SITES AT 125-129 WAPPING HIGH STREET,

13-15 CINNAMON STREET and 14-16 CLEGG STREET

LPA ref: PA/15/03561

PINS ref: APP/E5900/W/17/3167832

APPELLANT'S CLOSING SUBMISSIONS

INTRODUCTION and PLANNING BENEFITS OF THE SCHEME

1 This highly sustainable scheme is entirely in accordance with the Development Plan, and with the NPPF. Planning permission should be granted without delay so that the numerous weighty and desperately needed planning benefits which it will bring can be realised.

2 First, the Appeal Scheme proposes 27 market units, which will play their part in "significantly boosting" housing delivery (NPPF §47) and in addressing the "acknowledged housing crisis in London" (Humphreys proof §6.101). Further:

2.1 The London Plan makes clear that London is a "single housing market area" (see text at §3.15), and that London "desperately needs more homes" (text at §3.13 citing the Mayor's aspirations to this effect). The stated minimum targets in policy 3.3 and table 3.1 (which are around 42,000pa) are well below London's OAN, which is somewhere between 49,000pa and 62,000pa (see text at §3.16b). This is why the relevant targets are expressly stated to be "minima", and why policy 3.3 dictates that the targets should not just be met but "exceeded".

2.2 There is nothing more unsustainable than not building enough new homes. Failing to do so causes or exacerbates affordability problems (applying the usual supply/demand calculus), and social problems, with people unable to get on the property ladder or (if on it) to move up it to a home suitable for their expanding requirements.

2.3 The area around the Appeal Site is identified in the Core Strategy (p147) as one intended to accept "very high growth" in the current period (2015-20).

This emphasis can only have increased, given that the Core Strategy was based on a housing requirement of 2885pa (policy SP02(1)), which has subsequently been replaced by the London Plan's minimum target of 3931pa (a rise of 1046pa) to 2025.

2.4 Moreover, table 6 of Goddard App 3 (which was not challenged in evidence) indicates that the Council has a projected shortfall of 5320 new homes (even taking into account a windfall allowance of 3010) in the 15 year period to 2031. NPPF §47 provides that "where possible" LPAs should identify locations for development in the 11-15 year period.

2.5 The Appeal Scheme makes efficient use of land and it does so at a highly sustainable location. Making efficient use of land is an objective stated in the NPPF (at §17, 8th bullet), which was strongly emphasised by the Prime Minister in the recent White Paper on the UK's "broken housing market". Further, the Appeal Site is exactly the sort of publicly owned (by Rail for London) previously developed (PDL) site, at a PTAL-5 location adjacent to numerous forms of public transport and just a short cycle from Central London, where it is fundamental to ensure land is not under-used.

2.6 It is common ground with the Council that the above matters must be accorded significant weight: SOCG §8.10. It has been necessary to remind the Inspector in this paragraph of the reasons for this agreement, because the Council's Closing Submissions gloss over the housing benefits of the Appeal Scheme. This, unfortunately, was a feature of the Council's approach to the Inquiry and its written evidence, perhaps best exemplified by Mr Humphreys' mystification in XX as to why questions were being asked to elicit the full gravity of London's (and, particularly in respect of affordable housing, the Council's) "housing crisis".

3 Second, the Appeal Scheme will bring forward 14 affordable units, including a significant proportion that will provide the highest possible quality accommodation for families. Further:

3.1 It is not possible to understate the Council's current and urgent affordable housing requirements. The waiting list is over 20,000. That, frankly, is a breath-taking state of affairs, which cries out for immediate action, and for ensuring that every credible opportunity (a test the Appeal Scheme handsomely passes) is welcomed. Moreover, parts of the Council's area (the northern areas identified in shades of red on figure 6 of the Core Strategy) remain among the most deprived in the country, and (as Mr Humphreys stated in XX), the gap in the Council's area between rich and poor has widened since 2010.

3.2 Nor is an "affordability problem" confined to this Council. It is a substantial London-wide issue. The SHMA which underpins the London Plan identifies an underlying affordable need of 25,600pa (text at §3.64). As against that, policy 3.11 sets a minimum target of 17,000pa. The text of the London Plan (at §3.63) refers to "the particular priority the Mayor gives to provision of new affordable homes to meet London's very pressing need".

3.3 Again, it is common ground with the Council that the above matters must be accorded significant weight: SOCG §8.10. Once more, the Council's failure to consider such matters in its Closing Submissions, or its apparent desire to focus on other issues throughout our long Inquiry, betrays an approach of paying no more than "lip service" to these issues of public importance in the planning balance.

3.4 The Appeal Scheme offers 14 affordable units, amounting to 37% provision by habitable room. As Mr Humphreys confirmed in XX, that is "policy compliant". But it must also be noted that this is "the maximum viable amount of affordable housing that can be delivered as part of the proposed development" (SOCG §8.12). The Council seems to be seeking substantial reductions in the scale of the Appeal Scheme, including: (a) loss of the 5th storey of Site A (although in reality it is the 4th floor that would go), (b) loss of the northern part of the 4th storey on Site A (to facilitate greater daylight retention at Ross House), (c) loss of the 3rd storey on the Cinnamon St/Clave St corner (Site A), (d) further reductions in the scale of Site A to allow for an off-road HGV servicing area and to improve daylight conditions on the ground floor of the internal courtyard, (e) general reductions in scale (of unspecified scope) at Site B, to accord more with the scale of the existing redundant warehouse (which, it appears to be common ground, could be demolished in short order, subject only to a "prior approval" notification), and (f) reduction in scale of Site C by 1 storey, both to accord with the scale of the existing redundant former stables and to reduce the extent of blank façade to the rear. If the Council gets its way, the Appeal Scheme will likely be about half the size it currently is (or possibly a bit more)[1]. It is highly unlikely any such scheme would be viable, condemning the Sites to a future of continued dereliction, but even if it was viable, it would be most surprising if even a minute element of affordable housing could viably be provided. Even if the Council only gets its way on some of the above laundry-list of cutbacks that it advocates, the viability of any reduced Scheme will self-evidently result in

[1] It is not accepted that Mr Watkins accepted in XX that these changes would leave a scheme in excess of 30 units (Council's Closing Submissions, §129). The main thrust of his evidence was that it would be necessary to go back to the drawing board. A practical assessment of all these changes appears to suggest far more than a 25% or so reduction, especially when one considers that once a main habitable room is lost within a unit, it will be necessary to reconfigure / combine with the remnants of other units.

greater reductions in the proportion of affordable housing than the proportion of market housing. Mr Humphreys was entirely unconcerned when this inevitability was raised with him in XX. Such insouciance flies in the face of the desperate needs of London, and this Borough, for new affordable housing provision.

4 Third, the Appeal Scheme provides substantial social and environmental benefits by regenerating a derelict and unsightly area, which is obviously in need of redevelopment. This will make a significant contribution to improving the amenities of existing residents in the vicinity. These matters will themselves result in a material enhancement to the character of the Conservation Area (and they are permissibly taken into account in this context, per the Court of Appeal's decision in ***Palmer*** [CDE.4 at paragraph 5[2]]). In particular:

4.1 Views of and across run-down, tired and redundant sites and buildings will be replaced by views of high quality new architecture which draws (entirely appropriately) on the warehouse aesthetic. These matters are considered in further detail below, when addressing the Council's heritage reason for refusal.

4.2 Risk of crime and anti-social behaviour, often associated with derelict and unoccupied buildings, will be substantially reduced. It is most unlikely that the sort of frequent and recent anti-social behaviour described by Mr Ball will return to the south side of Cinnamon Street once it is overlooked by Mr Watkins' stunning buildings. (The Council's Closing Submissions do not deny this material benefit. Indeed, they do not mention it at all.)

4.3 Redevelopment of Sites B and C removes any possibility of the current buildings being re-used in association with some "cheap and dirty" industrial use. (As Mr Goddard made clear in his oral evidence, this possibility is distinct from the prospect of an employment-led refurbishment scheme, which would be hopelessly unviable, for the reasons at OR §2.3, §7.18 and §9.9-§9.12, as accepted in XX by Mr Humphreys.) The possibility of a "cheap and dirty" industrial use returning if the Appeal Scheme is refused was described in this manner by Mr Goddard (proof, §3.8): "The current, permitted use of the buildings is for B class uses. … While the buildings are in a poor state of repair, and would not meet modern occupiers' requirements, they could lawfully be used for employment uses, without any planning regulation over noise, deliveries or operating hours" (underlining added). This cannot be what the Council wishes for the neighbourhood.

[2] Where the Court of Appeal agrees that amenity considerations such as "noise or smell" (which were those at issue in that case) are relevant when assessing harm to or enhancement of the setting of a designated heritage asset (in that case, a listed building).

4.4 The widening of the eastern pavement on Clegg Street is an obvious benefit to pedestrians, in particular those with wheelchairs and prams. Mr Wisher accepted as much in XX.

5 Fourth, there will be associated economic benefits, deriving from construction jobs and expenditure, and from the small shop proposed within Site A, which will contribute to the vitality and viability (V&V) and sustainability of the area. Significant weight should be accorded to such matters, in accordance with NPPF §19.

HERITAGE and DESIGN

General

6 The following general matters of approach can be noted, by way of introduction:

6.1 It is common ground that the restoration of the Wapping High Street façade is a material enhancement of the Conservation Area (C/Area). (The Appellant, of course, contends that there are numerous other material enhancements of the C/Area from the proposed redevelopment of these derelict sites, and that the Appeal Scheme will bring overall a "major enhancement" (per Dr Miele). These are considered in detail below.) NPPF §132 advises that "great weight should be given to the asset's conservation". "Conservation" is defined in the glossary as "The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance". Great weight must therefore be accorded to the enhancement of the Site A façade (and to the other enhancements to which the Appellant draws attention).

6.2 The Appellant contends that, overall, the Appeal Scheme will provide a "major enhancement" of the C/Area (per Dr Miele at proof, §9.1). In particular, this is because:

a. The prominent Wapping High Street façade will be sympathetically restored: see above.

b. The northern part of Site A is presently dilapidated and menacing. A new street frontage, drawing on the area's industrial background, will be brought forward. Overlooking and enclosure will be provided by means of high quality buildings.

c. The new buildings on Sites B and C regenerate run-down, tired sites which are of poor quality, and which do not relate to one another. This allows a

"family relationship" which will substantially enhance the Cinnamon Street / Clegg Street / Clave Street corner.

d. The unattractive party wall on the western side of Site B will be removed, enhancing the visual appearance of the area.

e. The character of the C/Area will be materially improved and enhanced by way of the Appeal Scheme (a) improving its visual qualities, (b) providing over-looking to Cinnamon Street which will reduce the prospect of repeated anti-social behaviour, and (c) ensuring no "cheap and dirty" motor repair (or related) business returns to Sites B and C.

6.3 Perhaps the most revealing remark of the Inquiry was the comment to Dr Miele during his XX that "no-one said heritage was meant to be easy". The truth of this case is that the Council had adopted throughout a wholly unrealistic and uncompromising "strict preservationist" approach, as if the appeal proposed the demolition of grade I listed buildings. It does not. It concerns the loss of 2 wholly unremarkable, unsympathetic and much altered buildings, of extremely modest historical interest, one of which is not even in the C/Area (and can thus be demolished subject only to a "prior approval" notification), and which are now totally devoid of meaningful connection with the heart or special qualities of the C/Area. In their much altered contexts, the buildings tell us almost nothing about the history or significance of the wider area. In their diminished states, the buildings visually detract from the character and appearance of the area.

6.4 The Council has no "in principle" objection to the demolition of any or all of the extant buildings. Mr Froneman accepted in XX that an "over my dead body" stance would be contrary to the NPPF. At its highest, the Council's case can be no more than that there is "less than substantial harm" which is not outweighed for purposes of a §134 balance. Key questions for the Inspector on which the parties are not aligned therefore include:

a. Whether there will be "less than substantial harm" to the significance of the Wapping Wall C/Area, from the demolition of the buildings on Sites B and C, which the Council says are positive contributors to the C/Area and its setting (per NPPF §138).

b. If so, whether any "less than substantial harm" is outweighed by the public benefits of the Appeal Scheme, including (a) the matters summarised in the opening paragraphs of these Closing Submissions, (b) the inability to make meaningful and efficient use of the existing buildings on Sites B and/or C, and (c) the material enhancements of the C/Area which the Appeal Scheme will bring.

c. Whether the Appeal Scheme will "preserve" (ie, not harm overall) and/or "enhance" the C/Area, a matter to which specific attention is directed by s72(1) of the Listed Buildings Act and MDD policy DM27.

