment in the Town Centre. The approach to the design and layout was supported.
- 4.5 On 31 January 2018, RBKC’s planning committee resolved to refuse planning permission for the application, against officers’ recommendation, and on 14 March 2018 RBKC

advised the Mayor of this decision. The Council's draft decision notice included the following reasons for refusal:

1. The height of the tall building would be significantly taller than the existing building and the surrounding townscape at a very high land point in the borough. The architecture of the proposed tall building would be of insufficient high design quality and would not have a wholly positive impact on the townscape. It would result in harm to the setting of nearby listed buildings and conservation areas, including important local views and when moving around the conservation areas experiencing them as a whole. This would result in substantial harm to those heritage assets, to which the Council attaches considerable importance and weight. The proposals are contrary to policies of the London Plan, in particular policies 7.4, 7.6 and 7.7, and the Consolidated Local Plan, in particular policies CL1, CL2, CL3, CL4, CL11 and CL12, and the Notting Hill Gate SPD. The public benefits would be insufficient to outweigh those harms.
2. Although slightly more affordable housing floorspace is proposed than currently exists, the proposals would result in the loss of social rented homes within the borough and the Council is not satisfied that the approach to developing the site provides the maximum reasonable amount of affordable housing, contrary to policies of the London Plan, in particular policies 3.12 and 3.14, and the Consolidated Local Plan, in particular policies CH2 and CH3.
3. In the absence of agreed obligations under section 106 of the Town and Country Planning Act 1990 and provisions under section 16 of the Greater London Council (General Powers) Act 1974 which would secure the necessary mitigation measures and infrastructure which are necessary to make the development acceptable, the proposal would be contrary to policies of the London Plan, in particular policies 3.12 and 3.16, and the Consolidated Local Plan, in particular policies C1, CT1 and CH2.

- 4.6 Stage 2: On 26 March 2018, the Mayor considered a GLA Stage II planning report (CD/2.5). The report concluded that having regard to the details of the application, the development is of such a nature and scale that it would have a significant impact on the implementation of the London Plan, and there are sound planning reasons for the Mayor to intervene in this case and issue a direction under Article 7 of the Order that he would

act as the Local Planning Authority for the purpose of determining the application. The Mayor agreed this recommendation and the application was subsequently 'called in' for his determination.

4.7 Stage 3 (Mayor of London as Local Planning Authority): Following, the Mayoral 'call in' GLA officers worked with the applicant to secure a further uplift in the affordable housing offer to 35% by habitable room (42% by unit) to meet the affordable housing threshold approach set out within the Mayor's Affordable Housing and Viability SPG ('AHV SPG'). The AHV SPG is discussed further below within section 7 of my POE and attached within CD/6.2. Revised drawings and documentation were submitted by the applicant on 10 July 2018 making the following amendments:

- I. an increase in the number of homes from 46 (9,992sqm) to 55 (10,585sqm), and alterations to the housing mix;
- II. an increase in the proportion of affordable homes from 17% by habitable room (20% by unit) to 35% by habitable room (42% by unit);
- III. Alteration to housing tenure split from 9 social rented homes to 15 social rented homes and 8 intermediate rent.
- IV. The provision of 10 x 2 bed affordable units off site, each with at least two habitable rooms and nomination rights granted to the Council.
- V. Alterations to the housing mix. The overall housing mix is 19 x 1-bed homes, 9 x 2-bed homes, 24 x 3-bed homes and 3 x 4-bed homes. The proposed market housing mix is 5 x 1-bed homes, 6 x 2-bed homes, 18 x 3-bed homes and 3 x 4-bed homes. The proposed affordable housing mix has been altered from 3 x 1-bed homes, 3 x 2-bed homes and 3 x 3-bed homes to 14 x 1-bed homes, 3 x 2-bed homes and 6 x 3-bed homes.
- VI. an increase in office floorspace of c. 414 sq.m. GEA, to a total of c. 5,306 sq.m.;
- VII. the addition of one storey to Kensington Church Street Building 1 in C3 residential use, from four storeys to five;
- VIII. the addition of two storeys to West Perimeter Building 3 in B1 office use, from five storeys to seven storeys;
- IX. alterations to the layouts of Kensington Church Street Buildings 1 and 2, and West Perimeter Buildings 1 and 3, with associated changes to the facades;

- X. minor alterations to the façade of the Corner Building on levels 4, 5 and 6, which respond to the revised massing of West Perimeter Building 3;
- XI. minor alterations to the services strategy for West Perimeter Building 2; and,
- XII. an increase in cycle parking from 220 to 265.

4.8 On 11 July 2018, interested parties were notified of the proposed amendments with a deadline date of 10 August 2018 for the submission of representations. However, on 31 July 2018 interested parties were notified of an extension of the consultation period to 30 August 2018 following a request for an extension from the local community.

4.9 As such, the current application is now described as the “Demolition of existing buildings and redevelopment to provide office, 55 residential units, retail uses, and a flexible surgery/office use, across six buildings (ranging from ground plus two storeys to ground plus 17 storeys), with two-storey basement together with landscaping to provide a new public square, ancillary parking and associated works.” Further details of the current proposal are set out below.

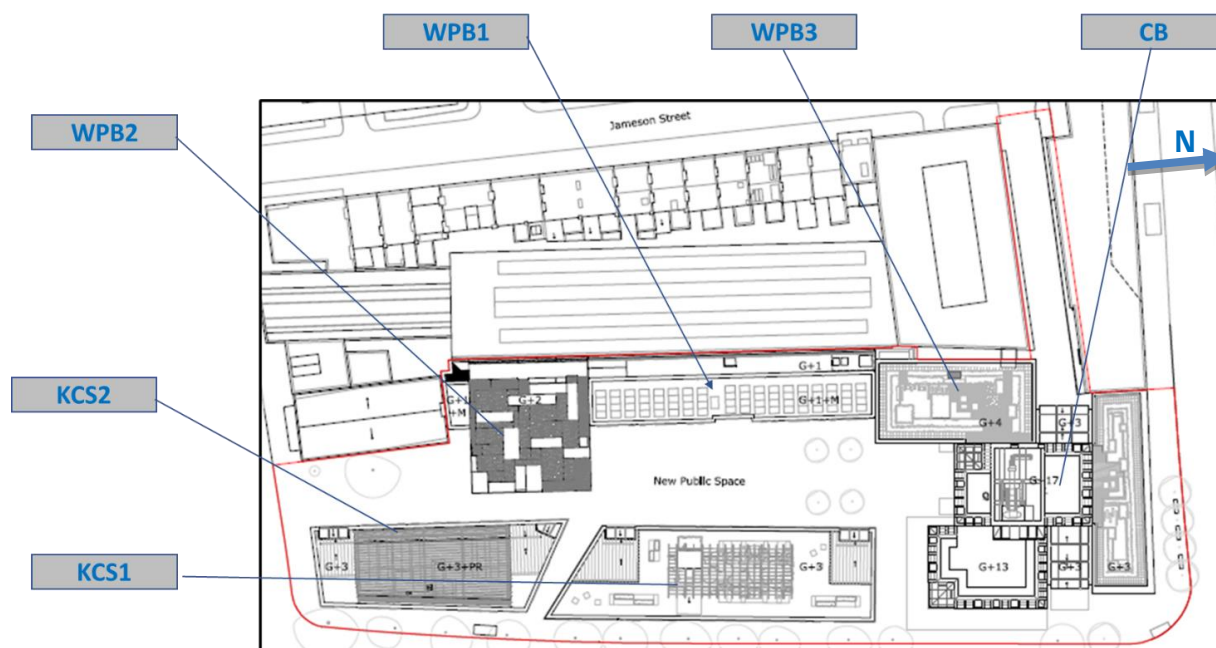


Figure 1: Site plan (1059 P-SITE-AA (0-J002))

4.10 As shown in Figure 1 above, the development would comprise six buildings. The Corner Building (CB) is at the northern end of the site and would consist of two distinct parts: Notting Hill Gate forward projection and the ‘slipped’ tower. The Notting Hill Gate

podium would front on to the road and would be four storeys in height, with retail uses at the ground floor levels and office accommodation above. The slipped tower would comprise an Eastern and Central element at 14 and 18 storeys respectively. The tower would contain a mix of retail and office uses at the lower floors with private residential units at the 4<sup>th</sup> floor and above.

- 4.11 The western edge of the site would be occupied by the West Perimeter Building 1 (WPB1), West Perimeter Building 2/Cube (WPB2) and West Perimeter Building 3 (WPB3). WPB1 would be a 3-storey mixed-use building with four retail units at ground floor and four affordable duplex residential units at first and second floor. Located south of WPB1, the WPB2 would also be three storeys and would contain office accommodation at all floors and support services at basement level. WPB3 would be the most northern of the west perimeter building and the tallest at seven storeys. The height of this building was increased by two storeys following the Mayor's decision to 'call in' the application. The proposed building would sit immediately south of Uxbridge Street and behind David Game House; it would include a retail unit, surgery entrance lobby, services and a vehicle lift at ground floor level. The first, second and third floors would accommodate office floorspace and the remaining floors (4th to 6th) would provide space for a GP surgery.
- 4.12 Kensington Church Street Building 1 (KCS1) and Kensington Church Street Building 2 (KCS2) are proposed to the south of the eastern part of the tower and would be five storeys and four storeys respectively. KCS1 would be immediately to the south of the eastern tower and was increased in height by one storey following the Mayor's decision to 'call in' the application. Both KCS1 and KCS2 would provide retail uses at ground floor and residential use above. A communal private amenity space, including children play space, would also be provided on the fourth floor of KCS1.
- 4.13 The proposed development involves the provision of a 2-storey basement across most of the site, apart from the northern boundary of the site which is to accommodate existing LUL infrastructure. Basement level -1 would provide ancillary storage space for the commercial units at ground floor level and a communal amenity space beneath KCS1. The lower level would provide a basement car park comprising residential / health facility parking spaces as well as cycle storage facilities. The basement plans demonstrate an area



to facilitate installation of a lift from the southbound/eastbound Circle and District line platform to the TfL ticket hall under Notting Hill Gate.

