

IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2022-2023

HOLOCAUST MEMORIAL BILL

EXAMINATION OF BILL

**REPRESENTATIONS ON BEHALF OF THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING
AND COMMUNITIES**

Annexes

1. *Planning permission dated 29 July 2021 granted by the Minister of State for Housing for the UK Holocaust Memorial and Learning Centre [subsequently quashed by the High Court – see Annex 2]*
 2. *Judgment of the High Court in London Historic Parks and Gardens Trust v Minister of State for Housing & Others [2022] EWHC 829 (Admin)*
 3. *London County Council (Improvements) Act 1900*
 4. *Press Release – “Government to introduce legislation to pave way for new National Holocaust Memorial”, 26 January 2023*
 5. *London Government Bill (Session 1962–63) HC Deb 669, c 45*
 6. *Extract from Erskine May, 25th Edition (2019), para 30.57 [accessed online on 29 March 2023]*
 7. *Extract from Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2022, para 8.222*
 8. *Local Government Bill [HL] (Session 2010-11) – Certificate from the Examiners, Statement of Reasons and Record of Hearing before the Examiners, June 2010*
 9. *Aircraft and Shipbuilding Industries Bill (Session 1976-1977) - Report of the Examiners*
 10. *Education Reform Bill (Session 1987-88) HC Deb 123, c 770*
 11. *Iron and Steel Bill (Session 1948-49) HC Deb 458, c.52*
 12. *Erskine May, 19th Edition (1976), pages 873 to 874*
 13. *Erskine May, 19th Edition (1976), page 863*
 14. *Electricity (Miscellaneous Provisions) Bill (Session 2002-2003) HC Deb 398, c 581*
 15. *Extract from Cabinet Office's Guide to Making Legislation, 2022, para 41.3*
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1. INTRODUCTION

- 1.1 On 23 February 2023, the Holocaust Memorial Bill (**the Bill**) was introduced into the House of Commons and given its first reading. Subsequently, pursuant to Standing Order No. 61¹ of the standing orders relating to public business (**the PuBSOs**), the Examiners of Petitions for Private Bills (**the Examiners**) were ordered to examine the Bill and to report on whether the standing orders relating to private business (**the PrBSOs**) are applicable to the Bill – in other words, whether the Bill should be considered as being ‘hybrid’.
- 1.2 Pursuant to Standing Order No. 224 of the PrBSOs, the Examiners must, in determining whether the Bill is hybrid, consider whether or not Standing Orders No. 4 to 68 of the PrBSOs should apply to it.
- 1.3 This note sets out the Secretary of State’s representations on the nature and effect of the Bill, the rules regarding hybridity and their application to the Bill.
- 1.4 In addition, in the event that the Examiners find that the Bill is hybrid and that therefore the PrBSOs apply to it, a table has been included in the **Appendix** to this note commenting on which of Standing Orders No. 4 to 68 of the PrBSOs are considered to apply.

2. BACKGROUND

- 2.1 On 29 July 2021, planning permission² was granted to the (now) Secretary of State for Levelling Up, Housing and Communities by the Minister for Housing³ for the construction of the United Kingdom Holocaust Memorial and Learning Centre (**the UKHMLC**) in Victoria Tower Gardens in London.
- 2.2 Following a successful claim for a statutory review under section 288 of the Town and Country Planning Act 1990, that planning permission was quashed by the High Court in April 2022⁴.
- 2.3 The Court’s decision turned on the effect of section 8 of the London County Council (Improvements) Act 1900⁵ (**the 1900 Act**) that was found to prevent the UKHMLC from coming forward.
- 2.4 Given this, the Secretary of State has decided to introduce a bill to remove the restrictions the 1900 Act presents in respect of the UKHMLC⁶.
- 2.5 The Bill also makes provision for expenditure by the Secretary of State in connection with the UKHMLC.

3. THE BILL

- 3.1 It is important, at the outset, to set out and consider the content of the Bill, given it is this to which the principles of hybridity must be applied.
- 3.2 The long title of the Bill is:

"A Bill to Make provision for expenditure by the Secretary of State and the removal of restrictions in respect of certain land for or in connection with the construction of a Holocaust memorial and learning centre."

¹ Any reference to a standing order in these representations relates to the standing orders of the House of Commons unless otherwise stated.

² Annex 1.

³ The planning application was ‘called-in’ by the Minister for determination in November 2019.

⁴ *London Historic Parks And Gardens Trust v Minister of State for Housing & Othrs* [2022] EWHC 829 (Admin) – Annex 2.

⁵ Annex 3.

⁶ For further background, see the press release (dated 26 January 2023) at Annex 4.

3.3 The Bill consists of three clauses.

3.4 Clause 1 authorises the expenditure by the SoS in connection with the UKHMLC, specifically for:

"(a) the construction on, over or under any land of-

(i) a memorial commemorating the victims of the Holocaust, and

(ii) a centre for learning relating to the memorial,

(b) the carrying out of any work ancillary to, or associated with, anything falling within paragraph (a), and

(c) the use, operation, maintenance or improvement of the memorial and the centre for learning."

3.5 Clause 2 provides that sections 8(1) and (8) of the 1900 Act do not *"prevent, restrict or otherwise affect the carrying out of any of the activities described in paragraphs (a) to (c) of section 1(1) [those cited above] on or in relation to the land described in section 8(1) of that Act."*

3.6 Clause 3 provides for the extent, commencement and short title.

3.7 Given their general scope and nature, it is submitted that it is plain that clauses 1 and 3 do not present any questions (arguable or otherwise) of hybridity. As such, the focus of this note is on clause 2.

4. **THE 1900 ACT – SECTION 8 – CONTENT AND EFFECT**

4.1 Before applying the established principles of hybridity to consider whether the Bill should be treated as such, it is important to consider the legal effect of sections 8(1) and (8) of the 1900 Act, as it is this (and how the Bill alters this effect) that will determine whether the Bill should be considered hybrid.

4.2 The long title of the 1900 Act is as follows:

"An Act to empower the London County Council to make an extension of the Thames Embankment and a new street and improvements at Westminster to widen Mare Street Hackney and to make other street improvements and works in the administrative county of London and for other purposes."

4.3 Section 4 of the 1900 Act provides for certain improvement works to be carried out, as described – this includes improvements at Westminster.

4.4 Section 6 of the 1900 Act provides powers of compulsory acquisition for, inter alia, the purpose of effecting the improvements.

4.5 The 'heading' or 'marginal note' applicable to section 8 is *"For protection of the Commissioners of Works"*.

4.6 Section 8 contains a preamble, which states:

"Whereas the works authorised by this Act under the heading " Thames Embankment Extension and Improvements at Westminster" (herein-after referred to as "the Westminster improvement") will involve the occupation of certain lands vested in Her Majesty or vested in or under the control of the Commissioners of Works and will also necessitate some interference with the garden adjoining the Houses of Parliament known as the Victoria Tower Garden:

And whereas by the Crown Estate Paving Act 1851 management of certain streets and places in the neighbourhood of the Houses of Parliament which include Abingdon Street or part thereof was transferred to and vested in the Commissioners of Works:

And whereas it has been agreed between the Commissioners of Works and the Council that the said works shall only be executed subject to and in accordance with the provisions herein-after set forth:

And whereas for the purposes of this Act a plan has been prepared (in this section referred to as "the signed plan") which for purposes of identification has been signed by the Right Honourable Lord Brougham and Vaux the Chairman of the Committee of the House of Lords to whom the Bill for this Act was referred a copy of which plan has been deposited in the Office of the Clerk of the Parliaments:"

4.7 Section 8(1) provides:

"The lands lying to the eastward of the new street described in this Act as consisting in part of widenings of Abingdon Street and Millbank Street which is in this section called " the new street" and between the said street and the new embankment wall shall be laid out and maintained in manner herein-after provided for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden subject to such byelaws and regulations as the Commissioners of Works may determine".

4.8 Section 8(8) provides:

"The Commissioners shall maintain the garden so laid out and the embankment wall and kerb and railings enclosing it".

4.9 It is important to note that the Secretary of State for Culture, Media and Sport is the statutory successor to the Commissioners of Works and is one of the supporters of the Bill.

4.10 It is helpful background and context to set out the High Court's summary of the effect of section 8 of the 1900 Act contained in its Judgment quashing the planning permission for the UKHMLC:

"Accordingly, I arrive at the following construction of section 8 of the 1900 Act:

*1) On its ordinary and natural meaning, Section 8(1) of the 1900 Act imposes an enduring obligation to lay out and retain the new garden land **for use as a public garden** and integral part of the existing Victoria Tower Gardens. It is not an obligation which was spent once the Gardens had been laid out so that the land could be turned over to some other use or be developed or built upon at some point after it had been laid out whenever it suited those subject to the obligation.*

*2) Section 8(8) cannot be read as only covering repair or upkeep. The language is very similar to s.8(1) and the latter says in manner-hereinafter provided. **Sections 8(1) and 8(8) are both to the same effect. They require the land to be laid out and thereafter kept as public gardens.***

3) The detailed prohibitions in Section 8(15)-(18) do not detract from the substantive obligation in section 8(1). Sections 8(15) - (18) simply impose controls on works that could be carried out (or were not the subject of any absolute prohibition).

4) The repeal of the larger part of the 1900 Act, save for the prospective and continuing obligations in ss. 7-9, confirms the enduring nature of the obligations imposed by them.

5) As was common ground by the end of the hearing, the advent of the modern planning system has no bearing on the obligations in the 1900 Act."⁷ (my emphasis)

4.11 This, together with the helpful chronology of events which led to the 1900 Act as set out in the Court's Judgment (which it is unnecessary to reproduce here but can be seen in paragraphs 77 to 98 of the Judgment at Annex 2), and which the Court concluded supported its conclusions on construction of

⁷ Paragraph 76 - *London Historic Parks And Gardens Trust v Minister of State for Housing & Others* [2022] EWHC 829 (Admin) – Annex 2.

the 1900 Act⁸, confirm that the effect of the 1900 Act is to secure that Victoria Tower Gardens is, and is required to remain as, a ‘public’ garden, for the benefit of and recreation of the general public.

- 4.12 As such, the effect of sections 8(1) and (8) is to secure the relevant section of Victoria Tower Gardens for general public benefit and access and **not** to bestow any special or specific rights on particular parties or interests. As such, it can be reasonably concluded that the Bill would only impact this general public benefit rather than doing anything more specific to any other party or interest group. As will be seen, this is critical to the question of whether the Bill is hybrid.

5. APPLICATION OF THE HYBRIDITY PRINCIPLES TO THE BILL

General principles

- 5.1 The starting point in considering whether any bill is hybrid is the well-established definition expressed by Speaker Hylton-Fraser:

“[a] public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class”⁹.

- 5.2 It is also worth noting, as a further preliminary point, that in the past, ‘local interests’ as well as ‘private interests’ have been considered in determining the hybridity of a bill – indeed, see the following definition in *Erskine May*¹⁰, which is also broadly reflected elsewhere¹¹:

“Hybrid bills are public bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same category, so as to attract the provisions of the standing orders relating to private business”.

- 5.3 Indeed, in considering the question of whether the Local Government Bill [HL] 2010-11 was hybrid, the Examiners did raise the question of the meaning of a ‘local interest’, albeit in that context the answer was not clear (and the question of hybridity did not turn on it)¹².

- 5.4 In any event, as all the definitions of hybridity above contemplate, a bill is not hybrid simply because it impacts private (or local) interests. **The key factor is whether, where such interests are impacted, a particular person (or body of persons) is impacted differently from other persons or bodies in the same class.**

- 5.5 The Examiners captured this concept in their certificate relating to the Aircraft and Shipbuilding Industries Bill (and related Statement of Reasons)¹³, where it was stated:

*“This definition [Hylton-Foster’s], taken at its face value, indicates what might have been thought to be obvious, that the doctrine of hybridity is an expression of the will of each House of Parliament that an individual **singled out by a Public Bill for adverse treatment** should be allowed to plead his cause to a Select Committee on a Petition against the Bill or against those provisions of the Bill that will affect him...”* (my emphasis).

- 5.6 However, those same Examiners also acknowledged that this ‘concept’ had, in fact, been restricted by two particular rulings by the Speaker, on the Bill for the Iron and Steel Act 1949 and on the Bill for the Iron and Steel Act 1967, which focussed on the ‘class’ or ‘category’ to be used when considering

⁸ Paragraph 105 - *London Historic Parks And Gardens Trust v Minister of State for Housing & Others* [2022] EWHC 829 (Admin) – Annex 2.

⁹ HC Deb (1962–63) 669, c 45 – Annex 5.

¹⁰ 25th Edition (2019), para 30.57 [accessed online on 29 March 2023] – Annex 6.

¹¹ See, for example, paragraph 8.222 of *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2022* – Annex 7.

¹² Local Government Bill [HL] (2010-11) – *Certificate from the Examiners, Statement of Reasons and Record of Hearing before the Examiners*, June 2010 – Annex 8.

¹³ 1976-1977 Session – Annex 9.

hybridity. In short, the effect of those rulings was that the class or category within which impacts on private interests had to be compared had to be very tightly drawn:

“... the effect of both of [these rulings] is that the category or class that is relevant is the one selected by the Promoters of the Bill. In other words, the defences of the subject against selective ill-treatment can be turned by drawing a category or class that comprises him and his fellow victims and nobody else.”

- 5.7 This has been echoed in other rulings – see for example the Speaker’s comments in relation to the Education Reform Bill¹⁴:

*“In considering the question of hybridity, I have to look at the terms of the Bill. **Provided that the formula or description used in the Bill deals with a category or class which is relevant to the purposes of the Bill and the Bill does not expressly specify or single out an individual or corporation within the category for different treatment, the Bill is not hybrid. The fact that individuals are differently affected when they fall within a general description is not relevant. Indeed, any general legislation will probably affect different people in different degrees.**”* (my emphasis).

- 5.8 This reflects earlier precedents, such as in relation to the Iron and Steel Bill of 1948-49, where the Speaker stated, in concluding the Bill was not hybrid¹⁵:

*“The purpose, as I see it, of the Iron and Steel Bill, is to bring under public ownership all important companies producing iron ore and certain basic iron and steel products, the limits for acquisition being laid down in the Second Schedule. **This is a matter of public policy, as in the case of previous nationalisation Bills, and deals with private interests only generally, as respects a particular class. The Railways Bill of 1921 applied not to all railways but to all railways of a particular class, namely the main line railways.** Similarly, the Transport Bill, though it provided generally for the acquisition of railway and canal undertakings, did exclude certain small undertakings not controlled by the Government during the war, and other undertakings whose railway or canal activities were not main activities of the undertaking.”*

- 5.9 It should also be noted that, in general, it is not the practice to treat a bill implementing public policy as hybrid *“whereby private rights **over large areas or of a whole class** are affected¹⁶”* (my emphasis) – this is reflected in the passage in respect of the Iron and Steel Bill above¹⁷.

Application of these principles to the Bill

- 5.10 The case for the Bill not being hybrid rests on three main, interlinked, points:

- 5.10.1 the Bill does not single out a person or body from a defined class for special treatment;
- 5.10.2 the ‘private interests’ of such persons or bodies are not affected by the Bill; and/or
- 5.10.3 the Bill is implementing public policy.

No person or body singled out

- 5.11 Turning to the first point, it is submitted that it is impossible to establish any person or body that would be ‘specially’ affected by the Bill within a specific class or category.

¹⁴ HC Deb (1987-88) 123, c 770 – Annex 10.

¹⁵ HC Deb (1948-49) 458, c.52 – Annex 11; see also discussion of this further, and similar bills, in (for example) *Erskine May*, 19th Edition (1976), pages 873 to 874 – Annex 12.

¹⁶ *Erskine May*, 25th Edition (2019), para 30.57 [accessed online on 29 March 2023] – Annex 6.

¹⁷ See also discussion in earlier editions of *Erskine May*, such as the 19th Edition (1976), page 863 – Annex 13, where it is stated that the principle whereby a private bill should be introduced as a public bill is where a bill, though partly of a private nature, has as its main object a public matter.

- 5.12 As stated above, the effect of sections 8(1) and (8) of the 1900 Act presently is to ensure Victoria Tower Gardens is maintained as a public garden. These provisions do not enshrine in law any special rights or privileges for the benefit of particular persons or bodies.
- 5.13 As such, should the Bill pass into law, it would only impact the provisions securing maintenance of Victoria Tower Gardens as a public garden and therefore access to that garden by the general public. From within that ‘class’ of the general public, no person’s private rights or local interests (including any special interest groups and local residents) would be ‘specially’ affected. The public at large is affected equally, as the 1900 Act secures the maintenance of Victoria Tower Gardens on a purely general basis, being open to the general public.
- 5.14 For completeness, it is acknowledged that section 8 of the 1900 Act has a marginal heading of “*For protection of the Commissioners of Works*”. Sections 8(1) and (8) do confer obligations on the Commissioners of Works (now the Secretary of State for Culture, Media and Sport) which would be affected by the Bill. However, the effect of the Bill would not be *adverse*.
- 5.15 There are two points to be made in this regard:
- 5.15.1 at law, there is only one ‘Secretary of State’, so it would be a somewhat perverse situation for the only person being ‘specially affected’ by the Bill (thereby making it hybrid) being the same person (in law) promoting the Bill – although in any event, the Secretary of State for Culture, Media and Sport is a supporter of the Bill; and
- 5.15.2 in the case of the Electricity (Miscellaneous Provisions) Bill¹⁸, it was found that a publicly owned entity that was within the relevant ‘class’ was not *adversely* affected and therefore the bill in question was not hybrid - whilst it is noted this is not directly on point, one could infer that where a Bill is implementing the Government’s wishes, if the only other member of a class that *could* be affected is a government entity (or similar) and the effects are not adverse, the bill is therefore not hybrid¹⁹.

No private interests affected

- 5.16 Even if it can be said that a particular person or body has been singled out by the Bill, the ‘private’ (or indeed ‘local’) interests of those persons or bodies would not be affected.
- 5.17 To start with, the rights protected by sections 8(1) and (8) of the 1900 Act for members of the public to use Victoria Tower Gardens as a public garden cannot, by any reasonable interpretation, be described as ‘private rights’ – they are much too general in nature for that. This is reflected in the Speaker’s comments on the Education Reform Bill, cited in paragraph 5.7 above.
- 5.18 This reasoning can also be extended as to why the Bill, should the Examiners wish to consider the ‘wider’ interpretation of hybridity set out above, does not affect ‘local’ interests. It could be argued by a memorialist that, for example, sections 8(1) and (8) of the 1900 Act confer on certain members of the public who live in the vicinity of Victoria Tower Gardens a different nature of interest or right that would be impacted by the Bill compared to the wider general public – however, that is not how either the 1900 Act (as summarised above) or the Bill are framed – it is only the rights of the public at large that could be said to be impacted by the Bill.
- 5.19 Finally, should it be the case that the Secretary of State (as statutory successor to the Commissioners for Works) is found to be specially affected by the Bill, it cannot be said that the affected interests of the Secretary of State are in any way ‘private’, given their genesis and overarching nature and

¹⁸ HC Deb (2002-2003) 398, c 581 – Annex 14.

¹⁹ Indeed, this inference is supported by a statement contained in the Cabinet Office’s *Guide to Making Legislation*, 2022 at paragraph 41.3 which states: “...A bill that singles out a particular person or body for favourable treatment is not normally regarded as hybrid so long as others in the same category or class are not thereby prejudiced...” – Annex 15.

purpose (they are clearly ‘public’). Whilst it is accepted that it is well established that a local authority can have ‘private’ interests in its area, the present case is clearly distinguishable.

The Bill is implementing public policy

5.20 Without prejudice to the above commentary, as set out in *Erskine May*²⁰, should the Bill implement public policy where a whole class is affected, it will not be hybrid. It is submitted that this clearly applies here, given the nature of sections 8(1) and (8) of the 1900 Act and how the Bill proposes to deal with those provisions.

5.21 The coming forward of the UKHMLC is clearly a matter of public policy²¹. It is not a ‘local’ or ‘private’ measure and is to commemorate the victims of the Holocaust and to encourage reflection on the implications of the Holocaust for British Government and society – it is therefore of national importance and significance. The location of the UKHMLC is incidental to this overarching importance and purpose. As a result, the Bill (in facilitating the construction and operation of the UKHMLC) is implementing that public policy and therefore cannot be hybrid. This proposition is further strengthened when one considers that, as per the above, the only possible interests specially affected by the Bill are those of the Secretary of State.

6. INTERACTION WITH THE PLANNING REGIME AND PREVIOUS HIGH COURT CASE

6.1 It should also be noted that even if the Bill were to be passed and then receive the Royal Assent, the ability for the UKHMLC to be brought forward would remain subject to the Secretary of State obtaining all of the necessary consents and permissions for it to be constructed and operated at Victoria Tower Gardens, not least a planning permission under the Town and Country Planning Act 1990. For example, it is under that process that the appropriateness of the location, design and other matters relating to the UKHMLC would be duly examined and determined. In contrast, the Bill simply removes a legislative barrier to the UKHMLC being constructed and operated in the event those separate consents and permissions are obtained. The Bill itself does not authorise any works, which is of key importance and it is entirely separate from those processes.

6.2 For completeness, it is worth saying that this also applies to the High Court proceedings that took place in relation to the UKHMLC. Those have no bearing as to whether the Bill is hybrid – for example, whether a party was a successful claimant to those proceedings does not determine whether a person is specially affected by the Bill.

6.3 For example, the ‘tests’ for a party being able to bring a statutory planning review under section 288 of the Town and Country Planning Act 1990 (a ‘person aggrieved’) bear no relation whatsoever to the tests of hybridity set out above and, indeed, to the ‘test’ a party needs to meet to petition against a hybrid bill (i.e. to be ‘specially and directly affected’).

7. CONCLUSIONS REGARDING HYBRIDITY

7.1 For the reasons set out above, the principles that make a bill hybrid do not apply to the Bill and the Secretary of State accordingly invites the Examiners to certify and report the same.

²⁰ See footnote 11.

²¹ See the press release (dated 26 January 2023) at Annex 4.

8. **APPLICATION OF THE PRIVATE BUSINESS STANDING ORDERS**

- 8.1 As referred to in paragraph 1.4 above, should the Examiners find that the Bill is hybrid and that the PrBSOs therefore apply to it, a commentary has been provided in the **Appendix** to this note as to which of the PrBSOs it is considered *may* apply to the Bill, together with a rationale. Where a PrBSO is not cited in the Appendix, the conclusion is that the PrBSO would not apply to the Bill.

31 March 2023

RJV Owen, Partner of Pinsent Masons LLP

Agent for the Secretary of State for Levelling Up, Housing and Communities

APPENDIX

PRIVATE BUSINESS STANDING ORDERS (PrBSOs) POTENTIALLY APPLICABLE TO THE BILL

| House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference) | Brief description of requirement (and information on specific subsections, where applicable) | Applicability if the Bill is found to be hybrid | Differences between the HC and HL PrBSOs |
|---|--|--|--|
| 4. Contents of a notice (HL4) | <p>4(1): Publication of notice with concise summary of the Bill, as provided in PrBSO 10.</p> <p>4(2): Published notice to contain information as to where Bill may be inspected and purchased and when objections can be made by petition.</p> <p>4(3): Notice to be headed with short title of the Bill.</p> | <p>The purpose of this PrBSO is to notify persons interested/affected by a Bill of its existence and of the ability to petition against it – as such, the applicability of this is inherently connected with whether the Bill is considered to specially affect any private interests – if it is, this PrBSO would apply in principle.</p> | None relevant. |
| 4A. Copies of Bill to be made available (HL4A) | <p>4A(1)(c): A Bill not promoted by a local authority must be made available for inspection or purchase at an office in the local government area in which the promoters’ principal office is situated.</p> | <p>The purpose of this PrBSO is to allow persons interested/affected by a Bill to inspect its content - again, the applicability of this is inherently connected with whether the Bill is considered to specially affect any private interests – if it is, this PrBSO would apply in principle.</p> <p>4A(1)(d) and 4A(3) also potentially apply if PrBSO 27 applies (specific requirements for making copies of the Bill available where PrBSO 27 applies).</p> | None relevant. |

| House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference) | Brief description of requirement (and information on specific subsections, where applicable) | Applicability if the Bill is found to be hybrid | Differences between the HC and HL PrBSOs |
|---|--|--|--|
| 10. Publication of notice in newspapers (HL10) | <p>10(1): prescribes the times at which the notices must be published.</p> <p>10(2)(b): where a Bill is not promoted by a local authority, newspaper(s) must circulate in the area in which the promoters' principal office is situated.</p> | As with PrBSO 4. | None relevant. |
| 11. Publication of notice in the Gazette (HL11) | Publication of notice in The London Gazette giving time by which petitions must be submitted. | As with PrBSO 4. | None relevant. |
| 19. Notice to owners, etc., in case of alteration or repeal of protective provisions (HL19) | Notice to be given to any person who has the benefit of a protective provision that a bill is proposing to alter or repeal. | It could be said that section 8 of the 1900 Act is a protective provision in favour of the "Commissioner of Works" (now DCMS), meaning this PrBSO could apply if the Bill is found to be hybrid. | None relevant. |
| 38. Deposit of copies of bill in Vote Office and Private Bill Office (HL38) | <p>38(1): Copies of Bill to be delivered to the Vote Office and/or to the Private Bill Office for the use of every Agent.</p> <p>38(2) and (4): Provision of a printed memorandum to be attached to the Bill, in which related clauses can be dealt with together.</p> <p>38(3): statement of compatibility of the Bill with HRA 1998.</p> | Similar considerations to those set out for PrBSO 4A apply. | 38(1): Copies to be deposited in the office of the Clerk of the Parliaments (applicable whether or not any petitions have been deposited.) |

| House of Commons PrBSOs relating to private business potentially relevant to the Bill (and associated HL PrBSO reference) | Brief description of requirement (and information on specific sub-sections, where applicable) | Applicability if the Bill is found to be hybrid | Differences between the HC and HL PrBSOs |
|---|---|---|--|
| 39. Deposit of copies of bills (HL39) | Deposit of Bill at government departments and public bodies. | Similar considerations to those set out for PrBSO 4A apply. | None relevant. |

ANNEX 1

Planning permission dated 29 July 2021 granted by the Minister of State for Housing for the UK Holocaust Memorial and Learning Centre [subsequently quashed by the High Court – see Annex 2]



Ministry of Housing,
Communities &
Local Government

Mr Mark Knibbs
DP9 Ltd
100 Pall Mall
London
SW1Y 5NQ

Our ref: APP/XF990/V/19/3240661
Your ref:

29 July 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY SECRETARY OF STATE FOR HOUSING, COMMUNITIES
AND LOCAL GOVERNMENT
LAND AT VICTORIA TOWER GARDENS, MILLBANK, LONDON, SW1P 3YB
APPLICATION REF: 19/00114/FULL**

1. I am directed by the Minister of State for Housing (“Minister of State”) to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry between 6-23 October 2020 and 3-13 November 2020 into your client’s application for planning permission for installation of the United Kingdom Holocaust Memorial and Learning Centre (UKHMLC) including excavation to provide a basement and basement mezzanine for the learning centre (Class D1); erection of a single storey entrance pavilion; re-provision of the Horseferry Playground and refreshments kiosk (Class A1); repositioning of the Spicer Memorial; new hard and soft landscaping and lighting around the site; and all ancillary and associated works, application reference: 19/00114/FULL, dated 19 December 2018.
2. On 5 November 2019, the then Minister of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client’s application be referred to her instead of being dealt with by the local planning authority.

Inspector’s recommendation and summary of the decision

3. The Inspector recommended that the application should be approved, and planning permission granted, subject to conditions and the obligations in the Legal Agreement.
4. For the reasons given below, the Minister of State agrees with the Inspector’s conclusions, and agrees with his recommendation. He has decided to grant planning permission. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Minister of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Minister of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Minister of State notes at IR4.16 that the planning application of December 2018 was subject to subsequent amendments made and submitted in April 2019, and that some further reports and revisions were submitted as listed in the Core Documents at Appendix 3 to the Inspector's report. He has considered the application on the basis of the amended scheme, as considered at the Inquiry.

Matters arising since the close of the inquiry

7. At the time of the Inquiry, the development plan included the 2016 version of the London Plan, saved policies of the Westminster Unitary Development Plan (WUDP) 2007 and the Westminster City Plan (WCP) 2016. The London Plan was adopted on 2nd March 2021. The policies from the previous London Plan set out in IR3.10-3.16 have therefore been superseded. However, the Minister of State does not consider that the adoption of the London Plan (LonP 2021) raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this application, and he is satisfied that no interests have thereby been prejudiced.
8. The Westminster City Plan 2019 – 2040 was adopted on 21 April 2021. The saved policies from the WUDP set out in IR3.17-3.23 and the policies from the previous Westminster City Plan set out in IR3.24-3.31 have therefore been superseded. Relevant policies of the then emerging Plan were considered by the Inspector at the Inquiry (IR3.38-3.41). The Minister of State notes that the parties agreed that the Westminster Emerging City Plan was a material consideration in the determination of the Application (IR3.38). The Minister of State does not consider that the adoption of the new Westminster City Plan raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on the application, and he is satisfied that no interests have thereby been prejudiced.
9. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter. The Minister of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

Policy and statutory considerations

10. In reaching his decision, the Minister of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the London Plan (2021) and the Westminster City Plan (2021). The Minister of State considers that the relevant

development plan policies include those of the London Plan set out at IR3.3-3.9 and Policy 34: Green Infrastructure, Policy 38: Design Principles, and Policy 39: Westminster's Heritage of the Westminster City Plan (IR3.38-3.41).

12. Other material considerations which the Minister of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as Supplementary Planning Guidance and the Westminster World Heritage Site Management Plan referred to at IR3.34-3.37. The revised National Planning Policy Framework was published on 20 July 2021, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework. The Minister of State does not consider that the publication of the revised Framework raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on the application, and he is satisfied that no interests have thereby been prejudiced.
13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Minister of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
14. In accordance with section 72(1) of the LBCA Act, the Minister of State has paid special attention to the desirability of preserving or enhancing the character or appearance of those conservation areas potentially affected by the proposals.

Main issues

15. The Minister of State agrees that the main considerations are those set out by the Inspector at IR15.3.

Effect on Designated Heritage Assets

16. The Minister of State notes the Inspector's analysis set out at IR15.8-15.17 detailing views of parties on the harms to heritage assets, and agrees with his approach to considering effects on Designated Heritage Assets.

Effect on Trees

17. The Minister of State notes the analysis set out at IR15.18-15.21 and agrees with the Inspector's approach to assessing the effect of development on trees set out at IR15.22.

Identification of Root Protection Areas

18. For the reasons given at IR15.23-37, the Minister of State agrees with the Inspector that Westminster City Council's interpretation and application of the British Standard BS 5837: Trees in relation to identifying Root Protection Areas is the more logical, and thus the one garnering greater weight in this matter (IR15.37).

Extent and Nature of Encroachment into Root Protection Areas

19. The Minister of State notes the Inspector's assessment of the extent and nature of encroachment in Root Protection Areas set out at IR15.38-15.49 and agrees that there are a range of scheme elements involving some degree of interference with Root Protection Areas (IR15.49). For the reasons given in his assessment, the Minister of

State agrees with the Inspector that the 10 trees on the western side of Victoria Tower Gardens (VTG) (tree reference numbers 71011-71020) are at greatest risk of harm from intrusive works along with, in some cases, soil build up. The Minister of State also agrees that for two trees in particular, 71017 and 71018, those closest to the Dean Stanley Street exit, the levels of infringement into Root Protection Areas would be 29.5% and 29.4% respectively, with commensurately greater risks to their future health (IR15.49).

Impacts and Mitigation Measures

20. For the reasons given at IR15.50-15.59, the Minister of State agrees with the Inspector that it would not be possible to mitigate against harm caused as a result of root loss or severance for the main elements of the development (IR15.59) and as such there is a clear risk of harm to the affected trees. He further agrees that the affected trees' decline and possible eventual loss, and the effect this would have on the character and appearance of the Westminster Abbey and Parliament Square Conservation Area as a whole needs to form part of the heritage balance (IR15.59).
21. For the reasons given at IR15.60, the Minister of State agrees with the Inspector that the crown lifting of approximately 11 trees required to facilitate the development would be unlikely to noticeably damage or disfigure the trees concerned (IR15.60). The Minister of State notes the Inspector's conclusions on trees set out at IR15.61-15.64 and for the reasons given there he agrees that the effect on trees of amenity value is that a limited mid-section of the western stand of London Planes in proximity to the proposal would, in the long-term, be poorer for its construction (IR15.64). Furthermore, the Minister of State agrees with the Inspector's conclusion that although this degree of ecological and thus visual impoverishment would, in the context of the group of trees as a whole, be slight, it would nevertheless result in harm to or loss of trees of amenity value (IR15.64).

Heritage Impact

The Setting of the Buxton Memorial

22. The Minister of State has carefully considered the Inspector's assessment of the effect on the setting of the Buxton Memorial (Grade II* listed building) set out at IR15.65-15.69 and for the reasons given there, he agrees that when viewing the older monument from within the UKHMLC courtyard, or from other points in close proximity to it, the visual dominance of the proposal would unsettle and crowd the Buxton Memorial (IR15.67). Furthermore, he notes the Inspector's assessment that the plane trees to the east and west of the memorial do contribute to its setting but for the reason given at IR15.68 agrees that there would be no additional material harm arising to the setting of the Buxton Memorial as a result of impact to trees.
23. The Minister of State agrees with the Inspector's assessment that the Buxton Memorial would remain physically unaffected by the proposal, and in this respect, its special architectural and historic interest would be preserved (IR15.69), but further agrees with the Inspector that this outcome would fail to preserve the setting of the Buxton Memorial, a Grade II* listed building (IR15.69). For these reasons, the Minister of State agrees with the Inspector's characterisation of the harm to the setting of the Grade II* memorial as being of great importance (IR15.69), and that while well below the threshold of

substantial, this less than substantial harm should be afforded considerable weight in the heritage balance.

Other Designated and Non-Designated Memorials and Structures within Victoria Tower Gardens

24. For the reasons given at IR15.70-15.73, the Minister of State agrees with the Inspector's conclusion that the proposed development would preserve the setting of other designated and non-designated memorials and structures in the vicinity of the site, specifically the Memorial to Emmeline and Christabel Pankhurst (Grade II* listed structure), the Burghers of Calais Memorial (Grade I listed structure), the River Embankment Wall (Grade II listed structure) and the unlisted Spicer Memorial (IR15.73).

Victoria Tower Gardens

25. For the reasons given at IR15.74-15.94, the Minister of State agrees with the Inspector that: any significant intervention to Victoria Tower Gardens (Grade II Registered Park and Garden (RPG)) would be likely to affect its established character; such effects would also be likely to be multiple and multifaceted, and; the primary elements of the proposed development would be, without question, cumulatively a significant intervention to this RPG (IR15.78). He further agrees that the primary cause of identified harm to the special interest and significance of the RPG would result from the adverse effect the proposals would have on the setting of the Buxton Memorial (IR15.93), and that this is compounded, to a very limited degree, by the potential harm to a limited number of trees within the park (IR15.94). Allowing for the range of positive factors that would enhance the character of VTG as an RPG (IR15.94), the Minister of State agrees the measure of overall harm would be moderate, but accounting for the expectations of paragraph 199 of the Framework that great weight be afforded to the conservation of Designated Heritage Assets, this harm is afforded considerable weight in the heritage balance.

The Westminster Abbey and Parliament Square Conservation Area

26. For the reasons given at IR15.95-15.98, the Minister of State agrees with the Inspector that Victoria Tower Gardens makes an important positive contribution to the character and interest of the Westminster Abbey and Parliament Square Conservation Area, but the primary focus of its architectural and historic interest lies in the internationally important twin assets of the Abbey and Palace framing Parliament Square (IR15.95). He also agrees that when the sum of harm to the setting of the Buxton Memorial, and thus to the special interest of the Registered Park and Garden, as well as the potential for harm to a limited number of trees are accounted, the proposals cannot be held to preserve the character and appearance of the Westminster Abbey and Parliament Square Conservation Area (IR15.97). Given the magnitude of these identified harms, and when considering this against the sum significance of the Westminster Abbey and Parliament Square Conservation Area as a whole, the Minister of State concludes that the harm is slight, but is afforded considerable weight.

Effects on Other Designated Heritage Assets

27. For the reasons given at IR15.99-15.103, the Minister of State agrees with the Inspector that the setting of the Palace of Westminster (a Grade I listed building) would be preserved and also conserved (IR15.103). The Minister of State also agrees with the Inspector for the reasons given at IR15.104-15.110 that the proposed development would not result in compromise to the Outstanding Universal Value of the Palace of Westminster and Westminster Abbey including St Margaret's Church World Heritage Site because it does not harm it or its setting, thus conserving it (IR15.110). For the reasons

given at IR15.111-15.115, he also agrees that there would be no material harm to the significance of St John's Smith Square Concert Hall (Grade I listed building) as a Designated Heritage Asset (IR15.114), and that the proposed development would both preserve and conserve the settings of the adjacent listed buildings, including Norwest House (Grade II listed building) and 1 & 2 Millbank (Grade II* listed buildings) (IR15.115). For the reasons given at IR15.116, he also agrees that there would be no material harm to the setting of the adjacent Smith Square Conservation Area.

Conclusion on Effects on Designated Heritage Assets

28. For the reasons given at IR15.117, the Minister of State agrees with the Inspector's conclusion that the sum of harm to each designated heritage asset has been individually assessed and these vary (IR15.117). He also agrees that in the case of each key designated heritage asset, the degree of harm to its significance is less than substantial. In no case does this aggregated degree of harm to each asset individually approach anything near the substantial threshold established by either the *Bedford* case or the Planning Practice Guidance. He further agrees that even when the individual less than substantial harms to designated heritage assets are considered cumulatively, they again still fall well below the same substantial threshold (IR15.117).

Public Benefits

29. Paragraph 202 of the Framework states that where less than substantial harm is identified in respect of a Designated Heritage Asset, that harm should be weighed against the public benefits of the proposal.

Process

30. The Minister of State agrees with the Inspector's approach that all planning proposals are judged through the lens of section 38 (6) of the Planning and Compulsory Purchase Act 2004, with any breach of development plan policy being judged against the weight given to material considerations that may ultimately justify such a breach (IR15.126).

Principle of the Development

31. The Minister of State notes that, as set out at IR15.127, the first of the Holocaust Memorial Commission's (HMC) recommendations was that "*there should be a striking new memorial to serve as the focal point of national commemoration of the Holocaust. It should be prominently located in Central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust*". For the reasons given at IR15.127-15.132, the Minister of State agrees with the Inspector that the proposal, in terms of principle, fully meets the expectation of this recommendation, and further agrees that it would be a striking new memorial which, by virtue of its design and context, would serve as a focal point for commemoration (IR15.131). The Minister of State further agrees that the delivery of a national Memorial to the victims of the Holocaust and genocide in accordance with the expectations of the HMC, with the force of views expressed in support of its key objectives, does constitute a public benefit of great importance meriting considerable weight in the heritage and planning balance (IR15.132).

Purpose and Content

32. The Minister of State notes that, as set out at IR15.133, the HMC also made it 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*". Thus, the second recommendation of the report

sought “a world class LC [Learning Centre] at the heart of a campus driving a network of national educational activity” (IR15.133). For the reasons given at IR15.133-15.147, the Minister of State agrees with the Inspector that the educative approach set out for the UKHMLC and the content and purpose of the UKHMLC would fulfil the recommendations of the HMC and thus may rightly be considered a public benefit of great importance meriting considerable weight (IR15.146).

Location

33. The Minister of State notes that the Victoria Tower Gardens as a site for the UKHMLC was not anticipated by the HMC Report, nor identified in subsequent site selection processes (IR15.148). The Minister of State has carefully considered the analysis set out at IR15.148-15.163 and for the reasons given there, he agrees with the Inspector that the location next to the Palace of Westminster would offer a powerful associative message in itself, which is consistent with that of the memorial of its immediate and wider context (IR15.161). The Minister of State further agrees with the Inspector’s conclusion that the location of the UKHMLC adjacent to the Palace of Westminster can rightly be considered a public benefit of great importance, meriting considerable weight in the heritage and planning balance (IR15.161).

Alternative Locations

34. The Minister of State notes the Inspector’s assessment of alternative sites and, for the reasons given at IR15.164-15.169, agrees that the Imperial War Museum [IWM] lacks a detailed scheme that would meet the core requirements of the HMC and carries clear potential constraints that may hamper its delivery (IR15.169). The Minister of State agrees with the Inspector’s conclusion that the weight to be afforded the IWM alternative in the planning balance is very limited (IR15.169). Furthermore, the Minister of State agrees that the two other sites [Potter’s Field, south bank of the Thames adjacent to Tower Bridge and Millbank Site next to Millbank Tower], even more lacking in detail and feasibility, merit still lesser weight (IR15.169). The Minister of State has carefully considered the matter of timing at IR 170-172 and considers that the desirability of delivering the UKHMLC within the living memory of survivors as a fulfilment of the nation’s obligation to honour the living as well as the dead reinforces the conclusions drawn in IR15.169 as to the limited weight to be given to alternative proposals.

Design

35. For the reasons set out at IR15.173-15.185, the Minister of State agrees with the Inspector that the proposals comprise a design of exceptional quality and assurance and considers the identified design merits of the scheme to be a public benefit of great importance, and merit being afforded considerable weight in the balance accordingly (IR15.184). The Minister of State further agrees with the Inspector’s analysis that such an apportionment of weight is supported by paragraphs 126 and 134b of the Framework, which anticipate high quality design being fundamental to what the planning process should achieve and that great weight be given to outstanding or innovative designs which help raise the standard of design more generally (IR15.184).

36. The Minister of State notes the Inspector’s statement that Westminster City Council argue that the enhancement of the park, in respect of planting, boardwalk, path network and groundwork, could be delivered without the UKHMLC proposals (IR15.185). He agrees with the Inspector that these elements are an integral part of the scheme and, should conditional permission be granted, would have to be implemented as part of it (IR15.185). The Minister of State therefore agrees with the Inspector’s conclusion that

these considerations do not militate in favour of diminishing the weight to be afforded these works as a public benefit weighing in favour of the scheme (IR15.185).

Heritage Balance

37. The Minister of State has carefully considered the Inspector's commentary on the approach to the heritage balance set out at IR15.186-15.187. He agrees with the Inspector for the reasons given at IR15.188 that whilst the magnitude of harm may vary in relation to each designated heritage asset, when all are considered in the context of the statutory duties under the LBCA Act and national planning policy requirements, considerable weight must be given in each case to the asset's conservation (IR15.188).
38. The Minister of State has carefully considered the Inspector's assessment of the public benefits in this case and for the reasons given at IR15.189 and in paragraphs 31-33 and 35-36 of this Decision Letter (DL), agrees with the Inspector that the principle of development, the purpose and content of the UKHMLC, the location and the design of the UKHMLC are all public benefits of great importance, each meriting considerable weight in the heritage balance. He has further concluded in DL34 that the weight to be afforded to alternative locations is very limited and that the matter of timing reinforces that conclusion. The Minister of State concludes that, when these very important public benefits are together weighed against the less than substantial harm to the significance of the designated heritage assets identified above, in each case the balance clearly and demonstrably weighs in favour of the proposals (IR15.189). He further agrees with the Inspector that this is an important material consideration (IR15.189).

Other Matters Raised

Open Space Character and Functionality

39. The Minister of State has carefully considered the Inspector's assessment of open space character and functionality, and for the reasons given at IR15.190-15.217 he agrees with the Inspector that, as a result of the proposed development and the increased visitor activity, there would be a modest loss of open space and functionality within the park (IR15.217). The Minister of State agrees that whilst this would result in a measure of conflict with development plan policy, the scope and magnitude of this conflict is limited (IR15.217) and he further agrees that whilst there is a lack of compliance with certain criterion of paragraph 99 of the Framework, these breaches would be mitigated by a range of improvements and open space benefits that would again limit the extent of the harm resulting from such policy infraction (IR15.217). The Minister of State agrees with the Inspector that the extent of this harm can be judged modest, and the weight to be afforded this breach moderate.

Flood Risk Matters

40. The Minister of State has carefully considered the Inspector's analysis at IR15.218-15.233 and agrees that the site's location within Flood Zone 3 means it is regarded as being at a theoretical high risk of fluvial and/or tidal flooding (IR15.221). For the reasons set out at IR15.218-15.233, the Minister of State agrees with the Inspector's conclusions that, whilst the risk of breach scenarios cannot be fully mitigated, there is commitment to ensuring that the remaining risk would be extremely low (IR15.230). Furthermore, he agrees with the Inspector that the flood risk over the lifetime of this development would be acceptably managed, that the proposal would meet the expectations of the Framework in respect of planning for flood risk (IR15.233), and also that the development

would be in accordance with national, regional and local policy relating to flood risk, subject to the conditions recommended (IR15.233).

Security Matters

41. The Minister of State has carefully considered the Inspector's assessment of security matters. For the reasons given at IR15.234-15.253, the Minister of State agrees with the Inspector that the requirements of paragraph 97a) of the Framework have been met (IR15.253). He further agrees with the Inspector that matters of security have a neutral value in the planning balance (IR15.253).

Transport and Pedestrian Movement Matters

42. The Minister of State has carefully considered the Inspector's analysis of transport and pedestrian movement matters at IR15.254-15.264, and for the reasons given there, he agrees with the Inspector that the development would seek to minimise any conflict between pedestrians, cyclists and vehicles, and would not have an unacceptable impact on highway safety matters (IR15.264), subject to conditions to address matters including a Construction Logistics Plan, a Coach Management Plan, a Travel Plan and an Operational Management Plan, and also s106 planning obligations seeking to manage construction and operational safety and security matters (IR15.264).

Archaeology

43. For the reasons given at IR15.265-15.271, the Minister of State agrees with the Inspector's assessment that the likelihood of significant archaeological deposits is limited, even with the deep excavation and secant piling required for the Learning Centre [LC] (IR15.271). The Minister of State notes that a Written Scheme of Investigation [WSI], to include details of a programme for delivering related positive public benefits, would be required by condition (IR15.271).

The Development Plan and Overall Planning Balance

44. As detailed in paragraphs 7 and 8 of this letter, the London Plan 2021 and the Westminster City Plan 2019-2040 both post-date the inquiry into the application. Where policies considered by the Inspector have been superseded, the Minister of State considers that the substance of those policies has not changed, and he adopts the Inspector's assessments for his conclusions. The Minister of State notes the Inspector's assessment that not just in land use policy terms, but in social, cultural and even morally obligatory terms, the delivery of such a national Memorial and LC [Learning Centre] of the type proposed, in this location, would accord with LonP 2021 Policies GG1, HC5 and SD4, all of which seek collectively to build on the city's tradition of openness and support for new cultural venues and functions in the CAZ [Central Activity Zone] (IR15.273). The Minister of State notes that this would also be consistent with Policy S22 of the WCP which states that new arts and cultural uses and tourist attractions will be acceptable within the CAZ (IR15.273). Following the adoption of the Westminster City Plan (2021), Policy S22 has been superseded by Policy 15 Visitor Economy. The Minister of State considers the proposal accords with Policy 15, which seeks to maintain and enhance the attractiveness of Westminster as a visitor destination, balancing the needs of visitors, businesses and local communities. The Minister of State notes the proposal would also be consistent with Policy S27 [of the WCP 2016], which anticipates that new international and nationally important uses will be encouraged within the CAZ (IR15.273). Policy S27

has since been superseded by Policy 1 Westminster's spatial strategy of the Westminster City Plan 2021.

45. For the reasons given at IR15.274, the Minister of State considers that in respect of the avoidance of harm to the Outstanding Universal Value of the World Heritage Site, the setting of the Grade I Palace of Westminster, the setting of the Grade I St John's Smith Square Concert Hall, the settings of the Grade II* and Grade II buildings on Millbank and the setting of the Smith Square Conservation Area, the proposals accord with and gain support from the expectations of Policies HC1 and HC2 of the LonP 2021. The Minister of State notes the proposal would accord with Policies S25 and S26 of the WCP and Policies DES 10 and DES 16 of the WUDP, however such policies have since been superseded by policies in the Westminster City Plan (2021). The Minister of State considers that for the reasons given at IR15.274, the proposals accord with Policy 39 of the Westminster City Plan (2021). For the reasons given at IR15.274, the Minister of State considers that in the avoidance of harm to the Outstanding Universal Value of the World Heritage Site, the proposal is also in conformity with Westminster's World Heritage Site Management Plan, a Supplementary Planning Document.
46. For the reasons given at IR15.275, the Minister of State finds that with respect to design, LonP 2021 Policy D4, which sets expectations on how good design in the capital will be delivered also, in broad terms, supports the proposal (IR15.275). The Minister of State notes that with reference to design quality, Policy S28 of the WCP requires that development must incorporate exemplary standards of sustainable and inclusive urban design and architecture, with which the proposal would also accord (IR15.275). He also notes that WUDP saved Policy DES 1 requires development to be of the highest standard of sustainable and inclusive urban design and architectural quality, with which the proposals are again consistent (IR15.275). Saved Policy DES 1 of the WUDP and Policy S28 of the WCP 2016 have since been superseded by Policy 38 of the Westminster City Plan 2021. Given the similar intent of Policy 38, the Minister of State considers the proposal accords with that policy of the Westminster City Plan (2021).
47. In respect of other heritage matters, the Minister of State considers for the reasons given at IR15.276 that because of the less than substantial harm to the setting of the Buxton Memorial, to the special interest of Victoria Tower Gardens as a Registered Park and Garden, and to the character and appearance of the Westminster Abbey and Parliament Square Conservation Area, all designated heritage assets, including cumulative harm, the scheme would lead to conflict with LonP 2021 Policy HC1 (IR15.276). The Minister of State notes that for the same reasons, there would be conflict with Policy S25 of the WCP and Policies DES 9, DES 10 and DES 12 of the WUDP, however such policies have since been superseded. Given the intent of Policy 39, the Minister of State considers that for the reasons given at IR15.276 there would be conflict with that policy of the Westminster City Plan (2021).
48. The Minister of State notes that in terms of the erosion of public open space, though limited and in part mitigated through compensating qualitative improvements, there would be conflict with Policies S35 of WCP, ENV 15 of the WUDP, Policy 7.18 of the LonP and Policy G4 of the LonP 2021 (IR15.277). For the reasons given at IR15.277, the Minister of State concludes that there would be conflict with Policy G4 of the LonP 2021. Policies S35 of WCP and ENV15 of WUDP have since been superseded by Policy 34 of the

Westminster City Plan 2021. Given the wording of Policy 34, he also considers that there would be conflict with this policy of the Westminster City Plan (2021).

49. The Minister of State notes that whilst the matter of harm to trees has been dealt with within the ambit of harm to Designated Heritage Assets, there nevertheless remains conflict with policies WUDP Policy ENV 16(A) and (B), Policy S38 of the WCP and with Policy 7.21 of the LonP and Policy G7 of the LonP 2021 in this specific regard (IR15.278). Policy ENV 16 of the WUDP and Policy S38 of the WCP have since been superseded by the Westminster City Plan (2021) and Policy 7.21 of the LonP has since been superseded by LonP 2021. For the reasons given at IR15.278, the Minister of State considers that the matter of harm to trees conflicts with Policy G7 of the LonP 2021. Given the wording of Policy 34 of the Westminster City Plan (2021), the Minister of State considers there would be conflict with this policy.
50. For the reasons given at IR15.279, the Minister of State concludes that on balance, the proposals are not in accordance with the development plan when read as a whole (IR15.279).

Material Considerations

51. For the reasons given at IR15.280-15.282, the Minister of State agrees with the Inspector that the balance is a simple one between the harms, principally those that would be caused to the setting, special interest and character and appearance of a number of heritage assets and harm to open space and to trees, set against the public benefits, primarily the delivery of a national Memorial and Learning Centre of exceptional design quality in a location befitting the national and international importance of its purpose (IR15.280).

Planning conditions

52. The Minister of State has given consideration to the Inspector's analysis at IR13.1, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. While he notes that the reasons for some conditions in IR Appendix 1 refer to policies in the WUDP and the previous WCP, he is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B to this letter should form part of his decision.

Planning obligations

53. Having had regard to the Inspector's analysis at IR14.1-14.4, the planning obligation dated 18 December 2020, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Minister of State agrees with the Inspector's conclusion for the reasons given in IR14.5 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework.
54. With respect to the financial contribution requested by Transport for London (TfL) towards the delivery of the Lambeth Bridge North scheme, for the reasons set out at IR14.6-14.8 the Minister of State agrees with the Inspector that on the basis of the likely impact of this development on the use of Lambeth Bridge by pedestrians and cyclists, it does not appear that this TfL funding request would be either directly related to the development proposed or necessary to make it acceptable in planning terms (IR14.8).

55. The Minister of State notes that the Parties agree in paragraph 2.14 of the planning obligation dated 18 December 2020 that the Minister of Housing shall make a determination as to which of paragraph 1 of Schedule 1 or paragraph 2 of Schedule 1 shall be applicable and which of those paragraphs shall be struck out. The Minister of State considers that paragraph 1 of Schedule 1 shall be applicable, and paragraph 2 of Schedule 1 shall be struck out. Paragraph 1 of Schedule 1 states:

“The Promoter and City Council shall enter into a Highways Agreement in respect of the Highway Works at least 12 months prior to the Opening of the Memorial and Learning Centre”.

Public Sector Equality Duty

56. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Minister of State has considered the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

57. The Minister of State considers that the delivery of the United Kingdom Holocaust Memorial and Learning Centre would have a positive impact on people with protected characteristics. The purpose of the Memorial and Learning Centre would be to provide a national focal point and educational offering to remember and inform visitors about the persecution of protected persons as part of the Holocaust and other subsequent genocides. It would help build understanding between people who share a protected characteristic and those who do not.

58. The Minister of State considers that in granting planning permission, there would be some positive impact on people with protected characteristics. Conversely, if planning permission were to be refused, the opportunity to have a positive impact on protected people might be lost.

Planning balance and overall conclusion

59. For the reasons given above, the Minister of State considers that the application is not in accordance with a number of policies in the development plan, particularly Policy 34 and Policy 39 of the Westminster City Plan (2021) and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

60. Weighing considerably against the proposal is the less than substantial harm to the significance of the following designated heritage assets: the harm to the setting of the Buxton Memorial; the harm to Victoria Tower Gardens as a Registered Park and Garden; and the harm to the Westminster Abbey and Parliament Square Conservation Area. The Minister of State considers the harm to the setting of the Buxton Memorial to be less than substantial but affords it considerable weight. He considers the overall harm to Victoria Tower Gardens to be moderate but still less than substantial and accords this considerable weight. The Minister of State considers the harm to the Westminster Abbey and Parliament Square Conservation Area would be less than moderate but still less than substantial and affords this considerable weight. Collectively also, the harm to these

designated heritage assets is considered to be less than substantial but nevertheless deserving of considerable weight. When combined with the harm to trees, considered to be moderate, this materially adds to the harm weighing against the proposals.

61. Weighing in favour of the proposal are a series of very significant public benefits. These include the delivery of a national Memorial to the victims of the Holocaust and genocide in accordance with the expectations of the Holocaust Memorial Commission, a public benefit of great importance to which the Minister of State affords considerable weight. Moreover, the Minister of State considers the purpose and content of the combined structure to be a public benefit of great importance which also merits considerable weight. Further, he considers the location of the UKHMLC in Victoria Tower Gardens next to the Palace of Westminster and the very powerful message given by that juxtaposition is a public benefit of great importance to which considerable weight should be given. The Minister of State considers that limited weight should be given to alternative locations, a factor that is reinforced by the desirability of delivering the UKHMLC within the living memory of survivors, as a fulfilment of the nation's obligation to honour the living as well as the dead. Finally, the Minister of State considers the delivery of an outstanding piece of civic design in empathy with its context to be a public benefit of great importance, again deserving of considerable weight.
62. Overall the Minister of State, like the Inspector at IR15.283, concludes that the important public benefits of the scheme, taken together, are sufficient to demonstrably outweigh the identified harm that the proposals have been found to cause. For the reasons given above, the Minister of State considers that material considerations in this case justify a decision otherwise than in accordance with the development plan.

63. The Minister of State therefore concludes that planning permission should be granted.

Formal decision

64. Accordingly, for the reasons given above, the Minister of State agrees with the Inspector's recommendation. He hereby grants planning permission subject to the conditions set out in Annex B of this decision letter for: for installation of the United Kingdom Holocaust Memorial and Learning Centre including excavation to provide a basement and basement mezzanine for the learning centre (Class D1); erection of a single storey entrance pavilion; re-provision of the Horseferry Playground and refreshments kiosk (Class A1); repositioning of the Spicer Memorial; new hard and soft landscaping and lighting around the site; and all ancillary and associated works, in accordance with application reference: 19/00114/FULL, dated 19 December 2018, as amended.

65. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

66. A separate note is attached setting out the circumstances in which the validity of the Minister of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

67. A copy of this letter has been sent to Westminster City Council, Learning from the Righteous, Thorney Island Society, Save Victoria Tower Gardens, London Gardens Trust and Baroness Deech, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Planning Casework Unit

This decision was made by the Minister of State for Housing in line with the published handling arrangements for this case¹ and signed on his behalf. In particular, those handling arrangements state that:

*“**Christopher Pincher MP** (the Housing and Planning Minister) will be responsible for exercising the functions of the Secretary of State under sections 70 and 77 of the Town and Country Planning Act 1990, section 38(6) of the Planning and Compulsory Purchase Act 2004, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and any other applicable Ministerial statutory responsibilities arising in respect of the determination of the called-in planning application. He will handle advice / submissions on the substantive decision on the case following the Public Inquiry into the called-in application. Advice and information on the called-in planning application will not be seen by any other Minister.”*

¹ <https://www.gov.uk/government/publications/holocaust-memorial-handling-arrangements-for-planning-casework>

Annex A: Schedule of Representations

General representations

| Party | Date |
|----------------|-------------|
| Freedman, L | 20/11/2020 |
| Holloway, P | 17/02/2021 |
| Spearing, W | 18/02/2021 |
| Hales, N | 07/04/2021 |
| Fullerton, W H | 08/06/2021 |

Annex B: List of Conditions

- 1) The development must be commenced within three years of the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the drawings and other documents listed in Annex B1 of this Decision Letter and any drawings approved subsequently by the local planning authority pursuant to any conditions on this decision letter.
- 3) Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday;
 - between 08.00 and 13.00 on Saturday; and
 - not at all on Sundays, bank holidays and public holidays.
 - Piling, excavation and demolition work shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday; and
 - not at all on Saturdays, Sundays, bank holidays and public holidays.
- 4) Prior to the commencement of any:
 - a. Demolition, and/or
 - b. Earthworks/piling and/or
 - c. Construction

A scheme which secures compliance with the Council's Code of Construction Practice, shall be submitted to and approved in writing by the local planning authority. Such scheme must include the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the Applicant and approved in advance by the local planning authority's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the local planning authority has issued its written approval through submission of details prior to each stage of commencement. The development shall be carried out in accordance with the approved scheme of construction practice.

- 5) Samples of the materials to be used in the construction of the external surfaces of the development hereby permitted, including sample panels of the Memorial Fins, shall be submitted to, and approved by the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.
- 6) The details of the following parts of the development (at Scale 1:20) shall be submitted to, and approved by, the local planning authority in advance of the construction thereof:
 - a. Holocaust Memorial and Learning Centre (above ground)
 - b. Memorial Courtyard including enclosures, including railings and boundary details
 - c. Entrance pavilion
 - d. Café
 - e. Works adjacent to the Buxton Memorial
 - f. The Boardwalk, including details adjoining the Embankment

The development shall be carried out in accordance with the details approved.

- 7) The details of a hard and soft landscaping scheme, other than those specified in Condition 6, shall be submitted to, and approved, by, the local planning authority in advance of the installation thereof. These details shall include:
- A Planting Plan to include the number, size, species and position of and shrubs;
 - A Lighting Plan to include existing and new lighting elements;
 - New surfacing, changes to existing surfacing, seating, bins and other hard landscape infrastructure;
 - Any proposed raising or lowering of levels; and,
 - A detailed plan for the management of the landscaping.

The landscaping and planting shall be carried out within 1 year of completing the development (or within any other time limit we agree to in writing). Any trees removed or found to be dying, severely damaged or diseased within 5 years of planting them (or a timescale otherwise agreed in writing) must be replaced in the same location with trees of the same size and species, or any other such species and size and location to which the local planning authority agrees in writing.

The development shall be carried out in accordance with the details approved.

- 8) The details of a Tree Protection Method Statement explaining the measures to be taken to protect the trees on and close to the site shall be submitted to, and approved, by the local planning authority in advance of any archaeological or other site investigations, demolition, site clearance or building work, or taking any equipment, machinery or materials for the development onto the site. The Tree Protection Method Statement shall take account of anticipated construction requirements (sections 5.2.3, 5.5.6, 6 and 7 of BS5837: 2012). The development shall be carried out in accordance with the details approved.
- 9) The details of an auditable system of arboricultural site supervision and record keeping (the Arboreal Audit Scheme) prepared by an arboricultural consultant who is registered with the Arboricultural Association, or who has the level of qualifications and experience needed to be registered, shall be submitted to, and approved, by, the local planning authority in advance of any archaeological or other site investigations, demolition, site clearance or building work, or taking any equipment, machinery or materials for the development onto the site. These details shall include:
- identification of individual responsibilities and key personnel.
 - induction and personnel awareness of arboricultural matters.
 - supervision schedule, indicating frequency and methods of site visiting and record keeping.
 - procedures for dealing with variations and incidents.

The development shall be carried out in accordance with the approved Arboreal Audit Scheme.

Written site supervision reports shall be produced after each site monitoring visit, demonstrating that the supervision has been carried out and that the tree protection is being provided in accordance with the scheme approved pursuant to condition 8. If any damage to trees, root protection areas or other breaches of tree protection

measures occur then details of the incident and any mitigation/amelioration must be included. Copies of each written site supervision record must be sent to the local planning authority within five working days of the site visit.

- 10) The details of the depth, profile and specification of the substrate intended to be built up over the development, and how this will connect with the existing soils within VTG shall be submitted to, and approved, by the local planning authority in advance of taking any equipment, machinery or materials for the development onto the site. The development shall be carried out in accordance with the details approved.
- 11) The development shall not be occupied until each long-term cycle parking space shown on the approved drawings has been provided. Thereafter the cycle spaces must be retained and the spaces used for no other purpose without the prior written consent of the local planning authority.
- 12) Notwithstanding the information provided, details of a Servicing Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.
- 13) All doors or gates must be hung so that they do not open over or across the road or pavement.
- 14) The provision for the storage of waste and recyclable materials, as shown on drawing number UKHM-AA-XX-ZZ-DR-A-03-400, is to be made permanently available from the date of occupation of the development and used for no other purpose.
- 15) Notwithstanding the approved plans and documents, no development shall take place until details of an updated Air Quality Assessment has been submitted to, and approved by, the local planning authority. In the event that the updated Air Quality Assessment fails to show that the approved scheme will be air quality neutral, details of appropriate offsetting and mitigation measures shall be submitted to, and approved by, the local planning authority in advance of any development. In the case of each of the appropriate offsetting and mitigation measures, the details shall include arrangements of when the benefits will be provided, and how this timing will be guaranteed. The development shall be carried out in accordance with the details of the Air Quality Assessment as approved.
- 16) No development shall take place until details of a site investigation to find out if the land is contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment, has been submitted to, and approved by, the local planning authority. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated Land Guidance for Developers submitting planning applications' - produced by the local planning authority.

The details of the following investigation reports for phases 1, 2 and 3, shall be submitted to, and approved by, the local planning authority in advance of any demolition or excavation work, and for phase 4 when the development has been completed but before it is occupied.

- Phase 1: Desktop study - full site history and environmental information from the public records.
- Phase 2: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property.
- Phase 3: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution.
- Phase 4: Validation report - summarises the action taken during the development and what action will be taken in the future, if necessary.

17) The details of the ventilation system to remove cooking smells from the café/ refreshments kiosk, including details of how it will be built and how it will look shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.

18) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation of the development. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation of the development. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, an application may be made in writing to the local planning authority for a fixed maximum noise level to be approved. Such an application shall consist of a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the local planning authority. Any noise report submitted must include:

- a. A schedule of all plant and equipment that formed part of this application;
- b. Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- c. Manufacturer specifications of sound emissions in octave or third octave detail;
- d. The location of most affected noise sensitive receptor location and the most affected window of it;

- e. Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
 - f. Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
 - g. The lowest existing L A90, 15 mins measurement recorded under (f) above;
 - h. Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
 - i. The proposed maximum noise level to be emitted by the plant and equipment.
- 19) The details of a supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in Condition 18 of this permission shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.
- 20) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 21) (1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any residential or noise sensitive property.
- (2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.
- (3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.
- 22) No development shall take place until a strategy for maintaining, and improving (if necessary), the flood defences has been submitted to, and approved by, the local planning authority. This strategy will include the following components:
1. A condition survey of the existing river wall.
 2. A scheme, based on the condition survey in (1), to undertake any required improvements or repairs to the flood defence prior to the commencement of construction works. The scheme shall include a plan for any required long-term monitoring and maintenance and a programme for the improvements or repairs completion.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 23) If, during development, additional improvements or repairs to the flood defence not previously identified are found to be necessary, then no further development (unless otherwise agreed in writing with the local planning authority) shall take place until a strategy detailing how these additional works will be undertaken has been submitted to, and approved by, the local planning authority. The strategy shall be implemented as approved.
- 24) The development shall be carried out in accordance with Appendix I of Environmental Statement (Volume 5) titled '*Proposed site plan showing vehicle access*' (UKHM-03-003 *Proposed Site Plan Flood Defence Wall Set Back 19/04/11*) and shall include the following mitigation measures it details:
- 16m set back from back of granite wall at ground level.
 - Vehicle access routes for future wall maintenance and parapet raising works.
- 25) No development shall take place until a Monitoring Action Plan (MAP) has been submitted to and approved by the local planning authority. The MAP shall be fully implemented in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

The MAP shall be based on the approved Monitoring Strategy (Holocaust Memorial Westminster Monitoring Strategy Revision 4 Project Ref: 70043431, dated 5 September 2019) and will define the trigger thresholds and actions required by all parties if a trigger threshold is exceeded.

- 26) No development shall take place until a flood risk evacuation plan has been submitted to and approved in writing by the local planning authority. The plan shall include trigger levels for evacuation which reflect the ongoing condition of the flood wall. It shall be reviewed annually and updated as necessary to take into consideration any changes to local conditions (such as change in flood wall condition or Standard of Protection). The development shall be carried out in accordance with the details approved.
- 27) The energy measures set out in the approved Energy Strategy (Energy Statement by WSP dated December 2018; and WSP Memos dated 21 August 2019 and 3 October 2019) shall be provided in writing and in accordance with a timescale agreed in writing by the local planning authority.
- 28) Details of an Operational Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The Operational Management Plan should include details of:
- a. Method of managing pre-booking/ticketing so as not to cause overcrowding in Victoria Tower Gardens;
 - b. Method of managing visitors on arrival so as not to cause overcrowding in Victoria Tower Gardens;
 - c. Staffing to ensure that visitors to the Learning Centre are managed so as not to cause overcrowding in Victoria Tower Gardens;
 - d. Deliveries to and servicing of the Memorial and Learning Centre so as not to contribute to the risk of overcrowding occurring in Victoria Tower Gardens are open to the public.

The development shall be carried out in accordance with the details approved.

- 29) The details of any guidewall in association with the Secant piling installation or infrastructure for the same or a similar purpose shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. No such guidewall or other infrastructure for the same or similar purpose shall be installed below existing ground levels. The development shall be carried out in accordance with the details approved.
- 30) No excavation for the construction of the proposed basement and courtyard shall be closer to the retained trees than the outer line of secant piling shown in dark grey on the Proposed Basement Floor plan reference UKHM-AA-XX-B3-DR-A-03-101 Rev P03 and shown by the dashed line on the Proposed Ground Floor plan reference UKHM-AA-XX-B3-DR-A-03-100 Rev P03. No excavation for the memorial fins shall be closer to the retained trees than the areas shown coloured purple on plan reference UKHM-AA-ZZ-DR-A-03-500 other than in the area to be excavated for the basement as identified on the Proposed Basement Floor plan reference UKHM-AA-XX-B3-DR-A-03-101 Rev P03.
- 31) No development shall take place until a Construction Logistics Plan for the proposed development has been submitted to and approved by, the local planning authority. Thereafter the construction logistics must be managed in accordance with the details approved.
- 32) Details of a Coach Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.
- 33) Details of a Travel Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.
- 34) No development shall take place until a fire escape plan has been submitted to and approved by the local planning authority. The development shall be managed in accordance with the details approved.
- 35) No groundworks beyond those enabling works and services diversions referred to in condition 36 shall take place until a written scheme of investigation (WSI) in respect of such groundworks has been submitted to and approved by the local planning authority in writing. No such groundworks shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and
 - a. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
 - b. Details of a programme for delivering related positive public benefits;
 - c. A method statement for protecting buried remains outside the basement footprint during the construction period and
 - d. The programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

- 36) No below ground works other than service diversions and enabling works to a depth of no more than 1.2m below the existing ground surface shall take place until a written scheme of investigation (WSI) in respect of those service diversions and enabling works has been submitted to and approved by the local planning authority in writing. No enabling works or service diversions shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and:
- a. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works and a process for integrating the results into post-investigation programme secured by Part d of Condition 36 and
 - b. a method statement for protecting underlying significant archaeological remains.

Annex B1: Approved Plans – Application: APP/XF990/V/19/3240661

UKHM-03_000C Rev. P.01
UKHM-AA-XX-ZZ-DR-AR-03-001 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-002 Rev. P.03
UKHM-GPB-XX-ZZ-DR-A-03-003 Rev. P.03
UKHM-AA-XX-L0-DR-A-03-100 Rev P.03
UKHM-AA-XX-B3- DR-A-03-101 Rev. P.03
UKHM-AA-XX-B2-DR-A-03-102 Rev. P.03
UKHM-AA-XX-RF-DR-A-03-103 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-200 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-201 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03- 202 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-203 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-220 Rev. P.03
UKHM-AAXX-ZZ-DR-A-03-221 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-240 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-241 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-242 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-243 Rev. P.03
UKHM-AA-XX-ZZ-DRA-03-250 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-251 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-252 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-253 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-254 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03- 255 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-256 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-257 Rev. P.03
UKHM-AAXX-ZZ-DR-A-03-258 Rev. P.02

UKHM-AA-XX-ZZ-DR-A-03-259 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-260 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-261 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-300 Rev. P.02
UKHM-AA-XX-ZZ-DRA-03-301 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-302 Rev. P.02
UKHM-AA-XX-ZZ-DR-A-03-303 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-304 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-305 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03- 306 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-307 Rev. P.03
UKHM-AA-XX-ZZ-DR-A-03-308 Rev. P.03
UKHM-GPBXX-ZZ-DR-A-03-320 Rev. P.01



Report to the Minister of State for Housing

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

an Inspector appointed on behalf of the Minister of State for Housing

Date 29 April 2021



Inquiry Held on 6-23 October, and 3-13 November 2020.

Site visits held on 15 September, 2 October 2020 and 17 March 2021

VTG, Millbank, London SW1P 3YB

File Ref: APP/XF990/V/19/3240661

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¹ Cover picture taken from the Design and Access Statement

List of abbreviations used in the Report

| | |
|--------|---|
| AMS | Arboricultural Method Statement |
| AIA | Arboricultural Impact Assessment |
| BD | Baroness Deech |
| BS | British Standard BS 5837: 2012 Trees in relation to design, demolition and construction |
| BM | Buxton Memorial |
| CA | Conservation Area |
| CAZ | Central Activity Zone |
| CIL | Community Infrastructure Levy |
| DAS | Design and Access Statement |
| DHA | Designated Heritage Asset |
| EA | Environment Agency |
| EiC | Evidence in Chief |
| EE | Echo Eternal |
| ES | Environmental Statement |
| GLA | Greater London Authority |
| IQs | Inspector Questions |
| HTVIA | Heritage, Townscape and Visual Impact Assessment |
| HE | Historic England |
| HMC | Holocaust Memorial Commission |
| HMF | Holocaust Memorial Foundation |
| HMV | Hostile Vehicle Mitigation |
| ICOMOS | International Council on Monuments and Sites |
| IWM | Imperial War Museum |
| LC | Learning Centre |
| LftR | Learning from the Righteous |
| LPA | Local Planning Authority |
| LGT | London Gardens Trust |
| LonP | London Plan, 2016 |

| | |
|-----------|--|
| LonP 2021 | London Plan, published in 2021 |
| MoSH | Minister of State for Housing |
| MP | Member of Parliament |
| NPPF | National Planning Policy Framework |
| OUV | Outstanding Universal Value |
| PCL | Pedestrian Comfort Level |
| PPG | Planning Practice Guidance |
| P&CP Act | Planning and Compulsory Purchase Act 2004 |
| PLBCA Act | Planning (Listed Buildings and Conservation Areas) Act 1990 |
| PPG | Planning Practice Guidance |
| PTAL | Passenger Transport Accessibility Level |
| RCMP | Revised Construction Management Plan |
| RPA | Root Protection Area |
| RPG | Registered Park and Garden |
| RTD | Round Table Discussion |
| s106 | Section 106 of the T&CP Act |
| SoCG | Statement of Common Ground |
| SoS | Secretary of State |
| SSCA | Smith Square Conservation Area |
| SVTG | Save Victoria Tower Gardens |
| TE2100 | Thames Estuary 2100 Plan |
| T&CP Act | Town and Country Planning Act 1990 |
| TIS | Thorney Island Society |
| TA | Transport Assessment |
| TfL | Transport for London |
| UKHMF | United Kingdom Holocaust Memorial Foundation |
| UKHMLC | United Kingdom Holocaust Memorial and Learning Centre |
| UNESCO | United Nations Educational, Scientific and Cultural Organisation |
| USHMM | United States Holocaust Memorial Museum |
| WAPSCA | Westminster Abbey and Parliament Square Conservation Area |

| | |
|--------|--------------------------------------|
| WHSMP | World Heritage Site Management Plan |
| WCC | Westminster City Council |
| WHL | Weiner Holocaust Library |
| WHS | World Heritage Site |
| WHS MP | World Heritage Site Management Plan |
| WCP | Westminster City Plan |
| WECP | Westminster Emerging City Plan |
| WUDP | Westminster Unitary Development Plan |
| WSI | Written Scheme of Investigation |
| XX | Cross-examination |

File Ref: APP/XF990/V/19/3240661

Victoria Tower Gardens, Millbank, London SW1P 3YB

- The application was called in for decision by the Minister of State for Housing (MoSH) by a direction, made under section 77 of the Town and Country Planning Act 1990, on 5 November 2019.
- The application is made by Secretary of State for Housing, Communities and Local Government to Westminster City Council (WCC).
- The application Ref 19/00114/FULL is dated 19 December 2018
- The development proposed is installation of the United Kingdom Holocaust Memorial and Learning Centre including excavation to provide a basement and basement mezzanine for the learning centre (Class D1); erection of a single storey entrance pavilion; re-provision of the Horseferry Playground and refreshments kiosk (Class A1); repositioning of the Spicer Memorial; new hard and soft landscaping and lighting around the site; and all ancillary and associated works.
- The reason given for making the direction was that the then MoSH has considered the policy on calling in applications and concluded, in their opinion, that the application should be called-in.
- On the information available at the time of making the direction, the following were the matters on which the MoSH particularly wished to be informed for the purpose of her consideration of the application:
 - a) *Matters pertaining to policies on conserving and enhancing the historic environment as set out at Chapter 16 of the National Planning Policy Framework;*
 - b) *Matters pertaining to policies on flood risk as set out at Chapter 14 of the National Planning Policy Framework;*
 - c) *Any other matters the Inspector considers relevant.*

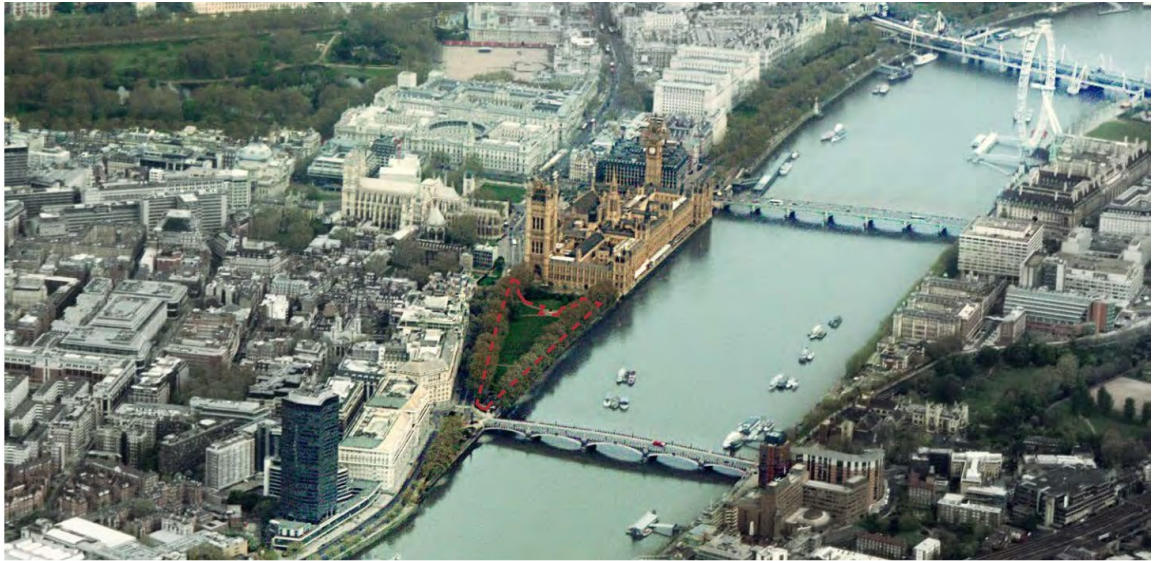
Summary of Recommendation:

I recommend that the application should be approved, and planning permission granted, subject to the attached Schedule of conditions and all the obligations in the Legal Agreement.

1 Procedural Matter

- 1.1 All the evidence presented to the Inquiry was prepared on the basis of the London Plan 2016 (LonP) and the draft London Plan (Intend to Publish) Version of December 2019. The new London Plan (LonP 2021) was adopted on 2 March 2021, after the close of the Inquiry. If the MoSH considers that the adoption of the LonP 2021 raises any policy issues which were not able to be addressed at the Inquiry, he will need to consider seeking the further views of the parties in the interests of fairness.

2 The Site and Surroundings



*VTG in context*²

- 2.1 The site is located within Victoria Tower Gardens (VTG), a Grade II Registered Garden and area of accessible public open space, located on the north bank of the River Thames, immediately south of the Palace of Westminster and Black Rod Garden. The site is bounded by Abingdon Street and Millbank to the west, the River Thames to the east and Horseferry Road/Lambeth Bridge to the south.
- 2.2 Within VTG there are three listed structures: the statue of Emmeline Pankhurst (Grade II listed), the statue of the Burghers of Calais (Grade I listed) and the Buxton Memorial Fountain (Grade II* listed). The Grade II listed River Embankment from the Houses of Parliament to Lambeth Bridge forms the eastern (river) edge of VTG.
- 2.3 The site is also within the setting of a number of other listed buildings and structures, including the Grade I listed Palace of Westminster. Other designated heritage assets in the vicinity include Lambeth Bridge (Grade II listed), Victoria Tower Lodge and Gates to Black Rod Garden (Grade I listed), Norwest House, Millbank (Grade II listed), The Church Commissioners (Grade II* listed) and Lambeth Palace (Grade I listed).
- 2.4 The site is located within the Westminster Abbey and Parliament Square Conservation Area (WAPSCA) and is immediately south of the Palace of Westminster and Westminster Abbey including St. Margaret's Church World Heritage Site (WHS). The site is to the east of the Smith Square Conservation Area (SSCA).
- 2.5 The surroundings have a range of buildings, dating from the twelfth century to modern times. The majority of the buildings within the WAPSCA are listed.
- 2.6 The site is located within Westminster's Core Central Activity Zone (CAZ) as identified in Policy S6 of the Westminster City Plan (WCP), the

² Taken from the Design and Access Statement

Thames Policy Area and Flood Zone 3. The site has a Public Transport Access Level (PTAL) rating of 6a, reflecting the excellent accessibility of the site to public transport. Westminster Underground Station is located approximately 600m from the site, in addition to Abingdon Street and Millbank bus stops which are located immediately west of the site on Millbank.

3 Planning Policy

- 3.1 All relevant planning policy and guidance, including Supplementary Planning Guidance (SPG) and emerging policy is listed in the Statement of Common Ground (SoCG).³ This section focuses on those policies of particular relevance to the issues raised.

The Development Plan

- 3.2 It was common ground that the Development Plan includes the LonP, the saved policies of the Westminster Unitary Development Plan 2007 (the WUDP) and the WCP. Additionally, I have noted the publication of the LonP 2021 following the conclusion of the Inquiry.

London Plan 2021

- 3.3 Policy GG1 of the LonP 2021 seeks to build on the city's tradition of openness, diversity and equality, and to help deliver strong and inclusive communities.
- 3.4 Policy HC5 supports the continued growth of London's diverse cultural facilities and creative industries. Also, Policy SD4 recognises the unique international, national and London-wide roles of the CAZ, and seeks to sustain and enhance its distinctive environment and heritage.
- 3.5 With reference to delivering good design, Policy D4 sets out how this will be achieved, including through, amongst other things, thorough scrutiny of development proposals.
- 3.6 Policy HC1 refers to heritage conservation and growth, including the cumulative impacts of incremental change, and the requirement that development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.
- 3.7 Policy HC2 refers to WHS and sets out that development proposals in WHS and their settings, including any buffer zones, should conserve, promote and enhance their Outstanding Universal Value (OUV), including the authenticity, integrity and significance of their attributes, and support their management and protection. In particular, they should not

³ CD 5.30 Part 1 Sections 6 and 7.

compromise the ability to appreciate their OUV, or the authenticity and integrity of their attributes.

- 3.8 In relation to open space, Policy G4 sets out that development proposals should not result in the loss of protected open space.
- 3.9 Policy G7 refers to trees and the fact that development proposals should ensure that, wherever possible, existing trees of value are retained.

London Plan

- 3.10 With reference to heritage assets, LonP Policy 7.8 sets out that development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale materials and architectural detail.
- 3.11 Policy 7.10A establishes that development in WHS and their settings, including any buffer zones, should conserve, promote, make sustainable use of and enhance their authenticity, integrity and significance and OUV. It notes that the Mayor has published SPG on London's WHSs – Guidance on Settings to help relevant stakeholders define the setting of WHSs. For planning decisions Policy 7.10B sets out that development should not cause adverse impacts on WHSs or their settings....in particular, it should not compromise a viewer's ability to appreciate its OUV, integrity, authenticity or significance. When considering planning applications, appropriate weight should be given to implementing the provisions of the WHS Management Plans (WHSMP).
- 3.12 Policy 7.21 sets out that trees and woodlands should be protected, maintained and enhanced.
- 3.13 In relation to open space, Policy 7.18 sets out that for decision making the loss of protected open spaces must be resisted unless equivalent or better-quality provision is made within the local catchment area.
- 3.14 With reference to architecture, Policy 7.6 promotes development of the highest quality that makes a positive contribution to a coherent public realm, streetscape and wider cityscape. It should incorporate the highest quality materials and design appropriate to its context.
- 3.15 Policy 4.6 supports the continued success of London's diverse range of arts, cultural, professional sporting and entertainment enterprises and the cultural, social and economic benefits that they offer to its residents, workers and visitors. In terms of decision making, such developments should be located on sites where there is good access by public transport and be accessible to all sections of the community, including disabled and older people.
- 3.16 Looking at flood risk, Policy 5.12 requires development proposals to comply with the flood risk assessment and management requirements as set out in the National Planning Policy Framework (NPPF) and the

associated technical guidance on flood risk over the lifetime of the development.

Westminster Unitary Development Plan (WUDP)

- 3.17 WUDP saved Policy DES 1 requires development to be of the highest standard of sustainable and inclusive urban design and architectural quality.
- 3.18 For conservation areas, saved Policy DES 9 aims to preserve or enhance the character or appearance of conservation areas and their settings. It further states that *"permission will only be granted for development, involving a material change of use, which would serve either to preserve or enhance the character and appearance of the conservation area"*. In terms of the setting of conservation areas, development will not be permitted which might *"have a visibly adverse effect upon the area's recognised special character or appearance, including intrusiveness with respect to any recognised and recorded familiar local views into, out of, within or across the area"*.
- 3.19 In relation to the setting of listed buildings saved Policy DES 10 sets out that planning permission will not be granted where it would adversely affect the immediate or wider setting of a listed building, or recognised and recorded views of a listed building or a group of listed buildings.
- 3.20 Saved Policy DES 12 refers to parks, gardens and squares and requires that permission will not be given for development on or under those parks... where the open spaces: 1) form an important element in the townscape, part of a planned estate or street layout 2) are characteristic features of conservation areas 3) provide the setting of a listed building.
- 3.21 Saved Policy DES 16 sets out that permission will only be granted for developments that protect and conserve the character, appearance, setting and ecological value of the WHS.
- 3.22 Saved Policy ENV 15 aims to conserve, enhance and increase Westminster's green spaces, stating that planning permission will not be granted for development on, or under public, private open space of amenity, recreation or nature conservation value, unless the development is essential and ancillary to maintaining or enhancing that land as valuable open space.
- 3.23 In relation to trees saved Policy ENV 16 sets out that all trees in conservation areas will be protected and that planning permission will be refused for development likely to result in the loss of or damage to a tree which makes a significant contribution to the ecology, character or appearance of the area.

Westminster City Plan

- 3.24 WCP Policy S1 sets out that WCC will encourage development which promotes Westminster's World City functions, manages its heritage and environment and supports its resident, working and visiting populations.
- 3.25 Heritage matters are dealt with by Policy S25, which sets out that Westminster's extensive heritage assets, including listed buildings, Conservation Areas, Westminster's WHS, its historic parks, squares,

- gardens and other open spaces, their settings, and its archaeological heritage, will be conserved.
- 3.26 Policy S26 recognises that views of buildings and landscapes are an essential part of Westminster's unique heritage. It sets out that strategic views will be protected from inappropriate development, including any breaches of the viewing corridors. Similarly, local views, including those of metropolitan significance, will be protected from intrusive or insensitive development.
- 3.27 Policy S38 states that green infrastructure will be protected and enhanced throughout Westminster.
- 3.28 Policy S35 focuses on protecting and enhancing the open space network and sets out that WCC will seek to address existing open space deficiencies, including active play deficiency. This will be achieved by protecting all open spaces, and their quality, heritage and ecological value, tranquillity and amenity.
- 3.29 Policy S22 states that new arts and cultural uses and tourist attractions will be acceptable within the CAZ. Also, Policy S27 sets out that new international and nationally important uses will be encouraged within the CAZ.
- 3.30 With reference to design quality, Policy S28 requires that development must incorporate exemplary standards of sustainable and inclusive urban design and architecture. It states that in the correct context, imaginative modern architecture is encouraged provided that it respects Westminster's heritage and local distinctiveness and enriches its world-class city environment.
- 3.31 In terms of flood risk matters, Policy S30 sets out that Highly Vulnerable Uses will not be allowed within Flood Zone 3, and in Flood Zone 2 will be required to pass the Exception Test. Proposals for Essential Infrastructure and More Vulnerable Uses within Flood Zone 3 will be required to pass the Exception Test.

National Planning Policy Framework

- 3.32 The revised NPPF was published in July 2018 and further revised in February 2019. Section 16 refers to conserving and enhancing the historic environment. With particular reference to Paragraph 195 and whether a development would cause substantial harm, the Judgement in the Bedford⁴ case has established that substantial harm requires such serious impact on significance that this is "*either vitiated altogether or very much reduced, resulting in very much, if not all, of the significance [being] drained away.*"
- 3.33 Planning Practice Guidance (PPG) advises that when assessing harm to a heritage asset, substantial harm is a high test and that an important

⁴ CD 7.2 Bedford Borough Council v Secretary of State for Communities and Local Government and (2) Nuon UK Ltd [2012] EWHC 4344 (Admin)

consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.⁵

Supplementary Planning Guidance

- 3.34 WCC's Statues and Monuments in Westminster Supplementary Planning Document 2008⁶ identifies a monument saturation zone, within which the appeal site is located, where applications for new statues and monuments will not be permitted unless there is an exceptionally good reason. It also requires that any proposal for a statue or monument must have a clear and well defined historical or conceptual relationship with the proposed location.
- 3.35 The WAPSCA Audit and Management Proposals⁷ set out that the VTG, to the south of the Palace, provide an attractive escape from the busy routes around. This large area of green open space enjoys a riverside location, with expansive views along the Thames and to the Victoria Tower. It goes on to state that the "*large open space of Victoria Gardens, to the west of Victoria Tower (this must mean to refer to the south)....provides a sheltered public garden and an escape from the adjacent busy roads.*"⁸ The Audit also sets out Local Views regarded as sensitive and important, three of which relate to VTG. Firstly, that of the Victoria Tower and the southern facade of the Palace of Westminster, and river embankment from VTG; secondly of Victoria Tower and the southern facade of the Palace of Westminster, VTG, the River Thames and the South Bank Conservation Area (Borough of Lambeth) from the river embankment, and thirdly of VTG, the River Thames and the South Bank Conservation Area (Borough of Lambeth) from Lambeth Bridge.
- 3.36 The SSCA Audit⁹ refers to the importance of the London plane trees within VTG in serving to define the boundaries of the CA in views "along Great Peter Street and Tufton Street" (the latter should more accurately be *Dean Stanley Street*), forming part of the important and characteristic riverside planting throughout the city. The visual impact of these plantings is fundamental in defining the character of the area.

Other documents

- 3.37 The Westminster WHSMP, adopted in May 2007¹⁰ refers to the symbolic and spiritual significance of Westminster as a centre of power and high politics, the home and symbol of parliamentary democracy, with the Palace as one of the most universally recognised buildings in the world. The historic, architectural, intellectual and public significance of the WHS are described. Whilst excluded from the WHS boundary, VTG is

⁵ CD 4.13 Paragraph: 018 Reference ID: 18a-018-20190723

⁶ CD 3.6

⁷ CD 3.1

⁸ Ibid para 4.23

⁹ CD 3.2

¹⁰ CD 4.12

described as forming an important public realm component of its setting, such that it is one of the spaces that share the OUV of the WHS.

Emerging Policy

Emerging City Plan

- 3.38 WCC submitted a new City Plan (the WECP) to the SoS in November 2019 and the Examination in Public has commenced. The parties agree that the WECP is a material consideration in the determination of the Application.¹¹
- 3.39 Relevant policies include Policy 39 which sets out design principles, including promoting excellence in contemporary design. This sets out that imaginative approaches to contemporary architecture and use of innovative modern building techniques and materials will be encouraged where they result in exemplary new buildings and public realm which incorporate the highest standards of environmental sustainability, that respect and enhance their surroundings and are integrated with and better reveal Westminster's heritage and existing townscape.
- 3.40 Policy 40 refers to Westminster's heritage and that development must optimise the positive role of the historic environment on Westminster's townscape, economy and character. With regards to the WHS it states that the setting of the site will be protected and managed to support and enhance its OUV. Also, development will protect the silhouettes of the Palace of Westminster and Westminster Abbey and will protect and enhance significant views out of, across and towards the WHS.
- 3.41 Policy 35C refers to green infrastructure and states that all open spaces and their quality, heritage and ecological value, tranquillity and amenity will be protected.

4 Planning History

- 4.1 The SoCG¹² sets out the most relevant historic permissions.
- 4.2 Planning permission and listed building consents were granted in January 2007 for the construction of a paved area with seating and lighting around the Buxton Memorial.¹³ This was not implemented.
- 4.3 In March 2014 an application was approved for upgrade works to VTG including an extension of the children's play area; renovation and extension of the public toilets; the demolition, relocation and

¹¹ CD 5.30 Part 1 para 6.5

¹² Ibid Section 3

¹³ Ref. 06/08888/FULL & 06/04210/LBC

refurbishment of the Spicer Memorial; provision of a small refreshments kiosk; and alignment of the pedestrian entrance off Millbank.¹⁴.

- 4.4 In connection with the above planning permission, in March 2014 listed building consent was granted for the renovation and extension of the public toilets within Lambeth Bridge.¹⁵
- 4.5 Planning permission was granted on 10 June 2014 for the erection of a new education centre for the Palace of Westminster. This was for a temporary period of 10 years. It included associated alterations to the VTG landscaping.¹⁶

Planning history and development: UKHMLC

- 4.6 The Prime Minister's Holocaust Commission (the HMC) was launched on Holocaust Memorial Day on 27 January 2014. The task was to examine what more should be done in Britain to ensure that the memory of the Holocaust is preserved and that the lessons it teaches are never forgotten.¹⁷ The HMC began by undertaking an audit of relevant work underway in Britain, alongside a study of best practice in other countries. A series of consultation events and meetings took place, and a Call for Evidence received almost 2,500 responses.¹⁸
- 4.7 The HMC's findings were widespread dissatisfaction with the current national memorial in Hyde Park; that effective Holocaust education fails to reach significant numbers of young people; that there is inadequate support for regional projects, compounded by a lack of long term funding for Holocaust education; and that the testimony of survivors and liberators needs to be urgently recorded and appropriately preserved.
- 4.8 The recommendations were for:
- A striking and prominent new National Memorial, "*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.*"¹⁹
 - A world-class Learning Centre (LC) at the heart of a campus driving national educational activity.
 - An endowment fund to secure the long-term future of Holocaust education– including the new LC and projects across the country.
 - An urgent programme to record and preserve the testimony of British Holocaust survivors and liberators.
- 4.9 These recommendations were accepted by the then Prime Minister, who announced on 27 January 2015 that the Government would build a national Memorial to the Holocaust and a world-class LC.²⁰ Additionally, the HMC's recommendation that a new permanent independent body be

¹⁴ Ref: 13/01417/FULL

¹⁵ Ref: 13/10419/LBC

¹⁶ Ref: 13/07747/FULL

¹⁷ CD 5.9 Britain's Promise to Remember: The Prime Minister's Holocaust Commission Report

¹⁸ CD 8.1 PoE Mr Balls and Lord Pickles

¹⁹ CD 5.9 Section 4(i)

²⁰ CD 8.1 Annex I

created to oversee the establishment of a new national Memorial and LC was also accepted.

- 4.10 The HMC identified three possible locations that should be considered as part of a consultation taken forward by the new independent body.²¹ These were firstly the Imperial War Museum (IWM), with reference to the IWM's proposal to build a new wing to house a memorial and learning centre and link to newly expanded and upgraded Holocaust galleries in the main building. This was regarded by the HMC as a viable option, provided a way could be found to meet the HMC's vision for a prominent and striking memorial.²²
- 4.11 Secondly, at Potters Field, with reference to a site between Tower Bridge and City Hall, which at the time was a development site with a large space intended for cultural use. It was thought that this could accommodate components of the LC and that Potters Field Park, which sits immediately in front of the development, could provide an iconic location for a memorial.²³ The third site was at Millbank, as part of the redevelopment of a large area of the Millbank complex. It was suggested that this could offer a great location for a prominent riverfront memorial a short walk from the Houses of Parliament. The complex could include other elements, including a LC.²⁴
- 4.12 The UK Holocaust Memorial Foundation (UKHMF) was established with cross-party support to deliver the recommendations of the HMC. The work of the UKHMF included a call for potential sites which, in addition to the three identified by the HMC, would be considered prior to making a recommendation to the Prime Minister at the end of 2015. This included a detailed 'Site Briefing' setting out more detail on the objectives for the National Memorial and LC, the facilities that would be required and the criteria on which the UKHMF would evaluate potential sites.²⁵ This work was led by property consultants CBRE who were appointed to find a suitable site.²⁶
- 4.13 In January 2016 twenty-four sites had been identified, with three preferred sites. However, none of these sites were considered suitable, mainly for reasons of availability and viability.²⁷ The site at VTG had not been identified within this selection.
- 4.14 Separate from this process, parliamentary correspondence from late 2015 indicates that VTG had been identified as a possible location for the memorial, with the suggestion that the LC could be located close by.²⁸ The site was identified by the UKHMF as the outstanding candidate, with

²¹ CD 5.9 p53

²² Ibid p54

²³ Ibid p55

²⁴ Ibid p56

²⁵ CD 14.6 UKHMF Search for a Central London Site, September 2015. In summary, the Foundation set out that it was seeking a prominent location in Central London with significant existing footfall so as to draw in and inspire the largest possible number of visitors. The site would support several features and activities, the number and extent of which would depend on the size of the space available. Sites capable of accommodating 5-10,000 sqm of built space for UKHMF over no more than three contiguous floors would be considered (p2).

²⁶ CD 6.49 Environmental Statement, Vol 2, Revised Chapter 4 Alternatives para 4.2.4

²⁷ Ibid para 4.2.7

²⁸ CD 14.4 and CD 14.5 Correspondence between Lord Feldman of Elstree, the Secretary of State for Culture Media and Sport

confirmation that VTG had been selected as the site for the UKHMLC given at Prime Ministers Questions on 27 January 2016.²⁹

- 4.15 A design competition was launched in September 2016. Ten proposals were shortlisted and displayed to the public in February 2017. In October 2017 the winning design team was announced as Adjaye Associates, Ron Arad Architects and Gustafson Porter + Bowman.
- 4.16 Pre-application public exhibitions were held in September and December 2018. The planning application was submitted to WCC in December 2018, with subsequent amendments made and submitted in April 2019. The application was then called-in in November 2019.

5 The Proposals

- 5.1 The application proposals comprise several principal elements: the entrance pavilion; the Memorial courtyard; the holocaust Memorial; the LC; the re-provision of Horseferry Playground and refreshments kiosk; relocation of the Spicer Memorial and comprehensive landscaping and public realm works.
- 5.2 The proposed entrance pavilion is a single storey building located to the south of the site. The pavilion would provide a ticket checking space and visitor storage facilities. It would assist with pedestrian flow into the Memorial and LC, in addition to providing safety and security screening.
- 5.3 The Memorial courtyard would define the relationship between the entrance pavilion and the Memorial and LC. The Memorial courtyard is designed to be paved with stone, creating visual continuity from the entrance pavilion. The courtyard would be enclosed by a series of rails, decorative hedges, vegetation and elements of glazing.
- 5.4 The Memorial would comprise 23 bronze fins honouring the millions of Jewish men, women and children who lost their lives in the Holocaust, and all other victims of persecution, including Roma, gay and disabled people. The 23 bronze fins would create 22 pathways into and from the LC below, symbolising the origins of Jewish communities destroyed during the Holocaust. The Memorial would bring together three key materials – bronze, stainless steel and stone. The fins would be clad in bronze panels of varying thicknesses. The sloping soffit/ceiling between the fin walls and beneath the landform would be clad in elongated panels of polished stainless steel. The Memorial stairs and the threshold floor below would be clad with silver-grey limestone.
- 5.5 The LC would be constructed below ground with basement and basement mezzanine levels and discreet secondary spaces. Associated infrastructure would include lift access for all and egress to ground level prior to exit.
- 5.6 The application proposal includes the reconfiguration of the Horseferry Playground and relocation of the Spicer Memorial at the southern end of

²⁹ CD 6.49 para 4.2.9

the site. The Spicer Memorial would be repositioned approximately 10 metres further to the south of its current position. The Horseferry Playground would be re-arranged and redesigned, with the addition of new play equipment. A new refreshment kiosk located at the southernmost end of the playground would replace the existing kiosk. A covered seating area associated with the refreshments' kiosk would provide a breakout space for parents and children.

- 5.7 The proposals incorporate a comprehensive range of landscaping provisions, not least the graduated mound over the LC, and also structural boundary treatments, relaying of existing paths and provision of new pathways, the provision of an accessible boardwalk on the Embankment, extensive planting and ground works to improve the drainage performance of the existing lawn.

6 The Case for the Applicant

The Applicant's case, with some minor adjustments for clarity and concision, is set out below.

- 6.1 The first section dealing with the purpose of the UKHMLC and the third section dealing with public benefits and the planning balance are, by virtue of the subject matter of the application and the unique nature of this Inquiry, highly emotive. These elements of the Applicant's case rely on the quotations of numerous parties making representations to the Inquiry. The authors of the quotes are identified and can be cross related to the specific representations made. As these submissions are integral to the Applicant's justification for the proposals and to the public benefit they represent in respect of the heritage and planning balance, they are included in the report.

"...she came with an SS man. I knew he came to kill us. But for some reason he didn't want to kill me. They killed my brother. He was just 7 years old..." - Janine Webber

Introduction

- 6.2 The incomprehensible evil of the Holocaust.
- 6.3 The Applicant asks why should we as a nation memorialise Janine's little brother and the six million Jewish men, women and children who were pitilessly slaughtered by the Nazis and their collaborators? Why should we as a nation share knowledge about them and all the victims of this, and subsequent genocides; and challenge ourselves to think about our nation's responses to these unfathomable crimes against humanity?

Why now? And why here, in the lea of Parliament, known throughout the world as the heart of our democracy?

- 6.4 Reading this, you should know the answers to these questions instinctively for they are visceral.
- 6.5 It is not the task of the Inquiry to gainsay the Government's decision that we the nation should memorialise, that we the nation should learn and that we the nation should do so now.
- 6.6 It is the task of the Inquiry to consider whether the proposal where proposed should be allowed to proceed. Of course, the answer has to be written up through the lens of planning statutes and policies and material considerations. But, the Applicant says, the answer is not prosaic. It is poetic. Beginning, middle and end the answer is simple. This nationally and internationally important location is extraordinarily fitting for this nationally and internationally important Memorial and LC. The resonance between site and scheme is profound. The symmetry is striking. And yes, it was a moment of genius when this location was chosen.

Purpose of the UKHMLC

"This is a sacred task for our nation" - the Chief Rabbi

- 6.7 The Co-Chairs of the UKHMF explained that: *"While the Memorial will honour the six million Jewish people murdered in the Holocaust, the learning centre will also remember the other victims of Nazi persecution, including Roma, gay and disabled people, and the victims of subsequent genocides in Cambodia, Rwanda, Bosnia and Darfur".*³⁰ The UKHMLC seeks to ensure that the voices of survivors are not replaced by those of deniers, to prevent the normalising of prejudices, to learn the lessons of the Holocaust and other genocides, and to see the Holocaust's part in British history. To quote the Co-Chairs:

"To establish a new national Memorial at the very heart of Westminster is an ambitious aim. Only the most serious, momentous and profound subject matter could justify such a step. With the Holocaust- the systematic attempt by a modern, civilised state to exterminate the whole Jewish people- we have exactly such a reason.

We also have a pressing need. Seventy-five years after the liberation of the death camps and the end of the Nazi regime, we see evidence across the world of revisionism and even outright denial that the Holocaust took place. We see the re-emergence of anti-Semitism, even on our own streets and within our own communities. And we know that the eyewitnesses who can directly challenge revisionists, and who provide the most vivid demonstrations of where anti-Semitism can lead, will not be with us much longer."³¹

"The thematic exhibition will set the Holocaust within the British narrative. ... The narrative will be balanced, addressing the complexities of Britain's ambiguous responses to the Holocaust, avoiding simplistic judgments and encouraging visitors to critically reflect on whether more could have been done, both by

³⁰ CD 8.1 para 44

³¹ Ibid paras 52, 53

*policymakers and by society as a whole.*³²

*"It is essential that we act now to establish a Memorial that will boldly, prominently and permanently remind us of the Holocaust."*³³

6.8 The Applicant believes that it is nigh on impossible to convey the collective eloquence of the testimony of those who spoke simple truths about the national and international importance of the UKHMLC. Just some of what they said suffices to reminds us that this case is like no other. To remember that is to remember just how important it is that we do the right thing. None of us ever have been, and none of us ever again will be involved in a planning Inquiry like this.

6.9 David Cooper reminded us that anti-Semitism never goes out of fashion. It is a light sleeper:

"By any objective standard, this Memorial is well and truly overdue...This application needs to be granted and it needs to be granted quickly, as the problem is getting ... worse, as time goes on".

6.10 Jaya Pathak:

"As a leading international force in the fight against prejudice and discrimination of all forms, it is time for Britain to give an equivalent space for the memory of the Holocaust in our capital city."

6.11 Fiorella Massey:

"History does not stand still...The Holocaust must form part of our collective memory particularly in light of the deniers, who seek to foment conspiracy theories and play on ignorance of the facts...The scheme is a clarion call for all civilised nations to be up-standers, not bystanders...It is the right time. It is the right place. It is overdue."

6.12 Judith Adda:

"...the current, alarming rise in worldwide anti-Semitism has clearly identified the urgent need for stronger, more impactful teaching, a more contemporary approach to learning the lessons of history and a more sophisticated educational medium in which to remind us all and teach the younger generations of the terrible events of the Holocaust in Europe and what led up to them."

6.13 Dr Toby Simpson, Director of the Wiener Library:

"The Holocaust is a profoundly disturbing subject. It is nevertheless a subject we must all confront and learn about if we wish to become full and responsible citizens in the twenty first century. We need to do so in order to make sense of the world, with all of its rich humanity along with its bewildering and often shocking inhumanity. We cannot escape the fact that the history of the Holocaust is complex and often difficult to get to grips with; we also cannot escape the fact that it is powerfully emotive and resonant and, sadly, highly relevant today as we strive to fight the rising tide of intolerance, anti-Semitism,

³² Ibid paras 45, 46

³³ Ibid para 54

racism and prejudice."

6.14 Rudi Leavor:

"It is both for the memory of those who perished and the opportunity to learn about their experiences, I feel it is imperative that there is a Memorial and Learning Centre...This is a matter of honour for our country...The siting of the proposed Memorial in VTG makes a bold statement, which cannot be missed and would proudly stand to expose the shame, depravity and darkness of the Holocaust for as long as the Houses of Parliament will stand...I firmly and strongly and passionately believe that this proposed Memorial and Learning Centre will frame the story of the Holocaust in public consciousness. It will bring awareness of the greatest tragedy in the history of mankind. It will act as a warning as to the evil that mankind can do."

6.15 Mala Tribich MBE:

"I am 90 years old. I intend to share my testimony for as long as I am able to, but there will become a time when this is not possible. As the Holocaust moves further into history and we survivors become less able to share our testimonies this Memorial and Learning Centre will be a lasting legacy so that future generations will understand why it is important for people to remember the Holocaust, to learn from the past and stand up against injustice. The memory of the Holocaust cannot be left to fade when us eyewitnesses are no longer able to share our memories."

6.16 The Chief Rabbi said of the Holocaust survivors:

"...There's a panic in their voices. They are saying one thing to me. Please, world, never forget. They know they cannot live forever. They are asking us to be their ambassadors. They fear the world will forget in the course of time. We have a responsibility to ensure we will remember..."

6.17 Natasha Kaplinsky OBE, whose life was changed by recording the testimony of 112 Holocaust survivors:

"...The common theme of these survivors was that they had not told their story before - to anyone. They had kept their secrets in order to protect their families from the horror - but then, toward the end of their lives, there seemed to be an urgent (an almost panicked) need to unburden themselves of their experiences before they left us.

...The survivors I spoke to trusted me with their testimony in large part because they knew it was being recorded for the benefit of generations to come and that it would be housed in a learning centre that would and could be accessed by their grandchildren and their grandchildren's children.

...The voices of these 112 survivors haunt me and in equal measure inspire me...in sharing their pain they have given us collectively the responsibility to do something with it and to learn from them. The placement of this monument and Learning centre is an opportunity to give them a semblance of peace and stillness at the end of their lives. I believe it is the greatest chance we all have to illuminate our thinking and enlighten the generations that follow. This is a project that goes well beyond any boundaries and I beseech you to see its

National and International significance for the sake of humanity.”

6.18 Kish Alam spoke of the opportunity to disrupt Holocaust denial that the Memorial and LC would provide.

6.19 Jaya Pathak:

“...I first heard from a Holocaust survivor when I was 17 years old and it changed my life...As Holocaust survivor and Nobel Laureate Elie Wiesel said, 'When you hear from a witness you become a witness.' I am now a witness to the truth.”

6.20 Mr. Adrian Packer CBE:

“These truths must not be tucked away in a vault or diluted. In fact, the words of survivors should be amplified and given a major platform to be heard far and wide.”

6.21 Ellie Olmer:

“It will educate this and future generations about the dangers of prejudice, discrimination and hate speech in a time of rising extremism. It will be a place to go, to allow time and space to learn, to sit, to engage, to challenge, to listen, to reflect and ponder, to set the record straight and actively educate for the common good. For its visitors, seeing will be believing, understanding and remembering. The Nazis and perpetrators since have gone to great lengths to hide the extent of their crimes, remembering is an act of justice that gives dignity back to the victims. As Elie Wiesel reminds us, 'To forget is akin to killing a second time.' ... When we look back in the tarnished mirror of history, what do we see? The catastrophe of the Holocaust is that it has not finished. There has been a failure of genocide prevention since 1945, atrocities, injustices, prejudice and discrimination continue. ...

Building the Memorial is an important, urgent, natural and right evolutionary step in our story. We have an obligation to the past and to each other.”

6.22 The Applicant makes no apology for reminding the Inquiry of some of the testimony to this effect. It provides the true context for considering the objections that have been raised: the views that would be changed towards Parliament, or of the Buxton Memorial (BM), the grass that would be lost, the people who would come to the Gardens who otherwise would not have, and all the other effects that have been drawn attention to. All these things would happen because there is a far, far more important greater public interest in play here.

Location

6.23 The Applicant believes that a proposal of such obviously profound national and international importance warrants being located at the heart of Westminster, beside Parliament, in VTG, a place of national

significance adjacent to a WHS. There can be no doubt that the site is prominent. Its symbolism is obvious.

6.24 As the Co-Chairs said:

*"A dignified, striking Memorial prominently placed amongst our national institutions of Government will symbolise [the] noble aspiration..." of the proposal.*³⁴

6.25 Many of those who spoke at the Inquiry strongly endorsed this.

6.26 Dr Toby Simpson:

"...The Holocaust is widely recognised as the defining event of twentieth century European history, and as the worst and most extreme atrocity perpetrated in the history of human civilisation. In my view, it is fitting for the Memorial to be located in a position of the greatest possible prominence to reflect that fact."

6.27 Karen Pollock CBE:

"its location will send an important message to us all- that the horrors of the past are central to Britain...that the leadership of our nation sees the central place that the Holocaust has on our shared history and identity."

6.28 Eric Murangwa Eugene MBE:

"...having a new UK Holocaust Memorial and Learning Centre built at the heart of the world's greatest city and next to the symbol of the home of British democracy will have a huge significance on how the UK and the world at large will remember and learn about the Holocaust and modern genocides in the future."

6.29 Natasha Kaplinsky OBE:

"I have listened to an endless list of people over the past...weeks- with a great deal of respect (of course), and in many cases, with understanding and sympathy for what they have said, but I feel they are missing the point of what this Memorial and Learning Centre is about and why the significance of its positioning in VTG is so poignant. The placement of the Memorial gives the subject the prominence it most certainly deserves and changing its location, as many of the past speakers seem to promote, would profoundly relegate its significance."

6.30 Martyn Heather:

"To me there is only one place the UK holocaust Memorial can be and that is right next to the seat of our democratic Government, it sends an unequivocal and powerful message..."

6.31 The Archbishop of Canterbury, Justin Welby:

"The proposal for a Holocaust Memorial with a Learning Centre by the Houses of Parliament and across the river from Lambeth Palace provides a symbolic opportunity to present the full story to new generations. It is a story that will not, and cannot be a comfortable piece of public self-congratulation by the establishment. Rather, it offers an opportunity to learn what we did wrong, as

³⁴ CD 8.1 para 56

well as celebrating what we did right. Its position by the seat of UK government is a necessary challenge to our national life: that the seeds of such cultural and religious hatred would never be allowed to take root here again. Make no mistake: those seeds were here in the UK too."

6.32 The Chief Rabbi:

"It is an inspirational choice of venue. This is the most wonderful location because it is in a prime place of prominence, the heart of our democracy. We don't want to tuck the Holocaust under a bushel somewhere like the tiny monument in Hyde Park that most people have never heard of. We want all British society to know. For the sake of all of us...and a hopefully stable future."

6.33 Adrian Packer CBE referred to the location as:

"...the only place fitting the magnitude of [the] project's ambition and its importance to shaping modern British society."

6.34 Kish Alam:

"...it has to be in Westminster. It has to be in the most important of places...Westminster is and should be the place where deeper meanings are pondered and the lessons from the past are considered to help shape the decisions which affect all our futures."

6.35 Mala Tribich MBE:

"I really believe that a Memorial next to Parliament, where vital decisions are made, will help us to learn the vital lessons of the past. What better symbol to remind our Parliamentarians and the wider public of where apathy as well as prejudice and hate can ultimately lead? ...A national Memorial, in the shadow of Parliament, will enable not just hundreds of thousands of British students to learn more, but countless other members of the public to do so too."

6.36 Ellie Olmer:

"The place from which you remember an event shapes how you remember it- and it has radically different meaning in the place that it's told. That place, where we are telling the story, VTG, Westminster, has immense strategic interest. An energy and dynamism of its own. A place of prominence- and it's that that will shape and guide a visitor's all-embracing experience. This is the heart of British democracy, of the rule of law, of justice and fairness. All roads lead to here...Surely if it's going to be built anywhere, for purpose, meaning and relevance, this is where it has to be.

Critics have asked the question, 'What's the Memorial got to do with Britain?' That's one of the very reasons we need it. ...

It will allow us to face the truth of that history- which is not quite the well-established redemptive narrative we are led to believe. The reality is far more complex, problematic and messy. It is flawed. We must face the past with truth and honesty, address its misappropriated and mis-sold aspects in our collective and selective memory.

Put simply, this is also the place where, along with our allies, the Government failed to take appropriate action, repeatedly. The signs were all there and missed."

6.37 In the words of Sir David Adjaye:

"The location gives this momentous Memorial the gravitas it needs..."

6.38 The high profile of the Memorial and LC matters. Natasha Kaplinsky OBE referred to the existing Holocaust Memorial:

"Our current national memorial in Hyde Park is wholly inadequate, it is not much known about - and through our consultations we have learnt that it is felt to be out of sight and with no context."

6.39 Whether it is an accident of more recent history or the result of conscious thought, there is a theme to the memorials and monuments in VTG which the Applicant dubs "a garden of conscience". The UKHMLC would add to this narrative.

6.40 A number of speakers spoke of this. Jaya Pathak considered the point "crucial." And Judith Adda said:

"Sited beside the important memorials to Women's Suffrage for which I helped to campaign and the Emancipation from Slavery, it is therefore the most appropriate place to educate everyone..."

6.41 Fiorella Massey welcomed better bringing the existing memorials to our attention:

"...The increased footfall will help shine a light on these important stories from our shared past which are all too often overlooked."

6.42 Turning to the site selection process and then to what are thought by others to be alternative locations. The Applicant considers the points raised by objectors on this topic to be a series of distractions.

6.43 The way in which VTG was chosen is characterised by the Applicant as the outcome of a site selection process which failed to find a suitable site. The opportunity then arose to locate the UKHMLC in VTG, the profundity and symbolism of which was obvious to all involved, and which put all the other locations that had failed to meet the proponents' aspirations even further in the shade. Whereas others characterise the process as insufficiently systematic. The Applicant questions whether this matters.

6.44 Logically, if the Minister shares the view that this location is well-suited for the UKHMLC then it really does not matter how it was alighted upon. If it is concluded that any harm that the proposals would cause in this location would be outweighed by the public benefits of the proposals in this location (applying the statutory, case law and policy presumptions as relevant) then the proposals should be permitted. In these circumstances, the proposals simply could not be refused on the basis of criticisms of how the Applicant ended up choosing the site in the first place.

6.45 Others argue that there are alternative locations for UKHMLC where no harm would be caused or less harm would be caused than meeting the need in VTG. The Applicant accepts that as a matter of law, if there is such a location then that can be a material consideration but considers

that the point goes nowhere in the circumstances of this case. Specifically, the Applicant says:

(1) The only alternative location that has been referred to by other parties is the IWM.

(2) The IWM was referred to as “a viable option” in the PM’s Holocaust Memorial Commission’s Report ‘Britain’s Promise to Remember’ published in January 2015³⁵ but that reference was qualified by the following proviso: “provided a way can be found to meet the Commission’s vision for a prominent and striking Memorial”³⁶ As explained by the Rt. Hon. Ed Balls³⁷ and by Chris Goddard³⁸ this proviso was never met.

(3) The application site in VTG meets the vision for a prominent and striking Memorial.

(4) The IWM is not an alternative location at all because it simply would not meet the identified need for a prominent and striking Memorial. This is particularly important because WCC acknowledge that VTG is a suitable location for a Memorial to the Holocaust.

(5) VTG was identified as the location for the UKHMLC after the publication of the 2015 report. The heart of the Applicant’s case is that the symbolism and resonance of the chosen site is unique. IWM does not have this as it is not adjacent to Parliament.

(6) There is no alternative before this Inquiry upon which an objective comparison could be made. In contrast to the detailed plans and supporting documents on the one hand for this application, all that is known of IWM is a screen-shot of an image in a 2017 AJ article.³⁹

(7) There is no evidence at all that were the application to be refused, the proposals would migrate to the IWM.⁴⁰

6.46 The Applicant points to an interesting international parallel drawn by Paul Shapiro of the United States Holocaust Memorial Museum, speaking of the report of the US Commission on the Holocaust which recommended the establishment of a museum in Washington DC:

“The report elicited considerable public criticism. Some critics asserted that emphasising the dark potential of which humans are capable, epitomised by the Holocaust, in the midst of the many monuments to human and national achievement located in the national capital would be inappropriate. Better, the argument ran, to reconsider the entire enterprise or, failing that, to construct the memorial in some other city.

Other critics argued that the Holocaust was a European event, not one central to the American experience, and that efforts to make the Holocaust relevant for Americans would fail.

³⁵ CD 5.9 p54

³⁶ Ibid

³⁷ In chief, XX and RX

³⁸ In RX

³⁹ CD 13.10

⁴⁰ Mr Goddard in RX

Still others made less savoury arguments...

You can see the parallels."

6.47 Some have argued that there should not be a national UKHMLC because, for example there should not be a new Memorial and/or there are other better ways to educate and so there should not be a LC and/or the money would be better spent elsewhere or in other ways. However, these are not legitimate alternatives, they miss the point that it is no part of the Inquiry's remit to challenge the Government's decision that there is to be a national UKHMLC. In any event, Dr Toby Simpson, Director of the Wiener Library, which is Britain's largest collection of evidence of the Holocaust and the Nazi era and the oldest collection of its kind anywhere in the world, was unequivocal about the potential for the UKHMLC to add value to that work. As he sees it:

"This is also a once in a lifetime opportunity for a new and more sustainable framework of education, research and remembrance to be established in this country, and that opportunity should not be missed."

6.48 There are those who argue that the Holocaust Memorial could be placed in one location and the LC somewhere else. However, any such ideas are not legitimate alternatives to the proposals which are before the Inquiry, which reflect the Government's settled decision that there is to be a UK Holocaust Memorial and co-located LC. It is not for the Inquiry to cast aside the proposals.

Design

6.49 The Applicant considers the Memorial, including the descent to the threshold and the LC, to be a masterpiece.

6.50 Visitors to VTG do not have the opportunity to hear from and discuss with the artists the why and the what of the existing memorials in the Gardens, but the Inquiry heard first-hand from the world-class, artists and architects who together have drawn up the proposals for the UKHMLC.

6.51 Giving an overview, Sir David Adjaye, RIBA 2021 Royal Gold Medal winner and the lead design architect for the project, explained its architectural and placemaking qualities, which were driven by a deep understanding of the local context and the project's significance. He was extremely excited to have the opportunity to make this Memorial, to make something have resonance not just in architecture but in the world. Having studied every Holocaust memorial in the world he hoped that it would trigger a new idea about how to make a memorial. He explained how the design is bespoke and befitting only to VTG.

*"With the park as it exists now- its vitality and its beauty- these are features that we want to harness and expand upon... to create the new Memorial."*⁴¹

6.52 The proposals fulfil all of the core objectives of the project.⁴² Sir David explained that it was his intention from the outset to create a concept

⁴¹ CD 8.3 para. 3.1.14

⁴² Ibid paras 3.2.5- 3.2.18

that is thought provoking, sitting within an occupied and useable park where visitors can engage with the park and the Memorial simultaneously, thereby understanding the impact of the narrative of the memorials within the setting of Parliament.⁴³

"We want to capture the dark and the light that coexist, the loss and the hope experienced in life..."⁴⁴

6.53 Robert Rinder referred to some having said that the proposed Memorial stands 'in the looming shadow' of Parliament:

"That is the wrong way to describe it. The design and position of the monument places neither edifice in darkness. They are precisely positioned to bring light to each other."

6.54 Asa Bruno, the designer of the Memorial itself, explained the overall concept of the design and its aims, the features of the Memorial, its symbolism, the balance in the different uses of the site, the placement within the site, the relationship with existing memorials, and accessibility.

"Developing the proposal for the Memorial has been a tightrope walk between the absolute need and wish for it to be both an emotive and significant presence in the public domain, and an integral part of the Gardens, peacefully co-existing within the wider context."⁴⁵

6.55 As the Holocaust nears the edge of living memory, it was in Asa Bruno's words "a daunting task"⁴⁶ to formulate a design to honour the victims and survivors, and also to make it inclusive, relevant and strongly resonant with any who visit it, and especially a younger and broader audience.⁴⁷ The Memorial needs to resonate with both living survivors of the Holocaust and their relatives, and also with current generations and the generations to come who have no living memory of the Holocaust. It also needs to resonate universally with survivors of other atrocities and their relatives.⁴⁸

6.56 The Applicant believes that having heard Asa Bruno the Memorial is in hands worthy of this sacred task. As he says:

"We will have succeeded if even a fraction of future visitors to the Memorial and Learning Centre leave with an enhanced sense of their individual responsibility as citizens".⁴⁹

6.57 In terms of its physical features, the Memorial would not have a 'front' or a 'rear' but would be multifaceted and intended to offer diverse impressions, both visually and experientially.⁵⁰ It considered to be sculptural, with a gentle amphitheatrical slope which would give new

⁴³ Ibid 9.1.2

⁴⁴ Ibid 9.1.8

⁴⁵ CD 8.5 para. 2.20

⁴⁶ Ibid para 4.1

⁴⁷ Ibid para 4.2

⁴⁸ Ibid para 2.23

⁴⁹ Ibid para 2.24

⁵⁰ Ibid para 7.3.2

views towards Parliament from an elevated position, as well as views of the Thames over the river wall.⁵¹

- 6.58 In symbolic terms the 22 ravine-like pathways between the Memorial's 23 patinated bronze walls would represent the number of countries in which Jewish communities were destroyed during the Holocaust. The challenge during the Inquiry to justify the reference to 22 countries seemed to misunderstand the symbolism of art, sculpture and architecture. Asa Bruno explained⁵² that the key is to understand that:

"...in creating this proposed Memorial, as a piece of art, on an architectural scale, we can only use our own interpretation of narratives, and translation of statistical and numerical data into artistic motifs. This is hardly scientific but is, I believe, carefully considered and well-informed."

- 6.59 Three of the pathways would be open for people in the Gardens to walk through. Most of the pathways would be experienced from within the Memorial itself with the descent to the threshold wide enough for someone to pass in between in single file. Therefore the passage taken is one that each visitor takes alone. It is a shared experience only from a distance.

- 6.60 The Applicant believes that one of the strongest aspects of the design would be its ability to affect people viscerally and emotionally. Asa Bruno explained:

"We conceived of the Memorial as an experience, not an object on a plinth. We have drawn upon many contextual and symbolic references in its conception, but these are discreetly integrated into the process, rather than demarcated by letters or emblems. Visitors may or may not appreciate this, or they may understand the references the Memorial draws upon to a greater or lesser extent, but this isn't crucial for the experience- we strongly believe they are unlikely to remain unmoved by it."⁵³

- 6.61 The designers felt from the start of the process that the key to making the Memorial relevant and resonant with a broader, younger audience, and its message more universal in reach, would be through it being experiential.⁵⁴ They wanted to avoid using overtly familiar pictographic symbols such as the Star of David, or Hebrew lettering, but alongside the physical experience the Memorial would be infused with symbolic meaning, which lies at its core, including the choice of bronze as the principal material. *"It bears evidence to some of humanity's best and worst achievements"*.⁵⁵

- 6.62 The Applicant describes how the first guiding principle or motif in the design stemmed from the 'lifting of the fabric'- as an expression of the gradual upheaval lurking beneath the surface, and the fragility of democracy and how easily and abruptly it can break down. This took the form of a gentle slope, the more dramatic face of which is revealed from

⁵¹ Ibid para 7.3.3

⁵² In XX and CD 11.7 and CD 11.8

⁵³ CD 8.5 para 2.22

⁵⁴ Ibid para 6.1

⁵⁵ Ibid paras 6.2 – 6.5

the south. Whilst the series of paths through the Memorial are layered with symbolism, recognition of these references is not required in order for them to be experienced.

- 6.63 Asa Bruno described how, from design inception, there was a symbiotic relationship between the Memorial and the Gardens, with:

*"... the desire to both protect and improve an important central London asset, as well as create a connotative experience of the dramatic contrast between the day-to-day routine of a safe life in a sound democracy, and the slow and insidious creep of intolerance, sedition and hatred and where those could lead."*⁵⁶

- 6.64 The desire, from competition stage, has been to site the Memorial as far south within the site as possible, noting that the southern end of the site is both the tightest in terms of available space, and the darkest, as a result of the closeness of the overhanging boughs of the trees running alongside both edges of the park. The design team agreed that in that context they could minimise the impact on the wider, open, well-lit and more frequently occupied parts of the garden to the north. This would also place the Memorial further away from the Palace of Westminster, thereby reducing the potential visual impact on far-reaching views of the historic building. At the same time, with such a backdrop, the Memorial would command a pivotal position and provide a new vantage point from which members of the public could view the Houses of Parliament and the river Thames.⁵⁷

- 6.65 Asa Bruno described how a significant part of the site appraisal involved the exploration of how to sensitively fit what would become the Memorial fin walls into the narrower end of the site. The site's triangular layout helped shape the Memorial into a south-facing horseshoe arrangement, which would allow its component fins and the paths in between them to appear integral to the newly proposed site landform. Also, careful consideration was given to how to emphasise the Memorial's geological rather than architectural character, so that it would appear as part of a landscape rather than an object on a plinth. The Memorial would therefore be mostly embedded in grass with extensive areas of the perimeter around the courtyard being densely planted and treated in a manner which would help to embed it further within its context.⁵⁸

- 6.66 The journey to the Memorial from the north would begin with the landscaped path which acts as a narrative journey connecting the Emmeline Pankhurst Memorial, Rodin's Burghers of Calais, the BM, and the Spicer Memorial.

"When viewed from the northwest corner by the Palace of Westminster, the Memorial is first perceived as a gradual rising hill towards the south end of the VTG. Along the journey south, the path inscribes the rising landscape, and leads along the embankment past the BM after which the full scale of the Memorial is revealed. The elevated land mass is both hill, and cliff-like landscape, and is held aloft by 23 tall, bronze-clad walls. The overall volume inscribed by the walls

⁵⁶ Ibid para 4.3

⁵⁷ Ibid paras 5.1 and 5.2

⁵⁸ Ibid para 5.3 and CD 8.6 para 7.7

offers an interplay between robustness and frailty; cohesiveness and fragmentation; community and individualism.”⁵⁹

6.67 The relationship between the UKHMLC and the BM, its closest neighbour has, ever since competition stage, been of importance to the design team. Careful thought was given to the immediate context of the BM within the new proposed scheme.

*“A radial indentation in the grassy landform forms a natural amphitheatre and was created in order to allow for peripheral lighting and a perimeter seating bench around the BM. In this way it was envisaged that the BM’s colourful spire will remain on axis and in view from Dean Stanley Street and St John’s Smith Square, but would be given spatial significance within the park and a new setting which would allow for the first time a place of rest and reflection for visitors to the BM, with outward views towards the Houses of Parliament and the Thames”.*⁶⁰

6.68 The Memorial has been designed to offer visitors of differing physical abilities the opportunity to experience it fully. For example, the mound would allow wheelchair access. The revised boardwalk would for the first time offer wheelchair users a view of the Thames. The Memorial courtyard would be ramped all the way down towards the Memorial and lined with benches. Three of the Memorial paths would be ramped, and the Memorial lift a bespoke solution, with glazed doors offering a continuous view to the threshold along the entire journey down. Therefore, whilst critics claim⁶¹ that wheelchair users somehow would have an inferior version of the narrative or experience of the Memorial, this could not be the case.

6.69 In Asa Bruno’s words:

*“I believe the design has achieved the goals set for it, and manages to establish a unique place, iconic in nature and subtle in variation, evocative of emotions and experiences without being literal or manipulative. I also believe it will achieve the highest challenge, that of successfully resonating universally for years to come, with survivors and relatives of other atrocities”.*⁶²

6.70 Professor Greenberg described the journey through the LC and the powerful, visceral experience for visitors. He explained how the exhibition would be structured around its location in Westminster, recalling the advice from Michael Berenbaum shortly after winning the competition to design the IWM Holocaust Exhibition as being *“the place where we remember defines what we remember”*. Many speakers have referred to Mr. Berenbaum’s insight.

6.71 The descent through the Memorial would be a profound part of the experience. The threshold is seen a critical part both of the interpretive design as well as the architecture. As Professor Greenberg explained, at this stage we have to imagine what this space would feel like: it would be dramatic and intense. When the original IWM Holocaust exhibition,

⁵⁹ CD 8.5 para 6.7

⁶⁰ Ibid para 5.4

⁶¹ CD 8.52 para 4.2.5.3

⁶² CD 8.5 para 9.4

for which Professor Greenberg is responsible, opened in 2000, it was considered both ground-breaking and innovative. The Applicant has no doubt that a new generation of filmmakers, scriptwriters and artists would achieve similar innovation in the LC building on the conceptual master-planning framework that Professor Greenberg has set out for them. The size of the LC would be ample to deliver a moving, challenging and thought-provoking exhibition.

- 6.72 Integral to the scheme as a whole are the landscape design proposals which would constitute another layer in the historical evolution of the Gardens which have changed many times with the march of time and ideas, tastes and styles.
- 6.73 As Donncha O Shea explained, whereas VTG is perceived as a predominantly flat open space, that does not mean that it is an even surface. There are in fact undulations across the hard and soft surfaces which, together with compaction, creates ponding of water. This reduces the usability of the lawned spaces by visitors to the driest months. The central lawn is well used at lunchtimes on sunny days in summer but is unusable during the wet periods and the winter months. However, with the right sub-base and lawn specification, it would be possible to regrade and improve the condition of the lawn to provide year-round support to activity.
- 6.74 Similarly, as Dr Miele said:
- "VTG is very rich in terms of its associations and its meanings and its purpose, but as a landscape design it's fairly ordinary. It's green sward with perimeter belts of trees...[a] very closed space, and perimeter paths laid out in asphalt. Not to diminish it, but those are its characteristics as a landscape."*
- 6.75 The Applicant does not consider that the Gardens would be transformed into simply being the setting of the UKHMLC. It seems more apt to think of the Gardens as being enriched, and multifaceted.
- 6.76 It is commonplace for contemporary masterpieces which become the cherished heritage of future years to be subject to criticism and controversy at their inception. That said, it is important to note that WCC do not criticise the quality of the design of the proposals, as Robert Ayton confirmed in cross-examination and indeed the GLA commend the quality of the design of the proposals.⁶³
- 6.77 Instead, the criticism has been led by the architectural critic, Rowan Moore. The evidence of the four designers and Professor Tavernor in their proofs and rebuttals and that given orally at the Inquiry demonstrate that Mr Moore's criticisms are ill-founded and overblown. Mr Moore's critique is founded upon his belief that the brief for the UKHMLC was fundamentally flawed, and the proposition is that if the brief is bad then it does not matter how good the architects are, they cannot help but fail. Sir David's response was:

"The very premise of my profession is to find solutions to ever changing typologies and forms. What was exciting was the combination, not just...a

⁶³ See e.g. CD 5.14 at paras 28 - 40

Memorial to go to in the traditional sense, but also to...experience the LC to give you education. People seem to think that is not a benefit. But I don't know a single memorial in the whole world where that happens- where you go through a memorial into a LC. It is a profound evolution, a way of memorialising and of understanding education. A Memorial and also a gateway to illumination. One that made a lot of sense in the landscape. And that is what good architects do. We rise to that challenge when we see it."

6.78 Professor Tavernor sees the UKHMLC as:

*"... a complementary addition to the existing VTG memorial thematic of 'humanity versus inhumanity'."*⁶⁴

6.79 He says of the proposals:

*"The UKHMLC is a brilliant conception, a skilful response to the competition brief, which has been developed into a convincing architectural and landscape design resolution. The considerable experience and abilities of the design team, and their ability to work so well together, has resulted in a sensitive design resolution that has made the very best of the site constraints and opportunities. This will be an extraordinary Memorial, which will be regarded as world class".*⁶⁵

Heritage

6.80 The statutory, case law and policy presumptions which fall to be applied in reaching a decision where a proposal would affect the heritage significance of heritage assets are well known. The Applicant's case is set within that legal and policy context, and the belief that any harm would be less than substantial in NPPF terms. Applying what is said in paragraphs 193, 194 and 196 of the NPPF, if it is concluded that the public benefits of the proposals would outweigh that harm, this conclusion would constitute the clear and convincing justification sought by the NPPF. This is the Applicant's position.

6.81 How any identified harm any identified harm is calibrated as being either substantial or less than substantial needs to be set out. WCC says that the harm, while less than substantial, would be towards the very high end of the less than substantial scale *"almost equating to substantial harm but not quite."*⁶⁶ It is not correct to say that unless what in law constitutes substantial harm is correctly understood.

6.82 The Applicant believes that the law is clear. The High Court held in the case of *Bedford BC v SSCLG*⁶⁷ (the Bedford case) that in order to be substantial *"the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. ...One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."*

6.83 This was the approach applied by the Applicant's heritage witness. All the other heritage witnesses have set the bar for 'substantial' harm at a

⁶⁴ CD 8.11 para 5.3

⁶⁵ Ibid para 3.18

⁶⁶ CD 8.37 para 165

⁶⁷ CD 7.2 at [24] and [25] The citation is [2012] EWHC 4344 (Admin)

- lower level than the law sets it. This inevitably means that the degree of harm found by all of the witnesses called by the opposing parties is overstated.
- 6.84 Those who have neglected to apply the law seek to rely instead on what is said in the 4th paragraph of the PPG at 18a-018-20190723⁶⁸ which gives as an example that: *"in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest."* The argument appears to run that substantial simply means serious.
- 6.85 Whether what was held in the Bedford case and the example given in the PPG are reconcilable is debatable. The passage in the PPG does not explicitly or implicitly set out to reformulate the legal definition of substantial as established in the Bedford case, nor could it have. The only way they can be reconciled is to treat the PPG's reference to seriously affects as meaning seriously, in the sense of vitiating altogether or very much reducing significance (as per Bedford). But the Applicant's submission is that the legal definition of substantial as set out in Bedford cannot be replaced with some less exacting test derived from the wording of the PPG. The Applicant's case on whether harm would be caused to heritage assets, and if so to what degree, proceeds on this basis.
- 6.86 The change arising from introducing a new structure into two heritage areas (a Registered Park and Garden (RPG) and a Conservation Area), and the setting of several others, is likely to cause at least some harm to something because of the metrics utilised. The Applicant's view is also that in considering the UKHMLC we are considering what would become in its own right a listed building, Dr Miele considered, Grade I in the future.⁶⁹ Furthermore, it is simplistic to equate changes to views from or to a heritage asset with harm to the significance of the asset in question.
- 6.87 As a contextual point, the Applicant considered that adding a Memorial and revamping VTG would be of a piece with the history of the Gardens, the layout of which has changed significantly on a number of occasions over time. Memorials and sculptures have been located in, and relocated to, and moved from place to place, within the Gardens.
- 6.88 The advice of Historic England (HE) should be used as a sense-check of the Applicant's conclusions and that of others.
- 6.89 Firstly, the impacts on the key heritage assets are considered on the basis that all the plane trees would remain and would not be lost nor would their contribution to the scene be tangibly harmed by the proposals, that being the Applicant's case.
- 6.90 VTG as an RPG: HE considers that there would be moderate less than substantial harm; the Applicant, low less than substantial harm. The Applicant considers that the proposals would also bring heritage benefits and that these would outweigh the small degree of harm. These are

⁶⁸ CD 4.13

⁶⁹ Dr Miele in chief and in answer to the Inspector

- considered to be balanced and sensible judgement-calls. There is no basis to suggest that VTG would be de-registered, should the UKHMLC be built.
- 6.91 The WAPSCA: given that VTG are part of a much larger Conservation Area which itself contains buildings and spaces of phenomenal significance, it follows as a matter of logic that the degree of harm to the Conservation Area as a whole must be less than the degree of harm found to one element within it (VTG). Accordingly, the Applicant says that there would be some very limited less than substantial harm which itself would be countervailed by heritage benefits. HE does not suggest that there would be any harm at all to the Conservation Area's significance. These judgements, in the Applicant's submission, feel right.
- 6.92 The BM, Grade II*: the Applicant's view is that there would be some limited less than substantial harm, and that although there would be heritage benefits as well, on 'a finely balanced conclusion' overall there would still be some very limited harm. HE considers there would be low to moderate less than substantial harm, which it seems sensible to conclude would be the position at the very worst.
- 6.93 The WHS: it is hard to understand how any grounded assessment could conclude that the UKHMLC would cause harm to the OUV of the WHS. There could be some inconsequential harm because views towards Parliament would change with the UKHMLC in the foreground, but the new, elevated, views which would be created by the proposals just a few metres to the north of the impinged-upon views, and the ability to better appreciate the river setting from the boardwalk, would offset this and demonstrable an overall enhancement to the ability to appreciate the OUV of the WHS. The HE representative confirmed in answer to the Inspector that there would be no harm to the WHS.
- 6.94 The Houses of Parliament and Palace of Westminster, Grade I: very similar points arise as with the WHS as the same views would be affected, and so the Applicant concludes that any low degree of less than substantial harm would be cancelled out by the beneficial effects. HE does not suggest that there would be any harm at all to the significance of the listed building. Neither the Applicant nor HE consider that any harm would be caused to the significance of any of the other heritage assets that have been assessed by the parties.
- 6.95 Turning to the impacts, should some of the plane trees be lost or their contribution to the character or appearance of the conservation area be tangibly diminished: it became clear during the Inquiry that WCC has in mind only the trees on the west side of the Gardens between Great Peter Street and Dean Stanley Street as potentially being affected, in fact 10 (of the 51) plane trees.
- 6.96 The Applicant's conclusions concerning the degree of harm would change little if at all in such circumstances. The WCC view that the loss (or tangible harm to) these trees would mean that the degree of harm to the significance of VTG as a RPG, the Conservation Area, the WHS, the Houses of Parliament, the BM, the Memorial to Emmeline Pankhurst, and the Burghers of Calais would be substantial is not considered to be

credible. The Applicant's view is that conclusions like these can only have been arrived at by failing to apply the definition of substantial harm stated by the High Court in the Bedford case. An easy way of testing the proposition is to ask whether the OUV of the WHS wholly or very much depends on these 10 plane trees such that their loss (or tangible harm to them) would vitiate altogether or very much reduce the heritage significance of the WHS. The only one conceivable answer to this question is no. This analysis can be repeated for all of the heritage assets in question.

Use of the Gardens

6.97 VTG has a multiplicity of uses and users. The Inquiry has heard a lot of sincere and heartfelt testimony from local residents and others convinced that there would be very real impacts on their and others use of the Gardens. The Applicant's view is that much of this arises from fear of change. In such circumstances we have to imagine the Gardens of the future with all the various beneficial changes that are proposed in place, with the UKHMLC in place, which would repurpose some 7.5%⁷⁰ of the existing Gardens from publicly freely accessible open space to being available to ticket-holders as, in the main, the Memorial courtyard. As such the Applicant's case is that it is not credible to think that any of the various activities which currently take place- people walking through the Gardens, joggers, people sitting in the Gardens, people contemplating the memorials and sculptures, children playing, people relaxing, people on their lunchbreak- would be constrained in any real sense in this future evolution of the Gardens.

6.98 As Natasha Kaplinsky OBE noted:

"I see no reason at all why the Memorial and the current uses of the park cannot happily continue to co-exist. I understand that it might be important for some people to sunbathe or to have a picnic in the park, but I find it very hard to hear that this cannot be squeezed into the remaining 93% of the park and that it is to be prioritised over the opportunity to juxtapose a monument marking the worst example of the disintegration of democratic values against the greatest emblem of Britain's aspirations for democracy."

6.99 There would be more, and at times many more, people in the Gardens but let us not forget why they would be there.

Trees

6.100 The Gardens are enclosed by two rows of London planes. Twenty-five to the east and twenty-six to the west. No one has contended that the proposals would cause the death of any of these trees.

6.101 Applicant is confident that enough is known about the trees and about how to carry out works of the nature proposed, together with mitigatory and compensatory measures, that the works would not cause their death. The role of British Standard BS 5837: 2012 Trees in relation to

⁷⁰ When the temporary permission for the Parliamentary education centre expires and the area occupied by it is returned to the Gardens, VTG will become a little larger and the percentage "loss" a little smaller

design, demolition and construction (the BS) ⁷¹ Root Protection Areas (RPAs) was discussed at the Inquiry with differing views evident. There are two key points: (1) drawing a circle on a plan round a tree cannot tell us more about the presence and dimensions of tree roots than non-invasive and invasive on-site investigations, as have taken place here, and (2) works within RPAs do not mean that the trees in question will be harmed. Works within RPAs are commonplace.⁷² Furthermore, all the works (other than the secant piling) which would take place within the RPAs, provided properly carried out, would not harm the trees.⁷³ This narrows the issue down to the impact of the secant piling on 10 plane trees on the western side of the gardens only.

6.102 The ten plane trees in question are numbered 71011 to 71020 inclusive. The Applicant's view is that disagreement between the arboricultural experts about how precisely the RPAs for the trees should be plotted, and in particular whether roots are present or absent under the carriageway of Millbank, is a red herring. Similarly, the competing views about how deep plane trees root is also a distraction. However the RPAs are plotted and however shallow or deep the roots, this cannot make any difference to the actual distance between the proposed secant piling and the ten trees in question, nor the dimensions of the roots that would be encountered at these distances.

6.103 The Applicant states that the distances concerned are⁷⁴:

| | |
|-------|--------|
| 71011 | 14.6 m |
| 71012 | 12.4 m |
| 71013 | 12 m |
| 71014 | 10.5 m |
| 71015 | 9.7 m |
| 71016 | 9 m |
| 71017 | 9.2 m |
| 71018 | 8.75 m |
| 71019 | 8.3 m |
| 71020 | 9.6 m |

6.104 Research before the Inquiry ⁷⁵ demonstrates that beyond 3 metres, roots taper to being very small, and at the distances in question here (from 8.3 metres to 14.6 metres) any roots which would be severed by the secant piling would be tiny. As the Applicants witness confirmed, roots of these dimensions would not "*be essential to the tree's health and*

⁷¹ CD 4.16

⁷² Confirmed in XX by Mr Barrell

⁷³ Confirmed in XX by Mr Mackworth-Praed and Mr Barrell

⁷⁴ Dr Hope, EiC

⁷⁵ CD 8.16 Appendix B p81 para 4 and CD 11.10 p30 left-hand column bottom para

*stability*⁷⁶ and could be severed without harming the health or longevity of the trees.

- 6.105 The trees in question are, with a small caveat, healthy. The Tree Health & Vitality Diagnostic Assessment⁷⁷ assessed 9 of these 10 trees and on a methodological 7 step scale⁷⁸ of 0 to 6 (in which 0, 1, 2, 3 = healthy) found all but one of them to be healthy. Remembering that 0 is the best end of the scale and 6 the worst end of the scale:

| | |
|--------------|----------|
| 71011 | 0 |
| 71012 | 4 |
| 71013 | 1 |
| 71014 | 0 |
| 71015 | 0 |
| 71016 | 0 |
| 71017 | 1 |
| 71018 | 1 |
| 71019 | 0 |

- 6.106 Tree 71012 is in category 4 and so of reduced vitality. Of the 10 trees in question, it is the second farthest away from the secant piling (at 12.4 metres). As the Tree Health & Vitality Diagnostic Assessment concludes (in line with all the arboricultural assessments submitted as part of the application) the trees would be:

*"...resilient to the impacts of [the] proposed development."*⁷⁹

And:

*"Proposed within the Arboricultural Impact Assessment which accompanied the planning application, a proactive programme of tree and soil health care will help ensure that all the London plane trees are in "peak" health prior to any approved development. A reactive programme of tree health care identified for both during and after [the] approved development has also been proposed, to address root pruning and any other potential causes of physiological stress and tree health, to maintain current tree health."*⁸⁰

Security

- 6.107 There are no guarantees against terrorism or extremist activity, and designers design to achieve a balance between the intended use of a site and the safety and security that make the use of the site viable in an everyday context. For the UKHMLC, the potential security risks were assessed along with the likelihood of these events occurring, and proportional and appropriate mitigations and management procedures were then designed in. A full set of security design information was

⁷⁶ CD 4.16 para 7.2.3

⁷⁷ CD 11.12 see p5

⁷⁸ CD 11.13

⁷⁹ CD 11.12 p7 last para

⁸⁰ Ibid p7 section 3 last para

submitted to WCC as part of the planning process, though for obvious reasons was not included in the public part of the planning information.

- 6.108 It is not possible to remove all the risk from terrorism to the UKHMLC, be it sited in any location, without enforcing a 'fortress' mentality that is likely to be disproportionate to the threat. However, siting the UKHMLC adjacent to the Palace of Westminster is unlikely to cause any determinable increase in threat for the area above what is already present. The threat to the users of VTG and the UKHMLC would not be over and above the same threat level that will exist in other crowded spaces within London.
- 6.109 Throughout the design process the Applicant has liaised with the Metropolitan Police Service, the Centre for the Protection of National Infrastructure and the Community Security Trust, who are a charity that completes varied activities to protect British Jews. All parties have had access to the security development information and have made no objections to the level of security that would be applied at the UKHMLC.
- 6.110 As David Cooper said: "*It is much better here where there is already massive security.*"
- 6.111 Rudi Leavor reflected upon the fact that a terrorist threat can never be denied:

"We face this with every synagogue we try to build. But not to build the Memorial simply for this reason would mean the terrorists would have won without having to lift a finger."

Protection against Flooding

- 6.112 None of the responsible authorities and agencies have objected to the proposals. A sensible view must be taken of the likelihood of the risk. It is beneficial to look at the factors which would actually have to coalesce at the same time in order for one of the only two credible breach scenarios to occur.⁸¹ For the wall to fail due to high water levels in the Thames would require a structural instability in the wall causing it to collapse. However, a water level that high would already have caused the Thames barrier to be closed, and flood warnings or alerts would have been given. Further, the condition of the wall is better even than required, and sufficient to protect the existing urban area, including the Houses of Parliament and buildings in the vicinity. The likelihood of the wall failing, right at the location adjacent to the UKHMLC, is extremely low. Similarly, a breach caused by a collision with the wall right adjacent to the Memorial would also have to coincide with high water levels, to which the same points apply. If there were somehow to be a breach, it would not be just the immediate site, but large parts of Central London which would be under water. A sense of perspective needs to be retained in looking at these matters.

⁸¹ CD 9.7 at R1.22 – 1.28

Transport and Pedestrian Movement

- 6.113 None of the responsible authorities or agencies have objected to the proposals. It should be remembered that the site falls within the Core CAZ which is where WCP encourages uses of international and national significance to locate⁸² and so it is unreasonable to object, as a number of the Rule 6 and interested parties do, on the basis that lots of people would visit the proposed UKHMLC. In the Applicant's view, objecting on the basis that lots of people would walk to the site seems odd, given that policy at every level encourages just that.
- 6.114 The evidence indicates that the peak impact of the development would miss all of the peaks of current use.⁸³ The Gate 1 potential 'pinch-point' has been tested on the basis of the maximum predicted number of visitors, which would occur only for a short time on some days in the year.
- 6.115 Transport for London (TfL) have sought to make their support for the scheme contingent on a contribution to funding for a project at Lambeth Bridge, which they have been planning to carry out anyway since 2012. As explained in the separate note submitted to the Inquiry,⁸⁴ the contribution sought by TfL fails to meet the tests set out in Community Infrastructure Levy (CIL) Regulation 122. Fundamentally, it cannot be said that the proposals would only be acceptable if £1m is contributed towards these works. The sum requested has no known basis.

Archaeology

- 6.116 There are no points of controversy here.

Public Benefits and the Planning Balance

- 6.117 Ultimately, applying all relevant statutory requirements, the issue is whether any harm that the proposals would cause in terms of heritage and to any other interests are outweighed by the public benefits of the proposals. Applying s.38(6) of the 2004 Planning and Compulsory Purchase Act (P&CP Act) it is the Applicant's case, (a) that although there are some instances in which the proposals do not accord with development plan policies, reading the plan as a whole, the determination which would be in accordance with the plan would be to grant planning permission, and (b) that material considerations, primarily the national and international scale public benefits of the proposals, do not indicate otherwise.
- 6.118 The Applicant's alternative case is that (a) if it is concluded that the determination which would be in accordance with the development plan would be to refuse planning permission, then (b) material considerations, primarily the national and international scale public benefits of the proposals, readily indicate otherwise.
- 6.119 Similar points arise in relation to the balance which is required to be struck applying NPPF 196. It is the Applicant's case that any less than

⁸² CD 2.3 p117 Policy S27

⁸³ Round table discussion on pedestrian movement

⁸⁴ CD 11.17

substantial harm to heritage assets (whatever the degree of that harm) would be readily outweighed by the public benefits of the proposals. The Applicant's alternative case, if it is concluded that substantial harm would be caused to heritage assets is that, applying NPPF 195, that harm would be outweighed by the public benefits of the proposals, the harm being necessary to achieve those benefits.

- 6.120 Efforts have been made to seek to downplay the public benefits of the proposals but it is worth recalling that WCC⁸⁵ accepted that the UKHMLC would be a substantial benefit to the nation and globally, of national and international significance and that it followed that the public benefits would be of national and international significance.
- 6.121 Objectors to the proposals have argued that the weight to be given to the public benefits should be reduced because they could be achieved somewhere else, or that some of them could be provided regardless of the UKHMLC. However, the fact is that there is no evidence that any of the public benefits would be provided in the event that permission is refused for the UKHMLC.
- 6.122 In any event, NPPF para 196 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits *of the proposal* (Applicant's emphasis).
- 6.123 This makes the simple point that there must be a weighing of the pros and cons of the proposal. The Applicant believes that this is especially pertinent in this case as what makes this location so special also makes it well suited for the proposed UKHMLC. It is overwhelmingly in the greater public interest to allow the UKHMLC to proceed.

To close

6.124 As Professor Foster said:

"...if we believe as a society that learning about and commemorating the Holocaust is profoundly significant, then it follows that the Memorial and LC should be in a place of immense national and international importance. Thus, locating it in London- the nation's capital city- and directly adjacent to the iconic Houses of Parliament, has an irresistible appeal. Indeed, if the Memorial and LC is not placed in such a prominent location it will severely diminish its impact and reach and, inevitably, raise questions about Britain's commitment to educate about the Holocaust and to memorialise its victims."

6.125 And Ellie Olmer:

"When it's built it will be a central, beacon of hope, of living history, a reminder to those that need reminding in the face of obscene revisionists, deniers and conspiracy theorists. Its compelling voice will be one of education and of action. We have to be informed and active participants in countering hate in today's world."

⁸⁵ XX Mr Doward

What if we don't build it? History and future generations will never forgive us as we face the moral implications of our government's inaction then and now. ... Why would we want to build it? How could we afford not to?"

- 6.126 The Applicant believes that this is not a time for fatalism or pessimism, or for keeping ourselves small. It is not a time to be grudging, or narrow, or to think only of one's own life. It is a time for optimism and a time to act. A time to honour, commemorate and grieve those lost, and to educate, inspire and nurture those still to come. To build the right thing right at the centre of things to show its central importance.
- 6.127 This Inquiry has welcomed many different voices. The subject matter of this application could not be more important or more serious. Whilst it ultimately does remain a land use planning matter, there is nothing more noble nor more sacred to plan for than this. To meet the memory of state-sponsored evil with hope.
- 6.128 The Applicant asks us to imagine visiting the Gardens in a few years' time: the Gardens would look the most beautiful they ever have, and set within the Gardens you would see the UKHMLC. In seeing and touching the Memorial and descend into the LC, your emotions would be yours and yours alone. Then think back to Autumn 2020 and the words spoken by a remarkable young man, Dov Forman:

"With education comes remembrance - this Memorial will give people somewhere to remember and reflect. When we no longer have survivors like [my great-grandma] Lily among us, this Memorial will help to ensure that their experiences are never forgotten. We can create the next generation of witnesses."

- 6.129 The Inquiry would have played a profound role in achieving this.

7 The Case for Learning from the Righteous

All relevant points of the case for Learning from the Righteous (LftR), with minor adjustments, are set out below.

Introduction

"By the rivers of Babylon, there we sat down and wept when we remembered Jerusalem"

- 7.1 Fundamentally, the place from which we remember an event shapes how we remember it.⁸⁶ Monuments, museums and learning centres are institutions of memory, and of story-telling.⁸⁷ The stories they tell, how they tell them, and how those stories are understood are a product not only of the what, the who and the how, but also the where. All over the

⁸⁶ Psalm 137, para 1

⁸⁷ CD15.2 transcript of presentation given by Dr Berenbaum – who was the Project Director of the United States Holocaust Memorial Museum in Washington DC and oversaw its creation – to the Liberation 75 conference on "RELEVANCE & SUSTAINABILITY: The Future of Holocaust Museums"

world, museums and monuments about the Holocaust mediate this conversation between content and place.

- 7.2 The Holocaust is remembered differently in Washington than it is in Jerusalem, in Warsaw than in Budapest, in Paris than it is in London, at Auschwitz than it is in Bergen Belsen.⁸⁸ For example, Berlin's Holocaust Memorial is close to the Reich Chancellery and on the site of the former Berlin Wall, that tells an enormously challenging story of the history of a nation and its re-unification; New York's Museum of Jewish Heritage is located within sight of Ellis Island and the Statue of Liberty, that tells a complicated story of America's ambivalent response to refugees who fled the Nazis to its Eastern shores; the museum at Auschwitz must, of course, tell the uniquely barbarous and cruel story of that place; and the United States Holocaust Memorial Museum in Washington DC tells the story of how democratic institutions can be subverted, which has a powerful resonance in the heart of that nation's capital city.⁸⁹
- 7.3 The question is what story would the location of the current proposal tell us?

The story this proposal will tell

- 7.4 This is, in part, a British story: the story not only of the Holocaust, but of Britain's relationship both with the Holocaust and Nazism itself. Events in the Palace of Westminster determined the course of this country's response to Nazism. This story would be told to visitors sitting on green benches which echo those in the House of Commons only footsteps from the site, surrounded by the words of Members of Parliament (MPs) of the day which were spoken in that place.
- 7.5 For example, the Evian Conference debate on 27 July 1938,⁹⁰ which shows that notwithstanding growing awareness of and concern about the awful impact of Nazi policies on Jewish people, many members of the House of Lords showed ambivalence at the prospect of an influx of German refugees into the UK. Indeed, the Government's focus was on Jewish immigration to East Africa and Palestine. Immigration to the UK was only contemplated at that stage on a temporary basis for "*suitable refugees*" who could work in industry.⁹¹ The "*policy of the open door*" for fleeing refugees was expressly rejected by the Government.⁹²
- 7.6 The iconic Kindertransport debate took place in the House of Commons on 21 November 1938.⁹³ The brutal cruelty of the Nazis' treatment of Jewish people was addressed by many MPs in detail. Under pressure to act from Members across the House, the Home Secretary confirmed the Government's policy to find homes within the UK for 10,000 Jewish children. Mr David Grenfell MP closed the debate late into the night by remarking on the "*wonderful unanimity of sentiment and feeling and the feeling of common humanity and a common standard of civilisation.*"

⁸⁸ CD10.45 Dr Berenbaum speaking note

⁸⁹ CD15.2 provides further and more detailed exposition of these examples

⁹⁰ CD9.13 LfR Rebuttal Appendix 1

⁹¹ Ibid p31 /207

⁹² Ibid p32 /207

⁹³ Ibid Appendix 2, from p39 / 207

*Members in all parts of the House have filled in a picture which shows the House of Commons at its very best".*⁹⁴

- 7.7 When it came to commemorating the 80th anniversary of that debate, the location selected was in Speaker's House, one of the most prestigious locations in the Palace of Westminster. Where else? Because the place from which we remember an event shapes how we remember it.
- 7.8 Also of note, the United Nations Declaration debate of 17th December 1942,⁹⁵ where Members of the House of Commons rose to their feet in spontaneous and unanimous silence to condemn "*the barbarous and inhuman treatment to which Jews are being subjected in German-occupied Europe*".⁹⁶
- 7.9 On 19 May 1943 a heated debate took place on *the Refugee Problem*,⁹⁷ in which a number of MPs, including Eleanor Rathbone MP, raged against the Government's intransigence on allowing refugees into the country. Her unforgettable speech⁹⁸ ended with a warning: "*let no one say: We are not responsible. We are responsible if a single man, woman or child perishes whom we could and should have saved. Too many lives, too much time has been lost already. Do not lose any more*".⁹⁹
- 7.10 A number of critical debates post-dated the war, including debates on the Nuremburg Trials¹⁰⁰ and the Genocide Convention¹⁰¹, events of the utmost importance on their own terms, and for their contribution to the establishment of modern international law.
- 7.11 Even this limited selection of Hansard transcripts presented tells a story rife with ambiguity, but also with power. It is a story which includes ambivalence, inaction and latent prejudice. But it also includes many MPs standing up to the Government on behalf of the voiceless and the oppressed, opposing the spirit of intolerance in a way that has echoed down the ages.
- 7.12 Nonetheless, the story of this proposal would go further than what the Government did. This is also a story of what Government failed to do. It is a story of the fragility of democracy; the limitations of democracy; the role of the individual in society; the collective consequences of individual decisions; the importance of being an upstander rather than a bystander.¹⁰²
- 7.13 This is a complicated story which the proposal would set out to tell in all its complexity, its ambiguity and its power. The narrative presented would be balanced.¹⁰³ It would address the ambiguity of Britain's response to the Holocaust, avoiding simplistic judgments, with nuance, based on sound scholarship, and with an emphasis on complexity. The

⁹⁴ Ibid Appendix 2, p71 / 207

⁹⁵ Ibid Appendix 3, from p86 / 207

⁹⁶ CD15.01 LftR Opening Statement, para 3 onwards provides further details.

⁹⁷ CD9.13, Appendix 4, from p.90 / 207

⁹⁸ Ibid Appendix 4, from p.97 p.102 / 207

⁹⁹ Ibid Appendix 4 p102 / 207

¹⁰⁰ Ibid Appendix 5a, p131 / 207 and Appendix 5d, p167/207

¹⁰¹ Ibid Appendix 5c, from p139 / 207

¹⁰² EinC, Mr Maws

¹⁰³ CD8.1, Mr Balls and Pickles PoE, para 46; and oral evidence of Mr Barkow (CD10.59)

visitor narrative would give over 252 sqm of the LC to the section on 'Government' (more than to any other section) in which visitors would 'hear both sides'.¹⁰⁴ Visitors would be challenged to ask: what would I do if faced with such a situation?

- 7.14 Once the contours of this story and how the scheme would tell it are understood, it is clear that the suggestion by objectors that the scheme's narrative would be over-simplistic and self-congratulatory is wrong. It has incorrectly been characterised as setting out to propagate a narrative that Britain was the sole saviour of the Jews.¹⁰⁵
- 7.15 The resonance between this scheme's content and its location would be profound. That resonance would make it unique.

VTG is one of the Country's most Iconic Locations

- 7.16 The HMC made the importance of a prominent location clear in the first recommendation of its 2015 report to the Prime Minister, explaining that: *"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"*.¹⁰⁶
- 7.17 Several of the opponents to this scheme have agreed that this is an iconic and prominent site which would be visited by large numbers of people. It would therefore accord with the HMC's recommendations.¹⁰⁷ This accordance would be a public benefit.¹⁰⁸ Further, it is agreed that the site is more prominent and iconic than the IWM¹⁰⁹, and the fact VTG is very regularly used by thousands of Parliamentarians and Parliamentary staff would mean that there would be wide-spread awareness of this scheme.¹¹⁰ It has been suggested that MPs are the category of people least in need of reminding about the dangers of religious or racial intolerance.¹¹¹ However, even very recent history tells a more complicated story¹¹².
- 7.18 Therefore, a permanent and high-profile reminder on Parliament's doorstep about the consequences of religious and racial intolerance

¹⁰⁴ CD8.9 para 12.4 PoE Greenberg

¹⁰⁵ CD10.36 Representation by a group of academics with expertise in Holocaust history and education in Britain

¹⁰⁶ CD5.9 Britain's Promise to Remember - The Prime Minister's Holocaust Commission Report, January 2015 p41-42

¹⁰⁷ XX Mr Doward by LftR

¹⁰⁸ Ibid; also agreed in XX of Mr Lowndes by LftR

¹⁰⁹ XX Lord Carlile by LftR

¹¹⁰ Ibid

¹¹¹ CD5.26 PoE Baroness Deech

¹¹² As recently as 29th October 2020, the Equality and Human Rights Commission concluded that the Labour party's handling of complaints about anti-Semitism within the party from 2014-2019 breached the Equality Act 2010

would be a profound benefit of this scheme for Parliamentarians and for the public.

The Site's Iconic Quality would be a Profound Benefit

- 7.19 LftR challenges the view of those who believe the location of the proposal in VTG adjacent to the Palace of Westminster would make no difference, or have no discernible effect.¹¹³
- 7.20 The fact that these propositions are extreme, surprising, counter-intuitive and are wrong is demonstrated by the contributions to the Inquiry from all corners of society. Particular reference is made to the evidence of Adrian Packer CBE;¹¹⁴ Ben Barkow;¹¹⁵ Dr Toby Simpson;¹¹⁶ Natasha Kaplinsky;¹¹⁷ Kishor Alam;¹¹⁸ Mala Tribich¹¹⁹ and Rudi Leavor¹²⁰, two of the Holocaust survivors who spoke in support of the scheme; Eric Murangwa Eugene MBE, a survivor of the 1994 genocide against the Tutsi in Rwanda;¹²¹ the Archbishop of Canterbury, Justin Welby;¹²² Ellie Olmer;¹²³ Karen Pollock CBE;¹²⁴ Chief Rabbi Ephraim Mirvis; Rob Rinder;¹²⁵ and Professor Stuart Foster,¹²⁶ Executive Director at the Centre for Holocaust Education at UCL.¹²⁷ Dr Michael Berenbaum crystallised the point in this way: "*the proposed site offers an unequalled opportunity to grapple with the history of Great Britain and its values. Placing it anywhere else reduces the power of what it can achieve*".¹²⁸
- 7.21 In the 1930's and 40's, Jews were stripped of citizenship. When most vulnerable, they were left isolated, with no country to fight for their protection, to say "*you are our people and we won't let you be treated this way*".¹²⁹ Siting a Memorial in VTG would be a powerful symbol that

¹¹³ For example, CD10.25 Dr Gerhold's view is that if the role of the learning centre would be to examine the decisions made by Parliament during the Holocaust and other genocides, then it would make literally "no difference" whether it is located next to Parliament or somewhere else; CD8.41 Baroness Deech PoE para 3, the location of the proposal next to Parliament, would have "no discernible effect"; CD8.51 PoE Mr Lowndes para 6.6 acknowledges there may be "resonance" and "associative triggers" in locating the scheme here, though believes the same would arise "in any number of locations"; XX Mr Moggridge by SoS, saw no symbolic relationship in the scheme's proximity to Parliament

¹¹⁴ CD10.42

¹¹⁵ CD10.59

¹¹⁶ CD10.26

¹¹⁷ CD10.40

¹¹⁸ CD10.38

¹¹⁹ CD10.24

¹²⁰ CD10.2

¹²¹ CD10.21

¹²² CD10.43

¹²³ CD10.55

¹²⁴ CD10.56

¹²⁵ CD10.61

¹²⁶ CD10.67

¹²⁷ Excerpts from these statements which set out the importance of the location are appended to the full closing statement (CD16.4)

¹²⁸ CD10.45

¹²⁹ EinC, Mr Maws

says: British Jews are British; your history is our history; your security is a British concern, “*you belong here*”.¹³⁰

Many of the Objections are based on Straw Men

- 7.22 On analysis, many of the key points the objectors make are straw men. That is, they mischaracterise the propositions in favour of the scheme, then seek to respond to the mischaracterisation.
- 7.23 For example, Dr Gerhold believes that the “*most important reason why the link with Parliament and democracy is weak is that democracy and genocide are not opposites*”.¹³¹ However, nobody has suggested that the world is so simply divided into democracies on the one hand, and barbarous genocides on the other. As such, if it is agreed that the justification for the scheme does not rely on this proposition, then this particular objection falls away.¹³²
- 7.24 Another straw man argument is that “*Democracy provides no guarantee against racial or religious hatred*”¹³³, nor does democracy protect against genocide.¹³⁴ Again, nobody has claimed that it does. Indeed, it is the very frailty of democracy, its lack of guarantees, its capacity to be subverted and distorted, which will make this permanent physical reminder to Parliamentarians so valuable.¹³⁵ Nobody supporting the scheme claims that the fight against anti-Semitism or genocide will be won by a single project. Even a nationally and internationally significant scheme like this one in one of the world’s most iconic locations. No individual scheme is enough. But that only emphasises the scale of the challenge, and the importance of doing more, not less, to meet it.
- 7.25 There are different views on this scheme within in the Jewish community, and even among Holocaust survivors. This country is home to almost 300,000 Jews, a socially, politically and culturally diverse community, which at times is almost characterised by its members’ strong views on every side of every debate. As such the lack of unanimous support for this scheme, or any other, is not in itself of significance.
- 7.26 Finally, Lord Carlile recognises that the Holocaust is “*an important cautionary tale about the dangers of mass, popular movements founded on past political failure and a profound cautionary tale about nationalism, inequality, and the failure to recognise diversity*”.¹³⁶ However, due to security concerns he suggests a less prominent and iconic location than VTG to tell that cautionary tale, so that we avoid provoking right wing extremists.¹³⁷ The logic of this argument says to Jews: because of the very same ancient hatred that led to the Holocaust, that causes your schools and synagogues to require security teams, you have become a liability and therefore do not deserve to be visible in our public spaces.