6.5 In respect of section 72(1) of the Listed Buildings Act and MDD policy DM27, the following additional observations can be made:

a. Mr Froneman agreed in XX (as is clearly right) that the approach set out by the Court of Appeal in ***Palmer v Herefordshire*** [2016] EWCA Civ 1061 [CD5.4] applied equally to Conservation Areas (not just listed buildings, which is what the case concerned). At §29, Lewison LJ stated:

> "Where proposed development would affect a listed building or its setting in different ways, some positive and some negative, the decision-maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting".

b. Thus, the Inspector must make a holistic judgment here as to whether the Appeal Scheme overall preserves or enhances the C/Area. If (as the Appellant contends) that judgment is favourable to the Appeal Scheme (and concludes there will be a "major enhancement"), this is a very weighty consideration in striking any NPPF §134 balance that might arise (ie, given the "deeming" provisions of NPPF §138 whereby loss of a "positive contributor" must be treated as "less than substantial harm"). So, even if Site C is found to be a "positive contributor" such that its loss is deemed to engage NPPF §134, a judgment under s72(1) / DM27 that the Appeal Scheme will - overall - preserve and enhance the C/Area is, of itself, a weighty factor when striking the NPPF §134 balance.

c. In the unlikely event the Inspector considered the Appeal Scheme "preserved" the C/Area but did not "enhance" it, there would be full compliance with s72(1) but not with the "enhancement" expectation of policy DM27. Any such minor non-accordance with DM27 is clearly outweighed (for purposes of s38(6) of the 2004 Act) by the following material considerations: (a) the planning benefits of the Appeal Scheme, and (b) the fact that the Appeal Scheme at the very least "does no harm" overall, and has elements of enhancement.

6.6 The Inspector will be very familiar with the fact that "less than substantial harm" is a spectrum. Further, any "deemed" harm under NPPF §138 needs to be assessed in the context of the final phrase in that paragraph, directing attention to the "relative significance of the element affected" and its

contribution to the C/Area "as a whole". Here, the Appellant's position is that (a) Sites B and C are not "positive contributors" and there is no "less than substantial harm", but (b) even if there is, any harm is right at the bottom of the spectrum, given the low "relative significance" of those buildings, and their at most "limited" overall contribution to the C/Area's significance. Indeed, Froneman §5.16 (Site C) and §5.4 (Site B) accepts that "in relative terms" demolition would cause "limited" harm

6.7 While Mr Froneman's proof mentions the existence of the nearby Wapping Pierhead Conservation Area, and various listed buildings, nothing turns on them. Mr Froneman agreed in XX that (a) the reason for refusal raised no issue about any impact on the setting of such assets, (b) he had not conducted an assessment of their significance, or put forward any evidence as to whether the Appeal Scheme would have any impact thereon, and (c) if the Inspector found no "less than substantial harm" to the Wapping Wall C/Area (or that any such harm was outweighed by the planning benefits of the Appeal Scheme), that conclusion would not be affected in any way by the existence of the other designated assets. The Council's Closing Submissions (at footnote 8) wrongly ignore the evidence of Mr Froneman summarised above.

6.8 It is common ground (having been agreed by Mr Froneman in XX) that the Inspector has sufficient information to make reasonable judgments on the heritage matters raised by this case, in accordance with NPPF §128-9.

7 The Inspector has heard starkly different approaches on heritage and design matters from Mr Froneman (for the Council) and Dr Miele and Mr Watkins (for the Appellant). In assessing the competing evidence, the Inspector is invited to accord little credibility to Mr Froneman's analysis, and to prefer the assessments of Dr Miele and Mr Watkins. Mr Froneman's evidence was, in many instances, exaggerated, defensive, and confused. Notable examples include:

7.1 Mr Froneman's oft-repeated opinion that his view on the heritage issues is the <u>only tenable conclusion</u> is quite unjustified. Differing opinions have been expressed by the Planning Officers (whose OR contains a careful and detailed assessment of the heritage credentials – or otherwise – of the existing buildings), by the Council's Conservation Officer (Mr Hargreaves) who has supported the Appeal Scheme, by the authors of the Heritage Assessment (condemned by Mr Froneman as "not fit for purpose", without anything remotely approaching a sufficient basis for attaching such a label to another professional's assessment[3]), and by Dr Miele. Dr Miele[4] is a renowned expert

[3] Indeed, in one paragraph of his proof – paragraph 4.9(vii) – Mr Froneman alleges that the authors of the Heritage Assessment deliberately down-played certain matters. There is absolutely no evidence to support that very serious allegation. It is a totally over-blown charge, especially where the main

in the field, who gave his evidence to the Inquiry in a careful and considered manner. He is extremely knowledgeable on heritage matters. He spent 8 years at Historic England (who are now a client), and has a PhD in the history of architecture (specialising in the architecture of the 18th, 19th and 20th centuries). He was a Panel Member of CABE. He advises the Government and Historic England on heritage policy, and has dealt with some of the most sensitive heritage sites in the country. For Mr Froneman to condemn Dr Miele's opinion as so unreasonable no reasonable heritage expert could hold it is nothing short of nonsensical. It necessarily shatters any confidence that can be placed in the reliability of Mr Froneman's judgments.

7.2 Mr Froneman told the Inspector in XX that the fact buildings B and C were not locally listed was wholly irrelevant, then in his next answer said it was relevant and needed to be taken into account. Mr Froneman appears not to have thought his evidence through.

7.3 Mr Froneman's comments on Historic England's "non objection" (a matter he had, for no good reason, entirely omitted from consideration in his proof) were most surprising. Instead of accepting that this was clearly material (as Historic England would – when consulted because of demolition in the C/Area - not hesitate to raise vociferously concerns about significant heritage losses), he sought to turn defence into attack by saying that HE had not articulated that there would be enhancements either, and then asserted that the Inspector could not be sure whether HE had even assessed the Appeal Scheme, even cursorily, before submitting its consultation response. This approach is most unrealistic, and betrays an entrenched mentality. As Dr Miele explained (reflecting Mr Goddard's long experience too), anyone who practices in the field knows that HE (while slow to offer praise for a scheme) is <u>not slow</u> to bring forward material concerns, and HE would certainly have assessed the proposals to the point of judging whether any such concerns arose. That should be self-evident given that HE was consulted <u>because of</u> the proposed demolition of a building in the CA, and it is inconceivable that the 2 HE officers that would have considered the matter would not have satisfied themselves as to the acceptability of such a proposal. Had they not, concerns would have been raised without hesitation.

7.4 Mr Froneman maintained an interpretation of page 8 of the Conservation Area Appraisal ("CAA") which is untenable, flies in the face of available evidence,

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reason Mr Froneman condemns the Heritage Assessment as "not fit for purpose" is that it reaches a conclusion different from his own. Entirely appropriately, the Council's Closing Submissions do not seek to rely on or repeat Mr Froneman's allegation of deliberate down-playing.

[4] Much of the Council's Closing Submissions consists of commentary on some exchanges with Dr Miele during his XX. The Inspector will no doubt have regard to the whole of the evidence, including the full context of Dr Miele's evidence and explanations.

and which the Council's Closing Submissions (while repeating) do not defend by way of any reasoned argument or analysis: see further below. It is plain that, having placed substantial weight on the language at p8 of the CAA in his proof, Mr Froneman felt cornered to hold his ground, notwithstanding clear evidence that the words "surrounding buildings" obviously bear a much more limited meaning than he would wish.

7.5 It was most surprising that Mr Froneman claimed to see no significance in the fact that the C/Area includes a large area which is within the River Thames. Mr Froneman thought this was just due to randomised "boundary drawing", akin to putting a boundary in the middle of a road. That analysis is naïve, and obviously wrong here. The C/Area was plainly deliberately extended to incorporate the relevant part of the River because of the important historic associations of the area with navigation in (and goods deliveries from) the River, as well as the availability of views to and from the River which (in association with the riverfront warehouses) reveal the significance and history of the C/Area.

7.6 Mr Froneman was unconvincing in refusing to accept the relevance of Site B's exclusion from any Conservation Area, whether the Wapping Wall C/Area or the Wapping Pierhead C/Area, notwithstanding that their boundaries envelop about 90% of the relevant block: see the plan at Watkins p14. That is all the more significant given that the Wapping Wall C/Area was extended in 2008, and in light of the comments at p8 of the CAA about the buildings "surrounding" the vent shaft, the author of the CAA must have walked down Cinnamon Street. Mr Froneman refused to accept that the author would have made such a visit, which is quite unrealistic, and appears to ascribe total incompetence to the author of the CAA.

7.7 It was surprising that Mr Froneman told the Inspector (when asked about the Site A façade restoration) that he did not know what a "significant" enhancement of the C/Area was, and requested a definition of "significant" in this context. The general impression was that Mr Froneman preferred to play word games than offer anything beyond grudging praise for the Appeal Scheme. It is clear that the restoration of the façade in this prominent location in the very heart of the historically significant part of the C/Area is a significant enhancement.

7.8 Nor is there any good reason to prefer Mr Froneman's analysis because his proof is longer, or because (per se) he has specifically asked himself some of the questions in §61 of GPA1, or because (per se) he has produced a lengthy Appendix (barely referenced in the Inquiry) prolixly commenting on virtually every paragraph within GPA3. Contrary to the way in which numerous questions were asked of the Appellant's witnesses, such exercises are not

requirements of any HE guidance, let alone of any relevant DP or Government policy. What matters is the quality and credibility of the ultimate analysis.

7.9 The Council's Closing Submissions adopt the same formulation in relation to Mr Froneman as with all Council witnesses, namely that their evidence was "undisturbed" by cross examination and so requires no further comment (eg, Council's Closing Submissions, paragraphs 36, 140 and 176). That is wishful thinking of the highest order in all cases (not just Mr Froneman). But it is a convenient device for not grappling with the real problems in the Council's case or with the flawed evidence of its witnesses.

8 It is appropriate to say a further word about Mr Hargreaves' support for the Appeal Scheme. He has long been (and remains presently) the Council's Conservation Officer (having previously been the HE adviser for this area), and as Dr Miele explained, he has considerable knowledge of the Council's Conservation Areas, what makes them special, what contributes positively to them, and what does not. It is true that Mr Hargreaves did not author a note setting out his clear support for the Appeal Scheme. It is, however, quite wrong that the Council (starting with Mr Froneman's proof §4.28) has sought to imply that Mr Hargreaves was not the strong supporter of the Appeal Scheme that he obviously is. His support has been expressed at numerous meetings held with members of the Appellant's team during the application process, and it is referred to expressly in the Officer Report (taken to three Planning Committee meetings – and during none of which was this position revised, notwithstanding the ample opportunity for a correction, if one were warranted). Further, Mr Hargreaves is still employed by the Council, and was in the building where the Inquiry was held while it was taking place. The absence of any evidence from Mr Hargreaves in support of the Council's insinuations tells the Inspector all that is necessary. The fact that Mr Hargreaves is supportive of the Appeal Scheme given his position and the extent of his knowledge of heritage matters within the Borough should itself be given significant weight. The truth is that the Council recognises this, which it why it sought to diminish this weight with its unsubstantiated and transparent insinuations to the contrary.

Whether the Appeal Site presently contributes positively to the significance of the Conservation Area and/or its setting

9 The starting-point is to identify the significance of the Wapping Wall C/Area, ie what is special about it so as to have led to its designation.

10 The first clue as to what is special about the C/Area is to consider the nature and qualities of the area designated: see the map on p3 of the CAA. This shows that around 90% of the C/Area is the River (as to which, see paragraph 7.5 above), the substantial former warehouses on the River frontage (including a run of Listed

Buildings on Wapping Wall), the Shadwell Basin, King Edward VII park[5], and a swath of the Thames Path heading north. These are the sorts of features which are specifically discussed in the CAA's section on "character" (pages 5-6) ["one of London's finest stretches of 19th century riverside wharf and warehouse developments"], and "open spaces" (page 7) [describing King Edward VII park and its "spectacular views" and other special features; and the Thames Path with its collection "of significant historic riverside features"]. These are (as seems to be accepted at Froneman §3.16) the "defining" attributes what is special about the Wapping Wall C/Area.

11 Sites B and C make no contribution whatsoever to any of these "defining" special qualities.

12 Nor is Site C (or, in respect of setting, Site B) specifically identified in the CAA as materially contributing to what is special or significant about the C/Area, whether by precise identification or by reference to a general category of buildings deemed or presumed significant (ie, any old warehouse/stables). Neither is locally listed, notwithstanding periodic revisions of the Council's local list (which now contains 169 items). Nor is there any reference to Sites C (or B) in the "significant Views" section at page 8 of the CAA.

13 There was much debate at the Inquiry about the first paragraph under the heading "Scale" on page 8, which reads:

> "The western boundary of the Conservation Area is marked by Wapping Underground Station, on London's first under-river train link to the south bank. The tunnel's vent shaft and surrounding buildings contribute to the character of the area. Their relatively low scale provides visual relief from the corridor of buildings extending either side along Wapping High Street".

14 Mr Froneman went to extraordinary lengths to try and interpret the phrase "surrounding buildings" to cover Sites B and C. It plainly does not. In particular:

14.1 If Mr Froneman were right, and "surrounding buildings" includes a reference to Site B, it makes no sense at all that a building specifically identified as "contribut[ing] to the character of the area" would not be included into the C/Area in the 2008 extension thereof. Mr Froneman had no explanation at all for this point, nor do the Council's Closing Submissions attempt to provide an answer.

[5] It is unclear why the Council's Closing Submissions consistently refer to the King Henry VII park: see paragraph 65. There is no evidence the Park has been re-named, nor is there any known association with King Henry VII. Bosworth Field is not in Wapping. And the C/Area's industrial heritage post-dates Henry VII's death in 1509 by well over 3 centuries.