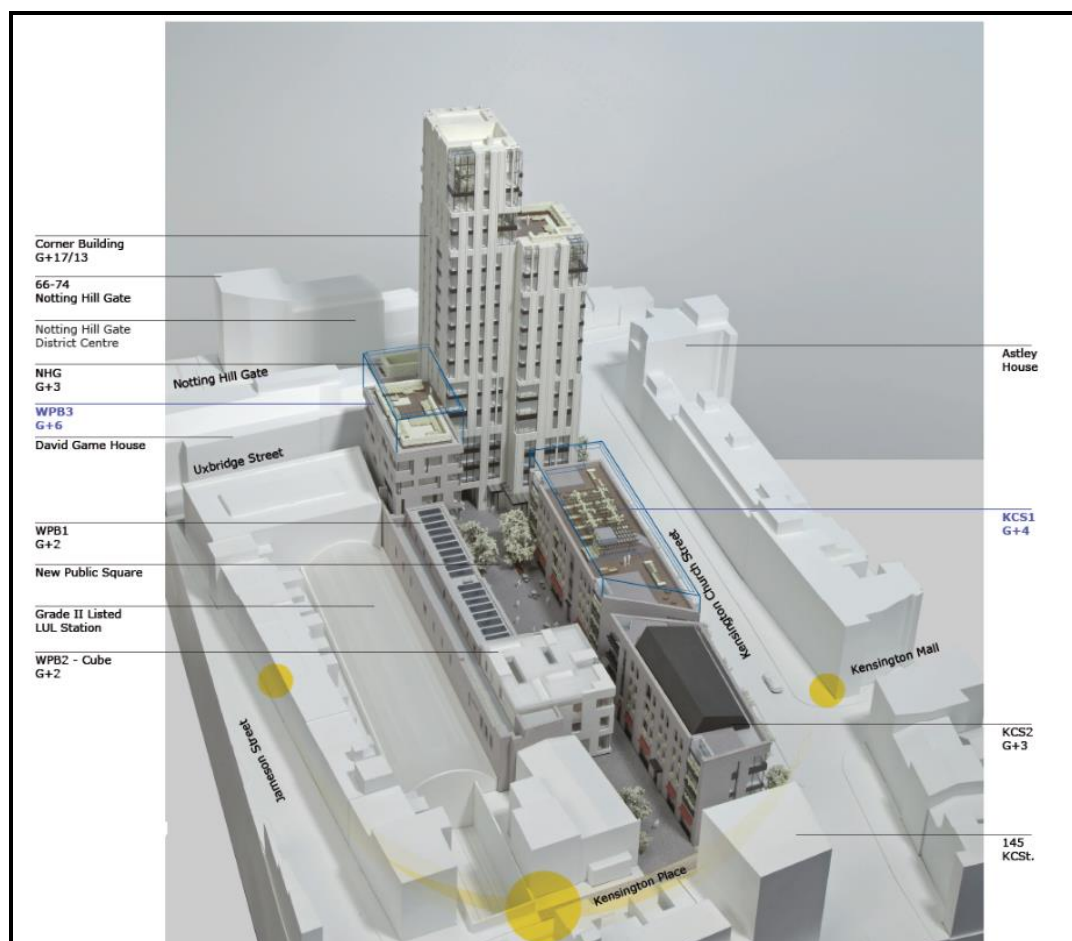


Figure 2: proposed aerial view, with additional massing of amended scheme outlined in blue.

- 4.14 The public square would be situated in the centre of the site and would only be accessible by pedestrians and emergency vehicles. Pedestrian routes from Notting Hill Gate, Kensington Church Street, Kensington Place and Uxbridge Street into the public square would also be provided. As part of the redevelopment proposals, the applicant would provide step-free access to the adjacent Notting Hill Gate London Underground station. This would entail the leasing of land necessary to undertake these works, along with a financial contribution, to be secured through the S106 agreement.
- 4.15 The scheme proposes 30 car parking spaces at basement level -2, 5 of which would be for the GP energy. Of this total, 6 would be Blue Badge parking space, with 5 for

residential users and one for the surgery. Entry to the car parking would be via car lifts and these would be installed at either end of Newcombe Street and Uxbridge Street to access and egress respectively. Regarding cycle parking, 204 long-stay and 61 short-stay spaces are proposed and would be located at both basement levels.

- 4.16 On 7 August 2018 RBKC's Planning Committee considered a report (CD/3.7) by its officers on the amended proposal. Officers recommendation was again to raise no objection to the amended scheme, however, members decided that objection should be raised. As confirmed within the Planning Committee minutes (CD/3.8) members raised objection to the scheme on broadly the same reasons as that stated on 31 January 2018. With reference to objection reason 1, it is important to note that the minutes do not raise specific concern with the changes to buildings KCS1 and WPB3 and focus solely on the tower. It is not until the 29 August 2019 memorandum (CD/3.10) that concern is raised with respect to these buildings. No explanation is provided for this change in the RBKC objection reason and it is unclear whether this was the decision of members on the 7 August 2018.
- 4.17 On 18 September 2018, a public Representation Hearing (Stage 3 report attached at CD/3.12) was held at City Hall for the Mayor to consider the planning application and hear from third parties opposed and in favour of the scheme, as well as from RBKC. At the Hearing, the Mayor resolved to grant planning permission in line with the recommendation of GLA officers, subject to conditions and the conclusion of a S106 agreement.
- 4.18 Post Stage 3 and Secretary of State 'Call In': On 29 November 2018 a Holding Direction was issued by the SoS (CD/2.9), preventing the Mayor from granting planning permission. The SoS called in the application for his determination on 14 March 2019 (CD/2.13).
- 4.19 Following the SoS 'Call In', a further RBKC Planning Committee was held on 30 May 2019 (CD/3.13) where Council officers sought to clarify RBKC's position at the Public Inquiry. Members decided to continue with the concerns raised previously but with one significant change to objection reason 1 changing the harm to heritage assets from 'substantial' to 'less than substantial'.

4.20 A further RBKC Planning Committee took place on 17 September 2019 following RBKC officers seeking Counsel's advice in the preparation for the forthcoming Public Inquiry. Members agreed with the report (CD/3.16) that objection 2, in relation to affordable housing, should be removed. As such, it would now appear that the Council are continuing to contest the forthcoming Public Inquiry on the basis of the two following objections:

- The height of the tall building would be significantly taller than the existing building and the surrounding townscape at a very high land point in the borough. The architecture of the proposed tall building would be of insufficient high design quality and would not have a wholly positive impact on the townscape. The tall building and increased massing to KCS1 and WPB3 buildings would result in harm to the setting of nearby listed buildings and conservation areas, including important local views and when moving around the conservation areas experiencing them as a whole. This would result in substantial harm to those heritage assets, to which the Council attaches considerable importance and weight. The proposals are contrary to policies of the London Plan, in particular policies 7.4, 7.6, 7.7 and 7.8, and the Consolidated Local Plan, in particular policies CL1, CL2, CL3, CL4, CL11 and CL12, and the Notting Hill Gate SPD and Building Height in the Royal Borough SPD. The public benefits would be insufficient to outweigh those harms.
- In the absence of agreed obligations under section 106 of the Town and Country Planning Act 1990 and provisions under section 16 of the Greater London Council (General Powers) Act 1974 which would secure the necessary mitigation measures and infrastructure which are necessary to make the development acceptable, the proposal would be contrary to policies of the London Plan, in particular policies 3.12 and 3.16, and the Consolidated Local Plan, in particular policies C1, CT1 and CH2.

4.21 As demonstrated above, RBKC have changed their position on a number of occasions since the SoS has called in the application and, whilst I can speculate, RBKC have not provided any formal explanation for doing so. It is important to note the recommendation from the latest 17<sup>th</sup> September 2019 Planning Committee (CD/3.17)

confirms “The Committee is recommended to consider Leading Counsel’s advice contained in this report and resolve that the Council withdraws Objection 2 to the proposals at the forthcoming Public Inquiry. The Committee is recommended to consider Leading Counsel’s advice contained in this report and acknowledge the risk to the Council in pursuing Objection 1 to the proposals at the forthcoming Public Inquiry.” (emphasis added)

- 4.22 It is anticipated that a Statement of Common Ground will be provided prior to the Public Inquiry setting out the agreed background and description of proposal.

## **5.0 THE LEGAL CONTEXT**

### **Planning and Compulsory Purchase Act 2004 and Town and Country Planning Act 1990**

- 5.1 The effect of section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 is that applications for planning permission should be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise.

### **Planning (Listed Buildings and Conservation Areas Act) 1990**

- 5.2 The site is located within the setting of a number of listed buildings and adjacent to a number of conservation areas. Relevant to this application is Section 66(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 which states “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. This places a statutory duty on the decision maker to have a special regard to preserving the setting of listed buildings. It has been confirmed<sup>1</sup> (CD/11.7) in the Court of Appeal that 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, where “preserve” means to “to do no harm”. This duty must be borne in mind when considering any harm that may accrue and the balancing of such harm against public benefits as required by national planning policy.
- 5.3 The Courts have confirmed that if the policy approach set out in the NPPF is followed then the statutory duties referred to above will have been fulfilled.

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<sup>1</sup> HMSO (1990) Planning (Listed Buildings and Conservation Areas) Act Barnwell Manor Wind Energy Limited and (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary of State for Communities and Local Governments, Case No: C1/2013/0843, 18 February 2014

- 5.4 It should be noted that the Court of Appeal has confirmed that the decision in the Barnwell Manor case (as previously mentioned) did not require the decision maker to demonstrate compliance with Section 66(1) of the Planning Act 1990<sup>2</sup> (CD/11.4). The onus is instead upon a claimant to show that there is a positive indication that the decision-maker has not given the required “considerable importance and weight” to the importance of conserving the relevant designated heritage asset. Only if there is such a positive indication need a decision maker make a countervailing positive reference to the relevant duty(s) in the reasons themselves.
- 5.5 With regard to how this relates to the National Planning Policy Framework (NPPF), the courts also held that, given that the relevant part of the NPPF is to be read together, if an Inspector refers to paragraph 134 (which is equivalent to the paragraph of the revised NPPF 2019), then unless there is a positive indication to the contrary, the appropriate inference is that he / she has taken properly into account all of the relevant paragraphs of the Framework.
- 5.6 Section 72 (1) confirms that where buildings and land are located within a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The site is not located within a conservation area and, therefore, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is not engaged. There is no statutory duty relating to the setting of conservation areas within the Planning Act. In addition, there is no statutory duty relating to the special historic interest or setting of registered parks and gardens within the Planning Act.
- 5.7 The evidence of Mr Brookes sets out advice as to the correct approach to follow in this case, which I commend but do not repeat.

**Greater London Authority Act 1999, Greater London Authority Act 2007 and Mayor of London Order 2008**

- 5.8 This legislation sets out the power and functions of the Mayor and Assembly and are referred to further with the GLA’s Statement of Case (CD/4.2).

