

**PROPOSED HOLOCAUST MEMORIAL AND LEARNING CENTRE,  
VICTORIA TOWER GARDENS, LONDON SW1**

**PLANNING INSPECTORATE REFERENCE: V/19/3240661**

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**CLOSING SUBMISSIONS  
ON BEHALF OF WESTMINSTER CITY COUNCIL**

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**Introduction**

1. The contributions made to this inquiry by interested, interesting and often remarkable people have been thought provoking and profound. Many have been in support of the proposal; many have spoken eloquently and thoughtfully in opposition. Complex and challenging, even sometimes disturbing, matters have been raised and debated respectfully. It is right to describe this unprecedented level of engagement as contributing breadth and texture to the process, which must be of benefit to the ultimate decision, whatever it may be. At its core, however, the issue raised by this application is a simple one; it is whether Victoria Tower Gardens (“VTG”) is the right place for *this* development. Westminster City Council (“WCC”) says that it is not, although it fully recognises that *a* memorial, delivering the same objectives, but of a different form and scale, may appropriately be located here. In these submissions, which are unavoidably of some length, we will set out, by reference the evidence given to the inquiry, why this is the City Council’s case. We do so by reference to the Main Issues set out by the Inspector at the start of the inquiry.

**The Principle of the Proposed Development and Victoria Tower Gardens as a Location for the Memorial (Main Issues 6(a) – (b))**

2. As we made clear when opening our case at this inquiry, Westminster City Council does not question the desirability of a national memorial to the tragedy of the Holocaust and those who suffered as a result of it. Nor, as we have just said, does it dispute that it might be possible to design a memorial of a form and scale which is

appropriate for VTG. The principle of development is not in dispute, nor is its objective. The issue in this case about is about the impacts of *this* memorial in *this* location.

**Whether the Proposed Development Would Result in the Loss of or Harm to Trees of Amenity Value on the Site (Main Issue 7(h))**

3. There is no issue between the parties that the fine mature Plane trees that enclose VTG on its east and west sides are of high amenity value and contribute substantially to the character and significance of the Gardens, of nearby heritage assets, and of the wider cityscape. It is also agreed that any loss of, or diminution in contribution made by, these trees to the surrounding assets and cityscape would amount to harm; harm which WCC and others consider to be of particular significance.
4. The policy context against which this issue falls to be considered is straightforward enough. Policy ENV16 of the WCC UDP requires, at part (A), that all trees in a conservation area “will be safeguarded unless dangerous to public safety ...”.<sup>1</sup> Part (B) of policy ENV16 provides that “planning permission will be refused for development likely to result in loss of or damage to a tree which makes a substantial contribution to the ... character and appearance of the area”. Policy 38 of the WCC City Plan<sup>2</sup> provides that “green infrastructure”<sup>3</sup> will be protected. The London Plan at policy 7.21 provides that “existing trees of value” (which those at VTG plainly are) should be retained.<sup>4</sup>
5. What emerges from the development plan is that likelihood of “damage to a tree”, which makes a substantial contribution to an area, as well as total loss, would amount to a policy conflict, as would a development’s failure to “safeguard” such a tree within a conservation area.

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<sup>1</sup> CD2.2 p.477

<sup>2</sup> CD2.3 p.152

<sup>3</sup> “Green Infrastructure” is defined in the City Plan at p.215 as including “trees”.

<sup>4</sup> CD2.1

6. Immediate catastrophic loss of the trees is not likely. The harm here would arise through the effect of the proposed extensive deep excavations and other construction operations on the health and wellbeing of the trees, which, in turn, generates a greater vulnerability to disease thereby precipitating the trees' decline and loss, with the attendant harm which will follow.
7. The issue is the likelihood of such an outcome. WCC and the Rule 6 parties consider that there is a clear risk that a series of important trees within VTG will suffer significant damage, which is so serious and of such an extent that it could well result in their ultimate loss. The evidence, we submit, is such that decision maker should proceed on the basis that this damage and loss will be the likely ultimate outcome of the development. The development should therefore be assessed on this basis. The Applicant, of course, refuses to accept any such risk.
8. The Inquiry has heard from three expert witnesses in respect of this issue. Mr. Mackworth-Praed for WCC gave, we submit, measured and compelling evidence. His conclusions are essentially supported by Mr. Barrell, for the rule 6 parties.
9. Mr. Mackworth-Praed has identified what he considered to be the correct root protection area ("RPAs") for all potentially affected trees and identified the extent of encroachment within the RPAs, particularly through excavation for the courtyard, memorial, and underground learning centre (see his Appendix 3).<sup>5</sup> Mr. Mackworth-Praed made clear that the trees of particular concern are those on the west side of VTG and, in particular, nos. 71011 to 71023 inclusive (set out at his schedule at Appendix 4).<sup>6</sup> The extent of encroachment is substantial – 96.39 m<sup>2</sup> in respect of tree 71017 alone. The effect of the proposed excavation will be to sever any roots which lie within the footprint of the extensive excavation. There is no evidence whatsoever to demonstrate that any arboricultural process to administer root pruning is available given the depth and extent of excavation. This permanent loss of significant proportions of RPAs and the roots within them, Mr. Mackworth-Praed contends,

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<sup>5</sup> CD8.40 Part 1

<sup>6</sup> CD8.40 Part 1

generates a substantial risk of damage to, and ultimate loss of, the affected trees. Mr. Barrell agrees.<sup>7</sup>

10. Indeed, and importantly, the extent of this risk is confirmed by the Applicant's own evidence. In particular:
  - a. some of most directly affected trees on the west side of VTG are already experiencing mild to moderate physiological stress, as confirmed in Bartlett's Tree Health and Vitality Diagnostic Assessment, including 71012-13, 71017-18. Tree 71012, on the west side, is identified as of "reduced vitality" now.<sup>8</sup> This Diagnostic Assessment is a highly revealing document and one which repays careful consideration. Dr. Hope's assertion<sup>9</sup> that all the relevant trees are "healthy" is plainly and inexplicably inconsistent with it.
  - b. The trees experiencing mild to moderate stress include those which will suffer the greatest extent of total encroachment into their RPAs, as Mr. Mackworth-Praed's Appendix 4 confirms.<sup>10</sup>
  - c. Even on their own (unreliable, we say) assessment as to extent of encroachment into the RPA of the affected trees, Bartlett expect the level of stress upon these trees to be elevated to moderate stress through the implementation of this development.<sup>11</sup>
  - d. As Bartlett Consulting, the author of the Applicants Arboriculture Impact Assessment (and its Addendum ("AIA Addendum")), confirms "as mature trees, these London Plane trees, may be more susceptible to physiological stress due to root pruning".<sup>12</sup>

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<sup>7</sup> XIC Barrell

<sup>8</sup> CD11.12 Vitality Assessment p.5 para.2

<sup>9</sup> XX Dr.Hope.

<sup>10</sup>CD8.40 Tree 71012W (Reduced Vitality – Mild-Moderate physiological stress) - 34.2% of RPA; Tree 71013W (Healthy but mild-moderate physiological stress) - 38.7% of RPA; Tree 71017W (Healthy but mild-moderate physiological stress) - 29.5% of PRA; Tree 71018W (Healthy but mild-moderate physiological stress) – 29.4% of RPA (total encroachments from all causes)

<sup>11</sup> CD11.12 para. 3

<sup>12</sup> CD6.22 AIA Addendum p.32/46 para.5.3.5

11. When this evidence – that of Mr. Mackworth-Praed, Mr. Barrell and of Bartlett Consulting – is then considered in the context of policy, the conclusion can only be reached that the development fails to safeguard or protect the affected Plane trees, contrary to UDP Policy ENV16A and City Plan policy S38 respectively. It will be likely to damage and lead to the loss of trees which, it is agreed, make a significant contribution to the character and appearance of VTG and the area of Westminster that surrounds it, contrary to UDP Policy ENV16B.
12. The Applicant advances its case in reliance on the evidence of Dr. Hope.
13. Dr. Hope’s evidence, and the material on which it is based, is, we submit, muddled, incomplete and flawed. Following its testing at the inquiry, it is difficult to see how, rationally, Dr. Hope’s evidence can be preferred to that of Mr. Mackworth-Praed and that of Mr. Barrell. In support of this submission, we make the following points.
14. First, the root protection areas of the affected trees on the west side of VTG as advanced by the Applicant is shown to extend below the carriageway of Millbank. Dr. Hope’s case is that the roots of the affected trees do indeed extend beneath the Millbank carriageway. He thus makes no adjustment to his RPA to address any asymmetry in root distribution as a result of any obstructive effect of the carriageway, as is advised within BS 5837.<sup>13</sup> Mr. Mackworth-Praed’s firm view is that no material rooting will be present beneath the Millbank carriageway.<sup>14</sup> This assessment has been confirmed by what was revealed by the excavations at Millbank which were taking place in September 2020.<sup>15</sup>
15. It is notable that Dr. Hope’s evidence is not consistent with the Applicant’s own arboricultural evidence and, in particular:
  - a. Canopy Consulting who state that:

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<sup>13</sup> CD4.16 p.11 para.4.6.2

<sup>14</sup> CD8.39 PoE Mackworth Praed p.16 para. 2.2.8

<sup>15</sup> CD8.39 p.16 para. 2.2.8

“The root protection area (RPA) to the west of the western trees comprises a main road which does not provide an adequate rooting environment. The size of the roots uncovered in trenches 3 – 6 show that the trees in this area are reliant on the rooting environment within the park and as such, their RPAs should be offset to take this into consideration:”<sup>16</sup>

b. Bartlett Consulting, who state that the carriageway at Millbank “will be an inhospitable growing environment for feeding roots”;<sup>17</sup>

c. Sharon Hosegood Associates<sup>18</sup> who states as follows:

“The optimum conditions for rooting are a loamy soil with no impediments, preferably with no soil “capping” of hard surfaces. These are the conditions of VTG. It is my professional opinion that it is highly likely that the majority of the roots are growing with[in] [sic] the grassed area, but based on research and observation by the author over several decades it [is] [sic] likely that the trees are also rooting in the footpaths but at a lower density...”<sup>19</sup>

d. The WCC arboricultural officer.<sup>20</sup>

e. The Royal Parks in its Arboricultural Observations.<sup>21</sup>

16. Dr. Hope’s position in this respect is therefore a complete outlier. It is not consistent with all the other experts who have expressed a view in evidence and in other material before the inquiry. Other than stating repeatedly that he disagrees, Dr. Hope has offered little in terms of a basis for rejecting the preponderance of views which are contrary to his; Dr. Hope’s reference in XX to a photograph of a tree in a randomly different location rather demonstrates his inability to substantiate his position.<sup>22</sup> This of course is an important matter. In the event that Dr. Hope is wrong and all the other experts are correct, there will be no material rooting beneath the carriageway at Millbank and the RPAs as drawn by the Applicant and shown inter alia in Mr. O’Shea’s

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<sup>16</sup> CD6.5 App.4 (internal page 38) para.4.2

<sup>17</sup> CD6.5 p.20 para.5.2.1 and CD6.22 p.24 para.5.2.1,

<sup>18</sup> Sharon Hosegood is Vice President of the Institute of Chartered Foresters and a Fellow of the Arboricultural Association.