14.2 Mr Froneman could not explain how, if he were right, the "surrounding buildings" would not include (inter alia) Ross House, which cannot on any view be described as of "low scale".

14.3 The "surrounding buildings" are clearly no more than a reference to the Site A warehouses (since demolished) which "surrounded" the vent shaft. It is clear from the March 2007 draft CAA [CD 4.13] (containing identical language) that the sentence in question was written at a time when those warehouses still stood. It is also clear from photo 2 on Mr Wisher's App A (also now Inquiry Document 4) that the gable ends of the warehouses which surrounded the vent shaft most certainly <u>did</u> "contribute to the character of the area". The Council's Closing Submissions once again overplay its hand at paragraph 83, contending that the relevant passage at p8 of the CAA shows the "Appeal Site is singled out for special and positive mention". That may be so, but only in respect of features which were lost when the "surrounding buildings" were demolished in 2008.

15 Further, the following sentence, "Their relatively low scale provides visual relief from the corridor of buildings extending either side along Wapping High Street", adds nothing to the Council's case. <u>First</u>, this is again a reference to the now demolished warehouses on the northern part of Site A – hence "their relatively low scale". <u>Second</u>, the "relatively low scale" was simply reported as a statement of fact. There is nothing in the CAA which suggests that it is of relevance to the significance / specialness of the C/Area that these former buildings were of "relatively low scale". Certainly, Mr Froneman (when asked about this point) was unable to explain in XX <u>how</u> the scale of those buildings was in and of itself significant, whether historically or in any other way.

16 It can be noted that Mr Froneman's proof (see §2.32, for example) is critical of the CAA for not (in his assessment) articulating the special interest of the C/Area better. In reality, Mr Froneman makes this point because there is nothing in the CAA which (properly construed) supports his case. In fact, as set out above, the CAA identifies entirely satisfactorily what is truly special about the C/Area. It is therefore telling that Sites C and B are no part of the identified features of special interest.

17 Mr Froneman's proof placed massive weight on a series of aerial photos from 1929. In fact, those photos starkly demonstrate how Sites C and B are now <u>wholly divorced</u> from their former historical context. This is a fundamental point in the case. In particular:

17.1 Sites C and B are now surrounded by later developments, of an entirely different character, including Ross House, Tasman House, 18-34 Cinnamon, and the new terrace at 2-12 Clave Street. All of these new buildings are identified by Mr Froneman as detracting from the character of the area: see his

§3.31 (in respect of 18-34 Cinnamon and 2-12 Clave), and his §4.61 (in respect of Ross House and Tasman House).

17.2 Gone are the warehouses formerly adjoining Site B to the west, or the warehouses formerly adjoining Site C to its east. Gone too is the residential hinterland of workers' houses which, in 1929, lay immediately to the north.

17.3 As Dr Miele explained in his evidence, the interest of the 1929 photos is the sheer density of the buildings, butting up against each-other to create a solid mass of buildings. The sense of group value evident from the 1929 photos has totally evaporated.

17.4 The Council simply has no answer to any of these points, or the conclusion they lead to that Sites B and C have lost their historic contexts. One will struggle in vain to find engagement with, let alone a coherent response, either in Mr Froneman's evidence or the Council's Closing Submissions.

18 Mr Froneman tries to make a virtue out of the "rarity" of Sites C and B, ie as the last remaining small warehouse/stables in or adjacent to this particular C/Area. This argument is an intellectual construct which lacks substance. First, the main reason small warehouses/stables constructed in the first decades of the 20th century have largely disappeared from the area is that no-one has considered them worth saving. They are quite unlike the more substantial warehouses in the area, which genuinely and materially contribute to an appreciation of the area's docklands history, and can usefully (and viably) be given an afterlife in a residential conversion. Second, as there is nothing inherently special or interesting about small, fairly non-descript, warehouses/stables – especially where, as here, they have otherwise lost their historical context – it is a point of no substance that such realities have caught up with Sites B and C a little later than they reached other such buildings. By the law of averages, some small warehouses/stables were bound to survive a little longer than others. That does not make the last ones any more significant than the insignificant comparators which have already been replaced. "Rarity" may (depending on all the facts) be one relevant consideration, but it cannot be determinative by itself. The "rarity" issue is addressed further below when considering each of Buildings B and C.

19 The following points can also be made as to why the building on Site C is not a positive contributor to the significance of the C/Area:

19.1 Site C is a utilitarian building with no architectural or artistic interest. In fairness to him, Mr Froneman does not claim otherwise: see his §3.63 (noting that Site C "lacks architectural pretence or adornment").

19.2 Mr Froneman accepted in XX that Site C was not of "listable" quality, nor would he expect to see it "locally listed" in the event the Council reviews its local list in due course.

19.3 It was agreed in XX of Mr Froneman, by reference to the plan at Miele App 4.8, that the building was constructed and first used as a stables. There is absolutely nothing historically special or significant about such a building, whether in a London, Docklands or Wapping context. Site C is not associated with any of the major or important stages of expansion of the C/Area (ie, the 2nd half of the 19th century).

19.4 The 1929 aerial photos show that the stables was ancillary to a range of larger warehouse buildings to the east, and would at one time have had group value with them. All that historical context has vanished. As Dr Miele put it in XX, the extant "remnants" of former days tell us hardly anything about the history of the area, in particular, it is unclear "that the area used to be dense", which is "a measure of how things have changed".

19.5 As Dr Miele explained, it is not just that Site C has lost its historical context. Site C has no direct relationship with the core of the C/Area in Wapping High Street. While the new roof and reconstructed southern elevation are visible from there (justifying Site C's inclusion within the C/Area, so that the Council has a measure of additional control over its replacement), that does not constitute a material connection with the areas within the C/Area that are at the heart of its special interest. Dr Miele is correct to conclude that Site C makes no meaningful contribution to the special qualities of the C/Area, and that its special interest would not be diminished in any way were it replaced.

19.6 The building on Site C is of poor quality generally, with poor quality bricks (in a colour which is not characteristic of the area), and is of unremarkable form. It has been much altered. The southern elevation is completely new, differing materially from the form of the southern elevation shown in the original plan at Miele App 4.8. In addition, Site C now has metal roller shutters, unsympathetic brick infills on Clegg Street (where the window is bricked up, and where the roof trusses were replaced), a new roof, modern windows (with concrete lintels) at the northern elevation, and the party wall to the east is in a poor state of repair. It is currently derelict and boarded up. As Dr Miele explained, Site C is so unremarkable it would not be out of place on a farm in Norfolk.

19.7 As to "rarity", while there are no other known stables within this particular Conservation Area, Dr Miele gave a number of examples of historic stables (many of which are listed buildings) elsewhere in the Council's area and in London. Where historic stables have survived it is because they are examples

of purpose-built commercial stables which were integrated within larger complexes like police or tram stations. Unremarkable small stables like Site C have not survived because there is no good reason for their retention, especially where their historic context has been so dramatically altered.

19.8 It was asserted by Mr Froneman in XX that the current visual appearance of the buildings is irrelevant. That is demonstrably wrong (as the Council's Closing Submissions implicitly recognise[6]). First, visual appearance is plainly relevant to whether there is any architectural or artistic significance in the building. Indeed, it is plainly not accidental that s72(1) of the Listed Buildings Act refers to the "character or appearance" of the area. Second, HE's advice notes (both GPA3 on "setting" at p5[7]; and GPA1 at para 61) both make clear that current visual appearance is relevant to the holistic assessment of contribution to significance. Third, as Dr Miele explained in his oral evidence: (a) in his many years of experience, it has never been suggested to him before that visual appearance is irrelevant when assessing positive contribution to a C/Area, and (b) he is not aware of any SS or Inspector decision, or any planning policy or guidance (from HE or anyone else), which makes the novel point pursued by Mr Froneman in this case.

19.9 It is not proportionate or necessary to review one by one the list of questions that "may" (or may not) indicate a "positive contributor" set out in §61 of GPA1 [CD4.8b]. The relevant paragraph states an important proviso – provided that "historic form and value have not been eroded". (The proviso is, strikingly, completely ignored in the Council's Closing Submissions on GPA1: see paragraph 91). Here, Site C's historic context, former group value with the area in general and the warehouses immediately to its east, has been completely eroded. Further, it is striking (a) how many of those questions simply do not apply, even in Mr Froneman's world, and (b) how hard Mr Froneman has to strain (see his proof at §3.71) to try and answer some of the questions with a meaningful "yes". Dr Miele indicated in XX that it was only by trying very hard that one could answer any of the questions with "highly caveated 'yes's", but that even so the overall judgment remained that C is not a positive contributor. (It must be remembered that §61 of GPA1 does not result in there being a positive contributor just because there is a "highly

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[6] The Council's Closing Submissions contain no positive assertion that visual appearance is irrelevant. While it is not always easy (and wasn't at the Inquiry) to pin down precisely what the Council is saying, the thrust of the argument seems to be that visual appearance has been given too much weight by (inter alia) Dr Miele's assessment. For reasons here set out, the Appellants do not agree that Dr Miele (et al) have given visual appearance undue prominence. At any rate, a point about weight is a far cry from Mr Froneman's contention in XX that visual appearance was to be ignored.

[7] This provides: "The protection and enhancement of setting is intimately linked to townscape and urban design considerations, including the degree of conscious design or fortuitous beauty and the consequent visual harmony or congruity of development …". It is perfectly obvious that visual appearance is relevant to the relevant heritage assessments.

caveated" yes. A "yes" may lead to that conclusion, but it may not. And it will not where "historic form and value" have been eroded, as here.)

19.10 It can be noted that Members do not seem to have been concerned about the demolition of Site C: see §3.14 of the OR at [CD 1.3] which singles out Site B only. The argument about retention of Site C appears to be a frolic of Mr Froneman's, which does not materially reflect the concerns of the Council.

19.11 Planning Officers carefully assessed Site C, and gave clear reasons why it was not a "positive contributor". Thus, at OR9.38, it was noted: "… it is considered that this building does not respond positively to its surroundings and is not of sufficient merit for retention. There are no interesting facades to this building and no original features worth saving. Its original form may well have been compromised by modern additions or replacement over the years such as metal roller shutter". At OR9.39, Site C was described as "functional", "lacks visual articulation and symmetry" and "modest in contrast to larger warehouse buildings in the area and those along the river". At OR9.40, Officers refer to Sites C and B as of "no significance", with "very little townscape value", "intrusive", and "their style and design no longer add to the character of the area". The Inspector is invited to agree with this diligent and studied appraisal.

19.12 Overall, the Inspector is invited to agree with Dr Miele's judgment, that Site C's degraded visual appearance substantially outweighs any very limited residual historic interest of these stables, and means that overall it is not a "positive contributor" to the C/Area. The foregoing sentence fairly summarises what has been Dr Miele's judgment throughout. Contrary to the Council's Closing Submissions, he does not ignore the extremely modest historic interest of the buildings. He assesses that aspect as having a very limited interest, and as outweighed by the various other relevant considerations to which he points.

20 Turning to Site B, which lies outside the C/Area and which was pointedly passed over for inclusion within an extended C/Area in 2008, similar points apply. In particular:

20.1 Site B has no architectural or artistic qualities of significance. (Again, in fairness to him, Mr Froneman does not suggest it does.)

20.2 Mr Froneman accepted in XX that Site B was not of "listable" quality, nor would he expect to see it "locally listed" in the event the Council reviews its local list in due course.

20.3 The small warehouse on Site B was constructed around 1928-9[8]. It is therefore a later warehouse, from well beyond the historically significant periods when the Docklands was in its prime. Site B is not associated with any of the major or important stages of expansion of the C/Area (ie, the 2nd half of the 19th century).

20.4 Site B is not "rare" in any true sense. The C/Area is replete with former warehouses, mainly from the 19th century period of expansion. There are nearby examples of surviving smaller warehouses, ie the Pizza Express building (itself a magnificent, grade II listed building of beautiful proportions, dating from the 1840s), and Baltic Court on Clave Street/Wapping High Street (ie, within the central core of the C/Area). There are also examples of 20th century warehouses, such as the 9 storey Gun Wharf (which again is listed, and cannot in any way be compared favourably with Site B).

20.5 Site B (like C) has totally lost its former context, in particular the warehouses which once stood to the immediate west (where Ross House is now located).

20.6 Site B's visual appearance is a material detraction from the C/Area. It is derelict and boarded up. It is propped up to the west by a cemented blank wall which (even if painted) inevitably detracts from the area. The south-western 2-storey elevation is a crude and irregular structure, which is by itself an eyesore. The rest is austere, with no structural refinement, and panel and pier construction that is "completely typical of industrial buildings, but not of any special interest": Miele 8.31.

20.7 The Council is wrong to assert that there is any sort of meaningful "group value" in Sites B and C together. As Dr Miele explained in his oral evidence, they are very different buildings in terms of architecture, materials, orientation and purpose. They do not relate to each other in any meaningful way, notwithstanding the historical accident of being across Clegg Street from one another. They are certainly not an attractive "gateway" into the C/Area, and even if they were the "family relationship" of Mr Watkins' excellent design will be a far more welcoming introduction to the C/Area. (Again, the Council's Closing Submissions make sweeping claims of "group value", without in any way attempting to engage with Dr Miele's evidence, summarised above.)