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<sup>2</sup> Jones v Mordue [2015] EWCA Civ 1243 (03 December 2015)

## **6.0 DEVELOPMENT PLAN POLICY**

- 6.1 As has been noted, the relevant statutory provisions set the framework for decision making: the application proposal should be determined in accordance with the provisions of the statutory development plan, unless material considerations indicate otherwise. The development plan for the area comprises the London Plan (2016) and the RBKC Local Plan (RBKC LP) 2019.
- 6.2 The relevant policies of the statutory development plan should be afforded full weight in the determination of this application. I am of the view that the relevant policies of the development plan are up to date for the purposes of paragraph 11 and 213 of the National Planning Policy Framework (NPPF).

### **London Plan 2016 (CD/6.1)**

- 6.3 The current version of the London Plan was adopted in 2016 and is consolidated with alterations to the London Plan since 2011. The plan sets out the spatial development strategy for London. The London Plan 2016 adopted policies relevant to the consideration of the application are listed within the Statement of Common Ground (SoCG) and RBKC, within their 30/05/19 Planning Committee report, quoted a number of policies to contest the application. RBKC's remaining objection 1 and 3 include policies 3.12, 3.16, 7.4, 7.6, 7.7 and 7.8 of the London Plan 2016. These policies are referred to in more detail within the next section of my POE along with other policies where relevant. The London Plan 2016 is attached at CD/6.1.

### **RBKC Local Plan (RBKC LP) 2019 (CD/5.1)**

- 6.4 The Local Plan 2019 (referred to as 'RBKC LP') was submitted by RBKC to the Secretary of State for examination on Friday 5 May 2017 with the examination hearings held between 27 February and 16 March 2018. The Inspector published his interim findings letter on 16 July 2018, which set out that he found the plan to be unsound and that it required "main modifications". Consultation on the proposed "main modifications" took place from 23 July – 17 September 2018. The Council adopted its LPPR Publication Policies, February 2017, on 11 September 2019. This incorporates both the "main

modifications” recommended by the Inspector and the “minor/additional modifications” published by the Council. The adopted RBKC LP replaces parts of the Consolidated Local Plan (2015) and the remaining saved policies within RBKC’s Unitary Development Plan (2007).

- 6.5 The RBKC LP 2019 adopted policies relevant to the consideration of the application are listed within the SoCG and RBKC, within their 30/05/19 Planning Committee report, quoted a number of policies to contest the application. RBKC’s remaining objection 1 and 3 include policies C1, CT1, CL1, CL2, CL3, CL4, CL11, CL12 and CH2 of the RBKC LP 2019. These policies are referred to in more detail within the next section of my POE along with other policies where relevant. The RBKC LP 2019 is attached at CD/5.1.



## **7.0 OTHER RELEVANT PLANNING POLICY AND GUIDANCE**

### **Central Government Policy**

#### The National Planning Policy Framework (CD/7.1)

- 7.1 The National Planning Policy Framework (referred to as 'NPPF' or 'the Framework' hereafter) was adopted in February 2019 and sets out the governments objectives in achieving sustainable development. The most relevant paragraphs of the NPPF in relation to this application are referred to below.
- 7.2 The NPPF states at paragraph 8 that there are three dimensions to sustainable development: economic, social and environmental. These objectives are interdependent and need to be pursued in mutually supportive ways. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The objectives are as follows:
- a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
  - b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
  - c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 7.3 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development. Paragraph 11 confirms that for decision-taking this means
- “c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”
- 7.4 Paragraph 12 continues that “The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan permission should not usually be granted.” The suite of development plan documents relating to this application are up-to-date and this has not been contested by any party.
- 7.5 The NPPF, at paragraph 23, confirms that “Strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area.”
- 7.6 The NPPF continues at paragraph 48 that “Local planning authorities may give weight to relevant policies in emerging plans according to:
- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
  - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

- 7.7 Housing delivery is discussed within section 5 of the NPPF and confirms that the Government's objective is to significantly boost the supply of housing. Paragraph 57 states "Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force."
- 7.8 Paragraph 61 states that the "type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes.)"(emphasis added).
- 7.9 Paragraph 73 of the NPPF states that "Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old."
- 7.10 At paragraph 91, the NPPF states that planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction and are safe and accessible for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continue use of public areas. (emphasis added).
- 7.11 Section 9 discusses the promotion of sustainable transport and confirms within paragraph 108 that new development should ensure that "appropriate opportunities to promote

sustainable transport modes can be – or have been – taken up, given the type of development and its location.” (emphasis added) Paragraph 110 of the NPPF continues that applications for development should “give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use.” (emphasis added)

- 7.12 Paragraph 117 of the NPPF seeks to ensure that decisions “promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.” Paragraph 119 continues that “Local planning authorities, and other plan-making bodies, should take a proactive role in identifying and helping to bring forward land that may be suitable for meeting development needs”
- 7.13 Paragraph 122 of the NPPF confirms that decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing, local market conditions and viability and the importance of securing well-designed, attractive and healthy places.
- 7.14 Paragraph 123 of the NPPF states that “Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.” (emphasis added)
- 7.15 Section 12 of the NPPF discusses well designed places and confirms that the creation of high quality buildings and places is fundamental. Paragraph 124 states that “the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”
- 7.16 Paragraph 127 states that developments should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping and be sympathetic to

local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities) and establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit. (emphasis added)

- 7.17 Conserving and enhancing the historic environment is discussed within Section 16 of the NPPF. Paragraph 184 states “Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”
- 7.18 As the evidence of Mr Brookes has explained paragraphs 192 to 196 of the 2019 NPPF mirror a very similar set of paragraphs in the 2012 version. They can be seen as part of a “fasciculus” of paragraphs, which need to be worked through by the decision maker, in order to comply with the section 66 Planning (Listed Buildings and Conservation Areas) Act 1990 duty. Paragraph 192 of the NPPF confirms that “In determining applications, local planning authorities should take account of:
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
  - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - c) the desirability of new development making a positive contribution to local character and distinctiveness.” (Emphasis added)
- 7.19 Paragraph 193 continues that “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.”

- 7.20 Paragraph 194 states “Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.” The later part of paragraph 194 and paragraph 195 discuss ‘substantial harm’ to heritage assets, which are referred to here for completeness only.
- 7.21 At Paragraph 196 the NPPF confirms that “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.” (emphasis added)
- 7.22 Paragraph 200 continues that “Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”
- 7.23 Annex 2: Glossary of the NPPF describes the “Setting of a heritage asset” as being “the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”
- 7.24 The Glossary of the NPPF also confirms that the ‘Setting of a heritage asset’ is “The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”
- 7.25 Annex 2: Glossary continues that the “Significance for heritage policy” is defined as: “The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For

World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance".

### **Emerging Development Plan Policy**

The Draft London Plan (incorporating Minor and further Suggested Changes (July 2019) and Matters Statements) (CD/9.1)

- 7.26 A new draft London Plan is in the late stages of the adoption process and went through its Examination in Public (EiP) between January and May 2019. The draft new London Plan was published by the Mayor for consultation in December 2017 and in July 2019 the Mayor published a further version of the draft Plan that included minor and further suggested changes. The suggested changes were prepared following a review of consultation responses, and consist of clarifications, corrections and factual updates to the draft Plan. As the plan moves forward to its final form, increasing weight can be afforded to its policies. As updates on its progress become available, the inquiry will be kept up to date.
- 7.27 As above, the most recently consolidated version of the draft London Plan was published in July 2019. Matter statements have also been published in response to the EiP. Some of these relevant policies are referred to in more detail within the next section of my POE. The Draft London Plan 2019 is attached at CD/9.1.

### **Other Relevant Planning Guidance**

- 7.28 There are a number of other planning guidance documents that are relevant to this application which are listed within Section 5 of the SoCG. The most relevant guidance documents are referred to further below with the exception of heritage guidance which is referred to within the POE of Mr Brookes.

The London Strategic Housing Market Assessment (CD/6.8)

- 7.29 There is a clearly established need for affordable housing in London. The lack of supply of homes that Londoners can afford has played a significant role in London's housing

crisis. The 2017 London Strategic Housing Market Assessment (referred to as “the SMHA”) identified a significant need for housing, and for affordable housing in particular.

- 7.30 The failure to provide sufficient numbers of new homes to meet London’s needs has given rise to a range of negative social, economic and environmental consequences, including: worsening housing affordability issues, overcrowding, reduced labour market mobility, staff retention issues and longer commuting patterns. The SMHA also identified that London’s rates of need are far greater than in the rest of the country with significantly higher levels of overcrowding and homelessness in London. Delivering more affordable housing is a key strategic issue for London, as set out in the London Plan and the Draft London Plan.

Mayor’s Affordable Housing & Viability SPG (CD/6.2)

- 7.31 The Mayor published his Affordable Housing & Viability SPG (referred to as ‘AHV SPG’) in August 2017 which, amongst other matters, confirms the circumstances where viability information is expected to accompany planning applications and provides clarity over the use of viability review mechanisms. The AHV SPG must be read in conjunction with the decision in *R v McCarthy & Stone* (CD/11.8). However, this is relevant to shorter-term single phased schemes, as distinct from the longer-term application scheme which will take many years to build out. Whilst this point is not in dispute between parties, it should be noted that I consider that the AHV SPG can be relied on in relation to the requirement for a late review in this case, together with the London Plan, Local Plan and associated guidance, and Draft London Plan, as referred to above.
- 7.32 The AHV SPG seeks to increase the provision of affordable housing in London and embed affordable housing into land prices. The AHV SPG introduced a threshold approach to viability, which is now incorporated within Policy H6 of the draft London Plan. The AHV SPG also sets out a preferred tenure split of at least 30% low cost rent (social or affordable rent significantly less than 80% of market rent), at least 30% intermediate (with London Living Rent and shared ownership being the default tenures), and the remaining 40% to be determined by the local planning authority, and this is also reflected within Policy H7 of the draft London Plan. Where schemes do not provide the



relevant affordable housing threshold, a financial viability assessment is required to ascertain the maximum level of affordable housing deliverable on the scheme.

- 7.33 The AHV SPG and Policy H6 of the Draft London Plan require that schemes not meeting the threshold level of affordable housing provide early stage reviews and late stage reviews to ensure that if there is an improvement in viability additional affordable housing is provided. Paragraph 9 of the AHV SPG confirms that where schemes, such as that currently proposed, meet the threshold level only early stage reviews will be required. The AHV SPG states that an early stage review is triggered if an agreed level of progress on implementation is not made within two years of the permission being granted or as agreed with the LPA. This will result in additional onsite affordable housing in the event that viability has improved since the application stage. The Mayor's approach to review mechanisms is to assess changes in development values and build costs which are the most significant variables within an assessment and are most likely to be subject to change. This avoids the need for a full reassessment of viability and reduces information requirements and resources required to carry out a review which can be undertaken in shorter period.
- 7.34 Mayor's Transport Strategy (CD/6.4).
- 7.35 The Greater London Authority Act 1999 requires the Mayor of London to prepare and publish a transport strategy known as the Mayor's Transport Strategy (referred to as 'MTS'). The MTS must include, amongst other things, policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London and proposals for the provision of transport which is accessible to persons with mobility problems. A revised MTS was published by the Mayor in March 2018.
- 7.36 Notting Hill Gate SPD (CD/5.3)
- 7.37 RBKC adopted its Notting Hill Gate SPD in May 2015 (referred to as 'NHG SPD'). The SPD sets out the Council's vision for the area to strengthen Notting Hill Gate's role as a district centre and seeks new high-quality architecture and public realm. The site is identified for redevelopment to provide residential, offices and retail, including a landmark building.