<sup>19</sup>CD6.35 p.8 para.4.9

<sup>20</sup> CD5.11 p.62

<sup>21</sup> CD6.46 Part 32 p. 1 and p.4, bullet point 2

<sup>22</sup> CD 8.16 p.37, lower photograph

PoE<sup>23</sup> and the AIA Addendum<sup>24</sup> will be incorrect, given that no compensatory allowance is made to reflect asymmetric growth, as advised within BS 5837.<sup>25</sup> The consequence is that the Applicant's assessment of impact based on its RPAs is fundamentally flawed. That, we suggest, is the unavoidable conclusion which follows from Dr. Hope's evidence.

17. Secondly, the Applicant relies on the result of intrusive investigations, in particular, trial trenches (carried out in 2018) and trial pits and boreholes at selected locations (carried out in 2019), in support of its case. There is no basis for relying on such investigations in identifying RPAs or to support development within them. The Applicant acknowledges that BS 5837<sup>26</sup> is the "industry standard and nationally accepted document for providing guidance and recommendations in relation to the juxtaposition of trees and buildings".<sup>27</sup> Nowhere in the BS does it advise, recommend, or support use of, or reliance upon, such intrusive surveys in assessing the impact of buildings on existing trees or their RPAs. Given that the BS is produced by a technical panel comprising experts in the field, it may reasonably be thought that if such investigations were to be supported, the BS would have provided as much. Dr. Hope's reliance on the advice concerning soil assessments in para.4.3 of the BS is hopeless. That part of the BS does not fall within para.4.6 to which the BS, through Figure 1 (p.2), directs a user who is seeking to identify the distribution of roots of an existing tree. As Mr. Mackworth-Praed explained in his evidence in chief, a soil assessment is not synonymous with an intrusive investigation to establish the extent of roots but is rather directed at looking at soil conditions to establish whether the identified RPA should thereby be adjusted. An attempt to argue otherwise suggests desperation.
18. Thirdly, the Applicant acknowledges the need to sever the roots of trees on both sides of VTG as a result excavation. The root severance for trees on the west side are set

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<sup>23</sup> CD8.7 p.47

<sup>24</sup> CD6.22 p.25

<sup>25</sup> CD4.16 p.11 para.4.6.2

<sup>26</sup> CD4.16

<sup>27</sup> CD8.7 PoE O'Shea para.5.1.2 p. 44 and CD 5.31 SoCG para. 1.13

out at Table 2 of the AIA Addendum.<sup>28</sup> Many of those affected roots are of a diameter larger than 25 mm, which the BS<sup>29</sup>, at para.7.2.3, advises against severing on the basis that “such roots might be essential to the tree’s health and stability”.<sup>30</sup> It is also the case that many of those roots which are acknowledged by the Applicant to be severed are at a depth below 500 mm and, as such, will “not be able to regrow” according to Bartlett Consulting, for the Applicant, as set out in the ES.<sup>31</sup> Dr. Hope’s attempts to distance himself from this clear statement by the Applicant in its ES should be discounted.

19. However, the Applicant’s assessment of the extent of anticipated root severance is incomplete and, as such, is unreliable. Tables 2 and 3 within the AIA Addendum are derived from the trial trenching carried out by Canopy Consulting in September 2018.<sup>32</sup> This is clear from the AIA Addendum at para.5.3.4 (p.29), and Dr.Hope in XX confirmed the same. Canopy Consulting trial trenches, dug in 2018, were limited “where possible” to a depth of 1 metre.<sup>33</sup> More recent trial pit and bore hole investigations carried out for the Applicant in 2019 and recorded in the Sharon Hosegood Associates Root Investigation Report<sup>34</sup> and the Ground Investigation Report by Ground Engineering August 2019<sup>35</sup> have, however, revealed that the roots of the affected trees are “mostly in the top 1.2m” but that roots were found to a depth of 1.6m and 2.1m. This of course accords with the preponderance of evidence before the inquiry that Plane trees can be expected to root to depths greater than 1m and up to 5 m.<sup>36</sup> The Applicant’s assessment of the extent of likely roots to be severed set out in the AIA Addendum<sup>37</sup> at Tables 02 and 03, based as it is on Canopy Consulting’s trenches to a depth only of up to 1m, must therefore be an incomplete assessment of

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<sup>28</sup> CD6.22 internal p.30

<sup>29</sup> CD4.16

<sup>30</sup> See also CD6.22 AIA Addendum para.5.4.1

<sup>31</sup> CD6.22 para.5.3.5. Bartlett Consulting’s reasoning for roots above a depth of 500 mm having an opportunity to regrow is based, it would seem, on the re-introduction of a layer of soil over the box of the excavation – see CD6.22 para.5.4.1.

<sup>32</sup> CD6.22 p. 30-31

<sup>33</sup> See CD6.5 App.4 p.2 and confirmed by Dr.Hope in XX

<sup>34</sup> CD6.35

<sup>35</sup> CD6.50

<sup>36</sup> See e.g. CD6.46 part 2 p.4; CD 5.11 p.63)

<sup>37</sup> CD6.22

the extent of root severance. It does not and cannot capture the likely full root profile, which the evidence now suggested could be to a depth of up to 2.1m. And, of course, the affected roots (below 500 mm) will be severed bluntly or as Dr Hope accepted would be “smashed” by the piling and, on Bartlett Consulting’s view, will not thereafter regrow.

20. We should add that Dr. Hope’s assertion, derived from his reliance on Dr. Biddle’s work,<sup>38</sup> that at the distance of the proposed excavation from the affected trees the relevant roots will be unlikely to be in excess of 20 mm is inconsistent with the 2019 trial pit investigations which establish that these planes have roots of up to 90 mm in diameter at up to 13 m from the trunk of the tree.<sup>39</sup>
21. Where does all this leave the decision-maker? First, the Applicant’s own assessment of the likely impact on affected trees is incomplete and, as such, is unreliable. Second, it is predicated on an incorrect and methodologically unsound assessment of the extend of the RPAs of the affected trees. Third, the RPA as identified by Mr. Mackworth-Praed, which accords with the approach in the BS, is to be preferred. Fourth, on that basis the proper conclusion is that there will be damage, causing a substantial risk to the survival of at least 13 mature Plane trees on the west side of VTG.
22. There were, at certain points during the inquiry, attempts by the Applicant to float the suggestion that were the mature and protected Plane trees on the west side of VTG to be lost, they could be replaced. This was not a contention which, in the event, the Applicant has pursued in any vigorous way. This is unsurprising given the point is entirely lacking in merit. As Mr Mackwroth-Praed explained, seeking to replace the trees would raise manifest issues, including the difficulties regarding the timing and location of any replanting, given the potential for varying rates of dieback, the biosecurity issues with importing London Plane trees from the continental nurseries where they are grown, the risk of transplant-shock, and the impediment to growth

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<sup>38</sup> CD 11.10

<sup>39</sup> See CD6.35 pp.5-6

resulting from the shaded location.<sup>40</sup> Even ignoring all these issues, in the best case scenario, Mr. Mackworth-Praed's view was that a reasonable estimate for replacement would be 30-40 years.<sup>41</sup>

23. The only sound conclusion which can be arrived at is that the development gives rise to a clear and demonstrable conflict with policies ENV16(A) and (B) and S38 of the Westminster component of the development plan and with policy 7.21 of the London Plan.
24. There are of course important consequential issues to the impact of the development on the historic environment as a result of the risk to and of loss of these trees. We address this in the next section of these submissions.

## **Impact on the Historic Environment**

### **The Approach**

25. There is a dispute between the main parties as to the correct approach to the calibration of substantial and less than substantial harm to the significance of heritage assets, as provided for within the NPPF (2019) para.194 to 197. The Applicant's approach is that the threshold for substantial harm remains that set out in the *Bedford* case (*Bedford Borough Council v Secretary of State for Communities and Local Government* [2012] EWHC 4344 (Admin)).<sup>42</sup> WCC and the rule 6 parties consider that matters have moved on with the publication, post-*Bedford*, of the PPG.<sup>43</sup> WCC submits that "substantial" harm to the significance of a heritage asset can arise, consistently with the PPG, where the adverse impact of a development "seriously affects a key element of [the asset's] special architectural or historic interest".

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<sup>40</sup> XIC Mackworth-Praed

<sup>41</sup> XIC Mackworth-Praed

<sup>42</sup> CD7.2

<sup>43</sup> CD4.13

26. It is common ground that no definition or test is offered in the NPPF as to what would amount to “substantial harm”. And none was offered in the 2012 NPPF. At the time of the decision in *Bedford* (26 July 2012) the PPG was not available; the PPG was first published on 28 August 2013. The task of interpretation confronted by the Judge in *Bedford* was without the benefit of the Secretary of State’s own guidance as to what is meant by and what would amount to “substantial harm”. Moreover, it can safely be inferred that the PPG was prepared and published in the knowledge of the outcome of the *Bedford* case.
27. It is plain that with the publication since *Bedford* of the PPG, matters have indeed moved on. The PPG does not expressly or by any reasonable implication adopt or endorse the interpretation of, or threshold for, substantial harm set out in *Bedford*. Had the Secretary of State intended to endorse that approach it may reasonably be anticipated that he would have done so expressly or by necessary inference within the PPG. Instead, the Secretary of State set out in the PPG an “example” of what would amount to substantial harm, as indeed Dr.Miele accepted in XX; that is where “the adverse impact seriously affects a key element of its special architectural or historic interest”. This is very far removed from a threshold or test for substantial harm which requires that “very much if not all of the significance is drained away” or that the assets significance is “vitiating altogether or very much reduced”.
28. For the avoidance of doubt, that the “example” offered in the PPG is introduced by reference to “works to a listed building” is nothing to the point. There is no logical basis to contend that the same threshold for substantial harm would not apply to works which affect the setting and thereby the significance of a listed building or indeed the significance of a conservation area. As the Judge confirmed, correctly, in *Bedford*, the “yardstick” for different forms of impact on a heritage asset is essentially the same.<sup>44</sup>
29. In short, the approach in *Bedford* cannot be reconciled with the subsequent guidance published by the Secretary of State as to what he considers would amount “substantial

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<sup>44</sup> CD7.2 *Bedford* para.25

harm” to the significance of a heritage asset. The conclusion in *Bedford* was justified on material before the Court in July 2012. However, that interpretation can no longer stand, consistent with the elucidation provided subsequently by the Secretary of State in the PPG. *Bedford* is therefore, in legal terms, distinguishable. The guidance set out in the PPG as to what would generate substantial harm is now to be applied.

30. The Applicant’s suggestion made during the examination of the evidence that *Bedford* represents the “law” is misleading. The judgement of any court is only binding on a planning decision maker if it remains relevant and is not distinguishable. *Bedford* has plainly been overtaken by events and is therefore distinguishable, for the reasons we have given.
31. What then are the consequences of this? First and foremost, it follows that the approach to substantial harm and therefore the calibration of harm generally adopted by the Applicant is misplaced. WCC’s approach and that of the Rule 6 parties does not suffer from this same defect.

**Whether the Proposed Development Would Preserve the Setting of the Buxton Memorial, a Grade II\* Listed Building (and Other Memorials in the Vicinity of the Site) (Main Issue 7(c))**

32. In respect of the Buxton Memorial at least, it is common ground that the development will cause harm to its significance as an important, grade II\* listed, heritage asset.
33. The issue is where that harm lies on the less than substantial scale. WCC consider that, with the trees remaining unharmed, the harm to significance would be at the higher end of the scale. HE considers the harm to be low to moderate.<sup>45</sup> Dr. Miele’s position is that the harm is at the lower end of the scale.
34. The City Council’s position is to be preferred, we submit.