[8] Mr Froneman's photos established that this was the date Site B was constructed. Dr Miele had worked on the basis Site B likely dated from the 1930s: see his proof §8.20. He confirmed during his oral evidence that a 1929 date of construction did not alter his assessment in any way, and there is no good reason to think it should have. Having little by way of positive arguments to make, the Council's Closing Submissions (paragraph 88) re-cycle this matter, ascribing undue materiality to it.

20.8 Once more, and while it is accepted that Members disagreed, the Council's professional Planning Officers (supported by their Conservation Officer, Mr Hargreaves) carefully appraised Site B and found it to make no meaningful contribution to the setting of the C/Area. Thus, OR9.36 explains: "The front elevation is relatively nondescript and lacks distinctive quality or character in terms of architectural value. Also its state of repair cannot be ignored. Some structural integrity of the exterior does remain in particular the brick built facades but the lack of symmetry along Cinnamon Street detracts from the building as a whole. It is noted therefore that the contribution of Site B is minimal to the street scene. The building as a standalone structure lacks group value. Therefore, its architectural and historical significance are considered to be low". Further, OR9.37 concludes:

> "It is considered that this building with its light industrial form and high windows would not lend itself to a residential usage. Furthermore, in its present condition the building is not considered to be of sufficient merit to retain. Its loss would not result in harm to the CA given the lack of significance of the building, the lack of architectural quality and warehouse nature of the building. The building has become redundant since the previous business vacated it. The Design and Conservation Officer has not objected to the loss of this building and the proposed demolition would accord with policy".

20.9 Again, the Inspector is invited to agree with Dr Miele's judgment, that Site B's degraded visual appearance substantially outweighs any very limited residual historic interest of this late warehouse, and means that overall it does not contribute positively to the C/Area's setting.

21 Further, the debate is an arid and redundant one so far as Building B is concerned. As it lies outside the Conservation Area, there is no restriction on its demolition, subject only to a limited prior approval notice: see class B of Part 11 to Schedule 2 of the GPDO. This point was made by both Dr Miele and Mr Goddard. The Council did not challenge their evidence in XX. It has ignored the point in its Closing Submissions. In truth, the matter is not in dispute.

22 In short, the C/Area and its setting will be just as special and significant in the absence of the buildings currently on Sites B and C. Their demolition affords the opportunity to replace those buildings with a high quality design that will regenerate and enhance the area, and provide the various other planning benefits enumerated above.

Re-use of buildings A, B and C

23 It is common ground (see §4.3 of these Closing Submissions) that there is no realistic prospect of a warehouse/industrial refurbishment scheme coming forward.

24 Nor is there any coherent prospect of the Sites being brought forward for any other use, at any rate in a suitable and non-wasteful manner. Certainly, the Council led no evidence of its own on this matter.

25 Mr Froneman accepted in XX that the only way in which Site A could be converted to residential use would involve total demolition and replacement of all buildings behind the Wapping High Street façade.

26 There was some discussion at the Inquiry as to whether buildings B and C could suitably be re-used for residential purposes. This demonstrated the unsuitable, undesirable, and downright inefficient, nature of such a proposition.

27 In respect of Site B, the following points can be made:

27.1 As demonstrated by the analysis at Mr Watkins' p23, there is a significant area of space in the north-west quadrant of the building which cannot be used as residential accommodation (although it might be used as an amenity area serving the small number of new flats within Site B). This is because of the inability to form new windows in the party walls with Ross House and Tasman House. Mr Watkins' evidence on this matter was not challenged by the Council.

27.2 Mr Watkins indicates the possibility of 3 flats within Site B. When considering whether this is an efficient use of land, it should be noted that the Appeal Scheme proposes 10 flats on Site B. Further, if building B is retained, the number of bedrooms in the flats is necessarily limited by the number of window openings in the southern and eastern elevations which it is possible to introduce. That is why Mr Watkins' proof refers to 2 x 1-bed units and 1 x 2-bed units (evidence which was not challenged in XX).

27.3 Such a refurbishment of Site B (even if viable, which the Appellant has not tested) will (as Mr Froneman accepted in XX) deliver no affordable housing. In the Appeal Scheme all 10 units on Site B contribute to the Council's crushing affordable housing needs.

27.4 Such a scheme would necessarily retain the cement blank wall adjacent to Ross House. Mr Froneman was unspecific as to how painting the wall would make it any less prominent and unsightly, quite apart from questions as to who is going to pay for the exercise or maintain it. As Dr Miele explained, this

wall was never meant to be seen (it was the party wall to the now lost adjoining building demolished some time in the 1930s). Mr Froneman's painting option is the ultimate "lipstick on a pig" suggestion.

27.5 Substantial new openings for doors and windows would be required in the southern and eastern elevations: see figure 4 at Watkins p23. These further changes would materially diminish whatever limited remaining interest there is in Site B (if any). As Mr Watkins states (p23): "Dramatic changes to the elevations would be required to provide the open space light levels expected in modern living. … The existing brick frame work could be retained but the windows would need extending. … The existing brick reveals of the elevation could be extended into glass openings to provide natural light to any apartments. This would lead to extensive changes to the elevation". Dr Miele agreed. In his oral evidence, he stated that residential retention would create a product which "so little resembles the original" that the exercise would be self-defeating.

27.6 The roof is in a shocking state, and would require complete replacement.

27.7 What was left of Site B would remain an austere and uninspiring building, with little if any charm. It would, frankly, look like (and be) a wasted opportunity to do better.

27.8 Much time was spent exploring with Mr Watkins in XX an early pre-app sketch of an abandoned possibility whereby the façade of site B was retained and a new 5 storey residential block constructed within it (CD2.19). A proper consideration of that option merely confirms the potent reasons why such a proposal is unrealistic, undesirable and unachievable in any event. Specifically:

a. The sketch was based on an assumption that it would be possible to create windows in the north-west corner of Site B (between Ross and Tasman Houses). But the Council determined that this would be unacceptable, as it would create unacceptable over-looking of Ross House and its amenity area. On that basis alone, the sketch drawing is simply unworkable.

b. In any event, the Council told the Appellant it "did not like" the sketch, and that Mr Hargreaves (following meetings and site visits with Mr Watkins) formed the clear view that demolition of Sites B and C was justified: per Mr Watkins in XX. The reasons the Council (and Mr Hargreaves) "did not like" the sketch are obvious. A 5-storey new-build springing out of Site B would totally destroy any limited residual interest of Site B, and (frankly) look absurd. It is not just the Council's officers that hold this view. This was the evidence too of Dr Miele (when asked in

chief about Mr Gebler's comments about additional floors within Site B), although it can be noted that neither CD2.19 nor any other proposal to "build up" within Site B was put to Dr Miele in XX.

c. The Council's Closing Submissions (paragraphs 22, 101) make reference to some of the evidence on the early pre-app sketch, in an apparent attempt to put the blame for its abandonment on the "unfit for purpose" Heritage Assessment. The Council ignores the points made at (a) and (b) above, that the proposal was in any event unworkable, and that it was not just Montagu Evans (but also the Council, per Mr Hargreaves) which rejected the early pre-app sketch.

28 As for Site C, the above points apply even more forcefully. Specifically:

28.1 Residential conversion would, at most, result in 3 small flats, mostly at or around the minimum requirements. By contrast, the Appeal Scheme offers 4 (affordable) town houses for families, of the highest quality imaginable.

28.2 There would be no affordable housing component (even assuming conversion is viable, which the Appellant has not tested).

28.3 There would be no amenity space.

28.4 Substantial new openings would be required in the western elevation of Site C to facilitate the introduction of doors and windows: see, for the extent of required removal of the existing brickwork, figure 4 on Watkins' proof p24. Again, this would materially diminish any limited residual interest in Site C (if any). Mr Watkins' evidence to this effect was not challenged by the Council.

28.5 The very narrow pavement on the east side of Clegg Street would remain. The fact that it would be wheelchair- and pram-unfriendly is all the more inappropriate in the event it was converted to residential use.

28.6 The ugly northern façade (with its added windows and concrete lintels) would remain.

28.7 Again, the description "wasted opportunity" is entirely apt for such an inefficient re-use.

The design of the Appeal Scheme

29 It is noted that, unlike his rigid stance on the alleged contribution of Buildings B and C, Mr Froneman did accept that his criticisms of the design of the Appeal Scheme

were "more subjective" matters, on which reasonable people could differ. While some of Mr Froneman's points reflect concerns expressed by Members, there is again a substantial array of opinion which disagrees with Mr Froneman. This includes the Planning Officers (whose OR supports the proposed design in enthusiastic terms: see OR 9.29 ("sensitively designed" and "sympathetic to their historic surroundings", OR 9.47 ("very high" architectural quality)), the Conservation Officer (who was consulted on the proposals throughout their evolution), Mr Watkins (the award-winning architect who designed the Appeal Scheme), and Dr Miele (who has commented at §1.12 of his proof: "The design of these proposals is of very high quality and in my view demonstrates urban design of the highest quality").

30 As he carefully explains in his proof, Mr Watkins has adopted an overall design philosophy which references the prevailing warehouse aesthetic, in particular in terms of gable ends, verticality, a simple material palette, and strong fenestration (adding to the overall impression of verticality). Mr Froneman accepted that this was an appropriate approach for this Conservation Area location. More than that, such intelligent design will enhance the C/Area.

31 One small example of Mr Watkins' sensitive and thoughtful work is the subtle and innovative sculptural celebration of Brunel's Tunnel Shields (which allowed pioneering tunnelling through mud) in the Site A internal courtyard: see Watkins p34-35. It was disappointing (but revealing) that Mr Froneman could not find a good word to say about this. Instead, he sought to suggest in XX that such references were inappropriate because the Tunnel was "somewhere else" and "outside the Conservation Area". This answer turned out to be completely incorrect. Both Wapping Station and the northern extent of the original Brunel Tunnel are plainly within the C/Area: see the map on p3 of the CAA. Further, Wapping Station is but a few yards away from Site A, across Wapping High Street. But in any event, the original Brunel Tunnel was converted for railway use, and the Tunnel extended in the 1860s. That, coupled with the fact that the route was the first under-river train line and the pioneering tunnelling techniques used, are matters of obvious historical interest.

32 I turn to Mr Froneman's various subjective comments about the design of the Appeal Scheme.

33 <u>[1] Clave Street / Cinnamon Street corner (Site A)</u>. Mr Froneman says that the appropriate solution is 2 storeys not 3. His reasoning is revealing. His proof §5.26 asserts that the 3rd storey is harmful "given the relief that the site offers and historically lower scale of buildings here". This is a nonsense:

33.1 There is no good reason whatsoever why the "relief" currently offered by the part of Site A where the warehouses were demolished to make way for exit stairs should dictate (or even materially influence) the appropriate design

solution. There is certainly no policy requirement (or HE guidance) to this effect, as Mr Froneman conceded in XX (and Dr Miele later confirmed). As Dr Miele put it in his XX, it is appropriate to "formulate a new response to what is presently around" the Appeal Site.

33.2 There is even less reason why it is relevant that the warehouses demolished in 2008 were around 2 storeys in height at this location. There is (as Dr Miele explained in his oral evidence) no principle of heritage conservation that requires the redevelopment of this part of Site A to adhere to the historical scale.

33.3 The CGIs at Watkins proof p49, p51 and p59 indicate that this part of the Appeal Scheme will be entirely successful.

34 [2] Wapping High Street (5th storey) (Site A). There is no evidence Members were concerned about the 5th storey of Site A, when seen from Wapping High Street. It certainly does not feature in §3.14 of the OR at CD1.3. Nor is there any merit in Mr Froneman's comments on this topic. Specifically:

34.1 The CGI at Watkins proof p43 shows how well Mr Watkins' excellent design fits into the street-scene. The materials, fenestration and detailing are strong, giving a sleek and vertical appearance. The building is clearly a residential building, redolent of the area's warehousing history. The gable end and triangular roof shapes associated with the new design fit comfortably into the view when considered alongside the triangular shapes of the roofs on the Site A façade, and the buildings further west. Thus, it is not just the refurbishment of the Site A façade which enhances the C/Area. Wapping High Street will be materially enhanced by views of the upper parts of Mr Watkins' pleasing design.

34.2 The CGI also shows that, while the 5th storey rises above Falconet Court, this is not uncomfortable or over-bearing to the street-scene (nor will it compromise current relationships between buildings on Wapping High Street) where there is a 7.3m set-back to the glass balcony, and a further c3m set-back to the gable end behind, and in light of the thin, sleek dimensions of the Site A building. It will not look like "the back of a warehouse", which seems to be the Council's principal concern.

34.3 It is correct that from further east (eg the location of Froneman App 3.5), part of the 5th storey will be visible. But it will fit happily into views down the street, sitting below the higher floors of Gun Wharf. And, frankly, the more of Mr Watkins' excellent design that is visible, the greater the enhancement to the C/Area.