7.38 The NHG SPD is supplementary to the Council's Local Plan. The three main objectives identified for Notting Hill Gate within the SPD are:

- i. To improve the streets and public spaces;
- ii. To improve the buildings and architecture; and
- iii. To strengthen the identity of Notting Hill Gate.

7.39 The NHG SPD recognises that the Newcombe House site has an important part to play in the future of Notting Hill Gate, however, it also recognises that there are several constraints at the Site.

7.40 The Farmers' Market is an extremely popular part of Notting Hill Gate and paragraph 2.19 of the SPD explains that it offers a community meeting place, and the market's customers provide extra business for local shops and cafés. It is recognised that its current location in the car park of Newcombe House may be required for redevelopment and that searches for sites to relocate the market have not identified any successful locations.

7.41 Figures contained within the NHG SPD show illustrative proposals for the future of the Newcombe House site, including:

- i. Figure 4: Step free access to Notting Hill Gate station in place of the existing south east entrance;
- ii. Figure 4: Servicing bays on Notting Hill Gate directly north of the Site;
- iii. Figure 11: A landmark building in the north east of the Site;
- iv. Figure 11: Pedestrian access from Notting Hill Gate through the Site, under the replacement landmark building;
- v. Figure 11: Retail frontage running along the Notting Hill Gate and Kensington Church Street boundaries of the Site, as well as through the centre of the Site.

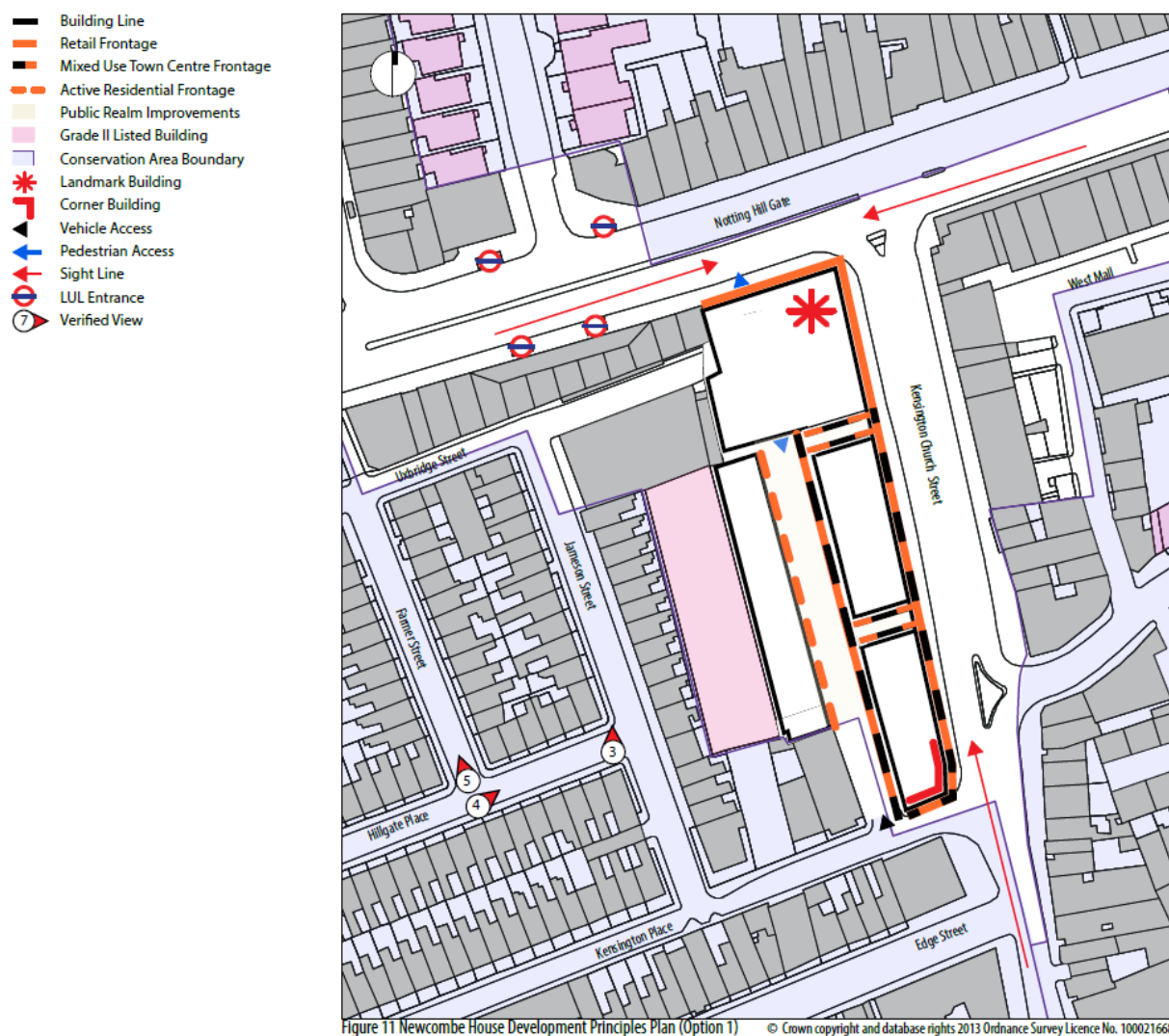
7.42 Paragraphs 4.11 to 4.23 relate specifically to the future of the Newcombe House site. The following opportunities are listed:

- i. the potential for Newcombe House to be either refurbished, to include a modest increase in height over the existing building, or redeveloped to a different plan form and with a less bulky profile than the existing tall building;
- ii. provision of a new public space in the form of a courtyard or square at the centre of the Site, accessible from Notting Hill Gate and Kensington Church Street, and with active frontages;
- iii. an improved public space to the north of the Site if the tall building is not moved forward; and
- iv. reprovision of all existing business floorspace, new retail and new residential floorspace.

7.43 The following constraints are also noted:

- i. daylighting and sunlighting constraints limit the massing along Kensington Church Street;
- ii. all existing business floorspace should be re-provided;
- iii. an interchange tunnel between the Central Line and District and Circle Line requires the setting back of buildings above or the use of cantilevering or a lightweight structure; and
- iv. development must preserve or enhance the heritage significance of the special architectural or historic interest of surrounding listed buildings and conservation areas.

7.44 Figure 11 (pg 14) from the NHG SPD is shown below and sets out development principles for Newcombe House. Of particular note, Figure 11 sets out the principles in relation to building line, active frontages and the location for a landmark building.



7.45 RBKC’s Building Height Supplementary Planning Document (referred to as ‘BHSPD’ – CD/5.2)

7.46 The Building height SPD was adopted in September 2010 and sets out guidance in relation to building heights within the RBKC and identifies parts of the borough that are unable or less able to absorb the impacts of tall buildings. The document also provides a list of criteria that tall buildings should address.

7.47 The Building Height SPD states at paragraph 2.10 that “Building plots along major transit corridors have experienced higher pressures for change, and show a greater variation in massing and height. This is especially evident around Notting Hill Gate... The tall building survey indicates that developments along these routes reach heights of between 7-9 and 10-14 storeys. Many of these buildings are not high enough to provide

landmarks on the skyline, but are tall enough to have a distinct visual impact that often detracts from their surroundings. The Borough also accommodates a limited number of taller buildings of 15 storeys and above that have a dominant effect on their immediate and wider surroundings.

- 7.48 Paragraph 2.11 continues that “With the exception of a few single developments, particularly along King’s Road, tall buildings loosely cluster in ten groups... 3) Notting Hill Gate” Section 3 of the BHSPD discusses the height ranges for local, district and metropolitan whilst section 4 discusses views and buffer zones for sensitive areas. Section 5 sets out proactive tests for tall buildings including design quality, materiality, townscape legibility and uses.
- 7.49 Appendix 1 of the BHSPD makes reference to the superseded RBKC Unitary Development Plan and states at paragraph A1.19 that “There are buildings within the Royal Borough that are regarded as highly disruptive to visual quality of the Royal Borough. The Core Strategy refers to them as ‘eyesores’ and promotes their removal and replacement with buildings better suited to their context. Two eyesore buildings are currently identified: Holiday Inn (Forum Hotel) in Gloucester Road and Newcombe House in Notting Hill Gate, both of which are tall buildings.
- 7.50 Whilst not specifically referenced here, there are a number of other relevant guidance documents relevant to this application as set out within the SoCG and core document list. The POE of Mr Brookes and Ms Turner also refer to other policy and guidance documents.

## **8.0 PRINCIPAL ISSUES**

8.1 Having regard to the policies and guidance outlined above and the Council's Planning Committee reports dated 30.05.19 and 17.09.19 it is considered that the application scheme raises 2 principal issues in dispute between parties which are both contained within RBKC's objection 1 for contesting the Public Inquiry. These are set out below:

1. Heritage Impact.
2. Townscape and Architectural Quality

8.2 As confirmed above, RBKC's objection 2 (affordable housing) has been withdrawn and objection 3 (planning obligations) is a technical reason pending the completion of a s106 agreement at which time objection 3 will fall away. Heads of Terms have been agreed between the Applicant, GLA and the Council and it is anticipated that prior to the opening of the Public Inquiry the parties will set out the reasons for the inclusion of each planning obligation in accordance with the tests. It is understood that the completion of the s106 is expected prior to the opening of the Public Inquiry and, as such, my POE has not focused on this objection.

### **Issue 1: Heritage Impact.**

8.3 The second part of RBKC's Objection 1 refers to harm to the setting of nearby listed buildings and conservation areas resulting from the proposed tall corner building and increased massing to KCS1 and WPB3 resulting from the amendments.