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<sup>45</sup> CD5.36 Part 1 Statement Dunn para. 6.2.4

35. It is common ground that the Buxton Memorial enjoys, currently, prominence within VTG and this prominence contributes greatly to its significance as a heritage asset, as well as to that which it memorialises. As Dr. Miele confirms in his proof<sup>46</sup> it is the topography of VTG and its open setting, as well as the location of the Buxton Memorial at the juxtaposition of footpaths and the presence of the trees, that contribute to this prominence and significance. It is notable that in his ES, the Applicant states that the Buxton Memorial “is currently situated at the conjunction of pedestrian paths, and is a prominent feature visible from across the park”.<sup>47</sup> The City Council agrees, as it does with HE’s assessment that the Memorial “enjoys a prominent position within the landscape of VTG, the open setting of which contributes to significance”.<sup>48</sup>
36. What is clear from the Applicant’s own assessment is that the prominence enjoyed by the Buxton Memorial will be diminished extensively by the proposed development. That this is the case is demonstrated by:
- a. HTVIA view 20 (from the north). In the existing view<sup>49</sup> the BM is described as forming the “focal point in the centre of the view, situated within the expanse of the park”.<sup>50</sup> With the development in place, the BM would be “largely obscured from this perspective” as a result plainly of the loss open setting and changes to topography.<sup>51</sup>
  - b. HTVIA view 22, (from the south). In the existing view,<sup>52</sup> the BM is described as an “important landmark in the view” and its juxtaposition with the Palace of Westminster can be clearly appreciated and enjoyed.<sup>53</sup> Dr. Miele acknowledges this as a “most attractive” view.<sup>54</sup> With the proposed development the prominence of the BM is largely removed.<sup>55</sup> HE rightly

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<sup>46</sup> CD.8.13 PoE Miele paras.8.23-8.27

<sup>47</sup> CD5.1 HTVIA p.78 para.8.82

<sup>48</sup> CD5.15 HTVIA part 2

<sup>49</sup> CD5.1 HTVIA p.192

<sup>50</sup> CD 5.1 HTVIA para.9.311

<sup>51</sup> CD5.1 HTVIA p.193 para.9.319

<sup>52</sup> CD5.1 HTVIA p.200

<sup>53</sup> CD 5.1 HTVIA p.200 para.9.339

<sup>54</sup> CD8.3 PoE Adjaye p.38 para.7.54

<sup>55</sup> CD6.15 DAS Addendum p.55

describes the intervention of the development as introducing “visual tension”.<sup>56</sup> The open setting of the BM is plainly lost in views from the south.

- c. HTVIA View 13, from Millbank. In the existing view the BM is accepted to be prominent.<sup>57</sup> That prominence is largely lost by the introduction of the development, which is acknowledged by the Applicant to change the view from one of “open parkland, to one focussed on the built form of the memorial”.<sup>58</sup> The view of the BM along an axis from Dean Stanley Street, which is identified as an important view in the Smith Square Conservation Area Audit, will be affected even more acutely;<sup>59</sup> the BM was of course located in its current position expressly, following agreement with the Royal Fine Art Commission, so as to align with Dean Stanley Street.<sup>60</sup>

37. In essence, the open setting and flat topography which all accept contribute and enhance the significance of the BM will be extensively and harmfully changed. The position of the BM, physically, at the juxtaposition of east to west and north to south, footpaths will be lost too; the position of the monument as an extension of Dean Stanley Street will be extinguished.

38. Dr. Miele attaches weight the enhanced local setting of the BM, including the new seating arrangement, to mitigate the harm. He does, however, recognise that these benefits can be delivered independently of the application scheme; indeed, planning permission was given for such interventions in 2007.<sup>61</sup> Similarly, any wider landscaping improvement to VTG can of course be delivered independently of, and is not dependent upon, this scheme. These cannot, therefore, properly or sensibly mitigate materially the harm caused to the BM. It is no answer to suggest that only this scheme is on the table. VTG is a Government-owned area of public open space and is managed by a charity (the Royal Parks). If improvement to the BM or the Gardens more

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<sup>56</sup> CD5.36 HE Statement Part 1 para. 6.2.4

<sup>57</sup> CD5.1 HTVIA p.160 para. 9.190

<sup>58</sup> CD5.1 HTVIA p.161 para. 9.197

<sup>59</sup> CD3.2 Fig.10 p.20 and p.24 para.4.38

<sup>60</sup> CD 5.23 App.5

<sup>61</sup> CD 8.34 PoE Goddard para.10

generally are considered to be a benefit then, acting in the public interest, the owner of the Gardens can be relied upon to deliver the same. Dr. Miele's suggestion that juxtaposition with the new memorial is a benefit to the BM itself is somewhat odd; given that it is that new memorial development which causes the harm, it cannot sensibly be claimed to be a benefit at the same time. In any event, WCC does not oppose in principle a memorial in VTG so long as it is appropriate in scale and form.

39. In conclusion, it is not, we submit, credible to calibrate the harm to the significance of the BM as at the lowest end of the scale, as the Applicant does. Given the importance of the BM as an asset, reflected in its grade II\* listing, and the significance of what it memorialises, namely the Parliamentary processes and protagonists who secured the abolition of slavery in the UK – an event that has attracted particular interest and importance in context of the Black Lives Matter movement – it must be concluded that the harm to the BM is greatly underreported by the Applicant. Mr. Ayton is right to identify the harm as at the higher end of the less than substantial scale.<sup>62</sup> And that this harm would be elevated to substantial harm if the trees are diminished or lost, given the key role that the trees perform in establishing the character of the Gardens and the setting of the memorials and monuments within it.<sup>63</sup>
40. The failure to conserve the BM as a heritage asset, and the extent of harm caused, must be given substantial weight.
41. With regard to the other memorials in VTG – in particular the Burghers of Calais and the Pankhurst Memorials – the scale and the dominating effect of the proposed development will harm the contribution which these memorials make to the significance VTG.<sup>64</sup>

**The Effect of the Proposed Development on the Significance of Victoria Tower Gardens, a Grade II Registered Park and Garden (Main Issue 7(a))**

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<sup>62</sup> CD8.37 p.30 para.94

<sup>63</sup> CD8.37 p.57 para.173

<sup>64</sup>CD8.37 PoE Ayton p.30 para.95

42. Dr. Miele, for the Applicant, accepts some harm to the significance of VTG as an asset in its own right. He assesses this impact as at the lower end of less than substantial harm.<sup>65</sup> This, Dr. Miele says, is caused by the loss of openness and of greenery, curtailment of views of the Palace of Westminster and reduction in the visibility of the BM.<sup>66</sup> WCC largely agree with these as impact but consider that the harm, discounting harm to the trees, is at the higher end of the less than substantial scale. As such, Dr. Miele and the Applicant under record the degree of harm to VTG as a heritage asset in its own right.
43. It is quite clear that VTG was devised and laid out to take advantage of its location adjacent to Parliament and to deliver fine views of and towards the Palace of Westminster. In this regard it is a successful – indeed a remarkable - space. The Westminster Abbey and Parliament Square Conservation Area Audit recognises these “expansive views” northwards.<sup>67</sup> Its configuration has changed to a degree over time. However, its “elegant simplicity”, as Sir David Adjaye described it, is plainly recognisable. It is this simplicity - a flat uncluttered space enclosed by trees - which largely defines its character and affords the spectacular views northwards.
44. The proposed development would have a transformative effect on the Gardens. The flat open topography will be substantially lost through the introduction of the courtyard, monument and mound, in particular. Its simplicity too will be disrupted and diminished for the same reason. The greenery, at its southern end at least, will be lost to a built form of development.
45. The physical intervention of the proposed development into VTG will be particularly notable and adversely so. The proposed memorial courtyard will introduce a separate space into VTG; it will be less a memorial within the Gardens than a memorial separated from the Gardens. Dr. Miele, rightly, singles this out as an aspect of particular harm, which he describes as “introduce[ing] a sense of separation and

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<sup>65</sup> CD8.13 PoE Miele para. 1.11(I)

<sup>66</sup> CD8.13 PoE Miele para 6.61-6.103

<sup>67</sup> CD3.1 CAA p.24 para.4.4 and p.P35 Fig 22

undermines the appreciation of the trees and from the east side, interfer[ing] with an appreciation of the site’s riverside setting to an extent”.<sup>68</sup> The Applicant’s case is that the design of the proposed development is one which “intentionally seeks to create an experience where users feel separate from the remaining part of the park”.<sup>69</sup> Such an approach stands in clear contradistinction with the other memorials within the park which are experienced as part of the open space, rather than as “apart” from it. The approach, as Mr O’Shea accepted, is “radically different”.<sup>70</sup>

46. Moreover, views northwards towards the Victoria Tower and of the wider southern elevation of the Palace of Westminster will be substantially curtailed. This is most clearly demonstrated by the impact on view 22 in the HTVIA.<sup>71</sup> From this “most attractive view” the views of Victoria Tower will be “occluded” at least in part.<sup>72</sup> The extent of this impact is demonstrated graphically by the image produced by Mr. O’Shea in his evidence.<sup>73</sup> We agree, and note that the occlusion will be of most of the lower portion of Victoria Tower, including its remarkable ground level window, as well as much of the southern elevation to the east to the Victoria Tower. A similar view from the seat on the north side of the Spicer Memorial will also substantially be lost. On any basis this impact on views northwards – which contribute much to the significance of VTG – will be extensive.

47. So far as benefits to VTG are concerned, the Applicant relies on improved views of the river through the path and viewing platform, increased connectivity between monuments and improved landscaping and in particular new surfaces and lighting. To the extent that these are in fact benefits, none is dependent on the delivery of a scheme of the form and scale proposed; all could be achieved through a lesser degree of intervention in the Gardens by the public authority who owns it. There is of course nothing which suggests that the Gardens are recognised as being to any degree deficient in their current form and condition.

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<sup>68</sup> CD8.13 PoE Miele p.2 para.6.98

<sup>69</sup> WCC XX O’Shea

<sup>70</sup> Idem

<sup>71</sup> CD5.1 HTVIA p.200 (existing) and CD 6.15 DAS Addendum p.55 (proposed)

<sup>72</sup> CD8.13 PoE Miele p.38 para.7.54-7.55

<sup>73</sup> CD8.7 PoE O’Shea p.39 Fig.4.4.3

48. In conclusion, HE is correct in describing the impact of the proposed development on VTG as delivering a “fundamental change” to its character and one which generates “serious harm”.<sup>74</sup> This harm, discounting effect on trees, is less than substantial but at the upper end of the scale. The Applicant’s case, which is that there will be little or no harm at all, is frankly fanciful.
49. Damage or loss of the trees, which are a key element to the character of VTG and in views which it affords, will elevate that harm to substantial harm, applying the approach in the PPG.

**Whether the Proposed Development Would Preserve the Character or Appearance of the Westminster Abbey and Parliament Square Conservation Area (Main Issue 7(b))**

50. It is common ground that VTG is a central and important element in the wider Conservation Area of which it forms a part.
51. The harm which WCC considers will be caused to the significance of VTG as an asset in its own right reflects the harm to the wider Conservation Area of which it is a part. The self-same submissions made earlier in the context of VTG are engaged in respect of the impact on the Conservation Area, but not repeated.
52. It is of note that VTG is described at para.4.4 of the CA Audit<sup>75</sup> as forming part of Area 1 – Palace of Westminster and Victoria Tower Gardens, and the important and expensive views toward the Palace in particular are noted. Furthermore, the importance of VTG as an area of green space within the CA and the importance of the trees are also singled out in the Audit; both are described as contributing “significantly to the character and appearance of the conservation area and the local townscape”.<sup>76</sup> This contribution will be harmed, we say significantly, by what the Applicant proposes.