¹³⁰ Ibid

¹³¹ CD10.25, Dr Gerhold’s Statement, para 19.

¹³² As agreed by Dr Gerhold during XX by LftR

¹³³ CD10.25, para 19.

¹³⁴ CD 8.41 PoE Baroness Deech, para 3

¹³⁵ EinC Mr Maws

¹³⁶ CD8.43 Lord Carlile’s PoE para 8

¹³⁷ Ibid para 12 k

That is blaming the victim. If anything, the persistence of anti-Semitism is a reason for this to be all the more prominent, not less.¹³⁸

The Scheme would be a National Focus for Education about the Holocaust

- 7.27 With anti-Semitism and nationalism on the rise across the globe, it is urgent that this country takes steps to not merely remember the Holocaust but to educate in a way that research suggests is most likely to have a meaningful impact. Embedding these approaches in the heart of this scheme would help to spread good practice in schools and communities across the UK.
- 7.28 The scheme's location would enhance its power as an educational tool exponentially. The scheme would galvanise, focus and coordinate teaching and learning about the Holocaust in the UK for future generations. It would send a powerful message that would resonate throughout the education sector about where priorities should lie.¹³⁹ It would create, and indeed has already started to create, a focal point to unify a fragmented sector.
- 7.29 Various opponents argue that Holocaust education nationwide should be improved, with an emphasis on de-centralised approaches and more use of digital technology. However, improving the teaching of and learning about the Holocaust more generally is consistent, and not inconsistent, with this scheme. What better way to encourage educational policy makers to solve this problem once and for all than for the Government to make such a clear statement that the Holocaust is a central part of our national story.¹⁴⁰
- 7.30 In this location the proposal would become a focal point for learning about the Holocaust. Not only would it assist with educating the next generation about the Holocaust, as described by survivor Janine Webber.¹⁴¹ It would also preserve the voices of other survivors with their own stories to tell.¹⁴²
- 7.31 Whilst some may ask the question: why here?¹⁴³, provoking that question is the very point. In this regard the inquiry heard that *"Good teaching is about asking questions and being comfortable with not having all the answers. Sites are particularly good educational resources, where you ask: what does this mean? So many of the people I've heard speaking out against the Memorial seem to say – I know what this means. For example, 'it is obviously meant to promote a skewed narrative'. Well, I'd suggest they don't know what it means. In large part because a site can hold many different meanings. It can mean different things to different people. There are no prescribed lessons of the Holocaust. And this proposed site reinforces that very point. Maybe*

¹³⁸ EinC Mr Maws

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ CD10.46 Ms Webber speaking note

¹⁴² As described by Ms Kaplinksky (CD10.40) and others

¹⁴³ Oral representation to the inquiry by teacher Ms Boyarsky: she imagined a bemused child looking up at their teacher outside the memorial asking "why is it here?" and the teacher being at a loss to respond

you think that the take-away message from it is that the UK should have done more; or that we should honour those who were liberators; or to remember those who fostered Kindertransport refugees; or something broader like the idea that democracy is fragile. These are all valid points to explore... not conclusions, but questions to grapple with. Which one of these is the most important? I can't give you that answer, but I sure as hell would love to stand on that site with a group of students having that discussion".¹⁴⁴

The Public Benefits of this Scheme in this Location are Overwhelming

7.32 For WCC, Mr Doward agreed that the principle of a national Memorial and LC about the Holocaust is supported; that it would lead to substantial benefits of both national and global significance; and that the site is a suitable location for a Holocaust Memorial.¹⁴⁵ Whilst in evidence WCC suggests that the sites location adjacent to Parliament 'may be' considered as positive and desirable,¹⁴⁶ under cross-examination WCC's position was less equivocal.¹⁴⁷ In particular, it was agreed the location was iconic and prominent, was likely to attract a very large number of visitors and meets the brief set by the 2015 HMC's first recommendation.¹⁴⁸ This is partly so because of the scheme's proximity to Parliament. As such it was accepted that the scheme's proximity to Parliament would be public benefit.

7.33 Similarly, the proposed co-location with a LC was also accepted as a public benefit.¹⁴⁹ In this regard WCC's suggestion that a more modest form of memorial could be accommodated here,¹⁵⁰ which would be divorced from a LC and would be less visually prominent, would not meet the brief set by the 2015 HMC report.

7.34 The UKHMF's justification for selecting this site were as follows:

- It provides an iconic location adjoining Parliament, sitting along the riverfront immediately next to the House of Lords;
- Its relevance as a commemorative garden of Britain's national conscience, already containing significant memorial sculptures, marking momentous historic events, with significance for the struggle for human rights, that remain relevant today and will do so in the future;
- It is visually prominent and adjacent to one of the most visited parts of London, within easy reach of a major tube station and many bus routes;
- The resonance of being next to Parliament and on the timeless banks of the Thames is exceptional; and

¹⁴⁴ EinC Mr Maws

¹⁴⁵ XX of Mr Doward by LftR

¹⁴⁶ CD8.36 PoE Doward para 9.10 and CD5.11 WCC's Committee Report p.85

¹⁴⁷ XX Mr Doward by LftR

¹⁴⁸ CD5.9 p. 13

¹⁴⁹ XX Mr Doward by LftR

¹⁵⁰ CD8.36 PoE Mr Doward, para 9.10

- Under the shadow of Victoria Tower, the UKHMLC would question the impacts of the Holocaust and subsequent genocides on our own Parliament.¹⁵¹
- 7.35 WCC was able to agree with the first three of the five propositions. TIS/SVGT & LGT agreed that all of the propositions bar the second could be regarded as public benefits.¹⁵²
- 7.36 LfTR present no evidence on heritage, design, trees or several of the other important issues before the Inquiry. The LfTR case is simple. For all the reasons given, these public benefits should be given very substantial weight, whether that is in the context of the balancing exercises under the heritage chapter of the NPPF, or as material considerations under section 38(6) of the P&CP Act 2004.
- 7.37 In the end, it is the locational imperative of delivering this scheme in this place and at this time which is the point of overwhelming importance. The scheme's importance is elevated by our moment in history. It is a moment of transition, rapidly moving between lived and historical memory. The Inquiry had the unforgettable privilege of hearing from several survivors of the Holocaust and their families. In a sense, it was the advent of the current (albeit discreet) Holocaust Memorial in Hyde Park in 1983 which heralded a new era of teaching and learning about the Holocaust in this country which has been based around survivor testimony. That testimony can be of immeasurable power. But almost four decades on, that era is ending. It would be the task and the privilege of the Applicant's world-class team to preserve the voices of survivors to be heard by our children, and their children.
- 7.38 Finally, the attempt to weigh public benefits in a heritage balance in Dr Gerhold's evidence¹⁵³ is criticised as being misguided and legally unsafe. It suggests, for example, that for the public benefits to count the site must be uniquely prominent and a link to Parliament necessary.¹⁵⁴ Such propositions have no support in policy or any authority the decisions of the High Court, the SoS or other Planning Inspectors, or anywhere else.

Conclusion

- 7.39 We recall the momentous events on the floor of the House of Commons, only steps from the appeal site, which shaped Britain's response to the Holocaust.
- 7.40 At 8.15pm on 21 November 1938,¹⁵⁵ Philip Noel-Baker MP rose on the floor of the House of Commons. He described the requirements of a

¹⁵¹ CD6.49 para 4.2.8

¹⁵² XX Mr Doward and Mr Lowndes by LfRT

¹⁵³ CD10.25 Dr Gerhold Statement

¹⁵⁴ XX Dr Gerhold by LfTR found these propositions to rest on e.g. that (a) if the site is not uniquely prominent, its degree of prominence is irrelevant, or that (b) unless the link between Parliament and the scheme is necessary then any benefits associated with that link do not exist

¹⁵⁵ CD9.13 LfTR Rebuttal Appendix 2, from p.47 / 207

coordinated and effective scheme for dealing with the flood of refugees including 10,000 Jewish children, and then he said:

"I think [those steps] might in some measure stay the tyrant's hand in Germany by the means I have suggested. Certainly they can gather the resources, human and material, that are needed to make a new life for this pitiful human wreckage. That wreckage is the result of the mistakes made by all the Governments during the last 20 years. Let the Governments now atone for those mistakes. The refugees have surely endured enough. Dr Goebbels said the other day that he hoped the outside world would soon forget the German Jews. He hopes in vain. His campaign against them will go down in history with St. Batholomew's Eve as a lasting memory of human shame. Let there go with it another memory, the memory of what the other nations did to wipe the shame away."

- 7.41 Telling the complicated story of Britain's response to the Holocaust only steps from where those words were spoken makes this scheme not just prominent, not just striking, not just iconic, and not just internationally significant. It makes it unique.
- 7.42 In the end, LftR joins with the Applicant in asking the Inspector to recommend that planning permission for the UKHMLC be granted.

APPENDIX

Excerpts from the evidence on the importance of the scheme's location

7.43 Adrian Packer CBE called the site:

"the only place fitting of the magnitude of our project's ambition and its importance to shaping modern British society".¹⁵⁶

7.44 Mr Barkow explained that:¹⁵⁷

"It is wholly appropriate to locate Britain's national reminder of the political and moral dangers posed by genocide, the crime of crimes, next to its seat of political power. As we visit the Memorial, we also send a message to Parliament, that we are alert, we are watching, and we will hold our leaders to account."

7.45 Dr Toby Simpson, Director of the Wiener Holocaust Library, said:¹⁵⁸

"The Holocaust is widely recognised as the defining event of twentieth century European history, and as the worst and most extreme atrocity perpetrated in the history of human civilisation. In my view, it is fitting for the Memorial to be located in a position of the greatest possible prominence to reflect that fact.

The choice of location and design is therefore a difficult challenge to rise to, and in my view the proposal achieves its most important aims. It is sensitive, it is evocative, it is prominent and it is appropriate. I would echo Sir David Adjaye's view that the chosen location 'emphasises [the Memorial's] importance as a public space in dialogue with its cultural, political and historic surroundings'."

¹⁵⁶ CD10.42

¹⁵⁷ CD10.59

¹⁵⁸ CD10.26

7.46 Natasha Kaplinsky said that:¹⁵⁹

"The placement of the Memorial gives the subject the prominence it most certainly deserves and changing its location, as many of the past speakers seems to promote, would profoundly relegate it's significance. The view of Parliament from the Memorial will serve as a permanent reminder that political decisions have far-reaching consequences and highlight the responsibilities of citizens in a democracy to be vigilant and responsive whenever and wherever our core values are threatened."

7.47 Kishor Alam said that:¹⁶⁰

"Westminster is and should be the place where deeper meanings are pondered and the lessons from the past are considered to help shape the decisions which affect all our futures...it has to be in Westminster. It has to be in the most important of places, because the Holocaust, the attempted annihilation of European Jewry was a unique cataclysmic event and the darkest chapter in the history of Western Civilisation. Westminster is and should be the place where deeper meanings are pondered and the lessons from the past are considered to help shape the decisions which affect all our futures. ...It has to be Westminster with the Cenotaph and all the other monuments because the Holocaust Memorial must be seen to be of no less importance- not just an adjunct in a south London museum that has existed for decades. The Holocaust is distinct from all other conflicts and has to be considered as such by giving it, its own place at the heart of where Government operates today and every day."

7.48 Mala Tribich, one of the Holocaust survivors who spoke in favour of the scheme, said that:¹⁶¹

"I really believe that a Memorial next to Parliament, where vital decisions are made, will help us to learn the vital lessons from the past. What better symbol to remind our Parliamentarians and the wider public of where apathy as well as prejudice and hate can ultimately lead? What better legacy than to have a Memorial and a LC in which thousands of students and teachers can learn more about the Holocaust? This is an issue of the utmost national importance. I would even say, it is an issue of international importance. Britain must lead the way in educating the next generation about the dangers of antisemitism, hatred and racial prejudice. A national Memorial, in the shadow of Parliament, will enable not just hundreds of thousands of British students to learn more, but countless other members of the public to do so too."

7.49 Rudi Leavor, another of the Holocaust survivors who spoke in support of the scheme said that:¹⁶²

"The siting of the proposed Memorial in VTG makes a bold statement, which cannot be missed and would proudly stand to expose the shame, depravity and darkness of the Holocaust for as long as the Houses of Parliament will stand."

¹⁵⁹ CD10.40

¹⁶⁰ CD10.38

¹⁶¹ CD10.24

¹⁶² CD10.2

7.50 Eric Murangwa Eugene MBE, a survivor of the 1994 genocide against the Tutsi in Rwanda, said that:¹⁶³

"having a new UKHMLC built at the heart of world's greatest city and next to the symbol of the home of British democracy will have a huge significance on how the UK and the world at large will remember and learn about the Holocaust and modern Genocides in the future."

7.51 Dr Michael Berenbaum said that:¹⁶⁴

"the proposed site offers an unequalled opportunity to grapple with the history of Great Britain and its values. Placing it anywhere else reduces the power of what it can achieve."

7.52 The Archbishop of Canterbury, Justin Welby, said that:¹⁶⁵

"The proposal for a Holocaust Memorial with a LC by the Houses of Parliament and across the river from Lambeth Palace provides a symbolic opportunity to present the full story to new generations. It is a story that will not and cannot be a comfortable piece of public self-congratulation by the establishment. Rather, it offers an opportunity to learn what we did wrong, as well as celebrating what we did right. Its position by the seat of UK government is a necessary challenge to our national life: that the seeds of such cultural and religious hatred would never be allowed to take root here again. Make no mistake: those seeds were here in the UK too."

7.53 As Ellie Olmer said:¹⁶⁶

"The place from which you remember an event shapes how you remember it - and it has radically different meaning in the place that it's told. That place, where we are telling the story, VTG, Westminster, has immense strategic interest. An energy and dynamism of its own. A place of prominence- and it's that, that will shape and guide a visitor's all-embracing experience. This is the heart of British democracy, of the rule of law, of justice and fairness. All roads lead to here. It has unique sense of majesty and power with a proud history of British values. Surely if it's going to be built anywhere, for purpose, meaning and relevance, this is where it has to be."

7.54 As Karen Pollock CBE said:¹⁶⁷

"its location will send an important message to us all- that the horrors of the past are central to Britain, that what happened during the Holocaust must never be forgotten and never repeated, that the leadership of our nation sees the central place that the Holocaust has on our shared history and identity."

7.55 As Stephen Greenberg put it in his oral evidence:

"If you want to tell this story and the story of the Holocaust with other subsequent genocides and the impact of human rights legislation, the Nuremberg trials, all of that and Parliament's role, the nation's role in responding, whether it's Quaker families inviting Kindertransport children into their homes, whether it's people wanting to intercede on behalf of other people,

¹⁶³ CD10.21

¹⁶⁴ CD10.45

¹⁶⁵ CD10.43

¹⁶⁶ CD10.55

¹⁶⁷ CD10.56

or Government now deciding that they do or do not want to help, then being there right by Parliament where history is still contested in Parliament Square on a regular basis, having these discussions, having witnesses like we had this morning [...] in that location, having MPs, whether in Hansard or contemporary, in that location, would not be the same down in Potter's Field, it just wouldn't. [...] If we want to tackle these issues nationally and centrally then that is the place to do it in an open-minded way."

7.56 As Chief Rabbi Ephraim Mirvis said:

"Locating this particular initiative and development in VTG is an inspirational choice of venue. It is a wonderful location [...] This is a most wonderful location because it is in a prime place of prominence and it is at the heart of our democracy. We want it to be in a prime place of prominence. We want people to know about it [...] We want all of British society to be aware of what transpired to the Jews in the 20th Century not just for the sake of the Jews, for the sake of all of us in the country [...] Locating it in this particular venue will serve as an ongoing reminder to our lawmakers in Parliament that they are accountable to the people and their prime objective always must be the welfare and wellbeing of every single citizen in our society."

7.57 As Rob Rinder put it:¹⁶⁸

"The proposed Holocaust Memorial stands, some have said, in the looming shadow of our Parliament. That is the wrong way to describe it. The design and position of the monument places neither edifice in darkness. They are precisely positioned to bring light to each other.

The Memorial will illuminate the halls of Parliament where those exercising political power do their work. And, at the monument itself, each and every one of us, regardless of our background, faith or sexuality, will be able to speak to our representatives through bronze and stone."

7.58 As Professor Stuart Foster,¹⁶⁹ Executive Director at the Centre for Holocaust Education at UCL said:

"Thus, if we believe as a society that learning about and commemorating the Holocaust is profoundly significant, then it follows that the Memorial and LC should be in a place of immense national and international importance. Thus, locating it in London- the nation's capital city- and directly adjacent to the iconic Houses of Parliament, has an irresistible appeal. Indeed, if the Memorial and LC is not placed in such a prominent location it will severely diminish its impact and reach and, inevitably, raise questions about Britain's commitment to educate about the Holocaust and to memorialise its victims.

Secondly, locating the Memorial and LC right next to the seat of our democratic government powerfully emphasises that as a nation we are prepared to reflect on Britain's relationship with the Holocaust in a candid and honest way- potentially taking pride in its finest moments, but also humbly reflecting on its failures and the devastating effects of its inaction. From this frank and introspective confrontation with its past, the Memorial and LC will serve as a

¹⁶⁸ CD10.61

¹⁶⁹ CD10.67

reminder of the fragility of our democracy and the responsibilities we have to others."

8 The Case for Westminster City Council

WCC's case, with some adjustments for concision, is set out below

- 8.1 It is WCC's case that the issue raised by this application is a simple one: it is whether VTG is the right place for *this* development. WCC does not therefore question the desirability of a national memorial to the tragedy of the Holocaust and those who suffered as a result of it. Nor does it dispute that it might be possible to design a memorial of a form and scale which is appropriate for VTG. WCC's concerns centre on 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

- 8.2 The mature London plane trees that enclose VTG 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. Any loss of, or diminution in contribution made by, these trees would amount to harm which WCC considers to be of particular significance. Policy provisions¹⁷⁰ set out that the 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.
- 8.3 Immediate catastrophic loss of the trees is not likely. The issue is the clear risk of significant damage to a series of important trees through the effect of the proposed extensive deep excavations and other construction operations.¹⁷¹ This would affect the health and wellbeing of the trees which, in turn, would lead to a greater vulnerability to disease, thereby precipitating the trees' decline and loss, with the attendant harm which would follow. The evidence is such that this damage and loss would be the likely ultimate outcome of the development.
- 8.4 WCC's arboricultural witness, identified the RPAs (RPAs) for all potentially affected trees, and the extent of encroachment within them, particularly through excavation for the courtyard, Memorial, and underground LC.¹⁷² The trees of particular concern are those on the west side of VTG.¹⁷³ The extent of encroachment would be substantial– 96.39 m² in respect of

¹⁷⁰ Policy ENV16 of the WCC WUDP (CD 2.3) requires, at part (A), that all trees in a conservation area "will be safeguarded unless dangerous to public safety ..."; 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 S38 of the WCC City Plan (CD2.3 p152) provides that "green infrastructure" (defined in the City Plan at p.215 as including "trees") will be protected

The LonP at Policy 7.21 provides that "existing trees of value" (which those at VTG plainly are) should be retained (CD2.1)

¹⁷¹ In particular, nos. 71011 to 71023 inclusive (set out at schedule at CD 8.40 Part 1 Appendix 4)

¹⁷² CD8.40 Part 1 Appendix 3

¹⁷³ Ibid Appendix 4

- tree 71017 alone.¹⁷⁴ The effect of the proposed excavation would be to sever any roots which lie within the footprint of the excavation. There is no evidence to demonstrate that any arboricultural process to administer root pruning would be available given the depth and extent of excavation. This permanent loss of significant proportions of RPAs and the roots within them would generate a substantial risk of damage to, and ultimate loss of, the affected trees.
- 8.5 The extent of this risk is confirmed by the Applicant's own evidence. In particular some of the most directly affected trees on the west side of VTG are already experiencing mild to moderate physiological stress¹⁷⁵, with Tree 71012, on the west side, identified as of "reduced vitality".¹⁷⁶ WCC's evidence indicates that the trees experiencing mild to moderate stress include those which would suffer the greatest extent of total encroachment into their RPAs.¹⁷⁷ Even the on Applicant's own assessment as to the extent of encroachment into the RPA of the affected trees, the level of stress upon these trees is expected to be elevated to moderate stress through the implementation of this development.¹⁷⁸ Further, "*as mature trees, these London plane trees, may be more susceptible to physiological stress due to root pruning*".¹⁷⁹
- 8.6 This evidence demonstrates that the development would fail to safeguard or protect the affected plane trees, contrary to WUDP Policy ENV 16A and WCP Policy S38 respectively. It would 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 WUDP Policy ENV 16B.
- 8.7 WCC considers the Applicants case to be flawed in a number of ways. First, the RPAs of the affected trees on the west side of VTG advanced by the Applicant extend into the carriageway of Millbank, suggesting that the roots of the affected trees extend beneath the Millbank carriageway. There are no adjustments to RPAs to address any asymmetry in root distribution as a result of any obstructive effect of the carriageway, as is advised within the BS.¹⁸⁰ WCC's case that no material rooting will be present below the carriageway has been confirmed by what was revealed by the excavations at Millbank which were taking place in September 2020.¹⁸¹
- 8.8 There are inconsistencies within the Applicant's evidence. For example, the Arboricultural Impact Assessment refers to the fact that the "*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*

¹⁷⁴ Ibid Appendix 4

¹⁷⁵ CD11.12 Vitality Assessment

¹⁷⁶ Ibid p.5 para.2

¹⁷⁷ Compare Vitality Assessment with Mr Mackworth-Praed PoE, Tree Impact Schedule (CD8.40 Appendix 4): 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)

¹⁷⁸ CD11.12 Section 3

¹⁷⁹ CD6.22 AIA Addendum para.5.3.5

¹⁸⁰ CD4.16 p.11 para.4.6.2

¹⁸¹ CD9.14 p10 para 3.1.10

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".¹⁸² The AIA also states that the carriageway at Millbank *"will be an inhospitable growing environment for feeding roots"*.¹⁸³

- 8.9 The Root Investigation Report also refers to the fact that *"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"*.¹⁸⁴
- 8.10 The evidence therefore indicates that there will be no material rooting beneath the carriageway at Millbank. The consequence is that the Applicant's assessment of impact based on its RPAs is fundamentally flawed.
- 8.11 Secondly, the Applicant relies on the result of intrusive investigations in support of its case. There is no basis for relying on such investigations in identifying RPAs, or to support development within them, in the industry standard technical guidance, the BS.
- 8.12 Thirdly, the Applicant acknowledges the need to sever the roots of trees on both sides of VTG as a result of excavation. Many of those affected roots are of a diameter larger than 25 mm which the BS advises against severing on the basis that *"such roots might be essential to the tree's health and stability"*.¹⁸⁵ It is also the case that many of those roots which are acknowledged by the Applicant to be severed are at a depth below 500mm and, as such, will not be able to regrow.¹⁸⁶ Furthermore, the Applicant's assessment of the extent of anticipated root severance is incomplete and, as such, is unreliable.
- 8.13 Therefore, the RPA as identified by the WCC's witness, which accords with the approach in the BS, is to be preferred. On that basis, the proper conclusion is that there would be damage causing a substantial risk to the survival of at least 13 mature plane trees on the western side of VTG.
- 8.14 Seeking to replace the trees would also raise issues, including the difficulties regarding the timing and location of any replanting, 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

¹⁸² CD6.5 App.4 (internal p38) para.4.2

¹⁸³ CD6.5 p20 para.5.2.1 and CD6.22 p.24 para.5.2.1

¹⁸⁴ CD6.35 p8 para.4.9

¹⁸⁵ CD4.16 para 7.2.3

¹⁸⁶ CD6.22 para 5.4.1

resulting from the shaded location.¹⁸⁷ Further, in the best case scenario, a reasonable estimate for replacement would be 30-40 years.¹⁸⁸

- 8.15 Therefore, the only sound conclusion which can be arrived at is that the development would give rise to a clear and demonstrable conflict with Policies ENV 16(A) and (B) of the WUDP, S38 of the WCP, and with Policy 7.21 of the LonP.

Impact on the Historic Environment: the approach

- 8.16 The main parties disagree on the correct approach to the calibration of substantial and less than substantial harm to the significance of heritage assets. The Applicant's approach is that the threshold for substantial harm remains that set out in the *Bedford* case.¹⁸⁹ This sets out that for substantial harm to be demonstrated "*very much if not all of the significance is drained away or that the assets significance is vitiated altogether or very much reduced*".¹⁹⁰ WCC considers that matters have moved on with the publication, post-*Bedford*, of the PPG. The PPG sets out 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*".¹⁹¹
- 8.17 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*. Instead, the PPG sets out an 'example' of what would amount to substantial harm. There is no logical basis to contend that, whilst this example refers to works to a listed building, the same threshold for substantial harm would not apply to works which affect the setting and thereby the significance of a listed building or 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.¹⁹²
- 8.18 Therefore, the approach in *Bedford* cannot be reconciled with the subsequent guidance published by the SoS as to what he considers would amount to 'substantial 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. *Bedford* has therefore been overtaken by events and is distinguishable. The guidance set out in the PPG as to what would generate substantial harm is now to be applied.

¹⁸⁷ XIC Mr Mackworth-Praed

¹⁸⁸ XIC Mr Mackworth-Praed

¹⁸⁹ CD7.2 *Bedford Borough Council v Secretary of State for Communities and Local Government* [2012] EWHC 4344 (Admin)

¹⁹⁰ *Ibid* para 25

¹⁹¹ CD4.13 para 018 Reference ID: 18a-018-20190723

¹⁹² CD7.2 *Bedford* para 25

Whether the Proposed Development Would Preserve the Setting of the BM, a Grade II* Listed Building (and Other Memorials in the Vicinity of the Site)

- 8.19 In respect of the BM it is common ground that the development would cause harm to its significance as an important, Grade II* listed, heritage asset. WCC considers that, if the trees remaining unharmed, the harm to significance would be at the higher end of the less than substantial scale.
- 8.20 Currently the BM enjoys prominence within VTG, which contributes greatly to its significance as a heritage asset, as well as to that which it memorialises. This is supported by the flat topography of VTG and its open setting, as well as the location of the BM at the conjunction of footpaths and the presence of the trees, that contribute to this prominence and significance.¹⁹³
- 8.21 The setting of the BM would be diminished extensively by the proposed development. In the existing Heritage and Townscape Visual Impact Appraisal (HTVIA) view 20, the BM is described as forming the *"focal point in the centre of the view, situated within the expanse of the park"*.¹⁹⁴ With the development in place, the BM would be "largely obscured from this perspective"¹⁹⁵ as a result of the loss of open setting and changes to topography. In the existing view 22, the BM is described as an *"important landmark in the view"*,¹⁹⁶ and its juxtaposition with the Palace of Westminster can be clearly appreciated. With the proposed development in place the prominence of the BM would be largely removed.¹⁹⁷ In the existing view 13, from Millbank the prominence of the BM¹⁹⁸ would change as the view would alter from *"open parkland, to one focussed on the built form of the Memorial"*.¹⁹⁹ The view of the BM along an axis from Dean Stanley Street,²⁰⁰ which is identified as an important view in the SSCA, would be affected even more acutely.²⁰¹
- 8.22 In essence, the open setting and flat topography which contribute and enhance the significance of the BM would be extensively and harmfully changed. The position of the BM at the junction of east to west and north to south footpaths would be lost too; the position of the monument as an extension of Dean Stanley Street would be extinguished.
- 8.23 The enhancement of the local setting of the BM, including the new seating arrangement, could be delivered independently of the application scheme; indeed, planning permission was given for such interventions in 2007.²⁰² Similarly, any wider landscaping improvement to VTG could be

¹⁹³ As confirmed by the Applicant CD5.1 HTVIA p.78 para.8.82 and HE CD5.15 Part 2

¹⁹⁴ CD5.1 HTVIA p192 para 9.311

¹⁹⁵ Ibid p193 para.9.319

¹⁹⁶ Ibid p200 para.9.339

¹⁹⁷ CD6.15 DAS Addendum, View 22 p.55

¹⁹⁸ CD5.1 HTVIA p160 para. 9.190

¹⁹⁹ Ibid p161 para. 9.197

²⁰⁰ CD5.23 Part 1 App.5 refers to the relocation of the BM in the 1950's and agreement of this position by the Royal Fine Art Commission

²⁰¹ CD3.2 Fig 10 p.20 and p24 para 4.38

²⁰² CD 8.34 PoE Mr Goddard para 3.10

delivered independent of this scheme. These cannot, therefore, materially mitigate the harm caused to the BM.

- 8.24 In conclusion, given the importance of the BM as an asset, reflected in its grade II* listing, and the significance of what it memorialises, it must be concluded that the harm would be at the higher end of the less than substantial scale.²⁰³ This 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 VTG and the setting of the memorials and monuments within it.²⁰⁴
- 8.25 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 would harm the contribution which these memorials make to the significance of VTG.²⁰⁵

The Effect of the Proposed Development on the Significance of VTG, a Grade II Registered Park and Garden

- 8.26 VTG was devised and laid out to take advantage of its location adjacent to Parliament, and to deliver fine views of the Palace of Westminster. The WAPSCA Audit recognises these “*expansive views*” northwards.²⁰⁶ 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.
- 8.27 The proposed development would have a transformative effect on the Gardens. The flat open topography would be substantially lost through the introduction of the courtyard, monument and mound. Its simplicity would be disrupted and diminished for the same reason. The greenery, at its southern end at least, would be lost to a built form of development. The proposed Memorial courtyard would introduce a separate space into VTG.²⁰⁷ 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*”.²⁰⁸ Such an approach stands in clear contradistinction with the other memorials within VTG, which are experienced as part of the open space, rather than as ‘apart’ from it. The UKHMLC would be less a memorial within the Gardens than a memorial separated from the Gardens.
- 8.28 Views northwards towards the Victoria Tower, and of the wider southern elevation of the Palace of Westminster, would be substantially curtailed. This is most clearly demonstrated by the impact on view 22.²⁰⁹ The

²⁰³ CD8.37 PoE Mr Ayton p.30 para 94

²⁰⁴ Ibid p.57 para 173

²⁰⁵ Ibid p30 para 95

²⁰⁶ CD3.1 CAA p24 para 4.4 and pP35 Fig 22

²⁰⁷ CD8.13 PoE Dr Miele p.28 para.6.98 described as “introduce[ing] a sense of separation and undermines the appreciation of the trees and from the east side, interferes with an appreciation of the site’s riverside setting to an extent”

²⁰⁸ WCC XX Mr O’Shea

²⁰⁹ CD5.1 HTVIA p.200 (existing) and CD 6.15 DAS Addendum p55 (proposed); the extent of the impact is shown CD8.7 PoE Mr O’Shea p39 Fig 4.4.3

occlusion would 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 of the Victoria Tower. A similar view from the seat on the north side of the Spicer Memorial would also be substantially lost. The impact on views northwards, which contribute much to the significance of VTG, would be extensive.

- 8.29 Looking at the suggested benefits, the improved views of the river from the path and viewing platform, and the increased connectivity between the monuments and improved landscaping, are not 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. Further, there is nothing which suggests that the Gardens are recognised as being to any degree deficient in their current form and condition.
- 8.30 In conclusion, the harm caused by the loss of openness and of greenery, curtailment of the views of the Palace of Westminster and reduction in the visibility of the BM, discounting the effect on trees, would be less than substantial but at the upper end of the scale. Damage or loss of the trees, which are a key element of the character of VTG and in views which it affords, would elevate that harm to substantial, applying the approach in the PPG.

Whether the Proposed Development Would Preserve the Character or Appearance of the WAPSCA

- 8.31 It is common ground that VTG is a central and important element of the wider CA of which it forms a part. The harm which WCC considers would be caused to the significance of VTG as an asset in its own right also reflects the harm to the wider CA of which it is a part (and is not repeated).
- 8.32 The WAPSCA Audit describes VTG as forming part of Area 1 – Palace of Westminster and VTG, and the important and expansive views toward the Palace.²¹⁰ Furthermore, the importance of trees, soft landscape and Gardens are also referred to in the Audit.²¹¹ This contribution would be harmed significantly by the proposal.
- 8.33 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 and policy, harm to the conservation area overall.²¹² The harm that would be caused to the WAPSCA must be considered in this way.
- 8.34 The development would cause harm to the character and appearance of the WAPSCA and, as a heritage asset, its significance would be damaged. This impact would 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,

²¹⁰ CD3.1 p24, para 4.4

²¹¹ CD3.1 p75 paras.5.53-5.54 trees and green landscaping contribute significantly to the character of the area

²¹² CD16.3A

the harm to its significance would be substantial, such is their contribution to that significance.

The Effect of the Proposed Development on the OUV of the Palace of Westminster and the WHS and its Setting

- 8.35 The OUV of the WHS is comprehensively set out in the WHS Management Plan (the WHS MP), including a Statement of Significance.²¹³ One of the identified “*overarching significances is the outstanding and artistic value of its buildings and their content*”. This includes the “*New Palace of Westminster*.”²¹⁴
- 8.36 VTG is important in providing an opportunity to appreciate that element of the OUV of the WHS²¹⁵ and forms an “*important part of its setting*.”²¹⁶ This is unsurprising given the remarkable views which are afforded towards and of the Victoria Tower, and the south elevation of the Palace of Westminster, from VTG. This is acknowledged in the WHS MP by the inclusion of the view north from the footpath on an east-west alignment between the Dean Stanley Street entrance to VTG and the BM as a “*key local view*”²¹⁷. This view is described as “*an important public realm component of the setting of the WHS*”.²¹⁸
- 8.37 The effect of the development would be to substantially reduce the views from VTG looking northwards, and with it the opportunity to appreciate the OUV of the WHS. Truncated views from the elevated mound would remain, however elevated views from the south towards the Palace of Westminster were never intended in the original layout of the Gardens.
- 8.38 Further, the WHS MP includes as an objective that VTG, as a “*key space*” which shares the OUV of the WHS should be included within the boundaries of the inscribed area.²¹⁹ This is further emphasised by the shorter term objective to create a buffer zone to the WHS, with VTG identified as part of the area under consideration.²²⁰
- 8.39 The World Heritage Committee have commented 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*”²²¹, recommending that alternative locations and/or designs should be pursued.²²²
- 8.40 In conclusion, WCC submits that harm to the OUV and significance of the WHS would arise without harm to the trees. The trees form a key element of the significance of VTG and of views towards, and appreciation of, the WHS. If the trees were lost or their contribution materially diminished, the effect would be all the greater and, applying the PPG guidance, a key element in the significance of the WHS would be

²¹³ CD4.12 WHS MP p 91 Section 2.3

²¹⁴ Ibid p.97

²¹⁵ CD8.13 PoE Dr Miele p36 para.7.32(3)

²¹⁶ CD4.12 WHS MP as confirmed at p.66 para.1.7.2.1

²¹⁷ Ibid p62

²¹⁸ Ibid p 65 para.1.6.4.3

²¹⁹ Ibid p119 para.5.1.2.5

²²⁰ Ibid p66 para 1.7.2

²²¹ CD4.21 WHC 2019 Report p91

²²² Ibid p92

seriously and adversely affected. 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

8.41 The impact on the significance of the Palace of Westminster as a designated asset in its own right is essentially the same as impact on the OUV of the WHS.

Whether the Proposed Development Would Preserve the Character and Appearance of the SSSCA

8.42 The harm to the locally significant view from Dean Stanley Street towards VTG and the BM has been noted. There would also be harm to the view from VTG towards the SSSCA and St. John's Church which is also noted as being of importance in the SSSCA Audit.²²³ The trees in VTG, including those most directly at risk on the west side, contribute to the setting of the SSSCA. If those trees were lost, or their contribution to the setting of the CA diminished, its character and appearance would be undermined and its significance as an asset would be harmed. This harm would be less than substantial.

Whether the Proposed Development Would Preserve the Setting of Adjacent Listed Buildings, Including Norwest House, Nos 1 & 2 Milbank and the River Embankment Wall

8.43 VTG forms part of the setting of these listed buildings and structures. The plane trees contribute particularly to the significance of the assets. If the trees were lost or their contribution to the significance of the assets were to be materially diminished as a result of the development, as WCC considers likely, the significance overall of these assets would be harmed to a degree which is less than substantial.²²⁴

Impact on Heritage Assets – Development Plan Conflict and Conclusions

8.44 The current LonP Policy 7.8C-D provides that heritage assets, their significance and settings, should be conserved. The Applicant agrees that there would be conflict with Policy 7.8 by reason of harm to the significance of the BM. WCC's view is that the impact on VTG, the other memorials in VTG and the CA would also conflict with Policy 7.8. For the same reasons there would also be conflict with Policy S25 of WCP (2016)²²⁵ and WUDP Policy DES 10²²⁶. There would be conflict with WUDP Policy 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 WCP Policy S26 would also be due to the impact on local views.

8.45 The harm to the OUV of the WHS, and opportunities to appreciate it, would generate a conflict with LonP Policy 7.10(B) and WUDP Policy DES 16, as well as the corresponding Policy HC2(B) of the LonP 2021,²²⁷

²²³ CD3.2 CAA p24 para 4.38 (and Fig.10)

²²⁴ CD8.37 PoE Mr Ayton paras 114 and 180

²²⁵ CD2.3 City Plan p114

²²⁶ CD 2.2 WUDP p536

²²⁷ CD2.4 Intend to Publish London Plan p.325-326

which has strengthened the policy framework concerning WHS in London. On the latter, the examining Panel referred to the fact that the policies in the current plan had not been totally effective in preventing negative impacts on the WHS, stating that the proposed strengthening would accord with national policy.²²⁸

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 VTG for Recreational Purposes

- 8.46 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 used²²⁹. Their use contributes to the health and wellbeing of local residents, workers, and tourists, who visit the Gardens to relax, to exercise, and for recreation.²³⁰ At the southern end of the Gardens is a children's playground, designed with the help and input of local children.²³¹ VTG lies in an area identified as being deficient in publicly accessible play space and open space greater than 0.4ha considered suitable for informal play.²³² It is also within a short distance of the St James and Vincent Square wards, where there is an identified insufficiency of public open space.
- 8.47 WCC's case is that the effect of the proposed development would be to prevent public access to a material proportion of VTG, and fundamentally to harm the openness and function of the Gardens. Four main points are made.
- 8.48 First, the development would 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) would be constructed and enclosed within a secure perimeter. This would undoubtedly be a material loss of accessible public open space.
- 8.49 There would be conflict with Policy ENV 15 of the WUDP which 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. There would also be conflict with WCP Policy S35 which seeks to address existing open space deficiencies by protecting "all open spaces". Moreover, the removal of an area of VTG for the Memorial would result in a disconnect between the northern part of the Gardens and the playground to the south. This would also fail to accord with Policy S35 which seeks to develop connections between open spaces.
- 8.50 Similarly, Policy 7.18B of the LonP requires that the loss of protected open spaces be resisted unless equivalent or better-quality provision is

²²⁸ CD2.8 paras 330-331 With reference to the findings of the International Council on Monuments and Sites/International Centre for the Study of the Preservation and Restoration of Cultural Property Mission Report

²²⁹ CD 8.7 PoE Mr O'Shea para 3.3.1

²³⁰ CD8.36 PoE Mr Dorward paras 2.2-2.3

²³¹ XIC Mr Moggridge

²³² CD 2.3 p.147 Fig 47

- made within the local catchment area. No such re-provision would be made in this case.
- 8.51 There would also be conflict with the NPPF para. 97 which states that existing open space should not be built on unless one of three tests are met. None of the exceptions in para. 97 applies to this case. In relation to NPPF 97 c), the Applicant seeks to conflate a recreational use with a cultural use which has some recreational value. The UKHMLC would be a cultural use. This is apparent from NPPF para 92 in which 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.
- 8.52 Second, VTG would be physically transformed. A large portion of the central lawn, which is at present the core of the Gardens, would become a grassed mound with a footprint of approximately 2,000sqm, that would slope down to the north from the location where the fins project, beneath which would be the LC, laid out over two levels.²³³ At present, the layout of the Gardens has a "*powerful*" or "*elegant*" or "*understated*" simplicity.²³⁴ The development of the proposed Memorial would destroy this simple open form. No longer would the core of VTG consist of a flat lawn surrounded by trees channelling a view north towards the Palace of Westminster. This would affect usability of large grassed area, making it less suitable as a space for informal play and recreation as a result of the incline. It would conflict with Policy S35 of the WCP, in that it would harm the quality and amenity of the open space in an area with an acknowledged deficiency informal play space.
- 8.53 Third, the effect of introducing the UKHMLC into VTG would be fundamentally to change its character. VTG would be transformed from a tranquil parkland space into the setting of the UKHMLC. It would lead to a significant increase in the number of visitors to VTG and would reduce the tranquillity of the Gardens, contrary to Policy S35 of the WCP. 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 that uniformed security personnel may be stationed on the mound over the Memorial to control or disperse members of the public, as necessary.²³⁵ There would be a substantive qualitative change, replacing the relaxed informal simplicity and tranquillity with a busier and more structured environment.
- 8.54 Finally, the effect of introducing into the Gardens a monument to the worst crime in human history could have the effect of discouraging some users from continuing to use VTG in the way that they do. There are those who would feel uncomfortable, or that would not be appropriate, to use the area above the Memorial for informal play and recreation, given the gravity of its subject matter.
- 8.55 In an effort to offset this harm, the Applicant seeks to rely on proposed wider improvements to VTG, including providing new and improved

²³³ CD8.36 PoE Mr Dorward paras 3.6-3.10

²³⁴ CD8.7 PoE Mr O'Shea para 1.10; WCC XX Sir David Adjaye; XIC Mr Moggridge

²³⁵ TIS/SVTG & LGT XX Mr Brittle

paths, addressing existing drainage issues, and increasing and improving the accessibility of the Park. WCC questions whether these works could really be regarded as 'benefits' or improvements. Even if they are taken to be improvements, the weight they would attract would be limited by the fact that VTG is Government-owned and is managed and maintained by the Royal Parks in the public interest. Where improvements are considered appropriate they can and do take place.²³⁶ The fact that the works relied upon by the Applicant as improvements have not been proposed suggests that the Royal Parks and the landowner do not regard those works as being necessary improvements. Therefore, if the improvements relied upon really would be benefits, they would attract limited weight and would not outweigh the significant harm to VTG as an open space.

- 8.56 Overall, WCC's view is that the development adversely impacts on VTG as an area of open space in both qualitative and quantitative terms. It would reduce the amount of open space available to members of the public, and would harm the tranquillity and functionality of VTG as a place for informal recreation. This would conflict with the principle of protecting open space set out in WCP Policy S35, LonP Policy 7.18 and the NPPF para 97.

Other Considerations

- 8.57 WCC finds inconsistencies in the Applicant's evidence presented by Professor Tavernor in relation to general design and cityscape impacts.²³⁷ The Council therefore suggests that this evidence should be discounted.

The Effect of the Proposals on the Security of the Area

- 8.58 WCC does not object to the development on the basis of security concerns. In reaching this decision, WCC consulted the Metropolitan Police Service Designing Out Crime team, who raised no objection.²³⁸ However, the nature of the security arrangements proposed, including the presence of uniformed security personnel, would result in an adverse impact on the tranquillity of VTG, in conflict with Policy S35 of the WCP.

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

- 8.59 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 would be capable of being adequately

²³⁶ Planning permission was granted in 2007 for improvements to the Buxton Memorial; and works to extend the playground were approved in 2014 and implemented

²³⁷ For example, whilst the ES finds harm in relation to some visual receptors (such as to view 13 (CD5.1 p161 para 9.202)), Professor Tavernor states that "principally that the visual effects of the Call-In scheme will be beneficial to VTG and the assets it contains and that surround it" (CD8.11 para 1.7)

²³⁸ CD5.11 Committee Report para 9.14

mitigated through the imposition of appropriate conditions and, where necessary, planning obligations.

Consideration of Other Sites and the Content of the Proposals

- 8.60 All parties agree that the proposed development would cause planning harm and that a public benefit focused balancing exercise is required.²³⁹ The Applicant relies upon the “*very significant public benefits*” of delivering “*a nationally and internationally significant Memorial and LC which would reinforce the role of London as a world city.*”²⁴⁰ The Applicant considers that these benefits would be 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.²⁴¹
- 8.61 WCC’s case is that the public benefit of delivering this Memorial in VTG, must 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 would be significantly reduced. In effect, the availability of alternative means of meeting the objective underlying this development must be material to considering the weight to be attached to any public benefit of delivering the development proposed in this location. Support for this position 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 page 299-300.²⁴²
- 8.62 WCC believes that the absence of detailed and worked up alternatives before the Inquiry is not a reason for discounting this principle, as 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.*”²⁴³
- 8.63 The way in which the proposal to locate the UKHMLC in VTG came forward became a little clearer during the Inquiry.
- 8.64 In January 2014 the then Prime Minister, David Cameron, established the HMC. Following a year of careful research, investigation, and public involvement, the HMC made its recommendations.²⁴⁴ The combined expertise upon which the HMC was able to draw was formidable.²⁴⁵ The Report made recommendations for: a striking and prominent new

²³⁹ In accordance with NPPF para 195 or 196

²⁴⁰ CD8.34 PoE Mr Goddard para 11.9

²⁴¹ Ibid para 11.12

²⁴² CD16.2A

²⁴³ Ibid p301

²⁴⁴ CD5.9 Commission Report

²⁴⁵ The Holocaust Commission was 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. 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 Lee)), the current Director-General of the Imperial War Museum)

- National Memorial; a World-Class LC at the heart of a campus driving a network of national educational activity; an endowment fund to secure the long-term future of Holocaust Education– including the new LC and projects across the country; and, an urgent programme to record and preserve the testimony of British Holocaust survivors and liberators.²⁴⁶
- 8.65 In relation to the first recommendation for a striking new Memorial, the Applicant accepts that the principal parameters were that it should be prominently located in central London; that it should make a bold statement about the importance Britain places on preserving the memory of the Holocaust; and that it should attract the largest possible number of visitors.²⁴⁷
- 8.66 The HMC identified three possible locations (the IWM, Potter’s Field, and Millbank) as “*tangible possibilities that can capture the essence of the vision set out in [the HMC’s] report*”.²⁴⁸ The HMC’s objectives were therefore regarded as being capable of being met by developing a memorial at sites other than VTG. None of the sites identified by the HMC were adjacent to, or within sight of, Parliament. Nor did the HMC regard the co-location of the Memorial and LC as essential. What was required was somewhere “*close at hand*” to the Memorial where people can “*go and learn more about the Holocaust*”.²⁴⁹
- 8.67 In January 2015, the UKHMF was established as an independent body to take forward its recommendations ensure a world-leading educational initiative.²⁵⁰ The site search undertaken on behalf of the UKHMF appears to have stopped at the river to the south, and therefore to have excluded the IWM as a potential site.²⁵¹ The IWM was not one of the 24 sites they identified, or the three sites shortlisted.²⁵² None of the three shortlisted sites were adjacent to Parliament, nor were any of the shortlisted sites rejected on this basis. The UKHMF’s own document suggests an area of search considered to be sufficiently central to meet the visions set out by the HMC.²⁵³
- 8.68 It was not until late 2015 that the idea of locating the UKHMLC at VTG appears to have arisen.²⁵⁴ Even then what was being advanced was a LC not co-located in VTG but to be close by in Millbank, clarified to be in a reconfigured Millbank Tower complex, next the Tate Britain.²⁵⁵
- 8.69 In January 2016, the UKHMF had a sudden change of direction and locked on VTG as the location for the UKHMLC. The VTG location was presented to the Prime Minister as a *fait accompli*. No alternatives were offered, nor professional advice sought as to the acceptability in planning

²⁴⁶ CD5.9 Commission Report p13-15

²⁴⁷ WCC XX Mr Balls

²⁴⁸ CD5.9 Commission Report p53

²⁴⁹ *Ibid* p42

²⁵⁰ *Ibid* p6-7

²⁵¹ CD8.34 PoE Goddard para 4.6. The search area is show in UKHMF Document CD14.6 p10

²⁵² *Ibid* para 4.8-4.9

²⁵³ CD14.6 Search for a Central London Site, p10

²⁵⁴ As communicated in a letter from Lord Feldman of 26 October 2015, to which John Wittingdale, then Secretary of State for Culture, Media, and Sport, responded on 3 November 2015 (CD14.4 Feldman 1 and CD14.5 Mr Feldman 2)

²⁵⁵ CD14.4 Mr Feldman 1 para 3; XX Pickles

terms of VTG as a location for the Memorial and LC. There has been no public consultation on this less than transparent process.

- 8.70 WCC's position is that there are alternative ways of delivering the benefits of the UKHMLC without causing the harm associated with the Applicant's proposals. If a location adjacent to Parliament is considered critical, a memorial of a different form and scale could be provided at VTG, with a LC near-by; or a co-located memorial and LC could be provided on an alternative central London site, such as the "*viable option*" proposed at the IWM.²⁵⁶ As the Applicant accepts, there is nothing to suggest that the IWM proposal has been withdrawn.²⁵⁷

A VTG Monument

- 8.71 In his evidence Sir David Adjaye very fairly accepted that the scale of a memorial "*does not equate to its success*".²⁵⁸ 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*".²⁵⁹ WCC's case is that 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.
- 8.72 Examples of this being achieved include the BM, within VTG itself, and the Cenotaph, 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.²⁶⁰
- 8.73 In such circumstances, an LC could be located close by, either on Millbank, as was originally envisaged even after the VTG location was identified, or perhaps more appropriately at the IWM, which represents an eminently suitable location for a Holocaust LC (whether co-located with a memorial or not), in a location which is just a short walk from VTG and Parliament. This approach was initially envisaged for VTG, with the intention to locate the LC in Millbank Tower.
- 8.74 It is notable that a stand-alone memorial (with a LC located elsewhere) has a clear precedent. The HMC in its report commended in particular the New England Holocaust Memorial in Boston, which is a standalone monument that does not include a LC.²⁶¹

Alternative Locations

- 8.75 If the co-location of the UKHMLC is considered essential, there are other viable central London locations that would meet the objectives set out in the HMC's report.
- 8.76 As the Court made clear in *Trusthouse Forte*²⁶², it is not necessary to identify a specific site as a preferable alternative to the proposal. The

²⁵⁶ CD5.9 Commission Report p16

²⁵⁷ WCC XX Mr Goddard

²⁵⁸ WCC XX Sir David Adjaye

²⁵⁹ Ibid

²⁶⁰ Ibid

²⁶¹ CD5.9 Commission Report p42

²⁶² CD16.2A, p299

IWM site, however, provides a powerful example of the possibility of a suitable and available alternative location.

- 8.77 The IWM is a world renowned museum, with IWM London as its central London flagship.²⁶³ It is located a short walk from the Palace of Westminster (1.2 miles) and from VTG (0.7 miles). The HMC Report noted the benefits of locating a memorial and LC at the IWM, stating *there "is an obvious advantage in locating the LC alongside the IWM London in Geraldine Mary Harmsworth Park"*, going so far as to say, *"the Commission also recommends that the LC should include the Imperial War Museum's Holocaust Exhibition, upgraded and expanded"*.²⁶⁴
- 8.78 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 Holocaust Library (WHL) or the IWM Holocaust galleries.
- 8.79 The Holocaust galleries at IWM (as they presently are) represent a world class educational facility. This was regarded by the Prime Minister's HMC as *"an example of excellent practice in relation to holocaust commemoration"* and it presently runs a significant learning programme supporting schools and students.²⁶⁵ The exhibition at the IWM, which the Applicant agreed is *"of the highest quality and very highly acclaimed"* welcomes approximately 1 million visitors a year, of which approximately 21,000 are students.²⁶⁶
- 8.80 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, 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.²⁶⁷

The Applicant's Reasons for Rejecting the IWM London

- 8.81 In its revised Environmental Statement chapter on alternatives, the Applicant gives reasons for rejecting the IWM site.²⁶⁸ 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.²⁶⁹ Had it been so sensitive as to preclude its development for a Holocaust Memorial and LC then the relevant local planning authority,

²⁶³ WCC XX Mr Greenberg

²⁶⁴ CD5.9 Commission Report p54 and p13

²⁶⁵ Ibid p27

²⁶⁶ Ibid p11 and p27

²⁶⁷ Agreed WCC XX Mr Greenberg

²⁶⁸ CD6.49 ES Alternatives

²⁶⁹ Ibid table 4-1

- the London Borough of Southwark, who were commended for their engagement by the HMC,²⁷⁰ would be likely to have said so.
- 8.82 The IWM is located in the CAZ in an area in which delivery of a cultural use like the UKHMLC is acceptable in principle. There is nothing in the HMC's report to suggest that there would be any in principle land use objections or other insurmountable issues with delivering the UKHMLC at the IWM. The revised Environmental Statement (ES) describes the location as one where "*cultural uses are considered compatible with local policy*".²⁷¹
- 8.83 The issues identified with the IWM site relate to 'visibility and profile'. The revised ES identifies that "*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 UKHMLC*".²⁷² These reasons are entirely inconsistent with the HMC's view of the suitability of the IWM as a potential site in a number of ways.
- 8.84 Firstly, there appear to have been a number of different memorial's proposed. The HMC Report refers to "*the building of a new wing*",²⁷³ the ES alternatives assessment to "*a back wall*",²⁷⁴ and the Applicant's planning witness to "*a two-dimensional text-based memorial covering a side elevation of the building*".²⁷⁵ A drawing of the proposed development by Foster + Partners suggests a very substantial scheme, with a large scale LC (located underground, like that proposed at VTG), a "*wall of remembrance*", recalling the Vietnam memorial in Washington, and a carved oculus surrounded by a landscape spiral.²⁷⁶ The dismissal of the IWM proposal in the ES Addendum is irreconcilable with the nature of the scheme proposed, and with the fact that the IWM and the London Borough of Southwark are public bodies who could 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 been required would not have been a significant objection to the Foster + Partner's scheme, particularly given the scale of Geraldine Mary Harmsworth Park and the opportunities for re-provision that it presents, nor was it suggested by the London Borough of Southwark, the owners of the park, to have been so.
- 8.85 Secondly, the suggestion that the IWM "*lacks significance*" 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

²⁷⁰ CD5.9 p53

²⁷¹ CD6.49 ES Alternatives Table 4-3

²⁷² Ibid Table 4-2

²⁷³ CD5.9 Commission Report p16 and 54

²⁷⁴ CD6.49 ES Alternatives p7 Table 4-2

²⁷⁵ CD8.34 PoE Mr Goddard para 4.5(iii)

²⁷⁶ CD13.10 Illustration of the Foster scheme for the IWM provided to the Inquiry

museum exhibitions, accepted its prominence and international significance as a “*world-renowned*” museum.

- 8.86 Thirdly, the portrayal of the IWM as a museum “*whose aims in remembering Britain at war... are not consistent with the aims of the UKHMLC*” 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*” its consequences.²⁷⁷ That objective was 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*”.²⁷⁸ As Professor Greenburg explained, it was 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*”.²⁷⁹ The Applicant’s presentation of the IWM as “*celebrating British achievements in various wars*”²⁸⁰ is at least 20 years out of date and irreconcilable with its own evidence.
- 8.87 Finally, in terms of deliverability, the trustees of the IWM and the London Borough of Southwark, as owner of the surrounding park, have embraced enthusiastically the opportunity to host a new Holocaust Memorial and LC, as the HMC themselves acknowledged.²⁸¹ There is no evidence that the IWM’s enthusiasm has waned, nor that either the IWM or the London Borough of Southwark support 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.
- 8.88 The HMC did not regard a location close to Parliament as being necessary to capture the vision set out in its report.²⁸² Nevertheless, in addition to the reasons stated in the ES alternatives analysis, the Applicant relies heavily on the importance of a location adjacent to Parliament as a justification for developing the UKHMLC at VTG. This was an objective cannot be identified anywhere in the thorough and comprehensive report of the HMC. References to the idea of locating the story of the Holocaust within a Parliamentary context are an after the event justification, inconsistent with the HMC’s recommendations, which regarded as suitable sites a considerable distance from the Palace of Westminster.
- 8.89 The Applicant’s attempts to draw a comparison with the location of the Berlin Memorial close to the Reich Chancellery is 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

²⁷⁷ WCC XX Mr Greenberg

²⁷⁸ Ibid

²⁷⁹ Ibid

²⁸⁰ Applicant XX Mr Dorward

²⁸¹ CD5.9 p43

²⁸² WCC XX Mr Greenberg

which the appalling events of the Holocaust were directed. There is an obvious symbolism in situating the "*Memorial to the Murdered Jews of Europe*"²⁸³ close to that location. But there can be no meaningful parallel to support locating the UK Memorial in VTG, adjacent to Parliament.

- 8.90 Moreover, whilst this case must focus on 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 fact that "*it symbolizes ...parliamentary democracy*" risks failing to recognise that "*democratic and humanitarian values ...are not British values, they are universal values*". In doing so runs the risk of "*complacency and self-satisfaction*".²⁸⁴ 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.
- 8.91 There is no good reason for rejecting the IWM site. The reasons given in the revised ES Chapter on Alternatives are an ex post facto attempt to rationalise the rejection of the site. This is without any public consultation or professional advice and is against the HMC's recommendations and the comprehensive evidence gathering exercise that underlay them.

Conclusion on Alternatives

- 8.92 WCC supports fully the delivery of a fitting memorial in London to the victims of the Holocaust and a LC. However, 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 would be capable of being appropriately and successfully achieved by a more modestly designed but fitting memorial in VTG, with a LC provided elsewhere; or, if co-location is considered to be critical, by a memorial and LC being delivered in another appropriate location, such as at the IWM. 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

- 8.93 The starting point when determining any planning application is the development plan. Section 38(6) of the P&CP 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.
- 8.94 The proposed development conflicts with the development plan. Specifically, Policies S25 and S38 of the WCP, saved Policies ENV 16 and DES 9 of the WUDP, and LonP Policy 7.21 as a result of the impact on protected trees; WCP Policies S25 and S26, saved Policies DES 1, DES 9,

²⁸³ The official title of the Memorial in Berlin.

²⁸⁴ CD10.50 Professor Sir Richard Evans speaking note

- DES 10, DES 12, and DES 16 of the WUDP, and Policies 7.8 and 7.10 of the LonP as a result of harm to designated heritage assets; and Policy S35 of the WCP, Policy ENV 15 of the WUDP, LonP Policy 7.18 as a result of harm to and loss of open space.
- 8.95 The fact that Policy S27 of the WCP encourages the principle of uses of international importance within the core CAZ does nothing to undermine these wider conflicts. Policy S27 cannot be considered in isolation, ignoring the more conventional development control policies in the development plan.
- 8.96 For the purposes of s.38(6) there is conflict with the development plan, considered as a whole. It follows that a statutory presumption against the grant of planning permission arises. There are also material considerations which militate against the grant of planning permission.
- 8.97 This development would not accord with the NPPF, and in particular the policies protecting Open Space (para. 97) and the great weight that should be attached to the conservation of designated heritage assets (para. 193). There would also be conflict with relevant emerging development plan policy,²⁸⁵ specifically: Policy G7 of the LonP 2021 in relation to trees; Policies HC1 and HC2 of the LonP 2021 in relation to the historic environment; and LonP 2021 Policy G4 in relation to open space.
- 8.98 The Applicant accepts that this development would 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 1990.²⁸⁶ WCC considers that there would be harm to the settings of a wider range of listed buildings as well as harm to the character and appearance of the WAPSCA, thereby engaging s.72 of the PLBCA Act 1990. If correct, these factors add strength to the negative statutory presumptions.
- 8.99 Against this, 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 and 196.
- 8.100 WCC fully supports the delivery of a fitting memorial in London to the victims of the Holocaust. It also supports a LC, 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 would be benefits of the proposal. These objectives, important as they are, do not have to be met through a development in this location of the form and scale proposed. This reduces substantially the weight which attaches to the scheme's benefits.
- 8.101 In that context, the benefits of delivering a memorial of this form and scale in this location would not outweigh the harm that the development

²⁸⁵ Now part of the published LonP 2021

²⁸⁶ Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137 per Sullivan LJ at para. 23

would cause to VTG and its highly sensitive surroundings, including harm to the significance of a range of affected heritage assets.

- 8.102 Given the national, indeed international, importance of appropriately marking the terrible events of the Holocaust within the United Kingdom, 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 were expressed at the Inquiry. This proposal is not the correct response to the challenge. Therefore, it is WCC's case that planning permission for the development proposed should be refused.

9 The Case for Thorney Island Society/Save VTG & London Gardens Trust (TIS/SVGT & LGT)

This summary of the TIS/SVGT & LGT case contains all material points relevant of their case, and additional references to inquiry proceedings for clarity.

- 9.1 The combined case presented by the TIS/SVGT & LGT is, in summary, that the proposal would cause substantial harm to the settings of numerous designated heritage assets of the very highest value and significance. It would result in both the loss and transformation of substantial areas of valuable and valued open space in an area of already low provision. It would be likely to result in the loss of fine mature trees which contribute substantially to the quality and value of VTG and the setting of the Palace of Westminster and the WHS.

Background

- 9.2 TIS/SVGT & LGT refer to the evolution of the current proposal, and in particular the many statements about commitment of the Government, the Prime Minister and the SoS to the development proposed in VTG being carried out. Concerns are raised about the lawfulness of the decision-making procedure involving the Applicant for the planning permission being the decision maker on his own application.²⁸⁷
- 9.3 Notwithstanding the uncompromising commitments to the project expressed by the SoS, the unanimous resolution of WCC is that it would have refused the application if it had not been called in. This was made having full and proper regard to the planning merits and, although the committee supported the principle of the proposal, they accepted the recommendation of their professional officers and concluded that the development was unacceptable because of its size, design, location and associated activity, as well as for reasons of harm to heritage assets, impact on the many mature trees on the application site and as a result of loss of recreational open space.

²⁸⁷ The LGT has challenged the handling arrangements for the case in *London Historic Parks and Gardens Trust v Secretary of State for Housing Communities and Local Government* [2020] EWHC 2580 (Admin)

The Thorney Island Society/Save VTG and the London Gardens Trust

- 9.4 The TIS is the local amenity society for the area of south-east Westminster, which includes VTG. Their remit is to protect the amenities that people living and working in the area value.
- 9.5 The SVTG campaign was founded in the autumn of 2016, to coincide with the launch of the design competition for the Holocaust Memorial proposed for VTG. The campaign is supported by a very large number of individuals and organisations. Their supporters originate not only from SW1, but from all over London, the UK and even abroad.
- 9.6 The LGT is a charity with the principal object of preserving and enhancing the quality and integrity of London's green open spaces. The Trust was not consulted before the launch of the public consultation which assumed the location of the proposals in VTG. This is surprising given its affiliation to the Gardens Trust, a statutory consultee in the planning process.
- 9.7 The Trust takes its work and responsibilities very seriously and has invested considerable effort to produce a carefully considered Heritage and Significance Statement for VTG.²⁸⁸ The Trust were also the Claimants in the High Court judicial review of the SoS's decision making arrangements proposed for the determination of this application.
- 9.8 The stance of TIS/SVTG & LGT in relation to the appeal proposal complements the position of WCC, although two additional issues are also raised, namely, highways impact and flood risk.

The Principle of the Proposed Development

- 9.9 TIS/SVTG & LGT are not opposed to the principle of an appropriate memorial to the horrors of the Holocaust. Indeed, many of their supporters are Jewish people whose families were either forced to flee the Holocaust or who perished in it. The delivery of the UKHMLC is recognised as an important public benefit, albeit a generic one.²⁸⁹
- 9.10 But the location of the proposals in VTG are opposed on the basis of numerous and fundamental objections to them which are set out below.

VTG as a Location for the Proposals

- 9.11 VTG is an inherently unsuitable location for the proposed UKHMLC. Indeed, it is hard to think of a more sensitive location in terms of its cultural, historical and heritage significance. Moreover, the proposal would be located in a public RPG, an existing open space protected under development plan policies and the NPPF, and within an area of acknowledged shortage of provision.

Consideration of Other Sites

- 9.12 After studying the available options the HMC identified three central London sites, IWM, Potter's Field and Millbank,²⁹⁰ each regarded as fulfilling the HMC's objective of providing a "*striking new Memorial to*

²⁸⁸ CD8.46

²⁸⁹ CD8.51 Mr Lowndes PoE, para 6.4

²⁹⁰ CD5.9 p53-56

serve as the focal point for national commemoration of the Holocaust... prominently located in Central London".²⁹¹ Subsequently, CBRE (property consultants) shortlisted three potential sites to fulfil those objectives, Royal College of Gynaecologists, Knightsbridge Barracks and Middlesex Hospital, although all were ultimately regarded as unsuitable and/or unavailable.²⁹²

- 9.13 VTG was, by contrast, chosen in a so-called "*moment of genius*" in January 2016²⁹³ without any professional assessment to support the choice of the site, and no public consultation as to its suitability, acceptability or desirability as a location. Subsequent consultation through exhibitions and presentations cannot remedy this failure of consideration because there was no option, despite vocal opposition to the proposals from large numbers of the public, for the proposed location to be reconsidered by this stage.
- 9.14 The exercise of consideration of alternatives in the ES²⁹⁴ was a perfunctory exercise carried out long after VTG had been settled on. The reference to IWM as a possible alternative location was based on an incorrect factual summary of the Sir Norman Foster designed bid²⁹⁵, dismissing the Memorial element as being "*attached to a back wall with no prominence and a below-ground LC adjacent to it*"²⁹⁶. What was actually proposed was a three-storey high wall of remembrance alongside the building and a sculpted memorial located beside that, with the LC provision below ground.
- 9.15 These important matters have been excluded from the justification of the proposals before the Inquiry as the site search process was not a matter for scrutiny. The location of the proposals in VTG is in effect a fait accompli.

Effect of the proposals on the Significance of the Grade II Registered Park and Garden

- 9.16 The heritage designations within and surrounding the application site intersect and overlap. Therefore, many of the impacts on any one of them would also be suffered by others.
- 9.17 In addition to heritage designations, as an area of existing open space VTG is covered by the policy in para 97 of the NPPF. The presumption is that it should not be built on unless specific criteria are satisfied. During the Inquiry the Applicant suggested that para 97 criteria b) requiring lost open space to be replaced by equivalent or better provision, and criteria c) allowing development for "*alternative sports and recreational*

²⁹¹ Ibid p41

²⁹² CD 8.34 Mr Goddard PoE para 4.9

²⁹³ XX Mr Balls by TIS/SVVG & LGT

²⁹⁴ CD6.11 p12 - updated in CD 6.49

²⁹⁵ CD13.10

²⁹⁶ CD6.11 para 4.1.3

provision", were met by the development. However, these claims were not prefigured in evidence²⁹⁷ nor effectively supported in XX.²⁹⁸

- 9.18 As all parties accept, VTG is an oasis of calm in the heart of the capital, framed by a large number of very fine substantial mature trees- which are integral to its special character- and benefitting from a most pleasing uncluttered openness of aspect. It functions as a green lung in an area which already suffers from poor provision of recreational space.²⁹⁹
- 9.19 The Applicant's assessment of the special qualities of the Gardens, and therefore its estimation of the extent of harm, is inadequate in that it does not analyse the heritage asset in terms of its 'values'³⁰⁰, despite the clear guidance to that effect.³⁰¹ Whilst the Applicant's view is that some of the terminology, including 'communal value' can be hard to assess³⁰², fundamentally the character of VTG is in the sum of all its values. Further, communal value is a most important consideration in this particular case.
- 9.20 The Applicant's analysis does not consider wider or simultaneous views or the potential for enjoyment of more than one heritage asset within the wide, open landscape of the Gardens.³⁰³ Similarly, their analysis includes little discussion of the impact of additional hardstanding, soil mounding, and the imposing Hostile Vehicle Mitigation (HVM) barriers and other fencing and ancillary structures on the character and amenity of the VTG.³⁰⁴ The proposal would completely change the existing intimate and tranquil atmosphere of VTG, resulting in the loss of its special qualities and its character being "*irrevocably changed*".³⁰⁵
- 9.21 In purely physical terms the area no longer freely accessible would be 1429 sqm³⁰⁶, apparently equating to 7% of the total park area. However, the proposal would involve the loss of more than a quarter of existing open recreational park space³⁰⁷, cramping the rest of what remains and reducing in size and cutting off the children's playground from the public realm.
- 9.22 Therefore, an arithmetic approach does not ultimately assist in answering the question of what the visible and perceptible impact of developing the UKHMLC in VTG would be. The proposal would involve the loss of a large proportion of these and valued Gardens, and inevitably cause a substantial loss of functional area. This would result in VTG being swamped and overwhelmed by a huge increase in visitor numbers unrelated to the primary function of the Gardens as a public park.³⁰⁸ The mound would not be as accessible to all users as a flat,

²⁹⁷ CD8.34 Mr Goddard PoE para 8.7-8.8

²⁹⁸ XX Lord Pickles by TIS/SVTG & LGT, Day 12, pm; XX Mr Goddard by WCC, Day 17, pm.

²⁹⁹ CD8.45 Mr Moggridge PoE

³⁰⁰ CD8.46 Part 1 Ms Prothero PoE p16 para 1.2.7

³⁰¹ CD8.46 Part 2 HE Conservation Principles, Policies and Guidance

³⁰² XX of Dr Miele by TIS/SVTG & LGT

³⁰³ CD8.46 Part 1 Ms Prothero PoE p16 para 1.2.8

³⁰⁴ Ibid

³⁰⁵ CD8.52 PoE Dr Moore para 4.2.1

³⁰⁶ CD5.30 para SoCG 10.4

³⁰⁷ CD8.46 Part 1 Ms Prothero PoE, LPGT Plan 3

³⁰⁸ CD 8.48 PoE Ms Annamalai and CD8.45 PoE Mr Moggridge

- grassed area. For visitors, the physical loss of functional area would be reinforced by the presence of visitor management staff whose role would be to supervise people coming to see the Memorial and LC.
- 9.23 The experience for park users would be transformed from being able to enter the Gardens unrestricted and enjoy its wide-open views, to having the sense that they are entering the landscaped setting of the new UKHMLC. The influence of the proposals would be felt throughout VTG as a whole.³⁰⁹ Ultimately, the character of the Gardens would be transformed from that of affording the setting for the existing memorials into one where, far from being the Garden of the Nation's Conscience, it would simply become the Garden of the UKHMLC.
- 9.24 The application proposals would irreversibly change and substantially harm the character of the consciously designed Grade II RPG. They would turn a calm green garden space into a cluttered, visually and physically congested and urbanised landscape, to the substantial detriment of its special amenity and character.³¹⁰ The harm to the RPG would be very high, particularly in the light of the other very high value heritage assets located within it and surrounding it. This would be to the extent that the RPG would have to be deregistered.³¹¹
- 9.25 Turning to the correct test for assessing substantial harm, reference has been made to both the Bedford judgement³¹² and the PPG³¹³. It is submitted that the Bedford case does not set out the legal definition of what substantial harm means. It cannot impose a gloss on the ordinary and natural meaning of the words in the NPPF. Similarly, it cannot be imposed as a substitute for the clear wording of the PPG.³¹⁴ Nonetheless, if the Bedford approach was to be applied, it would be satisfied on the basis of the heritage significance of the Gardens, the WAPSCA and the BM being "*very much reduced*".³¹⁵
- 9.26 Notwithstanding the variety of views across the range of parties to and participants the Inquiry, TIS/SVGT & LGT take the view that substantial harm would be caused. There is also a substantial degree of common ground between TIS/SVGT & LGT and WCC, especially having regard to the likely effect on trees. The Applicants witnesses 'net' or 'balance' out at lesser degrees of harm. HE are somewhere in the middle. However, it should be noted firstly that HE did not seem to take full account of the obstruction of View 22, and secondly that they focused on the built

³⁰⁹ XX of Professor Tavernor by TIS/SVGT

³¹⁰ CD8.46 Part 1 Ms Prothero PoE para 6.1.7 and CD8.45 Mr Moggridge PoE para 23

³¹¹ Ms Prothero response to IQ

³¹² CD7.2 Bedford BC v SoSCLG and (2) Nuon Ltd (2012) para 24-25

³¹³ CD4.13 PPG para. 18a-018-20190723

³¹⁴ Ibid For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest

³¹⁵ As agreed by Ms Prothero and Mr Lowndes in XX by the Applicant

environment rather than the character of the RPG as a whole, reflecting their more limited remit.³¹⁶

Whether the proposals would preserve the character and appearance of the WAPSCA

- 9.27 WAPSCA is one of the most, if not the most, significant and valuable CAs in the country, of very high significance. The proposals would not preserve but would in fact substantially harm the character and appearance of the CA, of which VTG forms an integral part, and therefore cause substantial harm to its significance.
- 9.28 This issue very much overlaps with the topics of harm to the RPG, the WHS, and the Palace of Westminster as a listed building. Therefore, the same causes of substantial harm to those assets are prayed in aid here. Additionally, the Applicant has agreed that impact on a CA is not to be judged according to how great or little a percentage of it is affected; the important consideration is to look at the impact on the part of the area which is affected.³¹⁷

Whether the proposals would preserve setting of Grade II* BM

- 9.29 The Grade II* BM is considered to be of very high significance. It would be *engulfed* by the proposals³¹⁸, causing substantial harm to its setting and significance.³¹⁹ This is starkly illustrated by an image from the Design and Access Statement (DAS).³²⁰ The BM would be left looking *"incidental, a piece of flotsam in on the wave of new work"*.³²¹ There is no viewpoint image from the north west entrance to VTG, close to the Pankhurst Memorial, but it seems likely that the BM would be altogether obscured from this location.
- 9.30 As recorded in the ES, the impact in views from Dean Stanley Street would be a *"moderate adverse effect to visual receptors"*³²², an effect defined as one in which *"the scheme would cause a noticeable deterioration in the value of the receptor"*.³²³ This impact is the more material and significant given the intentional placing of the BM at the end of that axial path continuing the line of Dean Stanley Street, as shown on the 1949 plan³²⁴, and explained in the accompanying paper laid before Parliament, with support from the Royal Fine Arts Commission.³²⁵
- 9.31 None of the benefits claimed as enhancing the setting of the BM, in the form of new benching, lighting, and improvements to interpretation,

³¹⁶ CD10.68 Part 1 Mr Lambert, Director of the Parks Agency, explains the role of Historic England in the planning system

³¹⁷ XX of Dr Miele by TIS/SVTG

³¹⁸ CD8.45 Mr Moggridge PoE, para 7.

³¹⁹ As set out in the evidence of Ms Prothero (CD8.46), Lowndes (CD8.51), Dr Moore (CD8.52) and Mr Moggridge (CD8.45)

³²⁰ Reproduced at CD8.52, Dr Moore PoE p8

³²¹ Ibid, Section 4.2.2.2

³²² CD5.1 para 9.202

³²³ Ibid, para 2.44.

³²⁴ CD8.49 Part 1 Figure 4.7, p67

³²⁵ Ibid p107 Quotation from the Paper laid before Parliament by the Minister of Works *"it is desirable however that this memorial of an act outstanding in the annals of Parliament should not be far removed from the scene of its achievement. It is proposed therefore subject to the approval of Parliament to re-erect it on a site in the*

would be sufficient to outweigh the identified harm. In any event, as pointed out by WCC, those benefits could be achieved independently of the application proposals.

Whether the Proposals would Preserve the Setting of the Grade I Palace of Westminster

- 9.32 It is hard to imagine a heritage asset of higher significance than the Grade I listed Palace of Westminster in the whole of the UK. The over large-Memorial and the contrasting styles of its' elements³²⁶ would have a damaging effect on views, thereby causing substantial harm to the setting, and therefore significance of this heritage asset.
- 9.33 More specifically, the proposals would represent a damaging and unwelcome intrusion into views of the Palace from a part of its setting which was consciously planned to afford those iconic views. This would profoundly change the relationship between VTG and the Palace so that it would no longer be seen clearly and dramatically from the Gardens, and many views of it would be blocked, obscured or filtered by a built form quite alien to the character of the area.³²⁷

The effect of the proposals on the OUV of the WHS and its setting ³²⁸

- 9.34 The International Council on Monuments and Sites United Kingdom (ICOMOS UK) is the UK National Committee of ICOMOS (the International Council on Monuments and Sites). ICOMOS develop best practice in the conservation and management of cultural sites and are specialist advisers to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee on Cultural WHSs.
- 9.35 The TIS/SVTG & LGT case is that the proposal would have a highly significant negative impact on the OUV of the WHS amounting to substantial harm within the terms of the NPPF.
- 9.36 The Palace of Westminster was designed to be dominant in the landscape through its form, size and siting and the Victoria Tower itself was designed to be the tallest and most visible part. The setting of the Palace should allow an understanding of it as an entity, of its functions and of the dignity and symbolism with which it is endowed.
- 9.37 The proposal would completely change the character of the Gardens which were designed and laid out to allow an appreciation of the Palace. Its presence would very much reduce and restrict space from which Victoria Tower could be contemplated and understood. Both detailed and medium distance views of Victoria Tower would be highly compromised. Further, the UKHMLC would compete with the symbolism of the Palace with its intricate silhouettes. The UKHMLC would therefore interfere with and demean the setting of the Palace as a vivid symbol of one of the oldest parliamentary institutions in the world; would restrict views of the

VTG at the river end of the footpath which continues the line of Dean Stanley Street. This site has been agreed with the Anti-Slavery Society and the Royal Fine Art Commission".

³²⁶ CD8.52 Dr Moore PoE Section 4.2.2.2

³²⁷ CD8.51 Mr Lowndes PoE para 5.33

³²⁸ This topic was covered in the evidence of Ms Denyer (CD8.53), Secretary General of ICOMOS UK.

- Victoria Tower intended to be a dominant element of its design, and would weaken overall appreciation of the form and siting of the Palace.³²⁹
- 9.38 The Applicant has not carried out a Heritage Impact Assessment in accordance with the ICOMOS Guidance³³⁰, and the general principles of good planning. However, the importance of systematic methodology for identifying heritage impacts or adverse effects on the outstanding universal value of a WHS, is agreed.³³¹
- 9.39 The World Heritage Committee recognised the difficulty of the task of placing a memorial in VTG without harming the OUV of the WHS³³². As such they recommended securing a mechanism whereby the Jury of the design competition for the Memorial would be able to get advice from the World Heritage Centre and/or Advisory Bodies before a final decision is taken. In any event, the selected design and related developments should have been submitted to the World Heritage Centre, in conformity with Paragraph 172 of the Operational Guidelines.³³³ It appears that these recommendations were not followed before the winning competition entry was chosen.
- 9.40 Subsequently, the World Heritage Committee has observed that as currently presented, the proposal would have an adverse impact on the OUV of the Palace, and would unacceptably compromise a key part of its immediate setting and key views. They advised that alternative locations and/or designs should be considered.³³⁴ Further, the conclusion of the ICOMOS's second Technical Review of the proposal as submitted in January 2019 was that it should not proceed according to the current visually intrusive design.³³⁵
- 9.41 The stance of TIS/SVTG & LGT is forcefully corroborated by the conclusions of ICOMOS, as well as by those of WCC.

Whether the Proposals would Preserve the Character and Appearance of SSCA

- 9.42 The proposals would not preserve the character or appearance of the SSCA. The main issues here are the views from St John's Smith Square and along Dean Stanley Street. The moderate adverse effect to visual receptors from Dean Stanley Street was previously referred to. The harm caused to the CA would be less than substantial. However, there would be substantial harm to the setting of St. John's, a Grade I listed building of very high significance.

Whether the Proposals would Preserve the Settings of adjacent Listed Buildings

- 9.43 The proposal would not preserve and would cause less than substantial harm to the settings of the adjacent listed buildings, namely, Norwest

³²⁹ CD8.53, para 79

³³⁰ CD4.6

³³¹ XX of Dr Meile by TIS/SVTG & LGT

³³² CD4.19 Mission Report of the World Heritage Committee, June 2017, p38

³³³ Ibid p40.

³³⁴ CD4.21, Report of the World Heritage Committee, June 2019 p91

³³⁵ CD8.53 p41

House, Nos 1 & 2 Millbank, the river embankment wall, Lambeth Bridge and its obelisks. These buildings are of high significance.³³⁶

Whether the Proposals would result in the Loss of or harm to Trees of Amenity Value

- 9.44 The Applicant's starting point is that "no one contends that our proposals would cause the death of any of these magnificent trees".³³⁷ However, despite the number of reports produced by the applicant purporting to address this issue, the position remains that the majority of arboricultural witnesses³³⁸ do not regard the submitted arboricultural documentation as sufficient to demonstrate that the potential impacts on the plane trees would not be likely to result in harm to them, potentially leading to their loss.
- 9.45 Therefore, it is not agreed that these matters can be satisfactorily addressed or assured by means of an Arboricultural Method Statement (AMS) to be submitted pursuant to a condition or conditions, as the Applicant proposes.
- 9.46 Trial investigations to see where the critical feeding roots of the trees are likely to be severed cannot be carried out after the event. That must be undertaken before permission is granted based on thorough investigations which simply have not occurred here. The TIS/SVTG & LGT case is that there is unanimity of opinion between the majority of arboricultural witnesses that plane tree roots can grow down to depths of several metres so that they will be at risk of severance from secant piling (*whilst TIS/SVTG & LGT references are given in full below, the Inspector notes that they do not all support this point*).³³⁹ Of particular note is the representation from the Royal Parks who conclude that as significant roots have not been identified from survey work they must be deeper, and would be susceptible to damage.³⁴⁰
- 9.47 The Applicant's arboricultural witness disputed this evidence as being unreliable or misleading and therefore not credible, though gave little

³³⁶ CD8.51, Mr Lowndes PoE

³³⁷ CD11.2 Applicant opening submission

³³⁸ Mr Barrell, in common with Mr Mackworth-Praed and the officers of WCC

³³⁹ For example CD 8.49 Mr Barrell PoE para. 2.2; CD 8.39 Mr Mackworth-Praed PoE para. 2.5.14; CD 5.11 WCC Officer Report page 63; Dr's Helliwell (CD 8.40 part 2 para. 11); Biddle (CD 13. 9 p298) and Dobson (CD 8.16 p82 para 8) would seem to agree with them. So would the Royal Parks, CD 6.46 Part 2 fourth page under heading Root Assessment: "Plane trees can and often do root down to depths of 4-6m, and sometimes deeper. The report reinforces this".

³⁴⁰ CD6.46 Part 2 p4 "The root survey has identified roots only as deep as a metre and didn't find any significant roots. This does not mean that they are not present. If the roots are not present in the surface, they must be deeper as the trees cannot survive without an extensive root system. For that reason, a reliable assessment of the impact of roots that will be cut must be made before planning permission is granted, otherwise the damage cannot be assessed. The reports make statements that suggest that the roots will be assessed when they are excavated, and a programme of work put forward at the time to help the trees recover. Some plane roots can be as large as 800mm diameter and be many decades old. Significant root loss like this can't be recovered and encouraged to grow back by adopting techniques such as irrigation and fertilisation. Any suggestion that it can is conjecture, especially when there has been no identification of the roots affected".

- evidence of his own observations.³⁴¹ The Applicant also failed to apply the industry standard technical guidance BS 5837 in relation to RPAs.³⁴²
- 9.48 The Applicant maintains that the trees which would be most directly affected are healthy and could withstand even heavy pruning.³⁴³ However, the Applicant's evidence in relation to tree health and vitality reveals that trees 12, 13, 17 and 18 are healthy but suffering "*mild to moderate physiological stress*" and tree 12 has both "*reduced vitality*" and "*mild to moderate physiological stress*".³⁴⁴
- 9.49 Moreover, this report goes on to say that after root pruning, "*it would be reasonable to presume healthy trees may experience a reduction in vitality; and the stress level of trees with 'mild to moderate' stress may increase to 'moderate'.*"³⁴⁵ This understates the likely degree of impact as it is not based on either the correct drawing of RPA's, or the evidence on the extent of plane tree root growth. The Inquiry heard what the consequences of root severance are, and how those consequences are exacerbated for trees suffering from stress.³⁴⁶ The fact that it would take replacement plane trees 30-40 years to grow back was unchallenged by the Applicant.³⁴⁷
- 9.50 The evidence called by the Applicant on this most important issue is not sufficient to demonstrate with any confidence that trees would not be harmed and even killed. On this basis TIS/SVGT & LGT maintain that there would be unacceptable risk of loss or harm to the splendid trees in VTG.
- 9.51 This objection is free-standing of the heritage and other objections to the application proposals. It represents a wholly but equally compelling separate basis for rejecting them.

Whether the proposals/increased visitor activity would result in loss of public open space and the functionality and character of VTG for Recreational Purposes

- 9.52 In addition to the points raised above about the loss of open space, there are two further issues. First, there would be a loss of playground area.³⁴⁸ This would include the expansion westwards into the shrubbery along Millbank would result in the loss of important vehicle emission and noise mitigation. Further, it is not accepted that the existing playground needs "*improving*".³⁴⁹ There would also be an inherent undesirability in potentially sharing the park/kiosk/playground space with UKHMLC visitors and/or staff.³⁵⁰
- 9.53 Secondly, the mounded area would accounts for another 2000 sq m of existing park space which will be remodelled to accommodate the

³⁴¹ CD8.16 PoE Dr Hope

³⁴² CD4.16 para 4.6.2

³⁴³ CD8.16 PoE Dr Hope para 8.1.5

³⁴⁴ CD11.12 Tree Health and Vitality Diagnostic Assessment p5

³⁴⁵ Ibid p7

³⁴⁶ Evidence in Chief Mr Mackworth-Praed and XX of Mr Mackworth-Praed by Applicant

³⁴⁷ Evidence in Chief Mr Mackworth-Praed

³⁴⁸ CD8.46 Ms Prothero PoE Part 1 para 1.1.5

³⁴⁹ CD8.48 Ms Annamalai PoE

³⁵⁰ Ibid

application proposals. This would not be accessible to all park users (such as the old, non-ambulant or disabled)³⁵¹, and would be unattractive when wet or muddy. Also, if there was a persistent issue of people peering over the haha at the top of the slope, uniformed staff could be deployed here.³⁵² This is another matter which would limit the amenity and usability of the Park.

- 9.54 Reference is also made to the effect of the presence of security staff, altering the atmosphere of VTG.³⁵³

The effect of the Proposals on the Security of the Area

- 9.55 The effect of the proposals on the security of the area is addressed in the written submission on security issues.³⁵⁴

Additional objections– Highways Impact and Flood Risk

- 9.56 Objections in relation to highways impact and flood risk are maintained, despite the lack of objection from the WCC or the Environment Agency (EA).
- 9.57 In relation to highway matters, both the Council and TfL acknowledge that there would be a “*significant impact*” on the pavement outside the Gardens, especially when visitor numbers are at their peak. This pressured environment would be constrained by parked coaches³⁵⁵ and HVM measures³⁵⁶. This would be inimical to the objective of Healthy Streets, which is to encourage greater pedestrian and cycle use of the public realm. The inhospitable environment created around the entrances to VTG would further detract from their character as a popular public park.
- 9.58 The SoS specifically asked that flood risk should be addressed. The importance of choosing the correct location for development is reflected in the NPPF.³⁵⁷ The TIS/SVTG & LGT case is that the risk of a breach flooding event has not been adequately addressed or provided for.³⁵⁸ Specifically, the EA has advised that the “*proposal does not have a safe means of access and egress in the event of flooding from all new buildings to an area wholly outside the floodplain, however, safe refuge within the higher floors of the proposed development is possible*”.³⁵⁹ The concern is that such upper level provision would not help anyone who was either on the entrance stairs to the LC, or in the basement if a breach event occurred, a fact which WCC has not recognised. On this point it is relevant to refer to the earlier EA advice to WCC that “*if you are not satisfied with the emergency access/egress or refuge, then we*

³⁵¹ Noting the steeper slopes, CD8.7 Mr O’Shea PoE Fig 6.9.8

³⁵² TIS/SVTG & LGT XX Mr Brittle

³⁵³ CD8.48 Ms Annamalai PoE

³⁵⁴ CD5.35 SVTG Security, crime and disorder assessment

³⁵⁵ 11 coaches per day unloading and loading respectively for 5 and 15 minutes each time

³⁵⁶ These are described as “temporary” but with no obvious plans to remove or relocate them

³⁵⁷ NPPF para 155 “Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime...”

³⁵⁸ CD8.50 PoE Mr Coombs

³⁵⁹ CD5.16 EA Response letter 2 December 2019

would recommend you refuse the application on the grounds of safety".³⁶⁰

- 9.59 In the case of a breach flooding event assessed in accordance with a 2100 scenario, a 1 metre high wave of water travelling at 2.5 metres per second would swamp the UKHMLC. This would fall within the *danger for all- including emergency services* Hazard Rating, leading to inevitable loss of life.³⁶¹ Even with the 2014 flood levels scenario, a wave of water 90mm would represent a serious hazard to someone on the LC stairs.³⁶²
- 9.60 The fact that there would be very low probability of a breach event occurring does not mean that it would not be necessary to plan for this. *"It's like saying we don't need a fire escape because we don't think a fire is ever going to happen (because we've got a sprinkler system or something)"*.³⁶³
- 9.61 Therefore, the identified concerns of the EA have not been addressed. Further, the NPPF para. 155 requirement is that inappropriate development relation in areas at risk of flooding should be avoided by directing development away from areas at highest risk. In this case the IWM would not have the same problems, because this site is not next to the river. Where development is necessary in such areas, para 155 also requires that it should be made safe for its for its lifetime. This requirement is not satisfied here.
- 9.62 Accordingly, both of these two additional matters remain objections of substance to the application proposals.

Other material considerations, including any Public Benefits the proposals might bring

- 9.63 TIS/SVTG & LGT contend that substantial harm would be caused to all of the heritage assets most closely affected. The public benefits referred to by the Applicant include the delivery of the UKHMLC; social benefits by helping to fight racism and discrimination in all its guises; environmental benefits in the form of the highest architectural and design quality; and a contribution to the economic importance of Westminster's cultural and tourist attractions.³⁶⁴
- 9.64 The delivery of the UKHMLC is an important public benefit. However, this benefit is 'generic' in the sense that it would equally arise in any number of less sensitive locations, such as at the IWM. Therefore, such a 'public benefit' cannot be so substantial as to outweigh the substantial harm to heritage significance arising in and to VTG, and the surrounding exceptionally high value heritage assets.³⁶⁵
- 9.65 It is not accepted that the existence of an alternative proposal or site is only a material consideration if there is a specific scheme in existence (such as occurs in a conjoined planning appeal or otherwise). It has

³⁶⁰ CD8.50 PoE Mr Coombs, EA Correspondence 9 August 2019 p25

³⁶¹ With refence CD8.50 Attachment 1 and CD9.7 Ms Nunns Rebuttal Proof p10

³⁶² Mr Coombes, during RTD

³⁶³ Ibid

³⁶⁴ CD8.34 Mr Goddard PoE Section 10

³⁶⁵ CD8.51 Mr Lowndes PoE para 6.4

been established that *"Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it"*.³⁶⁶

- 9.66 The need for co-locating the UKHMLC with Parliament is questioned.³⁶⁷ The reasons for doing so are not clearly articulated, beyond it being a 'good thing' to have the UKHMLC next to Parliament.
- 9.67 The idea of contrasting the high ideals of Government through Parliamentary democracy against the depths of tyranny demonstrated in the Holocaust, or of reminding national Governments that they were key players in the events of the Holocaust, is not something which requires the UKHMLC next door to bring about.³⁶⁸
- 9.68 Furthermore, this connection could be seen to be disparaging of the dutiful, hardworking and right-thinking people and MPs who already appreciate and recognise these issues. Would putting the UKHMLC in VTG really teach those lessons to anyone who doesn't?
- 9.69 The claimed architectural quality of the proposals is disputed. Their design is not up to the usually high standard of their respected architects. A large part of the problem is considered to be the fact that the architects were presented with too large a project for too small and constrained a site.³⁶⁹ Some of the design issues considered identified relate to cacophony versus crescendo, general 'busyness', the familiarity of the devices used (but their lack of resonance for many British people), the 'one-way' conception of the journey through the Memorial and the fact that combining a Memorial and LC is not of itself innovative.³⁷⁰ The fact that the Applicant's witnesses consider that the proposal could be a Grade I listed building of the future is another example of the over-enthusiasm and lack of proper justification which has gone into the Applicant's case. Accordingly, the architectural quality of the proposal amounts to *"no public benefit"*.³⁷¹
- 9.70 The contribution to the local economy would apply equally to a UKHMLC located elsewhere in central London, such as at the IWM. If there is to be no charge for tickets to visit the Memorial, then there would be no economic benefit in that respect.
- 9.71 It is further submitted that none of the sources of substantial harm identified above are necessary to achieve the contended substantial

³⁶⁶ CD16.2A Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299

³⁶⁷ CD8.51 Mr Lowndes PoE para 6.6

³⁶⁸ CD8.1 Mr Balls and Lord Pickles PoE, para 51, includes further points about how the location of UKHMLC would promote reflection by "Asking what causes governments... to support such atrocities"; reminding people that "actions and decisions taken specifically by the British Government had profound implications for many victims of the Holocaust"; "a challenge specifically to British citizens and parliamentarians to take responsibility for the commitment to avoid future genocides"

³⁶⁹ CD8.52 Dr Moore PoE

³⁷⁰ TIS/SVGT & LGT XX of Sir David Adjaye, Mr O'Shea, Mr Bruno and Professor Tavernor

³⁷¹ CD8.51 Mr Lowndes PoE para 6.4

public benefits within the terms of para 195 of the NPPF, especially given the availability of the IWM as a location where they could be realised.³⁷² In fact a lot of the 'benefits' of implementing the proposals are questionable. It is evident that the Jewish community, including survivors of the Holocaust, are far from being united behind the proposals.

- 9.72 A comment to the Inquiry has been made by Lili Pohlman, Joint President at LfR, who said: "*I recommend the space, which is enormous, at the Imperial War Museum for the Holocaust Memorial. They have gardens and space, it is guarded, there is security and it is an excellent place, part of history and relevant to the war*".³⁷³ This highlights the dichotomy in public opinion about the merits of the proposals at the heart of the Jewish community, and even amongst Holocaust survivors.
- 9.73 Questions are raised about the value of the proposals and whether they meet the objectives envisaged for the project, such as the extent to which they represent a meaningful symbol of Holocaust remembrance. For example, in relation to the 22 passages between the 23 fins, Sir Richard Evans³⁷⁴ authoritatively described the number 22 as *arbitrary*. Further evidence was presented by the Applicant on this point.³⁷⁵ However, it is respectfully submitted that Sir Richard's view is entitled to greater weight on this issue.
- 9.74 Also, the LC offer would be less than the 'campus' contemplated by the HMC.³⁷⁶ Sir Richard Evans summed this up by saying that "*The proposed LC in Westminster would only be an embarrassment for Britain if it laid claim to be a national centre of learning and research on the Holocaust*".³⁷⁷
- 9.75 The TIS/SVGT & LGT position is there would be positive disbenefits resulting from the implementation of the appeal proposals. Apart from the undesirable and unacceptable direct and indirect impacts on Designated Heritage Assets (DHAs), there would be the loss of a cherished public park through its transformation from a quiet, tranquil open space to a busy, congested and over-developed space. The quality of the space would be subordinated to the large disruptive Memorial with all the trappings of a civic space, staff, security guards and substantial visually intrusive landscaping to accommodate the built structures. Any improvement represented by the quality of these works would not be justified or required by the current condition of the gardens.

³⁷² TIS/SVGT & LGT Re-Examination Mr Lowndes

³⁷³ Comments from Mrs Lili Pohlman taken by telephone, 6 October 2020

³⁷⁴ Professor Emeritus in history at the University of Cambridge, oral presentation to the Inquiry (speaking note at CD10.50)

³⁷⁵ CD11.8 Mr Bruno Additional note

³⁷⁶ CD 5.9 The Prime Minister Holocaust Commission Report, p43, anticipated a 'world class Learning Centre at the heart of a campus driving national educational activity'; CD8.41 Part 12 UKHMLC Search for a Central London site, p6 sets out requirements including a 150 seat auditorium for lectures.

³⁷⁷ Professor Sir Richard Evans, oral presentation to the Inquiry

Conclusion

- 9.76 The proposals are unacceptable due to conflict with policies for the protection of the historic and natural environments and the protection of open space. They cannot on any view lay claim to the description of 'sustainable development'.
- 9.77 They would cause substantial harm to the settings of numerous DHAs of the very highest value and significance. They would result in both the loss and transformation of substantial areas of valuable and valued open space in an area of already low provision. They would be likely to result in the loss of fine mature trees which contribute so substantially to the quality and value of VTG, the setting of the Palace of Westminster and the WHS.
- 9.78 Other concerns:
- (1) the application proposals were not properly consulted on before VTG was suddenly selected;
 - (2) there was no transparent, let alone objectively justified assessment of the suitability of VTG as the location for the proposals (instead of e.g. IWM);
 - (3) there was no proper analysis of the significance of VTG having regard to heritage values;
 - (4) no design review of the proposals was undertaken by an independent body such as CABE;
 - (5) no heritage impact assessment was undertaken in accordance with ICOMOS Guidelines;
 - (6) despite ICOMOS's clear recommendation, no advice was taken by the design competition jury who selected the design on the impact on the WHS; and,
 - (7) there is no evidence that trees will not be harmed if not actually destroyed as a result of the invasive deep excavations required to accommodate the proposals.
- 9.79 TIS/SVTG & LGT are concerned about the premature and presumptuous assurance on the part of the Applicant that the proposals should or 'will' be built in VTG, in effect regardless of any objection to them. It is submitted that permitting these controversial, damaging and ultimately unjustified proposals for VTG would simply be wrong. This is especially so when all the HMC's original objectives could be simply realised and delivered at the IWM. Indeed, if only those proposals had been pursued back in 2015 when the HMC resolved on them, the UK would probably already have its international, world class, architect designed UKHMLC.

10 The Case for Baroness Deech (BD)

All relevant points of the case for BD, with minor adjustments for clarity, are set out below.

Introduction

- 10.1 The proposal would lead to obvious harms by virtue of building a substantial structure in a public RPG in London, much used and loved by all who have contact with it. It is therefore assumed that for the proposal to be recommended for approval it would be necessary for the public benefits to outweigh the harms by some considerable margin.
- 10.2 The NPPF seeks to protect heritage assets and open space. Development affecting these provisions requires clear and convincing justification, including the consideration of benefits.³⁷⁸ The case made on behalf of BD focuses on three points regarding the public benefits of this project.
- 10.3 First, in order to determine the magnitude of the public benefit of the proposed scheme, consideration must be given to the concept of 'public benefit' and how that is to be determined. It cannot be based on the assertions of interested people, some famous, no matter how deeply and genuinely felt. Nor is it something that can be determined by making assumptions about what constitutes the public interest or good. Such considerations must be influenced largely by the official reports of bodies specifically set up by the state to consider and determine, after conducting extensive consultation and investigation, how the public interest would best be served. In the present case the HMC was created for this very purpose.
- 10.4 Secondly, it is logically and factually impossible to determine the appropriate magnitude and weight of public benefits without considering in depth the question of alternatives. If that were not the case, then every park or open green space in the UK would be available for the construction of, say, a badly needed hospital or other essential service, the public benefit of which is otherwise not in dispute.
- 10.5 Thirdly, the huge controversy which the location for this project has generated considerably undermines and reduces the extent of any public benefit said to be generated by its construction.

Public Benefit and How to Determine it

- 10.6 The Prime Minister's HMC was established in January 2014 as a cross-party and society-wide effort to consider what more Britain should do to ensure that the memory of the Holocaust is preserved and that the lessons it teaches are never forgotten. The HMC ran a national Call for Evidence, which received almost 2,500 responses and included one of Britain's largest ever gatherings of Holocaust survivors at Wembley Stadium, as well as a competition for young people which received more

³⁷⁸ NPPF para 194 and 97 respectively

- than 700 entries.³⁷⁹ The HMC's Report is the primary source of reference when it comes to determining the public benefit of this project.³⁸⁰
- 10.7 The HMC carried out, over a period of a year, a thorough and detailed investigation. It came up with a range of recommendations which were accepted by the government and the opposition of the day. Its findings and recommendations are of the utmost importance on this topic. The requirements it determined to achieve included a striking and prominent new Memorial in central London and a with a physical campus and online hub that would bring together a network of the UK's existing Holocaust education partners, seeking to advance Holocaust education in every part of the country. The LC, which was to be part of the campus, would include a lecture theatre, classrooms, and the opportunity for those who want it to locate their offices or set up satellite offices there, within the wider physical campus. It recommended that the LC should include the IWM Holocaust Exhibition, upgraded and expanded.³⁸¹
- 10.8 Therefore, whilst the Memorial would be in central London, the campus including its LC would be the bringing together of the country's educational partners to direct and govern Holocaust Education throughout the country. Indeed, two of the HMC's four findings were that existing holocaust education was failing to reach significant numbers of young people and there was inadequate support for regional projects.³⁸² More specifically "*In driving a renewed national effort to extend high quality Holocaust education to all parts of the country, the LC and its partners would seek to transform the way Holocaust education is delivered*".³⁸³
- 10.9 'Visitors' are referred to only once in the HMC's recommendations in the executive summary with regard to a LC and without further elaboration.³⁸⁴ In the next 11 paragraphs, the HMC deals at length with national educational activity. The 'exhibition space' aspect of the Memorial for visitors was seen as a minor aspect of the overall project. Yet, as can be seen from the plans, an exhibition space is essentially all that is now envisaged.
- 10.10 The UKHMF set up to implement the HMC's recommendations clearly understood these criteria as a basis for identifying a suitable site for the project.³⁸⁵ It also specified further details of required features and facilities.³⁸⁶ This included a physical campus of at least 5000 sqm³⁸⁷, permanent and temporary gallery spaces; four learning rooms; an auditorium with tiered seating for at least 150 people; two meeting rooms for events and hire; the provision of office space for staff from the

³⁷⁹ CD14.6 UK Holocaust Memorial Foundation 'National Memorial and Learning Centre: Search for a Central London site' p3

³⁸⁰ CD5.9 Britain's Promise to Remember: The Prime Ministers Holocaust Commission Report

³⁸¹ Ibid p13

³⁸² Ibid p12

³⁸³ Ibid p14

³⁸⁴ Ibid p13

³⁸⁵ CD14.6 p4 summarises the HC recommendations for the LC

³⁸⁶ Ibid, p6

³⁸⁷ Ibid, p2 states that sites should be capable of accommodating 5-10,000 sqm over no more than three contiguous floors.

- UKHMF and other Holocaust organisations to locate offices or satellite offices so as to bring together a network of Holocaust education bodies; quiet contemplative space for reflection and commemoration or interfaith prayer room; and, a space suitable for gatherings of up to 500 people.
- 10.11 Very little of this would be achieved in the current proposal. The idea of a campus, with a myriad of different teaching, learning and research offices and rooms over three floors, with the intended interaction between numerous nationwide organisations, with classrooms, lecture rooms, and auditorium, has all been severely curtailed if not actually abandoned.
- 10.12 In its place the proposal would have a much smaller exhibition centre to supplement the Memorial, only part of which could be divided into four rooms, taking up only 40% of the whole. It would be well below even the minimum of 5000 sqm which the UKHMF specified.
- 10.13 The public benefit being promoted is no longer a university style campus, a nationwide centre of Holocaust teaching and research, a hub of activity for the organisations throughout the country which are devoted to teaching about and learning from the Holocaust. Rather, it would be a sort of information centre for the Memorial to enhance the experience for visitors. This would be necessary for the project because the Memorial in and of itself would have no obvious connection with the Holocaust or its victims. Its designer expressly excluded any Jewish or religious symbolism.³⁸⁸ It would appear as 23 semi-parallel metal blades or fins located in a public park. By itself, its purpose would not be clear. As such, it would need an information or exhibition centre below to explain this.
- 10.14 BD challenges the basis of the design of the proposal, in which it is suggested that the significance of the 23 fins is explained by the “22 countries in which the Jewish communities were destroyed during the Holocaust”.³⁸⁹ The number of countries in which Jewish communities were destroyed was actually between 19 and 26, depending on how you count them. Professor Sir Richard Evans authoritatively described the figure 22 as arbitrary.³⁹⁰ The suggestion that the Memorial would resonate with the English meaning of the Latin word ‘Holocaustum’ is also challenged³⁹¹ is unlikely, as few passers-by would have heard of this term, as is the suggestion that the spaces between the blades would ‘recall’ the tunnels in Jerusalem or the sacrifice of Abraham.³⁹²
- 10.15 If the campus of joint activity and offices of all Holocaust educational partners had been achieved as envisaged, there would have been no need to consider the detail of the education and research that would be conducted there. It would have been a centre of Holocaust study and education for the whole country, with the involvement of all national and local Holocaust organisations. That would have been enough justification

³⁸⁸ CD8.5 Mr Bruno PoE para 6.2 we wished to avoid using overtly familiar pictographic symbols such as the Star of David or Hebrew lettering..”

³⁸⁹ Ibid para 6.8

³⁹⁰ Professor Sir Richard Evans, oral presentation to the Inquiry

³⁹¹ CD8.5 Mr Bruno PoE para 6.3

³⁹² Ibid para 6.4

for its existence and therefore its public benefit. The fact that the recommendations of the HMC have not been achieved means that it has been necessary to advance new justifications as to why the Memorial and LC are for the public benefit.

- 10.16 If the Memorial had been proposed in any other location, it would not have been necessary to speculate about what associations would arise in the minds of visitors about the nature of Britain's constitutional arrangements, history and democracy based on this location. Indeed, it would have seemed absurd to do so.
- 10.17 Predictions have been made about how visitors would react or what they would think, as if this could be pre-determined. Perhaps the most sensible reality check on all this speculation came from the teacher, Ms Victoria Boyarski,³⁹³ who said that a typical school child would ask why is the UKHMLC next to Parliament when Britain and its Parliament did not persecute the Jews. Therefore, the experience of the UKHMLC in this location could undermine the public benefits of remembering the Holocaust, honouring the victims and understanding the lessons. The prime question for visitors would be: what is the UKHMLC doing here?
- 10.18 This attempt to link the Holocaust with a location next to Parliament subverts the original purpose of the Memorial as recommended by the HMC. The HMC indicated that it should be built in central London and stand as an affirmation of the values of our society.³⁹⁴ This has nothing to do with role of the Parliament during the second world war, our constitutional arrangements as a democracy, or our system of government. The HMC considered that the very building of the Memorial in central London would express Britain's values. That would be the case whether for VTG or anywhere else in Central London. Therefore, the public benefit of the UKHMLC as recommended by the HMC would exist independently of the VTG location.
- 10.19 The claims made by the Applicant to justify this location are highly debatable and challengeable.³⁹⁵ A case could be made for locating the scheme just about anywhere in central London. For example, if it was located in Whitehall, this would be in the Avenue of Power, close to the seat of government where decisions were made with regard to Britain's role during the war, as opposed to Parliament itself; or on the other side of the river Thames, which would show that democracy is impermanent and flows like water. If proximity to Parliament is so overwhelmingly in the public interest, why not build the Memorial in the lobby of Parliament itself?

The Question of Alternatives

- 10.20 Secondly, the question of whether or not there is an acceptable alternative location is fundamental to the consideration of the public

³⁹³ Oral presentation to the Inquiry

³⁹⁴ CD5.9 p13: the new memorial must "serve as the focal point of national commemoration of the Holocaust. It should be prominently located in Central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust. This will stand as a permanent affirmation of the values of our society."

³⁹⁵ CD10.25 As set out in the evidence of Dr Gerhold

benefits relating to a proposal in a public park, and whether any benefits would be sufficient to outweigh harms. Without considering the possibility of alternatives, the question is how much weight can be put on the public benefit. It is suggested that public benefit cannot logically exist independently of the alternatives.

- 10.21 A scenario is given to illustrate the problem: part of Westminster could be in serious need of a hospital and medical experts appointed to find a suitable site in the area. Perhaps 24 possible sites in Westminster could be identified. Perhaps three of those sites were found to be particularly well suited, maybe not ideal but could meet the overwhelming public need for such a facility. Perhaps then someone charged with finding a site could have a flash of genius that it could be sited in VTG, cutting out all the debate and the difficulty of acquisition and paying for it. No one could argue that the need for the hospital is not overwhelmingly in the public interest.
- 10.22 In this context the fact that 24 alternative sites had been identified, with three or four of them very promising, though not properly investigated or considered, would be relevant. It would be particularly relevant if one of the sites was already a medical facility and was keen to take on or incorporate the new hospital. In these circumstances would it be said that planning considerations should relate only to whether this hospital should be sited in the park, and not the alternative locations?
- 10.23 In the present case there is evidence about the availability of alternative sites. In particular, there is the clearest possible evidence that the IWM would have been available as a highly suitable, indeed desirable, site for this project. It was identified by the HMC as one of three sites. It is understood that the IWM welcomed this opportunity and offered to build a new wing to house it. There are plans or concepts for plans by Sir Norman Foster.³⁹⁶ It is a central London site, it is very high status, iconic, very accessible to individuals and coaches, already well used to vast numbers of visitors every year, and organised to receive and accommodate them safely and comfortably. Moreover, it already has a Holocaust exhibition which has been recently expanded so there would be a case of avoiding duplication and building on what already exists. That factor was expressly mentioned by the HMC.³⁹⁷
- 10.24 It is incumbent on the Applicant to demonstrate in the most detailed and thorough way why the apparent benefits of the IWM site would be inadequate or unsuitable to meet the objectives of the HMC, as a realistic alternative location to VTG. The Applicant has not done this.
- 10.25 Instead, in addition to artificially connecting the Holocaust with the Parliament building, it is also suggested that along with the other small statues and memorials already in place, VTG could be renamed a "*garden of remembrance*". However, in the case of one of the

³⁹⁶ CD13.10 Foster's unbuilt Holocaust Design for IWM

³⁹⁷ CD5.9 p43 Commission recommends that the Learning Centre includes the IWM's Holocaust Exhibition, upgraded and expanded.

- memorials, it would be remembrance of something that never happened, an unfortunate juxtaposition with the Holocaust.³⁹⁸
- 10.26 Evidence to the Inquiry demonstrates that all this justification was thought up after the site had been identified. The choice of VTG occurred as a "*flash of genius*".³⁹⁹ The correspondence linked to this show that there were no actual reasons expressed for the choice of VTG, other than it would be close to Millbank where the LC was to be located.⁴⁰⁰ When Millbank fell away, it later occurred to Lord Pickles to raise the question of whether the LC could also be fitted underground beneath the Memorial.⁴⁰¹
- 10.27 Sir Richard Evans pointed out to the Inquiry that by the standards of other international memorials and museums, the planned memorial in VTG would be an embarrassment, not an addition to the excellent scholarship already undertaken elsewhere in the UK.⁴⁰² The new and expanded Holocaust Galleries at the IWM, at a cost of £31m, are due to open next year. They will place Britain at the forefront of international comparison.
- 10.28 The way in which this proposal has come about, and the complete absence of any proper explanation for the rejection of the alternatives, makes it impossible to conclude that there would be any measurable public benefit outweighing the drawbacks inherent in locating this project in a public park. If it were the only such location in central London, it might well be argued that it is necessary to destroy all or part of the park in order to build this vital Memorial. But without a determination of the viability and availability of the alternatives, no sufficient conclusion can be reached as to the extent and strength of the public benefit in the balancing process.

Controversy

- 10.29 The third point in BD's case is that the decision whether to permit this proposal in VTG is deeply controversial. Whether there should be a Memorial to the Holocaust and a place of learning about the Holocaust in the Central London is not in itself at issue. It is a matter of great regret that the siting of this project should have raised so much controversy, not just amongst the planning experts, but among scholars, teachers, survivors of the Holocaust and their descendants, the Jewish community, and of course amongst the residents of the area.
- 10.30 The fact that it has become so controversial is in itself a fundamental challenge to the alleged public benefits of this scheme. If it were proposed to build the Memorial and LC on the campus of the IWM, with a new building to house the LC as envisaged in the HMC's Report, and a fitting memorial there or nearby, there would be almost no opposition to such a scheme. This would not be opposed by IWM, which initially

³⁹⁸ CD10.25 Dr Gerhold objection, para 25

³⁹⁹ XX Mr Balls by TIS/SVTG & LGT

⁴⁰⁰ CD14.4 and CD14.5 Correspondence between Lord Feldman and John Whittingdale, October/November 2015

⁴⁰¹ EIC Mr Balls/Lord Pickles

⁴⁰² Professor Sir Richard Evans, oral presentation to the Inquiry

offered to host it there, or by the scholars involved in Holocaust research and study, nor by the HMC set up by the government to consider and advise on this very question. There would be no opposition from the UKHMF, or the survivors, or the Jewish community, and likely not from the residents of the area around the IWM who are used to living with a major public institution visited by millions each year. Nobody could sensibly have opposed such a proposal as it would obviously be right to have a Holocaust Memorial, and right to site it in the IWM.

- 10.31 It is almost certain that this controversy would continue and possibly increase if the proposal were to be allowed. Security is already a concern.⁴⁰³ If any major incident occurred the park may well have to be closed. The President of the Board of Deputies said that such considerations cannot be allowed to determine whether to build this proposal or not.⁴⁰⁴ However, such a building should not be built without careful consideration of the security aspects as Lord Carlile⁴⁰⁵ and other witnesses have shown.
- 10.32 In advancing this site in preference to all others, the Applicant has also ignored the effect of the restoration and renewal of Parliament itself. The works to the Palace are due to start soon and to carry on until the mid-2030s. The Accounting Officers of the Commons and the Lords raise concerns about the impact of the memorial project on the infrastructure and security of Parliament now, during any construction period and afterwards.⁴⁰⁶ It is inevitable that space in VTG will be needed for works on the Palace for many years, no doubt being filled with scaffolding and the usual clutter appertaining to major building works. It is impossible to see how the two projects could co-exist without seriously affecting or even closing VTG entirely for the duration. This alone makes virtually any alternative site more attractive.
- 10.33 If the park were to be closed from time to time or for longer periods, this would make the siting of this UKHMLC a source of continuing controversy. All very far from the public benefit which the HMC envisaged and recommended, and which could have been achieved at an alternative more suitable site.
- 10.34 In conclusion, consent for this planning application should be refused on the grounds that it has not been shown that the public benefits outweigh the harms. It has been demonstrated that the extent of the public benefit cannot be properly evaluated, and so the weight to be accorded

⁴⁰³ As set out in the evidence of Sir David Adjaye (CD8.3)

⁴⁰⁴ CD10.51 Ms Marie van der Zyl speaking note

⁴⁰⁵ CD8.34 Lord Carlile PoE

⁴⁰⁶ Written representation submitted by the Accounting Officers of the House of Commons and the House of Lords, and Chief Executive of the Restoration and Renewal Sponsor Body, on behalf of the two Houses. Requesting that consideration is given to mitigating, during both the construction and the operation of the proposed Memorial and Learning Centre, any possible impacts on the infrastructure, amenities and operation, including the security, logistics and access operations, of Parliament, and on wider access to Parliament's precincts. In terms of timing, impacts could arise over a number of time periods: first, in the short term while Parliament is operating "as is" and the Holocaust Memorial and LC is under construction; secondly, and later once the Memorial and LC is open, during works on the Palace and the wider parliamentary estate as part of the Restoration and Renewal Programme; and, finally, once that programme is complete, in the longer term when both the Palace and parliamentary estate, and the Memorial and LC, are fully operational.

to this building in this park is either insufficient or cannot be said to outweigh the obvious harms.

- 10.35 That would not mean the end of this project: it would have the beneficial outcome that it would be sited probably at the IWM or some other more suitable site that is still to be properly identified.

11 Oral Presentations to the Inquiry

- 11.1 A total of 69 people made oral representations at the Inquiry, 31 made representations in favour, 35 made representations against and 3 expressed a view neither for nor against. The representations are thus set out.
- 11.2 Some of these representations are extensive, technical in content and at times emotive. Taken together in unedited form such is their volume that they would risk unbalancing the content of the report as a whole. I have therefore decided to include edited summaries of those representations at the appropriate place in the report. However, because of the sensitivity of this case, and the clear need to avoid any suggestion that such editing lacked balance, as well as necessity for the decision maker to fully understand the full breadth of representations made on both sides of the debate, I have determined to include the unedited transcripts in a separate annex to the report. This is attached as Appendix 4. This is a fair balance between including them verbatim within the report and leaving them referenced as Inquiry documents, separated from it. Where appropriate in the Inspector conclusions, reference is made to the summary paragraph within the report and where necessary to the Appendix, so the reader may readily refer to the full version as required. I have also sought to group contributors by broad type for ease of common reference; these types are common to those in support and opposing the proposals, again in the interests of balance.

Those speaking in Favour of the Proposal

Survivors and their families and affiliated societies

Lily Ebert BEM and Dov Foreman

- 11.3 Lily is a Holocaust survivor speaking in support of the Holocaust Memorial. She wants to tell her story because it will have become history.
- 11.4 "I was born in Hungary, the oldest of six children. When the Nazis occupied Hungary, we had to give up everything. My brother knew things would get worse; he hid a few items of jewellery, including a golden pendant, in the heel of my mother's shoe. In July 1944 I was deported to Auschwitz Birkenau along with my mother, my younger

- brother and three of my sisters. We travelled in cattle trucks, and the conditions were indescribable– people began to die.
- 11.5 As we travelled my mother said maybe we should swap shoes. And we did. After five days we arrived at Auschwitz. My mother, my youngest sister and my brother were sent straight to the gas chambers. I never saw them again. I still find it hard to talk about Auschwitz– how do you describe a factory of death? A place of industrial killing? The Nazis shaved our heads and took away our clothing. By chance, I was able to keep my shoes. When the heel of my shoe wore out, I moved the jewellery and kept it safe by hiding it in a piece of bread. It survived along with me and is the only thing I have from my childhood. I wear it every day.
- 11.6 Hundreds of members of my extended family were murdered during the Holocaust. I am telling you what took place because they cannot. I promised myself, if I survive against all the odds, I will do all I can to share my story, for myself and for those that did not survive. And I do. The world should not forget the most terrible crime against humanity. I am a witness.
- 11.7 With the Holocaust Educational Trust, I speak to students and organisations as much as I can because I want them to know what happened. But I know that there will come a time when I can't do this anymore. That is why we must build this Memorial to educate the world and ensure that the terrible crimes of the Holocaust will never ever happen again."
- 11.8 Dov is Lily's great-grandson. He is 16 years old. "You might ask, what is a 16-year-old doing at a Planning Inquiry, and why do I care?" The answer is sat here next to me; my great grandma Lily Ebert. I do not remember a time when I didn't know about the Holocaust, or what my great grandma experienced. It is a part of my life and of all of Lily's many descendants. Growing up I have heard Lily speaking formally and informally about her experiences during the Holocaust– especially through organisations like Holocaust Educational Trust.
- 11.9 During lockdown, not seeing Lily for two months made me realise how precious she is, and that she will not live forever. I also realised that I am now already older than she was when the Nazis invaded Hungary in 1944. As soon as the lockdown rules were eased and I could spend time again with Lily, I was determined to absorb her testimony whilst I still have the chance. I wanted to help people understand what she had to go through, just for being Jewish, so since then I have been promoting my great-grandma's testimony using social media. And the response has been remarkable– even connecting us to the family of her liberator.
- 11.10 I know that my great-grandma's story of surviving Auschwitz is not the typical story of the Holocaust. On arrival her mother, sister, brother, other family members and many other members of her community were

- gassed and cremated. That is what happened to most who arrived at Auschwitz.
- 11.11 The typical story has no witness to tell it. For most, their entire families, villages and communities were murdered in the ghettos, concentration, and death camps, by gas, starvation, and bullets. It is our responsibility, as those who know what happened to tell those stories. Lily is a witness to the Holocaust. And I am her witness. As Lily's great-grandson, the duty of sharing her story are now falling upon me and my generation. But, not everyone sees the tattoo of a number on the arm of their great grandma. Lily's tattoo reads A-10572 ('A' for Auschwitz, 'One zero' for block 10 and 572 for prisoner number). Most people in this country are not Jewish and do not know Holocaust survivors or witnesses.
- 11.12 I am studying history A-level at school, but the Holocaust is not a subject that can just be taught in a classroom and through a textbook. So, we need a Memorial and we need its accompanying LC. There is, after all, a lot to learn. We need an enduring reminder that the language of hate, if left unchecked, can turn into something far worse; a disaster that transcends national boundaries.
- 11.13 Locating this Holocaust Memorial next to the institutions and icons of the government imparts the message that needs to be heard. The heritage we should pass to future generations is that genocide is inhumane and unacceptable. Remembrance of the Nazis' crimes against humanity should not be hidden from maximum public view. The Memorial is no use in some forgotten and remote location where it cannot be seen. As a young person, seeing decision makers walk in and out of Parliament and knowing they see this important symbol of history reassures me that they know their duty to stop hatred in its tracks.
- 11.14 With education comes remembrance– this memorial will give people somewhere to remember and reflect. When we no longer have survivors like Lily among us, this memorial will help to ensure that their experiences are never forgotten. We can create the next generation of witnesses. You have heard the story of my family, and the drive that we have to remember those we lost in the Holocaust. It is of vital importance that the stories of millions of others who have nobody to remember them are heard. We strongly believe that a Memorial and a LC will enable this hope to become a reality. We cannot afford to wait. We cannot afford to hide away from our responsibility to remember the six million Jewish men, women, and children, murdered simply because they were Jewish.
- 11.15 On behalf of my great-grandma, my family, and all those who survived, we speak today, firmly in support of the UKHMLC. Thank you."

Janine Webber (JW)

- 11.16 JW described how her happy family life in Lvov (then in Poland, now Ukraine) was changed overnight with the Nazi occupation of the City in 1941. They were forced to live in indescribable conditions in the Lvov ghetto. After hiding in farms in the Polish countryside and working as a shepherdess, JW was discovered to be Jewish and returned to Lvov. JW

made contact with an aunt and they together with other Jews in a hole under the stable floor for a year. Eventually JW was given a new identity was that of a Polish Catholic girl and lived as a Catholic until liberation in 1945.

- 11.17 JW came to the UK in 1956 and had a family. Hard as it is, JW believes that it is vital to tell others about her experiences so that we can work towards a more humane world together. For a number of years she has been visiting schools, universities, workplaces, voluntary organisations in a bid to educate people about where anti-Semitism and racism can eventually lead. JW has spoken to tens of thousands of students.
- 11.18 JW believes the UKHMLC would not only assist her mission of educating the next generation, but would preserve the voices of other survivors, who all have their own stories to tell. A central location such as Westminster, enables a focal point for this learning. More than this, it will facilitate the assistance of our leaders. All first-hand witnesses are in their eighties and nineties. Many of the young people JW meets whom declare that they will be our witnesses in the future, though more are always needed. Without education, without memorials open to the public, these stories will not be passed on.

Maurice Helfgott (MH)

- 11.19 Son of Sir Ben Helfgott, a Holocaust survivor, MH represents his own and his father's views. Sir Ben has been involved in most of the significant Holocaust Memorial events in this country over the past 30-40 years. Sir Ben believes that the HMLC should be built in VTG, next to the mother of Parliament, and now.
- 11.20 As time goes on there are fewer survivors around. It is important to take the long view: the importance of the memorial is not so much that it is needed today, but that it will be needed in 2064 and 2164. When the survivors arrived in 1945 people didn't want to talk about the Holocaust or hear the stories of the survivors but as time has gone on there has been an interest in hearing these stories which over the decades have been told reasonably often and reasonably well. But in the decades to come how will these important lessons be learned? It is very important for the Holocaust Memorial to be built next to the mother of parliament because of the symbol that it would represent: that the British nation decided to place it here, with cross party support. In this location it will be noticed: it cannot be ignored.
- 11.21 Sir Ben is a man of incredible confidence and determination. He has been involved in the HMC and argued for colocation with other organisations. However, the power and symbolism of the location in VTG over-rides all other practical considerations: this is unique.
- 11.22 MH stated he has had the privilege of growing up with and being influenced by a survivor, a leader, focused on spreading the message of tolerance, teaching the lessons of the Holocaust, protecting the ideals of democracy and the rule of law. What this memorial does, and why his Dad at 91 is still out there articulating, encouraging this to be built, is so that this will be there in 50, 100, 150 years' time. No other location will

have this significance at this time. This may be qualitative, but it is unparalleled. It is important to take the long view: history will be the judge of that.

Rudi Leavor (RL)

11.23 RL states that this is a matter of honour for our country. We must have our own statement to stand alongside the growing number of monuments in other countries around the world. Such a memorial must stand out and make its mark loud and clear. The siting of the proposed memorial in VTG makes a bold statement, which cannot be missed and would proudly stand to expose the shame, depravity and darkness of the Holocaust for as long as the Houses of Parliament will stand. RL strongly and passionately believes that this proposed prominent UKHMLC will frame the story of the Holocaust in public consciousness. It will bring awareness of the greatest tragedy in the history of mankind. It will act as a warning as to the evil that mankind can do. But, above all, it will stand to the permanent honour of the UK and as an eternal memorial for those who perished so needlessly.

Mala Tribich MBE (MT)

11.24 MT described her family experience of the Holocaust from when she was nine years old and the Nazis invaded Poland. Over the next five and a half years she lost her parents, sister and most of her extended family. She spent time in the Ravensbruck concentration camp and Bergen-Belsen, described as the ultimate, beyond human endurance, and was there until liberation by the British forces.

11.25 For decades, MT has shared her story with tens of thousands of people across this country, particularly in schools. But prejudice and discrimination still live on. She believes that a memorial next to Parliament, where vital decisions are made, will help us to learn the vital lessons from the past. What better symbol to remind our Parliamentarians and the wider public of where apathy as well as prejudice and hate can ultimately lead? This is an issue of the utmost national and international importance. Britain must lead the way in educating the next generation about the dangers of anti-Semitism, hatred and racial prejudice.

11.26 When MT and others are no longer able to share their testimony, the UKHMLC will be a lasting legacy and a reminder to all to learn from the past and stand up against injustice.

Angela Cohen, Chair of Holocaust Survivors'45 Aid Society (AC)

11.27 At total of 732 Holocaust Survivors came to the UK in 1945, most of them having lost their entire families in the cruellest way we can imagine. In 1963 they set up the 45 Aid society to educate and teach the lessons of the Holocaust, support their members, and give back to their adopted country by through supporting many worthy causes and

charities throughout the UK. The charity is now run by the 2nd and 3rd generation.

- 11.28 Germany in the 1920's had been the most fertile ground for intellectuals, scientists artists, musicians and innovators. It had seen the birth of the reform Jewish movement, but then the black clouds descended. In the blink of an eye the world changed. Can the past insulate us from the future?
- 11.29 Our Houses of Parliament and the UKHMLC must stand side by side and be a guidepost for tolerance and kindness towards each other. It would call out to those in power, and those who seek it never to be complacent. It would teach our children, and their children, the most significant salient lessons that are as relevant today, and in fact today more than ever, a message that all human life has to be valued, treasured and cherished.

Marie van de Zyl President, Board of Deputies of British Jews (MvdZ)

- 11.30 In 2014, the Board of Deputies submitted a response to the Prime Minister's HMC recognising the need for a new Holocaust memorial. A permanent commemoration to the 6 million Jewish people murdered in the Holocaust is an important and timely project. At a time when the number of Holocaust survivors is dwindling by the year, and when antisemitism and racism are on the rise across Europe and in the UK, a permanent and visible memorial will serve as a constant reminder of the danger of complacency to those whom we elect to represent us.
- 11.31 It is MvdZ's belief that there is something uniquely powerful in locating a memorial and learning centre to humankind's greatest crime right next to the centre of the UK's democracy in Westminster. The symbolism of a memorial to victims of genocide alongside our national Parliament would be hugely powerful.
- 11.32 Whilst the Holocaust was a particular crime against Jewish people, alongside other victims of Nazi persecution, including Roma, gay and disabled people, the messages and learnings that one should glean from its memorialisation are a powerful reminder of the universal values of fairness and justice that a democratic society has the responsibility to bestow upon its citizens. It would be fair to say our country had a mixed record in its response to the Nazis' attempted genocide. One the one hand, we should be rightly proud that refugees were accepted prior to the War as part of the Kindertransport programme. At the same time, Britain could and should, have done more to save the threatened Jews of Europe. The UKHMLC will recognise that duality and show our nation's own confidence in engaging with that complex past. Crucially, it will give a voice to those who cannot speak about what they endured. The diminishing group of Holocaust survivors have themselves said how important it is to have a memorial on a specific and important site.
- 11.33 It has never been more important to have an important, national institution dedicated to preserving the memory of the Holocaust, to serve as a constant reminder of what happens when hate goes unchecked. The additional component that makes the case for the memorial so

compelling is the learning centre. The UKHMLC will certainly achieve that aim. The impact that the associated learning centre will have is incalculable. An interactive learning centre as a part of the permanent fixture of the memorial will ensure that future generations are able to learn the lessons of the Holocaust and ensure that 'Never Again' is not only a slogan, but rather a call to action against any future abuses of human rights.

- 11.34 Some have already told the planning inquiry that the UKHMLC will be a target for terrorists and extremists. Such arguments are self-defeating and, whilst surely unintentional, an insult to the victims and survivors whose story the UKHMLC will seek to tell. The UK Jewish community has painfully learned over the past 50 years, schools and synagogues need to be protected against those who would do us harm. What we have not done, however, is to close down those centres of prayer and Jewish learning. The very fact that the enemies of democracy and justice would have us abandon plans for a significant memorial, is not a reason for us to cower in defeat, but to redouble our efforts to get it built.
- 11.35 We look forward to the time that our fellow citizens and guests from abroad will be able to visit, learn and understand more about this dark period of genocidal intolerance, and come away determined to play their part in a better, more peaceful and more inclusive future.

Religious

Chief Rabbi Holocaust Commission

- 11.36 On the 27 January 2014, Holocaust Memorial Day the Chief Rabbi was honoured to be invited the launch of the HMC. He recalled the meeting in 10 Downing Street, present were representatives of major parties in the UK, together with some of the best-known Holocaust survivors. The Prime Minister laid out his aspirations: through this initiative, he hoped, that we would contribute towards a safe, stable, secure and peaceful Britain. Before the meeting ended, he said "*before we conclude I now call on the Chief Rabbi to set out some reflections*". The Chief Rabbi explained he had no prior notice of this and so what he then said came from the heart. He commenced by saying "*Prime Minister thank you, this is a sacred task for our nation*". Ever since that moment, he explains that he has become more and more convinced of this fact.
- 11.37 The Chief Rabbi used the following explanation: the Hebrew word for Holocaust is 'Shoah'. This means a fierce wind, a hurricane, and actually there are many similarities that can be drawn between a hurricane and the Holocaust of the 20th century. When there is a forecast that a hurricane is on the way many people just don't believe it. They say here we are and everything is peace calm and tranquil: are you telling us that in 48 hours' time there will be utter devastation. There are others that believe its going to happen but say that actually it will die down before it gets to us. Whilst others say it will come with full force but there's no way that we will be affected, it will affect those to the north or to the south. There are still others who say yes it will come with full force, but we will stay here we will be alright, we will survive. And then there are

- still others who say no, this presents a danger to all our lives we need to flee.
- 11.38 Then, when the hurricane comes it doesn't differentiate between one person or another, old or young, men or women, those who are knowledgeable and those who are ignorant, those who are religious and those who are secular, all are affected alike. And in the aftermath of the hurricane there is sheer devastation, loss of life and some people will never be able to get over it. The Chief Rabbi says he does not need to explain the parallels between a hurricane and what transpired. 6 million innocent men, women and children were brutally murdered, only because they were Jewish, together with many, many other victims of Nazi persecution.
- 11.39 On 9 November 1938 was 'Schicksalstag', on that night many 100's of synagogues in Europe were burnt to the ground. Because many residents of the areas heard the shattering of glass from the windows of the synagogues the night was called 'Schicksalstag' meaning 'the night of the broken glass'. At that time many people could see that this was a signal of awful things to come, but many people did not see that signal. With hindsight we now know that that was the commencement of a horrific train of events which would follow. It is only now that we realise that people who burn places of worship, holy Torah Scrolls and Prayer books can become people who will burn other people but those living at that time did not all know. That, the Chief Rabbi explained, this highlights how important it is for us today, and well into the future, to highlight the lessons of the past, to be well educated in terms of those horrors, so that we can protect ourselves now and in the future.
- 11.40 There is a significant difference between a hurricane and the Holocaust: we have no power over a hurricane, we can't stop it, we have no power over the elements. But the Chief Rabbi says we can have power and do have influence over our fellow human beings, we can protect others when their lives are threatened but better still we can prevent events such as a Holocaust, such as the genocide's that followed. The best form of protection is education, to inspire people to have emotional experiences, and to expose them to details of what happened in the past, in order that they should learn from those lessons for the sake of our collective present and future.
- 11.41 It is with this in mind that the intentions of the UKHMF are noble. They are engaged in a sacred task. The Chief Rabbi appreciates that there are some detractors, people saying that they are opposed to this idea. He has listened to their views, but his views differ. Locating this initiative in VTG is an inspirational choice of venue, it is a wonderful location. Of course, we need to look after the Gardens, which hopefully will be enhanced; of course we need to look after the interests of local residents, their welfare and their wellbeing. This, he says, is a wonderful location because it is in a prime place of prominence at the heart of our democracy. He wants all of British society to be aware of what transpired to the Jews in the 20th century, not just for the sake of the

- Jews, but for all of us in the country and our hopefully stable and peaceful future.
- 11.42 Sadly, the Chief Rabbi reports that we are experiencing a significant rise in hate speech and hate crime, xenophobia, anti-Semitism and racism of all kinds. In his view the only way we can address this successfully is through education. He hopes through this initiative we will inspire our society to be knowledgeable enough to protect, and better still to prevent.
- 11.43 The Book of Deuteronomy teaches us about the importance of confronting evil, and it gives us two imperatives. When we have experienced wickedness, the Torah says remember and never forget. Remembering means to you are never forgetting. Remember means to engage in proactive steps to guarantee that you will remember and as a result no one will ever forget and that is exactly the intention of this initiative, through this striking Memorial, through this impressive and important LC in a prominent place, he says, we will ensure that our British society will remember. Being situated alongside the Houses of Parliament at the heart of our democracy would serve as an internal reminder of what transpired in Germany in the 1930's.
- 11.44 The Holocaust was born within a democracy, created by people who were seemingly cultured and sophisticated. What they did; anyone can do. What a democracy then produced; any democracy can create. Through locating this initiative in this particular venue, this will serve as an ongoing reminder to our lawmakers in parliament that they are accountable to people and that their prime objective must be the welfare and wellbeing of every single citizen in our society. This will, the Chief Rabbi considers, go a long way towards contributing towards a stable, secure and peaceful Britain in the future.
- 11.45 The Chief Rabbi has noticed that for about the past 10 years the narrative of the survivors has changed, there is a panic in their voices. They are saying one clear thing to me and asking me to convey this to others: 'Please world never forget'. The survivors know that they cannot live forever, they are asking us to be their representatives, their ambassadors in the future, and for us to guarantee that there will be future ambassadors after us. They fear that we will forget in the course of time. The Chief Rabbi explains we have a responsibility to them to ensure that we will remember. Their desire for the Holocaust to be remembered is not just to remember something that happened to Jews. They are fearing the implications of forgetting the Holocaust on all of us within our society. We need to learn about tolerance, understanding, love, unity, understanding and forgiveness in order to transform the hatred that exists now into love and understanding in the future.
- 11.46 We have a sacred task to allow this possibility of this UKHMLC to be created in VTG. The Chief Rabbi concludes that we have a responsibility to the survivors, we have a responsibility to the victims, we have a responsibility to our all of our great grandchildren, and their great grandchildren well into the future.

Imam Qari Muhammad Asim (QMA)

- 11.47 QMA stated as a of personal faith, I feel it is my moral duty to remember the survivors and the victims of that atrocity. I have met Holocaust survivors at each time it has been a deeply moving experience.
- 11.48 A permanent memorial is required for public awareness. The proposed Memorial in this significant place next to parliament, provides a remarkable space for reflection and to enable people to respect and embrace difference. I believe that changing the location would profoundly relegate the significance of the memorial to the worst atrocity committed in the last century. The site is a poignant and timely reminder of the consequences that follow when we allow hatred to fester. This will offer a vital space for reflection and learning in order to educate future generations about the Holocaust and other genocide's and the consequences of hatred. Locating the memorial on this site adjacent to Parliament will send out a strong message to those promoting intolerance and prejudice.
- 11.49 As a Muslim QMA believes that this site will offer a remarkable tribute to the victims and preserve the stories of survivors. These survivors have been supported by Muslims, many of whom have risked their lives to support and protect the victims of genocide. The UKHMLC will not only preserve the legacy of the genocide of Jewish communities, but also subsequent genocides. It is in all of our interests that a symbolic place is allocated at the epicentre of democracy, to highlight the fact that we have learnt the lessons from this terrible event in our history.

Archbishop Justin Welby Archbishop of Canterbury (JW)

- 11.50 In 1942, Archbishop William Temple met with the then Chief Rabbi Joseph Hertz to establish the Council for Christians and Jews the "CCJ". This was an unprecedented meeting that marked the beginning of a growing collaboration and friendship after centuries of disdain from the Church towards British Jews. The point of mentioning this shameful history is to overlay into these deliberations a sense of the establishment context to our thinking in the UK about the Shoah or Holocaust. Contrary to the views of some, the history of anti-Semitism and anti-Judaism that culminated in the atrocities of the Holocaust was enabled by cultural and religious attitudes that were widespread right across Europe, and not unique to Germany. The UK can only be proud of its stance against the Nazi regime when it also recognises its deep failings towards Jewish people.
- 11.51 History matters. Yes, it has its fair share of heroes, but more often it is littered with very human frailties. When we see history for what it is, then the lessons of our past can more readily teach us in the vivid realities of today. And today we witness, alarmingly, a rise in anti-Semitism, incidents of hate crimes against Jews and Jewish establishments. Disturbingly, a survey last year revealed that 5% of UK adults believe that the Holocaust is a myth. Much as the Government and Church responses to the Nazi persecution in the 1930's and 1940's

were partial and incomplete, so today's tasks of education about the Holocaust, and the evils of anti-Semitism, remain partial and incomplete.

- 11.52 The proposal for a UKHMLC by the Houses of Parliament and across the river from Lambeth Palace provides a symbolic opportunity to present the full story to new generations. It is a story that will not, and cannot be a comfortable piece of public self-congratulation by the establishment. Rather, it offers an opportunity to learn what we did wrong, as well as celebrating what we did right. Its position by the seat of UK Government is a necessary challenge to our national life: that the seeds of such cultural and religious hatred would never be allowed to take root here again. Make no mistake: those seeds were here in the UK too.
- 11.53 Archbishop Temple described his intervention in the House of Lords in 1943 (speaking in favour of the UK receiving Jewish refugees) as being "*at the bar of history*". As Holocaust survivors dwindle in number, this is the time to ensure that a very public memorial to their story, and the millions that were murdered, the millions that we did not save, is told at the heart of our establishment.
- 11.54 As a neighbour across the river, as a friend of British Jews, and as a Christian leader enjoying the privileges and ambiguities of a role in the established structures of the nation, JW voiced his support for the siting of the Holocaust Memorial in VTG.

Academics

Professor Stuart Foster Director, UCL Centre for Holocaust Education (PF)

- 11.55 PF has worked for almost 40 years in the field of history and Holocaust education. He believes that the UKHMLC would make a profound and positive impact on teaching and learning about the Holocaust in this country and potentially beyond. The submission has 5 sections.
- 11.56 He explains that the Holocaust was the product of a false, racist ideology which drew on more than a thousand years of anti-Judaism and anti-Semitism. The horrific events originated in an ostensibly civilized, educated and democratic nation in the heart of twentieth century Europe, which itself had been significantly shaped by the policies and actions of the British government and its peoples. The rise of Nazism, the course of the WWII and the subsequent devastation of the Holocaust are closely connected to our national story.
- 11.57 The UKHMLC would, PF says, help us to intelligently confront and navigate this complex and troubling history and Britain's central role within it, including the fact that the Holocaust was not inevitable. This will raise difficult questions, such as how we ensure that threats to democracy are challenged and diminished. To consider such issues we must have a knowledge and understanding of the Holocaust and its history. A growing body of evidence suggests that people across the UK

- have a very limited understanding of the Holocaust and many often harbour troubling myths and misconceptions.
- 11.58 The 2016 study 'What do students know and understand about the Holocaust?' revealed that most students were familiar with the term and believed that the study of the Holocaust was important and interesting, with many expressing a desire to learn more. Nevertheless, significant numbers of students typically lacked core knowledge and many often had troubling myths and misconceptions.
- 11.59 The research also revealed the need to educate young people about, pre-war Jewish life, the long-history of anti-Semitism, the impact of the Nazi racial state, the responses of Jewish communities, the geography and chronology of the Holocaust, and the loss and devastation caused by the actions of the Nazis and their collaborators.
- 11.60 The research also revealed a very narrow understanding of who was responsible for perpetrating the Holocaust, including knowledge of how many Germans and citizens in other occupied states across Europe were complicit, and the extent to which 'ordinary people' willingly participated in genocide.
- 11.61 Most students operated with a very limited and often erroneous understanding of this aspect of British history. Other studies examining adult understanding of the Holocaust have found that knowledge is typically limited and misconceptions abound. More troubling is the growth of individuals and organisations who, largely through social media, seek to distort and deny the Holocaust and disseminate anti-Semitic propaganda.
- 11.62 Improving the knowledge and understanding of people of all ages is, SF says, a critical imperative. There have been improvements in educating young people about the Holocaust, nevertheless, immense challenges remain. The UKHMLC has the potential to transform how people understand and reflect upon this history.
- 11.63 The LC will offer visitors an engaging, interactive and dynamic experience, underpinned by rigorous scholarship and the advice and expertise of leading academics and specialists in the field. It will offer different insights and critical interpretations of what Britain did and did not do in response to events.
- 11.64 It will serve as a catalyst for deeper engagement and interest in Holocaust education across the country. For example, since the United States Holocaust Memorial Museum (USHMM) opened in 1993, it has stimulated a growth in Holocaust education across the country. The UKHMLC would similarly amplify commitment to every child learning about the Holocaust, and strengthen collaboration among leading Holocaust education organisations.
- 11.65 As evidenced by the success of the USHMM, the UKHMLC would be visited by millions of people with the potential to educate and challenge common myths and misconceptions for this and future generations. Visitors will come not only to honour the victims, but also to contemplate

the dangers to civilized society of increasing prejudice, discrimination, and extremist rhetoric and action.

- 11.66 By featuring both a Memorial and a LC as part of an organic whole, visitors without extensive prior knowledge of the Holocaust will begin to appreciate the disturbing narratives of the victims. This would be a place to reflect, digest, commemorate and consider broader questions about humanity. It is unlikely that a museum or a memorial standing alone would have the intellectual and emotional power to induce such strong connections.
- 11.67 There is an explicit and direct relationship between the significance and prominence of any given site and the value and status that individuals assign to the events commemorated. If learning about and commemorating the Holocaust is profoundly significant, then it follows that the UKHMLC should be in a place of national and international importance. If not, its impact and reach would be diminished. This location would also emphasise that as a nation we are prepared to reflect on Britain's relationship with the Holocaust in a candid and honest way, serving as a reminder of the fragility of our democracy.
- 11.68 PF points out that we are at a critical turning point. Soon, we will no longer be able to experience first-hand the powerful testimonies of survivors' or witness their indomitable spirit. We will not have the benefit of their remarkable resilience and courage to counter those who look to discredit the historical record and distort, downplay or deny the Holocaust. Without survivors in our midst, there is a risk of Holocaust revisionism and/or trivialisation. At a time when levels of anti-Semitism and hate crime are on the rise, the UKHMLC would send out a forthright message: this country is committed to standing against racism of any kind, and we pledge to work collectively to achieve this aim.

Dr Toby Simpson Director Weiner Holocaust Library (TS)

- 11.69 The WHL is Britain's largest collection of evidence of the Holocaust and the Nazi era, and it is the oldest collection of its kind anywhere in the world. It has a global reputation as a source of world-leading scholarship.
- 11.70 The UKHMLC has the potential through partnership working to add value to the existing work being done in organisations and institutions which are actively engaged with Holocaust commemoration, research, and education. This includes WHL and museums like the IWM, and educators like the Centre for Holocaust Education at University College London. There is a need to strengthen the commitment to a joined up strategic approach, and for these organisations to engage intensively and productively in order to ensure that this potential is realised through more sustainable framework of education, research and remembrance.
- 11.71 The planned Memorial represents a level of commitment and engagement from UK Governments that has not always been present. There is profound meaning in ensuring that the memory of the victims of the Holocaust, victims the Roma genocide and other victims of Nazi persecution is permanently honoured. The content and curation of the

LC would reflect an honest appraisal of the history of the Holocaust, the Nazi era and other genocides, including those aspects which ask us to remember or reflect on uncomfortable truths.

- 11.72 The Holocaust is widely recognised as the defining event of twentieth century European history, and as the worst and most extreme atrocity perpetrated in the history of human civilisation. The history of the Holocaust is complex and difficult to get to grips with; it is a powerfully emotive and resonant and, sadly, highly relevant today as we strive to fight the rising tide of intolerance, antisemitism, racism and prejudice. It is fitting for the memorial to be located in a position of the greatest possible prominence to reflect that fact.

Dr Michael Berenbaum Holocaust Scholar and Adviser (MB)

- 11.73 MB set out his experience in contributing to the development of an appropriate national memorial to the Holocaust in the United States of America. He described how those involved in the development of the USHMM faced many of the issues that have engaged this Inquiry, including why bring to the nation's capital an essentially European event. However, the USHMM was controversial until its opening; its success silenced its critics. Based on his experiences of developing museums and memorial across the world, MB sought to address what he defined as basic principles:
- 11.74 The place from which you remember an event shapes how you remember it. And place is not just a spatial concept but a temporal one.
- 11.75 The Holocaust is remembered differently in Washington than it is in Jerusalem, In Warsaw than in Budapest, in Paris than it is in London, at Auschwitz than it is in Bergen Blesen. We are at a transitional time: we are all too rapidly moving between lived memory and historical memory.
- 11.76 The USHMM is situated at the intersection between Museum Washington, Memorial Washington, and Governmental Washington. Everywhere surrounding it celebrates the powers of government, human achievement in art, science, technology and history. The USHMM tells an American story, albeit about a European event. The visitor is given the opportunity to consider what America knew, and what it did and did it not do with that information to confront the unfolding genocide and to alleviate the condition of the victims.
- 11.77 The proposed location in London offers an unequalled opportunity to grapple with the history of Great Britain and its values. Placing it anywhere else reduces the power of what it can achieve.
- 11.78 Do not create a Memorial alone but a Memorial and an Educational Centre together as an organic whole. Experience has taught us that a Memorial is effective for the generation that knows what is being memorialized; it is less effective in subsequent generations so, MB says, a LC is essential.
- 11.79 Firstly, MB says, visitors who see the Berlin Memorial alone come away with a radically different experience than those who visit both the Memorial and the LC. The LC conveys the importance of the Holocaust

- for German history and for German citizens, reinforcing basic values of the country, now a democracy committed to human rights and tolerance.
- 11.80 Secondly, the differences between Treblinka and Belzec, are explored. At the site of the Treblinka death camp in the 1960s a moving and powerful memorial was created. A field of 17,000 jagged stones was erected each in a different shape, 700 hundred of them had the names of the towns, villages and hamlets from which Jews were deported to Treblinka. The stones outline the contours of the camp. Visitors regard Treblinka as a cemetery. Yet, whilst this Memorial brilliantly conveys feeling and the magnitude of the loss, it does not convey the nature of the crime. Therefore Polish authorities are now contemplating creating an educational centre at the Camp.
- 11.81 In contrast, the Memorial and the Museum at Belzec uses the entire camp. The Memorial consists of a long path, evoking the tube that prisoners would walk from the ramp to the gas chamber with walls on both sides growing ever higher, leading to the Memorial Wall with an appropriate inscription. At each end of the Memorial Wall, there is a staircase ascending from the depths with the visitor would emerging to see the entire landscape of the camp. The modest educational centre is integral to the Memorial, essential to informing the visitor intellectually as well as moving them emotionally.
- 11.82 The creation of the UKHMLC in so prominent a place in London would reverberate throughout the entire country, stressing the importance of the Holocaust and the implications of the Holocaust for contemporary Britain.
- 11.83 This is important because the Holocaust happened. 21st century humanity must understand the evil that was the essence of the Holocaust. Some were sadists and criminals but many more were ordinary men trying to fulfil their obligations. We must understand the circumstances of the victims, who had to make choiceless choices between the impossible and the horrific. We must understand the indifference of neutrality. We can also learn about the precious few who opened their homes and their hearts and provided a haven for the victims. These are the people whose deeds we may wish to emulate, who cans serve as a model for how we want to behave and what we want to become.
- 11.84 The study of the Holocaust is not easy, emotionally or intellectually. The UKHMLC would express the importance of this event for the people of Great Britain and its implications for tolerance, decency, human rights and human dignity.

Paul Shapiro Director of International Affairs, USHMM (PS)

- 11.85 The Holocaust was a continent-wide European phenomenon with global consequences. International perspective on this national enterprise is, PS believes essential, especially because what Britain does has international significance that is unmatched by most other countries.
- 11.86 As neither the UK nor USA have an actual Holocaust site, the issues raised about location are similar. The development of the USHMM in

- Washington raised concerns about the effects of emphasising the dark potential of humans in the midst of the many monuments to human and national achievement located in the national capital, given the Holocaust was a European event. The issues in the UK are similar, including the view that would not be appropriate to place a monument to evil at the heart of British democracy.
- 11.87 There are also parallels in relation to content. The development of the USHMM recognised the need to address America's indifference to the fate of the Jews of Europe. Similarly, the focus of the UKHMLC on the British interface with the rise of Nazism, the Holocaust, and the postwar legacy of genocide would fulfil the commitment to explore Britain's record, warts and all. In this way the UKHMLC aspires to challenge visitors to reflect on whether more could have been done, both by policymakers and by society as a whole. This is why decisions regarding its location are so critical.
- 11.88 The site of the USHMM adjacent to the National Mall, in the shadow of the Washington Monument, and in the most visited tourist area of the city was controversial. However, the USHMM planners and supporters determined that it was crucial for it to be built in the memorial core of the nation, as a lesson in a country that sees itself as a standard-bearer of freedom and human rights. Since its opening, the USHMM's prominence on the national map has stimulated Holocaust education across the country and reached leaders in the American military, judiciary, law enforcement, and government communities. It has had an international impact with multiple involvements at the national level in many countries. America's willingness to confront its own history during the Holocaust has impressed foreign visitors.
- 11.89 The new Holocaust Memorial institutions being planned contextualise the British initiative. In Ukraine, an intense debate has unfolded relating to the creation of a memorial at the Babyn Yar ravine, a site where in September 1941 more than 33,000 Ukrainian Jews were murdered by German killers, assisted by local Ukrainian nationalist militia and police. A private initiative to build a Holocaust Memorial centre at the site received early endorsement by the President, but no formal government involvement or public funding.
- 11.90 However, the Babyn Yar ravine was also the site of the execution of 60-70,000 additional victims of Nazi brutality during German occupation, including several dozen Ukrainian nationalists. An alternative memorial plan has been developed which relativises the Holocaust by equating Nazism and Communism, suggesting equal memorial treatment of the 33,000 Jewish victims at the site and the few dozen nationalists who died there. By proposing to cover the 2000-year history of Babyn Yar from ancient times through the entire Soviet post-war period, this official plan has the effect of burying the Holocaust altogether. So, whilst the site is not contested, in Ukraine everything possible is being suggested to avoid authentic confrontation with the Holocaust.
- 11.91 Romania had a long history of anti-Semitism before the Holocaust. It was the second perpetrator country in Europe in terms of the number of

Jews murdered. For the last 15 years, presidents and prime ministers have supported significant efforts to learn about and learn from this history, including the creation of a National Museum of the History of Romanian Jews and the Holocaust.

- 11.92 The location suggested of the museum in Bucharest has been a hotly contested public issue. The Mayor designated a prominent building in Bucharest's historic old quarter to serve as the museum site. This was challenged in the courts, with the judge seeing no justification for such a museum to exist at all. The Deputy Mayor suggested that it be placed in the Jewish quarter of the city, a quarter that had been almost totally bulldozed during the final years of the Ceausescu regime. A second site close to the headquarters of the Government was proposed. This too met with opposition.
- 11.93 The Government of Romania has demonstrated its commitment by providing a huge building on Bucharest's most historic boulevard, which runs between the Government headquarters and the National Museum of Art. To forestall any additional delay, the Parliament passed a special law allocating the site, and an international exhibition design competition is currently underway.
- 11.94 PS suggests that there is a spectrum of experiences of Holocaust memorial initiatives. At one end there are situations where the arguments about procedure, content and location, and ultimately the denial of the need for any memorial at all, are overwhelming. The Ukrainian case is located somewhere toward that end of the spectrum, with a high risk that no memorial, or one that distorts or trivializes the Holocaust, may ultimately materialize. The other end of the spectrum, where such issues have not arisen, is theoretically possible. The Romanian initiative is moving from the centre of this spectrum, where it was stalled by arguments regarding an appropriate site, towards the positive end. The American experience has always resided nearer the positive end. This Inquiry will play a role in determining where the UKHMLC is on this spectrum.
- 11.95 Where the site of a memorial is not an authentic Holocaust site, location plays a major role in the success/potential for failure to achieve goals. Locating the USHMM on the National Mall has been essential in attracting the 90% of American visitors who are not Jewish and who would have had no reason to identify the Holocaust as part of their story. From an international perspective, the impact is similar: visitors see that you have had the courage to place a memorial to the Holocaust in the midst of your most emblematic memorials.
- 11.96 The completion of the UKHMLC would add a unique new partner to complement the impressive network of related institutions that the UK already supports. This endeavour that has the potential to improve British society and the world.

Ben Barklow, Chair of the Academic Advisory Group of UK Holocaust memorial Foundation (BB)

- 11.97 BB addresses a number of points raised in the letter sent by 42 academics addressing the Inquiry,⁴⁰⁷ which refers to another letter sent by a group of 28 academics to the Prime Minister's HMC in 2014 (the letter of 2014). The letter of 2014 expressed strong support for the planned Memorial and education centre, but confusingly concluded by arguing that there is 'no pressing need for a further physical monument' relating to the Holocaust. It refers to the permanent Holocaust exhibition at the IWM, and the possibility of moving the Holocaust Memorial in Hyde Park to Whitehall. BB counters these points by stating that firstly, it is clear that an exhibition does fundamentally different work to a memorial, and also that the Hyde Park Holocaust Memorial is not a national Memorial but one erected by the Jewish community and largely serving that community.
- 11.98 The existence of a memorial erected by and for any community should not rule out the creation of a national memorial. Britain's diverse Jewish communities stand in a somewhat different relation to the history of the Holocaust than the majority of British people and others living in the UK. The UKHMLC would be intended to serve all people living in Britain, which of course includes British Jews.
- 11.99 The letter to the Inquiry states that the 'resourcing of educational materials should be a priority' but ignores progress made in this regard since the letter of 2014. One example is the enormous development, by the Wiener Holocaust Library, of a set of online digital resources called The Holocaust Explained. This website is one of the most visited educational sites on the subject in the world.
- 11.100 The letter to the Inquiry also states that funds dedicated to the UKHMLC would be better spent supporting academic research and doctoral students. The signatories seem to be making the assumption that any money spent on the memorial must mean less for other educational purposes. However, BB believes that the UKHMLC would in itself be a very significant educational resource and would contribute enormously to the improvement of Holocaust education and awareness in the UK. Further, the memorial would be likely to stimulate longer term educational demand as people, especially the young, begin to explore the topic as a result of their visits.
- 11.101 The letter to the Inquiry suggests that other memorials in VTG will be 'overwhelmed' by the UKHMLC. BB believes that it would be just as likely that interest in these memorials would increase as more visitors are attracted to VTG. Further, there is no precedent or rational basis for the suggestion that a location next to Parliament would be likely to create a celebratory narrative of the British Government's responses to the Jewish experience. Nothing of the kind followed from locating

⁴⁰⁷ CD10.36

Germany's national memorial close to the Reichstag, or the siting of the USHMM near Congress.

- 11.102 Those visiting the UKHMLC would be challenged to ask themselves, what would I do if faced with such situations? Locating Britain's national reminder of the political and moral dangers posed by genocide next to its seat of political power would send a message to Parliament that we are alert, we are watching, and we will hold our leaders to account.

Educators

Olivia Marks-Woldman Holocaust Memorial Day Trust (HMDT)

- 11.103 The Stockholm Declaration in 2000 said that 'the Holocaust must have a permanent place in our nation's collective memory'. Following this, the Holocaust Memorial Day in the UK was established. Whilst UK leads the way internationally in marking Holocaust Memorial Day, there is no national Holocaust Memorial in our capital city. The UKHMLC would fulfil the commitment to the Stockholm Declaration. It could become the ideal place for us to organise and hold the annual Holocaust Memorial Day ceremony. At HMDT, we are privileged to lead the Partnership Group with more than 20 different organisations who work hard for a big cause. The UKHMLC will help highlight and complement all the work taking place around the country.

- 11.104 Learning about the Holocaust and recent genocides, and hearing from survivors can be deeply significant experiences. We know that although the world said 'never again', there have been genocides since the Holocaust in Cambodia, Rwanda, Bosnia and Darfur. We also know that anti-Semitism did not end after the Holocaust. There is still so much to warn about today and so many lessons to learn from what happened 75 years ago. Identity-based hostility isn't a 'Jewish issue', or a 'Muslim issue' or a 'black issue'. It is a problem of otherness, of being human and being shut out for who you are. The UKHMLC would be aligned with these priorities.

- 11.105 It has never been more urgent than now to remind ourselves of where division, misinformation and fear can lead. This year is the 75 anniversary of the liberation of Auschwitz-Birkenau. We have looked back over these 75 years, and treasured the witness testimony that is still able to be shared with us. But this reflection prompts questions: what will be here in 75 years' time? What kind of society will we live in? Most of us taking part in this Inquiry will probably not be here to answer these questions- but the UKHMLC can be.

Jaya Pathak Holocaust Education Trust (JP)

- 11.106 JP stated the Holocaust remembrance is more vital than ever: we are seeing a concerning rise in antisemitism and other forms of discrimination across Britain and other countries; we are similarly seeing a worrying rise in Holocaust denial. As Holocaust survivor and Nobel Laureate Elie Weisel said 'When you hear from a witness you become a

witness'. I am now a witness to the truth. We have a duty to continue to educate others about where hatred can lead to when left unchecked.

- 11.107 I have personally experienced the effects of a what a truly powerful Memorial can do. A Memorial provides an invaluable chance to educate people from diverse backgrounds in an accessible way, reaching out to a wide audience of people who aren't just living in the UK, but who also come to visit. I have seen the difference these memorials can make on someone's understanding of history and the concept of atrocity. It is the capacity to educate people through the LC that is especially vital. The history of the Holocaust isn't just the history of European Jewry, it is our shared history. The location of the UKHMLC next to Parliament, amongst prominent memorials commemorating the struggle against slavery, inequality and injustice, is crucial. Will we tell our survivors that they will be remembered and that their testimonies will live on? The honourable answer is a British one- yes, and the way to do this is to create this Memorial and LC next to Parliament. The proposals are supported.

Eric Murangwa Eugene MBE Founder and Executive Director Ishami Foundation (EME)

- 11.108 EME stated that he is a survivor of the 1994 genocide against the Tutsi in Rwanda, a genocide education campaigner and advocate for peace and development through sport and storytelling. EME explained that he has been working in collaboration with different groups to support initiatives designed to mark the over one million victims of the 1994 Genocide against the Tutsi in Rwanda and to ensure that the victims are remembered at this prominent national place of commemoration and education. The Ishami Foundation is pleased to support such an important and significant project as the UKMLC. Historical memorials truly matter and a new UKMLC built at the heart of world's greatest city and next to the symbol of the home of British democracy will have a huge significance on how the UK and the world at large remember and learn about the Holocaust and modern Genocides in the future.

Natasha Kaplinsky Holocaust Memorial Foundation (NK)

- 11.109 NK outlined her involvement with the HMC and her extensive and emotionally demanding work of recording the testimony of 112 Holocaust survivors as a fulfilment of one of the HMC recommendations. NK feels that the voices of these 112 survivors she listened to haunt inspire. She feels so fortunate to have spent so much time with such exceptional people, in sharing their pain- they have given us collectively the responsibility to do something with it and to learn from them. That is what this whole project is about- memorialising their pain and the immense loss and learning from a period of history that must never be repeated. NK further stated that the placement of the memorial gives the subject the prominence it most certainly deserves and changing it's location, as many of the past speakers seems to promote, would profoundly relegate its significance. The view of Parliament from the memorial will serve as a permanent reminder that political decisions have far-reaching consequences and highlight the responsibilities of

citizens in a democracy to be vigilant and responsive whenever and wherever our core values are threatened.

- 11.110 NK identified two key issues in respect of the proposal. The first is the specific location of the memorial in VTG. Some say they feel the park will be taken over by the memorial. This is patently not the case. The memorial will only take up 7% of the park. That being the case, there is no reason at all why the memorial and the current uses of the park cannot happily continue to co-exist. NK understood the public amenity value of the park is important but it is very hard to hear that this cannot be squeezed into the remaining 93% of the park and that it is to be prioritised over the opportunity to juxtapose a monument marking the worst example of the disintegration of democratic values against the greatest emblem of Britain's aspirations for democracy. Our current national memorial in Hyde Park is wholly inadequate, it is not much known about- and through our consultations we have learnt that it is felt to be out of sight and with no context. We should not shy away from our ambition or lose sight of the statement we are trying to make. Political decisions have far-reaching consequences and the location, is exactly the point of this Memorial. It gives us the opportunity to view the depths of tyranny against the high ideals of the Mother of all Parliaments.
- 11.111 NK states that the criticisms of the content of the UKHMLC have been made with limited understanding of what we are trying to achieve. Firstly, the content of this LC is a work in progress- though the principals are set. Constructive input from all experts is welcomed if they feel the content can be improved going forward. But criticism that what has been achieved so far is no more than a "series of four small rooms measuring 30 by 30" is unfair. The work is a collaboration with a range of institutions across the UK to craft an educational resource that promotes the deepest understanding possible of the Holocaust and subsequent genocides that goes far beyond the outer perimeter of the LC. You will be hearing from colleagues such as Adrian Packer, who will tell you about a very significant educational project called Echo Eternal (EE) that has sprung directly from the testimony spoken about above. EE is a commemorative arts, media and civic engagement project that has already won a very prestigious Pearson education award inspired solely by the survivors who will be memorialised in the LC.
- 11.112 NK returned to the survivors who are at the heart of this project. Those who are still with us, will no doubt be following every twist and turn of this Inquiry. The placement of the UKHMLC is an opportunity to give them a semblance of peace and stillness at the end of their lives. NK believes it is the greatest chance we all have to illuminate our thinking and enlighten the generations that follow. NK strongly supports the proposals.

Adrian Packer (AP) CBE Chief Executive EE

- 11.113 AP's statement is not a technical submission, but rather an expression of a view that the proposal you are considering has significant and far reaching human-interest implications. EE was originally inspired by the 112 interviews with Holocaust, but that is just the beginning of our story.

The project is now a nationally recognised, award winning partnership project, highly praised for its ambition, its reach and its innovation. Although the Holocaust is quite rightly taught as part of the history curriculum in schools across the country, the project offers a different perspective to learning about the Holocaust and subsequent genocides because it uses testimony to build empathy: empathy between children and survivors and empathy between children and schools with different social and cultural characteristics.

- 11.114 EE is a commemorative arts, media and civic engagement project that connects 19 carefully adapted testimonies from the original 112 interviews of the survivors with schools across the country. The testimony adaptations were supervised by the UCL Centre for Holocaust Education and are now "gifted" to schools to develop their own unique responses: echoes of the testimony, which are co-constructed with an artist in residence, specially trained to navigate the complexities of survivor insights.
- 11.115 In AP's view, there is nothing more important to humanity than education. There are many excellent examples of how children and young people are taught about the Holocaust and subsequent genocides, but what has been achieved through partnership with UKHMF is a concept that Holocaust survivor testimony should be an entitlement. EE believe every child should have access to testimony and should know that survivors speak an intolerable truth so that future generations are able to listen, learn and become the change we so desperately crave in an increasingly polarised world.
- 11.116 These truths must not be tucked away in a vault or diluted. In fact, the words of survivors should be amplified and given a major platform to be heard far and wide. If we are to truly confront hatred and prejudice, we should proactively seek to break down the barriers that lead to it.

Kish Alam (KA)

- 11.117 KA set out his background as a London Muslim, his work in education and his studies in countering radicalisation. He then set out his views in support of the proposal. There should be one in every city, town, village and hamlet. KA loves Sir David's design. Liking something is subjective and he's preaching to the converted but it has to be in Westminster. It has to be in the most important of places, because the Holocaust, the attempted annihilation of European Jewry was a unique cataclysmic event and the darkest chapter in the history of Western Civilisation. Westminster is and should be the place where deeper meanings are pondered and the lessons from the past are considered to help shape the decisions which affect all our futures.
- 11.118 Last year KA visited Scarlett Crawford's photography on the Race Relations Act displayed in the Hall at the House of Commons. He subsequently returned with some young men from his Mosque. Apart

from the exhibition, they were genuinely thrilled to see the plaque on the floor where Nelson Mandela spoke to the members of both houses.