8.4 It is now understood that the Council's position on Heritage impact is that the proposal would result in 'less than substantial' harm, however, where the Council consider this harm sits on the scale is unclear. As set out above within the background section of my POE, the Council has been inconsistent in their approach to heritage impact, first concluding that 'substantial' harm would arise but reducing this impact to 'less than substantial' following the SoS 'call in' and, I understand, following Counsel advice. The Council has provided little analysis, to date, to support their objection and no reasons are given in relation to the impacts on each heritage asset. In addition, it has not been evidenced, to date, how the Council arrived at their objection having regard to the

planning balance. In addition, as confirmed above within paragraph 4.16 of my POE, it would appear that the inclusion of KCS1 and WPB3 is somewhat of an afterthought having not appeared in the original minutes to the 7 August 2018 Planning Committee.

- 8.5 The application was supported by an Environmental Statement, including a Townscape, Heritage and Visual Impact Assessment (referred to as 'TVIA') (CD/1.19 to 1.22) by Tavenor Consultancy Ltd with Milerhare London providing Accurate Visual Representations (referred to as 'AVR'). The purpose of the report was to provide an assessment of the impact upon heritage and townscape receptors. The built heritage assessment sets out to consider the significance of heritage assets and the impact of the proposals upon that significance.
- 8.6 Matters relating to heritage are discussed, in detail, within the POE of Mr Brookes. Mr Brookes has completed an analysis of the baseline conditions of each heritage asset and made an assessment of the significance of each of the identified designated heritage assets and, where appropriate, a consideration of their setting.
- 8.7 The evidence provided by Mr Brookes is compelling in concluding that "the proposed development would cause a degree of harm to the understanding or appreciation of the significance of a number of designated heritage assets (conservation areas, listed buildings and a registered park and garden) within the surrounding area of the Site" but this would be 'less than substantial' to some heritage assets as per the NPPF's definition and at the very lower end of the scale. The evidence of Mr Brookes also identifies that the scheme has the potential to enhance or better reveal the significance of a number of heritage assets and that, in the majority of cases, the proposal would have a neutral or no impact on the understanding or appreciation of the significance of designated heritage assets.
- 8.8 As confirmed above, the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out certain statutory duties to which a planning decision maker must have regard and confirms that, in relation to listed buildings, planning decisions should "have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

- 8.9 Paragraph 196 of the NPPF is clear that “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.” I consider, within section 9 of my POE, the overall planning balance and provide an analysis of the harm and benefits arising from the proposed development.
- 8.10 Criterion D of Policy 7.8 of the London Plan 2016 states “Development affecting heritage assets and their setting should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail”. The supportive text, at paragraph 7.29, explains that “It is to London’s benefit that some of the best examples of architecture from the past 2000 years sit side by side to provide a rich texture that makes the city a delight to live, visit, study and do business in. Ensuring the identification and sensitive management of London’s heritage assets in tandem with promotion of the highest standards of modern architecture will be key to maintaining the blend of old and new that gives the capital its unique character”. It is clear from this statement that, whilst London’s heritage assets are very important and should be carefully managed, this does not preclude high quality modern architecture in close proximity to it. Indeed, architectural variety with high quality modern architecture sitting alongside heritage assets is an important element of London’s unique character and one of the reasons that makes London the special city it is today.
- 8.11 In particular, paragraph 7.31A of the amplification to Policy 7.8 confirms that “Where a development proposal will lead to less than substantial harm to the significance of a designated asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.” This approach is also confirmed by Policy HC1 of the draft London Plan. In line with the NPPF, policy 7.8 allows some flexibility when considering the setting of a listed building and ‘less than substantial’ harm needs to be weighed up against the public benefits. As will be demonstrated within section 9 of my POE, I consider that the proposal offers substantial benefits to outweigh the ‘less than substantial’ harm to some assets identified. As such, I consider that the current proposal accords with London Plan heritage policy when taking into account the wider public benefits



- 8.12 Part (a) of Policy CL3 of the RBKC LP confirms that the council will “require development to preserve or enhance the character or appearance of the conservation area and protect the special architectural or historic interest of the area and its setting.” The amplification to policy CL3 confirms that the setting of a listed building and the surroundings in which it is experienced can also contribute to its special interest. Part (b) of this policy is not particularly relevant to this application as it relates to resisting change of uses that contribute to the local character.
- 8.13 Part (c) of Policy CL3 refers to substantial demolition within a conservation area and, as the application site is not within a conservation area, it is not of particular relevance. However, it should be noted that this part of Policy CL3 does introduce a planning balance test. At c(i) and (ii) of policy CL3, it confirms that the Council will “resist substantial demolition in conservation areas unless it can be demonstrated that: (i) in the case of substantial harm or loss to the significance of a heritage asset it is necessary to achieve substantial public benefits that outweigh that harm or loss; (ii) in the case of less than substantial harm to the significance of a heritage asset, that the public benefits, including securing the optimum viable use, outweigh that harm; (iii) the building or part of the building or structure makes no positive contribution to the character or appearance of the area”. It is clear that policy CL3 allows a planning balance assessment to be made even for a site within a Conservation area, where there is ‘substantial’ harm to a heritage asset through demolition. In the case of ‘less than substantial’ harm the test is ‘public benefits’ not ‘substantial public benefits’ and there is a requirement to make the ‘optimum viable use’ of the site. It is clear that Policy CL3 allows a planning balance to take place for development (demolition) which could result in substantial harm to a heritage asset.
- 8.14 Policy CL4 of the RBKC LP require developments to protect the heritage significance of listed buildings, scheduled ancient monuments and archaeological priority areas. Additionally, Policy CL11 sets out the Council’s requirements for development to protect and enhance gaps, views, vistas and the skyline. Among others, Policy CL3, CL4 and CL11 have been given full consideration in the assessment of Mr Brookes on heritage impact as set out in his POE. I am of the view that the current proposal accords with policies of the RBKC LP and, in particular, policies CL3 and CL4 having regard to the wider benefits of the proposal.

- 8.15 I adopt the evidence of Mr Brookes that the proposal would result in ‘less than substantial harm’ to some heritage assets but at the very lower end of the scale. As will be discussed within section 9 of my POE, the harm identified is outweighed by the substantial benefits of the scheme and this was also the conclusions of the Inspector in considering the previous appeal. I am of the view that that the proposal fully accords with the NPPF and both strategic and local heritage development plan policy.

## **Issue 2: Townscape and Architectural Quality**

- 8.16 The first part of RBKC’s Objection 1 relates to the alleged negative townscape impact of the proposed tall building (Building CB). The Council’s objection refers specifically to the ‘height of the tall building’ and continues that ‘the architecture of the proposed tall building would be of insufficient high design quality’. In terms of townscape, the objection does not raise concern with any other proposed building (including KCS1 and WPB3) and, as such, my focus in addressing this objection will be on Building CB although I will comment on the overall design quality of the proposal.
- 8.17 In achieving the Mayor’s vision and objectives relating to architecture, Chapter 7 of the London Plan and Chapter 3 of the draft London Plan sets out a series of design policies about the places and spaces in which Londoners live, work and visit. London Plan Policy 7.1 sets some overarching design principles for development in London as does Policy D2 of the draft London Plan. Other relevant design policies in Chapter 7 include specific design requirements relating to: inclusive design (London Plan Policy 7.2/ draft London Plan Policies D3 and D5); designing out crime (London Plan Policy 7.3/ draft London Plan Policy D10); local character (London Plan Policy 7.4/ draft London Plan Policy D1); public realm (London Plan Policy 7.5/ draft London Plan Policy D7); architecture (London Plan Policy 7.6 and draft London Plan Policy D2); tall and large scale buildings (London Plan Policy 7.7 and draft London Plan Policy D8) and heritage assets (London Plan Policies 7.8 and 7.9 and draft London Policies HC1 and HC3). These are discussed more specifically below.
- 8.18 Policy 7.4 of the London Plan confirms that buildings, streets and open spaces should provide a high quality design response that “has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass” and “is informed

by the surrounding historic environment.” Policy 7.5 states that “Landscape treatment, street furniture and infrastructure should be of the highest quality, have a clear purpose, maintain uncluttered spaces and should contribute to the easy movement of people through the space.” Policy 7.6 continues that buildings should be of the highest architectural quality and comprise details and materials that complement, not necessarily replicate, the local architectural character.

- 8.19 London Plan Policy 7.7 and draft London Plan Policy D8 set out the strategic policy regarding tall buildings and establish that the Mayor will promote the development of tall buildings where they create attractive landmarks enhancing London’s character, and help to provide a catalyst for regeneration where they are acceptable in terms of design and impact on their surroundings. The Central Activities Zone (CAZ), Opportunity Areas and highly accessible town centres have been identified in Policy 7.7 as locations that may be suitable for tall buildings. The application site is located within a highly accessible town centre location suitable for tall buildings. I am of the view that the current proposal complies with London Plan policy and the list of relevant criteria within Policy 7.7 when considering tall buildings.
- 8.20 Policy 7.7 also states that the “impact of tall buildings proposed in sensitive locations should be given particular consideration. Such areas might include conservation areas, listed buildings and their settings, registered history parks and gardens.” The amplification to the policy continues that “Whilst high density does not need to imply high rise, tall and large buildings can form part of a strategic approach to meeting the regeneration and economic development goals laid out in the London Plan, particularly in order to make optimal use of the capacity of sites with high levels of public transport accessibility. However, they can also have a significant detrimental impact on local character. Therefore, they should be resisted in areas that will be particularly sensitive to their impacts and only be considered if they are the most appropriate way to achieve the optimum density in highly accessible locations, are able to enhance the qualities of their immediate and wider settings, or if they make a significant contribution to local regeneration.” This follows the approach in the NPPF and, as above, I find that the tall building proposed would comply in full with policy 7.7 and its amplification as particular consideration has been given to the setting of nearby heritage assets, this is a highly

sustainable location, the scheme makes the optimum use of the land and it would have substantial benefits for local regeneration.

- 8.21 LPPR Policies CL1, CL2, CL11 and CL12 and the BHSPD set out the Borough's requirements for new buildings, including appropriate building heights which must respect the setting of valued townscape and landscapes within the borough. Whilst the general building heights within the area are up to 6 storeys, Newcombe House and the nearby Campden Hill Towers are 12 and 19 storeys (plus roof plant) respectively and are described in the NHG SPD as tall buildings.
- 8.22 Policy CL2 'Design Quality' of RBKC's LP requires all development to respect the existing character, appearance and context of their surroundings, ensuring that any available opportunities to improve the quality and character of buildings and the location are utilised. Policy CL2 focuses on design quality and requires that all developments are of the highest urban and architectural design quality to improve the quality and character of buildings in the area. Policy CL12 'Building Heights' confirms the Council's approach to managing the heights of new buildings proposed in developments and emphasises the requirement for new buildings to respect the setting of the borough's valued townscape and landscapes, through appropriate building heights. Policy CL12 states that the Council will "resist buildings significantly taller than the surrounding townscape other than in exceptionally rare circumstances, where the development has a wholly positive impact on the character and quality of the townscape."
- 8.23 Additionally, the BHSPD (CD/5.2) sets out building heights, particularly in relation to tall buildings, within the borough, and defines a local landmark as a building that is more than one and a half times or more the height of their context. District landmarks are defined as buildings between 1.5 and 4 times the local context height and paragraph 3.6 of the BHSPD states that "Slender tall buildings are easier to absorb within the urban fabric." Metropolitan landmarks are defined as buildings whose height is more than 4 times that typical in the area. Metropolitan landmarks are regarded as very tall buildings in the context of RBKC and can be seen outside the borough. In addition, given the application site's adjacency to the Kensington Conservation Area and proximity to other conservation areas, the site is classified as being within a buffer zone considered highly sensitive for tall buildings in the BHSPD. Whilst the site has some characteristics of a

Metropolitan landmark, overall, I am of the view that the current proposal would be a district landmark and in a sensitive location. As above, the proposal has been carefully considered and its height is considered appropriate in this location.