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<sup>74</sup>CD5.15 Part 1HE Response Letter pp.1 and 3

<sup>75</sup> CD3.1

<sup>76</sup> CD3.1 CAA p.75 paras.5.53-5.54

53. The development will cause harm to the character and appearance of the Westminster Abbey and Parliament Square Conservation Area and, as a heritage asset, its significance will be damaged. This impact will be less than substantial without harm to or loss of trees. With loss of, or harm to, trees such that their contribution to the character and appearance of the CA is foregone or materially diminished, the harm to its significance will be substantial since the trees are a key element contributing to that significance and, as such, that significance will be seriously and adversely affected.
54. The Applicant at various points during the inquiry sought to make something of the fact that the CA is extensive in spatial terms but that development and its impact is localised and is focused on VTG. This, it was suggested, limits or, in some way, mitigates the impact of the development on the conservation area as a whole and therefore the weight to be attached to such impact. That is the wrong approach. In *R (Irving) v Mid-Sussex District Council* [2016] PTSR 1365, at para.58, Gilbert J. held that harm to a part of a conservation area was, for the purposes of law (i.e. s.72 PLBCA Act 1990) and policy, harm to the conservation area overall. The harm that we submit will be caused to the Westminster Abbey and Parliament Square CA must be considered in this way.

**The Effect of the Proposed Development on the Outstanding Universal Value of the Palace of Westminster and Westminster Abbey Including St Margaret's Church World Heritage Site and its Setting (Main Issue 7(e))**

55. The Outstanding Universal Value of the WHS is not in issue. It is comprehensively set out in the WHS Management Plan ("the WHS MP").<sup>77</sup> The WHS MP includes a Statement of Significance at paragraph 2.3.<sup>78</sup> One of the identified "overarching significances" is "the outstanding and artistic value of its buildings at their content" (p.92). The buildings include the "New Palace of Westminster", which is noted for its "architectural significance".<sup>79</sup>

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<sup>77</sup> CD4.12

<sup>78</sup> CD4.12 WHS MP p.91

<sup>79</sup> CD4.12 WHS MP p.97

56. There is no dispute between WCC and the Applicant that VTG is important in providing an opportunity to appreciate that element of OUV of the WHS<sup>80</sup> and that it forms an “important part of its setting”.<sup>81</sup> This is unsurprising given the remarkable views which are afforded towards and of the Victoria Tower and the south elevation of the PoW from VTG; indeed, as was put to Dr. Miele in XX, VTG offers the best views of the Victoria Tower and the south elevation of the PoW. This is acknowledged in the WHS MP by inclusion as an “key local view”, which is currently enjoyed from the footpath on an east-west alignment between the Dean Stanley Street entrance to VTG and the BM;<sup>82</sup> this view is described as being “an important public realm component of the setting” of the WHS.<sup>83</sup>
57. The effect of the development will be substantially to reduce the views from VTG looking northwards and with it the opportunity to appreciate the OUV of the WHS. Indeed, the important view identified in the WHS MP at p.61 will be subsumed into the sunken courtyard and is thereby effectively lost. That truncated views from the elevated mound will remain is no answer to this loss; elevated views from the south towards the PoW were never intended in the original layout of the Gardens and secure no mitigation.
58. The impact is, however, even greater. The WHS MP includes as an objective that VTG, as a “key space”, should be included within the boundaries of the inscribed area.<sup>84</sup> VTG is said to “share the OUV of the WHS”. This tends to recognise the intrinsic relationship in architectural terms of VTG to the PoW and the critical opportunities that VTG affords to appreciate the Palace. What this objective does clearly demonstrate, however, is the importance that the WHS Steering Group (which includes HE, DCMS and ICOMOS) attaches to VTG in terms of its relationship to the WHS as currently formulated. This is further emphasised by the shorter term objective

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<sup>80</sup> CD8.13 PoE Miele p.36 para.7.32(3)

<sup>81</sup> CD4.12 WHS MP p.66 para.1.7.2.1, agreed WCC XX Miele

<sup>82</sup> CD4.12 WHS MP p.42

<sup>83</sup> CD4.12 WHS MP para.1.6.4.3

<sup>84</sup> CD4.12 WHS MP p.119 para.5.1.2.5

that VTG should be included as part of the buffer zone to the WHS.<sup>85</sup> Dr.Miele confirmed that the Steering Group had not abandoned these objectives or the rationale underlying them.

59. It is also of note that the World Heritage Committee have made it abundantly clear that the proposed development “would have an adverse impact on the OUV of the property and would unacceptably compromise a key part of its immediate setting and key views”.<sup>86</sup> The Committee recommended that alternative locations and/or designs should be pursued.<sup>87</sup> It is notable that the Foundation singularly failed to accept, without explanation, the invitation that a representative of the World Heritage Committee or Advisory Bodies contribute to the Design Panel Jury’s deliberations.
60. In conclusion, it is submitted that harm to the OUV and significance of the WHS will arise without harm to the trees.
61. The trees form a key element in the significance of VTG and of views towards, and appreciation of, the WHS. If the trees are lost or their contribution is materially diminished, the effect would be all the greater and, applying the PPG guidance, a key element in the significance of the WHS will be seriously and adversely affected. The harm to or loss of trees on the west side of VTG would also adversely affect the strategic view at LVMF View 27B.2.<sup>88</sup> The level of harm, in the case of loss of or substantial diminution of contribution made by the trees, would become substantial.

**Whether the Proposed Development Would Preserve the Setting of the Palace of Westminster, a Grade I listed Building (Main Issue 7(d))**

62. The impact on the significance of the Palace of Westminster as a designed asset in its own right is essentially the same as impact on the OUV of the WHS. We do not therefore repeat the submissions made in respect of impact on the WHS. Those submissions should be taken to set out WCC’s case in respect of impact on the PoW.

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<sup>85</sup>CD4.12 WHS MP p.122

<sup>86</sup> CD4.21 WHC 2019 Report p.91

<sup>87</sup> CD4.21 WHC 2019 Report p.92

<sup>88</sup> CD3.14 LVMF pp.231-233 esp. para.454

**Whether the Proposed Development Would Preserve the Character and Appearance of the Smith Square Conservation Area (Main Issue 7(f))**

63. The impact of the proposed development on locally significant views from Dean Stanley Street towards VTG and the BM have already been addressed. A locally important view from VTG towards the Smith Square CA and St. John’s Church is also noted as of importance in the CA Audit.<sup>89</sup> The introduction of the proposed development will plainly harm those views.
64. WCC, through Mr. Ayton, has confirmed that the trees in VTG, including those most directly at risk on the west side, contribute to the setting of the Smith Square CA.<sup>90</sup> If those trees were lost, their contribution to the setting of the CA and to its character and appearance will be significantly diminished and its significance as an asset will be harmed. This harm will be less than substantial.

**Whether the Proposed Development Would Preserve the Setting of Adjacent Listed Buildings, Including Nowest House, Nos 1 & 2 Milbank and the River Embankment Wall (Main Issue 7(g))**

65. VTG forms part of the setting of these listed buildings and structure. The Plane trees contribute particularly to the significance of the assets. If the trees are lost or their contribution to the significance of the assets is materially diminished as a result of the development, as WCC considers is likely, the significance overall of these assets will be harmed to a degree which is less than substantial.<sup>91</sup>

**Impact on Heritage Assets – Development Plan Conflict and Conclusions**

66. The development plan context in which impact on heritage assets is to be understood is, it seems, not controversial. The current London Plan provides, at policy 7.8C-D, that heritage assets, their significance and settings, should be conserved. The LP was

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<sup>89</sup> CD3.2 CAA p.24 para.4.38 (and Fig.10)

<sup>90</sup> CD8.37 PoE Ayton p.34 para.114

<sup>91</sup> CD8.37 PoE Ayton paras.114 and 180

revised post-publication to secure compliance with the NPPF.<sup>92</sup> As was confirmed by the Secretary of State in determining the *Citroen Site, Brentford* application, if the significance of an asset is harmed, then it is not “conserved” and a conflict with policy 7.8 arises.<sup>93</sup> On the Applicant’s case, the development conflicts with policy 7.8 by reason of harm to the significance of the BM. WCC says that the impact on VTG, the other memorials in VTG, and the CA are also such as to conflict with policy 7.8.

67. The Applicant must accept also, by reason of failure to conserve the BM and by reason of harm to its setting, a conflict with policy S25 of the City Plan (2016)<sup>94</sup> and of UDP policy DES10.<sup>95</sup> For the same reasons as set above WCC considers that the harm to a range of other designated assets is such that further conflicts with these policies arises, as well as with DES 12(A) and (B) and DES 15 by reason of harm to views and to the setting of buildings adjoining VTG. A conflict with City Plan policy S26 also arises by reason of impact on local views.
  
68. The harm to the OUV of the WHS, and opportunities to appreciate it, generate a conflict with London Plan policy 7.10(B) and UDP policy DES 16, as well as the corresponding policy – HC2(B) – of the intend to publish LP,<sup>96</sup> which has strengthened the policy framework concerning WHSs in London largely due to past-damage inflicted on the Westminster WHS. In this regard, it should be noted that in its 2017 Mission Report the World Heritage Committee referred specifically to the importance of strengthening the role of the planning framework in London in protecting the WHS, and the role of the GLA in particular, as well as placing considerable stress upon the importance of developing and implementing the WHS Management Plan.<sup>97</sup> This emerging policy has not been criticised or required to be altered by the Secretary of State. On the contrary, in examining the London Plan, the Panel referred back to the 2017 WHC Mission Report, noting their conclusion that the policies in the current plan

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<sup>92</sup> CD LP paras. 0.13-0.15

<sup>93</sup> see CD7.3 IR p.117 para.15.84-15.85 and DL p.5 para.28

<sup>94</sup> CD2.3 City Plan p.114

<sup>95</sup> CD 2.2 UDP p.536

<sup>96</sup> CD2.4 IPLP p.325-326

<sup>97</sup> CD4.19 WHC Mission Report (2017) p.26

had not been totally effective in preventing negative impacts on the WHS and stating that the proposed strengthening would accord with national policy.<sup>98</sup>

69. A clear conflict with heritage policies within the development plan arises which, by reference to the impact on the Buxton Memorial at least, the Applicant is compelled to accept. We return later in these submissions to compliance overall with the development plan and the requisite planning balance.