11.119 KA met the young men in Parliament Square. It resonates that there are monuments to Gandhi and Mandela at the very centre, at the very core. They were not interested in Viscount whoever or Marquess so and so, who put down some rebellion centuries ago. But to see Gandhi and Mandela sharing the same space as Churchill is such a demonstrative acknowledgement of importance. It also indicates how attitudes can, and have, changed.

11.120 IKA considers that the UKHMLC has to be Westminster with the Cenotaph and all the other monuments because the Holocaust Memorial must be seen to be of no less importance– not just an adjunct in a South London museum that has existed for decades. The Holocaust is distinct from all other conflicts and has to be considered as such by giving it, its own place at the heart of where Government operates today and every day.

Martyn Heather Head of Education and Welfare, Premier League (MH)

11.121 One of the initiatives we undertake, as part of the holistic development, is a programme in partnership with the Holocaust Education Trust. The Premier League is currently coming to end of our two week 'No Room For Racism' campaign and you will have seen a lot around players taking the knee in support of 'Black Lives Matter'.

11.122 These become no more than gestures if they are not supported through the education of players, and young people, around the issues of equality, diversity and inclusion deepening their understanding of the differing forms that racism can take. Unfortunately, anti-Semitism can end up the poor relation when issues around racism are discussed and hence why we wanted to ensure that it is central to our education programmes.

11.123 What relevance does this have to the Inquiry? Well for the Holocaust Education Trust and ourselves to deliver the most effective learning environment for the programme we have to travel to Poland to understand first-hand the horrors of the holocaust and how it came about. In an ideal world every young person should have to visit Auschwitz/Birkenau as part of their education, but we know that is a difficult dream to achieve. Shamefully we have no central place in our country where we can bring, not just young people, but the public as a whole to learn about the atrocities the Nazi regime inflicted on the Jewish people, and other minority groups, whilst looking at our own complicity and actions as a country in the events which eventually led to the persecution and massacre of 6 million Jewish people.

11.124 We should stand proud as country that we at times were alone in standing up to the evils of the Nazi ideologies. People from my father's generation went to war to defeat Hitler's regime and many of them gave their lives in pursuit of freedom and this memorial should also be a

testament to the sacrifices they made to enable us to live in the democratic society we have today.

- 11.125 Through the excellent teaching resources of the Holocaust Education Trust we can start to explore the role our country played, pre the Second World War. However, these lessons can be far more effectively taught through a dedicated interactive learning environment, which the UKHMLC will provide, and which would give schools and youth groups, in particular, a place in this country where there is a focus for their education on the holocaust.
- 11.126 MH only recently discovered that in October 1935 the Football Association invited the German national team to play a friendly international this was just one month after Germany passed the Nuremberg Race Laws which saw Jewish rights taken away. To add to insult the game was played at White Hart Lane home of Tottenham Hotspur a club noted for its significant Jewish following. Despite protests there was little sympathy amongst the general footballing public and protests on the day of the game were robustly dealt with by the authorities. Three years later the England team again played Germany in Berlin and prior to the game the whole England team gave the Nazi salute.
- 11.127 This is mentioned because we seem to want to erase these actions from the memories, having a dedicated UKHMLC where we not only recognize and remember the victims but which will also teach us about the mistakes we made helps us to not repeat them in the future. We have all seen a significant increase in hate crime, which many of our players suffer on a daily basis, and we need to be prepared to face our past and recognize that if hate goes on unchecked the terrible events of the holocaust can be the consequences.
- 11.128 There is only one place the UKHMLC can be and that is right next to the seat of our democratic Government, it sends an unequivocal and powerful message that we will, as a country, face up to our past but more importantly we will fight against all forms of prejudice, discrimination and racism and stand alongside the victims of these evils. It is a sad indictment if we feel it is more important to have a space to exercise and walk our dogs than it is to have a memorial and LC which will honour the memory of the victims. MH implored the Inspector to (recommend) approving this application so that we will have a long overdue permanent memorial to remember the victims and to educate future generations to ensure history is never repeated.

Karen Pollock CBE Chief Executive Holocaust Education Trust (KP)

- 11.129 KP outlined the end and aftermath of the Second World War. The Holocaust is part of our nation's story. After all, it is still in living memory. But in another 10 or 25 years– when we mark 85 or 100 years since the end of the Second World War– how will this nation remember? Will there be eyewitnesses to tell us what happened? When we can no longer hear the testimonies from the eyewitnesses, when we can no longer be awestruck as they tell their unimaginable stories of survival, when we can no longer almost touch history, how will we ensure that this

stain on world history, this seminal moment in British history is remembered and learned about? How will we ensure that the experiences of those survivors– who despite all they had endured made a life here, became part of the very fabric of this nation– live on?

- 11.130 KP says the answer of course is the UKHMLC, to be built right at the heart of our democracy, in the centre of our capital city, next to our Parliament. A Parliament that made decisions that shaped the Second World War. An UKHMLC that will take a central place in our city– a place to pause, reflect, and challenge- for generations to come. A place where we can come together to reflect upon our shared humanity. A place where the very human stories of the Holocaust will be told. A place where the Jewish community can come together to mourn. A place where people from around the world will learn about this abominable part of human history. A place that will tell our nation’s story and stand forever as a warning of what can happen when liberal democracy fails. Here we are, 75 years after the end of the Second World War and up to now there is no notable memorial in this country. It is time that that changed.
- 11.131 There is no doubt that Britain’s relationship with the Holocaust is a complex one and there will always be debates about whether more could have been done. On the one hand, Britain allowed 10,000 Jewish children to seek refuge here, through the kindertransport, undoubtedly saving their lives.
- 11.132 British armed forces liberated concentration camps, most famously Bergen-Belsen on April 15 1945 and their care gave survivors their health and humanity back. Whilst other countries rounded up Jews to their deaths, Britain and its allies, fought the Nazis.
- 11.133 The UKHMLC has a duty to tell the story- warts and all. We must pay tribute to those brave British liberators and those that risked their lives to save Jews. But equally, this will be a place to tell the full story.
- 11.134 And yet, even today, there are those who claimed it never happened, or that it did happen but not to the extent people say. That Jews have made this up to gain sympathy or that it was a hoax. As our beloved eyewitnesses grow fewer and frailer, as the Holocaust moves away from living history to just history, we have a duty to protect the truth of the past and we must be able to stand up against the scourge and danger of Holocaust denial, the most spurious form of anti-Semitism.
- 11.135 And that is why, KP says, our Holocaust memorial needs to be here, in the shadow of Parliament, the shadow of our democracy. The place where decisions are taken. The home of British history.
- 11.136 Of course, the UKHMLC will complement the work of brilliant organisations ensuring the Holocaust is not forgotten– including the Holocaust Educational Trust that she runs. We have been working hard for many years to ensure that teachers and young people in schools up and down the country know what the Holocaust was, hear the testimony of Holocaust survivors, understand why the Holocaust matters here and

now. This UKHMLC will help us reach more people, it will help us reach different people, it will help us strength the impact of what we do.

11.137 And its location will send an important message to us all– that the horrors of the past are central to Britain, that what happened during the Holocaust must never be forgotten and never repeated, that the leadership of our nation sees the central place that the Holocaust has on our shared history and identity. The tragic story of the Holocaust is a lesson for all humanity, a warning for the future about the danger of despots and dictatorship and what can happen when racism is left unchecked.

11.138 It is time that this country has a fitting Memorial and LC in a fitting place– for the survivors, for this generation and for the next. It is our duty.

Ellie Omer Holocaust Educator (EO)

11.139 EO supports the proposal. It will be state of the art Holocaust memorial and educational LC; a masterful architectural collaboration internally curated by some of the greatest minds in Holocaust historiography and education. It will commemorate and contemplate the immense, incomprehensible murders of millions of people. A chronicle of history, it will honour the victims of the unprecedented crime of the Holocaust and provide a prism through which to view contemporary genocides. A confrontational reminder of humankind’s inhumanity to each other.

11.140 The 22 large bronze fins that will sit above its surface will symbolically represent the destruction of 22 Jewish lost communities across Europe, reminding us of the brutal gaping cuts into the living landscapes where life once flourished. In contrast, EO understands, it will gradually rise from a gentle hill to minimize any visual intrusion. It should be a physical provocation, a deafening reminder to wake our sensibilities that shameful actions took place not long ago and not far away. This happened in the 20th century, in the heart of a civilized, legitimate democracy in Europe, a history we are very much a part of and it asks the question, how was this humanly possible on our watch?

11.141 There’s nothing like a Memorial to get people fired up and few things are as contentious. That’s good thing. This is a complicated, challenging and brutal narrative, a weighty history that needs to be engaged in to understand how this stain on humanity erupted and spread. For its visitors, seeing will be believing, understanding and remembering.

11.142 The Nazis and perpetrators since have gone to great lengths to hide the extent of their crimes, remembering is an act of justice that gives dignity back to the victims. As Elie Wiesel reminds us, *“To forget is akin to killing a second time.”* We know the Government recognises the value and great importance of Holocaust education and has done since 1991. It is the only mandatory history topic to be included in the curriculum for most secondary schools across the UK. This would be the completion of

- that aim. This is the right and proper response to keep the conversation alive.
- 11.143 The place from which you remember an event shapes how you remember it- and it has radically different meaning in the place that it's told. That place, where we are telling the story, VTG, has immense strategic interest. An energy and dynamism of its own. A place of prominence- and it's that, that will shape and guide a visitor's all-embracing experience. This is the heart of British democracy, of the rule of law, of justice and fairness. All roads lead to here. It has unique sense of majesty and power with a proud history of British values. Surely if it's going to be built anywhere, for purpose, meaning and relevance, this is where, EO says, it has to be.
- 11.144 Critics have asked the question, 'What's the Memorial got to do with Britain?' That is one of the very reasons we need it. The LC, right there, will address this misinformed perceived knowledge. British history does not sit in a vacuum from Europe. We are very much part of the story. The memorial is an important tangible reminder of Britain's moral failure to act right where those decisions were taken. This cannot happen again. A LC will provide a more nuanced response and the opportunity to unpick this assumption of 'indifference' whilst reflecting in the context of its contemporary relevance. We cannot afford to sit back or more urgently, look the other way again.
- 11.145 Placing it there will have a valuable presence as an addition to the physical and moral landscape of our self-understanding. This is the right and proper place to keep the conversation alive. As history is lived forwards and studied backwards, the presence of a Holocaust Memorial and world class LC will, EO says, allow all peoples to reflect on the likely ramifications of past and contemporary decisions and ask, 'What can I do'?
- 11.146 Genocide is a social act; it concerns a group of people unable to rely on others. What resonates here is that more could have been done by policy makers and society to prevent it. That's why we should care.
- 11.147 We should care because it was about ordinary people in extraordinary times. It was a betrayal of humanity in the heart of a civilized modern world where a racist, divisive regime crossed an entire continent, sweeping up willing accomplices in its hateful wake. Ordinary people became complicit in the murder of their neighbours or simply indifferent. It is a chilling reminder that in the right conditions, anything is possible. Politically impossible, organisationally unworkable and ideologically unthinkable and yet...it happened.
- 11.148 George Santayana's prescient, 'Those that don't learn from history are condemned to repeat it' reminds us, to avoid repeating the mistakes of history we need knowledge and understanding, we need empathy and tolerance, to be open to diversity and to the stranger and education is our greatest tool. The memorial and LC would be part of that learning.
- 11.149 When we look back in the tarnished mirror of history, what do we see? The catastrophe of the Holocaust is that it has not finished. There has

been a failure of genocide prevention since 1945, atrocities, injustices, prejudice and discrimination continue. We should be appalled. Never again is meaningless, the single imploring, 'Still?' would be more appropriate. It is not too late. It is our world, it touches us and we have to care. Building the memorial is an important, urgent, natural and right evolutionary step in our story. We have an obligation to the past and to each other.

- 11.150 When it is built it will be a central, beacon of hope, of living history, a reminder to those that need reminding in the face of obscene revisionists, deniers and conspiracy theorists. Its compelling voice will be one of education and of action. We have to be informed and active participants in countering hate in today's world.
- 11.151 If we do not build it history and future generations will never forgive us as we face the moral implications of our government's inaction then and now. It is not a noble project, it is essential.
- 11.152 EO goes on to say that if it is rejected it means that Britain sees the Holocaust and subsequent genocides as less important and its tragic abiding contemporary relevance insignificant. It would also mean we turn our backs on many of the critical issues that are present in the world we live in today. This, she says, is unthinkable.

Robert Rinder (RR)

- 11.153 Of the range of material before the Inquiry, RR considers that perhaps the one that speaks most powerfully in support of his is that of HE (at 4.11) who ask 'what is the meaning of cultural heritage?' Their answer is that cultural heritage is an asset which people identify and value as a reflection of their evolving knowledge beliefs and traditions and of their understanding of the belief and traditions of others.
- 11.154 At a time when there is a challenging conversation about the purpose of national monuments and statues, RR reflects on the words of HE, written not in reaction to protest nor in response to recent events, but over a decade ago in 2008. However, some knowledge, beliefs and tradition do not evolve. First amongst these is the knowledge and belief that the rule of the law is a golden thread which binds the fragile tapestry of our democracy together. RR explains that it protects each and every one of us and, in so doing, ensures that we understand the beliefs and traditions of others so that peaceful coexistence can endure.
- 11.155 RR presented a TV programme about the Holocaust, broadcast in November 2020. The stories witnessed of his family and others who went back to discover the fate of their relatives who's early lives were not characterised by anti-Jewish racism or hate. They lived in a time when people believed that, having suffered the trauma of the first world war, democracy and the rule of law would protect them. They were tragically wrong. RR reflects that we will never know fully of the suffering of millions, their last desperate thoughts of terror and their incalculable loss to the world. He states that what we do know is that this happened

because the beliefs and traditions of our humanity died as democracy was subverted and destroyed.

- 11.156 We owe our freedom to the sacrifices of men and women of courage. Those values are not only reflected in the statues of political leaders or stone monuments to the bravery of that great generation; there must be something more. The proposed Holocaust Memorial would be precisely positioned adjacent to Parliament so that they would bring light to each other. The Memorial will illuminate the halls of Parliament where those exercising political power do their work. And, at the monument itself, each and every one of us, regardless of our background, faith or sexuality, will be able to speak to our representatives through bronze and stone.
- 11.157 RR contends it is difficult to think of space that would gift our nation, an understanding of the belief and traditions of others more than a teaching centre at the heart of the Memorial. For this is not just about commemorating a story of tyranny. It is the story of what happens when we forget to delight in, celebrate and- above all- remember the values that have made our nation last. It is a story to be taught to all the generations to come and in doing so he hopes will serve us all by safeguarding democracy so that we may be able to say, with renewed confidence, that oppression and discrimination by one group of human beings over another can and will never happen again.

Interested Persons

David Cooper (DC)

- 11.158 A National Holocaust Memorial is of the utmost importance not just for the Jews but for every single individual in the UK and elsewhere, lest they should forget the atrocities that took place. Anti-Semitic incidents in the UK have increased and European knowledge of the Holocaust and attitudes towards Jews is similarly of concern. There has been cross-party support for the project from and the Prime Minister and all his living predecessors. As the whole concept is of national and international importance that the heart of Westminster should be infinitely the best site. The Memorial needs to be next to the buildings that control our democracy (Parliament).
- 11.159 The Memorial should stand as a reminder of the horrors of Nazi persecution and include subsequent genocides. The view of Parliament from the Memorial would serve as a permanent reminder that political decisions have far reaching consequences, and that the responsibility of citizens in a democracy is to be vigilant responsive whenever and wherever those values are threatened. VTG is already well known for its existing memorials to fighting oppression, celebration of emancipation.
- 11.160 The original proposals have been revised to address various specific objections that have been made. Some 93% of the parks green space will be retained and enhanced, and there would be improvements to the way VTG is used and experienced.
- 11.161 There are no overwhelming arguments or security concerns about it being sited close to the Houses of Parliament. Any site dealing with the

Holocaust Memorial might provoke extremist activity. There is a much better opportunity of dealing with this in the middle of Westminster, than there is in some remote area. The memorial will not remove all anti-Semitism. That will only be done by deep education over a long period of time, as with every other form of racism. It is a major start and is in the right direction.

Fiorella Massey (FM)

11.162 FM states that the location will also strengthen the association of VTG with the heart of our British civic and democratic life, political and ecclesiastical, situated in Westminster. The proposal preserves the existing character of the gardens, allowing residents to continue to enjoy its benefits. The scheme aims to enhance and improve the landscaping and views of the Thames, whilst bringing this important historical Monument to central London. The UKHMLC will ensure the gardens become a vibrant space with better facilities, instead of an open space with often overlooked memorials to the past. Some 93% of the green space will be retained. Existing memorials will also be better brought to our attention. It is fitting that this memorial, the most important memorial to be built in the 21st Century in Britain, will stand close to the mother of all Parliaments, the seat of our Democracy. The scheme is a clarion call for all civilised nations to be up-standers, not bystanders. It inspires us all to be better for a brighter future.

Judith Adda (JA)

11.163 JA states that the UKHMLC is a sympathetically-designed building and a shining example of Britain's courageous stand against the most heinous crimes in the history of Humanity, and will also demonstrate to the world, Britain's staunch determination to always do what is right. A Westminster UKHMLC will, in her view, stand as both a memorial to Britain and a warning to the rest of the world of the tyranny of Dictatorship. There is also a public and educational interest in seeing this UKHMLC established beside the world-renowned Houses of Parliament to enhance the historic environment of Westminster. JA states that all visitors without exception, from wherever in the world and from whichever walks of life they will come from, will emerge changed forever from this UKHMLC in the future, convinced more than ever, when they see the Houses of Parliament buildings in front of them, that rigorous Parliamentary debate, respect for the law and democracy is the only way forward for the British people and for the whole of humanity.

Dr Stephen Frankiss (SF)

11.164 SF liked the bold architecture of the UKHMLC from first sight of the plans. The more it was considered the more significant it became. This would surely not be a Monument just to the victims of the Holocaust, dreadful as that was, but, in a deeper sense, it would be an expression of our values about tolerance to minorities. Importantly, it would provide education to support and sustain those values. The project does, of course, have a significant international dimension. When working abroad I was impressed how many people viewed the U.K. as traditionally one of the few bastions of liberal democracy, honest elections, minimal

corruption, tolerance of minorities, reliable broadcasting and so on. The Memorial would form part of that tradition. Its location would surely be important as it would show the political significance we attach to the project.

Politicians

Right Honourable David Cameron Holocaust Commission (DC)

11.165 DC explained that he I launched the HMC in January 2014.

11.166 DC explained that he set up the Holocaust Commission to remember the past and to make sure we safeguard the future. In the Past Holocaust survivors have done a great job of educating the country about what happened in this, the most ghastly event of the 20th century. The survivors are reducing in number every year. It is vitally important that we go on with this task of educating, explaining and remembering. This links to the importance of demonstrating that democracy is about so much more than holding elections, it is about tolerance, never forgetting about where prejudice, bigotry and hatred can lead. That is why this project is so important. DC was inspired by what happened in America when President Carter set up the all-party presidents Holocaust HMC to think about how best to commemorate and remember.

11.167 DC explained that from the very start this was an all-party non-political project. Spending commitments were made by both front benches. The HMC and its outcome have been backed by every living Prime Minister and the current leader of the opposition. The presentation of the HMC's findings when it came out were made to both the Cabinet and Shadow Cabinet emphasising its national significance. It was not the work of one party or Prime Minister, but all parties and all Prime Ministers.

11.168 DC continued explaining that he consider it is not just functionally important that the UKHMLC are in the same location, it's also symbolically important, making a statement that is a permanent affirmation of the values of our society about tolerance and diversity. These are the values that we want children to learn about, and that we want people to understand about our country.

11.169 No matter how stunning architecture on its own, this can only do so much to make sure that we remember and think of the future. It is important the we have the LC so that people can see the evidence of how, where and why the holocaust happened in one place. This matters for understanding the past, for combating Holocaust denial and for educating new generations about the dangers of intolerance and bigotry and allowing hatred to grow in our societies.

11.170 DC is very proud to have played a part in setting up the HMC. It was an all party project with a national focus, and the recommendations were about learning and remembering at the same time.

Right Honourable Gordon Brown (GB)

11.171 No one should ever forget the horrors of the Holocaust. No young person should grow up into adulthood without an awareness of the evil that men can inflict on their fellow men. No one should be able to claim

that they do not know where hatred leads. For these three reasons: never to forget, always to remember and forever to learn from the past, we need a national UKHMLC. But more than that: everyone should know what, faced with the reality of the Holocaust only a few 100 miles from our shores, what we as a country did and did not do. Everyone should know to what more we could have done to tackle the persecution of Jewish communities and many minorities who perished.

- 11.172 We need a national UKHMLC. More than that, no one should be able to obscure the truth of the Holocaust, no one should be able to downplay the sheer atrocity of what happened, no one should be able to rewrite history or manipulate the facts. The Holocaust happened because politicians failed to prevent it, and because of the weakness and naivety of people who wanted to do good was no match for the people who wanted to do evil. For these reasons too we need a UKHMLC.
- 11.173 GB does not believe that it should be a matter of controversy that there should be, in this great country of ours, one sacred place designated as such: known to all, open to everyone and built to bring to life the pledge that we will never again allow evil to triumph over good; that we will never again allow discrimination to go unaddressed and prejudice to rise unchecked; that sends out a clear unambiguous message 'no' to racism in all its forms. That sacred place should, in his view, be the proposed national Holocaust Memorial and LC. Without permission to enact this UKHMLC after the commitments that have been made, he considers we will forever as a country be diminished by the failure to bring to life to a bold compassionate idea that has the support of all major parties, all religious faiths and all community groups. But with the UKHMLC we will as a country be strengthened in our ability to face the future united.
- 11.174 GB believes that for all of these heartfelt and compelling reasons, the national interest is best advanced by building the UKHMLC in VTG. For this is of enormous significance, and why he offers his thanks to Ed Balls and Lord Pickles in leading this project, so that this enduring Memorial will be built close to Parliament, to stand at the heart of our democracy as a permanent statement of our enduring values.
- 11.175 It is now all the more important in the 2020s, in the eighth decade since the events of the 1940s to tell the story, in pictures and in sound, that have been told towards to us for 75 years with eloquence and emotion by those heroes. Stories which today too few heroes are now here with us to tell.
- 11.176 GB recalled many people of note in the legacy of the Holocaust.
- 11.177 GB considers how this new LC will also tell the story of genocides that in our lifetimes we have seen on our television screens, but that we have a duty to call out as crimes against humanity. So, he says, if we can, through the UKHMLC, remind people of the everlasting need for tolerance, if we can build on the pathbreaking work of the Holocaust Education Foundation Trust, if we can help foster religious freedom, advanced human rights and remind ourselves of the obligations we owe

to each other, then this National Memorial will do far more to change the world for the better than any words any of us can offer in its support.

Those speaking against the proposal

Religious

Rabbi Jonathan Romain Rabbi Maidenhead Synagogue

11.178 Rabbi Romain made six points:

- Monuments do not combat anti-Semitism: education and role models do;
- Given this fact, the substantial costs of the proposed Memorial (and its on-going maintenance, both physically and in terms of its programming and staff) could be better used;
- The Memorial is even more irrelevant given that we already have in London the Holocaust wing of the Imperial War Museum and the Hyde Park memorial. There might be a case for upgrading them, but certainly not for rivalling them;
- The building will therefore unnecessarily denude locals of their park to a significant extent;
- Britain was not involved in the Holocaust and, unlike various European countries, has no guilt to expunge, so the need for such a project is debateable;
- The Memorial has not yet been built and we have the chance to start from the right place.

Reverend Philip Chester Local Parish Priest (PC) and Reverend Graham Buckle Local Parish Priest (GB)

11.179 Both PC and GB stated the Parishes are home to a diverse communities, one with pockets of quite acute deprivation and with a thriving primary school. Broad sectors of these communities are reliant on VTG as a source of public open space and view the proposed development with great apprehension as a perceived threat to that space. GB also expressed concerns that the highly significant view of the Palace of Westminster from Lambeth Bridge would be compromised by the proposals. Whilst both very much supported the principle of the UKHMLC, the cost to the local community and environment, in locating it in VTG was too great.

11.180 GB is against the proposed plan on number of reasons: it is a vital and valuable green space in a busy community in the heart of Westminster. GB is saddened that this memorial will block a historic and wonderful view from Lambeth Bridge. GB does not object to the UKHMLC, but feels this fundamentally this is in the wrong place. Such a large amount of money could be spent more creatively in a far more reaching way in putting it into education throughout the country.

Academics

Professor Adam Ganz (PG)

- 11.181 PG outlined his personal and family background as an academic and as a UK citizen with relatives that had perished in the Holocaust.
- 11.182 PG feel strongly that the Government's argument that the public benefit of their scheme is great enough to justify the environmental and heritage harm are not valid, it is the wrong Memorial in the wrong place.
- 11.183 Others have spoken about the power of German Holocaust Memorials. PG agrees- but says these are the culmination of a long engagement with the past which has involved painful debate and discussion at every level. PG considers it is Germany's duty to do such work. A similar debate, in his view, is needed in the UK. The resources would be much better spent at other sites- the Wiener Library, and the IWM and in supporting local archives and museums to enable the kind of open national debate which has taken place in Germany.
- 11.184 PG fears that this bombastic edifice on this site will not only destroy this hard-won calm but will be used to whitewash the role of the Mother of Parliaments support an implicit narrative that the British are somehow seen as superior.

Professor Geoffrey Alderman (PA)

- 11.185 PA outlined his personal and family background as an academic and as a UK citizen with relatives that had perished in the Holocaust. He then stated his objection to the proposals both in principle and in terms of its location.
- 11.186 In terms of principle PA objects on the grounds that there are already many such memorials to victims of the Holocaust. In addition, the sum of £100 million (spent on a memorial for which there is 'absolutely on need') could be better sent to other pressing societal needs.
- 11.187 In terms of location, PA also pointed out that VTG is a small public Park within a CA itself within a designated zone of 'monument saturation'. The proposal has also drawn objection from other agencies, including UNESCO, Royal Parks and the Environment Agency. PA also takes issue with the argument that the juxtaposition of the UKHMLC with Parliament symbolises the antithesis between the Holocaust and British values and that democracy is a protection against genocide. This is not truly reflective historical record, which shows an ambivalent approach of the British Government of the day to the evolving Nazi onslaught on the European Jewish population. PA challenges the argument that the Memorial will act as a deterrent against anti-Semitism, suggesting it is 'foolish and ignorant in the extreme'. PA suggested much better plan would be to digitise the entire Holocaust story and make it accessible nationwide. PA concludes by arguing there is no 'public benefit whatsoever to be derived from the Memorial' that would outweigh the identified harms.

Dr Irene Lancaster (IL)

- 11.188 IL outlined her family and personal background as an academic and as a UK citizen with relatives that had perished in the Holocaust. She then stated her objection to the proposals in terms of procedure and location, function, its motivation and its design.
- 11.189 IL stated the presentations to the selection jury in Manchester in 2017 were very significantly different to those now forming the basis of the application proposals, omitting such key elements as alterations to the children's play area. The conceptual design approach of the fins was also rejected at this time.
- 11.190 IL explained that she felt the jury process was flawed because she had been lead to believe that those living in the area surrounding VTG supported the proposal, yet it transpires from this Inquiry that was not the case.
- 11.191 Moreover, it has been demonstrated that the existing number of more than 300 of these edifices around the world, including in Washington, Berlin and Ottawa, which have been mentioned during the Inquiry, have led not to fewer, but to more anti-Semitic acts. Evidence has been sent to the Inquiry regarding these three western democratic countries- the USA, Germany and Canada- detailing how the construction of Holocaust Memorials and LCs has always, without exception, led to an increase of anti-Semitic activity in those countries. The evidence is irrefutable therefore that the construction of Memorials and LCs to Jews leads to an increase in antisemitic attacks on living Jewish communities in those same countries. The first duty of government is to safeguard Jews who are alive.
- 11.192 Contrary to that stated to the jury in Manchester, the proposed UKHMLC is not going to be dedicated to the six million or to celebrate the contribution of Jews today. Instead it is going to be dedicated to so-called 'British Values', to be presented in a tiny underground exhibition featuring British issues during the Holocaust. This is not at all what was expressed by the Prime Minister's team to the Manchester Jury. A LC on so-called 'British Values' will not solve the problem of vicious anti-Semitism, which is still with us as I speak, and growing in many sectors.
- 11.193 IL explained that in Manchester there was no mention of 22 countries (a misnomer in any case), the Covenant of the Pieces between God and the Jewish people, or the Kotel tunnels. The other nine designs did not appear to have LCs attached, and other LCs were certainly not mentioned to us. In any case, to choose a Holocaust Memorial with an LC would not have been in the spirit of the remit before us, which was to harmonize in every way with the BM. Finally IL concludes that the loss or material change to the children's play area would mean the loss of an important resource.

Professor Tom Lawson Representing academic interests (PL)

- 11.194 PL represents a group of scholars with significant expertise in the history of the Holocaust in relation to Britain, the history of British refugee policy, the memorialisation of the Holocaust in Britain and Holocaust

education. PL identified two main issues: the principle of the UKHMLC and its location.

- 11.195 PL explained that the planned memorial and education project represents a tremendous opportunity to increase public historical understanding of a complex and challenging part of our history and the opportunity to correct widespread misconceptions about the Holocaust, not least with regard to Britain's role. In a time, he says, of unprecedented pressure on the public finances it also offers the chance of securing the resources necessary for effective learning and teaching in all forms of public education. PL, representing a group of academic interests, welcomes the cross-party commitment to provide resources for education and research into an aspect of our shared traumatic past. However, he finds that there is no pressing need for a further physical monument and that it would be better for resources to be deployed in more creative and potentially transformative ways.
- 11.196 PL suggests that the resourcing of educational materials should be a priority, through the creation of a digital repository to aid learners, teachers and researchers; greater investment in teacher development programmes; supporting the provision of research-informed public history initiatives; funding for research including doctoral scholarships to ensure the training of new generations of scholars.
- 11.197 PL states that VTG is a small space and the intended UKHMLC will overpower all the existing important statues and memorials. Situating the UKHMLC next to the Houses of Parliament he considers is likely to create a celebratory narrative of the British government's responses to the Jewish catastrophe during the Nazi era and beyond. Therefore, PL and the other academic interests he represents oppose the current site and propose an alternative, decentralised option.

Professor Sir Richard Evans Regius Professor Emeritus of History at the University of Cambridge (PE)

- 11.198 PE stated that the proposed UKHMLC in Westminster would be an unnecessary duplication of the IWM's offerings on the Holocaust. The IWM, located less than a mile away from the Palace of Westminster, is already the national Holocaust Memorial centre and it remains the appropriate location for a comprehensive, scholarly and professional coverage in the UK of this most tragic episode in human history.
- 11.199 The proposed new Westminster Memorial will not be able to compete with the substantial and long-established archival collections of the WHL. The implication that the Westminster centre is needed because more research on the Holocaust is needed is, PE says, misleading. Britain, with its universities and its research institutions, is already, along with Germany, the United States and Israel, one of the world's leading country for Holocaust research. The location of the proposed memorial in Westminster apparently, in PE's view, symbolizing the importance of 'British values' and Parliamentary democracy as a bulwark against genocide is misleading, an objective historical appraisal of the British

response would need to be far more nuanced, as Britain placed many obstacles in the way of Jews who tried to escape from Nazi Germany.

11.200 The public benefit and the benefit to historians accruing from the proposed new Holocaust Memorial and underground exhibition and LC are in PE's view insufficient to justify the partial destruction of an important and much-loved green space. But all of this is distracting from the true purpose of the Memorial.

Charli Veale (CV)

11.201 CV asked why is the government creating this new Memorial, and why now? CV wished to offer a new perspective on why VTG is an unsuitable location for this proposal. There is now a recommendation to build a new national Memorial, which is encouraging Holocaust commemoration but off the back of that, promoting 'British values'. The crux of the argument is that CV doesn't believe this Memorial, being built next to Parliament, is as single-mindedly focused on Holocaust memorialization as it really ought to be. CV states that a Memorial is important, and encouraging Holocaust history and memory is such a worthwhile endeavor. However, CV considers that it should not be used to advance whatever domestic aims the government has at the time, even if worthwhile. Holocaust history and subsequent genocides, the educational topics of this proposal, are quite huge and complicated enough, without introducing contemporary preoccupations to the mix. CV opposes the proposed scheme.

Politicians

Sir Peter Bottomley Member of Parliament Worthing West (PB)

11.202 PB supports strongly the proposal and the specifications issued in September 2015 by the UKHMF, though opposes what is now proposed and where it is proposed. Moreover, the present proposals do not meet the brief initially set out by the UKHMF. PB also set out at length concerns of the process of procuring the present proposals.

Lord Flight (LF)

11.203 LF stated that he seems to think that everyone is in agreement in terms of supporting a Holocaust Memorial in London, thus the argument is about where the memorial should be. LF strongly supports the IWM site. LF states there are several powerful arguments against VTG as a site. VTG is an important site for local recreation; the current proposal will generate significant additional traffic and UNESCO and the Royal Park oppose the scheme on the basis of harm to the WHS and RPG.

Lord Howard of Rising (LHofR)

11.204 LHofR stated that a large part the park has already been taken for the Parliament visitor centre and that the area is already congested with traffic. Although some of the one million visitors will come by tube, others will come by road exacerbating traffic problems; he is concerned about where will buses park whilst waiting for visitors. Regular demonstrations already cause massive congestion with many streets

being closed reducing traffic to a standstill. Access to the LC will only be possible on foot.

Lord Blencathra (LB)

LB stated two principal reasons for opposing the proposals: visual amenity grounds and traffic generation. The proposal, incorporating 23 bronze fins, are an inappropriate intervention in their context, failing to enhance the visual beauty of the park. In addition, the symbolism of the fins is both obscure and inappropriate. On this matter LB concludes that "everyone knows that these 23 giant bronze fins are a grotesque, ugly monstrosity".

11.205 proposed location is inappropriate as much of the facility is to be underground to minimise its impact. There are other more suited locations for such a facility such as St James's Park and the need for a physical structure in the digital age is also questionable. The proposal will also increase traffic and increase the risk of terrorist attack. The present resources would be better directed at enhanced educational programmes.

Lord King of Bridgewater (LKofB)

11.206 LKofB stated he had previous ministerial responsibility for four years for the Royal Parks. He Supports a Holocaust Memorial in VTG, supports a LC, but not in VTG. In particular he is also concerned that the proposal will risk of increasing problems of major demonstrations, noting these are currently affecting Parliament.

Viscount Eccles (VE)

11.207 VE set out at length his concerns over the process and governance of the UKHMLC project rather than offering a view on the justification for or against the proposals. Nor did he comment on the planning merits or otherwise of the project.

Lord Sterling (LS)

11.208 LS supports the comments made by Rev Chester as a local resident. LS also states that this small park, adjacent to the mother of Parliament is iconic, and is of enormous significance, and will be increasingly so. LS believes that monuments are meaningless, but you cannot destroy ideas, rather education is a key factor. LS says we do not need a Monument in VTG. LS explains he is concerned about the environment of the park, explaining when you walk amongst the trees, enjoying the sound of the leaves and birds, the effect on this calm space must be carefully considered.

Lord Williams of Oystermouth (LWofO)

11.209 There are two considerations that should influence us in assessing the quality and suitability of a building. One is its relation to its immediate environment; the other is its fitness for a declared purpose. On the first point LW reiterated concerns over the resultant reduction in green space and further pressures on existing infrastructure as well as the loss of recreational facilities. The matter of the balance of these harms against public benefit has to also account for the possibility of alternative

locations being discounted; it remains unclear why the IWM has been so discounted. Secondly, the fitness for its declared purpose must be questioned. There remains doubt as to whether, as presented the UKHMLC will deliver the educational purpose desired.

11.210 LWofO is unclear whether the memorial to commemorate the victims of mass murder more widely, or the Jews of Europe in particular, or even it is to also celebrate liberal 'British' values as a bulwark against such crimes? The educational message has to be clear. LWofO is unclear as to whether the educational provision envisaged in the current plans fully thought through. He questions whether a centre with a robust educational focus would best be served by a building of the kind proposed. And finally, he questions whether the best use of our resources is to invest in a large-scale, high-status public memorial or to pursue a dramatic expansion of training and provision for relevant education in our schools and elsewhere.

11.211 The proposal is, he acknowledges, well-meant and its defenders are all sincere enemies to anti-Semitism. But nothing presented at this Inquiry has reassured him that the project as presented is adequately scoped, its educational dimension been thoroughly thought out, and that it has fully considered what can be learned from experience elsewhere. LWofO is especially concerned about the elision of the task of effectively and transformingly memorialising the Shoah with the affirming of 'British values'. Locating the monument close to the heart of British Government and other symbols of British collective memory has a certain force, but how far is this in effect conscripting the Shoah into our own national agenda? That, LWofO says very strongly, cannot and should not be the focus of any attempt to deal with the appalling memory of the events in question.

Local Residents and interested persons

Sir Jeremy Blackham (JB)

11.212 JB expressed two principal concerns, location and format. In locational terms, being at the heart of Westminster, there is the real risk of terrorist attack. The proposals will also compromise the setting and significance of the BM, itself marking a very significant moment in the fight to abolish the global slave trade. The proposals will also compromise the function of VTG as a public park. All such harms could be mitigated through considering relocation of the UKHMLC at the IWM. JB therefore opposes the memorial being located in VTG.

Chris Dawes (CD)

11.213 CD stated that whilst memorialisation of events is a worthy aim the open spaces of London have been encroached upon and 'eroded' of late by such memoria. Whilst CD supports the principle of a UKHMLC he opposes its location in VTG. CD also stated that it was not necessary for such a combined facility to incorporate a large physical building to facilitate education about the Holocaust. The architecture, particularly the bronze fins, are not appropriate to the banks of the Thames and such a facility would cause congestion and a threat to security. Moreover, the

higher aims of educating our lawmakers residing in the Palace of Westminster are misconceived. CD emphasised again the great importance of VTG as a public open space for both local residents and as part of a network of public open space in London. Whilst supportive of a UKHMLC its provision should not, in CD's view be at the expense of this vital urban resource.

Mary Dejevsky (MD)

11.214 MD spoke as a local resident opposing the proposals, emphasising: the uniqueness of the site; the need for urban green space and the congestion the proposals may cause. MD also expressed concerns regarding local policy matters and the process of the scheme's development.

Victoria Boyarsky (VB)

11.215 VB, a history teacher, objects to the siting of the Holocaust Memorial and LC for two main reasons: firstly it needs to be accessible to school parties, the proposed site is not optimal and the message sent by placing it next to Parliament will be difficult to explain to children. In addition, the IWM has an excellent exhibition and is also spacious and well set up to accommodate school visits.

Dr Sally Marlow (SM)

11.216 SM spoke as a local resident and mental health professional opposing the UKHMLC in VTG. SM stated that public open space plays an important role in safeguarding mental health– a point given especial emphasis during the pandemic. VTG is a vital resource in this regard to local residents, many of whom lack private amenity space. It is necessary to safeguarding the wellbeing of the community that VTG remains as open space facility in its current format.

Bob Lindsay (BL)

11.217 BL object to the proposal on the grounds that VTG is a valuable resource as it is now, and the scale of the proposed development will radically change the utility of that resource.

Paul Diamond CMG (PD)

11.218 PD incontrovertibly supports the principle of the UKHMLC but doubts that it will have the gravitas and presence to really deliver an educational benefit comparable to other Holocaust memoria. Moreover, it would also come at an unacceptable cost to the environment and loss of public open space highly valued by the local community.

Saija Singer-Seidenfaden (SS-S)

11.219 S-SS objects to the location of the UKHMLC. The design appears as a recycling an idea that had previously lost a competition– the Holocaust monument in Ottawa in 2014. What started out with the aspiration of being a dramatic sculpture in the park is now no longer, and rather, has resulted- with each iteration in a complex of buildings, making greater intrusion into the park. The proposed complex of buildings, eliminates

the existing playground and proposes, in her view, an ill-located new playground.

Wilfred Rimensberger (WR)

11.220 WR is chairperson of Millbank Estate and established the local community platform Millbank Creative Works. The local parks serve the local community to relax, play, exercise, and walk their dogs. They are informal meeting places for an increasing number of people on tight budgets but still seeking to socialise across the mixed community. Amongst the existing green spaces, VTG is the one providing the largest local open space where dog owners, families, children and tourists can go about their business with a minimum of constraints. It does not make sense, WR says, to reduce existing open green spaces in the heart of London when demand is growing from existing residents and further population growth from new developments.

Mike Cunningham (MC)

11.221 MC considers that the proposal is inappropriately located, will result in the loss of valued park space and the loss of trees; it will also result in local congestion and become just another tourist site. He considers that the money would be better spent on education. Moreover in his view there is already a fitting memorial to those lost in the Holocaust in Hyde Park.

Raphael Wallfisch (RW)

11.222 RW believes planning should be refused for the LC at this site, and this might allow for additional time for the search for a more generous space which would enable a thorough and dedicated study of the history and present state of anti-Semitism in the UK and worldwide. RW expressed fears that the message of a 'British Values' LC would undermine the purpose of the memorial and indeed incite further anti-Semitic action.

Jonathan Lass (JL)

11.223 JL fully supports the principle of UKHMLC in London but opposes its location in VTG by reason of its location, scale, cost and duplication of other memoria and educational facilities. By virtue of its scale in the location proposed the UKHMLC would harm the significance of the WHS, consume 30% of the area of the park and harm the settings of a range of very significant heritage assets. JL considers that a better approach would be to coordinate and develop the Holocaust exhibition at the IWM to incorporate a Memorial in addition to enhance teaching facilities that would avoid the harmful interventions to the VTG.

Amenity Societies

Paul Thornton London Forum of Civic and Amenity Societies (PT)

11.224 PT expressed concern that VTG would be overwhelmed by the number of visitors to the facility and that this could in turn represent a security risk

for those attending. VTG as a public open space asset would be lost to local residents and visitors to Westminster. PT opposes the proposals.

David Lambert Director of the Parks Agency (DL)

11.225 DL's initial concern on behalf of the Parks Agency is that the UKHMLC proposals will dominate VTG not just in terms of visual scale but in terms of its use and function as well. This is contrary to the common balance whereby memorials within parks are subservient to the public open space. As a result of the proposals this primacy would be reversed. A further point is simply that the resultant loss of open space would be contrary to the expectations of paragraph 97 of the NPPF in relation to open space. Moreover, DL does not accept the characterisation of the harm by HE as 'less than substantial'. Instead DL argues that this proposal is seriously damaging to the fabric, significance and character of the RPG.

11.226 Moreover, for the Parks Agency DL suggests that the very word 'substantial' unintentionally makes it more difficult to understand that some 'serious' harm is not about substance at all but about the intangibles of space and use. If significance is assessed in a way appropriate to a public garden (including a more nuanced approach to understanding the character and quality of such designed landscapes) then the Parks Agency believes, in terms of Bedford, that 'very much if not all the significance (would be) drained away... vitiated altogether or very much reduced. For the Parks Agency DL concludes by saying he can think of few other examples where such substantial harm has been caused to a RPG.

Peter Roberts Cathedral Area Residents Group (PR) (CARG)

11.227 PR on behalf of CARG supports the principle of the UKHMLC, however, VTG is not considered an appropriate site for such a structure. PR further states that VTG does not constitute an adequate site for this purpose. Therefore, CARG opposed the proposal on the grounds that the resulting loss of the precious park facility could not be justified by the intended benefit. If the proposed UKHMLC were built in VTG the park amenities would be lost or severely diminished in many respects. Moreover, the expected additional 10,000 visitors a day would constitute an increase by some five-fold over the current average daily use of the park. Not only would they overload the reduced park space- but in arriving at and departing from the VTG they would heavily congest Millbank and the surrounding streets. CARG believe that the unfortunate reality is that the aspiration for the proposed UKHMLC to benefit from being set in the calm tranquillity of this park will be thwarted by the development itself and by the large increment of people and activity which it is designed to attract which will simply overload the reduced space and the surrounding streets.

Nathan Silver Westminster Society (NS)

11.228 NS on behalf of the Westminster Society fully supports the principle of the UKHMLC but strongly opposes the choice of its site in VTG. The Westminster Society believes that this memorial design is inadequately

inspiring. It also severely miscalculates the public space required, introduces unwanted turbulence in the tranquil park, and proposes to place an inevitable attraction to terrorism alongside our principal structures of Government. Moreover, the Westminster Society considers that approval of this unsatisfactory proposal would preclude a better-considered Holocaust Memorial on an appropriate site elsewhere.

Those speaking neither for nor against the proposal

William Towie

11.229 Mr Towie made reference to family links with the Holocaust and the also the fact that he has enjoyed VTG on many occasions.

Michael Pinto-Duschinsky (MPD)

11.230 MPD focuses on the issue of the public interest in this case, and whether it is strong enough to overcome the powerful planning objections.

11.231 Firstly, he says it is both unsurprising and healthy that there should be such passionate disagreement about the substance of the proposal. Careful criticisms should be welcomed since they are not only indications of a vibrant community and of the questions of judgement needed to come to solutions, but they may actually lead to improved, more nuanced plans.

11.232 Second, MPD is uncomfortable about the lack of sufficient thought about the precise objectives of the Memorial and the prospect that the project could easily backfire. In addition, he believes that all or most of our hopes should not be aligned with a prestige construction project or of the annual Holocaust Memorial Day.

11.233 MPD believes the scope of our efforts need to be considerably widened, and raises a range of areas of concern. For example, top of this list is the material and psychological welfare of fellow Holocaust survivors. Ordinary survivors have often been treated poorly by scholars, communal activists, broadcasters and others. There is unfinished business from the Holocaust that needs to be challenged if there is to be a legitimate legal order in Europe. MPD's conclusion is that, whilst grateful to the HMC, it is dangerous to suppose that a few major initiatives will resolve our post-Holocaust problems.

11.234 He suggests that if the aim is to create an iconic symbol of our horror concerning the Holocaust and if the site next to Parliament is considered essential, then the current proposal should be judged on grounds of planning law and standards, functionality and possibilities for future expansion. If the proposal fails on those criteria, another site should be found for the project.

Kenneth Whittaker (KW)

11.235 KW sought to draw attention to the legacy of monumental riverside embankments constructed along the Thames in the period 1860 to 1933, an historic enterprise that includes the genesis of VTG. During this time institutions of Parliamentary governance grappled with questions of

democratic representation that continue to resonate today. This legacy charts a direct link between environment, health and urban infrastructure.

- 11.236 KW gave details of the history of the Thames Riverside Embankment and the genesis of VTG, specifically the role of the Metropolitan Board of Works which came into existence in 1855 to solve the capital's urgent sanitation problems at a time of an unprecedented environmental and health crisis. The solution was to provide urban and environmental infrastructure that tackled a deficient flood and urban sanitation system, improved public access to green space and reduced traffic congestion by creating a grand river frontage. The Thames Embankments framed the recently re-built Palace to create an architectural composition representing the pinnacle of UK civic society.
- 11.237 In 1928, less than 60 years after the completion of Victoria Embankment, a section of river wall at Millbank was breached, flooding the Palace of Westminster and the Tate Gallery. A programme of flood defence improvements was undertaken. Part of this work, undertaken in 1932/3, involved the creation of the garden which accords with the current boundaries of VTG and the simplification of the planting design to give clear views to the Palace of Westminster. KW explained that W H Smith MP took the role as benefactor to VTG.
- 11.238 VTG is one of several individual public garden spaces conceived, at least in their current form, by the necessity to reclaim, embank and build flood walls along the Thames. These spaces share common characteristics. They are in proximity to the Palace of Westminster, in some instances with direct views of key buildings within the WHS; they closely relate to a unified, monumental civic architecture of land reclamation; are part of a historic designed landscape intimately connected to and shaped by the riparian setting, and they function as open air galleries containing many memorial monuments.
- 11.239 KW concludes that in this location, given the issues of sensitivity arising from this application, there can be weaknesses if heritage considerations are not properly contextualised, as designations are not always well described or appropriately defined. Significance in this instance transcends the immediate confines of the application site, the heritage assets it contains or those in the immediate vicinity. The need to address the issue of whether the UKHMLC is an appropriate intervention at VTG also justifies a more developed curatorial approach to the historic environment. Few would view a genteel historic park with a backdrop of a Neo-gothic architectural masterpiece and see instead a flood defence and sewer, let alone give weight to seemingly mundane issues of governance and public welfare that lie deeper still in the site narrative.
- 11.240 The Thames Embankment and VTG are both products of catastrophes that occurred due to ignorance or neglect. They constitute safeguards that, had civic institutions and accountable authorities been in place, or if they had acted early enough, would have prevented unnecessary loss of life.

12 Written Representations

Application stage

- 12.1 Responses from local residents and other individuals were received during both the first and second phase consultations at application stage. The first phase resulted in 935 letters of objection, 133 letters of support and 3 neither objecting or supporting; the second phase resulted in 259 letters of objection and 3113 in support. With regard to the latter high figure, the Officer Report refers to the fact that over 3000 consultation responses were submitted on behalf of individuals by an organisation called the Big Ideas Company (this includes around 3000 in support, 58 objections and 4 neutral comments).
- 12.2 Recurring themes from supporters of the scheme include references to the fact that Holocaust remembrance and education is of national importance. That the location beside Parliament would give the memorial prominence. that intolerance, racism and hate crime is rising. They also voiced that the proposal would send a strong message to all people that Britain must be a country committed to supporting tolerance, social cohesion an opposing racism and hatred, reminding people where racism and hatred can lead. The appearance/design of the memorial would not harm the character and appearance of the Park and wider area. The landscaping would improve the appearance of the park. The proposals would maintain and enhance VTG as a place for local residents and visitors to enjoy and also provide a home for the Holocaust memorial and LC. VTG is already well-known for its existing memorials to fighting oppression and celebrating emancipation. Security issues would be adequately addressed. There is considerable support, locally and from further afield, for the proposed UKHMLC to be sited as proposed.
- 12.3 Recurring themes against the proposal include the effect on the character and appearance of VTG, the WAPSCA, the setting of the WHS and existing listed memorials and structures. The negative effect of the increased activity and additional visitors and its impact on the character and function of VTG is raised, as is the loss of open space and the impact on the amount of green space available locally. The impact on the trees is also referred to, as is the increased security risk, as are concerns about the proximity of the memorial to the children's playground. The changes to the children's playground are specifically cited: the relocated playground area would be reduced in size and cut off from the main grass area, and the volume of people using the café before or after visiting the Holocaust Memorial and LC may affect playground users. The increased traffic from coaches and servicing would pose a danger to cyclists and pedestrians. There would be a risk of basement flooding. The site is located within the Westminster Monument Saturation Zone.

Finally, it was suggested that alternative sites should be sought, such as the IWM.

- 12.4 Many of the issues raised by organisational and other formal responses have been covered in the cases raised by the main and Rule 6 parties, and are not repeated here. Nonetheless, it is relevant to highlight two.
- 12.5 The Westminster Society⁴⁰⁸ expresses concerns about the fact that the scheme would ignore the Royal Park protections, overriding the locations significance in history and overpowering existing monuments; that the sizable demand for admission, visitor coach congestion and intensified security measures that would be added to those already required by Parliament, would impair successful public access to both; questions whether the size of the site is suitable for this use, suggesting that part of a well-conceived Holocaust Memorial should be a quiet and amply sized working library for scholars, as well as a LC for visitors; and that the choice of site ignores Parliaments own likely future requirements, suggesting that masterplan for the entire parliamentary precinct including VTG, based on future needs and connections, should precede this application.
- 12.6 The Royal Parks⁴⁰⁹ refer to the impact of the proposal on a popular public amenity space in an area with few public parks. More specifically, the scale, design and loss of public space, would have significant harmful impacts on the character and function of VTG. The loss of large areas, or the entire park closed during construction, would impact on visitor enjoyment. The increased footfall would also affect visitor enjoyment and lead to congestion near entrances. Overall, the sombre nature of the memorial, the large structure and the necessary security measure around the curtilage of VTG will change the nature of what is currently a relaxed park alongside a unique riverside location.
- 12.7 The concern about arboricultural and ecological impacts are referenced elsewhere in the report.

Appeal Stage

- 12.8 A further tranche of 131 written representations were received at appeal stage: 8 in support, 118 opposed to and 5 neither for or against the proposal.
- 12.9 Those writing in favour of the proposal largely reiterate the points made above, and include observations that the IMW is outside the Central London context, in an area lacking footfall/other attractions; that the proposed new path would follow the exact shortcut most people take when the lawn is dry; and that as witnesses disappear, and schools have failed to effectively deliver holocaust education, this space is required to convert what happened into public knowledge, in a central London location, accessible to all.
- 12.10 The Greater London Authority (GLA) considers that the proposal complies with both the London Plan and the New London Plan. Reference is made

⁴⁰⁸ CD 6.47

⁴⁰⁹ CD 6.46

to the wide-ranging educational, cultural and societal benefits. The importance of locating the UKHMLC adjacent to the UK's pre-eminent building of political power, along with qualitative improvements to open space and the wider public benefits, would outweigh any conflict with Policy 7.18 in terms of the impact on open space. The design would be of the highest quality and would enhance the remaining open space. Whilst there would be some heritage harm to the significance of the RPG and listed structures, this would be less than substantial and outweighed by public benefits. Subject to mitigation, the proposal would comply with development plan policies regarding inclusive design, climate change and transport (*Refers to the £1m towards Lambeth Bridge Safer Junction Programme*).

- 12.11 Those writing against the proposal largely reiterate the points made above. Additional points raised include the effect of the proposal on the character of VTG, particularly that this is a well-used and popular local space, in an area where many people lack private gardens. It is seen as a space where people can gather safely, a peaceful space for both rest and exercise. The park feels safe and connected, whilst also calm and private.
- 12.12 The value of such public open spaces for mental health and wellbeing has been highlighted, with particular reflection on the current pandemic. Reference is also made to research which has shown that high levels of green space presence in childhood are associated with lower risk of a wide spectrum of psychiatric disorders later in life.
- 12.13 It is estimated that over half of the current stretch of grass would be lost. The juxtaposition of a well-used and popular leisure space with a monument to horror would be inappropriate, changing its character from a calming green space to a sombre memorial site. It would become the anti-chamber to the UKHMLC, a civic space and not a park. There is also a dichotomy between the suggestion that the current scheme can be both a sombre place of learning, reflection and remembrance, as well as a tourist attraction.
- 12.14 The children's play area would be unusable during the building works, and then swamped by visitors, with increased safety and security risks.
- 12.15 These changes would breach the condition of the donation of £1,000 made by the benefactor W H Smith in 1879, that the land was kept as a garden for the use of the inhabitants of Westminster. It would be in direct contravention of the 1900 Act under which the land was to be used as a park in perpetuity.
- 12.16 The dominance of the Palace of Westminster, particularly the Victoria Tower, would be diminished. The BM, a public symbol to be proud of and of greater significance to British history than the Holocaust, would be dwarfed and overshadowed. The visual impact of the scheme is disguised by many of the illustrations which show the trees in leaf. The

- risk of harm to the trees, which are an important part of the iconic views of the Thames and also clean the air, is unacceptable.
- 12.17 The design itself is seen as poor, with no harmony with the prevailing gothic architecture of its context, nor a clear appreciation of how it connects to the Holocaust.
- 12.18 The site is within the Westminster Monument Saturation Zone, and this part of Westminster is already loaded with memorials. It is suggested that it is logistically inappropriate to locate so many visitor attractions together. The roads around this area are already very busy, with multiple coaches using Millbank/Great Peter Street and resulting in safety issues, congestion and pollution. This would be exacerbated by the proposal. Also the loss of vegetation adjacent to the play area increasing air pollution levels here further.
- 12.19 It is suggested that there is little evidence that memorials such as this reduce anti-Semitism; with some noting the potential for the UKHMLC to exacerbate anti-Semitism, and become a focal point for terrorism. This would be particularly so if it was seen to dwarf the memorial to anti-slavery. As Jews still have much to fear in their lives it was suggested that a living tribute to their tenacity and ongoing contributions to every society would be more appropriate, maybe by planting a grove.
- 12.20 Public money would be better targeted at teaching history as accurately as possible. This does not require a special building. An international education foundation with an online resource would have a greater impact on education and awareness and serve a more useful purpose than a memorial. Some question whether a sad and depressing memorial emphasising the darker side of humanity is really needed.
- 12.21 Such a memorial could lead to demand for other monuments/education centres from people feeling victimised by the actions of British or other governments. It could be suggested that match funding should be available to address the legacies of slavery, racism and colonial violence.
- 12.22 This location is seen as inappropriate as the murder of Jews by the Nazi's was no part of British history, and therefore there is no need for redemptive expressions. The Holocaust Memorials in Berlin, Amsterdam, Paris and Washington are located at a greater distance to the parliaments in those countries without detriment. Further, there are already many Holocaust Memorial sites in London and throughout the UK (*one suggests that there are 17 in total*).
- 12.23 Other sites would be more suitable, with the IWM frequently mentioned. A much larger site is required to provide effective education against anti-Semitism. It was suggested that somewhere in north London would be more suitable, closer to Jewish heritage and an area which would benefit from regeneration.
- 12.24 The public interest benefits of locating the UKHMLC adjacent to Parliament would not be so significant as to outweigh the range of planning objections. Many of the public benefits referred to, such as improved paths, drainage and landscaping would have no direct relationship with the UKHMLC, unlike the quantifiable measures of harm

in terms of the loss of open space, impact on trees, intrusive security measures and traffic congestion. Furthermore, on this site many size compromises must be made due to its constrained nature. Overall, it is suggested that the three main aims of the UKHMLC: education, reduction in anti-Semitism and memorialisation, all fail in this scheme. Its approval in this location would enable national politicians to engage in 'virtue signalling' with its self-congratulatory overtones.

13 Conditions

- 13.1 The suggested conditions were discussed at the Inquiry before arriving at a final agreed version. The agreed list, including some minor amendments for clarity are set out in Appendix 1. I am satisfied that, for the reasons stated, with the exception of the suggested condition that refers to waste on the public highway, these conditions are necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. Whilst the intention of safeguarding the accumulation of refuse on the highway is accepted, this matter may properly be controlled by other regulatory measures. It follows that, in the event that permission is granted, they should be imposed, again with the exception of the condition which refers to waste on the public highway.

14 Obligations

- 14.1 The executed agreement⁴¹⁰ (the S106 Agreement) made in accordance with section 106 of the Town and Country Planning Act 1990 would secure highway works,⁴¹¹ security management plans and a Legible London financial contribution.⁴¹² A Compliance Statement⁴¹³ was submitted to the Inquiry, covering how the Agreement would comply with the policy tests set out in the NPPF and the statutory test in regulation 122 of the CIL Regulations 2010.⁴¹⁴
- 14.2 The obligations would secure the highway works, including amendments to road markings and additional associated signage, installation of cycle parking stands, the strengthening of crossovers and the relocation of a TfL bus stop and shelter. These provisions would be required to ensure compliance with policy objectives contained in saved Policies TRANS 3 and STRA 25 of the WUDP, and Policy S41 of the WCP. WUDP Policy TRANS 3 aims to secure an improved environment for pedestrians, with

⁴¹⁰ CD 5.32 Part 7.

⁴¹¹ To provide for amendment to road marking and additional associated road signage; installation of cycle parking stands; strengthening of the crossovers; and relocation of the TfL bus stop and shelter.

⁴¹² £20,000

⁴¹³ CD 5.32 Part 4 and Part 5.

⁴¹⁴ CIL Regulation 122(2) A Planning Obligation may only constitute a reason for granting planning permission for the development if the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly related in scale and kind to the development

particular regard to their safety, ease, convenience and directness of movement. WUDP STRA 25 aims to control on street parking. Finally, WCP Policy S41 requires that development prioritises pedestrian movement and that sustainable transport options be provided, including providing cycling facilities and reducing reliance on private motor vehicles and single person motor vehicle trips.

- 14.3 The obligations concerning security management plans refer to both construction security management and operational security management. These plans would be necessary to ensure that the public, including visitors to the UKHMLC and the users of VTG, are safe. This would meet the requirements of WCP Policy S29, which sets out that development should ensure that the need to secure a healthy and safe environment is addressed, including minimising opportunities for crime, including the risk of terrorism and addressing any specific risks to health and safety from the local environment.
- 14.4 The obligation which would secure the Legible London contribution relates to the promotion of pedestrian wayfinding in the vicinity of the development. This would be necessary to ensure compliance with LonP Policies 4.5 and 6.10, and LonP2021 Policies T2 and T4. LonP Policy 4.5 relates to London's visitor infrastructure and sets out that development should seek to promote, enhance and protect the special characteristics of major clusters of visitor attractions. LonP Policy 6.10 sets out that development proposals should ensure high quality pedestrian environments. LonP2021 Policy T2 requires that development proposals deliver improvements that support the ten Healthy Streets Indicators. LonP2021 Policy T4 requires that improved walking and cycling facilities be secured to address any adverse transport impacts identified by transport assessments.
- 14.5 Following discussion at the Inquiry, I am satisfied that these obligations all comply with the CIL regulations and the same policy tests in the NPPF. I would recommend that they are taken into account in assessing the application.
- 14.6 Finally, additionally, TfL have requested a financial contribution towards the delivery of the Lambeth Bridge North scheme,⁴¹⁵ focused on improvements to the Horseferry Road/Millbank junction. This is described as a flagship Healthy Streets scheme designed to deal with cumulative impacts in the area, reducing road danger and improving pedestrian safety. Specifically, the requested contribution would be directed towards providing wide new signalised crossing points at the Horseferry Road/Millbank junction, widening the footways at the junction and signalising the junction to lower traffic speeds.
- 14.7 Most visitors to VTG currently arrive on foot from the north via Westminster tube station and Parliament Square, with around 32% of

⁴¹⁵ CD 6.51 TfL letter 2 October 2020. This scheme seeks to modify the junctions at either side of Lambeth Bridge as part of the Safer Junctions programme. At the Horseferry Road/Millbank side, this would involve the conversion of the existing roundabout into a signal-controlled intersection. Certain turning movements would be restricted to various categories of vehicle. The scheme has been put forward as a cycle safety scheme to provide capacity and safety to cycle journeys, together with improved crossing facilities through signalisation of the roundabout.

visitors arriving from the southern Lambeth Bridge direction.⁴¹⁶ With the development in place, it is anticipated that the majority of visitors to the UKHMLC would continue to arrive and depart on foot from the north as Westminster is the closest underground station, and there are several other tourist attractions nearby such that combined trips could be made.⁴¹⁷ Entry to VTG would be largely via Gate 1, and whilst at busy times pedestrians may seek to walk further down Millbank to other entry points, it is unlikely that they would walk as far as Lambeth Bridge to view the UKHMLC.

- 14.8 As such, it is reasonable to assume that the pedestrian demand generated by UKHMLC would have a negligible impact on the performance of the Horseferry Road/Millbank junction.⁴¹⁸ On the basis of the likely impact of this development on the use of Lambeth Bridge by pedestrians and cyclists, it does not appear that this TfL funding request would be either directly related to the development proposed or necessary to make it acceptable in planning terms [6.115].

⁴¹⁶ CD 6.13 Environmental Statement Vol 5, Appendix M Transport Assessment para 8.3.12

⁴¹⁷ CD 6.13 para 8.5.11; CD 11.17 Applicant response to TfL letter para 3.1

⁴¹⁸ CD 11.17 para 4.8

15 Inspector's Conclusions

15.1 From the evidence before me at the Inquiry, the written representations, and my inspection of the application site and its surroundings, I have reached the following conclusions. The references in square brackets [] relate specifically to earlier paragraphs in this report, though of course it is best read, and considered, as a whole.

Main Considerations

15.2 The matters on which the MoSH particularly wished to be informed are:

- Matters pertaining to policies on conserving and enhancing the historic environment as set out in chapter 16 of the National Planning Policy Framework (the NPPF);
- matters pertaining to policies on flood risk as set out at chapter 14 of the NPPF; and,
- any other matters the Inspector considers relevant.

15.3 Mindful of these, I find that the main considerations in this Application are:

- a) The effect of the proposal on designated and non-designated heritage assets, specifically:
 - i. Whether the proposal would result in harm to or loss of trees of amenity value
 - ii. Whether the proposed development would preserve the setting of the BM, a Grade II* listed building;
 - iii. Whether the proposed development would preserve the setting of other designated and non-designated memorials and structures in the vicinity of the site;
 - iv. The effect of the proposed development on the significance of VTG, a Grade II RPG;
 - v. Whether the proposed development would preserve the character or appearance of WAPSCA;
 - vi. Whether the proposed development would preserve the setting of the Palace of Westminster, a Grade I listed building;
 - vii. The effect of the proposed development on the Outstanding Universal Value of the WHS and its setting;
 - viii. Whether the proposed development would preserve the settings of adjacent listed buildings, including Norwest House and Nos 1 & 2 Millbank;
 - ix. Whether the proposed development would conserve the setting of the SSCA;

- b) Whether the proposed development, and the increased visitor activity it would generate, would result in the loss of public open space and the functionality of VTG for recreational purposes;
- c) Whether the proposals would be at unacceptable risk of flooding;
- d) The effect of the proposals on the security of the area and
- e) Other material considerations, including any public benefits the proposals might bring, which include (in light of the presentation of evidence and numerous representations made at the Inquiry) the principle of the proposed development, VTG as a location for the memorial, the consideration of other sites and the timing and content of the proposals and alterations to the layout and access of VTG.

15.4 Other matters raised include:

- Transport (access, parking, servicing and effects of construction);
- Archaeology; and,
- Pedestrian movement through and around the site.

15.5 The main issues above vary from those set out in pre-Inquiry meetings and as in my openings at the start of the Inquiry. Firstly, I have chosen to incorporate the main issue of trees within consideration of heritage matters. Consequentially, as WCC's approach to the calibration of harms to all identified heritage assets is contingent on the effect of the proposals on the wellbeing or loss of trees, it is sensible that this matter is dealt with at the outset of heritage considerations.

15.6 In elemental terms, subject to being satisfied that flood risk can be managed, this application turns on the balance between any identified harm to the significance of the various heritage assets and open space and the public benefits that may or may not flow from the proposals. These benefits are presented as principally (but not exclusively) the provision of a UKHMLC and associated landscape proposals of the highest design quality located at the heart of the City of Westminster adjacent to the Palace of Westminster.

15.7 In national policy terms the heritage balance to be applied is set out in paragraphs 195 and 196 of the NPPF and there is broad consensus amongst the parties, with whom I agree, that there is nothing materially different about this policy test and compliance with the policies of the development plan. In addition, any other harms, principally those associated with the loss of public open space, are assessed also against the policies of the development plan and national policy. Reference is also made, where appropriate to emerging policy. [3.3-3.9, 3.10-3.16, 3.17-3.23, 3.24-3.31, 3.32, 3.33, 3.38-3.41]

Effect on Designated Heritage Assets (DHAs)

15.8 All the relevant DHAs (as defined in the NPPF) affected by the proposals are identified in the main considerations above. All parties set out the significance, status and importance of the affected DHAs in their respective proofs of evidence and in the SoCG and there is little to be

added in light of this coverage, except to explore where any effects of the development may infract upon any key attributes of an asset contributing to that significance.

- 15.9 There would be harm to the setting of the BM, a Grade II* listed building, harm to the VTG, as an RPG, and harm to the WAPSCA, all DHAs. It is common ground between the Applicant and WCC that where harm is identified to the significance of DHAs, this can be characterised as less than substantial. This is, however qualified by WCC in respect of the magnitude of effect on all heritage assets identified, whereby if material harm is identified to trees, the sum of harm is increased to that of substantial. [8.24, 8.30, 8.34, 8.40, 8.41]
- 15.10 There is disagreement though as to the degree of, or weight to, any harm to significance within the less than substantial harm categorisation identified in paragraph 196 of the NPPF. There was also disagreement between the parties as to whether there would be harm to other DHAs and again the degree of, or weight to these harms in relation to their significance; these are considered below. The TIS.SVTG & LGT, and others making representations to the Inquiry, also disagree with the calibration of harm as less than substantial in respect of certain DHAs, indicating this should be judged as substantial harm and considered as such in the context of paragraph 195 of the NPPF. Where this occurs, it is addressed in relation to the specific DHAs in question set out below. [9.24, 9.25, 9.27, 9.28, 9.33, 9.35, 9.42, 11.225-11.226/Appendix 4] (See also my reasoning in 15.74-15.94, 15.95-15.98, 15.99-15.103, 15.104-15.110, 15.111-15.115, 15.116-15.117)
- 15.11 In addition to disagreements on the magnitude of harm to DHAs between the parties, there is also divergence in the methodology to be applied to its calibration. The Applicant relies on the definition of substantial harm (and the calibration of lesser harms that flow from it) set out in the Bedford case⁴¹⁹, broadly defined as a high test. WCC on the other hand (though not making express reference to it in written evidence) prefer to rely on the example of substantial harm set out in paragraph 018 of the PPG, a definition, as I understand it from their oral evidence, which sets the test at a lesser height. Although also reliant on the PPG definition (but again with no reference in written evidence) TIS.SVTG & LGT apply a further, different approach, based on consultancy-developed methodologies for characterising the magnitude of harm. Lastly, other parties present a similar Bedford-based approach to harm calibration, though conclude that the magnitude of harm, specifically with regard to VTG as an RPG, should be judged as substantial. [8.16-8.18, 9.25, 11.225-11.226]
- 15.12 My interpretation of this point, also bearing in mind paragraph 018 of the PPG has been formulated in light of the Bedford judgement, is that there is in fact little to call between both interpretations. Bedford turns on the requirement for the harm to be assessed as 'serious' (with significance needing to be very much, if not all, 'drained away') in order that it be deemed substantial. Alternatively, paragraph 018 indicates that an

⁴¹⁹ CD7.2 Bedford Borough Council v (1) The Secretary of State for Communities and Local Government (2) Nuon UK Ltd [2012] EWHC 4344 (Admin)

important consideration would be whether the adverse impact 'seriously' affects a key element of special interest. In both interpretations, it is the serious degree of harm to the asset's significance which is the key test. Moreover, in accordance with the logic of the Bedford argument, paragraph 018 explicitly acknowledges that substantial harm is a 'high test'.

- 15.13 It is a high test indeed and I address these matters in detail below, calibrating the degree of harm identified to each DHA and the weight to be apportioned accordingly. The sum of such harms is then duly considered against any public benefits in the heritage balance anticipated in paragraphs 195 or 196 of the NPPF and, where appropriate, development plan policy. (15.186-15.189, 15.272-15.283)
- 15.14 In doing so I differ in approach from that taken by the main parties, who go on to consider the sub-degrees of harm within the less than substantial harm magnitude hitherto commonly agreed. My approach adheres to that set out in the Shimbles judgement,⁴²⁰ which addresses such a concept of 'spectrum of harm' to heritage assets. This is where a judgement is to be made somehow above and beyond the binary classification of harm (substantial or less than substantial) set out in the NPPF. Mr Justice Kerr found that there was no support in the language of s66 of The Act⁴²¹ or the NPPF for this approach and that the two established categories of harm are more than adequate in enabling the weighted balancing exercise to be carried out.
- 15.15 He noted that the concept means subdividing less than substantial harm into sub-categories such as 'slight less than substantial harm', 'quite serious less than substantial harm', 'really serious less than substantial harm' etc. which in turn leads to over-refinement. The approach in the NPPF on the other hand deliberately keeps the exercise relatively straightforward, avoiding unnecessary complexity. This may at first be considered at variance with the guidance set out in the PPG (which states "*Within each category of harm - which category applies should be explicitly identified - the extent of the harm may vary and should be clearly articulated*"). However, through the identification of the measure harm to DHAs individually and cumulatively and the apportioning of appropriate weight to that harm accordingly, both approaches are in my view reconciled.
- 15.16 Moreover, less than substantial harm does not necessarily equate to less than substantial planning objection. This is particularly the case where the statutory tests of the relevant sections of the Act⁴²² have not been met, especially given that the courts adjudge such harms to be matters of considerable importance and weight. This decision-making framework is consolidated by the covalent force of paragraph 193 of the NPPF which

⁴²⁰ R on behalf of Simon Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin)

⁴²¹ Planning (Listed Building and Conservation Areas) Act 1990

⁴²² Ibid

anticipated great weight being given to the conservation of heritage assets.

- 15.17 Each asset is therefore considered in turn and a calibration of harm, if any, determined and weight duly apportioned. Whilst the relevance of development plan policy may be noted in each case, any conflicts or conformity with the development plan are left to the final planning balance preceding the recommendation below.

Effect on Trees

- 15.18 Harm to or loss of trees was identified as a discreet main issue at the outset of the Inquiry. However, this matter is intimately linked, particularly in respect of WCC's case, to the calibration of harm to the BM, RPG, WAPSCA, the Palace of Westminster and setting of the WHS. Indeed, it is also pivotal to their argument in relation to the characterisation of that harm as either substantial or less than substantial, as defined by paragraphs 195 and 196 of the NPPF. In order that the identification and calibration of harm, if any, is properly and fully understood, it is therefore necessary to explore the effect of the proposals on trees in detail at the outset. Accordingly, this matter is considered fully as a preliminary element of the heritage section, enabling the consequences in terms of heritage effects to then be considered. [8.2, 8.30, 8.34, 8.40,8.40]
- 15.19 London plane trees are a distinctive feature of the capital's urban landscape, being uniquely suited to urban conditions, and able to tolerate high levels of pollution. The VTG trees were planted approximately between 1890-1914 to form two rows along the boundaries of VTG, with 25 trees at the eastern side and 26 trees to the west. These mature trees are now of significant height and grand stature, most estimated to be over 25m, with over half estimated to be over 30m.
- 15.20 Most of the trees (46 out of 51) are graded as category 'A' 'trees of high quality' under the categorisation set out in the BS, with five graded as lower category 'B' 'trees of moderate quality' due to impairments of structure, form or quality. Notwithstanding the BS life expectancy of at least 40 years and at least 20 years respectively, the consensus is that they have some 250-350 years remaining.⁴²³
- 15.21 There is consensus therefore that the trees make a positive contribution to the character and appearance of the WAPSCA, in which they are located. Their high crowns provide welcomed shade in summer and a strong, almost architectural, visual framework in winter. At a greater distance they, particularly the eastern stand, are a distinctive and highly visible feature of the Thames riverscape. They are prominent in a range of wider views from Westminster and Lambeth Bridges and across the Thames and beyond into the WAPSCA. The trees are protected by virtue of their location within the WAPSCA and contribute to the setting and significance of a number of heritage assets, particularly the RPG itself

⁴²³ CD 5.31 para 1.3

and through framing the view of the south elevation of the Palace of Westminster.

Assessing the Effect of Development on Trees

15.22 The agreed starting point for the assessment of the effect of development on trees is the BS.⁴²⁴ Whilst there is scope for some factual agreement between the main parties, the identification of root protection areas (RPA's), the likely encroachment and consequences of this for tree health, and the effectiveness of the mitigation measures proposed were areas of contention⁴²⁵ [6.100-6.102, 8.3-4, 8.7, 9.44, 9.47]

Identification of RPAs

15.23 A central tenet of BS is the establishment of RPAs to define the minimum area around a tree adequate for sufficient roots and rooting volume to maintain the tree's viability.⁴²⁶ The calculation of the RPA should be based on a circle with a radius 12x stem diameter. However, where pre-existing site conditions suggest asymmetrical growth, modifications of the RPA can be justified based on sound arboricultural assessment.⁴²⁷

15.24 For this site the Thames Embankment and the Millbank carriageway justify RPA adaptation. Whilst the Embankment trees would have their RPA clipped by the proposed secant piling, the parties agree that the risk to the Millbank trees (specifically no's 71011-71020) is in fact the area of prime concern. In terms of the rooting environment at this side of the park, the focus of debate was on suitability of the Millbank carriageway as a rooting environment and likelihood of compensatory rooting within VTG. [6.95, 6.101, 8.4, 8.13]

15.25 London planes can and have adapted to grow and thrive in less than ideal circumstances, as the Applicant has illustrated by trees appearing to grow solely within pavement and carriageway areas.⁴²⁸ Indeed the Arboricultural Impact Assessment (AIA) reflects that while pavements are an "*inhospitable growing environment for feeding roots, root growth for stability and anchorage will be present*".⁴²⁹ Notably, the presence of roots in precisely this environment is seen by the lifting of the Millbank pavement.

15.26 Turning to the evidence, the size of roots uncovered in trench investigations it suggests that the western trees are "*reliant on the rooting environment within the park*".⁴³⁰ This view is supported by more recent root investigation evidence which affirms "*it is highly likely that the majority of roots are growing within the grassed area*".⁴³¹ Further, the Millbank carriageway excavations of September 2020 showed no

⁴²⁴ CD 4.16 para 1

⁴²⁵ CD 5.31 para 1.24-1.41

⁴²⁶ CD 4.16 para 3.7

⁴²⁷ Ibid para 4.6.2

⁴²⁸ CD 8.16 para 7.3.2-7.3.3

⁴²⁹ CD 6.22 para 5.2.1

⁴³⁰ CD 6.5 Appendix 4, Section 4.2

⁴³¹ CD 6.35 para 4.9

- evidence of root growth, albeit these were only modest sized areas in the central areas of the carriageway.⁴³²
- 15.27 Despite arguments to the contrary, the balance of evidence before the Inquiry indicates that roots will not grow where there is no possibility of moisture or gaseous exchange, or where the soil is compacted, as would typically be found under a road carriageway. Whilst there may be exceptions to this, for the most part it is expected that hostile conditions prevail.
- 15.28 In the Applicant's view, just because roots on one side of a tree encounter a barrier this does not mean that additional roots are produced elsewhere: the roots simply proliferate between the trunk and the barrier.⁴³³ Be that as it may, it is clear that the rooting environment within the open grassed areas of VTG offers greater access to moisture, nutrients and oxygen, thereby offering more favourable conditions for growth. The preferential rooting environment within VTG appears to be demonstrated by the Applicant's trench root investigations which recorded a number of roots of over 25mm in diameter located beyond the notional RPA's of the eastern trees.⁴³⁴
- 15.29 It is reasonable to assume therefore that root growth would be more significant in this direction and that the RPAs should be offset accordingly. Whilst this conclusion suggests an unbalanced root distribution and the possibility of stability issues, these trees have a reputation for being windfirm.⁴³⁵ Given their presence in and adjacent to a variety of hostile growing situations, it is apparent that even highly asymmetrical root growth can secure the necessary anchorage for stability.
- 15.30 There is no agreement about whether the BS gives support to root investigation work to inform root protection requirements. The BS does refer to soil investigation as part of preliminary feasibility planning, indicating that this may inform decisions relating to RPAs by adding a third dimension.⁴³⁶ However, no specific reference is made to requiring root investigation.
- 15.31 Nor does the BS make specific reference to root investigations as part of the calculation of RPAs, referring instead to more general considerations of morphology and root distribution when influenced by past or existing site conditions. Any references to work involving excavation are in the latter part of the document related to detailed design and implementation, occurring after the feasibility and planning stages.
- 15.32 In this case root investigations have taken place and as a matter of fact are before the Inquiry.⁴³⁷ Whilst these investigations are of some value

⁴³² CD 9.14 para 3.1.6

⁴³³ CD 8.16 para 7.2.5

⁴³⁴ CD 6.5 Appendix 4

⁴³⁵ CD 8.39 para 1.8.2

⁴³⁶ CD 4.16, para 4.3

⁴³⁷ The first of these undertaken in February 2018, was a root investigation by tree radar within VTG, with scan lines radiating out at 0.5m intervals from the trees up to around 12m (CD 6.44). Focusing on the western trees, this found rooting in medium densities at a depth of 150-2400mm beneath the footpath and at moderate to very high rooting densities at a depth of 100-1500mm beneath the grass area (but concentrated within the

- in demonstrating the favourable nature of the park rooting environment (confirming the good sense of adapting of the RPAs), beyond this the variable and inconclusive nature of the findings relating to root presence and depth do not assist with the actual definition of RPAs.
- 15.33 The likely depth of rooting was also the subject of much discussion during the Inquiry, a necessary consideration in relation to the possible effects of the deep foundations required. References provided indicate that tree roots typically extend laterally for some distance but are usually found in the top 1m of soil.⁴³⁸ WCC confirmed that in 'average' conditions 90% of feeding roots occur within the upper 600-1000mm of soil. Circumstances may however vary; with another reference indicating that in a waterlogged peat soil maximum root depth may be 100-200mm, whereas in loose, well-aerated soils, or fissured rocks, roots may exceptionally reach depths of tens of metres.⁴³⁹
- 15.34 More specifically, those with experience of the rooting habits of London plane trees within urban environments suggest that significant roots can extend down to 4-5m or more, a position supported by evidence of WCC and the Royal Parks.^{440,441,442.}
- 15.35 The limited depth of the tree root investigations do not offer much assistance here. They demonstrate the compacted nature of the upper soil levels within the park, resulting in rooting being predominantly below 600mm. However, beyond this, the soil investigations confirm no more than that the park has loamy soil, providing the optimum conditions for rooting.⁴⁴³ As such, within the open park area it appears that there is no reason for root growth not to conform to the generally expected patterns of lateral growth, and therefore no need to seek out their physiological requirements at great depths.
- 15.36 Root size within the RPAs was also considered, with acknowledgement that the severance of roots greater than the 25mm referred to by the BS would in all likelihood deprive trees of necessary sustenance. It is the Applicant's premise that even a large tree may have few roots in excess of 20mm diameter at a distance of 3m from the trunk.⁴⁴⁴ However, trench investigations undertaken at distances apparently greater than

top 100mm of soil). The trench investigations undertaken in September 2018 found fewer roots in the compacted upper levels of soil, with most below 600mm, with trees appearing to take advantage of the looser material below 1m. 40% of the roots uncovered had a diameter of 25mm or less, with the remaining 60% deemed to be of significant size (CD 6.5, Appendix 4).

A further report was issued in November 2018, based on the application of a software update to the radar data and considered alongside the findings of the trench survey work. This allowed for the removal of 'false positives' from the radar survey. It concluded that the trees are not rooting below a depth of 1m, and that along the proposed building lines there are very low rooting densities (CD 6.5, Appendix 3).

Finally, borehole and trial pit investigations were undertaken in May 2019, undertaken to investigate geoarchaeological and soil conditions, and to assess tree root depth as reasonable as can practicably be achieved. Whilst limited in its investigation of root location, it concluded, that they are most likely to be present within the top 2-2.5m, and mostly within the top 1.2m (CD 6.35)

⁴³⁸ As referred to by Helliwell (CD 8.40 Part 2); Biddle (CD 11.10)

⁴³⁹ CD 8.16 Appendix B, Paper by Dobson.

⁴⁴⁰ CD 8.49 para 2.2

⁴⁴¹ CD 5.11 p63

⁴⁴² CD 6.46 Appendix A, p4 'Root assessment'

⁴⁴³ CD 6.35 para 4.9

⁴⁴⁴ CD 11.10 Biddle p30; supported by Dodson CD8.16 Appendix B

3m from the trunks of the trees,⁴⁴⁵ reveal over 60% of the roots identified were over 60mm in diameter. Such evidence militates against applying the generalised approach preferred by the Applicant thus meriting limited weight.

- 15.37 Drawing this altogether, WCC's interpretation and application of the BS in identifying RPAs is the more logical, and thus the one garnering greater weight in this matter. [6.102, 8.7-8.11]

Extent of and Nature of Encroachment into RPAs

- 15.38 Whilst RPAs are in essence theoretical constructs, they provide an awareness of development constraints in relation to trees. They do not seek to define the whole of the rooting structure, but rather the minimum area to be protected as priority in order to support the trees continued vitality. As such, any incursion into this area must be carefully considered and fully justified.
- 15.39 The main and most intrusive elements of the proposal in terms of excavation requirements would be the entrance pavilion (involving excavation to 600mm), the entrance courtyard (excavation to 2.1m) and the basement box for the underground LC (excavation to 12m).⁴⁴⁶ The basement box would include the introduction of secant piling and its associated guide wall. All would require excavation and root pruning within RPAs. Whilst the BS does refer to intrusion into the soil of RPAs as being unacceptable other than for piling⁴⁴⁷ it is clear that this does not include secant piling, which would involve a continuous run of piles. Of greater relevance to this case is the BS reference to subterranean intrusion, and the guidance that it is essential to avoid excavating down through rootable soil if trees are to be retained.⁴⁴⁸
- 15.40 By WCC's assessment, 10 of the western trees would be subject to encroachment of between 2% and 17% of their RPAs (71011-71020) as a result of the basement and memorial courtyard excavations. Three further trees would be impacted by the courtyard/entrance excavations by between 2.3% and 9.1% (71021-71023). [8.13]
- 15.41 This work would be undertaken at distances of between 8.3m to 14.6m of these trees [6.103]. Nonetheless this would be well within most of the WCC's identified RPAs. Moreover, the AIA indicates that, based on the root investigation work, pruning of some significant roots would be required.⁴⁴⁹ As it is unlikely the degree of root pruning required could be fully anticipated, it is probable that additional unmanaged root severance would occur.⁴⁵⁰
- 15.42 In addition to these main elements, further work within the RPAs would be required for HMV measures, underground services, the relocation of

⁴⁴⁵ In the case of trenches 3- 6 Mr Mackworth-Praed estimates these to have been around 12.5-13m from the trees CD 8.39 para 3.1.9

⁴⁴⁶ CD 6.22 AIA Section 4.1.1

⁴⁴⁷ CD 4.16 Para 7.2.1

⁴⁴⁸ Ibid Para 7.6.1

⁴⁴⁹ CD 6.22 AIA Section 5.3.4 Table 02.

⁴⁵⁰ During the course of the inquiry Dr Hope did suggest that there could be an engineering solution to ensure encountered roots could be severed cleanly, though no evidence was produced on this point

- the Spicer Memorial and Café, soil build up around the new landform, and finally, during construction, site set up and management.
- 15.43 HMV would take the form of a bespoke perimeter fence system, involving posts and bollards which would require foundation depths of between 400-600mm. The AIA refers to further root survey work undertaken within the areas affected by the introduction of these measures. Trial pits did find roots of over 25mm diameter.⁴⁵¹ Some bollards could be accommodated within existing hardstanding, and some posts positioned to avoid known tree roots. However, the AIA acknowledges that some fibrous roots would need to be pruned/removed to accommodate bollard foundation and posts would be within the 'critical rootzone' of all the western trees.⁴⁵² The critical rootzone is not defined but, on the basis of the survey plan,⁴⁵³ it is presumed to be clearly within the RPAs. WCC notes that there would be some encroachment into almost every one of the RPAs of the western trees, but that this would be relatively small, with 16 below 1%, and 9 between 1% and 5.7%. Given this very modest level of intrusion, it is a reasonable conclusion, if taken in isolation, that it would be possible to accommodate the HMV without causing harm to the trees.
- 15.44 Two service routes for underground utilities and drainage are proposed to serve the UKHMLC. The main route would run north to south from the southern end of the park into the UKHMLC basement, traversing the narrower end of the park where the tree lines are at their closest and the RPAs overlap. A secondary service route would be located on the western side at the Dean Stanley Street entrance, connecting to existing services. Whilst this would be within an existing pavement area, it would be well within the RPAs of trees 71017 and 71018, with significant roots likely to exist beneath. The AIA also illustrates a further drainage run emerging from the basement and running alongside its western side to connect with the secondary service route, within the RPAs of two further trees.⁴⁵⁴
- 15.45 The AIA states that the routes would be independently laid, allowing routes to be surveyed, proven and changed.⁴⁵⁵ Whilst reference is made to the use of "*hand dug broken trench techniques*" required to establish these routes, the detail of this would be left to the AMS. The AIA recognises that the installation of new services has a high potential to cause direct and indirect tree damage and cause cumulative damage to the London plane trees,⁴⁵⁶ though notes that this impact could be reduced with further investigations and planning. With the detailed provisions of the AMS taking these matters into account such an approach, could in good measure, mitigate these concerns.
- 15.46 The relocation of the Spicer Memorial to the south of its current position would involve either the retention or careful removal of its current

⁴⁵¹ CD 6.22 Appendix B Section 4.1 p30

⁴⁵² Ibid AIA Section 5.3.8

⁴⁵³ Ibid Appendix B p32

⁴⁵⁴ Ibid, Section 4.0 Underground services p44

⁴⁵⁵ Ibid, Section 4.1.0 p45

⁴⁵⁶ Ibid, AIA, Section 5.3.7

foundations within RPAs. The new location would also be within RPAs and as such the AIA notes that the foundations would have to be of low impact and bespoke design, and load bearing to prevent any new soil compaction or disturbance.⁴⁵⁷ Further information suggests that foundations at a depth of no more than 300mm would be anticipated.⁴⁵⁸ No details relating to the replacement of the existing refreshment kiosk/café with a new structure at the southern end of the playground are provided, though this would be within the RPA of tree 70000. These features are relatively small components of the scheme overall, though their installation could have the potential to cause some harm if satisfactory mitigatory measures were not incorporated within the AMS.

- 15.47 The proposals would alter the landform of the central part of VTG, with the current soil levels gradually raised to form a sloping profile up to the Memorial fins. This build-up would be present within 20-30% of the RPAs of 9 of the western trees, though with the more northern trees the degree of build-up would be significantly less. Whilst not involving invasive works, this would have the potential to cause soil compaction and thereby a reduction in oxygen levels reaching roots if not properly addressed in mitigation provisions.
- 15.48 Normal considerations for trees within development sites will apply in respect of the movement of plant and vehicles, storage of heavy materials within RPAs and potential spillage of phytotoxic materials. The current Revised Construction Management Plan (RCMP)⁴⁵⁹ does not fully reflect the refined RPAs now deemed appropriate.⁴⁶⁰ However, this is not insurmountable and could be addressed in a revised RCMP and AMS.
- 15.49 In summary, there are a range of scheme elements involving some degree of interference with RPAs. The 10 trees on the western side (71011-71020) are at greatest risk of harm from intrusive works along with, in some cases, soil build-up.⁴⁶¹ For two trees in particular, 71017 and 71018, those closest to the Dean Stanley Street exit, the levels of infringement into RPAs would be 29.5% and 29.4% respectively, with commensurately greater risks to their future health.

Impacts and Mitigation Measures

- 15.50 The effects of harmful works to trees and their decline is a complex physiological process, the visible effects of which are not immediately apparent. It would typically commence with arrested or impeded shoot growth, then the dieback of branch ends, with this progressively leading to dieback of larger lateral branches or of leading stems. Indeed, the progressive depletion of carbohydrate reserves as a result of the reduced photosynthetic capability would lead to greater susceptibility to pathogens or fungal decay. Unsurprisingly, trees that have previously suffered root damage, are at greater risk of disease which can be fatal,

⁴⁵⁷ Ibid, AIA, Section 5.3.3

⁴⁵⁸ Ibid, Section 3.0 Landscape design detailed information p39

⁴⁵⁹ CD 6.30

⁴⁶⁰ CD 8.39 Section 2.10

⁴⁶¹ CD 8.40 Part 1- Appendix 4 Tree Impacts Schedule

- albeit this taking some 10-20 years after the initial works to become evident.
- 15.51 I have identified the potentially harmful effects of root pruning or severance within RPAs. In addition, whilst capable of mitigation and management, I have noted the potential for soil compaction and the possibility of the accidental introduction of chemically toxic materials.
- 15.52 Where development within the RPA has been agreed due to an overriding justification, the BS states that the arboriculturist should: firstly demonstrate that the area lost can be compensated elsewhere; and secondly, propose mitigation measures to improve the soil environment.⁴⁶² In this case, the constrained location of these trees with Millbank to their west means that the presence of compensatory rooting areas contiguous with their RPAs is restricted to the areas to their north and south. This suggests that the provision of such compensatory space is at best limited.
- 15.53 That said, the AIA describes proposed improvements to the soil environment,⁴⁶³ to include the topical application of potassium phosphite to pruned roots, and as a 'drench' along with a carbohydrate solution. Soil sampling would also be used to enable appropriate fertilization. A programme of improvements would involve the break-up and removal of existing surfaces and their sub-bases, the de-compaction of existing soil, fertilization, and then the reinstatement of permeable surfacing. Vertical pipes and drainage ports, as well as a permeable paving system within the courtyard area, are also elements identified that could be further secured through revisions to the AMS.
- 15.54 Such provisions would encourage the continued growth of retained roots, and also the regrowth of pruned roots. Moreover, improvements associated with areas of hardstanding, noting the large areas of footpath adjacent to the trees on both sides of the park, could be expected to result in material improvement to the rooting environment beneath the paths.⁴⁶⁴ Such measures would assist the mitigation of the less intrusive elements of the scheme.
- 15.55 With particular reference to the soil compaction associated with the new landform, the use of a well-aerated topsoil and the incorporation of air vents within the raised area would assist in managing risks, as would the use of permeable footpath material adjacent to the landform. Such measures could be effective in mitigating compaction risks and are referred to in the conditions.
- 15.56 However, the introduction of the secant piling would result in both root pruning and some unmanaged root severance. For the latter, the application of topical treatments would be difficult potentially making roots more vulnerable to infection. The AIA also states that the design and construction of the courtyard and basement mean that the roots pruned below 500mm would not be able to re-grow.⁴⁶⁵ There is some

⁴⁶² CD 4.16 para 5.3.1

⁴⁶³ CD 6.22 AIA Section 5.4

⁴⁶⁴ CD 8.39 para 3.2.5

⁴⁶⁵ CD 6.22 AIA Section 5.3.5

- limited potential for smaller pruned roots above this level to grow in the soil area above the capping beam. [8.12,9.46]
- 15.57 For the two trees identified as having the greatest degree of cumulative incursion into their RPAs, 71017 and 71018, the pruning of roots of up to 100mm in diameter would be required.⁴⁶⁶ The likely consequence of significant root pruning is a reduction in the annual growth of the tree canopy above mirroring the pruned area. Where these are of larger size (100mm diameter), or where there are a high number of roots pruned, it would be reasonable to expect a degree of die back of the parent tree.⁴⁶⁷
- 15.58 Furthermore, the evidence before the Inquiry indicates that these two trees are currently healthy but experiencing "*mild to moderate physiological stress*."⁴⁶⁸ Two of the other western trees identified as requiring root pruning, and subject to significant cumulative incursion into their RPAs (71012 and 71013) are also showing signs of similar stress, with 71012 also demonstrating reduced vitality. It is accepted that the proposed works would increase the stress experienced by these trees to a moderate level. [6.105-6.106, 8.5, 9.48]
- 15.59 The robust nature of plane trees and the general health and life expectancy of these trees is agreed, but it is a fact set out in the BS that mature trees recover slowly, if at all, from damage to their woody roots.⁴⁶⁹ It would not be possible to mitigate against harm caused as a result of root loss or severance for the main elements of the development. Thus, there could be a clear risk of harm to the affected trees, noted in relation to the cumulative impacts on 71017 and 71018, and also current health issues in relation to 71012 and 71013, which could possibly lead to their decline and ultimately to their death. Their decline and possible eventual loss, and the effect this would have on the character and appearance of the WAPSCA as a whole needs to form part of the overall heritage balance.

Other Matters

- 15.60 Crown lifting of approximately 11 trees would be required to facilitate the development. As London planes are tolerant of severe crown pruning, this would be unlikely to noticeably damage or disfigure the trees concerned.⁴⁷⁰ The rig for the required secant piling would need to adhere to height restrictions, to be set in the AMS, to prevent further access issues.

Conclusion on trees

- 15.61 The unique challenge of accommodating this highly complex scheme, requiring significant excavation along with ground alterations within RPAs, would inevitably involve a degree of risk to tree health. On the basis of the evidence before me it is inevitable that localised harm to some of the trees on the western side of the park would be likely to

⁴⁶⁶ Ibid AIA, Section 5.3.4 Table 02

⁴⁶⁷ Ibid, AIA, Section 5.3.5

⁴⁶⁸ CD 11.12 Tree Health and Vitality Diagnostic Assessment

⁴⁶⁹ CD 4.16 Section A.2.2

⁴⁷⁰ CD 8.39 para 2.11.2

occur. The risk level for trees 71012, 71013, 71017 and 71018, all of which are currently showing mild to moderate physiological stress, indicate they would be the more vulnerable.

- 15.62 The complexity of the physiological processes involved in determining tree health and vitality mean that it is impossible to predict outcomes for future tree health with any degree of certainty. The robust nature of London planes and their ability to thrive in less than ideal circumstances is a positive factor. Nonetheless, these are mature trees that may not be as tolerant of change as younger trees. Whilst the mitigation measure proposed could assist with the adaption of these trees to their altered circumstances, certainty cannot be guaranteed. Therefore, I conclude that it is possible that the impact of this development could lead to the ill-health and decline, and potentially the loss of one or more of these trees. However, this is not an inevitable outcome and the trees might well survive to achieve their life expectancy.
- 15.63 In the event that the poor health of the trees required their removal, a possibility which could arise some 30-40 years in the future,⁴⁷¹ the risks inherent in introducing new trees of any significant size would be compound by the intolerance of plane trees to shaded locations. This point is evidenced by tree 71004, a younger tree of around 30 years old whose growth has been suppressed by adjacent trees. There must be an acceptance therefore that any replacement trees planted in the mid-term future would likely reflect these circumstances. [8.14]
- 15.64 Reflecting the evidence before the Inquiry, the possible effects on trees within the park are in the end nuanced, and judgements on harm finely balanced. On the one hand, the balance of probability is that the proposals would cause harm to a very limited number of trees on the western side of the park. This harm would have the clear potential to result in their longer-term managed decline and ultimately to their replacement in the future. On the other, such limited decline could be mitigated and managed, and ultimately remediated by replanting. Put simply, I conclude that the effect on trees of amenity value is that a limited mid-section of the western stand of London planes in proximity to the proposal would, in the long-term, be the poorer for its construction. Although this degree of ecological and thus visual impoverishment would, in the context of the group of trees as a whole, be slight, it would nevertheless result in harm to or loss of trees of amenity value.

The setting of the Buxton Memorial (BM), a Grade II* Listed Building

- 15.65 There is no purpose in repeating the assessments of the BM's special architectural and historic interest and significance previously set out in evidence. It is listed at Grade II*, reflecting not only the conspicuous idiosyncratic flair of its designer, but also the nationally and internationally important events it memorialises. Despite its relocation from its intended place in Parliament Square, its present location in VTG, commemorating the courageous actions of lawmakers serving in the

⁴⁷¹ EIC of Mr Mackworth-Praed

- Palace of Westminster just to the north, remains an element of its special interest and significance.
- 15.66 Beyond these primary attributes, it is clear that the open spatial context to the memorial is a constituent of its significance. One element of this significance is the formal, though opportunistic perspective of Dean Stanley Street, where the monument may be viewed and appreciated in framed long perspective. But a more relevant contributor is the sense of space around the structure, allowing the viewer to at first perceive its distant presence, then be drawn by its 'fanciful' play of forms, detail and colour and then, when close, appreciate its memorial purpose and importance.⁴⁷²
- 15.67 As set out above, the safeguarding of the setting of the BM would be most successfully mediated in views looking north along the Embankment path, and along the Embankment itself. Here, the monument would retain its pre-eminence within its wider context.⁴⁷³ However, from other points, most particularly when viewing the older monument from within the UKHMLC courtyard, or from other points in close proximity to it, its setting would visually become quickly congested. More specifically at this point the radically differing aesthetic moods of existing and proposed structures would collide in uneasy and discordant juxtaposition. And so here, decisively, the visual dominance of the UKHMLC would unsettle and crowd the BM, significantly infringing the viewer's opportunity to settle and contemplate its purpose and architecture, and thus fully appreciate its multi-faceted significance. The wider effects of this relationship on the character and special interest of the park are explored below. (15.91-15.93)
- 15.68 The plane trees to the east and west of the memorial do contribute to its setting. However, they do so very much in a collective sense, particularly those to its east forming a green backdrop to the memorial, and these would remain unaffected by the proposals. Whilst the limited number of western trees identified as being possibly at risk of harm frame the view from the west, any decline here would be mitigated by the curtain of greenery beyond. Consequently, there would be no additional material harm arising to the setting of the BM as a result of impact to trees.
- 15.69 Notwithstanding these effects, the BM would remain physically unaffected by the proposal, and in this respect, its special architectural and historic interest would be preserved. That said, this outcome would fail to preserve the setting of the BM, a Grade II* listed building, in accordance with the expectations of the Act⁴⁷⁴, such a consideration the Courts anticipate being given considerable importance and weight. It would also be contrary to those of paragraphs 193 and 194 of the NPPF, which anticipates great weight being given to the conservation of DHAs and their settings. Accounting for these considerations, I characterise this harm to the setting of the Grade II* memorial as being of great

⁴⁷² This is a term applied in the HE list description of the memorial CD4.23

⁴⁷³ Illustrated in Figure 8.7 p107 CD8.3

⁴⁷⁴ Ibid

importance. Although this measure remains well below the threshold of substantial, I nevertheless afford this a measure of considerable weight in the heritage balance.

Other Designated and Non-Designated Memorials and Structures within VTG

- 15.70 The Memorial to Emmeline and Christabel Pankhurst, a Grade II* listed structure, is located at the north east entrance to the park. It was erected within its precincts in 1930 on the western side of the now removed large central planting bed on axis with Great Peter Street, and then moved to its current location (not without some controversy) in 1956. Its status as the first of the three designated monuments in the park to greet visitors was evidently established at this point, with the then revised network of paths incorporated in the proposals, seeming to bind all newly relocated memorials visually and symbolically more closely. The present proposals, by retaining the existing structural planting framing the Pankhurst memorial, mean that its setting would be preserved.
- 15.71 The second such memorial is to the six Burghers of Calais by Auguste Rodin and listed at Grade I. Initially installed approximately on the site of the Pankhurst memorial at the artist's request, this too has a history of itinerancy within the park, arriving at its present location, like all the listed monuments in the park, in the mid-1950s. Despite the initial location and elevated plinth being the preference of the great sculptor, the monument was relocated to a more central point on the crossed axis of new curved paths. Whilst this is a more open context than that of its fellow monuments to the north and west, because of its scale, and its distance from the proposals, its setting would also be preserved. Although WCC identify harm to both these listed memorials, the scale of that harm is not calibrated. On the basis of my reasoning above, I conclude that there would be no material encroachment on the settings of these memorials and their significance would therefore be safeguarded. [8.25]
- 15.72 The River Embankment wall running between the Palace of Westminster and Lambeth Bridge is also listed at Grade II. Although most significantly affected by the installation of the elevated boardwalk incorporated within the proposals, this superstructure would in fact have a light touch on the fabric and appearance of the listed structure. With materials and detailing to be assured through conditions, its special interest and significance would be preserved.
- 15.73 The Spicer Memorial, located at the southern end of the park, although not a nationally designated asset, has played a prominent visual role in the park since its erection in 1930. This structure too has been the subject of relocation subsequently and would be subject to a further change in location as part of the proposals. Despite this, its structural and visual integrity would be maintained and its contribution to the character and interest of the park sustained. Taken altogether then, I therefore conclude that the proposed development would preserve the

setting of other designated and non-designated memorials and structures in the vicinity of the site.

VTG, a Grade II RPG

- 15.74 There is universal consensus that VTG is both an attractive urban landscape and a much-loved public park. It is these key attributes, both aesthetic and functional, that justify its national designation in the Register of Historic Parks and Gardens of Special Historic Interest in England at Grade II.⁴⁷⁵ As we know from the detailed assessments of significance presented to the Inquiry, it is a landscape that has evolved over the 140 years or so since the northern part of the site was first adapted for its intended public purpose. Not only has its area been extended, but its structural parameters redefined, most significantly by the extension of the Thames Embankment to the east but also by the raised west abutment to Lambeth Bridge to its south (both themselves listed structures).
- 15.75 Moreover, beyond these works, the path and planting layouts have undergone extensive revision and the park has been progressively colonised by a succession of memorials, individually and collectively of such significance themselves that they too have changed the character of the park. Nor has this evolution ceased, with some of the monument's locations being changed (with evident consideration), reflected in the comprehensive, and apparently not uncontroversial, revisions to the layout of the park agreed in the mid-1950s.⁴⁷⁶ This process continued with alterations being made to the layout of the children's play area and Spicer Memorial to the south. There have also been plans (unimplemented) for the landscape enhancement of the BM in recent years. In immediate proximity to the Palace of Westminster, to the south, temporary permission has been granted and implemented for the construction of an educational centre to serve the Palace on the site of former planting. Beyond these interventions, more utilitarian works have been undertaken, with black-top resurfacing and patching of paths and areas of lawn demarked because of waterlogging.⁴⁷⁷
- 15.76 So, perhaps initially perceived as being at variance with HE criteria for considering designation of post-1875 landscapes (which anticipates such sites will demonstrate "*significant attention was paid to landscaping, and that the layout survives intact or almost intact*"),⁴⁷⁸ this is an RPG which is in fact no stranger to intervention or change. This is not however to diminish its special interest. Indeed, these simple evolved components of bold structure, open unadorned lawn, striking monuments, and above all the framing twin stands of mature plane trees along its eastern and western boundaries, give the park its defining elemental, urbane and ultimately highly picturesque landscape character and special interest. Indeed, cumulatively they meet the perception of "*elegant simplicity*"

⁴⁷⁵ First Registered in 1987, reviewed in 2002 and now incorporated as a component of the National Heritage List for England CD 4.22

⁴⁷⁶ The list description of the Pankhurst memorial refers to opposition to the relocation of the memorial at that time CD4.24

⁴⁷⁷ Noted on the Inspector's site visit 28 October 2020

⁴⁷⁸ Page 21, Urban landscapes, Register of Park and Gardens Selection Guide, HE 2017

- identified by Sir David Adjaye and broadly endorsed by the main parties at the Inquiry. [8.52]
- 15.77 This openness, partly achieved through the progressive removal of substantial structural shrubbery and ornamental tree planting (clearly most notable in the extensive 1955 alterations), also affords the opportunities for views across the site beneath and between the canopies of the trees. The most significant of these views is from the south, first from the elevated abutment of Lambeth Bridge but then across the lawn through the broadening funnelled perspective of the trees where the day-lit south elevation of the Palace of Westminster can be properly and picturesquely appreciated. A second, more opportunistic view is from the eastern portal of St John's Smith Square along Dean Stanley Street. Here, across Millbank and framed by both gates and trees, the BM can be seen in axial alignment amid the open lawn; another noted picturesque visual incident. Beyond these attributes are more intangible qualities – a perceptive sense of spatial openness beyond the street and trees, and the draw this has for people to use it at moments of leisure, defining its function as a communal Metropolitan space. These too are important elements of its character and interest as an RPG.
- 15.78 In this context, any significant intervention would be likely to affect this established character. And, as TIS/SVTG & LGT point out, given that the heritage designations within and surrounding the site intersect and overlap, these effects would also likely to be multiple and multi-faceted. The primary elements of the proposed development have been set out above and they would be, without question, cumulatively a significant intervention to this RPG. [9.11, 9.16, 9.17]
- 15.79 The first of these effects is the physical presence of the UKHMLC in the park. There is agreement in the SoCG that the actual loss of open space (principally as a consequence of the entrance pavilion and courtyard) would stand at 7.5%. However, there is no wider consensus, and loss ranging from above that figure, through higher percentages to total loss of the park as open space for casual recreational enjoyment are suggested. These high numbers are in part based on considering the greater presence of the UKHMLC, including the earthen mound and associated structural planting to the wider effects of landscaping, management of the space to facilitate visits and the wider annexation of the park as a setting for the monument. [9.21, 9.22, 9.23, 11.203/Appendix 4, 11.219/Appendix 4, 11.220/Appendix 4, 11.221/Appendix 4, 11.223/Appendix 4, 11.224/Appendix 4, 11.227/Appendix 4, 11.228/Appendix 4]
- 15.80 Although located within the southern funnel of the park to minimise its take on the open lawn to the north, this would come at the price of the greater structure sitting between the twin constraints of the trees to the west and the BM to the east. The entrance pavilion and enclosed courtyard would also be close to abutting the modified play area to the south. This would have the effect of accentuating the topographical presence of the combined earthen and sculptural structure in the otherwise tabular landscape. Moreover, the associated infrastructure of entrance pavilion, courtyard walling, railings and structural planting would inevitably consolidate this presence. Indeed, this nexus of forms

and spaces would, in specific circumstances, appear dense and congested, and so at variance with the greater open simple character of the park. [9.24, 11.219/Appendix 4]

- 15.81 This sense of visual congestion would be most acute where the combined structure visually abuts the BM, where both physical and visual proximity and radically different forms of memorial architecture would sit in uneasy and dissonant juxtaposition.⁴⁷⁹
- 15.82 However, notwithstanding these points (the last of which, in particular, I will return to below), the combined structure would otherwise be very sensitively mediated within its context. In terms of location, the proposal seeks the cover of the converging lines of trees and the sense of intimacy this creates, so mitigating its presence in the wider landscape. In terms of form, the profile of the earthen mound would build gradually from the north, with the sculptural bronze fins breaking from the crest of the eminence towards the entrance courtyard and remaining space to the south. The interface of the structure and courtyard would be further mitigated by detailed planting proposals, particularly to the west and south. More subtly but equally importantly, the wider landscaping proposals for the park would work to further integrate the combined structure and planting within its context.
- 15.83 The revised path network (consistent in magnitude to previous path rearrangements within the park), would serve to guide the entrant visitor past the existing memorials at the north, sinuously delivering them, past the BM, to the UKHMLC itself. This primary approach within the park (acknowledging visitors may also choose to approach the UKHMLC along Millbank) would be supported by secondary routes that secure access to the earthen mound and to the boardwalk along the Embankment. Combined, this matrix would safeguard and indeed supplement existing connectivity within the park and bring a tangible sense of cohesion between the flat landscape to the north and the rising organic landform of the UKHMLC to the south. Moreover, the stated commitment to improving groundworks and the focus on quality materials and planting to be used in the landscaping works would also provide significant gains in the quality, appearance and functionality of the park. This would mitigate any erosion of the civic amenity of the park space.
- 15.84 The views from the south through the park are rightly considered an important part of its character, special interest and significance. Much discussion at the Inquiry focused on this view in relation to the prospect of the south elevation of the Palace of Westminster, seen against the open "*pastoral*" lawn before it.⁴⁸⁰ Reflecting the points made above, it would certainly be the case that where the proposals are considered in a static way, as in the case of view 22, elements of the south façade of the Palace would be obscured, and the view from this point occluded. But this would be just one point, or pause, in a kinetic experience of the park, where, as one descended from the steps from Lambeth Bridge to

⁴⁷⁹ This juxtaposition is registered in several places in evidence but for reference can be considered when viewing Figure 6.44, page 81, Sir David Adjaye's PoE CD8.3

⁴⁸⁰ A phrase used by HE in their submission to the Inquiry, paragraph 6.1.3, CD 5.36

the park and onward past the UKHMLC, the south façade of the Palace of Westminster would be first partly obscured, then revealed, then occluded, then once more revealed as one traversed the northern lawn. Moreover, if a static view of the south façade were desired one could readily be achieved from the eminence of the mound. This could offer an elevated prospect to the north, partly overcoming the presence of the Palace of Westminster education centre, currently an impediment to the full appreciation of the south front from this prospect.⁴⁸¹ Furthermore, the elevated prospect of the mound would also afford hitherto unavailable views over the Embankment parapet, allowing the view of the river and the southern bank beyond, extending the visual and spatial scope of the park for the better.

- 15.85 Again, the view along Dean Stanley Street is both charming and striking in its picturesqueness. Standing in the east portal of St John's Smith Square, one's view east is framed first by the tall buildings lining Dean Stanley Street. These then set the prospect for the entrance gates to the park, themselves framed by London planes, with the BM set on the axis of the street and pathway leading into the park. It is a classic urban vignette, and manifestly contributes to the special interest of the park as an RPG.
- 15.86 It is the case that the profile of the Memorial fins would intercede in this view on its left, and that this would condense the frame of the view to a degree. Moreover, the railings and planting along the western border of the courtyard would partly cloud the prospect beyond into the park to the BM thereafter. Despite this however, the force of the axial view of the monument would remain, secured by the strong continued presence of its upper superstructure and spire in the long perspective. Moreover, as considered above in respect of the BM, whilst the trees bounding the park to east and west contribute to its character and interest, they do so very much in the collective sense. Whilst there would be a risk to the wellbeing of a limited number of the trees to the west of the Memorial site, in the context of the group as a whole, these potential effects, though constituting a modest measure of harm, cannot be considered of any great magnitude. Nevertheless, such an outcome requires inclusion in the final calibration of harm to the DHA.
- 15.87 The point was rightly and perceptively made at the Inquiry that an appreciation of landscape qualities requires more than the application of historic building conservation sensibilities. The character attributes of landscapes can indeed be very nuanced and informed by the subtleties of use, activity and even a more intangible sense of spatiality. There is no doubt that the UKHMLC would, by its physical presence, alter the character of the park and thus its spatial balance would be changed. Indeed, the draw of the UKHMLC, and the presence of visitors, sometimes many, would in turn perceptibly alter the ambiance and mood

⁴⁸¹ CD8.7 Mr O Shea PoE Figure 6.72 p66

of the park. This is also a matter to which I return below in the section on open space. [6.97, 8.56, 9.24, 11.225 - 11.226]

- 15.88 But claims that such effects, in concert with the physical ones already addressed above (but also including excavation) would in fact vitiate or substantially drain away the significance of the RPG, even justifying deregistration, are in my view considerably overstated. On the one hand they overlook the tangible, even utilitarian, benefits the scheme would bring, supporting its function and amenity as a park. Such works (like improved drainage and improved access to the Embankment) would also add to its more intangible ambient vitality as a public space. On the other, they also underestimate the resilience and capacity of the existing character of the park to accommodate such change. Such a conclusion is partly born of an acknowledgement of the degree of change it has already sustained, and also the conviction that the new spatial enclaves created by the UKHMLC would in turn be adopted and used by visitors, undeterred by its commemorative or educative purposes. Its character would be changed, reinvested, and re-expressed by changing patterns of use and activity, but these effects would not, in my view, amount to anything near a measure of what could be described as substantive harm.
- 15.89 Thus far then, despite the scale and scope of the intervention suggested by the proposals (including topographical change and structural densification, as well as noticeable though momentary infraction of views), their effect on the special interest and significance of the RPG would be neutral. As set out above, this outcome would be as much due to the high degree of skill and sensitivity applied to the design process, in terms of structure and landscaping, as to the offer of a range of works proposed, underscored by an emphasis on quality materials, that would deliver tangible benefits to the structure, utility and character of the park.
- 15.90 However, as I have determined above, despite the best efforts of the Applicant's multi-disciplinary design team, a successful relationship between the proposed structure and the BM has not been fully achieved. The setting of the Grade II* structure would not be preserved, and it is necessary to consider this again here to understand the effect this could have the significance of the RPG. (See also my reasoning in 15.65-15.69)
- 15.91 It is clear to all that the present location of the BM, a relocation after its storage following removal from Parliament Square, has been chosen with some care and that its installation in 1957 represents one of the more prominent post-war interventions into the park. Arguably the location chosen on the axis of Dean Stanley Street at the end of an existing path within the park was one not too difficult to arrive at. After all, such axial devices have been used before in the park, for example in the initial siting of the Pankhurst Memorial on that of Great Peter Street immediately to the north.⁴⁸² Such a location borrows the force and symmetry of existing views, whilst giving the monument sufficient space

⁴⁸² See Fig 1.16 (internal p12) Appendix 02 Visual Material CD 8.58

- from the others already populating the park to the north (albeit that these had arrived at their respective locations only the year before).
- 15.92 Despite the sense that the "*fanciful*"⁴⁸³ Gothic of Teulon's expressly architectural structure may have always felt more comfortable amid the hard urban enclosure of Parliament Square (it's intended initial location), it has nevertheless found its place within the park, a point of quiet remove, close to the Embankment and anchored by the axis of the path and streetscape to the west. The compelling logic of this location perhaps also explains a reticence about relocating the memorial as part of the present proposals. However, this too presents a no less difficult challenge: that of safeguarding the setting of the existing structure whilst delivering the UKHMLC to its design brief.
- 15.93 This reconciliation is nevertheless pursued through demarking the immediate context of the existing structure, scribing the enclosure of the proposed precinct around it and softening the visual interface between the two with planting. Whilst this would seek to establish an honest and inevitably intimate new relationship between the two, it would not be achieved convincingly. The exuberance of Teulon's structure would sit uncomfortably with the more sober and restrained modernity of the proposal. Moreover, the space such an expressive historic structure needs to be properly appreciated would be demonstrably curtailed. This sense of awkward stylistic juxtaposition and visual congestion would be most obviously understood from views within the UKHMLC complex, but would also have resonances in other views from the north down the Embankment path and the new sinuous route. Whilst these adverse effects would be partly mitigated by the more open and appreciative way the BM would be experienced when viewed from the Embankment walk, it would be impossible to escape the sense that the existing structure's open setting would be materially compromised by the presence of the UKHMLC. It is agreed that the special interest of the BM and the contribution its setting makes to its significance represents a constituent element of that of the park. It follows as a matter of logic therefore that any harm to that significance in turn affects that of the RPG. [8.20]
- 15.94 All these matters in respect of VTG as an RPG require drawing together. I conclude that the effect of the proposed development on the significance of VTG, a Grade II RPG, can be best summarised as follows: the primary cause of identified harm to the special interest and significance of the RPG would result from the adverse effect the proposals would have on the setting of the BM. This is compounded, to a very limited degree, by the potential harm to a limited number of trees within the park. However, this degree of harm must also be considered in the context of the sum of the significance of the RPG as a whole. Accounting for this calculation, and also allowing for the range of positive factors that would enhance the character of VTG as an RPG, I conclude that the measure of harm overall would be moderate. Nevertheless, accounting for the expectations of paragraph 193 of the NPPF that great

⁴⁸³ CD 4.23 List description, Heritage List for England, Historic England

weight be afforded to the conservation of DHAs, I afford this harm considerable weight in the heritage balance.

The Westminster Abbey and Parliament Square Conservation Area (WAPSCA)

- 15.95 No one would dispute the point made by TIS/SVGT & LGT that the WAPSCA “is one of the most, if not the most, significant and valuable Cas in the country, of very high significance”. WAPSCA is also undisputedly asset-rich and that the VTG comprises one of those assets. VTG lies within the WAPSCA which the WCC Conservation Area Audit divides into sub-character areas, VTG comprising part of Area 1 “*The Palace of Westminster and Victoria Tower Gardens*”.⁴⁸⁴ The sub-character area is dominated by the Palace of Westminster, with VTG forming its southerly context. This area also includes elements of Westminster and Lambeth Bridges, whilst a little less than half its area comprises an element of the river to the east. There is no dispute that VTG makes an important positive contribution to the character and interest of the WAPSCA. However, and as its name suggests, the primary focus of its architectural and historic interest, and thus significance, lies in the internationally important twin assets of the Abbey and Palace framing Parliament Square, with its residual interest being shared across its greater area. [6.91, 8.31, 9.27]
- 15.96 As set out above, the proposals, by virtue of their form and location, would harm the setting of the BM and the character of the RPG. There is a logical inevitability in having found such harm to these DHAs, that there must also be a measure of harm caused to the character or appearance of the Conservation Area in which all reside. And this is the case here, by virtue of the harms to the setting of the BM and the special interest of the RPG, the proposals would fail to preserve the character or appearance of the WAPSCA.
- 15.97 When the sum of harm to the setting of the BM, and thus to the special interest of the RPG, as well as the potential for harm to a limited number of trees are accounted, the proposals cannot be held to preserve the character or appearance of the WAPSCA. This would be contrary to the expectations of section 72 of the Act and would be at variance with paragraphs 193 and 194 of the NPPF, which anticipates great weight being given to the conservation of DHAs. [8.34, 9.28]
- 15.98 It is right, as WCC point out, that harm to a part of a conservation area, for the purposes of law and policy, means harm to the conservation area overall. However, it must also be right that any such identified harm is assessed in the context of the sum of the significance of that designation as a whole. The capital heritage value, or significance, of the WAPSCA is most evidently expressed in the internationally important architecture of the Palace of Westminster and Westminster Abbey and then the diverse range of assets that form their context. Although a distinct and acknowledged positive contributor to significance, VTG, seen in that wider hierarchy of significance, is a secondary component of the whole.

⁴⁸⁴ CD3.1 Conservation Area Audit & Management Proposals Westminster Abbey and Parliament Square 2008

Given the magnitude of harm identified in respect of the setting of the BM, the RPG and trees, and when considering this against the sum significance of the WAPSCA as a whole, I conclude that the magnitude of that harm should necessarily be measured as only a little less than moderate. However, once again accounting for the special attention to be afforded to preserving the Conservation Area (and the considerable importance and weight to be afforded it), and the great weight to be given to its conservation in the NPPF, I conclude the weight to be apportioned this degree of harm is considerable.

The setting of the Palace of Westminster, a Grade I Listed Building

- 15.99 One would expect no dispute that the setting of the Palace of Westminster contributes substantially to its significance. Indeed, the truly iconic architecture of the Palace, with its scale, measured forms, intricate play of texture and detail and self-consciously articulated roof profile (including the twin defining Elizabeth and Victoria Towers) demands to be appreciated in its context. The views from the river (the very pathway to trade, wealth, power and global dominion in its day) both from the east bank and Westminster Bridge, are globally recognised. So too are those views down Whitehall and across Parliament Square, the very intersection of the primary organs of the once global state. [6.94, 8.41, 9.32]
- 15.100 VTG certainly plays its part in this context, offering a contrastingly verdant, “*pastoral*”⁴⁸⁵ even, prospect from the south. However, to suggest that the “*original design intention (was) to create a relationship between the Houses of Parliament and a semi-pastoral setting*” does not sit comfortably with the evident multi-phased, incremental evolution of the park. It was, after all, only after the mid-1950s remodelling of the park that the substantial structural planting of the central round bed and specimen trees were removed, facilitating the open uninterrupted lawn we see today. Moreover, the argument that this primary view has hitherto been self-consciously preserved in recognition of its primary importance is difficult to sustain in light of significant interventions within it. This includes the grant of planning permission (albeit a temporary one of ten years) for the Palace of Westminster education centre immediately to the south of the Palace of Westminster precinct, a structure, with its apparently extensive planting, of undeniable presence in this view.⁴⁸⁶ [4.5]
- 15.101 The location of the UKHMLC within the southern part of the park and its effect on views to the north has been addressed above in relation to the character of the RPG but justifies a brief revisiting here. It is the case, particularly in respect of view 22⁴⁸⁷, when seen in stasis from this point, that the combined structure, would encroach upon elements of the south elevation of the Palace of Westminster and elements of the verdant context before it. But considered within the kinetic experience of progressing through the park from the south, and at points within such

⁴⁸⁵ A term used by HE in their submissions to the Inquiry, CD 5.36

⁴⁸⁶ Fig 4.8 p27, fig 4.22 p35 and fig 4.37 p39 Sir David Adjaye’s PoE CD8.3

⁴⁸⁷ CD5.1 HTVIA p.200

an experience, this occlusion would be momentary. At the descent of the Lambeth Bridge steps the south façade would emerge beneath the merged canopy of the trees, the entrance pavilion, portal fins and courtyard perimeter would then become visually more ascendant. But beyond these, past the mound, the façade would emerge again resplendent, before the open northern lawn.

- 15.102 There is also a consideration beyond the effect of the proposed structure of the view of the Palace of Westminster in relation to setting. The location of the UKHMLC in the funnel of the gardens to the south would seek community with the harder landscape character of the park periphery and play area. It would also seek the cover, shade and intimacy of the trees converging on both sides. The almost anthropomorphic form of the mound would graduate progressively from the north, offering a transition between the drama of the portal fins facing south and the open landscape to the north. These factors of location, context and form, abetted by the filter of the trees along Millbank and the degree of physical separation, would all mitigate the visual presence of the UKHMLC within the wider southerly context of the Palace of Westminster.
- 15.103 Moreover, the mound, designed for access by everyone, would afford a new, elevated static prospect of the south façade. Not only would this be a legitimate *new* view of the Palace of Westminster, its elevation would overcome, to a degree, the visual presence of the education centre immediately to its south. Although a secondary element of the greater setting of the Palace of Westminster, VTG nevertheless remains a contributor to it, and so to its significance as amongst the highest grade of DHA. Despite the scale and scope of what is proposed here, and the potential for harm to a limited number of the western trees, all foregoing factors would combine to safeguard this element of the setting of the Palace of Westminster. Its setting as a Grade I listed building would therefore be preserved in accordance with the expectations of the Act⁴⁸⁸, and would also be conserved, as forcefully anticipated by paragraphs 193 and 194 of the NPPF.

The setting of the Palace of Westminster and Westminster Abbey including St Margret's Church World Heritage Site (WHS)

- 15.104 No one disputes that one of the identified overarching significances of the OUV of the WHS is the outstanding and artistic value of its buildings and their content. The masterful Neo-Gothic architectural treatment of the Palace facades and its betowered, lanterned and pinnacled roofscape (clearly expressed in the south elevation) manifestly fulfil these expectations. The VTG provide an opportunity to appreciate this distinct element of OUV of the WHS, and thus forms an identifiable element of its significance. [6.93, 8.35, 9.35, 9.36]
- 15.105 TIS/SVTG & LGT in particular argue that the proposals would have a "*highly significant negative impact on the OUV of the WHS*", amounting to a degree of substantial harm to the significance of the asset within the

⁴⁸⁸ Planning (Listed Buildings and Conservation Areas) Act 1990

terms of the NPPF. This view is consistent with concerns expressed by ICOMOSUK and presented in evidence by TIS/SVTG & LGT. The genesis of this harm, it is argued, is that the proposals would “*completely change the character of the gardens which were designed and laid out to allow an appreciation of the Palace.*” Such arguments are underpinned by the view that “*The Palace of Westminster was designed to be dominant in the landscape through its size and siting. Victoria Tower itself was designed to be the tallest and most visible part*” and the proposal would, by virtue of size and location “*reduce and restrict*” the space from which Victoria Tower could be contemplated and understood. Such arguments of course resonate with those made in respect of VTG as an RPG and in relation to the WAPSCA already considered above. (See also my reasoning in 15.74-15.94, 15.95-15.98)

- 15.106 Such arguments are broadly supported by WCC, who express concern in respect of the effect on the WHS that it would “*substantially reduce the views from the VTG northwards*” and moreover, that “*truncated views from the elevated mound.....were never intended in the original layout of the gardens*”. WCC add that with the harm to trees accounted, such cumulative harm to the setting of the WHS should also be calibrated at substantial in NPPF terms. [8.37]
- 15.107 Such arguments, particularly in relation to the views of the Palace of Westminster from the south, in respect of the effect of the proposals on the significance of VTG as an RPG and the WAPSCA, have been rehearsed above, and require no repetition. However, in respect of the opportunities to appreciate the OUV of the WHS, it is worth restating that although there would be momentary disruption of this view to the north, this would be mediated in any kinetic experience by its full return once immediately past the UKHMLC on one’s journey to the open lawn and the unencumbered prospect of the Palace to the north. Whilst the elevated view from the mound may represent a modest foreshortening, this needs to be balanced against the fresh opportunity that would be gained to appreciate the Palace of Westminster and its setting from this perspective. (See my reasoning also above -15.74-15.94, 15.95-15.98)
- 15.108 Nor is it right to diminish the value of this latter new view against the yardstick of the suggested intention behind the “*original layout of the gardens*”. The incremental extension of the park to the south meant that initial views north from within the earlier phases would necessarily have been truncated. Further, the open, unimpeded prospect now defended was only truly (and again incrementally) realised with the completion of the mid 1950s layout and the removal of the substantial occluding raised circular planting in its northern sector at that time. Neither is it right, when the kinetic experience of progressing through the park and new views within it are taken into account, to say objectively that the proposals would much “*reduce and restrict the space*” in which the Palace of Westminster can be viewed, or that “*detailed and medium distance views of Victoria Tower would be highly compromised*”. [8.37, 9.37]
- 15.109 It should also be noted at this point that harm to the significance of VTG, BM and the WAPSCA, does not automatically translate into harm to the

OUV and setting of the WHS. Material harm in respect of these assets relates specifically to the setting of the BM and potential adverse effects on a small number of trees. Such harms have to be considered in relation to both the RPG and WAPSCA as respective wholes. Recognising that the primary cause of this harm would be to the setting of the BM, harm to the RPG has been characterised as moderate, whilst that to the WAPSCA has been characterised as slight. Accounting for this, the limited harm anticipated in respect of trees, the distance from the boundary of the WHS, the buffering effect of the buildings on Millbank and the screening relationship of the multiple tree crowns seen in acute perspective along Millbank, the proposals would have no appreciable or material effect on the setting of the WHS and so no appreciative effect on its OUV.

- 15.110 So, drawing these points together, the proposed UKHMLC would not result in compromise to the OUV of the WHS because it does not harm it or its setting, thus conserving it. Accordingly, it would meet the expectations set out in paragraphs 193 and 194 of the NPPF anticipating great weight being given to the conservation of DHAs and their setting. This outcome determines that the proposed development would also accord with the relevant policies of the development plan, which seek to support and underpin these national policy objectives. Such a conclusion accords with that of HE, clarifying at the Inquiry that there would be no material harm to the significance of the WHS. [6.93]

The settings of adjacent listed buildings, including Nos 1 & 2 Millbank (Grade II*), Norwest House (Grade II) and St John's Smith Square (Grade I)

- 15.111 Nos 1&2 Millbank and Norwest house, both fronting Millbank, each offer very contrasting styles of C20 metropolitan architecture. The former, an exuberant and confident essay in north European Renaissance Revivalism, the latter a bombastic Empire-style Neo-Classicism. Both more than confidently hold their own in terms of visual presence, and accordingly make a strong contribution to the SSCA in which they reside and by form the backdrop to the WAPSCA.
- 15.112 Each are set at some remove from the proposed UKHMLC site to the north and south along Millbank, so any juxtaposing views would be seen within the acutely narrowing perspective of the road. In this context the proposed UKHMLC would have the most minimal effect on their settings. Moreover, even accounting for the minor harm to the wellbeing and longevity of the limited number of trees on the west of the park, because of the perspective in which the buildings are viewed, such a thinning would be absorbed within the combined canopies of the greater stand. No material adverse effect would therefore result. [8.43, 9.43]
- 15.113 St John's Smith Square Concert Hall, formerly listed as Church of St John the Evangelist is, as the list description states "*the climax of the exceptionally well preserved early C18 enclave comprising the north side of Smith Square and Lord North, Barton and Cowley Streets*". Indeed, the confined space of the Square amplifies the power of the exuberant Baroque architecture of the church, giving a highly evocative sense of

the character of early C18 London. As we know from the map evidence, it was never the intention of the axis of Dean Stanley Street at the time of the construction of the square to offer a vista or view onto open spaces or the light of the river beyond. [8.42, 9.42]

- 15.114 This picturesque perspective, framed by buildings and trees, is borrowed from the clearance of the river frontage and the subsequent laying-out of the extended park in the first two decades of the C20. This visual incident may offer both a new perspective on the east portal of the building and indeed in reverse, offer a visual connection beyond the confines of Smith Square. However, this contribution to the significance of the building has, proportionately, to be seen as very limited. As set out above, the incursion of the UKHMLC into this view would in any case be limited, the most apparent component being that of the boundary treatment and planting on the west side of the courtyard. The core constituents of perspective, light, tree cover (whilst still accounting for any potential harm to trees) and point-in-view (BM) would all be safeguarded. In light of this, and the limited contribution this view makes to the setting of the building, there would be no material harm to the significance of St John's Smith Square Concert Hall as a DHA.
- 15.115 For all these reasons then, the proposed development would both preserve and conserve the settings of the adjacent listed buildings, including Norwest House and 1 & 2 Millbank, in accordance with the expectations of s66 of the Act⁴⁸⁹ and paragraphs 193 and 194 of the NPPF and local development plan policy that seeks to underpin these national statutory and policy objectives. [3.6, 3.10, 3.19, 3.25, 3.32]

The setting of the Smith Square Conservation Area (SSCA)

- 15.116 On the basis of my conclusions in respect of the setting of the listed buildings on Millbank, the setting of St John's Smith Square and the effect of the proposal on trees within VTG, I also conclude that there would be no material harm to the setting of the adjacent SSCA. Such an outcome accords with the expectations of paragraphs 193 and 194 of the NPPF and local development plan policy that reflects and underpins these national policy objectives. [3.6, 3.10, 3.18, 3.25, 3.32]

Conclusion on effects on DHA's

- 15.117 Taken together then, these are the sum of the heritage harms, including harm to trees. In respect of each key DHA, the BM, the RPG and the WAPSCA, the modest degree of harm to trees has been added to the final sum of harm in each. To be clear however, the degree of harm to trees has been found to be very considerably less than that characterised by those opposing the proposals. The sum of harm to each DHA has been individually assessed and these vary. However, in no case, does this aggregated degree of harm to each asset individually approach anything near the substantial threshold established by either Bedford or the PPG. Furthermore, even when the individual harms to DHAs are considered cumulatively, as required, they again still fall well below the

⁴⁸⁹ Planning (Listed Buildings and Conservation Areas) Act 1990

substantial threshold established by Bedford and the PPG. Having fully considered such harms, I now turn to the public benefits.

Public Benefits

15.118 Paragraphs 195 and 196 of the NPPF clearly anticipate that where harm is identified in respect of a DHA, in relation to paragraph 195, it must be demonstrated that to overcome such substantial harm it is necessary to achieve substantial public benefits, and in the case of paragraph 196, that less than substantial harm should be weighed against the public benefits of the proposal. [3.32]

15.119 Some of the vigorously contested public benefits identified in this case are both familiar and temporal. These include structural improvements to the VTG and the delivery of a monument of outstanding design that would be seen as an asset to its sensitive context. Others, notably the principle of the development itself, though abstract, are anchored very much within the aspirations of the findings of the Government's HMC, are also more clearly demarked. But others, such as the purpose, (commemorative and educational) and content of the UKHMLC and the merits or otherwise of its location (and alternative locations) are more emotive, subjective and abstract still. The basis for a judgement on these matters can be found in the formal evidence and submissions of the main parties, and also in the testimonies of those who spoke at the Inquiry as well as written submissions. [6.1-6.129, 7.1-7.58, 8.1-8.102, 9.1-9.79, 10.1-10.35, 11.1-11.240 Appendix 4, 12.1-12.24,]

Governance and procedure

15.120 Some parties and the TIS/SVTG & LGT take issue with the governance and oversight of the HMC, the evolution of the scheme after initial public consultation and the public consultation process undertaken by the Applicant, the approach to site selection, the analysis of the significance of the site, the design review and the referral of the proposals to the World Heritage Centre in accordance with World Heritage Committee expectations. Baroness Deech, a Rule 6 Party (BD), also raised concern over the potential conflict between the programmed refurbishment works for the Palace of Westminster and the advent of construction of the UKHMLC and the requirement of associated utility space for both, should planning permission be granted for the latter. [9.2, 9.12-9.15, 9.38, 9.39, 9.78, 9.79, 10.32, 11.189-11.190/Appendix 4, 11.202/Appendix 4, 11.207/ Appendix 4, 11.214/Appendix 4]

15.121 Whether or not these are matters for which answers are sought, they are not strictly germane nor material to the planning merits of the case and are, therefore, not taken into account in the balancing process or recommendation below.

Process

15.122 BD argues that a proper consideration of the public benefits of the scheme cannot be assessed without reference to official reports of bodies specifically set up to consider how the public interest would be best served in this case. The primary official report identified is the Prime

Minister's HMC Report published in January 2015. BD further maintains that it is impossible to determine the appropriate magnitude and weight of public benefits without considering in depth the question of alternatives to the VTG site. BD goes on to postulate an example 'alternative site' to question a process that excluded the detailed consideration of such sites. The weight to be attached to alternative sites (the IWM being identified as the proxy/nominal site see below) is also a matter addressed at length by the TIS.SVTG & LGT and also by WCC. TIS.SVTG & LGT also raise concerns over the site selection process and how the VTG site came to be chosen. [8.81-8.92, 9.12-9.15, 10.3, 10.4, 10.6-10.13, 10.20-10.28]

- 15.123 In the majority of cases the submission of a planning application is neither the end nor the beginning of the development process. It may more properly be characterised as the beginning of the end, where proposals have been worked-up to a stage where they may be formally presented for public assessment against local and national policy and statute, and all other material considerations taken into account. This process can be extended in the minority of cases, such as here, with the proposals being determined at appeal.
- 15.124 As the evidence demonstrates, the development of the UKHMLC proposals since the publication of the HMC's report, have been very thorough. This has involved site selection, a public architectural competition, and after initial selection, a very detailed preparation of the proposals and their presentation, with formal public consultation, consideration by WCC and ultimately the more detailed evidence presented before the Inquiry. As TIS.SVTG & LGT make clear, the identification process for the VTG site was outwith the initial site selection procedure. The concern with these circumstances is that this process lacked public consultation on the suitability, acceptability or desirability of VTG as a location. [9.13-9.15]
- 15.125 There is of course merit in such a pre-application process, and this reflects best practice. The benefits of such a process, such as the early identification of potential risk, can assist with mitigating the proposal prior to formal consideration. However, not undertaking this process does not materially diminish any public benefit the proposal may offer, or necessarily weigh against it in planning terms. Notwithstanding subsequent consultation through exhibitions and presentations, it defers an assessment of risk to a point of formal consideration within the planning process, and the hazard that hitherto unidentified matters may result in the refusal of the scheme. It is not therefore the purpose of the Inquiry to review or consider the process by which the proposals have arrived in their current form, but properly to consider their planning merits, in the widest meaning of that term.
- 15.126 So, in planning terms, we are where we are. The cornerstone of planning statute requires that the planning application be determined in accordance with the development plan unless "*material considerations*" indicate otherwise. In the circumstances of this case, regard is also to be had to statutory and national policy relating to DHAs. In this context it is entirely appropriate for parties to put matters of official reports

(specifically the HMC 2015 report), and alternative locations, before the Inquiry as material considerations to be weighed in the final planning balance. Matters presented in support of the proposal, governmental expectation, principle, purpose, location, and alternative locations are also therefore considered appropriately below. This process also serves as an answer to DB's hypothetical 'hospital' question raised in closings.⁴⁹⁰ Ultimately, all planning proposals are judged through the lens of section 38 (6) of the Act⁴⁹¹, with any breach of development plan policy being judged against the weight given to material considerations that may ultimately justify such a breach. [10.21-10.22]

Principle of Development

- 15.127 Whilst a memorial to those who died in the Holocaust exists in Hyde Park, one of the primary findings of the HMC was "*widespread dissatisfaction*" with this memorial, with the report concluding that it was "*wholly inadequate*". Such concerns gave expression to the first of the HMC's recommendations that "*there should be a striking new memorial to serve as the focal point of national commemoration of the Holocaust. It should be prominently located in Central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust. This will stand as a permanent affirmation of the values of our society*".⁴⁹²
- 15.128 It is a fair assessment that the majority of those expressing a view on the merits or otherwise of the proposal accepted the need for such a commemorative structure in principle, and in accordance with the expectations of the HMC. It is self-evidently the case that the Applicant and LfR fully support the proposals. It is also the case that WCC and TIS.SVTG & LGT support the principle of a UKHMLC, and state that in generic terms, such a provision may be accepted as a public benefit. Some support the principle, whilst opposing the application proposals themselves. Many others who spoke in support of the UKHMLC at the Inquiry, including prominent public and religious figures, and most forcefully holocaust survivors and their families, argued most passionately for the imperative necessity of such a specific national Memorial, especially as we face the inevitable last passing of those who survived. Additionally, the survivors and their families, along with those engaged with the work of the HMC in capturing the testimonies of survivors and those engaged in the field of Holocaust education, also spoke powerfully in support of the need for a LC as a vital and integral component of the project. [8.1, 9.9, 10.29, 11.3-11.177/Appendix 4, 11.202/Appendix 4, 11.203/ Appendix 4, 11.213/Appendix 4, 11.218/Appendix 4, 11.223/Appendix 4, 11.227/Appendix 4]
- 15.129 Others argue that there is absolutely "*no need*" for such a structure, as sufficient provision has already been made, and indeed that such a structure may be of no purpose, or even counter-productive, in the fight against anti-Semitism, both in the UK and internationally. Some argued forcefully that such memoria internationally have in fact fuelled anti-

⁴⁹⁰ Paragraphs 21-23 Closings for BD CD 16.1

⁴⁹¹ Planning and Compulsory Purchase Act 2004

⁴⁹² Prime Minister's Holocaust Commission Report "Britain's Promise to Remember" (January 2015) CD5.9

Semitism in countries that have erected them. Such arguments are also linked to those suggesting that the educative component of the UKHMLC would compound such concerns, and the money allocated to it could be better spent on digitising the Holocaust story and making it accessible worldwide. Such arguments conclude that there would be no *"public benefit whatsoever to be derived from the memorial"* that would outweigh the identified harms. [11.183/Appendix 4, 11.187/Appendix 4, 11.191/Appendix 4, 11.195/ Appendix 4, 11.198-11.200/Appendix 4, 11.205/Appendix 4, 11.208/ Appendix 4, 11.221/ Appendix 4]

- 15.130 There must be a place for those that consider that existing memorials to the Holocaust are sufficient to commemorate such an event. Moreover, the arguments that such national memoria act as a catalyst, or an incitement to increased anti-Semitism, cannot be summarily dismissed. However, as is clear from the findings of the HMC, and indeed from the readily identifiable majority of those making representations to the Inquiry, there is very strong support for the premiss of a national memorial that fulfils the expectations of the HMC's first recommendation.
- 15.131 In my view, the proposal before the Inquiry, in terms of principle, fully meets the expectations of this recommendation. It would be (see below) a striking new memorial which, by virtue of its design and context, would serve as a focal point for commemoration. It would have a very prominent location in central London which would, because of its proximity to the Palace of Westminster and its wider national sacramental context (again see below), make a very bold statement as to the importance this nation places on preserving the memory of the Holocaust. The sum of these achievements also means that it would serve as a permanent affirmation of the values of our wider society.
- 15.132 The argument that Holocaust memoria increase anti-Semitism is indeed a disturbing one, though the evidence supporting this view was not explored in depth during the Inquiry. However, even if convincingly established, would or should this be a basis for concluding it would be better not to erect such a national memorial? A number of those who spoke at the Inquiry, suggested that such an outcome would be a validation or a perceived victory of such racist action. I am bound most forcefully to agree. More than that, it would mean the defeat of Holocaust memorialisation and remembrance and an open door to wider denialism. So, notwithstanding dissenting opinion, I conclude that the clear fulfilment of the first recommendation of the HMC, with the force of views expressed in support of its key objectives, does constitute a public benefit of great importance meriting considerable weight in the heritage and planning balance.

Purpose and Content

- 15.133 The HMC also made it 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"*. Thus, the second recommendation of the report sought *"a world class LC at the heart of a campus driving a network of national educational activity"*. So, from the outset, the HMC anticipated that both

Memorial and LC would be co-located.⁴⁹³ Here again however, opinion is further divided between those supporting the LC element of the scheme, and those who either do not believe it would fulfil the educative objectives of the HMC and further, that it would risk the overall objectives being undermined or even subverted by a national British narrative pursued for political purpose under the egis of promoting “*British values*”. For:[7.27-7.31, 11.12-11.14/Appendix 4, 11.18/Appendix 4, 11.26/Appendix 4, 11.45/Appendix 4, 11.51- 11.52/Appendix 4, 11.56 -7/Appendix 4, 11.62-11.66/Appendix 4, 11.70-11.71/Appendix 4, 11.78-11.84/Appendix 4, 11.96/Appendix 4, 11.100/Appendix 4, 11.107/Appendix 4, 11.111/Appendix4, 11.113-11.116/Appendix 4, 11.136/Appendix 4,11.139/Appendix 4, 11.168/ Appendix 4; Against:[10.6-10.13, 11.178/Appendix 4, 11.184/Appendix 4, 11.187/Appendix 4, 11.192/Appendix 4, 11.195.-11197/ Appendix 4, 11.199/ Appendix 4, 11.201/Appendix 4, 11.211/Appendix 4, 11.222/ Appendix 4]

- 15.134 BD argues that if the educative provisions of the UKHMLC are considered against the detailed aspirations of the recommendations of the HMC report and the UKHMF site selection criteria, then what is offered falls considerably short of that sought. This, it is argued, combined without a detailed assessment of the alternatives, means that a true assessment of any public benefit the scheme might offer cannot be confidently determined. For others, such as WCC and TIS.SVTG & LGT, the matter of co-location itself, because of the physical scope and extent of the learning component of the scheme and its suggested harm, in this location, is the point where the proposal as a commemorative entity, ceases to offer a public benefit, in fact becomes a disbenefit, or that the benefits of a memorial are outweighed by the identified harms. [8.101, 9.75, 10.28, 10.34]
- 15.135 The LC component of the scheme as presented does not precisely reflect the aspirations set out in the HMC report. This subsequent evolution may well reflect a continued commitment to co-location and the seamless binding of memorial and LC in the chosen VTG location. It may also reflect a changing response to the brief and content of the scheme as it was developed. But, notwithstanding this evolution of physical configuration and makeup, it is the capacity of the LC to deliver the ambitious educational objectives of the HMC recommendation, rather than obeying the letter of its aspiration, that should be the critical consideration here.
- 15.136 Scholastic opinion is divided as to the merits or otherwise of the educative content of the LC, and the degree to which it could be said to contribute any public benefit as part of the scheme. Those questioning the efficacy of the LC also contend that the resources allocated for the provision of the UKHMLC would be better targeted at developing and growing educational and academic initiatives nationwide that would much more effectively fight growing anti-Semitism in the UK and elsewhere. [11.183/Appendix 4, 11.186/ Appendix 4, 11.195-11.196/Appendix 4,11.205/ Appendix 4]
- 15.137 Representatives from the academic community argue that with the prospect of the existing Hyde Park Memorial being relocated to central London and with the advent of the renewed Holocaust exhibition at the

⁴⁹³ CD5.9 Recommendation ii, page 13 HMC report

IWM, there was no “*pressing need for a further physical monument*” and that resources would be better “*deployed in more creative and potentially transformative use of funds.*” Such deployment included a digital repository, teacher development, funding research and creating a new research institute tailored to this task. Others, of conspicuous academic distinction, argue that the UKHMLC would be both an unnecessary duplication of the IWM’s offerings on the Holocaust and at the same time be unable to compete with other long-established archival collections such as the WHL. [11.183/Appendix 4, 11.186/ Appendix 4, 11.195/Appendix 4, 11.198-11.199/ Appendix 4, 11.205/ Appendix 4]

- 15.138 This discourse is however countered, not only by the Applicant, but also by LftR and distinguished academics, educators and museum exhibition designers (some honoured for their work in the field of Holocaust education and of international repute).⁴⁹⁴ Such views are in turn supported by institutions, some cited by opponents of the scheme, as being in unequal competition with its offer, such as the WHL. Evidence and testimony presented to the Inquiry by those already extensively involved in the project make clear, with erudition, that the educative content of the proposal would offer an engaging, interactive and dynamic experience. Such an experience would be underpinned by rigorous scholarship and the advice and expertise of leading academics and specialists in the field of holocaust education. [6.70-6.71, 7.31, 11.55-11.68/Appendix 4, 11.69-11.72/Appendix 4, 11.73-11.84/Appendix 4, 11.85-11.96/Appendix 4, 11.97- 11.102/ Appendix 4, 11.103/Appendix 4, 11.111/Appendix 4, 11.113-11.116/Appendix 4, 11.121-11.128/Appendix 4, 11.129-11.38/Appendix 4, 11.39-1152/Appendix 4]
- 15.139 This message, delivered through the medium of an integrated Memorial and LC, conceived as an organic whole, would have the power to offer the experience of memorialisation in profound and meaningful ways that two disaggregated elements could not so effectively achieve. So presented, the UKHMLC would not only offer new opportunities to enhance school curriculum-based learning but also to the wider population, providing a means to educate, inform and challenge common myths, misconceptions and disinformation apparent from research informing the work of the HMC and UKHMF. [6.7, 6.71, 7.4-7.15, 7.27, 7.31, 11.13/Appendix 4, 11.24-11.25/Appendix 4, 11.62-11.66/Appendix 4, , 11.69-11.72/Appendix 4, 11.78-11.81/Appendix 4, 11.100/Appendix 4, 11.107/Appendix 4, 11.111/Appendix 4, 11.115-11.116/Appendix 4, 11.125/Appendix 4, 11.130/Appendix 4, 11.139/ Appendix 4, 11.168/ Appendix 4]
- 15.140 Such an approach would also see the UKHMLC as a catalytic seedbed for further learning, encouraging continued engagement and research with other academic institutions in partnership with the UKHMF and those as yet unaffiliated. This facility would also provide the forum to fully contextualise and present the recorded testimony of Holocaust survivors, one of the first and most important tasks of the HMC already completed.

⁴⁹⁴ CD8.9 p4 The Applicant’s witness Mr Greenberg, has a long track record in the delivery such exhibitions, including the acclaimed Holocaust exhibition at the IWM

- [7.30, 11.62-11.66/Appendix 4, 11.70/Appendix 4, 11.111/Appendix 4, 11.115/Appendix 4]
- 15.141 The conviction of academics and educationalists supporting the UKHMLC that it would be highly effective is given support, and added weight, by the shared belief of distinguished practitioners in the United States of America who addressed the Inquiry. The testimony affirming the success of the SUHMM (and insights into the unfounded initial perceptions as to its appropriateness), gives a strong assurance that the approaches adopted in respect of the UKHMLC would yield similar beneficial educative results. [11.73-11.84/ Appendix 4, 11.85-11.96/Appendix 4]
- 15.142 Without disrespecting the views of those challenging the merits of the educative content of the UKHMLC, it seems to me that the objections in this regard are founded on a wrong premise. Notwithstanding the initial aspirations of the HMC recommendation, the proposal, as now presented, is not for a centre of learning in the classical sense. It is rather a learning centre, a portal through which, using the seamless medium of commemoration and interpretation, a primary understanding can be conveyed, and so initiate a further exploration, either formal or informal, by which the enormity of the moral questions raised by the Holocaust could be pursued. On the basis of the evidence presented and testimony to the Inquiry, I am firmly persuaded that the educative approach set out for the UKHMLC, so authoritatively endorsed, is a public benefit of great importance meriting considerable weight in the planning balance.
- 15.143 One matter however that might significantly compromise this message, and so the degree of public benefit and the weight it would garner, would be if, either consciously or subconsciously, it was in some way appropriated for a baser, nationalistic or political purpose. Those who consider this a legitimate concern for such a state-sponsored endeavour might equally consider it in relation to any such memorial on any prospective central London, or even national site. [11.184/Appendix 4, 11.187/Appendix 4, 11.192/Appendix 4, 11.199/ Appendix 4, 11.201/Appendix 4, 11.210/Appendix 4, 11.222/Appendix 4]
- 15.144 Perhaps it is a good indicator of the vigour of a democracy that the aims and ambitions of its lawmakers are held to critical account, and their motives for raising monuments given sceptical scrutiny. In the case of a national memorial such as the UKHMLC, it is especially important that the message it would convey would be one of clear moral integrity, and not one filtered through other partisan narratives. This, in part explains perhaps why the aspiration of the HMC to deliver a memorial that is “*a permanent affirmation of the values of our society*” has been interpreted by such sceptics as a means to promote so-called “*British values*”. Although the phrase is used only once in the HMC report, as its publication preceded any definitive choice of site, it can be reasonably be assumed it would be a dimension of the Memorial wherever it was to be located.⁴⁹⁵ [11.231]
- 15.145 Although the final location of the proposed UKHMLC in VTG adjacent to the Palace of Westminster is a significant factor in the concerns over

⁴⁹⁵ CD5.9 p22

appropriation, the broader picture is not necessarily contingent upon it. The wider cultural narratives, such as Britain as the cradle of Parliamentary democracy, or as the lone defender of it against the predations of the National Socialist regime in the early years of the war, could all be brought within the ambit of a national memorial to those lost to the Holocaust. However, it is clear from the outset that it was the HMC's intent to clearly and truthfully set out Britain's complex relationship with the Holocaust. This aim is demonstrably underpinned by academic research indicating a worrying lack of understanding in this respect, specifically amongst young people. In partisan hands, such a task might well risk appropriation for other purposes. But there are clear assurances that this would not be the case. Ben Barklow, Chair of the Academic Advisory Group of UKHMF, expressly stressed the fierce independence of the Board, a body made up of prominent academics in the field engaged in the preparation of the contents of the learning facility, determined that it would present an unvarnished narrative, continually stressing the need for detail, nuance, context and an emphasis on the complexity of the issues being presented. [11.57-11.66/Appendix, 411.144-11.145/Appendix 4, 11.70/Appendix 4, 11.102/Appendix 4, 11.145/Appendix 4]

- 15.146 This assurance was supported by others, who spoke in support of the balanced and multi-faceted content the UKHMLC must have in order that this unvarnished, 'warts and all' narrative is secured and delivered. Fears that it could be otherwise are, on the basis of the evidence before the Inquiry, unfounded. There is no substantive evidence to suggest that the UKHMLC would be appropriated for a purpose other than Holocaust commemoration and learning, and apprehension that this may be so does not diminish the public benefit identified above. For these reasons therefore, although mindful that the content of the LC has yet to be finalised, I nevertheless conclude that the content and purpose of the UKHMLC would fulfil the recommendations of the HMC and thus may rightly be considered a public benefit of great importance meriting considerable weight.
- 15.147 However, unease over matters of purpose, meaning and content do not end there, but extend into the debate around the location of the UKHMLC in VTG in proximity to the Palace of Westminster, to which I now turn.

Location

- 15.148 It is the case that the VTG as a site for the UKHMLC was not anticipated by the HMC Report, nor identified in subsequent site selection processes, a point raised by those opposing the scheme. These objections are not just in relation to the harms that would result, but also that the arguments by the Applicant and others justifying the location in proximity to the Palace of Westminster, which they say, are unfounded or misplaced, and should accordingly, gain no weight in the planning

balance. [8.88-8.90, 9.66-9.68, 10.16-10.19, 11.187/Appendix 4, 11.199/Appendix 4, 11.205/Appendix 4]

- 15.149 Although the juxtaposition of the UKHMLC and Palace of Westminster was not apparently explicitly in the mind of the HMC at the point of the publication of the report, nor in the later site selection process, the broader expectation of its location was always clear. This was that it should be in a prominent location in central London and be the focal point of national commemoration of the Holocaust. Moreover, one of the merits identified in the HMC Report in favour of the Millbank site (one of three identified) was *“that the location offers great potential for a prominent riverfront memorial, a short walk along the river from the Houses of Parliament”*.⁴⁹⁶ This is also reflected in the report’s assessment of the IWM site, which noted that *“the site is within easy reach of Westminster”*.⁴⁹⁷ It is reasonable to infer from this that proximity to the Houses of Parliament or Westminster at least was a factor militating in favour of a proximate location for the UKHMLC from the outset.
- 15.150 Those opposing the scheme argue that for the UKHMLC to fulfil its purpose no such associative factors are required. In fact, the absence of such a specific requirement in the recommendations of the HMC affirms this argument. It is also argued, trenchantly, that the merits, or even necessity for such a direct association have been presented subsequently to justify the proposed location *“ex post facto”*. Others still argue that promoting the link between Parliament, democracy and the events of the Holocaust and its commemoration is a false narrative, and that *“democracy”* in itself offers no assurance against the pernicious threat of anti-Semitism. As considered above, the parliamentary association, it is suggested, is one that also risks the message of such commemoration being appropriated for baser political purpose, principally the promotion of *“British Values”* above its intended commemorative purpose. [10.18-10.19, 11.178/Appendix 4, 11.187/Appendix 4, 11.192/Appendix 4, 11.199/Appendix 4, 11.209/Appendix 4, 11.222/ Appendix 4]
- 15.151 Those supporting the proposals, and so the UKHMLC in VTG, argue with equal conviction that the juxtaposition of the UKHMLC with the Palace of Westminster is central to its purpose; these arguments are diverse. Primary amongst them is the view that *“the place from which you remember an event shapes how you remember it”*. Related to this is the corollary that the more significant the topic of commemoration, the higher the order of location of that commemoration should be. [11.67]
- 15.152 Others argue that events in Parliament both before and during the Second World War had direct links to and consequences for those caught in the Holocaust’s barbarous embrace. Arguments were also put suggesting that the UKHMLC would serve as a powerful reminder to law-makers within the Palace of Westminster of the very fragility of democracy and the mechanisms of its governance, and the vigilance needed to safeguard it from subversion. The meaning of this was graphically drawn in oral evidence where we were reminded that before

⁴⁹⁶ CD5.9 p56

⁴⁹⁷ Ibid p54

the advent of the mass killing, Jewish people were first stripped of their citizenship and the protections this offered under the law, leaving them at the mercy of a regime of self-professed murderous intent. [6.23-6.41, 6.70, 7.1-7.3, 7.4-7.15, 7.16-7.18, 7.19-7.21]

15.153 Before finally considering the locational merits of the proposal it is worth considering them against the expectations of that first HMC Report recommendation:

"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".

15.154 The precise process by which VTG became the preferred and definitive location for the UKHMLC is not clear. The apparent realisation of its potential as such a site has subsequently been framed as a "*moment of genius*" (by those on both sides of the argument). But whether bathetic or not, such a choice may well have reasonably been driven by a conclusion that the sites hitherto identified were not adequately meeting the HMC report recommendation requirements, and that further alternatives were necessary.

15.155 What is clear though is how closely the VTG site meets the core expectations of the recommendation. This is not just on the more obvious points of its newness, prominence and its location in a place already within the catchment of large numbers of visitors. Nor is it the boldness of the proposal as a piece of architectural, sculptural and landscape design (see below). Perhaps more significantly though, by virtue of this aesthetic and semiotic boldness combined with its location, the proposal would make a clear and unequivocal statement about the degree of importance we as a nation place on preserving the memory of the Holocaust. A statement moreover that would readily serve as a focal point for its national commemoration. Expressing these attributes, it would indeed stand as an affirmation of the universal human values, and so those also, unashamedly, of British society.

15.156 Such questions of location do however beg the wider questions as to why we raise such memoria, and why we put them where we do. The diverse monumental denizens of Whitehall, Parliament Square, and VTG itself, are all witness to significant national and international events, people or causes. All too, seem held in space by the gravitational mass of the Palace of Westminster, for so long the very epicentre of national and global power. Even to one familiar with these places, the passing observer is compelled to ask of each memorial, "*why are you here?*" We also know that there are great sensitivities around the relocation of these

memoria, such as those to the Pankhursts and to Buxton.⁴⁹⁸ [11.117-11.119/Appendix 4]

- 15.157 A good part of the answer may well lie in the aforementioned statement made to the Inquiry about the importance of place in the remembrance of people and events. It is also hard to challenge the notion put by Professor Foster (speaking for the proposal) that “*there is an explicit and direct relationship between the significance and prominence of any given site and the value and status that individuals assign to the events (or people or person) commemorated*”. Before considering the location of the UKHMLC against such a hypothesis it is worth applying it to the memoria of Parliament Square, Whitehall, VTG and indeed the existing garden memorial to the Holocaust in Hyde Park, and reflecting on the value and status we assign to them. [11.67 Appendix 4, 11.118-11.119/Appendix 4]
- 15.158 If, as the clear greater majority of those offering a view at the Inquiry and more widely, believe that the commemoration of the Holocaust (and learning of its horrors and contemporary legacy) is profoundly significant, then it follows that the UKHMLC should be located in a place of primary national and indeed international importance. So, locating the combined structure in central London, the nation’s capital, adjacent to the Palace of Westminster, the very epicentre of national law-making, would have an inescapable resonance. It should be recalled that this semiotic appeal was not lost on the HMC, who identified one of the merits of the Millbank site as being its relative proximity to the Houses of Parliament.⁴⁹⁹ It should also be recalled that the HMC also concluded that the IWM was also very highly regarded, being within easy reach of Westminster.⁵⁰⁰ Moreover, if one accepts the primacy of location in recognising the importance of the Holocaust, it follows that the selection of a less significant location connotes a lesser degree of significance to the purpose of that commemoration.
- 15.159 In addition, the juxtaposition of the UKHMLC with the Palace of Westminster as an ever-present reminder to lawmakers of the dangers of complacency may be considered trite. But as a lesson to nation and Parliament that, in exploring Britain’s relationship with the Holocaust, reflecting on its finer moments, its failures, and the terrible consequences of opportunities not taken, honestly and candidly, would remind us of the fallibility of democracy’s assumed righteousness, and our responsibility, if not duty, to others in safeguarding it. Such an approach underscores the direct connection between action, or the lack of it in Parliament, and the consequence in relation to the unfolding cataclysm of the Holocaust. The UKHMLC would make tangible that linkage, amplifying the commemorative and cognitive purpose of the combined structure. Lastly, the idea of the Memorial offering a sense of commemorative citizenship (to those from which it was robbed), a symbol that says “*British Jews (and others of minority ethnicity and sexuality) are British; your history is our history; your security is a*

⁴⁹⁸ CD4.23 Para 8 list description and CD4.24 para 9 list description

⁴⁹⁹ CD 5.9 p56

⁵⁰⁰ Ibid p54

British concern, you belong here”, has a very powerful resonance, and one that should indeed be heard in the context of the Palace of Westminster. [7.21]

- 15.160 Understanding the evolution, delivery and successful outcomes of other Holocaust commemorative and educative sites, in both the United States and Berlin, gives a tangible assurance that such associative attributes contribute significantly to their success. Such indicators therefore militate further in favour of the site’s Westminster location. [11.73-11.84/Appendix 4, 11.85-11.96/Appendix 4]
- 15.161 In broader locational terms therefore, the proposals would fulfil the expectations of the recommendation of the HMC. More specifically, the location next to the Palace of Westminster not only has a resonance with a key positive attribute of the Millbank and IWM sites, it would offer a powerful associative message in itself, which is consistent with that of the memoria of its immediate and wider context. As a measure of the importance attached to the commemorative task it has, and for all the reasons set out above, I conclude that the location of the UKHMLC adjacent to the Palace of Westminster can rightly be considered a public benefit of great importance, meriting considerable weight in the heritage and planning balance.
- 15.162 BD argues that the intense debate, or “*controversy*” around the location of the UKHMLC in VTG is in itself a “*fundamental challenge to the alleged public benefits of this scheme*”. That said, for those familiar with the British planning process, the idea that different parties will hold trenchant, deeply felt opinions on the merits or otherwise of a development proposal will come as no surprise. The intensity of the debate will vary, and there must be few who would argue that this case has not generated considerable local, national and even international interest and debate. But to suggest that such open (and in great part civil) debate should be a factor diminishing the merit of a proposal is misplaced, and inconsistent with the principles of openness, fairness and impartiality that underpin the British planning system. Such arguments therefore carry very little weight in the planning balance and do not alter the measure established above. [10.29-10.31]
- 15.163 Moreover, linking such arguments to the belief that if the proposals were moved to another location, specifically the IWM, the clouds of such controversy would lift and a universal consensus on the merits of that location be achieved is, to say the least, optimistic. From what I heard at the Inquiry and saw during my site visit, the debate over the merits of that location, the relationship of its purpose to its host, and the environmental and social costs it might entail, would still prevail. Nevertheless, a consideration of such alternative sites is reasonable and justified in light of the matters raised at the Inquiry.

Alternative locations

- 15.164 It is reasonable to suggest that if there are alternative locations for a proposal which would avoid an environmental cost, then these should be taken into account when determining the acceptability or otherwise of

the proposal at hand. This is a particularly attractive prospect if it is held that there are viable alternative sites that could accommodate the proposal without attendant harm. But such an approach has to be treated with caution. Whilst (as the Courts have determined) the desirability of having alternative proposals before the Inquiry may be "*relevant and indeed necessary*", (though not always essential), in order that it may garner significant weight, the merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative.⁵⁰¹ [8.62, 9.65]

- 15.165 A range of alternative sites appear in the evidence before the Inquiry, all of which, for different reasons, were subsequently rejected in the selection process. Primary amongst these are the three provisionally identified in the HMC Report, Potter's Field on the south bank of the Thames adjacent to Tower Bridge, the aforementioned Millbank site next to Millbank Tower, and the IWM again south of the river. It is on the latter that the hopes of those opposing the VTG proposal are focused as a credible alternative worthy of weight in the planning balance. [8.81-8.91, 9.56, 10.20-10.28]
- 15.166 Such an interest is not without justification. The IWM was one of the sites identified in the HMC report; there are obvious synergies with the existing and proposed Holocaust content of the museum; it is an institution familiar with handling large numbers of people; it has a landscape context that, physically at least, like VTG, could accommodate a combined Memorial and LC, and there is a provisional scheme by a distinguished architectural practice testing its feasibility, albeit this is limited in scope.⁵⁰² Moreover, the HMC saw the advantage of the site, as previously stated, in it being "*within easy reach of Westminster*".⁵⁰³
- 15.167 However, the HMC's conclusion was caveated, indicating that the IWM could be a viable option, provided "*a way could be found to meet the Commission's vision for a prominent and striking memorial*".⁵⁰⁴ Whilst it would not be fair to offer a definitive judgement on the IWM feasibility scheme as presented in evidence at the Inquiry, there are serious questions, in my view, as to whether it would meet that critical HMC requirement. The proposed Memorial is drawn as a "*wall of remembrance*" at the rear of the eastern flank elevation of the building, whilst the LC is buried beneath a shallow sunken landscape spiral on ground to the east.⁵⁰⁵ The proposed remembrance wall would also abut the utilitarian rear elevation of the IWM building. Whilst careful to avoid fettering any future decision makers on the merits of this site for whatever purpose, I would question whether it is indeed a bold and striking statement in a prominent location.
- 15.168 Again, without making assumptions that may fetter others, it is at least apparent to me that the IWM site is not free from constraint. The IWM is

⁵⁰¹ CD16.2A Trusthouse Forte Hotels Ltd v Secretary of State for Environment (1987)57 P&CR 293 at p299-300

⁵⁰² CD13.10

⁵⁰³ CD5.9 p54

⁵⁰⁴ Ibid

⁵⁰⁵ CD13.10

a Grade II listed building and the works could be held to affect its special interest and setting; the site also lies within a conservation area and there may also be archaeological sensitivities. From my site visit it was also apparent that the feasibility proposals would likely affect two mature trees on the site, may result in the loss of public open space and the loss of what appeared to be an early years play and learning facility. Moreover, the location of the UKHMLC here, outwith the established high-grade security envelope of the environs of the Palace of Westminster, may well have significant implications for necessary security infrastructure on the IWM site. Such factors may also have implications for residents living in immediate proximity to it. Clearly, achieving a combined facility here would also involve the balancing of benefits against possible harms, some not dissimilar to those at VTG. In light of the above, the notion offered by BD that "*there would be almost no opposition to such a scheme*" again seems optimistic. The same may be said of the two other sites, Potter's Field and Millbank. The Potter's field site would also involve a take of public open space and would likely affect the setting of designated heritage assets. Millbank similarly would likely affect the setting and significance of such assets.⁵⁰⁶ [10.30]

- 15.169 So, whilst seeming to offer a benign alternative, IWM lacks a detailed scheme that would meet the core requirements of the HMC and carries clear potential constraints that may hamper its delivery. Together this suggests that the weight to be afforded the IWM alternative in the planning balance is very limited. The two other sites, even more lacking in detail and feasibility, merit still lesser weight.