- 8.24 The NHG SPG describes Newcombe House as not attractive within paragraph 2.8 and the site has been identified by the Council for redevelopment which could act as a catalyst for the regeneration of the wider area. The NHG SPD is clear that there is the possibility of an increase in height of the building as part of any redevelopment proposal.
- 8.25 Newcombe House currently acts as a landmark, albeit an unattractive one, and a destination point for Notting Hill Gate London Underground station and the junction. The vision of the Council is to retain a landmark building on this site as confirmed by Figure 11 of the NHG SPD. In view of its location and height in relation to its surroundings it can be considered a district landmark in line with local policy, which defines such landmarks as buildings up to four times the height of the local context. I am of the view that the Council's ambition to create a landmark in this location would only be possible with a tall building within the site.
- 8.26 The proposed scheme involves the erection of six buildings ranging in height from 3 to 18 storeys, with the tallest being the Corner Building comprised of two distinct elements the Notting Hill Gate and the part 14/part 18-storey Corner Building (tower). The massing strategy for the site has been carefully considered in line with the above policies.
- 8.27 The proposed tower would increase the height compared to Newcombe House, however, there is a compelling policy justification for this increase given the high quality architecture, limited heritage impact (discussed above), the wider public benefits (discussed further below) and enhancements to the public realm. The positioning of the proposed Corner Building as a landmark building to the north of the site with a 'slipped form' tower would compliment the surrounding townscape and provide a slender profile from a number of more distant views responding to policy requirements.
- 8.28 I am of the view that the tower is of a high quality design and architecture incorporating a 'slipped form' approach to its massing, with deep vertical shadow lines and large glazed winter gardens on the upper corners to break down the massing further. This view was supported by the Inspector in deciding the previous appeal for a similar proposal. The

Inspector concluded that there was a “structured pattern” to the variation in the arrangement of glass and stone and the arrangement had a “pleasing rhythm which could be both interesting and cohesive”. The Inspector concluded, in contrast to the Council's Architectural Appraisal Panel, that the tall building “would be far more engaging to the eye than the dull repetition to the fenestration of Newcombe House while maintaining integrity”. The applicant has demonstrated that the external materials will be of the highest quality and planning conditions would ensure that these materials would be used in the construction process.

- 8.29 Whilst the tall building would be visible from several views and within the setting of surrounding Conservation Areas and other heritage assets, given the poor architectural quality of the existing building the proposal would represent an enhancement in townscape terms and provide some enhancements to heritage receptors. In most instances, the upper element of the tower would appear in a form that is more slender than Newcombe House and the muted stone material would be more recessive. In those cases where the tower appears bulkier, the variation in height from 14 to 18 storeys gives the impression of two separate buildings, which reduces the visual impact. The heritage impact is considered further by Mr Brookes and, as confirmed above, he concludes that the harm would be at the very lower end of ‘less than substantial’ to some heritage assets. This is testament to the careful design of the proposed building and the consideration of a number of views during the buildings’ design development.
- 8.30 Whilst not a particular concern for the Council, I am of the view that the other buildings proposed would provide significant enhancements to the townscape and visual amenity of the surrounding area responding well to the architecture and massing adjacent. The other buildings provide significant architecture interest and the amendments proposed, since the Mayor ‘called in’ the application do not detract from the overall design approach. Indeed the changes proposed to KCS1, increasing the height by one storey, represent a townscape improvement providing greater articulation and a marker for the access through to the rear of the site. The other perimeter buildings would have a regular rhythm of fenestration, responding to surrounding townhouses, and would be mainly textured brick with dark metal windows. The WPB2/Cube would only be visible in glimpsed views from outside the site and would be an interesting sculptural form, utilising a smooth white cladding material and deep reveals.

- 8.31 In term of building layout, I am of the view that the use of a series of perimeter blocks around a public square would be an improvement to the existing layout of the site. The proposal would maintain active frontages along Kensington Church Street and Kensington Place whilst enhancing the frontages along Notting Hill Gate and providing a significant increase in activation to the internal road, Newcombe Street.
- 8.32 Currently Newcombe House is set back from Notting Hill Gate and its entrance, via concrete stairs, currently creates an unattractive and hard edge to the road with a frontage at odds with the prevailing streetscene. The podium to CB would project forward and be stepped down in height, compared to the tower, which would establish a common building line with the adjacent David Game House so that shopfronts open up onto the road in a more traditional layout. I consider this to be a significant townscape enhancement to the scheme and in accordance with Figure 11 of the NHG SPD.
- 8.33 Whilst the proposed Corner Building, facing on to Notting Hill Gate, would infill the existing public realm this is currently described as lacking in quality. Paragraph 2.39 of the NHG SPG states that “The public space to the north side of Newcombe House is overshadowed and subject to wind turbulence created by the building. This is compounded by an unused raised piazza above which creates a blank edge to the space in front of Newcombe House.” Paragraph 4.21 of the NHG SPG continues “Whether redevelopment or refurbishment are pursued, schemes should provide improved public space on either the Notting Hill Gate frontage and/or the area to the rear of Newcombe House.” I consider that the proposed public square to the rear would be a welcome contribution towards public realm and would accommodate a range of uses, including the farmers’ market that currently takes place on the existing car park. The square would be accessed through a variety of legible routes from Notting Hill Gate, Kensington Church Street and Kensington Place, and would be framed by a mix of office, retail and residential core entrances. The use of dual aspect retail units and inclusion of through lobbies for the residential entrances is a particularly positive feature, which should maximise activity both to the surrounding streets and the new public square. The addition of east-west routes across the site would significantly improve its permeability. Overall the proposed layout and new public realm would result in a significant enhancement beyond the existing situation.

- 8.34 In summary, the height and mass of the proposed development is proportionate to its context, and the scale, height and massing would not be overbearing, or unduly prominent in local and more distant views. The replacement buildings are of a high quality design and, in particular, the tall building would appear as a slender form with its architecture responding sensitively to the nearby conservation areas and other heritage assets. The proposal would have a distinctive form and create a landmark building, encouraged by local policy.
- 8.35 The quality of the design, place making, architecture and materials of the application proposals provide significant enhancements contributing positively to the townscape and the regeneration of Notting Hill Gate. RBKC officers have on a number of occasions concluded that the proposed height is acceptable and this was also the conclusion of the Planning Inspector in deciding the previous appeal. I therefore conclude that RBKC's objections on townscape and architecture are not justified and the proposal complies with relevant development plan policies of the London Plan and RBKC LP along with local guidance contained within the NHG and BH SPD's.



## **9.0 OVERALL PLANNING BALANCE**

- 9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise. The evidence of Mr Brookes has identified 'less than substantial' harm to some heritage assets albeit at the very lower end of the scale. As such, in accordance with the NPPF and development plan policy an assessment is required in relation to the planning balance and the other material considerations of the case.
- 9.2 I am of the view that the relevant development plan policies are up to date and, noting the conclusions of the Inspector, in his report on the RBKC Local Plan Partial Review (CD/13.1) I do not contest that the Council has a five year housing land supply. As such, paragraph 11d of the NPPF does not apply and the normal planning balance applies to the determination of this application. However, it is relevant to note that there remains a significant and pressing need for housing throughout the country and London, delivery of housing in RBKC is significantly below that which should be expected and the Local Plan Inspector was clear that there are limited sites within RBKC for housing.
- 9.3 I set out the harm and benefits arising from the application scheme below.

### **The Harm**

#### **Heritage Impact**

- 9.4 As discussed further above within principal issue 1 (section 8) and as set out within Mr Brookes evidence, the proposal would result in 'less than substantial' harm to some heritage assets albeit at the very low end of the scale. The NPPF is clear that great weight should be given to the conservation of heritage assets 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. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

- 9.5 The NPPF continues that where a proposed development will lead to ‘substantial harm’ 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 loss is necessary to achieve substantial public benefits that outweigh the harm or loss. Where a development will lead to ‘less than substantial harm’, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 9.6 As referenced within Section 5 of my POE, the Barnwell Manor Wind Farm Energy Limited v East Northamptonshire District Council (CD/11.7) case tells us that Parliament, in enacting section 66(1), did intend that the desirability of preserving listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.
- 9.7 Overall the proposal results in ‘less than substantial’ harm to some heritage asset but at the very low end of the scale. Nevertheless, I give significant weight to this harm in the balance of considerations into this case.

### **The Benefits**

#### RBKC’s Housing Delivery (market and affordable)

- 9.8 With respect to housing delivery, Policy 3.3 of the London Plan states that the Mayor will seek to ensure the identified housing need is met through an annual provision of 42,000 net additional homes across London which will enhance the environment, improve housing choice and affordability and provide better quality accommodation for Londoners.
- 9.9 Table 1 below sets out pan-London delivery against the current London Plan targets between 2014-2017.