34.4 As explained by Dr Miele, the area is characterised by a variety of styles and designs. ("The area is characterised by development of varied scale so a taller building appearing behind a lower building is entirely appropriate": Miele 9.34.) The current "morphology" of the area does not dictate removing the 5th storey. Even less so does the historic development on Site A dictate a lower-scale proposal. The visible part of the building signals a new residential courtyard behind Wapping High Street.

34.5 In any event, the height of the new Site A fits well into the general pattern of taller buildings in the vicinity, including the 9 storey Gun Wharf to the west, the 7 storey Riverside scheme to the south, and the 5 storey (plus pitched roof) Prusom's Island to the east: see plan at Watkins proof p15.

34.6 The Inspector is reminded of the submissions above (at paragraphs 13-15) regarding the section on "Scale" at p8 of the CAA. There is no historical (or other) significance to the lower scale of the part-demolished Site A warehouses.

35 [3] Treatment of the Vent Shaft on Cinnamon Street (Site A). Again, there is no evidence this was one of Members' concerns. §3.14 of the OR at CD1.3 suggests it was not, and there is no positive evidence from any other document that it was. Once more, Mr Froneman's comments are without merit. Specifically:

35.1 The proposed design will mark the presence of the Thames Tunnel extension below. It is entirely appropriate to do so. It is hard to improve on the comments of Dr Miele at §1.68 of his proof:

> "I particularly admire the way that the architects have handled the elevation, where they have to incorporate the tunnel air shaft. There is continuity of street frontage provided and a well designed set of elevations. A wall spans the gap. The authority criticises this notwithstanding industrial areas often have yards enclosed by walls, and the wall and associated recess' position clearly communicate the location of historically significant infrastructure. For my part, I see no problem in visual terms with an extent of wall, as part of a single, well designed development" (underlining added).

35.2 Marking the presence of Brunel's pioneering work would appear consistent with the CAA's comments (p8) regarding the "tunnel's vent shaft" (inter alia) "contribut[ing] to the character of the area". Indeed, it can be noted (from the photos and plans at Wisher App A) that the tunnel's vent shaft was previously marked by more substantial structures than currently surround it.

35.3 It should be noted that the "vent shaft" element is just one part of the proposed Cinnamon Street elevation, and it is far from being the most prominent. The "vent shaft" feature sits at an angle to Cinnamon Street, and is about 10m deep into the Site. To the sides are the new Clave Street/Cinnamon Street corner (see CGI at Watkins p49), and the 4-storey element adjacent to Falconet Court (see CGIs at Watkins p57 and p59). Both of these are indisputably very strong features of the overall design. They would be lost if a storey were removed to reduce the height of the walls around the vent shaft.

35.4 The Appeal Scheme removes 2 other blank facades, the sorry states of which presently detract from the C/Area, namely (a) the cement party wall to the west of Site B, and (b) the 4 storey façade of Falconet Court, on which the scars of the part-demolished Site A warehouses are visible, and which (see photos at Watkins p48 and p50) is a negative feature of the C/Area at present. In general terms, though, "Blank stretches of brickwork are characteristic of warehouse architecture and the historic boundary walls one finds in these areas developed for docks in the late 18th century and into the 19th century": per Miele §9.41, and see the photos at Miele App 5 (p38-41).

36 <u>[4] Design of Site B building and amenity area</u>. Mr Froneman's complaints about Site B are pedantic and unconvincing:

36.1 It seemed from his evidence that he had not appreciated the need for the new building on Site B to perform 2 distinct roles, namely (a) its relationship with the 5-storey Ross House and Tasman House, and (b) its relationship with the Cinnamon Street / Clegg Street corner. Mr Watkins' intelligent design performs both roles in clear and coherent fashion, as shown by the massing drawings at Watkins p20 (figure 8) and p27 (figures 1 and 2).

36.2 It is most surprising that Mr Froneman <u>complains</u> at §5.28 that "the proposed building respects and responds to the scale of the adjacent c1930s social housing blocks". The fact that it does so is good design. No doubt Mr Froneman would have quibbled if any other approach had been adopted.

36.3 There is no substance to complaints about the "stepped" form of the Cinnamon Street frontage. This approach allows for good relationships with both Ross House and the street.

36.4 The manner in which the new building turns and addresses the corner and Clegg Street is, again, admirable and entirely appropriate. It certainly does not diminish or detract from the setting of the C/Area. There is an appropriate "stepping down" to 2 storeys on Clegg Street. The Cinnamon Street / Clegg Street corner is addressed with visual uniformity and a distinctive character,

which both Dr Miele and Mr Watkins have said reflects a "family resemblance".

36.5 It is impossible to understand what Mr Froneman has against the amenity area in the south-eastern part of Site B. This contributes to ensuring the scale of the building does not overwhelm its surroundings. The junction is "much better defined overall with the Appeal Scheme" (per Dr Miele in XX). Further, as Dr Miele explained, the C/Area itself contains various areas of greenery, and this feature will add to character. There is already a landscaped area between Ross House and Cinnamon Street.

37 [5] Balcony and rear elevation of Site C. Similarly, there is no merit in Mr Froneman's quibbles about the design of new Site C. Specifically:

37.1 The balcony at 3rd storey level will not be overbearing in the slightest. It is high above the street (over 7m above street level). It projects around 1m from the building. It will be seen as it is – light-touch and interesting architecture. CGIs of the balcony from both south and north (Watkins, p45 and p55) confirm there is no credence to the assertion it will be overbearing.

37.2 The rear elevation of new Site C is well articulated: see the CGI at Watkins p47. This is evident from (a) the internal staircases, which "create a very simple rhythm across this rear façade" (per Watkins proof p75), and (b) the blind window reveals and blue engineering brick banding, which add subtle interest. Dr Miele agrees that the treatment of this elevation is appropriate, noting (proof, §9.68): "The proportions are expressive and relieved by the horizontal bands of dark engineering brick and blind windows. … The elevation is visually integrated with the whole of the design and would be understood and appreciated on that basis, within a varied streetscene".

38 The Council's Statement of Case sought to introduce a concern (repeated in its Closing Submissions at paragraph 122) about daylight/sunlight levels in two ground floor Site A flats. There is no evidence Members were concerned about that matter in any way. There is no free-standing reason for refusal raising the point. Nor can the words of reason 2 conceivably be stretched to cover such a concern. Nonetheless, the Appellant has considered this complaint on its merits. The complaint is without foundation. The matter is considered below, at the end of the section on Daylight/Sunlight.

39 Finally, Mr Humphreys raises a point about "privacy" and "lack of defensible planting" for the ground floor residents within Site A. He is the only person to have raised such matters. They were no concern of Members, nor has Mr Froneman raised either point. There is no substance to these criticisms. As Mr Goddard explained, while new measures could be introduced within the courtyard (as described by Mr

Watkins) via a condition, there is no necessity for such additional steps. The courtyard is intended as a private amenity resource for most of the residents of Site A, and the situation will be "self-policing", with residents respecting each other's privacy. Further, all Site A units are market homes. No-one will be forced to buy them. This issue can safely be left to the market.

Conclusion on reason for refusal 2

40 For the reasons canvassed at length above, the Inspector is invited to conclude:

40.1 The design of the Appeal Scheme has been carefully considered and is entirely appropriate for its context.

40.2 The Appeal Scheme will, when the "overall" ***Palmer*** assessment is made, be a "major enhancement" of the C/Area and its setting. Section 72(1) and MDD policy DM27 are fully complied with.

40.3 Demolition of the buildings currently on Sites B and C will not cause "less than substantial harm" to the significance of the C/Area, but if that is wrong any such harm is very much at the lower end of the spectrum. If (contrary to the Appellant's primary submissions) NPPF §134 is engaged, even according considerable weight to the presumed heritage harm, this is clearly outweighed by the substantial benefits of the Appeal Scheme enumerated in these Closing Submissions.

SERVICING and DELIVERIES

41 The Council has sought to make a mountain out of what at most is a microscopic molehill.

42 Contrary to the advice of Planning and Highway Officers that these matters could readily be addressed pursuant to a suitable condition / s106 obligation, Members made servicing / delivery arrangements a reason for refusal, notwithstanding that they had (as Mr Wisher confirmed) no technical evidence or expert analysis whatsoever to support that conclusion. The Council's Statement of Case then sought to make a case based around a lengthy set of survey results (Appendix 2 to its S/Case) which it subsequently disregarded. Mr Wisher was parachuted in during August / September to try and save the Council's case on this issue. But, as demonstrated below, Mr Wisher's argument included a series of assertions put forward on the basis of no coherent evidence, or exaggerated interpretations, or which ignored the available evidence, or which misunderstood what Mr Beard had told him, or which were based on either ignoring relevant guidance or his "memory" of operative guidance that he

did not bother to check or review before giving his evidence. In these circumstances, Mr Wisher's evidence, in so far as he sought to put forward any judgments or opinions, was not rigorous and was lacking in the reliability and credibility that should be expected of an independent expert.

43 The Appeal Scheme is a car-free development (according in this respect, as Mr Wisher agreed in XX, with Core Strategy policy SP09(4)) in a highly sustainable PTAL-5 location. Reason for refusal 1 does not object to lack of parking provision, but the Council has sought to get parking in "through the back door" on the purported basis that it is relevant to servicing / delivery issues. The connection (at least on the basis of the Council's evidence) is highly spurious, but for completeness, I comment on the main themes of the parking issues raised by the Council:

43.1 The context for all parking issues is that, while there is evidence of a low level of parking pressure in the relevant area, there is no evidence this is a high stress area. Mr Wisher's surveys of Wapping High Street and immediately surrounding streets evidence more than ample parking availability (and loading/unloading availability) during the day. The surveys commissioned by Mr Beard (his App J) show substantial evening/overnight parking availability within the area, with a few CPZ spaces available on Cinnamon Street (see Beard App J-22; and proof, p27) and numerous CPZ spaces available on Wapping High Street (Beard proof p27; and App J-20, J-11).

43.2 The Council invokes the permit/space ratio of CPZ area C4. The fact that the ratio is higher than in the Council's other areas does not, per se, tell one anything about the level of parking stress in the area. That is directly addressed by the evidence referenced in the preceding sub-paragraph. Further, there must be a good reason why the Council has issued permits at such a ratio in area C4. It is likely to be the case that this (and the low levels of parking pressure in the immediate area) are explained by the significant quantum of private parking in the vicinity. Private parking will be seen, during the site visit, on Clave Street, behind the Clave Street terrace, and in the ground/basement floors of virtually every converted warehouse in the area. Of course, in order to be able to park in area C4 (or in other parts of the Council's area), a resident will (even if she has a private parking space) wish to obtain a residents permit. In summary, the permit/space ratio of area C4 tells us nothing, and it is not consistent with the low level of parking pressure in the area as a whole revealed by recent surveys.

43.3 Locations for 3 new parking spots are shown in Mr Beard's App I. It was very disappointing that Mr Wisher advanced complaints during his evidence in chief about these locations. Specifically:

a. He complained that the new spot at the western end of Cinnamon Street (to which he has no objection in principle) was too far from the disabled-access apartments. But he accepted that Mr Beard had explained to him, during discussions prior to the Inquiry, that the spot was simply a new parking spot and would enable a nearer spot to be used as a disabled spot.

b. He complained about the two new spots on Clegg Street. These complaints were incoherent. They do not meaningfully block the way to the pedestrian route on Hilliards Court (past the bollards), and the widening of Clegg Street's eastern pavement (which Mr Wisher acknowledged as a benefit of the Appeal Scheme) will materially assist pedestrian movements in the area.

43.4 It was especially disappointing and surprising that the Council sought, during Mr Wisher's re-examination and subsequently, to go behind his XX answers on the sufficiency of providing 3 disabled spots not 4. In XX, Mr Wisher agreed that provision of 3 spots, reflecting the "reasonable" and "realistic" agreement reached with Highway Officers at the application stage, was "sufficient" and that there was no reason for refusal to the contrary. In any event, it is impossible to see how, even if a 4th disabled spot were needed in the area, this would adversely impact on the delivery / servicing requirements of the Appeal Scheme given (a) the ready availability of some parking in the area at all times, and (b) the proposed loading bay for the occasional larger vehicle.

43.5 Mr Wisher's proof sought to make much of the fact that the Appeal Scheme proposes 5 very high quality 3-bed affordable units, and that in certain circumstances it would be theoretically possible for a person to be entitled to transfer their parking permit when moved in to these. This point is ill-considered trouble-making on the Council's part. Mr Wisher's proof §3.1.8 failed to point out that those already in 3-bed properties (even if substandard accommodation) are not entitled to transfer their permits. As the Inspector[9] put to Mr Humphreys, and as is clearly the case, the Council will have many, many people among the 20,000 on the housing need register who could be offered the relevant 3-bed properties, but who will not qualify for a permit transfer (on the terms of the permit transfer scheme itself). Even if this were not so, Mr Wisher's advice to the Council (offered during XX) was that any potential occupier should be required to give up their parking permit. If the Council declines to take their consultant's advice, it can only be because

[9] Although the Council's Closing Submissions refuse to drop these quibbles (see paragraph 159), there is no attempt to grapple with the Inspector's question (or the Council's inability to provide a satisfactory response consistent with maintaining this objection).

alleged parking difficulties in the area are of lesser magnitude than the picture which the Council sought to paint.