Timing

- 15.170 The HMC report is entitled 'Britain's Promise to Remember'. Now, 75 years after the liberation of the camps, for many in the Jewish community and most poignantly for survivors themselves, this proposal heralds a commitment by the British Government to fulfil the recommendations of the HMC. As such, this would represent not only a commitment to honour the memory of the millions lost to the Holocaust, but also a testament to the courage and resilience of those who survived it. This is a matter of importance and, though unusual in planning terms, it is of material weight that such a monument should be raised within the lifetime of at least some of those survivors so that this commitment is seen to be honoured in their living memory.
- 15.171 In the event the Minister was to refuse permission for the UKHMLC in VTG, as BD points out, this would, in all probability, not be the end of the project. It is suggested that this would be a "*beneficial outcome*", and that it would probably be sited "*at the Imperial War Museum or some other more suitable site*". This may or may not be the case. What is clear however is that the detailed process of selection, evaluation, preparation, design, consultation and formal consideration of a new proposal would begin anew, with all the gestation time this implies. If the programme for the current project is applied, this suggests approximately five years of further work. We know that a number of

⁵⁰⁶ CD5.9 p16, p54-56

survivors who saw the outcome of the HMC will not have lived long enough to learn of the outcome of this Inquiry. Another five years of renewed planning would only but add to their number. [10.35, 11.114/Appendix 4, 11.29/Appendix 4, 11.134/Appendix 4, 11.39/Appendix 4, 11.149/Appendix 4]

- 15.172 Whilst the matter of timing alone would not be of determinative weight, any such new scheme and its location must after all achieve HMC expectations and meet development plan and statutory planning requirements. But achieving a memorial within the lifetime of survivors, so seeking to honour the living as well as the dead, has a resounding moral importance that can legitimately, in my view, be considered a material consideration and a public benefit of great importance, meriting considerable weight in the planning balance in this case.

Design

- 15.173 Matters of design in planning are almost always likely to draw an opinion one way or the other. Some will argue that such matters are subjective and that all are entitled to a view on the merits or otherwise of such proposals. Some confidently assert, on behalf of "everyone" that elements of the combined structure would be an *ugly*, "*grotesque monstrosity*". TIS.SVTG & LGT offer more detailed measured criticisms of the design, whilst others, like WCC, having identified a range of harms and discounting landscaping improvements as benefits, decline a view on the merits or otherwise of the design of the combined structure itself. BD and others opposing the proposals question the merits of the symbolism and semiotic effectiveness of the Memorial, particularly the metaphor of the bronze fins. The Applicant, on the other hand, confidently considers the design a "*masterpiece*" and a future Grade I listed structure. There are then, a full spectrum of subjective assessments on the aesthetic qualities of the proposals on offer. But, to merit weight in any planning judgement, such an opinion must be informed by clear reasoning as to why any such proposal may be deemed either "*monstrosity*" or "*masterpiece*". The former pejorative descriptor, offered without any such reasoning, lacks any merit, and in my view should attract no weight; the other views presented demand closer consideration. [6.49-6.79, 9.69, 10.14, 11.117/Appendix 4, 11.139/Appendix 4, 11.164/Appendix 4, 11.205/Appendix 4, 11.219/Appendix 4]
- 15.174 At the root of TIS.SVTG & LGT concerns on design is the belief that all entrants to the design competition were given an unachievable brief, the task of accommodating such a substantial structure in an overly constrained space. This explains a scheme "*not up to the usually high standard*" of the respected architects finally chosen. Such circumstances, (aside from other limitations of functionality and lack of innovation) result in visual "*busyness*", compromising the scheme as a whole. Such is the degree of this compromise, it is argued, that the design offers no public benefit to be considered in the heritage and planning balance. [9.96]
- 15.175 If design is subjective then the interpretation of symbol and metaphor is as likely diverse as the number of persons seeking a meaning. However, BD challenges the merit of the key symbolic gesture of the Memorial, the

bronze fins, questioning the validity of their number, 23 (establishing 22 pathways), as a representative signifier of the number of countries from which Jewish victims of the genocide were taken. Again, this symbolic confusion, coupled with the unnecessary and misleading association with the Palace of Westminster (see above also), mean there can be no public benefit offered by the design to weigh in the balance. [10.14]

- 15.176 The points made regarding visual congestion, particularly in relation to the BM, have a register with concerns over that monument's setting identified above. This would be particularly the case in views of the BM from within the UKHMLC courtyard through the boundary treatment to the east. But, using another metaphor, such a preoccupation with the more prosaic details of the enclosure is akin, in my view, to criticising the gesso-work of a picture frame without considering the merit of the painting within.
- 15.177 The Memorial would avoid overt references to religious symbolism or text, relying instead on the twin primary motifs of the swelling landform and the cresting bronze portals with the descent into the chambers below. The graduated mound, rising out of the tabular lawn to the north, would convey a sense of the growing tide of orchestrated racial aggression and violence, finally breaking with the cataclysmic events of the Holocaust, symbolised by the bronze armature above the descending portals. These defining elements of the Memorial, fashioned from the brown alloy of sculpture, would have a power and grace distinctly of their own. Collectively these elements would make a bold and poetic visual statement of great power and beauty, and one that can be readily understood as such.
- 15.178 There need be no empirical or numeric precision required therefore to establish or convey such symbolic meaning. Thus, debates on whether the bronze fins would represent the 19, 22 or 26 countries from which Jews were taken to their extermination misses the point. It is, to my mind, the multiplicity of these victims' origins and their common, barbarous and inhuman fate to which the Monument, expressed as artistic motif and statement, would speak most forcefully. These abstract symbolic metaphors would be given physical substance by the profiling and technical specification of the landform, whilst the selection, handling and treatment of high quality materials and surfaces would give focus and sculptural gravitas to the superstructure and its attendant courtyard and entrance pavilion.⁵⁰⁷
- 15.179 The design of the scheme is however not limited to the Memorial structure itself, but would extend to the volumes, spaces and contents of the LC below and to the handling of the wider re-landscaping of the park.
- 15.180 The transition between an appreciation of the Memorial and realising its purpose as one descends the portal spaces would be seamless, and thus an integral part of the experience of the structure as a whole. The content of the interpretive media, yet to be finalised and ultimately beyond the scope of this Inquiry's primary planning interest, promises,

⁵⁰⁷ Materials are addressed at p57-58 and p86-96 of Sir David Adjaye's PoE, CD8.3

on the basis of the submissions to the Inquiry, to be a further articulation of this visceral, experiential process. [6.70-6.71]

- 15.181 One of the key conceptual elements of the landscape scheme would comprises a path leading from the northern entrance of the park to the Memorial itself. The Applicant suggests this would act “*as a narrative journey*” connecting the Pankhurst’s Memorial, Rodin’s Burghers of Calais, the BM and the Spicer Memorial. The UKHMLC would of course end this journey within the park. Whilst some question the suitability or credibility of the term “*garden of conscience*” offered by the Applicant to support such a narrative, there is, to me, some resonance to such a suggestion. [10.25]
- 15.182 Whether the current relationship of the memorials is historical happenstance or part of a more self-conscious approach is not understood from the evidence before the Inquiry. What may be deduced however is a coincidence of dates for the relocation of all the primary memorials (1955-57)⁵⁰⁸ and the rearrangement of the paths that connected them.⁵⁰⁹ Insofar as there is an established common theme (actual and metaphoric) of moral courage, honour and commemoration, the UKHMLC would be consistent with it, and its relative scale perhaps befitting the enormity of its commemorative task. The greater legibility of such a narrative would add depth and resonance not only to the UKHMLC but the other monuments in the park, and so to the landscape itself.
- 15.183 There are a range of landscape measures proposed in association with the scheme, including extensive planting programmes for the boundary of the courtyard and play area to the south, a revised network of paths with new surfacing, a newly accessible boardwalk along the embankment and a range of technical work to improve ground conditions in parts of the site. These measures would be integral to the contextualisation of the UKHMLC within the landscape of the park, and at the same time offering tangible utilitarian benefits to its future usability. This is particularly the case in respect of the wider northern area of the park. In the former respect they would enhance the aesthetic cohesion of the park. In the latter, they would sustain the more nuanced attributes of space and casual recreational functionality, contributing positively to the park’s amenity value and character.
- 15.184 When the proposal is considered as a conceptual entity, these manifest design qualities, whether metaphysical, aesthetic or temporal, would enrich the park as a whole as an asset of cultural and social value. Whether it may be judged a masterpiece, or a future Grade I listed structure, I will leave time and the judgement of others more qualified to say. For now, however, I consider the proposals comprise a design of exceptional quality and assurance. As such, they may properly be considered a significant public benefit in the planning balance. Mindful that the scheme, notwithstanding these merits, causes harm to the setting of the BM (and thus collateral harm to the RPG and WAPSCA), I

⁵⁰⁸ This can be adduced from a study of the list descriptions, CD 4.23, CD 4.24 and CD 4.25.

⁵⁰⁹ The unlisted Spicer Memorial was much more recently relocated as part of the reordering of the playground

nevertheless consider the identified design merits of the scheme to be a public benefit of great importance, and merit being afforded considerable weight in the balance accordingly. Such an apportionment of weight is supported by paragraphs 124 and 131 of the NPPF, which anticipate high quality design being fundamental to what the planning process should achieve and that great weight be given to outstanding or innovative designs which help raise the standard of design more generally. [3.32]

- 15.185 WCC argue that the enhancement of the park, in respect of planting, boardwalk, path network and groundwork, could be delivered without the UKHMLC proposals. As such, they suggest, these should in any case be discounted as a public benefit. Whilst this may technically be argued, it misses the point that these elements are an integral part of the scheme and, should conditional permission be granted, would have to be implemented as part of it. This is in the context of no evidence being presented to suggest that such a raft of improvements is otherwise anticipated, costed or funding secured for their implementation. Moreover, aside from the remodelling of the children's play area to the south, there is little evidence of proactive improvement to the infrastructure of the park since the radical reordering in the mid-1950s. Such opportunities as there were, like the enhancement of the setting of the BM anticipated in 2007 to commemorate the bicentenary of the abolition of the slave trade, and for which consent was subsequently granted, have not been implemented. These considerations therefore do not militate in favour of diminishing the weight to be afforded these works as a public benefit weighing in favour of the scheme.

Heritage balances

- 15.186 Paragraph 196 of the NPPF requires a balance to be struck in each instance of less than substantial harm to the significance of a designated heritage asset. This is explicitly defined as a single requirement and should therefore be applied to each of the assets affected individually. Where there is more than one instance of such harm, as in this case, these should be combined and calculated as such in the balance set out below. As I have set out above, the harm to the setting and special interest of each designated heritage asset has been characterised as less than substantial, including the sum of that cumulative harm.
- 15.187 Let us remember, for comparison, that substantial harm requires, in the case of Bedford, that the harm be assessed as 'serious' with significance needing to be very much, if not all, 'drained away'. Alternatively, paragraph 018 of the PPG indicates that an important consideration is whether the adverse impact would 'seriously' affect a key element of special interest. My reasoned judgement is that this bar has not been reached here and, contrary to the views of objecting parties, the harm, calibrated cumulatively at no greater than a medium degree above moderate, (still accounting for the great importance apportioned to the

harm to the setting of the BM) would not come close to substantial for any asset, by either measure.

15.188 I must emphasise, in the light of the extensive debate on the calibration of heritage harm heard at the Inquiry, that less than substantial harm does not necessarily amount to a less than substantial planning objection. This is particularly the case where the statutory and national policy tests have not been met. Accounting for the considerable importance and weight to be given to the desirability of preserving the setting of listed buildings anticipated by the Act⁵¹⁰, and the expectation that great weight be afforded to their conservation in the NPPF, I have found the measure of the harm to the setting of the BM should be assessed as being of great importance, and the weight to that harm characterised as considerable. Although the measure of harm to VTG as an RPG, is characterised as moderate, again set against the expectations of the NPPF, I nevertheless find the weight to be apportioned this should be characterised as considerable. The harm to the WAPSCA as a whole, (including the effects on trees) should be assessed as a little less than moderate. However, accounting for the considerable importance and weight that should be given to the special attention to preserving it anticipated by the Act⁵¹¹, and the great weight afforded its conservation by virtue of paragraph 193 of the NPPF, I have concluded that the weight to be apportioned this harm should be characterised as considerable. Whilst the magnitude of harms may vary in relation to each asset, when all are considered in the context of the statutory and national planning policy tests required, the weight apportioned them in this case has to be assessed as considerable.

15.189 I now turn to what I have defined as public benefits in this case. The delivery of a national Memorial to the victims of the Holocaust and genocide in accordance with the expectations of the HMC would be a public benefit of great importance to be afforded considerable weight. The purpose of the combined structure and its content to underpin this I also find would be a public benefit of great importance meriting considerable weight. The location of the UKHMLC in VTG next to the Palace of Westminster (an aspiration in the mind of the HMC from the outset) and the very powerful message this would send, would also be a public benefit of great importance to be afforded considerable weight. Moreover, the limited viability of alternative locations renders the weight to be afforded them as minimal, and would not act as a corrective to the conclusion reached above. The delivery of the UKHMLC within the living memory of survivors as a fulfilment of the nation's obligation to honour the living as well as the dead now would also be a public benefit of great importance to be afforded considerable weight. Finally, the delivery of an outstanding piece of civic design in empathy with its context (notwithstanding the harms to heritage identified) would also be a public benefit of great importance to be afforded considerable weight. When these benefits of great importance are weighed against the heritage harms identified above, I find that in each case the paragraph 196 NPPF

⁵¹⁰ Planning (listed Buildings and Conservation Areas) Act 1990

⁵¹¹ Ibid

balance can be seen to clearly and demonstrably weigh in favour of the proposals. This is an important material consideration.

Other Matters Raised

Open Space Character and Functionality

- 15.190 VTG is dominated by the tabular open northern lawn area which provides space for informal recreation and relaxation, regarded as a “*quiet, green oasis as well as a venue for play, picnicking, visiting sculptures ...ballgames, fitness training, walking, dog walking and enjoyment of nature*”.⁵¹² The Horseferry Playground, redesigned and expanded in 2013, is referred to by its many users as a valuable local resource. Also, VTG hosts a range of more formal events through the year, such as the Luna outdoor cinema held in August, as well as political rallies and other gatherings. [6.97, 8.46, 9.18, 10.1, 11.178/Appendix 4, 11.179-11.80/Appendix 4, 11.203/Appendix 4, 11.212/Appendix 4, 11.213/Appendix 4, 11.217/Appendix 4, 11.221/Appendix 4, 11.224/Appendix 4, 12.3, 12.6, 12.11, 12.12]
- 15.191 In physical terms the condition of the park is less than ideal in some areas. Notably the gentle undulations and areas of compaction mean that parts of the lawn are prone to waterlogging and therefore can be less usable during the wetter months. Some of the footpath surfacing is uneven, and the quality of some of the seating provision and playground equipment could be improved. As such it is reasonable to conclude that the year round use potential of the park has not been optimised. [6.73]
- 15.192 The value of urban green spaces to physical, psychological and general wellbeing is widely acknowledged, and recognised within WCC’s open spaces and biodiversity strategy.⁵¹³ The importance of VTG to the local community has been brought into sharp focus during the COVID 19 pandemic. Many nearby residents do not have access to private gardens. For these people VTG is their only accessible open space, especially for those living south of Horseferry Road.⁵¹⁴ Notwithstanding the apparent wealth of open spaces within Westminster, this tends to be concentrated in the larger parks, with resulting deficiencies in the south. The area around VTG is identified in the WCP as deficient in Open Space >0.4ha considered suitable for informal play (though it is not within an area of Public Open Space Deficiency).⁵¹⁵
- 15.193 The Westminster City Ward Profiles from 2018 indicate that within the wards of St James, containing VTG, and Vincent Square directly to the south, 30% and 28% respectively of children in Year 6 were classified as obese (compared to the borough average of 24%). Both wards were within the 30-40% most deprived in the UK when measured against the 2015 Index of Multiple Deprivation (IMD). This rose to 40-50% for some of the local areas within the wards near to VTG.⁵¹⁶ These figures

⁵¹² CD 5.23 Part 1, Section 5.9

⁵¹³ CD 4.1 A Partnership Approach to Open Spaces and Biodiversity in Westminster

⁵¹⁴ CD 8.48 PoE Ms Annamalia, para 4 (p1)

⁵¹⁵ CD 2.3 Figure 47

⁵¹⁶ CD 4.17 Westminster Ward Profiles

underline the fact that as accessible open space VTG is likely to be of considerable value to the health and wellbeing of many local residents.

- 15.194 Parties at the Inquiry agree that VTG is well used by a range of visitors from local residents and office workers to tourists visiting nearby attractions. Evidence relating to the actual use levels of the park is somewhat limited and is based on a series of pedestrian counts undertaken on three days in May and September 2017.⁵¹⁷ This indicates that the busiest periods were 15.00-1700 on the surveyed Saturday and 11.00-15.00 on the Bank Holiday. On the surveyed weekday the peaks were around 08.00, 12.00-13.00 and again at around 17.00, suggesting that the park is used as a traffic-free route by those commuting to and from work, and during their lunchbreaks.
- 15.195 The survey indicated activity throughout the park, much appearing to be focused on accessing views of the river, the northern memorials and the BM. On the Saturday, a sunny day, the north eastern part of the central area was used most intensively. Unsurprisingly, this area receives the most direct sunlight.⁵¹⁸ There was a similar distribution of park users on the weekday, which was partly sunny. The bank holiday had rain and so visitors were distributed throughout the park. On all occasions the seating provision along the riverfront was the most popular and well used, as was the playground.⁵¹⁹ The highest recorded level of visitor occupancy at any one time was around 384 people.⁵²⁰
- 15.196 Whilst limited in extent, the survey information indicates the park is popular and reasonably well used, particularly during pleasant weather. My several site visits, undertaken during both sunny and overcast conditions, support these findings.⁵²¹ In particular, the general popularity of the wider and sunnier northern lawn, and the riverside seating was noted.
- 15.197 The area of the park containing the entrance pavilion, Memorial courtyard and Memorial fins would be excluded from general public access by a secure perimeter fence. The main parties have agreed that this would amount to around 1,429 sqm, that is 7.5% of the total park area. The physical separation of this area from the rest of the park is a deliberate design element which would enable visitors to focus on the immediate experience of the Memorial, leaving behind the wider city environment.⁵²²
- 15.198 Others disagree,⁵²³ arguing that this 7.5% 'excluded' area alone underestimates the actual effects on available recreation space, due to both physical alterations and because of the increase in visitor numbers. Looking firstly at the physical alterations, in addition to the excluded area, the TIS/SCTG & LGT estimate that with losses to the playground area, new access paths and additional areas of hardstanding, the

⁵¹⁷ CD 6.40 Appendix C

⁵¹⁸ CD 8.7 PoE Mr OShae, Section 3.8

⁵¹⁹ CD 6.40 Appendix C

⁵²⁰ CD 8.36, PoE Mr Doward, Para 3.11, with reference to CD 6.13, Vol 5 App M, Section 9.2, Fig 17

⁵²¹ Site visits undertaken in September and October 2020, and March 2021

⁵²² CD 8.7 Section 6.10.2

⁵²³ CD 8.36 Section 3.14-3.19

proposal would reduce the open, usable, accessible recreational park space by 26%. Further, if the mound area were to be included this loss would increase to 33%⁵²⁴ [8.47-8.48, 9.21]

- 15.199 The mound would take the lawn from ground level up to the height of the Memorial fins, with the slope grading down to the north. Much of the northern part of the mound would be at a gradient of 2-3.5% and therefore readily accessible to most, including for informal play and recreation. The smaller areas closer to the fins and adjoining the diagonal footpath would have a gradient up to 11%. On the eastern side this would increase more rapidly to between 5% and 11%. These steeper areas would remain accessible to those able to traverse this moderate incline and the resulting visual vantage point, offering new perspectives of the south façade of the Palace of Westminster, east to the river and beyond. Smaller areas to the west and adjacent to the fins would have a gradient of up to 30% and therefore would be inaccessible to many. [9.53]
- 15.200 It is possible that the steeper areas of incline could be at risk of wear and tear. However, the risk of such localised erosion could be managed and mitigated through the technical performance of the structure and the approach to its maintenance.
- 15.201 The remodelling of the playground would result in a modest loss to its area overall.⁵²⁵ It would be expanded slightly to the west into what is currently an area of shrubbery along Millbank. This might result in the loss of some vehicle emission and noise mitigation, though the efficacy of the current planting is not established, nor the extent of any reduction calibrated. More significantly however, the location of the Memorial would result in the physical and visual separation of the playground from the rest of the park, the effect of which on the park's functionality is considered further below. [9.52]
- 15.202 That all said however, the positioning of the proposal in the narrower southern end of the park would mean much of the wider northern lawn area would remain open, albeit with varying levels of incline and dissection by new paths. These paths would be positioned in part to reflect the existing desire lines evidenced by current use, and to connect the existing and proposed memorials. The perimeter path would also be retained and supplemented by the accessible boardwalk on the Embankment.
- 15.203 Significantly, from the northern entrance, the appearance of the wider northern section of the park would remain primarily as an open lawn space, with the Memorial itself largely hidden by the rising grass mound and encroaching canopies of the converging trees. As such the design of the Memorial is more morphological than architectural, and from the

⁵²⁴ CD 8.46 PoE Ms Prothero, para 2.1.11

⁵²⁵ Estimated to be 167sqm, Ibid Para 1.1.5

northern approach it would appear as a fully integrated landscape component of the park. [6.64-6.65]

- 15.204 In physical terms, the suggestion that the effect of the proposals would be to turn the park into a cluttered and more urbanised landscape⁵²⁶ considerably exaggerates the scale of their effect. Whilst the area directly affected by the proposals would in my view likely be greater than the 7.5% calculation, the addition of further footpaths would remain part of the recreation space, as would much of the mound area. Further, the sensitive positioning and degree of physical integration of the UKHMLC into this setting would assist in its assimilation into the park.
- 15.205 Other physical changes, including the re-laying of the lawn areas to improve drainage and the upgrading of the pathways throughout the park to enhance permeability would benefit the condition of the park generally. Making the boardwalk and thus Embankment accessible to all would also increase recreational opportunities in the park. [6.68,6.75]
- 15.206 The UKHMLC has been designed to as far as possible integrate with its context. Nonetheless, its purpose would be to both command attention and generate an emotional response to seeing and visiting it. It would attract large numbers of visitors. From the current highest recorded occupancy level of almost 400, this is anticipated to increase to a maximum of 1,269 people at any one time.⁵²⁷ The peak number of visitors accessing the secure area per day is estimated as 3,000, with a further 7,000 per day estimated as entering the park to view the Memorial only.⁵²⁸ Whilst these would be peak rather than typical use figures, it is inevitable that the significant increase in visitor numbers to the park would have an impact on its character and functionality, particularly during the Memorial opening hours proposed as between 09.30-1730.⁵²⁹
- 15.207 The degree to which the park could be used in a relaxed and informal way would be constrained by the reduction in size and division of the open flat green space, and inevitably to some extent by the increase in visitor numbers. Its quality as a peaceful breathing space would, to a degree, be diminished⁵³⁰ and it would become a busier and more structured environment. This would include lighting of the Memorial, and the footpaths leading to it, at night.⁵³¹
- 15.208 Nonetheless, some of the facilities introduced, including the new footpath through the northern lawn and the elevated riverside boardwalk would facilitate improved access to and around the park by wheelchair users. Further, the introduction of the mound would offer new opportunities for views of the surrounding area, including over the River and of the Palace

⁵²⁶ Ibid para 6.1.7

⁵²⁷ CD 6.13 Appendix M para 9.2.3

⁵²⁸ CD 5.8 Part 2 Section 4

⁵²⁹ Ibid Section 6.2

⁵³⁰ CD 8.45 Para 14

⁵³¹ CD 5.8, Part 2 Section 6.7

- of Westminster. A new refreshments kiosk with covered seating would also be provided.
- 15.209 The apprehension that the park would become actively patrolled by security guards significantly exaggerates the fact that security measures, including 'security operatives' alongside meet and greet staff,⁵³² would be necessary to manage the influx of visitors. Nonetheless, it is likely that these people would need to wear some form of identifiable uniform. It is also possible that certain areas, particularly where the upper levels of the mound abut the fins, would require a measure of supervision. Further, security and patrolling out of hours would be required, based on risk assessments.⁵³³ [8.58, 9.54]
- 15.210 Whilst the playground facilities would be upgraded, its use as an integral element of the wider park would be disrupted by its position behind the Memorial, so that sightlines to the northern lawn would be lost. As it would be close to the Memorial entrance it would become busier, with significant numbers of UKHMLC visitors passing through and perhaps stopping to make use of the seating, café and toilets. This would have an inevitable effect on perceptions of safety and security for playground users and their families. Moreover, the juxtaposition of this sombre monument next to a play area with its activity and sounds of children at play would be apparent and may not, to some, sit comfortably together.
- 15.211 In overall functional terms the opportunities for informal use within the park would, to a degree, be diminished. The perception of the park as being a space primarily offering quiet relaxation would change, with its role as the setting for the UKHMLC inevitably becoming the more substantial element of its identity as a public space. In these circumstances there has to be a fair probability that local residents would be discouraged from using the park for informal recreation purposes, particularly at busier times. [9.22-9.23]
- 15.212 Summing up, the current value of VTG to the health and wellbeing of local residents and other users is without question. It is inevitable that significant physical and functional alterations would be required to accommodate and service a proposal of this magnitude. Nonetheless, this would be achieved with a great degree of sensitivity to the current role of VTG as a recreational space, such that the park would not simply become just the setting for the UKHMLC.
- 15.213 Local residents and users would perceive a distinct change to the form and function of VTG. The addition of security and visitor management facilities would alter its current relaxed and informal character. The playground area would be separated from the wider park. However, the qualitative improvements would enhance the attractiveness and usability of the park overall, with elements such as the new seating looking out over the River, and along the new pathways, providing new and dynamic ways to experience the space. The improvements to the northern lawn area would mean that it would continue to provide and increase opportunities for informal recreation, particularly at less busy times.

⁵³² Ibid Section 6.3

⁵³³ Ibid Section 6.7

This area could also continue to host organised events, such as the Luna outdoor cinema. [6.73, 8.52-8.56, 9.22]

- 15.214 The general thrust of WCP Policy S35, WUDP Policy ENV 15 and LonP Policy 7.18 is that existing spaces should be protected and not developed. There would be a tension between the proposals and these provisions, noting the loss of accessible space overall. This is acknowledged by the Applicant.⁵³⁴ Further, the scheme would alter the park's character overall, and it would not reflect the Policy ENV 15 requirement for this to be essential or ancillary to maintaining or enhancing the park. Policy S35 also requires a focus on addressing active play deficiency. VTG is within an area considered deficient in spaces suitable for informal play. As such, the reduced utility of the playground as an integral part of the wider park would add further policy conflict, and therefore harm. [3.13, 3.22, 3.28, 8.6, 8.49-8.50]
- 15.215 Nonetheless, the qualitative improvements of the fabric of the park would be in general compliance with open space enhancement provisions of Policies S35 and ENV 15. Notwithstanding this corrective, there remains a balance of conflict with development plan policy in respect of open space.
- 15.216 Moreover, these matters also risk conflict with paragraph 97 of the NPPF which seeks to safeguard open space. It is clear from the above that in respect of criterion a) VTG is not surplus to requirements. Neither can the UKHMLC be held, in accordance with criterion b), to offer replacement by equivalent or better provision quantitatively in an alternative suitable location. However, in terms of its quality and the alternative provision of recreational components within the park, this would, on balance, outweigh the modest loss of the current areas of such provision. [8.51, 9.17]
- 15.217 Drawing these open space issues together, and reflecting whether the proposed development, and the increased visitor activity it would generate, would result in the loss of public open space and the functionality of VTG for recreational purposes, I conclude there that there would be a modest loss of open space and functionality within the park. Whilst this would result in a measure of conflict with development plan policy, the scope and magnitude of this conflict is limited. Moreover, whilst there is a lack of compliance with certain criterion of paragraph 97 of the NPPF, these breaches would be mitigated by a range of improvements and open space benefits that would again limit the extent of the harm resulting from such policy infraction. I conclude therefore that the extent of this harm can be judged modest, and the weight to be afforded to this breach moderate.

Flood Risk Matters

- 15.218 One of the matters on which the MoSH wished to be informed was policies on flood risk, as set out in Chapter 14 of the NPPF.⁵³⁵ The Applicant and WCC have agreed that the development would be in

⁵³⁴ CD 8.34 PoE Goddard, para 7.21

⁵³⁵ CD 5.33 para 7

accordance with national, regional and local planning policy in relation to flood risk, subject to conditions.⁵³⁶ [6.112, 8.59]

- 15.219 While concerns were maintained by some other parties to the Inquiry these were predicated on a literal and in some ways simplistic approach to the interpretation of flood risk guidance. It is critical to understand that the guidance is designed to apply nationwide. However, in many cities flood risk has to be carefully managed, as is the case in London. It is against this backdrop that a pragmatic approach to flood risk should be taken. Put simply, a large part of our capital city is subject to the highest level of flood risk because it is within Flood Zone 3, and given the location of the city in relation to the Thames there is at least a theoretical risk of flooding.
- 15.220 It was on that basis that the roundtable discussion, which included representatives of the Applicant and TIS/SVTG&TIS, focused on the vulnerability classification of the development and on the risks of a breach of the flood defences. [9.58-9.61]
- 15.221 The site's location within Flood Zone 3 means it is regarded as being at a theoretical high risk of fluvial and/or tidal flooding. The sequential test set out in the NPPF⁵³⁷ aims to steer new development to areas with the lowest risk of flooding. Where this is not possible the exception test may be applied, depending on the potential vulnerability of the site and the development proposed.⁵³⁸
- 15.222 Vulnerability classifications have to take a broad approach. The best fit category, used in The Flood Risk Assessment (FRA) places the development within the "less vulnerable" category, which is the lowest vulnerability category for a new building.⁵³⁹ This category includes assembly and leisure uses.
- 15.223 The TIS.SVTG & LGT suggest that the proposal fits most closely with the "highly vulnerable" category, as this category includes basement dwellings, or the "more vulnerable" category⁵⁴⁰ including buildings used for nightclubs or hotels, many of which include underground facilities. However, those buildings are significantly different to the proposal here; residential occupation of dwellings and hotels include times when people are asleep and can involve more vulnerable people being left alone. Nightclubs may include those who have been drinking or late-night use when people can be less aware of their environment.
- 15.224 In contrast, the type of use currently proposed would be highly managed, would have comprehensive formal flood evacuation plans in place and would operate within daytime and evening hours.
- 15.225 Indeed, if I were to accept that the proposed development may fall into the 'more vulnerable' category, it would be necessary to apply the exception test which includes the requirement to demonstrate that the

⁵³⁶ CD 5.30 Part 1 para 10.21

⁵³⁷ CD 1.1 para 158

⁵³⁸ Ibid para 159

⁵³⁹ CD 6.39 Environmental Statement, Vol 5, Revised Appendix K, Flood Risk Assessment, Part 1, p5

⁵⁴⁰ CD 8.50 Mr Coombs PoE para 4.6.1.3

development “will be safe for its lifetime taking account of the vulnerability of users, without increasing flood risk elsewhere, and, where possible, will reduce the flood risk overall”.⁵⁴¹ This is a matter which I shall consider in any event.

- 15.226 The River Thames is tidal in this location, meaning that high tides and storm surges could potentially lead to the overtopping of riverbanks and the inundation of surrounding land. As already noted, the site is identified by the Environment Agency (EA) as being in an area with a high probability of tidal flooding: in risk terms a 0.5% annual event risk.⁵⁴² However, these provisions do not take into account the presence of flood defences, which include the Thames Barrier⁵⁴³ and the Embankment wall. As such, the level of protection provided by the defences should be regarded as being to a very high standard.⁵⁴⁴ In this area as the risk of overtopping the wall is extremely low, the residual risk relates only to a breach of the Embankment wall.
- 15.227 The Applicant sets out that there are two credible breach scenarios. These relate firstly to the Embankment wall failing due to high river water levels, combined with structural wall instability causing collapse, and secondly high river water levels combined with some external force, such as a boat, lorry collision or terror attack. In both cases high river water levels would themselves trigger the closure of the Thames Barrier, and flood warnings or alerts would be issued highlighting the elevated risk levels.
- 15.228 In relation to the first scenario, the current condition of the Embankment wall is considered to be “2”, or “good”.⁵⁴⁵ Moreover, the EA have requested that the ongoing good state of repair of the wall be managed by planning conditions that would require a survey of the existing river wall and the completion of improvements or repairs prior to construction works. It is also important to note that the Thames Estuary 2100 Plan (TE2100)⁵⁴⁶ commits to continuing to maintain and upgrade such defences to account for climate change.
- 15.229 Whilst the TIS.SVTG & LGT agrees that the risk of flooding is low, there is a concern that the risk of breach flooding and the safety of visitors in the event of such a flood has not been addressed. The below ground location of the LC, with an entrance that would be set below the highest predicted river levels is the main cause of concern. The entrance of the LC would be at 4.75mAOD. The Breach Flooding Maps produced for 2014⁵⁴⁷ indicate that an extreme predicted water level of 4.84mAOD would give rise to a 90mm depth of flood water. On the basis of the EA guidance for such situations, it appears reasonable to conclude that, if

⁵⁴¹ CD 1.1 para 160b)

⁵⁴² CD 6.39 Section 2.5. Estimated to be ≥ 1 in 200 (0.5%) annual event

⁵⁴³ CD 8.29 Ms Nunns PoE, para 4.3i. The Thames Barrier and associated defence system has a 1 in 1000 years standard which means it ensures that flood risk is managed up to an event that has a 0.1% annual probability

⁵⁴⁴ CD 5.16 Environment Agency Response, p3. Protection up to a 1 in 1000 (0.1%) chance in any year flood event

⁵⁴⁵ CD 8.29, para 4.3ii. On a scale between 1 (very good) and 5 (very poor)

⁵⁴⁶ CD 4.14 TE2100 Plan

⁵⁴⁷ CD 8.50 Attachment 1

the LC were being used, visitors would be able to evacuate through 90mm of water.⁵⁴⁸

- 15.230 The peak river levels in the Thames are predicted to rise in the future. In scenario planning for 2100 it is suggested that the site could experience flood water up to 1m in depth, with a commensurate increase in water inundation velocity.⁵⁴⁹ Nonetheless, the strategic flood risk management approach for the Thames estuary as a whole recognises the importance of reducing flood risk further in this extremely sensitive location. Specifically, the TE2100 includes plans to increase the standard of protection, and includes a recommendation to maintain, enhance or replace the defence walls and active structures through central London.⁵⁵⁰ I understand that this includes the raising of tidal defences, including the Embankment wall. It is therefore reasonable to conclude that, whilst the risk of the breach scenarios cannot be fully mitigated, there is a commitment to ensuring that the remaining risk would be extremely low.
- 15.231 It is on this clear basis that the EA has not objected to the proposal, subject to the conditions relating to the maintenance and improvement of the flood defences. The EA has required these conditions to ensure that the development can remain safe for its lifetime and to prevent flood risk in the site and elsewhere.⁵⁵¹ This would correspond with the NPPF requirement regarding the exception test.
- 15.232 In its advisory letter to WCC the EA also refers to the fact that the proposal "*does not have a safe means of access and egress in the event of flooding from all new buildings to an area wholly outside the floodplain, however, safe refuge within the higher floors of the development is possible*".⁵⁵² This comment does not reflect the below ground nature of the LC. However, a comprehensive evacuation plan would be required by a pre-commencement condition. This would set out arrangements for evacuation onto higher ground, including possibly the mound and also higher land to the south and west of the site which has been shown would not flood in the event of a breach.⁵⁵³
- 15.233 To conclude, London is, and will continue to be, well defended against the risk of tidal flooding. Whilst the consequences of breach flooding would be significant given the underground nature of the LC, the chances of this occurring would be extremely remote. In the unlikely event that it did occur, I am satisfied that early warning and evacuation arrangements would mean that the risk to life would be mitigated. Moreover, flood risk over the lifetime of this development would be acceptably managed. Indeed, in so far as the proposal would also deliver significant public benefits as identified above, I conclude the proposals would meet the expectations of the NPPF in respect of planning

⁵⁴⁸ CD 9.7, para R1.31

⁵⁴⁹ CD 8.50, Attachment 1

⁵⁵⁰ CD 4.14, p111. This would occur during the 15 year period of the Plan from 2035 to 2049

⁵⁵¹ CD 5.16, p2-3

⁵⁵² Ibid, p3

⁵⁵³ CD 6.39, Section 2.5, page 15. Refer to the fact that "*an evacuation route would be possible via the higher land south of the site and heading west on Horseferry Road, which has not been modelled to flood in a breach event*"

for flood risk⁵⁵⁴. As such, I agree that the development would be in accordance with national, regional and local policy relating to flood risk, subject to the conditions recommended.

Security Matters

- 15.234 The main parties have agreed⁵⁵⁵ that the proposed internal and external security measures, and the security arrangements for public access to the UKHMLC, are to be secured by the s106 agreement.
- 15.235 I understand that as part of the planning application security information was submitted and made available to the counterterrorism and crime reduction teams supporting WCC. As a result, neither WCC, nor its advisers, have objected to this aspect of the proposal. Much of the detail of the security provisions is considered sensitive and could potentially compromise the security of the site if released into the public domain.⁵⁵⁶ This has therefore not been included in the public part of the planning evidence. It follows that the responses to the issues raised by objectors are addressed in this context. These issues are addressed below. [6.107-6.109,8.58,9.55]
- 15.236 Some believe that the UKHMLC would be vulnerable to attack due to both its location adjacent to the Palace of Westminster and because of its clear links to Jews and the Jewish faith. Reference is made to the desecration of Holocaust memoria seen around the world.⁵⁵⁷ Opposers suggest that it is the nature of extremists to want to gain as much publicity as possible for their cause, and in this the context location of the Memorial in VTG would be a 'gift' to them.⁵⁵⁸ There is further concern that there could be a perception that the Jewish community have been singled out for preferential treatment, particularly due to the significant level of public funding the UKHMLC has drawn. There is also concern that if the LC also included the history of LBGT, Roma and other genocides this would attract further protests.⁵⁵⁹ [9.55,10.31, 11.205/Appendix4, 11.206/Appendix4, 11.212/Appendix4, 11.224/Appendix4]
- 15.237 It is a fact that acts of terrorism, violence and other criminal activities do and can occur. These acts are becoming less predictable, with the growth of low sophistication attacks that require little skill or logistic support.⁵⁶⁰ If a Jewish-related facility is to be targeted specifically, this is likely to be the case wherever it is located. It would not be possible to remove all of the risks associated with a proposal like UKHMLC within VTG. A threat and risk assessment has been undertaken to take account of the likely risk severity of the issues raised, with proportionate security measures designed to provide an appropriate response, both during construction and when in operation. Those partners involved in developing this response have included the Community Security Trust, a charity undertaking varied activities to protect British Jews. As a result,

⁵⁵⁴ CD 1.1 para 160a)

⁵⁵⁵ CD5.30, Statement of Common Ground, para 10.20

⁵⁵⁶ CD 8.18 Mr Brittle PoE para 5.23

⁵⁵⁷ CD 5.26 Baroness Deech Statement of Case p5

⁵⁵⁸ CD 5.35 Security, Crime and Disorder Assessment, SVTG, para 5.4

⁵⁵⁹ CD 5.26 p6

⁵⁶⁰ CD 8.18 Mr Brittle PoE para 5.2

the measures introduced would be in the highest quartile of protective measures when compared to other visitor and cultural centres in London.⁵⁶¹

- 15.238 Those opposing the proposal suggest that VTG would be a softer target than the Parliamentary estate as it would not have the advanced security measures. The regular use of the park by parliamentarians is referred to, as is the proposed concentration of activity within the restricted area of the park and the passage of significant traffic flows close by.⁵⁶² In this latter respect it is suggested that VTG could be vulnerable to vehicular attacks. As the pavements in the vicinity of VTG are narrow and already busy with pedestrians it would be difficult to accommodate the addition of physical security measures along boundaries.⁵⁶³ Further, it is also suggested that the proposal is likely to lead to an increase in pedestrian flows along pavements adjacent to VTG, compounding this security risk.
- 15.239 Wherever located it is likely that UKHMLC would at times draw dense crowds, and that appropriate surveillance techniques would be required. In this case the security response has been designed to reduce the vulnerability of the park to a vehicular-style attack. Details of the planned vehicle security barriers have not been provided as it would be inappropriate to do so. However, it is known that the proposed protective measures include a Hostile Vehicle Mitigation (HVM) perimeter fence positioned inside the current wrought iron railings. Pedestrians arriving from the north would be encouraged to enter the park via the northernmost entrance, thereby placing them within the safer park area.
- 15.240 Other security measures, including Project Servator which aims to deter, detect and disrupt criminal activity, would be used to add layers of protection to the site in a way that is not overly oppressive to VTG users.⁵⁶⁴ There would also be an intrusion detection capability. Further, this location adjacent to Parliament would benefit from high levels of security and a quick response to any incident, which in itself could act as a deterrent. I do not therefore believe that the presence of the UKHMLC would materially alter the threat profile to parliamentarians using the park⁵⁶⁵, to other park users, or to pedestrians on footways to the north of VTG.
- 15.241 Opposers also suggest terrorism risks at other locations, including the IWM, would not be as high, although no evidence is presented to support this assertion. Indeed, it is likely that if the UKHMLC were to be located at the IWM the risk profile of this site would be elevated such that extensive security enhancements would be required across the whole site,⁵⁶⁶ to the detriment of this DHA, a Grade II listed building and the unfettered use of the open space forming its context.
- 15.242 Within the park itself, there is speculation that the open nature of VTG and its proximity to Millbank could render it vulnerable to objects being

⁵⁶¹ Ibid para 5.5.

⁵⁶² CD 8.43 Lord Carlile PoE para 12h

⁵⁶³ CD 5.35 para 6.5

⁵⁶⁴ CD 9.6 Mr Brittle Rebuttal para 2.7

⁵⁶⁵ Ibid para 3.2

⁵⁶⁶ Ibid para 3.12 and para 5.2

thrown, possibly from outside the park itself.⁵⁶⁷ Other potential vulnerabilities, including the possibility that objects could be thrown from the mound into the courtyard, cannot be ruled out. However, the presence of the security barriers within the upper level of the fins⁵⁶⁸ indicates that this could not be achieved with any degree of accuracy.

- 15.243 It is also suggested that security concerns could mean more checks at the entrance to the gardens for everyone, whether visiting the UKHMLC or not. Whilst the security solution has been developed to allow for assistance at park entrances during peak periods, security at this point is not proposed.⁵⁶⁹ Rather, searching and screening would be undertaken as part of the UKHMLC entry process.
- 15.244 The robustness of entrance security screening is also questioned, in terms of the adequacy of a 20 second check and its feasibility in busy periods. However, whilst limited time is allowed for security checks, this is based on the operational experience of the provision at other sites.⁵⁷⁰ It would require strict entry criteria and would use both manual and technological approaches. The proposed entry system has been modelled on the predicted busiest periods to demonstrate that there would be limited queuing.⁵⁷¹
- 15.245 Those opposing the proposal maintain that the underground LC raises the possibility that visitors could be trapped below ground. However, a number of evacuation routes would be present, with the operational overlay taking into account the ability to invacuate and evacuate people to a safer place, depending on the nature of the threat.⁵⁷²
- 15.246 Finally, there is speculation that the road (Millbank/Abingdon Street) would have to be closed and extra security arranged if the UKHMLC became a regular stop for important visitors. In response the Applicant has advised that in such circumstances additional security would be provided through an operational overlay covering their arrival, time at the UKHMLC and departure; occasional temporary closures may be necessary in exceptional circumstances. These could be managed outside peak traffic periods to minimise disruption.⁵⁷³
- 15.247 Some people will, for whatever indiscernible purpose, seek to damage or vandalise such a site. It is further suggested that Holocaust memoria without an immediate visible message about the event itself, are apparently more likely to attract vandalism than those where the message is immediate.⁵⁷⁴ Such concerns suggest it would be ultimately necessary to fence-off areas of the site, specifically the fins and sloping

⁵⁶⁷ CD 5.35, para 6.13

⁵⁶⁸ CD 8.5 Mr Bruno PoE p32 Fig 6.13 and p35 Fig 6.16

⁵⁶⁹ CD 8.18 para 5.11

⁵⁷⁰ Ibid, para 5.41

⁵⁷¹ CD 5.8, Visitor Management Strategy, Part 2 Appendix 3

⁵⁷² CD 9.6 para 3.9

⁵⁷³ CD 8.18, para 5.17

⁵⁷⁴ CD 8.41 para 9

grass, so avoiding the threat of graffiti either being applied to the fins or being burnt, by whatever means, into the grass of the mound.

- 15.248 Bronze, the particular brown metal of memoria, has long resisted the taints of neglect, adulation and prejudice. Whilst it may be susceptible to graffiti or defacement, its durability, and the patina it wears as a result, is an enduring assurance of its stated and long-lasting purpose. All high profile and accessible structures, spaces and features, be they sculpture, monument or other, are susceptible to these risks. Such a Memorial, wherever located, would be subjected, regrettably, to the same.
- 15.249 The fact that visitors to the UKHMLC and families using the playground would inevitably mingle could, it is suggested, raise child protection issues. On this point, whilst it is inevitable that the playground would become busier, the requirement for responsible adult supervision of children at play remains an essential part of using such a free access facility.
- 15.250 Objectors seek a single coherent report and comprehensive assessment plan bringing together all security threats and risks. Whilst desirable, there is obviously a reasonable limit to the amount of detail on security matters that can be presented in the public domain. Nonetheless, the relevant bodies, including counter-terrorism security advisers, have worked together to validate the proposed security solution, such that the absence of a single document in itself is not a determinative matter.
- 15.251 The fact of the matter is that whilst the location of UKHMLC within VTG could be viewed as a 'high value' target, the risks associated with this venue are not so acute as to be out of proportion when compared with many other sites in central London. The evidence provided indicates that the risk profile of the UKHMLC would remain fairly constant regardless of the location.⁵⁷⁵ As such, wherever it was located, a UKHMLC would entail extensive security enhancements.
- 15.252 Paragraph 95 of the NPPF requires that planning policies should consider wider security and defence requirements by anticipating and addressing possible malicious threats, especially in locations where large numbers of people are likely to congregate. Also, the design and layout of developments should be informed by the most up to date information available from the police and other agencies about the nature of threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security.
- 15.253 In this case, there is evidence of the regular liaison between security experts throughout the design process,⁵⁷⁶ and of the resulting security provisions. This determines that the requirements of paragraph 95a)

⁵⁷⁵ CD 9.6, para 5.1

⁵⁷⁶ CD 8.18, Summarised in Section 4.0

have been met. As such, matters of security have a neutral value in the planning balance.

Transport and Pedestrian Movement Matters

- 15.254 The site is located within an area that experiences high levels of pedestrian activity. The proposed development would result in increases and changes to local pedestrian and vehicle movement. It has been agreed that planning conditions and s106 planning obligations would be necessary to manage the impacts of the proposal. Subject to these provisions, the main parties have agreed that the increased number of pedestrians would not in itself create a road safety issue.⁵⁷⁷
- 15.255 Nonetheless, pedestrian safety and other transport and movement concerns were raised by other parties to the Inquiry. The main areas of concern were focused on the effect of the increase in pedestrian traffic on the northernmost entrance to VTG, and also the effect of the proposal on the safety of cyclists using Millbank, with particular reference to coaches and construction vehicles. These points are explored below. [6.113-6.114, 9.57, 11.205/Appendix4, 11.206/Appendix4, 11.204/Appendix4, 11.221/Appendix 4]
- 15.256 Following comparative studies of other memorials, the Applicant's Transport Assessment (TA) suggests that the Berlin Memorial represents the best proxy for estimating trip generation to the UKHMLC.⁵⁷⁸ Based on visits to this Memorial during its first year of opening, a figure of 10,000 visitors per day has been used for scenario planning. Similar comparisons have also led to the assumption that there would be 930,000 visitors to UKHMLC per year, which has been rounded up to 1 million for modelling.⁵⁷⁹ A maximum of 3,300 tickets for entry to the UKHMLC would be issued per day, with the remaining 6,700 viewing the exterior only.⁵⁸⁰
- 15.257 The TA assumes that most ticketed visitors, and 90% of non-ticketed visitors, would arrive via Gate 1, the northernmost entry point into VTG, as this is the closest to public transport stops and the visitor attractions on Parliament Square. The effect of this increase on the use of the footway to the north of Gate 1 and the Gate itself is examined in terms of the Pedestrian Comfort Level (PCL).⁵⁸¹ To the north of Gate 1 it is unlikely that the current PCL of 'C' ⁵⁸², regarded as 'increasingly uncomfortable' would, as the TA suggests, remain at this level, given the anticipated significant increase in pedestrian traffic. It is possible that some relief to this situation could be secured through the movement of the current HVM barrier and security box to the north of Gate 1. Details

⁵⁷⁷ CD 5.30 Part 1: SoCG para 10.12

⁵⁷⁸ CD 6.13 Environmental Statement, Vol 5, Appendix M, Para 8.5.21

⁵⁷⁹ Ibid, Para 8.2.23. Whilst WCC have referred to 3.65 million visitors per year, this is based on an extrapolation of the Applicants assumption of 10,000 visitors per day. However, this would be likely to represent a busy day. It seems unreasonable to assume that this number of visitors would be achieved all year round

⁵⁸⁰ Ibid, Para 8.5.23

⁵⁸¹ A classification of the level of comfort based on the level of crowding a pedestrian experiences, ranging from 'A' very comfortable with plenty of space for people to walk at the speed they choose to 'E' very uncomfortable with restricted movement and very little personal space. PCL 'B+' is the recommended minimum for all areas

⁵⁸² Whilst the TA suggests that this is currently 'C+', TIS argue that it is actually 'C-' (CD 8.47, Table 2)

of how this could be achieved would be considered as part of the Security Management Plan, to be secured as part of the s106 agreement.

- 15.258 It is probable that Gate 1 itself would be a 'pinch point' and that PCL levels would be reduced. The Applicant suggests that this entry point could be widened, set back or even closed during busy periods so that the flow could be managed through other gates along Millbank/Abingdon Street.⁵⁸³ Whilst this could increase the interaction between pedestrians and vehicles on Millbank/Abingdon Street, particularly when crossing, it is unlikely that this would lead to any road safety concerns or be significantly detrimental to the operation of the highway.⁵⁸⁴
- 15.259 The main parties have agreed that coaches would drop off and pick up visitors to the UKHMLC from a section of Millbank between Dean Stanley Street and Horseferry Road, on the eastern side of the street utilising the existing bus lane and double yellow lines. Millbank is well used by cyclists as part of the Cycle Superhighway network.⁵⁸⁵ Those cyclists travelling southbound are accommodated in the bus lane. Concerns have been raised about their safety.
- 15.260 The coaches would park in the bus lane to drop off and pick up passengers for up to 15 minutes at a time. This would add to the risks to cyclists having to negotiate traffic. It is anticipated that up to 11 coaches per day would serve the UKHMLC, with drop off/pick up times anticipated as being 10.00-12.00/14.00-16.00. As the coaches would be present outside the peak morning and evening hours when use by cyclists would be at its highest, this point does not raise any significant road safety concerns. The addition of up to one waste collection vehicle per day and one servicing vehicle per week for the café would not add any further concerns in this regard.
- 15.261 Millbank is assessed against the 'Healthy Streets' indicators, which focus on improving the environment for pedestrians, cyclists and public transport users. Notwithstanding the proposed improvements to the highway in terms of improved surfaces, landscaping and surveillance,⁵⁸⁶ there would be a slight reduction in the overall Healthy Streets Check score from 70 to 66.⁵⁸⁷ It is recognised that this follows alterations to the bus and general traffic lane on the eastern side of Millbank, which would have a minor effect on cyclists using this route.⁵⁸⁸
- 15.262 During the construction phase it is proposed that construction vehicles would arrive and leave via Lambeth Bridge. This would require arriving vehicles to turn right into the site across the bus lane. It would also mean that vehicles leaving the site would turn left and left again onto

⁵⁸³ CD 9.9 Mr Little Rebuttal, para 3.8

⁵⁸⁴ CD 5.11 WCC Officer Report p74

⁵⁸⁵ CD 6.40 Vol 5 Revised Appendix M, Appendix C, Chapter 7 (p56), During the evening peak hour there are more than 1,000 southbound cyclists

⁵⁸⁶ Ibid para 5.2.1

⁵⁸⁷ Ibid Appendix B. This has been updated from the earlier TA Healthy Streets Assessment (CD 6.13 Vol 5, Appendix M, Appendix D) which showed a reduction from 70 to 65, including one zero score. The zero score, now removed, related to the interaction between large vehicles and people cycling. The update indicates that the level of traffic generated by the development is not expected to increase levels of larger vehicles significantly beyond the existing baseline traffic flow

⁵⁸⁸ Ibid, para 5.2.8

Lambeth Bridge. Risks to cyclists can be associated with both large vehicles turning across oncoming traffic, and particularly with such vehicles turning left across the path of cyclists travelling straight on. However, such risks are associated with most central London development sites. Provisions within the Construction Management Plan would be kept under review to minimise the risks involved. This could include regular review of the number and type of vehicles involved and could consider the use of marshals in busy periods.

15.263 Finally, it is relevant to note that TfL have requested a planning obligation to secure funding for improvements to the Lambeth Road junction. This point is considered in the Planning Obligation section.

15.264 Overall, I find that the development would seek to minimise any conflict between pedestrians, cyclists and vehicles, and would not have an unacceptable impact on highway safety matters. This conclusion is subject to conditions to address matters including a Construction Logistics Plan, a Coach Management Plan, a Travel Plan and an Operational Management Plan, and also s106 planning obligations seeking to manage construction and operational safety and security matters.

Other consideration

Archaeology

15.265 The main parties have agreed that sufficient information has been provided to assess the likely risk to archaeological remains. HE (Greater London Archaeological Advisory Service) raise no objection, subject to conditions to safeguard the archaeology of the site.⁵⁸⁹ A short roundtable discussion took place as part of Inquiry proceedings.⁵⁹⁰ As no significant concerns were raised during this discussion, or by other parties to the Inquiry, this section briefly summarises the likely archaeological effects of the proposal. [6.116, 8.59]

15.266 VTG lies towards the southern end of the Palace of Westminster and Whitehall Archaeological Priority Area. This non-statutory planning policy area recognises the diverse and highly significant archaeological interests in the area, ranging from prehistoric to modern times.

15.267 VTG was built astride the C17 to C19 river frontage. The remains of land reclamation deposits, river walls, wharves and associated commercial and industrial premises are expected to survive beneath the 1.2m of topsoil that was imported to create the park. The eastern side of VTG lay within the river until the modern embankment was built shortly before the First World War. Given the lack of C20 disturbance this could be one of the best-preserved sections of post-medieval riverfront in London, with the potential for substantial buried remains of masonry and timber.

15.268 Documentary evidence indicates that commercial wharfs were located here. Archaeological investigations of the Roman and medieval City of

⁵⁸⁹ CD 5.30, Part 1, para 10.22

⁵⁹⁰ Participants included Mr Ford for the Applicant and Mr Ayton for WCC

London have been highly productive, but much less work of this nature has been done in Westminster. These remains are therefore judged to be significant, but not demonstrably equivalent to a scheduled monument.⁵⁹¹

- 15.269 During the medieval period up to the mid-C17, the site lay to the south of the Abbey and Palace of Westminster. It is possible that a substantial stone-built river wall found in Black Rod's garden may extend south into the northern parts of VTG. However, whilst the northern part of VTG is considered to have clear potential to contain buried remains of equivalent status to a scheduled monument, in contrast the southern part is not thought to have been developed through this time.
- 15.270 The site has been shown to have pre-medieval riverine deposits containing significant evidence of past environments, although the potential for pre-medieval structural or artefactual evidence is harder to assess. Nonetheless there is no evidence of significant archaeological remains here.
- 15.271 The proposal would be located in the southern and central parts of VTG. As such, the likelihood of significant archaeological deposits is limited, even with the deep excavation and secant piling required for the LC. As such, the Applicant has prepared an Archaeological Mitigation Strategy.⁵⁹² This would comprise a programme of investigative archaeological fieldwork with associated post-excavation assessment, analysis, updated project design, final reporting and publication. There would also be a public outreach programme during the archaeological fieldwork and reporting phases. This document is a high-level framework which would provide an umbrella for the Written Scheme of Investigation (WSI), produced by the appointed competent individual/organisation and agreed with statutory consultees. The WSI, to include details of a programme for delivering related positive public benefits, would be required by condition.

The Development Plan and Overall Planning Balance

- 15.272 Under s38(6) of the P&CP Act, reaffirmed in paragraphs 2, 12 and 47 of the NPPF, the development plan should form the starting point for the determination of this application. The relevant policies of the plan are set out above.
- 15.273 Not just in land use policy terms, but in social, cultural and even morally obligatory terms, the delivery of such a national Memorial and LC of the type proposed, in this location, would most emphatically accord with the aspirations of Policy S1 of the WCP, which seeks to promote Westminster's World City functions. It would also accord with (LonP 2021) Policies GG1, HC5 and SD4, all of which seek collectively to build on the city's tradition of openness and support for new cultural venues and functions in the CAZ. In similar regard, the proposals would accord with London Plan Policy 4.6, which seeks the same objectives. This would also be consistent with Policy S22 of the WCP states that new arts

⁵⁹¹ CD 6.43 Historic England (GLAAS) response letter, 12 November 2019, p3

⁵⁹² CD 8.28 PoE Mr Ford Appendix E

and cultural uses and tourist attractions will be acceptable within the CAZ. As such it would also be consistent with Policy S27, which anticipates that new international and nationally important uses will be encouraged within the CAZ. [3.3, 3.4, 3.15, 3.24, 3.29]

- 15.274 Furthermore, in respect of the avoidance of harm to the OUV of the WHS, the setting of the Grade I Palace of Westminster, the setting of the Grade I St John's Smith Square Concert Hall, the settings of the Grade II* and Grade II buildings on Millbank and the setting of the SSCA, the proposals accord with and gain support from the expectations of Policies HC1 and HC2 of the LonP 2021, Policies S25 and S26 of the WCP and Policies DES 10 and DES 16 of the WUDP. In the avoidance of harm to the OUV of the WHS, the proposals are also in conformity with LonP Policy 7.10 and Westminster's World Heritage Site Management Plan, a Supplementary Planning Document. [3.6, 3.7, 3.11, 3.25, 3.26, 3.19, 3.21, 3.37]
- 15.275 Concerning design, LonP 2021 Policy D4, which sets expectations on how good design in the capital will be delivered also, in broad terms, supports the proposals. With reference to design quality, Policy S28 of the WCP requires that development must incorporate exemplary standards of sustainable and inclusive urban design and architecture, with which the proposals would also accord. It states that *"in the correct context, imaginative modern architecture is encouraged provided that it respects Westminster's heritage and local distinctiveness and enriches its world-class city environment"*. WUDP saved Policy DES 1 requires development to be of the highest standard of sustainable and inclusive urban design and architectural quality, with which the proposals are again consistent. [3.5, 3.17, 3.30]
- 15.276 However, in respect of other heritage matters, because of the less than substantial harm to the setting of the BM, to the special interest of VTG as an RPG and harm to the character and appearance of the WAPSCA, all designated heritage assets, including cumulative harm, the scheme would lead to conflict with LonP 2021 Policy HC1 and with Policy 7.8 of the LonP. Moreover, for the same reasons, there would be conflict with Policy S25 of the WCP and Policies DES 9, DES 10 and DES 12 of the WUDP. [3.6, 3.18, 3.19, 3.20, 3.25]
- 15.277 In terms of the erosion of public open space, though limited and in part mitigated through compensating qualitative improvements, there would be conflict with Policies S35 of WCP, ENV 15 of the WUDP, Policy 7.18 of the LonP and Policy G4 of the LonP 2021. [3.8, 3.13, 3.22, 3.28]
- 15.278 Moreover, whilst the matter of harm to trees has been dealt with within the ambit of harm to DHAs, there nevertheless remains conflict with policies WUDP Policy ENV 16(A) and (B), Policy S38 of the WCP and with Policy 7.21 of the LonP and Policy G7 of the LonP 2021 in this specific regard. [3.9, 3.12, 3.23, 3.27]
- 15.279 There are very compelling arguments in support of the proposal which clearly fulfil the expectations of key policies of the development plan. The proposals are also policy compliant in that they would preserve the setting of the highest grade of listed building and safeguard the setting of the WHS and therefore it's OUV. On the other hand, there is

measurable conflict with policy in respect of harm to identified DHAs, trees and open space, all of which incrementally militate against a conclusion of development plan conformity. On balance, and it is a fine one, I conclude that overall, the proposals cannot be judged to be in accordance with the development plan when read as a whole. Whilst such conformity is the expectation of s38(6) of the Act⁵⁹³, it is but a starting point, not an end, as it makes clear that material considerations may lead to a determination otherwise than in accordance with the plan. It is by way of final conclusion that I now turn to these matters.

Material Considerations

15.280 In essence, the balance is a simple one between the harms, principally those that would be caused to the setting, special interest and character and appearance of a number of heritage assets and harm to open space and to trees, set against the public benefits, primarily the delivery of a national Memorial and LC of exceptional design quality in a location befitting the national and international importance of its purpose. As there is, amongst other harms, more than one instance of heritage harm, these have been combined in the planning balance.

15.281 The range of heritage harm would be to a Grade II RPG in the form of VTG, through harm to a conservation area (WAPSCA) and to that of amongst the highest order of designated assets, in the case of the Grade II* BM. These findings of harm lead to conflict with paragraphs 193 and 194 of the NPPF, and with s66 and s72 of the Act.⁵⁹⁴ This determines that such harm should attract great weight, or considerable importance and weight, in the balancing exercise required. Whilst I have carried out the paragraph 196 NPPF balances individually, when combined, the sum of harms identified to more than one asset does not significantly increase this weight. However, the harms to open space and trees, respectively calibrated as moderate, and the policy conflict they engender, also materially add to the weight against a recommendation to approve the proposals.

15.282 Set against these identified harms, and the policy conflicts that ensue, are the material considerations, in this case expressed as public benefits, proffered to weigh in the heritage and planning balance considered in detail above.

Development Plan and planning Balance Conclusion

15.283 When the measures of harms and benefits are respectively accounted, it is clear to me, as set out in the comprehensive reasoning above, that the significant range of truly civic, educative, social and even moral, public benefits the proposals offer would demonstrably outweigh the identified harms the proposals have been found to cause. The outcome of this balance therefore amounts to a material consideration of manifestly

⁵⁹³ Planning and Compulsory Purchase Act 2004

⁵⁹⁴ Planning (Listed Buildings and Conservation Areas) Act 1990

sufficient weight to indicate in this case that determination other than in accordance with the development plan is justified.

16 Recommendation

- 16.1 I recommend that the application should be approved, and planning permission granted, subject to the attached Schedule of conditions and all the obligations in the Legal Agreement.

David Morgan

Inspector

Appendix 1: Suggested Conditions

Recommended conditions in the event that planning permission is granted

- 1) The development must be commenced within three years of the date from this permission.

Reason: To comply with Section 91 of the T&CP Act 1990 (as amended)

- 2) The development hereby permitted shall be carried out in accordance with the drawings and other documents listed in Appendix A of the SoCG and any drawings approved subsequently by the local planning authority pursuant to any conditions on this decision letter.

Reason: for the avoidance of doubt and in the interests of proper planning.

- 3) Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday;
 - between 08.00 and 13.00 on Saturday; and
 - not at all on Sundays, bank holidays and public holidays.Piling, excavation and demolition work shall only be carried out:
 - between 08.00 and 18.00 Monday to Friday; and
 - not at all on Saturdays, Sundays, bank holidays and public holidays.

Reason: to protect the environment of residents and the area generally, as set out in Policy S29 of Westminster's City Plan (WCP) and Policies STRA 25, TRANS 23, ENV 5 and ENV 6 of Westminster's Unitary Development Plan (WUDP).

- 4) Prior to the commencement of any:
 - (a) Demolition, and/or
 - (b) Earthworks/piling and/or
 - (c) Construction

A scheme which secures compliance with the Council's Code of Construction Practice, shall be submitted to and approved in writing by the local planning authority. Such scheme must include the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the Applicant and approved in advance by the local planning authority's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein. Commencement of the relevant stage of demolition, earthworks/piling or construction cannot take place until the local planning authority has issued its written approval through submission of details prior to each stage of commencement. The development shall be carried out in accordance with the approved scheme of construction practice.

Reason: To protect the environment of the residents of the area generally as set out in Policy S29 of the WCP and STRA 25, TRANS 23, ENV 5 and ENV 6 of the WUDP.

- 5) Samples of the materials to be used in the construction of the external surfaces of the development hereby permitted, including sample panels of the Memorial Fins, shall be submitted to, and approved by the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.

Reason: to make sure that the appearance of the development is suitable and that it contributes to the character and appearance of this part of the Westminster Abbey, Parliament Square Conservation Area (WAPSCA). This is set out in Policies S25 and S28 of the WCP and DES 1, DES 5 and DES 6 and paras 10.108 to 10.128 of the WUDP.

- 6) The details of the following parts of the development (at Scale 1:20) shall be submitted to, and approved by, the local planning authority in advance of the construction thereof:
- a. Holocaust Memorial and Learning Centre (above ground)
 - b. Memorial Courtyard including enclosures, including railings and boundary details
 - c. Entrance pavilion
 - d. Café
 - e. Works adjacent to the Buxton Memorial
 - f. The Boardwalk, including details adjoining the Embankment

The development shall be carried out in accordance with the details approved.

Reason: to make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the WAPSCA. This is set out in Policies S25 and S28 of the WCP and DES 1, DES 5 and DES 6 and paras 10.108 to 10.128 of the WUDP.

- 7) The details of a hard and soft landscaping scheme, other than those specified in Condition 6, shall be submitted to, and approved, by, the local planning authority in advance of the installation thereof. These details shall include:
- A Planting Plan to include the number, size, species and position of trees and shrubs;
 - A Lighting Plan to include existing and new lighting elements;
 - New surfacing, changes to existing surfacing, seating, bins and other hard landscape infrastructure;
 - Any proposed raising or lowering of levels; and,
 - A detailed plan for the management of the landscaping.

The landscaping and planting shall be carried out within 1 year of completing the development (or within any other time limit we agree to in writing). Any trees removed or found to be dying, severely damaged or diseased within 5 years of planting them (or a timescale otherwise agreed in writing) must be replaced in the same location with trees of the same size and species, or any other such species and size and location to which the local planning authority agrees in writing.

The development shall be carried out in accordance with the details approved.

Reason: to improve the appearance of the proposed development, to make sure that it contributes to the character and appearance of this part of the WAPSCA, and to improve its contribution to biodiversity and the local environment. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 8) The details of a Tree Protection Method Statement explaining the measures to be taken to protect the trees on and close to the site shall be submitted to, and approved, by the local planning authority in advance of any archaeological or other site investigations, demolition, site clearance or building work, or taking any equipment, machinery or materials for the development onto the site. The Tree Protection Method Statement shall take account of anticipated construction requirements (sections 5.2.3, 5.5.6, 6 and 7 of BS5837: 2012). The development shall be carried out in accordance with the details approved.

Reason: to protect the trees and the character and appearance of this part of the WAPSCA. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 9) The details of an auditable system of arboricultural site supervision and record keeping (the Arboreal Audit Scheme) prepared by an arboricultural consultant who is registered with the Arboricultural Association, or who has the level of qualifications and experience needed to be registered, shall be submitted to, and approved, by, the local planning authority in advance of any archaeological or other site investigations, demolition, site clearance or building work, or taking any equipment, machinery or materials for the development onto the site. These details shall include:
- identification of individual responsibilities and key personnel.
 - induction and personnel awareness of arboricultural matters.
 - supervision schedule, indicating frequency and methods of site visiting and record keeping.
 - procedures for dealing with variations and incidents.

The development shall be carried out in accordance with the approved Arboreal Audit Scheme.

Written site supervision reports shall be produced after each site monitoring visit, demonstrating that the supervision has been carried out and that the tree protection is being provided in accordance with the scheme approved pursuant to condition 8. If any damage to trees, root protection areas or other breaches of tree protection measures occur then details of the incident and any mitigation/amelioration must be included. Copies of each written site supervision record must be sent to the local planning authority within five working days of the site visit.

Reason: to protect the trees and the character and appearance of this part of the WAPSCA. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 10) The details of the depth, profile and specification of the substrate intended to be built up over the development, and how this will connect with the existing soils within VTG shall be submitted to, and approved, by the local planning authority in advance of taking any equipment, machinery or materials for the development onto the site. The development shall be carried out in accordance with the details approved.

Reason: to protect the trees and the character and appearance of this part of the WAPSCA. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 11) The development shall not be occupied until each long-term cycle parking space shown on the approved drawings has been provided. Thereafter the cycle spaces must be retained and the spaces used for no other purpose without the prior written consent of the local planning authority.

Reason: to provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan.

- 12) Notwithstanding the information provided, details of a Servicing Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.

Reason: to ensure that servicing of the UKHMLC does not block surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy S42 of the WCP and Policy TRANS 20 and TRANS 21 of the WUDP.

- 13) All doors or gates must be hung so that they do not open over or across the road or pavement.

Reason: in the interests of public safety and to avoid blocking the road as set out in Policy S41 of the WCP and TRANS 2 and TRANS 3 of the WUDP.

- 14) The provision for the storage of waste and recyclable materials, as shown on drawing number UKHM-AA-XX-ZZ-DR-A-03-400, is to be made permanently available from the date of occupation of the development and used for no other purpose.

Reason: to protect the environment and provide suitable storage for waste and materials for WUDP recycling as set out in Policy S44 of the WCP and Policy ENV 12 of the UDP.

- 15) Notwithstanding the approved plans and documents, no development shall take place until details of an updated Air Quality Assessment has been submitted to, and approved by, the local planning authority. In the event that the updated Air Quality Assessment fails to show that the approved scheme will be air quality neutral, details of appropriate offsetting and mitigation measures shall be submitted to, and approved by, the local planning authority in advance of any development. In the case of each of the appropriate offsetting and mitigation measures, the details shall include arrangements of when the benefits will be provided, and how this

timing will be guaranteed. The development shall be carried out in accordance with the details of the Air Quality Assessment as approved.

Reason: to ensure the development complies with Policy S31 of the WCP and Policy 7.14 of the London Plan.

- 16) No development shall take place until details of a site investigation to find out if the land is contaminated with dangerous material, to assess the contamination that is present, and to find out if it could affect human health or the environment, has been submitted to, and approved by, the local planning authority. This site investigation must meet the water, ecology and general requirements outlined in 'Contaminated Land Guidance for Developers submitting planning applications' - produced by the local planning authority.

The details of the following investigation reports for phases 1, 2 and 3, shall be submitted to, and approved by, the local planning authority in advance of any demolition or excavation work, and for phase 4 when the development has been completed but before it is occupied.

Phase 1: Desktop study - full site history and environmental information from the public records.

Phase 2: Site investigation - to assess the contamination and the possible effect it could have on human health, pollution and damage to property.

Phase 3: Remediation strategy - details of this, including maintenance and monitoring to protect human health and prevent pollution.

Phase 4: Validation report - summarises the action taken during the development and what action will be taken in the future, if necessary.

Reason: to make sure that any contamination under the site is identified and treated so that it does not harm anyone who uses the site in the future, as set out in Policies STRA 34 and ENV 8 of the WUDP.

- 17) The details of the ventilation system to remove cooking smells from the café/ refreshments kiosk, including details of how it will be built and how it will look shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.

Reasons: to protect the environment of people in neighbouring properties as set out in Policies S29 and S32 of the WCP and Policies ENV 6, ENV 7 and DES 5 of the WUDP.

- 18) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the local planning authority. The

background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation of the development. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the local planning authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation of the development. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, an application may be made in writing to the local planning authority for a fixed maximum noise level to be approved. Such an application shall consist of a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the local planning authority. Any noise report submitted must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason: because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 1), 6) and 8) and ENV 7 (A)1) of the WUDP, so that the noise environment of people in noise sensitive

properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in Policy S32 of the WCP, by contributing to excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after the implementation of the planning permission.

- 19) The details of a supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in Condition 18 of this permission shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. The development shall be carried out in accordance with the details approved.

Reason: because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 1), 6) and 8) and ENV 7 (A) 1) of the WUDP, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in Policy S32 of the WCP, by contributing to excessive ambient noise levels.

- 20) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason: to ensure that the development is designed to prevent structural transmission of noise or vibration as set out in ENV (2) and (6) of the WUDP.

- 21) (1) Noise emitted from the emergency plant and generators hereby permitted shall not increase the minimum assessed background noise level (expressed as the lowest 24 hour LA90, 15 mins) by more than 10 dB one metre outside any residential or noise sensitive property.

(2) The emergency plant and generators hereby permitted may be operated only for essential testing, except when required by an emergency loss of power.

(3) Testing of emergency plant and generators hereby permitted may be carried out only for up to one hour in a calendar month, and only during the hours 09.00 to 17.00 hrs Monday to Friday and not at all on public holidays.

Reason: emergency and auxiliary energy generation plant is generally noisy, so a maximum noise level is required to ensure that any disturbance caused by it is kept to a minimum and to ensure testing and other non-emergency use is carried out for limited periods during defined daytime and weekday hours only, to prevent disturbance to residents and those working nearby, as set out in Policy S32 of the WCP and ENV 7 B) of the WUDP.

- 22) No development shall take place until a strategy for maintaining, and improving (if necessary), the flood defences has been submitted to, and

approved by, the local planning authority. This strategy will include the following components:

1. A condition survey of the existing river wall.
2. A scheme, based on the condition survey in (1), to undertake any required improvements or repairs to the flood defence prior to the commencement of construction works. The scheme shall include a plan for any required long-term monitoring and maintenance and a programme for the improvements or repairs completion.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: to ensure that the structural integrity of the flood defence is not compromised so that the development can remain safe for its lifetime and to reduce flood risk on site and elsewhere. This is in line with NPPF para 160 and Policy SI 12.F of the LonP2021.

- 23) If, during development, additional improvements or repairs to the flood defence not previously identified are found to be necessary, then no further development (unless otherwise agreed in writing with the local planning authority) shall take place until a strategy detailing how these additional works will be undertaken has been submitted to, and approved by, the local planning authority. The strategy shall be implemented as approved.

Reason: to ensure that the structural integrity of the flood defence is not compromised from previously unidentified improvements or repairs, so that the development can remain safe for its lifetime and to reduce flood risk on the site and elsewhere. This is in line with NPPF para 160 and Policy SI 12.F of the LonP2021.

- 24) The development shall be carried out in accordance with Appendix I of Environmental Statement (Volume 5) titled '*Proposed site plan showing vehicle access*' (UKHM-03-003 Proposed Site Plan Flood Defence Wall Set Back 19/04/11) and shall include the following mitigation measures it details:

- 16m set back from back of granite wall at ground level.
- Vehicle access routes for future wall maintenance and parapet raising works.

Reason: to ensure that adequate access is provided for inspection, maintenance, repair, replacement and raising in the future of the flood defences in line with the TE2100 plan, as supported by Policy SI 12.F of the LonP2021.

- 25) No development shall take place until a Monitoring Action Plan (MAP) has been submitted to and approved by the local planning authority. The MAP shall be fully implemented in accordance with the scheme's

timing/phasing arrangements, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

The MAP shall be based on the approved Monitoring Strategy (Holocaust Memorial Westminster Monitoring Strategy Revision 4 Project Ref: 70043431, dated 5 September 2019) and will define the trigger thresholds and actions required by all parties if a trigger threshold is exceeded.

Reason: to ensure that the structural integrity of the flood defence is not compromised so that the development can remain safe for its lifetime and to reduce flood risk on site and elsewhere. This is in line with NPPF para 160 and Policy SI 12.F of the LonP 2021.

- 26) No development shall take place until a flood risk evacuation plan has been submitted to and approved in writing by the local planning authority. The plan shall include trigger levels for evacuation which reflect the ongoing condition of the flood wall. It shall be reviewed annually and updated as necessary to take into consideration any changes to local conditions (such as change in flood wall condition or Standard of Protection). The development shall be carried out in accordance with the details approved.

Reason: to ensure that the development has adequate evacuation arrangements and can ensure a safe means of access and egress in the event of flooding from all new buildings to an area wholly outside the floodplain. This is in line with Policy S30 of the WCP, Policies 5.12 and 7.13 of the LonP, Policy SI 12.F of the LonP 2021 and para 160 of the NPPF.

- 27) The energy measures set out in the approved Energy Strategy (Energy Statement by WSP dated December 2018; and WSP Memos dated 21 August 2019 and 3 October 2019) shall be provided in writing and in accordance with a timescale agreed in writing by the local planning authority.

Reason: to make sure that the development affects the environment as little as possible, as set out in Policies S28 or S40, or both, of the WCP.

- 28) Details of an Operational Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The Operational Management Plan should include details of:

- a. Method of managing pre-booking/ticketing so as not to cause overcrowding in Victoria Tower Gardens;
- b. Method of managing visitors on arrival so as not to cause overcrowding in Victoria Tower Gardens;
- c. Staffing to ensure that visitors to the Learning Centre are managed so as not to cause overcrowding in Victoria Tower Gardens;
- d. Deliveries to and servicing of the Memorial and Learning Centre so as not to contribute to the risk of overcrowding occurring in Victoria Tower Gardens are open to the public.

The development shall be carried out in accordance with the details approved.

Reason: to make sure that the operation of the UKHMLC is compatible with the ongoing and existing uses of VTG and the impact of visitors is mitigated.

- 29) The details of any guidewall in association with the Secant piling installation or infrastructure for the same or a similar purpose shall be submitted to, and approved by, the local planning authority in advance of the installation thereof. No such guidewall or other infrastructure for the same or similar purpose shall be installed below existing ground levels. The development shall be carried out in accordance with the details approved.

Reason: to protect the trees and the character and appearance of this part of the WAPSCA. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 30) No excavation for the construction of the proposed basement and courtyard shall be closer to the retained trees than the outer line of secant piling shown in dark grey on the Proposed Basement Floor plan reference UKHM-AA-XX-B3-DR-A-03-101 Rev P03 and shown by the dashed line on the Proposed Ground Floor plan reference UKHM-AA-XX-B3-DR-A-03-100 Rev P03. No excavation for the memorial fins shall be closer to the retained trees than the areas shown coloured purple on plan reference UKHM-AA-ZZ-DR-A-03-500 other than in the area to be excavated for the basement as identified on the Proposed Basement Floor plan reference UKHM-AA-XX-B3-DR-A-03-101 Rev P03.

Reason: to protect the trees and the character and appearance of this part of the WAPSCA. This is as set out in Policies S25, S28 and S38 of the WCP and Policies ENV 16, ENV 17, DES 1(A) and paras 10.108-10.128 of the WUDP.

- 31) No development shall take place until a Construction Logistics Plan for the proposed development has been submitted to and approved by, the local planning authority. Thereafter the construction logistics must be managed in accordance with the details approved.

Reason: to avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy S42 of the WCP and Policy STRA 25, TRANS 20 and TRANS 21 of the WUDP.

- 32) Details of a Coach Management Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.

Reason: to avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy S42 of the WCP and Policy STRA 25, TRANS 20 and TRANS 21 of the WUDP.

- 33) Details of a Travel Plan shall be submitted to, and approved by, the local planning authority in advance of the occupation of the development. The development shall be carried out in accordance with the details approved.

Reason: to avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy S42 of the WCP and Policy STRA 25, TRANS 20 and TRANS 21 of the WUDP.

- 34) No development shall take place until a fire escape plan has been submitted to and approved by the local planning authority. The development shall be managed in accordance with the details approved.

Reason: to ensure that the development has adequate evacuation arrangements and can ensure a safe means of access and egress to the site in the event of a fire. This is as set out in Policy 7.13 of the LonP, Policy D12 of LonP2021 and section 8 of the NPPF.

- 35) No groundworks beyond those enabling works and services diversions referred to in condition 36 shall take place until a written scheme of investigation (WSI) in respect of such groundworks has been submitted to and approved by the local planning authority in writing. No such groundworks shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and
- a. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works;
 - b. Details of a programme for delivering related positive public benefits;
 - c. A method statement for protecting buried remains outside the basement footprint during the construction period and
 - d. The programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: this pre-commencement condition is necessary to safeguard the archaeological interest on this site as set out in Policy S25 of the WCP and DES 11 of the WUDP. Approval of the WSI before works begin on site provides clarity on what investigations are required, and their timing in relation to the development programme.

- 36) No below ground works other than service diversions and enabling works to a depth of no more than 1.2m below the existing ground surface shall take place until a written scheme of investigation (WSI) in respect of those service diversions and enabling works has been submitted to and approved by the local planning authority in writing. No enabling works or service diversions shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and:
- a. The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works and a process for integrating the results into post-investigation programme secured by Part d of Condition 36 and

b. a method statement for protecting underlying significant archaeological remains.

Reason: to safeguard the archaeological interest in this site as set out in Policy S25 of the WCP and Policy Des 11 of the WUDP. Approval of the WSI before works begin on site provides clarity on what investigations are required, and their timing in relation to the development programme.

Appendix 2: Appearances

FOR THE APPLICANT:

Christopher Katkowski of Queen's Council

Instructed by Reza Newton, Iain Gilbey and Natasha Muszanksyj of Pinsent Mason LLP

Kate Olley

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| They called | |
| Sir David Adjaye OBE, RA MArch DipArch RIBA ARB NCARB FAIA | On Design Concept Founder, Adjaye Associates |
| Donnacha O Shea BArch MSc ARB | On Landscape Masterplan Partner Gustafson Porter and Bowman LLP |
| Asa Bruno AAdipl RIBA | On Design Process Director, Ron Arad Architects |
| Stephen Greenburg MA (Cantab) Dip Hons ARB | On Exhibition Masterplan and Concept Design Creative Director, Metaphor |
| The Rt Hon Lord Pickles and Rt Hon Ed Balls | On Project Background and Objectives Co-Chairs of the United Kingdom Holocaust Memorial Foundation |
| Professor Robert Tavernor BA DipArch PhD RIBA | On Design and Townscape appraisal Director, Tavernor Consultancy |
| Chris Miele PhD MRTPI IHBC | On Heritage Senior Partner, Montagu Evans LLP |
| Frank Hope PhD MPhil NDH NDArbor | On Arboriculture Independent Arboricultural Consultant |
| Matthew Brittle CEng RSES CSyP | On Security Head of Security, Risk and Resilience (UK), WSP |
| Chris Goddard BA (Hons), BPI MTRPI MRICS | On Planning/Policy Board Director DP9 |
| Alan Ford BA(Hons) MClfA | On Archaeology Senior Heritage Consultant, Atkins |
| Charlotte Nunns BSc (Hons) MCIWEM CWEM CEnv | On Flood Risk Principle Consultant, Atkins |
| Alex Andrews BA (Hons), MRTPI | On Transport Technical Director, WSP |
| Brett Little BA MSc CMILT | On Pedestrian Movement Head of Pedestrian Modelling, WSP |

FOR LEARNING FROM THE RIGHTEOUS

Zack Simons of Counsel

Instructed by Anthony Lishak of
Learning for the Righteous

He called
Antony Lishak

Founder and Chief Education Consultant,
Learning from the Righteous (*unable to
present oral evidence to the Inquiry*)

Alex Maws

Head of Education Grants and Projects at
the Association of Jewish Refuges

FOR THE LOCAL PLANNING AUTHORITY

Douglas Edwards QC

Instructed by the Director of Law, Bi-
Borough Legal Services

Charles Streeten

They called
Robert Ayton MA MSc
MRTPI IHBC

On Heritage
Head of Design and Conservation, City
of Westminster Council

Mark Mackworth-Praed
MSc MICF FAA

On Arboriculture
Senior Arboricultural Consultant, David
Archer Associates

David Doward
BA(Hons) MRTPI

On Planning/Policy
Area Planning Officer, City of
Westminster Council

FOR THE THORNEY ISLAND SOCIETY/SAVE VICTORIA TOWER GARDENS & THE
LONDON GARDENS TRUST

Meyric Lewis of Counsel

Instructed by Richard Buxton of
Richard Buxton Environmental and
Public Law

He called
Hal Moggridge OBE PPLI
VMH FIHort RIBA AADip
Sally Prothero BA Dip LA
MSc CMLI MIfA
Dr Rowan Moore MA Dip
Arch DCL
Susan Denyer BSc FSA

On Landscape Design
Colvin and Moggridge, consultant
On Landscape Heritage
Director LDA Design
On Design Quality
Architecture Critic, The Observer
On World Heritage
Heritage Adviser, ICOMOS
International

Jeremy Barrell BSc
FArborA DipArb CBiol
FICFor FRICS

On Arboriculture
Managing Director, Barrell Tree
Consultancy

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| Clare Annamalai | On Park Use Local resident |
| Michael Lowndes BA (Hons) Dip TP MSc Dip Cons (AA) MRTPI | On Heritage Senior Director, Lichfields |
| Michael Coombs CEng, FIStructE, MSc, DIC, BSc(Eng), Grad Dipl Ind Eng | On Flood Risk Director, Alan Baxter Associates |
| Christopher Thomas Peck MA MSc | On Transport and Pedestrian Movement Independent transport planning consultant |

FOR BARONESS DEECH

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| Brian Doctor of Counsel | Instructed by Baroness Deech |
| He called Baroness Deech | On the Principle of the Proposal, and other matters |
| Lord Carlile | On Planning Matters |
| Trudy Gold | On Holocaust Education |

INTERESTED PERSONS:

Those speaking in favour of the proposal:

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| David Cooper | Solicitor (CD 10.03) |
| Fiorella Massey | Interested person (CD10.10) |
| Jaya Pathak | Holocaust Education Trust (CD10.09) |
| Rudi Leavor | Interested person (CD10.02) |
| Mala Tribich MBE | Interested person (CD10.12 & 10.24) |
| Eric Murangwa Eugene | Director, Ishami Foundation (CD10.21) |
| Dr Toby Simpson | Director of the Wiener Holocaust Library (CD10.16 & 10.26) |
| Judith Adda | Interested person (CD 10.23) |
| Natasha Kaplinsky | Holocaust Memorial Foundation (CD10.40) |
| Imam Qari Muhammad Asim | Interested person |
| Dr Stephen Frankiss | Interested person (CD10.39) |
| Adrian Packer CBE | Echo Eternal Project (CD10.42) |
| Kish Alam | Interested person (CD10.38) |
| Archbishop Justin Welby | Archbishop of Canterbury (CD10.43) |
| Martyn Heather | Head of Education and Welfare, The Premier League (CD10.44) |
| Karen Pollock | Chief Executive Holocaust Education Trust (CD10.56) |
| Maurice Helfgott | Interested person |

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| Rt Hon David Cameron | Holocaust Commission |
| Ellie Olmer | Holocaust educator (CD10.55) |
| Dr Michael Berenbaum | Holocaust Scholar and Adviser (CD10.45) |
| Marie van der Zyl | President, Board of Deputies of British Jews (CD10.51) |
| Paul Shapiro | Director of International Affairs, US Holocaust Memorial Museum (CD10.53) |
| Ben Barklow | Chair of the Academic Advisory Group of UK Holocaust Memorial Foundation (CD10.59) |
| Angela Cohen | Chair of Holocaust Survivors '45 Aid Society |
| Janine Webber BEM | Interested person (CD10.46) |
| Olivia Marks-Woldman OBE | Holocaust Memorial Day Trust (CD10.57) |
| Chief Rabbi | Holocaust Commission |
| Robert Rinder | Interested person (CD10.61) |
| Rt Hon Gordon Brown | Interested person |
| Lily Ebert BEM and Dov Foreman | Interested persons (CD10.64) |
| Professor Stuart Foster | Director, UCL Centre for Holocaust Education |

Those speaking against the proposal

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| Sir Peter Bottomley | Member of Parliament, Worthing West (CD10.05) |
| Rabbi Jonathan Romain | Rabbi Maidenhead Synagogue (CD10.07) |
| Chris Dawes | Local resident (CD10.27) |
| Sir Jeremy Blackham | Interested person (CD10.08) |
| Lord Howard of Rising | Interested person (CD10.06) |
| Mary Dejevsky | Local resident (CD10.11) |
| Victoria Boyarsky | Interested person |
| Dr Sally Marlow | Local resident (CD10.13) |
| Professor Adam Ganz | Interested person (CD10.14) |
| Paul Thornton | London Forum of Civic and Amenity Societies (CD10.15) |
| Bob Lindsay | Interested person (CD10.17) |
| Howard Sawyer | Interested person |
| Prof Geoffrey Alderman | Interested person (CD10.20) |
| Lord Flight | Interested person (CD10.22) |
| Nathan Silver | The Westminster Society (CD10.28) |
| Paul Dimond CMG | Local Resident (CD10.30) |
| Saija Singer-Seidenfaden | Interested person (CD10.31) |
| Lord Blencathra | Interested person (CD10.32) |
| Wilfred Rimensberger | Local resident (CD10.34) |
| Reverend Graham Buckle | Local Vicar (CD10.35) |
| Professor Tom Lawson | Representing academic interests (CD10.36) |
| Mike Cunningham | Interested person (CD10.37) |

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| Raphael Wallfisch | Interested person (CD10.48) |
| Jonathan Lass | Interested person (CD10.52) |
| David Lambert | Director of the Parks Agency (10.68) |
| Lord King of Bridgewater | Interested person (10.58) |
| Viscount Eccles | Interested person (10.54) |
| Professor Sir Richard Evans | Regius Professor Emeritus of History at the University of Cambridge (CD10.50) |
| Peter Roberts | Cathedral Area Residents Group (10.62) |
| Lord Williams of Oystermouth | Interested person (CD10.60) |
| Dr Irene Lancaster | Interested person (CD10.65) |
| Charli Veale | Student, University of Bristol (CD10.63) |
| Reverend Philip Chester | Local Parish Priest (CD10.66) |
| Lord Sterling | Interested person |

Those speaking neither fore nor against

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| William Towie | Interested person (CD10.4) |
| Dr Michael Pinto Dushinsky | Interested person (CD10.19 & 10.29) |
| Ken Whittaker | Archaeologist and Historic Environment Consultant (CD10.41) |
| Mike Dunn | Historic England (CD5.36 & 10.47) |

Appendix 3: Core Documents

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| NATIONAL POLICY | | |
| CD 1.1 | National Planning Policy Framework | February 2019 |
| DEVELOPMENT PLAN | | |
| Adopted: | | |
| CD 2.1 | The London Plan | March 2016 |
| CD 2.2 | WCC Unitary Development Plan | 2007 |
| CD 2.3 | WCC City Plan | 2016 |
| Emerging: | | |
| CD 2.4 | The London Plan Intend to Publish | December 2019 |
| CD 2.5 | City Plan 2019-2040 (Reg 19 Publication Draft) | June 2019 |
| CD 2.6 | City Plan 2019-2040 (Schedule of Proposed Minor Modifications to the Reg 19 Publication Draft City Plan) | November 2019 |
| CD 2.7 | City Plan 2019-2040 2031 Submission Draft Policies Map | 2019 |
| CD 2.8 | The London Plan Examination in Public: Panel Report | October 2019 |
| SUPPLEMENTARY PLANNING GUIDANCE | | |
| Westminster City Council documents: | | |
| CD 3.1 | Conservation Area Audit and Management Proposals Westminster Abbey and Parliament Square | September 2008 |
| CD 3.2 | Smith Square Conservation Area Audit | January 2005 |
| CD 3.3 | Archaeology and Planning in Westminster SPG | November 2004 |
| CD 3.4 | Basement Development in Westminster SPG | October 2014 |
| CD 3.5 | Design Matters in Westminster | October 2018 |
| CD 3.6 | Statues and Monuments SPD | 2008 |
| CD 3.7 | Trees and the Public Realm – A Tree Strategy for Westminster | September 2011 |
| Greater London Authority Documents | | |
| CD 3.8 | Accessible London: Achieving an Inclusive Environment SPG | October 2014 |
| CD 3.9 | Central Activities Zone SPG | March 2016 |
| CD 3.10 | Character and Context SPG | June 2014 |
| CD 3.11 | Control of Dust and Emissions during Construction and Demolition SPG | July 2014 |
| CD 3.12 | Culture and Night-time Economy SPG | November 2017 |
| CD 3.13 | London Environment Strategy | May 2018 |
| CD 3.14 | London View Management Framework SPG | March 2012 |
| CD 3.15 | London's World Heritage Sites - Guidance on Setting SPG | March 2012 |
| CD 3.16 | Sustainable Design and Construction SPG | April 2014 |
| OTHER POLICY RELATED DOCUMENTS | | |
| Westminster City Council documents: | | |
| CD 4.1 | A Partnership Approach to Open Spaces and Biodiversity in Westminster | March 2019 |

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| CD 4.2 | Westminster City Council Strategic Flood Assessment | May 2010 |
| CD 4.3 | Westminster City Council Draft Strategic Flood Assessment | 2019 |
| CD 4.4 | Mayors Transport Strategy | 2018 |
| CD 4.5 | Transport for London - London Cycling Standards | 2014 |
| CD 4.6 | ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Projects | 2011 |
| CD 4.7 | Operational Guidelines for the Implementation of the World Heritage Convention | 2019 |
| CD 4.8 | Historic England, Managing Significance in Decision-taking in the Historic Environment | March 2015 |
| CD 4.9 | Historic England, The Setting of Heritage Assets | December 2017 |
| CD 4.10 | Historic England, Protection and Management of World Heritage Sites in England | July 2009 |
| CD 4.11 | Historic England, Seeing the History in View | May 2011 |
| CD 4.12 | Westminster World Heritage Site Management Plan Steering Group – The Palace of Westminster and Westminster Abbey including St Margaret’s Church World Heritage Site Management Plan | May 2007 |
| CD 4.13 | Planning Practice Guidance (as first published in March 2014 and updated regularly) | |
| CD 4.14 | Thames Estuary Plan 2100 | 2012 |
| CD 4.15 | National Joint Utilities Group Guidelines for the Planning, Installation and Maintenance of Utility Services in Proximity to Trees | 2007 |
| CD 4.16 | BS 5837: 2012 Trees in relation to design, demolition and construction | 2012 |
| CD 4.17 | Westminster City Ward Profile (St James Ward) | 2018 |
| CD 4.17 | Westminster City Ward Profile (Vincent Square Ward) | 2018 |
| CD 4.18 | World Heritage Committee – 37 th session Phnom Penh, Cambodia 16-27 June 2013, Item 8 of the Provisional Agenda: Establishment of the World Heritage List and the List of World Heritage in Danger 8E: Adoption of retrospective Statements of Outstanding Universal Value; WHC-13/37.COM/8E Paris, 17 May 2013. | 2013 |
| CD 4.19 | World Heritage Committee – 41 st session Krakow, Poland 2-12 July 2017 Palace of Westminster and Westminster Abbey including St Margaret’s Church World Heritage Site – Mission report 21-23 February 2017; WHC.17/41.COM.Paris 2 June 2017 | 2017 |
| CD 4.20 | World Heritage Committee – 41 st session Krakow, Poland 2-12 July 2017 Item 7B of the Provisional Agenda: State of conservation properties inscribed in the World Heritage List; WHC.17/41.COM/7B.Add.2. Paris 2 June 2017 | 2017 |
| CD 4.21 | World Heritage Committee – 43 rd Session -Baku, Republic of Azerbaijan 30 June-10 July 2019 Item 7B of the Provisional Agenda: State of the conservation | 2019 |

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| | of properties inscribed on the World Heritage List; WHC/19/43.COM.7B.Add. Paris 7 June 2019 | |
| CD 4.22 | List Description – Victoria Tower Gardens | |
| CD 4.23 | List Description – Buxton Memorial | |
| CD 4.24 | List Description – Memorial to Emmeline Pankhurst | |
| CD 4.25 | List Description – Statuary Group of The Burghers of Calais | |
| CD 4.26 | List Description – River Embankment Wall from the Houses of Parliament to Lambeth Bridge | |
| CD 4.27 | List Description – Palace of Westminster | |
| CD 4.28 | List Description – Lambeth Bridge and Attached Parapets, Light Standards, Associated Walls to Approaches and Obelisks | |
| CD 4.29 | List Description – Norwest House Millbank | |
| CD 4.30 | List Description – Nos 1 and 2 Millbank, The Church Commissioners | |
| CD 4.31 | List Description – St John’s Concert Hall | |
| CD 4.32 | National Design Guide | |
| CD 4.33 | UNESCO World Heritage Centre – The Criteria for Selection | |
| SUPPORTING DOCUMENTS | | |
| Planning application documents | | |
| CD 5.1 | Environmental Statement Vol 3, Built Heritage, Townscape and Visual Impact Assessment | December 2018 |
| CD 5.2 | Part A Environmental Statement Vol 3, Addendum to Built Heritage, Townscape and Visual Impact Assessment | April 2019 |
| CD 5.2 | Part B Environmental Statement Vol 3, Addendum to Built Heritage, Townscape and Visual Impact Assessment | April 2019 |
| CD 5.3 | Environmental Statement Vol 5, Appendix K – Flood Risk Assessment | December 2018 |
| CD 5.4 | Environmental Statement Vol 5, Addendum to revised Appendix K – Flood Risk Assessment | October 2019 |
| CD 5.5 | Energy Statement | December 2018 |
| CD 5.6 | Sustainability Statement | December 2018 |
| CD 5.7 | Design and Access Statement, Part 1 | December 2018 |
| CD 5.7 | Design and Access Statement, Part 2 | December 2018 |
| CD 5.7 | Design and Access Statement, Part 3 | December 2018 |
| CD 5.7 | Design and Access Statement, Part 4 | December 2018 |
| CD 5.8 | Visitor Management Strategy, Part 1 | December 2018 |
| CD 5.8 | Visitor Management Strategy, Part 2 | December 2018 |
| CD 5.9 | Prime Ministers Holocaust Commission Report ‘Britain’s Promise to Remember’ | January 2015 |
| CD 5.10 | Governments Estates Strategy | July 2018 |
| Correspondence | | |
| CD 5.11 | WCC Planning Sub-Committee Report, 11 February 2020 | 2020 |

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| CD 5.12 | LUC Review of the Environmental Statement for the UK Holocaust Memorial and Learning Centre Final Review Report: Review of Applicants Response | October 2019 |
| CD 5.13 | LUC Review of the Environmental Statement for the UK Holocaust Memorial and Learning Centre Briefing Note on Alternatives | August 2019 |
| CD 5.14 | GLA Stage 1 Report ref.GLA/5035/01 | March 2019 |
| CD 5.15 | Part 1 -Historic England Response letter | March 2019 |
| CD 5.15 | Part 2 -Historic England pre-app letter | November 2018 |
| CD 5.16 | Environment Agency Response letter | December 2019 |
| CD 5.17 | Save Victoria Tower Gardens Objection | March 2019 |
| CD 5.18 | A response by the Thorney Island Society together with Save Victoria Tower Gardens | March 2019 |
| CD 5.19 | Objection letter from the Thorney Island Society | May 2019 |
| CD 5.20 | The Thorney Island Society response to the New Environment Statement documents, submitted by MHCLG/UKHMF in October 2019 | December 2019 |
| CD 5.21 | The Thorney Island Society Objection to the application to build UKHMLC in Victoria Tower Gardens (19/00114/FULL) | 2019 |
| CD 5.22 | WCC Highways Department Comments – email for David Doward | May 2019 |
| CD 5.23 | Part 1 VTG Conservation and Significance Statement | January 2019 |
| CD 5.23 | Part 2 London Parks and Gardens Trust letter | February 2019 |
| Call-in documents | | |
| CD 5.24 | Part 1 – UKHMLC Statement of Case | |
| CD 5.24 | Part 2 – Appendix 1 Call in letter dated 5 November 2019 | |
| CD 5.24 | Part 3 – Appendix 2 Committee Report 11 February 2019 | |
| CD 5.24 | Part 4 – Appendix 3 Committee Draft Minutes 11 February 2019 | |
| CD 5.24 | Part 5 – Appendix 4 Arboricultural Impact Statement Overview | |
| CD 5.25 | WCC Statement of Case | |
| CD 5.26 | Baroness Deech Statement of Case | |
| CD 5.27 | Learning from the Righteous Statement of Case | |
| CD 5.28 | London Parks and Gardens Trust Statement of Case | |
| CD 5.29 | Thorney Island Society/Save Victoria Tower Gardens Statement of Case | |
| CD 5.30 | Part 1 - Statement of Case | |
| CD 5.30 | Part 2 - Conditions | |
| CD 5.30 | Part 3 – Tracked changed Conditions | |
| CD 5.30 | Part 4 – Amended and New Conditions | |
| CD 5.30 | Part 5 – Excavation Plan | |
| CD 5.30 | Part 6 - Condition 31 | |
| CD 5.30 | Part 7 – Proposed basement plan | |
| CD 5.30 | Part 8 – Proposed ground floor plan | |

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| CD 5.30 | Part 9 – Scaled Excavation Plan | |
| CD 5.30 | Part 10 – Condition Plan 1 and Condition 25 | |
| CD 5.31 | Tree Statement of Common Ground | |
| CD 5.32 | Part 1 – Draft S106 Agreement | |
| CD 5.32 | Part 2 – Location Plan | |
| CD 5.32 | Part 3 - Highway Works Location Plan | |
| CD 5.32 | Part 4 – Regulation 122 Statement (WCC Counterpart) | |
| CD 5.32 | Part 5 – Regulation 122 Statement (Applicant Counterpart) | |
| CD 5.32 | Part 6 – Draft S106 Agreement 12 November 2020 draft | |
| CD 5.32 | Part 7 – Completed S106 Agreement 18 December 2020 | |
| CD 5.33 | Ministry of Housing Communities and Local Government Planning Casework Unit - Call in letter | |
| CD 5.34 | HM Treasury Managing Public Money (July 2013 with annexes revised March 2018) | |
| CD 5.35 | Save Victoria Tower Gardens Campaign – Security, crime and disorder assessment | June 2019 |
| CD 5.36 | Part 1 Historic England Statement by Mike Dunn | |
| CD 5.36 | Part 2 Appendices to Historic England Statement | |
| DECEMBER 2018 PLANNING APPLICATION SUBMISSION | | |
| CD 6.1 | Planning Statement | December 2018 |
| CD 6.2 | Application Form | December 2018 |
| CD 6.3 | BREEAM pre-assessment | December 2018 |
| CD 6.4 | Ventilation Management Strategy | December 2018 |
| CD 6.5 | Arboricultural Impact Assessment | December 2018 |
| CD 6.6 | Wind Microclimate Assessment | December 2018 |
| CD 6.7 | Structural Methodology Assessment | December 2018 |
| CD 6.8 | Waste Management Strategy | December 2018 |
| CD 6.9 | Utilities Statement | December 2018 |
| CD 6.10 | Environmental Statement Vol 1, Non-Technical Summary | December 2018 |
| CD 6.11 | Environmental Statement Vol 2, Main text | December 2018 |
| CD 6.12 | Environmental Statement Vol 4, Figures and drawings | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix A | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix B | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix C | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix D | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix E | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix F | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix G | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix H | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix I | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 1 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 2 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 3 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 4 | December 2018 |

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| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 5 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 6 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 7 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix J Part 8 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix K Part 1 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix K Part 2 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix K Part 3 | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix L | December 2018 |
| CD 6.13 | Environmental Statement Vol 5, Appendix M | December 2018 |
| CD 6.31 | Environmental Statement Vol 5, Appendix N | December 2018 |
| OTHER CORRESPONDENCE | | |
| CD 6.32 | GP + B Covering letter | August 2019 |
| CD 6.33 | Bartlett Consulting Letter, Ref: JH JPL/190181/R1 | August 2019 |
| CD 6.34 | Bartlett Consulting Letter, Ref: JH JPL/190181/R2 | August 2019 |
| CD 6.35 | Sharon Hosegood Associates Root Investigation Report, Ref SHA 621 | June 2019 |
| CD 6.36 | Dr. Frank Hope Peer Review | August 2019 |
| CD 6.37 | Environmental Statement Vol 5, Revised Appendix F Archaeological Desk Based Assessment | October 2019 |
| CD 6.38 | Victoria Tower Gardens – Geophysical Survey Report | August 2017 |
| CD 6.39 | Environmental Statement Vol 5, Appendix K Flood Risk Assessment Part 1 | July 2019 |
| CD 6.40 | Environmental Statement Vol 5, Appendix K Flood Risk Assessment Part 2 | July 2019 |
| CD 6.41 | UK Holocaust Memorial, Victoria Tower Gardens SW1P, City of Westminster – Report on Archaeological Watching Brief | June 2019 |
| CD 6.42 | UK Holocaust Memorial, Victoria Tower Gardens SW1P, Geoarchaeological Evaluation Report | November 2019 |
| CD 6.43 | Historic England (GLAAS) Response Letter | November 2019 |
| CD 6.44 | Sharon Hosegood Associates Root Investigation Report, Ref SHA 621 | March 2018 |
| CD 6.45 | UK Holocaust Memorial, EIA Scoping Report, Ministry of Housing, Communities and Local Government | July 2018 |
| CD 6.46 | Part 1 – The Royal Parks Letter | February 2018 |
| CD 6.46 | Part 2 – Appendices to The Royal Parks letter | |
| CD 6.47 | Westminster Society objection letter | |
| CD 6.48 | Cathedral Area Residents Group email | February 2019 |
| CD 6.49 | Environmental Statement Vol 2, Revised Chapter 4 Alternatives (PINS Reg 25 Further Information | June 2020 |
| CD 6.50 | Ground Investigation Report by Ground Engineering (Ref C14757) | August 2019 |
| CD 6.51 | Part 1 – TfL letter | October 2020 |
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| LEGISLATION | | |
| CD 7.1 | Town and Country Planning (Environmental Impact Assessment) Regulations 2017 | |

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| CD 7.2 | Bedford Borough Council v (1) Secretary of State for Communities and Local Government and (2) Nuon UK Ltd [2012] EWHC 4344 (Admin) | |
| CD 7.3 | Decision letter of Secretary of State for Housing, Communities and Local Government in relation to Land at CitroenSite, Capital Interchange Way, Brentford TW8 0EX (Application Ref: GLA/4279 & 01508/A/P6) | September 2020 |
| PROOFS OF EVIDENCE | | |
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| CD 8.1 | Proof of Evidence of Rt Hon Ed Balls and Rt Hon Lord Pickles | |
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| CD 8.31 | Proof of Evidence of Brett Little | |
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| CD 8.36 | Proof of Evidence of David Doward | |
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| CD 8.39 | Proof of Evidence of Mark Mackworth-Praed | |
| CD 8.40 | Part 1 -Appendices to Proof of Evidence of Mark Mackworth-Praed | |
| CD 8.40 | Part 2 – Helliwell, DR & Fordham SJ (1992) Tree roots and tree growth, Reading Agricultural Consultants | |
| CD 8.40 | Part 3 – Crow, P (2005) The Influence of Soils and Species on Tree Root Depth, Forestry Commission | |
| CD 8.40 | Part 4 – Smiley, ET (undated) Preventing Grade Change Damage to Trees, Research Laboratory Technical Report, Bartlett Tree Experts | |
| CD 8.40 | Part 5 – Benson A, Koeser AK & Morgenroth J (2019a) A test of tree protection zones: Responses of live oak (<i>Quercus virginiana</i> Mill) to root severance treatments, Urban Forestry & Urban Greening 38: 54-63. | |
| CD 8.40 | Part 6 – Perry, TO (1989) Tree Roots: Facts and Fallacies, <i>Arnoldia</i> 49, 1-21. | |
| CD 8.40 | Part 7 – Nicoll BC, & Armstrong A (1998) Development of Prunus root systems in a city street: pavement damage and root architecture, <i>Arboricultural Journal</i> 22, 259-270. | |
| CD 8.40 | Part 8 – Benson A, Morgenroth J & Koeser A (2019b) Responses of mature roadside trees to root severance treatments, <i>Urban Forestry & Urban Greening</i> 46. | |
| CD 8.40 | Part 9 – Benson A (2020) Root Pruning, <i>The Arb Magazine</i> 189, Summer 2020, Arboricultural Association | |
| CD 8.40 | Part 10 – Cutler DF, Gasson PE, & Farmer MC (1990) The Wind Blown Tree Survey: Analysis of Results, <i>Arboricultural Journal</i> 14 (3), 265-286. | |
| CD 8.40 | Part 11 – Perry TO (1982) The Ecology of Tree Roots and the Practical Significance Thereof, <i>Journal of Arboriculture</i> 8(8) 197-211. | |
| CD 8.40 | Part 12 – Gilman, EF (1989) Predicting root spread from trunk diameter and branch spread, <i>Arboricultural Journal</i> , 13, 25-32. | |
| BARONESS DEECH | | |
| CD 8.41 | Part 1 - Proof of Evidence of Baroness Deech | |
| CD 8.41 | Part 2 – Appendix (Berlin) to Proof of Evidence of Baroness Deech | |

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| THE THORNEY ISLAND SOCIETY AND SAVE VICTORIA TOWER GARDENS | | |
| CD 8.47 | Proof of Evidence of Christopher Thomas Peck | |
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| CD 10.9 | Jaya Pathak | |
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| CD 10.11 | Mary Dejevsky | |
| CD 10.12 | Mala Tribich MBE | |
| CD 10.13 | Dr Sally Marlow | |
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| CD 10.30 | Paul Dimond | |
| CD 10.31 | Saija Singer-Seidenfaden | |
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| CD 10.35 | Rev Graham Buckle | |
| CD 10.36 | Correspondence to which Prof Tom Lawson referred | |
| CD 10.37 | Mike Cunningham | |
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| CD 10.42 | Adrian Packer CBE | |
| CD 10.43 | Archbishop Justin Welby | |
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| CD 10.48 | Raphael Wallfisch | |
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| CD 10.51 | Marie van der Zyl | |
| CD 10.52 | Jonathan Lass | |
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| CD 10.55 | Ellie Olmer | |
| CD 10.56 | Karen Pollock CBE | |
| CD 10.57 | Olivia Marks-Woldman | |
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| CD 10.62 | Cathedral Area Residents Group | |
| CD 10.63 | Charli Veale | |
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| CD 11.2 | Applicant’s Opening Submissions | |
| CD 11.3 | Schedule of differences in tree measurements | |
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| CD 11.6 | Asa Bruno slide XC | |
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| CD 11.12 | Tree Health & Vitality Diagnostic Assessment | |
| CD 11.13 | Note regarding Tree Vitality Assessment | |
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| CD 11.15 | Goddard answers to Dr. Gerhold questions | |
| CD 11.16 | Dr Miele Responses to Dr. Gerhold questions | |
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| WESTMINSTER CITY COUNCIL INQUIRY DOCUMENTS | | |
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| CD 12.2 | WCC Opening Submissions | |
| CD 12.3 | Decision Notice 13/07747/FULL Temporary Education Centre in VTG | |
| CD 12.4 | Tender Brief Extract | |
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| RULE 6 - LGT/TIS/SVTG INQUIRY DOCUMENTS | | |
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| CD 13.5 | Speaking Note of Susan Denyer | |
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| CD 14.5 | 'Feldman 2' correspondence 3 November 2015 | |
| CD 14.6 | UKHMF Search for a Central London Site | |
| CD 14.7 | The role of sacrality in British state-supported Holocaust remembrance | |
| CD 14.8 | The Dark Side of Holocaust Education | |
| CD 14.9 | 36 Questions About the Holocaust | |
| RULE 6 - LEARNING FROM THE RIGHTEOUS INQUIRY DOCUMENTS | | |
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| CD 15.2 | Transcript of 1 October 2020 lecture by Prof Michael Berenbaum | |
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| CD 16.1 | Baroness Deech | |

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| CD 16.2 | The Thorney Island Society/ Save Victoria Gardens/London Gardens Trust | |
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| CD 16.3A | R (Irving) v Mid-Sussex District Council | |
| CD 16.4 | Learning from the Righteous | |
| CD 16.5 | Applicant | |

Appendix 4: Interested Persons oral contributions

The oral presentations from interested parties are, as far as possible, set out in full, either from supplied speaking notes or transcribed from their presentations. The presentation of these views in their raw and largely unedited form is intended to complement the abridged versions presented in Section 11.

Those speaking in favour of the proposal

Survivors and their families and affiliated societies

Lily Ebert BEM and Dov Foreman

My name is Lily Ebert, I am here with my great-grandson Dov and I am a Holocaust survivor. I am speaking in support of the Holocaust Memorial. I want to tell you about my story because in a few years' time I won't be able to. It will have become history.

I was born in Hungary, the oldest of 6 children.

When the Nazis occupied Hungary, we had to give up everything. My brother knew things would get worse; he hid a few items of jewellery, including a golden pendant, in the heel of my mother's shoe.

In July 1944 I was deported to Auschwitz Birkenau along with my mother, my younger brother and 3 of my sisters.

We travelled in cattle trucks, and the conditions were indescribable – people began to die.

As we travelled my mother said maybe we should swap shoes. And we did. After 5 days we arrived at Auschwitz. My mother, my youngest sister and my brother were sent straight to the gas chambers. I never saw them again.

I still find it hard to talk about Auschwitz – how do you describe a factory of death? A place of industrial killing?

The Nazis shaved our heads and took away our clothing. By chance, I was able to keep my shoes. When the heel of my shoe wore out, I moved the jewellery and kept it safe by hiding it in a piece of bread. It survived along with me and is the only thing I have from my childhood. I wear it every day.

Hundreds of members of my extended family were murdered during the Holocaust. I am telling you what took place because they cannot.

I promised myself, if I survive against all the odds, I will do all I can to share my story, for myself and for those that did not survive. And I do. The world should not forget the most terrible crime against humanity. I am a witness.

With the Holocaust Educational Trust, I speak to students and organisations as much as I can because I want them to know what happened. But I know that there will come a time when I can't do this anymore. That is why we must build this Memorial to educate the world and ensure that the terrible crimes of the Holocaust will never ever happen again.

Dov Forman

My name is Dov Forman and I'm 16 years old.

You might ask, what is a 16-year-old doing at a Planning Inquiry, and why do I care?

The answer is sat here next to me; my great grandma Lily Ebert. I do not remember a time when I didn't know about the Holocaust, or what my great grandma experienced. It is a part of my life and of all of Lily's many descendants.

Growing up I have heard Lily speaking formally and informally about her experiences during the Holocaust – especially through organisations like Holocaust Educational Trust.

During lockdown, not seeing Lily for two months made me realise how precious she is, and that she will not live forever. I also realised that I am now already older than she was when the Nazis invaded Hungary in 1944. As soon as the lockdown rules were eased and I could spend time again with Lily, I was determined to absorb her testimony whilst I still have the chance. I wanted to help people understand what she had to go through, just for being Jewish, so since then I have been promoting my great-grandma's testimony using social media. And the response has been remarkable – even connecting us to the family of her liberator.

I know that my great-grandma's story of surviving Auschwitz is not the typical story of the Holocaust. On arrival her mother, sister, brother, other family members and many other members of her community were gassed and cremated. That is what happened to most who arrived at Auschwitz.

The typical story has no witness to tell it. For most, their entire families, villages and communities were murdered in the ghettos, concentration, and death camps, by gas, starvation, and bullets.

It is our responsibility, as those who know what happened to tell those stories. Lily is a witness to the Holocaust. And I am her witness.

As Lily's great-grandson, the duty of sharing her story are now falling upon me and my generation. But, not everyone sees the tattoo of a number on the arm of their great grandma. Lily's tattoo reads A-10572 ('A' for Auschwitz, 'One zero' for block 10 and 572 for prisoner number). Most people in this country are not Jewish and do not know Holocaust survivors or witnesses.

I am studying history A-level at school, but the Holocaust is not a subject that can just be taught in a classroom and through a textbook.

So we need a Memorial and we need its accompanying Learning Centre. There is, after all, a lot to learn. We need an enduring reminder that the language of hate, if left unchecked, can turn into something far worse; a disaster that transcends national boundaries.

Locating this Holocaust Memorial next to the institutions and icons of the government imparts the message that needs to be heard. The heritage we should pass to future generations is that genocide is inhumane and unacceptable.

Remembrance of the Nazis' crimes against humanity should not be hidden from maximum public view. The Memorial is no use in some forgotten and remote location where it cannot be seen.

As a young person, seeing decision makers walk in and out of Parliament and knowing they see this important symbol of history reassures me that they know their duty to stop hatred in its tracks.

With education comes remembrance – this memorial will give people somewhere to remember and reflect. When we no longer have survivors like Lily among us, this memorial will help to ensure that their experiences are never forgotten. We can create the next generation of witnesses.

You have heard the story of my family, and the drive that we have to remember those we lost in the Holocaust. It is of vital importance that the stories of millions of others who have nobody to remember them are heard.

We strongly believe that a Memorial and a Learning Centre will enable this hope to become a reality. We cannot afford to wait. We cannot afford to hide away from our responsibility to remember the six million Jewish men, women, and children, murdered simply because they were Jewish.

On behalf of my great-grandma, my family, and all those who survived, we speak today, firmly in support of the Holocaust Memorial and Learning Centre. Thank you.

Janine Webber

My name is Janine Webber, I am a Holocaust survivor and I'm speaking in favour of the memorial.

I was born in 1932, in a city called Lvov which at the time was in Poland but is now in present day Ukraine. I lived with my parents and my younger brother and life was very happy. However, in 1939 the Soviets invaded and later, in 1941, after the Nazi invasion of the Soviet Union, the Nazis occupied our city. Within weeks of the Nazi invasion, thousands of Jewish people were murdered by the Nazis and their Ukrainian collaborators. My happy family life changed overnight.

My family had to leave our home and we were moved to the edge of the city, in preparation for a move to the city's ghetto. We were only able to take one suitcase and were only allocated one room in a small house. We lived with my aunt and two other families. We lived in constant fear of raids by the Gestapo and so my parents dug a hiding place for us under a wardrobe. However, this was so cramped not all of my family could fit. They took my father and my grandmother away. They shot my father and I never saw my grandmother again. Again we hid, in kennels, and the Gestapo did not find us.

After this, my family and I were sent to the Lvov ghetto. The conditions in the ghetto were indescribable. The Nazis hanged people and left them for days for us all to see. There was no food, it was dirty, and people became very sick. My mother, who was only 29 years old, became ill with typhus. I remember my uncle taking her to the basement of the building to hide her. The last time I saw my mother she was lying in the basement and I can remember being so upset and puzzled that she did not comfort me or reach out to me. She had always

been so loving. I ran out of the basement in fright and I knew I had lost my mother.

People in the ghetto were being taken to Belzec extermination camp in deportations. My uncle found a hiding place for me at a nearby farm with my aunt Rouja, however, soon after the farmer attacked her and she ran away. I was locked away in isolation and after this they threw me out. My uncle found us another place to hide, this time with my seven year old brother, Tunio. This was another farm, but the Polish daughter betrayed us to an SS man. They came to the farm and although they let me go, they killed my little brother, he was just seven years old. I then had to wonder the Polish countryside and found work as a shepherdess. This family found out I was Jewish and so I had to return to Lvov.

My aunt Rouja had given me the name of a young Polish Catholic man, Edek, who was working as a night watchman in a convent. I made contact with Edek and he took me to an attic where I was amazed to discover 13 other Jews whom he was hiding. One of them was my aunt Rouja and another was my uncle, and we were reunited. We stayed together in a hole under the stable floor for a year and by that time I could hardly walk, and it was so hot and uncomfortable. My aunt knew I couldn't stay there any longer and she arranged some false papers for me. My new identity was that of a Polish Catholic girl and I went to hide in a convent. After this, I was taken to live with a Catholic priest. Lastly, I lived with another Polish family, I lived as a Catholic and worked as their maid, until liberation in 1945. At the end of the war, my aunt Rouja came for me and we went to Paris. I stayed in a Jewish orphanage.

I came to the UK in 1956. Here, I married and had two sons. Although my experiences are difficult for me, I feel it is vital to tell others about my experiences so that we can work towards a more humane world together. For a number of years, I have been visiting schools, universities, workplaces, voluntary organisations in a bid to educate people about where antisemitism and racism can eventually lead. It is not easy to relive these experiences, remembering all who I lost, but I do it because it is the right thing to do. By now, I believe I have spoken to tens of thousands of students and in 2018 I spoke to over 40,000 at once in a live broadcast. I received a British Empire Medal from the Queen in 2018 for services to Holocaust education and remembrance. As you can see, doing my part to help educate people about the horrors of the Holocaust is so important to me.

I strongly believe that a new Holocaust memorial and learning centre will not only assist my mission of educating the next generation. But it will preserve the voices of other survivors, who all have their own stories to tell, their own families to remember. Millions of Jews did not get the chance to survive nor the chance to visit schools and share what happened. We must therefore ensure that these stories are heard. A central location such as Westminster, enables a focal point for this learning. More than this, it will facilitate the assistance of our leaders. They can more easily lend their voices to our joint cause of remembrance and raising awareness. I believe I have an obligation to honour and remember those who perished.

All of us first-hand witnesses are in our eighties and nineties. Although we are so encouraged by the young people we meet, many of whom declare that they

will be our witnesses in the future, I feel more is always needed. Without education, without memorials open to the public, our stories will not be passed on. We need as many people as possible to see our first-hand documents, hear our voices and to pledge to make this society a better place. I therefore argue that a public memorial and learning centre in the prominent location of Westminster, will go so far in securing our legacies.

Maurice Helfgott

In 2014 the PM set the original goal of the HM: to make sure that we remember the events of the Holocaust so that in 50 years time, in 2064, it is as vibrant and strong a memory as it is today.

As time goes on there are fewer survivors around. It is important to take the long view: the importance of the memorial is not so much that it is needed today, but that it will be needed in 2064 and 2164. When the survivors arrived in 1945 people didn't want to talk about the Holocaust or here the stories of the survivors but as time has gone on there has been an interest in hearing these stories which over the decades have been told reasonably often and reasonably well. But in the decades to come how will these important lessons be learned? It is very important for the Holocaust memorial to be built next to the mother of parliament because of the symbol that it would represent: that the British nation decided to place it here, with cross party support. In this location it will be noticed: it cannot be ignored.

In the 1970s Sir Ben was involved in establishing the small memorial in Hyde Park: that was an achievement then. Not many people know where that stone is: everyone will know where the current proposal is. The corollary to that is, if it not built with the level of support that it has, they will be aware that it has not been built.

Sir Ben is a man of incredible confidence and determination. He has been involved in the Holocaust Commission and argued for colocation with other organisations. However, the power and symbolism of the location in VTG overrides all other practical considerations: this is unique.

The architecture is deliberately non-specific, beautiful and uplifting. The competition entries included more traditional designs evoking the camps and their victims. But the Commission unanimously voted for something aspirational, in keeping with its setting, that would last for decades. If you had asked the survivors what they had wanted, it would be something more traditional. However, this design is more forward looking and inclusive.

I have had the privilege of growing up with and being influenced by a survivor, a leader, focused on spreading the message of tolerance, teaching the lessons of the Holocaust, protecting the ideals of democracy and the rule of law. What this memorial does, and why my Dad at 91 is still out there articulating, encouraging this to be built, is so that this will be there in 50, 100, 150 years time. No other location will have this significance at this time. This may be qualitative, but it is unparalleled. It is important to take the long view: history will be the judge of that.

Rudi Leavor

My name is Rudi Leavor and I was born in Berlin in May 1926, so I am almost 94 and a half! Although modesty prevents me talking too much about myself, I was awarded a BEM for my work on interfaith relations. I am one of the lucky ones. My immediate family and I fled from Berlin and came to England, arriving in Bradford in November 1937. That I could come to England was fortunate; my parents being able to secure visas. But, although we were fortunate to escape, my family lost 13 of our closest relatives in the Holocaust. Persecuted by a regime and a twisted ideology, but murdered by conscious and witting human beings. And, it is both for the memory of those who perished and the opportunity to learn about their experiences, I feel it is imperative that there is a Memorial and a Learning Centre.

The Holocaust was a once-in-a-world life-time event, surpassing even the Crusades in its cruelty, being not only cruel but with unnecessarily obscene meanness, making death even more horrible than it needed to be. To commemorate this monstrosity is essential and reflects and recognises the growing number of memorial events that are indeed held across our country and worldwide annually, and which I have personally had the honour to participate and recite the Memorial prayer, El Male Rachamim, including once at the national Holocaust Memorial Day commemoration.

This is a matter of honour for our country. We must have our own statement to stand alongside the growing number of monuments in other countries around the world. Such a memorial must stand out and make its mark loud and clear. The siting of the proposed memorial in VTG makes a bold statement, which cannot be missed and would proudly stand to expose the shame, depravity and darkness of the Holocaust for as long as the Houses of Parliament will stand. I strongly and passionately believe that this proposed prominent Memorial and Learning Centre will frame the story of the Holocaust in public consciousness. It will bring awareness of the greatest tragedy in the history of mankind. It will act as a warning as to the evil that mankind can do. But, above all, it will stand to the permanent honour of the United Kingdom and as an eternal memorial for those who perished so needlessly.

Mala Tribich MBE

My name is Mala Tribich and I am a Holocaust survivor.

I was born in Piotrkow, Poland and lived a happy life with my parents Sara and Moishe, my brother Ben and my sister Lucia. When I was nearly 9 years old my life changed forever. The Nazis invaded Poland and over the next five and a half years I lost my parents, sister and most of my extended family. Our town was the first in Poland to have a ghetto. All the Jews of the town were incarcerated in these crowded and unhygienic conditions; deprived of the most basic human rights.

In order to avoid the deportations to labour and death camps, my parents arranged for me, along with my cousin Idzia, to travel to Czestochowa to stay with a Christian family, for which they paid. However, soon after this Idzia asked to return to the ghetto because she missed her family. I stayed and when I returned to the ghetto I found out that Idzia had never made it back to her

parents. We never heard from her again and her parents never got over her disappearance. She was only a young girl.

In 1942, my mother and 8 year old sister Lucia were taken from the ghetto, to the nearby Rakov forest together with 560 others. There, they were brutally murdered. One of my uncles was also shot and my aunt was deported, so I had to look after their 5 year old daughter, my cousin Ann. At the age of 12 I became a slave labourer when the Piotrkow ghetto was finally liquidated. After 18 months Ann and I were deported to Ravensbruck concentration camp, whilst the men, including my brother Ben and my father, were sent to Buchenwald. After about ten weeks at Ravensbruck we were deported to Bergen Belsen in cattle cars.

During those long 5 and a half years we would say to each other that it can't get any worse than this, but when we arrived in Bergen-Belsen that was the ultimate, it was horrendous, beyond human endurance. The first thing that hit you was the smell and smog. There were skeletons shuffling along aimlessly in a daze and as they shuffled they would collapse and die. There were dead bodies everywhere and piles of naked twisted decaying corpses. I heard that there was a children's home somewhere in the camp and we quickly set out to find it. We were lucky to get in, but I still succumbed to typhus. I remember coming into consciousness on my bunk by the window and seeing people running. That was the 15th of April 1945 when we were liberated by the wonderful British forces. I cannot describe what it meant to be treated with kindness – as human beings – by these British soldiers.

My cousin Ann survived and so did her mother. I was sent to Sweden with some other children in order to recuperate. Whilst there, I learned that my brother Ben was the only other survivor of my family, we were reunited in England in 1947. It is here in the UK, that I have rebuilt my life, got married, had children and later, grandchildren.

For decades, I have shared my story with tens of thousands of people across this country. Year on year I tell my testimony in schools, universities, government departments and businesses. The vast majority of the people I speak to are students at school or those who are just about to enter university. I hope that my words and my story will reach them, that they will learn from the past, and work towards building a better world. I am proud to share my experiences and have done so for many years. In 2012 I received an MBE from Her Majesty the Queen to recognise my contribution in educating the next generation.

But, despite my talks and those of my brave fellow survivors who also speak in schools year in, year out, the lessons of the Holocaust are yet to be learnt. Prejudice and discrimination still live on. I really believe that a memorial next to Parliament, where vital decisions are made, will help us to learn the vital lessons from the past. What better symbol to remind our Parliamentarians and the wider public of where apathy as well as prejudice and hate can ultimately lead? What better legacy than to have a memorial and a learning centre in which thousands of students and teachers can learn more about the Holocaust? This is an issue of the utmost national importance. I would even say, it is an issue of international importance. Britain must lead the way in educating the next generation about the dangers of antisemitism, hatred and racial prejudice. A national memorial, in

the shadow of Parliament, will enable not just hundreds of thousands of British students to learn more, but countless other members of the public to do so too.

I am 90 years old. I intend to share my testimony for as long as I am able to, but there will become a time when this is not possible. As the Holocaust moves further into history and we survivors become less able to share our testimonies this Memorial and Learning Centre will be a lasting legacy so that future generations will understand why it is important for people to remember the Holocaust, to learn from the past and stand up against injustice. The memory of the Holocaust cannot be left to fade when us eyewitnesses are no longer able to share our memories. I implore the Planning Inspector to please support this vital Memorial and Learning centre.

Angela Cohen, Chair of Holocaust Survivors'45 Aid Society

I truly believe that the Holocaust Memorial should be built in VTG. I am the Chair of the 45 Aid Society. 732 Holocaust Survivors came to the UK in 1945, most of them having lost their entire families in the cruellest way we can imagine. This group became known as the boys even though it contained 130 girls. They settled, set up businesses, married, had families and we are eternally grateful to the country that became their home. In 1963 they set up the 45 Aid society, Headed by our former Chairman, and now President, Sir Ben Helfgott. Their aim was to educate and teach the lessons of the Holocaust, support their members, and give back to their adopted country by through supporting many worthy causes and charities throughout the UK. The charity is now run by the 2nd and 3rd generation who are continuing their legacy.

My late dad came from a small town in Poland, where he lived with his parents and was the eldest of six children, a brother and four sisters. His whole family was murdered in the gas chambers at Treblinka. His youngest sister Miriam was nine years old. In 1942 at the Treblinka alone 10,000 men, women and children were massacred every single day.

Germany in the 1920's was the most fertile ground for intellectuals, scientists artists, musicians and innovators. There were open discussions about LGBT rights, women have had the vote since 1910 and have 10% of the seats in parliament. It has seen the birth of the reform Jewish movement. And then the black clouds descended. Poverty, hyperinflation, mass unemployment, a treaty broken, a nation aggrieved, and the wrong individual at the right time appeared. In the blind of an eye the world changed.

That was the past, now let us return to the present. Can the past insulate us from the future? A holocaust memorial that will remember the 6 million Jews and others that were massacred because it was felt that they were unworthy for life. This proposed memorial sends a message of hope that transcends party politics and even time itself. It calls out to those in power, and those who seek it in the mother of all parliaments, here in Westminster, never to be complacent. Protecting our democracy requires more than courage, it demands that we never take it for granted. The rule of law is not just a theory, and British freedom is more than just a feeling of security. A memorial here in VTG be a beacon of light shining into the heart of our noble democracy.

Our houses of parliament and the Holocaust Memorial must stand side by side and be a guidepost for tolerance and kindness towards each other. It will be a powerful statement that we have learnt and are still learning the lessons of the past. It will teach our children, and their children, the most significant salient lessons that are as relevant today, and in fact today more than ever, a message that all human life has to be valued, treasured and cherished.

Marie van de Zyl President, Board of Deputies of British Jews

The Board of Deputies wholeheartedly supports the proposals for the UK National Holocaust Memorial. The Holocaust was the single greatest crime against humanity that the world has seen – so great, in fact, that the term ‘genocide’ was coined to describe it by Polish Jewish lawyer Raphael Lemkin. Six million Jews, alongside other victims of Nazi persecution, including Roma, gay and disabled people, were murdered in industrial death factories as the Second World War raged.

In less than four years most of Europe’s Jewish population – 2 out of every 3 Jews – were murdered. In 2014, the Board of Deputies submitted a response to the Prime Minister’s Holocaust Commission recognising the need for a new Holocaust memorial. A permanent commemoration to the 6 million Jewish people murdered in the Holocaust is an important and timely project. At a time when the number of Holocaust survivors is dwindling by the year, and when antisemitism and racism are on the rise across Europe and in the UK, a permanent and visible memorial will serve as a constant reminder of the danger of complacency to those whom we elect to represent us.

Whilst there are existing memorials in the UK, they all currently lack the stature and the visibility that the proposed project promises. Much has been said in recent months and years about the proposed memorial in VTG – about whether it is the right location and the right form of memorial. It is my belief that there is something uniquely powerful in locating a UKHMLC to humankind’s greatest crime right next to the centre of the UK’s democracy in Westminster. The symbolism of a memorial to victims of genocide alongside our national Parliament would be hugely powerful. Whilst the Holocaust was a particular crime against Jewish people, alongside other victims of Nazi persecution, including Roma, gay and disabled people, the messages and learnings that one should glean from its memorialisation are a powerful reminder of the universal values of fairness and justice that a democratic society has the responsibility to bestow upon its citizens.

Moreover, in our era when there are politicians and political movements, in different countries, who purposely or passively spread hatred of minority groups, including our own, it sends an important message about the importance of the Holocaust to our nation’s history and our collective memory. It would be fair to say our country had a mixed record in its response to the Nazis’ attempted genocide. On the one hand, we should be rightly proud that refugees were accepted prior to the War as part of the Kindertransport programme.

My own grandfather, Max Lustmann, came to this country on the Kindertransport on the 16th of February 1939. At the same time, Britain could and should, have done more to save the threatened Jews of Europe. This Centre will recognise

that duality and show our Nation's own confidence in engaging with that complex past. Crucially, it will give a voice to those who cannot speak about what they endured. The diminishing group of Holocaust survivors have themselves said how important it is to have a memorial on a specific and important site. Despite commitments that this kind of tragedy will never happen again following the Holocaust, there have been millions murdered in subsequent genocides around the world. It has never been more important to have an important, national institution dedicated to preserving the memory of the Holocaust, to serve as a constant reminder of what happens when hate goes unchecked.

It will provide a stark lesson about the horrors of racism and persecution which have been high on the news agenda too: whether it be the systemic racism that Black people suffer on both sides of the Atlantic, or the state-backed persecution of the Uyghurs in China. The additional component that makes the case for the memorial so compelling is the learning centre. In our 2014 submission to the Prime Minister's Holocaust Commission, we outlined that a new memorial should be 'more than just an inert statue and must contribute to real education about the Holocaust'. The UKHMLC will certainly achieve that aim. The impact that the associated learning centre will have is incalculable. An interactive learning centre as a part of the permanent fixture of the memorial will ensure that future generations are able to learn the lessons of the Holocaust and ensure that 'Never Again' is not only a slogan, but rather a call to action against any future abuses of human rights.

Holocaust education is being taught to our children and in recent years the country has paused to mark Holocaust Memorial Day. We are pleased that the government supports the Holocaust Memorial Day Trust, the Holocaust Education Trust, as well as other initiatives including Yom HaShoah. This vital education work is by no means mutually exclusive to the UKHMLC at Westminster. The centre will enhance the educational possibilities we can give to our children on this most important of themes, by looking at the Holocaust in addition to harrowing subsequent genocides. Knowledge and understanding of what happened during Europe's darkest hour is fundamental to ensuring that we build a kinder, more compassionate Britain and world.

Some have already told the planning inquiry that the UKHMLC will be a target for terrorists and extremists. I am afraid that we regard such arguments as self-defeating and, whilst surely unintentional, an insult to the victims and survivors whose story the UKHMLC will seek to tell. I reflect that the UK Jewish community has painfully learned over the past 50 years, schools and synagogues need to be protected against those who would do us harm. What we have not done, however, is to close down those centres of prayer and Jewish learning. We have carried on, proudly, as British Jews. The very fact that the enemies of democracy and justice would have us abandon plans for a significant memorial, is not a reason for us to cower in defeat, but to redouble our efforts to get it built.

We are delighted that both the Government and the opposition are in favour of this Centre. We look forward to the time that our fellow citizens and guests from abroad will be able to visit, learn and understand more about this dark period of genocidal intolerance, and come away determined to play their part in a better, more peaceful and more inclusive future.

Religious

Chief Rabbi Holocaust Commission

On the 27 January 2014, Holocaust Memorial Day I was honoured to be invited to a meeting hosted by then Prime Minister David Cameron, around the Cabinet table in Downing Street. The purpose of the meeting was to launch the Holocaust Commission. The mission Commission in time gave its recommendations, taken up by the Holocaust foundation. The Foundation is now seeking to implement its intentions. I was honoured to be a member of the Commission and then subsequently the Foundation. I well recall the meeting in 10 Downing St, Present were representatives of major parties in the UK, together with some of the best known Holocaust survivors. The Prime Minister laid out his aspirations: through this initiative, he hoped, that we would contribute towards a safe, stable, secure and peaceful Britain in the future. And then just before the meeting ended he said before we conclude I now call on the chief rabbi to set out some reflections. I had no prior notice of this and So what I then said came from the heart. I commenced by saying '*Prime Minister thank you, this is a sacred task for our nation*'. Ever since that moment I have become more and more convinced of this fact.

Let me explain why: the Hebrew word for Holocaust is 'Shoah'. This means a fierce wind, a hurricane, and actually there are many similarities that can be drawn between a hurricane and the Holocaust of the 20th century. When there is a forecast that a hurricane is on the way many people just don't believe it. They say here we are here and everything is peace calm and tranquil: are you telling us that in 48 hours' time there will be utter devastation. There are others that do believe it's going to happen but say that actually it will die down before it gets to us. Whilst others say it will come with full forced force but there's no way that we will be affected, it will affect those to the North or to the South. There are still others who say yes it will come with full force, but we will stay here we will be alright, we will survive. And then there are still others who say no, this presents a danger to all our lives we need to flee.

And then, when the hurricane comes it doesn't differentiate between one person or another, old or young, men or women, those who are knowledgeable and those who are ignorant, those who are religious and those who are secular, all are affected alike. And in the aftermath of the hurricane there is sheer devastation, loss of life and some people will never be able to get over it. I do not need to explain the parallels between a hurricane and what transpired. 6 million innocent men, women and children were brutally murdered, only because they were Jewish, together with many, many other victims of Nazi persecution.

On 9 November 1938 was 'Schicksalstag', on that night many 100's of synagogues in Europe were Burnt to the ground. And because many residents of the areas heard the shattering of glass From the windows of the synagogues the night was called 'Schicksalstag' meaning 'the night of the broken glass'. At that time many people could see that this was a signal of awful things to come, but many people did not see that signal. With how with hindsight we now know that that was the commencement of a horrific train of events which would follow. It is only now that we realise that people who burn places of worship, holy Torah Scrolls and Prayer books can become people Who will burn other people. but

those living at that time didn't all know. That highlights how important it is for us today, and well into the future, to highlight the lessons of the past, to be well educated in terms of those horrors, so that we can protect ourselves now and in the future.

There is a significant difference between a hurricane and the Holocaust. You see, we have no power over hurricane, we can't stop it, we have no power over the elements. But we can have power and do have influence over our fellow human beings, We can protect others when their lives are threatened but better still we can prevent events such as a Holocaust, such as the genocide's that followed. The best form of protection is education, to inspire people to have emotional experiences, and to expose them to details of what happened in the past, in order that they should learn from those lessons for the sake of our collective present and future.

It is with this in mind that the intentions of the UK Holocaust Memorial foundation are noble. They are engaged in a sacred task. I appreciate that there are some detractors, people saying that they are opposed to this idea. I respect their views, I listened to their views, I am very happy that they are having the opportunity to Put their views before you. But I beg to differ, And I differ with them in the strongest, most passionate way. Locating this initiative in Victoria Tower Gardens is an inspirational choice of venue, it is a wonderful location. Of course we need to look after the Gardens, which hopefully will be enhanced. Of course we need to look after the interests of local residents, Their welfare and their wellbeing. This is wonderful location because it is in a prime place of prominence at the heart of our democracy. We want it to be in such a prime location because we want people to know about it we don't want to took the holocaust memorial away under a bushel somewhere, Similar to the current tiny monument in Hyde Park which most people have never heard of. We want all of British society to be aware of what transpired to the Jews in the 20th century, not just for the sake of the Jews, but for all of us in the country and our hopefully stable and peaceful future.

Sadly, we are experiencing a significant rise in hate speech and hate crime, xenophobia, anti-Semitism and racism of all kinds. The only way we can addressed this successfully is through education. Hopefully through this initiative we will inspire our society to be knowledgeable enough to protect, and better still to prevent.

The Book of Deuteronomy teaches us About the importance of confronting evil and it gives us two imperatives. When we have experienced wickedness, the Torah says remember and never forget. Remember means to you are never forgetting. Remember means to engage in proactive steps to guarantee that you will remember and as a result no one will ever forget and that is exactly the intention of this initiative, through this striking memorial, through this impressive and important learning centre in a prominent place we will ensure that our British society will remember. Being situated alongside the Houses of Parliament at the heart of our democracy will serve as an internal reminder of what transpired in Germany in the 1930's.

The Holocaust was born within a democracy, created by people who were seemingly cultured and sophisticated. What they did; anyone can do. What a democracy then produced; any democracy can create. Through locating this

initiative in this particular venue, this will serve as an ongoing reminder to our lawmakers in parliament That they are accountable to people and that their prime objective must be the welfare and wellbeing of every single citizen in our society. This will go a long way towards contributing towards a stable, secure and peaceful Britain in the future.

I appear before you today as someone who, like many other Jewish people, was raised in a family which lost precious members in the Holocaust. Throughout my life I have met Holocaust survivors. They are certainly the most inspirational people that I have met. But I Have noticed that for about the past 10 years That narrative has changed, there is a panic in their voices. They're saying one clear thing to me and asking me to convey this to others: 'Please world never forget'.

The survivors know that they can't live forever, they are asking Us to be their representatives, their ambassadors in the future, and for us to guarantee that there will be future ambassadors after us. They fear that we will forget in the course of time. We have a responsibility to them to ensure that we will remember. Their desire for the Holocaust to be remembered is not just to remember something that happened to Jews. They are fearing the implications of forgetting the Holocaust on all of us within our society. We need to learn about tolerance, understanding, love, unity, understanding and forgiveness in order to transform the hatred that is exists now into love and understanding in the future.

One such Holocaust survivor who has inspired me enormously was Harry Bibring. I particularly remember Harry at one occasion. In January of last year something extraordinary happened: the ashes of victims from Auschwitz came our way. We buried the ashes of six victims of Auschwitz At the Cemetery in London. Many people were there at this highly emotional and historic event Including survivors such as Harry who had lost his entire family In the Holocaust. Harry's hand remained on the coffin that contained the ashes the entire time. Afterwards he said to me that 'I felt that he was burying the members of his own family'. Harry died one week later.

In an interview on Sky television in 2017 Harry was asked why is it so Important for the world to remember the Holocaust. He said 'I have fears for my great grandchildren, what kind of world they are going into'. All of us today have fears for our great grandchildren, what kind of world they are going into.

We have a sacred task to allow this possibility of this Holocaust Memorial and learning centre to be created in Victoria tower gardens. We have a responsibility to the survivors, we have a responsibility to the victims, we have a responsibility to our all of our great grandchildren, and their great grandchildren well into the future.

I sincerely hope that this initiative will come about in its desired excellent venue.

Imam Qari Muhammad Asim

As a of personal faith, I feel it is my moral duty to remember the survivors and the victims of that atrocity. I have met Holocaust survivors at each time it has been a deeply moving experience.

The Holocaust was one of the darkest chapters in history, 6 million Jews murdered because of their faith, ethnicity and identify. As a of personal faith, I feel it is my moral duty to remember the survivors and the victims of that atrocity. I have met Holocaust survivors at each time it has been a deeply moving experience.

A permanent memorial is required for public awareness. The proposed memorial in this significant place next to parliament, provides a remarkable space for reflection and to enable people to respect and embrace difference. I believe that changing the location would profoundly relegate the significance of the memorial to the worst atrocity committed in the last century. The site is a poignant and timely reminder of the consequences that follow when we allow hatred to fester.

I signed a letter of support for this memorial along with the Archbishop of Canterbury and the Archbishop of Westminster, the Chief Rabbi. I believe that it is essential to cite the memorial next to the epicentre of British democracy. Experience is deepened by symbolism. The symbolism of this centre right next to the home of our democracy is profound and hugely powerful. I also believe that it will add significantly to the status of Westminster as a place of government that is a world model.

This will offer a vital space for reflection and learning in order to educate future generations about the Holocaust and other genocide's and the consequences of hatred. Locating the memorial on this site adjacent to parliament will send out a strong message to those promoting intolerance and prejudice.

As a Muslim I believe that this site will offer a remarkable tribute to the victims and preserve the stories of survivors. These survivors have been supported by Muslims, many of whom have risked their lives to support and protect the victims of genocide. The memorial will not only preserve the legacy of the genocide of Jewish communities, but also subsequent genocide's. It is in all of our interests that a symbolic place is allocated at the epicentre of democracy, to highlight the fact that we have learnt the lessons from this terrible event in our history.

Archbishop Justin Welby Archbishop of Canterbury

In the autumn of 1942, my predecessor Archbishop William Temple met with the then Chief Rabbi Joseph Hertz and established the Council for Christians and Jews: "CCJ". This was an unprecedented meeting that marked the beginning of a growing collaboration and friendship after centuries of disdain from the Church towards British Jews. This disdain was often thinly veiled but was sometimes more explicitly manifest in infamous moments of historic persecution. The twelfth-century Jewish pogroms in York and Norwich, for example, happened with the full support and encouragement of the Church hierarchy.

The point of mentioning this shameful history is to overlay into these deliberations a sense of the establishment context to our thinking in the UK about the Shoah or Holocaust. Contrary to the views of some, the history of antisemitism and anti-Judaism that culminated in the atrocities of the Holocaust was enabled by cultural and religious attitudes that were widespread right across Europe, and not unique to Germany. The United Kingdom can only be proud of

its stance against the Nazi regime when it also recognises its deep failings towards Jewish people.

The Council of Christians and Jews was founded "to check and combat religious and racial intolerance" as well as "to promote mutual understanding and goodwill between Christians and Jews in all sections of the community". Archbishop William Temple recognised the failings of the Church and did something practical to make a positive difference. He pressed public opinion in letters to *The Times*, and in representations to government for an awareness of the persecution being inflicted upon Jewish communities across Europe. But Archbishop Temple did not always get a hearing.

In March 1943, Temple's persistent advocacy came to a head when he stood up in the House of Lords, stating that "We at this moment have upon us a tremendous responsibility. We stand at the bar of history, of humanity and of God." That responsibility was a call to receive Jewish refugees from persecution. Again, it was a call that was only partially heard. Like the *kindertransports* of 1938 and 1939, the government did something; but not enough. In celebrating the 80th anniversary of those *kindertransports* as we did at Lambeth Palace in 2018, I recall survivors and historians sharing the pain of loss: of separated families, of a piecemeal, limited offer of safety. Across the Church, as across the government, the story of our response to the Holocaust is fragmentary, mixed, and coloured by an anti-Judaism that is difficult to shake off.

History matters. Yes, it has its fair share of heroes, but more often it is littered with very human frailties. When we see history for what it is, then the lessons of our past can more readily teach us in the vivid realities of today. And today we witness, alarmingly, a rise in antisemitism; incidents of hate crimes against Jews and Jewish establishments. Disturbingly, a survey last year revealed that 5% of UK adults believe that the Holocaust is a myth. Much as the government and Church responses to the Nazi persecution in the 1930's and 1940's were partial and incomplete, so today's tasks of education about the Holocaust, and the evils of antisemitism, remain partial and incomplete.

The proposal for a UKHMLC by the Houses of Parliament and across the river from Lambeth Palace provides a symbolic opportunity to present the full story to new generations. It is a story that will not and cannot be a comfortable piece of public self-congratulation by the establishment. Rather, it offers an opportunity to learn what we did wrong, as well as celebrating what we did right. Its position by the seat of UK government is a necessary challenge to our national life: that the seeds of such cultural and religious hatred would never be allowed to take root here again. Make no mistake: those seeds were here in the UK too.

I had the privilege of being at the National Holocaust Memorial Day event in Westminster Central Hall in January of this year and was deeply moved hearing from survivors, meeting some of them, and marvelling at their courage as they continued to tell their story. Archbishop Temple described his intervention in the House of Lords in 1943 as being "at the bar of history". As Holocaust survivors dwindle in number, *this* is the time to ensure that a very public memorial to their story, and the millions that were murdered, the millions that we did not save, is told at the heart of our establishment.

I note the efforts that have been made to ensure that the designs guard as much of the scarce green space available in Victoria Park Gardens. I am very

conscious of the pleasure that this park brings to workers and residents in Westminster and would encourage practical proposals that can make this project happen responsively with the surrounding communities. As a neighbour across the river, as a friend of British Jews, and as a Christian leader enjoying the privileges and ambiguities of a role in the established structures of the nation, I want to voice my support for the siting of the Holocaust Memorial in Victoria Tower Gardens.

Academics

Professor Stuart Foster Director, UCL Centre for Holocaust Education

The perspective I want to bring to this Inquiry stems from the experiences gleaned from almost 40 years working in the field of history and Holocaust education. I believe the proposed Holocaust Memorial and Learning Centre will make a profound and positive impact on teaching and learning about the Holocaust in this country and, potentially, beyond. Thus, I am grateful for the opportunity to offer my insights and recommendations.

For clarity I have divided my submission into 5 sections in which I aim to reply to five significant and relevant questions. I want to begin by arguing that the Holocaust should be seen as a fundamental part of British history and not something that is separate and distinct.

It is a privilege to speak in favour of the proposed Holocaust Memorial and Learning Centre. I am Executive Director of the University College London (UCL) Centre for Holocaust Education. I have led the Centre since its inception in 2008. The Centre for Holocaust Education is part of UCL Institute of Education, which has been ranked number one for education worldwide for the past seven years. As a Centre our primary focus is on developing the knowledge, understanding and practice of teachers and, by extension, improving students' knowledge and understanding of the Holocaust. In the past 6 years more than 14,000 teachers have participated in our educational programmes. We offer professional development courses for teachers at all stages of their careers, including at MA and PhD level. We also work closely with an ever-expanding network of hundreds of secondary schools across the country.

For many reasons, therefore, our Centre and senior colleagues at the IOE and UCL are keen supporters of the proposed Holocaust Memorial and Learning Centre. Furthermore, senior staff at the Centre have been actively involved in the development of the project for more than 5 years. For example, the preliminary findings of our detailed national research study, *What do students know and understand about the Holocaust?* (full report published in 2016) were extensively used in the narrative framing of the Report of the Prime Minister's Holocaust Commission in January 2015. My colleagues Ruth-Lenga and Nicola Wetherall have also been centrally involved in supporting the Commission and Foundation and have advised on issues related to curriculum, teaching and learning, and the use of survivor testimony in classroom settings. Currently, I serve on the academic advisory board for the UK Holocaust Memorial and Learning Centre.

The perspective I want to bring to this Inquiry stems from the experiences gleaned from almost 40 years working in the field of history and Holocaust

education. I believe the proposed Holocaust Memorial and Learning Centre will make a profound and positive impact on teaching and learning about the Holocaust in this country and, potentially, beyond. Thus, I am grateful for the opportunity to offer my insights and recommendations.

For clarity I have divided my submission in to 5 sections in which I aim to reply to five significant and relevant questions. I want to begin by arguing that the Holocaust should be seen as a fundamental part of British history and not something that is separate and distinct.

1. Why is the holocaust an integral part of British history?

The Holocaust was the systematic, industrialised, state-sponsored murder of 6 million innocent Jews during the Second the World War. Perpetrated by the Nazis and their collaborators across Europe, it was a product of a false, racist ideology and a poisoned world view which cynically drew on more than a thousand years of anti-Judaism and antisemitism. Its development and prosecution proved catastrophic for Europe and European civilization.

Far from being a historical phenomenon that was remote and distant from Britain, these horrific events originated in an ostensibly civilized, educated and democratic nation in the heart of twentieth century Europe. A Europe significantly shaped by the policies and actions of the British government and its peoples. In this respect, the rise of Nazism in Germany, the course of the Second World War and the subsequent devastation of the Holocaust must be closely connected and cannot be divorced from our national story. Indeed, the Holocaust is an integral part of our history. And, because of its significance and impact, it is a history that as nation we must reflect upon and better understand.

Thus, one of the most important and essential contributions of the Holocaust Memorial and Learning Centre is that it will help us as a nation intelligently confront and navigate this complex and troubling history and Britain's central role within it. The Learning Centre will also compel us to appreciate and reflect on the uncomfortable reality that, as with all historical phenomenon, the Holocaust was not inevitable. It therefore obliges us to confront a range of difficult questions, including:

- How and why did the Holocaust happen?
- What did Britain and the British people do before, during and after the Holocaust to support Jewish people and other victim groups?
- What more could Britain have done?
- What obligations do we have as individuals and as a nation to others who are persecuted and victimised?
- How fragile is democracy? What are its biggest threats and how do we as society ensure that those threats are challenged and diminished?
- What responsibility do we have to ensure the history of the Holocaust is - for generations to come - respected, remembered and commemorated?

These questions are not trivial or facile, but ones which require us to explore issues that lie at the very heart of who we are as a nation and as a democratic, civilized and humane society. Engaging with the Holocaust should not be easy or comfortable. It should challenge our assumptions about the past and the world

around us. It should also compel us to consider the significance of the Holocaust and its relevance to contemporary society.

But, of course, to begin even to consider these significant issues it is imperative that we have some knowledge and understanding of the Holocaust and its history.

Unfortunately, however, a growing body of evidence suggests that people across the UK have a very limited understanding of the Holocaust and many often harbour troubling myths and misconceptions. More specifically, our 2016 UCL study - the largest of its kind conducted anywhere in the world - revealed numerous issues and concerns. Indeed, the findings of these studies strongly suggest that a national Memorial and Learning Centre will play a vital and necessary role in educating our nation.

2. What do young people know about the Holocaust?

Our UCL Centre for Holocaust Education 2016 study, *What do students know and understand about the Holocaust?* resulted from a three-year investigation. It involved more than 9,500 secondary school students (aged 11-18), and was primarily based on analysis of 7,952 survey responses and focus group interviews with 244 students. The principal aim of the study was to provide a detailed portrait of students' knowledge and understanding of the Holocaust in order to inform and support efforts to improve teaching and learning about it.

The results of the research programme were carefully detailed in a 274 page report. On a positive note the study revealed that 83% of secondary school students surveyed believed the Holocaust was important to study, 81.8% found the subject interesting and 70% expressed a desire to learn more. The study also revealed that by age 15, 85% of students had learned about the Holocaust within school and most were familiar with the term.

Nevertheless, closer analysis revealed that significant numbers of students typically lacked core knowledge and many often harboured troubling myths and misconceptions about the Holocaust. Clearly, it is not possible to do justice into the full complexity of the results but brief attention to three areas hopefully illustrates why the development of a National Learning Centre is so critical.

i. Jewish Victims

Although students commonly knew that Jews were the victims of the genocide, most students did not know why. Revealingly, 68% did not know what 'antisemitism' meant and most appeared unaware of its long history and the racial dimensions of Nazi antisemitism. Furthermore, many students were ill-informed about pre-war Jewish life and largely unaware that 9.5 million Jews lived and worked in communities in every European country. A third of students grossly underestimated the number of Jews killed in the Holocaust, with 10% believing that no more than 100,000 were murdered. Most students were unaware where mass killing took place, with 55% believing it occurred in Germany.

In summary, the research revealed the need to educate young people about, among other things, pre-war Jewish life, the long-history of antisemitism, the impact of the Nazi racial state, the responses of Jewish communities, the geography and chronology of the Holocaust, and the loss and devastation caused

by the actions of the Nazis and their collaborators. In my view there is no doubt that the national Memorial and Learning Centre will play a prominent role in addressing all these significant issues and the alarming and common gaps in knowledge and understanding.

ii. Responsibility

Many students also appeared to have very narrow understanding of who was responsible for perpetrating the Holocaust. For example, more than half (56.1%) of 11-14 year olds believed the Holocaust was *solely* attributable to Hitler. Fewer than 10% attributed any blame or responsibility to the German people and many held the strong belief that the German people 'did not know' about the Holocaust. Typically, students in Years 7-9 also had a very limited understanding of the Nazis often seeing them as an elite paramilitary group rather than a political party that enjoyed the popular support of more than 13 million Germans in July 1932. Commonly missing from student responses, therefore, was knowledge of how many Germans - and citizens in other occupied states across Europe - were complicit. Indeed, this narrow Hitler-centric focus and the absence of important contextual knowledge appeared to inhibit students' explanation and understanding of how and why the web of complicity extended across Europe and the extent to which vast numbers of 'ordinary people' willingly participated in genocide, either out of greed, conviction, or peer pressure.

Overall, therefore, the research revealed the need for teachers to challenge the dominant narrative that it was Hitler who murdered the Jews and engage young people in more thought-provoking explorations of complicity, responsibility, agency and choice. Many educators argue that one of the key goals of Holocaust education is to ensure that young people are aware of the dangers of being a 'bystander' when discrimination and persecution rears its ugly head. Indeed, Elie Wiesel implored us 'never to be silent whenever and wherever human beings endure suffering and humiliation. We must take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.' I am, therefore, confident that the Memorial and Learning Centre will play a prominent role in considering these vital issues and addressing identified limitations in students' knowledge and understanding.

iii. Britain and the Holocaust

Not enough time exists to detail all the problems, issues and challenges identified in the 2016 study. It is, however, worth ending this overview with a brief reflection on what students appeared to know about Britain's relationship with the Holocaust. In summary, survey responses indicated that most students operated with a very limited and often erroneous understanding of this aspect of British history. For example, 34.4% incorrectly reasoned that the Holocaust triggered Britain's entry into war and a further 17.6% of students believed the British drew up rescue plans to save the Jews. Almost a quarter of students (23.8%) also incorrectly thought the British government did not know about the Holocaust until the end of the war in 1945.

Evidence from both the survey and focus-group interviews clearly demonstrated that many students were ill-equipped to answer and assess vital and challenging issues such as: when and what did Britain know? What choices and possibilities were open to Britain and her Allies? and what actions were and were not taken?

Overall, therefore, the study revealed the need for young people to know so much more about Britain's actions and responses to the Holocaust. Only armed with this knowledge and understanding can they even begin to critically reflect on the complexities of Britain's role and the lives of individuals and communities so profoundly impacted by the Holocaust. A central aim of the Memorial and Learning Centre is to more robustly educate young people about Britain's relationship to the Holocaust and I believe it will play a significant role in addressing the lack of knowledge and understanding that appears to exist among our young people.

Of course, our focus at UCL was to explore in detail the knowledge, understanding and attitudes of young people in England. Our remit was not to look at the understandings of the broader population. Nevertheless, it is potentially significant that repeated national and international studies which have examined adult understanding of the Holocaust have consistently concluded that knowledge is typically limited and misconceptions abound. Indeed, the eminent Holocaust historian David Cesarani lamented 'the yawning gulf between popular understanding of this history and current scholarship on the subject.'

More troubling, however, is not the ill-informed and innocent ignorance of the broader population, but the alarming growth of individuals and organisations who, largely through social media, wilfully seek to distort and deny the Holocaust and disseminate pernicious anti-Semitic propaganda.

For all these reasons, therefore, improving the knowledge and understanding of people of all ages is a critical imperative and one that must be taken very seriously. The good news is that organisations like the UCL Centre for Holocaust Education have in recent years made demonstrable strides in educating young people about the Holocaust and a body of empirical evidence indicates that students in those who work closely with the Centre have significantly improved levels of knowledge and understanding. Nevertheless, despite these impressive gains immense challenges remain for all of us who work in the field of Holocaust education. It is, therefore, my fervent belief that the creation of the Holocaust Memorial and Learning Centre has the potential to transform how people (and especially young people) understand and reflect upon the significance of this history.

3. What will the Memorial and Learning Centre achieve?

As stated above, it has been a tremendous privilege to be part of the Academic Advisory Group for the Memorial and Learning Centre. The experience has certainly impressed upon me the importance of the undertaking and the incredible expertise and knowledge of those involved in making the enterprise a success. Based on my involvement I would like to offer 4 key observations which speak to the power, potential and impact of the proposed development.

First, it is certain that the Learning Centre will offer visitors an engaging, interactive and dynamic experience. But, it is also clear that this experience will be underpinned by rigorous scholarship and the advice and expertise of some of the leading academics and specialists in the field. It will be a serious and ambitious enterprise that will tell the story of the Holocaust and Britain's connections to it in all its troubling complexity. Under the leadership of Ben Barkow (Chair of the Academic Advisory Board) it most certainly will not provide,

as some critics suggest, a simplistic glorification of Britain's role in and response to the Holocaust, but rather offer different insights and critical interpretations of what Britain did and did not do in response to events. Above, all I believe it will challenge visitors to engage, reflect, and contemplate profound questions, such as those I have outlined above.

Second, I am convinced that the Memorial and Learning Centre will serve as a catalyst for deeper engagement and interest in Holocaust education across the country. The example of similar projects in other countries bears testament to this fact. For example, since the United States Holocaust Memorial Museum (USHMM) opened in 1993, more than 11 million school students have visited the site and its presence and programmes have stimulated a growth in Holocaust education across the country. I know that some critics have suggested that the development in London will divert funds and attention away from other Holocaust organisations and initiatives, but I believe the opposite will be the case. I contend it will amplify cross party commitment that every child has a right to learn about the Holocaust as part of his/her education. It will also increase the importance of teacher education and potentially strengthen collaboration among leading Holocaust education organisations. Indeed, our Centre is committed to the Memorial and Learning Centre by ensuring it is supported by the latest developments in educational research, Holocaust pedagogy and on-line learning.

Third, as evidenced by the incredible success of the USHMM, it is certain that the Memorial and Learning Centre will be visited by millions of people across the whole spectrum of society. Unquestionably, it has the potential to educate, inform and challenge common myths and misconceptions for this and for future generations. In light of the experience of the USHMM, it is also clear that the Memorial and Learning Centre will attract and educate Jews and non-Jews. In fact, 90% of visitors to the USHMM are not Jewish. It is highly likely that the experience of visitors to the Memorial and Learning Centre in London will mirror the success of the USHMM in Washington. Increasingly, visitors will learn to appreciate that the Holocaust is very much a part of both their own and their nation's history and it will play a powerful role on increasing public historical understanding. Undoubtedly, it also will be a place where visitors will come not only honour the victims of this abominable crime against humanity, but also provide a space to contemplate the dangers to civilized society of increasing prejudice, discrimination, and extremist rhetoric and action.

A fourth and final point is the belief that one of the most important and profound decisions made by those responsible for the original proposal was the desire to ensure that the site featured both a Memorial and a Learning Centre which operated as part of an organic whole. This observation is particularly salient for the millions of people who will visit the site without extensive knowledge of the Holocaust. Because, by visiting the site and learning about the fate of the Jews of Europe and Britain's inexorable connection to events, visitors will begin to appreciate in more profound ways the disturbing narrative of those who were persecuted and murdered by the Nazis and their collaborators. Powerful human stories and testimonies of survivors will lie at the heart of the Learning Centre and engagement with these absorbing narratives will compel visitors to learn with empathy, respect and reverence. Thus, because they will be equipped with - often new-found, knowledge and compassion - visitors will experience the site

of memorialisation in profound and meaningful ways. The Memorial will therefore be a place to reflect, digest, commemorate and perhaps to consider broader questions about humanity our obligations to one another. Standing in isolation it is unlikely that neither a museum or a memorial alone would have the intellectual and emotional power to induce such strong connections. But operating in tandem, the Memorial and Learning Centre will be incredibly effective. As Michael Berenbaum stated, based on his extensive experiences in similar sites across the globe, 'I know it can be done because I have seen it done elsewhere.'

4. Why should it be located next to the Houses of Parliament?

Many advocates of the Memorial and Learning Centre have spoken eloquently of the real and symbolic significance of locating it in Victoria Gardens, in the shadow of the Palace of Westminster. My intention is not to extensively rehearse all these compelling arguments. I do, however, wish to make two further points.

Firstly, it is a truism that, as Michael Berenbaum has also said 'the place from which you remember an event shapes how you remember it.' For this reason, there is an explicit and direct relationship between the significance and prominence of any given site and the value and status that individuals assign to the events commemorated.

Thus, if we believe as a society that learning about and commemorating the Holocaust is profoundly significant, then it follows that the Memorial and Learning Centre should be in a place of immense national and international importance. Thus, locating it in London - the nation's capital city - and directly adjacent to the iconic Houses of Parliament, has an irresistible appeal. Indeed, if the Memorial and Learning Centre is not placed in such a prominent location it will severely diminish its impact and reach and, inevitably, raise questions about Britain's commitment to educate about the Holocaust and to memorialise its victims.