<b>Total completions</b>	<b>FY2014-2015</b>	<b>FY2015-2016</b>	<b>FY2016-2017</b>	<b>Total</b>	<b>Delivery</b>
<i>Homes target</i>	<i>32,210</i>	<i>42,388</i>	<i>42,388</i>	<i>116,986</i>	<b>102% of target</b>
<b>Homes delivered</b>	<b>33,887</b>	<b>39,728</b>	<b>46,149</b>	<b>119,764</b>	
<i>Affordable homes target</i>	<i>13,200</i>	<i>17,000</i>	<i>17,000</i>	<i>47,200</i>	<b>43% of target</b>
<b>Affordable homes delivered</b>	<b>6,237</b>	<b>7,006</b>	<b>6,892</b>	<b>20,135</b>	

**Table 1:** Delivery against pan-London housing and affordable housing targets (source: London Development Database).

- 9.10 Based on Table 1 it is evident that the delivery of new affordable housing on a pan-London basis is significantly below the London Plan target. At a borough level, the London Plan allocates RBKC a target of 7,330 between 2015 and 2025. In monitoring delivery against these targets, RBKC had an assigned an annual target of a minimum 733 net additional homes per year. The draft London Plan sets a reduced ten-year target to 448.
- 9.11 The now superseded RBKC Local Plan (2015) required developments to provide affordable housing at 50% by floor area on residential floorspace in excess of 800 sq.m. (GEA), which should be provided on site if more than 1,200 sq.m. is proposed. In light of the difficulty in translating the Council's floorspace based policy target into a numerical unit-based target for comparison, the absolute strategic target of 40% affordable housing across London set out in the London Plan, has been applied for assessment purposes. This equates to 293 affordable homes per year based on the current London Plan housing target and 195 based on the draft London Plan. Historic delivery and previous planning policy targets are clearly relevant to the case.
- 9.12 Table 2 below sets out delivery against the above-mentioned borough level targets during the financial years 2013-2018. It should be noted, at the outset, that the figures used in the GLA's stage 3 report have since been updated and the figures below, within table 2 and 3, are the most up to date and relevant.

Net completions	2013/14	2014/15	2015/16	2016/17	2017/18	Total
London plan benchmark - Total homes target	584	584	733	733	733	3367
RBKC total net completions	460	737	114	319	397	2027
Performance against target	79%	126%	16%	44%	54%	60%
London plan benchmark - Affordable homes target	200	200	293	293	293	1279
RBKC affordable net completions	164	54	67	23	73	381
Performance against affordable home target	82%	27%	23%	8%	25%	30%

**Table 2:** RBKC completions against London Plan housing and affordable housing target (source: London Development Database).

9.13 From Tables 2 it is evident that the Council has not met the aggregated London Plan and Local Plan annual monitoring target for new homes and affordable homes over these last five years. It should be noted that all targets are expressed as minimums, with a clear expectation in the London Plan and Local Plans that delivery of housing should be maximised. RBKC have consistently underdelivered on the housing targets for both total and affordable housing substantially below the numbers expected at 60% and 30% of the target respectively.

9.14 RBKC's performance on planning approvals has also failed to meet expectations. Table 3 below sets out delivery against the above-mentioned borough level targets during the financial years 2013-2018.

Planning approvals	2013/14	2014/15	2015/16	2016/17	2017/18	Total
London plan benchmark - Total homes target	584	584	733	733	733	3367
RBKC total home approvals	1263	1049	112	349	154	2927
Performance against target	216%	180%	15%	48%	21%	87%
London plan benchmark - Affordable homes target	200	200	293	293	293	1279
RBKC affordable home approvals	156	90	26	9	0	281
Performance against affordable home target	78%	45%	9%	3%	0%	22%

**Table 3:** RBKC planning approvals against London Plan housing and affordable housing target (source: London Development Database).

- 9.15 As demonstrated within Table 3, the planning approvals for total housing is at 87% of the target whilst the performance against affordable housing is just 22%. As such, it is clear that there will continue to be a substantial under delivery in the coming years and the number of affordable units given permission over the last 3 years at 0, 3 and 9 percent of the target is particularly poor.

#### Affordable Housing and the Current Application

- 9.16 There is no dispute between the parties that the provision of affordable housing is a significant benefit. This is particularly relevant to RBKC where there is an urgent and immediate need for affordable housing. Following the Mayor's 'call in' the application was amended to increase the proportion of affordable homes from 17% by habitable room (20% by unit) to 35% by habitable room (42% by unit). Alterations were also made to the housing tenure split to provide 15 London Affordable Rent (LAR) homes and 8 intermediate rent. The intermediate rent is discounted London Living Rent (LLR) and discounted below the standard ward levels to ensure it would be affordable on a household salary of £60k in compliance with the Mayor's AHV SPG. In addition, the proposal also provides 10 x 2 bed affordable units off site, each with at least two habitable rooms and nomination rights granted to the Council.
- 9.17 The Mayor has made the delivery of new affordable housing a strategic priority. Policy 3.11 and 3.12 of the London Plan is clear that boroughs should seek the maximum reasonable amount of affordable housing when negotiating on individual private residential and mixed-use schemes having regard to the Council's and Mayor's affordable housing targets. The Policy seeks to ensure an average of at least 17,000 more affordable homes per year in London up to 2031. Policy H5 of the draft London Plan expands on this and sets a clear strategic target of 50% of all new homes delivered across London to be affordable.
- 9.18 As set out on page 14 onwards of the Mayors AHV SPG, a 'Threshold Approach' has been introduced whereby schemes that provide 35% and above can follow a 'Fast Track Route'. The applicant's revised level and tenure of affordable housing was considered in compliance with the Mayors AHV SPG and provided the maximum level of affordable housing. I also consider the proposal in compliance with development plan policy

particularly policies 3.9, 3.11 and 3.12 of the London Plan 2016 and Draft Policies H6 and H7 of the Draft London Plan.

- 9.19 RBKC has failed consistently to meet their affordable housing targets, as demonstrated above, and the current proposal meets and exceeds the Mayors AHV SPG targets contributing to both local and strategic need. The proposal would provide 8% of the Council's affordable housing target assuming the currently adopted London Plan target of 293 units per annum.
- 9.20 The proposal would increase the number of social rent habitable rooms compared to that existing and also increase the overall number of affordable units on site. The delivery of high quality affordable housing, at the tenures proposed, would provide substantial benefits. In compliance with policy 3.9 of the London Plan, the proposal would promote mixed and balanced communities, assist in redressing social exclusion and strengthen neighbourhood identity.
- 9.21 As such, I consider that the delivery of this affordable housing on the application site is a significant benefit which should be given significant weight in the decision making process.

#### Market Housing and the Current Application

- 9.22 The proposal would provide an additional 32 market (private) units which weighs in favour of granting permission. The NPPF and development plan policy is clear that sites should be optimised particularly in highly sustainable locations such as the application site. As demonstrated above, RBKC have consistently undelivered on their total housing targets and, as such, I conclude that additional market housing is a significant benefit which should be afforded significant weight.
- 9.23 Sustainable Development and Provision of Step-Free Access
- 9.24 This matter is discussed further within the evidence of Ms Turner and below I set out a summary of the proposals along with the policy context. London Plan Policy 3.1 makes it clear that expanding opportunities and meeting the needs of all Londoners is essential to confronting inequality across London. To achieve this, Policy 3.1 underlines the

importance of addressing the barriers to meeting the needs of specific groups and communities, including persons with mobility problems. In addressing equality and inclusiveness as it relates to transport infrastructure, London Plan Policy 6.1 encourages the provision of step-free access as part of an integrated approach to development and transport. Draft London Plan Policy GG1 states that in building strong and inclusive communities the movement of all Londoners, including older people, disabled people and people with young children should be supported by those involved in planning and development. This should be done by creating a welcoming environment that everyone can use confidently, independently, and with choice and dignity, avoiding separation or segregation.

- 9.25 The provision of step-free access (SFA) to the Notting Hill Gate London Underground station is identified as one of the opportunities available for the redevelopment of the site by the NHG SPD. Notting Hill Gate (NHG) London Underground station forms a strategically important interchange both with the Central line and local bus services at street level. However, there is no SFA at this station, which serves the District Line and Circle Line. The station is heavily used, with the latest statistics showing that 44,599 customers use the eastbound/southbound platform weekly.
- 9.26 The proposed development includes the provision of SFA at the adjacent NHG London Underground station. Fully funded by the applicant, this SFA would be delivered from street level to the southbound/eastbound platform of the Circle Line and District Line, through two new lifts and walkways. In addition, there is the possibility of the provision of SFA to the northbound/westbound platform coming forward as part of any future development on the adjacent David Game House site. Even on their own, the proposed improvements would enable a wide range of people with mobility difficulties, including those who are physically or visually disabled, parents/ carers with young children (especially in a buggy or pram) and those with heavy and awkward luggage, to use the Underground safely and conveniently without having to use stairs or an escalator.
- 9.27 The provision of SFA at the station would therefore enable passengers to travel to other stations on the District Line & Circle Line, which are also step-free. In addition, the scheme would also provide stair-free access to the Central Line through the provision of a lift from street to ticket hall level, which would benefit passengers who struggle to use

stairs but can use escalators. The escalators would directly serve the platforms, which is often not the case as many stations have a further flight of stairs after the foot of the escalators to reach the platforms. This would assist many people with mobility difficulties and would provide them with a direct link to all the Central Line stations, which are either step or stair-free from Greenford in the west to Epping in the east.

- 9.28 As such, the provision of step-free access to Notting Hill Gate London Underground station is strongly supported in line with strategic and local planning policies and its delivery would be secured in the Section 106 agreement.
- 9.29 Other sustainable transport benefits as set out in Ms Turner's POE include the provision of a cycle hire docking station.
- 9.30 In addition, Policy 3.4 of the London Plan confirms that sites should be optimised taking into account local context and character but also public transport capacity. Density ranges are set within Table 3.2 of the London Plan which are directly related to sites Public Transport Accessibility Level (PTAL). In general, the better the PTAL the more suitable the site is for increased density. Providing increased densities and optimising sites that are in highly sustainable transport locations, such as the application site, should be seen as a benefit as it encourages the use of sustainable modes of transport, is environmentally positive and reduces the pressure on less sustainable sites to deliver the housing needs of the borough.
- 9.31 The current proposal represents a highly sustainable form of development, provides sustainable transport initiatives and allows for step-free access at Notting Hill Gate station enhancing inclusivity. These are considered to be significant benefits which I give significant weight in the planning balance.

#### Urban Design/Townscape

- 9.32 As confirmed within section 8 of my POE, the quality of the design, place making and architecture proposed provide significant enhancements contributing positively to the townscape and the regeneration of Notting Hill Gate. This is a significant benefit that I give significant weight.



Public Realm, Landscaping and Pedestrian Connectivity

- 9.33 London Plan Policy 3.5 and draft London Plan Policies D4 and D7 set out expectations in relation to quality and design of housing developments, to include public, communal and open spaces. The development proposes a number of amenity spaces amounting to 1,870 sq.m., including a public square at ground level of approximately 876 sq.m., with an additional 316 sq.m. of connecting lanes.
- 9.34 As confirmed within principal issue 2 (section 8) of my POE, the proposal provides a high quality public realm with enhanced connectivity. In addition, the scheme provides a good level of planting for an urban development in line with the objectives of London Plan Policy 5.10 and draft London Plan Policy G5, including tree planting and raised planters within the public spaces. As such, I consider that the provision of the new public realm, increased permeability and landscaping is a benefit. I consider that significant weight should be afforded to this significant benefit.