43.6 Finally, as Mr Wisher accepted in XX, even if it were the case that there were high levels of parking stress in the area which the Appeal Scheme would exacerbate, the likely consequence is that some people would get rid of their cars (given ready access to more sustainable modes of transport). That is a result that would be entirely in keeping with Government policy, and with the Development Plan.

44 There was some suggestion to Mr Goddard in XX that MDD policy DM20 (referring to "no unacceptable impacts") was a different (and harder) test than NPPF §32. This is nonsense. There is no indication from the text of the MDD that it was intended to go beyond the NPPF and introduce a test inconsistent with it. One would expect this to have been stated clearly if that were the intention. The reality is no more than that the MDD uses a different word ("unacceptable") to mean the same thing as "severe". Mr Wisher agreed the above interpretation in XX. The Council suggested to Mr Goddard in XX that Mr Wisher's evidence could be disregarded as he was "only a highways witness", but this ignores the fact that Mr Humphreys accepted at the start of XX that he had not disagreed with anything said by the Council's witnesses who had preceded him.

45 The Council's Closing Submissions appear at one point to imply[10] that the Appellants have ignored NPPF 35's expectation that developments will "accommodate the efficient delivery of goods and supplies". That is incorrect. The Appellants' evidence fully explains why servicing / deliveries can readily and safely be accommodated, at both "ends" of the Scheme.

46 Servicing trips to the southern end of Site A (for the small shop, and the southernmost residential units) can readily be accommodated within the existing network. No changes are necessary to road markings, or waiting restrictions. Deliveries should be conditioned so as not to take place in the peak periods, but this can be swept up as part of the submitted "scheme". Furthermore:

46.1 We are here concerned with 1 daily servicing stop to the small shop, and the occasional additional stop for some of the southern residential units. This is common ground.

46.2 Inter-peak two-way traffic on Wapping High Street averages 263: see Wisher §4.1.3. This equates to just over 4 cars a minute. There will be no discernible

[10] This appears to be the thrust of the "pleading point" taken on Mr Goddard's written proof: see paragraph 145 of the Council's Closing. In truth, it is not clear what the Council is saying. Paragraph 163 of its Closing acknowledges that the Appellants have engaged with NPPF 35.

impact on Wapping High Street, certainly none that is "severe" in NPPF §32 terms.

46.3 There is copious opportunity for safe and satisfactory conduct of these servicing trips, given:

a. 1 or 2 of the 8 CPZ spaces right outside Site A were observed by Mr Wisher's video survey to be available throughout the day: Wisher §4.2.10. These are shared use spaces, which may permissibly be used for loading/unloading purposes. It perhaps betrayed that the Council did not properly understand the evidence on the Servicing / Deliveries issue that Mr Beard was asked questions in XX about these spaces on the basis that their use for these purposes was "not allowed".

b. Wisher §4.2.9 reports that the adjacent car club space was used throughout the day without any apparent difficulties.

c. Wisher §4.2.11 reports 15 vehicles making a short stop, during the surveyed day, on the Single Yellow Line (SYL) area at the south-eastern part of Wapping Dock Street, again without any reported difficulties. Such activity is entirely lawful and authorised (so long as it is outside peak hours). Indeed, the SYL area in question is intended to be used by the Council for this very purpose. It is hardly surprising there is no evidence of any difficulties – Wapping Dock Street has two-way daily flow of 98 (see Beard, p20). The area is just a few metres from Site A. This point alone makes the Council's complaints about servicing here entirely unreasonable.

d. Wisher §4.2.12 refers to a 25m section of SYL on the south side of Wapping High Street opposite Site A. At least 40% of that area seems to have been free at all times surveyed by Mr Wisher. This is part of the area which services the Galliard scheme (which itself has no dedicated off-road servicing space). In fact, there is 65m of SYL in this area (not 25m): see Beard App J-4 and J-11.

46.4 The above picture is entirely consistent with Mr Beard's on-site observations that existing Wapping High Street deliveries/servicing occurs with "no obstruction to traffic movements witnessed" (Beard proof, p25). As he confirmed during his oral evidence, he has spent lengthy periods observing servicing/deliveries around the Appeal Site on 4 occasions, and he has "always seen some spaces" available.

47 Turning to the northern, Cinnamon Street, end of the development, from where the northern part of Site A and Sites B and C will be serviced, the following points apply:

47.1 There has been no accident in Cinnamon Street or the relevant surrounding area in the last 5 years. This is notwithstanding the absence of a dedicated loading bay for larger vehicles. That alone tends to indicate that the Council's alleged concerns are exaggerated.

47.2 Nor is there evidence of past problems in the area, in particular stemming from the time Sites B and C were operational as a car repair facility. Mr Wisher had no evidence that there had been problems in respect of servicing 18-34 Cinnamon Street, notwithstanding that they are down a very narrow cul-de-sac with a 5 tonne weight restriction.

47.3 Movements in the area are at miniscule levels. Two-way daily flows on Cinnamon Street are in the region of 100, and there is a comparable picture on Clegg Street and Clave Street. Further, speeds on Cinnamon Street are very low, with 85th percentile speeds recorded at 14.1mph eastbound and 13.9mph westbound: see Beard table 8 (proof, p20).

47.4 As for the number of servicing trips associated with the Appeal Scheme, it is hard to see what possible problem could arise from motorcycle or taxi trips or the small projected number of car visits (ie, collecting / dropping off children) to Cinnamon Street, given the low usage numbers / very low speeds / availability of some parking within the Cinnamon Street CPZ spaces (and elsewhere in the local area).

47.5 Light Goods Vehicles trips (ie "short dwell" supermarket deliveries) can equally be facilitated within current parking availability in the area or the proposed new loading bay. Both Mr Wisher (proof, §4.2.4) and Mr Beard (proof, p22) observed delivery vehicles using the Cinnamon Street CPZ spaces (where there were always 1 or 2 spaces available), without any apparent difficulty.

47.6 Primarily for the occasional larger vehicle (but, obviously, for other servicing/deliveries vehicles at other times), a 12m x 2.5m loading bay has been proposed by Mr Beard. This proposal has been subject to a Stage 1 Road Safety Audit which found no material difficulty [Beard App H]. It is very disappointing that the Council has not accepted the results of the Stage 1 RSA, but has instead sought to deploy a series of misconceived objections flouting the clear provisions of Manual for Streets (1 and 2). In particular:

a. Visibility Splay. The following points apply:

(i) Mr Wisher agreed in XX that the designed visibility splay accorded with Manual for Streets (1 and 2). This fundamental concession is ignored in the Council's Closing Submissions.

(ii) Mr Wisher's answer was plainly a correct concession. In particular, MfS2 [Inquiry Document 8] provides at §10.7.1 that "Parking in visibility splays in built-up areas is quite common, yet it does not appear to create significant problems in practice. Ideally, defined parking bays should be provided outside the visibility splay. However, in some circumstances, where speeds are low, some encroachment may be acceptable". Speeds clearly are low, recorded speeds showing an 85th percentile of 14mph. The diagrams on the relevant page of MfS2 then show the car pulling out to effect the manoeuvre slowly, and checking what is coming as it does so. That is exactly how one would expect a driver to undertake the relevant manoeuvre. Mr Wisher sought tentatively to suggest that it might be more appropriate to use the speed limit of the road (20mph)[11], but the Council has no adopted policy or guidance to this effect, and it would (as Mr Wisher accepted) be contrary to MfS1 [CD2.29] (which provides (at §7.5.2) that 85th percentile wet weather speeds can appropriately be used) and MfS2 §10.7.1 (as above) to insist on such a requirement. It is notable that Mr Beard's reliance on MfS2 at §10.7.1 was not challenged in any way during his XX.

(iii) If he has not already done so, the Inspector is invited to drive for a few metres at 14mph. That will underscore quite how slow speeds on Cinnamon Street are.

(iv) The Council's questioning of Mr Beard in relation to his 17m visibility splay appeared to betray a failure to recognise that the relevant angles allow a driver at the Clegg/Cinnamon junction to see an approaching vehicle some distance before it is level with the edge of the loading bay.

(v) No doubt it was the compliance of Mr Beard's approach with MfS (1 and 2) which was behind Highway Officers' proposal at application stage that the very same area be used for 2 of the new disabled places.

[11] Contrary to paragraph 167 of the Council's Closing Submissions, there is no evidence on this matter from highway officers, let alone reasoned written analysis.

(vi) The second part of paragraph 167 to the Council's Closing Submissions repeats a mistaken interpretation of MfS1 at §7.5.8 [CD B.29] put to Mr Beard in XX. It appears the Council did not understand the answer Mr Beard gave. The point is that "speed reducing features" are not required, because the requisite visibility splays can be achieved without them.

(vii) Mr Wisher sought to float a point in XX about the alleged lesser skid resistance of Cinnamon Street. He has produced not a shred of evidence in support of this proposition, which is ignored in the Council's Closing Submissions and should be rejected out of hand. It is an obvious example of clutching at straws in order to try and find a problem.

(viii) Even if the above were all wrong, not even the Council could complain on visibility splay grounds if the loading bay were moved 6m west. This would result in the loss of 1 of the Cinnamon St CPZ spaces, which in light of the full picture of parking availability in the area could not possibly be argued to have a "severe" residual impact.

b. Fire Truck clearance. This is a further example of Mr Wisher desperately clutching at straws in order to find a problem (rather than a solution). It was disappointing that he had failed (as he admitted in XX) to re-examine the relevant guidance before ventilating this point. As to this:

(i) MfS1, §6.7.3 [CD2.29] provides that the Association of Chief Fire Officers have advised that an access route can be reduced to 2.75m over short distances "provided the pump appliance can get to within 45m of dwelling entrances". That is plainly the case here.

(ii) Fire trucks are up to about 2.7m wide. That is why there is no access difficulty with a reduction to 2.75m over short distances. Here, at its narrowest, and assuming an HGV is making a servicing stop in the loading bay at the time of a fire, there would be a gap of no less than 3.2m along Cinnamon Street for the Fire Truck to pass. It would plainly be able to do so.

(iii) In addition, because the loading bay is only 12m long, there is no impeding the relevant requirements for access to within 45m of residential entrances. There is also a very large "working area" in the Cinnamon/Clegg/Clave junction area immediately east of the proposed loading bay.

(iv) Unless the Council is proposing to abolish a large number of its parking spaces (ie, those on Clave Street, Clegg Street and Wapping Dock Street), it does not act on the basis of a blanket or universal need for 3.7m between parking spaces and opposite kerbs. Nor would that make any sense.

(v) It must be remembered that the loading bay is provided for the very occasional HGV (with agreed likely duration of 30 minutes). There is no reason why the driver will not be "in the area", so even if it would be more convenient for the HGV to be moved, that will be readily achievable.

(vi) It was for these reasons that the Fire Bridge advised (Inquiry Document 19) that the Appellant's proposed scheme was acceptable.

47.7 Unheralded by any evidence at all at the Inquiry (whether from Mr Wisher, or by way of any question posed of Mr Beard), the Council's Closing Submissions (paragraph 164) suggest that the primary concern with the loading bay is that it may not always be available for HGV use. Again, the Council adopts an entirely unrealistic approach. The loading bay will be marked as "loading/unloading only", and no doubt the Council's many parking wardens will be only too content to enforce that restriction. The suggestion (if made) that any material difficulty will arise from (say) a 5 minute stop by a post office van occurring at the same time as the very occasional HGV arrives is ludicrous and the worst sort of "straw-clutching".

47.8 For these reasons, the Appellant's primary position is that the loading bay located as shown on Mr Beard's Appendix E (annex 2) [also Inquiry Document 1] is entirely realistic, and acceptable. The Inspector is invited so to indicate in his decision letter.

47.9 However, given the Council's continuing quibbles, further achievable and realistic options have been put forward by the Appellant, namely:

a. Moving the loading bay ½ metre north. This would allow 3.7m between the edge of the bay and the opposite kerb, if this were considered necessary in this location (notwithstanding that it is not required by the Fire Brigade's emailed comments). In order to accommodate the re-located loading bay and retain a 1.5m pavement, there would be a miniscule "land take" from Site B, and it would be necessary to reconfigure the planting area in front of the building. This is shown on Inquiry Document 20. It can be accommodated into a planning permission by way of a Grampian condition, as discussed at the conditions session.

b. Moving the loading bay 6m west (with or without a move ½ metre north). This would result in a distance of at least 17m from the Clegg St junction to the edge of the loading bay. For reasons given above, the Appellant does not consider this is necessary here, as (per Mr Wisher) the loading bay shown on Inquiry Document 1 fully complies with the guidance in MfS 1 and 2. But if the Inspector takes a different view, the price to pay (1 CPZ spot) barely registers. It is certainly a far more desirable option in planning terms than the Council's obstinate insistence that HGV servicing be accommodated within Site A (in the manner shown on Inquiry Document 18).