Secondly, locating the Memorial and Learning Centre right next to the seat of our democratic government powerfully emphasises that as a nation we are prepared to reflect on Britain's relationship with the Holocaust in a candid and honest way - potentially taking pride in its finest moments, but also humbly reflecting on its failures and the devastating effects of its inaction. From this frank and introspective confrontation with its past, the Memorial and Learning Centre will serve as a reminder of the fragility of our democracy and the responsibilities we have to others.

5. Why must it be built now?

It is perhaps almost unthinkable that in Britain, 75 years after the end of the Second World War, we have no national memorial or learning centre to commemorate and understand the tragic events of the Holocaust. It is time to put this right.

We are at a critical turning point: with the passing of survivors, the Holocaust will shortly depart from living history and enter the realms of documented history. Soon, we will no longer be able to experience first-hand survivors' powerful testimonies and witness their indomitable spirit. We will also not have the benefit of their remarkable resilience and courage to counter those who look

to discredit the historical record and distort, downplay or deny the Holocaust. Without survivors in our midst, there is a risk of Holocaust revisionism and/or trivialisation. At a time when levels of antisemitism and hate crime are on the rise, both within and outside public and political life, this Memorial and Learning Centre situated next to Parliament, will send out a forthright message: this country is committed to standing against racism of any kind, and we pledge to work collectively to achieve this aim.

In January 2015 The Prime Minister's Holocaust Commission Report was published. It was entitled 'Britain's Promise to Remember'. For many survivors and members of the Jewish community this heralded a commitment, a promise, by the British government to establish a 'national memorial' and 'world-class learning Centre' which would be 'prominently located in Central London to make a bold statement about the importance Britain places on preserving the memory of the Holocaust.'

In the months leading up to the publication of the report I was honoured to be invited, on several occasions, to 10 Downing Street to present the findings of our national research with secondary school students. During a coffee break I had the pleasure of chatting with Jack Kagan, a Holocaust survivor and inspirational individual. In our conversation I was struck by how excited and grateful he was that a Memorial and Learning Centre was soon to be built in a prominent location in central London. Sadly, however, Jack died in 2016. He, like many other survivors of his generation did not live to witness the realisation of the "promise".

In my view we simply cannot allow more time to elapse. We must build this new Memorial and Learning Centre. We must honour our commitment to our survivors. We must educate current and future generations. And, in my humble opinion, we must do this now.

Dr Toby Simpson Director Wiener Holocaust Library

My name is Dr Toby Simpson and I hope to offer some useful comments today on the merits of the current proposal for a UK Holocaust Memorial and Learning Centre. My comments reflect my position as Director of The Wiener Holocaust Library and are grounded in the professional experience I have accrued over the past decade. I will now introduce the institution I represent as I believe it is relevant to the inquiry. The Wiener Holocaust Library is Britain's largest collection of evidence of the Holocaust and the Nazi era, and it is the oldest collection of its kind anywhere in the world. The Library began its existence in Amsterdam, and was initiated by a visionary founder, Dr Alfred Wiener. Wiener worked with several generations of dedicated and expert staff, including several eminent Jewish refugees from Nazism. As a result, Britain is blessed to have a world-class research library and archive on a subject of the utmost contemporary relevance. I am proud and privileged to lead this institution today, and to offer our submission to today's session.

The evidence that Wiener gathered in Amsterdam during the 1930s provided the foundation of the library's collections in London. The Library supported the Allied war effort, primarily as an information service. The information they provided concerned both the inner workings of the Nazi state and detailed

reports of the escalating genocide of European Jews. After the war, Wiener's collections were brought to bear in the Nuremberg War Crimes Trials. In the decades thereafter the Library became an important centre of research.

Today, the Library has a global reputation as a source of world-leading scholarship. It regularly hosts exhibitions and events that prior to the pandemic were attracting over ten thousand people annually, and we continue to reach large numbers online with exhibitions and events. Indeed, the Wiener Holocaust Library's digital collections as a whole reach an estimated two million people online every year in over 200 countries. In 2017, Arts Council England recognised the Library's entire holdings as a Designated Collection of outstanding national significance.

As this summary suggests, the Library has for many decades played an important role in Holocaust remembrance, education and research in the UK. We made a submission to the Prime Minister's Holocaust Commission in 2015 and have offered our expertise and support to UKHMF since it was established as an advisory body to Government.

I will now move on from introducing myself and the institution I represent to commenting on the proposal.

The first point I want to comment on concerns the potential for the memorial to add value to the existing work being done in organisations and institutions like ours, which are actively engaged with Holocaust commemoration, research, and education. The report produced by the Prime Minister's Commission on the Holocaust pointed out the internationally recognised excellence of much of this provision, ranging from research centres like the Library, to museums like the Imperial War Museum, and educators like the Centre for Holocaust Education at UCL. UKHMF has explicitly recognised that there is therefore a clear need to engage intensively and productively with these organisations in order to ensure that this potential is realised. I am confident that the team working on developing the memorial will hold to this promise.

The substantial investment in the memorial represents a broader commitment, expressed in the Prime Minister's report, to secure the long-term future of Holocaust education in Britain. In this sense, the planned memorial also represents a plan to lift up and give more support to the work being done across the UK in a variety of contexts. Even though I have only been working in this area for a short time compared to some of the other speakers, I know that this represents a level of commitment and engagement from UK governments that has not always been present. I represent an organisation whose history is interwoven with the trauma, suffering and extraordinary resilience of Jewish refugees from Nazism, often striving for recognition. There is profound meaning in ensuring that the memory of the victims of the Holocaust, victims the Roma genocide and other victims of Nazi persecution is permanently honoured. This is also a once in a lifetime opportunity for a new and more sustainable framework of education, research and remembrance to be established in this country, and that opportunity should not be missed.

In 2018, the previous Director of The Wiener Holocaust Library, Ben Barkow, who now chairs the UKHMF Academic Advisory Board, made a statement welcoming the Mission Statement of the UKHMF's plan and mission. I would like to reinforce the point he made then, that: "it is particularly good to see a

commitment [in the proposal] to encouraging citizens to engage in critical reflection of the conduct of our government, Parliament and society during this darkest of times. Only by approaching history honestly - looking at the bad as well as the good - can we learn from the past in hope of creating a better future. We welcome promise of partnership with institutions like the Wiener Holocaust Library: such partnerships will be hugely mutually beneficial, strengthening the Memorial and its work, and bringing the resources of the Library and other institutions to the attention of more people."

Mr Barkow's point about the potential for partnership work is particularly important in my opinion. There is a clear need to maximise the impact of investment in Holocaust remembrance by making efficient use of limited resources, and a clear need to avoid reinventing the wheel in any area where there is existing provision. I do not believe that the proposal is incompatible with an efficient use of resources in the sector; rather I am optimistic that it will strengthen an overall commitment to a joined-up, strategic approach, while adding prominence through signposting to other institutions, while attracting more people to engage with the subject.

This brings me to my second to last point, regarding the planned location of the memorial and the symbolic value of that location as it relates to Holocaust memory. The Holocaust is widely recognised as the defining event of twentieth century European history, and as the worst and most extreme atrocity perpetrated in the history of human civilisation. In my view, it is fitting for the memorial to be located in a position of the greatest possible prominence to reflect that fact.

The Holocaust is a profoundly disturbing subject. It is nevertheless a subject we must all confront and learn about if we wish to become full and responsible citizens in the twenty first century. We need to do so in order to make sense of the world, with all of its rich humanity along with its bewildering and often shocking inhumanity. We cannot escape the fact that the history of the Holocaust is complex and often difficult to get to grips with; we also cannot escape the fact that it is a powerfully emotive and resonant and, sadly, highly relevant today as we strive to fight the rising tide of intolerance, antisemitism, racism and prejudice.

The choice of location and design is therefore a difficult challenge to rise to, and in my view the proposal achieves its most important aims. It is sensitive, it is evocative, it is prominent and it is appropriate. I would echo Sir David Adjaye's view that the chosen location 'emphasises [the Memorial's] importance as a public space in dialogue with its cultural, political and historic surroundings'. I do not agree that it encourages a falsely celebratory narrative of Britain's relationship to the Holocaust. I think this is to impose an interpretation on the memorial that is in fact neither inherent in its design nor in its location.

The last point I wish to make is brief but important, nonetheless. I have full confidence in the UKHMF Academic Advisory Board and its current curation team to develop the content of the Learning centre in such a way that it will meet an extremely high standard and reflect an honest appraisal of the history of the Holocaust, the Nazi era and other genocides, including those aspects which ask us remember or reflect on uncomfortable truths. I worked with the Advisory Board's Chair, Ben Barkow, for many years while he was Director of the Library

and I know him to be an individual of integrity who has always rejected the notion that it is acceptable to view history through rose-tinted spectacles or to manipulate it for political ends. I will therefore conclude by saying that I look forward to the prospect of working with UKHMF to ensure that this project realises its full potential.

Dr Michael Berenbaum Holocaust Scholar and Adviser

As a young academic I came to Washington, D.C. in 1979 to staff the President's Commission on the Holocaust. We were charged by President Jimmy Carter to recommend "an appropriate national memorial to the Holocaust." I authored its *Report to the President* that recommended that the United States create a "living memorial to the Holocaust," a public-private partnership; a Museum to tell the story of the Holocaust, an educational centre to help educate the American people on the Holocaust, an archives and library to gather documents and works essential to scholarship and a scholarly centre to advance research along with a Committee on Conscience to warn the nation and its leaders of impending genocide. The President accepted his Commission's recommendations, and the United States Holocaust Memorial Council was created, first by Executive Order and then by unanimous Congressional Legislation to create the Memorial Museum and all its component parts.

Seven years later, I was called back into national service as Project Director overseeing the creation of the United States Holocaust Memorial Museum, where we confronted many of the very same issues that have engaged this body including why bring to the nation's capital an essentially European event. What place does it have among the sacred monuments and memorials of the nation? Would the public be interested?

We even faced opposition within the Jewish community who wondered if the funds would not be better spent in Jewish education or support of Israel and whether the Holocaust was not occupying too central a place in the Jewish narrative. Why introduce the Jew as victims when Jewish history and Jewish memory is far deeper than victimization? Jewish critics spoke out against the lachrymose theory of Jewish history.

Other critics, even if they did not object to the Museum, objected to its placement among the sacred shrines of Washington. "Anywhere, but there," they argued. "Anywhere but there."

The Museum was controversial until its opening; its success silenced its critics.

Visitation was so robust that a press conference was held to discourage visitors from coming. And visitors not only voted confidence with their feet but also with what was most precious, their time. The average visit to a Museum on the National Mall was around an hour and visitors were spending three to four times that amount of time seeing the exhibitions and visiting the learning centre. Museum visitation has remained robust through its 27 years until the pandemic.

After years of service to the Museum, I served as President and CEO of the Survivors of the Shoah Visual History Foundation which took the testimony of 52,000 Holocaust survivors in 57 countries and thirty two languages and compiled the largest video testimony collection of any historical event.

More the point, I have been the conceptual developer of Museums and Memorials in North Macedonia, Mexico and Poland, advised the Swedish Commission on their report to the Prime Minister, Yad Vashem on its exhibition in Block 27 at Auschwitz and created Museums and Memorials in the United States in Illinois, Florida, Texas, Ohio, New Jersey. I also co-curated the exhibition in Madrid, which is now in New York *Auschwitz: Not Long Ago, Not Far Away*.

Most specifically, I advised the late US Ambassador to Germany Richard Holbrooke as the Berlin Memorial to the Holocaust, the project most analogous to the one you are considering, was evolving.

In short, I humbly believe that my experience may be useful to these deliberations. As I have followed these deliberations, the questions and comments being offered here have been asked elsewhere and have been successfully addressed in memorial projects.

Let me address some basic principles.

The place from which you remember an event shapes how you remember it.

This principle is as old as the Psalmist: "By the Rivers of Babylon we sat and we wept as we remembered Zion." (Psalm 137) Zion was remembered differently in exile in Babylon than in the ruins of Jerusalem.

The Holocaust is remembered differently in Washington than it is in Jerusalem, in Warsaw than in Budapest, in Paris than it is in London, at Auschwitz than it is in Bergen Blesen.

And place is not just a spatial concept but a temporal one. The time at which you remember an event –

We are at a transitional time: we are all too rapidly moving between lived memory and historical memory. We are the last, the very last, to live, in the presence of survivors, yet we live at a 75 year distance from the event. And as I shall argue that distance will have to shape the way in which the Memorial is envisioned, and the educational centre created.

When we created the United States Holocaust Memorial Museum, we took our physical place seriously. We were situated at the intersection between Museum Washington, Memorial Washington, and Governmental Washington.

Museum Washington: The Museum was to be situated adjacent to the great Museums of the Smithsonian Institution.

Monumental Washington: The Museum was to be situated within site of the Washington and Jefferson Memorial, within a distant view of the Lincoln Memorial and now within the World War II Memorial, the Franklin Delano Roosevelt Memorial, and even the Eisenhower Memorial.

Governmental Washington: To the Museum's left in the National Mint, across the street were governmental departments. Step out in the street and one can see the White House. Go down the block and turn to your right and one has a magnificent view of the Capitol.

We entered into dialogue with these institutions because the Holocaust poses fundamental questions to the institutions.

Everywhere surrounding the Museum, they celebrate the powers of government, human achievement in art, science, technology and history, human ability to land on the Moon and to nurture the power of the Atom. The visitor can see monuments to great and important people and events. The Holocaust Museum tells an American story, albeit about a European event.

The Holocaust shows what can happen to these powers if they are not linked to Constitutional government:

- Restraint on the powers of government
- Checks and balances
- Basic inalienable rights
- Freedom of Speech and Assembly, freedom of Religion and the Separation of Powers.

We started the exhibition with the liberation of the camps by American and Allied troops to serve as a transition between Mall and the Museum, to move the visitor back then 50 years in time and to move them a continent away and to have them encounter what American and British soldiers saw as they entered Dachau and Bergen-Belsen.

The proposed location in London is both a challenge and an opportunity to have the UKHMLC engage with the core of the British narrative, to challenge and also to reaffirm the great British contributions to democracy, human rights and human dignity.

We did not shy away from challenging America. At the conclusion of the top floor and again at the last floor of the Museum the visitor is given the interactive opportunity to consider what did America know and what did it do, what did it not do with that information to confront the unfolding genocide and to alleviate the condition of the victims.

We were true to the historical record and we did not face any political pressure to soften the harsh judgments of American inaction. We dealt with the non-bombing of Auschwitz and with the Memo on the Acquiesce of American Government to the Murder of the European Jews. We dealt with the failure to receive immigrants and the creation of what historians have called "paper walls" to keep them from reaching America's shores. An even more elaborate special exhibition was created on America was created to mark the Museum's 25th anniversary and interest is so high that it will remain at the Museum for some four years.

Incidentally, our visitors come away asking questions about the world in which they live. We present the history truthfully, honestly, apolitically and the audience deals with these issues in the here and now, connecting it to their lives, their time, their moment in history.

So a word of advice: *the proposed site offers an unequalled opportunity to grapple with the history of Great Britain and its values. Placing it anywhere else reduces the power of what it can achieve.* The men and women you will choose to create the UKHMLC must be equal to the challenge.

Second piece of unsolicited advice humbly offered: *Do not create a Memorial alone but a Memorial and an Educational Centre together as an organic whole.*

The reason is simple: experience has taught us that a Memorial is effective for the generation that knows what is being memorialized; it is less effective in subsequent generations. Three examples will suffice.

The Memorial in Berlin should be instructive. Despite the power of Peter Eisenman's artistic representation, it might have become a place for young people to roller blade and for couples to have a private place to embrace, without its learning centre beneath the Memorial. Visitors who see the Memorial alone come away with a radically different experience than those who visit both the Memorial and the Learning Centre. Square meter by square meter the Learning Centre is one of the most powerful and effective learning centres in the world and does a commendable job of conveying the importance of the Holocaust for German history and for German citizens, reinforcing basic values of the country, now a democracy committed to human rights and tolerance.

So too, the difference between Treblinka and Belzec, two of the three Aktion Reinhard camps, is instructive.

Under Communism in the 1960s a moving and powerful memorial was created on the site of the Treblinka death camp where some 925,000 Jews were murdered between the 23rd of July 1942 and the 4th of August 1943.

In February of 1960, the Warsaw Regional Council selected the design for a memorial at Treblinka II from two Poles, sculptor Franciszek Duszenko and architect Adam Haupt. The design was focused on the experience of the victims and the loss of the Jews who were murdered at Treblinka. A field of 17,000 jagged stones was erected each in a different shape, 700 hundred of them had the names of the towns, villages and hamlets from which Jews were deported to Treblinka. Only one individual was mentioned by name, Janusz Korczak, the famed Polish Pediatrician, writer and radio personality who ran an orphanage in the Warsaw Ghetto. When offered the opportunity to escape to the Aryan side, Korczak valiantly attempted to save his children. When he could not, he marched together with his children to the death that awaited them in Treblinka. Emanuel Ringelblum, the great chronicler of the Warsaw Ghetto described the procession: "This was no march to the train cars, but rather a mute protest against the murderous regime... a process the like of which no human eye every witnessed." The ghetto stood by in silence as the children marched.

The stones outline the contours of the camp. At the entrance way concrete blocks give the impression of railroad ties that abruptly veer to the left and move up to an area which conveys the sense of being the ramp. From there a straight path to the monument which is built on the site of Treblinka's gas chambers and beyond. The Germans called this path the *Himmelstrasse*, the pathway to heaven as part of their macabre sense of humor. And beyond the memorial monument is a pit, which is at the site of one of the fields in which the bodies of Jews were burned. At Treblinka Jews were first buried in mass graves. Later on, those bodies were dug up by prisoners and burned on pyres to solve the "disposal problem" and to erase evidence of the crime.

The Memorial is brilliantly effective. It evokes the Presence of Absence and seemingly offers to visitors to Treblinka a sense that the victims, whose graves were the sky, have been given a final burial place. Small stones are left on some of jagged stones, Visitors regard Treblinka as the architects and sculptors intended it, as a cemetery.

Only a few words are used: the crime is reiterated, as are the countries from which Jews were shipped to the camps and even in Communist times, the word Jew is mentioned and there can be no misimpression that the people murdered in Treblinka were Jews. Visitors to the site whisper, unmistakably aware that these are visiting a sacred site.

Yet, visitors to Treblinka do not learn the story of what happened there in any detail. *They visit a Memorial, a memorial which brilliantly conveys feeling and the magnitude of the loss, but not the nature of the crime.*

So even though visitors travel some two hour to arrive at Treblinka from Warsaw, unless they know what the camp was and how it operated, unless they hear from its victims, they do not learn it at Treblinka, which is why Polish authorities are now contemplating creating an educational centre at the camp.

I was deeply involved in the creation of the Memorial and the Museum at Belzec, the site of the murder of some 500,000 Jews between March and December 1942.

The submission by Polish artists and architects Andrzej Solyga, Zdzislaw Pidek, and Marcin Roszczyk won unanimous approval. The model we viewed was so powerful that indeed the choice of these artists proved to be the easiest part of the project. As the design was implemented, it exceeded even our most exalted hopes. Their designed called for the use of the entire camp.

A fence and walled in area would mark the outlines of the camp. The Memorial consists of a long path – a tube, evoking the tube that prisoners would walk from the ramp to the gas chamber -- with walls on both sides growing ever higher, leading to a Memorial Wall with an appropriate inscription. One might think of the wall at the Vietnam Memorial in Washington, D.C. but as the Vietnam Wall grows higher on one side, the second side is open and provides a sense of safety, of escape if you like, from the pressure of the wall. At Belzec, there would be no escape. A Biblically sensitive visitor might think of the words from the Song of the Sea: "And the water for them forms a wall to the right and to the left." The Walls seem to be holding back the deluge.

As the visitor walk more deeply down, the Walls made the visitor feel dwarfed. As the visitor reaches the Memorial Wall, the inscription's letters in Hebrew, English and Polish blend into the contours of the Wall seemingly like tears. "Earth, do not cover their blood, let there be no resting place for their outcry," was the verse from Job.

On the back of the Memorial would be two areas for additional inscriptions; in the end it was decided that one wall contain the first names – not the last name because for every Moshe, there were hundreds; for every Sarah there were thousands. On the other wall inscribed are the names of the cities and towns, villages and hamlets from which the Jews were deported to Belzec.

At each end of the Memorial Wall, there is be a staircase ascending from the depths and the visitor would emerge to see the entire landscape of the camp. The main area of the camp is marked by industrial sludge – giving the impression of what our planet might look like after a nuclear catastrophe. No visitor could walk on the field. It would be forbidden territory. The late Stephen Feinstein described it as "volcanic lava field." And the areas of the camp that were the site of mass graves were darkened so that as one viewed the entire

site, the presence of mass graves would be apparent. From the top of the Memorial Wall, the visitor walks around one half of the camp and each concrete landing would be marked by the name of the towns from which the Jews were deported; town by town, month by month for each of the ten months that Belzec was operational.

The inscription is on steel letters with the Polish and the Yiddish name of the town. Over time these steel letter began to rust. To a few visitors, the rust gives the impression of an area not well preserved; to most, the significance is apparent, the letter are bleeding, just as the Jewish inhabitants of these cities and towns bled.

As one entered the camp to the left was a Memorial to the trains and to the right the entrance to the Museum and the "visitor centre" where restrooms were available after the long ride to Belzec and a visitors' desk that doubles as a modest bookstore.

The modest educational centre is integral to the Memorial, essential to informing the visitor intellectually as well as moving them emotionally.

Let me conclude this testimony by stressing that the creation of a Memorial/Education Centre in so prominent a place in London will reverberate throughout the entire country, stressing the importance of the Holocaust and the implications of the Holocaust for contemporary Britain. It will provide an opportunity to disseminate knowledge, to increase interest and importance and to spur learning opportunities.

Why give such prominence to the Holocaust? Because it happened.

21st century humanity must understand the evil, systematic evil, state-sponsored evil, industrialized killing, mass murders that was the essence of the Holocaust. We must understand its emblematic invention, the death camp and the people who served in these camps. Their assignment: mass murder. Some were sadists and criminals – people unlike us -- but many more were ordinary men trying to do their best, to fulfill their obligations. Some were even professionals, lawyers and doctors, who used the skills they had learned to become more efficient killers. Some were enthusiastic, others more reluctant, all became killers.

We must understand the circumstances of the victims, who had to make choiceless choices between the impossible and the horrific, and who faced conditions of such utter powerlessness that they could do so little to determine their fate.

And we must understand the indifference of neutrality. In the struggle between powerless victims and an overwhelmingly powerful killing machine, neutrality is anything but neutral. Indifference is a death sentence.

We can learn so much about evil in studying the Holocaust that it leaves us numb, that despair overtakes us, that we sense our own helplessness. Indeed, the Holocaust was an atrocity, senseless and anguishing. But there were a few, a precious few men, women and even children who opened their homes and their hearts and provided a haven for the victims, a place to sleep, a crust of bread, a kind word, a hiding place. What makes such goodness possible? Why

were some people immune to the infection of evil? Why do some people become Upstanders/Rescuers?

These are the people whose deeds we may wish to emulate, who can serve as a model for how we want to behave and what we want to become.

The Holocaust began slowly. Age-old prejudice led to discrimination, discrimination to persecution, persecution to incarceration, incarceration to annihilation. And mass murder, which culminated with the killing of six million Jews, did not begin with the Jews nor did it encompass only the Jews. The violations of one group's rights are seldom contained only to that group.

Democracy was eroded, polarization divided a society, a charismatic leader turned the people one against the other. That leader was enabled by those who thought they could control him, that the office of Chancellor would force moderation or they could benefit with political and economic power so why get along, go alone?

The study of the Holocaust is not easy, emotionally or intellectually. The Memorial and the Education Centre is a tool, a tool that will be enhanced by the creativity of its creators, their artistic and educational capabilities. It will express the importance of this event for the people of Great Britain and its implications for tolerance, decency, human rights and human dignity. It will not only serve as a moral beacon to those who visit but the word will go forth from that site and reverberate throughout the country.

I know it can be done because I have seen it done elsewhere. Now is your time, your challenge, your opportunity.

Paul Shapiro Director of International Affairs, US Holocaust Memorial Museum

I am currently the Director of International Affairs and Founding Director (Emeritus) of the Mandel Centre for Advanced Holocaust Studies at the United States Holocaust Memorial Museum (USHMM). I have been involved with the development of our Museum since 1989, first on a voluntary basis, and since 1997 as a permanent member of the Museum's staff. I served before that as the editor in chief of Columbia University's *Journal of International Affairs* (New York) and during the Cold War as editor of a US Government-sponsored journal on communist affairs. In the 1970s, I carried out the historical research that led to the first successful denaturalization and expulsion from the United States of a fascist leader who had entered the country illegally after the war. I have served on multiple exhibition development committees; represented our Museum at the International Holocaust Remembrance Alliance (IHRA); led the Museum's campaign to open the archives of the International Tracing Service (a copy of which now resides at the Wiener Library); wrote major sections of the *Final Report* of the International Commission on the Holocaust in Romania, which was chaired by Elie Wiesel; and served on the US Government's Inter-Agency Working Group on Nazi-Era Crimes, which oversaw the declassification of millions of documents from US Government archives that dealt with American awareness of the Holocaust when it was taking place and post-war American attitudes toward and treatment of both Holocaust survivors and Holocaust perpetrators. In recent months I have had the privilege of participating in the

deliberations of the Academic Advisory Board of the United Kingdom Holocaust Memorial (UKHM).

I appreciate the opportunity to address this Inquiry. I admire the decency, decorum, and intensity with which the matters before the Inquiry are being explored—by the Public Inspector, by presenters, and by the distinguished attorneys whose questions do so much to clarify the issues. Your process is testimony to what it takes to get it right in a democratic system. I hope to offer some useful perspective on the issues before you.

My statement focuses on the international. I plan a) to bring an international/transatlantic comparative perspective to your deliberations and b) to share information that may be of use regarding other new national Holocaust memorials that are in the planning stages in Europe today. The Holocaust was a continent-wide European phenomenon with global consequences. International perspective on your national enterprise is essential, especially because what Britain does has international significance that is unmatched by most other countries.

Like the United Kingdom, the United States was spared Axis occupation and thus spared the heinous crimes of the Holocaust on its own territory. It is thus perhaps not surprising that the very issues being discussed by this Inquiry—relating to content, relevance, and location in the absence of an actual Holocaust site—materialized in a very similar manner as plans for the United States Holocaust Memorial Museum were being made. In 1978, a planned march by the American Nazi Party in Skokie, Illinois, home to a large community of Holocaust survivors, the shocking public acknowledgement that hundreds, perhaps thousands, of Nazis, including Holocaust perpetrators, had come to the United States after the war, and the television miniseries *The Holocaust* combined to increase public sensitivity to the horrors of the Holocaust and challenge the comfortable notion—the myth—that the United States knew little about and had little to do with the Holocaust.

Jimmy Carter appointed a commission to explore the possibility of creating a national Holocaust memorial. When the report of the President's Commission on the Holocaust was made public in 1979 it incorporated mandates not only to memorialize the victims in a museum in Washington, but also to educate about the Holocaust and the persecution of other groups that the Nazis had targeted on racial grounds, with the goal to "remind contemporary generations of the dangers of indifference."

The report elicited considerable public criticism. Some critics asserted that emphasizing the dark potential of which humans are capable, epitomized by the Holocaust, in the midst of the many monuments to human and national achievement located in the national capital would be inappropriate. Better, the argument ran, to reconsider the entire enterprise or, failing that, to construct the memorial in some other city. Other critics argued that the Holocaust was a European event, not one central to the American experience, and that efforts to make the Holocaust relevant for Americans would fail. Still others made less savoury arguments, that the museum would constitute "a Jewish intrusion on American space," arguments that reflected the legacy of the prejudice, stereotyping, and antisemitism that had been prevalent enough in American

society in the 1930s and 1940s to have had a clear impact on American policy during the Holocaust itself.

You can see the parallels. Current events—the resurgence of antisemitism in our own time, including in the United Kingdom, the visceral hatred, or at least wariness, of immigrants and refugees that taints governmental responses today on both sides of the Atlantic, and powerful recent scholarship that has clarified the degree to which the actions or the inaction of countries other than Germany contributed to the magnitude of the mass murder of European Jewry that occurred: these factors have provided impetus for the creation of the United Kingdom Holocaust Memorial. Criticism of the initiative has also been similar. It would not be appropriate to place a monument to evil at the heart of British democracy. Perhaps another city would do . Better to spend the money on something else entirely. Or, how relevant can a memorial about the Holocaust of the Jews be in a country that was a safe haven and, like the United States, a major contributor to the military defeat of Nazi Germany and her allies?

The issue of *relevance*, of course, relates to the *content* that one intends to emphasize. Here, too, there are interesting parallels. Far from self-glorification, the President's Commission in the United States cited the "distinct responsibility" to address America's "disastrous indifference" to the fate of the Jews of Europe. The United Kingdom Commission's purposeful call to address the "ambiguity" of Britain's response similarly requires honest confrontation with the country's record at a time when millions of lives were at stake. The planned focus of the United Kingdom Holocaust Memorial on the British interface with the rise of Nazism, the Holocaust, and the post-war legacy of genocide promises to fulfil this commitment to explore the country's record, warts and all.

It is this focus on Britain's interface with the Holocaust that clearly distinguishes the content and potential of the new Memorial from the approach of the Holocaust Exhibition at the Imperial War Museum. Furthermore, the antisemitism that was a central element of Nazi ideology existed long before the war and was utilized by Germany from the Nazi rise to power in 1933 onward to build support both inside Germany and throughout much of the rest of Europe. Germany's persecution and spoliation of Jews also preceded the war, as did British decisions of enormous consequence for European Jewry. The consequences of the Holocaust lasted for decades after the war; indeed, they continue to play out and confound governments today. It would be a mistake to portray the Holocaust solely in a wartime or military history context, just as it would be too confining to see it solely as part of Jewish history or of German history. It is part of British history as well. That is the point that the Memorial aspires to bring home to visitors, challenging visitors to "reflect on whether more could have been done, both by policymakers and by society as a whole." That is why decisions regarding the *location* of the Memorial are so critical.

Twelve locations in Washington, including several existing historic buildings in the city's downtown, were explored initially as possible sites for the new museum. The site where the Museum stands today was not one of the twelve. When the transfer to the Museum of its present site, adjacent to the National Mall, in the shadow of the Washington Monument, and in the most visited tourist area of the city was made, controversy erupted. The National Capital Planning Commission protested that some procedural steps—steps not required, but generally applied to Federal government land transfers—had not been followed.

When public announcement of the site was made, additional objections emerged. Critics proclaimed that monuments to Native Americans and Black Americans should be built first, which would have meant decades of delay. Others argued that it would be impossible for the Museum to address honestly "American hypocrisy" during the Holocaust, and still others feared that the new institution would glorify the American record and that of President Franklin D. Roosevelt. Still others insisted that Holocaust survivors should instead "build a memorial to the American dead who gave their lives to free them." Some members of the Jewish community, seeing this reaction, feared that resentment toward what would be perceived as a Jewish presence on the National Mall would spark a new wave of antisemitism.

The most prevalent criticism in the letters and editorials that followed the announcement, however, was that the Museum would be misplaced on the National Mall because the Holocaust "was not an American event." The celebratory institutions on the National Mall, wrote one author, should not be "confronted by a morbid reminder of a genocidal crime committed by an alien tyranny on another continent." Commentators suggested that the right place for such a memorial would be Germany or Austria. A letter published in *Time* magazine declared that such a museum would be "highly appropriate in Jerusalem, where it would be more relevant." In short, the suggestion was to implement the recommendations of the President's Commission as far away as possible from where Americans and international visitors to our national capital might see it and, hopefully, come away with a better understanding of the roles and responsibilities of both citizens and government in times of crisis.

Despite all of this criticism, the Museum's planners and supporters in both the White House and the US Congress determined that it was crucially important for the Museum to be built in the "memorial core" of the nation, as "a warning and a lesson" in a country that saw itself as a "standard-bearer of freedom and human rights." Highly respected columnist George Will wrote that "No other nation more needs citizens trained to look life in the face." Several focus group participants stressed that the site was essential to "impress upon visitors the need to take personal responsibility for issues usually deemed affairs of state." Civil rights icon Bayard Rustin argued in the *New York Times* that located in "the centre of our democracy" the new museum would stand as a "warning against hatred and dehumanization whoever is the victim." I could continue, but the parallels to the issues being examined and the opinions being expressed to this Inquiry are clear.

Let me conclude this transatlantic analogy with a word about the consequences of America's decision regarding the location of our national Holocaust memorial. Since the Museum opened in 1993 over 45 million people have visited our permanent exhibition, 25 percent of them school students, 12 percent international visitors, and approximately 90 percent non-Jewish. Visitors have included over 100 heads of state and more than 3,500 other high-level foreign officials from over 132 countries. In 2019 our web site was accessed by 19.8 million visitors from more than 238 countries and territories. The Museum has huge Facebook, Twitter, Instagram, and E-mail Community followings. The Museum's prominence on the national map has stimulated Holocaust education across the country, reaching students, teachers, as well as leaders in the American military, judiciary, law enforcement, and government communities.

Programs for professionals examine the Holocaust so as to give participants insight into their own professional and individual responsibilities today. The Museum has presented multiple special exhibitions to the public, including exhibitions that through Holocaust history address the dangers of propaganda and hate speech; medical ethics; collaboration, complicity and the effects of inaction; and America's interface with the Holocaust. Over 900 university faculty, including from Historically Black Colleges and Universities (HBCU) and majority Hispanic Serving Institutions (HSI), have participated in teaching seminars offered by the Museum's scholarly centre, and over 675 scholars from 34 countries have plumbed the Museum's huge research collections to prepare doctoral dissertations and post-doctoral publications while on fellowships-in-residence at the Museum. The Museum's centre for prevention of genocide has educated the public about contemporary genocide and has affected official US policy through successful advocacy that resulted in the establishment of a US Government interagency Atrocities Prevention Board.

Our international impact has included a role in founding the International Holocaust Remembrance Alliance, leadership in opening of the International Tracing Service archives, participation in the activities of the European Holocaust Research Initiative, and multiple involvements at the national level in many countries. America's willingness to confront its own history during the Holocaust certainly impresses foreign visitors. It makes a statement about the importance of facing the truth in a democracy, and of course provides us with a firm foundation from which to encourage other countries to do the same.

Just how interlinked confrontation with one's own history and location can be was reinforced for me when the German Minister of Culture, who bears responsibility for most of the Federal Republic's Holocaust-related institutional infrastructure and budget, as well as the then very hot art restitution issue, visited Washington in 2016. The Minister came to the Museum with a sizeable contingent of German media. As we began a visit to our permanent exhibition, she asked me to concentrate on the sections of the exhibition that relate to US policy at the time—US immigration restrictions, the turning away of the 937 mostly-Jewish refugees on the ocean liner St. Louis in early 1939, after Kristallnacht, America's refusal to bomb Auschwitz and the rail lines daily carrying thousands of Jews to their deaths there, and the extensive newspaper coverage that provided Americans with ample access to information about the persecution and murder of European Jews. It was this willingness to confront one's own national past, warts and all, that the Minister wanted to impress on her senior staff and wanted the media surrounding her to report on. Stopping as we crossed one of the Museum's glass bridges and caught site of the Washington Monument, she emphasized to the reporters that it was important to absorb this American example and to understand that laying before the public an honest picture of the dark parts of one's past can only reinforce the strength and legitimacy of one's democracy. The Archbishop of Canterbury has endorsed the Memorial plan to "present opportunities to learn what we did wrong, as well as to celebrate what we did right." Speaking from another faith tradition, Imam Asim has expressed to the Inquiry his conviction that the VTG site is "critical" to achieving this.

I want also to present some information regarding new Holocaust memorial institutions that are being planned right now on the continent, thus providing

context that is nearer both geographically and chronologically to the British initiative.

In Kyiv, Ukraine, an intense debate has unfolded relating to the creation of a memorial at the Babyn Yar ravine, surely one of the two or three most iconic authentic Holocaust sites, a site where over two days in late September 1941 more than 33,000 Ukrainian Jews were systematically murdered by German killers, assisted by local Ukrainian nationalist militia and police. A private initiative to build a Babyn Yar Holocaust Memorial Centre (BYHMC) at the site received early endorsement by then President Poroshenko of Ukraine, but no formal government involvement or public funding. The backgrounds of some of the principal funders of the initiative raised questions from the start, and a number of managerial missteps also derailed the early progress that had been made, which included a historical narrative that was true to the history of what happened there and focused on the murder of those tens of thousands of Jews. Because Babyn Yar is an authentic Holocaust site, the location of the memorial was not in question. This has not meant, however, an absence of criticism and controversy. During the German occupation of Ukraine, the Babyn Yar ravine became a site of execution of sixty to seventy thousand additional victims of Nazi brutality—communists, prisoners of war, individuals who became suspect in the occupiers' eyes, and even several dozen Ukrainian nationalists who had collaborated with the Germans, including in the murder of Jews, but who turned against the Germans when they understood that Germany had no intention of allowing them to establish an independent Ukraine. The director of Ukraine's Institute of National Memory attacked the BYHMC plan, insisting that any new memorial had to memorialize in equal measure all of the victims shot into the ravine, and in particular the small number of nationalists who met their fate there. With this governmental authority opening the door to relativizing and diminishing the significance of the Holocaust murders at the site, a team at the Institute of History of the National Academy of Ukraine, under auspices of the Ministry of Culture, developed an alternate memorial plan. The word Holocaust does not appear in the title of the plan, and the plan itself relativizes the Holocaust by equating Nazism and communism and suggesting equal memorial treatment of the 33,000 Jewish victims at the site and the few dozen nationalists, identified as heroes, who died there. By proposing to cover the 2000-year history of Babyn Yar from ancient times through the entire Soviet post-war period, this "official" plan has the effect of burying the Holocaust altogether. As if to clarify the less seemly intent of some proponents, the plan indirectly resuscitates the Judeo-Bolshevik myth that the Nazis had promoted and calls directly for investigation of the "anti-Ukrainian" motives of Jews who advocate the establishment of a Babyn Yar memorial that would actually focus on the Holocaust.

In Ukraine, the site is not contested. It is an authentic site. But everything possible is being suggested to avoid authentic confrontation with the Holocaust and the learning experience that, in London, the United Kingdom Holocaust Memorial has the potential to deliver.

The situation in Bucharest, Romania, is different. For the last 15 years, presidents and prime ministers of Romania have all supported significant efforts to have that country learn about and learn from its Holocaust history. Treated as a taboo subject during the communist era, Romania had a long history of

antisemitism before the Holocaust and was the second perpetrator country in Europe, after Germany, in terms of the number of Jews murdered by its own government, military and police forces. Thus it is striking that it was under Romanian chairmanship and leadership that the 34 member countries of the International Holocaust Remembrance Alliance crafted the working definition of antisemitism that has since been adopted by many national governments and international organizations worldwide. With the country once home to nearly one million Jews and now to just a few thousand, the Romanian government is supporting with staff and significant funding the creation of a National Museum of the History of Romanian Jews and the Holocaust. But in Bucharest, the location of the museum became a hotly contested public issue. When the Mayor of Bucharest designated an ornate, prominent, city-owned building in Bucharest's historic old quarter to serve as the museum site, an anti-Semitic political group challenged the decision in court on procedural grounds. The judge, in finding for the plaintiffs, added to his written decision regarding procedure that he frankly saw no justification for such a museum to exist at all. Editorials followed noting that an antisemitic 19th century Romanian poet had once worked in the building, and complaining that it would insult the dead poet's memory to install a memorial to Jews there. The deputy mayor broke with the mayor and stated publicly that it would be better if the new museum were located away from any symbol of "Romanianism," specifically suggesting that it be placed in "the Jewish quarter" of the city, a quarter that had been nearly totally bulldozed during the final years of the Ceausescu regime. No one missed the point. A second site was proposed, close to the headquarters of the Government and between two existing national museums (Museum of the Romanian Peasant, Antipa Museum of Natural History) in Bucharest's "museum quarter." Members of the prestigious Romanian Academy protested this intrusion of a "foreign" subject into Romania's cultural landscape. The director of the Museum of Natural History brushed off a decades-old plan to expand that 100-year-old museum and claimed suddenly to have urgent need of the overgrown tract of land in question.

Despite all of this, the Government of Romania has demonstrated its commitment by providing a huge seven-story building on Bucharest's most historic and most trafficked boulevard, Calea Victoriei, which runs between the square where the Government headquarters are located and the former royal palace, now the National Museum of Art. Neighbouring institutions include several art museums, the George Enescu Museum, and not coincidentally, the Romanian Academy. To forestall any additional delay, the Parliament passed a special law allocating the site, and an international exhibition design competition is currently underway.

In light of the cases I have presented, one can see that very similar arguments against and avenues of opposition to the establishment of Holocaust memorials appear even in countries with quite different histories, social structures, and governmental traditions. Thinking in comparative terms, I would suggest that there exists a spectrum along which one can place the experiences of Holocaust memorial initiatives. At one end one might see winning the day denial of the need for any memorial at all; procedural arguments overwhelming noble purpose; a yielding to insistence on the inappropriateness of any truly central location as too revealing of one's national history, or for people of prejudice, just too "Jewish"; and, if all else fails, embrace of the argument that there was

nothing so unprecedented or horrific about the Holocaust that would justify dealing with it at all, certainly not before dealing with other issues, and definitely not without seeing it submerged by other subject matter into near invisibility. The Ukrainian case today would be located somewhere toward that end of the spectrum, with high risk that no memorial, or one that distorts or trivializes the Holocaust, may ultimately materialize.

At the other end of the spectrum one would have to posit an instance where none of these arguments, procedural, content- or location-related, occurred. To my knowledge there has never been such a case, but it is theoretically possible. The Romanian initiative has encountered serious challenges and delays, though the content of the museum has been secure from early on. Today it is clearly moving from dead-centre on the spectrum, where it was stalled by arguments regarding an appropriate site, toward the positive end. The American experience always resided nearer the positive end of the spectrum, with broadly recognized results, because at every key turning point, procedural issues, content issues, and site selection issues were resolved in a way that not only did not cause the project to stall, but that impelled it toward completion and high impact. This Public Inquiry will play a role in determining where on this hypothetical spectrum the initiative to create a national Holocaust memorial in the United Kingdom stands today and the direction in which it is headed along the spectrum.

There can be no question that when dealing with a site that is not itself an authentic Holocaust site, location plays a major role in predestining degrees of success and, conversely, the potential for failure to achieve a memorial's goals. The founding director of the Museum in Washington insisted that the Museum's primary educational goal was to educate "bystanders." Locating the Museum among other national museums on the National Mall was essential to attracting the 90 percent of our American visitors who are not Jewish and who, but for the placement of the Museum so squarely in our national monumental core, would have had no immediate reason to identify the Holocaust as part of their story and of personal importance to them. Placing the Museum where it became part of the American experience has fostered success that would have been impossible elsewhere.

From an international perspective, the impact is similar. It is one thing to insist to a foreign government official or foreign visitor that it is important to preserve the memory of the Holocaust and confront one's own Holocaust history, and that doing so reflects a national commitment to stand up against antisemitism, prejudice and hatred in all its forms. They may or may not choose to hear you. It is quite something else when they see that you have had the courage—the deep commitment required—to place a national memorial to the Holocaust in the midst of your most emblematic national memorials, for all the world, and of course for one's own citizens, to see. They may even hold you up as an exemplar. Moving a memorial elsewhere will inevitably diminish its reach and educational power, and will invite, even legitimate, questions regarding the actual national commitment to memorializing the victims and teaching the lessons of the Holocaust.

Our permanent exhibition in Washington, opened in 1993, provides glimpses of America's failures during the Holocaust era. But it took 25 years for us to provide the public with the extensive exploration of the consequences of

American governmental decisions and social and political realities in that era, that we now provide in a special exhibit on "Americans and the Holocaust." The United Kingdom Holocaust Memorial team is making the exploration of the Holocaust as part of British history its core focus. It is bold and courageous to do so and justifies ensuring that the Memorial's unique content stands on its own, without risk of subordination to any other institution's priorities. Completion of the Memorial will add a unique new partner, a complement not a competitor, to the impressive network of related institutions that this country already supports—the Wiener Library, the Imperial War Museum, the Holocaust Education Trust. You are engaged in an endeavour that has the potential to improve British society and the world.

I encourage this Inquiry to recommend the resolution of outstanding issues relating to this new British Memorial in a manner that ensures fulfilment of the country's aspirations for it and impels the project toward timely completion.

Ben Barklow, Chair of the Academic Advisory Group of UK Holocaust Memorial Foundation

My name is Ben Barkow and I am the Chair of the Academic Advisory Group of UKHMF. I came to this after serving as Director of the Wiener Holocaust Library for 20 years where, altogether, I served for over 30 years. I hold the Cross of the Order of Merit of the Federal Republic of Germany for this work. I was recently appointed Chair of the Holocaust Survivors' Friendship Association and its exhibition and learning centre at Huddersfield University and also am a member of the Academic Advisory Group for the new permanent exhibition at the Imperial War Museum. I am the author and editor of a number of books relating to the Holocaust.

I would like to address a number of points raised in the letter sent by 42 academics addressing the Inquiry and understand that Prof Tom Lawson from Northumbria University, one of the signatories, has spoken to the Inquiry. The letter begins by referring to another letter sent by a group of 28 academics to the Prime Minister's Holocaust Commission in 2014 in response to its call for evidence. In the letter of 2014 the 28 signatories expressed strong support for the planned memorial and education centre, lauding it as 'a tremendous opportunity to increase public historical understanding of a complex and challenging part of our history' and 'the opportunity to correct widespread misconceptions about the Holocaust, not least with regard to Britain's role.' Despite this, the letter of 2014 confusingly concludes by arguing that there is 'no pressing need for a further physical monument' relating to the Holocaust.

The reason given is the existence of the permanent Holocaust exhibition at the Imperial War Museum, and the possibility of moving the Holocaust memorial in Hyde Park to Whitehall. On the Imperial War Museum, it is clear that an exhibition does fundamentally different work from a memorial. The latter point about Hyde park seems to me to contain two problems: firstly, the Hyde Park Holocaust Memorial is not a national memorial but one erected by the Jewish community and largely serving that community (for example as the site of the annual Yom Hashoah ceremony over many years); and secondly, there has never been a plan to move it or in any way incorporate it into the national Holocaust memorial.

The existence of a memorial erected by and for any community does not and should not rule out the creation of national memorial. Every town and village has its war memorial, but this in no way undermines the need for the Cenotaph in Whitehall. It is evident that Britain's diverse Jewish communities stand in a somewhat different relation to the history of the Holocaust than the majority of British people and others living in the UK. The National Holocaust memorial is intended to serve all people living in Britain, which of course includes British Jews. I may take my own position as an example. I am not a Jew, and yet members of my family were murdered in Auschwitz and elsewhere as so-called 'Geltungsjuden' ie non-Jews who chose to live as Jews, while other relatives were exploited as slaves in concentration and slave labour camps and the Terezin ghetto.

While strongly empathetic and sympathetic to Jewish communities everywhere, I do not want to participate in specifically Jewish Holocaust memorial events when remembering the sufferings of my family. For me it is more fitting and comfortable to remember them in the context of a national setting, such as Holocaust Memorial Day. The national Holocaust memorial will serve as a focal point for my own remembrance. The letter of 29 September reiterates that 'resourcing of educational materials should be a priority' but ignores progress made in this regard since the letter of 2014. One example is the enormous development, by the Wiener Holocaust Library, of a set of online digital resources called The Holocaust Explained – originally created by the London Jewish Cultural Centre. This very significant resource was offered – when I was Director of the Wiener – to the UKHMF as the backbone of its offering of online educational resources. The Holocaust Explained website is one of the most visited educational sites on the subject in the world. Another example is the creation by the UCL Centre for Holocaust Education, of a specialised textbook on the subject for use in schools in England and Wales, funded by the Toni Schiff Memorial Fund (Mrs Toni Schiff being an Austrian woman murdered in Auschwitz, whose daughter Hilda came to the UK with Kindertransport).

The letter of 29 September also states that funds dedicated to the memorial would be better spent supporting academic research and doctoral students. Given the profession of the signatories one might respond, well, they would say that, wouldn't they? More seriously, the signatories seem to me to be making the unwarranted assumption that funding the memorial is a kind of zero-sum game; that any money spent on the memorial must mean less for other educational purposes. I don't accept this view. I believe that the Memorial is in itself a very significant educational resource and will contribute enormously to the improvement of Holocaust education and awareness in the UK. Further, the memorial is likely to stimulate longer term educational demand as people, especially the young, begin to explore the topic as a result of their visits.

Concerning the location of the memorial, the letter of 29 September expresses concerns that other memorials in VTG will be 'overwhelmed'. I believe it is just as likely that interest in these memorials will increase as more visitors are attracted to the Gardens. It is well known that businesses cluster together (eg shoe makers in Northampton, Jewellers in Hatton Garden) because this increases footfall and profitability. A similar effect is at least possible in VTG, the Holocaust memorial attracting people who will view all the other memorials in the Gardens during their visit. The letter argues that a location next to

Parliament is 'likely to create a celebratory narrative of the British Government's responses to the Jewish catastrophe' and 'almost certain to add to the mythology of 'Britain alone' as the ultimate saviour of the Jews' rather than an account that can be supported by scholarship. There is no precedent or rational basis for this view. Nothing in any of the planning documents for the memorial would lead one to fear this outcome.

Nothing of the kind followed from locating Germany's national memorial close to the Reichstag, or the siting of the USA Holocaust Memorial Museum near Congress. My relatives found no refuge in Britain, and some perished, so I could hardly support the creation of a national memorial that seeks only to glorify Britain as a rescuing country, or that tries to minimise the many ways in which it might have done more to save the lives of those victimised by the Nazis and their allies. I chair the Academic Advisory Board precisely because I am determined to do everything in my power to ensure that Britain's memorial offers genuine reflection rather than any form of national propaganda. My colleagues on the Board are fiercely independent, represent some of the finest academic work being done in the field of Holocaust studies today and have already made a significant impact on the content of the exhibition at the memorial to ensure that it presents an account that is, in the words of Lord Pickles, 'Warts and All'. They continually stress the need for detail, nuance, context and an emphasis on the complexity of the issues being presented.

This challenges the Holocaust Memorial's chief curator Yehudit Shendar in her work and she has embraced these imperatives in a whole-hearted way that is truly admirable. I am convinced that everyone engaged with shaping the memorial is dedicated to creating an educational experience that is not only underpinned by sound scholarship but that also profoundly challenges visitors to ask themselves, what would I do if faced with such situations? I would suggest that it is wholly appropriate to locate Britain's national reminder of the political and moral dangers posed by genocide, the crime of crimes, next to its seat of political power. As we visit the memorial, we also send a message to Parliament that we are alert, we are watching and we will hold our leaders to account.

Educators

Olivia Marks-Woldman Holocaust Memorial Day Trust

Twenty years ago, in January 2000, the senior leaders of 46 countries met in Stockholm to discuss Holocaust education and remembrance. At the end, they signed the Stockholm Declaration, which became the cornerstone for remembering the Holocaust around the world. The declaration said that 'the Holocaust shook the foundations of modern civilisation' and that 'the Holocaust must have a permanent place in our nation's collective memory'. Then Prime Minister Tony Blair returned from Stockholm and established Holocaust Memorial Day in the UK.

Leaders and parties have come and gone since then, but the British government's commitment to learning from the brutal truth of the Holocaust hasn't changed. Whatever their political beliefs or agendas, all MPs solidly unite – a rare sight in politics! – on this cause and it is deeply encouraging. Since that meeting in Stockholm twenty years ago, people in the UK started to take time to

collectively remember the Holocaust on Holocaust Memorial Day. At first it started in a small way: in 2006 there were 266 local events, held mostly in schools and civic centres. But today there are tens of thousands of commemorations – large and small – that take place all around the country in libraries, churches, mosques, offices, prisons, museums and more. And beyond the UK, from Argentina to Australia to Canada to Europe – people gather on the 27 January to remember.

UKHMLC

The UK leads the way internationally in marking Holocaust Memorial Day, and with our rich educational sector – yet there is no national Holocaust Memorial in our capital city. This is a big gap. I am making this statement in support of the Memorial and learning centre as I believe that having the UK Holocaust Memorial will fill this gap. ‘The Holocaust must have a permanent place in our nation’s collective memory’. It has this place through the annual Holocaust Memorial Day commemorations, but has no significant physical place. The UKHMLC will fulfil this commitment.

What is a memorial? A symbol of what we think is worth remembering. It outlasts us. It is a place of learning. The space could become the front of all this work. The UKHMLC could become the ideal place for us to organise and hold the annual HMD ceremony. There is a big, vibrant education and commemoration sector in the UK doing fantastic work for Holocaust education and commemoration. At HMDT, we are privileged to lead the Partnership Group with more than 20 different organisations who work hard for a big cause. The UKHMLC will help highlight and complement all the work taking place around the country.

Today

Learning about the Holocaust and recent genocides, and hearing from survivors can be deeply significant experiences. On Holocaust Memorial Day, people who attend events learn more, empathise more and show more tolerance to anyone different from them. People take action in their communities to make a better future – they are inspired to continue learning, they volunteer, they inform others.

We know that although the world said ‘never again’, there have been genocides since the Holocaust in Cambodia, Rwanda, Bosnia and Darfur. We also know that antisemitism didn’t end after the Holocaust. Of course, Nazis also persecuted many other groups, like black people, Roma & Sinti people, disabled people, gay people. Prejudice and hostility towards minority groups still exist: homophobia, anti-Roma sentiment, prejudice against disabled people, anti-Muslim hatred.

We know that there is still so much hostility and division in the world today, and there are still places in the world where people are being persecuted for who they are. We see reports of Uighur Muslims in China, shackled and blindfolded, being loaded onto trains, ‘re-educated’ away from their faith and culture. And Rohingyas in Myanmar being stripped of their citizenships and persecuted. There is still so much to warn about today and so many lessons to learn from what happened 75 years ago. Because identity-based hostility isn’t a ‘Jewish issue’, or a ‘Muslim issue’ or a ‘black issue’. It is a problem of otherness, of

being human and being shut out for who you are. We know that the Holocaust Memorial and Learning Centre will be aligned with these priorities: to focus on the Holocaust, and to include, in the Learning Centre, information about all victims of Nazi Persecution and about recent genocides. This alignment in approach between the Government-established Holocaust Memorial and Learning Centre and the Government-established Holocaust Memorial Day is entirely fitting

Summary

The global pandemic and the economic crisis are challenging the very essence of remembering: how does one reflect on the past when the present is so overwhelming? In fact, it's never been more urgent than now to be remind ourselves of where division, misinformation and fear can lead to. This year is the 75 anniversary of the liberation of Auschwitz-Birkenau. We have reflected on what has been learnt since then, and how much more we still have, as a society, to learn in order to create a better future. We have looked back over these 75 years, and treasured the witness testimony that is still able to be shared with us. But this reflection over the past 75 years prompts questions: What will be here in 75 years' time? What kind of society will we live in? What kind of people will we be? What will shape our learning?

Most of us taking part in this Inquiry will probably not be here to answer these questions - but the Memorial can be.

Jaya Pathak Holocaust Education Trust

I speak to you as a Regional Ambassador for the Holocaust Educational Trust in complete support of the Memorial. Holocaust remembrance is more vital than ever: We are seeing a concerning rise in antisemitism and other forms of discrimination across Britain and other countries; we are similarly seeing a worrying rise in Holocaust denial, entering the mainstream through social media networks. It appears that the lessons from the Holocaust have yet to be learnt, and this needs to be addressed.

I first heard from a Holocaust survivor when I was 17 years old- it changed my life. Having the opportunity to hear from and work alongside Holocaust survivors is a privilege I know that my generation are very fortunate to have. As Holocaust survivor and Nobel Laureate Elie Weisel said 'When you hear from a witness you become a witness'. I am now a witness to the truth. We must face the reality that survivors will soon no longer be able to share their testimonies. We have a duty to continue to educate others about where hatred can lead to when left unchecked. We have a duty to solve the issue of how we can effectively share their testimonies with future generations. This Memorial is the solution. We must reassure survivors that we will keep their legacies alive by having a permanent reminder of our history, open and accessible to everyone.

My role as a Regional Ambassador for the Holocaust Educational Trust has given me the opportunity to travel the world and see some of the best Memorials that exist. I have personally experienced the effects of a what a truly powerful Memorial can do. I have visited Yad Vashem- the World Holocaust Remembrance Centre in Israel, the Polin Museum in Poland and the memorials to the Holocaust

on the banks of the Danube in Budapest- near the Hungarian Parliament. Each presents the history of the Holocaust from its country's individual narrative. A Memorial provides an invaluable chance to educate people from diverse backgrounds in an accessible way, reaching out to a wide audience of people who aren't just living in the UK, but who also come to visit . Those who visit these memorials leave feeling inspired to create positive change in our society and are a testament to the worth of such memorials.

I have developed a profound understanding of the Holocaust in ways that cannot be done through textbooks and documentaries. I have seen the difference these memorials can make on someone's understanding of history and the concept of atrocity. It is the capacity to educate people through the Learning Centre that is especially vital. It will allow those of us who don't have the access to further learning the chance to understand the history of the Holocaust and its vital lessons for today. It will give people the tools to fight antisemitism and hatred, as well as allowing us to commemorate the victims of the Holocaust.

The history of the Holocaust isn't just the history of European Jewry, it is our shared history. The location of the Memorial and Learning Centre next to Parliament, amongst prominent memorials commemorating the struggle against slavery, inequality and injustice, is crucial. It will serve as a permanent reminder of the role of British decisions in the lead up to, during, and aftermath of the Holocaust. Globally, we can find such Memorials and Learning Centres at the heart of many democracies around the world, for example the United States Holocaust Memorial Museum sits in Washington DC and several memorials sit in Berlin near the Reichstag. As a leading international force in the fight against prejudice and discrimination of all forms, it is time for Britain to give an equivalent space for the memory of the Holocaust in our capital city.

Growing up in London, I appreciate the value that such memorials bring, and there is nothing comparative to this proposed Memorial that exists. Education is the most important tool in ensuring that we learn from the past. The Holocaust is a part of British history, it is not a foreign tragedy. As an ethnic minority born and raised in the UK, I know the importance of critically reflecting on the role of Britain and the importance of this to the Jewish community and to other minority communities who were persecuted by the Nazis.

Will we tell our survivors that they will be remembered and that their testimonies will live on? The honourable answer is a British one – yes, and the way to do this is to create this Memorial and Learning Centre next to Parliament.

Eric Murangwa Eugene MBE Founder and Executive Director Ishami Foundation

I am a survivor of the 1994 genocide against the Tutsi in Rwanda, a genocide education campaigner and advocate for peace and development through sport and storytelling. The Ishami Foundation draws on genocide survivor experience to help us all connect to our common humanity and challenge polarisation in divided communities. We currently focus on communicating the lessons of the past through two strands of activity: sport and storytelling.

We work with survivors, young people and vulnerable communities. Our activities empower participants by fostering respect, team spirit, critical thinking

and resilience. Memorials in my home country Rwanda bear witness both to the victims buried there and to the others, like my brother Jean-Paul, whose body was never found. They serve as evidence of the 1994 genocide against the Tutsi in Rwanda. This is why I believe that memorials are essential and offer one of the crucial mechanisms the world needs to keep the memories alive and this is why I personally wanted to support the UK Holocaust Memorial and Learning Centre project when I heard about it.

Through personal and my organization activities I have been working in collaboration with different groups to support initiatives designed to mark the over one million victims of the 1994 Genocide against the Tutsi in Rwanda and to ensure that the victims are remembered at this prominent national place of commemoration and education. The Ishami Foundation is pleased to support such an important and significant project as the UKMLC. Historical memorials truly matter and a new UKMLC built at the heart of world's greatest city and next to the symbol of the home of British democracy will have a huge significance on how the UK and the world at large remember and learn about the Holocaust and modern Genocides in the future.

Natasha Kaplinsky Holocaust Memorial Foundation

I have heard with interest (and a great deal of respect) the multitude of experts who have appeared so far, but what I feel, I might best add is a bit about the soul of the project.

I will start with a bit of background to my involvement - and then explain its relevance later. I have been involved in this project since its inception in 2014. It was then that the then PM David Cameron launched the Holocaust Commission, and I had the great honour of being one of his Commissioners. I believe that I was included in response to an episode of the BBC Programme Who Do You Think You Are? where my family heritage was researched and linked back to Belarus. To our immense sadness, the programme detailed how a number of my father's family had been murdered by the Nazi's in Eastern Europe.

I spent much of 2014-2015 travelling with the Commission to see how other countries commemorated the victims of one of the darkest periods in history - in order to inform our recommendations. The report, 'Britain's Promise to Remember', was written and submitted in time for Holocaust Memorial Day in 2015 when the PM endorsed and accepted all of our recommendations.

One of our key findings was the urgent need to gather survivor testimony due to the obvious, and diminishing time, we have left with these extraordinary people. The Holocaust Memorial Foundation was formed to advise the Government on the implementation of these recommendations, and as the only journalist on the Board, I volunteered to record the testimony of five initial Survivors. The premise of each of these interviews was to record the testimony of a survivor who had never before spoken. It was a deeply intense and extremely moving experience requiring days of preparation prior to each interview; the five hour interview itself (that needed very careful and delicate handling) and then the significant after-care of these very frail survivors and their families.

The first five interviews, were so powerful, so significant and so emotional, that it was decided that we had only touched the very tip of the iceberg and funds were then found to extend the project to recorded a further 107 - so 112 in total. The common theme of these survivors was that they had not told their story before - to anyone. They had kept their secrets in order to protect their families from the horror - but then, toward the end of their lives, there seemed to be an urgent (an almost panicked) need to unburden themselves of their experiences before they left us.

At that time, I was working as a news anchor for ITN - hosting key national bulletins. The project was so significant, that I stepped out of the newsroom (giving up my salary), to commit myself wholeheartedly to this project on a voluntary basis.

The proceeding interviews took place over a 15 month period and took every ounce of strength from me. Towards the end, I was a nervous wreck and needed a great deal of counselling to come to terms with the horror of what had been shared with me. My husband genuinely thought I was going to have a breakdown. The Chief Rabbi at the time, comforted me by telling me what we were doing was a sacred task. And it felt so. It felt like a mission. It was certainly the hardest period of my professional life and, at the same time, it was 100 percent the honour of my life to be part of a team that helped these extraordinary people unburden themselves of their secrets. But I will be honest in saying, I feel a great weight of responsibility in representing them today.

The survivors I spoke to trusted me with their testimony in large part because they knew it was being recorded for the benefit of generations to come and that it would be housed in a learning centre that would and could be accessed by their grandchildren and their grandchildren's children.

At the end of every interview, I would always ask whether they felt that any lessons had been learnt from the past. In almost every case - the answer was no. And that, was always the hardest answer to hear - that despite their unimaginable suffering and torment - it was all for nothing.

And it is this answer that drives me on. It is this answer that has ensured that I have committed a large part of the sweet spot of my professional career to ensure that their pain is heard and that their horror is recognised. That six million people did not die for nothing.

The voices of these 112 survivors haunt me and in equal measure inspire me. I feel so fortunate to have spent so much time with such exceptional people but in sharing their pain - they have given us collectively the responsibility to do something with it and to learn from them. That is what this whole project is about - Memorialising their pain and the immense loss and learning from a period of history that must never be repeated.

Please forgive me, but I have listened to an endless list of people over the past two weeks - with a great deal of respect (of course), and in many cases, with understanding and sympathy for what they have said, but I feel they are missing the point of what UKHMLC is about and why the significance of it's positioning in Victoria Tower Gardens is so poignant. The placement of the memorial gives the subject the prominence it most certainly deserves and changing it's location, as many of the past speakers seems to promote, would profoundly relegate it's

significance. The view of Parliament from the Memorial will serve as a permanent reminder that political decisions have far-reaching consequences and highlight the responsibilities of citizens in a democracy to be vigilant and responsive whenever and wherever our core values are threatened. I am sure, that it has not escaped you all that we are living in extremely volatile times and as a Nation, I believe that we have the obligation to confront extremism and hatred in all its forms.

I would like to address what I understand to be the two key issues at stake here. The first being the specific location of the Memorial in Victoria Tower Gardens. I have heard a number of speakers highlight that they feel the park will be taken over by the memorial. This is blatantly not the case. I believe we have shown that the Memorial will only take up 7 percent of the park. That being the case, I see no reason at all why the Memorial and the current uses of the park cannot happily continue to co-exist. I understand that it might be important for some people to sunbathe or to have a picnic in the park, but I find it very hard to hear that this cannot be squeezed into the remaining 93 percent of the park and that it is to be prioritised over the opportunity to juxtapose a monument marking the worst example of the disintegration of democratic values against the greatest emblem of Britain's aspirations for democracy. Our current national memorial in Hyde Park is wholly inadequate, it is not much known about - and through our consultations we have learnt that it is felt to be out of sight and with no context. We should not shy away from our ambition or lose sight of the statement we are trying to make. Political decisions have far-reaching consequences and the location, is exactly the point of this Memorial. It gives us the opportunity to view the depths of tyranny against the high ideals of the Mother of all Parliaments.

A now in my last few minutes, I would like to refer to the less than positive comments made about the Learning Centre. Please forgive me, but it feels that these comments are made with what I believe is a limited understanding of what we are trying to achieve. Firstly, the content of this Learning Centre is a work in progress - though the principals are set. We would, I am sure, welcome any constructive input from the experts who have commented if they feel we can improve the content going forward. I have been aghast to hear the progress we have made belittled to a "series of four small rooms measuring 30 by 30." We are working in collaboration with a range of institutions across the UK to craft an educational resource that promotes the deepest understanding possible of the Holocaust and subsequent genocides that goes far beyond the outer perimeter of the learning centre. For example, in the next few days, I understand that you will be hearing from one of my colleges Adrian Packer who will tell you about a very significant Educational Project called Echo Eternal that has sprung directly from the testimony spoken about above. Echo Eternal is a commemorative arts, media and civic engagement project that has already won a very prestigious Pearson education award inspired solely by the survivors who will be memorialised in the Learning Centre.

I return now to the survivors who are at the heart of this project - and who are in my heart. Those who are still with us, will no doubt be following every twist and turn of this Inquiry. The placement of the UKHMLC is an opportunity to give them a semblance of peace and stillness at the end of their lives. I believe it is

the greatest chance we all have to illuminate our thinking and enlighten the generations that follow.

This is a project that goes well beyond any boundaries and I beseech you to see its National and International significance for the sake of humanity.

Adrian Packer CBE Chief Executive Echo Eternal

Like Natasha Kaplinsky yesterday, I am mindful that my statement is not a technical submission, but rather an expression of a view that the proposal you are considering has significant and far reaching human-interest implications. In my case, those implications relate to children and families, representation of minority groups, cultural and social integration, Fundamental British Values and education.

Echo Eternal was originally inspired by the 112 interviews with Holocaust survivors Natasha spoke of so eloquently yesterday, but that is just the beginning of our story. The project is now a nationally recognised, award winning partnership project, highly praised for its ambition, its reach and its innovation.

Although the Holocaust is quite rightly taught as part of the history curriculum in schools across the country, our project offers a different perspective to learning about the Holocaust and subsequent genocides because it uses testimony to build empathy: empathy between children and survivors and empathy between children and schools with different social and cultural characteristics.

Echo Eternal is a commemorative arts, media and civic engagement project that connects 19 carefully adapted testimonies from the original 112 interviews between Natasha and the survivors with schools across the country. The testimony adaptations were supervised by the UCL Centre for Holocaust Education and are now "gifted" to schools to develop their own unique responses: echoes of the testimony, which are co-constructed with an artist in residence, specially trained to navigate the complexities of survivor insights.

Ultimately, the project allows children to develop poignant, beautifully crafted expressions in response to the key messages of each testimony. These are shared in local communities and archived through film versions of each echo. The echoes have a significant impact on the survivors and their families. Sadly, some of the 19 survivors have passed away since the time we started the project. But we take comfort that the survivors consistently tell us that their truth is in safe hands. In the case of one of them, the late Kurt Taussig, this impact was felt so profoundly that his family spoke specifically about how important Echo Eternal was to him AND them in his last days at his funeral last year.

Natasha spoke to you yesterday of bringing a soulful and human perspective to the considerations about the Memorial and Education Centre. In my view, there is nothing more important to humanity than education. There are many excellent examples of how children and young people are taught about the Holocaust and subsequent genocides, but what we have been able to achieve through our partnership with UKHMF is a concept that Holocaust survivor testimony should be an entitlement. We believe every child should have access to testimony and

should know that survivors speak an intolerable truth so that future generations are able to listen, learn and become the change we so desperately crave in an increasingly polarised world.

These truths must not be tucked away in a vault or diluted. In fact, the words of survivors should be amplified and given a major platform to be heard far and wide. Testimony should resonate across all communities, transcending faith, culture, ethnicity and national borders. If we are to truly confront hatred and prejudice, we should proactively seek to break down the barriers that lead to it.

This is what our young Echo Eternal participants are so passionate about: engaging with oral history to shape a world where “never again” becomes the reality of *their* legacy to this world. One of our students, Sana, was awarded with our first ever Echo Eternal fellowship this year because she wanted her relationship with survivor Mady Gerard to go beyond a single echo. Sana was so moved by Mady’s accounts of starvation in the camps and her subsequent commitment to eradicate child hunger, that she mobilised her whole local community to support a campaign to work with Save the Children and fundraise in honour of Mady’s testimony.

I long to visit the UKHMLC with Sana and the many other students impacted so positively by Echo Eternal in this way.

Beyond the individuals like Sana who have benefitted so positively from the project, I am particularly proud of the social and cultural integration elements of our work. Every year on Holocaust Memorial Day we bring together different communities who have participated in Echo Eternal to share their echoes as one. This solemn act of solidarity goes beyond anything I have ever experienced in my 30 plus years in education.

My current role as CEO of a multi-academy Trust sponsoring schools in Birmingham has helped me shape the principles of Echo Eternal. The majority of our pupils come from so-called minority backgrounds and are far too often referred to as “hard to reach”. This annual Echo Eternal event disproves that notion. We make it easy for children and families from all backgrounds to come together with a single purpose- to pay tribute to our survivors and promote strong messages of civic togetherness.

My initial interest in developing this project with UKHMF’s support was to build on the success of my Trust’s work with the schools we took over in 2014. These schools were at the centre of the so-called Trojan Horse affair in Birmingham. I was struck that UKHMF recognised that the children we serve have the potential to pioneer an approach to bringing the proposed Learning Centre to life before it exists as a physical entity.

When I first arrived in Birmingham in 2014, I was confronted by the complexities of the issues highlighted in Ofsted reports about the schools I was taking over, the most damning Ofsted reports I have ever read. These reports talked about children at risk of extremist ideologies, inadequately prepared for the risks of radicalisation. The children were not aware of life in different parts of the UK and were not well prepared for life in wider society.

In one report it was noted that ‘Leaders do not sufficiently develop pupils’ understanding of the different customs, traditions or religions that exist in Britain. This does not prepare pupils adequately for life in modern Britain.’

The reference to life in modern Britain is particularly note-worthy, as it was the events in these schools in 2014 that led to all English schools being required to teach fundamental British Values. These values including democracy and the rule of law are perhaps universal and arguably not exclusively British values at all. So, our approach has always been to make these values come to life.

Parliament is an undeniable symbol of these values. Before Echo Eternal, students like Sana would not have made that link. Now, Sana sees Parliament as a place of relevance because the learning centre will create a physical link to the place where democracy shapes the rule of law in modern Britain. This will empower her and others to feel that they have a meaningful stake in democracy.

That we pioneered this initial learning in Birmingham is something we are rightly proud of, but our motivation has always been inspired by knowing that our students' voices would find a home worthy of their significance and importance to future generations. We look forward to more echoes from across the whole UK coming together in this single site- to create what has the potential to be the largest social and cultural integration project this country will have ever seen.

When Ofsted returned to our schools three years after I first arrived, they noted how we focused on making our students effective British citizens noting that:

"Pupils are taught how to keep safe; fundamental British values are promoted highly effectively. Powerful partnerships with other organisations provide a range of opportunities to further enrich pupils' spiritual, moral, cultural and social development"

I remain committed to bring children from different backgrounds together and in doing so, I propose that we ensure our national institutions remain relevant and accessible as a conduit to that process. We also need to remember the last of the four British values which speaks of mutual respect and tolerance of difference. Sana's school has a 98 percent Muslim population. Their relationship with Mady is one of the most beautiful embodiments of that value. That same school has hosted regular Echo Eternal events including the annual Great Get Together in memory of the murdered MP Jo Cox, inspired by Jo's legacy as we remember her words that "We have more in common than that which divides us."

As a proud Member of Parliament, Jo would surely have been approving to see different communities coming together with such strong common purpose within touching reach of where she spoke those words.

I look forward with optimism that Echo Eternal and the testimony that fuels our tributes to Holocaust and subsequent genocide survivors will ultimately find a home in the only place fitting of the magnitude of our project's ambition and its importance to shaping modern British society.

Kish Alam

My name is Kishor Alam, a Muslim who has lived all his life in Finsbury Park and have prayed in Finsbury Park Mosque for over thirty years.

The reason why I am speaking is that in the late 90's- bear in mind at the time the Mosque was known as the Suicide Factory- I was asked by special Branch to let them know what was going on inside.

We have all heard about Abu Hamza, Abu Qatada, Richard Reid (the shoe bomber) and Zaharias Mossaoui (convicted for his part in 9/11) but as well as them, younger pseudo academics, I remember came over from Egypt, Yemen and Pakistan. They spoke in perfect English, led prayers and gave lectures.

That's was the first time I had really heard Holocaust denial. It was clear that its purpose was as kindling to start a fire of hateful antisemitism with the very real intention of promoting violence/ a race war, call it what you will, against young Jewish boys round the corner in Stamford Hill.

For me the Holocaust was an undeniable fact – like the moon landings. Sure, there were people who didn't believe in it but there are always flat earth believers. They are marginalised. Nothing really to be concerned about and usually the butt of jokes. But this was different. There were charismatic, visiting Imams whose sole purpose was to influence. And the argument they began with, was this:

The biggest lie in history is The Holocaust - told by the biggest liars – the Jews.

I reported what was going on in these lectures and the books that were being used to back up the claims. In order to have a sort of argument countering this, I was put in touch with Prof. Klier – the late Prof Klier at UCL- who was an expert on the Holocaust and its denial. I spent many hours with him and I like to think it had an effect. When the Imams went back to their countries and I was with those boys, I could work on them and try to show them the other point of view.

There were several circumstances where we thought there may be an imminent attack but these never came to pass. There was of course a price to pay and those elements in the Mosque who I was railing against...well let's say they didn't take too kindly. Before the MP Stephen Timms and Drummer Lee Rigby I was attacked and stabbed by someone loyal to the Imam.

Fortunately, I was fine – he missed – just cuts and wounds to my back and shoulder.

My life changed and I had to move away. From everything. I cut ties with my parents and friends; left a university course where I was studying management; broke up with Ellie.

But I was looked after and went to Scotland, to St Andrews University to read for the MLITT in Terrorism Studies. I went on to an MSc in Transnational Security Studies, an LLM in Law and a further research degree regarding Security and Surveillance. I hope to progress and eventually complete doctoral studies. What I'm trying to say, is that I have been at point of the sword, literally, and have studied Terrorism from an academic perspective too.

I absolutely know that in Islamist terrorism, Holocaust denial - and I want to separate this from general antisemitism- lies pivotal to radicalisation. And regretfully, we've all seen where that can lead. You won't find this in every textbook but believe me it's the truth that I've learned. And anyone actually working in CT or the PREVENT and PURSUE arms or CONTEST will agree. We learnt these from real operations such as RHYME and CREVICE which are still seminal to our understanding of Islamist Terrorism.

This is how it works:

Step 1 -praise the glories of Islam

Step 2 -question the western view. Show how Muslims have been downtrodden. That they are on their own, isolated and it is the lying Jews, controlling the US who are behind this. The Jews have invoked sympathy from the world by conjuring a Holocaust that did not happen. And here's the proof it didn't happen

Step 3- Muslims must fight back.

Step 4- This is the point of no return – acts of terrorism are legitimised and promoted by the elders.

Step 5 – deployment on a mission.

And because it's so crucial to the argument, I've seen how disrupting the holocaust denial at step 2 can give that moment of pause.

It's too broad and easy to say that education is a silver bullet – there's a far more nuanced discussion to be had. But I want to emphasize in this case, I've seen how learning of what happened, changed attitudes and then behaviour in the young men from the Mosque that I knew.

Nowadays, I take such men from various Mosques to different places to learn about the Holocaust. The first time at the IWM, I was really unsure – I pretty much thought they would just see it as a day off from the Mosque – like any school trip and I was pleased that it would be at the IWM as there are Spitfires hanging from the roof. I took a ball as it's in a park. I was very surprised – they spent the whole time in the Holocaust exhibition and afterwards, we sat in the park chatting -without needing the kickabout. There was one photograph in particular that made it a real thing, about real people like them, and not just something abstracted, historical, something to write about for a project. It was a photograph of Jews in Vienna, on their hands and knees, made to scrub the pavements while their neighbours looked on. It looked just like the devotion pose in Islamic prayer.

And then there's the shoes. People just like them, who wore shoes, were tortured and killed for their beliefs and all that was left of them was their piled-up shoes. Discarded, tossed away and anonymous, like the people who they belonged to.

I've since tried to help with that education and Jonathan Bruck at the *Anne Frank House* has asked me to be a trustee there – I don't know if I will but I'm certainly going to continue taking lads to Amsterdam, the IWM and I hope the Holocaust Centre in Westminster.

To sum up, I am a Muslim. A devout one and a Londoner too. I've seen first-hand how education changes people's attitudes and their subsequent actions. If it didn't, I couldn't have come back - [REDACTED] has gone but some of his acolytes are still there and yet I am no longer in danger. I talk to them. Mosques are buildings – they are not good or bad – only the people that inhabit them. It used to be called the *Suicide Factory* and now there is a banner outside that proclaims a quote from the Koran: *...and we have made you into nations and tribes that you may know each other...*

It's clear that I am in favour of holocaust memorials and education centres. If it were up to me there would be one in every city, town, village and hamlet. But of course, that's not real life. I love Sir David's design and I am aware of my

own bias. Liking something is subjective and he's preaching to the converted but it has to be in Westminster. It has to be in the most important of places, because the Holocaust, the attempted annihilation of European Jewry was a unique cataclysmic event and the darkest chapter in the history of Western Civilisation. Westminster is and should be the place where deeper meanings are pondered and the lessons from the past are considered to help shape the decisions which affect all our futures.

Last year my tutor took us to see Scarlett Crawford's photography on the Race Relations Act displayed in the Hall at the House of Commons. I went back again with some lads from the Mosque and apart from the exhibition, they were genuinely thrilled to see the plaque on the floor where Nelson Mandela spoke to the members of both houses.

We met in Parliament Square and it resonates that there are monuments to Gandhi and Mandela at the very centre, at the very core. They are not interested in Viscount whoever or Marquess so and so, who put down some rebellion centuries ago. But to see Gandhi and Mandela sharing the same space as Churchill is such a demonstrative acknowledgement of importance. And how attitudes can, and have changed.

It has to be Westminster with the Cenotaph and all the other monuments because the Holocaust Memorial must be seen to be of no less importance – not just an adjunct in a South London Museum that has existed for decades. The Holocaust is distinct from all other conflicts and has to be considered as such by giving it, its own place at the heart of where Government operates today and every day.

And just one last thing- I am sure that everyone will politely thank you for the opportunity to speak and be heard. But for those working in counter-terrorism there are no traditional legacies. Their successes are secret and failures public. They don't get medals and glory in the same way. They'll do a risk assessment and probably won't get married or have children. What I am saying is, if this happens and in some small measure my words have made a difference then it will probably be the most important thing I've done.

Martyn Heather Head of Education and Welfare, Premier League

You may well be wondering why someone from the world of football wishes to speak at this inquiry so if I could just give you a brief background this will hopefully give you some context. Part of the work we do with the young players in our academies, who range from aged 8 – 23, is seldom seen outside of the football environment. One of our stated aims is we wish to not only produce the best players in the world, but we also want to develop holistically well-rounded young people. As such we undertake a comprehensive program of formal and informal education programs supported by a wider program of player care initiatives which we believe will not only equip the young people for life as a professional player but also prepare them for life outside of football whenever that outcome will arise. Having young people who are socially responsible and who contribute to society is something we continually strive for. A great example of this would be Marcus Rashford and his ongoing campaign to enable

young people to access free school meals outside of term time. Marcus is a product of the excellent education and care he has received from his club.

One of the initiatives we undertake, as part of the holistic development, is a program in partnership with the Holocaust Education Trust. The PL are currently coming to end of our two week 'No Room For Racism' campaign and you will have seen a lot around players taking the knee in support of 'Black Lives Matter'. These become no more than gestures if they are not supported through the education of players, and young people, around the issues of equality, diversity and inclusion helping to deepen their understanding of the differing forms that racism can take. Unfortunately, anti-Semitism can end up the poor relation when issues around racism are discussed and hence why we wanted to ensure that it is central to our education programs.

I wish I could show you the videos of the young people who have been through our program as their voices are far more powerful than mine; but the impact of learning about the holocaust, hearing survivor testimonies and visiting Auschwitz/Birkenau has given them a passion to ensure that history will not repeat itself.

Alongside this we have been heavily involved in the Foundation Stones project, alongside our friends at the Big Idea Company, whereby young people paint stones with messages around the holocaust and other genocides and which will form part of the foundations of the new memorial. The sessions where they have been painted, and the workshops which support them, have led to extremely moving and thought-provoking statements. Bearing in mind the significance of stones in the Jewish faith there can be no better way to remember the victims than by including the stones within the building's foundations.

I was fortunate last year to be at a tournament in Poland where we had under 15 teams from England, Germany, Poland and the Czech Republic. As part of the off-field activities we hosted a Foundation Stones session. Whilst the languages for the delivery may have been different the messages on the stones conveyed the same language. Young people from around Europe who were learning the lessons of the past but standing united in their hopes for the future.

What relevance does this have to the inquiry? Well for HET and ourselves to deliver the most effective learning environment for the programme we have to travel to Poland to understand first-hand the horrors of the holocaust and how it came about. In an ideal world every young person should have to visit Auschwitz/Birkenau as part of their education, but we know that is a difficult dream to achieve. Shamefully we have no central place in our country where we can bring, not just young people, but the public as a whole to learn about the atrocities the Nazi regime inflicted on the Jewish people, and other minority groups, whilst looking at our own complicity and actions as a country in the events which eventually led to the persecution and massacre of 6 million Jewish people.

We should stand proud as country that we at times were alone in standing up to the evils of the Nazi ideologies. People from my father's generation went to war to defeat Hitler's regime and many of them gave their lives in pursuit of freedom and this memorial should also be a testament to the sacrifices they made to enable us to live in the democratic society we have today.

There has been much discussion recently around our historical past and how we should teach it. Pulling down statues will not erase the mistakes of the past but teaching the narrative and context around events will empower people to understand why events occurred and how we can prevent the same mistakes in the future. Whilst through the excellent teaching resources of HET we can start to explore the role our country played, pre the second world war, in at times seeming to condone the actions of Nazi Germany. These lessons can be far more effectively taught through a dedicated interactive learning environment, which the UKHMLC will provide, and which would give schools and youth groups, in particular, a place in this country where there is a focus for their education on the holocaust.

In the context of my own world I only recently discovered that in October 1935 the Football Association invited the German national team to play a friendly international this was just one month after Germany passed the Nuremberg Race Laws which saw Jewish rights taken away. To add to insult the game was played at White Hart Lane home of Tottenham Hotspur a club noted for its significant Jewish following. Despite protests there was little sympathy amongst the general footballing public and protests on the day of the game were robustly dealt with by the authorities. Three years later the England team again played Germany in Berlin and prior to the game the whole England team gave the Nazi salute.

I only mention these because we seem to want to erase these actions from the memories, having a dedicated UKHMLC where we not only recognize and remember the victims but which will also teach us about the mistakes we made helps us to not repeat them in the future. We have all seen a significant increase in hate crime, which many of our players suffer on a daily basis, and we need to be prepared to face our past and recognize that if hate goes on unchecked the terrible events of the holocaust can be the consequences.

To me there is only one place the UK holocaust memorial can be and that is right next to the seat of our democratic government, it sends an unequivocal and powerful message that we will, as a country, face up to our past but more importantly we will fight against all forms of prejudice, discrimination and racism and stand alongside the victims of these evils. It is a sad indictment if we feel it is more important to have a space to exercise and walk our dogs than it is to have a memorial and learning centre which will honour the memory of the victims.

I have been privileged in the past few years to hear the testimonies of five survivors from the holocaust. Their bravery in telling their personal stories entails them constantly having to revisit the horrors and suffering of the past that they faced. They do it because they do not want the memories of their families and other victims to be forgotten. Unfortunately, we are at a point where the number of survivors is diminishing. To not have somewhere their memories and stories continue to be told would be an insult to their bravery and allows the potential for the same to happen in the future.

I do not profess to be an architect or an expert on environmental impact but what I do see is a building which compliments its surroundings which looks aesthetically pleasing and I know every measure has been taking in ensuring there is minimal impact on the environment. For those who say we need a

memorial but please not in my back yard I would say that is no different to those who were able to apply the 'out of sight out of mind' attitude towards the events that were unfolding in Germany in the 1930's.

I implore the inquiry to approve this application so that we will have a long overdue permanent memorial to remember the victims and to educate future generations to ensure history is never repeated.

Karen Pollock CBE Chief Executive Holocaust Education Trust

This year we mark 75 years since the end of the Second World War. 75 years since the world saw the horrific images coming out of the camps. 75 years since the world started to grapple with the truth of what had happened – that 6 million Jewish men, women and children had been annihilated; that a state sponsored genocide now known as the Holocaust had taken place in the heart of Europe. That of that 6 million, 1.5 million were Jewish children.

It happened in towns, villages, fields and ravines across Nazi occupied Europe. The Nazis identified people as Jews, marked them with a yellow star, forced them out of their homes, beat them, starved them, worked them to death. They shot and gassed people whose only crime was to be born Jewish.

When the camps were liberated – some by British soldiers – there were a small number of Jewish prisoners left. Too many died in the days and weeks that followed, despite the best efforts of the young soldiers. Many of these battle hardened soldiers were traumatised by what they saw at the camps - the walking skeletons and the mounds of bodies who died where they fell.

Of that small number who survived, some made their life here, in Britain. I am privileged to have worked with and got to know many of the survivors who rebuilt their lives here.

I am forever in awe of their strength and determination. Even today, in their 80s and 90s, these incredible people share their stories with the next generation. They know, as we do, that when you hear from a witness, you become a witness, and they continue to spend every living moment working hard to ensure that the horrors of the past are not forgotten. Yet they also demonstrate a zest for life and a kindness that after all they have been through you would not presume - they are a true example of humanity.

The Holocaust is part of our nation's story. After all, it is still in living memory.

But in another 10 or 25 years – when we mark 85 or 100 years since the end of the Second World War – how will this nation remember? Will there be eyewitnesses to tell us what happened?

When we can no longer hear the testimonies from the eyewitnesses, when we can no longer be awestruck as they tell their unimaginable stories of survival, when we can no longer almost touch history, how will we ensure that this stain on world history, this seminal moment in British history is remembered and learned about. How will we ensure that the experiences of those survivors – who despite all they had endured made a life here, became part of the very fabric of this nation – live on?

The answer of course – and the reason I am speaking to you today – is the UKHMLC, to be built right at the heart of our democracy, in the centre of our capital city, next to our Parliament. A Parliament that made decisions that shaped the Second World War. An UKHMLC that will take a central place in our city – a place to pause, reflect, and challenge - for generations to come.

A place where we can come together to reflect upon our shared humanity. A place where the very human stories of the Holocaust will be told. A place where the Jewish community can come together to mourn. A place where people from around the world will learn about this abominable part of human history. A place that will tell our nation's story and stand forever as a warning of what can happen when liberal democracy fails. Here we are, 75 years after the end of the Second World War and up to now there is no notable memorial in this country. It is time that that changed.

There is no doubt that Britain's relationship with the Holocaust is a complex one and there will always be debates about whether more could have been done. On the one hand, Britain allowed 10,000 Jewish children to seek refuge here, through the kindertransport, undoubtably saving their lives.

British armed forces liberated concentration camps, most famously Bergen-Belsen on April 15th 1945 and their care gave survivors their health and humanity back. Whilst other countries rounded up Jews to their deaths, Britain and its allies, fought the Nazis.

The UKHMLC has a duty to tell the story - warts and all. We must pay tribute to those brave British liberators and those that risked their lives to save Jews. But equally, this will be a place to tell the full story.

Most of those 10,000 children were orphaned by 1945, their parents having been denied entry to Britain, murdered in the Holocaust. Allied forces made the decision not to bomb the train lines to Auschwitz – for lots of reasons, a decision that is still debated and controversial to this day. The Channel Islands were occupied by the Nazis, Jewish residents persecuted and in some cases deported to Auschwitz. But what is clear is that what happened in Europe, affected Britain and was affected by Britain. This is our story.

And yet, even today, there are those who claimed it never happened, or that it did happen but not to the extent people say. That Jews have made this up to gain sympathy or that it was a hoax. As our beloved eyewitnesses grow fewer and frailer, as the Holocaust moves away from living history to just history, we have a duty to protect the truth of the past and we must be able to stand up against the scourge and danger of Holocaust denial, the most spurious form of antisemitism.

And that is why our Holocaust memorial needs to be here, in the shadow of Parliament, the shadow of our democracy. The place where decisions are taken. The home of British history.

Of course, the UKHMLC will complement the work of brilliant organisations ensuring the Holocaust is not forgotten – including the Holocaust Educational Trust that I run. We have been working hard for many years to ensure that teachers and young people in schools up and down the country know what the Holocaust was, hear the testimony of Holocaust survivors, understand why the Holocaust matters *here and now*. This UKHMLC will help us reach *more* people,

it will help us reach *different* people, it will help us strength the impact of what we do.

And its location will send an important message to us all – that the horrors of the past are central to Britain, that what happened during the Holocaust must never be forgotten and never repeated, that the leadership of our nation sees the central place that the Holocaust has on our shared history and identity. The tragic story of the Holocaust is a lesson for all humanity, a warning for the future about the danger of despots and dictatorship and what can happen when racism is left unchecked.

75 years on, our survivors – the witnesses - who allow us to almost touch history – who, at the end of the War, had nothing and no one – today they have hope. The prospect of this Memorial next to Parliament reassures them – that for generations to come, long after they have gone, there will stand a place, in the heart of our democracy, the place of influence and decisions, where they and their lost loved ones will be remembered. And the stories of their liberators, their saviours, will be heard.

I grew up down the road to a Holocaust survivor, Gena Turgel. She was known as the Bride of Belsen as she married one of her liberators, Norman – in the shadow of the Belsen camp in a dress made from an army parachute. She embodies the very tie between the Holocaust and Britain. I adored Gena – an indomitable character with such drive and grace. 75 years on from the Holocaust, it is right that future generations know about Gena and all the survivors who made Britain their home.

It is time that this country has a fitting Memorial and Learning Centre in a fitting place – for the survivors, for this generation and for the next. It is our duty.

Ellie Omer Holocaust Educator

I support the proposal. I express my interest as a teacher, Holocaust educator and with a personal connection.

My response will be in three parts;

What?

A state of the art Holocaust memorial and educational learning centre; a masterful architectural collaboration internally curated by some of the greatest minds in Holocaust historiography and education. It will commemorate and contemplate the immense, incomprehensible murders of millions of people. A chronicle of history, it will honour the victims of the unprecedented crime of the Holocaust and provide a prism through which to view contemporary genocides. A confrontational reminder of humankind's inhumanity to each other.

The 22 large bronze fins that will sit above its surface will symbolically represent the destruction of 22 Jewish lost communities across Europe, reminding us of the brutal gaping cuts into the living landscapes where life once flourished. In contrast, I understand, it will gradually rise from a gentle hill to minimize any visual intrusion.

Critics argue, it's big, it's rude, loud and angry. And, so it should be. That is its job. It has integrity. It must shout out that this happened because people made choices and many simply weren't good ones.

It should be a physical provocation, a deafening reminder to wake our sensibilities that shameful actions took place not long ago and not far away. This happened in the 20th century, in the heart of a civilized, legitimate democracy in Europe, a history we are very much a part of and it asks the question, how was this humanly possible on our watch? There's nothing like a memorial to get people fired up and few things are as contentious. That's good thing.

This is a complicated, challenging and brutal narrative, a weighty history that needs to be engaged in to understand how this stain on humanity erupted and spread.

The Holocaust is not a single event but a vast and complex history which evolved and morphed over time – for teachers we are concerned that there is little classroom time to truly grapple with its complexities and global repercussions. As we know only too well, a lack of knowledge allows history to be distorted. The experiential educational centre will be of immense value, teaching trauma without traumatising, allowing students (and visitors from across the globe) to construct their own informed meaning, enhancing their knowledge and challenging their understanding. It will educate this and future generations about the dangers of prejudice, discrimination and hate speech in a time of rising extremism. It will be a place to go, to allow time and space to learn, to sit, to engage, to challenge, to listen, to reflect and ponder, to set the record straight and actively educate for the common good.

For its visitors, seeing will be believing, understanding and remembering. The Nazis and perpetrators since have gone to great lengths to hide the extent of their crimes, remembering is an act of justice that gives dignity back to the victims. As Elie Wiesel reminds us, 'To forget is akin to killing a second time.'

We know the Government recognises the value and great importance of Holocaust education and has done since 1991. It is the only mandatory history topic to be included in the curriculum for most secondary schools across the UK. This would be the completion of that aim. This is the right and proper response to keep the conversation alive.

Why there?

The place from which you remember an event shapes how you remember it - and it has radically different meaning in the place that it's told. That place, where we are telling the story, VTG, has immense strategic interest. An energy and dynamism of its own. A place of prominence - and it's that, that will shape and guide a visitor's all-embracing experience. This is the heart of British democracy, of the rule of law, of justice and fairness. All roads lead to here. It has unique sense of majesty and power with a proud history of British values. Surely if it's going to be built anywhere, for purpose, meaning and relevance, this is where it has to be.

Critics have asked the question, 'What's the Memorial got to do with Britain?' That's one of the very reasons we need it. The learning centre, right there, will

address this misinformed perceived knowledge. British history does not sit in a vacuum from Europe. We are very much part of the story.

It will allow us to face the truth of that history - which is not quite the well-established redemptive narrative we are led to believe. The reality is far more complex, problematic and messy. It is flawed. We must face the past with truth and honesty, address its misappropriated and miss-sold aspects in our collected and selective memory. Put simply, this is also the place where, along with our allies, the government failed to take appropriate action, repeatedly. The signs were all there and missed.

We proudly cite The Kinder transport, as Britain's noble humanitarian child rescue operation. Yes, it did allow up to 10,000 mainly Jewish unaccompanied children to enter Britain - but, their parents weren't allowed in. Let's not forget that from the very same platforms where they took the best choice available to them - sending their children away into the arms of complete strangers, most would be transported to their deaths.

1938 The Evian Conference - Britain did not open its doors, denied entry to the thousands of beleaguered refugees. Their fates we now know.

Some would contend, 'But we didn't know'. Again, wrong. British policy-makers had knowledge of the unprecedented acts of mass atrocities taking place across Europe early on in the War, as I remind my students; in Parliament, on 17th December 1941, Anthony Eden, the then Foreign Secretary described to the House how the German authorities, who had already stripped the Jews of their human rights, were carrying out "Hitlers oft repeated intention to exterminate the Jewish people in Europe....in conditions of appalling horror and brutality."

He then read out the declaration made by the allied governments which, condemned "in the strongest possible terms this bestial policy of cold-blooded extermination." After he delivered his statement, MP's stood in the chamber for one minute - adding their voices to the screaming silence. No other action was taken. Reports of the systematic annihilation of the Jews of Europe continued to seep through, but as the war progressed, the Foreign Office felt that any attempt at rescue would 'divert resources away from the war effort'.

Even in the final spasms of the war, in Spring '44, the British policy makers had knowledge of the death camp Auschwitz-Birkenau where the Hungarian murders were in full flow. Again, British justifications of a non-response are problematic.

Perhaps, a simple understanding would suggest that the Nazis wanted to murder their victims more than the world wanted to save them.

The memorial is an important tangible reminder of Britain's moral failure to act right where those decisions were taken. This cannot happen again. A learning centre will provide a more nuanced response and the opportunity to unpick this assumption of 'indifference' whilst reflecting in the context of its contemporary relevance. We cannot afford to sit back or more urgently, look the other way again.

Placing it there will have a valuable presence as an addition to the physical and moral landscape of our self-understanding. This is the right and proper place to keep the conversation alive. As history is lived forwards and studied backwards, the presence of a Holocaust Memorial and world class learning centre will allow

all peoples to reflect on the likely ramifications of past and contemporary decisions and ask, 'What can I do'?

Why care?

The Holocaust happened because it was allowed to happen. Genocide is a social act; it concerns a group of people unable to rely on others. What resonates here is that more could have been done by policy makers and society to prevent it. That's why we should care.

We should care because it was about ordinary people in extraordinary times. In an outbreak of primitivism, friends, neighbours and communities turned against each other. It was a betrayal of humanity in the heart of a civilized modern world where a racist, divisive regime crossed an entire continent, sweeping up willing accomplices in its hateful wake. Ordinary people became complicit in the murder of their neighbours or simply indifferent. It is a chilling reminder that in the right conditions, anything is possible. Politically impossible, organisationally unworkable and ideologically unthinkable and yet...it happened.

George Santayana's prescient, 'Those that don't learn from history are condemned to repeat it' reminds us, to avoid repeating the mistakes of history we need knowledge & understanding, we need empathy and tolerance, to be open to diversity and to the stranger and education is our greatest tool. The memorial and learning centre are part of that learning.

When we look back in the tarnished mirror of history, what do we see? The catastrophe of the Holocaust is that it has not finished. There has been a failure of genocide prevention since 1945, atrocities, injustices, prejudice and discrimination continue. We should be appalled. Never again is meaningless, the single imploring, 'Still?' would be more appropriate. It's not too late. It's our world, it touches us and we have to care. Building the memorial is an important, urgent, natural and right evolutionary step in our story. We have an obligation to the past and to each other.

When it's built it will be a central, beacon of hope, of living history, a reminder to those that need reminding in the face of obscene revisionists, deniers and conspiracy theorists. Its compelling voice will be one of education and of action. We have to be informed and active participants in countering hate in today's world.

What if we don't build it? History and future generations will never forgive us as we face the moral implications of our government's inaction then and now. It is not a noble project, it is essential.

And if it is rejected? It means that Britain sees the Holocaust and subsequent genocides as less important and its tragic abiding contemporary relevance insignificant. It would also mean we turn our backs on many of the critical issues that are present in the world we live in today. That's unthinkable.

Why would we want to build it?

How could we afford not to?

Robert Rinder

This Inquiry is of course a planning hearing. It is a legal process of a type I am – after nearly two decades in the law – vaguely familiar with.

The obligations of the Inspector are to fairly and without fear or favour to anybody, consider the law by assessing all the evidence to determine whether the proposed UKHMLC in VTG should be built.

To that end I have read a great deal of the available material before this inquiry, including the National Planning Policy Framework and the various submissions made by people of good faith from across the country and locally who represent a range of opposing political backgrounds, with differing personal points of view.

Of the numerous documents I considered, perhaps the one that speaks most powerfully in support of my submission today, as is often the case, was not to be found at the top of the bundles or placed noisily at the centre of the material. It was not in the statements made by politicians, neither was it contained in the thoughtful opinions of architects and designers. I found this paper placed quietly in an Appendix submitted to the inquiry by Historic England (at 4.11). In that document, a critical question is posed by that public body whose mission it is to safeguard England's historic environment. It articulates the fundamental purpose of why I am here giving evidence of today.

Historic England ask, what is the meaning of cultural heritage?

The answer they give? *That cultural heritage is an asset which people identify and value as a reflection of their evolving knowledge beliefs and traditions and of their understanding of the belief and traditions of others.*

These, I emphasise, are not my words. They are the precisely articulated policy language of an organisation designated to think and reflect on behalf of us all. To be the curators of the architecture that informs and shapes our community spaces. At a time when there is a challenging conversation about the purpose of national monuments and statues, I reflect on the words of Historic England, written not in reaction to protest nor in response to recent events, but over a decade ago in 2008.

The problem with Historic England's language is that it is wrong in one critical respect. Some knowledge, beliefs and tradition do not evolve. First amongst these is the knowledge and belief that the rule of the law is a golden thread which binds the fragile tapestry of our democracy together. It protects each and every one of us and, in so doing, ensures that we understand the beliefs and traditions of others so that peaceful coexistence can endure.

Last night millions of my fellow citizens from every community, representing every age and creed across our country watched a programme I presented on the BBC about the holocaust. The stories we witnessed were not only of my family. They represented a tiny group of countless others. The bond between each of the courageous men and women who went back to discover the fate of their relatives (parents, uncles and grandparents) in Europe was that the early lives of those we watched were not characterised by anti-Jewish racism or hate.

The architecture of Amsterdam and Berlin in the 1920s we saw were modernist, experimental works of art. They reflected their time. A time when people believed with justifiable confidence that, having suffered the trauma of the first

world war, democracy and the rule of law would protect them. They were tragically wrong.

My mother Angela Cohen has given her evidence to this inquiry, so I can do no better than to echo some of her words here. The descent into human depravity did not happen in one explosion of violence. It happened slowly & gradually: Catastrophic economic events, a treaty people felt aggrieved by and the wrong man at the right historical moment with the power to galvanise the most civilized democratic nation on the planet against millions of Jews and other communities including gypsies, members of the LBGTQ community and the disabled. It left my aunts and uncles (the youngest a 9 year old little girl) gassed and discarded in unmarked earth.

The horrors are of course too numerous and appalling to recount here. We will never know fully of the suffering of millions, their last desperate thoughts of terror and their incalculable loss to the world. What we do know is that this happened because the beliefs and traditions of our humanity died as democracy was subverted and destroyed.

Those beliefs and traditions of tolerance, of respect, and of the rule of law evolved over centuries of dispute, war and anguish in our nation. So, by the time we were tested, we stood firm as the last bastion of freedom. A freedom we owe to the sacrifices of men and women of courage. Those values are not only reflected in the statues of political leaders or stone monuments to the bravery of that great generation; there must be something more.

The proposed Holocaust memorial stands, some have said, in the looming shadow of our Parliament. That is the wrong way to describe it. The design and position of the monument places neither edifice in darkness. They are precisely positioned to bring light to each other. The memorial will illuminate the halls of parliament where those exercising political power do their work. And, at the monument itself, each and every one of us, regardless of our background, faith or sexuality, will be able to speak to our representatives through bronze and stone.

It is difficult to think (as Historic England put it), of space that would gift our nation, *an understanding of the belief and traditions of others* more than a teaching centre at the heart of the memorial. For this is not just about commemorating a story of tyranny. It is the story of what happens when we forget to delight in, celebrate and - above all - remember the values that have made our nation last. It is a story to be taught to all the generations to come and in doing so will serve us all by safeguarding democracy so that we may be able to say, with renewed confidence, that oppression and discrimination by one group of human beings over another can and will never happen again.

Interested Persons

David Cooper

Preliminary points: I want to remind everyone that Westminster City Council never made a decision on this matter, because by the time it came to committee it had already been called in and therefore it was a fait accompli.

I want to come to the fallback position. If this proposal is turned down, it follows that as night follows the day, that any other site will be objected to by various different societies and residents. The result of all this will be, either another Inquiry, a massive further delay or the memorial never happening at all. This doesn't have to be the world's best site (which it probably is in any event in my opinion) for all the reasons given; but when the purported harm is balanced against the benefits, the scales swings in favour of the benefits, it has to do no more.

The last point I want to make is about security. It is perfectly obvious that any site dealing with the holocaust memorial might provoke extremist activity wherever it was located. There is a much better opportunity of dealing with it in the middle of Westminster, than there is in some remote area, where I am sure those who don't like the memorial would like to place it. Very lastly, of course the memorial will not remove all anti-Semitism. That will only be done by deep education over the long period of time, as with every other form of racism. It is a major start and is in the right direction to help to eradicate these monstrous behaviours.

Main statement: From the outset I should say that I am Jewish although I do not practice and none of my direct family were murdered in the Holocaust. I was however brought up in a Jewish community just after the war, when even the children were made fully aware of the horrors and atrocities that took place in Nazi Germany, with the slaughter of 6 million Jews.

My first point is that anti-Semitism is, sadly, once again becoming increasingly more prevalent in the United Kingdom and as with all other forms of discrimination, all efforts should be made to eradicate it. There is still apparently 5% of the population who do not believe that the Holocaust ever existed. There has been cross party support and the Prime Minister and all his living predecessors have publicly supported the project.

By any objective standard I say this Memorial is:

1. Well and truly overdue.
2. It is being implemented with a combination of public funds and substantial private donations.
3. A great deal of effort was made to find a suitable site, but it has to be said as the whole concept is of national and international importance that the heart of Westminster should be infinitely the best site.

As you are aware the Secretary of State, who is no longer involved in the decision making, called in the application. It was called in prior to Westminster Council's rejection of the proposal at their planning committee. A National Holocaust Memorial is of the utmost importance not just for the Jews but for every single individual in the United Kingdom and elsewhere, lest they should forget the atrocities that took place. The purpose of the memorial is to prevent people from forgetting precisely what went on and in consequence, what could be repeated again.

At the Council meeting which considered the Westminster approach, after the matter was called in, it was clear to me that the officers had not carried out a proper balance exercise in accordance with the NPPF. The members slavishly

did not look beyond what the officer said, despite what Westminster City Council state in their evidence, I don't believe that the members carried out any balancing exercise at all, because it wasn't apparent before they made what I believe was a unanimous decision. If they did it carry out a balancing exercise, then by any objective standard, in my view they got it wholly wrong.

Many people believe that the site needs to be prominent, it needs to be next to the buildings that control our democracy ie Parliament, both the House of Commons in the House of Lords. Many other sites were looked at none of them were found to be suitable. Most countries have prominent Holocaust memorials which are well published and unashamedly promoted by their respective governments. We on the other hand been very slow in implementing this. I've lived in Westminster for 60 years, and for 50 years right next to Hyde Park which I use on a regular basis. I was unaware there was a Holocaust Memorial hidden in a dell in Hyde Park. Which proves the point that it to be highly visible and prominent and next to the seat of the power, Parliament.

The Holocaust Memorial and Learning Centre is dedicated to the 6 million Jewish men, women and children murdered in the Holocaust. It is also a permanent piece of remembrance for other victims of Nazi persecution don't let's forget the Roma, the LGBT community, those with disabilities and political prisoners. The Memorial should stand as a reminder of the horrors of the past, including subsequent genocides in Cambodia, Bosnia, Rwanda and will encourage with reflection on their implications for the British governments and society. The view of Parliament from the memorial was serve as a permanent reminder that political decisions have far reaching consequences, and that the responsibility of citizens in a democracy is to be vigilant responsive whenever and wherever those values are threatened. The memorial will allow visitors learn more about the Holocaust in all its complexities. It will be an innovative combination of memorial, exhibition and a place of learning for people of all ages and backgrounds.

As far as the objections are concerned:

1. 93% of the parks green space will be retained and enhanced.
2. Drainage and pathways will be improved, tree roots better irrigated and there will be disabled access to the seating alongside the Thames.
3. The creation of softly sloping landscape provides visitors with a new vantage point to the Houses of Parliament and the River Thames. It will provide relax sitting areas and act as a new element in the park.
4. The play area will be retained and enhance.
5. The new cafe area will replace the existing kiosk. Covered seating areas will be included as a breakout space for parents and children.
6. The memorial courtyard will include a garden within a garden.
7. There will be active engagement with the local community and local schools to develop these joint projects.

The original proposals have been revised to address various specific objections that have been made. Changes to be made to the layouts and perimeter of the memorial courtyard, including reduction in the height of the entrance pavilion. The Learning Centre basement footprint has been reduced.

It should be noted that Victoria Tower Gardens is already well known for its existing memorials to fighting oppression, celebration of emancipation. It is home to Rodin's The Burghers of Calais, the statue of Emmeline Pankhurst, the Buxton Memorial to the abolition of slavery and so there is an established tradition in this location; which is paramount as the reminder to those of work in the House of Parliament that they have a responsibility to protect the right of all citizens at all times.

All security issues have been resolved. There is no overwhelming arguments or security concerns about it being sited close to the Houses of Parliament. The support for the project is enormous, five former prime ministers and the Mayor of London. This remind people that anti-Semitism never goes out of fashion and anti-Semitism is a light sleeper. The phrases had never been so relevant as 5% of UK adults do not believe the Holocaust ever took place and fewer than 50% understand the word anti-Semitism. Recorded anti-Semitic incidents have reached a record level in the UK, hate crimes against Jews have more than doubled in this year. Anti-Semitic incidents in the UK universities have increased and European knowledge of the Holocaust and attitudes towards Jews is similarly of concern.

Conclusion: It is not for me to get over into detail of the contrasting harms and benefits, as this will be adequately done by the advocates of the applicant. This application needs to be granted and it needs to be granted quickly as the problem is getting older and worse as time goes on.

Fiorella Massey

The VTG have been carefully chosen to provide access and a central location, in an important and historical part of London. The chosen location will also strengthen the association of VRG with the heart of our British civic and democratic life, political and ecclesiastical, situated in Westminster. The proposal preserves the existing character of the gardens, allowing residents to continue to enjoy its benefits. The scheme aims to enhance and improve the landscaping and views of the Thames, whilst bringing this important historical monument to central London. The UKHMLC will ensure the gardens become a vibrant space with better facilities, instead of an open space with often overlooked memorials to the past. 93% of the green space will be retained.

Existing memorials will also be better brought to our attention. The increased footfall will help shine a light on these important stories from our shared past. History does not stand still and if there is one significant event in the last century that must be remembered, it is the Holocaust. We must learn from our past mistakes and the culpability of past actions like slavery, now form part of the zeitgeist.

The scheme respects the integrity of the park and the historical symbolism of this location. It is of a high quality in both aesthetic and materials used, and sympathetically embeds itself into the gardens. The content in the learning centre will help visitors to draw meaning and purpose out of tragedy and is a hugely important lesson for the coming generations. It provides substantial public benefit and no substantial harm to the environment.

It is fitting that this memorial, the most important memorial to be built in the 21st Century in Britain, will stand close to the mother of all parliaments, the seat of our Democracy. Britain played a significant part in ending World War 2. Our nation understood that freedom must be fought for and racism fought against and the UKHMLC will underline these values. The scheme is a clarion call for all civilised nations to be up-standers, not bystanders. It inspires us all to be better for a brighter future.

Judith Adda

Jewish people have made major contributions to Britain in the last thousand years in Parliamentary law-making, the Arts, in medicine, education and the founding of many of Britain's most successful companies. We have therefore 'earned our spurs' and the right to support the UKHMLC in Westminster, right next to the Houses of Parliament.

Not only will this sympathetically-designed building be a shining example of Britain's courageous stand against the most heinous crimes committed against the Jewish people in the history of Humanity, but will also demonstrate to the world, Britain's staunch determination to always do what is *right*.

For the sake of transparency, I am the daughter of Jewish child refugees whom Britain plucked from the jaws of the Nazi murder machine, I have a personal interest in seeing this Holocaust Educational Memorial Centre come to fruition, right in the heart of Westminster.

Together with my extended family, I and tens of thousands of Jewish citizens are blessed to be leading useful, law-abiding, peaceful lives in Britain and would not be here today if this country had not welcomed my parents' generation, fleeing, from the horrors of Europe just prior to World War II. At least 30 of my older immediate relations perished in the Nazi atrocities & this crime against Humanity should be better represented in Britain to ensure future education and understanding.

A Westminster UKHMLC will stand as both a memorial to Britain and a warning to the rest of the world of the tyranny of Dictatorship;

- Hundreds of thousands of British Jews would not be here today if Britain had not decided to bravely stand alone at the start of World War II to heroically prevent the Nazi juggernaut from invading this country.
- The world is a poorer place for the millions of Jewish people and their children whom the Nazis denied their most basic human right to life – to live in peace.
- This country is a richer place for having taken in Jewish child refugees who grew up to enhance British society by becoming the Doctors, Scientists, Teachers, Members of Parliament, Law-makers, Artists, Writers, Entrepreneurs and Nation-builders of today.
- Britain is a richer place for having stood up against the mass murder perpetrated against the Jewish people and our weekly Sabbath prayers for the well-being of the Royal family and the advancement of this nation well-reflect our appreciative acknowledgement to Britain.

- But there is also a public and educational interest in seeing this UKHMLC established beside the world-renowned Houses of Parliament to enhance the historic environment of Westminster.
- Standing beside Westminster's Mother of Parliaments, admired worldwide and close to the statues of those great Parliamentarians Sir Winston Churchill and Oliver Cromwell, the UKHMLC will send an important, *permanent* signal of Britain's unfaltering determination to always stand on the side of truth.

It is my humble view that the strategic establishment of the UKHMLC, so sympathetically designed to enhance and blend in but nevertheless make a bold statement of universally important purpose, rather than harm Victoria Tower Gardens and its surroundings, outweighs all other operational matters which have been so persuasively but, in my opinion, mistakenly put forward.

With all due respect to the views expressed *against* the UKHMLC are entirely misplaced, as the current, alarming rise in worldwide anti-Semitism has clearly identified the urgent need for stronger, more impactful teaching, a more contemporary approach to learning the lessons of history and a more sophisticated educational medium in which to remind us all and teach the younger generations of the terrible events of the Holocaust in Europe and what led up to them.

I say to you today, with the undeniable conviction of the 6 million voices of those who were tortured, experimented and those systematically murdered 80 years ago, which all rise up and scream out with all their might that all the arguments, so forensically put, against the establishment of this UKHMLC are entirely erroneous, outdated and totally wrong.

Sited beside the important memorials to Women's Suffrage for which I helped to campaign and the Emancipation from Slavery, it *IS* therefore the most appropriate place to educate everyone and drive home the need for increased vigilance of man's inhumanity to man which can so easily result from the dangers of Dictatorship.

All visitors without exception, from wherever in the world and from whichever walks of life they will come from, will emerge changed forever from this UKHMLC in the future, convinced more than ever, when they see the Houses of Parliament buildings in front of them, that rigorous Parliamentary debate, respect for the law and Democracy is the only way forward for the British people and for the whole of Humanity.

Dr Stephen Frankiss

I was born in Hampstead, brought up in the leafy Garden Suburb, schooled as a border at Highgate, did a couple of years' National Service, including a year as a Subaltern repairing tanks on the border with East Germany - quite near the Bergen-Belsen. I discussed Belsen quite a bit with Sergeant Lean - a tough, Lancastrian, who was one of Brits that opened up the camp after it had been locked down. Like Breugel's *The Triumph of Death*, I still think about it most days. One of the worst crimes in my lifetime.

Now to the project. Why have I become a recent Supporter? I'm not a natural campaigner! In the Civil Service it's sensible not to campaign if you've worked in sensitive areas. I first heard about the project from a rather charming Opposer. Her emphatic assertions were clearly overblown. Hearing NIMBY-ists from afar is one thing but when they lecture you on your doorstep can be a quite pain! She wound me up and I realised it must be a substantial project if NIMBY-ists were so active!

I liked the bold architecture of the UKHMLC from the first time I saw the plans. And the more I thought about the project the more significant I realised it was. This would surely not be a monument just to the victims of the Holocaust, dreadful as that was, but, in a deeper sense, it would be an expression of our values about tolerance to minorities. And, importantly, it would provide education to support and sustain those values. This is so important for current and future generations who seem to be increasingly exposed to extreme, intolerant and misleading views.

The project does, of course, have a significant international dimension. When working abroad I was impressed how many people viewed the U.K. as traditionally one of the few bastions of liberal democracy, honest elections, minimal corruption, tolerance of minorities, reliable broadcasting and so on. To me, the Memorial would form part of that tradition. And its location would surely be important as it would show the political significance we attach to the project.

I guess this is usually the case with powerful architecture. Our ancestors may have been horrified by the scale of King's College Chapel in Cambridge, Westminster Abbey and the Houses of Parliament. In Paris they were certainly shocked by the Eiffel Tower and the Centre Pompidou. These were all 'Marmite' projects and so is the Holocaust Memorial. At first sight you either like or hate a Marmite project. And with this mind-set it's all too easy to be prejudiced and reach some quick but dodgy conclusions. Which is why we need to be particularly careful to think before reaching a conclusion. You get a taste of this in the erudite Baroness Deech's long note, which actually sets out her conclusion in fairly strident terms in para 2 of her Introduction! Not the best way to analyse a complex Marmite project!

Getting away from that famous but sticky food, I would like to conclude, as a recent Supporter, by recording my gratitude to the government and many politicians for supporting and sustaining the project over the years.

Politicians

Right Honourable David Cameron Holocaust Commission

I launched the Holocaust Commission in January 2014. My statement covers four points:

Why I set it up

To remember the past and to make sure we safeguard the future. In the Past Holocaust survivors have done a great job of educating the country about what happened in this, the most ghastly event of the 20th century. The survivors are reducing in number every year. It is vitally important that we go on with this

task of educating, explaining and remembering. This links to the importance of demonstrating that democracy is about so much more than holding elections, it is about tolerance, never forgetting about where prejudice, bigotry and hatred can lead. That is why this project is so important. I was inspired by what happened in America when President Carter set up the all party presidents Holocaust Commission to think about how best to commemorate and remember.

Why I think it's right to see this centre as one of national significance

From the very start this was an all-party non-political project. Spending commitments were made by both front benches. The Commission and its outcome have been backed by every living Prime Minister and the current leader of the opposition. The presentation of the Commission's findings when it came out were made to both the Cabinet and Shadow Cabinet emphasising its national significance. It was not the work of one party or Prime Minister, but all parties and all Prime Ministers.

Why the location next to Parliament is important

Both the Cabinet and Shadow Cabinet signed up to a striking and new Holocaust Memorial in the central London. It is not just functionally important that the holocaust memorial and learning centre are in the same location, it's also symbolically important, making a statement that is a permanent affirmation of the values of our society about tolerance and diversity. These are the values that we want children to learn about, and that we want people to understand about our country.

Why the colocation of the monument with a learning centre is so important

This was a central recommendation of the Commission. No matter how stunning architecture on its own, this can only do so much to make sure that we remember and think of the future. It is important the we have the learning centre so that people can see the evidence of how, where and why the holocaust happened in one place. This matters for understanding the past, for combating Holocaust denial and for educating new generations about the dangers of intolerance and bigotry and allowing hatred to grow in our societies.

I am very proud to have played a part in setting up the Commission. It was an all party project with a national focus, and the recommendations were about learning and remembering at the same time. The proposals that have been made of very good ones.

Rt Honourable Gordon Brown

No one should ever forget the horrors of the Holocaust. No young person should grow up into adulthood without an awareness of the evil that men can inflict on their fellow men. No one should be able to claim that they do not know where hatred leads. For these three reasons: never to forget, always to remember and forever to learn from the past, we need a national holocaust memorial and learning centre. But more than that: everyone should know what, faced with the reality of the Holocaust only a few 100 miles from our shores, what we as a country did and did not do. Everyone should know to what more we could have done to tackle the persecution of Jewish communities and many minorities who perished. Everyone should know of the continuing need to root out persecution,

hatred and intolerance, something that has come home to me in my sorrow my anger and my shame that the Labour Parties failure for 4 years to aggressively and relentlessly root out the anti-Semitism in its midst.

For these further three reasons our national responsibility, our past national failure to act, and the continuing need to fight prejudice around us, we need a national Holocaust Memorial and learning centre. More than that, no one should be able to obscure the truth of the Holocaust, no one should be able to downplay the sheer atrocity of what happened, no one should be able to rewrite history or manipulate the facts. The Holocaust happened because politicians failed to prevent it, and because of the weakness and naivety of people who wanted to do good was no match for the people who wanted to do evil. For these reasons two we need a national Holocaust Memorial and learning centre.

I don't believe that it should be a matter of controversy that there should be, in this great country of ours, one sacred place designated as such: known to all, open to everyone and built to bring to life the pledge that we will never again allow evil to triumph over good; that we will never again allow discrimination to go unaddressed and prejudice to rise unchecked; that sends out a clear unambiguous message 'no' to racism in all its forms. That sacred place shall be the national Holocaust Memorial and learning centre. Without permission to enact this HMLC after the commitments that have been made, we will forever as a country be diminished by the failure to bring to life a bold compassionate idea that has the support of all major parties, all religious faiths and all community groups I know. But with the HMLC we will as a country be strengthened in our ability to face the future united.

I believe that for all of these heartfelt and compelling reasons, the national interest is best advanced by building the HMLC in VTG. For this is of enormous significance, and why I offer my thanks to Ed Balls and Lord Pickles in leading this project, that this enduring memorial will be built close to parliament, to stand at the heart of our democracy as a permanent statement of our enduring values.

I speak here today in the shadow of the death of Rabbi Jonathan Sacks, whose life and work, moral leadership and intellectual contribution, irreplaceable scholarship and inspirational commitment to building unity out of diversity should be remembered and celebrated in this new Centre. He would have been the first to tell us that we need also to honour those who did survive and told us the truth of what happened to those who did not survive: men and women of courage, who we sometimes call survivors, but I call heroes. It is now all the more important in the 2020s, in the eighth decade since the events of the 1940s to tell the story, in pictures and in sound, that have been told towards to us for 75 years with eloquence and emotion by those hero's. Stories which today too few heroes are now here with us to tell.

I think of Kitty Hart-Moxon OBE, a prisoner at 16 in Auschwitz, forced to sort out the clothes taken from the Jews murdered in the death camps. Alongside others she ensured that money and jewels found in the clothing was put to good use, including smuggling in gum powder that blew up a gas chamber at Auschwitz. She has dedicated many years to telling her story at the Holocaust centre in Nottingham.

I think also of Anita Lasker-Wallfisch MBE, who risked execution, forging documents for escaping prisoners, trying to flee but was caught, surviving only because she was a member of the Auschwitz orchestra. She later became a founder member of the English Chamber Orchestra.

I think of Arek Hersh, just a schoolboy He was one of 1000 Jews imprisoned by the SSS in a Polish church, becoming the sole family survivor after his mother and all 81 relatives were murdered. Justifiably angry that not one of these murderers were ever put on trial, he has dedicated his life to building understanding and respect across communities.

I think of Pinchas Gutter, 11 years old when he started his journey across five death camps, during which his sister Sabrina was murdered. His story is now told in the archives of the Shoah Foundation in Los Angeles but it needs to be told here too.

All heroes who fought against the terrible circumstances in which they found themselves. All heroes whose story's must now be told in this new Centre.

I think too of British heroes. My friend the late Nicolas Winton, whose Kindertransport rescued Hundreds of Jewish children from Nazi extermination.

I think also of Scottish missionary teacher Jane Haining, who I have written about, who walked into danger defending her Jewish pupils, with the full knowledge that she would pay the ultimate price.

I hope too that we can tell the story of those who worked so hard so that the truth can be documented, like Martin Gilbert who from the room at the top of his London house painstakingly assembled, catalogued and then reported the storeys of the Holocaust so that we could never forget.

I think also of how this new centre will also tell the story of genocides that in our lifetimes we have seen on our TV screens, but that we have a duty to call out as crimes against humanity. So if we can through this new monument and learning centre remind people of the everlasting need for tolerance, if we can build on the pathbreaking work of the Holocaust Education Foundation Trust, if we can help foster religious freedom, advanced human rights and remind ourselves of the obligations we owe to each other, then this National Memorial will do far more to change the world for the better than any words any of us can offer in its support.

Those speaking against the proposal

Religious

Rabbi Jonathan Romain Rabbi Maidenhead Synagogue

Rabbi Jonathan Romain expressed his strong reservations about the Holocaust Memorial/Museum being sited at Victoria Tower Gardens, Westminster.

He is both the rabbi of a large congregation (Maidenhead Synagogue) and the son of a child refugee from Nazi Germany, who came to Britain in August 1939 and has always been grateful for British hospitality, especially via the kindertransport scheme. So he has a keen awareness of both the Holocaust and Britain's role in combatting it. He stated:

"My concern is manifold, but briefly

1. monuments do not combat antisemitism; it is education and role models (eg Holocaust Educational Trust: www.het.org.uk and Anne Frank Day projects in schools: annefrank.org.uk)
2. given this fact, the substantial costs of the proposed memorial (and its on-going maintenance, both physically and in terms of its programming and staff) could be better used
3. it is even more irrelevant given that we already have in London the Holocaust wing of the Imperial War Museum & the Hyde Park memorial. There might be a case for upgrading them, but certainly not for rivalling them.
4. the building will therefore unnecessarily denude locals of their park to a significant extent
5. Britain was not involved in the Holocaust and, unlike various European countries, has no guilt to expunge, so the need for such a project is debateable
6. (*added during presentation*) The Memorial has not yet been built and we have the chance to start from the right place.

I should say that I fully appreciate the sincerity of those proposing the building and, if none of the above applied, it would be a fine project; but given that the above do very much apply, it seems inappropriate, wasting resources that could be better spent on expanding existing sites and strengthening educational programmes. The proposed building should not proceed."

Reverend Philip Chester Local Parish Priest

I know my colleague Graham Buckle, Vicar of St Stephen's Rochester Row has already spoken, and I just wanted to give a very short presentation from my perspective as a local parish priest.

St Matthew's church is in Great Peter Street, a few hundred yards from the VTG, and in normal times the church is open every day, and widely used as a place for private prayer, reflection and rest.

The geographical parish runs from Horseferry Road across to Petty France and down to the river, and like most parishes has a distinct character. It is home to a number of government departments, think tanks, embassies, offices and shops. But it is also home to a wide and varied community who live here, and call it home. And it is to this community aspect I would like to speak.

People imagine that this is a very privileged area, and in truth it is. But it contains significant pockets of real deprivation. Social housing sits adjacent to some of the most expensive properties in London, and it is this distinct blend that helps makes our part of Westminster so special. It is an area characterized by the powerful and the powerless, the strong and the fragile, those who are wealthy and those who are poor. In Great Peter Street we have two hostels for men who are very vulnerable, and there is a considerable and growing incidence of homelessness in the area.

Our parish has an excellent primary school with currently 183 children, in which again the diversity of the local community is reflected. We have approximately

25 languages spoken, and about a quarter of our children are on free school meals. We have 25 children from service families, who live in dense, local housing which is less than ideal for the needs of children growing up. Very few residences have any garden or yard, the two playgrounds for our school are small, and barely adequate. The school hugely values the VTG, which it uses creatively for organised and informal activities.

I would also stress that as an area we are very much subject to, dare I say it, 'lockdown' meaning that events culminating in protests around Parliament can make life for families who live here very difficult, particularly at weekends when protests so often happen for the benefit of an empty parliament and an empty Whitehall.

I've heard it said that some of the local criticism of the Holocaust Memorial is no more than Nimbyism. I can assure you, as someone who engages on a daily basis with those who live and work here, that this is simply not the case.

The anxiety felt locally about the implications of this proposed development for our community is deep rooted, reflecting concern about the erosion of public land in which people can gather. In a highly utilitarian landscape, public, democratic space is incredibly important.

We're talking about a small but vibrant park, in which those who come to play with their children or bring their dogs can feel as much at home as those with mental health issues. During lockdown this year, the VTG was for some, I would suggest, a vital life-line in a time of deep darkness. I came to appreciate, myself, very strongly, the wisdom of our forebears who won the battles to create public open spaces even in the very heart of our capital city.

The desire to locate expressions of national concern in central London is entirely understandable. It is a clear way of shaping the priorities we set for ourselves as a nation, and national interests must of course be respected and accommodated. At the same time there must be a guarding against the kind of attitude that says that the locus of any national focus outside the centre of London, indeed outside London itself, somehow lessens the importance we place upon the matter.

The cause of the UKHMLC, and the need for connected education about the fate of all the victims of Nazi terror, very much including Jewish victims, but also those of other social groups, I support deeply as a Christian priest. That for me is not the issue. And others have spoken persuasively about this.

My concern is about the impact (surely unintended, but likely to be hugely significant nonetheless) on the ecology of a diverse but quite vulnerable locality. To build the UKHMLC on VTG and thereby sadly to remove it from general public use is effectively to kettle a community. While some might argue that this is a price worth paying, I urge us to beware the dangers of such arguments, and to note that it is not the wealthy of Westminster, those who perhaps have second homes in the country, who will bear this cost, but the already under-privileged and marginalised.

Open space is vital for human flourishing, and VTG plays a significant role in this diverse and delicate environment. Not only is it a space in which much-needed recreation can occur, it is also one of the very few remaining spaces in this part of London in which people of different classes, cultures and creeds can meet. It

is common ground and it is on such common grounds that understanding and bonds can be formed between people in an organic way.

Such organic bonds are vital to the functioning of a healthy democracy. I have seen this happening in VTG with my own eyes, as passing nods of recognition turn into short conversations and then, sometimes, into firm friendships. And a healthy democracy is, in itself, necessary so that the horrors of Nazi extremism, or its modern and potential equivalents, may never occur in this or any other nation. We need a UKHMLC, absolutely. I strongly support its creation. But I humbly submit that this suggested location is wrong and I beg those who have power to think again.

Reverend Graham Buckle Local Parish Priest

As local Vicar I am against the proposed plan on number of reasons:

It is a vital and valuable green space in a busy community in the heart of Westminster - As a dog walker and local Vicar I am fortunate enough to use the park every day, and I see the large variety of people who use this lovely green space. It was a source of recreation by large numbers of people during the recent lockdown. As a local resident I am extremely concerned about the number of people it will generate. And with that the extra traffic and congestion in a narrow and major highway.

I feel saddened that this memorial will block a historic and wonderful view from Lambeth Bridge. I do not object to the UKHMLC, but I feel this fundamentally this is in the wrong place. I do, however feel that such a large amount of money could be spent more creatively in a far more reaching way in putting it into education throughout the country. I am a founder member of interfaith matters, a support and information group for faith leaders in south Westminster.

Academics

Professor Adam Ganz

I am the son of a Holocaust Survivor - my father Peter Ganz (later Professor of German at the University of Oxford) arrived in the UK in December 1938 after being imprisoned in Buchenwald Concentration camp after the pogrom in November 1938. At least 15 members of his family were murdered or committed suicide.

My father was a refugee from Germany who after spending time in Buchenwald concentration camp, managed to come to this country thanks to extraordinary efforts by my grandfather's employers. Morton Sundour and by the Quakers. He went on to serve his country in the war. I've written a trilogy of radio plays about his work with the Secret Listeners- and what happened in Mainz, the city he left. At least 16 members of his family were murdered. Thanks to archival research I've recently been able to discover his route to this country and even meet the daughter of the person whose intervention saved him. He was very lucky - as we have heard from the moving testimonies today.

Others have spoken about the power of German Holocaust memorials. I agree - but these are the culmination of a long engagement with the past which has

involved painful debate and discussion at every level. It is Germany's duty to do such work. We need a similar debate in the UK.

For me The Kindertransport is a record of sorrow, as well as success.

It was wonderful that 10000 lives were saved but their parents and their siblings were not. Millions were murdered, and the efforts and the pleas of the likes of Eleanor Rathbone MP and Rabbi Solomon Schonfeld to bring them to Britain went unheard. As Louse London's work has shown, many in Parliament and the Home Office were instrumental in ensuring that the refugees could not come to the UK. It feels to me that the tranquillity of Victoria Park Gardens would be destroyed to try and obscure that.

For some years I lived just across the River from the Gardens and loved the green space with its glorious views and trees and calm and access to the river. A perfect place to reflect on the holocaust- or anything else I'm also concerned, that others have suggested the choice is building the memorial or not remembering or not teaching the Holocaust. This is a false dichotomy. Indeed as museums and archives face funding cuts will make it harder to be remembered not easier. In my view it would be much better spent at other sites- the Wiener Library, and the Imperial War Museum and in supporting local archives and museums to enable the kind of open national debate which has taken place in Germany.

There has often been an official reluctance to debate or display the difficult areas of British history - or even to erase British crimes as historian Caroline Elkins' work on Kenya has shown. Archives were destroyed to try and prevent an unpleasant British story being told- one more recent than the Shoah. The recent government response to museums changing their displays makes me worried about the insistence on one narrative which this memorial might offer.

I consider the fact that this being considered beside the Buxton memorial (the only site in Central London where there is any acknowledgement of slavery) is what my relatives would once have called a shonde. An abomination. It is a tragedy that there is still no major museum about or monument to the victims of slavery in central London.

My father once shared with me his plan for a Holocaust memorial it would involve walking through endless corridors- to be confronted with a mirror.

I am frightened that this bombastic edifice on this site will not only destroy this hard-won calm but will be used to whitewash the role of the Mother of Parliaments support an implicit narrative that the British are somehow superior, a rhetoric which already being used by the far right - [REDACTED]

Oliver Goldsmith's poem The Deserted Village- was written about a village emptied to construct a fashionable landscape garden:

"Ill fares the land- to hastening ills a prey where wealth accumulates and men decay.

"Worse I would say in glistening London. to build vast monuments as children drown."

Professor Geoffrey Alderman

I am a practising Orthodox Jew, born in the UK and educated at the University of Oxford. I have pursued an academic career, initially as a university teacher but more recently as a senior manager and institutional head. I'm the author of several monographs on the history of the Jewish people in Great Britain, and many peer-reviewed and journalistic articles focus broadly on this theme. In 2016 the University of Oxford awarded me the advanced degree of doctor of letters in respect of my work in this field. More information about me may be found at www.geoffreyalderman.com

I make this submission exclusively in a personal capacity.

My own immediate ancestors immigrated to Great Britain between circa eighteen 1896 and 1904. But genealogical research has led me to conclude that the larger family circles from which my grandparents originated, and who remained in Eastern Europe, were murdered by the Nazis and their allies in 1941.

I have in my career taught at undergraduate and postgraduate levels the history of the Nazi Holocaust of the Jews, more specifically from British and British-Jewish perspectives.

I am strongly opposed to the present plan for a Holocaust Memorial and Learning Centre to be located at Victoria Tower Gardens. My objections are both to the proposal in principle and to the planned location of this edifice.

Background

In September 2013 the then Prime Minister David Cameron announced that he was establishing a 'Holocaust Commission' whose purpose was to 'investigate what more needs to be done to ensure Britain has a permanent and fitting [Holocaust] Memorial and the educational resources needed for generations to come'. Out of this Commission there came a Holocaust Memorial Foundation and out of this Foundation there issued forth a breathtaking proposal: to construct, within Victoria Tower Gardens, deliberately close to the Houses of Parliament, a giant edifice, incorporating a learning resource centre, to honour Jewish and other victims of the Nazi Holocaust, such as Roma, disabled and LGBT people, and to place these genocides in the context of what are termed 'British Values' as set out in the Prevent Duty.

Objections

Whilst the sincerity of those who support the project is not in doubt, it needs to be remembered that both in London and in numerous provincial centres there are already a number of imposing Holocaust memorials. For example, there's a Frank Meiler's moving *Kindertransport* sculpture at London's Liverpool Street station. There's the memorial in Highbridge, Somerset to British secret agent Frank Foley, through whose efforts (which included defying his British bosses in the foreign Foreign Office) more than 10,000 Jews were able to escape from Nazi Germany. There's already a Holocaust Memorial (opened 1983) in London's Hyde Park. There's a permanent Holocaust exhibition within the Imperial War Museum. And, in London's Russell Square, there's the world class Wiener Library for the Study of the Holocaust and Genocide.

I feel bound to ask, therefore, what justification there can possibly be for the erection of yet another Holocaust Memorial and learning centre crowding the nations capital.

I must draw attention to the cost. I understand the British government originally pledged £50 millions of taxpayers money, but later increased this pledge by another £25 millions. More recently it was announced that two Jewish members of the Foundation's management team had agreed to establish an independent charity to raise another £25 millions.

So that's a £100 millions in total for Holocaust Memorial in a city that already has several and yet another Holocaust education centre for which there is absolutely no need. With the NHS short of funds, rough sleepers on the streets and thousands of families in genuine poverty {to say nothing of the economic impact of COVID-19 on London} what justification can there possibly be for spending £10 millions on this project?

The proposed site for the proposed edifice

I can think of few sites less appropriate for the proposed edifice than Victoria Tower Gardens.

Victoria Tower Gardens is a small public park within a conservation area. It is already designated as a zone of 'Monument Saturation'. The Gardens are also home to a small childrens playground. Unsurprisingly, amongst the objectors to the current proposal are the official adviser to UNESCO on World Heritage sites, the Royal Parks and even the Environment Agency, which has pointed out that the building of the memorial within VTG could adversely affect flood defences on which local business businesses and homes rely . Official drawings show that the Memorial will take up no less than 26.9% of the green space currently in the park. It is little wonder that local residents are up in arms.

It has being made clear by the promoters of this memorial that be appropriateness of the proposed location lies in its proximity to the Palace of Westminster and Houses of Parliament, and that this juxtaposition symbolises (as it were) the antithesis between the Holocaust under British values, making the argument that democracy (and specifically British democracy) is somehow a protection against genocide.

It isn't.

Whilst it is true that the United Kingdom had no direct responsibility for the Holocaust, it bore much on indirect responsibility. Successive British governments deliberately, in stages culminating in the enforcement without League of Nations approval of the infamous white paper of 1939, shut off Mandate to Palestine as a haven for Jews fleeing Nazi occupied Europe. With parliamentary approval, the least possible number of Jews were permitted to enter the UK. Many, many more might have been afforded at least temporary refuge here. And this and it is well known that the wartime British government refused to bomb the railway lines to Auschwitz and other camps, even though these became easily accessible by aircraft of Bomber Command as the war progressed.

Indeed I have sometimes thought that a fitting memorial might be a monument simply listing those Jews who were specifically denied entry to this country (and

even, in some cases forcibly evicted once they had reached British shores), and who perished as a result!

At all events, the conduct of successive British governments, supported it must be stressed by the Westminster Parliament, was hardly, therefore, reflective of 'British values'.

It has been argued that the very existence of the proposed memorial in Victoria Tower Gardens would somehow act as a deterrent against resurgent antisemitism and that bringing coachloads of children to see it would somehow challenge Holocaust Denial. This argument strikes me as foolish and ignorant in the extreme. A much better plan would be to digitise the entire Holocaust story and make that grim story accessible nationwide.

I should add that allowed some prominent Jews support the current proposal, within the wider set of Anglo Jewish communities I have failed to detect any great enthusiasm for the gigantic memorial that is being proposed. But what I have detected is incredulity, embarrassment and cynicism.

'Public Benefit'

The argument has been put to me that 'public benefit' can- and should in this case- outweigh admitted planning drawbacks (flooding security and so on). I must therefore stress my view that there is no public benefit whatsoever to be derived from this memorial that could possibly outweigh the many drawbacks of the proposed location, to which I have drawn attention in this submission.

I hope, therefore, that the present planning application will be refused.

Dr Irene Lancaster

Introduction to my Family

Something about my Mum and Dad, both born in Poland. Dad's family was exterminated in their entirety by Germans and Poles. My grandmother ended up in Treblinka. I am named after one of my exterminated aunts, called Irene. In 1941, my Dad (who had been a judge in Poland) reached Canada via Lithuania, Russia and Japan. He then joined the British Army and later worked for British Intelligence as well as acting as an Observer at the Nuremberg Trials.

Mum spent her student years running away throughout France. After the War she received reparations for the rest of her life from the German Government. She yearned for green spaces, and therefore we lived in an area of the country surrounded on every side by fields. I was lucky in addition to be brought up in the vicinity of parks of every description. There is no doubt that my parent's farsightedness in choosing this type of location in which to adapt to their new home contributed in large measure to the person I have become.

Qualifications and experience

I have sent the Inquiry my qualifications but this is a brief reminder. I have studied at Tübingen, Cambridge and Lancaster Universities, as well as in Jerusalem. I have a teaching qualification from Manchester University and have taught in schools, colleges, universities, teacher training colleges and theological colleges, both Jewish and Christian, as well as in community settings, and continue to do so.

I have therefore educated on this subject at every age level and in all sectors. My experience includes visits to Holocaust sites. I have also written about this subject. I soon came to the conclusion however that teaching the Holocaust by way of sole emphasis, without background in Jewish and European history, as well as via memorials and learning centres, was counterproductive. Holocaust education per se actually increases antisemitism towards contemporary Jews living in the countries where these edifices are constructed. Antisemitism towards the contemporary Jewish community of a country must always be the prime concern of the government of the day.

My own views on the negative impact of HMLCs, based on a variety of different experiences, have been confirmed to me by the following experts: Sir Martin Gilbert, Professor Robert Wistrich of Yad VaShem (the world's greatest expert on antisemitism, formerly at UCL), Holocaust survivor and Nobel Prize winner, Elie Wiesel, and more recently, Professor Ruth Wisse of Harvard University, generally regarded as the greatest living expert on this subject.

In a recent email exchange, dated October 20th, Professor Wisse has asked me to inform the present Planning Inquiry that: 'advertising genocide is no way to prevent it. Must go back to the drawing board for examples of what inspires great citizenship, responsibility, and faith, etc.' Professor Wisse's carefully-thought-out article on this subject, dealing with the hijacking of Holocaust Memorials and Learning Centres by vested interests, to the detriment of the living Jewish communities in the host country, has been sent to the Inquiry for further perusal. And Lord Williams has just touched on this problematic consequence of these types of site-based commemorative and learning Centres.

In addition, I have myself been consulted by Yad Vashem on antisemitism in general and in the UK in particular. My Holocaust autobiography translations are housed in Yad Vashem and in the Washington Holocaust Memorial Museum. I have more recently written a number of articles on the present subject, including a joint article with Lord Williams, which was published earlier this year in Standpoint Journal (and sent to the Inquiry). This joint article was referred to during this Inquiry by Dr Michael Pinto-Duschinsky of Oxford.

I was recently invited to join the Board of the popular global website, Christian Today, to which I have contributed a number of articles on this issue as well as on positive aspects of Judaism which continue to be misunderstood by the Christian world, which has just been pointed out by Lord Williams.

I continue to input into clergy training, and have just finished training Anglican clergy by Zoom and will be doing the same with Orthodox rabbis in North America early next year. Recently I became the first woman to be invited to give a guest sermon in an Orthodox synagogue in Manchester.

Ongoing I participate in generational Holocaust education with Israeli school-children, telling them the stories of my own parents and grandparents - this is an important part of the Israeli educational system and has been found to be effective in forming bonds with the past and the future, as well as bringing the generations closer together. Maybe this country could learn from the Israeli example?

The two dialogue groups that I run, including recent Zoom participation from North America and Israel, have received government grants. We have put on

Holocaust concerts for the community, in which survivors and refugees were invited to speak and partake. These have resulted in survivors aged 90 or over starting to learn the violin once again, which has brought happiness and joy to many who are reaching the end of their lives.

I have also advised the Chief Rabbinate of the State of Israel on bilateral relations with the Church of England, and was impressed by the way the leadership of that institution in the country of highest Jewish demography, the State of Israel, relates to the rights and aspirations of every single human being, regardless of religious affiliation. The Jewish attitude to the rights and aspirations of every single human being is crucial to this Inquiry and has not been addressed thus far.

Jury, Manchester and North of England April 5th 2017

I was invited to participate in the selection jury to choose the best design for the proposed Memorial in VTG. We were told by the PM's team that every individual concerned in the vicinity of VTG, including park-users and the Buxtons themselves, was in favour of having a similar monument dedicated to the contribution of the Jewish community to the life of the UK.

In addition, we were told that our choice had to harmonize with the Buxton Memorial itself, photos of which were shown to us at the time. Finally, we were informed that 'planning permission is a mere formality'. According to the PM's team, Westminster City Council were fully in favour of the proposal and of all 10 designs which, they added, had been shown to WCC before our jury meeting in Manchester on April 5th 2017. We, Holocaust survivors and children of Holocaust survivors, who largely made up the judging panel, had no reason to question these statements. Why should we have questioned their words? They made sense.

The only design I recall with a 'Learning Centre' attached was the one with the fins, which most of us rejected as not in the spirit of Judaism, the Shoah, or the Buxton Memorial. But the design of that LC bore no resemblance to the one before us now at the Inquiry.

At no time were we told about the children's park, a crucial ingredient in this whole Inquiry, I would submit. In addition, no mention was made of HMD events, Park of Conscience ideas or the input of the proximity of the Palace of Westminster. Nothing was said about the nature of the spaces between the fins being of significance. Neither were Holocaust links, or links to do with Jewish memory, or with Church and State discussed. If they had been, believe me, I would have had something to say about this grotesque hijacking of our personal pain for ulterior motives. What was mentioned as sole criterion was the celebration and safeguarding of the Jewish community in the future, in keeping with the Buxton Memorial.

Location

This location is not wanted, not needed and not desirable. It is extremely concerning that not only were the full facts not given to the Jury, but in fact it appears that incorrect facts were given to us that day in Manchester Town Hall. The information before us on April 5th 2017 led us to believe that everyone in the surrounding area was in favour of the entire proposal. However, it appears from the present Inquiry that this was not the case and that the group SVTG had

formed well before our own jury date. In addition, it seems that representations against the construction had already been made, were being made during the week of our own deliberations, and continued to be made for a number of years after that, in fact up until the date of the WCC decision on the matter. Why were we not told of this significant fact?

Ineffectiveness of Holocaust Memorials and of Holocaust Memorials and Learning Centres

Even if the above had not been the case, it has been demonstrated that the existing number of more than 300 of these edifices around the world, including in Washington, Berlin and Ottawa, which have been mentioned during the Inquiry, have led not to fewer, but to more anti-Semitic acts. Evidence has been sent to the Inquiry regarding these three western democratic countries - the USA, Germany and Canada - detailing how the construction of HMLCs has always, without exception, led to an increase of anti-Semitic activity in those countries. The evidence is irrefutable therefore that the construction of memorials and learning centres to dead Jews leads to an increase in antisemitic attacks on living Jewish communities in those same countries. The first duty of government is to safeguard Jews who are alive.

Nor have these constructions prevented further genocides. Recently, On September 25th 2020, Chancellor Merkel stated that antisemitism in Germany has become 'more visible and uninhibited. It is a disgrace and it shames me deeply.' (Jewish Telegraph, September 25th 2020).

Evidence from German-Jewish visitors to the UK (including educators and teachers) confirms that, since 2005, antisemitism has risen steeply in Germany. According to these practitioners, the cause for this rise in antisemitism is due to non-contextual daily school teaching of the Holocaust, combined with the presence of the much-ridiculed Berlin HMLC, which was boycotted from the outset by the President of the German Jewish community and has become a place for recreation, selfies and gross desecrations.

Information on the deleterious effects of the Washington Holocaust Memorial Museum has been sent to you. In addition, peace-prize laureate, Elie Wiesel, himself informed me in Oslo at the 1991 Nobel Peace Prize awards ceremony that he had made a mistake. He explained that the Holocaust Memorial Museum he had helped to found in Washington was now being used for purposes that did not benefit, but actually harmed the Jewish community of the USA. Elie Wiesel therefore resigned from the Board of the Washington Holocaust Memorial Museum.

And we now learn from the Canadian institutions monitoring antisemitism in Canada, Bnei Brith and 'Friends of Simon Wiesenthal', that the construction of the Ottawa Holocaust Memorial has led to a 'steady rise' in anti-Semitic incidents in Canada.

Motives behind the present proposal

Having listened throughout the Inquiry, there is no doubt in my mind that, contrary to what we were told on the Jury in Manchester, the proposed HMLC is not going to be dedicated to the 6 million or to celebrate the contribution of Jews today. Instead it is going to be dedicated to so-called 'British Values', to be presented in a tiny underground exhibition featuring British issues during the

Holocaust. This is not at all what was expressed by the PM's team to the Manchester Jury. A Learning Centre on so-called 'British Values' will not solve the problem of vicious antisemitism, which is still with us as I speak, and growing in many sectors.

Rather, we have to go back to the drawing board for examples of what inspires great citizenship, responsibility and faith. It is also impossible not to draw the conclusion that it is the promotion of so-called 'British Values' which lies behind the stubborn determination of the proponents - in the face of all the evidence - to press on regardless with this site, which will advocate British democracy as the antidote to genocide. This is palpably untrue, as democracy spawned Adolf Hitler. And to be honest, democracy doesn't seem to have prevented a very recent resurgence of highly visible antisemitism within this country's own parliamentary democracy, which has already been pointed out to the Inquiry by Gordon Brown. But how on earth will this new edifice actually prevent this happening again, do you think?

Judaism as life-enhancing

'To life, to life, le-chaim' - isn't only a song from a much-loved musical, but sums up the core of what Judaism is about. This is why WCC's recent decision to permit the erection of the Eruv in their area (when other Councils have not always done so), is much to be praised, as it enables Shabbat observance by very old and very young alike.

Similarly, those VTG park-users who, in the face of insults from the mighty, have spoken up so eloquently in favour of their much-loved green space and way of life, are worthy of admiration. They have all worked together, including a number of Jews with links to the Shoah, in their midst. This joint effort shows that antisemitism certainly isn't a factor in the opposition to the imposition of a monstrous carbuncle, which isn't wanted, needed or desirable in their tiny, precious, and unique green space.

Winning design

The design chosen is an insult to the Jewish community. In Manchester there was no mention of 22 countries (a misnomer in any case), the Covenant of the Pieces between G-d and the Jewish people, or the Kotel tunnels. The other 9 designs did not appear to have LCs attached, and other LCs were certainly not mentioned to us. The specific LC we were shown at the time was a different LC from the LC with which we are faced today. In any case, to choose a HM with an LC would not have been in the spirit of the remit before us, which was to harmonize in every way with the Buxton Memorial. The Buxton Memorial does not have a LC attached, and is free-standing.

Playground not mentioned

As a mother and grandmother, I am appalled that none of the Jewish speakers in favour of the proposal, including a number of very forceful women, has seen fit to mention the loss or material change that the children's playground will undergo, including some sort of additional security device, plus influx of unknown people, many no doubt in a state of trauma - not at all conducive to children's play.

Status of Chief Rabbi of the United Synagogue and the Board of Deputies

The Chief Rabbi represents one and only one strand of the Jewish community and therefore does not necessarily represent the views of every observant Jew in the country, let alone the many other strands that make up the pluralistic society of Anglo-Jewry. Lord Williams has mentioned the contrasting views of Rabbi Jonathan Romain, which are far more typical of many strands within the Jewish community. Similarly, the Board of Deputies does not necessarily represent the full range of views within the Jewish community and does not have the remit to speak for all of us.

Professor Robert Wistrich (formerly from UCL, as I have stated) pointed this out to me a few years ago, when he changed his advertised star Yad Vashem lecture to global Holocaust educators from '2000 Years of European Antisemitism' to 'Contemporary Antisemitism in Today's UK.' He also and very pointedly asked me what I was going to do about it...! Constructing a Holocaust memorial and learning centre was irrelevant to the eradication of antisemitism in the UK, in the view of the greatest expert in the world on antisemitism, and in his view simply a 'fig-leaf'.

Living Jews

HMLC does no service to living Jews, and nor does it mention Israel - a very strange omission, given that the majority of Jews now live in that country. I wonder why that should be.

Conclusion

Apart from my own happy experience as a child growing up in an alien environment (as well as seeing the beneficial effects on my brother and local children with whom we played every day) I am also an educator who has studied child development as part of my training. I therefore know both subjectively and objectively how important it is for children to have the opportunity of unstructured play in green spaces. This is particularly essential during the first stages of life and the Primary years. Not a luxury, or added accessory, but an absolute necessity. That's why the playground, green spaces and trees of VTG are essential for the well-being of every single child visiting VTG.

In my view our duty to all our children, of whatever race, religion or creed, should be paramount in this as in any planning inquiry. As the children's play area will undoubtedly suffer under the new plans, and as we certainly were not informed of this feature of VTG during our jury service in Manchester, in my view the proposal should be declined for this reason alone. One cannot judge a design out of context. And in any case the design before the Inquiry today is an insult.

Children are our future. This principle on which all agree follows on from Jewish teaching in which the Hebrew words for 'children' and 'builders' are the same. Children will build our futures and they can only do that if they are given the best possible present in order to build lives for themselves and their own children in the future. Children learn from unstructured play that 'give and take' is the answer to all forms of bigotry and hatred, including the 'longest hatred' - that of antisemitism.

For the main meaning of Judaism is that we should never concentrate on death but rather 'choose life'. For as it says in the book of *Deuteronomy* (30:19):

'I call heaven and earth to witness against you this day, that I have set before you life and death, the blessing and the curse; therefore choose life, so that you can carry on living, you, your children and your children's children.'

Nothing could be clearer than the fact that you, Inspector, have before you the choice between the dead and the living. Judaism will always urge you to opt for life.

In the choice between mausoleums and parks, my father whose entire family perished in the Shoah, always opted for parks and playgrounds. As for my mother, green spaces gave her the reason to carry on living.

I hope you will heed all those people who have written in from this country and from around the world to inform you of the harm caused by the non-contextual teaching of Jewish history. Leave the park as it is with all its wonderful and carefully-nurtured opportunities for play and enjoyment, and let those of us who are educators get together and re-think our current curricula to include the huge contribution that Jews have made to civilization.

Professor Tom Lawson Representing academic interests

We share concerns about the Victoria Gardens site itself. 1) Victoria Gardens is a small space and the intended UK Holocaust Memorial will overpower all the existing important statues and memorials.

We are a group of scholars with significant expertise in the history of the Holocaust in relation to Britain, the history of British refugee policy, the memorialisation of the Holocaust in Britain and Holocaust education.

We have comments on two issues at the heart of this inquiry: 1. The principle of the planned Holocaust Memorial and Learning Centre. 2. The proposed location of the Holocaust Memorial and Learning Centre.

The principle of the planned Holocaust Memorial and Learning Centre. A cross-section of scholars based at UK institutions met at the Institute of Education, UCL on 24 April 2014 to discuss the proposed Holocaust Memorial and Learning Centre. A letter with 28 signatories was subsequently submitted to the Prime Minister's Holocaust Commission in response to the formal Call for Evidence. The letter acknowledged that the planned memorial and education project "represents a tremendous opportunity to increase public historical understanding of a complex and challenging part of our history" and "the opportunity to correct widespread misconceptions about the Holocaust, not least with regard to Britain's role". The letter further observes that in a time of unprecedented pressure on the public finances it also offers the chance of securing the resources necessary for effective learning and teaching in all forms of public education. We welcome, therefore, the Commission and the accompanying cross-party commitment to provide resources for education and research into an aspect of our shared traumatic past.

Noting the possibility of relocating the existing Holocaust Memorial from Hyde Park to Whitehall, and the permanent historical exhibition on the Holocaust in the Imperial War Museum (soon to be reopened), the letter concludes that "there is no pressing need for a further physical monument and that it would be better for resources to be deployed in more creative and potentially

transformative ways.” We wish to reiterate here the suggestions for the creative and transformative use of funds we made in 2014: 1) the resourcing of educational materials should be a priority, for example a. through the creation of a digital repository to aid learners, teachers and researchers; b. greater investment in teacher development programmes; and c. supporting the provision of research-informed public history initiatives. 2) funding for research including doctoral scholarships to ensure the training of new generations of scholars. This could include, for example, the creation of a permanent research institute dedicated to the study of mass violence and atrocity in the modern world.

These views take seriously the existence of established and respected institutions and infrastructures which provide teaching and learning about the Holocaust in Britain. This includes talented and committed teachers at all levels who accept the importance of Holocaust education, but who lack sufficient time and resources. Such decentralised options for the large amount of government funding set aside for the Holocaust Memorial and Learning Centre would demonstrate the government’s recognition of local educational initiatives, existing subject networks, and the substantial expertise of the British academic community. It would mean a commitment to raising public knowledge of British history in all parts of the United Kingdom and it would show a commitment to the education of future generations of teachers and researchers.

The proposed location of the Holocaust Memorial and Learning Centre. As scholars of the memory of the Holocaust especially, with wider expertise in issues of memorialisation, we share concerns about the Victoria Gardens site itself. 1) Victoria Gardens is a small space and the intended UK Holocaust Memorial will overpower all the existing important statues and memorials which reference a. women’s history (statue of Emmeline Pankhurst), b. the history of migration (Rodin’s Burghers of Calais sculpture) and c. slavery and its abolition in Britain (Buxton Memorial). It is remarkable that the proposed ‘Memorial 2007’ by the Windrush Foundation for a much smaller monument to commemorate the victims of slavery and supplementing the Buxton Memorial, was turned down in July 2005 by The Royal Parks on the basis that there was not enough space for any further memorials in Victoria Gardens.

Situating the UK Holocaust Memorial next to the Houses of Parliament is likely to create a celebratory narrative of the British government’s responses to the Jewish catastrophe during the Nazi era and beyond. Situating it so close to parliament is almost certain to add to the mythology of ‘Britain alone’ as the ultimate saviour of the Jews which negates several decades of careful scholarship and research. In summary, the site is deeply problematic in terms of overall memorialisation, and there is an urgent need for a decentralised and more reflexive approach. Therefore, we oppose the current site and propose an alternative, decentralised option. This suggestion would best feed into a new open and explicit public dialogue about the form and location of a national Holocaust memorial in Britain.

Professor Sir Richard Evans Regius Professor Emeritus of History at the University of Cambridge

I am Regius Professor Emeritus of History at the University of Cambridge and I have written and taught for many years on the history of Nazi Germany. Among my best known publications is a three-volume history published by Penguin Books and translated into 15 languages including German, Chinese and Russian: *The Coming of the Third Reich*, *The Third Reich in Power*, and *The Third Reich at War*. I am Deputy Chair of the Spoliation Advisory Panel, which advises the Secretary of State for Digital, Culture, Media and Sport on applications for the restitution of Nazi-looted artworks, a committee whose work is widely recognized in Europe as a pioneer and model in the field. I was the principal expert witness in the unsuccessful libel action brought before the High Court in 2000 by David Irving over accusations of Holocaust Denial. I advised the Imperial War Museum on its Holocaust Exhibition Wing and attended by invitation the formal opening by Her Majesty the Queen in 2000, and, also by invitation, I have submitted a lengthy 'research briefing' to the US Holocaust Memorial Museum as part of its preparations for a redesign of its permanent exhibition. Finally, when I was an undergraduate at Oxford, my tutor for modern history was Sir Martin Gilbert, subsequently author of a number of major works on the Holocaust, as well as the official biographer of Sir Winston Churchill.

The Imperial War Museum's Holocaust Exhibition attracts some 600,000 visitors in a normal year, and is linked to the Museum's significant archival collections, which make it an important centre of research on World War II and the Holocaust. The proposed exhibition and research centre in Westminster would be an unnecessary duplication of the Museum's offerings. It would be on a much smaller scale, and so less comprehensive and less effective, but it would at the same time divert attention from the Imperial War Museum's larger and more important collections and displays. A significant expansion of the Museum's Holocaust exhibition is under way, supported by HRH the Duke of Cambridge on his visit to the Museum on 27 September 2017, and will soon be opened. It is my view that the Imperial War Museum, located less than a mile away from the Palace of Westminster, is already the national Holocaust memorial centre and it remains the appropriate location for a comprehensive, scholarly and professional coverage in the UK of this most tragic episode in human history.

The arguments politicians of all parties have put forward – that the Holocaust must be remembered and publicly commemorated, that future generations need to learn about it, that a memorial is necessary as a signal that the UK is determined to fight racism, antisemitism and prejudice of all kinds – are of course unobjectionable. But we already commemorate and research the Holocaust not only at the Imperial War Museum but also at other sites across the country, notably in Hyde Park (London), at the Beth Shalom Holocaust Centre in Nottinghamshire, at the Holocaust Exhibition and Learning Centre in Huddersfield, and at the Wiener Library (London) for the Study of Holocaust and Genocide. The last three named have been the recipients of substantial public funds in the last few years. As a research centre on the Holocaust, the proposed new Westminster memorial will not be able to compete with the substantial and long-established archival collections of the Wiener Library.

The implication that the Westminster centre is needed because more research on the Holocaust is needed is misleading. Britain, with its universities and its research institutions, is already, along with Germany, the United States and Israel, the world's leading country for Holocaust research. One excellent

example is the Holocaust Research Institute at Royal Holloway, University of London, where staff members such as Professor Peter Longerich Professor Dan Stone and the late Professor David Cesarani have produced world-leading general accounts of the Holocaust, and there is a widely respected Master's degree in Holocaust history. To suggest that the recent and current Holocaust-related research and learning effort in the UK is inadequate or even non-existent does British scholarship and teaching in the field a grave disservice. Along with the world-famous British contribution to the history of the Nazi period more generally – one need only name Sir Ian Kershaw's standard biography of Hitler here – this is something Britain should be justly proud of, rather than suggest that the Holocaust will no longer be remembered or understood when the last remaining survivors are no longer with us.

The location of the proposed memorial in Westminster has been justified on the grounds that it symbolizes the importance of 'British values' and parliamentary democracy as a bulwark against genocide. As an historian, I find this argument dangerously misleading. To begin with, the democratic and humanitarian values that underlie hostility to racial and other kinds of discrimination, mass murder and genocide, are not 'British', they are universal. To suggest otherwise is to encourage complacency and self-satisfaction about the British response to the Holocaust, which I understand is to be the focus of the exhibition and presented in a positive light.

An objective historical appraisal of the British response would need to be far more nuanced, however. Britain placed many obstacles in the way of Jews who tried to escape from Nazi Germany, imposing strict immigration quotas on the British Mandate of Palestine and turning back Jewish refugees from Nazi Germany whose arrival would breach them. The British government's acceptance of the *Anschluss* of Austria and its brokering of the Munich Agreement in 1938 in the name of appeasing Hitler turned a blind eye to the fact that these actions brought hundreds of thousands of Jews under Nazi rule, with terrible consequences for them all. Antisemitism was widespread in the higher ranks of the British Civil Service, a disturbing fact brought to public attention by my former tutor Sir Martin Gilbert's book *Auschwitz and the Allies*, which found that antisemitic sentiment played a significant part in dissuading the Allies from taking action against the Auschwitz-Birkenau death camp.

If public funds are to be allocated to a new memorial, finally, then, given the fact that there are already several major publicly funded Holocaust memorials and research and learning centres in the country, pre-eminently at the Imperial War Museum, what is really needed are memorials of this kind dedicated to the victims of the transatlantic slave trade, in which Britain was a leading participant from the seventeenth century to the early nineteenth.

The public benefit and the benefit to historians accruing from the proposed new Holocaust memorial and underground exhibition and research centre are in my view insufficient to justify the partial destruction of an important and much-loved green space in what has justly been designated a World Heritage Site. I conclude therefore that the application should be rejected because there is no public benefit that could outweigh the damage done to the park.

Charlie Veale

I'm a recent graduate from the University of Bristol, having finished my BA in History earlier this year. I'm currently pursuing a career in arts management, and I've been volunteering at the Imperial War Museum in recent months whilst looking for a job. At university my specialism became the relationship between history and memory, specifically looking at Holocaust history and how the world's understanding of it has changed over the post-war period. I've always been interested in Holocaust history, as well as public history, and so chose third year modules that combined these two. I also had the pleasure of knowing a Holocaust survivor last year and it was really an accumulation of all these things that led me to my dissertation topic, which was called: *Shaping Memory: London's new national Holocaust memorial*.

My evidence for the Inspectorate today is my dissertation. I centered my thesis around this proposed Holocaust memorial, and I effectively asked *why* is the British government creating this new memorial, and *why now*? I'm hoping that my research findings can offer a new perspective on why VTG is an unsuitable location for this proposal.

To be clear, I am in full support of having a new national memorial to the Holocaust in Britain, and in London. I think this is a gap in Britain's memorial culture, and that the aims of the UK Holocaust Memorial Foundation – namely:

to build a memorial & learning centre that will 'address the complexities of Britain's ambiguous responses to the Holocaust'

and invite visitors to critically reflect on those responses are completely necessary. What concerns me, and this is the crux of my dissertation argument, is that I don't believe this memorial, being built next to Parliament, is as single-mindedly focused on Holocaust memorialization as it really ought to be. It's clear that there are political imperatives at work here as well, and that these, more than anything else, are behind the insistence on a location next to the Palace of Westminster. After all, as many people have already noted at this inquiry, it is hard to see how the really important educational aims of this proposal can best be achieved on this very small site, with no scope for expansion.

The 2015 Commission Report, *Britain's Promise to Remember*, makes clear that one aim of the memorial project was to 'build a nation of empathetic citizens', so to encourage integration by reducing prejudice and improving tolerance. We know this was an overall government goal at the time, because it was repeated in the Counter-Extremism Strategy released in the same year. Now, by this time Holocaust memory has become a kind of universalized framework for people to use and impart their own messages through, and it's clear from the 2015 Commission Report that that is what the government was doing. They attached this notion of 'British values', which is, in reality, a set of widely accepted, and not nation-specific, good values, to our British memory of the Holocaust. The idea being, that we can turn around and say, 'this period defines what it means to be British.' But this is problematic, because it risks being ultimately self-serving and congratulatory. Even though the report acknowledges Britain's story is 'not wholly positive', it tends to tell the story as if it is.

So, now we've got the recommendation to build a new national memorial from this report, which is encouraging Holocaust commemoration but off the back of

that, promoting 'British values.' National memorials do give us this sense of shared memory, they are shared spaces, and so attaching these values to a monument is intended to give us the sense that we share these values as a nation. This is particularly effective through Holocaust commemoration because of the juxtaposition: that was bad, we are good.

But all of this is distracting from the true purpose of the memorial. We're in danger of promoting a self-serving narrative against the memory of an event which was horrifying and complex, and in which Britain's involvement was very significant, but not in all ways exemplary. I think this is incredibly damaging, it not only signals the instrumentalization of Holocaust memory, but it threatens actual historical understanding of the event. History needs critical perspectives, and we can't be critical, or invite criticism, if we're encouraging the nation to complacency.