**Whether the Proposed Development, and the Increased Visitor Activity It Would Generate, Would Result in the Loss of Public Open Space and the Functionality and Character of Victoria Tower Gardens for Recreational Purposes (Main Issue 7(i))**

70. Open space is a valuable public asset. The principle of protecting open space is a key policy objective both within the development plan (policy S35 of Westminster's City Plan, ENV15 of the UDP, and policy 7.18 of the London Plan) and in the Applicant's own statement of national policy (para. 97 of the NPPF).
71. There can be no credible dispute that the proposals will conflict with these policies. They will result in harm, both qualitative and quantitative, to open space, transforming VTG physically, functionally and perceptually.
72. VTG is an area of well-appointed publicly accessible green space in the very heart of Westminster. All parties agree that the Gardens are well used.<sup>99</sup> Their use contributes to the health and wellbeing of local residents, workers, and tourists, who visit the gardens to relax, to exercise, and to recreate<sup>100</sup>. At the southern end of the Gardens is a children's playground, designed with the help and input of local children,<sup>101</sup> to the popularity of which several of the local residents who gave evidence spoke.<sup>102</sup>

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<sup>98</sup> CD2.8 paras 330-331

<sup>99</sup> CD 8.7 PoE O'Shea para. 3.3.1

<sup>100</sup> PoE Dorward paras. 2.2-2.3

<sup>101</sup> XIC Moggridge

<sup>102</sup> XIC Adjaye

73. The importance of the open space at VTG to the local community cannot and should not be underestimated. As Mr Goddard agreed, the area in which VTG lies is identified as being deficient in publicly accessible play space and open space greater than 0.4ha considered suitable for informal play.<sup>103</sup> It is also within a short distance of the St James and Vincent Square wards, providing a “vital service” to those parts of the Borough, where there is an identified insufficiency of public open space.<sup>104</sup> Mr Goddard’s assertion at para. 7.20 of his PoE that VTG is not within an area of open space deficiency is simply wrong; he confuses the fact that Parks are shown in white on Fig. 47 of the City Plan with the identified deficiency in the surrounding residential areas.
74. The effect of the proposed development will be to prevent public access to a material proportion of VTG and fundamentally to harm the openness and function of the Gardens.
75. First, the development will result in the loss of a significant area of publicly accessible open space. An entrance pavilion, memorial courtyard and memorial fins (together amounting to an area of 1,429sqm) will be constructed and enclosed within a secure perimeter. This is undoubtedly a material loss of public open space. As explained earlier in relation to the impact of VTG as a registered park and garden, the design intention of the scheme is to separate visitors to the UKHMLC from the remainder of the Park. This serves only to emphasise the loss of publicly accessible open space.
76. The loss of such an area necessarily conflicts with relevant development plan policy:
- a. There is no dispute that the development proposed conflicts with Policy ENV15 of the UDP.<sup>105</sup> That policy states that permission will be refused for development in or under open space which is not essential and ancillary to its function as open space. A conclusion that the development conflicts with that policy is unavoidable.

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<sup>103</sup> CD 2.3 p.147 Fig 47 and WCC XX Goddard

<sup>104</sup> Idem and XIC Dorward

<sup>105</sup> XIC Goddard

- b. City Plan policy S35 protects all open spaces. This policy must be taken to be consistent with the NPPF.<sup>106</sup> Mr Goddard accepted that open space will not be protected where a material amount of publicly accessible open space is lost.<sup>107</sup> The area surrounding VTH is deficient in certain types of open space, as we have submitted. As such, policy S35 provides that such deficiency should be addressed including be protecting “all open space”. The proposal fails in this respect. In those circumstances, there is unavoidable conflict with this policy. Moreover, the removal of an area of the Park for the memorial results in a disconnect between the northern part of the park and the playground to the south. This also fails to accord with policy S35 which seeks to develop connections between open spaces, not internally to sever them.
- c. Similarly, policy 7.18B of the London Plan which requires that the loss of protected open spaces be resisted unless equivalent or better-quality provision is made within the local catchment area. No such re-provision has been made in this case, and there is again an unavoidable conflict with the policy. Mr Goddard’s attempt to interpret policy 7.18B as permitting the loss of open space on the basis of wider improvements is wrong as a matter of construction.<sup>108</sup> The policy requires re-provision of open space lost; no re-provision is offered in this case. Policy 7.18B was published expressly in the context of the NPPF (discussed below) and must be read consistently with that policy, which Mr.Goddard’s interpretation fails to do.

77. The proposal also conflicts with NPPF para. 97, which is the Applicant’s own policy. That paragraph makes clear that existing open space should not be built on unless one of the three tests set out in that paragraph is met. Notwithstanding Lord Pickles’ heroic attempt to argue that this development is one “for alternative sports and recreational provision”, it is plain that none of the exceptions in para. 97 applies. Mr

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<sup>106</sup> Agreed WCC XX Goddard

<sup>107</sup> WCC XX Goddard

<sup>108</sup> XIC Goddard

Goddard's reliance on enhancements to VTG as a basis for meeting this policy ignores the wording of the policy. Sub-paragraph (b) refers expressly to "replacement" and there is none proposed in this case. In the course of his oral evidence Mr. Goddard attempted to develop an "on the hoof" argument that para 97(c) is engaged, on the basis, he claims, that the UKHMLC is a recreational use. This was not an argument found in the Applicant's statement of case, or in Mr Goddard's proof of evidence, where para.8.8 addressed in substance only para. 97(b). In doing so, Mr Goddard conflated a recreational use, with a cultural use which has some recreational value. As Mr Goddard accepted, the UKHMLC is a cultural use. As is apparent from NPPF para. 92, so far as the Secretary of State is concerned, cultural uses are distinct from recreational uses. The reference to "sport and recreation" in NPPF 97(c) plainly does not anticipate large scale cultural buildings like museums being built on open space. Such a reading of the NPPF would be manifestly absurd and would severely damage the efficacy of the Secretary of State's policy for protection for open space. Mr Goddard's belated attempt to justify the development on that basis and to sustain such an untenable reading of NPPF para. 97 does his evidence no credit. On any fair reading of NPPF 97, the development is in unavoidable conflict with the wording of the Applicant's own policy.

78. Second, the gardens will be physically transformed. A large portion of the central lawn, which is at present the core of the Gardens, will become a grassed mound with a footprint of approximately 2,000sqm, that slopes down to the north from the location where the fins project, beneath which will be the learning centre, laid out over two levels.<sup>109</sup> At present, the layout of the Gardens has a "powerful" or "elegant" or "understated" simplicity.<sup>110</sup> It has to use the Inspector's words "the attributes of a metropolitan landscape park" and that is how the open space is enjoyed.<sup>111</sup> The development of the proposed memorial will unavoidably destroy this simple open form. As Mr O'Shea agreed, no longer will the core of the park consist of a flat lawn, surrounded by trees channelling a view north towards the Palace of Westminster.<sup>112</sup>

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<sup>109</sup> PoE Dorward paras. 3.6-3.10

<sup>110</sup> CD8.7 PoE O'Shea para. 1.10; WCC XX Adjaye; XIC Moggridge

<sup>111</sup> Inspector's Questions Adjaye

<sup>112</sup> See CD8.7 O'Shea PoE p.39 Fig 442.

As Mr Dorward explained in evidence, the effect of this will be to make the large grassed area useable as a public open space, making it less suitable as a space for informal play and recreation as a result of the incline.<sup>113</sup> This is a qualitative adverse impact on the park which again conflicts with Policy S35 of the City Plan, in that it will harm the quality and amenity of the open space in an area of Westminster with an acknowledged deficiency in, inter alia, informal play space.

79. Third, the effect of introducing the UKHMLC into VTG will be fundamentally to change its character. VTG will be transformed into the setting of the UKHMLC. This much Sir David Adjaye appeared to accept in response to a question from the Inspector, agreeing that the landscape would be “drawn in”, and “shifted” to make the memorial.<sup>114</sup>
80. This has an effect beyond the physical elements of the landscape. In the course of his evidence, Mr Goddard stated expressly that there is no policy protection in the development plan for the tranquillity of open space. That is wrong. Policy S35 of the Westminster City Plan refers specifically to protecting tranquillity. The significant increase in the number of visitors to VTG as a result of the introduction of the UKHMLC will reduce the tranquillity of the gardens, contrary to Policy S35 of the City Plan. Indeed, the potential for this to change the character of the park was drawn into sharp focus during Mr Brittle’s evidence, when he indicated that uniformed security personnel may be stationed on the mound over the Memorial to control or disperse members of the public, as necessary.<sup>115</sup> This would plainly be a substantive qualitative change to the way in which the Gardens are enjoyed, replacing the relaxed sense of informal simplicity and tranquillity with a busier and more structured environment.
81. Finally, whilst it might not have been the intention or desire of those who designed the memorial, the effect of introducing into the park a monument to the worst crime in human history may have the effect of discouraging some users of VTG from

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<sup>113</sup> XIC Dorward

<sup>114</sup> Inspector’s Questions Adjaye

<sup>115</sup> TTIS XX Brittle

continuing to use the Gardens in the way that they do.<sup>116</sup> There are those who will reasonably feel uncomfortable, or that it is not appropriate, to use the area above the memorial for informal play and recreation, given the gravity of its subject matter. As Mr O’Shea agreed, that is a reasonable subjective response to the introduction of a memorial of this nature into the Park which “cannot be discounted”.<sup>117</sup>

82. In an effort to offset this harm, the applicant seeks to rely on what it considers to be wider improvements to VTG. These may fairly be summarised as: (1) providing new and improved paths within VTG, (2) addressing existing drainage issues; and (3) increasing and improving the accessibility of the Park.
83. There is a serious question over whether these works can really be regarded as ‘benefits’ or improvements. Mr Dorward made clear in evidence that in his view they are not.<sup>118</sup> In this, he was supported by Mr Moggridge, who regarded the paths proposed to be introduced as harmful to VTG and described the proposed improvements as being “cheaply detailed”, preferring the present layout along the river embankment.<sup>119</sup>
84. Even if the works proposed are taken to be improvements, however, the weight they attract is limited by the fact that, as the Applicant accepts, VTG is Government-owned and is managed and maintained by the Royal Parks in the public interest such that where improvements are considered appropriate in the public interest such works can and do take place.<sup>120</sup> For example, and as we have submitted, in January 2007 planning permission was granted for a paved area with seating and lighting around the Buxton Memorial.<sup>121</sup> More recently in March 2014, a planning application was approved for upgrading works to VTG including an extension of the children’s play area.<sup>122</sup> This permission was implemented and is a clear demonstration of the fact

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<sup>116</sup> WCC XX O’Shea

<sup>117</sup> WCC XX O’Shea

<sup>118</sup> Applicant XX Dorward

<sup>119</sup> XIC Moggridge

<sup>120</sup> WCC XX O’Shea

<sup>121</sup> CD8.34 PoE Goddard Para. 3.10

<sup>122</sup> CD8.34 PoE Goddard para. 3.11

that, where works are regarded as improving VTG, they can and will be undertaken. The fact that the works relied upon by the Applicant as improvements have not been proposed suggests, as Mr Dorward and Mr Moggridge confirmed, that the Royal Parks and the landowner do not regard those works as being necessary improvements, but if they are, they can be undertaken independently of this scheme. Any weight they attract is limited. If the “improvements” relied upon really are benefits, they are undoubtedly insufficient to outweigh the significant harm to VTG as an open space identified above.

85. Overall, therefore, the development will adversely impact VTG as an area of open space in both qualitative and quantitative terms. It will reduce the amount of open space available to members of the public, and will harm the tranquillity and functionality of VTG as a place for informal recreation in conflict with City Plan Policy S35, London Plan Policy 7.18 and NPPF para. 97.