48 It has been hard to understand what the Council really proposes in terms of servicing the Appeal Scheme. Is it really suggested that the north-western part of Site A must be turned into a dedicated servicing area? Surprisingly, that does indeed appear to be the Council's case, as Inquiry Document 18 was adopted by the Council in questioning of Mr Beard and Mr Goddard. There is, not for the first time, a genuine lack of reality to the Council's stance. Specifically:

48.1 Inquiry Document 18 shows a wholly disproportionate land-take given the available options for a Cinnamon Street loading bay. It would require the best part of 2 flats, as well as a significant chunk of the courtyard. It would also (as Mr Watkins explained) necessitate a complete redesign of the Site A buildings because of the need to raise the ceiling to accommodate the required height.

48.2 The Council's position is nothing short of absurd. It is the antithesis of efficient use of land.

48.3 Nor can the land-take within Site A required for an Inquiry Document 18 HGV area be reduced by expecting HGVs to reverse in (or out). It was most surprising such matters were explored with Mr Beard in XX. It is obvious (as he explained) that there are manifest safety implications for pedestrians and cyclists with such manoeuvres, which is why they are required to be "designed out".

48.4 The Council's Closing Submissions (paragraph 129) refer to the non-provision of "undercroft type facilities at Falconet Court and Baltic Court". The Inspector will be able to judge on the site visit whether there is any substance to this comparison. In truth, there is not. The ground floor parking at Falconet and Baltic is for resident car-parking. There is neither the height nor the space for servicing by HGVs to enter or leave in forward gear.

49 The irresistible inference is that the Council is simply trying to erect obstacles if it can, in an attempt to find a fig-leaf for Members' position, adopted in the face of the Appellant's agreement with Highways Officers and in the absence of any evidence that would support it.

50 In summary, these matters can feasibly be left to be worked out pursuant to the Grampian provision now incorporated within the s106 and conditions for a "scheme" on servicing / deliveries. This should never have been a reason for refusal.

DAYLIGHT and SUNLIGHT ISSUES

Impacts on existing residents

51 As the Inspector will be aware, the battle-lines have shifted from the time of the decision notice and subsequent LPA Statement of Case. The sole remaining dispute concerns impacts on daylight conditions to a number of windows in Ross House, it having been agreed between the main parties that:

51.1 Sunlight conditions at all surrounding properties will continue to meet BRE guidelines, obviating any need for further consideration of flexibility and context in that respect.

51.2 There is no "unacceptable material deterioration" [MDD policy DM25(d)] in daylight conditions regarding the ground floors at 10 or 12 Clave Street. This is the position whether one focuses only on daylighting conditions (given the urban context of the Appeal Site, and the policy need to optimise housing delivery on such sites), or whether (as the Appellant contends is appropriate) the issue of "acceptability" is judged in a holistic manner which takes into account the planning benefits of the Appeal Scheme, and other benefits to resident amenity therefrom (including enhancements to the character and appearance of the C/Area, reduction of crime / anti-social behaviour, improvement to views of and across the Appeal Site etc etc).

52 As regards Ross House, the Inspector is invited to agree with the Appellant, and with Mr Dunford's and Mr Goddard's evidence, that there will be no "unacceptable material deterioration" [MDD, policy DM25(d)] in surrounding daylight/sunlight conditions. Their views accord also with the conclusions of the Council's Planning Officers [OR §9.153] (which Mr Harris did not feel able to characterise in XX as unreasonable) that:

> "The development is considered acceptable in terms of daylight/sunlight as the impacts of the scheme taken overall is well within normal levels of failings given the urban context and with an acceptance that any new development,

however modest in its height, might have significant impacts on a small number of neighbouring windows".

53 It further appears to accord with the advice of Professor Littlefair (the author of the BRE). He was asked to advise the LPA on Mr Dunford's original report, and he did so in terms which contained no suggestion at all that he regarded impacts as "unacceptable", taking context into account: see Harris App 4. It is striking that Professor Littlefair was not called to give evidence in support of the relevant reason for refusal. In light of the terms of his report at the application stage, he would plainly have been unable to do so. As Mr Goddard explained in his oral evidence, Professor Littlefair is not shy about expressing views on the acceptability of a scheme in terms of daylight impacts (as Mr Goddard has seen in other cases), and the absence of any comment in his report that the Appeal Scheme was unacceptable is therefore a clear indication that he formed no such opinion and was in effect giving the Appeal Scheme "a clean bill of health".

54 The Council points to the fact that 14 windows at Ross House fail one or both of the BRE Guidelines' tests. It is fundamental that the BRE Guidelines are just that. They are not intended to be applied rigorously, as if they were an Act of Parliament. The BRE Guidelines themselves recognise that there can in truth be no "one size fits all" approach applicable equally to a rural location and to an urban setting in a PTAL-5 area. The Summary at page (v) states: "It is purely advisory and the numerical target values within it may be varied to meet the needs of the development and its location [see Appendix F]". Similarly, the Introduction (p1) at §1.6 provides: "The advice given here is <u>not mandatory</u> and <u>the guide should not be seen as an instrument of planning policy</u>; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be <u>interpreted flexibly since natural lighting is only one of many factors in site layout design</u>. In special circumstances the developer or planning authority <u>may wish to use different target values</u>. For example, in a historic city centre, or in an area with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are <u>to match the height and proportions of existing buildings</u>" (underlining added).

55 The Mayor's SPG on Housing [CD4.6b] also emphasises the need for flexible application in London, in particular in urban settings and where public transport accessibility is good. These are the locations which the Mayor expects to see efficient use made of land so that new housing can be optimised. For example:

55.1 Paragraphs 1.3.45-1.3.46 of the SPG include the following:

> "An appropriate degree of flexibility needs to be applied when using BRE guidelines to assess the daylight and sunlight impacts of new development on surrounding properties. … <u>Guidelines should be applied sensitively to higher density development</u>, <u>especially</u> in opportunity

areas, town centres, large sites and accessible locations, where BRE advice suggests considering the use of alternative targets. This should take into account local circumstances; the need to optimise housing capacity; and scope for the character and form of an area to change over time.

"The degree of harm on adjacent properties … should be assessed drawing on broadly comparable residential typologies within the area and of a similar nature across London. Decision makers should recognise that fully optimising housing potential on large sites may necessitate standards which depart from those presently experienced but which still achieve satisfactory levels of residential amenity and avoid unacceptable harm".

Underlining is added, reflecting key parts of the SPG, which Mr Harris accepted in XX were applicable to this case.

55.2 To similar effect is paragraph 2.3.47 of the Mayor's SPG, which states:

"BRE guidelines on assessing daylight and sunlight should be applied sensitively to higher density development in London, particularly in central and urban settings, recognising the London Plan's strategic approach to optimise housing output (Policy 3.4) and the need to accommodate additional housing supply in locations with good accessibility suitable for higher density development (Policy 3.3). Quantitative standards on daylight and sunlight should not be applied rigidly, without carefully considering the location and context and standards experienced in broadly comparable housing typologies in London" (underlining added).

55.3 The Appeal Scheme is a "higher density" scheme in a highly accessible area. The Scheme proposes 41 units on 0.22ha (186u/ha) and 564 habitable rooms per hectare: OR 9.71. This is towards the top end of the Mayor's density matrix for PTAL-5 sites.

56 The legitimate expectations of those living in highly accessible urban areas within London must include a clear acknowledgement that prevailing planning policy, at all levels, from national to local to London-wide, supports the need for optimisation of the housing supply. That is particularly so when considering a derelict and under-used site (such as Site A) which (as the Council, through Mr Humphreys in XX, eventually acknowledged) has no serious prospects of being re-used for industrial/warehousing purposes in consequence of a refurbishment scheme. It is not only that regeneration of Site A will bring substantial amenity benefits to the area and

its residents, it is that re-development must use land efficiently and in a manner which optimises "housing output".

57 The following broad "context" points are also relevant when assessing impacts on Ross House:

57.1 Ross House is itself a 5 storey building. Part of it is opposite a 4 storey building (Falconet House). The relevant part of the Appeal Scheme is itself a (very high quality) 4 storey building (with a flat roof on the material section), matching the heights of both Falconet House to the west and Ross House to the north. This is what townscape and design considerations dictate. Such a consideration is recognised as needing to be taken into account by the BRE Guidelines, Appendix F. Paragraph F1 states that "alternative targets may be generated from the layout dimensions of existing development" and paragraph F4 is content in principle with a VSC of 18% if that is the consequence of an ambition for "new development … to match the existing layout". The underlying principle, as explained by Mr Dunford, relates to what is a "fair share" of daylight to be ascribed to one building, given corresponding "fairness" for comparable scale development nearby.

57.2 The BRE Guidelines (and the Mayor's SPG) also support a consideration of local context that includes an assessment of daylight levels in the vicinity. Neither the Council nor Mr Harris has sought to perform any such exercise. It is most unfortunate that Mr Dunford's relevant exercise is described as selective and arbitrary (Council's Closing Submissions, paragraph 192), when this is plainly not the case. His work has encompassed a very significant number of windows/rooms around the Appeal Site. The relevant results are entirely supportive of the acceptability of the residual daylighting conditions at Ross House, with the Appeal Scheme. Of particular note in this context:

a. Results for the ground and first floors at 138-140 Wapping High Street are (if anything) below the "proposed VSCs" for the equivalent storeys at Ross House. The results at Appendix B of the original Point 2 Report [Harris App 3] show single-window living rooms in the range 16.63 – 18.49 – 20.28 (the lowest at Ross House, ignoring those affected by the balcony, is 17.73); and single-window bedrooms in the range 12.21 – 14.48 – 15.63 at ground/first floor, and in the 17s at second floor (the lowest at Ross House is 14.73, the next lowest is 17.93).

b. Results at Tasman House are much lower: see p9-11 of Appendix B of the original Point 2 Report [Harris App 3], with numerous single-window kitchens recording single-figure VSCs, and single-window bedrooms starting at 16.62.

c. A similar picture emerges from Mr Dunford's assessments of nearby Wapping Dock Street and Wapping Lane: see Inquiry Document 3 (pages 3-4). Habitable rooms on the lowest floors are, again, recording single-figure VSCs.

d. On this basis alone, Mr Dunford's oral evidence that VSCs in the "mid-teens" are "good for the area" is entirely justified.

57.3 Mr Harris' proof at §8.2.3 referred to a possible reduced VSC target of 20-22% (although he sought to raise that to 22-23% during oral evidence). It is wholly unclear where Mr Harris has derived this evolving approach from. Neither his proof nor his oral presentation contained hard evidence supporting these figures from analyses of either the area surrounding the Appeal Site or any other area said to be comparable. In general, Mr Harris' approach did not seek to embrace or put forward empirical or comparative material to support the Council's position. Whether taken as 20-22%, or the evolved 22-23%, Mr Harris' approach is not evidentially rigorous or justified by any supporting analysis. It is a "finger in the air", without any hard evidence to back it up.

58 Most strikingly, it can be noted that neither the Council, nor Mr Harris, has put forward any comparator case where daylight impacts such as those on Ross House have been found "unacceptable" by a planning decision-maker. That is very telling.

59 It is also in marked contrast to the Appellant's (and Mr Dunford's) approach, which has provided a number of relevant comparators. These are put forward because the Inspector will be familiar with the well-established principle in planning cases as to the importance of consistency in decision-making. They are also put forward because they explain and justify the Planning Officers' comments cited above [OR 9.153] that the impacts of the Appeal Scheme are "well within normal levels of failings given the urban context". Particularly helpful examples from the comparator cases put forward by Mr Dunford are these:

59.1 <u>Cambridge Heath Road</u> [Dunford App 7.1]. Mr Harris agreed in XX that the location was "broadly similar" to the Appeal Site, in terms of considering daylighting impacts. That is plainly right. The area seems to be an urban area, the middle of Bethnal Green, with a mix of 2-3 storey residential properties, and larger commercial buildings (including up to 9 storeys at the relevant site). A new 7 storey building was proposed. The Council granted consent, reasoning (see the OR) that daylight impacts were within acceptable ranges. These impacts included reductions in VSC and NSL which are substantially greater than those here, in particular at <u>13 Bishops Way</u> (a ground floor kitchen experienced VSC reductions over 32% and NSL reductions of 28%; and a ground floor bedroom experienced a VSC loss of 31.34% and an NSL loss of 60.9%), <u>9 Bishops Way</u> (a first floor probable

bedroom experienced a VSC loss of over 36% and corresponding NSL loss of 42%) and 7 Bishops Way (rooms R1/151 and R1/152 experienced substantial VSC reductions and NSL reductions just under 60%). The Inspector will have noted that Mr Dunford was not asked any questions on this comparator in XX. The irresistible conclusion is that the Council's approach at this Inquiry is wholly inconsistent with its approach at Cambridge Heath Road.

59.2 Castlewood House [Dunford App 7.2]. The relevance of this case is that Mr Harris' firm described comparable VSC reductions as "quite marginal" and justified comparable NSL reductions as acceptable given that the front part of the relevant rooms retained their NSLs. There is no material difference here. While Mr Harris is right to point out that the ADF test was carried out to consider impacts at Centre Point House, Mr Dunford's evidence was that, if carried out in respect of the relevant Ross House windows, it can be expected that they would pass the minimum ADF levels given their southern orientation and the fact that they would continue to get "good light" from the "upper parts of the sky", ie above the Appeal Scheme. It is accepted, of course, that in some respects which can be assessed for planning purposes a central location near Tottenham Court Road is not akin to the Appeal Site. What is unexplained by either the Council or Mr Harris is why such differences as there may be are material when considering the acceptability of reductions in VSC and NSL of a comparable order of magnitude (to rooms on the 6th and 7th floors). The Council might have a point if Mr Dunford was seeking to say "prevailing VSCs/NSLs at Tottenham Court Road are [x] and that applies to Wapping". But he is not. He is saying "here is another urban location, to which the Mayor's SPG applies, where almost precisely comparable percentage reductions in VSC and NSL were found acceptable". The Council has simply failed to engage with that argument, no doubt because the point is unanswerable.

59.3 Royal Mint Street [Dunford App 7.3]. This site is within the Council's area about 15 minutes' walk from the Appeal Site, and was described by Mr Dunford as having a similar urban grain in terms of a mix of larger and smaller residential and commercial properties. The OR at §8.138 recorded that 75 out of 88 windows on Royal Mint Street would experience VSC losses in excess of 40% (but mostly in excess of 60%), with NSL results showing "a similar pattern in terms of both the number and magnitude of failures". While it is accepted that the site was within an opportunity area, that point alone is not an adequate explanation as to why the magnitude of impacts found acceptable there does not in reality dwarf the much reduced number and extent of impacts with the Appeal Scheme.

59.4 South Quay Plaza [Dunford App 7.4]. The Anstey Horne ES chapter identified literally hundreds of results (both VSCs and NSLs) which are more

substantial than the present case (the position is summarised as Tables 17-12 and 17-13), and justified them as acceptable. The Council agreed. There has been no coherent explanation as to why, if such impacts were acceptable at South Quay Plaza, the far more limited impacts of the Appeal Scheme are not.

60 Further, there are numerous considerations which the "blunt instruments" of the VSC and NSL tests set out in the BRE Guidelines are incapable of taking into account, but which are plainly relevant to the planning decision-maker assessing overall "acceptability". For example:

60.1 Improved and/or Satisfactory Views. The numerical analyses of the VSC and NSL cannot take into account that (a) views towards Site A will consist of views towards the very high quality 4-storey Cinnamon Street elevation (which will be both extremely pleasant, and in the case of windows at first floor level and above a very considerable improvement over existing views across the derelict and unsightly Site A), or that (b) oblique views (in particular from the eastern-most Ross House windows) will no longer be towards an ugly cement wall, but will be significantly improved, taking in the western part of the new Site B building.

60.2 The deciduous trees in front of Ross House (in particular, the large one to the east). The BRE Guidelines state that it is too difficult to model trees when calculating VSCs and NSLs. No doubt that is true. But what should be evident from the substantial deciduous trees that are right in front of the relevant windows here is that (a) in winter (as will be seen on the site visit), these will have very little impact on the daylight reaching the relevant part of Ross House (with or without the Appeal Scheme), but (b) in summer, because the trees are so substantial (and as pictures of them in full bloom reveal) and so close to the relevant windows (just a few metres away), daylight conditions in the material part of Ross House will be primarily affected by the foliage of the trees (especially the easternmost tree), quite irrespective of any 4-storey building opposite on the Appeal Site.

60.3 Curtains at Ross House. While the Council sought to mock this consideration during Mr Dunford's XX, and while of course it cannot be factored into the mathematical models which make up the VSC and NSL tests, it is a relevant factor when assessing impacts for the ground floor Ross House windows. It is relevant because eyes should not be closed to a practical reality, merely because it has no place in some algorithmic calculation. The practical reality here is that, because of their ground floor location, because of exposure to the street (just a few metres away, beyond some low railings), and because in most cases use of the room in question is for bedrooms, residents of the relevant flats do appear to be more concerned about enhancing their privacy than raising their VSC scores.

60.4 No-one will be plunged into darkness. It is entirely accepted that there is a preference for natural light over artificial light. Sight should not, though, be lost of the fact that any noticeable reduction in natural light to accommodate regeneration of a derelict and unsightly neighbour does not require anyone to live in darkness. In any event, as explained further below, retained levels of natural daylight are, on any view, good.

61 Turning to Ross House, the first 3 windows/rooms to be considered are the 3 under the balcony. Impacts on these should be disregarded, because the "without balcony" calculations show (in terms of BRE Guidelines, §2.2.11) that the "main cause" of any non-compliance is the balcony. As Mr Dunford explained, the BRE supports disregarding impacts in such a scenario. (The Council's Closing Submissions accept, at paragraph 203, that this is the thrust of the BRE Guidelines.) Mr Dunford explained in XX that the underlying principle is that the design of Ross House is "taking more than its fair share of light" if the "with balcony" results are considered. His evidence in chief to the effect that disregarding under-balcony rooms where there is less than a 20% reduction in the "without balcony" scenario is universal country-wide "custom and practice" was not challenged in XX. Nor does the Council cite any example where such "custom and practice" has not been applied.

62 As for the other 11 windows affected (the 10 at Dunford §4.10 and W8/51 (a first floor bedroom which passes the VSC but not the NSL)), it is not necessary to consider each individually. Taking into account the submissions above, the reductions are well within the range of acceptability. In particular:

62.1 VSC and NSL reductions are well within the sort of range where consent has been granted by the Council, and at least one other London authority.

62.2 The "proposed VSC" levels accord with what is experienced in neighbouring areas.

62.3 Retained NSLs are reasonably high. Even in the eastern-most ground floor rooms, retained NSLs are above 50%, meaning in effect that the southern part of the room (lit by the window) will remain well lit. Further, as Mr Dunford pointed out (evidence on which he was not challenged in XX), the relevant light is "good quality" light, because it derives from the top part of the sky, above Site A.

62.4 Pertinent to the above is that the relevant Ross House rooms are all south-facing. Further, they will all retain excellent sunlight levels. This is set out numerically in the "Sunlight Analysis" at Appendix B of Point 2's original report [Harris App 3]. The "proposed" levels for the relevant ground floor rooms range from 42-47 (annual) and from 8-11 (winter), as against BRE

targets of 25 and 5 respectively. This just emphasises that retained lighting conditions, even in the ground floor rooms, will remain good, and entirely within the bounds of acceptability.

62.5 In order to ensure full VSC and NSL compliance with the BRE Guidelines (as Mr Humphreys, at any rate, seemed to suggest should be the case), Inquiry Document 15 demonstrates that it would be necessary to remove the 4th storey of the northern part. This would compromise the design of the relevant elevation, would result in the loss of flats M24 and M25, and would thus further undermine the viability of the scheme (no doubt resulting in reductions of affordable housing that could be proposed). At one point in the 2nd week of the Inquiry, the Council muttered that Inquiry Document 15 "does not reflect the Council's case" on cut-backs. As to this, the position is as follows:

a. The Council has not advanced a positive case as to what level of "cut-backs" it says are required. As in so many areas, the Council has criticised the Appellant, without offering its own clear blue-print of acceptability.

b. It fair to say that Mr Harris volunteered lower retained VSCs than BRE guidelines (20 in his proof, amended to 22-23 in oral evidence). However, neither Mr Harris nor the Council has offered any precision on NSLs, either as to what % reduction beyond 20% (if any) the Council would tolerate, or what retained NSL would be acceptable. Accordingly, it is not possible to model anything to reflect the "unknown" of the Council's case. It is a matter for the Council whether it chooses to play its cards so close to its chest, but it cannot criticise Inquiry Document 15 if it does so. The Inspector can note that the Council has produced no evidence to the effect that its "case" (if it has one) as to what cut-backs would be required is materially less than shown on Inquiry Document 15.

Site A within the Appeal Scheme

63 The Council's Statement of Case and Closing Submissions (paragraph 122) seeks to raise ill-considered points about the daylight/sunlight conditions of two of the rooms on the lower floor around the courtyard area within Site A. It is unclear on what basis the Council does so. There is no reason for refusal raising these matters, and no evidence of any Member concern, notwithstanding that daylighting conditions within the Appeal Scheme were fully explained within the OR. Be that as it may, these points are without substance or merit as objections to the Appeal Scheme.

64 A holistic assessment is required, and when that is carried out, the relevant new units cannot be described as anything other than "high quality" in amenity terms. The Site A units in question are all private units; no-one will be forced to buy one, and anyone

concerned about ADF minimum compliance to the exclusion of anything else will not buy unit M04. However, these private market units are unquestionably miles above the level at which it would be appropriate for the planning system to intervene.

65 Dealing first with the daylight/sunlight conditions of the relevant Site A units:

65.1 It is agreed that the ground floor living rooms for units M04 and M05 do not meet ADF recommendations in the BRE Guidelines. This is because of the balconies above: see Dunford §9.3 and App 6 (none of which was contested during his evidence). That does not give rise to the Appellants making a comparable point regarding the Ross House under-balcony rooms. But it does demonstrate the "trade-off" that was built into the design here. The lowest units have living rooms that do not meet the ADF minima, but as compensation they all have their own balconies. Anyone whose preference would have been otherwise will buy elsewhere or on a higher floor. It is respectfully submitted, however, that there are lots of people who will be interested in the design (and inherent preference) which the Appellant wishes to bring to the market, and that is before considering all the other amenities offered by the Appeal Scheme.

65.2 It is inevitable, especially with higher density development in London in the current "housing crisis" climate, that some lower-floor rooms will not meet the guidelines for ADF minima. The Council has recognised this elsewhere. At Royal Mint Street [Dunford App 7.3], OR8.145 records over 100 habitable rooms which would not meet the ADF minima, most of which were "private studio units". The plans within Dunford App 7.3 evidence ADF readings as low as 0.6% (lower than at Site A). As Mr Dunford pointed out, he could not think of a worse habitable room in this context than a private studio unit, which does not have the advantage of either a balcony or rooms on the floor above. The proposed South Quay Plaza plans also showed ADF failings, notwithstanding that the scheme was being brought forward on a cleared site. In both cases, the Council granted planning permission.

65.3 The ADF recommendations derive from BS8206. However, as page (iv) of that document [CD8.15] makes clear, "this part of BS8206 takes the form of guidance and recommendations. It should not be quoted as if it were a specification …". The Council has lost sight of this simple message in its search for something to beat the Appellants over the head with.

65.4 Turning to sunlight issues, it is accepted that a number of rooms on the lower floors within the courtyard (parts of which are either north-facing, east-facing, or facing towards the 5-storey elevation) do not meet the minimum sunlight figures in the BRE Guidelines and associated BS8206. However, as Mr Dunford explained in his proof (evidence which was not challenged in XX),

and as the Inspector will know, reactions to direct sunlight differ. Some people are enthusiastic, others regard it as a nuisance requiring curtains or blinds to be drawn. BS8206 emphasises at §5.3 (as do the BRE Guidelines at §3.1.10) that it is all a matter of purchaser expectations. Here, anyone buying a lower-floor flat with a north- or east-facing aspect, or one facing a 5-storey elevation across the courtyard, will have no reasonable expectation of direct sunlight. Again, though, they will have a balcony, and the many other amenities of the area and the proposed scheme, which will more than compensate.

66 The factors which more than make up for reduced levels of daylight/sunlight in lower levels of the Site A courtyard properties include the following:

66.1 Every relevant property has a balcony.

66.2 The relevant Site A units all have floor to ceiling glazing (including to the affected rooms). There will be no feeling of being imprisoned in a dark space with only a tiny window showing a glimmer of the sky.

66.3 All the relevant flats enjoy views over, and direct access into, the high quality courtyard area.

66.4 The relevant units are all duplex units, on both the ground and first floors.

66.5 Unit sizes are substantially above the Mayor's minimum requirements (apart from M06, which is dual aspect): see dimensions at Watkins p79.

66.6 M04 and M05 are west-facing units which face the 5-storey element. Potential purchasers may well consider that views of such a well-designed elevation (which even Mr Froneman was unable to find a basis to criticise) are a very positive aspect.

66.7 It is common ground that the Site A courtyard units will be very quiet, the enclosure of the courtyard shutting out noise from Wapping High Street and beyond.

66.8 The Site is excellently located, close to public transport, with ample cycle parking, and with a high level of local amenities.

67 Overall, there is no coherent argument that the flats in question offer anything other than high amenity levels. The Council's complaints to the contrary are misconceived and should be roundly rejected.

PLANNING BALANCE

68 Insofar as any planning balance falls to be struck (whether pursuant to NPPF §134, if engaged, with due according of considerable weight to any "less than substantial harm" identified; or when making a determination as to the "acceptability" of daylighting conditions at Ross House or the outline servicing arrangements), it comes down very clearly in favour of the grant of planning permission. The Appeal Scheme will bring the important planning benefits identified in the opening paragraphs of these Closing Submissions. It will bring forward high quality new homes (a considerable number of which are affordable, and family-sized), in a very high quality design.

CONDITIONS

69 It is understood that agreement has now been reached between the parties on issues raised at the conditions session, and that this will be explained in a joint note.

CONCLUSION

70 For all these reasons, the Appellant invites the Inspector to allow the Appeal and grant planning permission for this sustainable, high quality and much needed regeneration scheme.

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LONDON

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