And so, this is where the location becomes a problem. We know it hasn't been democratically chosen, it was not originally considered as a site choice, and yet it's been pushed forward because – I would contend – it corroborates this idea of 'British values.'

The UK Holocaust Memorial Foundation's search brief said that the memorial will be 'both a focal point for national commemoration of the Holocaust', but also that it will be a 'permanent affirmation' of these 'British values.' I don't think these two things are mutually inclusive. It's the same juxtaposition of Britain good, Holocaust bad. Having the memorial next to Parliament created this physical association that encourages this symbolism. Ed Balls has literally said that having the two next to one another means that children can come and learn about 'the history of our great democracy' whilst remembering what happens when racism and antisemitism is 'left unchecked.' The implication being that democracy should be celebrated, against Holocaust memory. Again, pushing forward this self-serving (and potentially misleading, given that 1930s Germany was a democracy) narrative, and using Holocaust memory to do so.

The UK Holocaust Memorial Foundation is made up of people who clearly care passionately about Holocaust memory and education, and have put enormous effort into getting this proposal to such an advanced stage. That said, it is worth noting that all members of the UKHMF are Government appointees, so they cannot be said to be independent in the way that they might be, had they been recruited through a more conventional process. To reiterate. I think a memorial is so important, and that encouraging Holocaust history and memory is such a worthwhile endeavor. I just don't think it should be used to advance whatever domestic aims the government has at the time, even if these aims are also worthwhile. Holocaust history and subsequent genocides, the educational topics of this proposal, are quite huge and complicated enough, without introducing contemporary preoccupations to the mix.

Not allowing the memorial to be built next to Westminster would hopefully force the UK Holocaust Memorial Foundation to rethink this dual ambition and focus solely on the task at hand, which should be, as they outline on their website:

'Facing history honestly', which 'requires us to question the role of our own Parliament, government and society in the history of the Holocaust'.

Because I don't think this is something that can be done solely inside the Learning Centre. And it's important that it's not, because of the projected figures. If over half of the visitors aren't even going to go inside, surely the incentive should be, how can we encourage this honest interaction with history from the outside? And if it's next to the Houses of Parliament, we can't, because what we're actually encouraging is this unspoken symbolism of Holocaust bad, Parliament good. And that, to me, is the most harmful thing of all – to history, to Holocaust memory, and to ourselves.

Politicians

Sir Peter Bottomley Member of Parliament Worthing West

From early years I knew of the Holocaust and most of its horrors and history. Here is my personal testimony to the aims of education and research as a lasting memorial to victims. Since 2015 through the work of Philip Beddows, we know the names of over 100 of our grandfather's extended cousins and their families who were killed or died in death camps and concentration camps.

Nearly 70 years ago I stood in VTG cheering The Queen at the State Opening of Parliament. Later I lived for five years hearing the chimes from the Palace of Westminster clock. For the past 45 years I have worked at Westminster. For 30 years I have turned one corner from home to see the anti-slavery Buxton memorial, the memorial I caused to be repaired decades ago.

I support strongly the proposal and the specifications issued in September 2015 by the United Kingdom Holocaust Memorial Foundation UKHMF. I oppose what is now proposed and where it is proposed.

Sir Peter quotes from the Holocaust Commission web site on the process of site selection.

National Memorial and Learning Centre Search for a Central London site.

"The Commission was clear that the National Memorial and Learning Centre should be in Central London. It identified three possible sites, one at the Imperial War Museum in Lambeth, one on the South Bank next to Tower Bridge and one on the river near Tate Britain. However, it was also clear that these were not the only possible sites. So, while the UK Holocaust Memorial Foundation will continue to explore these sites in greater detail, this selection process is also open to any other potential site that could fulfil the Commission's vision.

"This Site Briefing sets out more detail on the objectives for the National Memorial and Learning Centre, the facilities that would be required and the criteria on which the UKHMF will evaluate potential sites and make its recommendation to the Prime Minister at the end of this year.

"The scope of this paper does not include the design of the National Memorial itself. This will be chosen through a separate competition, once the site for the Memorial and Learning Centre has been selected. It will, however, be important for any potential site to indicate clearly how it could provide a fitting and compelling home for an iconic new National Memorial.

“In summary, the UKHMF is seeking a prominent location in Central London with significant existing footfall so as to draw in and inspire the largest possible number of visitors. The site will support several features and activities, the number and extent of which will depend on the size of the space available. Sites capable of accommodating 5-10,000 sqm of built space for UKHMF over no more than three contiguous floors will be considered. This could include being part of a larger mixed-use development. In order to achieve the maximum benefits for the public, the UKHMF needs to allocate as much of its funds as possible to educational purposes rather than to land and construction and so the site must be highly cost effective.”

“Through the use of cutting edge technology, the Learning Centre will educate people of all ages in the context and history of the Holocaust and help them to understand how the lessons of the Holocaust apply more widely to many of the important issues faced subsequently, including to other genocides. It will include a particular focus on Britain’s own important historical connections to the Holocaust.”

Between September 2015 and later developments the following year, neither the UKHMF nor the successive sponsoring ministries nor No.10 Downing Street have agreed to release papers showing the audit trail of how proposals at the Imperial War Museum in Geraldine Mary Harmsworth Park were compared with the possibilities at Victoria Tower Gardens or elsewhere. Pre-Covid, there were nearly 1,000,000 annual visitors to the Holocaust galleries, with capacity to grow significantly.

The present application fails to meet the aims.

No one claims it matches the full September 2015 specification: These are then set out

“The Learning Centre will require a number of features and facilities. These will include:

- At least 5,000 square metres and as big and ambitious as the site will allow.
 - This could be a freestanding building or could occupy part of a multi-use building, but would require its own prominent entrance.
 - A suitable space for a highly visible memorial with room for gatherings of at least 500 people. This must be co-located or in close proximity.
 - The public space and facilities should be spread across no more than three contiguous floors.
 - Entrance hall: reception, visitor orientation and circulation.
 - Visitor facilities: restrooms, cloakroom, first aid room, interfaith prayer room, shop, café.
 - Permanent and temporary gallery spaces.
 - Loading bay area with secure transit store adjacent.
 - Secure store for material including works of art, photography, and archives.
 - Clean workshop space for construction activities and exhibit preparation.
 - 4x Learning rooms, able to accommodate 40 people.

- Auditorium with tiered seating for at least 150 people.
- 2x meetings rooms for events and hire.
- Office space and associated facilities for members of staff from UKHMF and other Holocaust organisations.
- Infrastructure to fulfil all security considerations around the site.”

Many things have gone wrong. Many changes have been made since the architectural competition. Costs have risen, all except the free use of land in VTG. It is public knowledge that the final design is a reworking of a design not chosen when submitted for the Canadian capital monument.

Present plans most will go to digging a hole and building the hill. It was specified that most of the available funds should go to education.

Having heard proceeding on the first day, I suspect the applicants and their advocate will not give answers on the chronology that led the UKHMF and the government to settle on VTG. Will they put questions to witnesses like me if they know answers weaken the application?

When was it recorded that any of those involved in developing or submitting or defending this application first considered that it had been wrong to include the Imperial War Museum in the January 2015 announcement? Was the UKHMF mistaken in September 2015 to have defined acceptable central London locations as ranging from and including Regent’s Park, East London and Southwark’s Geraldine Mary Harmsworth park and the Imperial War Museum?

There has been close cooperation and plotting within government at various stages. They have withheld information; they give the appearance of fixing matters or trying to fix matters in ways that are incompatible with the required openness and consideration of evidence that should lead to a significant effective education centre and a good memorial, whether collocated or nearby.

After the public consultations on the architects’ submissions and on the developed plans, there were overwhelming and reasoned objections. The applicants responded with a dodgy public education initiative that seemed to result in unspecified support for the plan from unknown people.

Ministers at Housing and Communities made the surprising decision to take the application away from the Westminster City Council within days of the suggestion by UKHMF.

The Inspector was appointed with the instruction not to decide on the application but to make a recommendation to the Planning minister because the applicant is his colleague the Secretary of State. Few can have confidence in this arrangement.

If ministers accept a justified recommendation to refuse the application, or if in advance the application is withdrawn or suspended, it would be possible to come together to decide how better to develop education and learning, the best location and, importantly, how to choose a design for the national memorial without the constraint of taking more than a quarter of the small Victoria Tower Gardens and without having to shoe horn the education and learning centre underneath.

Lord Flight

I believe we are all agreed in supporting a Holocaust memorial in London, the argument is about where the memorial should be.

I support strongly the proposed Imperial War Museum site. It provides, in particular, plenty of parking space for visitors and inside and outside space for displays/exhibitions. The Imperial War Museum also wants to house the Holocaust Memorial.

There are several powerful arguments against VTG as a site. It is an important green space area for local residents and employees – to exercise; to eat a packed lunch; to walk their dog etc.

If the Holocaust memorial is sited in VTG visitor coach traffic is likely to cause congestion and to disturb local residents and businesses.

The local community has evidenced that it is strongly against VTG as a site, Westminster Council turned down the planning application – subsequently there has been what I view as improper behaviour by Government in overruling Westminster Council's decision. UNECSO advisers oppose the location over visual impact, The Royal Parks, who own the Park, are strongly against the Holocaust memorial location in VTG. The local Jewish Community is opposed to the site and has been the most active and effective in campaigning against.

If Government interference enables the VTG site to be used, I believe the Conservatives are sure to lose Westminster at the next General Election. The democratic process has registered a clear "no" to using this site.

Lord Howard of Rising

Stated:

Large part of area already been taken for Parliament visitor centre; already traffic congested. Although some of the one million visitors will come by tube others will come by road exacerbating traffic problems; where will buses park waiting for visitors; regular demonstrations already cause massive congestion with many streets being closed reducing traffic to a standstill. Access to the visitors centre will only be possible on foot.

Lord Blencathra

First of all I declare two interests; I have lived in the area for almost 20 years. Whilst my main home is not in London I have a flat about 400 yards away from the proposed development. However, it is tucked away on a side street and I would not be affected by any additional traffic.

Therefore, I do know this area quite well and I detour through the Gardens in my wheelchair enroute to Parliament every day when I am in London since it is much more pleasant than using Millbank.

Second, I am a member of the Conservative Friends of Israel and the Transatlantic Friends of Israel. In my capacity as a Member of the Council of Europe I have made speeches in Strasbourg on the evils of antisemitism, indeed,

on the 23rd January 2017 I said, inter alia, "the Holocaust was the greatest crime ever committed against humanity."

Turning now to planning reasons why I am opposed to this development, I would first cite visual amenity grounds.

Everyone knows that these 23 giant bronze fins are a grotesque, ugly monstrosity.

Architects may defend them on the grounds of symbolising the 22 countries affected by the Holocaust and other specious architectural gobbledegook but they cannot claim that they enhance the visual beauty of this Grade 2 listed park. The best defence mounted by the architect was "disrupting the pleasure of being in a park is key to the thinking of the memorial." What an appallingly feeble excuse for bad design in the wrong place. Key to the thinking should be educating people of the evils of National Socialism as practised by Hitler and the Nazi regime.

When the House of Commons built its visitor centre at the northern edge of the Gardens it was limited to one storey so that it did not detract from the exquisite beauty of the Victoria Tower and the western façade of the Palace of Westminster. Even then it has a grass and plant roof and the walls are hidden by shrubbery. It still detracts from that Palace façade but in an infinitely minor way in comparison to the giant fins of the proposed development.

The architectural justification for these fins is that the 22 gaps between them represent the 22 countries from where Jews were plucked to be exterminated. But why pick that previously unheard of figure? Why not just one fin depicting Nazi Germany, the one country which perpetrated the Holocaust or 20, symbolising the number of concentration camps or 6 the number of large extermination camps? There are many numbers which could be chosen and they are all irrelevant except one. There is only one number which matters – 6 million. 6 million Jews exterminated and any physical memorial needs to represent that time and time again and not some other obscure number no one has heard of before. Nor is there any explanation as to why these fins are made of bronze nor their odd shape or size. They are of no relevance whatsoever to the Holocaust or 6 million Jews exterminated.

I do worry that people and children who have not read about the Holocaust will come away from this exhibition with the wrong impression. No doubt there would be a mention of the 6 million in the underground exhibition but the one thing which will hit visitors in the eyes are the giant fins. That's where children will take their selfies. This design undermines the serious message of the Holocaust.

I wrote to the then Secretary of State on this a few years ago and suggested that if some symbol of the Holocaust was required to mark the entrance to a Holocaust Memorial then there was only one horrifying image which would suffice and that would be to re-create the arched entrance gate to Auschwitz with the sick words Arbeit Macht Frei, work sets you free.

Those steel gates are recognised all over the world as symbolising the entrance to hell which 1,1 million Jews entered but never left alive. If the architect wants to "disrupt people's pleasure" then that is an infinitely more explicit and historically correct way to do it.

Second, I suggest that there is a tacit admission by the Government and organisers that this is in the wrong place and hence the demand that all of it be underground.

Why should a memorial to the Holocaust be underground? The Imperial War Museum have devoted two floors to the Holocaust and they are upstairs where the light of day shines on this evil.

We can surmise, and probably correctly, that after Mr Cameron suddenly announced, with no consultation or thought, that there would be a memorial in VTG, officials pointed out that it would take up all the garden space and there would be widespread opposition and so the decision was made to stick it all underground but with some big feature entrance.

Therefore having a Holocaust memorial underground does not make any sense except to try to justify the selection of an inappropriate site.

I cannot comment authoritatively on increased traffic but I assume that experts from Westminster Council can do so. Even at the present moment with no tour coaches near Westminster the traffic on Millbank is horrendous. Of course more people, at the moment, may be using their cars rather than relying on public transport but I have watched traffic in this area over the last 30 years and even without the Covid 19 situation there is always severe congestion on Millbank, Lambeth Bridge and Parliament Square.

I would remind the Inquiry that with cycle lanes and the Corus anti-terrorist barriers outside the Palace of Westminster there is only one lane of traffic each way. The police were forever chasing away coaches which were blocking the road and if this development attracted many more coachloads of visitors then all traffic in this area would be severely affected.

I mentioned the anti-terrorist barriers. I am not sure that I agree with those who say that this development would be a new terrorist attraction. Frankly there are more attractive, I mean politically attractive, targets in this area from the Palace itself to other iconic government buildings in Whitehall. Nevertheless it is a fact that terrorists will go for the least protected target and this edifice could be a target unless it gets the same sort of large steel anti-terrorist barriers which will again add to the visual destruction of the Gardens.

Next, I would suggest that if a physical building is deemed necessary then this is the wrong location for the visual amenity reasons I have given and also for future political impact. What I mean is that in all my daily trips through the Gardens I have never ever seen another politician walk through there. If there is to be a monument to the evils of the Holocaust so that politicians will never permit it to happen again then it has to be right in their and our faces not tucked away in a park they never visit.

Thus if it has to be in the Westminster area, I would put it in the corner of St James Park right opposite the Churchill War Rooms. That would be almost as appropriate as having it in the Imperial War Museum but it would also be seen by the key decision makers. And being close to the Churchill War Rooms is also symbolically important. The War did not bring about the Holocaust since Hitler had started his attacks on the Jews before 1939 and "The Final Solution" in 1941, but winning the war certainly ended it and the two are inextricably linked. I want the Foreign Secretary and the Prime Minister to look out their back

windows of the FCDO and No. 10 and see this every day and recall the evils of genocide.

You will know Sir, that when the Commons was rebuilt after being bombed during the war, Churchill ordered that the entrance arch into the Chamber from the Members' Lobby be constructed of broken and bomb damaged stones so that every MP entering the Chamber had a reminder of the destruction of war before they voted to take part in another one. Thus I believe that if a physical memorial is deemed necessary then it should be where our political masters will see it so that they will never forget.

I have said earlier that if a physical memorial is necessary then this proposed development is the wrong design in the wrong location.

But I want to conclude by stating that a physical building is now not necessary and indeed is an irrelevant old-fashioned concept which will fail in its objective of teaching young people about the Holocaust. There are already five excellent museums of which I am aware. The prime one is the Imperial War Museum which is greatly expanding its Holocaust showing and plans to open it next year.

Then there is the Hyde Park Holocaust Memorial, in Hyde Park, the Wiener Library for the Study of the Holocaust and Genocide, also in London, the Beth Shalom Holocaust Centre in Nottinghamshire and the Holocaust Exhibition and Learning Centre, Huddersfield. There may be others of which I am unaware.

But of far more importance is the need to extend education on the evils of the Holocaust far beyond the thousands of school children who may visit it in any year. There are about 12 million school children in the UK from age 5 to 18. Thus if a child were to make one school visit to London in the course of his or her school education that that would be 1 million children per annum who would need to visit this memorial if they are to be educated on the Holocaust there. There is no likelihood of anything like those numbers being achieved and school trips to London for children from N.I., Wales, Scotland and the far corners of England are very low in comparison to trips from children within a day's coach drive of London. And when these school trips get to London it is highly unlikely that this development will be on their must see list. There will be Buckingham Palace, the Eye, Houses of Parliament, Westminster Abbey, Churchill War rooms and possibly the Imperial War Museum.

That does nothing to educate people about the Holocaust and diminishes the horror of it. What does stand a chance of working is to educate people on-line and virtually.

This proposed physical development may get to 10,000 children per annum. The £100 million invested in Holocaust education can get to 10 million children per annum via a medium they all now use. Like it or not on-line education across a whole range of topics is the future.

I find it instructive that so many prominent Jew, Rabbis and Jewish organisations are opposed to this development. They too argue strongly that all efforts should focus on education and this physical building has no real role to play. This proposal for a physical museum was even out of date in 2015. It is utterly irrelevant now since the future of Holocaust education is digital, virtual and on-line.

It is vital that we educate children about the Holocaust. There is considerable merit in that. There is no merit in yet another museum which will not be visited by the target audience, will destroy a World Heritage Site, despoil the extraordinary view of the Houses of Parliament, foul up traffic in an already congested area, and is only still being pursued as a vanity project by some of my colleagues who now cannot admit that it is old fashioned technology of no relevance to the digital age.

Lord King of Bridgewater (LKoB)

In summary LKoB stated:

He had previous ministerial responsibility for the Royal Parks, and well aware of the pressure they are under.

LKoB supports an appropriate Holocaust Memorial in VTG.

LKoB supports a Learning Centre, but not in VTG.

He noted that NPPF emphasises the importance of access to open space and the protection of existing open space.

LKoB is concerned about the impact of the proposal on the use of VTG, in terms of the impact of the construction period (a 4 year build, noting possible delays). He also referred to the impact of the Parliamentary restoration and renewal programme, which may require part of VTG for storage of materials. Taken together, these projects would effectively shut down the gardens for a considerable period.

LKoB also referred to the risks of the scheme being located so close to Parliament in terms of the increasing problems of major demonstrations taking place in Parliament Square and elsewhere. The resulting road closures would seriously handicap the effective operation of the HMLC. Terrorist threats must also be factored in. It would be much safer for all concerned if the learning centre were to be located away from VTG.

Viscount Eccles

The Journey starts with the January 2015 Prime Minister's Commission Report 'Britain's Promise to Remember'. It starts with the Prime Minister's acceptance of the report's recommendations and that of the Deputy Prime Minister and the Leader of the Opposition. Shortly thereafter the UKHMF was formed.

The Commission made five recommendations. They concentrated on delivering 'directions of travel'. There were options and choices to be made as the Holocaust Memorial was established and operated in its early years.

The Commission's report and its recommendations were very well received. I know of no opposition to them. I am strong supporter believing that we need a grant aided 'national institution' to commemorate the Nazi Holocaust. As important and more demanding will be the Institution's contribution to research into and study and education in all that the Nazi Holocaust and previous and subsequent genocides can tell us.

As the Commission reminded us our national institution will come into operation nearly 80 years after the 'Final Solution'. During those 80 years and before there have been charities, academic bodies, writers and commentators contributing to the recording and to the understanding we seek. There lies our duty to achieve close cooperation and our need to add value. "A Striking Memorial" will add value as will "A world Class Learning Centre".

We are fortunate to live in an old and sophisticated democracy. We have had centuries in which to develop institutions in civil society which underpin and support our parliamentary conventions. Almost everybody wants to see a successful 'National Holocaust Memorial Foundation' as a new national institution in our civic society.

The challenge is how to implement this ambition. The question I have been addressing is 'how well have we got on with this task so far?' Cautiously and with due diligence I have listed three areas of doubt. They are that the implementation has been 'Unconventional', is an 'Incomplete' response to 'Britain's Promise to remember', and it is perceived as 'Partisan'. It is seen as Partisan because of the decision to leave executive control with the government of the day. There is no independent body as envisaged by the Commission.

There should be because for many years National Institutions have been legal entities subject to parliamentary approval: entities with considerable independence and a demanding level of accountability. Some like the IWM have Acts of Parliament. In IWM's case an act 100 years old this year. Others like The Royal Botanic Gardens Kew are Non-Departmental Public Bodies, in Kew's case under a Section of the 1983 Heritage Act. This policy and practice is supported across Parliament.

In implementing progress toward this memorial in 2015/6 no proposal was put to Parliament to form an NDPB. If it is argued that the MHCLA is entitled to be chosen by the Executive to implement the Commission's recommendations: argued that parliamentary approval is not needed; argued that existing policy toward nationals can be bypassed then we get into the question of authorisation. Would Parliament approve if the matter was put to it? We also need to look at what the record shows.

I do not believe that the MHCLG can point to its accountability for any other executive body or national institution in the cultural sector comparable to the proposed Holocaust Memorial.

Following the decision not to form an arms-length executive body in 2015 things which would have been expected have not happened. There is no director, no finance officer and no Business Plan. There are no executive progress reports, no accounts, no record of developing co-operations, no memoranda of understanding, and therefore no emerging coherence and leadership between the proposed national institution and all the other respected players. Nor is there a professor. Nor has there been any fund raising.

Instead the entire public focus has been on the building. This has put the cart before the horse. Careful study of the five demanding recommendations makes it clear that this national institution needs to know what it is going to do before it decides where it will do it. Further that with its overwhelming public support it would have been wise to make its plans plain, to consult on them, and publish

its findings and responses. It needed to carry its public with it and this it has failed to do.

Instead there is controversy. The consensus of 2015 has broken down. It is time to change direction. It would not take long to set things on a sound footing. Parliamentary time can be found to legislate for an NDPB. An accountable Board can be appointed as can a director and a professional team. A £75 million grant aided National Holocaust Memorial is a very attractive project surely able to attract charitable funds.

Action needs to be taken urgently because if the project with its very patchy record stays with the MHCLG it will ensure endless controversy. The Planning Application should be rejected.

Presumably it can be revived when an accountable independent Board and its executive management members commit themselves to an open style Business Plan to lead and cohere the commemoration, research, study and nationwide educational network envisaged by the Commission.

Lord Sterling (LS)

I live by the River and have an office on Millbank. I have great pleasure in walking amongst the trees and by the River in the early morning, I find the combination of the two very calming, as do a great many other people. This has become more evident during the pandemic, with a great many people gaining enormous pleasure from this.

This small park, adjacent to the mother of parliament is iconic, the most photographed view in London.

I do not comment on the legal or planning aspects of the appeal. This small park is of enormous significance, and will be increasingly so.

LS spoke of his military background the fact that for 7 years he was president of Ajax (Association of Jewish Ex-Servicemen and women).

LS has been involved in the creation of a suitable Holocaust memorial for some years, working with a range of important people. There is a marvellous set up at the IMW, and a small memorial in Hyde Park, as well as in synagogues up and down the country.

Actually, monuments are meaningless, but you cannot destroy ideas. Education is a key factor. We don't need a monument in VTG. When you walk amongst the trees, enjoying the sound of the leaves and birds, effect on this calm space must be carefully considered.

The increase in antisemitism means that this park would become a target for a terrorist attack.

Lord Williams of Oystermouth

I must begin by saying that I have been reluctant to offer a comment on this project. I am neither Jewish nor a local resident, and I am not a qualified expert in Holocaust Studies. I am keenly aware that any challenge to the plans under discussion is very easily represented as suspect. It may be seen - at best - as a

failure to see the massive disproportion between the importance of local or environmental concerns and the commemoration of the greatest European atrocity of the modern age. At worst it can be written off as a covertly anti-semitic evasion of what most would see as a clear moral imperative. What could possibly justify making difficulties about a project that is manifestly directed to the betterment of community relations and to a bold and conspicuous acknowledgement of a unique historical horror?

Two things have persuaded me that it might be worth trying to formulate some worries. One is the urging of several Jewish friend and acquaintances, all of them with more experience and authority than I, who have shared their deep anxiety that this project could be not only a missed opportunity but a positively counter-productive move in terms of confronting the poisons of anti-semitism in our culture. Some of these Jewish voices have already been heard to good effect in this Inquiry. The other is my own longstanding concern – as someone who has been involved with Jewish-Christian dialogue for many years – about the effectiveness of many prevailing models of ‘Holocaust Education’. I shall come back in a moment to this latter concern.

There are, I think, two considerations that should influence us in assessing the quality and suitability of a building. One is its *relation to its immediate environment*; the other is its *fitness for a declared purpose*. A lot has already been said about the former question in this instance – about the problems of significantly reducing a green public space in the heart of the city, about the new infrastructure pressures in an already hugely overcrowded area, about the actual management of visitor flow in a somewhat complicated space. Some have raised as well the fresh concerns about security that might arise, though I do not have the expertise needed to add anything of value in that debate. The response to these worries has very frequently been to underline the immense significance of the project and to insist that this must override lesser, more ‘domestic’ concerns: how could anyone compare the needs and preferences of the local community or the desirability of preserving children’s play areas with the gravity of genocide? The argument is understandable, certainly. But it would be decisive *only* if we agreed on two assumptions – first, that it was absolutely clear that a monument of this kind and on this scale was the only or at least the vastly preferable way of appropriately commemorating the victims of the Shoah; and, second, that there was agreed to be no alternative location. On the second point, it cannot be said that there is any such universal agreement; discussion in this Inquiry has returned often to the claims of the IWM, and the least that could be said is that the reasons for abandoning possibilities on that site remain obscure.

The issue about whether this is the only appropriate kind of memorialising is a more complicated one and bears on the second of the considerations I mentioned a moment ago, *fitness for purpose*. The problem here is that the definition of the purpose of the planned memorial has been shifting a good deal in the years since it was first mooted. The place of the Learning Centre within the whole design has been unclear. Dr Lancaster will have some observations on the lack of discussion of this element in the Manchester consultation in which she took part three years ago; it does not seem to have figured largely in early discussions and consultations, and the question has to be asked of how far it has always been an integral aspect of the project or whether it is something of an

afterthought. We can point to other Shoah-related memorials and centres where the educational component is primary and unmistakable. Can we make a judgement on this plan without having more clarity about how important its educational provision is thought to be and how successfully the present design serves this goal? Some of the responses to this question in the course of this Inquiry have been disappointingly vague.

Perhaps more importantly, there has been further obscurity about the scope of what is envisaged. Are we talking about the commemoration of the Shoah in the proper sense (I recognise that the very word 'Holocaust' is difficult for some Jews as carrying a sense of 'redemptive sacrifice')? Or about the victims of the Third Reich overall? It is absolutely *not* to deny the horror of what was done to Roma people, to those regarded by the Nazis as mentally or physically 'subnormal', or to people of minority sexual orientation if we say that the Shoah was an atrocity of a very distinct order because of its deep roots in the religious and imaginative life of Europe for nearly two millennia. It is not an issue about comparative levels of suffering; every murder perpetrated by the Third Reich in the death camps and elsewhere was an unforgivable outrage. But to understand just why Jewish people were singled out for extermination requires us to understand something of what made this possible, how Jews were historically identified as scapegoats and outcast. And that means – I say it with a strong sense of what Christians have to repent for – understanding the toxic history of Christian hatred and calumny, which Christians have only begun to recognise for what it is in the last couple of generations. It requires us also to have some sense of the agonisingly difficult negotiations that Jewish people were forced to undertake over the centuries in finding any kind of security in Christian Europe, and why it proved so easy – and not only in Germany – to demonise and isolate even the most 'Europeanised' Jewish communities.

To put it more simply: a memorial may be about the victims of mass murder and genocidal violence overall, or it may be about *this* specific cancer in the European mindset. Both are worthy aims, but if any monument is to do its work in changing perceptions and sentiments there needs to be clarity about the goal. A monument - or an event or an educational programme - focused on victims of intolerance and exclusion in general will not necessarily help anyone grasp why this or that particular group experienced this or that particular kind of violence. At different stages of the consultation process, it seems that rather different things have been highlighted in this regard.

And this brings me to a concern that is uncomfortable to express but which needs articulating. Some of the defenders of the present design have spoken of it as an affirmation of 'democracy' or even of 'British values'. It has been said that visitors emerging from the memorial building will immediately be confronted with the great symbols of British democratic institutions, as if this were the proper climax to the educational experience of the building itself.

It has been said by one modern Jewish commentator on these subjects that the point of any memorial connected with the Shoah is not primarily to make individuals feel guilty or even to create deep empathetic feelings; it is to prompt the question of how societies, including democratic societies, can be manipulated into murder and atrocity. In other words, the last thing any memorial should seek to do is to *reassure*. Whatever comes of this Inquiry, I earnestly hope that any self-congratulatory rhetoric about democracy and British values will be

reined in and recognised as deeply inappropriate. There is something of a dissonance between what we have heard in defence of the very credible idea that a memorial like this should be disruptive and jarring in its environment, and the subtext to much of the discussion - that it is really about the reaffirming of our own moral security and sanity. Many have noted that our democracy did not uniformly stand alongside the victims of Hitler's murderousness at key points in the thirties. We should beware - here more than anywhere - of consoling myths about this. The point about the importance of a Shoah memorial for the majority population of this country, or any European country, is that it is not primarily about *us* - the us, that is, of Western Christian and post-Christian society: it is about a community that has historically been a feared and hated 'other' to the mainstream of European culture, democratic or otherwise.

This takes us back to the point about education. The questions that need answering are these. Is the educational focus of the project sufficiently clear, capable of delivering a challenging and comprehensive account of the historical hinterland of anti-semitism? Is the educational provision envisaged in the current plans fully thought through? Would a centre with a robust educational focus best be served by a building of the kind proposed? And finally, is the best use of our resources to invest in a large-scale, high-status public memorial or to pursue a dramatic expansion of training and provision for relevant education in our schools and elsewhere, as argued by Rabbi Jonathan Romain among others?

Some years ago, the Australian Government announced that it was investing in a large public monument to commemorate a moment in the European settlement of Australia - at around the same time that it was reducing its funding of public broadcasting with an educational slant. The irony was widely noted, and the story has some relevance here. Voices have been heard in this Inquiry arguing strongly for a thorough national overhaul of 'Holocaust Education' and for any public money currently earmarked for the present design to be redirected to this. The argument has its roots in the same point touched in earlier: Holocaust education as a general education in deploring intolerance is not doing its job. I recognise that some have said that we are not facing an either-or between the memorial and a proper educational campaign nationwide or an increased investment in serious historical research. I hope this is true; but there is a serious question about the effectiveness of large-scale commemorative monuments in changing attitudes and this needs addressing. Some, including Baroness Deech as part of her extremely detailed critique of the proposals, have drawn attention to the unwelcome fact that monuments alone can attract anti-semitic vandalism. It could certainly be said that a Shoah memorial defaced with anti-semitic graffiti illustrates with dramatic clarity just why the memorial is necessary, and that to be deterred from going forward by a fear of vandalism is a counsel of despair. But these points do not in themselves answer the question of whether the memorial is fulfilling its *transformative* purpose. It is easy to think we have done our duty by erecting a sophisticated architectural structure, a tangible public 'statement', an undoubtedly arresting and powerful design; harder to plan for the long haul of policies that will genuinely work to reduce the prevalence of anti-semitism in a rising generation going through their education. Some contributors to the discussion have pleaded for a closer look not just at the design, location and functioning of Holocaust memorials elsewhere (matters which have figured in this debate and have been discussed on both sides) but at what can be determined about their actual effectiveness.

I began by saying that I entered this debate with some reluctance. I don't question the good faith of those who have defended the proposal, but I am still preoccupied with the anxieties of friends in the Jewish community who see this as a diversion from the real challenge of contesting the resurgence of hatred and prejudice against Jews in so many European contexts, including the United Kingdom. 'Holocaust Education' will succeed in its aims only if the deep historical and religious roots of that hatred are understood. We all know that contemporary moral education tends to see 'intolerance' as the worst of iniquities: I can recall speaking with a group of intelligent and sensitive sixth formers after a visit to Auschwitz about what they thought they had learned, and being rather disappointed that even a group such as this expressed their reactions almost entirely in these general terms of the need for tolerance of difference. I don't want to be misunderstood: there is nothing wrong with commending tolerance. But it doesn't necessarily help in identifying the points where democratic common sense lets itself be corrupted and undermined, where national pride begins to look for outside threats in order to bolster itself, where crises are handled by looking for scapegoats. And it doesn't help in identifying who the most readily available scapegoats are and why.

The proposal we are discussing is obviously well-meant; its defenders are all sincere enemies to anti-semitism, and they have included some who, as survivors, have a very distinctive authority in this context (though remember that the voices of survivors and their families can be heard on the other side also). But nothing I have so far seen or heard in this Inquiry has reassured me that the project as presented is adequately scoped, that its educational dimension has been thoroughly thought out, that it has fully taken into account what can be learned from experience elsewhere. And, as I have said, I am specially concerned about the elision of the task of effectively and transformingly memorialising the Shoah with the affirming of 'British values' – co-opting the remembrance of the Shoah into a celebration of who we are, and softening the edges of the specific character of the slaughter of Jewish people against its historical and religious background. Locating the monument close to the heart of British government and indeed to other symbols of British collective memory like the Abbey has a certain force (though the language of proximity to a 'national Valhalla' is gratingly inappropriate in more ways than can easily be summarised). But how far is this in effect conscripting the Shoah into our own national agenda? That, I'd say very strongly, can't and shouldn't be the focus of any attempt to deal with the appalling memory of the events in question. Authentic education is a slow and painstaking task, and it is not always served by the grand gesture. The hardest question for this proposal to answer, I believe, is whether we are being lured towards a grand gesture whose actual effects are so very far from clear.

Local Residents and interested persons

Sir Jeremy Blackham

I am Vice Admiral (Ret'd) Sir Jeremy Blackham, a life-long resident of London (at one time a constituent of Sir Peter Bottomley's). I served for 40 years in the Navy, both in operational circumstances and frequently in Whitehall and Westminster and know both well. I have worked in London in industry, teach

Masters students at KCL and am a frequent writer and speaker. I am keenly interested in London's parks and open spaces for historic, cultural, conservancy and social reasons. My remarks were composed last week and many of them have now been touched on in yesterday's opening addresses, but I wish to make them because they are wholly independent and I represent only myself and none of the organisations represented here.

I strongly support a national Holocaust Memorial. It will commemorate an event which shamed mankind, an abhorrent crime which must be universally recognised and about which every generation should be educated. Sadly it is not unique. Several other equally abhorrent examples of genocide have taken place since the end of WW2, all of them a disgrace to humanity. If I have a disappointment over the proposal it is that it singularises a shameful crime which is not in fact singular and that it would be more appropriate to create a broader genocide memorial as a "preventative education" focus. This is an absolute moral, not a political, imperative. As a nation we must be concerned with them all.

As the Inspector wisely remarked yesterday the question whether there should be a Holocaust memorial is not an issue; it will, quite rightly, be built. I do, however, have real concerns over its location and format.

First and most seriously, as a military man, over security. Victoria Tower Gardens stands at the heart of our nation and its democracy, in a World Heritage Site, abutting the Houses of Parliament – "the Mother of democratic parliaments" as it was called in my childhood, close to No 10, and to Westminster Abbey, the centre of our national religious observance and our way of life and governance. As more than one incident has shown, this area is a potential terrorist target. It is already heavily congested with transport and tourists, to which this proposal can only add. It also risks bringing to the centre of our capital city other potential conflicts. To me, all this poses substantial, unnecessary and unacceptable security risks, when there are other, and in my view better, sites available.

Secondly, now as a citizen, this proposal will partially hide and will detract from the Buxton Memorial. I know that some groups have reservations about this memorial. However, it does commemorate the proud fact that the United Kingdom was the first nation to make slavery illegal and to commit its Navy to an anti-slavery campaign in several parts of the world for over 60 years in the 19th century, to stop, search and bring to justice those involved in the abhorrent slave trade, another deep stain on the history of humanity. But it's not just historical – slavery is still rife in parts of the world today - and is properly a matter of current public concern. It seems to me wrong to diminish the visibility of a memorial which provides a focus and an educational asset which could perhaps be developed to cater for the views of other groups rightly concerned with this long and shameful practice. I would deplore anything which devalued this monument.

I want to mention the amenity value of the park. It is both a public recreational area and an important neighbourhood amenity. It is for the residents to present their views on this. I am, however, deeply interested in local parks and public open spaces in my own borough in SE London. I have been hugely struck during the Covid pandemic by the great public use made of these spaces, and have

realised the enormous health and social benefits to all age groups afforded by these vital "lungs", within walking distance of many city flat dwellers, which last point is very important.

In summary, I strongly support a national memorial centre to all instances of genocide. They, like slavery, are all equally abhorrent crimes and we have a clear moral duty to remember them and educate future generations. Since I have raised the question and suggested that VTG is not a suitable venue, where is it best done?

Exactly a mile by car or on foot from VRG is the IWM. It possesses a great deal more open space, is much less congested by traffic and is a significantly lower security risk. It already has a Holocaust Memorial Gallery, and seems an appropriate place to commemorate all genocides, which are either the cause or the consequence, of conflict.

Chris Dawes

You will see from my written submission that I oppose the *location* of the proposed UKHMLC in VTG, though I do not oppose there being a Holocaust Memorial and a Learning Centre in the UK.

I am grateful for the opportunity to address this Inquiry, though I feel a little humbled following Sir Peter and Rabbi Romain, who have spoken so eloquently in words with which I entirely agree. I am merely pleading "Please, sir, don't let them destroy my park". You will hear further much more articulate and well-informed testimony and analysis of the principal planning objections to the proposal, with which I also agree; my remarks offer a more personal and local perspective.

I represent only myself, but bring to the inquiry my long personal knowledge of the area. I have lived in my current flat for 30 years and almost my whole working life was spent in some proximity to the Gardens: from my first civil service job in 1974 in the then Lambeth Bridge House, just to the south of the river, diagonally opposite the Gardens which were visible from my office, to my time in nearby Marsham Street and then subsequently in Cockspur Street, off Trafalgar Square.

My qualifications to speak as a local resident and office worker over many years are supplemented by a strong interest in the historic environment nurtured in my roles at various times with sponsorship responsibility for English Heritage, the National Heritage Memorial and Lottery Funds, the Royal Parks and the Occupied and Unoccupied Royal Palaces. I also had responsibilities in relation to memorials, as I had to advise Ministers on the application of the 1854 Public Statues (Metropolis) Act designed to limit the proliferation of monuments in London and, having been responsible for co-ordinating the necessary provision for the funeral route of Diana, Princess of Wales, of proposals for memorials to the Princess. I was subsequently involved with memorials also to those murdered in terrorist acts. I know the intense and understandable passion which is felt by those who have lost loved ones to terrorist violence that there should be a suitable memorial to them, and that must be magnified when there is a large community which has suffered appalling loss in what for me are the unimaginable circumstances of the Holocaust.

But however worthy each individual memorial, I have seen our green spaces continuously and, sadly, increasingly eroded in order to erect memorials, especially in the 21st century. At Hyde Park Corner, in Hyde Park itself, in the Green Park, at the edge of St James's Park and in Parliament Square*. But none is as egregious as this proposal. None totally dominates an entire park. It's easy for politicians to trade symbols and move on; we are left the losers.

Turning to this scheme itself. As I see the debate, the proponents of the scheme under consideration have essentially 4 points to make. There should be a national memorial to the Holocaust. There needs to be a learning centre to teach people about the Holocaust because that will provide a moral lesson. These need to be built structures; and they need to be in VTG because it's a location at the heart of British democracy and they will thereby in some way inspire our representatives to act in a moral way.

I accept of course that the Holocaust is a defining tragedy for an important part of our population and that there is a strong public demand for a Memorial. I have no objection to there being one. I'm not an historian, but it is not clear to what extent this can properly be said of itself to be "national", as Rabbi Romain has noted, given that the Holocaust was not an experience of the British nation as a whole; the Second World War was not fought because of the atrocity of the Holocaust; and indeed I have read that Britain's response to the fact of the Holocaust was at least ambivalent. So I do not find the argument to put the Memorial in a nationally important site overwhelming.

The Learning Centre. It does not necessarily require a building to teach people the moral lessons of the Holocaust, let alone the giant structure proposed, with the attendant crowding, traffic and security issues it would bring to this valued park and to the whole area. By all means establish a Learning Centre if you wish, but more appropriate and less destructive and divisive locations were identified earlier in this process, to which Sir Peter alluded.

Finally, the idea that our representatives will be morally improved by locating such a memorial near Parliament is an unevicenced assertion, which I find not only insulting to our Parliament but utter cant.

A quick word on the architecture. It is the work of a well-respected architect, but to my untutored eye the most obvious feature, the fins, plagiarise the magnificent USAF Academy Cadet Chapel in the Rockies at Colorado Springs, designed by Walter Netsch of Skidmore, Owens and Merrill in the late 1950s. I couldn't locate my own photographs, but there are images on the Internet and here is one. As you can see, full of fins: perfectly suited to the Rockies, but not the soft Thames landscape.

Having said that, what I especially want to emphasise is how much we in the local community value the park. We value it because of the benefit it provides to this very built-up part of the city, softening the landscape along the river when looking from the Lambeth side or crossing over the bridge, providing a fine setting for the Houses of Parliament and the road along Millbank. It benefits not only those who enter the Gardens, but the thousands who pass it every day.

It offers an important area of green open space in a dense urban environment. Traffic along Millbank and Horseferry Road pre-lockdown was often heavy, especially on the numerous occasions when nearby road closures for ceremonials

and suchlike, for protests and for road and building works funnelled traffic along those routes.

Although there are expensive homes in the area, there is a large swathe of social housing, including where I live (albeit in a leasehold flat) on a Council estate in Vincent Street. There is social housing also in Page Street, in Regency Street and in the area west of Great Smith Street, without any private open space. This is a very mixed area, still with the legacy of being probably the original slum, identified as such in the 19th century and called by Dickens the Devil's Acre. The proximity to Parliament of that swampy area of beggars, thieves, prostitutes and charlatans does not seem to have inspired parliamentarians to good works in those days, though others were. This area still suffers from a deficiency of open space, despite excellent efforts by Westminster City Council, which we have increasingly, especially recently, recognised is needed - now more than ever.

VTG provides an oasis for recreation and play. I've had the benefit of this, notably when I fractured my hip earlier this year and could set the Gardens as a target for my rehabilitation, having been wheeled there previously; and in recent years as a place to take my daughter, aged 3 when I first put my objections to the Council, 4 when I wrote to the Inquiry and now 5, to play in the playground. As I set out in my written comments I have an old-fashioned preference for public monuments that might inspire children, monuments to human achievements like the Buxton Memorial and the Emmeline Pankhurst statue, and monuments to self-sacrifice and mercy, like the Burghers of Calais. A Holocaust Memorial would confound that and dominate the whole space. Whatever individual stories of courage or fortitude might be told, I can't see how a Holocaust Memorial can be anything other than a monument to the worst of human evil, indeed that seems to be its intended effect.

I have described personal benefits, but I believe that they are illustrative and representative and available to all, residents and visitors alike. As I see it, planning policies are put in place for the general public good, of which the benefits I have noted are part: they reflect real human needs and they should not be set aside when it suits millionaires and their politician friends. Once lost, they will be lost for good. This case should not be reduced to a contest between our commitment to our urban heritage, our trees, our green spaces and the amenity of our surroundings and on the other hand our commitment to fighting antisemitism. Commitment to the latter should not involve spoiling the former. We can have both. I love my city and want to save the best of it. So let there be a Holocaust Memorial. Let there be a Learning Centre of some kind. But not in VTG. Let us Save Victoria Tower Gardens for everyone to enjoy.

Mary Dejevsky

I am speaking as a local resident, who opposes the application. I live in a 1930s mansion block about 5 minutes' walk from Victoria Tower Garden, which is my closest open space. I have lived here for 20 years. I am also a journalist, who has written on social and planning matters, but it is not my speciality and I am not speaking primarily in this capacity. I was born in Nottingham, went to school in Sheffield and studied languages at Oxford. My name is my married name, and my late husband was the son of Second World War Russian-Ukrainian

refugees, and a US-British dual national. It's unfortunate that I feel the need to make this clear, but experience - especially recent experience - suggests that it is prudent.

I have five points I would like to make and a suggestion.

1. Uniqueness of the site:
2. Green space: there, or someone with limited mobility.
3. Policy: London and Westminster policy on green space
4. Congestion:
- 5 - and lastly: Process - the use by the Government of a PR company and publicity for the project as though it had been approved.

Uniqueness: I was amazed, and frankly shocked, to learn that ANYTHING was envisaged to be built on this park. It seemed to me, and I imagine to many people, that as a small park on the edge of the Parliamentary estate, with unique views, including a stretch of the Thames Embankment, and under the jurisdiction of the Royal Parks, it was surely a protected open space - it is - but, it appears, only up to a point. If the inquiry rejects the development, maybe a recommendation could be made that it should be placed under a protection order to prevent anyone having designs on it again.

Green space: This is a very rare green space in this part of Westminster. You may see this as a highly privileged area, and in many ways it is. But there is also a lot of social housing - far more than a casual visitor might imagine - and a lot of mansion flats with little or no outside space. There are a number of small formal gardens and courtyards, but this is the closest open space for a lot of people, where children can run around and people can walk their dogs. It was an absolute boon during lockdown and since, and it is hard to imagine how we would have done without it. In the other direction, you have St James's Park, but this is much further away, especially if you are a mother with a toddler needing to be shepherded through the streets to get there, or someone with limited mobility.

Policy: There was reference in the opening presentation for Westminster Council yesterday to the 2018 London Plan, drawn up by the Greater London Authority, which includes the intention to make London what it calls "a National Park city". Trying to move in this direction is even more important now, given what is now known about the pandemic and the far lower likelihood of becoming infected by the virus in open space. Building here would drive a coach and horses through that policy - which is being steered by democratically elected representatives.

Congestion: Before the pandemic struck, there was a huge problem with coach parking and dropping off in the vicinity, with Westminster Abbey and the Houses of Parliament attracting big groups of tourists. To put it mildly, another attraction is not going to help - especially one that is likely to need security. Any disruption to traffic - currently works in Horseferry Road and the closure of Vauxhall Bridge, plus the periodic closure of Millbank for parliamentary security - causes enormous snarl-ups and attendant pollution all around. It is hard to see how the proposed development will not make matters worse.

Procedures: This is possibly one of the most important points. It seems to me that there is evidence of at least two questionable moves on the part of the

Government and the scheme's supporters that help to explain why so many people take a rather cynical view of the planning process.

In June, 2019, at a time when objections on the council planning site were vastly outnumbering expressions of support (866 v 144), the tenor of communications changed overnight. There was a sudden wave of support, with the emails consisting not of connected sentences, like most of the public submissions, but a few breathlessly enthusiastic words, such as "brilliant", "fabulous" etc. There were more than 3,000 such submissions, the vast majority in favour of the scheme. It turned out that the Government had commissioned a PR company, Big Idea, to promote its case - at taxpayer expense - and this duly happened. It also turned out that the company had been able to access the planning site and make submissions without logging in as everyone else had been required to do.

The minimum is that all these submissions need to be discounted. This reminds me of nothing more than the vote-stuffing that happens in the sort of countries I have reported on to ensure that the government's candidate always wins. One day, a few weeks later, I went to the park and found two drilling sites. One had a hoarding around it, with posters advertising the new complex and saying that it had the support of the then Prime Minister, Theresa May, and a clutch of her predecessors. There was no mention of the fact that the planning application had not yet even been considered, let alone that there was still an opportunity for the public to object. I contacted Royal Parks, who said they knew nothing about this. The hoarding vanished a few days later. I regard both of these interventions at very least as gross subversions of the democratic process, if not actually illegal.

A suggestion: In January this year, the Environment Department published 'Living with Beauty...', the report of the Building Better, Building Beautiful Commission set up by Theresa May. Among its many recommendations was greater use of "augmented reality" and other high tech tools in planning applications. The purpose is to give a realistic impression of how any development will look or feel to real people on the ground and from neighbouring buildings.

The architectural presentations we saw yesterday contained elements of this, but gave very little idea of the human scale. I can point to several developments in Westminster where the traditional elevations that accompanied the planning application bear very little relation to the finished result - largely because they had been drawn from flattering angles and distances that simply did not exist in real life. A more thorough walk-through of the memorial site, including a pedestrian-eye view and views from adjacent buildings, could give the inquiry a sense of how the complex would really look.

AND a footnote on reporting or commenting: It has been extremely difficult to persuade editors to publish reports or comments on this project and the issues involved, especially - in my experience - if you opposed the proposals. There could, and maybe should, have been a public debate on local television or in the Evening Standard, now the capital's only 'local' paper. That there has not been reflects in part the sensitivity of some of the issues involved, including the concern that objectors and anyone who gives them a platform, will be branded "anti-semitic".

Victoria Boyarsky

A history teacher in a secondary school which has had many inspiring talks from survivors and their families. We all need to learn lessons from the Holocaust: it should never be forgotten. However, I object to the siting of the HMLC for two main reasons:

- It needs to be accessible to school parties. For all schools trips risk assessments must be undertaken etc. In this case pupils will need to come by public transport, which can be difficult to manage, particularly on that involving the tube in central London. This may be prohibitively expensive and difficult, particularly for those visiting from outside London.
- The message sent by placing the HMLC next to Parliament will be difficult to explain to children. This suggests that Britain and Britain's parliament played a role in the Holocaust, when Britain was one of the few country's that did not persecute Jews during the 1930's and 1940's, but provided sanctuary and homes for many of those who needed them. There are of course many aspects of Britain's involvement that could be debated, but these are complicated issues that the HMLC in this location would not address.

As a teacher I have visited the IWM's excellent exhibition which not only explains what happened but also raises some difficult issues, including newspapers from the time which can facilitate discussion with older pupils about Britain's involvement at the time, and what perhaps could have been done differently. The IMW is also spacious and well set up to accommodate school visits.

The Nottingham Holocaust Centre is another excellent facility, which has enabled students to meet and talk to survivors gaining real insights. They have also created an interactive resource involving digital projections of filmed survivors, including their responses to questions, which means that as they dwindle we can still hear their voices.

Surely we should be encouraging students to visit places such as this outside London. Perhaps the HMLC money could instead be put towards ensuring that every child has a trip to the Nottingham Centre to learn about the Holocaust, but not in a way which confuses this with the role of the British Parliament.

Dr Sally Marlow

I am a local resident, and I have been conflicted about the development, seeing both sides of the debate. I am also a healthcare researcher, based at the Institute of Psychiatry, Psychology and Neuroscience at King's College London, where my research focuses on mental health inequalities – in other words, I study the social and environmental factors that contribute to why some of us have better mental health than others. I have been aware for some time of the overwhelming body of evidence that access to green space impacts community and individual mental health positively, particularly for those who are living in high density housing in urban areas. There is a wealth of research in this area, so much so that there have been several recent reviews bringing all the evidence together. Those living in high density housing in urban areas are subject to other mental health inequalities linked to their housing, socio-

economic status and ethnicity. Since the Covid pandemic like many of my colleagues I have been conducting research into communities and their mental health during the pandemic and beyond. It is clear to everyone working in mental health research that in the UK there is a second epidemic, that of poor mental health, which in many cases will develop into serious mental illness if it is not treated. The communities which are suffering the most are also those who have the least access to resources to improve their situation.

Mental health services and treatments were already not sufficient to meet need before Covid struck, and the few services there were have been decimated by this pandemic, with clinics closing and many healthcare workers unable to provide a safe standard of care. I have as a resident seen for myself how vital the park has been to the local community during the pandemic, and am in no doubt that the benefits for community and individual mental health are overwhelming, and have never been more needed. It is this that has prompted me to speak out. It is often forgotten that this part of Westminster has 4 social housing estates: Abbey Orchard, Page Street, Lillington Gardens and Millbank. The people who live in these estates often do not have a voice in hearings like this, and I wanted to give evidence at this Inquiry to lay out how my neighbours will be affected. As someone who is familiar with the evidence around mental health and green space, and mental health and inequalities, I have seen the evidence come to life in the park over the past six months of the pandemic. I believe it is vital for the mental health of the local community that the park remains in its current form, with enough green space for all to use it.

Bob Lindsay

I am an individual who grew up in the area (just across the River), used VTG as a child and appreciate it as an adult. I am not affiliated to any group

I object to the proposal on the grounds that VTG is a valuable resource in the condition in which it is now and the scale of the proposed development will radically change the utility of that resource

Paul Diamond CMG

I have no expert qualification in planning but am a local resident five minutes' walk from Victoria Tower Gardens.

I oppose the application. I support the Opening Submission on behalf of Westminster City Council, those on behalf of the Thorney Island Society, Save Victoria Tower Gardens and the London Gardens Society, the Opening Speech on behalf of Part 6 Party Baroness Deech and the statements by Vice Admiral Sir James Blackham, Sir Peter Bottomley, Mary Dejevsky, Dr Sally Marlow, and others in similar vein. But I would like to submit the following points for your consideration.

A privilege of over forty years in HM Foreign and Diplomatic Services, working in three Continents, was to absorb something of how others see and evaluate the British. I was particularly fortunate to work only in democratic countries, appreciating the variety among them. But a common feature I found was the deep stock of esteem still felt for the United Kingdom, our sense of history, our

approach to common law, our common sense, wisdom in the application of the separation of powers and reasoned distribution of decision-making to local government best able to reflect local interests. These features of foreign and Commonwealth interest in these islands help to drive inward tourism, from which our economy benefits so strongly in normal times. Many visitors arrive with expectations of evidence of the way in which we do things for the public good, through our good governance, including the working of the planning discipline. Against such background, I see your Inquiry into this case as a welcome chance to demonstrate fairness in our planning process.

To avoid any doubt, I want to state very clearly that I find the proposal for a Holocaust Memorial and Learning Centre as in the September 2015 specifications to be incontrovertible, most especially an enhanced learning centre that is fit for purpose: will be lasting; taking due account of our local circumstances, will bear comparison with such centres as the Museum of Tolerance in Los Angeles, the Yad Vashem Holocaust Remembrance Centre in Jerusalem, the Information Centre under the Field of Stelae in Berlin and many others; and will be implemented without undue harm to the normally accepted conditions of life, the environment and respect for the value of green space in this dense capital city.

Transferring to the younger and future generations and to visitors from overseas the reality of the Holocaust as we see it in the United Kingdom must be the central educational aim. I would put the educational effect to be sought in this, quite simply, alongside that achieved in another instance when, every September at Oosterbeek, witnessed by the British and Polish pilgrims, the local children play a central part in laying flowers at the graves at the cemetery of the Commonwealth War Graves Commission. The effect there is stunningly poignant and has been effective now for two generations. There are many other comparable examples of this. But I fear that I harbour doubts about the fitness of the VTG for the purpose of leaving visitors to the proposed Learning Centre with a desired sense of deeply sober and quiet reflection, and with lasting effect, in the limited space there is as they would leave the proposed Centre, with the reality of the immediately adjacent traffic congestion along Millbank towards Lambeth Bridge.

My last and principal point is however on the severe loss of amenity as now afforded to local residents by VTG. I am not seeing this as a proprietorial backyard. The immediate vicinity west and south of the Gardens contains a long-established and mixed residential community, largely flat dwellers with no access to private gardens, a community now growing in size with the newly built and converted blocks. The reduced area of usable amenity space that would result from siting the project here would effectively remove a long valued calm refuge of green space next to the river, relief from the intense hubbub of the surrounding area. To succeed in its purpose, the project would attract significant numbers of visitors to the area that also contains schools and already suffers from high air pollution. Taking account of current and foreseeable security works further north on Millbank and in Old Palace Yard, the dropping-off and collection of visitors by road would further exacerbate the pollution close to the residential area. The effect of the necessary security to protect the Centre itself would make matters worse, impacting the quiet enjoyment of the Gardens by local residents, not least children, senior citizens and those looking for modest exercise close to their homes or places of work.

These drawbacks seem so real in contrast to an imaginative alternative of an enhanced Centre at the Imperial War Museum. I conclude that the Victoria Tower Gardens site is not suitable and oppose the application.

Saija Singer-Seidenfaden

To be clear, I do not object to a Holocaust Memorial but object to the location of the Holocaust Memorial and Underground Holocaust Learning Centre as proposed. I feel compelled to speak for I have not yet heard the following points that I wish to make.

First as an architect: I became aware of the proposal at its conception in the form of the Architectural Competition held in 2017. It appeared to be recycling an idea that had previously lost a competition – to design The Holocaust Monument in Ottawa in 2014. The first scheme strived to become a striking sculpture in a park, flanked by an open and sunken forecourt with amphitheatre seating, a design standing fiercely free and unobscured in the expanse of the lawn. But, as an architect, I could see from the outset, that safety measures would make it necessary to enclose the sunken forecourt and add some sort of security entrance building - which indeed has now been baked into the design. Furthermore, I could tell that health & safety, access and mechanical requirements would lead to a much bigger forecourt.

As the design progressed, and to try to give room to the tree roots growing toward the centre of the park's footprint, I noticed that the buildings moved further into the centre of the lawn and pushed the lawn up, ever higher. Sadly, what started out with the aspiration of being a dramatic sculpture in the park is now no longer, and rather, has resulted - with each iteration - in a complex of buildings, making greater intrusion into the park. And what of the Buxton Memorial to the Abolition of Slavery? It is still obstructed from its designed axial point in relation to St John Smith Square - now by fencing for the forecourts. Not only do the buildings no longer stop us in our tracks, but they also take away our park.

Second as a parent, I feel it is vital to hear the perspective of the child's view - for they are the future. The playground in VTG was originally created in 1923, consisting of a large sandpit funded by paper merchant and local philanthropist Henry Spicer. His vision was to provide an exciting and safe area for children, especially those from the poorer areas in this neighbourhood, to play and socialise together. There were a few changes made to the children's area between the 50's and today. As part of the refurbishment of the playground in 2015, among many other novelties, the enclosing fence and gate were removed which is unusual for playgrounds in London parks VTG became a more wonderful place for both parents and children alike, allowing free movement between the playground and the large open space - especially useful for families with children of mixed ages.

However, the proposed complex of buildings, eliminates the existing playground and proposes an ill-located and new playground, reduced of its unique property and function. Are we meant to believe that we can bring our children to play freely in a playground that is wedged between a café and the security entrance building of the UKHMLC, an area devised for the many thousands of visitors to

enter and exit? And what if we have children of different ages, some playing on the lawn on the other side of the mound? Can we and they still feel free and yet at the same time safe and secure? The concept of children or indeed older visitors having a picnic in the summer on the mound above a Holocaust Exhibition below is unthinkable. The juxtaposition of a thing of joy and fun, adjacent to a sombre space for reflection is in practice incompatible. I will of course take my children - when they are old enough - to The Holocaust Exhibition at the Imperial War Museum - recommended for children 14 years or older and only recently renovated - at the courtesy of substantial government investment. The case for another exhibition so close is ill conceived - all the more so - when it is at the expense of the playground.

A research study last showed that green space in childhood is associated with lower risk of psychiatric disorders. Children brought up in an urban environment - above all - need Green Open Space to Play. VTG in the 1950s ...even a former Prime Minister - who sanctioned a Memorial, but not necessarily a Learning Centre - can be seen here, having fun playing in the snow, on the lawn area proposed to be built over... Last year the architect specifically stated that "Disrupting the pleasure of being in a park is key to the thinking" (of the design). He has definitely succeeded in his mission and clearly demonstrates that there was no thought given to children. To imagine that there is space for the Holocaust Memorial and the Underground Holocaust Learning Centre and free children's play - on this tiny piece of land - is incredulous. There will be no more pleasure to be had in this jewel of a park.

I urge for this application to be rejected for the sake of the children who need Space to Play in this park now and in the future. But before I end - one further observation: When, as an architect, I submit a planning application for a client, and there is a risk of it being rejected by the Planning Officer, I am certainly not able to "pull the application", let alone then also decide upon it - or indeed - ask one of my colleagues in my practice to determine its outcome. Why is it that in this case the "Client" was able to do both pull the planning application and then also decide upon it? There is a conflict of interest here, which is completely unacceptable!

Wilfred Rimensberger

I'm a Pimlico/Millbank resident for the past 32 years and have 2 children who grew up there. I'm also the longest serving chairman of Millbank Estate and established the local community platform Millbank Creative Works. I run workshops at Tate Britain and collaborate since 2016 with students and lecturers from Chelsea UAL linking them with local community projects and residents. I'm also a former chairman of the Westminster Residents Panel.

I asked to give my view after being contacted by a number of local residents concerned about the negative impact the proposed UKHMLC will have locally if it is going to be built in the grounds of VTG. Currently, local residents are mainly using St George's Square, Millbank Gardens, St John's Garden and VTG and to a lesser degree St James' Park. These are all spaces also utilised by tourists and thousands of government employees for an al fresco lunch or just to have a break from work.

The parks serve the local community to relax, play, exercise, and walk their dogs. They are informal meeting places for an increasing number of people on tight budgets but still seeking to socialise across the community mix.

For many years the local population was stagnant. However, over the past 5 years the area is increasingly subjected to property developments and over 1000 new flats have been built in the Millbank Victoria Street neighbourhood and at least the same numbers are currently under construction. I also noticed that families with children are increasingly moving in to the area. Not just in new developments but also older ones such as Millbank Estate where we have a dramatic increase of young professionals with kids. Furthermore, we experience also a dramatic increase of dog owning residents, and increasingly they are of a larger breed such as Huskies and Greyhounds needing more space to run. A trend is also to have more than one dog. As a consequence, the local Green spaces are feeling the pressure. For example, Millbank Gardens behind Tate Britain sees now 3 times as many dogs being exercised than 2 years ago. This is the reason why more people now escape to the larger Victoria Tower Gardens.

With over 1000 new local properties going to be released over the coming year the pressure will grow on existing spaces and it will be made worse if the largest available open space is going to be reduced by a museum/education facility with national appeal and all that comes with it. The area is already suffering from regularly blocked streets and parking spaces needed by coaches transporting demonstrators, visitors to Parliament Square and attractions such as Tate Britain, Buckingham Palace and regular mass events such as the Virgin Marathon and Prudential Bicycle Race weekend.

Amongst the existing Green spaces, VTG is the one providing the largest local open space where dog owners, families, kids and tourists can go about their business with a minimum of constraints. Football playing, badminton, flying a kite is what can all be experienced there at the same time; and locals mingling with tourists. It does not make sense to reduce existing open green spaces in the heart of London when demand is growing from existing residents and further population growth from new developments. And shopping malls included in some of the new developments offering privately owned public realm are no substitute. It is particularly worrying when one considers we all have probably to live with Covid-19 for some time and social distancing and therefore further urban green space needs to be factored in if planning is working properly.

There is no question on the need for Holocaust education facility. But with a more than suitable alternative space on offer, not far away and where such a facility actually would add an attraction to the area rather than adding to already existing pressure, Millbank residents have great difficulties to understand why VTG should be the location.

Mike Cunningham

I begin with a single line quotation from Lamentations :-

"For these I weep. Streams of tears flow from my eyes because of the destruction of my people." I speak today on a proposal, by an ex-Prime Minister; for a Holocaust Memorial and Learning Centre. The proposal, turned flat down by a prescient Westminster City Council, was for the construction to be

built inside the VTG: which is a Grade II-listed park and forms a small triangular green space next to Westminster Abbey and the Houses of Parliament - collectively designated as a World Heritage Site. As an aside, some of the famed plane trees which circle the present Park may probably be sacrificed. A second sacrifice would be the loss of a fair stretch of the recreational space used and enjoyed by so many, but this loss was dismissed by the Architect Sir David Adjaye with the words "Disrupting the pleasure of being in a park is the key: the thinking."

My views on this proposal are many and varied, but the major one is simply one of logistics; and, simply put states the blindingly obvious: You would have to travel to London to see the Memorial. I used to work in London, along with many thousands more: but literally millions will never ever dream of travelling to the Capital, and indeed why should they? The vast majority of Brits prefer going overseas for holiday relaxation, in normal times at least: so why travel down, in the same weather as they get where they live, to a City which might house a reminder of the greatest Crime ever recorded?

Given that the proposed Memorial would, of necessity, limit the numbers of visitors; partially because of, in this day and age, virus restrictions; but also, and unfortunately mainly, heavy security precautions against a Terrorist Threat; numerical access will be very limited. The numbers, just on a traffic basis alone; just do not add up. It will become, because of its prime position, if approved and built, just another Tourist Location. Imagine, members of this Inquiry, a Memorial Site and an underground Hall dedicated to the Remembrance of the murdered Six Million; a European version of 'Yad Vashem' becoming just another 'tick-box' trophy for tourists.

When I was but thirteen years old, our History teacher told we schoolboys that we should read one book, and one book only, if we were to understand the greatest War ever fought. He told us that the Battles; of Kursk, of Britain, at Alamein and Falaise; and of the massacres such as Oradour-sur-Glane and Babi-Yar could only be viewed in true perspective if we also understood the true history of the fall of the Nazi Reich: and this would and could be viewed in one book: namely the Scourge of the Swastika, by Lord Russell of Liverpool. As I turned the pages of that awful book, as I read the pages of eye-witness descriptions of the truth that Jews were really viewed by the Nazis as sub-human; as I viewed the photograph of the British-manned bulldozer pushing that pile of corpses towards a trench; of the dumping-grounds, spread with human skeletons, it was only then that I realised what, unknowingly: the whole Allied World had been fighting against.

My own father served throughout the War: my uncle, an Artillery gunner, died in Normandy. We slept in our terraced house front room, in Newcastle-on-Tyne: my Mother, my Grandma, myself and my two brothers under the slender protection of an Andersen shelter, built by my Dad when on leave. He moved two mattresses in, together with bedding, and there we took night-time refuge, against the threat of bombs which rained down on Great Britain and Northern Ireland from the Luftwaffe. Born in the September of 1940, I was just an infant, but we survived; courtesy of the heroes who served and flew in the R.A.F., and those who manned the ships in the Merchant Navy convoys who sailed the Atlantic, with the paper-thin numbers of Escort vessels given the Royal Navy after years of neglect from politicians of all colours as protection. The War

proceeded over our heads, democracy was saved by the Japanese attack on Pearl Harbour, which of course brought America into the War: and by the sheer twin lunacies of Hitler's declaration of War against the might of the United States, and against his mortal enemy Soviet Russia, yet another 'Sleeping Giant'; to paraphrase Admiral Yamamoto.

Very few politicians of that decade understood the real threat of Hitler's Third Reich. Winston Churchill partly did, but I reckon he only ever thought of Hitler as a conqueror; determined to gain the 'Lebensraum' which that evil man determined that his Aryan Nation deserved. Neville Chamberlain took us into War only because Hitler invaded Poland, and Great Britain and Northern Ireland had Treaty obligations with Poland. But, with his Munich negotiations; Mr. Chamberlain had also given us that priceless year within which time Britain was able to produce the numbers of fighters such as the Hurricane and the Spitfire, and to give the precious training time for the pilots who would fly, fight and die so that Great Britain might withstand the Nazi onslaught: as well as completion of 'Chain Home', the first Radar system.

The true scale of the Nazi Atrocities, apart that is from the genocides practiced against the Occupied Nations, were only revealed when the Soviet Russians began overrunning the Death Camps like Auschwitz, along with Treblinka; a Camp which the Nazis attempted to obliterate as they retreated: and these discoveries were later confirmed after the British and Americans liberated such places as Bergen-Belsen and Dachau. The unreal views of the living skeleton survivors, amidst the piles of dead, were remorselessly covered by the Allied Camera military teams who were directed to follow and catalogue everything they saw, later compiled into a film. This film was censored by the British and American Governments, and was only released a few years ago under the grim title; 'Holocaust: Night Will Fall'. The BBC broadcast the commentaries from such as Richard Dimbleby, but only after referring everything back for corroboration, so ghastly were those factual reports. The syllabus in all British schools, colleges and universities is said to include the Jewish Holocaust, but it is, possibly because of the paramountcy of politicised educationalists; diluted, sanitised and, put plainly: sandpapered.

My own daughter, a well-educated and Degreed Mechanical Engineer, now mid-aged, stated, to the best of her recollection; 'No coverage at all of the Holocaust' during her Secondary School years. Things may be different today: but somehow, I doubt it. My generation needs no reminders or 'nudges' to recall the Holocaust, and the Generation following mine is equally versed in the Nazi crimes against Humanity. But today's Generation needs a wake-up call, a swift and brutal reminder that a Nation which produced Telemann, Bach and Mendelsohn; Nietzsche and Freud: also produced the type of thinking which reduced human beings to numbers. Numbers to be transported, numbers to be enslaved; numbers to be beguiled with lies: and numbers to be murdered, gassed and cremated. This cannot be achieved by a 'Memorial' building, no matter how 'Educational' it may be; no matter how well intentioned the place, the design or the electronic gimmicks which may festoon the 'Learning Experience'!

So, Members and Participants in this Inquiry; here's my proposal, which is to discard the proposal to build this Memorial and Learning Centre, and instead spend at least part of that £50 million quid to fund the purchase of 90,000

hardback copies of 'The Scourge of the Swastika'; along with the production and reproduction of 90,000 DVD copies of 'Holocaust: Night will Fall'. These items will be distributed amongst all, repeat ALL British education establishments with an enrolled age of 15 years or older. No one would be allowed to demur from watching the DVD or reading the Book. The Book will form part of the Syllabus, along with timely showing of the DVD to those schools, colleges, Universities: so that Britain's youth can, should and will learn of the capacity, within a nation from whence sprang genius; of Man's INHUMANITY to his fellow man within the policies of that feared FINAL SOLUTION.

In conclusion and in explaining the quotation from Lamentations: we already have Three Holocaust Memorials. The first is in the Imperial War Museum, well-known, accessible, and in the throes of upgrading. The second is the Memorial Statue to the ten thousand Kindertransport children, sited just outside Liverpool Street Station at pavement level. The British Government gave formal sanctuary to some ten thousand Jewish children who became the Kindertransport. The British Government had literally no idea of the fate which would befall their parents, along with the other victims of Nazi Germany, but something, something strange occurred to move an Administration and a Government which was quietly partly anti-semitic itself. Letters of concern to senior members of both Government and Civil Service may have helped, but no-one really knows what moved a Government, through its bureaucracy, to announce a not-very-welcoming message to those ten thousand that they could come over, as long as they were no burden on the taxpayer. Those kids, pushed onto trains by frantic parents who could not leave either Germany or the later Occupied Nations were grudgingly allowed into Britain: grudgingly because of the thinly-veiled Anti-Semitism rank amongst many of the British Establishment. They came in their hundreds, and then in their thousands; as the Continental Jewish families began to realise that Hitler and his Germany had little time for Jews, and life was rapidly becoming intolerable, especially after the horrors of Kristallnacht spread like a fast cancer across a Germany which was all too accommodating to the anti-semitic calls of a rabid Nazi Party and their armed stooges. They arrived by air, they stumbled across the quays of Harwich, they arrived blinking at Liverpool Street Station: the last ship carrying Kindertransport children left the Netherlands on May 14 1940.

The third Memorial? The quotation from Lamentations appears, carved into a boulder below the explanatory heading 'HOLOCAUST MEMORIAL GARDEN'. The Holocaust is memorialised in Hyde Park in a simple design, with engraved boulders in a gravel space, surrounded by white-stemmed birch trees. It is understated, and that is, in mine own humble opinion, as it should be. Proposed, designed, funded and built by British Jewry; nestled adjacent to the Serpentine, that small space IS sufficient to the needs of both Memory and Memorial. What could be more apposite than a Jewish Memorial from British Jews? We do not need, as called for by the ex-Prime Minister David Cameron and his Holocaust Commission, a new memorial which should be "striking and prominent, as well as respectful, interactive, and educational". As all the participants in the Inquiry must know, we have the entire published history of the world at our literal fingertips: courtesy of Internet-connected smart phones, tablets and computers. We do not need to be 'educated' by some Establishment bunch who reckon that they know better than others what to push into the minds of the inquiring.

When the very term "Educational" is but two steps removed from the 'Re-education' in Orwell's '1984'. When a simple online search for "Jewish Holocaust" produces 60 million Web page addresses in 0.51 seconds. I end with the words; "Seek, and you shall find; Knock, and it shall be opened unto you!"

Raphael Wallfisch

I am an international concert cellist and teacher. I was born in London in 1953 and educated in the UK. As a musician, I have had the privilege for many years to experience, first-hand, how it is possible, through the power of music, to communicate and deeply affect the lives of people from every background and ethnicity.

My parents were both refugees coming to Britain after the Holocaust.

My father, Peter Wallfisch, and grandmother fled Germany for the British protectorate of Palestine in 1937, with the special help of Emil Hauser, a member of the famous Budapest Quartet, and he eventually came to Britain in 1951. He was an international concert pianist and teacher at the Royal College of Music.

My mother, Dr Anita Lasker Wallfisch MBE, survived Auschwitz and was liberated by the British army from Bergen Belsen 1945. She came to England in 1946 and became a founding member of the English Chamber Orchestra. Subsequently she has been honoured by the UK, German, Austria and France for her work in Holocaust education.

May I say that my sister and I are deeply indebted to the UK for having eventually allowed my parents to make a new life here after the second world war. We both had a first-class education, as have our own children. We certainly experienced no antisemitism during our childhoods, unlike our parents and grandparents.

It is only comparatively recently that the world has been made aware of a serious antisemitic element within parts of our democratically elected political parties in the UK. It was made clear to all that, tragically, this dangerous and ugly element in human society is alive and well at the very heart of our Democracy.

It is wonderful that the 'British Values Learning Centre' should be shown to be a paragon of 'civilisation'. However, the teaching of history to future generations is only truly valuable if it is rigorously truthful, nonpartisan and laser clear.

Therefore, the proposed 'British Values Learning Centre', to be symbolically positioned at the heart of Westminster must reflect, clearly and truthfully, the complete and unvarnished truth of Britain's role before, during and after, the Jewish Holocaust.

If ever antisemitism is to be eradicated, the history and trajectory for the Jewish people must firstly be taught carefully at all levels within the school curriculum. That means not simply the ancient biblical exodus, the Nazi Holocaust and the Israel-Palestine situation, but clearly and accurately how all these events relate to each other. It is vital to understand why the struggle for existence in Israel for the Jews took place and why it continues to this day.

It is essential to understand why Jews have never been able to truly feel safe – for centuries hounded from one country to another, envied, mistrusted, scapegoated and murdered. This, even though so many Jews clearly contributed and continue to do so, for the good of mankind in so many fields. Just think mathematics, science, medicine, music, education, psychology, human rights, politics, sport and many others.

The acceptance of 1000 Jewish children into the UK, known as 'Kindertransport' was a wonderful thing. The liberation by the British Army of Belsen became a triumph, a blessing and an historically great event.

However, I wonder whether the learning centre will feature the parents of the 1000 Kinder? I wonder whether it address the question of Statelessness, the UKs refusal to take more refugees in the 1930s, the refusal to bomb the camps, and above all, the UK government keeping Palestine closed in the 1930s, and even after the war. So many people might have been saved if they had been allowed into Palestine.

A proposed flagship, a centrally placed Learning Centre MUST address the wider issues of the poison that is antisemitism. This poison has not disappeared. It is a poison that was, for centuries, promoted by Christianity at its most perverted. Ugly but real facts.

I feel that those supporting this venture must also realise that the unbalanced and fragmented teaching of Jewish history actually provokes further antisemitism which may lead to violent attacks against the very edifice – the monument and the learning centre – where this teaching would take place. The historic involvement of the UK in Jewish matters is long and complex, and I trust that the ambitious and well-meaning project proposed for Westminster will reflect the true and complete history of Britain's multi-nuanced role.

Communication of the truth, which means rigorous balance, research and certainly not vainglorious self-promotion, is vital for the future of mankind and civilisation.

In conclusion if as I hope sincerely, planning is refused for the Learning Centre at this site, it might allow for additional time for the search for a more generous space which would enable a thorough and dedicated study of the history and present state of antisemitism in the UK and worldwide.

Jonathan Lass

1. I have lived in London my whole life and am enormously proud of our great city. Professionally, I have practised corporate & commercial law, much with an international element. I have been involved with numerous philanthropic and charitable causes and organisations in leadership and advisory roles. I am a graduate of Cambridge University and am a fellow of the Royal Society of the Arts.
2. History, the arts, the built environment including parks and gardens, are enduring interests. These elements underpin what living in London is all about. They nourish our spirit and uplift us: so vital in these challenging times.
3. I grew up in a traditional Jewish family and have had a lifelong interest and passion for Jewish history and education.

4. I am a member of the west London synagogue of British Jews ("WLS") upper Berkeley street, London W.1. WLS is the oldest reform congregation in the UK founded in 1840 with some 2000 members. I have had the privilege of serving WLS in many roles, including that of Chairman.
5. My father was born in Britain and served in the army in WW2. On the other hand my mother's family were from Poland and later Vienna, escaping in 1938. Most of her large and extended family died in the Holocaust.
6. Against this background I fully support the proposal that there should be an enhanced holocaust memorial and educational resource in central London. This would be in addition to the small scale and sadly not well-known memorial in Hyde Park and the amazing repository at the Weiner library in Bloomsbury. There are other holocaust collections in the UK, notably that established by the Smith family in Laxton Nottinghamshire: the National Holocaust Centre & Museum.
7. Having said this, I fear I cannot support the Victoria Gardens proposal for the following reasons: location, scale, cost & duplication.
8. The Inquiry will have noted the objections of numerous bodies including Westminster City Council and Royal Parks. The current proposal risks the potential loss of UNESCO world heritage status.
9. The Inquiry has heard substantial evidence detailing the incongruity of the location. The notion of siting an edifice of the mass proposed taking up almost 30% of Victoria Gardens will, combined with the projected visitor numbers in such a unique and historic location is troubling. The scale is such to detract from the existing Parliamentary estate, the Abbey and Victoria Gardens themselves. It will have a materially damaging impact on the park and equally important, the vista of the Palace of Westminster.
10. One must ask what possible rationale there could be for choosing Victoria Gardens as the best location for the memorial & educational centre ("MEC") in London. There has been reference to contrasting British parliamentary democracy and values embodied in the Palace of Westminster as a bulwark against antisemitism and genocide. But given Britain (& the US's) ambivalent role in saving Jews in WW2, this seems hard to accept.
11. To deploy some £75 million government support with an additional £25 million of private contribution would be hard to justify in any circumstances.
12. To my mind the most persuasive argument to refuse the current proposal is simple: duplication.
13. The Inquiry will be aware of the Imperial War Museum ("IWM") not more than 1.5 miles from Victoria Gardens.
14. The IWM and Cabinet War Rooms have provided my family across the generations and countless visitors from abroad with a rich experience and sense of history over many years.
15. IWM completed refurbishment of their wonderful WW1 galleries in 2018 for the centenary of WW1.
16. In September 2021 – in no less than 10 months from now, IWM will open their new, enlarged galleries as part of their masterplan designed by Foster &

Partners. Comprising: 1. New Holocaust Galleries – spatially and intellectually in the context of WW2 – some 1300 sq metres. 2. New WW2 Galleries, and most important 3. New digitally enabled and flexible learning centre, some 500 sq. metres. A V1 flying bomb will be in an atrium between the two spaces, linking the attacks on London in 1944/5 and marking the V1 as the product of the Holocaust, as it was built by slave labour.

17. IWM have been engaged in major curatorial effort on their substantial Holocaust artefacts and exhibits exceeding 1500 items. They will deploy the latest digital technology to enhance engagement and education for all visitors, young and old alike from all over the UK and the world, particularly schools where knowledge of the Holocaust is limited.

18. IWM is also engaging with numerous other museums including the National Film Archives in Tokyo and the Hiroshima Peace Memorial, to further enhance their resources.

19. IWM has relationships with some dozen museums and institutions in the UK to enhance education, supported by University College London.

20. The IWM is a well-recognised centre of excellence. The Holocaust Galleries form part of a state-of-the-art offering integrated as part of the new WW2 galleries. This is underpinned by a visionary digital and educational offering, which will focus on the place of the Holocaust in 20-21 century. Equally important, it will focus on genocide and crimes against humanity since WW2, so as to be relevant to current and future generations.

21. It is my respectful submission to the Inquiry and all the eminent and distinguished individuals who have given evidence, that the IWM Holocaust Galleries provide a fitting record of the Holocaust and educational resource. It is on the doorstep of the Palace of Westminster. No additional useful purpose is served by the current scheme.

22. However, it should be noted that the Holocaust Galleries and educational centre comprehensive as it is in its current iteration, does not have “a memorial” as such.

23. I would like to propose a joint venture between the Holocaust Memorial Foundation (“Foundation”) and IWM for a competition to create an appropriate “Holocaust memorial” either within the envelope of the IWM Holocaust Galleries, or possibly in the grounds of the IWM, where there is more than adequate space. IWM, I imagine, may have considered this at some point but this is not part of the galleries opening in September 2021.

24. This “memorial” in the IWM could therefore complete the Holocaust Galleries using a fraction of the £100m budget of the Holocaust memorial. It would be a perfect opportunity for the Foundation to work with IWM to achieve this, thereby avoiding the material problems posed by the Foundation proposal.

25. The current proposal has divided opinion on so many grounds. It cannot possibly make sense to create a massively expensive and duplicative option, which will take several years to complete.

26. With great respect, the present application should be refused and the parties should work together on a suitable memorial incorporated as part of IWM’s

outstanding new holocaust galleries and resource centre opening in September 2021 for the benefit of us all and future generations.

Amenity Societies

Paul Thornton London Forum of Civic and Amenity Societies

My name is Paul Thornton. I am Vice Chair of the London Forum of Amenity and Civic Societies, the London-wide umbrella organisation for the Civic movement. Our membership comprises some 120 civic and amenity societies and residents' associations across London. They in turn have a total membership of about 100,000 households. The Thorney Island Society is a Forum member, though we did not collaborate with them on this submission, nor indeed on theirs.

London Forum's objectives include "the creation of or improvement to open spaces and the avoidance, removal, or improvement of features that are unsightly or undesirable." Our member societies are vigorous in protecting open spaces on their doorstep, campaigning, for example, against large parts of Clapham Common or Finsbury Park being cordoned off for several weeks at a time for music festivals, or (unsuccessfully, in this case) to stop Harrow School from building a new Sports Centre on Metropolitan Open Land.

I am personally quite well acquainted with VTG, having worked within walking distance for about 30 years and having renewed my acquaintanceship at the time of the Church House exhibition in late 2018. It is a unique space, a refuge from the drama of Westminster and its World Heritage site which draws so many visitors from the UK and around the world. The Gardens are used by several thousand people daily, eating lunch, taking a stroll, walking their dogs, meeting friends and providing space and time for their children to play. It is the only public open space of any size within walking distance for the large number of residents, many with families, who live in apartment blocks in the triangle bounded by Victoria Street, Vauxhall Bridge Road and Millbank. The Gardens are teeming with life, yet an air of tranquility prevails. Much of this will be in jeopardy if the application is approved.

We can see that the applicant has gone to considerable lengths to minimise the harm to the Gardens. But the UKHMLC is not a small local museum that can readily be accommodated within the existing fabric. It is conceived as a facility of international importance, one which is expected to draw in a million visitors a year; and it probably will. What will that do to VTG and the surrounding area? An analogy may be drawn with Sir David Adjaye's hugely successful Museum of African American History and Culture in Washington DC, which attracts about 1.9 million visitors annually, approaching twice the number of the proposed Learning Centre. However, that Museum is built on a much grander scale, with a large concourse, wide approaches and almost 40,000 Sq m of floor space over 5 floors. It should comfortably accommodate twice the number of visitors expected in London. Yet despite almost 100% advance ticketing with timed entry, the forecourt is often heavily congested with those still hoping for a ticket on the day, with queues often stretching part-way around the building. It is hard to believe that this situation will not be replicated in VTG and on Millbank if this application goes ahead.

Security is also an issue with potentially far-reaching consequences. Regrettably the centre is likely to prove a magnet for extremists. How will the Centre's visitors and other users of the Gardens be protected and how intrusive will those measures be? I was for many years a trustee of Camden Arts Centre and witnessed the construction of the Jewish Cultural Centre, JW3, on the other side the Finchley Road. I'm not sure at what point it became evident that much of the building would need to be surrounded by a high steel fence, but it's hard to imagine that the Holocaust Memorial and Research Centre will be spared a similar fate - at some point in the future, if not from the outset.

The lure of a location next to the mother of parliaments, with its accessibility and symbolism is easy to understand. But at what cost, and to what end? The Gardens will be damaged, perhaps irretrievably for local residents and for visitors seeking respite from the hurly-burly of their surroundings. London Forum fully supports the intention to create a world class facility in the Capital to ensure that the memory and the lessons of the Holocaust endure well beyond the lifespan of those personally involved. But does it really make sense to squeeze the UKHMLC into such a constricted and sensitive site, one with so little scope for future development?

VTG is an irreplaceable asset, a rare open space in an otherwise congested cityscape, one that is much loved and well-used by the local community. It should only be sacrificed under the most compelling of circumstances, and certainly not to provide what will surely turn out to be a less than satisfactory home for an important new institution, one which in our view deserves better. On behalf of the London Forum of Amenity and Civic Societies, I submit that this application should be rejected.

David Lambert Director of the Parks Agency

In my statement I explain the statutory planning roles of HE and the Gardens Trust with respect to grade II registered parks and gardens. I make the point that HE is not consulted on these and generally leaves commenting on grade II sites to the Gardens Trust and its regional partner trusts. In this case, the grade II garden finds itself in a case also involving grade I and II* buildings, a WHS, and a high profile development in the capital hence their involvement.

I would like to add that over the years there have inevitably been disagreements between the Gardens Trust as a specialist amenity society and HE as the government advisory body. As you can imagine the Trust often feels HE is not as forceful as it, the Trust, would like; that is natural. But it is a matter of fact that over the years, HE has lost internal expertise on historic parks and gardens and that as a result advice on this specialist area is increasingly provided by staff without specialist knowledge. I see in the HE evidence, a lack of understanding of what comprises the significance of a garden space, for example in focusing on fabric rather than on spatial qualities, and in particular how significance in a public garden derives from how it is used by the public, not just physical structures.

In my statement I give a summary of how memorials have developed and functioned in public parks historically, and I take issue with the idea of VTG as 'a

garden of conscience and liberties'. My point is that while public parks have often been chosen for the location of memorials, those memorials have generally been strictly subsidiary to the main function of providing open space for passive or informal recreation. That is the case with the existing memorials in VTG – the main function of the park remains the provision of open space for quiet walking or sitting, children's play and occasional large scale events such as jubilee celebrations, rallies or public meetings.

There are indeed many cases where a park has been created primarily as a memorial (war memorial parks or George V playing fields) but in those cases the memorial is the open space, the provision of that space for formal or informal recreation. My concern is that the Holocaust Memorial proposals will dominate VTG not only physically, but also dominate their future use and function.

I would not count myself an expert on planning policy but I do make the simple point that the guidance in the NPPF about building on existing open space is unequivocal. I am sure the inquiry is looking at this extremely closely but it seems to me that none of the three exceptions in para.97 applies. I take issue with the evidence from Historic England which refers to qualitative improvements in the area of the park not physically harmed by the development as offsetting the loss of open space to the development. This doesn't seem to me to be a test under the NPPF.

I should add that measuring the impact of the development just in terms of loss of open space is not a sensitive or appropriate way to assess harm to a public park. An area of hard paving in front of a new reception building may still technically be open space, but it is not the same as flowing open lawn.

My statement also points out that while the NPPF refers to open space, the kind of space it refers to ('open space, sports and recreational buildings and land, including playing fields') hardly does justice to the quality of VTG as reflected in its multiple designations as a registered historic garden, the setting of the WHS and the setting of both the Palace of Westminster and the setting of the listed memorials within it.

While judgements about harm rely on expert opinion, I have struggled to understand the conclusions of HE that the damage here is less than substantial. I make the point in my statement that from my experience of planning casework over the decades I have no doubt that this proposal is seriously damaging to the fabric, significance and character of the registered garden.

Having watched Mr Dunn's evidence on 4 November I am concerned that – unless I misunderstood – when asked to explain HE's methodology for determining or calibrating harm HE, he replied that in this case they decided *a priori* that the harm was less than substantial so therefore did not apply the tests which were being discussed (2:04 in the video record).

I say in my statement that I take strong exception to Historic England's conclusion (CD 5.36 para. 7.1) that the proposal would amount to 'less than substantial harm'. Rather warily, I make a contribution to your discussions about the much-quoted Bedford judgement. By way of a preliminary, I would like to suggest that the very word 'substantial' unintentionally makes it more difficult to understand that some 'serious' harm is not about substance at all but about the intangibles of space and use.

If we assess significance in a way appropriate to a public garden, which I feel a number of witnesses with backgrounds in historic buildings have failed to do, then I believe that 'very much if not all the significance (would be) drained away... vitiated altogether or very much reduced.' For example:

- The significance of the view from the south, the long view from the Lambeth Bridge entrance, seems *high* to me. The way in which this view was achieved over several decades is set out elsewhere; it now forms one of London's great designed vistas focusing on the Victoria Tower through a perspective of mature trees and open lawn. The harm caused to the foreground of this view by the memorial, the reception building and its associated hard paving and new landscaping seems *substantial* to me.
- The garden's significance as a place for informal, even aimless, recreation in the heart of the capital, the tranquillity of its riverside setting, its mature trees and its designed relationship to the Palace, seems *high* to me. The harm to that significance caused by the dominance of a building with an express pedagogical purpose, and by a large increase in visitors with the express and sole purpose of visiting the learning centre rather than sitting or walking in the garden will be *substantial*.
- And finally, with regard to the Bedford case, the level of massive excavation and physical upheaval of the soil, the very substance of the garden itself, is indeed, in the words of the Bedford case, 'something approaching demolition or destruction'.

I conclude my written statement by saying that in my long experience, I can think of few more egregious examples of substantial harm, where the park is effectively disembowelled. The demolition and relocation of the grade II gardens at Harlow New Town, or the occupation of the grade II gardens of the Commonwealth Institute with three apartment blocks come to mind, but otherwise, this is a development as destructive of the fabric and character of a small but beautiful registered park as I can recall.

Peter Roberts Cathedral Area Residents Group

CARG is a local Westminster Amenity Society which comprises over 950 residential flats. Many of our members have lived in this neighbourhood for decades. I, like many of my neighbours I have lived in this area for many years. Our members recognise the importance of not only remembering the tragedy of the Holocaust but also of informing about it and, indeed, about all acts of genocide. We do not detract from the very important objectives of the proposed HM+LC.

However, we do need to bear in mind physical constraints. For the many reasons already set out during this inquiry the great majority of CARG members consider that the VTG do not constitute an adequate site for this purpose. Therefore, CARG opposed this planning application on the grounds that the resulting loss of the precious park facility could not be justified by the intended benefit. We welcomed the WCC decision that the proposed UKHMLC would be unacceptable in the VTG on planning grounds. The VTG is a small riverside park which is an essential facility in this neighbourhood where most residences have no outside space.

This is a very special space: in the shadow of Parliament providing a rare escape from the grandeur of the World Heritage Site; from the hectic traffic the daily flow of commuting office workers and the throng of tourists. If the proposed UKHMLC were built in VTG the park amenities would be lost or severely diminished in many respects. The applicant has claimed that, once construction was completed, the proposed memorial would occupy less than one third of the park. This loss of green space would be serious enough but inevitably the expected daily average of 10,000 visitors for whom the development is intended and the necessary associated activities which I shall summarise as follows would have far more extensive negative impacts on this small park.

First there would be the years of construction during which the children's playground and much of the park would have to be closed to the public. Once the UKHMLC were completed the expected additional 10,000 visitors a day would constitute an increase by some five-fold over the current average daily use of the park. Not only would they overload the reduced park space - but in arriving at and departing from the VTG they would heavily congest Millbank and the surrounding streets.

For example, a well marshalled stream of coaches might be able to deliver and collect 2,500 of the daily visitors with timed tickets but this would disrupt passing vehicular traffic and pedestrians along Millbank as well as the further 7 to 8,000 visitors to the Memorial and gardens. In addition, there will be many unticketed sightseers passing through the gardens to see the memorial without visiting the Learning Centre. Moreover, the particular significance of the UKHMLC would require extensive full-time security arrangements which would have to be heightened to cope with the many visitors. Also, the proposed location of the memorial and learning centre would require that the existing Horseferry Playground for children be reduced in size and effectively cut off from the remaining grassed area of the park.

Before closing, let me give a snapshot of current activity in VTG to remind us of what could be lost. If you pass through the park, say during the late afternoon on a typical weekday you will see:

- adults of all ages, individually, in couples or in small groups:
- some also passing through - strolling, walking the dog or more energetically jogging;
- others relaxing on the grass to enjoy the respite this provides, shielded by the mature plain trees from the traffic of Millbank and Parliament Square and appreciating the iconic view of the Victoria Tower;
 - yet others contemplating the river from benches under the trees or leaning on the embankment wall.
 - there are children playing in the recently upgraded Horseferry playground with their family or carers;
 - a few older siblings venturing from the playground to run about on the grassed area of the park and beginning to explore the three memorials which are already there;
 - Here it is that young and old can relax and become aware of not only a manifestation of our democracy but also of some very

important events of social development which are symbolised by the three memorials which compliment but do not dominate the park.

How would this change if WCC's decision not to permit the application to build the UKHMLC here were overturned? That memorial would physically dominate the space and the associated activity throughout every day would change its character to the extent that it would no longer be a park for physical and mental rejuvenation but rather an annex to the new memorial absorbing the flow of scheduled and unscheduled visitors, arriving and departing. The clear losers would be local families and other residents for most of whom there is no ready alternative. Many employees from parliament, the civil service and other nearby offices would also lose an important place to relax and rejuvenate, during or at the end of the working day.

If I may conclude with a personal professional observation. The unfortunate reality is that the aspiration for the proposed UKHMLC to benefit from being set in the calm tranquillity of this park will be thwarted by the development itself and by the large increment of people and activity which it is designed to attract and which will simply overload the reduced space and the surrounding streets. Thank you for this opportunity to summarise the concerns of the CARG regarding this proposed development, to stress our opposition to it and to urge you to endorse the soundness of the WCC's decision not to permit this application.

Nathan Silver Westminster Society

I am Nathan Silver, an architect, former Head of the Department of Architecture at the University of East London, and on the executive committee of The Westminster Society. Members of my family were killed in the Holocaust.

The Westminster Society earnestly shares the desire of this application to see built a national Holocaust Memorial and centre for study-- to quote Co-chair Ed Ball's words-- "both as a permanent record of the past, and a clear warning for the future." But we are appalled by the catastrophic choice of site, which seems profoundly misjudged to the Executive Committee.

This memorial design, inadequately inspiring as it appears to us, also severely miscalculates the public space required, it introduces unwanted turbulence in the tranquil park, and it proposes to place an inevitable attraction to terrorism alongside our principal structures of government. Above all, we believe that approval of this unsatisfactory proposal would tragically preclude a better-considered Holocaust Memorial on an appropriate site elsewhere.

Our specific objections are these:

(a) VTG is a peaceful park highly cherished by all who live and work nearby. Parks aren't convenient sites for appropriation, even for noble projects. This proposal ignores Royal Parks protections, overrides the location's particular significance in history, and overpowers its two existing historical monuments, the Buxton Memorial and the Burghers of Calais.

(b) The sizeable demand for admission, visitor coach congestion and intensified security measures that will be added to those already required by Parliament will impair successful public access to both.

(c) The proposed design's quality as such may not be deemed a planning issue. But the size of site related to suitable use, particularly in a design intended for the public at large, requires critical consideration. Part of a well-conceived Holocaust Memorial, we believe, should be a quiet and amply-sized working library for scholars, not just an underground learning centre for schoolchildren and visitors off tour buses.

(d) The choice of site is severely short sighted in that it ignores Parliament's own likely future requirements in 10 to 50 years. This matter has not been emphasised by others and it is a vital consideration, so we ask inspectors to think carefully about it. The refurbishment of the Palace of Westminster now beginning, at the expenditure of billions, will include in its planning the temporary decanting of its major constituents to the Northern Estate, but it has provided no guidance for an adopted masterplan of the entire parliamentary precinct. Every decent university and corporation undertakes a masterplan, yet it is shockingly absent as a design framework for this application. A masterplan is the vital instrument for studying needs and connections and designing for the future. An approved masterplan should be the prior requirement for determining uses and enhancements in the entire parliamentary precinct.

Among its self-evident aims should be security measures that are properly designed, in place of ugly corralling walls and barriers; safe modern access for ministers and parliamentarians; rerouted other vehicular access to eliminate present congestion and security risks; and greatly improved pedestrianisation within an outstanding new urban design of gardens and promenades that could begin from Parliament Square, and include-- for example--Westminster Hall's becoming fully welcoming to everyone. (The Westminster Society did such a masterplan study six years ago.)

Parliament's future needs would be of primary concern, and VTG would remain inviolate. If the inspectorate was to call for an initial masterplan that was to be well considered and designed, we believe it would show with powerful clarity that the UKHMLC deserves a more worthy site that uniquely affirms its importance, access, security, and uncrowded surroundings. Such a site would inspire a full design evocation, and its appropriate benefit of profound contemplation.

This very unsatisfactory application should not be accepted by the Inspectorate.

Those speaking neither for nor against the proposal

William Towie

Mr Towie made reference to family links with the Holocaust and the also the fact that he has enjoyed Victoria Tower Gardens on many occasions.

Dr Michael Pinto-Duschinsky

Mr Morgan, amid all the arguments and rebuttals relating to the proposal in question, one thing is obvious. Were the planning case for the building in Victoria Tower Gardens straightforward and uncontroversial, you would not have needed to conduct this inquiry.

An array of rival barristers have come before you because there is a clash between weighty planning objections and the Minister's stated "implacable" determination to press ahead on grounds of overwhelming public interest.

Were there clear support for the proposal throughout the Jewish or wider community, it would not have been seen as necessary to mount an expensive campaign aimed largely at Jews urging us to write in giving our support.

You will be receiving detailed expert evidence about the planning aspects. So I will not use my time to review them. My only comment - based on nine years as an elected city councillor and planning committee member in Oxford - is that objections from planning experts as concerted as those against the Victoria Park project should not lightly be dismissed.

I therefore will focus on the issue of PUBLIC INTEREST and whether it is strong enough to overcome the powerful planning objections.

Let me start with two points.

First, the Holocaust and the "battle for memory" of it are as complex as they are vital. Therefore it is both unsurprising and healthy that there should be such passionate disagreement about the substance of the proposal.

I hope and believe that real public benefit will arise from the current controversy. There is no inconsistency in my praise for both sides. On the one hand, we owe a huge debt to Lord Pickles, Ed Balls and leading political and public figures for their very strong advocacy of Holocaust remembrance.

But we need also to appreciate the reasons why some of our most leading and best informed Jews have expressed strong concerns. Careful criticisms should be welcomed since they are not only indications of a vibrant community and of the questions of judgement needed to come to solutions, but they may actually lead to improved, more nuanced plans.

The construction of edifices may have far-reaching benefits in some cases and very little in others.

It was my privilege to know Josef Fraenkel, of blessed memory, author of a standard work on the tragedy of the Jews of Austria. His brilliant daughter, now Baroness Deech, could not have failed to be deeply affected by the indignities he suffered as a refugee from the Nazis and by the knowledge that so many others died having been refused entry into Britain, Palestine or any place of safety.

Ruth Deech and the leading historian of Anglo-Jewry Professor Alderman have every reason to be dubious about the record of our Government and Parliament in the 1930s and 1940s.

My own approach is a bit different. It has been affected both by my professional expertise in the study of British politics and constitution and my early life, which I do not remember, as a survivor in Hungary of two camps and two ghettos.

In my academic writings and in past and recent advice to British governments I have been a strong proponent of the virtues of Parliamentary Sovereignty. For all the shortcomings of the policy of Appeasement, it was the House of Commons which overthrew Neville Chamberlain in 1940. It was under Churchill that Britain stood alone in 1940-41 against Hitler.

So I do not agree with Geoffrey Alderman that a British Holocaust memorial must inevitably be hypocritical. It must, however, be realistic and lacking in propaganda.

Second, my discomfort with the PUBLIC INTEREST argument stems from what former Archbishop of Canterbury Lord Williams and a Jewish co-author have criticised as the lack of sufficient thought about the precise objectives of the memorial and the prospect that the project could easily backfire. I do not have time to go further into this but strongly recommend their piece in STANDPOINT Magazine and their recommendation to consider content as well as monumental architecture.

As a city councillor in Oxford, I was asked to attend the official opening of the new city library where I was told that the construction costs had consumed the entire budget. So, it would be a while before the City Council would be able to purchase any new books. I was reminded of that by an email this morning from a rabbi who wrote that people should be given priority over buildings.

Provided the construction and maintenance costs will not subtract from other essential post-Holocaust needs, all well and good. But do we know that?

In addition, I believe that the battle for memory needs to be far more comprehensive than teaching schoolchildren.

All or most of our eggs should not be placed in the basket of a prestige construction project or of the annual Holocaust Memorial Day.

I have listed some other essential post-Holocaust issues in my submission because they tend to be forgotten. I believe the scope of our efforts needs to be considerably widened.

Top of the list for me is the material and psychological welfare of my fellow Holocaust survivors. We survivors - most of us older than me - must not be considered as useful only as props for television programmes or as givers of testimony to schoolchildren.

With our increasing age and frailty, policymakers and Jewish communal bodies must consider what they need to do for US, not only our use as agents of memory for the general population.

Apart from a few survivor leaders, ordinary survivors in my experience have often been treated poorly by scholars, communal activists, broadcasters and others. I should mention that the trauma extends to survivors' descendants many of them part Jewish and thus difficult to reach and help.

Welfare apart, there is unfinished business from the Holocaust. To the best of my knowledge, it remains the official German Government position that slave labour in Auschwitz and elsewhere was - as I heard a German ambassador to London telling Auschwitz survivors Rudi Kennedy and Roman Halter - "strictly speaking" legal.

That is a pernicious stance that needs to be challenged if there is to be a legitimate legal order in Europe.

Our universities have too easily accepted funds from Nazi-tainted corporations and foundations. Despite the usual protests of recipient scholars that they are free from the influence of their benefactors, this is sometimes open to question.

The focus of a series of conferences at the Imperial War Museum on topics "beyond" concentration camps and what was euphemistically called "forced" rather than slave labour was perhaps easier to explain when the funding sources emerged. They included the company which had profited from the trade in gold extracted from the teeth of gassed victims. The Museum no longer accepts its contributions.

The list goes on. The European Union has officially established the equivalence of Nazi and Communist crimes remembered each year on 23rd August, the day Molotov and Ribbentrop signed their pact in 1939.

Slovenia has become the latest central European country to overturn the postwar conviction of the country's leading pro-Nazi in a legal decision that appears to throw doubt on the validity of the Nuremberg trials. This is by no means an isolated example.

Seventy five years on, the battle for basic restitution for victims continues.

What of the records of postwar collaboration of British intelligence with former Nazis? When will they be declassified?

Why did the National Archives produce such biased and inaccurate educational materials?

Why did a member of the Dresden Trust, devoted to the memory of the Allied bombing of Dresden recently complain that Britain has obsessively rubbed German noses in the blood of the Nazis?

What of the soft-core Holocaust denials of leading German historians?

Why are intimate personal details of Holocaust survivors readily available on the internet while equivalent documents relating to their persecutors kept private under German privacy laws?

My sad conclusion is that it is dangerous to suppose that a few major initiatives will resolve our post-Holocaust problems. It is hard for commissions of eminent persons such as that created by David Cameron to devise policies and projects to cover the range of needs. I am extremely grateful to the members of the Commission, to members of the new Holocaust Memorial Foundation and to all the very senior political figures who have offered their backing and support. However, I feel that considerably more thought needs to be given to post-Holocaust issues in general.

If the aim is to create an ICONIC symbol of our horror concerning the Holocaust and if the site next to Parliament is considered essential, I suggest that the current proposal should be judged on grounds of

1. planning law and standards,
2. functionality and
3. possibilities for future expansion.

If the proposal fails on those criteria, another site should be found for the project.

But if there is to be another site for the learning centre, an ICONIC memorial to the Holocaust - on the lines of the Cenotaph and thus taking less room - can and

should be found in the Victoria Park Gardens or a more prominent Westminster site. This double option could satisfy both proponents and objectors.

Kenneth Whittaker

My name is Ken Whittaker, I am a freelance archaeologist and historic environment consultant with over 30 years' experience of professional and technical practice. I have led commercial historic environment teams within the planning and engineering consultancy sector for twenty years. I have worked exclusively on nationally significant infrastructure projects for over a decade. I am a Fellow of the Society of Antiquaries (London).

Between 2014-2017 I was on fulltime secondment to the Thames Tideway Tunnel as Archaeology and Heritage Lead. I was responsible for archaeological and heritage works at 24 worksites, mostly on the Thames riverside, including sites at the Chelsea, Albert and Victoria Embankments. I also wrote the heritage interpretation strategy that informed architectural and landscape design applied to new and re-purposed public realm.

I am happy to take questions on my statement.

Introduction

Sir, I have asked to address the Inquiry to draw attention to an aspect of the historic environment yet to receive consideration, but which seems to be particularly relevant to the question of whether Victoria Tower Gardens (VTG) is the right location for the National Holocaust Memorial and Learning Centre (NHMLC). I speak in a personal capacity, with a professional perspective, but I do not intend to express a particular view for or against the proposed scheme. I simply want the Inquiry to consider all relevant information that might help shape your recommendation on an issue of such profound public and national interest.

I refer to the legacy of monumental riverside embankments constructed along the Thames in the period 1860 to 1933, an historic enterprise that includes the genesis of VTG. During this time institutions of Parliamentary governance grappled with questions of democratic representation that continue to resonate today. Indeed, the endeavour required creation of the first pan-London governance arrangement, which has since evolved and steered the course of the metropolis from imperial epicentre to World City.

This legacy charts a direct link between environment, health and urban infrastructure, with Londoners' self-determination, and a unique form of public realm in which citizens can explore and contest cultural values in a national discourse that forges common purpose and identity. I believe this narrative is highly relevant to the specific matters before this Inquiry.

For calibration, I also direct you to the Thames Tideway Tunnel Heritage Interpretation Strategy. This is a pan-London framework and 'curatorial' toolkit, prepared in collaboration with Historic England, that guides and encourages design of public realm interventions that reference: the unique history, governance processes and geography that contribute to the collective significance of the Thames riverside embankment, an understanding of the nature of the public realm associated with the Thames riverside embankment

and its function in the representation and memorialisation of national values and allegories.

It will no doubt be a relief, but I have no intention to add to the melee of opinion on aesthetics generated by the question of setting. I simply note that setting can become a pre-occupation with narrow issues of viewpoint, in both a figurative and visual sense. I wish to focus your attention instead on other substantive matters. I will do so by adopting Mr Lewis' habit of directing witnesses to address the inquiry in short themed summary topics.

Thames Riverside Embankment and the genesis of Victoria Tower Garden
London experienced four major cholera epidemics between 1831 and 1866 resulting in 37,000 deaths. The Metropolitan Board of Works (MBW) came into existence in 1855 to solve the capital's urgent sanitation problems at a time of an unprecedented environmental and health crisis. The MBW reclaimed fifty-two acres of Thames foreshore between 1865 and 1870 under Sir Joseph Bazalgette's tenure as Chief Engineer, works that coincided with the later stages in the re-building of the Palace of Westminster between 1840 and 1870.

The MBW solution was to provide urban and environmental infrastructure that tackled a deficient flood and urban sanitation system, improved public access to green space and reduced traffic congestion by creating a grand river frontage. The Thames Embankments framed the recently re-built Palace to create an architectural composition representing the pinnacle of UK civic society.

This monumental new river frontage incorporated the low-level sewer, channelled the river and formed a deck occupied by promenades and public gardens. The Embankments extended along the Middlesex bank downstream from Westminster Bridge to Blackfriars Bridge (Victoria Embankment) and upstream from Millbank to Chelsea Creek (Chelsea Embankment). Along the Surrey bank, directly facing the Palace, the Albert Embankment extends from Westminster Bridge to Vauxhall Bridge and contains St Thomas's Hospital, the only building to occupy land the MBW reclaimed from the foreshore.

In 1928, less than 60 years after the completion of Victoria Embankment, a section of river wall at Millbank, between the Chelsea and Victoria Embankments was breached, flooding the Palace of Westminster and the Tate Gallery. Tragically, many of the crowded basement dwellings into which families were crammed were also flooded, resulting in 14 drownings, 4000 homeless and 1000 uninhabitable homes.

The London County Council (LCC), which had replaced the MBW in 1889, undertook a programme of flood defence improvements and replaced the dilapidated Lambeth Bridge. Part of this work, undertaken in 1932/3, involved the creation of the garden which accords with the current boundaries of the VTG and the simplification of the planting design to give clear views to the Palace of Westminster.

The VTG, as altered by the LCC, incorporated the smaller garden conceived with a donation by W H Smith MP. Smith's role as benefactor to VTG represents a direct historic connection to the MBW and the wider riverside embankment, as it was a repeat of the personal patronage conferred in the creation of Victoria Embankment Gardens, where he met costs for park furniture.

In fact, Smith was a member of the MBW from its inception in 1855, long before he became MP for Westminster in 1868. In 1870, in his parliamentary role, he successfully mounted a high-profile defence of the public interest against determined efforts to appropriate land reclaimed by the MBW at taxpayer expense for the commercial interest of the Crown Estate. Over the next three years he successfully faced down Prime Minister, William Gladstone, demonstrated parliamentarians' independence and principal obligations to the interests of constituents and refuted unfounded assertions by powerful vested interests, such as the Crown's claim to hold legal title to the Thames foreshore.

The continuous and upgraded embanked Thames frontage created on completion of the LCC works in 1933, improved the river frontage between Victoria and Chelsea Embankments, which is now punctuated only by the Palace of Westminster. The VTG is one of several individual public garden spaces conceived, at least in their current form, by the necessity to reclaim, embank and build flood walls along the Thames. These are connected by promenades or bridges affording access across the Thames and the wider riparian public realm and institutions.

Consequently, Victoria Tower Garden, Whitehall Garden, Victoria Embankment Garden and Middle Temple Garden share common characteristics. These garden spaces are in proximity to the Palace of Westminster, in some instances with direct views of key buildings within the World Heritage Site; they closely relate to a unified, monumental civic architecture of land reclamation; are part of a historic designed landscape intimately connected to and shaped by the riparian setting, and they function as open air galleries containing many memorial monuments. They amount to a rich juxtaposition of architecture and landscape, entailing a diverse design language, that symbolise changing attitudes on a wide range of significant topics of public interest, national values and contested legacies.

Heritage Interpretation and Design: Thames Tideway Tunnel Heritage Interpretation Strategy 'River of Liberty'.

A DCO Requirement directed Thames Tideway Tunnel to prepare a Heritage Interpretation Strategy. The resulting Strategy document combines a cultural and historic narrative with a curatorial 'tool kit' intended to assist and guide landscape design and public art commissions in highly sensitive locations. These works are the principle public realm benefits, other than the improved water environment, arising from the consent to extend the Bazalgette sewer system, by connecting it to a deep tunnel largely following the course of the Thames, starting at Acton and finishing at Becton.

I shall not spend too much time describing the Strategy that was launched 15 February 2017. It is best viewed on-line to consider the heritage and cultural significance, cultural manifesto and design principles derived from a detailed analysis of the metropolitan Thames.

(https://www.tideway.london/media/1476/tideway-heritage-interpretation-strategy_full-report.pdf)

I simply highlight a few points of relevance:

A tripartite framework is adopted within an overarching interpretive theme, 'River of Liberty'

This overarching theme encompassing narratives particular to groups who held advantages and benefits and, conversely, to those whose rights were denied, restricted or compromised. It engages concepts that evolve and in so doing continue to shape and influence discourses that inform London's development.

It presents a *public history*, looking at 'ways of life' viewed from many cultural and socio-economic perspectives, in contrast to common heritage preoccupations with elites

It encourages creative designs, that explore hidden or deeper meanings, drawing on a rich legacy of allegoric artistic responses to the river and events associated with the Thames.

Artists, architects, landscape designers and construction contractors are required to collaborate to create public realm that reflect the spirit of the Thames and its influence on Londoners.

VTG lies within Tideway's central section where the Liberty theme is explored from the perspective of civic London. Here Tideway are creating new public realm at foreshore structures attached to Albert Embankment and Victoria Embankment. In the context of VTG, the site-specific narratives at the locations in closest proximity are:

Albert Embankment - St Thomas's Hospital, built on land reclaimed by MBW, is where Florence Nightingale founded the first professional school of nursing. It was created from funds raised by subscription in honour of Nightingale's service in Crimea. The training school was dedicated to educating and communicated the philosophy and practice of its founder and patron, including Nightingale's strongly argued position on the removal of restrictions on women pursuing careers. The improvement in nursing care also had a transformative effect on patient outcomes.

Victoria Embankment -addresses the role of the MBW as the first pan-London system of governance and the leadership of its associates, particularly W H Smith MP, played in forging democratic institutions responsible for political representation in the interest of London's diverse urban communities.

Conclusion

Sir, I fully recognise the responsibility before Counsel and yourself to consider the heritage effects in line with policy and through the statutory arrangements, by the careful and precise cataloguing and testing of 'assets', to understand heritage significance, determine development harm and if necessary balance loss of significance against other public benefit.

For the vast majority of applications this is a perfectly straight forward exercise. But in this location, given the issues of sensitivity arising from this application, it is apparent that there can be weaknesses if heritage considerations are not properly contextualised, as designations are not always well described or appropriately defined. Significance in this instance transcends the immediate confines of the application site, the heritage assets it contains or those in the immediate vicinity. The need to address the issue of whether the NHMLC is an appropriate intervention at VTG also justifies a more developed curatorial approach to the historic environment.

As I found when I joined the Tideway project, the big picture is the one most easily overlooked.....after all few would view a genteel historic park with a backdrop of a Neo-gothic architectural masterpiece and see instead a flood defence and sewer, let alone give weight to seemingly mundane issues of governance and public welfare that lie deeper still in the site narrative.

As set out in my introduction, the purpose of my statement is to draw attention to available resources, so that there is greater awareness of the true significance of the public realm and garden spaces and their part in the dynamic relationship between the Westminster riparian urban landscape and capital and State civic institutions.

But please excuse one personal observation. To my mind, the most resonant and poignant message gained from an understanding of the heritage significance of the Thames Embankment and VTG is that they are both products of catastrophes that occurred due to ignorance or neglect. They constitute safeguards that, had civic institutions and accountable authorities been in place, or if they had acted early enough, would have prevented unnecessary loss of life. This insight seems to resolve the separate narratives inherent to location and memorial in a powerfully numinous counterpoint.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

ANNEX 2

Judgment of the High Court in London Historic Parks and Gardens Trust v Minister of State for Housing & Othrs [2022] EWHC 829 (Admin)



Neutral Citation Number: [2022] EWHC 829 (Admin)

Case No: CO/3041/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2022

Before :

THE HONOURABLE MRS JUSTICE THORNTON DBE

Between :

**THE LONDON HISTORIC PARKS AND
GARDENS TRUST**

Claimant

-and-

**(1) THE MINISTER OF STATE FOR
HOUSING**

(2) WESTMINSTER CITY COUNCIL

Defendants

-and-

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

(2) LEARNING FROM THE RIGHTEOUS

Interested
Parties

Richard Drabble QC and Meyric Lewis (instructed by **Richard Buxton Solicitors**) for the
Claimant

Timothy Mould QC and Matthew Henderson (instructed by **Government Legal**) for the
First Defendant

Douglas Edwards QC (instructed by **Bi-borough Legal Services**) for the **Second Defendant**
(written submissions only)

Christopher Katkowski QC and Kate Olley (instructed by **Government Legal Department**)
for the **Secretary of State for Housing Communities and Local Government**

Zack Simons (instructed by **Richard Max & Co LLP**) for **Learning from the Righteous**

Hearing dates: 22nd and 23rd February 2022

Approved Judgment

The Hon. Mrs Justice Thornton :

Introduction

1. This is a claim for statutory review, pursuant to s. 288 of the Town and Country Planning Act 1990, of the decision by the Minister of State for Housing to grant planning permission for the installation of the United Kingdom Holocaust Memorial and Learning Centre at Victoria Tower Gardens in Millbank, London.
2. The proposal for a UK Holocaust Memorial and Learning Centre ('the Holocaust Memorial') was first announced in January 2015 in the Holocaust Commission's Report, 'Britain's Promise to Remember':

“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.”

3. All parties before the Court support the principle of a compelling memorial to the victims of the Holocaust and all those persecuted by the Nazis during those years when, *“humanity was tipped into the abyss of evil and depravity”*. The memorial is an essential part of *“Britain's Promise to Remember”* (Holocaust Commission Report). The Trust explained to the Court that many of its supporters are Jewish people whose families were either forced to flee the Holocaust or who perished in it.
4. The issue dividing the parties is the proposed location of the Memorial in Victoria Tower Gardens. Victoria Tower Gardens has considerable cultural, historical and heritage significance. It is located on the north bank of the River Thames immediately south of and adjacent to the Palace of Westminster and Black Rod Garden. It is a Grade II Registered Park and Garden. It contains within it three listed structures; the statue of Emmeline Pankhurst (Grade II listed), the statue of the Burghers of Calais (Grade I listed) and the Buxton Memorial Fountain (Grade II* listed). The site has contained a garden for public recreation since approximately 1880.
5. It is important to emphasise that the merits of the Memorial's proposed location in Victoria Tower Gardens are not a matter for the Court. Its location there may raise matters of legitimate public debate, but they are not matters for the Court to determine. The role of the Court in judicial review is concerned with resolving questions of law and ensuring that public bodies act within the limits of their legal powers.
6. The three issues that arise for consideration by the Court in this challenge are:
 - 1) Did the inspector err in his assessment of harm to the historic environment of the Gardens; in particular the setting of the Buxton Memorial?

- 2) Does the London County Council (Improvements) Act 1900 impose a statutory prohibition on locating the Memorial in the Gardens?
- 3) Did the inspector err in his treatment of alternative sites for the Memorial?

Background

The parties

7. The Claimant is the London Historic Parks and Gardens Trust ('the Trust'). It is a small charity with the principal object of preserving and enhancing the quality and integrity of London's green open spaces. The First Defendant is the Minister of State for Housing ('the Minister') and decision maker on the planning application. The Second Defendant is Westminster City Council, the local planning authority for the area. The First Interested Party is the Secretary of State for Housing, Communities and Local Government and the applicant for planning permission. The Second Interested Party is Learning from the Righteous, a Holocaust Education Charity concerned to highlight the contemporary relevance of Holocaust Education.

The Holocaust Memorial and Learning Centre

8. On 27 January 2014, on Holocaust Memorial Day, the then Prime Minister launched the Holocaust Commission. Its task was to examine what more should be done in Britain to ensure that the memory of the Holocaust is preserved and the lessons it teaches are never forgotten. In January 2015, the Commission published a report titled 'Britain's Promise to Remember'. The report concluded that there should be a striking memorial prominently located in Central London. It would serve as the focal point for national commemoration of the Holocaust. A location in Central London would attract the largest possible number of visitors. The aim would be to make a bold statement about the importance Britain places on preserving the memory of the Holocaust.

Victoria Tower Gardens

9. Victoria Tower Gardens is a Grade II Registered Garden and area of accessible public open space, located on the north bank of the River Thames, immediately south and adjacent to the Palace of Westminster and Black Rod Garden. The site is bounded by Abingdon Street and Millbank to the west, the River Thames to the east and Horseferry Road/Lambeth Bridge to the south.
10. Within the Gardens there are three listed structures: the statue of Emmeline Pankhurst (Grade II listed), the statue of the Burghers of Calais (Grade I listed) and the Buxton Memorial Fountain (Grade II* listed). The Grade II listed River Embankment from the Houses of Parliament to Lambeth Bridge forms the eastern (river) edge of the Gardens.
11. The site is also within the setting of a number of other listed buildings and structures, including the Grade I listed Palace of Westminster, Lambeth Bridge (Grade II listed), Victoria Tower Lodge and Gates to Black Rod Garden (Grade I listed), Norwest House,

Millbank (Grade II listed), The Church Commissioners (Grade II* listed) and Lambeth Palace (Grade I listed).

12. The site is located within the Westminster Abbey and Parliament Square Conservation Area and is immediately south of the Palace of Westminster and Westminster Abbey including St. Margaret's Church World Heritage Site. The site is to the east of the Smith Square Conservation Area.

Site selection

13. The UK Holocaust Memorial Foundation was established with cross-party support to deliver the recommendations of the Holocaust Memorial Commission. Its work included a call for potential sites.
14. In 2015, after studying the available options, three central London sites were identified; the Imperial War Museum; Potter's Field and Millbank. They were all regarded as fulfilling the Commission's objective to provide a striking new memorial prominently located in Central London.
15. In January 2016, the then Prime Minister announced that the memorial would be built in Victoria Tower Gardens. A design competition was launched in September 2016 and in October 2017 it was announced that Adjaye Associates, Ron Arad Architects and the landscape architects Gustafson Porter + Bowman had been selected to design the Memorial and Learning Centre for the Gardens.
16. The selection of Victoria Tower Gardens as the site was controversial. In its closing submissions to the planning inquiry, the Trust expressed concern that the Gardens were chosen without any professional assessment to support the choice of the site and no public consultation as to its suitability, acceptability or desirability as a location. Proper consideration of alternative sites were said to have received scant consideration. The Trust expressed further concern that the site search process was not a matter for scrutiny in the public inquiry. These concerns formed part of the Trust's submissions to the Court on the Inspector's approach to alternative sites.

Planning application

17. In January 2019, the Secretary of State for Housing Communities and Local Government applied to the Council for planning permission for the Memorial to be located in the Gardens. Plans of the design illustrate the Memorial as comprising 23 bronze fins honouring the millions of Jewish men, women and children who lost their lives in the Holocaust, and all other victims of persecution, including Roma, gay and disabled people. The 23 bronze fins will create 22 pathways into and from the Learning Centre which will be constructed below ground.
18. In November 2019, the then Minister for Housing directed that the planning application be referred to her for determination, pursuant to section 77 of the Town and Country Planning Act 1990. Given the Secretary of State was the applicant for planning permission handling arrangements were put in place at the Government Legal Department and the Department for Levelling Up, Housing and Communities (as

renamed since the decision under challenge) to ensure there was, and is, a functional separation between the persons bringing forward the proposal and the persons responsible for determining the proposal. Following a successful legal challenge by the Trust to the decision making arrangements the arrangements were revised and published (London Historic Parks and Gardens Trust v the Secretary of State for Housing Communities and Local Government [2020] EWHC 2580 (Admin)).

The Planning inquiry

19. A public inquiry was held into the application by an Inspector appointed by the Minister for Housing between 6 – 23 October 2020 and 3 – 13 November 2020.
20. The Trust appeared at the inquiry and was formally represented. Whilst supporting the principle of the Memorial, the Trust, and other parties with whom they made common cause, opposed its location in Victoria Tower Gardens on the basis that it represents an exceptionally serious intrusion into a green public open space of the highest heritage significance. The Trust called expert evidence on harm to heritage assets; harm to the character, amenity and significance of Victoria Tower Gardens as a Registered Park and Garden; harm to the mature trees surrounding the park as well as on the availability of an alternative site for the memorial at the Imperial War Museum.
21. Westminster City Council appeared as the local planning authority. Whilst supportive of the principle of the memorial, it opposed its location in the Gardens on the basis of the sensitivities of the location and the impact on the historic environment and the risk of impact to the established trees on the west side of the Gardens. The Council considered that the Gardens might be a suitable location for a more modestly sized scheme.
22. Learning from the Righteous appeared in support of the application and was formally represented at the inquiry. It supported the location of the Memorial in Victoria Tower Gardens.

The Planning Inspector's Report

23. The Inspector's report to the Minister of State for Housing, dated 29 April 2021, is 243 pages long, with 60 pages of analysis. The Inspector identified the main considerations as including:
 - a) The effect of the proposal on designated and non-designated heritage assets, including of specific relevance to the challenge; whether the proposed development would preserve the setting of the Buxton Memorial, a Grade II* listed building;
 - b) Other material considerations, including any public benefits the proposals might bring; the principle of the proposed development; Victoria Tower Gardens as a location for the memorial, the consideration of alternative sites for the Memorial and the timing and content of the proposals.

24. In summary; the Inspector's main conclusions and recommendations on the issues relevant to this challenge were as follows:

- a) the harm from the development to the Buxton Memorial and the Gardens did not approach anything near the NPPF policy threshold of 'substantial harm' (IR 15.69; 15.94 and 15.117).
- b) Nonetheless, the measure of harm to the Buxton Memorial should be assessed as being of great importance and the weight to that harm should be characterised as considerable. The weight to be apportioned to the (moderate) harm to the Registered Park and Garden should be characterised as considerable (IR 15.69; 15.94 and 15.117).
- c) In terms of public benefit, the proposal fully meets the Holocaust Memorial Commission recommendation for a striking new memorial prominently located in central London. Location of the Memorial adjacent to the Palace of Westminster is a public benefit of great importance. These factors merited considerable weight in the heritage and planning balance (IR15.155-15.161).
- d) Alternative locations should be taken into account when determining the acceptability of the proposal if they would avoid an environmental cost (IR15.164).
- e) Whilst seeming to offer a benign alternative, the Imperial War Museum site lacks a detailed scheme that would meet the core requirements of the HMC and has clear constraints that may hamper delivery. The weight to be afforded to it was therefore very limited (IR15.169).
- f) The two other sites merited still lesser weight than the site at the Imperial War Museum (IR15.169).
- g) Achieving a memorial within the lifetime of survivors of the Holocaust has a resounding moral importance that can be considered a material consideration and a public benefit of great importance meriting considerable weight in the planning balance (IR15.170 -172).
- h) Weighing the public benefits of the proposal (including its location next to Westminster and the delivery of a Memorial within the lifetime of survivors) against the identified heritage harms, and taking account of the limited viability of alternative locations, the balance can be seen to clearly and demonstrably weigh in favour of the proposals (paragraph 196 (now 202) NPPF)(IR 15.186-15.189).
- i) On a fine balance, overall, the proposals cannot be judged to be in accordance with the development plan when read as a whole (IR15.279).
- j) However, the significant range of truly civic, educative, social and even moral, public benefits the proposals offer would demonstrably outweigh the identified harms the proposals have been found to cause. The outcome of this balance amounts to a material consideration of manifestly sufficient weight to indicate

in this case that determination other than in accordance with the development plan is justified (IR15.283).

25. The Inspector recommended that the application be approved, and planning permission granted.

The decision to grant planning permission

26. Following consideration of the Inspector's Report, the Minister granted planning permission by a decision letter dated 29 July 2021. The decision under challenge is the decision of the Minister. However, in the decision letter the Minister agreed with the Inspector's conclusions and recommendation. Accordingly, for the purposes of the present appeal it is not necessary to do more than look at the Inspector's report.

Grounds of challenge

27. The Trust applied for judicial review on five grounds, of which permission was granted on two Grounds:

Ground 1 – The Planning Inspector (and Minister) applied the wrong legal test to the issue of whether there will be 'substantial harm' to the heritage assets within the Gardens. The correct application of the test would have led inevitably to the conclusion that the harm to the significance of the Buxton Memorial was substantial and which would have led in turn to a very different test for the acceptability of the proposal.

Ground 4 – The Inspector (and Minister) erred in law in considering that in order to attract significant weight, the merits of any alternative sites must be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative.

28. Permission was refused on a third ground:

Ground 3 – The Inspector (and Minister) failed to address the provisions of the London County Council (Improvements) Act 1900, which creates a straightforward prohibition on using the Gardens for the provision of the Memorial in the manner proposed.

29. The Trust subsequently applied to renew its application for permission for judicial review on Ground 3. The parties agreed that the Trust's application should be considered on a rolled-up basis at the substantive hearing into Grounds 1 and 4. In his application to renew, Mr Drabble focussed on section 8(1) of the 1900 Act rather than section 8(8) which had been the focus of submissions before the Permission Judge. As refined by Mr Drabble, the ground is arguable, and I grant permission. Given the refinements to the Trust's case as developed during oral submissions at the hearing, including the production of the Local Law (Greater London Council and Inner London

Borough) Order 1965, I considered it appropriate (and of assistance to the Court) to allow the parties the opportunity to make short written submissions after the hearing.

The Court's jurisdiction under s288 Town and Country Planning Act

30. The correct approach to statutory reviews pursuant to s. 288 TCPA 1990 was summarised by Lindblom LJ in St Modwen Developments Limited v Secretary of State for Communities and Local Government [2011] EWCA Civ 1643, [2018] PTSR 746 at [6]. In summary; the relevant principles of focus in submissions by the parties are that:

- 1) Decisions of the Secretary of State and his Inspectors are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues.
- 2) The reasons for the decision must be intelligible and adequate enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues.
- 3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision maker. They are not for the Court. An application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an Inspector's decision.
- 4) The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision maker. Statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context.

Ground 1: Harm to heritage assets

The Planning Inspector and Minister applied the wrong legal test to the issue of whether there will be 'substantial harm' to the heritage assets within the Gardens. The correct application of the test would have led inevitably to the conclusion that the harm to the significance of the Buxton Memorial was substantial and which would have led in turn to a very different test for the acceptability of the proposal.

Legal framework

31. The legal framework for consideration of the impact of a proposed development on relevant heritage assets was common ground:

- a) In considering whether to grant planning permission the decision maker is under a general duty to pay special regard to the desirability of preserving the listed buildings potentially affected by the proposals, their settings and any features of special architectural or historic interest which they may possess (Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990). In

this case, the Listed buildings include the Buxton Memorial (Grade II* listed building).

- b) The significance of a heritage asset derives not only from an asset's physical presence, but also from its setting. Great weight should be given to the asset's conservation. The more important the asset, the greater the weight that should be given to conservation. Harm to the significance of a designated heritage asset requires clear and convincing justification (NPPF 199, 200).
- c) Where potential harm to designated heritage assets is identified, it needs to be categorised as either 'less than substantial' harm or 'substantial' harm (which includes total loss) in order to identify which policies in the NPPF apply (NPPF 200-202). Accordingly, the key concept is whether the harm will be 'substantial'.
- d) Substantial harm to grade II listed buildings or registered gardens (which would include Victoria Tower Gardens) should be exceptional. Substantial harm to assets of the highest significance, notably grade II* listed buildings (which will include the Buxton Memorial) should be wholly exceptional. For development that will lead to substantial harm to a designated heritage asset, consent should be refused unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm (NPPF paras 200-201).
- e) Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (NPPF 202).
- f) Whether a proposal causes 'substantial harm' or 'less than substantial harm' will be a matter of judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In particular; the effect of a particular development on the setting of a listed building – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the "significance" of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker. This is subject to the decision maker giving considerable importance and weight to the desirability of preserving the setting of a heritage asset (Catesby Estates Ltd v Steer [2019] 1 P. & C.R. 5 per Lindblom LJ at [30]).
- g) Unless there has been some clear error of law in the decision-maker's approach, the court should not intervene. This kind of case is a good test of the principle stated by Lord Carnwath in Hopkins Homes Ltd. v Secretary of State for Communities and Local Government [2017] 1 W.L.R. 1865 (at paragraph 25) – that "the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly" (Catesby Estates Ltd v Steer [2019] 1 P. & C.R. 5 per Lindblom LJ at [30]).

Impact of the development on the historic environment – the Inspector’s approach

32. In order to understand the Inspector’s approach to the question of harm, it is necessary to understand how matters were put to him. The main parties disagreed on the correct approach to the assessment of harm to the significance of heritage assets. The position of the applicant, the Secretary of State, was that for substantial harm to be demonstrated “*very much if not all of the significance is drained away or that the asset’s significance is vitiated altogether or very much reduced*”. This was said to be the threshold for substantial harm set down in the case of Bedford Borough Council v Secretary of State [2012] EWHC 4344 Admin. In contrast, the local planning authority, Westminster Council relied on the Planning Practice Guidance and the guidance that ‘substantial’ harm to the significance of a heritage asset can arise where the adverse impact of a development “*seriously affects a key element of (the asset’s) special architectural or historic interest*” (paragraph 18)
33. The Inspector recorded the differences between the parties and his view of matters at IR15.11 and 15.12:

“15.11 In addition to disagreements on the magnitude of harm to DHAs between the parties, there is also divergence in the methodology to be applied to its calibration. The Applicant relies on the definition of substantial harm (and the calibration of lesser harms that flow from it) set out in the Bedford case, broadly defined as a high test. WCC on the other hand (though not making express reference to it in written evidence) prefer to rely on the example of substantial harm set out in paragraph 018 of the PPG, a definition, as I understand it from their oral evidence, which sets the test at a lesser height. Although also reliant on the PPG definition (but again with no reference in written evidence) TIS.SVTG & LGT apply a further, different approach, based on consultancy-developed methodologies for characterising the magnitude of harm. Lastly, other parties present a similar Bedford-based approach to harm calibration, though conclude that the magnitude of harm, specifically with regard to VTG as an RPG, should be judged as substantial.”

“15.12 My interpretation of this point, also bearing in mind paragraph 018 of the PPG has been formulated in light of the Bedford judgement, is that there is in fact little to call between both interpretations. Bedford turns on the requirement for the harm to be assessed as ‘serious’ (with significance needing to be very much, if not all, ‘drained away’) in order that it be deemed substantial. Alternatively, paragraph 018 indicates that an important consideration would be whether the adverse impact ‘seriously’ affects a key element of special interest. In both interpretations, it is the serious degree of harm to the asset’s significance which is the key test. Moreover, in accordance with the logic of the Bedford argument, paragraph 018 explicitly

acknowledges that substantial harm is a 'high test'. (emphasis added)

34. Mr Drabble submitted that the issue has been bedevilled by the application of the language to be found in the judgment of Jay J in Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin) at [24] which apparently requires the impact on significance to be such that “*very much if not all, the significance [is] drained away for harm to be regarded as substantial.*” He submits that there is no justification for this gloss and there is accordingly an obvious danger that if one regards the requirement of substantial harm as being synonymous with much if not all of the significance of the asset being drained away then too high a test is being imposed. It is, he submitted, apparent from the Inspector’s Report that this is what has happened in this case.
35. In my assessment, however it is apparent from IR15.12 that, having set out the parties’ views, the Inspector came to his own interpretation of the relevant test for substantial harm which he expressed as “*the serious degree of harm to the asset’s significance.*” Mr Drabble accepted he could not object to this formulation of the test which reflects the wording of the Planning Practice Guidance and is an expression of Government policy. Similarly, he accepted that no issue could be taken with the Inspector equating ‘substantial’ with ‘serious’.
36. The Inspector continued his analysis of the task before him at IR 15.13. He went on to describe, in practical terms, the identification of the measure of harm to the designated heritage assets individually and cumulatively and the apportionment of appropriate weight to the harm:
- 15.13 It is a high test indeed and I address these matters in detail below, calibrating the degree of harm identified to each DHA and the weight to be apportioned accordingly. The sum of such harms is then duly considered against any public benefits in the heritage balance anticipated in paragraphs 195 or 196 of the NPPF and, where appropriate, development plan policy.*” (emphasis added)
37. It was common ground that no issue can be taken with the Inspector’s statement that the test is a ‘high test’.
38. Mr Drabble went onto submit that whatever view of matters the Inspector expressed in IR 15.12 - 13, the approach he actually adopted in his task of assessing harm was to apply a test of significance draining away. In this regard Mr Drabble pointed the Court to several passages in the Report (IR15.88; 15.117; and 15.187).
39. I am not however persuaded that the Inspector fell into the error suggested by Mr Drabble.
40. The Inspector assesses the harm to the setting of the Buxton Memorial at IR15.65 – 15.69 as follows:

“The Setting of the Buxton Memorial (BM), a Grade II Listed Building*

15.65 There is no purpose in repeating the assessments of the BM’s special architectural and historic interest and significance previously set out in evidence. It is listed at Grade II, reflecting not only the conspicuous idiosyncratic flair of its designer, but also the nationally and internationally important events it memorialises. Despite its relocation from its intended place in Parliament Square, its present location in VTG, commemorating the courageous actions of lawmakers serving in the Palace of Westminster just to the north, remains an element of its special interest and significance.*

15.66 Beyond these primary attributes, it is clear that the open spatial context to the memorial is a constituent of its significance. One element of this significance is the formal, though opportunistic perspective of Dean Stanley Street, where the monument may be viewed and appreciated in framed long perspective. But a more relevant contributor is the sense of space around the structure, allowing the viewer to at first perceive its distant presence, then be drawn by its ‘fanciful’ play of forms, detail and colour and then, when close, appreciate its memorial purpose and importance.

15.67 As set out above, the safeguarding of the setting of the BM would be most successfully mediated in views looking north along the Embankment path, and along the Embankment itself. Here, the monument would retain its pre-eminence within its wider context. However, from other points, most particularly when viewing the older monument from within the UKHMLC courtyard, or from other points in close proximity to it, its setting would visually become quickly congested. More specifically at this point the radically differing aesthetic moods of existing and proposed structures would collide in uneasy and discordant juxtaposition. And so here, decisively, the visual dominance of the UKHMLC would unsettle and crowd the BM, significantly infringing the viewer’s opportunity to settle and contemplate its purpose and architecture, and thus fully appreciate its multi-faceted significance. The wider effects of this relationship on the character and special interest of the park are explored below. (15.91-15.93)

...

15.69 Notwithstanding these effects, the BM would remain physically unaffected by the proposal, and in this respect, its special architectural and historic interest would be preserved. That said, this outcome would fail to preserve the setting of the

BM, a Grade II listed building, in accordance with the expectations of the Act, such a consideration the Courts anticipate being given considerable importance and weight. It would also be contrary to those of paragraphs 193 and 194 of the NPPF, which anticipates great weight being given to the conservation of DHAs and their settings. Accounting for these considerations, I characterise this harm to the setting of the Grade II* memorial as being of great importance. Although this measure remains well below the threshold of substantial, I nevertheless afford this a measure of considerable weight in the heritage balance.”*

41. He further considers the impact of the development on the Buxton Memorial in the context of the Registered Park and Garden at 15. 90 – 15.94:

“15. 90 However, as I have determined above, despite the best efforts of the Applicant’s multi-disciplinary design team, a successful relationship between the proposed structure and the BM has not been fully achieved. The setting of the Grade II structure would not be preserved, and it is necessary to consider this again here to understand the effect this could have the significance of the RPG.*

15. 91 It is clear to all that the present location of the BM, a relocation after its storage following removal from Parliament Square, has been chosen with some care and that its installation in 1957 represents one of the more prominent post-war interventions into the park. Arguably the location chosen on the axis of Dean Stanley Street at the end of an existing path within the park was one not too difficult to arrive at. After all, such axial devices have been used before in the park, for example in the initial siting of the Pankhurst Memorial on that of Great Peter Street immediately to the north. Such a location borrows the force and symmetry of existing views, whilst giving the monument sufficient space from the others already populating the park to the north (albeit that these had arrived at their respective locations only the year before).

15. 92 Despite the sense that the “fanciful” Gothic of Teulon’s expressly architectural structure may have always felt more comfortable amid the hard urban enclosure of Parliament Square (it’s intended initial location), it has nevertheless found its place within the park, a point of quiet remove, close to the Embankment and anchored by the axis of the path and streetscape to the west. The compelling logic of this location perhaps also explains a reticence about relocating the memorial as part of the present proposals. However, this too presents a no less difficult challenge: that of safeguarding the setting of the

existing structure whilst delivering the UKHMLC to its design brief.

15.93 This reconciliation is nevertheless pursued through demarking the immediate context of the existing structure, scribing the enclosure of the proposed precinct around it and softening the visual interface between the two with planting. Whilst this would seek to establish an honest and inevitably intimate new relationship between the two, it would not be achieved convincingly. The exuberance of Teulon's structure would sit uncomfortably with the more sober and restrained modernity of the proposal. Moreover, the space such an expressive historic structure needs to be properly appreciated would be demonstrably curtailed. This sense of awkward stylistic juxtaposition and visual congestion would be most obviously understood from views within the UKHMLC complex, but would also have resonances in other views from the north down the Embankment path and the new sinuous route. Whilst these adverse effects would be partly mitigated by the more open and appreciative way the BM would be experienced when viewed from the Embankment walk, it would be impossible to escape the sense that the existing structure's open setting would be materially compromised by the presence of the UKHMLC. It is agreed that the special interest of the BM and the contribution its setting makes to its significance represents a constituent element of that of the park. It follows as a matter of logic therefore that any harm to that significance in turn affects that of the RPG.

15.94 All these matters in respect of VTG as an RPG require drawing together. I conclude that the effect of the proposed development on the significance of VTG, a Grade II RPG, can be best summarised as follows: the primary cause of identified harm to the special interest and significance of the RPG would result from the adverse effect the proposals would have on the setting of the BM. This is compounded, to a very limited degree, by the potential harm to a limited number of trees within the park. However, this degree of harm must also be considered in the context of the sum of the significance of the RPG as a whole. Accounting for this calculation, and also allowing for the range of positive factors that would enhance the character of VTG as an RPG, I conclude that the measure of harm overall would be moderate. Nevertheless, accounting for the expectations of paragraph 193 of the NPPF that great weight be afforded to the conservation of DHAs, I afford this harm considerable weight in the heritage balance."

42. The Inspector draws his conclusions together on the effect on designated heritage assets as follows:

“...In respect of each key DHA, the BM, the RPG and the WAPSCA, the modest degree of harm to trees has been added to the final sum of harm in each...in no case, does this aggregated degree of harm to each asset individually approach anything near the substantial threshold established by either Bedford or the PPG. Furthermore, even when the individual harms to DHAs are considered cumulatively, as required, they again still fall well below the substantial threshold established by Bedford and the PPG. Having fully considered such harms, I now turn to the public benefits.” (IR15. 117) (emphasis added)

43. In support of his case, Mr Drabble placed emphasis on the reference to Bedford in the extract quoted above. He also referred to the section of the Report in which the Inspector conducted the heritage balancing exercise required by the NPPF (then paragraph 196 now paragraph 200) and the Inspector’s reference to:

“15.187 Let us remember, for comparison, that substantial harm requires, in the case of Bedford, that the harm be assessed as ‘serious’ with significance needing to be very much, if not all, ‘drained away’. Alternatively, paragraph 018 of the PPG indicates that an important consideration is whether the adverse impact would ‘seriously’ affect a key element of special interest. My reasoned judgement is that this bar has not been reached here and, contrary to the views of objecting parties, the harm, calibrated cumulatively at no greater than a medium degree above moderate, (still accounting for the great importance apportioned to the harm to the setting of the BM) would not come close to substantial for any asset, by either measure.” (emphasis added)

44. Finally, he pointed the Court to IR 15.88 in the context of the wider analysis of harm to the Registered Park and Garden) and to the Inspector’s observation that *“claims that such effects...would in fact vitiate or substantially drain away the significance of the RPG, even justifying deregistration, are in my view considerably overstated...”* as further evidence in this regard.
45. In my judgment, the passages set out above demonstrate the Inspector performing his own straightforward, careful estimation and characterisation of the harm to the Buxton Memorial and, as a consequence, to the Garden. His analysis is a sophisticated and, at times, poetic calibration of the harm. He begins by acknowledging the architectural and historic significance of the Buxton Memorial and the open spatial context in which it sits (IR 15.65/6). Turning to harm, he expresses the view that the *‘radically differing aesthetic moods of existing and proposed structures would collide in uneasy and discordant juxtaposition’*. The *‘visual dominance of [the memorial] would unsettle and crowd the BM’* (IR15.67). He concludes that whilst the Buxton Memorial would remain physically unaffected by the proposal, it would fail to preserve its setting which he directs himself (correctly) as being of great importance and considerable weight, albeit that the harm *‘remains well below the threshold of substantial’* (IR15.69). In the context

of the wider garden, he arrives at the view that “*the exuberance of the Teulon’s structure would sit uncomfortably with the more sober and restrained modernity of the proposal*”, albeit that “*these adverse effects would be partly mitigated by the more open and appreciative way the BM would be experienced when viewed from the Embankment walk*”. He concludes that the measure of harm to the RPG would be moderate (IR15.94).

46. In this context, read fairly and as a whole, his references to the ‘Bedford test’ alighted on by Mr Drabble at IR15.117 and 15.187 are no more than the Inspector confirming, or cross checking his analysis, conducted by reference to his view of the test as the ‘serious degree of harm to the asset’s significance’, by reference to the case advanced before him. In the case of IR15.88 the reference is no more than the Inspector repeating back the submissions made to him, to dismiss them as ‘*considerably overstated*’. It follows that I do not accept Mr Drabble’s submission that the Inspector’s reasoning was dependent on Bedford and thus in error. The Inspector formulated his own test, namely ‘*the serious degree of harm to the asset’s significance*’. This is unimpeachable and Mr Drabble did not attempt to impeach the formulation or propose an alternative formulation.
47. Moreover, the exercise conducted by the Inspector is entirely consistent with the approach to paragraphs 195 and 196 (now 201 and 202) of the NPPF, stipulated by the Court of Appeal in City & County Bramshill Limited v Secretary of State [2021] 1 WLR 5761. The question whether there will be substantial harm to a heritage asset is a matter of fact and planning judgment and will depend on the circumstances. The NPPF does not direct the decision maker to adopt any specific approach to identifying harm or gauging its extent beyond a finding of substantial or less than substantial harm. There is no one approach to the question:

“74 The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of “substantial harm” and “less than substantial harm” to a “designated heritage asset”. What amounts to “substantial harm” or “less than substantial harm” in a particular case will always depend on the circumstances. Whether there will be such “harm”, and, if so, whether it will be “substantial”, are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying “harm” or gauging its extent. It distinguishes the approach required in cases of “substantial harm ... (or total loss of significance ...)” (paragraph 195) from that required in cases of “less than substantial harm” (paragraph 196). But the decision-maker is not told how to assess what the “harm” to the heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a “designated heritage asset” or its setting.”

48. On behalf of the Secretary of State, Mr Katkowski suggested that I should approach Bramshill with caution and he submitted that paragraph 74 cited above is obiter. Whilst

that might, strictly speaking, be true given the facts of the case, Lindblom LJ's observations directly concern the interpretation of the test of substantial harm and are, in any event, consistent with a line of authority from the Court of Appeal emphasising the self-effacing role of the Court in respecting the expertise of Planning Inspectors and guarding against undue intervention in policy judgments within their areas of specialist competence which do not lend themselves to judicial analysis. (See in this context Hopkins Homes Ltd v Secretary of State for Communities and Local Government [2017] UKSC 37 and (R (Samuel Smith Old Brewery) v North Yorkshire County Council [2020] PTSR 221)).

49. Before leaving this ground, it is necessary to say a few words about the judgment of Jay J in Bedford Borough Council v Secretary of State [2013] EWHC 2847 (Admin). This is because Mr Drabble submitted the judgment has been misinterpreted, whilst on behalf of the Secretary of State, Mr Katkowski submitted that the ratio of the case is to be found, in part, at the end of paragraph 24 (the impact on significance was required to be serious such that very much if not all of the significance was drained away).
50. In Bedford, the question as to whether the Inspector had misconstrued or misapplied the policy concept of substantial harm was in issue before the Court ([11]). Jay J saw the epithets “*substantial*” and “*serious*” as essentially synonymous in the policy context: see [21] and [26]. In [25], he observed that the decision maker was looking for – “... *an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*”.
51. Read in context, the final sentence of [24] is Jay J's encapsulation of the Inspector's application of the test of substantial harm in the decision letter which was before him to review.

24 “...*What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.*”

25 *Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.*

26 *...I have considered whether the formulation “something approaching demolition or destruction” is putting the matter too high in any event. “Substantial” and “serious” may be regarded as interchangeable adjectives in this context, but does the phrase “something approaching demolition or destruction” add a further layer of seriousness as it were? The answer in my judgment is that it may do, but it does not necessarily. All would*

depend on how the inspector interpreted and applied the adjectival phrase "something approaching". It is somewhat flexible in its import. I am not persuaded that the inspector erred in this respect."

52. It is plain that Jay J saw the Inspector's approach as essentially the same as the approach that he (Jay J) endorsed in [25] as a correct basis for addressing the question, i.e. a decision maker would properly both interpret and apply the concept of substantial harm in the NPPF, if s/he assessed whether the impact of the proposed development was sufficiently serious in its effect that the significance of the designated heritage asset, including the ability to appreciate that asset in its setting, was (if not vitiated altogether) at least very much reduced. Jay J considered the reference to significance being "*very much ...drained away*" as no more than an alternative, metaphorical means of expressing the concept of substantial harm. In considering that "substantial" and 'serious' may be regarded as interchangeable adjectives in this context" [26], his judgment is consistent with the advice in the Planning Policy Guidance that, when considering whether or not any harm is "substantial", an important consideration would be whether the adverse impact seriously affects a key element of special architectural or historic interest
53. Accordingly, read as a whole and in context, Jay J's judgment does not import a test of 'draining away' to the test of substantial harm. He was not seeking to impose a gloss on the term. The judgment in Bedford accords with the approach stated by the Senior President of Tribunals at [74] in Bramshill. It is clear from cases like Tesco v Dundee [2012] UKSC 13; R(Samuel Smith) v North Yorkshire County Council [2020] UKSC 3; Bramshill and others, that a word like 'substantial' in the NPPF means what it says and any attempt to impose a gloss on the meaning of the term has no justification in the context of the NPPF. The policy framework and guidance provide a steer that relevant factors include the degree of impact, the significance of the heritage asset under scrutiny and its setting. It is not appropriate to treat comments made by a Judge assessing the reasoning of an individual decision maker, when applying the test of 'substantial harm' to the circumstances before him/her, as creating a gloss or additional meaning to the test.
54. Accordingly, Ground 1 fails.

Ground 3: The London County Council (Improvements) Act, 1900

A failure to address the provisions of the London County Council (Improvements) Act 1900, which creates a straightforward prohibition on using the Gardens for the provision of the Memorial in the manner proposed.

The legal principles of statutory construction

55. In interpreting a statute, the Court is "*seeking the meaning of the words which Parliament used*". A phrase, or passage, must be read in the context of the section as a

whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained (R (O) v Home Secretary [2022] UKSC 3 (Lord Hodge at 29)).

The wording of the Act

56. It was common ground that the London County Council (Improvements) Act 1900 is a private Act of Parliament, promoted by London County Council, which provided the Council with statutory authority to carry out improvement works to the Thames Embankment area. The long title of the Act is:

“An Act to empower the London County Council to make an extension of the Thames Embankment and a new street and improvements at Westminster to widen Mare Street Hackney and to make other street improvements and works in the administrative county of London and for other purposes.”

57. The preamble states that *“Whereas it is expedient to confer on the London County Council (herein-after called “the Council”) powers to make the improvements and works herein-after described and it is also expedient to confer on the Council such powers as are herein-after set forth with regard to the raising of money for the purposes of this Act:”*

58. Sections 4 & 5 details the relevant improvements and works authorised by the Act which include:

“1) Thames Embankment Extension and Improvements at Westminster

An embankment wall and an embankment on the foreshore of the River Thames in continuation of the existing river embankment south of the Houses of Parliament commencing at the present termination of the existing embankment at the south eastern corner of the Victoria Towne Gardens and terminating at the northern side of Lambeth Bridge

A new street consisting in parts of widening of Abingdon Street and Millbank Street commencing in Abingdon Street opposite or nearly opposite the entrance to the Peers Office Court of the House of Lords and terminating at the western end of Lambeth Bridge”

59. Section 6 entitles the Council to enter upon, use and take specified lands. Section 7 makes provision in relation to the construction of the embankment wall.

60. For present purposes, the critical section is Section 8, the side note to which states: “*For protection of the Commissioners of Works*”. The recitals to the section state:

“8. Whereas the works authorised by this Act under the heading “Thames Embankment Extension and Improvements at Westminster” (herein-after referred to as “the Westminster improvement”) will involve the occupation of certain lands vested in Her Majesty or vested in or under the control of the Commissioners of Works and will also necessitate some interference with the garden adjoining the Houses of Parliament known as the Victoria Tower Garden:

.....

And whereas it has been agreed between the Commissioners of Works and the Council that the said works shall only be executed subject to and in accordance with the provisions herein-after set forth:

And whereas for the purposes of the Act a plan has been prepared (in the section referred to as “the signed plan”) which for purposes of identification has been signed by the Right Honourable Lord Brougham and Vaux the Chairman of the Committee of the House of Lords to whom the Bill for this Act was referred a copy of which plan has been deposited in the Office of the Clerks of Parliaments.”

61. Section 8(1) to 8(8) provide as follows:

- (1) *“The lands lying to the eastward of the new street described in this Act as consisting in part of widenings of Abingdon Street and Millbank Street which is in this section called “the new street” and between the said street and the new embankment wall shall be laid out and maintained in manner herein-after provided for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden subject to such byelaws and regulations as the Commissioners of Works may determine:*
- (2) *The Council shall construct the new embankment wall to the satisfaction of and in accordance with plans approved by the First Commissioner of Works:*
- (3) *The Council shall to the satisfaction of the First Commissioner of Works clear and make up to a level suitable to the laying out of the garden the surface of the land between the new street and the new embankment wall to be laid out as a garden (which land is hereinafter referred to as “the new garden land”) and in default of their doing so the Commissioners of Works may do all work necessary for that purpose and all costs incurred by the*

Commissioners in relation thereto shall be repaid to the Commissioners by the Council But nothing in this section shall authorise the Council to remove any trees now standing within the garden:

- (4) The Council shall do all things necessary to vest the new garden land in the Commissioners:*
- (5) As soon as that land is so vested in the Commissioners of Works the Commissioners shall remove the existing railings and kerb on the west side of Victoria Tower Garden southward of a point thirty yards southward of the centre of the existing entrance to the Victoria Tower Garden opposite Great College Street and shall erect along the eastern side of the new street southward of the said point from which the existing railings and kerb are to be removed a kerb and railings of a suitable and for that purpose may if they think fit use the existing kerb and railings:*
- (6) The Commissioners of Works shall lay out as a garden the new garden land so vested in them and may also make such alterations in the paths bedding and turfing of the existing Victoria Tower Garden (in so far as any portion of it is not thrown into the new street) as they may think necessary to secure uniformity of design in the Victoria Tower Garden as extended under the provisions of this section:*
- (7) The Council shall pay to the Commissioners of Works the cost of the works to be executed by the Commissioners in respect of the removal and erection of railings and kerb and of altering and laying out the garden as before in this section mentioned Provided that the sum so payable shall not exceed five thousand pounds:*
- (8) The Commissioners shall maintain the garden so laid out and the embankment wall and kerb and railings enclosing it:*

(emphasis added)

62. Sections 8(8) – (14) make provision in relation to a variety of matters including the purchase of a house; identifying land to become part of the widened Street and vacant possession.

63. Sections 8(15) – (18) provide as follows:

“(15) The Council shall not under the powers of this Act alter the level of any streets or places which are under the charge management or control of the Commissioners of Works without having previously obtained the consent in writing of the First Commissioner to such alteration and the Council shall bear the

expense of adapting or adjusting the said streets or places to the requirements of the improvements:

(16) No building fronting the new street at the junction therewith of Great College Street shall be so erected that the main front wall at the north-east corner thereof shall be placed nearer than 80 feet to the line of the existing railings on the west side of the Victoria Tower Garden:

(17) Subject to the provisions of any future Act of Parliament with reference to the reconstruction of Lambeth Bridge and the approaches thereto the frontage of the buildings at the termination of the new street on the western side shall not project in front of the line marked H I on the signed plan:

(18) No new or additional building (including any addition to the height of a building) shall be erected on the west side of the new street other than buildings on the property of Her Majesty or the Commissioners of Works until the elevations and exterior design of such buildings have been approved by the Council and as regards buildings lying to the north of the line marked F G on the signed plan also by the First Commissioner of Works.”

64. Subsequent clauses detail provisions for the protection of the Conservators of the River Thames; the London Hydraulic Power Company and other organisations as well as making provision for consequential matters.

65. In 1965, the Local Law (Greater London Council and Inner London Boroughs) Order (SI1965/54) was laid before Parliament and came into operation. Article 5 provides that: *“The enactments specified in Schedule 3 are hereby repealed to the extent mentioned in the third column of that schedule.”* Schedule 3 provides that the London County Council (Improvements) Act 1900 is repealed *“other than sections 1 and 7 to 9 and so much of section 2 as is necessary to give effect to those sections.”* Accordingly, section 8 of the Act remains in force.

Submissions of the parties

66. Mr Drabble submits that Section 8 (preamble) and section 8(1) provide in mandatory terms for the laying out and maintenance of the relevant land referred to in the Act as the ‘new garden land’ (s.8(3)) as a garden for the public. Overall, the new garden land is an integral part of Victoria Tower Gardens, and cannot even be used as a separate or distinct garden with a different design. Consistent with the statutory obligation, the new garden land has been maintained for the past century by the Commissioners and its statutory successors in title as a garden open to the public and as an integral part of Victoria Tower Gardens. That obligation currently falls on the Secretary of State for Culture Media and Sport as the owner of the new garden land and ultimate statutory successor to the Commissioners of Works.

67. Mr Mould (whose submissions were endorsed by Mr Katkowski for the Secretary of State) submits that the legislative purpose of the protective provision enacted under s.8(1) of the 1900 Act was (i) the incorporation into the then existing Victoria Tower Gardens of the area of land to the south formed by the extension of the Thames Embankment to the riverside and the re-alignment of Millbank Street to the west; and (ii) the laying out and maintenance of that land as a public garden forming an integral part of Victoria Tower Gardens, subject to regulation by the Commissioners, in whom the land was to be vested under s.8(4) of the 1900 Act. That legislative purpose had been fulfilled by no later than 1914, as is apparent from an Ordnance Survey map of that year. By that date and no doubt earlier, the new garden land had been laid out and was already under maintenance as a garden open to the public and as an integral part of Victoria Tower Gardens as it existed in 1900 (see s.8(1) of the 1900 Act). The statutory objective in s. 8(1) was achieved when Victoria Tower Garden was laid out and vested in the Commissioners to maintain. Or, to use the express language of s.8(1), to maintain “*as hereinafter provided*” as a garden open to the public. Those words plainly look forward to s.8(8) of the 1900 Act and the maintenance obligation therein stated. No further provision was needed to be made for the protection of the Commissioners as the owners of the new garden land – they were plainly to be trusted to control the future use or development of Victoria Tower Gardens in accordance with those byelaws and regulations which they saw fit to impose. There was neither need nor any purpose in Parliament imposing a statutory prohibition on the future use or development of the new garden land, in those circumstances the legislature entrusted such matters to the Commissioners’ judgment. The plain words of s.8(1) of the 1900 Act impose no prohibition on development with the new garden land, or indeed any prohibition. Section 8(1) is concerned with requiring things to be done. It is not in any way (expressly or impliedly) concerned with prohibiting things from being done. Had Parliament intended s.8(1) to prohibit things being done in Victoria Tower Gardens after the new garden land had been laid out and integrated into the extended public garden, Parliament would have expressed itself in those terms. Mr Mould invited the Court to compare and contrast ss.8(15)(16)(18)(20)(21) of the 1900 Act, which contain express prohibitions. It is fanciful, he submitted, to suggest that Parliament nevertheless intended s.8(1) to operate as a prohibition by implication.

Analysis

i) Interpretation of Section 8 of the Act

68. The preamble to section 8 of the Act explains that the improvement works would necessitate the occupation of land under the control of the Commissioners or the Crown and interference with the garden already in existence (Victoria Tower Gardens as it was before the extension authorised by the 1900 Act). Accordingly, “*For protection of the Commissioners of Works*” (the side note to s.8 of the Act) it was agreed between the Commissioners and the Council that the works ‘*shall only be executed subject to and in accordance with*’ the provisions of section 8. Section 8 includes, as is common ground, an extension (the new garden land) to the existing Gardens. The preamble refers to a plan signed by the Chairman of the Committee of the House of Lords. The Court was taken to an (unsigned) copy of plan which shows the new garden land coloured in

green. This is in contrast to an earlier Ordnance Survey map which shows a cement works, a wharf and other buildings in the same area.

69. Sections 8(1) - 8(8) create a cascade of obligations which include as follows:

- Section 8(1) provides in mandatory terms that the land shall be laid out and maintained for use as a garden for the public and integral part of Victoria Gardens.
- Section 8(3) provides for London County Council to carry out the clearance and levelling works to the satisfaction of the Commissioner of Works and to vest the land in the Commissioners.
- Section 8(6) provides for the Commissioners to lay the land out as a garden and do related works to secure uniformity of design in the extended Victoria Tower Gardens and
- Section 8(8) provides for the Commissioners to maintain the garden so laid out.

70. Laying out of the land as a public garden integral to the existing gardens was carried out and completed but section 8(1) and (8) provide a continuing obligation to maintain it. Section 8 has not been repealed and accordingly the obligation subsists. The question that arises is whether ‘maintained’ is to be understood as meaning that the land must be kept for use as a public garden or whether it is limited to meaning to the garden must be kept in good repair/maintenance for so long as it is used as a public garden.

71. I am of the view that the wording of Section 8(1) “*The lands...shall be laid out and maintained...for use as a garden open to the public*” is to be read as a continuing obligation to keep the land in use as a public garden. Mr Mould relied on the words ‘in manner herein-after provided’ in section 8(1) (“*The lands ...shall be laid out and maintained in manner herein-after provided for use as a garden open to the public*”). He submitted that the words look forward to s.8(8) of the 1900 Act and the maintenance obligation therein stated (“*The Commissioners shall maintain the garden so laid out and the embankment wall and kerb and railings enclosing it.*”). Thus, he submitted, the statutory objective in s. 8(1) was achieved when Victoria Tower Gardens was laid out and vested in the Commissioners to maintain. However, in my judgment, significance is to be attached to the use of ‘maintained’ in Section 8(1). Section 8(1) lays down the purpose and object of the section whilst subsections (2) – (8) contain the detail. It is not clear why section 8(1) which sets out the statutory purpose of the section would need to refer to ‘maintained’ if the word is to read as the relatively trivial obligation to keep the garden in good repair or tidy. It would suffice for ‘maintained’ to appear in section 8(8) alone. Further, the language in section 8(8) is similar to section 8(1) and the latter refers to ‘hereinafter provided’. In my view the language of both section 8(1) and 8(8) is to the same effect – the land must be laid out and thereafter kept as a public garden.

72. Mr Mould’s submissions rest on there being a temporal limit to the obligation for the land to be ‘laid out and maintained’ in section 8(1) of the Act but the words “*shall be laid out and maintained*” do not, of themselves, incorporate within them any sort of time limited expiry date. They suggest the opposite, namely an ongoing obligation (‘laid out and maintained). There is, for example, no express wording to the effect that the garden must be kept in good repair, for so long as it remains a garden, which would have supported Mr Mould’s interpretation.

73. I do not accept sections 8(15)-(18) of the Act merit the significance which Mr Mould sought to attach to them. He submitted that where Parliament considered it was regulating the future it said so expressly, as with section 8(17) which makes reference to ‘subject to the provisions of any future Act of Parliament’. However, in my judgment sections 8(15)-(18) simply impose controls on works that could be carried out, or were not the subject of any absolute prohibition. Their existence does not address the issue of whether sections 8(1) and (8) are to be read as simply requiring a garden to be laid out which could thereafter be used or built upon as the Commissioners desired, or as requiring that the land be thereafter kept for use as a public garden.

74. I accept Mr Mould’s submission that the plain words of s.8(1) of the 1900 Act do not impose a prohibition on development in the new garden land. He is correct to say that Section 8(1) is concerned with requiring things to be done but the words create a statutory purpose, which has the effect of imposing a fetter on activities that conflict with the statutory purpose.

75. Mr Mould relied on the reference in Section 8(1) to “*subject to such byelaws and regulations as the Commissioner of Works may determine*” (“*the landshall be laid out and maintained in manner herein-after provided for use as a garden open to the public...subject to such byelaws and regulations as the Commissioners of Works may determine*”) to submit that future regulation of the Garden is left to the good sense of the Commissioners and no further provision needed to be made for the future or their protection. However, on the basis of the wording of section 8(1), I am of the view that the ordinary and natural reading is that the byelaws and regulations are intended to regulate the detail of the overall purpose, which is the provision of a garden for public use.

ii) *Conclusion on the construction of section 8 of the Act*

76. Accordingly, I arrive at the following construction of section 8 of the 1900 Act:

- 1) On its ordinary and natural meaning, Section 8(1) of the 1900 Act imposes an enduring obligation to lay out and retain the new garden land for use as a public garden and integral part of the existing Victoria Tower Gardens. It is not an obligation which was spent once the Gardens had been laid out so that the land could be turned over to some other use or be developed or built upon at some point after it had been laid out whenever it suited those subject to the obligation.

- 2) Section 8(8) cannot be read as only covering repair or upkeep. The language is very similar to s.8(1) and the latter says in manner-hereinafter provided. Sections 8(1) and 8(8) are both to the same effect. They require the land to be laid out and thereafter kept as public gardens.
- 3) The detailed prohibitions in Section 8(15)-(18) do not detract from the substantive obligation in section 8(1). Sections 8(15) - (18) simply impose controls on works that could be carried out (or were not the subject of any absolute prohibition).
- 4) The repeal of the larger part of the 1900 Act, save for the prospective and continuing obligations in ss. 7-9, confirms the enduring nature of the obligations imposed by them.
- 5) As was common ground by the end of the hearing, the advent of the modern planning system has no bearing on the obligations in the 1900 Act.

iii) The pre-legislative material

77. The Trust produced evidence from Dr Gerhold, a former House of Commons Clerk and a Fellow of the Royal Historical Society and the Society of Antiquaries. In his witness statement, he stated that he was familiar with the Parliamentary process and with archival work. He explained that he undertook research on the history of the Act using the London Metropolitan Archives and the Parliamentary Archives. The bulk of the material relied on comprises Minutes of the London County Council Improvements and Parliamentary Committees. There are also minutes from Westminster Council (Westminster Vestry) and a letter from the First Commissioner of Works, a position within Government (later to become a Government Department). Dr Gerhold produced a detailed chronology of the history of the Act with references to the documents he had drawn upon to produce the chronology.
78. Mr Drabble submitted that his primary case on section 8 rested on the meaning of the words in the section and was not reliant on the pre-legislative materials produced by Dr Gerhold. Nonetheless, he submitted, the contemporaneous contextual evidence supported his interpretation.
79. No objection was taken at the hearing to Dr Gerhold's evidence by the other parties. His evidence was relied on by Mr Mould for his submissions in relation to the fulfilment of the statutory purpose of section 8(1) once the improvement works had been completed and the garden laid out as a garden, which I consider below. No party submitted before me that the Court could not have regard to the material produced by Dr Gerhold. The context of the Act as a whole includes its legal, social and historical context (Principles of Statutory Construction: Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed (2020) (11.1, 11.2 and 11.3)).

80. I turn to Dr Gerhold's chronology of the Act, supplemented with quotes from the documents he relied upon from the archives.
81. In 1867, the northern part of the Gardens was purchased by the Government of the day under the Houses of Parliament Act 1867 (0 & 31 Vict, cap 40). The land was purchased and cleared to reduce the fire risk to the new Palace of Westminster. The Act made no provision about the use of the land. In 1879, the Rt Hon W.H. Smith MP donated £1000 towards laying it out for public use. A further £1400 was voted for by Parliament. W.H. Smith MP asked the then Office of Works to record in a minute that the sum had been accepted to level, turf and gravel the ground "*in order that it may be thrown open to the public and become available as a recreation ground*". The minute requested has not been traced, but later correspondence around negotiations for the 1900 Act, refers to the Government being "*pledged to an agreement with the late Rt Hon WH Smith for the Gardens to be maintained as a public recreation ground.*"
82. In 1898, a private syndicate proposed a scheme for rebuilding the Millbank area. The scheme was rejected by the Commons, partly because the plan involved building on the riverside rather than extending the existing open space:

"... the bill of the syndicate came on for discussion in the House of Commons. It was strongly opposed by representatives of the Council. Great objection was raised in the debate to the proposal in the bill to rebuild on the area to be cleared of wharves and buildings between Millbank-street and the river. It was contended that this should be laid out as an extension of the Victoria-tower-garden. The representatives of the Council, while not [illegible but thought to be 'not'] pledging it to any such scheme undertook that a scheme should be presented for the widening of Millbank-street and the embankment of the river, and that the Council would carefully consider whether it would not be possible to lay out the land between the street and the river as a garden. The bill was rejected by a large majority. It is to be feared, however, that, in the event of the Council not proposing a scheme of its own, the syndicate's scheme will be revived."

(Further Report of the County Council Improvements Committee, 25th May and 15th June 1898).

83. Prompted by the activity of the private syndicate, London County Council decided to bring forward its own scheme and instructed its Improvements Committee to prepare their own scheme for the area:

"Thames-embankment extension at Westminster

The Council, on 29th March, 1898, passed the following resolution – “That it be referred to the Improvements Committee to prepare and bring up to the Council, at the earliest date practicable a scheme for the embankment of the Thames from the Victoria-tower-garden to Lambeth-bridge, including the widening of Millbank-street, and the utilisation of any surplus land which remains after the carrying out of the improvement.”

(Further Report of the Improvements Committee, 25th May and 15th June 1898)

84. On 15 June 1898, the Improvements Committee reported on initial proposals to the Council. They assumed that the existing garden would be extended to Lambeth Bridge. They estimated that the net cost of the scheme would be £642,000. They commented that if, instead of laying out a garden, the land was built on, the cost would only be £71,900. They noted that the difference in cost of £570,600 could not be justified for four acres of land unless Parliament was willing to contribute:

“In pursuance of this reference we have carefully considered a scheme... We also assumed for the purpose of the scheme that all the houses and wharfs east of Millbank-street would be removed, and that the existing garden to the south of the Houses or Parliament would be extended to Lambeth-bridge. If such a scheme were undertaken, Millbank-street being increased in width to 60 feet, the estimated net cost of the necessary property, after deducting recoupment, would be £601,500. To this must be added the cost of constructing the embankment, and making up the widened road, such cost being estimated at £41,000. The total net cost of the scheme is therefore estimated at £642,500.

If in lieu of laying out the land to the east of the street as a garden, the site should be let on building leases, the new buildings to have a frontage to the river and a road between them and the river, the recoupment would be enormously greater and the estimated net cost of the scheme would then be no more than £71,900. The difference between this and the £642,500 (i.e., £570,600) represents the cost to the Council of laying out the land east of Millbank-street as a garden. The area of this land is some 184,000 square feet, or about 4 acres. While recognising the importance of such an improvement in throwing open Millbank-street to the river and extending the public garden, we feel that having regard to other public improvements required in all parts of London, the outlay of £570,600 on the acquisition of about 4 acres of garden could not be justified unless Parliament should be prepared to make a large contribution towards the cost, in view of the importance of improving the access to the Houses of Parliament from the south, and of removing further from them the buildings in Millbank-street.”

(Further Report of the Improvements Committee, 25th May and 15th June 1898,

85. The County Council then proposed a scheme in which the land between Millbank and the river would be laid out as a garden. However, in order to increase the County Council's bargaining power with the Government, the Council amended the wording of the resolution so that it would not be committed to laying out the land by the river as a garden:

*“... the chairman of the Improvements Committee accepted, and the Council adopted, a further amendment moved by Sir Arthur Arnold and seconded by Mr Verney, to provide that Millbank-street should be widened to either 70 or 80 feet, and **substituting the words “deal with” for the words “lay out as a garden” in recommendation (a).**”*

(Improvements Committee Adjourned Report, 13 March 1900,

*“In the discussion in the Council the opinion was expressed by some members that the Government ought to contribute more to the whole scheme, and **we understood that the object of Sir Arthur Arnold's amendment was to assist us in our further negotiations with the Government and the local authority.** When the chairman of the Committee accepted the amendment in the Council he stated that the Chancellor of the Exchequer considered that the Government was not interested in the extension of the garden, but the chairman expressed his willingness to accept the amendment which would enable further negotiations to be opened up with the Government.”*

(Improvements Committee Adjourned Report, 13 March 1900, (emphasis added).

86. On 4 July 1899, the Council approved the proposal for submission to Parliament:

*“Resolved – That, subject to the Council being relieved from widening Abingdon-street, and subject to a contribution by the local authority of £100,000, the Council do apply to Parliament in the session of 1900 for powers to embank the Thames from Victoria-tower-garden to Lambeth-bridge, to widen Millbank-street to 70 or 80 feet, **to acquire and deal with the land between the river and Millbank-street,** and to acquire and deal with the property between Millbank-street and Tufton-street, in general accordance with the scheme shown on the plan approved by the Improvements Committee on 7th June, 1899.”*

(London County Council Minutes, 4 July 1899) (emphasis added)

87. On 12 July 1899, Westminster Vestry agreed to contribute £100,000 on the condition that the land between Millbank and the river would be converted into a public garden:

“Resolved – That this Vestry, recognising...the Westminster Improvement Scheme communicated to them by the London County Council... (3) assent to a contribution of £100,000 towards the Westminster Improvement Scheme of the London County Council, subject to the understanding: ...that the space on the East of Millbank-street from the Victoria Tower-garden to Lambeth-bridge be converted into a public garden.”

(Westminster Vestry minutes, 12 July 1899) (emphasis added)

88. On 11 October the Improvements Committee proposed an amended scheme. The new scheme included a realignment of Millbank so that it was closer to the river. This made more land available for building and reduced the overall cost of the scheme.

*“Our negotiations with the Government have been somewhat protracted, but we are glad to be in a position to report that by slightly amending the original plan we have obtained the approval of the Government to the scheme, and an undertaking on their part to assist with the Abingdon-street portion. The amendment in question consists chiefly in the alteration of the line of the proposed street. **By somewhat altering the line so as to bring the street nearer the river than was originally proposed, a larger amount of land will be available for the purpose of recoupment, and the cost of the scheme to the Council will be accordingly reduced.** This amended plan involves the acquisition for the purpose of addition to the public way, of a narrow strip of the existing Victoria-tower-gardens. For the scheme to be complete it is also necessary that portions of the sites of five houses in Abingdon-street, four of which belong to the Government, should be given up, and we have now received a letter from the Lords Commissioner of HM Treasury approving this amended scheme.”*

(Report of the Improvements Committee, 11 October 1899) (emphasis added).

89. The Council approved the amended scheme. In around November to December, the Bill was deposited before Parliament accompanied by a plan which did not specify that the land by the river was to become a garden.
90. On 14 December the First Commissioner of Works wrote to the Council objecting that the Bill did not specify the land by the river becoming a garden:

“I am to mention, however, that the draft Bill does not fully or accurately provide for carrying out the arrangement provisionally agreed to by the First Commissioner and the Treasury. In particular, the First Commissioner notices that it is not specified that there shall be a Public Garden, to be formed and maintained by the Council, between the east side of the diverted roadway and the River, in continuation of the Victoria Tower Garden, down to Lambeth Bridge. This public benefit was, in the mind of the First Commissioner, one of the principal considerations in favour of giving up a strip of the existing garden.”

(Letter on behalf of the First Commissioner of Works to the LCC, 14 December 1899) (emphasis added)

91. On 23 February 1900, the First Commissioner of Works wrote to the Council again insisting that the Bill had to provide for the land by the river to become a garden:

“The Bill should provide, as part of the improvement, for a continuation of the Ornamental Garden, called the Victoria Tower Garden, as far south as Lambeth Bridge, over the space between the new roadway of Millbank Street and the Embankment. This public benefit, as in the first place proposed to the First Commissioner, was one of the principal considerations in his mind in favour of giving up a strip of the existing garden, to maintain which as a public recreation ground the Government are pledged by an agreement with the late Rt. Hon. W.H. Smith M.P. who contributed a great part of the cost of laying it out.”

“As regards the future maintenance of the garden, the First Commissioner considers it essential, in order to ensure uniformity in appearance and regulation between the present garden and its continuation, that both should be under one management... to be maintained by this Board as a garden for public recreation”.

(First Commissioner of Works' letter dated 23 February 1900) (emphasis added).

92. On 28 February 1900, the Council's Improvements Committee advised the Council's Parliamentary Committee of the First Commissioner's proposed amendments. The Improvements Committee agreed with the First Commissioner, on the basis the Council

had approved plans showing the land as a garden in July and October 1899 which had been the basis for negotiation:

“(1) The First Commissioner contends that the Bill should make it clear that the land between the new road of Millbank Street and the Embankment is to be kept as a garden and is not to be built upon as this was the understanding upon which he agreed to give up the strip of the Victoria Tower Garden.

The Improvements Committee fully concur with the insertion in the Bill of such a clause, particularly as the Council, on 4th July and 24th October, 1899, decided that the application to Parliament should be made in accordance with the plan submitted to the Council on those dates. On each occasion the plan shewed the land between the new Millbank Street and the river as intended to be kept as a garden. This, in fact, formed the basis of the negotiations with the Government and with the local authority in regard to the improvement, and a condition attached to the offer of the local authority to contribute £100,000 towards the cost of the scheme.”

(Minutes of Improvements Committee Meeting, 25 February 1900) (emphasis added)

93. A report by the Improvements Committee emphasised that the intention all along had been to extend Victoria Tower Gardens and the Government’s decision to give up a small part of the existing Victoria Tower Gardens and five houses in Abingdon Street required for the scheme was conditional on the provision of a garden, as was Westminster Vestry’s contribution of £100,000. It noted that it would not be justifiable for the Council to claim a concession from the Government but keep a discretion to either lay the land out as a garden or to build on it. The report also stated that Parliament would be certain to reject the bill given that the private syndicate’s plan was rejected because they proposed to build on the land:

“From what we have stated it will be seen that the amended scheme approved by the Council was based on the laying out of the land as a garden, that the Government contribution of the strip of the Victoria-tower-garden and the five houses in Abingdon-street was on the same basis, and that the Westminster Vestry made it a condition of their promise to contribute the £100,000. It could not for a moment be contended that the Council would be justified in claiming from the Government the concession of this strip of the Victoria-tower-garden and the five houses in Abingdon-street, leaving it open to the Council either to lay out the land between the road and the river as a garden or to build upon it at its discretion. It is certain that a scheme to build on the land would not obtain the sanction of Parliament, as the scheme introduced by the syndicate was rejected because it was proposed to so deal with the land.

We have accordingly expressed to the Parliamentary Committee our unanimous opinion that the land should be kept as a garden, and we have asked that Committee to insert the necessary clauses in the Bill.

...

*The scheme for which parliamentary sanction is sought, however, will, after deducting the contribution from the local authority and allowing for amounts to be received by the levying of an improvement charge, cost the Council only about £300,000. For this sum a great public improvement will be effected, completing the most important of the very few remaining links in the embankment of the Thames from Blackfriars to Chelsea, widening the approach to the Houses of Parliament and Lambeth-bridge, and getting rid of the reproach which Millbank-street now presents, and greatly improving the district between this street and St. John's Church. **We feel therefore that we are fully justified in asking the Parliamentary Committee to advise the Council to insert the necessary clauses in the bill making definite provision for the land between the new Millbank-street and the river being kept as a garden for the use of the public for ever.***

(Report of the Improvements Committee, 13 March 1900)

(emphasis added)

94. On 1 March 1900, on the Second Reading of the Bill in the Commons, the First Commissioner said that the bill must be amended to provide that the land between Millbank and the river be laid out as a garden, and that he would otherwise ask the House to reject the bill on its Third Reading.

“THE FIRST COMMISSIONER OF WORKS

(Mr. AKERS DOUGLAS (Kent, St. Augustine's)

*I desire to state to the House the attitude of the Government with reference to this measure. We recognise that it aims at a great improvement, but at the same time there are some important Amendments which we must insist on having introduced into the Bill. **One of the Amendments is that the whole space between the proposed new road and the river should be laid out in continuation of the Victoria Tower Gardens. There is really no difference in principle between the Government and the County Council as regards the nature of the Amendments. The County Council and the Government would be sorry to see the improvement scheme checked, and I do not propose to object to***

the Second Reading, but I reserve to myself the right to ask the House to reject the Bill on the Third Reading unless the Amendments are inserted.”

(Hansard, Volume 79, debated on 1 March 1900) (emphasis added).

95. On 20 March 1900, the Council agreed to accept a clause specifying that the land between Millbank and the river was to be laid out as a garden:

“The Council considered the following recommendation in the report brought upon 6th March –

London County Council (Improvements) Bill – Westminster improvement

2 – That the Parliamentary Committee be authorised to insert in the London County Council (Improvements) Bill a clause to provide that the land between the new Millbank-street to be formed in connection with the Westminster improvement, and the embankment, shall be laid out as a garden. [Adopted]”

(London County Council Minutes, 20 March 1900)

96. Between 2 and 4 May 1900, the Westminster improvements clauses of the bill were considered by the Commons Select Committee on the London County Council (Improvements) Bill. The Committee agreed the amendments to the Bill. On 11 July 1900 the Lords Select Committee on the London County Council (Improvements) Bill considered the Bill. The [Lords] Committee rejected the proposed realignment of Millbank.

97. On 24 July 1900, the Council considered reports from its Improvements and Parliamentary Committees. It agreed to accept the Lords’ Committee’s proposal and proceed with the improvements on the condition that the Committee approved the plan first proposed by the Improvements Committee in June 1899:

“Resolved – That the Council do proceed with the Improvements Bill, subject to the Select Committee of the House of Lords agreeing that the new street from the southern end of Abingdon-street to Lambeth-bridge shall be carried out in general accordance with the route shown upon the plan approved by the Improvements Committee on 7th June, 1899, sanctioned by the Council on 4th July, 1899, and as shown by blue lines upon the cartoon plan now submitted to the Council, including the widening of the northern end of Abingdon-street as already arranged.”

(Special Report of the Improvements Committee, 24 July 1900,

98. On 26 July the Lords Committee implicitly agreed to the June 1899 plan. On 6 August 1900 the Bill received Royal Assent.

iv) *Analysis of the historical context*

99. The archived documents uncovered by Dr Gerhold bring the Preamble to section 8 of the Act, to life. In particular, they demonstrate that the use of the land in question for a garden was a central part of negotiations during the passage of the 1900 Act. As the First Commissioner explained in his letter of 14 December 1899 *the 'public benefit' of a public garden 'was, in the mind of the First Commissioner, one of the principal considerations in favour of giving up a strip of the existing garden.'*

100. Mr Mould relied on the context in submitting that in return for the disadvantages to the Commissioners of the works, section 8 ensured the land was developed as a garden and not given over to buildings as it had been previously. However, once Millbank had been widened and the gardens laid, as envisaged in the plan in 1900, the legislative purpose of s.8(1) had been fulfilled. The statutory objective in s. 8(1) was therefore achieved when the Garden was laid out and vested in the Commissioners to maintain. This had happened, he submitted, by the latest in 1914 as is apparent from an Ordnance Survey map of 1914. In this context he submitted that no further provision was necessary for the future regulation of the Garden, which could be left to the good sense of the Commissioners using their powers under bylaws and regulations.

101. Mr Mould relied on an Ordnance Survey Map of 1914 which added cogency to his submission that the statutory objective had been fulfilled by the laying out of the Garden. However, the Ordnance Survey map in question post-dates the Act by 14 years. In my judgment, Mr Mould's submissions fall to be tested by their implication that as soon as the improvement works were completed, the protective provision in section 8(1) fell away, with the result that the new garden land could be used for another purpose or built upon again. Viewed from the perspective of 120 years later, this may seem unobjectionable. However, in my judgment, the context demonstrates that it would not have been considered acceptable to those involved in the negotiations of the Act that, say, four – six months after Millbank had been widened and the Garden laid out as extended, the new garden land could be used for some other purpose or built upon. The provision of a garden was of central importance to the negotiation of the Act and its passage into law. A scheme for rebuilding the Millbank area, proposed by the private syndicate in 1898, had been rejected by the Commons, partly because the plan involved building on the riverside rather than extending the existing open space. Mr Mould submitted that the future of the garden could be left to the good sense of the Commissioners. However, the context reveals that it was not just the Commissioners who had an interest in the use of the land as a garden. Westminster Vestry had donated £100,000 to the scheme conditional on the provision of a garden. Moreover, in 1879, the Rt Hon W.H. Smith MP donated £1000 towards laying it out for public use. A further £1400 was voted for by Parliament. W.H. Smith MP asked the then Office of Works to record in a minute that the sum had been accepted to level, turf and gravel the

ground “in order that it may be thrown open to the public and become available as a recreation ground”. The minute requested has not been traced, but later correspondence around negotiations for the 1900 Act, refers to the Government being “pledged to an agreement with the late Rt Hon WH Smith for the Gardens to be maintained as a public recreation ground.” In my judgment, the historical context is clear and supports Mr Drabble’s interpretation of the wording of section 8 as providing an enduring obligation to keep the land for use as a public garden.

102. Both Mr Drabble and Mr Mould made submissions on the following extract from the Report of the Council’s Improvements Committee dated 13 March 1900:

“We feel therefore that we are fully justified in asking the Parliamentary Committee to advise the Council to insert the necessary clauses in the bill making definite provision for the land between the new Millbank-street and the river being kept as a garden for the use of the public for ever.” (emphasis added)

103. Mr Drabble did not seek to rely on the extract for his primary case but submitted that, to the extent that the Court considered it necessary to resort to external aids, the reference in the extract to the land ‘being kept as a garden for the use of the public for ever’ supported his interpretation. Mr Mould submitted in response that the absence of any reference to ‘for ever’ in the Act indicated that Parliament had not accepted the Committee’s aspiration that the garden should be forever. The Trust was, he submitted, asking the Court to infer that, notwithstanding that those words are notably absent from s.8(1) of the 1900 Act, nevertheless they are to be read into that enactment as representing Parliament’s true intention. That contention was, he said, simply unsustainable.

104. Both Counsel were, at this juncture, using pre-legislative material to elucidate meaning, rather than context. In R(O) v Secretary of State Lord Hodges expressed the view that “none of these external aids displace the meanings conveyed by the words of a statute that after consideration of the context are clean and unambiguous and which do not produce absurdity” [30], Lady Arden was however prepared to consider that: “There are occasions when pre-legislative material may, depending on the circumstances, go further than simply provide the background or context for the statutory provision in question. It may influence its meaning.” [64]. She considered the benefit of doing so as enabling the Court to reach a better-informed interpretation of a provision [66]).

105. The difficulty in the present case is that the material relied on to elucidate meaning is the minutes of a Committee of the Promoter of a private Bill, a category of material not in the contemplation of Lord Hodge and Lady Arden in R(O) v Secretary of State. The parties did not address me on the admissibility of the material. My conclusions on the construction of section 8 of the Act, do not rely on the pre-legislative material. However, to the extent the Court is able to rely on the pre-legislative material to elucidate meaning

(in addition to context) then, in my view, it provides strong support for the interpretation I have arrived at on the basis of the wording of section 8.

106. Finally, I address briefly, the submission by Mr Mould and Mr Katkowski that the Gardens had accommodated a number of structures over the years, including the Buxton Memorial, which had not been considered to be contrary to the 1900 Act. I do not consider factual developments since the passage of the Act to be of assistance to my task of ascertaining the meaning of the wording of section 8 of the 1900 Act.

The 1900 Act as a material consideration

107. Mr Drabble submitted that the existence of the 1900 Act makes the Holocaust Memorial effectively undeliverable. Deliverability was a material consideration which the Inspector failed either adequately, or at all, to take into account. This failure has led to an error of law. Mr Mould disputed this analysis. Restrictions in other statutes are ordinarily not material considerations which the planning decision maker is obliged to consider. Mr Mould pointed in this regard to R v Solihull Borough Council, Ex parte Berkswell Parish Council (1999) 77 P. & C.R. 312, considering the Berkswell Enclosure Act 1802. By analogy with that case, no party to the public inquiry into the planning application advanced the alleged statutory restriction as a material consideration which the planning decision maker must take into account and evaluate. If and insofar as s. 8 of the 1900 Act may be found to impose an impediment on the delivery of the Memorial in accordance with the planning permission, that is a matter for those responsible for construction of the Memorial.
108. It is trite law that in deciding whether or not to recommend the grant of planning permission the Inspector (and subsequently the Minister) were obliged to have regard to material considerations (section 70(2) of the Town and Country Planning Act 1999).
109. I accept Mr Mould's submissions to the extent that, in general terms, the grant of planning permission sanctions the carrying out of a development which otherwise would be in contravention of the statutory prohibition against, in general, the carrying out of any development of land without planning permission. It establishes that the construction of a scheme is satisfactory on planning grounds. That decision is without prejudice to any further consents which may or may not be required for implementation of the planning permission. Someone who obtains planning permission may have to overcome any number of hurdles when seeking to implement the permission.
110. However, in this case, when considering the credibility and viability of alternative sites, the Inspector identified the deliverability of the proposal and, in particular its timing as a material consideration meriting considerable weight:

"Timing

15.170 The HMC report is entitled 'Britain's Promise to Remember'. Now, 75 years after the liberation of the camps, for many in the Jewish community and most poignantly for survivors themselves, this proposal heralds a commitment by the British

Government to fulfil the recommendations of the HMC. As such, this would represent not only a commitment to honour the memory of the millions lost to the Holocaust, but also a testament to the courage and resilience of those who survived it. This is a matter of importance and, though unusual in planning terms, it is of material weight that such a monument should be raised within the lifetime of at least some of those survivors so that this commitment is seen to be honoured in their living memory.

15.171 In the event the Minister was to refuse permission for the UKHMLC in VTG, as BD points out, this would, in all probability, not be the end of the project. It is suggested that this would be a “beneficial outcome”, and that it would probably be sited “at the Imperial War Museum or some other more suitable site”. This may or may not be the case. What is clear however is that the detailed process of selection, evaluation, preparation, design, consultation and formal consideration of a new proposal would begin anew, with all the gestation time this implies. If the programme for the current project is applied, this suggests approximately five years of further work. We know that a number of survivors who saw the outcome of the HMC will not have lived long enough to learn of the outcome of this Inquiry. Another five years of renewed planning would only but add to their number.

15.172 Whilst the matter of timing alone would not be of determinative weight, any such new scheme and its location must after all achieve HMC expectations and meet development plan and statutory planning requirements. But achieving a memorial within the lifetime of survivors, so seeking to honour the living as well as the dead, has a resounding moral importance that can legitimately, in my view, be considered a material consideration and a public benefit of great importance, meriting considerable weight in the planning balance in this case.”

111. If, as I consider to be the case, installation of the Memorial in the Gardens is contrary to the statutory purpose of section 8 of the 1900 Act then in my judgment this is a material consideration, given the Inspector’s emphasis on the importance of the need to deliver the Memorial within the lifetime of the Holocaust survivors. I note that, in May 2020 at least, the Government Legal Department appeared to be of the same view:

“...All substantive matters relating to the planning application will be for the appointed Inspector to consider and to report to the Minister of State in accordance with the procedure laid down by The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (“the Inquiries Procedure Rules”). Those matters include section 8(1) of the 1900 Act, insofar as it is engaged by the planning application. The Inspector must consider all material considerations, including any relevant

legislation, in preparing the inquiry report under rule 17 of the Inquiries Procedure Rules. All parties to the inquiry will have the opportunity to make submissions on those matters to the Inspector at the inquiry.”

(pre-action correspondence dated 18 May 2020)

Raising a new point on appeal

112. The third aspect of Mr Mould’s response on this ground was that the Inspector cannot be criticised for not considering the 1900 Act when it was not raised before him. The Trust was well aware of the point of statutory construction, having raised it with the Minister in advance of the inquiry but it did not pursue the matter at the inquiry. It is, he submitted, not tenable to sustain an argument under s288 of the Town and Country Planning Act that the Court should now interfere with the decision of the Minister to grant planning permission on the basis of the disputed effect of private legislation, a point that was only raised in the present proceedings after the decision to grant planning permission had been made. The Inspector cannot be criticised for not considering a matter which the Trust did not raise when it had the opportunity to do so.

113. In response, Mr Drabble submitted that there is no general rule preventing a party from raising an argument in a planning challenge that was not advanced by the party before the Inspector. A person with standing is entitled to a lawful decision. Mr Drabble relied on the following dicta of the Deputy High Court Judge in South Oxfordshire DC v Secretary of State for the Environment Transport and the Regions [2000] 2 All ER 667:

“I do not think that there can be any general rule that a party to a planning appeal decision is to be prevented from raising in a challenge to that decision an argument that was not advanced in representations made on the appeal. If the inspector has omitted a material consideration which could have affected his decision the decision may on that account be rendered unlawful, notwithstanding that the matter was not raised in the representations...”

“In an appeal against the refusal of planning permission...the issue, defined by the appeal, is whether planning permission should be granted; and the test of materiality is essentially that of relevance (see Stringer v Minister of Housing and Local Government [1970] 1 WLR 1281 at 671 (j) - 678 (b)).”

114. In response, Mr Mould pointed out that the Deputy High Court Judge had nonetheless refused permission for the introduction of other arguments which could have been, but were not, raised, at the inquiry and which would have necessitated factual inquiry:

“the grounds of challenge were set out in the notice of motion. In the course of the hearing, Mr Harper sought permission to amend the notice by adding additional grounds. There was no objection to certain of the proposed additions by Mr David Elvin for the First Respondent and Mr David Holgate QC for the Second Respondent, and I allowed those. I refused permission for the other amendments because they sought to advance arguments that could have been raised, but were not raised, at the inquiry. If they had been raised, the Second Respondent would almost certainly have wished to call further evidence and/or have advanced arguments to deal with them. I will say what the points were later. It is sufficient for me to say now that I did not consider the interests of justice required that the council should be allowed to pursue them on this application” (671 at g) -h))

115. The same point about the significance of factual inquiry was made in Trustees of the Barker Mill Estates v Test Valley Borough Council [2016] EWHC 3028:

“77 In an application for statutory review of a planning decision there is no absolute bar on the raising of a point which was not taken before the inspector or decision-maker. But it is necessary to examine the nature of the new point sought to be raised in the context of the process which was followed up to the decision challenged to see whether the claimant should be allowed to argue it. For example, one factor which weighs strongly against allowing a new point to be argued in the High Court is that if it had been raised in the earlier inquiry or appeal process, it would have been necessary for further evidence to be produced and/or additional factual findings or judgments to be made by the inspector, or alternatively participants would have had the opportunity to adduce evidence or make submissions (or the inspector might have called for more information...” (Holgate J)

116. Turning to the facts and circumstance of the present case.

117. Firstly, as per the stipulation of Holgate J in Trustees of Barker Mills, I have examined the nature of the point raised and I have concluded that, in my judgment, the 1900 Act is a material consideration because of the impediment it presents to delivery of the Memorial in Victoria Tower Gardens and the importance attached by the Inspector to the delivery of the Memorial in the lifetime of Holocaust survivors. In South Oxfordshire, the Judge identified the omission of a material consideration as a scenario in which the Inspector’s decision could be rendered unlawful notwithstanding that the point had not been raised in representations.

118. Secondly, the point was raised at the inquiry. It was raised by Mr Gerhold. The Inspector's decision letter records that 131 written representations were received at the appeal stage. He summarises the representations including the following:

“These changes would breach the condition of the donation of £1,000 made by the benefactor W H Smith in 1879, that the land was kept as a garden for the use of the inhabitants of Westminster. It would be in direct contravention of the 1900 Act under which the land was to be used as a park in perpetuity. (12.15)”

119. I was provided with a copy of Mr Gerhold's written objection which states as follows:

“Building on VTG as proposed would be illegal under the Act by which the southern part of it was acquired, as the Act requires that the land be maintained as ‘a garden open to the public’ (London County Council (Improvements) Act 1900, section 8, still in force). The Government was apparently unaware of this until it was brought to its attention in March 2019 (parliamentary answer 229633). This may not be in strict terms a planning matter, but it provides evidence of an inadequately prepared scheme.”

120. In my view, Mr Mould is in difficulty therefore in submitting that the point was not before the Inspector. It was before the Inspector, albeit it in modest fashion, via written representations and not from one of the main parties. Mr Mould sought to rely on Dr Gerhold's assessment of the point as *“not be[ing] in strict terms a planning matter”*. Dr Gerhold is, however, a historian not a lawyer. Moreover, the implication of Mr Mould's submission is that the views of members of the public attract less weight. This runs contrary to the recognised importance of the public to participate in environmental decision making (see for example the UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters). Procedural fairness at a planning inquiry requires the Inspector to consider significant issues raised by third parties, even if those issues are not in dispute between the main parties. The main parties should therefore deal with any such issues, unless and until the Inspector expressly states that they need not do so. To hold otherwise would undermine the value of public participation in environmental decision making (Hopkins Developments Ltd v Secretary of State for Communities and Local Government [2014] PTSR 1145 and Secretary of State v Claire Engbers) [2016] EWCA Civ 1183))

121. Thirdly, the Secretary of State, the applicant for planning permission, was on notice of the point and could reasonably have anticipated that it might be material. On 31 July

2019, the Trust’s solicitors wrote to the Secretary of State contending that locating the Memorial in the Gardens would breach s. 8(1) of the 1900 Act:

“...there is an important legal impediment which prevents the proposal proceeding at all...

*Section 8 of the London County Council (Improvements) Act 1900, the statute empowering the LCC to create the southern part of VTG and to pass it to (what was then) the Commissioners of Works, requires that the area in which the Memorial is proposed to be built “shall be laid out **and maintained...for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden**”. We have taken advice from counsel Mr Thomas Seymour of Wilberforce Chambers. He has reviewed the proposal and plans and confirms that developing a substantial part of the land as a Memorial and Learning Centre would, unarguably, be in breach of that provision.*

It would accordingly be unlawful for the Secretary of State, who has ministerial responsibility for the Holocaust Memorial project, to seek to proceed with a proposal in breach of a statutory prohibition. It would likewise be unlawful for the Secretary of State for Culture Media and Sport, to whom title to VTG has passed from the Commissioners of Works, and to whom we are copying this letter, to permit the development to proceed.”

122. The Secretary of State replied on 31 October 2019, stating that the provision of the memorial complied with the 1900 Act:

“We are of the view that the proposal for a Holocaust Memorial and Learning Centre complies with Section 8 of the London County Council (Improvements) Act 1900 and will not be withdrawing the planning application...”

123. In May 2020, the Trust raised the same point in pre-action correspondence in relation to the call in of the application:

“On 31 July 2019 Richard Buxton Solicitors (RB), representing one of the other Rule 6 parties, wrote to the Secretary of State and MHCLG pointing out that the building of the VTG Proposal would infringe the terms of the London County Council (Improvements) Act, 1900, which requires the preservation of VTG. MHCLG replied by stating that it would comply with the relevant section of that Act”

124. The Government Legal Department replied as follows:

“The 1900 Act

17. The lawfulness of the decision to call in the planning application is unaffected by section 8(1) of the London County Council (Improvement) Act 1900 (“the 1900 Act”). It is a decision as to the statutory procedure to be followed for the purpose of determining the planning application under Part 3 of the Act. It does not engage section 8(1) of the 1900 Act. Your proposed claim, if pursued, will not place “issues relating to the VTG proposal” before the Court. All substantive matters relating to the planning application will be for the appointed Inspector to consider and to report to the Minister of State in accordance with the procedure laid down by The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (“the Inquiries Procedure Rules”). Those matters include section 8(1) of the 1900 Act, insofar as it is engaged by the planning application. The Inspector must consider all material considerations, including any relevant legislation, in preparing the inquiry report under rule 17 of the Inquiries Procedure Rules. All parties to the inquiry will have the opportunity to make submissions on those matters to the Inspector at the inquiry.”

125. My attention was also drawn to the following question asked in Parliament of the Secretary of State in March 2019:

“Question: To ask the Secretary of State for Housing, Communities and Local Government, on what date (a) the Government and (b) the UK Holocaust Memorial Foundation were first informed about the potential application of section 8 (1) of the London County Council (Improvements) Act 1900 to the proposed location of the Holocaust Learning Centre. (229633)

Answer, 14 March 2019: Mrs Heather Wheeler: The Environmental Statement (Volume 3) submitted with the planning documents in December 2018 identifies that proposals for enlarging Victoria Tower Gardens were adopted under the London County Council (Improvements) Act 1900.”

126. In HJ Banks & Co Ltd v Secretary of State [1997] 2 PLR 50, Lord Woolf was prepared to accept that:

“Speaking in general terms, and recognising there are always going to be exceptional situations, it seems to me that, although

this court should be cautious to avoid encouraging points to be taken for the first time in this court, it is perfectly proper for this court, as a matter of discretion, to allow points to be argued before us, if the material is before this court to enable those matters properly to be considered. In relation to the point which Mr Horton wishes to raise on this particular appeal, which was not raised in the court below, that appears to me to be the position. It also seems to me desirable that we should express an opinion upon the point because, if we do not do so, it will leave an area of uncertainty in relation to planning matters of this nature which would be undesirable, because there are likely to be other appeals where the same point will arise.”

127. For the reasons set out above, in the facts and circumstances of the present case, I consider it proper, as a matter of my discretion, to allow the point to be raised.

128. Accordingly, in conclusion on Ground 3, in my judgment, Section 8(1) of the 1900 Act imposes an enduring obligation to retain the new garden land as a public garden and integral part of the existing Victoria Tower Gardens. The potential impediment to delivery of the scheme is a material consideration which was not considered at the inquiry.

129. Ground 3 succeeds.

Ground 4: error of law in relation to alternative sites

The Inspector erred in law in considering that in order to attract significant weight, the merits of any alternatives must be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative.

The relevant legal principles

130. The principles on whether alternative sites are an obviously material consideration which must be taken into account are well established. Where there are clear planning objections to development then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it (Trusthouse Forte v Secretary of State for the Environment (1987) 53 P & CR 293 at 299-300).

131. These principles are of obvious application in the present case. As was common ground, locating the Memorial in Victoria Tower Gardens will give rise to harm to the setting of the Buxton Memorial and, as a consequence, the Registered Park and Garden.

The potential of the Imperial War Museum to deliver the acknowledged benefit of the Memorial at a location that will arguably avoid that harm or at least lessen it to a material degree is a material consideration. The Inspector acknowledged the point at IR15.164:

“It is reasonable to suggest that if there are alternative locations for a proposal which would avoid an environmental cost, then these should be taken into account when determining the acceptability or otherwise of the proposal at hand. This is a particularly attractive prospect if it is held that there are viable alternatives sites that could accommodate the proposal without attendant harm.” (IR15.164)

132. However, the Inspector went onto express caution about the prospect of alternative sites:

“But such an approach has to be treated with caution. Whilst (as the Courts have determined) the desirability of having alternative proposals before the Inquiry may be “relevant and indeed necessary”, (though not always essential), in order that it may garner significant weight, the merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative.⁵⁰¹ [8.62, 9.65]”

133. This extract formed the basis of Mr Drabble’s submission under this ground. He submitted that the passage demonstrates an error of law in that it places a burden of proof on an objector to demonstrate the existence of a feasible alternative scheme showing how a prominent and striking memorial can be provided with less harm than at Victoria Tower Gardens. The application of the error is said to be evident in the Inspector’s conclusion that the weight to be afforded to the Imperial War Museum site as an alternative in the planning balance is “very limited” as, “whilst seeming to offer a benign alternative, it lacks a detailed scheme that would meet the core requirements of the HMC and carries clear potential constraints that may hamper its delivery” (IR15.169). There is, Mr Drabble submitted, no legal requirement or burden of proof on an objector to identify and establish the existence of a specific site as a preferable alternative before an application can be refused on the basis that a particular need can be satisfied elsewhere (Trusthouse Forte at 300-301 and South Cambridgeshire DC v SoSCLG [2009] PTSR 37). In the context of a proposal such as the Memorial, and the site selection process that proceeded it, the burden placed on any objector may well prove impracticable to discharge. The particular facts of this case and the concerns around the lack of transparency in the site selection exercise meant this was a case where the burden in relation to alternative sites was firmly on the developer because of the site selection process. The Secretary of State had it in his power to produce detailed schemes but did not do so. On the very specific facts of this case the Inspector’s reliance on the absence of detailed schemes for the alternative sites was unlawful.

134. Case law provides that the extent to which it will be for the developer to establish the need for his proposed development on the application or appeal site rather than for an objector to establish that such need can and should be met elsewhere will vary and is a matter of planning judgment (Trusthouse Forte at 301). The point is amplified in R (Langley Park School for Girls Governing Body) v Bromley London Borough Council. In that case Sullivan LJ referred to Trusthouse Forte when considering when it may be necessary to identify a specific alternative site and said at [52] – [53]).

“52. [...] There is no “one size fits all” rule. The starting point must be the extent of the harm in planning terms (conflict with policy etc.) that would be caused by the application. If little or no harm would be caused by granting permission there would be no need to consider whether the harm (or the lack of it) might be avoided. The less the harm the more likely it would be (all other things being equal) that the local planning authority would need to be thoroughly persuaded of the merits of avoiding or reducing it by adopting an alternative scheme. At the other end of the spectrum, if a local planning authority considered that a proposed development would do really serious harm it would be entitled to refuse planning permission if it had not been persuaded by the applicant that there was no possibility, whether by adopting an alternative scheme, or otherwise, of avoiding or reducing that harm.

53. Where any particular application falls within this spectrum; whether there is a need to consider the possibility of avoiding or reducing the planning harm that would be caused by a particular proposal; and if so, how far evidence in support of that possibility, or the lack of it, should have been worked up in detail by the objectors or the applicant for permission; are all matters of planning judgment for the local planning authority. [...]”

135. I did not understand Mr Drabble to dispute the proposition that the issue is a matter of planning judgment. His complaint focuses on the alleged impermissibility of an escalation by the Inspector of a matter of planning judgment to a hard-edged principle which places the burden of proof on an objector.

The Inspector’s approach to alternatives

136. Before turning to alternative sites, the Inspector considered the suitability of Victoria Tower Gardens as the proposed location for the Memorial:

“15.154 The precise process by which VTG became the preferred and definitive location for the UKHMLC is not clear. The apparent realisation of its potential as such a site has

subsequently been framed as a “moment of genius” (by those on both sides of the argument). But whether bathetic or not, such a choice may well have reasonably been driven by a conclusion that the sites hitherto identified were not adequately meeting the HMC report recommendation requirements, and that further alternatives were necessary.

15.155 What is clear though is how closely the VTG site meets the core expectations of the recommendation...

by virtue of this aesthetic and semiotic boldness combined with its location, the proposal would make a clear and unequivocal statement about the degree of importance we as a nation place on preserving the memory of the Holocaust. A statement moreover that would readily serve as a focal point for its national commemoration. Expressing these attributes, it would indeed stand as an affirmation of the universal human values, and so those also, unashamedly, of British society.

15.156 Such questions of location do however beg the wider questions as to why we raise such memoria, and why we put them where we do. The diverse monumental denizens of Whitehall, Parliament Square, and VTG itself, are all witness to significant national and international events, people or causes. All too, seem held in space by the gravitational mass of the Palace of Westminster, for so long the very epicentre of national and global power. Even to one familiar with these places, the passing observer is compelled to ask of each memorial, “why are you here?” We also know that there are great sensitivities around the relocation of these memoria, such as those to the Pankhursts and to Buxton.

...

15.158... If, as the clear greater majority of those offering a view at the Inquiry and more widely, believe that the commemoration of the Holocaust (and learning of its horrors and contemporary legacy) is profoundly significant, then it follows that the UKHMLC should be located in a place of primary national and indeed international importance. So, locating the combined structure in central London, the nation’s capital, adjacent to the Palace of Westminster, the very epicentre of national law-making, would have an inescapable resonance. It should be recalled that this semiotic appeal was not lost on the HMC, who identified one of the merits of the Millbank site as being its relative proximity to the Houses of Parliament. It should also be recalled that the HMC also concluded that the IWM was also very highly regarded, being within easy reach of Westminster. Moreover, if one accepts the primacy of location in recognising

the importance of the Holocaust, it follows that the selection of a less significant location connotes a lesser degree of significance to the purpose of that commemoration. (15.158)

15.159 In addition, the juxtaposition of the UKHMLC with the Palace of Westminster as an ever-present reminder to lawmakers of the dangers of complacency may be considered trite. But as a lesson to nation and Parliament that, in exploring Britain's relationship with the Holocaust, reflecting on its finer moments, its failures, and the terrible consequences of opportunities not taken, honestly and candidly, would remind us of the fallibility of democracy's assumed righteousness, and our responsibility, if not duty, to others in safeguarding it. Such an approach underscores the direct connection between action, or the lack of it in Parliament, and the consequence in relation to the unfolding cataclysm of the Holocaust. The UKHMLC would make tangible that linkage, amplifying the commemorative and cognitive purpose of the combined structure. Lastly, the idea of the Memorial offering a sense of commemorative citizenship (to those from which it was robbed), a symbol that says "British Jews (and others of minority ethnicity and sexuality) are British; your history is our history; your security is a British concern, you belong here", has a very powerful resonance, and one that should indeed be heard in the context of the Palace of Westminster. 15.159

15.161 In broader locational terms therefore, the proposals would fulfil the expectations of the recommendation of the HMC. More specifically, the location next to the Palace of Westminster not only has a resonance with a key positive attribute of the Millbank and IWM sites, it would offer a powerful associative message in itself, which is consistent with that of the memoria of its immediate and wider context. As a measure of the importance attached to the commemorative task it has, and for all the reasons set out above, I conclude that the location of the UKHMLC adjacent to the Palace of Westminster can rightly be considered a public benefit of great importance, meriting considerable weight in the heritage and planning balance. (15.161)"

137. On behalf of Learning from the Righteous, Mr Simons sought to distinguish the present case from other case law on alternatives. The depth and profundity of meaning in locating the Memorial in Victoria Tower Gardens, next to the Houses of Parliament, is exceptional. The Inspector found, he submitted, that the Memorial will not function in the same way or fulfil the same purpose in a different location. This amounts to a material distinction from the many examples in the authorities. Thus: Trusthouse Forte Hotels Ltd v Secretary of State for the Environment (1987) 53 P. & C.R. 293 was about a proposal for a new hotel near Bristol; R(Mount Cook Land Ltd) v Westminster City Council [2017] P.T.S.R. 1166 concerned external alterations to a department store on Oxford Street in London; R (Save Stonehenge World Heritage Site Limited) v Secretary

of State for Transport [2021] EWHC 2161 (Admin) was about the construction of a new route for the A303 in Wiltshire; R (J (A Child)) v North Warwickshire BC [2001] P.L.C.R. 31 was about a proposal for eight affordable bungalows for older people; Derbyshire Dales DC v Secretary of State for Communities and Local Government [2010] 1 P. & C.R. 19 concerned a proposal for 4 wind turbines; and R (Langley Park School for Girls Governors) v Bromley LBC [2010] 1 P. & C.R. 10 was about rebuilding a school in Kent. These examples - a hotel; school building; affordable bungalow; wind turbine – may be located in any number of places and still function in the same way.

138. I accept Mr Simons’ submission that the depth of meaning associated with locating the Holocaust Memorial next to the Houses of Parliament sets the present case apart from the other case law on alternatives put before the Court. The Inspector accepted that the proposed location in Victoria Tower Gardens meets the core expectations of the recommendations of the Holocaust Commission’s report. Its location would help the scheme to make a “*clear and unequivocal statement about the degree of importance we as a nation place on preserving the memory of the Holocaust*” which would “*readily serve as a focal point for its national commemoration*”. He accepted that there is an explicit and direct relationship between the significance and prominence of any given site and the value and status that individuals assign to the events commemorated (IR15.157). The Scheme’s location next to Parliament in a place of “*national and indeed international importance*” was found to be justified (15.158). The Inspector continued in the same paragraph that: *if one accepts the primacy of location in recognising the importance of the Holocaust, it follows that the selection of a less significant location connotes a lesser degree of significance to the purpose of that commemoration.*” Nonetheless; I did not understand Mr Simons to be proposing a new legal proposition to reflect the distinction. The matter remains one of planning judgment for the Inspector who found in this case that the location in Victoria Tower Gardens merits considerable weight. I agree with Mr Simons that this sets the context for the exercise of his planning judgment in the consideration of alternative sites for the Memorial.

139. Having reached his conclusion on the suitability of Victoria Tower Gardens, the Inspector made the following observation in which he accepted the relevance of alternative sites:

“15.163 the belief that if the proposals were moved to another location, specifically the IWM, the clouds of such controversy would lift and a universal consensus on the merits of that location be achieved is, to say the least, optimistic. From what I heard at the Inquiry and saw during my site visit, the debate over the merits of that location, the relationship of its purpose to its host, and the environmental and social costs it might entail, would still prevail. Nevertheless, a consideration of such alternative sites is reasonable and justified in light of the matters raised at the Inquiry.” (IR 15.163) (emphasis added)

140. He further directed himself on the materiality of alternative sites at IR 15.164 whilst expressing caution about the prospect of alternative sites, which, as mentioned, formed the basis of Mr Drabble’s submissions on this ground:

“It is reasonable to suggest that if there are alternative locations for a proposal which would avoid an environmental cost, then these should be taken into account when determining the acceptability or otherwise of the proposal at hand. This is a particularly attractive prospect if it is held that there are viable alternative sites that could accommodate the proposal without attendant harm.” “But such an approach has to be treated with caution. Whilst (as the Courts have determined) the desirability of having alternative proposals before the Inquiry may be “relevant and indeed necessary”, (though not always essential), in order that it may garner significant weight, the merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative. 501 [8.62, 9.65]”

141. Having identified the three primary alternative sites (IR 15.165) he narrowed his focus to the site at the Imperial War Museum stating that it is on this site *“that the hopes of those opposing the VTG proposal are focused as a credible alternative worthy of weight in the planning balance... Such an interest is not without justification”* (IR 15.166). He went on to address the relative merits and disadvantages of the Imperial War Museum site. As to its merits: the Imperial War Museum site was one of the sites identified in the Holocaust Memorial Commission report; there are obvious synergies with the existing and proposed Holocaust content of the museum; it is an institution familiar with handling large numbers of people; it has a landscape context that could accommodate a combined Memorial and Learning Centre, and there is a provisional scheme by a distinguished architectural practice testing its feasibility, albeit this is limited in scope. Moreover, the Holocaust Memorial Commission saw the advantage of the site, as previously stated, in it being *“within easy reach of Westminster”*. He then turns to address the disadvantages of the site including his view that *‘there are serious questions’*, as to whether it would meet the critical Holocaust Memorial Commission requirement for a prominent and striking memorial (IR15.167). Further; he went on to state that *‘it is at least apparent to me that the IWM site is not free from constraint.’* He listed the constraints as including: a Grade II listed building and works which could affect its special interest; a conservation area; potential impact on two mature trees on the site; loss of public open space and early years play and learning facility; less well developed security infrastructure and implications for local residents. He concluded that *“Clearly, achieving a combined facility here would also involve the balancing of benefits against possible harms, some not dissimilar to those at VTG”* (15.168). This is the context in which he arrives at the view that *“whilst seeming to offer a benign alternative, IWM lacks a detailed scheme that would meet the core requirements of the HMC and carries clear potential constraints that may hamper its delivery. Together this suggests that the weight to be afforded the IWM alternative in the planning balance is very limited.”* (IR 15.169). He then turns to consider timing of construction/installation of the Memorial and the importance of delivering the Memorial during the lifetime of Holocaust survivors, a matter to which considerable

weight should be attached. If the scheme at Victoria Tower Gardens were to be refused, work may have to begin on the scheme at an alternative with consequent further delay (IR15.170-172 set out in full above).

Analysis of Ground 4

142. Mr Drabble's case on this ground is based on one sentence in IR 15.64 by which he seeks to derive a quasi-legal test said to be applied by the Inspector, at IR 15.69. The Courts have on many occasions cautioned against a forensic and overly legalistic focus on individual sentences in the context of, as in this case, a lengthy, sophisticated and nuanced report. The Report must be read as a whole and in proper context.
143. In this respect, the key building blocks to the Inspector's approach to alternative sites were as follows:
- 1) Great weight should be given to locating the Memorial in Victoria Tower Gardens, next to the Houses of Parliament, given the profound connection between the location and the purpose of the Memorial.
 - 2) There are obvious constraints on locating the Memorial in the Imperial War Museum including that it does not appear able to fulfil a key Commission requirement for a striking and prominent Memorial.
 - 3) Other constraints on the Imperial War Museum site include potential impact on heritage assets; security and impacts on local residents.
 - 4) The suggestion that locating the Memorial in the Imperial War Museum will be free from controversy is optimistic.
 - 5) Though unusual in planning terms, it is of material weight that the Holocaust Memorial should be raised within the lifetime of at least some of those survivors.
 - 6) In the event the Minister was to refuse permission for the Memorial in Victoria Tower Gardens the detailed process of selection, evaluation, preparation, design, consultation and formal consideration of a new proposal would begin again. This suggests approximately five years of further work, which will add to the number of survivors who do not live to see the outcome.
 - 7) Achieving a memorial within the lifetime of survivors has a resounding moral importance that can legitimately be considered a material consideration and a public benefit of great importance, meriting considerable weight in the planning balance in this case."
144. I am not persuaded that the Inspector fell into the error suggested by Mr Drabble in impermissibly elevating a matter of planning judgment into a hard-edged principle about the burden of proof in relation to alternative sites. The first to third sentences of IR 15.64 are unobjectionable and the Trust makes no complaint about them. Mr Drabble focusses on the fourth sentence "*in order that it may garner significant weight, the*

*merits of such alternatives must, logically, be underpinned by a good measure of evidence demonstrating their viability and credibility as such an alternative.*⁵⁰¹ [8.62, 9.65]”. However, at the end of the sentence, the Inspector inserts a footnote and two cross references. The footnote refers to Trusthouse Forte Hotels Ltd v Secretary of State for Environment (1987) 57 P. & C.R. 293. The first cross-reference is to IR 8.62 where the Inspector records Westminster Council’s submission, supported by the Council’s reference to Trusthouse Forte, that the absence of detailed and worked up alternatives before the inquiry is not a reason for discounting alternative sites:

“WCC believes that the absence of detailed and worked up alternatives before the Inquiry is not a reason for discounting this principle, as 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””.

145. He also cross-referred to IR 9.65 recording the submission by the Trust, made again by reference to Trusthouse Forte that “[i]t is not accepted that the existence of an alternative proposal or site is only a material consideration if there is a specific scheme in existence (such as occurs in a conjoined planning appeal or otherwise)”.
146. The Inspector’s approach accords with Trusthouse Forte and reflects “*the spectrum*” explained in Langley Park per Sullivan LJ at [52] – [53] that “*how far evidence in support of [a] possibility, or the lack of it, should have been worked up by the objectors or the applicant for permission [are] all matters of planning judgment*”. His approach at IR 15.164 is an example of the application of planning judgment to that question as it arose in the case before him. He expressly recognises that it is not necessary for a specific alternative site to be placed before the inquiry (“*though not always essential*”) before indicating, unremarkably, that the weight to be given to a proposed alternative will be affected by the evidence of its credibility and viability as an alternative vehicle to meet the need for which the proposed development has been brought forward. The Trust does not identify any authority for the proposition that the credibility and viability of delivery of a proposed alternative is not relevant to the evaluation of an alternative site. It is simply an aspect of the Inspector’s planning judgment.
147. Accordingly, I accept Mr Mould’s submission that it is incorrect to characterise the Inspector’s approach as being to place a burden on objectors to produce a detailed scheme for an alternative location for the proposed development. In the light of the authorities, it was legally permissible for him to evaluate the strength of the case for rejecting the planning application before the Minister by considering (amongst other matters) the level of information before him on proposed alternative schemes, including the extent of the evidence in support of a particular alternative site when determining the weight to be afforded to that alternative in the planning balance.

148. In short, the Inspector accepted that the benefits associated with locating the Holocaust Memorial in Victoria Tower Gardens simply could not be achieved elsewhere or within the same timescale. I accept the submissions by Mr Mould, Mr Katkowski and Mr Simons that, properly understood, the challenge on this ground is an attack on the weight which the Inspector afforded to the alternative site at the Imperial War Museum. In this context, Mr Katkowski took the Court to various references to weight by the Inspector in his assessment of alternatives (IR 15.165; 15.122; 15.126, 15.169 and 15.189.) I also note that the Inspector visited the sites proposed as alternatives and his site visit to the Imperial War Museum was informed by a conceptual design in the Environmental Impact Statement and a comparative analysis which assessed the competing claims of alternative sites. I remind myself that where an Inspector's conclusions are based on impressions received at a site visit, anyone seeking to question those conclusions faces a particularly daunting task (R (Newsmith Stainless Ltd) v Secretary of State [2001] EWHC 74 (Admin) at [8]).

149. As advanced by Mr Drabble, Ground 4 therefore fails. However, I have concluded in relation to Ground 3 that, section 8 of the 1900 Act imposes an enduring statutory obligation to maintain Victoria Tower Gardens as a public garden, This is a material consideration in the context of the Inspector's emphasis on the importance of the need to deliver the scheme within the lifetime of the Holocaust survivors. The Inspector considered the question of alternative sites and the implications of their deliverability without assessment of the deliverability of the location in Victoria Tower Gardens in the context of the issues now presented by the Court's construction of the 1900 Act. In the circumstances, as a consequence, to this extent, Ground 4 succeeds.

Remedy

150. On behalf of the Trust, Mr Drabble submitted that the Court should conclude that the erection and use of the proposed Memorial would plainly contravene the terms of section 8 of the 1900 Act including placing the Secretary of State in breach of the continuing statutory obligation under section 8 to maintain the new garden land as a garden open to the public and an integral part of Victoria Tower Gardens. In his submission, the appropriate remedy is for the Court to quash the decision.

151. For the Secretary of State, Mr Katkowski submitted that, in the event that the Court agreed with the Trust on the point of statutory construction this could not justify quashing the decision as to do so would be wholly disproportionate in relation to a point that wasn't even argued by the Trust at the inquiry. At most, the Court should issue a declaration as doing so would leave the ability to remove the obstacle by repealing the relevant remaining provisions of the 1900 Act.

152. Section 288(5) of the Town and Country Planning Act defines the relief available on an application under the section in the event the Court is satisfied of the unlawfulness of a relevant decision. The Court's discretion extends to a quashing order, not a declaration.

153. In considering the exercise of my discretion, I take into account the existence of an Act of Parliament (the 1900 Act) which specifically regulates the land in question and the statutory basis on which the land must be held (a public garden).
154. In assessing the suitability of the Gardens and in placing little weight on alternative sites, the Inspector placed considerable weight on the timing of deliverability of the Scheme. In his submissions on Ground 4 (alternative sites), Mr Katkowski described the timing aspect of deliverability as a ‘powerful’ aspect of the Inspector’s analysis. However, the Inspector did so without any appreciation of the deliverability issue raised by the 1900 Act.
155. I was not addressed on the mechanics of if, how or when the 1900 Act might be repealed. Mr Drabble posited that it may require hybrid legislation. It was not disputed that the issue raises factual questions of some difficulty and detail which may require exploration of the relative speed of delivery of each site.
156. Mr Drabble submitted it is plain that the proposed scheme will breach the requirements of the 1900 Act, which are that the land be retained as a public garden and integral part of Victoria Tower Gardens. He pointed to the requirement in section 8(6) for uniformity of design in the Gardens.
157. Mr Katkowski pointed me to passages of the Inspector’s report which he submitted demonstrated a measured, sensible and nuanced assessment of the likely impact and overall position in relation to the Gardens from the proposals, leading to a conclusion that the Gardens would continue to function as a garden for the public. However, the passages in question do not address the impact in the context of the provisions of the 1900 Act (integral garden; public use; uniformity of design). Moreover, the Inspector’s assessment includes the following analysis:

15.206 “The UKHMLC has been designed to as far as possible integrate with its context. Nonetheless, its purpose would be to both command attention and generate an emotional response to seeing and visiting it. It would attract large numbers of visitors. From the current highest recorded occupancy level of almost 400, this is anticipated to increase to a maximum of 1,269 people at any one time. The peak number of visitors accessing the secure area per day is estimated as 3,000, with a further 7,000 per day estimated as entering the park to view the Memorial only. Whilst these would be peak rather than typical use figures, it is inevitable that the significant increase in visitor numbers to the park would have an impact on its character and functionality, particularly during the Memorial opening hours proposed as between 09:30-17:30.

15.207 The degree to which the park could be used in a relaxed and informal way would be constrained by the reduction in size and division of the open flat green space, and inevitably to some extent by the increase in visitor numbers. Its quality as a peaceful breathing space would, to a degree, be diminished and it would become a busier and more structured environment. This would include lighting of the Memorial, and the footpaths leading to it, at night.”

158. Given this assessment, it cannot be said that the existence of the 1900 Act makes no difference to the outcome of the decision. On the information before the Court, Mr Drabble’s contention is a proper one with real prospects of success. Accordingly, the appropriate remedy is to quash the decision, so as to enable further consideration of the implications of the London County Council (Improvements) Act 1900 for the proposed scheme.

Conclusion

159. For the reasons explained above, the claim fails on Ground 1 (heritage impacts) but succeeds on Ground 3 (London County Council (Improvements) Act 1900) and on Ground 4 (alternative sites), to the extent that the Inspector’s assessment of alternative sites was conducted without an appreciation of the implications of the London County Council (Improvements) Act 1900. The Minister’s decision is quashed.

Postscript: Permission to appeal

160. After the judgment was circulated in draft to the parties, the Court received applications for permission to appeal from the Minister and the Secretary of State. Submissions in response were filed by the Trust. Having considered the submissions carefully, I refuse permission to appeal for the following reasons.

161. I am not persuaded that the submissions made by the Minister in relation to the construction of the 1900 Act raise points with a real prospect of success. Section 8(1) of the Act provides that the land “*shall be laid out and maintained...for use as a garden open to the public*”. Section 8(1) remains in force. It is the use (as a public garden) that has to be maintained, not just its physical characteristics.

162. Mr Mould seeks to draw an analogy between provisions in the 1900 Act, which predates modern planning control, which regulate the performance and future maintenance of the improvement works, with conditions in a modern planning permission which state and define the ambit of the planning control. However, unlike the modern planning Acts, section 8 of the 1900 Act is specific to Victoria Tower Gardens. The historical context revealed by the passage of the Act, which the appeal

submissions do not address, is clear. It supports the construction of section 8(1) as imposing an enduring restriction on the use of the land. Victoria Tower Gardens is an example of land with a statutory restriction (like, for example, much of National Trust land may be declared inalienable, pursuant to Act of Parliament). Any change to its use as a public garden requires parliamentary approval. If recourse may be had to pre-legislative material for meaning, then the reference in the Report of the Improvements Committee (13 March 1900) to the land being kept as a garden for the use of the public forever puts the matter beyond doubt. Given the detail available in the archival material, one would have expected to see a great deal written on the matter, had the ‘forever’ point been controversial.

163. As regards the exercise of discretion to allow Ground 3 to be argued: Mr Mould places reliance on the statement in Trustees of Barker Mills Estates v Test Valley Borough Council [2016] EWHC that *“one factor which weighs strongly against allowing a new point...is that if it had been raised in the earlier inquiry...it would have been necessary for further evidence to be produced and/or additional factual findings or judgments by the inspector, or alternatively participants would have had the opportunity to adduce evidence or make submissions”*. Mr Mould submits that this was precisely the case here. However, there is a clear distinction between the present case and the Barker Mills case. In Barker Mills the point in question had not been raised by any party during the examination, a point the Judge placed emphasis on (*“Furthermore, no one suggests that it was raised by any other party”* (70)). Here, the point was raised by a party and in terms which directly invoke the central point about legality (*“Building on VTG...would be illegal under the Act...as the Act requires that the land be maintained as ‘a garden open to the public’”* (extract from the relevant submission)). Having been raised, the Act needed to be grappled with, but it was not. This is the context in which Mr Mould’s submission that the parties have been denied an opportunity to adduce evidence on the matter falls to be assessed. In the circumstances of this case, any such missed opportunity cannot amount to a countervailing factor against the exercise of the discretion.

164. On the unusual facts of this case, the 1900 Act was a material planning consideration, for the reasons explained in paragraphs 110, 111, 143, 149 and 154 of the judgment. The Act affects the deliverability of the Memorial in Victoria Tower Gardens and the desirability of implementing the Memorial within a reasonable timescale was an integral part of the Inspector’s reasoning.

165. In the absence of a real prospect of success on appeal, there are no other compelling reasons for the appeal to be heard. A ‘compelling’ reason must be a legally compelling reason. Public interest in the project does not suffice. The argument about construction of section 8 is specific to the present application for planning permission. This is not a case where there is a need to elucidate the legal policy behind section 8 or to investigate the implications of the construction in other factual scenarios.

ANNEX 3

London County Council (Improvements) Act 1900

**CHAPTER cclxix.**

An Act to empower the London County Council to make an extension of the Thames Embankment and a new street and improvements at Westminster to widen Mare Street Hackney and to make other street improvements and works in the administrative county of London and for other purposes. A.D. 1900.

[6th August 1900.]

WHEREAS it is expedient to confer on the London County Council (herein-after called "the Council") powers to make the improvements and works herein-after described and it is also expedient to confer on the Council such powers as are herein-after set forth with regard to the raising of money for the purposes of this Act :

And whereas it is also expedient to confer upon the Council in connexion with and for the purposes of the improvements by this Act authorised the powers herein-after set forth :

And whereas it is expedient that provisions should be made with regard to contributions by the Council of the city or borough of Westminster constituted or to be constituted under the London Government Act 1899 towards the Thames Embankment extension and improvements at Westminster by this Act authorised and that such provisions as are herein-after set forth should be made with reference thereto :

And whereas it is expedient that provisions should be made with regard to contributions by the vestries of certain parishes and by the Wandsworth District Board of Works as in this Act specified towards the improvements by this Act authorised within their respective parishes and district and that other provisions relative thereto should be made as herein-after set forth :

And whereas the Council have caused to be deposited with the clerk of the peace for the county of London plans and sections describing the lines and levels of the works by this Act authorised

A.D. 1900. — and the lands which may be taken for the purposes thereof and also plans of the lands liable to have a special charge imposed upon them under this Act and also a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of those lands and such plans sections and book of reference are respectively referred to in this Act as the deposited plans sections and book of reference :

And whereas estimates have been prepared by the Council as to the amount which they will require to expend on capital account for the purposes of this Act and such estimates (being in each case calculated to cover the original cost of purchasing lands and executing the works without any allowance in respect of returns from re-sale or letting of lands which will be ultimately available for that purpose) are as follows :—

| | £ |
|--|------------|
| Thames Embankment extension and im- provements at Westminster - - - | 1,319,000 |
| Mare Street Hackney Widening - - - | 660,750 |
| Goswell Road Widening - - - | 227,800 |
| Saint John Street (Clerkenwell) Widening | 92,400 |
| Blackstock Road (Islington) Widening - | 5,200 |
| Archway Road (Islington) Widening - | 6,000 |
| Kentish Town Road Widening - - - | 10,450 |
| Nine Elms Lane Widening - - - | 171,300 |
| Widenings at Battersea Rise - - - | 46,900 |
| Widenings at Blackheath Road Black- heath Hill and New Road - - - | 41,200 |
| High Street and Gardener's Lane Putney Widening - - - | 45,030 |
| | £2,626,030 |

And whereas the objects aforesaid cannot be effected without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

PART I.—INTRODUCTORY.

Short title. 1. This Act may be cited as the London County Council (Improvements) Act 1900.

2. In this Act the following words and expressions have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction (that is to say):—

A.D. 1900.
Interpretation.

“The Council” means the London County Council;

“The improvements” means the improvements and works by this Act authorised;

“Street” has the meaning assigned to that term in the Metropolis Management Acts 1855 to 1893;

And the several words and expressions to which by the Acts wholly or partly incorporated herewith meanings are assigned have in this Act the same respective meanings unless there be in the subject or context something repugnant to or inconsistent with such construction:

Provided that for the purposes of this Act the expressions “the promoters of the undertaking” and “the company” in the Lands Clauses Acts shall be construed to mean the Council.

3. The Lands Clauses Acts are (except section 133 of the Lands Clauses Consolidation Act 1845 (land tax and poor's rate to be made good) and except where expressly varied by this Act) incorporated with and form part of this Act.

Incorporation of Lands Clauses Acts.

PART II.—IMPROVEMENTS.

4. Subject to the provisions of this Act in the lines or situation and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections the Council may execute the works in the county of London herein-after described viz.:—

Power to Council to make works.

(1) *Thames Embankment Extension and Improvements at Westminster.*

An embankment wall and an embankment on the foreshore of the River Thames in continuation of the existing river embankment south of the Houses of Parliament commencing at the present termination of the existing embankment at the south-easteru corner of the Victoria Tower Gardens and terminating at the northern side of Lambeth Bridge:

A new street consisting in parts of widenings of Abingdon Street and Millbank Street commencing in Abingdon Street opposite or nearly opposite the entrance to the Peers Office Court of the House of Lords and terminating at the western end of Lambeth Bridge:

A.D. 1900.

A widening of Horseferry Road on the northern side thereof from Lambeth Bridge to Carpenter Street :

A widening of Wood Street on the southern side thereof from its junction with Millbank Street to its junction with Saint John Street :

Alterations of Smith Square and the approaches thereto comprising—

- (i) Widening of the roadway of the same on all four sides ;
- (ii) The widening of North Street from Wood Street as proposed to be widened to Smith Square ;
- (iii) Widening of Church Street at its junction with the roadway of Smith Square ;
- (iv) A new street commencing in Horseferry Road as proposed to be widened at about $1\frac{1}{2}$ chains eastward of Carpenter Street and terminating in Smith Square opposite the southern entrance to Saint John's Church ;
- (v) A new street commencing in Tufton Street about 1 chain northward of Little Tufton Street and terminating in Smith Square opposite the western side of Saint John's Church :

The said works will be situate in the parish of Saint John the Evangelist Westminster.

(2) *Mare Street Hackney Widening.*

- (i) A widening of Mare Street (Hackney) on the east side thereof commencing at the point where the North London Railway crosses Mare Street Hackney and terminating at the junction of Mare Street with Darnley Road :
- (ii) A widening of Morning Lane partly on the southern and partly on the northern or north-western side thereof commencing about a chain from the junction of Morning Lane with Mare Street and terminating near the southern end of Chalgrove Road :
- (iii) A new street commencing in Morning Lane at a point about $1\frac{1}{2}$ chains eastward of the junction thereof with Mare Street and terminating in Paragon Road at or near the entrance therefrom to Jerusalem Passage :
- (iv) A widening of Mare Street on the western side thereof commencing about $2\frac{1}{2}$ chains southward of the junction of the Grove with Mare Street and terminating at a point opposite Pemberton Place :
- (v) A widening of Mare Street on the eastern side thereof commencing between the Congregational Chapel and the

Catholic Apostolic Church and terminating at the junction of Well Street and Mare Street including a widening of Well Street on the northern side extending from Mare Street to Weston Place: A.D. 1900.

- (vi) A widening of Mare Street on the western side opposite the junction therewith of Well Street commencing at the northernmost corner of the "Dolphin" public-house and terminating at a point 1 chain or thereabouts northward of the said corner:
- (vii) A widening of Mare Street on the eastern side commencing at a point in Well Street about half a chain to the eastward of coach yard and terminating near the junction of Tudor Road with Mare Street including a widening of Tudor Road on the north side thereof between Mare Street and a point about 2 chains east of Mare Street:
- (viii) A widening of Mare Street on the eastern side commencing near the junction therewith of Tudor Road and terminating at a point 1 chain or thereabouts northward of the junction therewith of King Edward Road:

The said works will be situate in the parish of Saint John Hackney.

(3) *Goswell Road Widening.*

A widening of Goswell Road in the parish of Saint James and Saint John Clerkenwell on the western side of the said road commencing at the junction of Upper Ashby Street with the Goswell Road and terminating at the junction therewith of Great Sutton Street.

(4) *Saint John Street (Clerkenwell) Widening.*

A widening of Saint John Street on the western side thereof in the parish of Saint James and Saint John Clerkenwell commencing at the junction therewith of Aylesbury Street and terminating at the junction therewith of Albemarle Street.

(5) *Blackstock Road (Islington) Widening.*

A widening of Blackstock Road on the south-western side thereof in the parish of Saint Mary Islington commencing $4\frac{1}{2}$ chains to the southward of Ambler Road and extending therefrom southward for a distance of 3 chains or thereabouts.

(6) *Archway Road (Islington) Widening.*

A widening of Archway Road in the parish of Saint Mary Islington on the eastern or north-eastern side thereof com-

A.D. 1900.

mencing at a point in the Archway Road 2 chains or thereabouts northward of the junction therewith of Whitehall Park and terminating at a point $7\frac{1}{2}$ chains northward of the said junction.

(7) *Kentish Town Road Widening.*

A widening of Kentish Town Road in the parish of Saint Pancras on the eastern side thereof commencing at the junction therewith of Patshull Road and terminating at a point 2 chains or thereabouts northward of the junction therewith of Gaisford Street.

(8) *Nine Elms Lane Widening.*

A widening of Nine Elms Lane (partly in the parish of Saint Mary Battersea and partly in the parish of Lambeth) partly on the north and partly on the south side of the said Nine Elms Lane commencing at the junction of Nine Elms Lane with Battersea Park Road in the parish of Saint Mary Battersea and terminating at the junction of Nine Elms Lane with Wandsworth Road in the parish of Lambeth.

(9) *Widenings at Battersea Rise.*

A widening and improvement of the road known as Battersea Rise in the parish of Saint Mary Battersea—

(a) On the north side—

Between a point $\frac{1}{2}$ a chain or thereabouts westward of the junction therewith of Webb's Road and Saint John's Road :

(b) On the south side—

Between a point $1\frac{1}{2}$ chains or thereabouts westward of Almeric Road and a point 1 chain or thereabouts eastward of Saint John's Road ;

Between Saint John's Road and Middleton Road.

(10) *Widenings at Blackheath Road Blackheath Hill and New Road.*

A widening and improvement of the following streets between the points herein-after mentioned—

Blackheath Road in the parish of Greenwich on the south side between Ditch Alley and a point $2\frac{1}{2}$ chains or thereabouts west of the junction of Blackheath Road with Lewisham Road ;

Blackheath Hill in the parish of Greenwich on the north side between a point opposite the junction therewith of Merton Place and Maidenstone Hill : A.D. 1900.

New Road in the parish of Woolwich—

On the east side between points respectively 1 chain and 4 chains or thereabouts southward of the bridge carrying the said road over the South Eastern Railway ;

On the west side at the premises of the Royal Engineers barracks and the Post Office adjoining the same between a point opposite Anglesea Road and the junction of Thomas Street and New Road aforesaid including a widening of Thomas Street between the eastern corner of the Post Office building and New Road.

Provided that the powers conferred on the Council by this Act with respect to the works authorised by this section under the heading "Thames Embankment Extension and Improvements at Westminster" shall not be exercised by the Council unless a sum of one hundred thousand pounds as a contribution towards the costs and expenses thereof is agreed to be paid by the Council of the city or borough of Westminster constituted or to be constituted under the London Government Act 1899.

5. Subject to the provisions of this Act in the lines or situation and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections the Council may execute the following works in the parish of Putney in the county of London viz. :— Widening
of High
Street and
Gardener's
Lane
Putney.

(a) A widening of High Street on the western side thereof such widening to commence at the junction of Gardener's Lane therewith and to terminate at a point in High Street about 3 chains northward of the said junction :

(b) A widening of Gardener's Lane partly on the north and partly on the south side thereof such widening to commence at High Street and terminate at a point about $5\frac{1}{2}$ chains north-west of High Street.

6.—(1) Subject to the provisions of this Act the Council may enter upon take and use all or any of the lands shown on the deposited plans and described in the deposited book of reference as intended to be taken for the purposes of this Act which they may require for the purposes of the improvements and for providing space for the erection of houses and buildings adjoining or near to the improvements. Power to
take lands.

A.D. 1900.

(2) The powers of the Council for the purchase of lands by agreement shall be deemed to extend to and to authorise the purchase by the Council by agreement of any other lands which they may think it desirable to purchase in order to provide substituted sites or facilities for any persons whose lands may be required by them for the purposes of or in connexion with the improvements.

Provided that the powers of this section shall not apply to any of the lands numbered 283 to 295 inclusive on the deposited plans of the Thames Embankment extension and improvements at Westminster.

Various provisions as to embankment works &c.

7.—(1) In constructing the embankment wall and embankment herein-before described the Council may with the previous consent in writing of the First Commissioner of Works construct such steps piers landing-stages and other works in connexion with the said embankment as they may deem necessary or convenient.

(2) The Council may for the purposes of the said embankment and embankment wall take and use so much of the foreshore of the River Thames as is within the limits of deviation shown on the deposited plans and which may be required for such purposes and they may also for purposes of making temporary works and conveniences in connexion with the said embankment and embankment wall occupy and use temporarily so much of the bed or foreshore of the River Thames within the limits of deviation shown on the deposited plans as may be required for those purposes or any of them.

(3) Subject to the provisions of this Act for the purposes of constructing the said embankment wall and embankment the Council and for the purposes of maintaining renewing and repairing the same the Commissioners of Works may alter or interfere with the banks bed or foreshore of the River Thames at or near the said embankment wall and may place temporarily coffer dams and piles and may erect such temporary staging and other works in upon or over the river or the bed or foreshore thereof as may be necessary or convenient for any of the purposes aforesaid.

For protection of the Commissioners of Works.

8. Whereas the works authorised by this Act under the heading "Thames Embankment Extension and Improvements at Westminster" (herein-after referred to as "the Westminster improvement") will involve the occupation of certain lands vested in Her Majesty or vested in or under the control of the Commissioners of Works and will also necessitate some interference with the garden adjoining the Houses of Parliament known as the Victoria Tower Garden :

And whereas by the Crown Estate Paving Act 1851 the management of certain streets and places in the neighbourhood of the Houses of Parliament which include Abingdon Street or part thereof was transferred to and vested in the Commissioners of Works : A.D. 1900.

And whereas it has been agreed between the Commissioners of Works and the Council that the said works shall only be executed subject to and in accordance with the provisions herein-after set forth :

And whereas for the purposes of this Act a plan has been prepared (in this section referred to as "the signed plan") which for purposes of identification has been signed by the Right Honourable Lord Brougham and Vaux the Chairman of the Committee of the House of Lords to whom the Bill for this Act was referred a copy of which plan has been deposited in the Office of the Clerk of the Parliaments :

Therefore—

- (1) The lands lying to the eastward of the new street described in this Act as consisting in part of widenings of Abingdon Street and Millbank Street which is in this section called "the new street" and between the said street and the new embankment wall shall be laid out and maintained in manner herein-after provided for use as a garden open to the public and as an integral part of the existing Victoria Tower Garden subject to such byelaws and regulations as the Commissioners of Works may determine :
- (2) The Council shall construct the new embankment wall to the satisfaction of and in accordance with plans approved by the First Commissioner of Works :
- (3) The Council shall to the satisfaction of the First Commissioner of Works clear and make up to a level suitable to the laying out of the garden the surface of the land between the new street and the new embankment wall to be laid out as a garden (which land is hereafter referred to as "the new garden land") and in default of their doing so the Commissioners of Works may do all work necessary for that purpose and all costs incurred by the Commissioners in relation thereto shall be repaid to the Commissioners by the Council But nothing in this section shall authorise the Council to remove any trees now standing within the garden :
- (4) The Council shall do all things necessary to vest the new garden land in the Commissioners :

A.D. 1900.
—

- (5) As soon as that land is so vested in the Commissioners of Works the Commissioners shall remove the existing railings and kerb on the west side of Victoria Tower Garden southward of a point thirty yards southward of the centre of the existing entrance to the Victoria Tower Garden opposite Great College Street and shall erect along the eastern side of the new street southward of the said point from which the existing railings and kerb are to be removed a kerb and railings of a suitable pattern and for that purpose may if they think fit use the existing kerb and railings :
- (6) The Commissioners of Works shall lay out as a garden the new garden land so vested in them and may also make such alterations in the paths bedding and turfing of the existing Victoria Tower Garden (in so far as any portion of it is not thrown into the new street) as they may think necessary to secure uniformity of design in the Victoria Tower Garden as extended under the provisions of this section :
- (7) The Council shall pay to the Commissioners of Works the cost of the works to be executed by the Commissioners in respect of the removal and erection of railings and kerb and of altering and laying out the garden as before in this section mentioned Provided that the sum so payable shall not exceed five thousand pounds :
- (8) The Commissioners shall maintain the garden so laid out and the embankment wall and kerb and railings enclosing it :
- (9) The Council shall purchase the house and premises numbered 297 on the deposited plan :
- (10) There shall be thrown into and form part of the new street—
- (a) So much of the land forming part of the Victoria Tower Garden as lies to the westward of the line marked A B on the signed plan and is coloured brown thereon ;
 - (b) So much of the piece of land now occupied as a storeyard and numbered 329 on the deposited plan and coloured brown on the signed plan as is situate to the westward of the line marked B C on the signed plan ;
 - (c) So much of the properties numbered 296 297 298 299 and 300 on the deposited plan as lies to the eastward of the curved line marked D E on the signed plan and as is coloured red on the signed plan :

- (11) The Commissioners of Works shall give vacant possession of the part of the said properties numbered 296 298 299 and 300 on the deposited plan which is to be thrown into the new street but shall not be required to do so before the expiration of six months after notice in writing has been served on the Commissioners by the Council that the other parts of the Westminster Improvement have been completed : A.D. 1900.
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Provided that nothing in this Act shall prejudice or affect any right title or interest of Her Majesty or the Commissioners in to or over so much of the said properties numbered 296 298 299 and 300 on the deposited plan as is situate to the westward of the curved line marked D E on the signed plan :

- (12) The Council shall convey to the Commissioners of Works the fee simple in possession of so much of the property numbered 297 on the deposited plan as lies to the westward of the curved line marked D E on the signed plan but the Council shall not be required to complete such conveyance earlier than the date upon which the Commissioners of Works are to give vacant possession of so much of the properties numbered 296 298 299 and 300 as are situate to the eastward of the said line marked D E :

The sum receivable by the Council in consideration of the said conveyance including all costs and charges thereof shall not exceed ten thousand pounds :

- (13) Before the Council enter upon the said piece of land used as a storeyard for the purpose of clearing the new garden land or of making the new street they shall provide to the satisfaction of the First Commissioner of Works a substituted piece of land to be used for the purposes for which the said storeyard is at present used :

- (14) As soon as the new street has been paved and lighted to the satisfaction of the First Commissioner of Works all the powers duties and authorities vested in and exercisable by the Commissioners of Works in respect of Abingdon Street under and by virtue of the Crown Estate Paving Act 1851 shall be or continue to be vested in and exercisable by the Commissioners in respect of the new street from the commencement thereof at Old Palace Yard as shown on the signed plan to the line marked F G on the signed plan :

A.D. 1900.
—

- (15) The Council shall not under the powers of this Act alter the level of any streets or places which are under the charge management or control of the Commissioners of Works without having previously obtained the consent in writing of the First Commissioner to such alteration and the Council shall bear the expense of adapting or adjusting the said streets or places to the requirements of the improvements :
- (16) No building fronting the new street at the junction therewith of Great College Street shall be so erected that the main front wall at the north-east corner thereof shall be placed nearer than 80 feet to the line of the existing railings on the west side of the Victoria Tower Garden :
- (17) Subject to the provisions of any future Act of Parliament with reference to the reconstruction of Lambeth Bridge and the approaches thereto the frontage of the buildings at the termination of the new street on the western side shall not project in front of the line marked H I on the signed plan :
- (18) No new or additional building (including any addition to the height of a building) shall be erected on the west side of the new street other than buildings on the property of Her Majesty or the Commissioners of Works until the elevations and exterior design of such buildings have been approved by the Council and as regards buildings lying to the north of the line marked F G on the signed plan also by the First Commissioner of Works :
- (19) The Council shall at their cost if required in writing by the First Commissioner of Works construct vaults to the satisfaction of the First Commissioner under the footway on the west side of the new street so far as the said properties numbered 296 to 300 will abut on the new street :
- (20) No subway shall be constructed under the powers of this Act within a distance of one hundred feet from the Victoria Tower :
- (21) Nothing contained in this Act shall authorise the Council without the consent of the First Commissioner to obstruct or interfere with the free access to the Houses of Parliament during such time as the Houses of Parliament or either of them shall be in session :
- (22) The Council shall not under the powers of this Act interrupt the supply of electric current to the Houses of Parliament.

9. For the protection of the conservators of the River Thames (in this section called "the conservators") the following provisions shall have effect (that is to say):—

A.D. 1900.
For pro-
tection of
Conservators
of River
Thames.

- (1) The line of the Thames Embankment extension at Westminster by this Act authorised as shown upon the deposited plans shall not be deviated from without the consent of the conservators and all or any temporary or permanent works connected therewith or incidental thereto so far as the same affect the River Thames shall if constructed be executed according to plans elevations and sections to be approved in writing by the conservators and deposited at their office and the works in the River Thames shall be executed and performed to the reasonable satisfaction of the engineer for the time being of the conservators and the traffic of the said river shall not be interfered with more than may be absolutely necessary in the construction of the embankment and river wall and the works connected therewith :
- (2) The works when commenced shall be proceeded with and completed as early as practicable and the Council shall after completion of the permanent works upon reasonable notice in writing from the conservators so to do remove any temporary works and materials for temporary works which may have been placed in the river by the Council and on their failing so to do the conservators may remove the same charging the Council with the expense of so doing and the Council shall forthwith repay to the conservators all expenses so incurred :
- (3) The Council shall not make or commence any work on the shore or bed of the River Thames until the plans elevations and sections referred to in subsection 1 of this section have been approved by the conservators :
- (4) The Council shall during the construction of the embankment wall and embankment by this Act authorised hang out and exhibit at or near to the said works every night from sunset to sunrise lights to be kept burning by and at the expense of the Council and proper and sufficient for the navigation and safe guidance of vessels and the lights shall from time to time be altered by the Council in such manner and be of such kind and number and be so placed and used as the conservators by writing under the hand of their secretary or other authorised officer shall approve or direct and in case the Council fail so to exhibit and keep burning the lights they shall for every such offence forfeit to the conservators a daily penalty of ten pounds :

A.D. 1900.

(5) Nothing in this Act contained shall authorise or empower the Council without the previous consent of the conservators under the hand of their secretary to embank encroach upon or interfere with any part of the soil or bed of the River Thames or the shore thereof except according to the deposited plans and the plans elevations and sections approved by the conservators :

(6) The Council shall not (except so far as shall be necessary in the construction of the said embankment wall and embankment and the works connected therewith or incidental thereto) take any gravel soil or other material from the bed or shore of the river without the previous consent of the conservators signified in writing under the hand of their secretary :

(7) The compensation payable to the conservators in respect of the lands occupied by the works and the works by this Act authorised shall be the sum of two thousand eight hundred and eighty pounds and in the event of the execution of the works by this Act authorised causing or being the occasion of the partial or entire cessation of the payment by the London Hydraulic Power Company to the conservators of one hundred pounds per annum now paid by that company under the provisions of the Wharves and Warehouses Steam Power and Hydraulic Pressure Company's Act 1871 the Council shall pay to the conservators an additional sum of money calculated at thirty years' purchase of the amount which shall so cease to be paid with the addition of ten pounds per centum upon the amount of such thirty years' purchase.

For protection of
London
Hydraulic
Power
Company.

10.—(1) The Council shall before they shall enter upon take or use for the purposes of this Act any lands or property belonging to the London Hydraulic Power Company provide for and vest in that company (in this section called "the power company") an area of land reasonably equivalent to that which the Council shall acquire from the power company and for the purposes of this section the term equivalent shall apply not only to the area of land so to be provided but also (1) to the facilities to be secured to the power company for obtaining water from the River Thames and from the gravel beds underlying the foreshores thereof (2) to the facilities for carrying on the power company's operations and the creation and distribution of hydraulic energy (3) to the facilities for landing and dealing with coal and other stores required by the power company (4) to the position of the site within the Company's area

of supply as defined by the London Hydraulic Power Act 1884 and (5) to the capability for extension.

(2) The Council shall not enter upon any portion of the lands now belonging to the power company until the new pumping station and works to be constructed on the said equivalent site are completed and in working order.

(3) Any dispute as to (1) whether the land to be provided by the Council under this section is reasonably equivalent to the land acquired by the Council from the power company or (2) the amount of compensation payable by the Council to the company for any loss or expense incurred by the company in consequence of the exercise by the Council of the powers of this Act or the acquisition by the Council of the company's land shall be determined by an arbitrator agreed upon by the Council and the company or appointed in default of such agreement by the president for the time being of the Surveyors' Institution. The land so to be provided by the Council together with the compensation so payable as aforesaid shall be taken by the power company in lieu of any right of the company to compensation under the Lands Clauses Acts.

11. Whereas the Westminster Electric Supply Corporation Limited (herein-after called "the company") are supplying electric energy under the Westminster Electric Lighting Order 1889 scheduled to and confirmed by the Electric Lighting Orders Confirmation (No. 2) Act 1889 and the Westminster Electric Lighting Order 1891 scheduled to and confirmed by the Electric Lighting Orders Confirmation (No. 9) Act 1891 within a district which includes the whole of the area which may be taken under the powers of this Act for the Thames Embankment extension and improvements at Westminster and the company have a station buildings machinery and works on a site partly freehold and partly leasehold at Millbank Street (herein-after called "the existing site") the whole of which is required to be taken for the purposes of this Act and it is expedient that provision be made for reinstating such station buildings machinery and works on a site equivalent in all respects to the existing site:—

For protection of
Westminster
Electric
Supply
Corporation
Limited.

- (1) The Council shall not enter upon take or use any part of the existing site until the expiration of two years or such other period as may be agreed between the Council and the company after they shall have provided at their own expense and vested in the company as hereafter provided a new site cleared for building and available for the erection of a generating station which site shall be equivalent in all respects to the existing site:

A.D. 1900.

- (2) The Council shall acquire the freehold and all other interests in the whole of the new site and shall convey to the company free from incumbrances the freehold interest in so much of the new site as shall be equal in area to the freehold portion of the existing site free of expense to the company and shall grant to the company free of expense a lease or leases of the remaining portion of the new site upon terms equivalent to those of the lease or leases under which the company hold the leasehold portion of the existing site and the Council shall also if and when required by the company convey to them the freehold interest in the said remaining portion of the new site free from incumbrances within three years from the passing of this Act free of expense to the company except that the company shall pay to the Council the amount actually paid by the Council for and in connexion with the acquisition by the Council of the freehold interest of the leasehold portion of the existing site together with interest thereon at four per centum from the dates of the several payments :
- (3) On the vesting of the new site in the company as provided by the preceding subsection the company shall at the cost of the Council convey and assign the existing site to the Council together with all the buildings and machinery thereon in exchange for the new site but the company shall nevertheless be entitled to remain in undisturbed possession of the existing site and the buildings and machinery thereon for the period of two years or such other period as may be agreed as aforesaid from the date of the vesting in them of the new site :
- (4) It shall be lawful for the company on the site so provided to erect maintain work and use a station for generating transforming transmitting and conveying electrical energy with dynamos batteries accumulators engines plant machinery and appliances and to generate transform and transmit such energy accordingly and the Council will hold the company harmless and indemnified against the consequences of any actions or claims whatsoever for nuisance arising from the carrying out of their undertaking or business unless the same shall arise from neglect or from want of proper care or precaution on the part of the company their workmen or servants :
- (5) The plans for the generating station as submitted by the company shall be approved by the Council subject to any reasonable modifications that may be necessary :
- (6) The Council shall on or before the date of the conveyance and lease or the conveyance (as the case may be) to the

company of the new site pay or secure to the satisfaction of A.D. 1900.
the company—

A sum equal to the costs and expenses of erecting and fitting up a new generating station upon the new site with new plant of a capacity to generate and supply electrical energy to an output equivalent to that of the existing station at the time of the removal to the new site and all expenses in connexion with taking up replacing and relaying and altering mains and lines and laying any additional mains and lines that may be necessary owing to the carrying out of the provisions of this Act :

- (7) The Council shall either provide the company with equal facilities to those they now possess for obtaining water and disposing of same for condensation purposes whether such facilities be actually in full operation or in progress or they shall pay to the company a lump sum by way of compensation for the loss of the facilities as aforesaid :
- (8) The Council shall pay to the company compensation for any additional cost in which the company may be involved in respect of carriage of coal and materials in consequence of the removal of the company's works from their existing site :
- (9) The Council shall pay to the company compensation for any damages costs or expenses which may be incurred by the company if notwithstanding the provision for reinstatement herein-before secured any failure to supply energy by the company occurs which results from the carrying out of the provisions of this Act and not from default of the company :
- The compensation to be paid under this and the last preceding subsections shall be settled by arbitration under the Lands Clauses Consolidation Act 1845 :
- (10) Any differences arising under or in respect of any of the provisions of subsection (1) of this section shall be determined by arbitration under the Arbitration Act 1889.

12. For the protection of the North London Railway Company the following provisions shall have effect (that is to say) :—

- (1) Nothing in this Act shall authorise the Council (without the consent of the North London Railway Company) to acquire any greater portion of the house and lands numbered on the deposited plans 1 in the parish of Saint John Hackney than is situate to the westward of the line on the deposited plan indicating the widening on the east side of Mare Street Hackney :

For protection of
North
London
Railway
Company.

A.D. 1900.

- (2) If the Council take any part of the house and buildings now situate on the said lands they shall reconstruct the house and buildings with a proper frontage to and access from the amended frontage line of Mare Street Hackney to the reasonable satisfaction of the engineer-in-chief of the company :
- (3) Nothing in this Act shall authorise the Council to alter injure or interfere with the bridge carrying the North London Railway over Mare Street Hackney or the supports or abutments thereof.

For pro-
tection of
Cannon
Brewery
Company
Limited.

13. The following provisions shall unless otherwise agreed apply and have effect for the protection of the Cannon Brewery Company Limited (in this section referred to as "the company") (that is to say) :—

- (1) If the Council enter upon purchase or take the premises known as the "Nag's Head" public-house numbered on the deposited plan 162 in the parish of Saint John Hackney they shall if so required by the company also purchase and take all the estate and interest of the company in the premises numbered on the deposited plan 159 160 161 and 163 and also in the premises known as No. 7 London Lane in the same parish :
- (2) If the Council hereafter determine to continue the use as licensed premises either of any portion of the existing premises of the King's Head public-house numbered on the deposited plans 10 in the parish of Saint John Hackney or of the before-mentioned Nag's Head public-house they shall give to the company an option of taking a lease of the sites set apart for the new public-houses or either of them as the case may be :
- (3) Such leases shall be granted for the term of eighty years in such form and upon such terms as to premium rent and rebuilding as shall failing agreement be determined by an arbitrator to be appointed on the application of either party by the President of the Surveyors' Institution or him failing to be appointed pursuant to the Arbitration Act 1889 :
- (4) Unless the licences now held in respect of the existing public-houses are duly removed to the new public-houses respectively or provisional removals of the existing licences to the new public-houses respectively be granted and confirmed or similar licences in all respects be granted or provisionally granted and confirmed in respect of the new public-houses the provisions of subsections (2) and (3) of this section shall except as to anything done or which ought to have been done have no effect and the company shall be released from the

obligation to take the said leases which if granted shall be cancelled and any moneys paid thereunder shall be returned : A.D. 1900.

- (5) The provisions of the last immediately preceding subsection shall be applicable mutatis mutandis to the contingency of the licences now in force in respect of one only of the existing public-houses not being duly removed to the new public-house or a provisional removal of the existing licences to the new public-house not being granted and confirmed or similar licences not being granted or provisionally granted and confirmed in respect of the new public-house.

14. For the protection of the governors of Sutton's Hospital in Charterhouse (in this section called "the governors") the following provisions shall have effect with respect to the widening of Goswell Road by this Act authorised (that is to say) :—

For protection of Sutton's Hospital in Charterhouse.

- (1) Nothing contained in this Act or shown on the deposited plans shall empower the Council to purchase and take otherwise than by agreement with the governors any part of the properties respectively numbered on the deposited plans 62 63 64 74 75 and 76 in the parish of Saint James and Saint John Clerkenwell :
- (2) If the Council proceed under the powers of this Act with the widening of Goswell Road the governors shall sell and the Council shall purchase the fee simple free from encumbrances of and in the whole of any premises being the property of the governors shown on the deposited plans (except as aforesaid) required by the Council for the purposes of this Act and the price to be paid by the Council to the governors for the said purchase of the said lands shall be settled by the surveyors of the Council and the governors or failing agreement between them shall be determined by arbitration as a question of disputed compensation under the Lands Clauses Acts :
- (3) The Council shall reconvey and the governors shall re-purchase at the fair market value the freehold of all the lands acquired by the Council from the governors (except the portion thereof required for the widening of the said road) subject to any leases which may have been granted by the Council for the purpose of the reinstatement of any existing tenants and the amount of such market value shall be settled by the surveyors of the Council and the governors or failing agreement between them by arbitration :
- (4) If on the sale of the said lands to the Council any additional allowance is claimed by the governors in respect of compulsory sale the Council shall on the resale to the governors of the portion of the same land which is to be reconveyed as aforesaid

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be entitled to make a similar claim in respect of such portion and the reasonable costs and expenses of the governors of and incident to such resale shall be paid by the Council :

- (5) The Council shall in no case except with the previous consent in writing of the governors grant or agree to grant any lease for any other purpose than reinstatement in accordance with the provisions of this section or any lease to any reinstated tenant for a term expiring at a later date than the date at which the existing lease under which such tenant holds would expire. All leases or agreements so granted or entered into by the Council shall be in the form of and shall contain the conditions and covenants contained in the leases granted by the governors on their Clerkenwell Estate and no provision which shall in any way be likely to prove detrimental to the adjacent property of the governors shall be inserted therein.

For protection of
Marquess of
North-
ampton.

15. For the protection of the Most Honourable William George Spencer Scott Maclean Douglas-Compton Marquess of Northampton and the trustees of his family settlements or other the owner or owners for the time being of the lands in this section mentioned or referred to (all of whom are in this section included in the expression "the Marquess") the following provisions shall unless otherwise agreed between the Marquess and the Council be observed and have effect with respect to the powers by this Act conferred upon the Council in relation to the Goswell Road widening by this Act authorised (that is to say) :—

- (1) The Council shall purchase from the Marquess and the Marquess shall sell to the Council so much of the lands delineated and coloured red yellow green and blue respectively on the plan (in this section called "the plan") signed in duplicate by Robert Hamilton Few on behalf of the Marquess and by Andrew Young on behalf of the Council as the Council may require to purchase for the purposes of this Act subject to the leases thereof from the Marquess or his predecessors in title existing at the date of such sale and purchase and if the Council take part of a property comprised in a lease the rent reserved by such lease shall so far as necessary for the purposes of this section be apportioned between the Marquess and the Council in manner provided by the Lands Clauses Acts :
- (2) The purchase-money and compensation to be paid by the Council to the Marquess in respect of the purchase and taking of the said lands shall failing agreement be determined by arbitration as a question of disputed compensation under the Lands Clauses Acts :

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- (3) Nothing in this Act shall empower the Council to purchase or acquire from the Marquess except by agreement any lands other than the lands coloured red yellow green and blue respectively on the plan and if the Council acquire that portion of the land coloured red which forms the way or access from Goswell Road to Goswell Place there shall be reserved to the Marquess and persons claiming under him out of the conveyance thereof full right of footway and carriageway between Goswell Road and Goswell Place over the site of the said existing way or access :
- (4) After the Council shall have completed the widening by this Act authorised of that part of Goswell Road which adjoins the said lands coloured red yellow green and blue respectively upon the plan they shall sell to the Marquess and the Marquess shall purchase from the Council so much of the said lands as lies to the westward of the line on the plan marked "Extent of Widening" subject only to any leases or agreements of tenancy which may have been granted by the Council for the purpose of the re-instatement of any existing tenants in accordance with the provisions of this section and the property to be so sold to the Marquess shall be conveyed to him or as he shall direct :
- (5) The purchase-money to be paid by the Marquess for the lands to be purchased by him as aforesaid shall unless otherwise agreed be settled by arbitration at the cost of the Council and shall be assessed at the fair market value of the lands purchased If on the sale of the said lands to the Council any additional allowance is claimed by the Marquess in respect of compulsory sale the Council shall on the re-sale to the Marquess of the portion of the same land which is to be re-conveyed as aforesaid be entitled to make a similar claim in respect of such portion and the reasonable costs and expenses of the Marquess of and incident to such re-sale shall be paid by the Council :
- (6) The Council shall in no case except with the previous consent in writing of the Marquess grant or agree to grant any lease or create or agree to create any tenancy of any part of the lands coloured green upon the plan and the Marquess shall not during the period of three years from the passing of this Act grant or agree to grant any new lease or create or agree to create any new tenancy of any part thereof for a longer term than one year The Council shall not except with the like consent grant or agree to grant any lease of or create or agree to create any tenancy in any part of the lands coloured red and

A.D. 1900.

yellow respectively upon the plan for any other purpose than re-instatement and subject to and in accordance with the following provisions (that is to say):—

- (a) No tenant of any part of the lands coloured red upon the plan shall be reinstated by the Council on any lands of the Marquess other than the said lands coloured red and no tenant of any part of the lands coloured yellow upon the plan shall be reinstated by the Council on any lands of the Marquess other than the said lands coloured yellow;
 - (b) No lease to or agreement of tenancy in favour of any tenant shall be granted or agreed to be granted by the Council for any term expiring at any other date than the date at which the existing lease under which such tenant now holds would expire;
 - (c) No premium or other consideration other than an annual rent shall be reserved or made payable by or under any such lease or agreement of tenancy granted or agreed to be granted by the Council and the rent reserved under any lease or agreement of tenancy executed by the Council by way of reinstatement shall not without the consent in writing of the Marquess exceed the rent payable by the reinstated tenant under his existing lease or agreement;
 - (d) Every lease or agreement granted or entered into by the Council under this section shall be as nearly as may be in the form of the lease under which the lessee or tenant (as the case may be) now holds and shall contain such of the conditions and covenants contained in the existing lease as may be applicable and no provision which shall in any way be detrimental to the adjacent property of the Marquess shall be inserted therein;
- (7) Nothing in this Act or shown on the deposited plans shall empower the Council:—
- (a) To acquire stop up or divert any part of Upper Ashby Street Upper Charles Street Mulberry Place Percival Street Cyrus Street or Compton Street;
 - (b) To stop up Goswell Place or the existing access thereto from Goswell Road except with the consent in writing of the Marquess;
 - (c) To alter the level of or otherwise interfere with any of such streets to a greater extent than is necessary for the purpose of making the same communicate conveniently with Goswell Road as widened or (in the case of Mulberry

Place) for the purpose of making the same communicate conveniently with Upper Charles Street: A.D. 1900.

- (8) Notwithstanding anything in this Act or shown on the deposited plans the Council shall not without the consent in writing of the Marquess take any portion of the pavement belonging to the Marquess situate within four feet of the elevation of the shops in Goswell Road which pavement is numbered 39 on the deposited plans or any portion of the areas or property beneath such portion of pavement but the Council may acquire and the Marquess shall sell to the Council the right for the public to pass and repass over so much of such pavement as belongs to the Marquess and the acquisition of such right shall be deemed an acquisition of lands within the meaning of the Lands Clauses Acts and thereafter such portion of pavement shall be repaired and maintained at the expense of the authority for the time being liable to repair the Goswell Road the existing pavement lights being retained and the Marquess shall continue to have and may exercise after the passing of this Act all such and the like rights powers and privileges in respect of such portion of pavement as he now has or may exercise so far as they are not inconsistent with the public right of passage.

16. For the protection of the Improved Industrial Dwellings Company Limited and their assigns (herein-after called "the owners") the following provisions shall unless otherwise agreed between the Council and the owners have effect (that is to say):—

For protection of Improved Industrial Dwellings Company Limited.

- (1) Notwithstanding anything in this Act or shown on the deposited plans the Council shall not take any portion of the pavement belonging to the owners situate within four feet of the elevation of the shops in Goswell Road which pavement is numbered 39 on the deposited plans or any portion of the areas or property beneath such portion of pavement but the Council may acquire and the owners shall sell to the Council the right for the public to pass and repass over so much of such pavement as belongs to the owners and the acquisition of such right shall be deemed an acquisition of lands within the meaning of the Lands Clauses Acts and thereafter such portion of pavement shall be repaired and maintained at the expense of the authority for the time being liable to repair the Goswell Road the existing pavement lights being retained:
- (2) The owners shall continue to have and may exercise after the passing of this Act all such and the like rights powers and privileges in respect of such portion of pavement as they now

A.D. 1900.

have or may exercise so far as they are not inconsistent with the public right of passage.

For protection of Dean and Chapter of Christ Church Oxford.

17. For the protection of the Dean and Chapter of the Cathedral Church of Christ in Oxford of the Foundation of King Henry the Eighth their successors and assigns owners for the time being (herein-after referred to as "the owners") of the Christ Church Estate in Kentish Town Road (Wolsey Terrace) their lessees and tenants the following provisions shall apply:—

Nothing in this Act shall authorise the Council to require the removal or closing of any pavement lights gratings or cellar flaps used at the time of the passing of this Act for lighting ventilating or otherwise for the accommodation of the basement and cellars belonging to the premises forming part of the Christ Church Estate in Kentish Town Road (Wolsey Terrace) the forecourts of which are delineated on the deposited plans and may be required for the purposes of this Act and in the event of such forecourts being acquired and thrown into the public pavement the owners shall be entitled to retain the pavement lights gratings and cellar flaps therein together with the cellars thereunder in the same way as if this Act had not been passed Provided that the Council may make such alterations of the position and level thereof as may be necessary.

For protection of London and South Western Railway Company.

18. For the protection of the London and South Western Railway Company (in this section referred to as "the South Western Company") the following provisions shall unless otherwise agreed between the Council and the South Western Company apply and have effect:—

(1) The South Western Company shall convey to the Council all their interest in a strip of land (part of the lands numbered on the deposited plans 32 and 33 in the parish of Saint Mary Battersea) sufficient to enable Nine Elms Lane to be widened to the extent shown on the deposited plans and so as to give a width of not less than sixty feet where it adjoins the lands so numbered and the purchase money to be paid by the Council for such strip shall be agreed or failing agreement determined by arbitration as herein-after provided:

(2) The Council shall at their own cost erect on the new boundary between Nine Elms Lane and the South Western Company's property walls and gates of similar character and equal in all respects to those in existence at the date when such widening shall be commenced and the Company shall not be at any cost or expense in the making up of the widened portion of the road

pavement kerbing and channelling on which their property will front: A.D. 1900.

- (3) The Council shall carry out the said works after they shall have been commenced with all possible despatch to avoid as far as possible interference with the traffic of the South Western Company :
- (4) The Council shall pay to the South Western Company all costs charges and expenses to which they may be put in reference to the removal alteration and reinstatement of the existing sidings turntables buildings and other works in any way interfered with by the widening and also any additional works found necessary to enable the South Western Company to carry on their business with equal facility and convenience to that existing before the said widening :
- (5) All works executed by the Council with reference to the property of the South Western Company shall be under the supervision and to the reasonable satisfaction of the engineer of the South Western Company and the Council shall bear and on demand recoup to the South Western Company any expenses which they may reasonably incur in reference to such supervision :
- (6) Nothing contained in this Act shall in any way prejudice or abridge the rights now enjoyed by the South Western Company with reference to the rails crossing Nine Elms Lane on the level and the passage of vehicles thereover :
- (7) Any difference which may arise between the Council and the South Western Company touching any of the matters referred to in this section shall be decided by a single arbitrator to be agreed upon or failing agreement to be appointed on the application of either party by the Board of Trade.

19. Nothing in this Act contained shall authorise the Council to enter upon use or interfere with any land soil or water or any right in respect thereof vested in or exercised by the Principal Secretary of State for the War Department or to take away lessen prejudice or alter any of the rights privileges or powers vested in or exercised by the said Principal Secretary without his previous consent signified in writing under his hand and which consent the said Principal Secretary is hereby authorised to give subject to such special or other conditions as he shall see fit to impose on the Council.

Saving rights of Her Majesty's Principal Secretary of State for the War Department.

20. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may (if they think fit) subject to the

Power to certain persons to

A.D. 1900.
grant ease-
ments &c. by
agreement.

provisions of the Lands Clauses Acts and of this Act grant to the Council any easement right or privilege (not being an easement right or privilege of water in which persons other than the grantors have an interest) required for the purposes of this Act in over or affecting any such lands and for the purposes of this Act the provisions of the said Acts with respect to lands and rentcharges so far as the same are applicable in this behalf shall extend and apply to such easements rights and privileges as aforesaid and to any grant of the same respectively.

Correction
of errors &c.
in deposited
plans and
book of
reference.

21. If any omission mis-statement or erroneous description shall have been made of any lands or of the owners lessees or occupiers of any lands on the deposited plans or in the deposited book of reference the Council may after ten days' notice to the owners lessees and occupiers of the lands affected by the proposed correction apply to a metropolitan police magistrate for the correction thereof and if it shall appear to such magistrate that such omission mis-statement or erroneous description arose from mistake he shall certify the same accordingly and he shall in such certificate state the particulars of any such omission and in what respect any such matter shall have been mis-stated or erroneously described and such certificate shall be deposited with the clerk of the peace for the county of London and shall be kept by such clerk of the peace along with the other documents to which it relates and thereupon such plans or book of reference shall be deemed to be corrected according to such certificate and the Council may take the lands in accordance with such certificate.

Power to
Council to
enter upon
property for
survey and
valuation.

22. The Council and their surveyors officers and workmen and any person duly authorised in writing under the hand of the clerk of the Council may from time to time at all reasonable times in the day upon giving in writing for the first time twenty-four hours and afterwards from time to time twelve hours previous notice enter upon and into the lands and buildings by this Act authorised to be taken and used as aforesaid or within the improvement area hereafter defined or any of them for the purpose of surveying and valuing the said lands and buildings without being deemed trespassers and without being subject or liable to any fine penalty or punishment on account of entering or continuing upon any part of the said lands and buildings.

Costs of
arbitration
&c. in certain
cases.

23. The court or person to whom any question of disputed purchase-money or compensation under this Act is referred shall if so required by the Council award and declare whether a statement in writing of the amount of compensation claimed has

been delivered to the Council by the claimant giving sufficient particulars and in sufficient time to enable the Council to make a proper offer and if they or he shall be of opinion that no such statement giving sufficient particulars shall have been delivered one half of the costs of the arbitration or as the case may be one half of the costs of the proceedings before the sheriff (including the costs of summoning empannelling and returning the jury and of taking the inquiry and in recording the verdict and judgment therein) shall be defrayed by the person with whom the Council shall have such question and the remaining half shall be defrayed by the Council anything in the Lands Clauses Consolidation Act 1845 to the contrary notwithstanding Provided that it shall be lawful for any judge of the High Court to permit any claimant after seven days' notice to the Council to amend the statement in writing of the claim delivered by him to the Council in case of discovery of any error or mistake therein or for any other reasonable cause such error mistake or cause to be established to the satisfaction of the judge after hearing the Council if they object to the amendment and such amendment shall be subject to such terms enabling the Council to investigate the amended claim and to make an offer de novo and as to postponing the hearing of the claim and as to costs of the inquiry and otherwise as to such judge may seem just and proper under all the circumstances of the case Provided also that this section shall be applicable only in cases where the notice to treat under the Lands Clauses Consolidation Act 1845 either contained or was endorsed with a notice of the effect of this section.

A.D. 1900.

24. In settling any question of disputed purchase-money or compensation under this Act the court or person settling the same shall not award any sum of money for or in respect of any improvement alteration or building made or for or in respect of any interest in the lands created after the twelfth day of June one thousand eight hundred and ninety-nine if in the opinion of such court or person the improvement alteration or building or the creation of the interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing compensation under this Act.

Compensation in case of recently altered buildings.

25. Whereas in the construction of the works hereby authorised or otherwise in exercise of the powers of this Act it may happen that portions only of houses buildings or manufactories shown on the deposited plans may be sufficient for the purposes of this Act and that such portions may be severed from the remainder

As to taking of parts of certain properties.

A.D. 1900. of the said properties without material detriment thereto Therefore notwithstanding anything contained in section 92 of the Lands Clauses Consolidation Act 1845—

(1) The Council may take the part of the several houses buildings or manufactories shown on the deposited plans and described in the deposited book of reference under the numbers stated in Part I. of the schedule to this Act which is described in the said part of the said schedule or such part thereof as they may require without being required or compellable to purchase the whole or any greater part of any such house building or manufactory :

(2) The owners of and other persons interested in the properties numbered on the deposited plans as specified in Part II. of the schedule to this Act may (if such portions respectively can in the judgment of the arbitrator arbitrators umpire or jury assessing or determining the compensation under that Act be severed from the remainder of the properties without material detriment thereto) be required to sell and convey to the Council the portions only of the premises so required without the Council being obliged or compellable to purchase the whole or any greater portion thereof the Council paying for the portions required by them and making compensation for any damage sustained by the owners thereof or other parties interested therein by severance or otherwise :

If for twenty-one days after the service of notice to sell and convey any portions of the said properties any owner or other person shall fail to notify to the Council his contention that such portions cannot be severed from the remainder of the property without causing material detriment thereto then the Council may proceed to take such portions only :

But if within such twenty-one days he shall by notice to the Council allege that such portions cannot be severed from the remainder without causing such material detriment as aforesaid then the arbitrator arbitrators umpire or jury shall determine the matter of the said allegation in addition to the other questions required to be determined by them :

Provided that if in the opinion of the arbitrator arbitrators umpire or jury any such portion cannot be severed from the remainder of such property without material detriment thereto the Council may withdraw their notice to treat for the portion of the property required by them and thereupon they shall pay to the owners of and other persons interested in the property in respect of which they have given notice to treat all costs

charges and expenses reasonably and properly incurred by them in consequence of such notice and may if they think fit proceed de novo to take the whole or any other portion of the property : A.D. 1900.

Provided also that if in the opinion of the arbitrator arbitrators umpire or jury any such portions can notwithstanding the allegation of such owner or other person be severed from the remainder without such material detriment then they may in their absolute discretion determine and order that the costs charges and expenses incurred by such owner or person incident to the arbitration or inquiry shall be borne and paid by such owner or person.

The provisions of this section shall be stated in every notice given thereunder by the Council to sell and convey any premises.

26. Subject to the provisions of this Act the Council for the purposes and during the making of the improvements may in or upon the lands shown in connexion therewith upon the deposited plans stop up or cause to be stopped up temporarily all or any part of any carriageway or footway which they shall think necessary for such purposes to be stopped up and may put or cause to be put up sufficient palisades hoardings bars posts and other erections and may construct temporary works for keeping any such carriageway and footway open for traffic and may make from time to time such orders for regulating the traffic as to them shall seem proper and they may remove and alter any drinking troughs lamp-posts and other erections upon the said lands.

Power to stop up ways temporarily.

27. Subject to the provisions of this Act the Council may for the purposes of and in connexion with the improvements alter the line or level of any of the streets and places described on the deposited plans or sections as intended to be diverted raised or lowered in the manner shown on such plans or sections.

Streets may be raised or lowered.

28. In making any of the works for or connected with the improvements the Council may subject to the provisions of this Act deviate to any extent from the line thereof within the limits of deviation defined on the deposited plans and the Council may subject to the provisions of this Act deviate to any extent from the levels thereof defined on the deposited sections not exceeding three feet from the levels thereof as defined on the said sections.

Deviation from line and levels.

29. Subject to the provisions of this Act and within the limits of deviation defined on the deposited plans the Council in connexion with and for the purposes of this Act and as part of the works to

Power to make subsidiary works stop up streets &c.

A.D. 1900. be executed under the powers of this Act may execute or do any of the following works or things viz :—

They may—

- (a) Make junctions and communications with any existing streets intersected or interfered with by or contiguous to the improvements or any of them and may divert widen or alter the line or alter the level of any existing street for the purpose of connecting the same with the improvements ;
- (b) Relay and alter the line or alter the level of any tramways in or along any street to be widened raised or lowered under the powers of this Act and provide during such relaying and alteration any temporary line or lines of tramway which may be necessary for continuing the traffic on any tramway to be so relaid or altered ;
- (c) Stop up any street passage or place within the limits of deviation shown on the deposited plans which they may consider unnecessary to retain or to throw into the improvements and may alter and divert any street passage or place within the same limits ;
- (d) Appropriate the site and soil of any street passage or place so stopped up or diverted ;
- (e) Execute any works for the protection of any adjoining land or buildings ;
- (f) Execute any works and do any things necessary for the strengthening and supporting of any walls of adjoining buildings ; and
- (g) Raise lower alter and interfere with any drain or sewer providing a proper substitute before interrupting the flow of sewage in any such drain or sewer.

The site and soil of any street passage or place or any part of any street passage or place stopped up or diverted and appropriated by the Council under this Act shall vest in the Council and all rights of way or other rights over the same shall thereupon be extinguished and the lamp-posts paving metalling or materials in on or under any street so altered diverted or stopped up and any materials of any drain or sewer so altered shall vest in the Council and all substituted drains and sewers shall be under the same jurisdiction care management and direction as the existing drains and sewers for which they may be so substituted.

Compensation in case of insanitary property.

30. The Council may with the approval of the Secretary of State for the Home Department claim in any notice to treat for

the purchase of any lands intended to be taken for the purposes of this Act— A.D. 1900.

That the lands to which the notice refers are or comprise any houses courts or alleys unfit for human habitation ;

That the narrowness closeness and bad arrangement or the bad condition of the streets and houses or groups of houses upon any such lands or the want of light air ventilation or proper conveniences or any other sanitary defects or one or more of such causes renders any such lands or any buildings thereon prejudicial to the health of the inhabitants either of the buildings on the said lands or of the neighbouring buildings :

And in the event of any such claim then on the occasion of assessing the amount of compensation payable in respect of such lands the court or person settling the same shall determine whether such lands fall wholly or in part within any of the descriptions herein-before mentioned and if they shall so decide then in assessing the compensation payable under this Act in respect of any such lands evidence shall be receivable by such court or person to prove—

(1st) That the rental of any house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates ;

(2ndly) That any house or premises are in a state of defective sanitation or are not in reasonably good repair ; or

(3rdly) That any buildings on any such lands are unfit and not reasonably capable of being made fit for human habitation :

And if such court or person be satisfied by such evidence then the purchase-money and compensation in respect thereof shall be assessed and determined according to the principles indicated in section 21 of the Housing of the Working Classes Act 1890.

The Council shall pay to the Secretary of State a reasonable sum to be fixed by him in respect of any expenses which he may incur in making such inquiries as he may deem necessary in relation to any claim submitted for his approval under this section.

31. The Council may for any purpose in connexion with the improvements upon the lands acquired by them under the powers of this Act and also in any street within the limits of deviation defined on the deposited plans raise sink or otherwise alter the position of any watercourse water pipe or gas pipe belonging to or connected with any house or building and also any main pipe or apparatus laid down or used by any company or person for carrying a supply of water or water for hydraulic power or gas and also

Alteration of position of water gas and other pipes.

A.D. 1900. — any pipe tube wire or apparatus laid down or placed for telegraphic or other purposes and any pipe tube wire or apparatus laid down or placed for supplying electricity and may remove any other obstruction making proper substituted works during any alteration and causing as little detriment and inconvenience as circumstances admit to any company or person and making reasonable compensation to any company or person for any damage caused by any such alteration. Provided always that before the Council alter the position of any main pipe or apparatus laid down or used by any such company or person they shall (except in cases of emergency) give to the company or person to whom the same belongs notice of their intention to do so specifying the time at which they will begin to do so such notice to be given seven days at least before the commencement of the work for effecting such alteration and such work shall be done under the superintendence (at the expense of the Council) of the company or person to whom such pipe or apparatus belongs unless such company or person refuses or neglects to give such superintendence at the time specified in the notice for the commencement of such work or discontinues the same during the execution of such work and the Council shall execute such work to the reasonable satisfaction of the engineer of such company or person. Provided also that the Council shall not cause any street to be lowered or raised nor the position of any water or gas main or other pipe to be altered so as to leave over such main pipe or apparatus in any part a covering of less than two feet where the covering now existing is not less than two feet unless the Council shall in such case protect the same pipes from frost or injury by artificial covering to the satisfaction of the engineer of such company or person or more than six feet where the covering now existing does not exceed six feet or more than such existing covering where the same exceeds six feet unless the Council in such case provide special means of access to the same to the satisfaction of the engineer of such company or person :

If any difference arise between the Council or their engineer and any such company or person or their or his engineer touching the amount of any costs expenses or charges under the provisions of this Act to be paid by the Council to any such company or person or touching any work matter or thing with reference to such mains or other pipes under such provisions to be done or executed by the Council or the mode of doing or executing the same such difference shall be settled by an engineer to be agreed upon by the engineer of the Council and of any such company or person respectively or

failing agreement by such engineer as shall on the application of the engineer either of the Council or of any such company or person be named by the president for the time being of the Institution of Civil Engineers whose decision shall be final and binding and the expenses of the reference shall be borne as the referee may direct : A.D. 1900.

Provided also that the Council shall not raise sink or otherwise alter the position of any pipe tube wire or apparatus laid down for telegraphic or other purposes and belonging to the Postmaster-General except in accordance with and subject to the provisions of the Telegraph Act 1878 :

Provided always that nothing in this section shall extend to prejudice or affect any of the provisions for the protection of any undertakers authorised to supply electrical energy contained in any special Act or any Provisional Order confirmed by Act of Parliament.

32. If within seven days after a notice under the preceding section of this Act shall have been served upon any gas or water company that company so elect such company shall themselves execute all such alterations to their mains and pipes as may from time to time be necessary and the reasonable costs of executing such alterations shall be repaid by the Council to such company Provided always that such alterations shall be carried out in accordance with the directions and to the reasonable satisfaction of the chief engineer of the Council. For protection of gas and water companies.

33. Subject to the provisions of this Act the Council may cause such parts of the improvements to be laid out for carriageway and such parts thereof for footway as they may think proper and may upon the lands acquired by or vested in them under the powers of this Act and within the limits of deviation defined on the deposited plans construct erect and provide such vaults cellars arches sewers drains subways and other works and conveniences as they may think proper for the purposes of the improvements and in laying out or forming such carriageway and footway and works the Council may in addition to the powers by this Act conferred exercise the same powers and authorities as are vested in and shall be subject to the same liabilities only in respect thereof as are imposed upon any vestry or district board of works in the county of London when they stop up temporarily any thoroughfare or any part thereof in the repairing or repaving of any street. Carriage-way foot-way sewers and other works.

34. The Council shall for the purposes of and in connexion with the improvements in a substantial and workmanlike manner fill or cause to be filled in all and every the vaults cellars and open places Directing how the pavement shall be laid and made.

A.D. 1900. — over which it may be necessary to new pave (except such as are capable of being used as cellars vaults or areas) with good sound hard brick or other rubbish to be well rammed down to prevent the ground from giving way and shall well and effectually pave over all the said ground with a sufficient quantity of materials of proper quality and dimensions and shall in like manner erect and build any underground arches which they may think necessary and also relay and repair the streets which they may disturb or alter in carrying the purposes of this Act into execution Provided always that nothing herein contained shall extend or be construed to extend to charge the Council with the liability or expense of repairing or making good such pavement or arches in future but when the same shall have been in the first instance so paved relaid erected built and repaired as aforesaid the same shall for ever thereafter be kept in repair by the authority in whom the management and repair of the street are vested or by any other parties or persons liable to repair the same.

Sewers or drains to be arched over or filled up.

35. The Council may cause to be removed arched over or filled up all such sewers or drains or parts thereof which shall be in or near the streets to be interfered with for the purposes of the improvements as shall appear necessary for executing the purposes of this Act so as that no public sewer or drain (unless the same become unnecessary by reason of the purchase of the property entitled to the use thereof) shall be in any wise disturbed injured or prejudiced without another sewer or drain being made in lieu thereof equally serviceable and convenient Provided always that before removing or filling up any sewer or drain or part thereof as aforesaid the Council shall (where necessary) cause to be made and built other good and sufficient sewers and drains in substitution for the sewers or drains which shall be filled up and when made and completed the said sewers and drains shall be under the same jurisdiction care management and direction as the existing sewers or drains.

Power to alter steps areas pipes &c.

36. The Council within the limits of deviation defined on the deposited plans may for the purposes of and in connexion with the improvements raise sink or otherwise alter or cause to be altered the position of any of the steps areas cellars cellar-flaps gratings fencings windows and watercourses pipes or spouts belonging to any house or building and may remove all other obstructions so as the same be done with as little delay and inconvenience to the inhabitants as the circumstances of the case will admit and the Council shall make reasonable compensation to any person who suffers damage by any such alteration.

37. The provisions of the London County Council (Subways) Act 1893 shall apply to any subway to be constructed under the powers of this Act as if such subway or part thereof had been included in the expression "subway" in the said Act of 1893 and the provisions of section 3 of the said Act shall apply during the actual construction of any such subway. Provided that for the purposes of the application of the said Act of 1893 to any subway to be constructed under the powers of this Act the London Hydraulic Power Company shall be deemed to be a water company.

A.D. 1900.
Applying
provisions of
London
County
Council
(Subways)
Act 1893.

38. The powers of the Council for the compulsory purchase or taking of lands for the purposes of the improvements shall cease after the expiration of three years from the passing of this Act.

Limitation of
time for
purchase of
lands.

39. If the improvements be not completed within the period of seven years from the passing of this Act then on the expiration of that period the powers of the Council under this Act for the execution of the said improvements shall cease (except so far as the same shall then have been completed).

Period for
completion of
improve-
ments.

40. When and as each of the improvements or any part thereof is completed a certificate thereof shall be issued under the seal of the Council and any copy of such certificate certified under the hand of the clerk of the Council shall in all proceedings and for all purposes be admissible and received as evidence that such certificate has been duly made and from the date of such certificate so much of the improvement to which it relates as shall have been laid out for carriageway or footway shall form part of the street and may be used by the public accordingly. Subject to the provisions of this Act so much of the land acquired by the Council for the widening of any street as is thrown into and used for the carriageway or footway of any street widened under this Act shall on the completion of such widening become vested in the authority in whom the management and control of the existing street is vested and the land acquired by the Council for the new streets shall remain and be vested in the Council and subject to the provisions of this Act the maintenance repair paving cleansing and lighting of each of the improvements shall be under the care management control and jurisdiction of the authority in whom the management and repair of streets is vested in the same manner as other streets in their district:

Improve-
ments to
form public
street.
Repair &c.

Provided that any subways constructed by the Council in connection with any such improvements and any sewers already maintained by the Council shall be and continue under the care management control and jurisdiction of the Council.

A.D. 1900.
Power to sell
materials.

41. The Council may sell or dispose of all building and other materials of any houses and buildings acquired by them under the powers of this Act and all lamp-posts paving metalling and materials in under or upon any road street or other place altered by them for the purposes of this Act and any materials obtained in the alteration of or interference with any drain or sewer which are vested in the Council under the powers of this Act.

Power to
lease surplus
lands.

42. The Council may when and as they shall think fit so to do demise and lease any lands acquired by them under this Act and not required for the purposes of the improvements or such parts thereof as the Council shall think it expedient to let on building leases either altogether or in parcels to any person or persons who shall erect and build or covenant and agree to erect and build thereon or on any part thereof houses erections or buildings of such size or class of building and upon such plan and elevation and of such height and with such storeys as the Council shall think proper for such term or number of years as they may think fit so as there be reserved in every such demise or lease such peppercorn or other yearly rent to be incident to the immediate reversion of the premises therein comprised as to the Council shall seem reasonable and so that in every such demise or lease there be contained a covenant for the payment of the rent thereby to be reserved and such other covenants on the part of the tenant or lessee to be therein named as the Council shall reasonably be advised or require and also a clause in the nature of a condition of re-entry on non-payment of the rent thereby to be reserved or on non-observance or non-performance of the covenants therein to be contained on the part of the tenant or lessee to be observed and performed and every such tenant or lessee shall give such good and sufficient security for the erecting finishing and completing of every such house erection and building which he shall covenant or agree to erect within the time in which he shall have contracted to finish the same as the Council shall order and direct and the Council may if they think fit accept and take any fine or premium for the granting of any lease and may enter into any agreement for the granting of any lease of such lands or such parts thereof and may in any such lease or agreement for a lease give to the lessee or intended lessee an option or right to purchase the fee simple in reversion in the premises leased or agreed to be leased together with all houses erections or buildings thereon at the time of the exercise of such option at such time and on such terms and conditions as they may think fit and on granting leases in pursuance of such agreements may alter the amount of the rents agreed to be reserved in such leases and may apportion the same and grant separate leases of any part of the hereditaments by

any such agreement agreed to be leased as the Council think fit and may also alter or rescind any agreement as aforesaid and may accept any surrender of any lease in all respects as the Council shall think fit and any part of the said lands may be appropriated for and left as yards or courts to be attached to any houses agreed to be leased as the Council shall think fit.

A.D. 1900.

43. Subject to the provisions of this Act the Council may sell and dispose of or cause to be sold and disposed of the ground rents to be reserved by the leases or demises or agreed to be reserved by any agreements for leases of any lands made under the authority of this Act and also the fee simple in reversion in such lands and in the houses erections or buildings thereon either altogether or in parcels by public auction or by private contract for such price or prices or sum or sums of money as the Council shall think reasonable and subject to such stipulations and provisions for the enjoyment thereof and as to the nature of the buildings which are to be at all times erected and built thereon and also subject to such stipulations as to the title to be produced to the hereditaments to be sold as the Council shall think fit and as regards any stipulations or provisions which may be contained in any conveyance under this enactment the same may at all times thereafter be enforced by the Council by re-entry on such lands on breach of any such stipulation or provision or otherwise in such manner in all respects as the Council shall think fit.

As to sale
of ground
rents.

44. Subject to the provisions of this Act the Council may if they think it expedient so to do sell and dispose of in the manner hereinbefore directed all or any lands acquired under the powers of this Act and not required for the purposes of the improvements without having previously granted or agreed to grant any lease thereof for such price or prices or sum or sums of money as the Council shall think reasonable and subject to such stipulations and provisions for the enjoyment thereof and as to the nature of the buildings which are to be at all times erected and built thereon and also subject to such stipulations as to the title to be produced to the hereditaments to be sold as the Council shall think fit.

Council may
sell land in
the first
instance
without
having
previously
granted a
lease thereof.

45. The Council may let either from year to year or for a less period or for a term at rackrent or exchange or otherwise dispose of any building or lands or any part thereof acquired by them under the powers of this Act and not required for the purposes of the improvements and may execute and do any deed act or thing requisite or proper for effectuating any such lease exchange or other disposition.

Council may
let or ex-
change lands.

A.D. 1900.

Council to
dispose of
lands within
a certain
period.

46. Any lands acquired by the Council under the powers of this Act except such as are required to form part of any improvement or to be retained for the purposes thereof and except lands on which buildings shall have been erected by the Council in pursuance of the section of this Act of which the marginal note is "Scheme as to accommodation for persons of labouring class displaced" shall subject to the provisions of any future Act of Parliament be sold or disposed of by the Council within a period of sixty years from the first day of September next after the passing of this Act and section 127 of the Lands Clauses Consolidation Act 1845 shall not apply to any lands acquired by the Council under the powers of this Act.

Receipts of
Council to
be effectual
discharges.

47. The receipt of the Council or of any person duly authorised by the Council for any purchase-money rent or money payable to the Council by virtue of this Act shall be a sufficient and effectual discharge for the money in such receipt expressed or acknowledged to be received and the person to whom the receipt shall be given shall not afterwards be answerable or accountable for the misapplication or non-application of the money in such receipt expressed or acknowledged to be received.

Power to
Council to
make agree-
ments with
owners of
property &c.

48. The Council may subject to the provisions of this Act enter into and carry into effect agreements with any person being the owner of or interested in any lands houses or property abutting on any portion of the improvements with respect to the sale by the Council to such person of any lands or property (including any street or thoroughfare or any part of a street or thoroughfare appropriated by the Council under the powers of this Act and not required for the improvements) for such consideration as may be agreed upon between the Council and such person and the Council may accept as satisfaction of the whole or any part of such consideration the grant by such person of any lands or other property required by the Council for the purposes of this Act.

Scheme as
to accommo-
dation for
persons of
labouring
class dis-
placed.

49.—(1) The Council shall not under the powers of this Act purchase or acquire in any district in the administrative county of London twenty or more houses which on the fifteenth day of December last were or have been since that day or shall hereafter be occupied either wholly or partly by persons belonging to the labouring class as tenants or lodgers unless and until they shall have obtained the approval of the Secretary of State for the Home Department to a scheme for providing new dwellings for such number of persons as were residing in such houses on the fifteenth day of December last or for such number of persons as the Secretary

A.D. 1900.
—

of State shall after inquiry deem necessary having regard to the number of persons on or after that date residing in such houses and working within one mile therefrom and to the amount of vacant suitable accommodation in the immediate neighbourhood of such houses or to the place of employment of such persons and to all the circumstances of the case.

(2) The approval of the Secretary of State to any scheme under this section may be given either absolutely or conditionally and after the Secretary of State has approved of any such scheme he may from time to time approve either absolutely or conditionally of any modifications in the scheme.

(3) Every scheme under this section shall contain provisions prescribing the time within which it shall be carried out and shall require the new dwellings proposed to be provided under the scheme to be completed fit for occupation before the persons residing in the houses in respect of which the scheme is made are displaced. Provided that the Secretary of State may dispense with the last-mentioned requirement subject to such conditions (if any) as he may see fit.

(4) Any provisions of any scheme under this section or any conditions subject to which the Secretary of State may have approved of any scheme or of any modifications of any scheme or subject to which he may have dispensed with the above-mentioned requirement shall be enforceable by a writ of mandamus to be obtained by the Secretary of State out of the High Court.

(5) If the Council acquire or appropriate any house or houses for the purposes of this Act in contravention of the foregoing provisions or in contravention of the requirements of the scheme displace or cause to be displaced the persons residing in any house or houses they shall be liable to a penalty of five hundred pounds in respect of every such house which penalty shall be recoverable by the Secretary of State by action in the High Court and shall be carried to and form part of the Consolidated Fund of the United Kingdom. Provided that the Court may if it think fit reduce such penalty.

(6) For the purpose of carrying out any scheme under this section the Council may appropriate any lands for the time being belonging to them or which they have power to acquire and may purchase such further lands as they may require.

(7) The Council may on any lands belonging to them or purchased or acquired under this section provide such dwellings for persons of the labouring class as may be necessary for the purpose of any scheme under this section and such dwellings may be in

A.D. 1900. — buildings exclusively devoted to dwellings or in buildings partly designed for use for shops warehouses offices or other purposes and the Council may sell demise or let or otherwise dispose of such buildings and any lands purchased or acquired as aforesaid :

Provided that all lands on which any buildings have been erected or provided by the Council in pursuance of any scheme under this section shall for a period of twenty-five years from the date of the scheme be appropriated either wholly or partly as the case may be in accordance with the scheme for the purpose of such dwellings and every conveyance demise or lease of such lands and buildings shall be endorsed with notice of this enactment :

Provided also that the Secretary of State may at any time dispense with all or any of the requirements of this subsection subject to such conditions (if any) as he may see fit.

(8) All buildings erected or provided for the purpose of any scheme under this section shall be subject to the provisions of the London Building Act 1894 and any Act or Acts relating to buildings in the county of London.

(9) The Secretary of State may direct any inquiries to be held by any persons appointed by him as inspectors which he may deem necessary in relation to any scheme under this section or to the carrying out of any such scheme and may appoint or employ inspectors for the purposes of any such inquiry and the inspectors so appointed or employed shall for the purposes of any such inquiry have all such powers as the inspectors of the Local Government Board have for the purposes of inquiries directed by the Local Government Board under the Public Health Act 1875.

(10) The Council shall pay to the Secretary of State a sum to be fixed by him in respect of any expenses incurred by him in relation to any inquiries under this section including the expenses of any witnesses summoned by the inspector and a sum to be fixed by the Secretary of State for the services of such inspector.

(11) Any houses purchased or acquired by the Council for or in connection with any of the purposes of this Act whether purchased or acquired in exercise of the powers conferred by this Act or otherwise and whether before or after the passing of this Act which may have been occupied by persons of the labouring class within five years before the passing of this Act and for which houses no substitutes have been or are directed to be provided by any scheme approved by the Secretary of State under any previous Act relating to the Council shall for the purposes of this section be deemed to have been acquired under the powers of this Act and to have been occupied on the fifteenth day of December last by the

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same number of persons belonging to the labouring class as were occupying the said houses at the date of their acquisition. Provided that if the Secretary of State is unable to ascertain the number of such persons who were then occupying the said houses the said houses shall be deemed to have been occupied by such number of such persons as in the opinion of the Secretary of State they might have been sufficient to accommodate.

(12) For the purposes of this section—

The expression “labouring class” means mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others (except members of their own family) and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them ;

The expression “house” means any tenement separately occupied by any person or persons ;

The expression “district” means the district of a sanitary authority for the purposes of the Public Health (London) Act 1891.

50. If the Council with the consent of the Secretary of State for the Home Department utilise any lands forming any part of the site of Millbank Prison (which lands were acquired by the Council under the provisions of Part III. of the Housing of the Working Classes Act 1890) for the purpose of rehousing persons of the labouring class displaced in connexion with the said Thames Embankment extension and improvements at Westminster then such sum as the Council shall determine in respect of the cost of acquiring such lands shall be charged to and deemed to be part of the costs and expenses of the said Thames Embankment extension and improvements at Westminster and shall be applied towards the cost of the acquisition by the Council of other lands for the purposes of Part III. of the Housing of the Working Classes Act 1890.

Utilisation of certain lands at Millbank for rehousing in connexion with Westminster improvements.

51. If the Council take for the purposes of this Act any land forming part of a churchyard or burial ground the following provisions shall apply and have effect (namely):—

Removal of bodies.

(a) All human remains being interred or deposited in or on any part of such churchyard or burial ground so taken shall be removed and interred by the Council to and in such other graveyard or cemetery in which human remains may be

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- lawfully interred as the Council may appoint provided that human remains removed from consecrated ground shall be re-interred in consecrated ground :
- (b) Before proceeding to remove any such human remains the Council shall publish a notice once in each of two successive weeks in two newspapers circulating in the county of London to the effect that it is intended to remove such remains and such notice shall have embodied in it the substance of the conditions of this section :
- (c) At any time within two months after the last publication of such notice any person who is an heir executor or administrator or relative of any deceased person whose remains are to be removed may give notice in writing to the Council of his intention to undertake the removal of the remains of such deceased person and thereupon he shall be at liberty to undertake the same subject as herein-after mentioned :
- (d) The heir executor or relative of any such deceased person giving such notice as aforesaid may remove any tablets or monuments erected to the memory of such deceased person on such portion of ground and the expenses of such removal not exceeding twenty pounds for each vault containing a coffin or coffins and not exceeding five pounds for each separate coffin not contained in a vault and not exceeding ten pounds for each tablet or monument shall be borne and paid by the Council :
- (e) Provided that the removal of any such remains tablets or monuments from consecrated ground to consecrated ground shall be subject to such regulations (if any) as may be made with respect thereto by the Lord Bishop of the Diocese but no faculty shall be required for the purpose :
- (f) The removal of the remains of any deceased person shall be carried out under the supervision and to the satisfaction of the medical officer of health of the county of London.

PART III.—IMPROVEMENT AREA AND CHARGE.

Improve-
ment charge.

52. And whereas the Thames Embankment extension and improvements at Westminster and the High Street and Gardener's Lane Putney widening by this Act authorised will or may substantially and permanently increase in value lands in the neighbourhood of those improvements respectively which will not be acquired for the purpose thereof and it is reasonable that provision should be made under which in respect or in consideration of such increased value

a charge should be placed on such lands Therefore the following provisions shall have effect viz. :—

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(1) In and for the purposes of this Part of this Act—

Definitions
in this Part
of this Act.

The expression—

“The improvement area” means the areas shown on the deposited plans within the line thereon indicating the limits within which an improvement charge may be imposed exclusive of the lands shown on the deposited plans of the Westminster improvements within the said limits northward of Great College Street;

“The improvement” means the Thames Embankment extension and improvements at Westminster and the High Street and Gardener’s Lane Putney widening by this Act authorised or either of those improvements as the case may be;

“Owner” means where the hereditament is copyhold the person or persons entered on the roll of the manor and entitled to enfranchise the same;

“Lands” shall extend to messuages lands tenements and hereditaments but shall not include any main pipe or apparatus of any company supplying gas or water under the powers of any Act of Parliament or any culvert pipe tube apparatus or wire of any electric lighting or hydraulic company authorised by any Act of Parliament or telephone company acting under a licence from the Postmaster-General or any estate or interest in land of or belonging to any such company in respect of any such main pipe apparatus culvert tube or wire;

(2) All lands within the improvement area but which shall not be purchased and taken by the Council under the powers of this Act shall be liable to have an improvement charge placed on such lands or some of them (in accordance with the provisions herein-after set forth) in respect or in consideration of any substantial and permanent increase in value which it is clearly shown has been derived from the improvement:

Lands
liable to be
charged.

(3) Two months at least before the commencement of any part of the improvement and as soon after the passing of this Act as the Council think fit the Council shall make under their seal a specification of all the lands within the improvement area upon which they propose to place a charge and which they desire to include in the assessment hereafter mentioned:

Specification
of lands
proposed to
be charged.

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They shall give notice by registered letter addressed to each owner lessee or occupier of any such lands as the Council include in such specification :

Thereupon any such owner lessee or occupier may apply to the Local Government Board to appoint some independent person to make a valuation of the several lands within the improvement area which the Council have included in the specification :

A copy of the specification shall be delivered to the person so appointed within twenty-one days after his appointment and the person so appointed shall thereupon after giving such notice or notices as the Local Government Board may direct and hearing any parties interested and applying to be heard proceed to make a valuation of all such lands which valuation is hereafter referred to as "the initial valuation" The proper cost of making the initial valuation including the reasonable costs charges and expenses of all or any of the parties interested (to be taxed in case of difference by a Master of the Supreme Court attached to the Queen's Bench Division) shall be paid by the Council :

Provided that if within one month after the service of the said notices no application be made for the appointment of a person to make the initial valuation the Council shall make such application and the valuation shall be made accordingly :

In making such valuation the valuer shall separately distinguish and assess in each case the value of the land apart from that of any existing buildings thereon and shall also value the land and buildings as a whole and shall not take into consideration any increased value accruing or supposed to accrue to such land or buildings from or in consequence of the improvement but shall only take into consideration the value independently of the improvement and as if the improvement had not been contemplated:

The valuer shall also separately value the interest of the owner of any such lands and the interest of every lessee of any such lands for a term having not less than twenty-one years unexpired at the date of the valuation (excluding from each such valuation any trade interest) and shall not take into consideration any increased value accruing or supposed to accrue to such lands from or in consequence of the improvement but shall only take into consideration the value of the

said lands independently of the improvement and as if the improvement had not been contemplated :

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The initial valuation when made shall be deposited with the clerk of the Council and shall be kept deposited at the county hall and shall be open to inspection at all reasonable times by any persons and their duly authorised agents interested in any lands comprised in the said valuation :

- (4) The Council shall not sooner than twelve months nor later than three years after the issue by them of their certificate of the completion of the improvement cause to be framed an assessment describing the lands situate within the improvement area and comprised in the said valuation which the Council allege ought to bear and pay the said improvement charge and the Council shall in such assessment state and specify—

Assessment
for proposed
charge.

(a) The names of the owners lessees and occupiers of the lands described in the said assessment respectively so far as they can be ascertained ;

(b) The amounts by way of charge which the Council allege ought to be charged upon such lands respectively :

The assessment shall contain a statement of the amount which the Council allege is the enhanced market value derived by the lands respectively from the improvement :

The amount to be proposed in the assessment as the charge to be placed on any lands under the provisions of this section shall be equal to three per centum per annum upon one half of the amount which the Council allege is the enhanced market value derived by the said lands from the improvement after making all fair and proper deductions for rates taxes assessments and impositions on the said lands according to such increased value :

- (5) The assessment shall be submitted to and considered by the Council at a meeting or meetings and the Council may by resolution approve the same either with or without modification or addition as they think fit :

Approval of
assessment
by Council.

- (6) The resolution approving an assessment shall be published once in each of two successive weeks in two or more London daily newspapers with an interval of at least six clear days between the two publications and copies of such resolution shall be publicly posted on the site of the improvement and within seven days of the date of the first publication of the resolution copies thereof shall also be served on the owners lessees and occupiers of the lands described in the assessment :

Notice of
assessment.

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- The notices served on the owners lessees and occupiers under this section shall state shortly the effect of the resolution and assessment upon the lands in respect of which they are served and also of the provisions of this Part of this Act with respect to the time and mode of objecting to the assessment and the grounds on which the assessment may be objected to and shall also state shortly the provisions of this Part of this Act with respect to claims for decrease in value the right to have the matter decided by an arbitrator and the payment of costs :
- Copies to be deposited. (7) From and after the date of the first publication of the resolution and until the expiration of three months from the date of the last publication thereof the assessment or copies thereof certified by the clerk or some other officer of the Council shall be kept deposited at the office of the Council and shall be open to inspection at all reasonable times by any person interested :
- Objection to assessment. (8) During the said period of three months the owner or lessee of any lands described in the assessment or the occupier thereof for the time being may by written notice served on the Council object to the assessment on any of the grounds following :—
- (i) That any lands in which he is interested included in the assessment ought to be excluded by reason that it has not been or cannot be clearly shown that the market value of the lands to which the notice relates is substantially and permanently increased by the improvement ;
 - (ii) That the amount of any charge proposed to be placed upon any lands in which he is interested ought to be varied ;
 - (iii) That the assessment is incorrect in respect of some matter of fact (to be specified in the objection) :
- Purchase of estate or term in certain cases. (9) If (a) any owner or owners of any lands comprised in the initial valuation upon which a charge is proposed to be placed who alone or together have power to sell the fee simple of such lands subject to any lease or leases thereof or (b) any lessee or lessees of any such lands for a term having not less than twenty-one years unexpired at the date of the initial valuation are of opinion that such charge is greater than it should be in reference to the enhancement or supposed enhancement of the value of such lands by reason of the improvement they may at any time within the said period of three months (instead of giving any notice of objection: under the preceding

paragraph of this section) by notice in writing served upon the Council require the Council to purchase their estate and interest in such lands and the Council shall thereupon purchase and take the same accordingly at the value specified in the initial valuation : A.D. 1900.

If within one month after the receipt of any such notice by any owners or by any such lessees requiring the Council to purchase their estate and interest in any lands in manner aforesaid the Council shall elect to abandon the proposed charge to which such notice relates the Council may give notice by registered letter addressed to such owners or to such lessees as the case may be of their intention to abandon the same and thereupon the Council shall be relieved from any liability to purchase such lands or the estate or interest therein to which the notice relates and the charge so far as relates to such lands or any estate or interest therein of such owners or such lessees as the case may be shall be extinguished and the Council shall give a certificate under their common seal that such charge is extinguished which shall be sufficient evidence thereof Provided that the Council shall pay to the owners or to such lessees as the case may be all costs charges and expenses reasonably and properly incurred by them in consequence of the said lands having been included in the assessment such costs failing agreement to be settled by a master of the Supreme Court attached to the Queen's Bench Division :

Council may abandon improvement charge after notice given by owners or lessees to purchase.

(10) At any time during the said period of three months after the last publication of the assessment the owner or lessee of any lands upon which a charge under this section is proposed to be placed who may be the owner or lessee of other lands within the limits of the improvement area may give written notice to the Council that substantial and permanent decrease in the value of such other lands to an amount to be stated in the notice has been caused by the improvement and that he claims that such alleged decrease shall be considered by the arbitrator and if it be clearly shown that any substantial and permanent decrease in the value of such other lands as aforesaid has been caused by the improvement the arbitrator shall deduct the same in determining the amount of the charge in respect of such first-mentioned lands :

Lands decreased in value.

For the purposes of this Part of this Act joint tenants or tenants in common may give any such notice as aforesaid through one of their number authorised in writing under the

Notices by joint tenants.

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If no objection or claim assessment final.

Arbitrator to settle objections and claims.

Amendment of assessment.

Procedure of arbitrator.

hands of the majority of such joint tenants or tenants in common and any lessees may combine in a notice :

- (11) If at the expiration of the said period of three months no notice of objection or of alleged decrease in value shall have been served on the Council then the Council may publish notice to that effect in the London Gazette and as from the date of such notice such assessment shall become final :
- (12) If any such notice of objection or of alleged decrease in value be served on the Council within the said period of three months then the Council may apply to the Local Government Board to appoint an arbitrator for the purposes of this Part of this Act and the Local Government Board shall appoint an arbitrator accordingly and as often as any such arbitrator shall die or resign or become incapable of acting (previous to the making of an award as herein-after provided) the Council may in like manner apply to the said Board and the said Board shall from time to time appoint another arbitrator in his stead and every such arbitrator shall be entitled to such fees or remuneration as may be fixed by the Local Government Board :
- (13) The Council may at any time before the appointment of the arbitrator but subject to the provisions of this Part of this Act by resolution amend the assessment so as to include in the assessment as amended any lands by this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation but not in the original assessment and may fix the sums proposed to be charged upon any such lands but any such resolution shall be published and copies thereof shall be served and copies of the amended assessment deposited for public inspection in the manner herein-before prescribed with respect to the original resolution and assessment and notices of objection and of alleged decrease in value in respect of the amended assessment may be given in like manner and if given shall be dealt with and determined in like manner as objections to or claims in respect of the original assessment :
- (14)—(i) The Council at any time after the appointment of the arbitrator may apply to the arbitrator to appoint a time for determining the matter of all objections and alleged decreases in value made as in this Part of this Act mentioned and for making an award and shall publish a notice of the time and place appointed and copies of such notice shall be served upon the objectors and claimants and also upon the owners lessees and occupiers of any lands inserted or which it may be proposed

to insert in the award (being in all cases lands by this Part of this Act made liable to have an improvement charge placed upon them and comprised in the initial valuation) and at the time and place so appointed the arbitrator may proceed to hear and determine the matter of all such objections and allegations. The arbitrator may amend the assessment on the application either of any objector or claimant or of the Council. Provided that if he insert in the award any lands or the name of any person not included in the original assessment or increase the amount of the charge on any lands such notice as the arbitrator may think sufficient shall be given to the persons affected to enable them to object to such insertion or increase:

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(ii) The arbitrator may also if he think fit adjourn the hearing and direct any further notices to be given:

(iii) No objection to any assessment or award which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever:

(iv) All the reasonable and proper costs of any such arbitration and incident thereto shall be borne by the Council unless the arbitrator shall award the same amount of charge as shall have been proposed in the assessment or a greater amount or (in the case of alleged decrease in value) a less amount than the amount claimed in which case each party shall bear his own costs incident to the inquiry or arbitration and the costs of the arbitrator shall be borne in equal proportions. Provided that if it shall appear to the arbitrator that any objection to the amount proposed to be assessed or that any claim was frivolous and vexatious the arbitrator may make such order concerning the costs of the person making such objection as to him may seem meet. Where such costs are ordered to be paid or become payable by an objector or objectors the arbitrator may if he think fit add such costs to the charge apportioned on the estate or interest of the objector or objectors:

(15) When and so soon as the assessment and any amendments thereof and all objections thereto and all such allegations as aforesaid (if any) shall have been disposed of as by this Part of this Act directed the arbitrator shall issue an award under his hand which shall be final and conclusive for all purposes:

Award.

A copy of the award shall be published once in the London Gazette and notice of such award shall be served upon the owners or reputed owners lessees or reputed lessees and occupiers of the lands affected thereby:

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Effect of
charge.

(16) If no objection as herein-before provided be made to the assessment the amount defined by the assessment or the amended assessment (and if an award be made as herein-before provided then the amount defined by the award) as the charge in respect of any lands shall be a charge and incumbrance thereon and the Council shall cause the same to be registered as a land charge under the Land Charges Registration and Searches Act 1888 :

Incidence of
charge.

(17) The charge in respect of any lands as fixed by the award shall (subject to the following provision) begin to be payable on the first day of April or October as the case may be next ensuing after the date of the award and shall be payable thereafter half-yearly until redeemed and satisfied :

The arbitrator in making the award shall take into consideration all the circumstances of the case and in particular shall consider the several interests in such lands and the time at which they severally expire and may make the commencement of any charge dependent on the expiration of any term of years or other period or on the happening of any event as he shall deem fair and equitable :

The improvement charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as they shall agree or as in the event of no agreement being made or so far as any such agreement shall not extend shall be determined by the arbitrator who may apportion the incidence of such charge as between the freehold and any other estate or interest in the lands during the period of any existing term of years for which the same is held at the date of the award :

Collection of
charge.

(18) The charge due in respect of any lands shall be payable to the Council on demand and may be collected on behalf of the Council by such persons as they may appoint for that purpose :

Where any lands in respect of which a charge is payable are occupied by any person the Council may collect the annual payments due in respect of the charge from such person But if he be not the person for the time being liable to the payment of the charge or any part thereof then he may deduct from any rent payable by him the charge or any part thereof payable by any other person and any person receiving such

rent (if he be not the person liable to pay the charge or any part thereof) may in like manner deduct from any rent payable by him the charge or such part thereof as is payable by any other person so that the proper deduction may in each case be made from the rent paid to the person or persons by whom the charge or any portion thereof is payable :

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In case of default being made in any payment due to the Council in respect of the charge the amount thereof may be recovered in any court of summary jurisdiction and in addition the Council may have and exercise such remedies for recovering the same as are conferred by the Conveyancing Acts 1881 to 1892 with regard to sums payable by way of rentcharge :

- (19) Any owner lessee or occupier of any lands subject to the charge or any other person interested therein may from time to time redeem the same by agreement with the Council and shall be entitled from time to time to redeem the charge upon any lands on payment to the Council of any arrears thereof and of a sum equal to thirty-three times the amount of such charge and from and after such redemption the charge shall be deemed to be satisfied and shall be no longer payable in respect of the said lands and the Council shall give a certificate under their common seal that the said charge is redeemed and satisfied which shall be sufficient evidence thereof :
- (20) Where the incidence of the charge as between any persons interested in the lands is regulated or affected by any contract or covenant the arbitrator shall have regard to such contract or covenant and this Act shall not be deemed to alter the effect of any such contract or covenant :
- (21) In any case where the Council are required under this Part of this Act to serve any notice or other document upon any owner or lessee and the Council are unable after diligent inquiry to ascertain the name or address of any owner or lessee on whom such notice or document is to be served it shall be sufficient to serve the same either by delivering the same to the occupier of the lands with a notice that the same is to be given to each immediate or superior landlord or owner or by affixing a copy of the resolution to some conspicuous and convenient place on or near the lands :
- (22) The Arbitration Act 1889 shall subject to the provisions of this Part of this Act apply to the arbitrator and procedure before him except that the award shall be final and binding upon all parties.

Redemption
of charge.As to
existing
contracts &c.Service of
notices &c.Arbitration
Act to apply.

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PART IV.—CONTRIBUTIONS BY LOCAL AUTHORITIES.

Contribu-
tions by
local
authorities.

53. The district board of works for the district and the vestries of the parishes herein-after mentioned respectively shall and they are hereby required from time to time to contribute towards the costs and expenses of the Council in relation to the improvements herein-after respectively stated such sums on account of such costs and expenses as the Council may from time to time require to the extent of but not exceeding in each case the fixed sum or the proportion of such costs and expenses herein-after stated with reference thereto and the said district board and vestries respectively may for the purpose of paying any such contribution or any part thereof borrow the requisite moneys and for the purpose of securing the repayment with interest of any moneys to be borrowed as aforesaid the district board and vestries respectively may mortgage and assign all the moneys or rates authorised to be raised by them under the Metropolis Management Act 1855 and all the provisions of sections 183 to 191 of the last-mentioned Act as amended by any subsequent Act shall apply to any borrowing by such district board and vestries respectively under this section of this Act.

The contributions required by this section are—

Towards the cost of the Mare Street (Hackney) widening—

By the vestry of the parish of Saint John Hackney such sum not exceeding one hundred and twenty-five thousand pounds as will amount to one-fourth of the net cost :

Towards the cost of the Goswell Road widening—

By the vestry of the parish of Saint James and Saint John Clerkenwell fifteen thousand pounds ;

By the vestry of the parish of Saint Luke Middlesex five thousand pounds :

Towards the cost of the Kentish Town Road widening—

By the vestry of the parish of Saint Pancras such sum as will amount to the cost of the necessary paving works with the exception of the paving of the space occupied by tramway :

Towards the cost of the Nine Elms Lane widening—

By the vestry of the parish of Saint Mary Battersea fifteen thousand pounds :

Towards the cost of the widening at Battersea Rise—

By the vestry of the parish of Saint Mary Battersea seven thousand five hundred pounds.

With respect to the contributions towards the cost of the widening of High Street and Gardener's Lane Putney the following provisions shall have effect:—

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The Council shall contribute one-half of the net cost of the widening of High Street and one-fourth of the net cost of the widening of Gardener's Lane Provided that the total contribution by the Council towards such widenings shall not exceed the sum of fifteen thousand pounds ;

The residue of the costs and expenses of such widenings after the deduction from the total costs and expenses thereof of such contribution by the Council as aforesaid shall be provided by the Board of Works for the Wandsworth District :

Provided that any sums of money which the Board of Works for the Wandsworth District may from time to time require to raise for the purpose of the widening of High Street and Gardener's Lane and any moneys which they may from time to time require to raise in order to repay moneys borrowed for that purpose and the interest thereon may be ordered to be levied and shall be levied from the parish of Putney (including Roehampton) and all the provisions of the Metropolis Management Acts 1855 to 1893 with regard to the collection and levying by any district board of moneys for defraying expenses which have not been incurred for the equal benefit of the whole of their district shall apply to the collection and levying of any moneys charged under the provisions of this subsection upon the said parish of Putney (including Roehampton).

54. Separate accounts shall (if and so far as may be necessary) be kept in relation to the costs and expenses of each of the improvements referred to in the preceding section of this Act and for the purpose of ascertaining the sums to be paid to the Council under the provisions of the said preceding section by the district board and vestries therein mentioned the Council shall notwithstanding the provisions of the Metropolitan Board of Works (Loans) Act 1869 or any other Act carry to the said accounts respectively all sums of money (if any) which may from time to time be paid to the Council under the provisions of this Act on account of the said improvements respectively whether such sums arise from the sale of materials or the sale or letting of lands or any other sums which recoup the Council part of the expenses incurred by them in carrying this Act into execution with respect to the said improvements and shall furnish to the said district board and vestries copies of the accounts relative to the improvement to

Accounts of
receipts and
payments.

A.D. 1900. which they are respectively required under the provisions of the said section to contribute.

Agreements for closing accounts in case of joint works.

55. Where under the powers of this Act an improvement has been or is to be carried out at the joint cost of the Council and of any district board or vestry it shall be lawful for the Council and such district board or vestry to enter into and carry into effect any agreement for determining the amount of the respective contributions of the Council and such district board or vestry and for settling and closing the account between them in relation to the improvement although the improvement may not be at the time completed and although the total cost of the improvement may not have been at the time ascertained and either party may accept from the other of them and the other of them may make a conveyance or assignment of any estate or interest in any surplus lands in connection with such settlement in such manner as may be agreed between them.

Local contribution towards improvements at Westminster.

56. It shall be lawful for the borough council of the city or borough of Westminster to be constituted under the London Government Act 1899 to make a contribution if they think fit towards the costs and expenses of the Council in connexion with the Thames Embankment extension and improvements at Westminster by this Act authorised:

PART V.—FINANCIAL:

Money to be raised on capital account.

57.—(1) The Council may expend on capital account for the purpose of carrying out the improvements such money as they may from time to time think fit not exceeding two million six hundred and fifty thousand pounds and in order to raise or provide the money required for that purpose the Council may from time to time create and issue consolidated stock or resort to the consolidated loans fund or otherwise raise money in accordance in each case with the provisions of the Acts for the time being in force regulating the raising of money for capital purposes by the Council:

Provided that nothing in this Act shall authorise the borrowing and expenditure of any money on capital account after the thirtieth day of September one thousand nine hundred and one.

(2) The Council in accordance with the provisions in relation to redemption and repayment of the Acts relating to the raising and expenditure of money by the Council on capital account shall make provision for the redemption of stock or the repayment of money borrowed or expended on capital account for the purposes

of this Act within such term not exceeding in any case sixty years as the Council with the consent of the Treasury may determine: A.D. 1900.

Provided that the Council shall not be bound to commence making the annual payments to the Consolidated Loans Fund under section 27 (4) of the Metropolitan Board of Works (Loans) Act 1869 in respect of the redemption of stock issued for the purpose of meeting expenditure on the Thames Embankment extension and improvements at Westminster until after the expiration of seven years from the end of the financial year current on the passing of this Act.

58. In any case where the Council carry out any improvement of a street in which a tramway is intended to be laid the Council may if they think fit apportion the costs and expenses in such manner as they may think proper between the improvements account and any separate account which they may keep in relation to tramways: Apportionment of expenses of certain improvements.

Provided always that nothing contained in this Act shall be deemed to alter prejudice or affect the indenture of lease dated the fourteenth day of October one thousand eight hundred and ninety-seven and made between the Council of the one part and the North-Metropolitan Tramways Company of the other part or the respective rights and obligations of the Council and the said company under the said lease.

59. All costs and expenses of the Council in the execution of this Act (except so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act 1888 and the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be paid by the Council in like manner. As to payments under this Act.

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The SCHEDULE referred to in the foregoing Act.
(PROPERTIES OF WHICH PORTIONS ONLY MAY BE TAKEN BY THE COUNCIL.)

PART I.

DESCRIPTION OF PROPERTIES OF WHICH PARTS ONLY MAY BE TAKEN BY THE COUNCIL.

| Name of Improvement. | Parish. | No. on Plan and in Book of Reference. | Description in Book of Reference. | Describing Part to be taken. |
|-------------------------------|--|---------------------------------------|--|--|
| Mare Street Hackney Widening. | Saint John Hackney. | 131 | Forecourt wall and rails - | So much as is within the line marked on the deposited plans as "Extent of Widening" or "Limit of Deviation." |
| | | 132 | Forecourt area show-case walls and rails. | |
| | | 133 134 135 136 | Forecourts walls and rails | |
| | | 140 | Part forecourt roadway walls piers and rails. | |
| | | 142 143 144 145 146 | Part forecourt rails gates and wall. | |
| | | 147 | Part forecourt roadways and garden. | |
| | | 148 149 | Houses offices forecourts areas gardens and out-buildings. | |
| | | 190 | Part of forecourt - - - | |
| | | 184 | Part of forecourt rails and gates. | |
| | | 185 186 | Part forecourt walls piers rails and gates. | |
| | | 187 | Part forecourt passage walls piers rails and gates. | |
| | | 188 | Part forecourt walls rails and gates. | |
| | | 275 277 | Forecourts - - - | |
| | | 278 | Part forecourt roadway walls rails and gates. | |
| | | 279 | Forecourt and gateway - | |
| | | 280 | Forecourt area wall rails and gates. | |
| 281 | Forecourt roadway walls rails and gates. | | | |

THE SCHEDULE—continued.

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| Name of Improvement. | Parish. | No. on Plan and in Book of Reference. | Description in Book of Reference. | Describing Part to be taken. |
|--|---|---------------------------------------|------------------------------------|--|
| Mare Street Hackney Widening— <i>cont.</i> | Saint John Hackney— <i>cont.</i> | 282 | Forecourt and part passages. | } So much as is within the line marked on the deposited plans as "Extent of Widening" or "Limit of Deviation." |
| | | 284 | Forecourt - - - | |
| Goswell Road Widening. | Saint James and Saint John Clerkenwell. | 39 | Forecourt and areas - | |
| | | 68 | Roadway and gates - | |
| Blackstock Road (Islington) Widening. | Saint Mary Islington. | 1 | Part of playground - | |
| | | 2 3 | Forecourts - - - | |
| Archway Road (Islington) Widening. | Saint Mary Islington. | 1 | Part of garden and steps | |
| | | 3 | Private passage - - | |
| | | 4 5 | Forecourts - - - | |
| Widenings at Battersea Rise. | Battersea - - | 1 2 3 4 5 6 7 | Forecourts - - - | |
| | | 8 9 10 12 | | |
| | | 13 14 15 16 | | |
| | | 17 18 | | |
| | | 20 21 22 | Part forecourts and gardens. | |
| | | 23 | Part forecourt yard and steps. | |
| | | 25 | Forecourt and area - | |
| | | 26 27 | Forecourts - - - | |
| | | 30 | Forecourt of "The Northcote Arms." | |
| | | 57 58 59 60 61 62 | Shops and forecourts - | |
| Widenings at Blackheath Road Blackheath Hill and New Road. | Greenwich - - | 1 | Land and buildings - | |
| | | 2 3 4 5 6 8 9 | Forecourts - - - | |
| | Woolwich - - | 1 | Land wall and gates - | |
| | | 3 | Forecourt and roadway - | |
| | | 4 5 6 7 8 9 10 | Forecourts - - - | |
| | 11 | Forecourt and gateway - | | |

A.D. 1900.

PART II.

DESCRIPTION OF PROPERTIES OF WHICH PORTIONS ONLY MAY BE TAKEN
BY THE COUNCIL SUBJECT TO ARBITRATION.

| Name of Improvement. | Parish. | No. on Plan and in Book of Reference. |
|--|--|--|
| Mare Street Hackney Widening | Saint John Hackney - - | 189 177. |
| Goswell Road Widening - - | Saint James and Saint John Clerkenwell. | 50 56. |
| Saint John Street (Clerkenwell) Widening. | Saint James and Saint John Clerkenwell. | 11. |
| Nine Elms Lane Widening - | Saint Mary Battersea - - | 8 9 10 11 12 13 17 18 20 30 31 32 33. |
| | Lambeth - - - | 1 2 3 4. |

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ANNEX 4

Press Release – “Government to introduce legislation to pave way for new National Holocaust Memorial”, 26 January 2023

[Home](#)

Press release

Government to introduce legislation to pave way for new National Holocaust Memorial

Holocaust Memorial Bill will update historic legislation and progress the building of a new memorial in London

From:

[Department for Levelling Up, Housing and Communities](#)

[\(/government/organisations/department-for-levelling-up-housing-and-communities\)](#)

Published

26 January 2023



- Holocaust Memorial Bill will update historic legislation and progress the building of a new memorial and learning centre in Victoria Tower Gardens, Westminster
- Located next to the Houses of Parliament, memorial will serve as a powerful reminder to the whole of society
- Memorial and learning centre will be free to visitors and its careful design means the memorial will enhance the gardens.

The Government will introduce new legislation to progress the construction of a national Holocaust memorial.

The Prime Minister announced in the House of Commons yesterday (25 January) that the Holocaust Memorial Bill will update historic legislation, removing a statutory obstacle that has previously prevented the building of a new memorial and learning centre in Victoria Tower Gardens in Westminster.

Located next to the Houses of Parliament, the memorial will serve as a powerful reminder to the whole of society of the Holocaust, its victims and where prejudice can lead if unchallenged.

The Prime Minister, Rishi Sunak, said:

“This important Bill brings us one step closer to delivering a national Holocaust Memorial and Learning Centre at the heart of our democracy in Westminster, where it rightly belongs.

“The Memorial will honour the memory of those who were so cruelly murdered and preserve the testimonies of brave survivors so that future generations will never forget the horrors of the holocaust.

“As the remaining survivors become older and fewer in number, it is vital that we push ahead with the Memorial which is supported by all major political parties.”

Secretary of State for Levelling up, Housing and Communities, Michael Gove said:

“As the Holocaust moves from living history, to history, it becomes ever more important that we take the time to remember the six million Jewish men, women and children murdered and pay tribute to the survivors.

“We are committed to building the Memorial next to Parliament, a site which reflects its national significance and is close to other important memorials including the Cenotaph.

“We owe it to Holocaust survivors, to the British people and future generations to remember where hatred can lead.”

Rt Hon Ed Balls and Rt Hon Lord Eric Pickles, Co-chairs of the UK Holocaust Memorial Foundation said:

“As the generation of brave Holocaust survivors passes away, we have a duty to create this memorial to make sure that the memory and the truth of the Holocaust is preserved.

“Victoria Tower Gardens, at the heart of Westminster and alongside the great symbol and heart of our democracy, is absolutely the right place to construct the national Memorial to the Holocaust.”

Manfred Goldberg BEM, a Holocaust survivor who was held captive in Stutthof concentration camp, Poland, said:

“Several years ago survivors were promised a Holocaust Memorial in close proximity to the Houses of Parliament. I am a 92 year old survivor who would be so grateful to be alive when this project, uniquely situated next to the Mother of Parliaments, comes to fruition.”

Planning consent for the Holocaust Memorial to be built in Victoria Tower Gardens was granted in July 2021, but the decision was quashed by the High Court in April 2022 due to historic legislation that requires the garden to be maintained as a garden open to the public.

The memorial and learning centre will be free to visitors, with timed entry tickets.

Careful design means the memorial will enhance the gardens, ensuring they continue to provide an important public garden available to residents and visitors to Westminster. Paths and seating will be more attractive, accessible and landscaping improvements will enhance the local environment, maintaining public access.

Holocaust Educational Trust Chief Executive Karen Pollock said:

“As the Holocaust fades further into history, and with survivors becoming fewer and frailer, time is of the essence. Located in the heart of our democracy, the UK Holocaust Memorial will send a clear signal for years to come of the place the Holocaust should always have in our national consciousness and the importance of learning its lessons for generations to come.”

The proposal to construct a new national Memorial to the Holocaust, with an accompanying learning centre, was announced by the then Prime Minister with cross-party support in January 2015, and the decision to build the memorial at Victoria Tower Gardens was announced in January 2016.

Following an international competition, a design team of Adjaye Associates, Ron Arad Associates and Gustafson Porter + Bowman was selected. A planning application was submitted in December 2018 and planning consent was granted in July 2021, following a lengthy public inquiry.

A High Court judgment in April 2022 found that the London County Council (Improvements) Act 1900 imposed an obligation to maintain Victoria Tower Gardens as a public garden, and that this obligation was an obstacle to construction of the Holocaust Memorial at that site. Based on this conclusion, the High Court quashed the decision to grant planning consent.

NOTES TO EDITORS

- As the High Court quashed the earlier decision to grant planning consent, the decision needs to be re-taken by the designated Minister. Strict handling

arrangements are in place within the Department for Levelling-Up, Housing and Communities to ensure that there is a functional separation between the persons bringing forward the proposal for development and the persons responsible for determining that proposal.

Published 26 January 2023

OGI

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ANNEX 5

London Government Bill (Session 1962–63) HC Deb 669, c 45

London Government Bill

Volume 669: debated on Monday 10 December 1962

DEC

10

1962

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Order for Second Reading read.

3.53 p.m.

Mr. G. R. Mitchison

(Kettering)

Share

On a point of order, Mr. Speaker, I desire to submit that this is a Bill to which the Standing Orders relative to Private Business may apply—the words of Standing Order No. 36 are “may apply”. If that is so, the Bill ought to be sent to the Examiners.

A side note to the Rules talks about *prima facie* Hybrid Bills, but I prefer the language of the rule itself and the answer which was given by the then Clerk of Public Bills to the Select Committee on Hybrid Bills, 1948, when, on page 52 of the evidence, he was asked:

“Is the principle then, that when there is any doubt at all the bill must go to the Examiners?”

His answer was:

“I should say so, yes.”

I propose to submit that in this case there is, at any rate, some doubt and that the Bill should, therefore, go to the Examiners.

Standing Orders will be applicable if the Bill affects private rights which are not the private rights of a whole class of people. The second paragraph of the Report of that same Select Committee on Hybrid Bills contains as part of its definition of a Hybrid Bill

“... a public bill, since it accords with the two fundamental criteria of public bills described by Erskine May”—

those two fundamental criteria are that it should relate to public policy and be introduced directly by a Member of the House—

“it has also, in large or small degree, the character of a private bill, since it affects the interests of specific individuals or corporations as distinct from all individuals or corporations of a similar category.”

An instance of a Private Bill, and a very common instance, is a Bill local in its application. There appears to be no doubt that if the present Bill related to Birmingham, for instance, it would be a Private Bill and would, therefore, have in it that element of Private Bill character which would require it to be sent to the Examiners. That is the con- elusion in Erskine May which, on page 869, says:

“A bill relating to a city is usually held to be a private bill.”

Column 38

The question is whether that also applies to the Metropolis. I must say at once that the practice of the decisions about this has not by any means been consistent, but all that I have to show is that there is some doubt. For that purpose I can take a simple case referred to on page 1 of the Minutes of Evidence given before that same Committee. The footnote says:

“A bill purely public has been converted by amendment into a hybrid bill. Thus the Waterworks Clauses Act (1847) Amendment Bill, 1884–85, as introduced into the House of Commons, applied to every water company in the kingdom. By an Amendment made in Committee it was limited to the metropolis. The House of Lords referred the bill to the Examiners who held that it had become a hybrid bill.”

There follow references to the Lords Journals.

The practice in these matters is the same whichever House is concerned. The change from a general application to a Metropolis application was held to turn the Bill into a Hybrid Bill. During the course of years, Bills about the Metropolis were originally introduced as Public Bills; then matters affecting the Metropolis, gradually but to an increasing extent, have been dealt with by Private Bills now introduced regularly year by year. On page 870 of Erskine May there are a number of references to a variety of cases and the general statement:

“Since 1874 bills for giving further powers to the Metropolitan Board of Works and to its successor, the London County Council, have been introduced and passed as private bills.”

There therefore appears to be nothing in the metropolitan character of London which ‘necessarily prevents this Bill from being treated as what it really is—a Bill of local application.

There is a reference to the point of the Metropolis in Erskine May, but it is no doubt the result of the growth of other large conurbations that the tendency has been more and more to assimilate metropolitan practice to that which would apply to Birmingham, or some other large town. Therefore, if any distinction is to be drawn, it must be a distinction relating to the character of the Metropolis as such. I can see the point in relation to the police, for instance, but I fail to see it in relation to a number of matters with which this Bill deals. I submit that there is, therefore, sufficient doubt as to whether the matters should be dealt with in this form without reference to the Examiners to entitle us to have the Bill sent to them.

Column 39

From that aspect of the matter I wish to turn to one or two particular cases. It is common knowledge, and has been stated by the Government and reported in the Press, that there were provisions relating to the water supply of the Metropolis which appeared in some draft Bill—which, of course, I have not seen—and which were taken out and do not appear in the present Bill; and which are to be the subject of other legislation, because it was understood that if they were put into this Bill, they would turn it into a Hybrid Bill.

If one looks at the published statement, called “Future of the Metropolitan Water Board,” printed by the Board and containing the report of its General Purposes Committee which was adopted on 19th October, one sees the sort of thing which might, have been the reason for the hybrid character which these water provisions would have imported in the Bill. Page 2 of the printed statement states:

“The proposed area to be administered by the Council”—

that is, the Greater London Council which is contemplated in this Bill—

“is some 750 square miles. Of this only some 420 square miles are supplied by the Board, that is, a little more than half. Moreover, the Board supply an area of about 120 square miles outside the Greater London Council area”

Later in the statement, when arguing the case, the Board says:

“... it is inconceivable that at the very time when the Government is endeavouring to improve and regularise the local government pattern in London, a step is proposed which would immediately create an anomaly by giving the Greater London Council jurisdiction for a service in parts only of its area, and permitting ten other authorities to have jurisdiction for the same service in other parts of its area.”

The point of this, of course, is that if we have provisions of this kind we are bound to have with them treatment relating not to a whole class, such as the water undertakings throughout the kingdom, but to a whole class, less some par- ticular instance. The particular instance, would, therefore, get the special treatment which imports a private character into the Bill and calls for its examination by the Examiners.

Column 40

The Metropolitan Water Board is a statutory body. It is financed by a water fund with the deficiencies out of the fund supplemented from the rates of the constituent bodies. A similar body appears in the sewerage section of the Bill. Sewers are not always treated with sufficient seriousness, but their maintenance is, no doubt, an essential part of local government. They are just as essential as the water supply, and Part V of the Bill deals with nothing else but sewage and trade effluents. Here we get an instance, on which I propose to rely, of what I submit is, quite clearly, exceptional treatment of one particular person; using the term “person” in the sense in which it is used in the definition to which I refer, a Parliamentary person, either an individual, or some public authority or corporation.

It may be said that this is a small point. But the words of the definition which I read refer expressly to a small degree and I think that I can show the House, or I can show you, Mr. Speaker, that even two sewers may be enough to turn the Bill into a Hybrid Bill, and these are more than two.

Turning to Clause 35, the first Clause in this part of the Bill, certain sewerage authorities and sewers and sewage disposal works are dealt with. The authorities are to be dissolved in the near future, and the sewers and sewage disposal works are to vest in the Greater London Council. Those authorities cover a considerable part of the Greater London Council area, but not the whole of it. The part which they do cover is referred to in the same Clause as “the sewerage area of the Greater London Council”; and the broad structure of the Clause is to hand over the provision of main sewers and sewage disposal works to the Greater London Council and the provision of what I might perhaps call ancillary sewers to London boroughs.

There is even a provision for the

“... power of the Common Council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple to provide sewers ...”

I do not know what they do about it, but there it is.

Column 41

Then follows, in subsection (5), a provision which enables the Greater London Council, in effect, to annex adjacent sewers which go with the main sewers which pass to them by virtue of the first subsection of the Clause. The Council can make a declaration and take over such sewers as it thinks are required. Indeed, it is laid down as the duty of the Council that it should examine the whole matter and take action.

The point on which I rely is that subsection (5), as the operative subsection, is subject to one exception which recurs through the whole Clause. It is that nothing is to affect the property or the functions of the West Kent Main Sewerage Board. That Board, which receives this exceptional treatment—for, in the language of the subsection, it is exceptional treatment—is the sewerage authority which provides for the whole of one, and most of another, of the new London boroughs to be constituted under the Bill.

On page 89 of the Bill we find that Borough No. 19, which includes Beckenham, Bromley and other places, and most of the preceding borough No. 18, are served by the West Kent Main Sewerage Board. The result of these provisions is, therefore, that if the West Kent Main Sewerage Board had not been excepted its public sewers and sewage disposal works would have been vested in the Greater London Council and the boroughs respectively so far as the Greater London Council thought proper, having regard to its statutory duties.

It is now not allowed to deal with the West Kent Main Sewerage Board in this way and, therefore, its position, as indeed appears from the language of the Clause, is an exceptional one. This, of course, is not a mere matter of the technical property in this, that or the other sewer. It directly affects the rating powers and the exercise of those powers in the whole area. The effect may not be large, but it is there.

If one looks at Clause 36 which is entitled, “Expenditure on sewerage”, and without going into detail, it is perfectly clear that the exclusion, the peculiar treatment given to this sewerage board in this way, must have some effect—though it is rather hard to see beforehand exactly what it is—on the finances of the sewerage authorities concerned, and ultimately on the rating authorities concerned.

Column 42

I suggested a little time ago that two sewers might make all the difference. I am sure that the Minister will remember that they did make a considerable difference in 1955 when what is now the Rating and Valuation (Miscellaneous Provisions) Act, 1955, contained a number of various and wide provisions about rating generally all over the country and was unquestionably, in the form in which it came before the House, a public Bill; and, I should have thought, with no character of the hybrid Bill in it at all.

During the course of the passage of that Bill through this House, an undertaking was given on behalf of the Government to give exceptional treatment to two sewers. The position was that sewers were to be derated, and the effect of derating the two sewers, which were the London outfall sewers, would be considerable on the finances of the Metropolitan boroughs, on the one side, and the London County Council, on the other.

The London County Council was taken to be in occupation of the sewers, and, for this purpose, paid rates, which constituted a substantial source of finance, for instance, to the East End authorities. A great deal of pressure was put upon the Government in the House not to upset the finances of these authorities and to make things difficult for the East End boroughs, which, I think, were the ones principally dealt with here.

The Government gave an unqualified undertaking, but, when the matter came to another place, they broke it. They recognised it, but said it must be carried out some other way. Indeed, I believe that steps have been taken to that end. But the Government broke the undertaking to amend that Bill, and the reason they gave was that to have carried it out would have been to make that Bill a hybrid Bill. This was a case of two sewers, not all the sewers of the West Kent Sewerage Board, which may have been many more than two; and maybe they were two very large sewers, but still only two. This was in a Bill which not only dealt with sewers, because the sewers were dealt with only in two subsections of a miscellaneous Clause.

Column 43

In regard to the other, I quote from HANSARD of 26th July, 1955:

“MR. HASTINGS asked the Minister of Housing and Local Government what steps he is taking to implement his undertaking”—

that is, the undertaking to which I have just referred, and the present Secretary of State for Commonwealth Relations, who was then Minister of Housing and Local Government, replied:

“It was unfortunately found that the inclusion in the Bill of the proposed Amendments to implement the undertaking would turn it into a hybrid Bill, and this would involve a lengthy procedure for which time is not available. It is, however, still the Government’s view that the overground parts of these sewers should continue to be rated, and I am considering how best that result might be served.”

Then, later, the Minister said, at the top of column 980:

“We have taken the best possible advice, but we are not satisfied that, without stretching the constitution, it would be possible to deal with the matter other than by means of a hybrid Bill.”—[OFFICIAL REPORT, 26th July, 1955: Vol. 544, c. 979–80.]

Therefore, I find it hard, and to my limited capacity it is impossible, to distinguish that case from that which we have to consider in relation to the West Kent Sewerage Board. Of course, the right hon. Gentleman had taken the best possible advice, and all I would say is that though that led to no ruling, it led to a distinct change of front by the Government and to a step which had a very marked effect, and it must surely be sufficient to raise doubt, which is all that I require to have this Bill sent to the Special Examiners.

I wish to mention two other points, and I apologise for taking the time of the House, but this is a matter of importance, and the Bill itself is important. First, there is the question of land occupied by local authorities for housing purposes. Under Clause 23, there is provision for a transfer of land held for housing purposes, and, where land is so held, it is to vest in the councils of the newly constituted London boroughs. These difficulties inevitably occur, as in the case of the West Kent Sewerage Board, on the boundaries of the area concerned.

In this case, the difficulty occurs in connection with land held by the Councils of the Borough of Epsom and Ewell and the Chigwell Urban District. These two local authorities are partly within the new Greater London Council area and partly outside it, and the result is that they get special treatment. Some land held for housing purposes is to pass to the newly constituted London boroughs, being land within the council of the Greater London Council, and some will not. The result will be to have an effect on those areas, on their rates and on their ratepayers, which is quite exceptional and derives from the fact that they are cut in two by the Bill. If being cut in two does not affect one’s private interest, I do not know what does, and that is what is happening in this case.

Column 44

Again, we cannot say what the effect will be. The authorities may be better off or worse off. One cannot say, in this case, as in the sewerage case, exactly how it would work out, so there is room for doubt whether this comes within a hybrid Bill, so far as it relates to private interests.

There is one other instance which I shall mention shortly. This is a very complicated and long Bill. Nobody will deny that. I have said nothing, in speaking to this point of order, about its merits, but it is very odd indeed that when one looks at the City of London and the Middle Temple, one finds that throughout the Bill they are having treatment which appears at first sight to be very special. Some of it may depend on their existing statutory position, and I would not deny that, though I am not sure that all of it does. Perhaps the simplest way of looking at it is to look at Clause 69 (1), where there is a provision about the equalisation of rates, under which the Minister may make a scheme for the purpose of reducing the disparity in the rates levied in certain areas other than the Temple.

It means something. It could mean much, it may mean little; but this question of the position of the Temples, and, for that matter, the City of London, raises doubt whether private interests are affected. And, when I refer to private interests, I am not talking about the interests of private individuals, but the interests of the public or local authorities. In the case of the two sewers and the Minister, if I may so refer to it, the parties concerned were, on the one hand, the London County Council, and on the other, a number of London boroughs. In one sense of the word, there is no life in any of them; in another, they have a full and vigorous Parliamentary life, until somebody abolishes them one day.

Column 45

This is the kind of thing which it is intended to protect by this provision relating to Hybrid Bills, and I respectfully submit that this is a case where there is, at least, some doubt, and that the matter should be referred to the examiners.

Mr. Speaker

Share

I should like to begin by thanking the hon. and learned Member for Kettering (Mr. Mitchison), not only for the careful and pleasant way in which he has made his objection now but for coming quite a long time ago, with the hon. Member for Fulham (Mr. M. Stewart), to warn me of the substance of this argument, and my advisers, so that we might have time to consider it as best as we could.

I do not think that I need quarrel at all about definitions with the hon. and learned Member. I accept the true position to be this, that if it be possible for the view to be taken that this Bill is a Hybrid Bill it ought to go to the examiners. There must not be a doubt about it.

I will try to follow his order as much as I can. I do not think, frankly, that the relevant Standing Order applies to this Bill as *prima facie* hybrid. On the wide ground that the hon. and learned Member was urging, in the light of precedent by which I am guided, I think that a Hybrid Bill can be defined as a public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class. But I am afraid that the precedents relating to Bills affecting local government of the whole of London and those which relate to Bills on the metropolitan sewers would prevent me from ruling that this Bill is *prima facie* hybrid by reason of the presence of Part V in it.

Indeed, it is plain that our practice has admitted sewerage as having the very metropolitan character that the Police have so as to make it properly the subject of a Public Bill. An instance of it being so regarded is the Metropolitan Local Management Act, 1855, part of which dealt with that very topic. Further, sewerage necessarily falls within the scope of public policy dealt with by this Bill. Indeed, by the Bill the authorities at present charged with the functions relating to sewerage would largely disappear. It is, in the words of the hon. and learned Member, essentially part of local government.

Column 46

What this Bill is doing is dealing with the whole structure of local government and the exercise of all local authority functions in Greater London. Sewerage is by statute a local authority function imposed here, either by the Public Health Act, 1936, or by Part II of the Public Health (London) Act, 1936, on the local authorities. The fact is that on this principle London sewerage has previously been treated as a matter which can be dealt with by a purely Public Bill without any sort or kind of complaint or hint of hybridity.

I think that the first stab into that principle which the hon. and learned Member attempted was the footnote on page 1 of the evidence given before the Select Committee. Were this a matter of water it may well be that we should regard it the same way as another place regarded the matter then, namely, that when the Bill, by amendment, was confined to London that Bill, relating to water supply, became a Hybrid Bill. It might be so, but whatever the reason may be, it is quite clear that our practice in this field distinguishes between public utilities, like water, gas, transport, electricity, and local government and local government functions.

I can only guess at what the reason is. It may be that by and large you need not have gas if you do not want it, or electricity if you do not want it, but you must use the sewerage. To make good my point at a glance, if hon. Members look at Erskine May they will find the two notes on page 870. One is under (d) and another under (e). The (d) Bills are the ones which managed their life happily as Public Bills without hint of hybridity, and the (e) Bills are the ones dealing with water and gas.

I am not unduly frightened off my line of thinking by this footnote on page 1 of the evidence before the Select Committee. It is true that I did privately rule this Bill in its previous form as hybrid. I did it in relation to the provisions relating to the Metropolitan Water Board on grounds which in no way deal with the matter I am now ruling about, or my views about that.

Column 47

The next narrower objection of the hon. and learned Member’s is based on Clause 35, the argument being that that Clause treats the West Kent Main Sewerage Board differently from the three sewerage boards which are dissolved by subsection (1), but in my view there is no question here of singling out a sewerage board for special treatment within a category of sewerage board to which it belongs. This is the problem—I forget the exact words the hon. and learned Member used just now—it is in and out problem. What happens on the boundaries of an area one is legislating about? All the boards serving areas wholly or mainly within and having their disposal works or out-falls within Greater London are dealt with in exactly the same way by this Bill.

The East Kent Board is quite different. Half of its area will remain in Kent if the Bill becomes law and the sewerage of the area is purified at works which will lie outside Greater London under the Bill and fall into the Thames at a point which will be outside Greater London under the Bill. For this reason I cannot regard the exclusion of the West Kent Main Sewerage Board by subsection (8) of that Clause as making the Bill *prima facie* hybrid.

I turn to the hon. and learned Member’s two sewers case, in which I suspect he participated. I should have shared the fears of the Government of the day that, had they imported into the Bill the amendments they were contemplating, the Bill would have been ruled by my predecessor, if necessary, hybrid, because what the Bill would have done—not, indeed, with the two great outfall sewers but with parts of those sewers—would have been to except as against the category of all the sewers in England parts of two sewers from the exemption from rating. I cannot help feeling that that would be a way of singling them out in a wholly different way from the treatment of the West Kent Main Sewerage Board, which has its works and out-falls outside Greater London. In that case, I cannot regard the 1935 Act as a precedent helping me in what I have to decide here.

Column 48

The remaining matters that the hon. and learned Member mentioned were the provisions of Clause 23, but those are a different problem. In connection with this Clause, he used the expression that it looks as though the Council of the Borough of Epsom and Ewell, on the one hand, or Chigwell Urban District Council, on the other, were being singled out of the whole category of local authorities for some kind of benevolent and special treatment, but this is not so. I think that if hon. Members look at the facts they will see that those two local authorities are the only two of which a part will lie within Greater London under the Bill. So they are not treated specially within a category, but in the same way inside their own special category.

I think that the only other matter the hon. and learned Member mentioned was the Inner and Middle Temples, but I do not think that this vitiates my Ruling. They are, inside the Bill, treated as though they were local authorities, as, indeed, for some purposes they are. I do not think their treatment makes the Bill *prima facie* hybrid.

ANNEX 6

Extract from Erskine May, 25th Edition (2019), para 30.57 [accessed online on 29 March 2023]

Proceedings on hybrid bills

Contents

Proceedings in the House of Commons [➤](#)

Proceedings in the House of Lords [➤](#)

Paragraph 30.57

[Highlight Footnotes](#)

Hybrid bills are public bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same category, so as to attract the provisions of the standing orders relating to private business [1↓](#) (see paras [42.2](#) – [42.3](#), [43.2](#), [46.3–46.5](#)). Such bills are subject in both Houses to certain proceedings additional to the normal stages in the passing of public bills.

The Speaker has defined a hybrid bill as ‘a public bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class’ [2↓](#). It is rare for public bills to be objected to on the ground that they ought to have been private bills, [3↓](#) but it is not uncommon for objection to be taken that they ought to be treated as hybrid bills and ought to be referred accordingly to the Examiners under the procedure described below in relation to each House.










As such objections of their nature arise from particular cases it is not easy to define the ground on which such objections have been sustained or overruled. [4↓](#) A bill has not been regarded as hybrid if all the persons or bodies affected by it, and no others, belong to a category or class germane to the subject-matter of the bill [5↓](#) and it is not the practice to treat as hybrid, bills dealing with matters of public policy whereby private rights over large areas or of a whole class are affected. [6↓](#) A bill which sought to transfer compulsorily only certain canals, however, to a central canal trust [7↓](#) and a bill in which one company was not proposed to be nationalised although it fulfilled the qualifying conditions [8↓](#) have been ruled to be hybrid.

A class must be defined by reference to criteria germane to the subject-matter of the bill. [9↓](#) The subject of legislation may form a class of its own without necessarily rendering a bill *prima facie* hybrid. Thus, bills providing, for example, either separately or exclusively for London or for the Port of London Authority or for the City of London have, depending on their subject-matter, been ruled not to be *prima facie* hybrid [10↓](#) (cf paras [42.4](#) – [42.5](#)). A bill relating to a privately-owned company in the nuclear generating industry, a class the only other member of which was a publicly-owned company which was not adversely affected by the bill, has been ruled not to be *prima facie* hybrid. [11↓](#)

Footnotes

1. For a consideration of the difference between public and private bills, see paras [26.2](#), [42.1–42.11](#). [↑](#)

2. [HC Deb \(1962–63\) 669, c 45](#). [↑](#)

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3. See *Erskine May* (21st edn, 1989), pp 807–8. 
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4. See the Speaker's ruling on the House of Lords Reform Bill of 2012–13, [HC Deb \(9 July 2012\) 548, c 23](#). 
-
5. [HC Deb \(1966–67\) 732, cc 1221–23](#); Certificate from the Examiners relating to the Aircraft and Shipbuilding Industries Bill and Statement of Reasons therefor, HL 71 (1976–77) pp 11–12. 
-
6. The Railways Bill in 1921 (which amalgamated the main existing railways companies with larger companies), the Electricity (Supply) Bills of 1926 and 1934–35 and the Iron and Steel Bill of 1948–49 were all ruled to be matters of public policy and to treat alike the various classes of interests affected by the bills, [HC Deb \(1921\) 142, cc 42–44](#); *ibid* (1926) 193, cc 1683–89; *ibid* (1934) 295, cc 1021–27; *ibid* (1948–49) 458, cc 47–51. See also London Government Bill 1962–63 ([HC Deb \(1962–63\) 669, cc 45–48](#)); certain clauses of the Finance Bill 1966–67 ([HC Deb \(1966–67\) 729, cc 297–301](#)). 
-
7. CJ (1905) 201, 210, 214–216. Another bill was similarly introduced but with somewhat different provisions and to this standing orders were held not to apply, CJ (1905) 289, 327. 
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8. [HC Deb \(1975–76\) 912, cc 299–305, 445](#). 
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9. [HC Deb \(1966–67\) 732, cc 1215–23](#); *ibid* (1987–88) 123, c 770. 
-
10. See eg London Government Bill 1962–63 and the special exceptions therein for the City; [HC Deb \(1983–84\) 60, cc 1150–51](#); *ibid* (1986–87) 108, c 37. 
-
11. Electricity (Miscellaneous Provisions) Bill 2003, [HC Deb \(2002–03\) 398, c 581](#). 
-

ANNEX 7

Extract from Companion to the Standing Orders and Guide to the Proceedings of the House of Lords, 2022, para 8.222



HOUSE OF LORDS

Companion to the
Standing Orders and
Guide to the Proceedings
of the House of Lords

Laid before the House by the Clerk of the Parliaments
2022

the case of an amending stage, this is only possible if no amendments have been tabled. Any member may, however, propose that the bills be taken separately to the extent desired. The House can also resolve itself into a committee on recommitment in respect of several consolidation bills at once in order to debate any amendments tabled; the committee reports only when all the bills have been considered. In this case the procedure is applied by business of the House motion.¹⁰⁴

Hybrid bills

8.222 Hybrid bills are public bills which are considered to affect specific private or local interests, in a manner different from the private or local interests of other persons or bodies of the same class, thus attracting the provisions of the standing orders applicable to private business (see paragraph 9.7).

Reference of bills to Examiners

8.223 Each public bill introduced in the Lords is examined by the Legislation Office to see whether it may affect any private interests to which protection is given by the standing orders. If, *prima facie*, this is found to be so, an order is made referring the bill to the Examiners. The second reading of the bill cannot be moved until the report of the Examiners has been received nor, in the case of a bill requiring an environmental statement, until certain other actions have occurred (see paragraph 8.228), although notice of second reading of the bill may be entered in the order paper.

8.224 It is open to any member who considers that a public bill may be hybrid, or has become hybrid as a result of any amendment made to it (see paragraph 8.230), to move that the bill be referred to the Examiners. Such a motion is usually moved immediately before second reading, but may be moved with notice between stages at any time before third reading.

Report from Examiners

8.225 If the Examiners report that no standing orders are applicable, the bill may proceed on its ordinary course.

8.226 However, if the Examiners find that the standing orders relating to private business are applicable, the bill is a hybrid bill, and (unless the House

¹⁰⁴ Procedure 2nd Rpt 1991–92.

ANNEX 8

***Local Government Bill [HL] (Session 2010-11) – Certificate from the Examiners,
Statement of Reasons and Record of Hearing before the Examiners, June 2010***



HOUSE OF LORDS

Session 2010–11

Local Government Bill [HL]

Certificate from the Examiners, Statement of Reasons and Record of Hearing before the Examiners

Ordered to be printed 23 June 2010 and published 29 June 2010

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HL Paper 12

Examiners of Petitions for Private Bills

The Examiners are appointed by both Houses in accordance with the Private Business Standing Order 69 (*Appointment of Examiners of Petitions for Private Bills*) of each House. In the House of Commons the appointment is made by the Speaker, in the House of Lords by the House itself.

The Examiners are:

| | |
|------------------|--|
| Mr. T.V. Mohan | Clerk of Public and Private Bills, House of Lords ¹ |
| Mr. S.J. Patrick | Clerk of Bills, House of Commons |
| Mr. A.D. Roberts | Counsel to Chairman of Committees, House of Lords |
| Mr. P.D. Davis | Counsel for Domestic Legislation, House of Commons |

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¹ Mr. Mohan wrote to the Minister in charge of the Local Government Bill [HL] on 3 June 2010 expressing the Public Bill Office's view that, *prima facie*, the Bill was not hybrid. Mr. Mohan therefore played no role in this Examination.

Local Government Bill [HL]

INTRODUCTION

1. The Local Government Bill is a government bill introduced into the House of Lords on 26 May 2010. On 8 June 2010 the House agreed to a motion that the Bill be referred to the Examiners with respect to the applicability to the Bill of the Private Business Standing Orders of the House (HL Deb, 8 June 2010, cols 603–613).
2. Under Lords Private Business Standing Order 83, the Examiners must in these circumstances certify whether any of the standing orders, compliance with which in the case of a private bill is to be proved before an Examiner, are applicable to the Bill and, if they are, whether or not they have been complied with. The Examiners have leave to report also to the House of Commons, if the House of Commons so orders; and Commons Private Business Standing Order 224(6) provides for the Examiners to report also on the applicability of, and (if relevant) compliance with, the equivalent Commons Private Business Standing Orders.
3. The relevant Standing Orders are those numbered 4 to 68 in the case of each House. They are applicable only if the Bill is hybrid. So the Examiners must first determine the issue of hybridity and then, if the Bill is hybrid, determine whether the applicable Standing Orders have been complied with.
4. On 18 June 2010 Exeter City Council and Norwich City Council deposited memorials alleging that the Standing Orders were applicable to the Bill and had not been complied with. These memorials were withdrawn on 21 June 2010 and 22 June 2010 respectively.
5. On 23 June 2010 we held a hearing at which the government made representations that the Bill was not hybrid (a record of the hearing, including the written representations, is at Appendix 1). By the time of the hearing, there was no party alleging that the Standing Orders were applicable to the Bill.
6. Pursuant to House of Lords Private Business Standing Order 83 we give the following certificate and pursuant to House of Commons Private Business Standing Order 224 we report accordingly.

CERTIFICATE

We hereby certify that in the case of the Local Government Bill [HL] pending in the House of Lords no Standing Orders relating to Private Business are applicable.

Signed

S.J. Patrick

A.D. Roberts

P.D. Davis

STATEMENT OF REASONS FOR THE CERTIFICATE FROM THE EXAMINERS

Background

7. Chapter 1 of Part 1 of the Local Government and Public Involvement in Health Act 2007 includes provision for local government structural changes in England. The Secretary of State may invite principal authorities to make a proposal for a single tier of local government for an area, and may implement the proposal by order subject to affirmative procedure.
8. Several such orders have been made under which the implementation is already fully in force and effective. Two further such orders were made on 24 March 2010 and came into force on 25 March 2010. These were the Norwich and Norfolk (Structural Changes) Order 2010 (S.I. 2010/997) and the Exeter and Devon (Structural Changes) Order 2010 (S.I. 2010/998). Article 3(1) and (4) of the orders create, as from 1 April 2011, single tier government for the cities of Norwich and Exeter. Neither of the orders was subject to the hybrid instruments procedure in the House of Lords; section 240(9) of the 2007 Act provides that, even if orders under section 7 would be treated as hybrid instruments, they are to proceed as if they were not. So no issue of hybridity arose on the orders.
9. There was also a proposal for a single tier of local government in Suffolk, affecting Ipswich, but no order has been made following that proposal.
10. Clause 1(1) of the Bill provides that after commencement of the enacted Bill, no further order may be made under section 7 of the 2007 Act if it implements a proposal received by the Secretary of State before the commencement date. Clause 1(3) revokes the Norwich and Exeter orders. Clause 2 makes consequential provision relating to councillors whose terms of office were extended by the Norwich and Exeter orders.
11. On 21 June 2010 the High Court quashed the Norwich and Exeter orders for reasons relating to the adequacy of the consultation procedures, though the precise extent to which the various parts of those orders were to fall was to be the subject of further submissions to the court.

Hybridity

12. The first issue we have to determine is whether any of Private Business Standing Orders 4 to 68 are applicable to the Bill. As our starting point we have taken the definition of Mr. Speaker Hylton-Foster on the Bill for the London Government Act 1963:

“I think that a Hybrid Bill can be defined as a public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class.” (HC Deb, 10 December 1962, col 45)

It is well established that the criteria for determining the categories or classes by reference to which differential treatment is to be judged must be “germane to the subject-matter which they are required to distinguish”, i.e. “relevant to the purposes of the bill” (see, for example, HC Deb, 25 July 1966, cols 1222–23; HC Deb, 1 December 1987, col 770).

13. It is unclear whether the interests affected by this Bill, in particular the interests of the local authorities concerned, can properly be described as “private interests” at all. Paragraph 8.213 of the Companion to the Standing Orders and Guide to the Proceedings of the House of Lords (2010 Edition) describes hybrid bills as “public bills which are considered to affect specific private or local interests in a manner different from the private or local interests of other persons or bodies in the same class”. We do not find it necessary to decide whether this Bill, which is about local government structures, affects “private interests”, because for reasons appearing below we consider that, whether or not the Bill affects such interests, it would not be hybrid.
14. The government suggested that the Bill affects the interests of only one class, i.e. those affected by proposals for single tier government which have been received by a Secretary of State but have not been implemented at all, or have not been completely implemented. This class cannot be ascertained from looking at the Bill alone because clause 1(3) is not framed in terms of categories or classes. It is equally possible to suggest that two classes are affected. The first is that covered by clause 1(1). Clause 1(1) could be said to create a class of those affected by proposals received before the enacted Bill’s commencement date, but for which no implementing order has been made by that date. Clause 1(3) could be said to create another class. The two orders specified in clause 1(3) are the only ones which, at the date of introduction of the Bill, had been made under section 7 of the 2007 Act but under which the restructuring was not yet complete. Accordingly, clause 1(3) could be said to create a class of those affected by orders of that type made before the Bill’s introduction.
15. We do not think it matters whether there is one class or two. However we look at it, we are satisfied that each of the classes is germane to the subject-matter of the Bill, and it is not for us to go further and question why those classes have been chosen. Within each class all those affected (whether authorities, other bodies or residents) are treated in the same way.
16. The quashing of the Norwich and Exeter orders following the Bill’s introduction does not materially affect the outcome. It may indeed relegate clause 1(3) from a substantive provision affecting real interests to something merely consequential on the court’s order. No further orders under section 7 implementing the existing proposals relating to Norwich and/or Exeter could be made after the enacted Bill’s commencement because of clause 1(1); and in that respect the position would be similar to that for Ipswich. Such orders would appear unlikely before commencement given the current government’s stated policy and the extent of the discretion it has under the existing legislation.
17. We have considered whether there is any wider class of local authorities more generally whose interests are affected by the Bill, which would include those affected by the revocation of the Norwich and Exeter orders, but within which those affected by the revocation of those orders are treated differently. We are satisfied that there is no such wider class germane to the subject-matter of the Bill. The Bill is silent as to orders made in respect of proposals received after the commencement of the enacted Bill. It is not a topic addressed by the Bill. Even if it were, all authorities in the wider class would be treated similarly – they may make proposals only at the invitation of the Secretary of State and it is for the Secretary of State to accept or reject them

as the Secretary of State thinks fit, subject only to compliance with normal principles of administrative law. If any authority would feel disadvantaged for the future in this process because of the lack of an invitation from the Secretary of State, it would be because of the policy prevailing at that time, not because of this Bill. There is nothing in the Bill which prevents a Secretary of State at some time in the future after its enactment from inviting proposals for unitary government which relate to Ipswich, Norwich or Exeter.

18. **We are therefore unanimously of the view that this Bill is not hybrid.**

APPENDIX 1: RECORD OF HEARING BEFORE THE EXAMINERS

HOUSE OF LORDS

RECORD OF HEARING BEFORE THE EXAMINERS

on the

LOCAL GOVERNMENT BILL [HL]

Wednesday 23 June 2010

Before Examiners of Petitions for Private Bills:

MR S J PATRICK, Clerk of Bills, House of Commons

MR A D ROBERTS, Counsel to the Chairman of Committees, House of Lords

MR P D DAVIS, Counsel for Domestic Legislation, House of Commons

MRS ALISON GORLOV, of Winckworth Sherwood, appeared as Parliamentary Agent.

(Time Noted: 10.30)

1. **MR PATRICK:** My Lords, ladies and gentlemen, good morning. I have a brief opening statement to explain why we are here and then we can continue with the hearing.

2. On 8 June 2010, the House of Lords voted to refer the Local Government Bill [HL] to the Examiners. Our proceedings are governed by House of Lords Private Business Standing Order 83, which requires us to certify to the House of Lords whether specified Standing Orders are applicable to the Bill (which, in other words, is to say whether the Bill is hybrid) and, if we find that Standing Orders are applicable, we are to certify whether they have been complied with.

3. Under a corresponding Private Business Standing Order of the House of Commons, Standing Order 224, we are also to report on the same matters to the House of Commons.

4. The Standing Orders also provide that we are to hear from parties who may be specially affected by any non-compliance with the Standing Orders if they have submitted a memorial. Two memorials were deposited, on behalf of Norwich City Council and Exeter City Council, but they have subsequently been withdrawn.

5. It is also the practice of the House of Lords that we can hear from the Member in charge of the Bill, in this case the government, and the Secretary of State has provided us with a written submission and supporting documents. A Parliamentary Agent, Mrs Alison Gorlov of Winckworth Sherwood, is here to address us on the Secretary of State's behalf. Mrs Gorlov?

6. **MRS GORLOV:** Thank you very much, sir. You have had our file and I was not proposing to go through it word for word, but to take you through the edited highlights, as it were. On that basis, can it be put formally on to the record, please¹?

¹ The Government's written submissions are appended as Supplements to this Record. Those documents in the annex to the submissions which can be found elsewhere are not included but references have been inserted at the appropriate point in the text.

7. One of the reasons we are saying that the Bill is not hybrid is because it deals with matters of public policy. That is the one aspect that calls for evidence, we think, and we do have a witness here today to speak on that. If I might, I would like to suggest that we take the case in an order which might seem a little strange. I think we ought first to deal with the Statement of Fact so that the record shows what are the background facts to the case. I would like to say a few words in opening about hybridity and then call Mr Rowsell to give his policy evidence and then, if I may, deal with all the legal submissions in one go. Is that convenient?

8. **MR PATRICK:** Yes, that is convenient to us.

9. **MRS GORLOV:** First of all, turning to the file of documents and the Statement of Fact at tab 1², the Local Government and Public Involvement in Health Act 2007 is an Act which contains a mechanism for creating what are commonly known as ‘unitary authorities’. It is not the first such Act, but it is the legislation with which we operate at the moment. In outline, and this is in paragraphs 1 to 3, the mechanism is that principal councils, that is, county and district councils, may submit proposals for unitary authorities. However, they cannot do this of their own volition; they have to do it in response to a formal invitation made by the Secretary of State under section 2.

10. As explained in paragraphs 4 to 6, in October 2006, the then Secretary of State issued an invitation to all principal local authorities in England, except Greater London and the metropolitan counties, inviting them to submit unitary authority proposals. Now, the outcome of that was that there were 26 proposals, nine of which were implemented and are in operation, that is to say, they are unitary authorities and they are in business. There were three relating to Exeter, Norwich and Ipswich which were formally referred to the Boundary Commission under section 4 of the 2007 Act, and section 4 says that, if the Secretary of State wants some further advice, he can go to the Boundary Committee to seek it. Then, the rest of the 26 proposals were the subject of formal decisions that would not be implemented.

11. After that, there were developments which are described in paragraphs 6 to 9 of the statement, which deal with what happened with the referrals to the Boundary Committee and the making of the Orders. As you will see, the Exeter and Norwich proposals materialised as two Structural Changes Orders, which are the two Orders dealt with in clause 1(3) of the Local Government Bill. Those Orders have been made and are now in force, but there are no unitary authorities yet in Norwich and Exeter; they do not actually come into being until 1 April next year.

12. The net effect of all of that is that there are two Orders in being, Exeter and Norwich, which are there and in a transitional state and uncompleted, and there is another batch of proposals which relate to Ipswich and Suffolk and they come from both the local authority and the Boundary Committee. Those are there and they are on the table. No decision has been made in respect of them and, if something does not happen, a decision would have to be made one way or the other.

13. Well, something has happened. The Queen’s Speech said in relation to localism, and we will hear in a moment what ‘localism’ is, that the intention was to devolve greater powers to councils and neighbourhoods and give local communities control over housing and planning decisions and, in addition,

² See Supplement 1

“legislation will be introduced to stop uncompleted plans to create unitary councils”. Well, sir, the uncompleted plans are the ones I have just described to you. That was on 25 May.

14. On 26 May, the Secretary of State issued a press notice which you will find in annex 9, tab 13 of your folder³. This was the Secretary of State’s statement as to what is going to happen with these uncompleted proposals. As you will see, he was none too complimentary about them. They were to be halted and he said, “Today I am pulling the plug on this expensive distraction and saving the taxpayer £40 million of restructuring costs”, so a halt was to be called and it was called and the local authorities received a letter, telling them that they would be expected not to take further action to implement the Structural Changes Orders. That was at the local authority end of the operation.

15. From the government’s point of view, it said that it would get rid of these proposed changes, and the Local Government Bill is the result. It deals with the uncompleted plans in two different ways which are appropriate to the plans themselves because, as I just explained, they are in two different stages. If I might just take the Orders first, in clause 1(3) of the Bill two specific Structural Changes Orders are to be revoked and, in relation to everything else, clause 1(1) says that no further Order is to be made in respect of a relevant Order, which is defined as one giving effect to proposals which were received before the commencement of this Bill when it was enacted. The effect of that is that all the proposals that are on the table cannot be implemented by a Structural Changes Order.

16. Clause 2 of the Bill makes some consequential electoral provision because it has to unscramble the electoral provision the Structural Changes Orders put in place. That is not relevant to hybridity, I do not think, but it is relevant to what we will tell you about the developments since the introduction of the Bill.

17. One other thing that is relevant to hybridity is that, as you will see, Part 1 of the 2007 Act will remain unscathed, so all the machinery for creating unitary authorities is to be untouched by this Bill.

18. Now, the Bill addresses two localities by name and some others by implication, so the government were understandably concerned to avoid any suggestion that the Bill might be hybrid. Before introduction, they sought advice from the House and that was later confirmed in a letter which you have, I am told, at tab 20 of your file⁴. Mr Mohan wrote to the Minister, expressing a view that the Bill would not be hybrid because it dealt with a class and the defined areas were members of that class, which were dealt with all in the same way. We agree wholeheartedly with what Mr Mohan said and, if you were to say that you have made up your minds on the basis of Mr Mohan’s letter, we would be very happy not to take you through the rest of this file, but I do not suppose you are going to say that.

19. **MR PATRICK:** No, we are not!

20. **MRS GORLOV:** There is just one other development which is a recent one. The Orders were the subject of judicial review. It was all pretty contentious, but I do not think we need to look at that because it is not relevant to hybridity, we think. However, it is relevant to the fate of these Orders. Judgment was handed down on Monday and, as you will have seen – it is in paragraph 18 of the Statement of Fact – the judgment went against the government. The Secretary of State now of course has slightly altered his position from that of his predecessor,

³ See <http://www.communities.gov.uk/news/newsroom/1600805>

⁴ See Supplement 5

but the effect of the judgment is that the two specific Orders are to be quashed. There is some slight doubt still as to the extent of that and whether there will be a need to keep the electoral provision in those Orders on foot until the Bill comes into force and clause 2 replaces them, but, at all events, that is something for the court to sort out and that will happen over the next days and weeks. There is just one thing I might mention about paragraph 18 of the Statement of Fact. If you look four lines up from the bottom of page 5, it erroneously refers to Norfolk and Devon, but it should not; the uncompleted plans relate to Ipswich and Suffolk, Norwich and Exeter, but not to Norfolk and Devon.

21. Sir, I think that is all I have to say about the background facts. Perhaps you would turn to tab 2⁵ of your folders, and I will very briefly run through Part 1 of the Secretary of State's Representations dealing with hybridity. This addresses paragraph 1(a) of the Examiners' Notice. Your remit is indeed to decide whether the Standing Orders are applicable, but in real terms that translates into an investigation as to whether the Bill is hybrid. Well, there are a couple of preliminaries before we turn to Mr Rowsell's evidence. First of all, in paragraph 2 of this note it refers to comity between the Houses, and it probably does not need saying, but I think it is safe for us to say it anyway, that there are lots of decisions in both Houses and this note refers to decisions, many of which are in the Commons. That is not showing preference for either House; it is simply that that is where the decisions happen to have been made. I hope there is not any difficulty on your part if I say that it is the practice of Parliament that, so far as possible, the Houses agree with each other. That is not to say that their discretion is fettered in any way, as was pointed out by Lord Hailsham in the case cited in paragraph 2 of the note, but the Houses endeavour to agree and apply the same rules.

22. Turning to paragraph 3 of the note, it sets out two tests of hybridity in very broad terms. The first is that every class affected by the bill should be treated equally, and the other is that a bill dealing with public policy will not be treated as hybrid. Those are the two cases where a bill will not be regarded as hybrid, and we say that both of them apply to this Bill. Before making legal submissions on that, perhaps I might ask Mr Rowsell to give us evidence.

MR PAUL ROWSELL, Called

Examined by MRS GORLOV

23. **MRS GORLOV:** Sir, Mr Rowsell is the Deputy Director for Local Democracy at the Department for Communities and Local Government. That is correct, is it not?

(Mr Rowsell) That is correct, yes.

24. The Representations by the Secretary of State say that the purpose of the Local Government Bill is purely to further government policy. Is that correct?

(Mr Rowsell) Yes, indeed. It supports two policies primarily, the government's priority of putting the public finances in order and furthering the policy of localism.

25. Can you explain for the Examiners quite how it does that?

(Mr Rowsell) In terms of the public finances, the Bill will prevent wasting public money on unnecessary reorganisations. It will save some £40 million of restructuring costs, which we have heard about. Secondly, in terms of localism, the

⁵ See Supplement 2

government sees that the Bill puts to an end an aspect of the previous administration's micro-management of local government, and micro-management of local government is contrary to localism. That micro-management which is stopped involved accepting unnecessary cases for reorganisation, and accepting those unnecessary cases has taken authorities' attention away from the needs of rapidly changing service provision that needs to focus on service delivery.

26. One of the characteristics of government is that it comes up with expressions that one thinks one understands, but I think it might be helpful if you would explain quite what is meant by 'localism'.

(Mr Rowsell) What is meant by 'localism', which is very much a priority for my Secretary of State, is that it is a concept that decisions should be taken as closely as possible to the people who are affected by those decisions, so it is decisions to be taken at the most local level. Seeking to impose restructuring on any council, that is the very antithesis of localism.

27. This is not really to do with hybridity, I do not suppose, but, just by way of background, is it fair to say that this is not entirely a tussle between central and local government, but actually some local government is not in favour of unitary authorities being established?

(Mr Rowsell) It is very fair to say that. I can say that I have over the recent weeks had considerable contact with the county councils of Devon and Norfolk, and the county councils' views are very much the same as the government's views and they believe, it is fair to say, if I can say that, that this Bill should continue as a public bill.

28. So, in light of all that, could you just explain the government's policy rationale for this Bill?

(Mr Rowsell) The rationale, as I have said, is to pursue the policy priorities of public finances and localism, and it is to pursue those policies, recognising that none of the uncompleted plans for unitary structures was value for money. Which councils are involved is wholly incidental to the aims of reducing unnecessary spending, and you saw the priority of that aim in the press notice to which the Parliamentary Agent referred, and to putting a stop to restructuring that would be imposed on all, or some, of the councils involved contrary to the concept of localism. That is the rationale, to pursue these two policies.

29. I think, from what you are saying, it follows, does it not, that the Bill could deal with any body; they are purely a technical, incidental corollary to that policy? Is that correct?

(Mr Rowsell) The Bill could deal with any council which had uncompleted plans, yes.

30. I outlined the position as we have it in the Statement of Fact regarding the outcome of the judicial review. Could you just explain please what is the present status of these two Orders.

(Mr Rowsell) The judgment, which was handed down on Monday, was that the Orders should be quashed, but, for administrative reasons related to council elections, it may be necessary to quash them only in part, in essence, to allow part of the Order to remain which would keep in place a deferment of the 2010 elections to 2011. This is exactly also what the Bill does after the Orders are revoked. In terms of the court process, the parties will be making submissions to the court so that we do not know today whether the Orders will be completely quashed or quashed in part or indeed how precisely the Orders will be severed as

to which part should be quashed and which part should not be. However, crucially, the Bill will be amended as needed following the court's decision about quashing. I understand it will probably be necessary, therefore, still to refer to the specific Orders in the Bill, but it is certainly possible that, depending upon what the court decides, we could be left with a bill which was expressed entirely in general terms and did not make any reference to any Orders.

31. **MR ROBERTS:** If I might ask one question of Mr Rowsell, was leave to appeal given or refused?

(*Mr Rowsell*) It was refused.

32. Does that mean, therefore, that, if there were to be an appeal, there would have to be a request for leave to the Court of Appeal?

(*Mr Rowsell*) It does. I think it is also worth saying that of course the Secretary of State has no intention of appealing. This issue lies with the interested parties.

33. Has any indication been given to you by the other interested parties as to whether or not that is an avenue they are thinking of pursuing?

(*Mr Rowsell*) I have had no firm indication, but there seems to be a picture emerging which is that they are really deciding to throw in the towel, although I would not guarantee that.

The witness withdrew

34. **MRS GORLOV:** The tests of hybridity: as we were saying, in paragraph 3.1 of the note, there are two essential tests. One is class and the other is public policy. In relation to class, the bill is not to be regarded as hybrid if it deals with a class or classes of persons affected who are the only people so affected, that is to say, all members or potential members of that class are dealt with in the same way. The authority for that is cited in the note. It is Mr Speaker Hylton-Foster's ruling on the bill for the Local Government Act 1963. There is a similar definition – not quite the same – in the *Companion to Standing Orders* of this House.

35. If I may first deal with this question of class. It is, first, worth pointing out that it is for the Promoter of the bill to choose what class it deals with, not for somebody else to come along and say that the classes should have been devised in some other way. It follows from that that the decision to be made by the House is whether the class selected is germane to the bill. That caused a certain amount of distress on the part of the Examiners when examining the Aircraft and Shipbuilding Industries Bill 1977. They regarded themselves as rather unfortunately fettered. I do not want to say anything about that; the position, we say, is as it is and those are the two criteria – that we select the class and the House decides if it is the germane one. We say that this Bill selects a single class of local authorities in order to implement its purpose, and that single class is all those local authorities as respects which there are uncompleted plans, and I have just explained what those are. It is a single topic Bill; that is all it does. All the other provisions of the Bill – the electoral provisions – are ancillary to that principal purpose.

36. It is the case that the Bill does, in fact, deal with that single class in two different ways – clause 1(1) is a general provision, clause 1(3) is specific to the two cases where Orders exist. However, we say, that is simply a technical drafting issue because that is the correct way of dealing with all the affected local authorities. There is authority for saying that distinguishing between members of a single class does not make a bill hybrid; that was a ruling on the bill for the Railways Act

1921, which is cited on page 4 of the Secretary of State's Representations on hybridity.

37. You might think there were two affected classes, Norwich and Exeter, on the one hand, because they have got Orders in place, and Ipswich and Suffolk, on the other. We do not think that is right because it is a distinction that only exists now when the Bill has no legal effect; it will not be a distinction once the Bill is enacted and everybody's proposals have simply gone, albeit they will have gone down two different routes. In any event (and I will come to this in a minute), we think this question of one class or two is an irrelevance simply because everybody is treated in the same way. As I say, the purpose of the Bill is to remove these uncompleted plans, and that is what clause 1 does.

38. There is just one thing I should touch on that is in 4.8 of the note. In the course of the debate on 8 June I think Lord Howarth of Newport was expressing an opinion that in some way the two main local authorities would be placed in a different position after the enactment of the Bill – a position different from everybody else. He said that there would be this different position, and he indicated that these two local authorities would be precluded from becoming unitaries. He did not go on to say that they would be precluded from responding to any future invitation to submit proposals, but that seems to be the premise on which he was arguing. It is just worth saying, at this point, that if that was what he had in mind it was a misreading of the Bill. Nothing in this Bill precludes any local authority from making proposals thereafter under Part 1 of the 2007 Act. There is only one proviso to that: they have to be invited.

39. We think there may be some issue about whether the same proposals could be made. When there were Memorials – if you have read them – the Memorialists did seem to be saying that they would be prejudiced if the same proposals were to be made in future. It is just worth pointing out that if only for financial reasons, it would not, we think, be possible for anybody to put forward precisely the same proposals as have been made this time round. However, in any event, for reasons I have explained, we really do not think that is an issue; the proposals are put forward, they are what they are and they are considered at the time.

40. That said, there has to be an invitation, and there are not any invitations being made at the moment – as one would expect – and there is nothing in prospect, but the Bill does not repeal the relevant legislation. So the ability to make invitations remains.

41. **MR PATRICK:** Can I just ask: does anybody want to ask any questions about the class, or shall we do it at the end? We will do it at the end.

42. **MRS GORLOV:** I am sorry, sir, I am storming ahead. Please do stop me if you want to. Public policy: as you have heard in Mr Rowsell's evidence, this Bill implements a piece of public policy concerning the structure of local government in England. It really does not matter where that particular bit of local government is; it is only focused on uncompleted plans wherever they may be.

43. We have explained the two reasons behind the policy, but those are not reasons that concern hybridity; the fact is the Bill does what it does and, as a matter of public policy, it says the present proposals should be done away with. So that ought to be that on the public policy front, but I was conscious of the fact that you might ask me: what about Charlwood and Horley? Charlwood and Horley was not a matter of public policy; it was a bill that, on the face of it, looks as if it is remarkably similar to the present one, in that its purpose was to alter local authority boundaries. The parishes of Charlwood and Horley had been moved

from Surrey to West Sussex as a result of the local government reorganisation in the Local Government Act 1972, but the residents of those two parishes did not want to be moved, and the government had given them an undertaking that whatever they wanted would be legislated for.

44. The problem was that they did not get their resolutions on the subject completely settled until after the bill had been enacted, so in order to discharge its undertaking the government had to promote legislation to move Charlwood and Horley back to where they had come from. That bill was promoted as a hybrid bill. However, the difference between that bill and this one is that it was specifically concerned with arrangements for two areas that were focused on in the bill – all the merits related to those two areas; there was no issue of local government principle. In saying that I am quoting the Secretary of State on second reading in this House. It was an entirely different question.

45. For good measure I have mentioned in 4.16 and 4.17 of this note two other categories of bills that are cited by Erskine May as normally being treated as private simply because they are bills relating to local purposes and cities and counties. In relation to local purposes, these days lots of us forget what post office sites and Crown sites bills were all about, but they were specific to particular areas of land acquired for public purposes; they were, in effect, compulsory purchase measures. So no question of public policy there. In relation to bills relating to cities and counties, Erskine May says, quite rightly, that they are generally treated as private. However, sir, that is not a question of principle relating to city and county bills per se. What it is saying is reflecting the fact that normally the nature of these measures is that they are not public policy measures; they are purely local issues. So we say that is not relevant to the current Bill.

46. Sir, our conclusion on this, with which we hope the Examiners will agree, is that this Bill is not hybrid and we hope that you will be able so to report.

47. **MR ROBERTS:** Can we go back very briefly to this issue of one class or two classes? I take the point that your position is that it may well not matter, but I am trying to work out why it is thought that it is one class. As I understand it, the Bill is intended to catch the unimplemented proposals which were on the current Secretary of State's predecessor's table. That appears from the written submission. I am wondering why it was that, looking at clause 1 subsections (1) and (2), the definition of a "relevant order" is "a proposal received by the Secretary of State before the commencement of this Act". As you rightly say, at least in theory, inviting proposals, submitting proposals and making orders carries on. So, on the face of it, subsections (1) and (2) create a class which, if you like, closes at the commencement of the Act but subsection (3) takes two specific Orders which are obviously the only Orders of their type existing when the Bill was introduced.

48. If there is just one class, as it is suggested, why are different trigger points chosen in subsections (1) and (3)? I wondered why subsection (1) does not fix the proposals as those received when the Bill was introduced.

49. **MRS GORLOV:** Can I deal with that second point, first of all, because I think it is the simpler one to explain? The intention of 1(1) – and we say it achieves its intention – is to capture all the existing uncompleted proposals that have not been subject of Structural Changes Orders. As a matter of fact, the only ones on the table are the Ipswich and Suffolk proposals that I mentioned. As a matter of fact, too, because the October 2006 invitation was time limited (all proposals had to be in by 25 January 2007), there are no further proposals to come as a result of that invitation. So you might say why not relate "relevant order" in

1(1) to those proposals that were made in response to that invitation? It is, of course, theoretically possible that an invitation might issue today. I am advised it is not a practical possibility. If it were to issue today it is not a practical possibility that any proposals could be received before the commencement date of this Bill – at least we do not think so. So although, theoretically, there could be further proposals before this Bill becomes law, it is in practice not a possibility, we say. However, on paper, it could happen.

50. So that is one answer to the question, but it is a theoretical one. The practical one is, actually, more mundane. Parliamentary counsel in the room will tap my shoulder if I have got it wrong. The fact is that this is not a neat set of dates, unfortunately; it is not a set of proposals that have been received in sequence and then it stops. There were proposals that were Boundary Committee proposals, there are dates for this, dates for that – is it the date that is put at the bottom of the paper; is it the date when it lands on somebody's desk? It is all a bit confusing, and it is unnecessarily so. So we say anything before the commencement of this Act is out and cannot be legislated for. That is the simple reason why clause 1(2) refers to the “commencement date of the Act”.

51. The reason why we say it is only one class is because the purpose of the Bill is to do away with the uncompleted proposals. Can I emphasise “uncompleted”, not “unimplemented”? The two Orders that have been made amount to the commencement of implementation (if I can put it in that way), because section 7 of the Act says that a proposal can be implemented by the making of an Order. The implementation is not complete until the unitary authority is up and running, many months later, but it is undoubtedly started. So it is not correct to say that we are removing the unimplemented proposals; this Bill removes the uncompleted proposals. Those proposals are all of the proposals – the two that are the subject of Orders and the Ipswich and Suffolk proposals which are still there on the table as proposals. It is a single class which is dealt with in two different ways as a matter of pure mechanics, but that is incidental to the actual purpose.

52. **MR ROBERTS:** So is this right: it is not deliberate or it is not part of the policy that if there were now an invitation followed by a proposal, if the Order happens to be made after the commencement date it is covered and if it is made before the commencement date it is not covered?

53. **MRS GORLOV:** That is a theoretical possibility we did not look at, but, yes, I think that must be right. May I emphasise that this is all theoretical; in practice it is completely impossible.

54. **MR ROBERTS:** Probably related to that, could I just turn to the Response to the Memorials, and Part 3 of the submission? I fully accept that the Memorials have been withdrawn, and I do not want to spend too much time, but I did want to understand the response that was given in paragraph 4 where it is suggested (and you may say that it is purely theoretical because government policy is not going to change): “An invitation that requested proposals no later than the commencement date would therefore be unlawful.” If the Secretary of State now wanted to invite a proposal from one or more authorities with a view to making an Order before the commencement date of the Bill, surely that is unarguably alright?

55. **MRS GORLOV:** I said that you had just thought up a theoretical possibility we had not. In the event of the Order being made before the commencement of the Bill, yes, that is correct; it would not have been a futile exercise. Put it this way, paragraph 4 was coloured by the knowledge that it would be impossible for that to happen.

56. **MR ROBERTS:** Could I next move to something which again is only touched on but I wondered what was being said about it? It is the issue of property rights, which is dealt with, I think, at paragraph 4.18 of the written submission where you say that the Bill does not touch on private rights. Is part of what you are saying that we are not dealing here with private interests at all because we are not dealing with private rights in the sense of property rights? In terms of the Hylton-Foster definition, which talks of private interests, is 4.18 saying we are not concerned with private interests at all here?

57. **MRS GORLOV:** That is exactly what it is saying. It is undoubtedly the case that property has to be transferred all over the place as an administrative matter consequent on the establishment of a unitary authority so that all the assets get into the hands of the right authority, but that we say is an administrative consequence of carving up local government in a different way.

58. **MR ROBERTS:** In that case, I know all about the rules about comity between the Houses, which is, I think, taken as read, but amongst the material included in the bundle, as well as the Hylton-Foster definition there is the relevant extract from the House of Lords *Companion* and that talks of private or local interests. Are you saying somehow that a local interest that an authority might have in the administration of its own area is not a private interest and should not be regarded as a private interest? In other words, what is meant by “private interest”? The House of Lords *Companion to the Standing Orders* talks of “private or local interests”. Do you accept that there is a local interest, albeit not a private one?

59. **MRS GORLOV:** A local interest in relation to property?

60. **MR ROBERTS:** No. I was wondering whether you were saying that where the *Companion* talks of “private or local interests” it only means local interests in property, or whether it meant local interests in the sense of an interest in the administration of an area.

61. **MRS GORLOV:** I think it has to be an interest that is wider than purely the property interest. It has to be an interest which is related to the local authority’s function, but, if I might go on to say, I do not think that this Bill, in affecting a local interest, makes it hybrid for the reason that it implements a public policy. A bill can affect all sorts of private interests in all sorts of ways but not be treated as hybrid if its purpose is to implement public policy rather than to affect any particular local interest.

62. **MR ROBERTS:** I have one more question only and this is only relevant if the conclusion is that the Bill is hybrid. Turning to the list of Standing Orders which might potentially be applicable, I was wondering if I could press you on 38.1 and explore why it was said that this was not relevant. This is the requirement that a printed copy of every private bill proposed to be introduced into either House would be deposited in the Office of the Clerk of the Parliaments. It is undoubtedly the case that copies of the Bill are already available, but it seemed to me that what 38.1 was saying was that the printed copy has to be made available at a time when the Bill is proposed to be introduced.

63. **MRS GORLOV:** Perhaps I should make clear what we mean in this table when we say “not relevant”. Please do not think we are being rude. Of course, if these Standing Orders were applicable it is, of course, the case that none of the dates, none of the days, is right, none of them has been complied with. All we are trying to get across here is that it is not really relevant inasmuch as the Bill is already there; it has been introduced. Can I just say though that I do not think

those instructing me are at all bothered by any of this little lot, and where we say that we have done all this already or it is not strictly relevant, if the Bill is found to be hybrid I do not think we really mind doing it all over again. We will do it. We just do not think it is a particularly appropriate or necessary thing to do.

64. **MR DAVIS:** I have two slightly unconnected questions. The first is purely a factual one on the recent court case. In the transcript of the judgment that I have it starts at paragraph 106 and says, “However, for reasons which I have given, the Orders are quashed”, as an unequivocal statement. Is there more that goes beyond that paragraph that indicates that there will be further discussions as to how quashed they will be?

65. **MRS GORLOV:** Yes, sir. There were representations made by counsel and this is what the judge said at the hearing on Monday.

66. **MR DAVIS:** So it is simply that the transcript that I have is incomplete?

67. **MRS GORLOV:** That is correct, sir.

68. **MR DAVIS:** The other thing builds slightly on a point of Mr Roberts, and I accept that this is not an issue that has specifically been raised by the original Memorialists, but it is needed for the whole of the Examiners’ functions. Let us suppose that, forgetting the recent court case, Norfolk and Devon councils themselves had sought to introduce a private bill to quash the two Orders but save the electoral and office holding consequences. I have two questions. First, do you accept that that could technically have been introduced as a private bill, and secondly, if so, what is your argument against that in itself being a reason for the classification of this Bill as hybrid?

69. **MRS GORLOV:** I think it most unlikely, sir, that the Bill would be thought to be proper to proceed as a private bill, certainly not if it related to both Exeter and Norwich in a single bill. I say that because a single bill for both authorities would quite clearly be addressing a policy issue on whether local authorities ought to be unitaries. I am afraid I have not got the cases at my fingertips but I could find the relevant passages in *Erskine May* on that.

70. Where a bill relates to something that is purely local I was going to say that it might be treated as private. What I really mean to say, I think, is that the question of whether such a bill could be treated as private would only arise in the case of two separate bills. I suppose one must accept that there is a possibility that such a bill might be treated as private, and the case that I can particularly think of is the bills for the Assay Offices that were passed in 1995 – the Sheffield Assay Office Act 1995, and there was a Birmingham Assay Office Act, I think, in the same year. There was also a Scottish Provisional Order relating to the Edinburgh Assay Office. All three of those pieces of legislation made express amendments in the relevant public legislation. They were separate bills though for each Assay Office and I was not concerned in their promotion but I think one could say fairly safely that if there had been a single bill it could not have proceeded properly as a private bill. The three pieces of legislation did proceed as private legislation, so I suppose one might say that that goes to show that if there had been separate bills they could properly have been promoted as private bills. I suppose the only other thing I might add is that one does not quite know because the decisions do not ever seem to be quite cut and dried and an example is an example rather than a precedent. That is the first limb of your question, sir.

71. The second limb is, if the two pieces of private legislation could properly be promoted does that make this Bill hybrid? I think the answer to that has to be no.

The main reason for saying so is that if there were a single bill to deal with both Exeter and Norwich it could not properly proceed as a private bill in my view, and, that being so, it goes without saying, I think, that it is the flip side of the proposition that we are dealing here with the overall public policy of what happens to these local authorities and that that is proper to be proceeded with as a public bill which is not hybrid.

72. **MR DAVIS:** Thank you. That concludes the questions I have.

73. **MR PATRICK:** Mrs Gorlov, have you finished your presentation or do you have more to say?

74. **MRS GORLOV:** I had been going to ask you if you wanted to go through what we say in Part 2 of the Representations on the specific Standing Orders, but I think probably my answer to Mr Roberts has dealt with that unless there is anything else I can help you with.

75. **MR PATRICK:** No, I think if we were to decide that they were applicable we would also decide basically, as you said, that, certainly at least as far as dates are concerned, they have not been complied with, and that then, if we did all that, the matter would be referred to the Standing Orders Committee in both Houses as to whether they could be dispensed with or not, so I think the main question we have to decide is the first one: is the Bill hybrid or not, rather than the second one, unless my colleagues want to go further on that.

76. **MR ROBERTS:** No.

77. **MR DAVIS:** No.

78. **MR PATRICK:** As I was saying before about where we go from here, at the conclusion of this hearing we will ask you and those members of the public present to withdraw. Obviously, at this stage we do not know how long it will take us to come to a decision but I think we will be able to decide fairly soon after we start deliberating how long it will take us, so we hope to be able to let you know whether it is worth staying behind until we have made a fairly quick decision or whether it is going to take longer than that, in which case we will also convey that to those waiting and then produce a decision later. I do not think we want to prejudice the case by saying one way or the other until we have at least started our deliberations.

79. Is there anything else the Examiners want to ask or you wish to tell us before we do that?

80. **MRS GORLOV:** I have one matter which is pure housekeeping. My colleague and I have papers scattered all over these tables. It will take a few minutes to pack them up. Shall we simply leave them here and deal with that later because we have no particular need for them? I do not want to delay your deliberations.

81. **MR PATRICK:** We would be happy for you to leave them here, and if it turns out that we are going to take longer then we will allow an opportunity for you to come in and take them away. The Examiners would like to deliberate now, so would the public please leave us?

(Time Noted: 11.31)

The parties were directed to withdraw and, after a short time, were again called in.

(Time Noted: 11.53)

82. **MR PATRICK:** We are pleased to be able to announce that we have come to a decision so we will not have to make you wait any longer. We have decided to

certify that in the case of the Local Government Bill pending in the House of Lords no Standing Orders relating to private business are applicable. We therefore do not have to go on and say whether they have been complied with or not because they are not relevant.

83. We would like to thank Mrs Gorlov for the care she has taken in preparing the written material at very short notice and in stating her case.

84. **MRS GORLOV:** I wonder, sir, if I might ask you one thing. You did indicate at the outset that, whatever your decision, you might be going to report to the House. Are you going to prepare a full report?

85. **MR PATRICK:** Yes. We are planning, not necessarily immediately but within a day or two, to publish with our certificate a statement of our reasons.

86. **MRS GORLOV:** Thank you very much.

87. **MR PATRICK:** The meeting is now concluded.

(Time Noted: 11.55)

SUPPLEMENT 1**THE GOVERNMENT'S WRITTEN SUBMISSION: STATEMENT OF
FACT**

HOUSE OF LORDS

SESSION 2010–2011

LOCAL GOVERNMENT BILL [H.L.]

Examination of Bill

Background

1. The Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) introduced a mechanism pursuant to which principal authorities could submit to the Secretary of State for Communities and Local Government (“the Secretary of State”) proposals for introducing a single tier of local government in a particular area and which empowered the Secretary of State to implement such proposals by order.
2. (“Two tier” local government structures means the existence of both district councils and county councils for a certain area; “single tier” refers to the existence of only one local authority for a certain area exercising the functions of both a district and a county council, often described as a unitary council or authority. Section 1 of the 2007 Act contains definitions of “principal authority” and “single tier of local government”.)
3. The scheme of the Act is that proposals are made in response to an invitation under section 2. Section 2 is a power for the Secretary of State to invite local authorities to make proposals for introducing a single tier of local government. Section 2 also enabled the Secretary of State to direct that such proposals be made, but that power was time limited and is no longer in effect. The power to invite proposals is exercisable from time to time. Accordingly, a local authority can make proposals for introducing a

single tier of local government only if an invitation to submit such proposals is issued by the Secretary of State.

4. In 2006 an invitation was made to all principal local authorities in England (outside the areas of Greater London and the Metropolitan Counties), to make proposals to the Secretary of State for a change in local government structures from two tier to single tier. Any proposal was requested to be made by 25 January 2007. On 19 November 2007, as a consequence of a proposal made by Bedford Borough Council in response to the 2006 invitation, a further invitation was made to Bedfordshire County Council, Mid-Bedfordshire District Council, and South Bedfordshire District Council to make a proposal – which needed to be submitted by 17 December 2007 – for future unitary local government structures for the remaining area of Bedfordshire. No other invitations have been issued.
5. In response to the first invitation, 26 proposals were received by the Secretary of State. In response to the second invitation, one proposal was received. Nine proposals were implemented by structural change orders made in 2008, all of which came into operation in 2009. Of the remaining proposals–
 - (a) those proposals made by Norwich City Council, Exeter City Council and Ipswich Borough Council were referred to the Boundary Committee⁶, which was asked to advise whether an alternative proposal could be made for some or all of the wider county areas; and
 - (b) statutory decisions under the 2007 Act were taken not to implement the other proposals.
6. In December 2009, the Boundary Committee provided their advice to the Secretary of State which was for a county unitary authority in Devon and Norfolk and either a county unitary or two unitaries for Suffolk.

⁶ The power to allow for this is found in section 4 of the 2007 Act.

7. In February 2010 the then Secretary of State took decisions under the 2007 Act to implement the proposals submitted by Exeter City Council and Norwich City Council rather than the Boundary Committee's alternative proposals.
8. The resulting Orders were the Exeter and Devon (Structural Changes) Order 2010 and the Norwich and Norfolk (Structural Changes) Order 2010. Parliament approved the Orders; which were made on 24 March 2010 and came into force on the following day. However, as explained below, under the Orders Norwich and Exeter do not actually become unitary authorities until April 2011.
9. In relation to Suffolk, no decision was taken under the 2007 Act whether or not to implement any of the three proposals submitted but instead a decision was taken to hold a county constitutional convention⁷. As a result, the Ipswich proposal has not proceeded. As regards Norwich and Exeter, implementation of the proposals relating to them is incomplete because the Orders have not yet taken practical effect. Accordingly, the proposals for Ipswich, the County of Suffolk, Norwich and Exeter are all extant but are uncompleted plans (see paragraph 11 below). There are no other proposals under the 2007 Act that are in this position.

Current Policy

10. On 25 May 2010, Her Majesty's most gracious speech to both Houses of Parliament announced that "Legislation will be introduced to stop uncompleted plans to create unitary councils." On 26 May 2010 the Secretary of State announced⁸ that, in pursuance of the Government's policy to reverse uncompleted plans for the implementation of unitary councils before the autumn of 2010, an urgent Bill was to be introduced to revoke the Orders relating to Exeter and Norwich. At the same time, all restructuring plans for Suffolk were to be stopped. On the same day,

⁷ This has no statutory basis but was rather a request for the councils of Suffolk to agree a suitable unitary solution which the Secretary of State would then consider.

⁸ See DCLG Press Notice 26th May 2010 accessible at <http://www.communities.gov.uk/news/corporate/159177711>

Mr Bob Neil, the Parliamentary Under Secretary of State wrote to all Council Leaders in Devon, Norfolk and Suffolk to inform them of this policy.

11. In this context “uncompleted plan” means any case where the Secretary of State has already received a proposal for structural change to local government, but where the implementation of such change has either been commenced but not completed or has not taken place at all. As noted above, the Orders relating to Exeter and Norwich have been made, but no authorities affected by the Orders will become unitary authorities until April 2011. Accordingly, proposals in relation to uncompleted plans have been made by Exeter (within Devon County Council), Norwich (within Norfolk County Council) Ipswich (within Suffolk County Council) and by the Boundary Committee in relation to Suffolk.

The Local Government Bill

12. The Local Government Bill is the Bill anticipated in the Queen’s Speech on 25 May and the Secretary of State’s 26 May announcement. The Bill is a single topic Bill. Its purpose, as set out in the long title, is to prevent the implementation of existing proposals made for the purposes of Part 1 of the 2007 Act; to revoke the Exeter and Devon (Structural Changes) Order 2010 and the Norwich and Norfolk (Structural Changes) Order 2010; and to make provision consequential on that revocation. The effect of the Bill will therefore be to remove the outstanding but uncompleted plans resulting from the invitation to local authorities made in 2006.
13. Clause 1(3) of the Bill revokes the Orders already made relating to the Exeter and Norwich proposals.
14. Clause 1(1) and (2) provides that no order may be made under section 7 of the 2007 Act if it is a relevant order. A relevant order is defined by clause 1(2) as an order implementing a proposal received by the Secretary of State before the commencement of the intended Act. The Bill therefore has the effect of preventing the remaining three uncompleted plans relating to Ipswich and Suffolk from being implemented and making it impossible,

after the revocation of the existing Orders, for fresh Orders to be made in respect of the current Exeter and Norwich proposals as submitted in response to the 2006 invitation.

15. The Bill does not repeal Part 1 of the 2007 Act. Consequently, it is open to the Secretary of State under section 2 of the 2007 Act to invite any principal authority to make a proposal. If the Bill receives Royal Assent and becomes the Local Government Act, were the Secretary of State to make such a further invitation after commencement of that Act, any authority so invited could respond with proposals and those proposals could be implemented.
16. The Clerk of Public Bills in the House of Lords has advised Government that, in the view of the Public Bill Office, the Bill, in the form in which it was introduced, was not *prima facie* hybrid. This view has been confirmed in a letter dated 3 June 2010, a copy of which is annexed to this Note⁹.
17. The Bill was introduced in the House of Lords on 26 May 2010. Second reading was scheduled to take place on 8 June 2010. On 8 June 2010, on Lord Howarth of Newport's motion, the House resolved that the Bill be referred to the Examiners.
18. The Orders have been the subject of judicial review following which judgment was handed down in the High Court on 21 June 2010. The Court found that the decisions of the present Secretary of State's predecessor to make the Orders had been unfair. Consequently, the decisions were unlawful and were quashed. Given the administrative effects of the Orders, the Court will hear submissions shortly following which it will decide whether the Orders should be quashed completely or only in part to retain some administrative provisions. Whatever the final status of the Orders, following the quashing of the decisions, uncompleted plans now remain for Ipswich and Suffolk; Norwich and Norfolk; Exeter and Devon, on which no decision has been taken. The need for the Bill accordingly continues unchanged. Once the status of the Orders has been

⁹ [The letter is appended to the Record in Supplement 5]

decided by the Court, the Government will consider what amendments may be required to reflect that decision.

DATED 22 June 2010

Signed:
Alison M H Gorlov
Winckworth Sherwood LLP

Parliamentary Agent for the Secretary of State

SUPPLEMENT 2**THE GOVERNMENT'S WRITTEN SUBMISSION: PART 1 —
HYBRIDITY**

HOUSE OF LORDS
SESSION 2010 – 2011

LOCAL GOVERNMENT BILL [H.L.]

REPRESENTATIONS

on behalf of the Secretary of State

1. Background

- 1.1 On 8th June 2010 the House resolved that the Local Government Bill (“the Bill”) should be referred to the Examiners. The purpose of this Note, delivered on behalf of the Secretary of State for Communities and Local Government (“the Secretary of State”), is to set out the Secretary of State’s Representations regarding the rules concerning hybridity, their application to the present Bill and, in case the Private Business Standing Orders (“the PrBSOs”) are found to be applicable to the Bill, how and to what extent PrBSOs 4 to 68 might apply.

Introduction

- 1.2 As stated in the Examiners’ Notice dated 14th June 2010, the purpose of the examination will be to ascertain the three matters referred to in paragraphs 1 and 2 of the Notice. The nature of these issues is such that they fall to be determined in the order set out in the Notice. It should perhaps be mentioned that in addressing 1a. in this Note the Secretary of State will simply seek to answer the question whether the Bill is hybrid. It appears to him that, as the PrBSOs will only be applicable if the Bill is hybrid, this is the only question posed by 1a.

2. Comity between the Houses

- 2.1 Many of the examples given in this Note are of decisions made in the House of Commons, simply because that is the place where relevant decisions were made. Accordingly, before dealing with the nature of hybrid bills (see below), it should be said that the differences of

wording between the Houses in the definition of a hybrid bill¹⁰ are accepted as not being substantive. In addition, it has been accepted by this House that in questions concerning hybridity there should be comity between the Houses. As an example of this, in debate on the London Government Bill (Session 1962–63) in this House (which was the second House) Lord Hailsham spoke¹¹, as Lord President of the Council in place of the Lord Chancellor, against the motion before the House that the Bill be referred to the Examiners. While making clear that “each House is master of its own procedure”, regarding the tests of hybridity he said:¹²

“Certainly it is true ... that the criteria of what constitutes hybridity are, by common agreement, the same in both Houses ...”.

2.2 More generally in relation to comity, Lord Hailsham said:¹³

“... there are matters (and I think, and I am advised, that this is one of them) in which it is at least desirable that the opinion and practices of the two Houses should be at one and in which hitherto ... I think they have always remained at one. Certainly I can trace no divergence of opinion about this matter between the two Houses; and I should have thought that this question of hybridity was essentially a matter upon which the Houses should, so far as possible, remain at one. ... I personally should have thought – and I hope the House will follow me in this – that nothing but inconvenience, and even considerable constitutional disadvantage, could ensue from a Bill ordinarily being considered public in one House and hybrid or private in the other.”

2.3 On that occasion the House voted against the motion to refer the Bill to the Examiners, so demonstrating agreement with Lord Hailsham’s views and according with the Speaker’s ruling in the first House that the Bill was not hybrid.

3. The nature of hybrid bills

¹⁰ cf Mr Speaker Hylton-Foster’s ruling on the London Government Bill (HC Debates (1962–63) vol.669 col.45 (marked “A” in Annex 1 [*not appended to this Record*]) and the *Companion to Standing Orders and Guide to the Proceedings of the House of Lords* (2010) (ISBN 978 0 10 847241 1) at 8.213, both reproduced in Annex 1 [*not appended to this Record*].

¹¹ HL Debates (1962–63) vol.248 cols.1116–1117, reproduced in Annex 2 [*not appended to this Record*].

¹² Col.1117 (marked “B” in Annex 2 [*not appended to this Record*]).

¹³ Ibid cols.1116–1117 (marked “C” in Annex 2 [*not appended to this Record*]).

3.1 The tests of hybridity are helpfully summarised in the two paragraphs in Erskine May¹⁴ reproduced in Annex 3. So far as concerns non-works bills there are two criteria, namely:

- (a) **Equal treatment of affected class:** a bill will not be regarded as hybrid if all the persons or bodies affected by it in the same way (and no others) belong to a category or class germane to the subject-matter of the bill.
- (b) **Bills dealing with public policy:** a bill will not be treated as hybrid if it deals with public policy whereby private rights over large areas or of a whole class are affected.

3.2 The following principles can be derived from the cases cited:

- (a) The category or class that is relevant is the one selected by the promoters of the Bill.¹⁵
- (b) In relation to the issues of affected class, the question for the House is whether the selected class is germane to the subject-matter of the bill.¹⁶ The relevant passage is:

“The [Member] ... has alleged that the criteria were chosen so as to include certain companies and exclude others. Fortunately, it is not for me to consider the reasons why these particular criteria are chosen.

All that I have to consider is whether the criteria chosen are germane to the subject matter which they are required to distinguish.”

- (c) In relation to public policy, it is the practice that local government and local government functions fall to be treated as matters of public policy and so cannot be hybrid. In the House of Commons debate on the London

¹⁴ Erskine May 23rd edn (2004) p.641, reproduced in Annex 3 [*not appended to this Record*].

¹⁵ Certificate from the Examiners relating to the Aircraft and Shipbuilding Industries Bill and Statement of Reasons therefor, HL Paper 71 of session 1976–77 (ISBN 0 10 407177 X) p.5, reproduced at Annex 4 [*not appended to this Record*].

¹⁶ Mr Speaker King’s ruling on the bill for the Iron and Steel Act 1967 (see HC Debates (1966–67) vol.732 cols.1222–1223, reproduced in Annex 5 [*not appended to this Record*]. The ruling, at col.1222 is marked “D”.)

Government Bill referred to in paragraph 3.1, question was raised as to whether a distinction should be drawn between legislation relating to utilities on the one hand and a bill concerning local government and local authority sewers on the other.¹⁷ Mr. Speaker Hylton-Foster said¹⁸:

“What this Bill is doing is dealing with the whole structure of local government and the exercise of all local authority functions in Greater London. [Mr Speaker referred to sewerage functions of local authorities] ... on this principle London sewerage has previously been treated as a matter which can be dealt with by a purely Public Bill without any sort of kind of complaint or hint of hybridity.

[Mr Speaker opined that a bill dealing with London’s water supply might be hybrid] ... it is quite clear that our practice in this field distinguishes between public utilities like water, gas, transport, electricity and local government functions.

... the reason ... may be that by and large you need not have gas if you do not want it, or electricity if you do not want it, but you must use the sewerage. ... If hon. Members look at Erskine May they will find the two notes on page 870¹⁹ ... under (d) and ... (e). The (d) Bills are the ones which managed their life happily as Public Bills without hint of hybridity, and the (e) Bills are the ones dealing with water and gas.”

- (d) Bills that relate to property including utility and other undertakings, and which are not concerned with public policy, have been found to be hybrid.²⁰

¹⁷ HC Debates (1962–63) vol.669 cols.37–164 at cols.39–43 and 45–48, reproduced at Annex 1 [*not appended to this Record*]. The passages cited are marked “E” and “F” respectively.

¹⁸ Ibid. col.46, see “G”.

¹⁹ The reference is to the 16th (1957) edition [*of Parliamentary Practice by Erskine May*]. The relevant extract is reproduced as Annex 6A [*not appended to this Record*]. The equivalent in the 23rd edition (p.970), also reproduced in Annex 6B [*not appended to this Record*] does not refer to the examples noted in the 16th edition.

²⁰ See Annex 3 [*Erskine May, 23rd edn, p.641—not appended to this Record*], footnotes 5 and 6 and Annex 6A, footnote (e) [*See previous footnote*].

4. The criteria applied

Class

- 4.1 The Bill applies to local authorities comprising a single class. The reasons are as follows.
- 4.2 As set out in the Statement of Fact, the Bill is a single topic Bill to prevent all uncompleted proposals received by the Secretary of State's predecessor under Part 1 of the 2007 Act from effecting the changes proposed or provided for. The only such proposals are those referred to in paragraph 11 of the Statement, and it is only those proposals that are caught by the Bill.²¹
- 4.3 The local authorities affected by the Bill are Exeter City Council, Ipswich Borough Council and the other district councils in Suffolk, Norwich City Council, Devon County Council, Norfolk County Council and Suffolk County Council. As explained in paragraph 11 of the Statement, the changes prospectively made by the proposals affecting those authorities have not yet come about. In terms of the Statement, these changes are uncompleted plans. As just mentioned, the proposals captured by the Bill are the only proposals that are in this position. The Secretary of State accordingly invites the Examiners to agree that all these affected local authorities form a single class for the purposes of the Bill and they are the only local authorities affected in this way. As local authority structure is the essence of the Bill and these are the local authorities whose structures were to be affected by the 2007 Act proposals, it automatically follows that the class is germane to the subject matter of the Bill.
- 4.4 It may be argued that there are in fact two affected classes, namely Exeter (with Devon) and Norwich (with Norfolk) as one class and Ipswich (with Suffolk and the other district councils in Suffolk) as the other. The distinction that might be drawn between the two is that, if the Bill does not pass, the first class is affected by existing structural changes orders the implementation of which will be completed in 2011 so that unitary authorities will come into operation at that time; whereas local authorities in the second class will continue as they are at present.
- 4.5 The Secretary of State submits that this is not the correct approach because it views the position in terms of the law as it stands today and as it will have effect if the Bill does not pass. The test of class should, rather, relate to the Bill and the effect it will have when enacted. Using the latter test, all the affected local authorities comprise a single class. This proposition is not prejudiced by the

²¹ See Statement paragraphs 13 and 14 [*appended to this Record as Supplement 1*].

necessarily different legislative treatment of the orders and the remaining proposals. That is a drafting technicality. Necessary differentiation between bodies affected by legislation does not make the legislation hybrid.²²

Equal treatment

- 4.6 The issue of one class or two becomes irrelevant if, as the Secretary of State maintains, the Bill makes no distinction among those affected. The effect of section 1 of the Bill will be to remove all the uncompleted plans as if they had never been. The legislative route by which that end is achieved is different as between Exeter and Norwich on the one hand and Ipswich on the other, but the net effect is the same without any distinction.
- 4.7 Even if the view were taken that the Bill creates two classes of affected local authority, the position regarding hybridity would be unaffected. Exeter and Norwich, as one class, are both treated in the same way – both structural changes orders are to be revoked – and Ipswich, as the other class of one, is placed in the position of not being potentially affected by any 2007 Act proposals. So even on the multi-class analysis, the Bill provides for equal treatment of all members of each class.
- 4.8 In the course of the debate on 8th June 2010²³ Lord Howarth of Newport argued²⁴ that the Bill affects Norwich and Exeter differently from local authorities generally. His stated reasoning was that after the Bill has become law local authorities other than Norwich and Exeter will be able to respond to any future invitation under Part 1 of the 2007 Act; but that “the Bill specifies that Norwich and Exeter – just those two named authorities – are not to become unitary authorities”. Lord Howarth did not go on to say that Norwich and Exeter would be precluded from responding to a future invitation under Part 1 of the 2007 Act, but that is the premise on which his argument appears to rest.
- 4.9 If that is indeed the argument being made for hybridity, the Secretary of State respectfully submits that it proceeds on a misreading of the Bill. Clause 1(3) provides for the revocation of the specific structural changes orders that have been made but which are as yet uncompleted because the unitary authorities are not yet in being. The effect of clause 1(1) is to prevent any further structural changes orders being made in respect of the specific proposals made to the Secretary of State in response to the 2006 invitation, all such proposals having been received by the Secretary of State before the commencement of these provisions. The 2006 invitation having

²² See Mr Speaker Whitley’s ruling on the Bill for the Railways Act 1921 HC Debates (1920–21) vol.142 cols.42–44, at col.44 reproduced in Annex 7 [*not appended to this Record*]. The passage is marked “H”..

²³ HL Debates (2010–11) vol.719 cols.603–613, reproduced in Annex 8 [*not appended to this Record*].

²⁴ Ibid cols.604–605 (marked “I” in Annex 8) [*not appended to this Record*].

requested any proposal by 25th January 2007, and no invitation having been made since or being in prospect before the commencement of the Bill, these are the only proposals that will be caught by clause 1(1). The proposals in question are those identified in paragraph 11 of the Statement of Fact.

- 4.10 As Lord Howarth said, in future the Secretary of State may issue an invitation under section 2. Nothing in the Bill would prevent Exeter or Norwich from responding to any such invitation made to either of them.
- 4.11 The Secretary of State does not believe it would be possible for any future proposals to be exactly the same as the uncompleted plans that are caught by clause 1(3),²⁵ but even if it were, such proposals could be made. In the context of the legislation, “proposal” has a technical meaning. It refers, not to a substantive set of ideas for implementation, but to a specific response by a local authority to an invitation made under section 2 of the 2007 Act or an alternative proposal made by the Boundary Committee under section 5 in response to the Secretary of State’s request for the Committee’s advice under section 4. It follows that any future proposals would not be those caught by clause 1(1), whatever their substantive detail, and so could be made.

Public policy

- 4.12 The Bill is concerned solely with a matter of public policy, namely the structure of local government in England. The Government has inherited a situation whereby there is a number of unitary authorities. Government policy on unitary structure is simply stated: it does not favour the creation or coming into operation of further unitary authorities at this time. That policy is given effect to in the Bill by ensuring that the only uncompleted plans for unitary authorities do not proceed.
- 4.13 There are several reasons behind the policy and paragraph 10 of the Statement of Fact touches on two of them. As appears from the 26th May 2010 press notice,²⁶ there are concerns about the imposition of a unitary structure. Of more immediate importance, the Government is anxious that the four local authorities affected by the Exeter and Norwich structural changes orders and the Government should be in a position to avoid the adverse financial impacts of making the change to unitary status, both in terms of the considerable expense involved and the absence of any, or any worthwhile, savings.²⁷ In the Secretary of State’s submission these are all matters of public policy,

²⁵ Apart from anything else, the financial details would differ.

²⁶ DCLG Press Notice 26th May 2010, reproduced in Annex 9 [not appended to this Record. See <http://www.communities.gov.uk/news/newsroom.1600805>].

²⁷ See also the Parliamentary under Secretary of State’s letter referred to in the Statement, reproduced in Annex 10 [appended to this Record as Supplement 6].

and in turn they are the policy reasons underpinning the overarching public policy that, for the moment at least, further unitary authorities should not become operational.

- 4.14 In the Secretary of State submission, paragraphs 4.1 to 4.13 above are sufficient to demonstrate why the Bill is not hybrid. However, it may assist the Examiners if this Note also addresses cases that may at first glance seem inconsistent with the Secretary of State's position.
- 4.15 The Bill for the Charlwood and Horley Act 1974 was promoted as a hybrid Bill. The Act transferred parts of the parishes of Charlwood and Horley from the county of West Sussex to the county of Surrey. The Act therefore altered the boundaries and make up of West Sussex and Surrey, which might suggest that the case was comparable to the present Bill. There is in fact no comparison. The background to the Bill was concisely stated by the Parliamentary Under-Secretary of State (Baroness Young) on Second Reading in this House.²⁸ Explaining the Bill, she said:

“[The Bill] raises no issue of local government principle; it is simply a question of the Government carrying out a pledge to the people of the parishes of Charlwood and Horley.”²⁹

- 4.16 One of the categories of bills that is cited in Erskine May as being treated as hybrid is that of bills brought in by the Government for “local purposes, etc.”³⁰ The text makes clear that this category of bills concerns Crown or other property and works, affecting private interests, and the bills cited in the 23rd edition are self-evidently works or compulsory purchase measures. As the same may not today be so readily apparent as regards some of the older examples cited in the 21st edition, it may be as well to point out that the bills concerning sites all dealt with the acquisition of specific land for a variety of public purposes. These were compulsory purchase measures, not concerned with public policy.
- 4.17 Erskine May cites bills (other than for London relating to cities and counties as normally being private).³¹ However, this merely reflects the usual content of such bills. It is not some principle that applies to any bill simply because it relates to a city or county. Demonstrating this, May goes on to state expressly that such bills will be public if they deal with public policy.

²⁸ HL Debates (1973–74) vol.349 cols.111–115, reproduced as Annex 11 [*not appended to this Record*].

²⁹ Ibid col.111 (marked “J” in Annex 11) [*not appended to this Record*].

³⁰ See Erskine May 23rd edn (2004) p.970 and 21st edn (1989) p.794, both reproduced in Annex 12 [*not appended to this Record*].

³¹ Erskine May 23rd edn (2004) p.971 and notes referred to, all reproduced in Annex 13 [*not appended to this Record*].

Property and private rights

4.18 To complete the principles noted in section 3 of this Note, it will be evident that the Bill is not concerned with property matters. Neither does it touch on private rights. As explained above, it is concerned with the structure of local government in England. That is not something that is capable of giving rise to private rights.

5. Conclusion regarding hybridity

5.1 For the reasons explained in this Note, the Bill does not meet any of the criteria which might make it hybrid. The Secretary of State therefore invites the Examiners so to find.

SUPPLEMENT 3

THE GOVERNMENT'S WRITTEN SUBMISSION: PART 2 — APPLICABILITY OF PRIVATE BUSINESS STANDING ORDERS TO THE LOCAL GOVERNMENT BILL

In the event that the PrBSOs are found to be applicable to the Bill, the Secretary of State offers the following view on which of the Standing Orders should so apply.

| PrBSO [H.L. and H.C.] | Brief description of relevant requirement | Applicability |
|----------------------------------|---|--|
| 4(1) and 10(2) | Publication of notice with concise summary of Bill in a local newspaper circulating in the affected local government area. | Potentially applicable. Notice could be published in local newspapers. Relevant local authority areas and publication dates would have to be sanctioned by the House authorities. |
| 4(2) | Published notice to contain information as to where the Bill may be inspected and purchased. | Potentially applicable. The Bill is publicly available and may be purchased from the TSO. It can be made available on the wider basis contemplated by the SO. Details would have to be settled with the House authorities. |
| 4A(1)(a) | A Bill altering the functions of a local authority must be made available for inspection or purchase at an office in the area of the authority. | Potentially applicable. The Bill could be placed in suitable locations for inspection and sale. |

| | | |
|-------|---|---|
| 11 | Publication of notice in the London Gazette giving time by which petitions must be submitted. | Potentially applicable. The Secretary of State could publish notice in the London Gazette. Dates would have to be sanctioned by the House authorities. |
| 38(1) | Copies of the Bill to be delivered to the Vote office. | Not relevant. Copies of the Bill (as a public Bill) are already available in the Vote office. |
| 38(1) | Copies of the Bill to be delivered to the Private Bill Office for the use of every Agent. | Potentially applicable. The Secretary of State could deliver copies to the Private Bill Office for Agents' use. |
| 38(2) | Provision of a printed memorandum to be attached to the Bill. | Not relevant – the Government has issued a separate explanatory memorandum which accompanies the Bill. |
| 38(3) | Statement of compatibility | Not relevant – the Baroness Hanham has made a statement of compatibility printed on the front of the Bill. |
| 39(1) | Deposit of Bills at Government departments and public bodies | Theoretically applicable. However, as the Bill is a Government Bill Government departments are all aware of it and are collectively responsible for it. |

| | | |
|-------------------|---------------------------------------|---|
| | | Accordingly, no department can report against the Bill and deposit with those departments would not serve any useful purpose. |
| 39(2) [H.L. only] | Deposit of certain categories of Bill | Not relevant none of the categories applies to this Bill |

SUPPLEMENT 4**THE GOVERNMENT'S WRITTEN SUBMISSION: PART 3 —
RESPONSE TO THE MEMORIALS****WS 22.6.10**

1. Identical Memorials against the Bill were deposited by Exeter City Council and Norwich City Council. Both Memorials have subsequently been withdrawn. To assist the Examiners, set out below are the responses that the Secretary of State intended to make to the Memorials. The facts upon which the Secretary of State relies are set out in the Statement of Fact and his submissions regarding hybridity generally, including issues raised in the Memorials, are in Part 1 of these Representations.

The classes affected by the Bill

2. It appears from paragraph 12 of the Memorial that the parties are agreed about two affected classes all members of which the Bill treats equally. The former Memorialists' case rested upon there being a third class of local authority which is affected by the Bill, a class of which the former Memorialists said they were members and are treated by the Bill in a way that is different from the Bill's treatment of other members of that third class. The Secretary of State submits that the Memorialists' contentions are wrong.
3. The Secretary of State invites the Examiners to agree that this supposed third class relevant to hybridity does not exist. His reasoning is as follows. The separate reasons are not in order of importance.
4. The essence of the third grouping as described in paragraph 13 of the Memorials is that its members can all submit proposals under Part 1 of the 2007 Act, and can do so both before and after the commencement date. As explained in paragraph 3 of the Statement, proposals may only be made in response to an invitation by the Secretary of State under section 2. No such invitation is in prospect for reasons of policy, but that apart the Secretary of State could not reasonably invite proposals which had to be made by the commencement date. Such an invitation would be futile because clause 1(1) of the Bill, once enacted, would render nugatory any proposal made in response to the invitation. An invitation that requested proposals no later than the commencement date would therefore be unlawful.
5. It would legally be possible for the Secretary of State to issue an invitation before the commencement date requesting proposals by a date after the commencement date. In that event, no local authority could reasonably submit proposals before the commencement date in the knowledge that they would be rendered nugatory by the Bill when enacted. To spend council taxpayers' money on such a futile exercise would be unreasonable and, in consequence, unlawful.
6. There cannot therefore be any issue of hybridity connected with a theoretical requirement for proposals to be made before the

commencement date.

7. As regards events after the commencement date, the Secretary of State remains able to issue invitations under section 2 and the Bill's provisions will not alter that position. Thus the Bill does nothing to create an affected third class such as is described by the former Memorialists.
8. The supposed third class is by its nature one to which the Bill does not apply. It is therefore irrelevant to any test of hybridity. The tests of hybridity are all concerned with the effect of the Bill and whether that effect differentiates between classes. Hybridity does not arise because a Bill fails to capture some class that is not within the scope of the Bill.
9. The issue that is relevant to class is whether the Bill affects, in the sense of having a legal effect on, a class only some of whose members are caught by the Bill. Looked at in that way, the former Memorialists, both of which are legislated for in the Bill, are the only local authorities that come within the class to which clause 1(3) of the Bill relates.

Whether class is germane to subject matter

10. The Memorialists contend in paragraph 16 of the Memorials that their third grouping is germane to the subject matter of the Bill. This, too, is incorrect. The single purpose of the Bill is as explained in paragraph 12 of the Statement of Fact. It is concerned only with the implementation of uncompleted proposals, of which there is a finite number (see paragraph 11 of the Statement). The wider issue of the implementation of Part 1 of the 2007 Act generally is not legislated for in the Bill and so is not germane to it.

Whether Memorialist treated differently from others in its class

11. The Memorialists say in paragraph 17 of the Memorials that they will be treated differently from other local authorities making proposals. The argument appears to be that the Memorialists' proposal will be prejudiced. However, such prejudice is not (and is not claimed to be) a legal effect of the Bill. It is alleged to result from the Orders having previously been revoked and from Government's current policy. This line of argument ignores the law. If there were an invitation, any resulting proposals would have to be considered on their merits. Relevant Government policy, which indeed may have changed, must be a reasonable element of this, but prejudice in the sense of unreasonable adverse opinion or even predetermination i.e. a closed mind would be unlawful. The complaint of different treatment on this basis amounts to nothing less than an allegation that the Secretary of State can be expected to act unlawfully. If such a suggestion is really intended, it is unworthy of the former Memorialists and is wholly unjustified.
12. Paragraph 13 of the Memorials speaks of the Memorialists being "warned off". The former Memorialists draw attention to the Hylton-Foster definition, which refers to the effect of the Bill, and seeks to distinguish between the effects of the Bill as such i.e. while it is a Bill, and its effects as enacted. The Secretary of State submits that the distinction is false and that

the former Memorialists' proposition is both novel and extraordinary. A Bill can only affect parties prospectively, by specifying a legal effect that will result from enactment. (As an exception, one type of Bill that does have legal effect in itself i.e. before enactment, is one that authorises compulsory purchase causing planning blight.) In the present case, the promise of the legal provision that will be made if the Bill is enacted cannot have any legal effect while it remains no more than a promise. Thus the Memorialist cannot claim that there is any effect flowing from the Bill but not the Act, still less an effect that ought properly to give rise to a right to petition.

13. The former Memorialists refer to its desire to submit proposals in the same terms as those previously submitted. The Secretary of State does not believe that to be possible in practice (see Part 1 of these Representations, paragraph 4.11).

Other principles and submissions

14. Paragraphs 18 to 20 of the Memorials deal with hybridity in the context of public policy and bills relating to the cities and counties. Paragraph 18 cites the general statement on the subject in Erskine May. For the reasons explained in paragraph 4.17 of Part 1 of these Representations, that very general statement reflects the usual context of such Bills. It has to be applied as appropriate in the particular case. The example of the Charwood and Horley Bill (paragraph 4.15) demonstrates this. Erskine May bears out the proposition that any decision on the treatment of a particular Bill is taken on the basis of the Bill itself.³²
15. Paragraphs 21 and 22 of the Memorials claim that the Bill is hybrid because it revokes orders which are themselves hybrid instruments and were not treated as such only because of section 240(9) of the 2007 Act. This contention misunderstands the nature of hybridity. The Orders dealt exclusively with local government in Exeter and Norwich respectively. They were therefore concerned with locality, not public policy. That could be sufficient for the Lord Chairman to determine that they were within the scope of PrBSO 216, but the hybridity of the Orders is not relevant to the Bill. The questions to be asked in relation to the Bill are concerned with the classes of interest affected by it and their equality of treatment, all of which are addressed above.

Conclusion

16. The Secretary of State submits that nothing in the Memorials demonstrates that the Bill is hybrid. Accordingly, PrBSOs do not apply to it and the Secretary of State invites the Examiners so to find.

³² See Erskine May 23rd edn at p.970 and, in greater detail, the 21st edn at pp 793–794.

SUPPLEMENT 5**THE GOVERNMENT'S WRITTEN SUBMISSION: TEXT OF LETTER
FROM TOM MOHAN TO BARONESS HANHAM**

3 June 2010

Dear Lady Hanham,

Local Government Bill [HL] – Hybridity

Thank you for your letter of today's date. I am writing to confirm the Public Bill Office (PBO)'s view that the Local Government Bill currently before the House is not *prima facie* hybrid and to set out the reasons why we take this view.

A hybrid bill is defined as “a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class.” I attach a pdf of pages 640–641 of the current (23rd) edition of *Erskine May*, which gives more background on hybridity.

The practical significance of a bill being found to be hybrid is that persons or bodies whose private interests, when compared to the private interests of other persons or bodies in the same category or class, are adversely affected by the bill can petition against the bill and have those petitions considered by select committees in each House.

The concept of “class” is therefore crucial to deciding whether a bill is hybrid or not. *Erskine May* states that: “A class must be defined by reference to criteria germane to the subject matter of the bill.”

The Local Government Bill is a tightly drafted one-topic Bill which relates only to proposals made, but not yet implemented, for the creation of unitary authorities under Part 1 of the Local Government and Public Involvement in Health Act 2007. It does not affect Orders made under Part 1 of the 2007 Act which have already been implemented. So for the purpose of judging hybridity, the class, defined by reference to criteria germane to the subject matter of the bill, is those councils which have made proposals – as yet unimplemented – for unitary status under Part 1 of the 2007 Act.

Section 1 of the bill contains the substantive provisions preventing the implementation of proposals under Part 1 of the 2007 Act. Subsection (1) prevents any further Orders being made under Part 1 of the 2007 Act to implement existing proposals for unitary authorities. I understand that at the moment the only proposal which has not been the subject of an Order is that which was made by Ipswich Borough Council. Subsection (3) revokes the Orders which have already been made (but not implemented) in respect of Norwich and Exeter.

The class of bodies affected by the bill is clear, and all members of the class are treated equally, so we do not think that any hybridity arises. The fact that Norwich and Exeter are named on the face of the Bill, in the Titles of the Orders to be revoked, while Ipswich is not, does not make any difference to our view on hybridity. All three bodies are being treated equally.

If another council were, before this Bill becomes an Act, to make a proposal for unitary status, it would be treated in exactly the same way as the proposals relating to the three existing members of the class – the bill would prevent an implementing Order being made. So this would make no difference to the PBO view on hybridity.

I am copying this letter to Baroness Anelay of St Johns, the Government Chief Whip, to David Beamish, the Clerk Assistant and to Kate Lawrence, Private Secretary to the Government Chief Whip.

Tom Mohan
Clerk of the Public & Private Bill Office

Baroness Hanham CBE
Parliamentary Under Secretary of State
Department for Communities and Local Government
Eland House, Bressenden Place
London, SW1E 5DU

SUPPLEMENT 6**THE GOVERNMENT'S WRITTEN SUBMISSION: TEXT OF LETTER
FROM DEPARTMENT FOR COMMUNITIES AND LOCAL
GOVERNMENT TO VARIOUS COUNCIL LEADERS**

25 May 2010

Dear Leader

Local Government Restructuring in Suffolk

I am writing to let you know that the Queen's Speech today announced that the Government will introduce a Bill to stop the restructuring of councils in Norfolk, Suffolk, and Devon.

The proposed legislation will revoke the Orders that create from 1 April 2011 unitary councils for the cities of Exeter and Norwich, and will also have the effect that the unitary proposals for Suffolk remaining on the table cannot be implemented. The Bill will also provide that where any councillor's term of office has been extended by one year to May 2011 by the Orders being revoked, that extension will continue; thereafter each City Council will return to its usual pattern of elections for one third of the council annually. This avoids by-elections on the revocation of the Orders with the associated costs that would arise.

We want to move very quickly, so that councils can have the certainty they need as soon as possible. Our intention is to introduce the Bill this week, and subject to the will of Parliament, to seek its enactment by the summer. Meanwhile we would not expect councils to take any further steps, including any work on the proposed County Constitutional Convention, on taking forward plans to implement unitary structures.

Stopping this restructuring represents good value for money. Councils in Suffolk will now be free to concentrate on achieving efficiencies and giving greater value for money to their communities. The key will be sensible co-operation and effective collaborative partnership working between all councils and their partners across the county area. I am confident of your and your colleague Council Leaders' commitment to this.

Signed:

BOB NEILL MP

Parliamentary Under Secretary of State

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ANNEX 9

Aircraft and Shipbuilding Industries Bill (Session 1976-1977) - Report of the Examiners



AIRCRAFT AND SHIPBUILDING INDUSTRIES BILL

We have based our inquiry on the well-known statement by Mr. Speaker Hylton-Foster on the Bill for the London Government Act 1963:

"I think that a hybrid Bill can be defined as a Public Bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class."

This definition, taken at its face value, indicates what might have been thought to be obvious, that the doctrine of hybridity is an expression of the will of each House of Parliament that an individual singled out by a Public Bill for adverse treatment should be allowed to plead his cause to a Select Committee on a petition against the Bill or against those provisions of the Bill that will affect him. The doctrine was designed to give the minority some defence against the legislature; and that in modern times means defence against the Crown. Unless it is that, it is nothing.

Yet this defence has been eroded by two Speakers' Rulings, the first given before, and the second given after, Mr. Speaker Hylton-Foster's Ruling. Before discussing these Rulings, it is right to call attention to the difficulty of applying the Hylton-Foster definition to any particular Bill. Every person or body is a member of a category or class of persons or bodies and every category or class of persons or bodies is a member of a wider category or class of persons or bodies. Therefore, the answer to the question whether a Bill is hybrid on the Hylton-Foster definition depends on where you draw your category or class. The two Rulings we have referred to are that of Mr. Speaker Clifton-Brown on the Bill for the Iron

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and Steel Act 1949 and that of Mr. Speaker King on the Bill for the Iron and Steel Act 1967. The effect of both of them is that the category or class that is relevant is the one selected by the Promoters of the Bill. In other words, the defences of the subject against selective ill-treatment can be turned by drawing a category or class that comprises him and his fellow victims and nobody else.

We therefore conceive ourselves effectively prohibited by the Rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King from finding that the Aircraft and Shipbuilding Industries Bill is inherently hybrid, that is to say that we cannot in the light of those Rulings find that the class of companies whose securities are to be taken into public ownership is described with such particularity that it is itself a selection from a wider class of companies. We are prohibited, not because we as Officers of the House of Lords are formally bound by decisions of the Speakers of the House of Commons, but because it would be, to say the least, inconvenient if the two Houses developed different doctrines of hybridity.

It is still open to us to find that this Bill is hybrid according as we answer the arid questions whether all the companies named in Part I of the Second Schedule to the Bill are within the category or class set out in Part II of that Schedule and whether any company within that category or class is not named in Part I. If Part I and Part II of the Second Schedule are not congruent, the Bill is hybrid. This is because

(a) if a company is named in Part I but is outside the category or class defined in Part II, it is singled out from its own category or class; and

(b) if a company within the category or class defined in Part II is nevertheless not named in Part I, the companies named in Part I are within a category or class not all of whose members are subjected to nationalization.

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We deal later with the Government's suggestion that a category or class other than that described in Part II is appropriate to the list in Part I.

It is widely supposed that the Bill is to nationalize the aircraft manufacturing industry and the shipbuilding industry. This is far from the truth. The long title of the Bill refers to "certain companies" engaged in those industries, and, so far as the shiprepairing industry is concerned, and that is the industry that our examination has been almost exclusively concerned with, the Bill is notably selective. Out of the ninety or so shiprepairing companies, the Bill would bring into public ownership twelve companies named in the Second Schedule as shiprepairing companies, and about six more shiprepairing companies which are on the list in that Schedule of shipbuilding companies and presumably fulfil the criteria appropriate to such companies. If, therefore, we were free to apply Mr. Speaker Hylton-Foster's ruling to the shiprepairing nationalization proposed by the Bill, but without taking Mr. Speaker King's Ruling into account, we should be forced to find it hybrid, whether we were to treat the "category or class" as comprising the "companies engaged in shipbuilding and allied industries" mentioned in the long title or as comprising those engaged in the shiprepairing industry. It was only by devising a class as tight as that described in paragraphs 1 and 3 of Part II of the Second Schedule to the Bill that the Government could hope to avoid hybridity. How tight that class is can be seen by a study of those paragraphs and of the definitions of "group of companies" and "subsidiary" in Clause 56(1).

One of the main arguments advanced by those who appeared before us in support of the proposition that the Bill is hybrid (whom we shall refer to as "the Memorialists") was that many shipowning companies fitted the description in paragraph 1(b) of Part II of the Schedule as companies that "fulfilled" the criteria" in paragraph 3 of that Part as shiprepairing companies, in that they ~~CONFIDENTIAL~~ among other criteria, that



of being engaged on the 31st July, 1974, in the business of repairing, refitting or maintaining ships in spite of the fact that the ships were their own. The Government has all along resisted this contention. In his answer of 14th October 1976, to a question asked by Lord Colville of Culross, Lord Peart said:

"The Government are satisfied that a person who does repair or other work only for himself, such as a shipowner carrying out his own repairs or maintaining his own ships, is not 'engaged in the business of repairing, refitting or maintaining ships'. A good analogy would be a hotel company which launders its own linen; no-one would say this would make the company into a company engaged in the laundry business."

It was pointed out to us that the hotel analogy would have been better had it said "would make the company into a company engaged in the business of laundering linen."

We are thus invited to find that the Bill is hybrid because, although the shipowning companies are for the most part not within the list of shiprepairing companies contained in Part I of the Second Schedule they fulfil the conditions in Part II of that Schedule. This issue, above all, shows the unreality and artificiality of what we have been enquiring into. We are aware that Mr. Speaker King, in ruling that the Bill for the Iron and Steel Act 1967 was not hybrid, declined to speculate on the reason why the class devised for that Bill was selected; but in the case before us there was no occasion to speculate because both Mr. Gamon, the Government Agent, and Mr. McDonald, whom he called as a witness from the Department of Industry, made it abundantly clear that from the beginning the Government was aiming, not at the shiprepairing industry, but at a carefully selected list of companies engaged in that industry. The risk of Hybridity was, therefore, immediately apparent, and we are entitled to assume that Parliamentary Counsel endeavoured to draft Part II of the Second Schedule so as to enable the Government to avoid hybridity by availing itself of Mr. Speaker

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King's Ruling, that is to say, by devising a category or class into which the twelve companies could be fitted, but no others except those included in the list of shipbuilding companies. The Government was fully entitled to do this, as other Governments have in the past; but the effect of such tactics is remarkable, because the right of any of the twelve companies to plead its cause before a Select Committee depends, not on any consideration of the rights of the subject, but on the success of Parliamentary Counsel in so drafting the Schedule that Parts I and II cover exactly the same twelve companies; and indeed we had evidence that Part II was altered in the draft Bill stage of the original Bill, both on the dry-dock qualification and on the turnover qualification, to admit or exclude individual companies.

Moreover, when we turn to the question whether shipowning companies are also shiprepairing companies for the purposes of the Bill, the answer is "No" because those companies are not named in Part I of the Schedule. But that is not the question we have to answer. What we have to answer is the artificial question whether shipowning companies which repair their own ships fulfil the criteria in paragraph 3(1)(a) of Part II of the Schedule as shiprepairing companies. Mr. Gamon strongly urged us to have regard to the intention of those who framed the Bill; but this leads us nowhere. The intention of those who framed the Bill was to exclude the shipowning companies or most of them; and this, of course, the Bill will achieve not by reference to the long title or to the language of paragraph 1(b) of Part II, but by the list of companies in Part I. We find that many of the shipowning companies did repair their own ships.

Whether it follows from this that the shipowning companies which repaired their own ships were "engaged in the business" of repairing ships is an evenly balanced question. To find that they were not so engaged involves some absurdity having regard to the case of Clyde Wharf Limited, a subsidiary of Sugar Line Ltd., which was ~~CONFIDENTIAL~~ end of March 1973 was



repairing ships belonging to Sugar Line. On 31st March 1973, Clyde Wharf ceased to trade and transferred its shiprepairing section to Sugar Line together with the workforce, plant and machinery used in that section. Before the transfer Clyde Wharf was certainly engaged in the business of repairing ships. Can it therefore reasonably be held that immediately after transfer Sugar Line was not engaged in that business because its main business was the owning of ships? We, nevertheless, find that, in ordinary parlance, to be engaged in business connotes making, or attempting to make, a trading profit.

But the element of trading profit is more evident in the analogous case of companies such as Athel Line Ltd., Royal Mail Lines Ltd., Houlder Brothers Ltd., Manchester Liners Ltd. and Shaw Savill & Albion Ltd. which were managing ships belonging to other companies. We were told that a management contract invariably requires the manager to maintain the ship and generally requires him to repair the ship. As a rule small repairs are done by the manager's employees at sea or in port; larger repairs are carried out by shiprepairers. The five companies mentioned above are relevant, not because it was suggested that they should be in the Bill, but because, in the case of Athel, its turnover would, it was submitted to us, have required Richards (Shipbuilders) Ltd., and, in the other cases, their turnover would have required Manchester Dry Docks Ltd., to be included in the Bill as shiprepairing companies. All five companies sometimes repaired their managed ships with their own workforce and equipment. There is thus a strong argument for the proposition that a company that contracts with a shipowner to manager his ships, and, as an element of management, to maintain them and repair them as occasion demands with the manager's workforce and equipment is "engaged in the business of repairing, refitting or maintaining ships". Is the managing company then nevertheless engaged in the business of managing ships or can it be said to be engaged in the business of managing and the business of repairing or maintaining? With some difficulty, we have come to the

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conclusion that the management of ships does not involve the manager in the business of maintaining or repairing ships.

It was submitted to us that the Westminster Dredging Company, though not listed in Part I of the Second Schedule, was engaged in the business of repairing, refitting or maintaining ships within the meaning of paragraph 3(1)(a) of Part II of the Schedule because it was engaged in repairing not only its own ships and ships chartered by it but also ships of other companies. On 7th June 1972, the company wrote to the general manager and engineer of the Port of Preston Authority in these terms:

"We have now leased from the Mersey Docks and Harbour Company both No.1 and No.3 Birkenhead Drydocks. You will probably know that we maintain our own vessels utilising our workshops both at Bromborough and adjacent to the drydocks.

For many years we have virtually monopolised No.1 drydock for our own vessels and this utilisation, together with third party vessels using No.3 dock, leaves us with about 70% spare capacity.

Since 1st May 1972 we have been hiring the dock to shiprepairers who also carry out their own repairs, but we would also like to make maximum use of our workshop facilities. It is for this reason we are writing to ask if you would allow us to quote for drydocking and repairs on your vessels which drydock regularly in the Port of Liverpool.

We would like to think that, apart from our large stocks of materials and parts (peculiar to dredgers), we have also accumulated a great deal of specialised knowledge, and hope therefore we may be of some assistance."

The Company was from June 1972 until about May 1975, and certainly at the end of July 1974, repairing ships that were not owned or chartered or managed by the company including ships belonging to the Preston Port Authority. There is some dispute between the Memorialists and the Government about the number of ships repaired for outsiders during this period.

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We find that there were seven or eight. This repair work was a small portion of the company's total business, which consists of dredging and land reclamation. The turnover of the company in the financial year ended 31st December 1974, was £21 million, whereas the turnover of the company so far as it related to repair work undertaken for outside companies was from May 1972 to December 1975 inclusive not more than £47,305.

It was submitted to us that the London Graving Dock Company Ltd., though included in Part I of the Second Schedule to the Bill, did not fulfil the criteria of paragraph 3 of Part II of that Schedule. That company in the year in which 31st July 1974 fell was acting purely as a holding company, one of whose subsidiaries was London Graving Dock Ship Repairs Ltd. Though the parent company has for most of the time been the one selected by the Government for nationalization, there was a time in the spring of 1975 when both the Government and the directors of the companies were in serious doubt whether to select the parent or its subsidiary. It was the view of the directors that neither the parent nor its subsidiary in isolation appeared to fulfil the criteria specified in paragraph 3 of Part II of the Second Schedule; but the Government had no doubt that taken together the two companies and the companies in the same group engaged in shiprepairing fulfilled those criteria. After prolonged negotiations between the Government and the directors, it was decided by the Government with the approval of the directors to list the parent company in Part I; but the involvement of the parent company in the business of repairing, refitting or maintaining ships was tenuous and depended on a contract with Trinity House which was entirely subcontracted to London Graving Dock Ship Repairs Ltd. A note by Mr. Walker of the Department of Industry of a meeting on 10th April 1975 between the Department and the directors suggests that there may have been other long-term contracts; but we have no evidence about their content.



The parent company's turnover for the relevant financial year, which is that ended 31st March 1973, was over £5 million, being the consolidated turnover of the company and its subsidiaries. At the end of the March 1973 the company ceased to carry out shiprepairing, but retained its fixed assets. Though it employed some 200 persons some of whom were engaged in shiprepairing, its turnover for the year ended 31st March 1975, the year in which 31st July 1974, fell, was nil. All the practical work including administration work on the parent company's contracts was performed by London Graving Dock Repairs.

We deal next with J.B. Howie Ltd. and Western Shiprepairers Ltd. Both these companies were on 31st July 1974 engaged in the business of repairing, refitting or maintaining ships. Both companies were entitled to an interest in possession in, or a licence to occupy, a dry-dock or a graving dock within the meaning of the Second Schedule, Part II, paragraph 3(1)(b). The Department of Industry was informed by letter dated 30th September 1976, from Messrs. Ashurst, Morris, Crisp & Co., solicitors to the Laird Group, that in the "relevant financial year" i.e. that ended 31st December 1972, Howie did not trade and Western had a turnover of £1,735,243, so that neither qualified for the £3.4 million turnover which by paragraph 3(1)(c) is made a condition for takeover. Cammell Laird (Shiprepairers) Company Ltd. was, however, a member of the same group; and that company in the same relevant financial year had a turnover of more than £5 million. That company was on 31st July 1974 a member of the Laird Group to which Howie and Western belonged and accordingly its turnover could be reckoned with the turnovers of Howie and Western if, but only if, on 31st December 1972 it was "engaged in the business of repairing, refitting or maintaining ships" as required by subparagraphs (1)(a) and (2)(b) of paragraph 3. Messrs. Ashurst, Morris, Crisp & Co. have informed the Department of Industry that on 31st July 1974, Cammell Laird (Shiprepairers) Ltd. had a contract with the Venezuelan navy for the refitting of two destroyers and a contract with the



Peruvian Government for the refitting of two other destroyers. These two contracts were entered into before 1972. Cammell Laird (Shiprepairers) Ltd. had sold their assets to the Laird Group in 1972 and the work on the Venezuelan and Peruvian contracts had been sub-contracted to Cammell Laird (Shipbuilders) Ltd. and Western Shiprepairers Ltd. Cammell Laird (Shiprepairers) had no employees, it had no interest in possession in a dry-dock or graving dock and had no other fixed assets. There is some evidence that the directors of Cammell Laird (Shiprepairers) Ltd. continued to supervise the Venezuelan and Peruvian contracts. We find that on 31st July 1974 Cammell Laird (Shiprepairers) Ltd. was a member of the same group of companies as J.B. Howie Ltd. and Western Shiprepairers Ltd. and that on 31st December 1972 the end of the relevant financial year, it was still marginally engaged in repairing, refitting or maintaining ships, and that, therefore, its turnover may be aggregated with those of J.B. Howie Ltd. and Western Shiprepairers Ltd.

We now turn to the case of Humber St. Andrews Engineering Company Ltd. That company was on 31st July 1972 repairing the Esquimaux and the Emerald in a dry-dock at Hull owned and operated by British United Trawlers (Hull) Ltd. and managed by Hellyer Brothers Ltd.; and the Emerald was owned by Hellyer. The three companies, British United Trawlers (Hull) Ltd., Hellyer and Humber St. Andrews were members of the same group. Humber St. Andrews had a turnover in the relevant financial year exceeding £3.4 million and was agreed to be engaged on 31st July 1974 in the business of repairing ships. In an answer given in the House of Lords on 14th October 1976, Lord Peart said that neither Hellyer Brothers, who booked the dry-dock, nor Humber St. Andrews, who was doing the repairs, was entitled to a licence to occupy the dry-dock. What does the phrase "entitled to a licence to occupy a dry-dock" mean? It must be something less than "an interest in possession in a dry-dock" which is the other dry-dock qualification imposed by paragraph 3(1)(b) of Part II of the Second Schedule to the Bill.



We would expect it, on the other hand, to be something more than the occupation of a dry-dock in pursuance of a booking by the owner, charterer or manager of a ship occupying the dry-dock. No evidence has been given to us of any intermediate "licence" between an interest in possession and occupation under a booking from the dock-owner. We find that Hellyer Brothers Ltd. occupied the dry-dock on 31st July 1974.

We are thus presented with the question whether the Bill is hybrid -

first, because of the omission of Westminster Dredging Company notwithstanding that on 31st July 1974 it was engaged in the business of repairing ships, albeit in a small way;

second, because of the inclusion of the London Graving Dock Company, notwithstanding that its shiprepairing business on 31st July 1974 was minimal;

third, because of the inclusion of J.B. Howie and Western Shiprepairers notwithstanding that on 31st July 1974 the shiprepairing business of Cammell Laird Shiprepairers by virtue of whose turnover those two companies are included, was minimal;

fourth, because of the exclusion of Humber St. Andrews Engineering Company on the ground that their work in a dry-dock on 31st July 1974 did not amount to an entitlement to a licence to occupy it.

It has been urged on us on behalf of the Government that we should not concern ourselves with such trivialities and we agree with the Government that they are indeed trivialities. We go further and say that they have little bearing on the underlying question whether any of the companies selected by the Bill for nationalization, and especially the twelve shiprepairing companies, should be allowed to present their case to a Select Committee of the House.



It is at this point that the fundamental issue of this examination presents itself. We share the view expressed on behalf of the Government that it is grotesque that the constitutional right of a subject to plead his cause before a Select Committee of the House of Lords or the House of Commons should depend on the answers to the kind of questions we have just mentioned. Mr. Gamon, perhaps anticipating that the shiprepairing activities of Westminster Dredging Company might compel us to find that that company was engaged in the business of repairing ships within the meaning of Part II of the Schedule, though not listed in Part I of the Schedule, suggested that we should look beyond the class described in paragraphs 1 and 3 of Part II of the Schedule to an unexpressed class, described by him as the "genuine class" of companies which are to be nationalized as shiprepairing companies. He contended that the Government sought to bring into public ownership a genuine class of eighteen or so major shiprepairing companies and that Westminster Dredging Company, for instance, could not in ordinary parlance be described as a shiprepairing company at all. It was almost exclusively engaged in dredging and land-reclamation. But one must assume that those who framed the Bill shrank from a bare naming of the shiprepairing companies that the Government wanted to take, with or without some such description of them as "the major shiprepairing companies", because to do so would be to make a naked selection and so hybridise the Bill. So they employed the device adopted in the two Iron and Steel nationalization Bills and blessed by the Rulings of Mr. Speaker Clifton-Brown and Mr. Speaker King. That device, as we have said, was for the Promoters to draw a class that would comprise the selected companies and no others. That is the way the Government has chosen to play it. The fact that the class has been so drawn as to include a company that the Government did not intend to include does not justify us in ignoring the stated class, and relying on the unexpressed "genuine" class. To do so would amount to finding not only that clause 19(2) and the Second Schedule were ineffective but to substituting something for them that would itself hybridise the Bill.

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We find that the Bill is hybrid in respect of the omission of the Westminster Dredging Company. We find that the Bill is not hybrid with respect to the inclusion of the London Graving Dock Company, J.B. Howie, Western Shiprepairers and Humber St. Andrews.

It will be seen that the minor shiprepairing business of Westminster Dredging Company, a company outside Schedule II, is balanced by the minor shiprepairing businesses of London Graving Dock Company and Cammell Laird (Shiprepairers) which have brought London Graving Dock and J.B. Howie and Western Shiprepairers within Schedule II.

There is another matter which raises the question of hybridity. In the Bill for the Iron and Steel Act 1967 the Ruling of Mr. Speaker King, to which we have already referred, was to the effect that the description contained in that Bill of the companies selected for public ownership formed an adequate class if the description was germane to the subject matter of the Bill. It is not clear whether by this he meant germane to the Iron and Steel Industry or germane to the companies selected out of that industry for nationalization. We think he meant the first. It was submitted to us that the condition in paragraph 3(1)(c) of Part II of the Second Schedule to the Bill is not germane to the shiprepairing industry. Paragraph 3(1)(c) deals with turnover and requires that the aggregate turnover of the company concerned and of its associated shiprepairing companies must have exceeded £3.4 million in order to qualify for nationalisation; but the turnover is not confined to turnover in the shiprepairing business and, in one company at least, the Humber Graving Dock and Engineering Company, some 40% of the turnover required by the Bill was turnover in respect of business that was not the business of shiprepairing. In other words the Government has decided, in the case of this company, to bring it into public ownership by reason of its size, but not solely by reason of its size as shiprepairers.

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We find that the Bill is hybrid in that the condition of turnover is not germane to the subject matter of the Bill so far as it relates to the shiprepairing companies.

It is also our duty to decide whether the Bill is or is not hybrid in respect of the aircraft manufacturing industry and in respect of the shipbuilding, marine diesel engine and training industries. We have received virtually no evidence about these; but we accept Mr. Gamon's assurance that, as far as he knows, there is no incongruity between Parts I and II of the First Schedule and Parts I and II of the Second Schedule so far as they relate to the shipbuilding, marine engine and training industries. We accordingly find that the Bill is not hybrid on account of any such discrepancy.

Having pronounced our finding, we would add this. We are conscious of the fact that important sections of industry are waiting for Parliament to decide whether, and to what extent, nationalization of certain companies is to proceed. We are also conscious of the fact that, since this Bill is introduced with the certificate from the Speaker pursuant to section 2(4) of the Parliament Act 1911, the House of Lords will be unable in all probability to give effect to any Petitions against the Bill. Nevertheless, we have to do our best to decide whether the Memorialists and other parties affected by the Bill should be given an opportunity to plead their case before a Select Committee of the House.

We have not investigated to any great extent the origins of the rules of both Houses regarding hybridity. We are, however, convinced that they were designed by both Houses to ensure that the subject should have a right to plead his cause before them if he could show that their legislation would put him to greater disadvantage than it would put his fellows. Parliament has, in other words, been careful to protect the individual from the majority, from the power of the state, or, if you prefer it, from the power of the Government.

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As we have indicated above the Ruling of Mr. Speaker King and his predecessor, Mr. Speaker Clifton-Brown, have, we think, almost completely lost sight of the fundamental purposes of the hybridity rule. Governments are naturally very reluctant to submit major decisions of policy to the judgement of Select Committees, whether they be Committees of the House of Commons or Committees of the House of Lords. They, therefore, take great pains to have their Bills drafted so as to avoid hybridity. We have already expressed our opinion that whether a Bill is or is not hybrid has degenerated into a question whether the Parliamentary Counsel who draft Bills for the Government have been successful in drawing a class into which the undertakings intended for nationalization can be fitted and which excludes the undertakings that the Government does not wish to nationalize; and it is curious that the answer to the question whether a constitutional right of such importance as the right of a subject to plead his cause before Committees of either House might depend on the opinion of Officers of the House about the meaning of such phrases as "engaged in the business of repairing, refitting or maintaining ships" and "entitled to a license to occupy a dry-dock or graving dock".

The draftsman of this Bill was assigned an impossible task. It was difficult enough for him to make Part II of his Second Schedule cover all the companies in Part I; but when it came to ensuring that no other company fulfilled the conditions in Part II, he had to rely on such information as the Government could glean from sources that were not always sympathetic. Had he had the knowledge available to us, he would in all probability have succeeded. As it was, that knowledge was denied him, and the attempt failed.

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ANNEX 10

Education Reform Bill (Session 1987-88) HC Deb 123, c 770

Education Reform Bill

Volume 123: debated on Tuesday 1 December 1987



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Mr. Jack Straw

(Blackburn)

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Column 769

On a point of order, Mr. Speaker. I wish to raise a point of order, of which I have given you notice, about the hybridity of the Education Reform Bill. It arises in respect of clauses 130 to 136, which relate to provisions removing the security of tenure of academic staff.

A hybrid Bill is denned by "Erskine May" as "a public Bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class."

Clauses 130 to 136 contain various provisions for the removal of academic tenure in universities, including the appointment of commissioners to amend the statutes of universities and colleges. If and when the Bill receives the Royal Assent, the provisions will have retrospective force with effect from 20 November 1987, the day on which the Bill was published.

It is clear from the construction of the Bill that the category or class encompassed by the Bill is that of the academic staff of universities and colleges. However, the Bill wholly fails to take into account that, while some universities, by virtue of their statutes, at present have a choice in law as to whether to grant tenure, other institutions — including the university of London in respect of professorships and readerships — have no choice. The law will remain thus until the passage of the Bill.

In the former case, where a choice exists, the university authorities may be able lawfully to take into account the 20 November date set out in the Bill. But where, as in the latter case of the university of London and other universities and colleges, no such choices exist, the university authorities face an insoluble dilemma which will directly affect the private interests of one group of academic staff differently from the interests of others in the same category or class. The university authorities may decide to take note of the provisions of clause 132, and not grant tenure to those appointed after 20 November. In doing so, they would plainly be according quite different treatment to an individual in the same class, entitled to the same rights under the existing statute of the university.

To underline that differential treatment—contrary to the university's legal obligations, which will subsist until the passage of the Bill — if a member of staff was so discriminated against, he would be entitled to take the university to court. The defence that a Bill was before the House would not lie. In those circumstances, there appears to be a clear differentiation in treatment between staff who are appointed before 20 November and staff appointed after that date under the same statutes in force. In those circumstances, I ask you, Mr. Speaker, to declare that part of the Bill as hybrid and to refer it to the Examiners.

Column 770

Mr. Speaker

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I am grateful to the hon. Gentleman for having given me notice of his submission because it has enabled me to give the matter careful consideration.

The hon. Gentleman asks that I should find the Bill prima facie hybrid because the clauses dealing with academic tenure may result in some academic staff being affected differently from others in the same class. In particular, he submits that if some universities take note of clause 132 and do not grant tenure to anyone appointed after 20 November they will be singling out that individual from the remainder of the class for adverse treatment.

In considering the question of hybridity, I have to look at the terms of the Bill. Provided that the formula or description used in the Bill deals with a category or class which is relevant to the purposes of the Bill and the Bill does not expressly specify or single out an individual or corporation within the category for different treatment, the Bill is not hybrid. The fact that individuals are differently affected when they fall within a general description is not relevant. Indeed, any general legislation will probably affect different people in different degrees.

In the present case, the Bill creates two categories of academic staff: those appointed before 20 November 1987 —that is the date of the introduction of the Bill—and those appointed after 20 November. These categories are entirely general and the criteria used are germane to the Bill. The fact that those concerned may be differently affected is not relevant. I must, therefore, rule that the Bill is not prima facie hybrid.

ANNEX 11

Iron and Steel Bill (Session 1948-49) HC Deb 458, c.52

Iron And Steel Bill (Mr Speaker's Ruling)

Volume 458: debated on Monday 15 November 1948

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Major Sir David Maxwell Fyfe

Share

Column 47

On a point of Order. May I ask your guidance, Mr. Speaker, as to the nature of the Iron and Steel Bill, which will shortly come before the House? As I think everyone realises, the question on which we desire your guidance is not whether the Iron and Steel Bill is a Hybrid Bill, but whether it comes within the words of Standing Order No. 36? Perhaps I may remind the House of how that Order reads:

“Where a public bill (not being a bill to confirm a provisional order or certificate) is ordered to be read a second time on a future day, and it appears that the standing orders relative to private business may be applicable to the bill, the examiners of petitions for private bills shall be ordered to examine the bill with respect to the applicability thereto of the said standing orders ...”

I do not think the rest of the Order arises on this question, which is whether the Standing Orders applicable to Private Bills may be applicable to this Bill? In other words, no opinion against sending a Bill to the examiners could be given unless the view is taken that it is impossible that the examiners should think that the Standing Orders relating to Private Bills should apply.

Perhaps I may say a word or two about a Hybrid Bill, as the matter is not within the immediate knowledge of everyone. The modern definition, of course, is that a Hybrid Bill is a public Bill which appears, on examination, to affect private rights. I fully accept the qualification that it is not the practice of this House to refer Bills dealing with public policy whereby private rights of a whole class are affected. That is the sense of one of the passages of Erskine May, page 490, which deals with this matter. The most recent definition of which the House has had advantage occurs in the Report of the Select Committee on Hybrid Bills. page IV: "

"A hybrid bill ... has also, in large or small degree, the character of a private bill, since it affects the interests of specific individuals or corporations as distinct from all individuals or corporations of a similar category."

I do not think there would be any question as to the definition, and it is on the point that it affects individual corporations, and not all corporations in a similar category, that I ask for your opinion, Sir. Clause 11 of the Iron and Steel Bill sets out to nationalise, by vesting their securities in the Iron and Steel Corporation, the companies specified in the Third Schedule. It sets out to nationalise a list of 107 individual corporations. I submit there is no significance in the introductory words:

"Subject to the provisions of this Part of this Act ..."

because apart from Subsection (3) of Clause 11 they do not give us a great deal of assistance. The form is to nationalise a list of companies and then, in Subsection (3), we have some merely descriptive words. In Subsection (3) it states that the companies it is designed to nationalise are those which—and I stress these words—in the opinion of the Minister comply with the conditions of the Second Schedule. Apart from that the only other provisions that could be relevant in this part of the Bill are those in Clause 20, which merely give to the Minister the right to exclude from the Third Schedule a company which, in his opinion, has got rid of its iron and steel plant.

Clause 22, which supports my contention, goes further. It deals with recovery of assets transferred, and gives the right to the Minister to recover assets which have been transferred without giving any of the notices or publications which it is necessary to give in the ordinary case where private rights are affected. This is, in form and in fact, legislation against a number of individual companies.

The second point which I would draw to your attention is in Clause 11 (3). There the question of subsidiary companies is introduced and certain conditions imposed where subsidiary companies are steel companies. It is matter of common knowledge that the companies affected in the list of 107 individual corporations have subsidiaries that are not steel companies, so that the position is that, apart from the companies themselves, the subsidiaries are divided into a number of forms of activity. In those forms one will have the position where part of the category carried on by the subsidiary is nationalised and part of the category is not nationalised, a blatant case in my submission of discrimination within a category.

The matter goes further than that and raises a matter of principle which is new and not covered by any precedent. In Clause 11 (3) there is an attempt—I say an unsuccessful attempt—by description or explanation to make a category, and, therefore, to get out of this difficulty. The category which is attempted to be made is one which will not stand examination for a moment. The category is not the companies that comply with the conditions in Schedule 2, but the companies which, in the Minister's opinion, fulfil the conditions set out in Schedule 2. I say quite plainly that is not a category at all, because when it is left to the Minister's opinion and the legislation is passed, there is no power on earth that can correct a Minister if he makes a mistake. The courts cannot say anything to him, and if the Minister is quite wrong no action can be taken at all. That is not a category, and on that alone the attempt to make a subjective classification depending on the whim of a political Minister is not creating a category which is affected within the precedents of this House. That is apart altogether from the inroad into the conception of a category which is made by the proviso that excludes the manufacture of motor vehicles.

The purpose of the distinction which I am venturing to impress upon you, Mr. Speaker, is perfectly clear. If the whole of a category is the subject of legislation, then it is right and proper, and has been recognised by the practice of this House for 500 years, that that should be a matter to be discussed by the representatives of the people in this House. If there is not the whole of a category and a discrimination is made between members of the category, then again for 500 years it has been the practice of this House that those who are discriminated against and between whom distinctions are made should have the right to make their own individual defence. I know the common attack that is always made when lawyers raise a point. Therefore, I anticipate those who will make an attempt and in all seriousness I say that this is not a pettifogging or legalistic point. It is a question of common justice for people who are affected by individual discrimination.

I am sorry to detain the House for this time, but I should like to say a word about the precedents, which I am sure, Mr. Speaker, are in your mind. The precedents, of which no doubt you are aware, are quoted in Erskine May on page 836. They really come down to two where your predecessors have come down on the side of the Public Bill and one on the side of the Hybrid Bill. The first one is that of the Railways Bill of 1921. I am sure that you have seen it at some time as well as the method of Ruling of your predecessor of that date. It is fully summarised in Erskine May where it is quoted:

"Mr. Speaker ruled that the Bill dealt with a question of public policy affecting all the main railways of Great Britain."

Mr. Speaker, you may remember that in column 44 the then Speaker is dealing with that and makes it the keystone of the decision which he then formed.

The other example that is given is the Electricity (Supply) Bills of 1926 and 1934. There again the ground of Mr. Speaker Whitley in 1926 and Mr. Speaker FitzRoy in 1934 was the same, that these Bills affected all the undertakers of a particular class alike—that is there was no description within a clear and definite class. I respectfully submit to you, Mr. Speaker, that neither of these precedents is authoritative as saying that a particular class may be constituted by the whim of the Minister.

The other example in which the other view was taken is the example of the Canals Bill, 1905, "which did not apply to canals generally but which compulsorily transferred to the trust the undertakings of certain canal companies only, which were specified in a schedule."

That is the other point which I wish to put to you, that this raises a fresh issue which is not covered by the precedents in the House. The last thing I want to do is to raise any point which is of doubtful validity, and, therefore, I would only remind you that when Mr. Speaker Whitley ruled on the Railways Bill the question of the Standing Order to which I have referred was not mentioned to him. Owing to the research of Mr. Dennis Herbert, as he was then, it was mentioned in the case of the Electricity Bill. Since then there has been revision of the Standing Orders by which this Standing Order was transferred from those applicable to Private Business to Public Business. It, therefore, becomes quite clear in my submission that this is a definite problem posed to you by the Standing Orders.

The problem is not whether this is a Hybrid Bill, but whether there is a sufficient case for the Bill to be considered by the examiners. I submit that for all the reasons that I have given there is a case for consideration, and that the interest and rights of the companies affected ought at any rate to receive the safeguard that the examiners will consider their position, and when the examiners have reported the matter it comes back to this House.

Mr. Speaker

Share

I have been asked to give my Ruling whether the Iron and Steel Bill should be referred to the examiners. I should like to thank the right hon. and learned Member for West Derby (Sir D. Maxwell Fyfe) for giving me notice that he was going to raise this question.

Our procedure is governed by Standing Order No. 36—(*Bills which are prima facie hybrid*)—which must be read in conjunction with Standing Order 224 relating to Private Business. Although Standing Order No. 36 first appeared in 1945 among Public Business Standing Orders it contained no new provision. The same procedure had been directed by Private Business Standing Order No. 216. It seemed more appropriate for the provisions affecting public business to be put in Public Business Standing Orders. This was done without any amendment, other than by drafting Amendments.

It is laid down in Erskine May, page 490:

"It is not the practice to refer bills dealing with matters of public policy, whereby private rights over large areas, or of a whole class, are affected."

This statement is supported by rulings of my predecessors, in 1921 on the Railways Bill and in 1926 and 1934 on the Electricity (Supply) Bills. In all these cases it was ruled that the Bills were matters of public policy and that they must go through the ordinary procedure of the House, without reference to the examiners. Moreover, none of the large nationalisation Measures in relation to coal, transport, electricity or gas has been referred to the examiners, nor has this procedure been in any way challenged.

The purpose, as I see it, of the Iron and Steel Bill, is to bring under public ownership all important companies producing iron ore and certain basic iron and steel products, the limits for acquisition being laid down in the Second Schedule. This is a matter of public policy, as in the case of previous nationalisation Bills, and deals with private interests only generally, as respects a particular class. The Railways Bill of 1921 applied not to all railways but to all railways of a particular class, namely the main line railways. Similarly, the Transport Bill, though it provided generally for the acquisition of railway and canal undertakings, did not transfer to public ownership those undertakings which were not main activities of the undertaking, and other undertakings whose railway or canal activities were not main activities of the undertaking. These seem to me to be very complete precedents for the action which has been followed in this case of not referring the Iron and Steel Bill to the examiners.

There is one other point to which I should perhaps refer. In Clause 11 (3) it is laid down that the companies which are to be taken over are governed by the Second Schedule, which states the minimum to those companies qualifying for acquisition in four different types of activity. There is, however, a reference to those companies which, "in the Minister's opinion" fulfil the conditions. It seems to me that the Minister's opinion can only be given on the question of fact whether a particular company does or does not fall above or below the line, and that this does not affect the principle in question. For the reasons, therefore, that I have given, I consider that this Bill should not be referred to the examiners.

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ANNEX 12

Erskine May, 19th Edition (1976), pages 873 to 874

and the Standing Orders Committee resolved that such compliance should not be dispensed with (*j*). In the following year another bill for the same objects but empowering the Church Temporalities Commissioners and the secretary to the Commissioners of Public Works in Ireland, with the consent of the Lord Lieutenant, to transfer and assign the Rock and buildings to trustees, was similarly introduced and was held to be a public bill, as it merely sought powers for public bodies who already had a statutory interest in the property (*k*). In 1902 the management of the Imperial Institute was transferred from the existing corporation to the Board of Trade by means of a private Act, but in 1916 when the management was transferred from the Board of Trade to another government department, namely, the Colonial Office, recourse was had to a public bill (*l*). Further changes were made and the two previous Acts repealed by another government bill in 1925 which was proceeded with as a hybrid bill (*m*). Other amendments were made by the Commonwealth Institute Bill 1957-58, which was a public bill introduced by the Government.

PUBLIC BILLS OBJECTED TO ON THE GROUND THAT THEY SHOULD
HAVE BEEN PRIVATE OR HYBRID BILLS

Standing orders provide that where a public bill is ordered by the House to be examined by the Examiners on the ground that the standing orders relating to private business may be applicable to the bill, the Examiner is required to decide whether the bill is of such a nature that certain of those standing orders should apply to it; and, if he decides that they should apply, he is required to report whether or not they have been complied with (*n*). If he reports a non-compliance and the Standing Orders Committee do not dispense with standing orders, the Order of the Day relating to the bill must be discharged.

Since the passing of the above-mentioned standing orders in 1883 very few bills have been objected to on the ground that they should have been brought in on petition, though objection has frequently been taken that they should have been referred to the Examiners. It is, in any event, a more difficult task to argue that a public bill should have been brought in upon petition than vice versa, since many bills will contain some element of public policy which, while insufficient to debar a bill from proceeding as a private bill should it be introduced as such, will yet sustain it if introduced as a public bill. Furthermore it would appear that bills of a private nature may be properly introduced as public bills if there are no parties able to petition Parliament: for example, the Suffolk County Council (Borrowing Powers) Bill, 1893-94, was so introduced at a time when county councils (except the London County Council) were not empowered to promote bills. Hybrid bills hardly distinguishable from private bills have sometimes been brought in by unofficial Members (*o*).

(*j*) C. J. (1872) 156, 157, 180, 198.

(*k*) C. J. (1873) 114, 115, 140.

(*l*) * Imperial Institute (Management) Bill, 1916.

(*m*) * Imperial Institute Bill, 1924-25.

(*n*) The Atomic Energy Bill, 1969-70, was referred to the Examiners, who reported that no Standing Orders were applicable to it. The bill proceeded as a public bill.

(*o*) Orkney and Zetland Small Piers and Harbours Bill, 1896; Fisheries Acts (Norfolk and Suffolk) Amendment Bill, 1896; County of Suffolk Bill, 1904; Remission of Sur-charges (Dublin) Bill, 1900; Mercantile Marine Bill, 1901.

Thus, in the examples quoted, no recorded cases of public bills being objected to on the ground that they should have been brought in upon petition will be found in recent years, though Members have been dissuaded from bringing in bills which might have been so objected to. The examples which follow show whether the objections have been overruled or have been sustained or whether the bill has not been proceeded with because the Standing Orders Committee have not dispensed with standing orders.

1. Objections to Public Bills on the ground that they should
have been Private Bills.—

(i) *Overruled*.—In 1873 a public bill was introduced for the protection and preservation of certain ancient monuments in various parts of the country, the monuments in question being enumerated in the schedule to the bill (*p*). Objections were raised that, as the bill affected the property of persons upon whose lands those monuments were situated, it should have been brought in as a private bill, but its nature and objects were obviously of a public character, and it concerned too many counties and localities to be treated as a private bill, nor were any of its objects such as are contemplated by the standing orders or referred to in them (*q*).

In 1873 exception was taken to the Union of Benefices Bill on the ground that, as it deprived certain parishes of powers which they possessed under the Union of Benefices Act 1860, it ought to have been brought in as a private bill or to be treated as a hybrid bill, but it was held to be strictly a public bill (*r*).

In 1959 objection was taken to the Criminal Justice Administration (Amendment) Bill on the grounds that being purely local in character it should have been brought in as a private bill, but the objection was overruled (*s*).

(ii) *Sustained*.—In 1825 notice was taken that the Dunleary Harbour Bill and the College Lands Mortgage Bill ought to have been brought in upon petition and notices given as being private bills. Whereupon the orders of the day were discharged and the bills withdrawn (*t*).

2. Objections to Public Bills on the ground that they should
have been hybrid bills.

(i) *Objections Overruled*.—In 1921 it was suggested that the Railways Bill, a government bill, one of the proposals of which was to amalgamate the various railway companies in certain groups, should be treated as a hybrid bill, but Mr. Speaker ruled that the bill dealt with a question of public policy affecting all the main railways of Great Britain and should proceed as a public bill (*u*).

The Electricity (Supply) Bills of 1926 and 1934-35, both government bills, were not referred to the Examiners, but objections were raised in the House that they should have been treated as hybrid bills. Mr. Speaker ruled that they should proceed as public bills as they affected electricity undertakers of any particular class alike and dealt with matters of public policy (*v*).

(*p*) Ancient Monuments Bill, C. J. (1873) 11, 13, 191, etc.

(*q*) See also Parl. Deb. (1874) 218, c. 574; *ibid.* (1875) 223, c. 879.

(*r*) Parl. Deb. (1873) 214, cc. 282, 507. See also Brokers (City of London) Bill, 1870.

(*s*) H. C. Deb. (1958-59) 600, cc. 1497-1500.

(*t*) C. J. (1825) 490 and 491.

(*u*) H. C. Deb. (1921) 142, c. 42.

It was proposed in the Iron and Steel Bill of 1948-49 to vest in a statutory corporation all securities of companies listed in a schedule, which were within the limits for acquisition laid down in a second schedule; certain subsidiary activities were also exempted. It was objected that the bill affected individual corporations and not all corporations within a similar category, and should therefore be referred to the Examiners. Mr. Speaker, however, ruled that the bill concerned a matter of public policy and dealt with private interests only generally, as respected a particular class (*a*).

(ii) *Standing Orders not dispensed with*.—In 1905 a bill for the establishment of a central Canal Trust was introduced, containing a provision which did not apply to canals generally, but which compulsorily transferred to the trust the undertakings of certain canal companies only, which were specified in a schedule. The notices, that would have been necessary in such a case with regard to a private bill, not having been given, and standing orders not having been dispensed with, the bill was ordered to be withdrawn (*b*).

In 1926, a bill to nationalize the Bank of England was not allowed to proceed as the requisite notices had not been given and standing orders were not dispensed with (*c*).

PRIVATE BILLS OBJECTED TO ON THE GROUND THAT THEY SHOULD
HAVE BEEN PUBLIC BILLS

Private bills have frequently been objected to on the ground that they should have been brought in as public bills. Many of these objections have been sustained and the bills have been withdrawn, or not proceeded with, but other bills have been allowed to proceed.

1. Private Bills withdrawn or not proceeded with.

In 1877 notices were given of a private bill for settling a scheme of arrangement for the Turkish loans of 1854, 1855 and 1871, but its subject was obviously not one to be dealt with by a private bill, and it was not proceeded with.

On 7 February 1893, objection was taken on a point of order to the London Owners Improvement Rate or Charges Bill proceeding as a private bill and the bill was withdrawn on 16 February (*d*).

In 1900 on the second reading of a private bill promoted by the Metropolitan Water Companies, Mr. Speaker called the attention of the House to the large and important powers which were proposed to be conferred by it upon a public department (the Local Government Board), and which, according to the practice of the House, ought to be secured by a public rather than by a private bill, and the bill was accordingly withdrawn (*e*).

In 1910 on the second reading of the Society of Apothecaries of London Bill, which had been introduced as a private bill, Mr. Speaker drew attention to the fact that the bill sought to empower the Society to grant diplomas in sanitary science and public health, and for dentistry and dental surgery,

(*a*) H. C. Deb. (1948-49) 458, c. 47-51. See also London Government Bill, 1962-63 (H. C. Deb. (1962-63) 669, cc. 45-48); Iron and Steel Bill, 1966-67 (H. C. Deb. (1966-67) 732, c. 1215-23); certain clauses of the Finance Bill, 1966-67 (H. C. Deb. (1966-67) 729, c. 207-301).

(*b*) C. J. (1905) 201, 210, 214-16. Another bill was similarly introduced but with somewhat different provisions and to this standing orders were held not to apply. C. J. (1905) 289, 327. See also * Metropolitan and City of London Police Amalgamation Bill, 1863.

(*c*) Bank of England (Nationalisation) Bill, 1926. C. J. (1926) 77.

and ruled that such matters should be dealt with by a public bill as they were public interests, and the bill was accordingly withdrawn (*f*).

In 1959, on the second reading of the National Association of Almshouses (Investment) Bill Mr. Speaker called the attention of the House to the provisions of the Bill, which in his opinion raised such questions of public policy and were of such general application that the Bill should not be allowed to proceed, and in 1960 on the second reading of the Registration of Clubs (London) Bill, Mr. Speaker drew attention to these considerations and also to the fact that the Bill proposed to amend and repeal provisions in public Acts recently passed. Both Bills were accordingly withdrawn.

The above instances relate to cases where Mr. Speaker has drawn the attention of the House to private bills. There have also been cases where the Committee on a bill has reported that the subject matter was unsuitable for private legislation and should have been embodied in a Public Bill and has for this reason rejected the bill. Thus the Commons Committee on the St. Neots Urban District Council (Commons) Bill, 1959 reported that, having regard to the recent report of the Royal Commission on Common Land, private bills seeking to alienate common lands should not be introduced pending Government legislation. The Committee therefore found the preamble not proved (*g*). In the two succeeding sessions the Chairman of Ways and Means of the House of Commons reported under Standing Order 85 (Power of Chairman of Ways and Means to report special circumstances, etc., to the House) on three bills, the Tamworth Corporation and Plymouth Corporation (Harrowbeer Aerodrome) Bills, 1960 and the City of London (Various Powers) Bill 1961, pointing out that some of the provisions of the Bills impinged on the report of the Royal Commission. The Tamworth Corporation Bill was withdrawn (*h*); the Plymouth Corporation (Harrowbeer Aerodrome) Bill was not approved by the committee which considered it (*i*) and the Committee on the City of London (Various Powers) Bill struck out the provisions relating to commons. An attempt to re-commit the bill in order that the provisions might be re-inserted was defeated (*k*).

In July 1960 the committee on the Esso Petroleum Company Bill reported that no further pipe line bills should be introduced as private bills pending Government legislation (*l*). The next session the Trunk Pipelines Bill was introduced on petition but was withdrawn after debate on second reading (*m*).

2. Private Bills allowed to proceed.

In 1919 objection was taken on its second reading to the British and Continental Bank Bill [Lords] proceeding as a private bill, on the ground that it appropriated the London assets of a Russian bank for the benefit of creditors through the London branch to the detriment of creditors through its Russian headquarters and branches, and in this way raised issues affecting international relations, but Mr. Speaker ruled that the bill affected private

(*f*) C. J. (1910) 31; H. C. Deb. (1910) 14, c. 955. See also H. C. Deb. (1938-39) 343, cc. 952 and 1091; Manchester and Salford Education Bill, 1854; Liverpool Licensing Bill, 1865; Court of Hustings (London) Abolition Bill, 1871; Keble College Bill, 1888; London Valuation and Assessment Bill, 1895; West Riding County Council Bill, 1908; London Rating (Site Values) Bill, 1939 (see pp. 877-8), etc.

(*g*) Reports of Committees on Private Bills (1958-59) p. 19.

(*h*) C. J. (1960-61) 87.

(*i*) L. J. (1960-61) 255.

(*k*) C. J. (1961-62) 264.

ANNEX 13

Erskine May, 19th Edition (1976), page 863

It has already been explained that there are certain bills that are regularly recognized as hybrid bills. They have been defined by Mr. Speaker Hylton-Foster in the following terms, "I think that a hybrid bill can be defined as a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class." (*t*). These bills though brought in as public bills, are ordered to be examined by the Examiners and are found to be within the application of the standing orders relative to private business. The special procedure which is adopted for such bills, and which is itself of a hybrid character, has already been described (see pp. 554-8).

Before stating the general principles and giving examples to show what course has been adopted in determining bills to be public or private, one difficulty should be made clear at the outset. The petition on which a private bill is founded is a petition to the House of Commons, or in a few cases to the House of Lords; but the bill itself is in the form of a petition to the Crown. In practice no private bill is ever introduced by the Government, and it has been stated that the reason for this is that the Crown cannot petition itself (*u*). A further reason may be found in the fact that a bill introduced by a Government department for the direct or indirect benefit of that department may well be presumed to be founded upon state policy and accordingly be more properly introduced as a public bill, despite the fact that in all other respects it may display all the characteristic features of a private bill.

By long standing practice, Government departments do not petition either in favour of or against private bills. A report on the bill may be made by any interested Minister and, if the committee on the bill think fit, a departmental officer may be heard in explanation of it (*v*). It is not clear, however, that a Government department—more particularly one set up by statute—can in no circumstances petition Parliament. Departments have in the past petitioned against private bills (*a*), and in rare instances leave has been given by the House for departments, though they have not presented a petition (*b*), to appear by counsel before a committee on the bill (*c*).

No bill introduced by the Government and proceeded with as a hybrid bill can be cited as a precedent to show that the bill was of such a character that it ought to be treated as a public and not as a private bill. It may well be that such hybrid government bills as the London Water Bill, 1902, and the Port of London Bills, 1903 and 1908, and the London Passenger Transport Bill, 1930-31, dealt with matters of such far-reaching importance and extended to such wide areas that they ought in any case to have been introduced as public bills. There are two reasons why bills affecting

(*t*) H. C. Deb. (1962-63) 669, c. 45.

(*u*) See 28 Halsbury's Laws of England, 3rd Edn., pp. 373-4.

(*v*) See p. 966.

(*a*) *E.g.*, Petition of the Commissioners of Works against the Clapham Junction and Paddington Railway Bill, 1893. Also, a Petition of the Duchy of Cornwall was presented against the Plymouth and South West Devon Water Bill, 1969-70.

(*b*) For an example of a department being refused a hearing by a committee because

private rights such as these are properly introduced as hybrid bills—first that, although in part they may be of a private nature, their main object is a public one; and secondly, that there may be no parties able and willing to present a petition. But, since the bills were introduced by the Government, the fact that they were introduced as public bills cannot be brought forward as an argument that bills of a similar nature, if not introduced by the Government, ought not to be introduced as private bills. In dealing, therefore, in this chapter with the question whether bills ought to be treated as public or private bills, this fact must be borne in mind. On the other hand, when a government bill has been proceeded with throughout as a public bill and not as a hybrid bill, this, though not conclusive evidence, is at any rate some indication that the subject-matter dealt with is of a public nature. With this caution the principles which govern the subject and the examples which follow may now be considered (*d*).

In general there are four principles which have been followed in determining that a private bill should not be allowed to proceed as such, but should be introduced as a Public Bill. These are as follows:—

- (1) That public policy is affected;
- (2) That the bill proposes to amend or repeal public acts. (See p. 876-8). In these cases, the nature and degree of the proposed repeal or amendment have to be considered and provisions of this kind in private bills demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places.
- (3) The magnitude of the area and the multiplicity of the interests involved (*e*).
- (4) The fact that the bill though partly of a private nature has as its main object a public matter (see above). In this case the fact that standing orders have to be complied with is often an important factor in deciding whether a bill should be a Private Bill. Thus in the case of the Registration of Clubs (London) Bill, 1959, introduced as a private bill, no standing orders except those relating to the advertisement of the Bill were applicable. It was ruled that the Bill could not proceed as a private bill (*f*).

BILLS BROUGHT IN BY THE GOVERNMENT FOR LOCAL PURPOSES, ETC.

Bills which are brought in by the Government (dealing with Crown property, or with national and other works in different localities, etc.), and which affect private interests, are introduced as public bills, and subsequently treated as hybrid bills (*g*).

(*d*) In pp. 863-74, government bills have been indicated as such in the text and distinguished with an asterisk (*) in the footnotes.

(*e*) H. C. Deb. (1938-39) 343, cc. 950-4.

(*f*) H. C. Deb. (1959-60) 617, cc. 199-200.

(*g*) *E.g.* * Public Offices Site Bill, 1882, and other * Public Offices (Sites), etc., Bills to 1946-47; * Crown Lands Bills, 1906; 1927, 1935-36; * Post Office (Sites) Bill, 1900, and other * Post Office (Sites) Bills to 1953-54; * North Killingholme (Admiralty Pier) Bills, 1912-13, and 1930-31; * Invergordon Harbour (Transfer) Bill, 1920; * Air Ministry (Croydon Aerodrome Extension) Bill, 1924-25; * Festival of Britain (Supplementary Provisions) Bill, 1948-49; * Park Lane Improvement Bill, 1957-58; * Covent Garden Market Bill, 1960-61; * British Museum Bill, 1962-63; * Maplin Development

ANNEX 14

Electricity (Miscellaneous Provisions) Bill (Session 2002-2003) HC Deb 398, c 581

Electricity (Miscellaneous Provisions) Bill

Volume 398: debated on Monday 27 January 2003



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Order for Second Reading read.

4.19 pm

Mr. William Cash

(Stone)

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On a point of order, Mr. Deputy Speaker. The Bill contains provisions that merit further investigation. Erskine May and Standing Orders explicitly state that public Bills to which the Standing Orders relating to private business apply are subject to certain proceedings that are additional to the normal stages in passing public Bills.


Indeed, the Speaker has defined a hybrid Bill as

““a public Bill that affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class.””

My experience on the Aircraft and Shipbuilding Industries Act 1977, when I had the pleasure of being the legal adviser to the ship repairers, showed that it was not obvious that the Bill was hybrid. It required a great deal of analysis, which must also take place in this instance. I simply draw attention to the fact that Erskine May says that if, on examination, it appears to the Public Bill Office that Standing Orders relating to private business may apply to a public Bill, it does not necessarily mean that matters will be got right first time. We therefore give notice that we wish, with the leave of the House, to have the matter examined in further detail.

Mr. Deputy Speaker

(Sir Michael Lord)

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I thank the hon. Gentleman for giving prior notice of his point of order. Mr. Speaker has given the matter careful consideration, but he does not find the Electricity (Miscellaneous Provisions) Bill to be hybrid in any respect. The Bill is an enabling measure that gives the Secretary of State authority to incur expenditure on British Energy, a private sector group that is engaged in nuclear generation, or to acquire a British Energy undertaking. However, it does not require her to do so. The nuclear generating industry to which the Bill applies is a specific class for the purpose of legislation. The other member of the class is British Nuclear Fuels Ltd., a wholly publicly owned company, which is not adversely affected by the provisions of the Bill.

In reaching his conclusion that the Bill is not hybrid, Mr. Speaker has examined the precedents for such Government action under the Rolls-Royce (Purchase) Act 1971, the British Leyland Act 1975 and the Port of London (Financial Assistance) Act 1980.

4.23 pm

The Minister for Energy and Construction

(Mr. Brian Wilson)

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I beg to move, That the Bill be now read a Second time.

Before we even begin our consideration, we have a fascinating vignette in which the hon. Member for Stone (Mr. Cash) reveals himself 27 years later as the man behind Maxwell-Hyslop.

The Secretary of State came to the House on 28 November last year to make an announcement on British Energy. That company is Britain's only private sector nuclear generator and our largest single electricity generator. It was in serious financial difficulty, and the Government had provided it with a loan facility since early September to enable it to continue to operate.

ANNEX 15

Extract from Cabinet Office's Guide to Making Legislation, 2022, para 41.3



Cabinet Office

Guide to Making Legislation

2022

41. HYBRID BILLS

Key points

- A hybrid bill is a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies in the same category or class.
- The changes to the law proposed by a hybrid bill affect the general public but also have a significant impact on the private interests of specific individuals or bodies.
- Hybrid bills therefore have to go through some of the stages of a private bill, including select committee hearing of petitions against the bill after Second Reading. Generally the procedure is longer and more expensive (parliamentary agents have to be engaged by the department), so hybrid bills are best avoided wherever possible.
- Departments should indicate the possible hybridity of a bill when making a bid for a slot in the programme.

What is a hybrid bill?

41.1 A public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies in the same category or class is called a hybrid bill and is subject to a special procedure which includes some of the steps applicable to private bills. This means that it generally takes far longer to complete its parliamentary process than an ordinary public bill, and the procedure is more complex. Such bills are best avoided, if at all possible.

41.2 Recent examples of Acts resulting from hybrid bills are the Channel Tunnel Rail Link Act 1996 (first introduced in November 1994 and received Royal Assent in December 1996), the Crossrail Act 2008 (first introduced in February 2005 and received Royal Assent in January 2008), the High Speed Rail (London - West Midlands) Act 2017 (first introduced in November 2013 and received Royal Assent in February 2017) and the High Speed Rail (West Midlands - Crewe) Act 2021 (first introduced in July 2017 and received Royal Assent in February 2021).

41.3 “Private interest” is wide enough to cover not only the interests of a purely private person or body (such as an individual or company) but also, for example, the interest a local authority has in the administration of its area. A bill may also be regarded as hybrid if it affects a named

geographical area outside London (London is often viewed as a special case) and also affects private interests. A bill that singles out a particular person or body for favourable treatment is not normally regarded as hybrid so long as others in the same category or class are not thereby prejudiced. These are, however, only rough guides to hybridity. If there is a possibility of a bill being regarded as hybrid, it is essential for the matter to be checked with Parliamentary Counsel, who will consult the authorities of both Houses. The ultimate decision on whether a bill is hybrid lies with the House authorities.

41.4 The fact that a provision of a bill makes, or may make, the bill hybrid should be indicated when the bill is put forward for a place in the legislative programme. The degree and nature of the opposition which such a bill might be expected to arouse from the interests affected would be an important consideration in most cases. On both points it will be for the bill team to advise the minister on this as accurately as possible. Consultation should assist in this and, in some cases, help avoid or reduce opposition.

41.5 It is obviously desirable to determine whether a bill will be hybrid as early as possible, though the House authorities may not be able to form a clear view until the provisions in question have been drafted. If it becomes clear during drafting that a particular provision that is not critical to the bill would make it hybrid, and cannot be redrafted so as to avoid hybridity, the presumption should be to remove the provision from the bill.

41.6 Given the procedural complications and the extra time a hybrid bill will require, it is absolutely essential that any hybrid bill is introduced right at the start of the session. However a hybrid bill may be carried over from one session to the next, like a private bill, and even from one Parliament to the next (as with the Crossrail Bill and the High Speed Rail (West Midlands - Crewe) Bill).

Decision on hybridity

41.7 Parliament's formal decisions on hybrid bills are taken in several stages. These are set out below.

41.8 The Public Bill Office of the House in which the bill is introduced may consider that, *prima facie*, some of the standing orders relating to private business may be applicable; if so the House will refer the bill to the Examiners of Petitions for Private Bills (officers of the two Houses). It is the Examiners who decide whether these standing orders do apply (in other words, to decide whether the bill is *in fact* hybrid).