#### **Other Considerations**

86. We should address briefly the evidence of Professor Tavernor. Professor Tavernor’s role and remit remains somewhat unclear and his contribution to the inquiry is distinctly odd. The Applicant does not rely on his evidence as an assessment of impact on heritage assets; for that part of its case, it looks to Dr.Miele. Professor Tavernor’s remit seems to be to consider general design and cityscape impacts. However, in that respect, he does not offer any methodology to explain how he has arrived at the judgements and conclusions he has reached, let alone does he provide any explanation as how he has evaluated impacts. His assessment singularly lacks any traceability.
87. Further, and curiously, his assessment of impacts does not accord with the conclusions set out within the Applicant’s own ES, which was produced according to a tried and tested, and explained, methodology, namely the GLVIA(3) published by the Landscape Institute.

88. By way of illustration, Professor Tavernor states that he concurs with the ES “principally that the visual effects of the Call-In scheme will be beneficial to VTG and the assets it contains and that surround it”.<sup>123</sup> However, that fails to acknowledge that the ES finds harm in terms of visual effects of the proposed development to a number of important receptors, in particular in view 13 from Millbank, to the north of its junction with Dean Stanley Street, where the ES concludes, a “moderate adverse” effect on visual receptors.<sup>124</sup> Similarly, adverse visual effects are identified in respect of receptors at views 9 and 11,<sup>125</sup> both of which are within the Westminster Abbey and Parliament Square CA, and at view 12, Horseferry Road/Millbank within the Smith Square CA.<sup>126</sup> Professor Tavernor fails to recognise any of these impacts. As indeed he does in respect of the impact on views from within VTG, for example at view 22, where that view will be lost.<sup>127</sup>
89. Moreover, Professor Tavernor’s conclusion of overall enhancement to the Buxton Memorial<sup>128</sup> is not consistent with Dr. Miele’s assessment of impact on the BM.
90. Professor Tavernor fails to recognise any of these adverse visual impacts set out in the ES. His conclusion of unbridled positivity and benefit is not consistent with the Applicant’s own assessment as to the likely significant effects of the proposed development on visual receptors in various respects.
91. Given these inconsistencies, within the utmost respect, Professor Tavernor’s evidence should be discounted.

### **The Effect of the Proposals on the Security of the Area (Main Issue 7(j))**

92. The City Council does not object to the development on the basis of security concerns. In reaching this decision, it consulted the Metropolitan Police Service Designing Out

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<sup>123</sup> CD8.11 PoE Tavernor p.4 para.1.7

<sup>124</sup> CD5.1 HTVIA p.161 para.9.202

<sup>125</sup> CD5.1 HTVIA p.145 and p.153

<sup>126</sup> CD5.1 HTVIA p.157

<sup>127</sup> CD5.1 HTVIA p200 and CD6.15 DAS Addendum CD6.15 p.55

<sup>128</sup> CD8.11 PoE Tavernor p.34 para.5.2.2

Crime team, who raised no objection.<sup>129</sup> As stated above, the City Council does, however, note that the nature of the security arrangements proposed, including the potential to position uniformed security personnel on the mound, will result in an adverse impact on the tranquilly of VTG, which results in conflict with policy S35 of the City Plan.

#### **Other Matters: Flood Risk, Transport, Archaeology, Pedestrian Movement**

93. WCC does not regard flood risk, transport, archaeology, or the impact of the development on pedestrian movement as reasons for refusing the grant of planning permission. In its view, any adverse impacts associated with these matters are capable of being adequately mitigated through the imposition of appropriate conditions and, where necessary, planning obligations.

#### **Consideration of Other Sites and the Content of the Proposals (Main Issues 6(c)-(d))**

94. All parties agree that the proposed development would cause planning harm. Even on the Applicant's own stated case, there would be harm to designated heritage assets of the highest significance. Such harm requires justification.
95. The Applicant relies, in this regard, upon the "very significant public benefits" of delivering "a nationally and internationally significant memorial and learning centre which would reinforce the role of London as a world city"<sup>130</sup> and is bold enough to contend that these benefits are so significant that they would represent a "wholly exceptional" justification for causing even substantial harm to the significance of designated heritage assets including the Grade I listed Palace of Westminster and the OUV of the WHS.<sup>131</sup> There is no dispute that, given the harm to designated heritage assets, a public benefit focused balancing exercise is required to be carried out in accordance with NPPF para.195 or 196.

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<sup>129</sup> CD5.11 Committee Report para 9.14

<sup>130</sup> CD8.34 PoE Goddard para. 11.9

<sup>131</sup> CD8.34 PoE Goddard para. 11.12

96. The public benefit of delivering *this* memorial in *this* location must, however, be put in context. If the same or similar benefits could be achieved by a scheme which avoids or reduces the harm that this development would cause, then the weight to be attached to the benefits of delivering the scheme proposed is significantly reduced. In effect, the availability of alternative means of meeting the objective underlying this development must, on any basis, be material to considering the weight to be attached to any public benefit of delivering this development, as proposed, in this location. If any authority is required to support this proposition (which we suggest it is not), this is provided by the well-established principles set out in *Trusthouse Forte Hotels Ltd v Secretary of State for Environment* (1987)57 P&CR 293 at 299-300 per Simon Brown J, (as he then was)).
97. The Applicant's approach to this issue as a matter of principle was confused and ran contrary to the established legal position. Mr Goddard indicated that in his view, the opportunity to deliver an equivalent development in an alternative location which causes no or less harm is "irrelevant" in the absence of a detailed and worked up alternative before the inquiry, saying the only example of that he could think of was if the Appeals were conjoined. As an approach, this runs flatly contrary to the decision of the High Court in *Trusthouse Forte* at p.299, in which the court said "Although generally speaking it is desirable and preferable that a planning authority (including, of course, the Secretary of State on appeal) should identify and consider that possibility by reference to specifically identifiable alternative sites, it will not always be essential or indeed necessarily appropriate to do so." The effect of taking this approach, which Mr Goddard accepted is what he did, is that he has failed properly to have regard to the availability of alternatives.<sup>132</sup>
98. The way in which the proposal to locate the UKHMLC in VTG came forward has become a little clearer during the course of this inquiry.

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<sup>132</sup> WCC XX Goddard

99. In January 2014, the then Prime Minister, David Cameron, established the UK Holocaust Commission. The Commission, Chaired by Sir Mick Davis, was made up of what the Applicant agrees was a range of individuals distinguished in public life, the media, and education.<sup>133</sup> It included Mr. Ed Balls (who gave evidence on the Applicant's behalf to the inquiry). In addition, the Commission was assisted by two expert groups: one on Education (Chaired by Dame Helen Hyde) and one on Commemoration (Chaired by Sir Peter Bazalgette and including Ben Helfgott MBE and Diane Lees CBE (now Dame Diane Lees), the current Director-General of the Imperial War Museum). The combined expertise upon which the Commission was able to draw formidable.

100. The Commission's "sacred duty to the memory both of victims and survivors of the Holocaust" was to determine how best to preserve the memories and lessons of the Holocaust for generations to come.<sup>134</sup> Following a year of careful research, investigation, and public involvement, the Commission made recommendations which it said it had "no doubt...will meet the Prime Minister's charge to the Commission that in 50 years' time the memory and lessons of the Holocaust will be as strong and vibrant as today".<sup>135</sup> In putting together its report and recommendations, the Commission conducted a thorough call for evidence that elicited over 2500 responses. Those organisations that responded were listed at Appendix B to the report and included a wide range of highly respected and well informed institutions<sup>136</sup> such that the Commission's report was one which, the Applicant accepts, "was produced following a thorough consultation and engagement exercise".<sup>137</sup>

101. In its Report the commission made four recommendations:

- a. A striking and prominent new National Memorial;
- b. A World-Class Learning Centre at the heart of a campus driving a network of national educational activity

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<sup>133</sup> WCC XX Balls

<sup>134</sup> CD5.9 Commission Report p.5

<sup>135</sup> Idem

<sup>136</sup> CD5.9 Commission Report p.62-67

<sup>137</sup> WCC XX Balls

- c. An endowment fund to secure the long-term future of Holocaust Education – including the new Learning Centre and projects across the country; and
- d. An urgent programme to record and preserve the testimony of British Holocaust survivors and liberators.<sup>138</sup>

102. The Report went into considerable detail regarding how to achieve each of the above recommendations. In relation to recommendation 1, it said as follows:

*“the evidence is clear that there should be a striking new Memorial to serve as the focal point for national commemoration of the Holocaust. It should be prominently located in Central London to attract the largest possible number of visitors and to make a bold statement about the importance Britain places on preserving the memory of the Holocaust. It would stand as a permanent affirmation of the values of British society...But it is also clear that a memorial on its own is not enough and that there must be somewhere close at hand where people can go to learn more about the Holocaust.”<sup>139</sup>*

103. The Applicant accepts, on this basis, that the principal parameters for a new memorial were that: (1) it should be prominently located in Central London; (2) it should make a bold statement about the importance Britain places on preserving the memory of the Holocaust; and (3) it should attract the largest possible number of visitors.<sup>140</sup>

104. These were objectives which the Commission clearly regarded as capable of being met by developing a memorial at sites other than VTG. Indeed, VTG was not a site recommended by the Commission although plainly as a Government-owned asset, it would have been available for consideration. On the contrary, the Commission expressly identified three possible locations (at the IWM, Potter’s Field, and Millbank) that it said “should be considered as part of a consultation taken forwards by [the UKHMF]”, each of which it regarded as “tangible possibilities that can capture the essence of the vision set out in [the Commission’s] report”.<sup>141</sup>

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<sup>138</sup> CD5.9 Commission Report p.13

<sup>139</sup> CD5.9 Commission Report p.41

<sup>140</sup> WCC XX Balls

<sup>141</sup> CD5.9 Commission Report p.53

105. None of the sites identified by the Commission were adjacent to, or within sight of, Parliament. As the Applicant's own witness, Professor Greenberg, accepted, the Commission simply did not regard a location adjacent to Parliament as necessary to capture the "essence and vision" of its objectives or to satisfy the requirements of its four recommendations.<sup>142</sup>
106. Of the sites considered by the Commission, the IWM was the closest to Parliament Square, and within easy walking distance of the Palace of Westminster. The Report expressly refers to the IWM as "a viable option" for locating the UKHMLC, noting the benefits of the location of a memorial alongside the newly expanded and upgraded Holocaust galleries in the main building.<sup>143</sup> As Mr Balls said in XIC, there is "huge complementarity" between the UKHMLC and the IWM because of the IWM's "deep expertise" in the subject. And so there is.
107. Nor, it should be noted, did the Commission regard the co-location of the Memorial and Learning Centre as essential. What was required was somewhere "close at hand" to the Memorial where people can "go and learn more about the Holocaust".<sup>144</sup>
108. In order to take its recommendations forward, the Commission proposed the creation of an independent body, to implement the recommendations to commemorate the Holocaust and ensure a world-leading educational initiative.<sup>145</sup> In January 2015, the same month as the Commission reported, the UK Holocaust Memorial Foundation was established to fulfil that function. Its membership overlapped significantly with that of the Commission, including Mr. Balls, the Chief Rabbi, and Ms. Natasha Kaplinsky.
109. In Autumn 2015 the UKHMF appointed CBRE to carry out a search for a suitable site for the UKHMLC.<sup>146</sup> For reasons that remain wholly unexplained, the area of search given to CBRE appears to have stopped at the river to the south, and therefore to have

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<sup>142</sup>WCC XX Greenberg

<sup>143</sup> CD5.9 Commission Report p.16

<sup>144</sup> CD5.9 Commission Report p.42

<sup>145</sup> CD5.9 Commission Report p.7

<sup>146</sup> CD8.34 PoE Goddard para. 4.6

excluded the IWM as a potential site.<sup>147</sup> It was not one of the 24 sites they identified or the three sites shortlisted.<sup>148</sup> None of the three shortlisted sites was adjacent to Parliament, which again demonstrates that such a location was not a pre-requisite for successfully achieving the Commission’s objectives.<sup>149</sup> Similarly, none of the reasons given for rejecting the shortlisted sites involved a lack of adjacency to Parliament, which again reinforces this conclusion. The same point arises from the Foundation’s own document entitled “Search for a Central London Site”, which in suggesting an area of search to meet the Foundation’s vision of a prominent Central London site, considered an area going as far north as Regent’s Park and as far south as the IWM.<sup>150</sup> The same document did not direct co-location of the memorial and learning centre; what it did suggest is that there was “somewhere close at hand where people can go to learn more”<sup>151</sup>.

110. It was not until late 2015 that the idea of locating the UKHMLC at VTG appears to have arisen, as the brainchild of Lord Feldman, communicated in a letter of 26 October 2015, to which John Wittingdale, then Secretary of State for Culture, Media, and Sport, responded on 3 November 2015.<sup>152</sup> Even then, the “Fieldman” correspondence reveals that what was being advancing was a leaning centre not co-located in VTG but to be “close by in Millbank”, which was clarified by Lord Pickles to be in a reconfigured Millbank Tower complex, next the Tate Britain.<sup>153</sup>
111. At this point there was a sudden and unprecedented change of direction. In January 2016, the UKMHF met and had what Mr. Balls describes as “a moment of genius” as a result of which, without any public consultation,<sup>154</sup> or relevant professional or planning advice,<sup>155</sup> the UKMHF locked on VTG as the location for the UKHMLC.

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<sup>147</sup> CD8.34 PoE Goddard para. 4.6

<sup>148</sup> CD8.34 PoE Goddard para. 4.6 para. 4.8-4.9

<sup>149</sup> Agreed in WCC XX Balls

<sup>150</sup> CD14.6 Search for a Central London Site p.10

<sup>151</sup> CD14.6 Search for a Central London Site p.4.

<sup>152</sup> CD14.4 Feldman 1 and CD14.5 Feldman 2

<sup>153</sup> CD14.4 Feldman 1 para.3.

<sup>154</sup> WCC XX Pickles

<sup>155</sup> TTIS XX Pickles

112. Following that meeting, the VTG location was presented to the Prime Minister as a fait accompli. No alternatives were offered. It seems, rather, a single recommendation was made and approved.<sup>156</sup> It is clear, now, that in making this recommendation to the Prime Minister, no professional advice as to the acceptability in planning terms of VTG as a location for the memorial and learning centre had been sought or secured by the Foundation. Historic England were not consulted. Nor, importantly, had there been any public consultation on site selection.
113. So it was that, with the stroke of a pen, and in the absence of any meaningful analysis, the results of the significant public engagement which had led to the Commission's recommendations were jettisoned, and VTG selected.
114. What does emerge from this less than transparent process is as follows:
- a. At no stage was it considered that the memorial needs to be adjacent or in sight of Parliament. Had that been a pre-requisite the Commission would not have recommended as it did to the Prime Minister, nor would CBRE have been given by the Foundation the area of search that it was, nor would CBRE have made its recommendation as to potential sites;
  - b. Co-location was not a pre-requisite either, as indeed was clear from the Foundation's own "Search for a Central London Site" publication<sup>157</sup> and indeed from the Fieldman correspondence;<sup>158</sup>
  - c. IWM London was considered a perfectly viable and suitable location for the proposed memorial and learning centre, and one which brought considerable benefits.

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<sup>156</sup> TTIS XX Pickles

<sup>157</sup> CD14.06

<sup>158</sup> CD14.4-14.5

## The Alternatives

115. Mr Goddard's position was that there "is no alternative" in this case.<sup>159</sup> That is wrong. As the above context demonstrates, there are alternative ways of delivering the benefits of the UKHMLC without causing the harm associated with the Applicant's proposals. Specifically:

- a. If a location adjacent to Parliament is considered critical, a memorial of a different form and scale could be provided at VTG, with a learning centre nearby; or
- b. A co-located Memorial and Learning Centre could be provided on an alternative Central London site, such as the "viable option" proposed at IWM.<sup>160</sup> As the Applicant accepts, there is nothing to suggest that the IWM proposal has been withdrawn.<sup>161</sup>

### *A VTG Monument*

116. In his evidence, Sir David Adjaye very fairly accepted that the scale of a memorial "does not equate to its success".<sup>162</sup> As he put it "an appropriate memorial to an international event does not need to be of any particular scale" because "you can achieve an appropriate design on any scale".<sup>163</sup>

117. Mr. Dorwood gave two examples of this in his evidence: One, in the form of the Buxton Memorial, lies within VTG itself, and the other, the Cenotaph, is a monument of modest scale, which all parties agree is "a fitting memorial to the sacrifice made by millions during and as a result of war."<sup>164</sup>

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<sup>159</sup> WCC XX Goddard

<sup>160</sup> CD5.9 Commission Report p.16

<sup>161</sup> WCC XX Goddard

<sup>162</sup> WCC XX Adjaye

<sup>163</sup> WCC XX Adjaye

<sup>164</sup> WCC XX Adjaye

118. As both of those memorials demonstrate, it is possible to deliver a hugely powerful and internationally recognisable memorial without making the significant intrusions into the physical environment, and the concomitant environmental harm, required to deliver the Applicant's proposal.
119. In such circumstances, the learning centre could be located close by, either on Millbank, as was originally envisaged even after the VTG location was identified,<sup>165</sup> or perhaps more appropriately at the IWM, which (for the reasons explained below) represents an eminently suitable location for a Holocaust learning centre (whether co-located with a memorial or not), in a location which is just short walk from VTG and Parliament. It was in this context that the Commission said there must be somewhere "close at hand" to learn more about the Holocaust. As Lord Pickles evidence confirmed, even the Foundation initially took this approach, intending to locate the learning centre in Millbank Tower.<sup>166</sup>
120. It is notable that a stand-alone memorial (with a learning centre located elsewhere) has a clear precedent. The Commission in its Report commended in particular the New England Holocaust Memorial in Boston, which is a standalone monument that does not include a learning centre.<sup>167</sup>

#### *Alternative Locations*

121. If co-location of the memorial and learning centre is considered essential, there are other viable Central London locations that would meet the objectives of a Memorial and Learning Centre set out in the Commission's report.
122. As the court made clear in *Trusthouse Forte* at 299, it is not necessary to identify a specific site as a preferable alternative to the proposal. The IWM site, however,

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<sup>165</sup> WCC XX Balls

<sup>166</sup> WCC XX Pickles

<sup>167</sup> CD4.9 Commission Report p.42

provides a powerful example of the possibility of a suitable and available alternative location.

123. The IWM is, as the Applicant's expert agreed, "a world renowned museum, with IWM London as its Central London flagship".<sup>168</sup> It is located a short walk from the Palace of Westminster (1.2 miles) from VTG (0.7 miles). Mr Balls, who was a member of both the Commission and the Foundation, said the IWM "could have been suitable" as a site for the UKHMLC.<sup>169</sup> This accords with the view of the Prime Minister's Holocaust Commission, referred to already, which, in its Report, noted the benefits of locating a memorial and learning centre at the IWM, stating "there is an obvious advantage in locating the Learning Centre alongside the IWM London I Geraldine Mary Harmsworth Park" and going so far as to say, "the Commission also recommends that the Learning Centre should include the Imperial War Museum's Holocaust Exhibition, upgraded and expanded".<sup>170</sup>

124. The suitability of the IWM as a location was underlined by the representations of Professor Sir Richard Evans, emeritus Regius Professor of History at the University of Cambridge. Professor Evans' pre-eminence as a scholar of the Holocaust requires no rehearsal. His considered view was that the VTG proposal could not, as a research centre, compete with the Weiner Library or the IWM Holocaust galleries.

125. Certainly, even on the Appellant's evidence, the Holocaust galleries at IWM (as they presently are) represent a world class educational facility. It was regarded by the Prime Minister's Commission as "an example of excellent practice in relation to Holocaust commemoration" and it presently runs a significant learning programme supporting schools and students.<sup>171</sup> The exhibition at the IWM, which Professor Greenberg agreed is "of the highest quality" and "very highly acclaimed" welcomes approximately 1 million visitors a year, of which approximately 21,000 are students.<sup>172</sup>

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<sup>168</sup> WCC XX Greenberg

<sup>169</sup> WCC XX Balls

<sup>170</sup> CD5.9 Commission Report p.54 and p.13

<sup>171</sup> Ibid p.27

<sup>172</sup> Ibid p.11 and p.27

Amongst the reasons for that high acclaim are that, “through the artefacts, video testimonies and historic footage that have been diligently sought out and collected for the exhibition, it critically examines the story of the holocaust in a manner which, to quote one reviewer “takes at least two hours to examine properly and will stay in the memory forever””.<sup>173</sup>

126. The quality of the exhibition at the IWM is set only to improve. There is presently considerable public investment taking place in the Holocaust galleries at the IWM as part of a £30m project, £5m of which was provided by the Pears Foundation, which is a notable contributor to education in relation to the Holocaust and more widely to research, teaching and public policy formation relating to anti-Semitism and racial intolerance.<sup>174</sup>

*The Applicant’s Reasons for Rejecting the IWM London*

127. In its revised ES chapter on alternatives, the Applicant gives reasons for rejecting the IWM site.<sup>175</sup>
128. In terms of environmental considerations, it is difficult to think of a more environmentally sensitive site in London than VTG, and there is certainly nothing in the assessment of alternatives to suggest that the IWM would have been a more environmentally sensitive location than VTG (Table 4-1). Indeed, had it been so sensitive as to preclude its development for a Holocaust memorial and learning centre, it may have been thought that the relevant local planning authority, the LB Southwark, who were commended for their engagement by the Commission,<sup>176</sup> would have said so.
129. As to Land Use and Planning History, the IWM is in the Central Activities Zone in a location which Mr Goddard accepted the delivery of a cultural use like the UKHMLC is

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<sup>173</sup> Agreed WCC XX Greenberg

<sup>174</sup> Agreed WCC XX Greenberg

<sup>175</sup> CD6.49 ES Alternatives

<sup>176</sup> CD5.9 p.53.

acceptable in principle. As he agreed, there is nothing in the Commission’s report to suggest that there are any in principle land use objections or other insurmountable issues with delivering the UKHMLC at the IWM. This accords with the Applicant’s own ES (Table 4-3) which describes the location as one where “cultural uses are considered compatible with local policy”.<sup>177</sup> Indeed, it would be absurd for the Commission to recommend a site to the Prime Minister in circumstances where that site represented in principle planning objections.

130. The issues identified with the IWM site relate to “visibility and profile”, where the ES Addendum says,

*“The proposition offered was a memorial attached to a back wall with no prominence and a below-ground learning centre adjacent to it. The site lacks significance and the activities would be subsidiary to the far larger remit of the IWM, whose aims in remembering Britain at war which are not consistent with the aims of the HMLC.”<sup>178</sup>*

131. These reasons are entirely inconsistent with the Commission’s view of the suitability of the IWM as a site. Indeed, they are manifestly ill founded:

- a. As regards the nature of the memorial proposed, there appear to have been a number of proposals suggested. The Commission Report refers to “the building of a new wing”,<sup>179</sup> the ES alternatives assessment to “a back wall”,<sup>180</sup> and Mr Goddard to “a two-dimensional text- based memorial covering a side elevation of the building”.<sup>181</sup> The drawings of the proposed development introduced by TTIS show a very substantial scheme, designed by Foster + Partners, with a large scale learning centre (located like that proposed at VTG underground), a “wall of remembrance”, recalling the Vietnam memorial in Washington which Mr Goddard accepted is “more than just a text-based memorial”,<sup>182</sup> and a carved oculus surrounded by a landscape spiral. The summary dismissal of the

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<sup>177</sup> CD6.49 ES Alternatives p.7-8

<sup>178</sup> CD6.49 ES Alternatives p.7 Table 4-3

<sup>179</sup> CD5.9 Commission Report .p.16 and 54.

<sup>180</sup> CD6.49 ES Alternatives p.7 Table 4-3

<sup>181</sup> CD8.34 PoE Goddard para. 4.5(iii)

<sup>182</sup> TTIS XX Goddard

IWM proposal in the ES Addendum is irreconcilable with the nature of the schemes proposed, and with the fact that the IWM and LB Southwark are public bodies who would and could plainly be relied upon to engage in and facilitate a process of developing and delivering an appropriate form of memorial. That an existing children’s play facility may have be required to be relocated cannot be elevated to any kind of objection to the Foster + Partner’s scheme, particularly given the scale of Geraldine Mary Harmsworth Park and the opportunities for reprovision that it presents, nor was it suggested by LB Southwark, the owners of the park, to have been so.

- b. The suggestion that the IWM “lacks significance” simply is not credible and is in direct conflict with the Applicant’s evidence of its own witnesses. Professor Greenberg, a recognised expert in the design of museum exhibitions, accepted its prominence and international significance as a “world-renowned” museum. In light of this Mr Goddard agreed that the IWM was of “national and international significance”.<sup>183</sup>
  
- c. The portrayal of the IWM as a museum “whose aims in remembering Britain at war... are not consistent with the aims of the HMLC” is reductive and a fundamental mischaracterisation. As Professor Greenberg agreed, IWM was originally founded in 1917 to record the *civilian* and military effort and sacrifice involved in the Great War looking at its causes, course and (in the museums own words) “most importantly” consequences.<sup>184</sup> That objective subsequently expanded to encouraging “the study and understanding of the history of modern war and wartime experience” including for civilians. In the museums own words its galleries “give[s] voice to the extraordinary experiences of ordinary people forced to live their lives in a world torn apart by conflict”.<sup>185</sup> A current example of this is the “Refugees season” presently at IWM, which includes an exhibition entitled “Refugees: Forced to Flee” and an installation

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<sup>183</sup> WCC XX Goddard

<sup>184</sup> WCC XX Greenberg

<sup>185</sup> WCC XX Greenberg

in the Atrium by the internationally renowned contemporary artist and human rights activist Ai Weiwei.<sup>186</sup> As Professor Greenburg explained, it was, in fact, the Holocaust exhibition 2000 that “fundamentally changed the remit of that museum [from war] to people’s experience of conflict” having “profound ramifications on the direction of the museum.”<sup>187</sup> The Applicant’s presentation of the IWM as a “celebrating British achievements in various wars”<sup>188</sup> is at least 20 years out of date and irreconcilable with its own evidence.

d. In terms of deliverability, it is plain that the trustees of the IWM London and LB Southwark, as owner of the surrounding Park, have embraced enthusiastically the opportunity to host a new Holocaust memorial and learning facility, as the Commission themselves acknowledged<sup>189</sup> and as is demonstrated by their appointment of Foster + Partners to develop a scheme. There is no evidence that the IWM’s enthusiasm has waned, nor that either the IWM or LB Southwark supports the current location. The IWM is operated by trustees appointed by the Prime Minister and a chairman appointed by HM The Queen. As a body, it can be relied upon to act in the public interest.

132. As was accepted in XX, the Commission did not regard a location close to Parliament as being necessary to capture the vision set out in its report.<sup>190</sup> Nevertheless, in addition to the reasons stated in the ES alternatives analysis, the Applicant relied heavily at the Inquiry on the importance of a location adjacent to Parliament as a justification for developing the UKHMLC at VTG. This was an objective which Mr Balls, on behalf of the Applicant, fairly conceded could not anywhere be identified in the thorough and comprehensive report of the Commission, to which he had put his name, and the recommendations of which he agreed he “was and remains entirely supportive”.<sup>191</sup> It appears, in truth, that references to the idea of locating the story of

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<sup>186</sup> Idem

<sup>187</sup> Idem

<sup>188</sup> Applicant XX Dorward

<sup>189</sup> CD5.9 p.43.

<sup>190</sup> WCC XX Greenberg

<sup>191</sup> WCC XX Balls

the Holocaust within a Parliamentary context are an after the event justification, inconsistent with the Commission's recommendations, which regarded as suitable sites a considerable distance from the Palace of Westminster. The Applicant's attempts in evidence to draw a comparison with the location of the Berlin memorial's location close to the Reich Chancellery is disquietingly inapposite. The Reich Chancellery (as opposed to the Reichstag which is located approximately 1km further away) was Hitler's seat of government; the location from which the appalling events of the Holocaust were directed. There is an obvious symbolism in situating the "Memorial to the Murdered Jews of Europe"<sup>192</sup> close that location. But there can be no meaningful parallel to support locating the UK memorial in VTG, adjacent to Parliament. Any attempt to do so is not just spurious; it is paradoxical. Moreover, whilst this Inquiry's focus must be on the planning merits rather than the merits of competing historical analyses, Professor Sir Richard Evans criticisms of the justification for locating the memorial adjacent to the Palace of Westminster were powerful and compelling. As Professor Evans said, a justification for the location based on "the symbolism of Parliamentary democracy" risks failing to recognise that "democratic and humanitarian values are not British values, but universal values" and in doing so "running the risk of complacency and self-satisfaction". In any event, it is important not to lose sight of the fact that WCC do not oppose VTG as a location for *a* memorial to the Holocaust but rather to *this* scale and form of memorial.

133. In truth, there is no good reason for rejecting the IWM site. The reasons given in the ES Addendum on Alternatives is an ex post facto attempt to rationalise the rejection of the site without any public consultation or professional advice and in the teeth of the Commission's recommendations and the comprehensive evidence gathering exercise that underlay it.

### Conclusion on Alternatives

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<sup>192</sup> The official title of the Memorial in Berlin.

134. Thus, whilst the City Council supports fully the delivery of a fitting memorial in London to the victims of the Holocaust and a learning centre, which would contribute to ensuring that the horrors of that dark chapter of European history are not forgotten, its view is that these objectives, important as they are, do not have to be met through a development in *this* location of the form and scale proposed. These objectives are capable of being appropriately and successfully achieved by a more modestly designed but fitting memorial in VTG with a learning centre provided elsewhere, or, if co-location is considered to be critical, by a memorial and learning centre being delivered in another appropriate location, such as the IWM.<sup>193</sup> For these reasons, the weight that should be attributed to the benefits of the scheme relied upon by the Applicant is very considerably reduced.

**The Planning Balance – With Reference Any Public Benefits the Proposals Might Bring (Main Issue 7(k))**

135. The starting point when determining any planning application is the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be taken in accordance with the development plan, unless material considerations indicate otherwise. This creates a statutory presumption that applications which do not accord with the development plan, read as a whole, will be refused permission.

136. In this case, the proposed development undoubtedly conflict with the development plan. Specifically, it conflicts with: (1) Policies S25 and S38 of the City Plan, saved policies ENV16 and DES 9 of the UDP, and London Plan Policy 7.21 as a result of the impact on protected trees; (2) City Plan Policies S25 and S26, saved policies DES1, DES9, DES10, DES12, and DES16 of the UDP, and policies 7.8 and 7.10 of the London Plan as a result of harm to designated heritage assets; and (3) Policy S35 of the City Plan, Policy ENV15 of the UDP, London Plan Policy 7.18 as a result of harm to and loss of open space. The fact that policy S27 of the City Plan encourages the principle of uses of international importance within the core CAZ does nothing to undermine

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<sup>193</sup> CD8.36 PoE Dorward paras. 8.1-8.11

these wider conflicts. Policy S27 cannot be considered in isolation, ignoring the more conventional development control policies in the development plan, as indeed Mr. Goddard, in substance, accepted. The policy does not give carte blanche to build any development on any scale anywhere within the core CAZ. That would accord neither what the policy says, nor its intended purpose.

137. For the purposes of s.38(6) there is, we submit, a conflict with the development plan, considered as a whole. It follows that a statutory presumption against the grant of planning permission arises.
138. There are also material considerations which militate against the grant of planning permission. This development does not accord with the Applicant's own policy, as set out in the NPPF, and in particular the policies protecting Open Space (para. 97) and his policy that great weight should be attached to the conservation of designated heritage assets, which this proposal fails to do (Paras 193). There is also conflict with relevant emerging development plan policy specifically: (1) Policy G7 of the Intend to Publish London Plan in relation to trees; (2) Policies HC1 and HC2 of the Intend to Publish London Plan in relation to the historic environment; and (3) Intend to Publish London Plan Policy G4 in relation to open space. None of these emerging policies have been criticised by the Secretary of State.
139. The Applicant himself accepts that this development will cause harm to the significance of designated heritage assets, including assets of the highest significance such as the Grade II\* listed Buxton memorial. This creates a further "strong presumption" against the grant of planning permission through s.66 of the PLBCA Act 1990 (*Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* [2014] EWCA Civ 137 per Sullivan LJ at para. 23). WCC consider that there will be harm to the settings of a wider range listed buildings as well as harm to the character and appearance of the Westminster Abbey and Parliament Square CA, thereby engaging s.72 of the Listed Building, etc. Act. If correct, these factors add strength to the negative statutory presumptions.

140. The Applicant advances the benefits of the proposal as a material consideration to rebut any development plan conflict as well as a public benefit to outweigh any harm to the significance of heritage assets, in accordance with NPPF paras.195 or196.
141. As explained in opening, the City Council supports fully the delivery of a fitting memorial in London to the victims of the Holocaust. It also supports a learning centre, which would contribute to ensuring that the horrors of that dark chapter of European history are not forgotten. It accepts that the delivery of these objectives are benefits of the proposal. These objectives of the development, important as they are, do not, however, have to be met through a development in this location of the form and scale proposed. As Mr Balls and Mr Goddard both accepted in XX, the objectives of a fitting memorial to the victims of the Holocaust and a learning centre *could* be appropriately and successfully achieved elsewhere. This reduces substantially the weight which attaches to the scheme's benefits.
142. In that important context, the benefits of delivering a memorial of this form and scale in this location do not outweigh the harm that the development will cause to VTG and its highly sensitive surroundings, including harm to the significance of a range of affected heritage assets.
143. Given the national, indeed international, importance of appropriately marking, within the United Kingdom, the terrible events of the Holocaust, it is critical that any consented memorial is the right one in the right place. This is underscored by the strength and breadth of the views, deeply and genuinely held from all sides of the debate, which have been expressed at this inquiry. This proposal is not the correct response to the challenge. For the reasons we have given, therefore, it is the City Council's case that planning permission for the development proposed should be refused.
144. The decision maker is requested to refuse this application and the Inspector is invited to recommend accordingly.

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**13 November 2020**