Commercial Uses and Active Frontages

- 9.35 Paragraph 85 of the NPPF makes clear that the role of town centres as the heart of local communities should be supported by planning decisions and policies. The site is located within the Notting Hill Gate District Centre. Annex 2 of the London Plan provides guidance in respect of London's Town Centre network and for Notting Hill Gate confirms the town centre as a medium growth district centre which predicts moderate levels of demand for retail, leisure or office floorspace and with physical and public transport capacity to provide it. Policy 2.15 of the London Plan and draft Policy SD6 seek to ensure that centres within the town centre network remain the focus for commercial development and intensification, including residential-led development. Both policies require development proposals in town centres to sustain and enhance the vitality and viability of the centre and accommodate economic and/or housing growth through intensification.
- 9.36 Policy 4.7 of the London Plan promotes the provision of retail activity within town centres, which is at a scale appropriate to the role, function and catchment area of the town centre. Support for, and the recognition of retail activity to the vitality and viability

of town centres is also expressed in draft London Plan Policy E9.

- 9.37 Similarly, Policy CF2 and CF3 of the RBKC LP seek to promote the provision of retail development in town centres at a scale appropriate to the position of the centre within the retail hierarchy. Moreover, the protection, promotion and enhancement of a diverse range of shops is seen as key to securing the viability and vitality of town centres.
- 9.38 The scheme would deliver 2,638 sq.m. (GIA) of retail (A1/A3 Use Class), which is an increase of 69 sq.m. (GIA) on the existing quantum of retail floorspace. The proposed units vary in size and could accommodate a range of occupiers, with a focus on smaller retail units. Four of the commercial units would be restaurant/café use (Class A3) and these would be sited on the Kensington Church Street frontage, interspersed with retail units (Class A1) as complimentary town centre uses. In addition, the proposal would maintain active frontages along Kensington Church Street and Kensington Place whilst enhancing the frontages along Notting Hill Gate and providing a significant increase in activation to the internal road, Newcombe Street.
- 9.39 The proposed retail uses are diverse and would represent an overall improvement to the function and vitality of Notting Hill Gate whilst also improving on site employment opportunities. The proposal is therefore supported in line with Policies 2.15 and 4.7 of the London Plan, Policies SD6 and E9 draft London Plan and Policies CF2 and CF3 of the RBKC LP.
- 9.40 The proposal would have significant benefits to the viability and vitality of Notting Hill Gate which I give significant weight.

#### Local Farmer's Market

- 9.41 In addition to the retail units, the scheme would provide a new public square, which has been designed specifically to accommodate the local farmers' market that currently utilises the existing car park. It is understood that arrangements have been put in place for a temporary relocation of the market during construction and its return will be secured in the Section 106 agreement, as well as the terms and conditions governing the use of the public square by the farmers' market.

- 9.42 Policy 4.8 encourages diverse retail sectors such as farmers' markets and convenience shopping in District and local centres. The presence of such activity is important in enhancing the vitality and viability of town centres. Policy CF4 of the RBKC LP seeks to ensure that street markets continue to be a vibrant component of retail activity in the borough.
- 9.43 The proposal would create an enhanced, permanent and long term solution for the local farmers' market in accordance with Policy 4.8 of the London Plan and Policy CF 4 of the RBKC LP. This is a significant benefit which I give significant weight.

#### Office Provision

- 9.44 The renewal and modernisation of existing offices located in viable locations is encouraged in London Plan Policy 4.2. Further to this, Policy 4.2 supports mixed-use development and redevelopment involving different types and sizes of office provision to improve the competitiveness of London. London Plan Policy 4.3 also supports the provision of offices as part of mixed use development, within town centre locations. Similarly, draft London Plan Policy E1 promotes the enhancement of London's competitiveness and the provision of diverse office spaces, with a focus on town centres for new development.
- 9.45 The scheme proposes 4,765 sq.m. (GIA) of office accommodation across the 1st-3rd floors within the West Perimeter Building 3 and the Corner Building; and at ground to 2nd floor within Cube-West Perimeter. This equates to a loss of 441 sq.m. (GIA) in comparison to the existing office provision on-site; but is an increase of 375 sq.m. (GIA) since the Mayor called in the application compared to the scheme originally submitted. Given the improved quality and flexibility of the proposed office floorspace, this loss is acceptable in line with London Plan Policy 4.2 and 4.3 and draft London Plan Policy E1. Whilst the proposal would result in the loss of office floor space, the new space provided would be flexible, fit for purpose and improve on site employment opportunities. As such, this is a moderate benefit which I give significant weight.

Medical facility

- 9.46 Policies 3.16 and 3.17 of the London Plan and Policies S1 and S2 of the draft London Plan support the provision of high quality health care facilities, especially in areas of under-provision or where there are needs. In delivering such facilities, both the London Plan and draft London Plan encourage boroughs to work with the local NHS and other organisations in assessing need and securing locations for provision. Locally, Policy CK1 of the RBKC LP seeks to enhance social and community facilities; and the NHG SPD identifies the provision of a new primary healthcare centre for Notting Hill Gate as one of its development guidelines.
- 9.47 The proposal includes the provision of a modern GP surgery in a location that has been identified in the NHG SPD as in need of a primary health care centre and is supported by the NHS West London Clinical Commissioning Group under which the planning and commissioning of health facilities in the Notting Hill Gate vicinity falls. Two existing practices, located in proximity of the borough boundary between RBKC and City of Westminster have been identified to relocate to the proposed health facility. At present, both practices provide services to residents beyond RBKC, with a proportion of the residents in Westminster; and the existing premises provide challenges in relation to space and layout. The proposed surgery forms part of the NHS West London Clinical Commissioning Group's strategic delivery service plan. It has been designed in consultation with the NHS and would be fitted out to NHS-approved specifications, with capacity to accommodate nine GPs and serve up to 18,000 patients. A range of multi-disciplinary services including mental health and wellbeing would be provided.
- 9.48 Although there would be no increase in the number of GP surgeries, the proposed facilities would provide the range and quantum of facilities required to improve access to primary care, integrated health and social care professionals to a wider population. The proposed provision of a new modern GP surgery is therefore strongly supported in line with development plan policy. This is a significant benefit to the proposed scheme which I give significant weight.

### Heritage Impact

- 9.49 As confirmed within the evidence of Mr Brookes, there are heritage enhancements namely to the Kensington Conservation Area and the Listed Building Noting Hill Gate Underground Station. These are significant benefits in line with the approach taken in the NPPF which I give significant weight.

### Conclusion on Planning Balance

- 9.50 Table 4 below provides a summary of my conclusions on the competing harms and benefits of the application scheme when taken as a whole.

<b>Consideration</b>	<b>Extent of Harm/Benefit</b>	<b>Weight to be given</b>
Heritage Impact (harm)	'Less than substantial' harm to some heritage assets at the very low end of the scale	Significant
Affordable Housing	Significant benefit	Significant
Market Housing	Significant benefit	Significant
Sustainable Development and Provision of Step-Free Access	Significant benefit	Significant
Urban Design/Townscape	Significant benefit	Significant
Public Realm, Landscaping and Pedestrian Connectivity	Significant benefit	Significant
Commercial Uses and Active Frontages	Significant benefit	Significant
Local Farmers' Market	Significant benefit	Significant
Office Provision	Moderate benefit	Significant
Medical Facility	Significant benefit	Significant
Heritage Impact (benefit)	Significant benefit	Significant

**Table 4:** Summary of harms and benefits arising from the current proposal.

- 9.51 My assessment on planning balance has been made in line with the provisions of the NPPF when read as a whole, and also in light of the overarching statutory duty of the Planning Act 1990 as relevant.
- 9.52 I am of the view that the proposal provides a range of significant and substantial benefits which would outweigh the 'less than substantial' harm, at the lower end of the scale, to some heritage assets identified by Mr Brookes. Even if the decision maker should conclude there is any conflict with any relevant and up to date Development Plan policies, I have provided a clear and convincing justification that this would be outweighed by the very substantial public benefits that the proposed development will deliver. As such, I consider that the application scheme is in accordance with development plan policy and guidance.

## **10.0 SUMMARY AND CONCLUSIONS**

- 10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise. Paragraph 196 of the NPPF is clear that “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.”
- 10.2 It has been established within the evidence of Mr Brookes that the proposal would result in ‘less than substantial harm’ to some heritage assets but at the very lower end of the scale. As such, in accordance with the NPPF and development plan policy an assessment is required in relation to the planning balance and the other material considerations of the case. On this matter, I have demonstrated that the harm identified would be outweighed by the substantial benefits of the scheme when considered as a whole and that the proposed development makes the optimal use of the site.
- 10.3 The height and mass of the proposed development is proportionate to its context, and the scale, height and massing would not be overbearing, or unduly prominent in local and more distant views. The replacement buildings are of a high quality design and, in particular, the tall building would appear as a slender form with its architecture responding sensitively to the nearby conservation areas and other heritage assets. The proposal would create a landmark building encouraged by local policy, enhance the public realm, provide various townscape enhancements and contribute significantly to the regeneration of Notting Hill Gate.
- 10.4 I have demonstrated that RBKC has failed consistently to meet their market and affordable housing targets. The current proposal would contribute a significant number of both market and affordable housing, at an appropriate tenure, which would assist in meeting both local and strategic need. The delivery of high quality affordable housing would provide substantial benefits by promoting mixed and balanced communities, assisting in redressing social exclusion and strengthening neighbourhood identity.

- 10.5 My evidence, along with that of Ms Turner, has demonstrated that the proposal represents a highly sustainable form of development providing sustainable transport initiatives and allowing for step-free access at Notting Hill Gate station enhancing inclusivity.
- 10.6 The proposal would provide various other significant benefits to the viability and vitality of the Town Centre whilst increasing employment opportunities. These include a long term and enhanced location for the local farmer's market, the provision of flexible and fit for purpose office accommodation and an enhanced retail offer with increased active frontages throughout the site.
- 10.7 The proposal would also provide a modern GP surgery where there is an identified need. I have concluded that this facility would improve access to primary care, integrated health and social care professionals to a wider population and is considered a significant benefit. Lastly, the proposal would have heritage enhancements namely to the Kensington Conservation Area and the Listed Building Notting Hill Gate Underground Station.
- 10.8 I have provided clear and convincing justification that the heritage harm identified by Mr Brookes would be outweighed by the very substantial public benefits that the proposed development will deliver. I consider that the application scheme is in accordance with the NPPF and development plan policy and, as such, there should be a presumption in favour of granting planning permission. The Inspector is, therefore, respectfully requested to allow the appeal.



**11.0 DECLARATION**

- 11.0 The evidence which I have prepared and provided in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinions.