

UNITED KINGDOM HOLOCAUST MEMORIAL AND LEARNING CENTRE
APPLICATION BY THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES
AND LOCAL GOVERNMENT

PINS REF. APP/X5990/V/19/3240661

CLOSING SUBMISSIONS ON BEHALF OF THE THORNEY ISLAND SOCIETY/SAVE
VICTORIA TOWER GARDENS & THE LONDON GARDENS TRUST

Introduction

1. For the many reasons which follow the Thorney Island Society/Save Victoria Tower Gardens and the London Gardens Trust respectfully request that planning permission be refused for the Holocaust Memorial and Learning Centre proposed to be located in Victoria Tower Gardens. In summary, the proposals before the inquiry would cause substantial harm to the settings of numerous designated heritage assets of the very highest value and significance. They would result in both the loss and transformation of substantial areas of valuable and valued open space in an area of already low provision. They would be likely to result in the loss of fine mature trees which contribute so substantially to the quality and value of Victoria Tower Gardens and the setting of the Palace of Westminster and the World Heritage Site.
2. **Vote of thanks:** But before getting into the substance of my submissions, I want to record a vote of earnest thanks to the Planning Inspectorate support staff who have contributed so substantially to the successful smooth running of this virtual inquiry event. They have worked tirelessly throughout the proceedings – and very often at night and on weekends – but always with great patience and good humour despite all the demands placed upon them. I am sure I speak for all those who have appeared before this inquiry in thanking them or their most welcome efforts on behalf of us all.
3. These submissions are organised in accordance with the list of issues for consideration identified by the Inspector.

Background

4. The proposal for a UK Holocaust Memorial was first announced in January 2015 in the then Prime Minister, David Cameron's, Holocaust Commission Report "Britain's Promise to Remember". The report stated that "there should be a striking new memorial

to serve as the focal point for national commemoration of the Holocaust. It should be prominently located in Central London to attract the largest possible number of visitors and to make a bold statement about the importance Britain places on preserving the memory of the Holocaust.”

5. In January 2016, the then Prime Minister (David Cameron) announced that “this memorial will be built in Victoria Tower Gardens”.
6. A design competition was launched in September 2016 and in October 2017 it was announced that Adjaye Associates, Ron Arad Architects and the landscape architects Gustafson Porter + Bowman had been selected to design the new Holocaust Memorial and (by now) Learning Centre to be located in Victoria Tower Gardens.
7. In January 2019, the Secretary of State for Housing, Communities and Local Government, Robert Jenrick MP, made the application to Westminster City Council for planning permission for the “installation of the United Kingdom Holocaust Memorial and Learning Centre...” to be located in Victoria Tower Gardens.
8. Victoria Tower Gardens lie on the banks of the Thames to the south of and immediately adjacent to the Palace of Westminster and Westminster Abbey UNESCO World Heritage Site and to the Palace of Westminster itself, a Grade I listed building. The Gardens themselves are a Grade II Registered Park and Garden and form part of the Westminster Abbey and Parliament Square Conservation Area. They contain a number of statutorily listed buildings: Rodin’s Burghers of Calais (Grade I), the Buxton Memorial Fountain (Grade II*) and the Emmeline and Christabel Pankhurst Memorial (Grade II*).
9. Other designated heritage assets in the vicinity include: Lambeth Bridge (Grade II listed), Victoria Tower Lodge and Gates to Black Rod Garden (Grade I listed), Northwest House, Millbank (Grade II listed), The Church Commissioners (Grade II* listed) and Lambeth Palace (Grade I listed). Smith Square Conservation Area lies immediately to the west of the Gardens and includes St John's Smith Square church (Grade I listed), visible from Victoria Tower Gardens.

10. The surrounding area has an extremely large and diverse range of buildings dating from the twelfth century to modern times. The majority of the buildings within the Conservation Area are listed; however, buildings of all eras and styles contribute to its character.
11. It is hard to think of a more sensitive area in terms of its cultural, historical and heritage significance.
12. On 5 November 2019, the Secretary of State called in the application for his own determination, rather than leaving it to be determined by the City Council.
13. The Rule 6 parties who oppose the development and many others raised concerns about the lawfulness of the decision making procedure involving the applicant for the planning permission being the decision maker on his own application and therefore “a judge in his own cause”.
14. These concerns were expressed against the background of many statements about the Government’s, the Prime Minister’s and the Secretary of State’s commitment to the development proposed in Victoria Tower Gardens being carried out.
15. On 8 August 2019, the Secretary of State stated that “The National Holocaust Memorial and Education Centre has the complete and unshakeable support of the Prime Minister and I. It is a project of exceptional national significance.”
16. The Government’s election manifesto published on 24 November 2019 contains a commitment to “support the construction of the planned UK Holocaust Memorial”.
17. The Prime Minister has stated his personal commitment to its construction, saying in his speech at the Holocaust Memorial Day service on 27 January 2020 that “I will make sure we build the National Holocaust Memorial and Education Centre”.
18. In February 2020, when it appeared that Westminster City Council might oppose the proposed development, the Secretary of State said that

“the naysayers on that project will not succeed. We will build that memorial — let me promise you that.”

19. On 11 February 2020, immediately before Westminster City Council considered his application, the Secretary of State stated that

“the Government remains implacably committed to the construction of the Holocaust Memorial and Education Centre at the heart of our democracy, beside our national Parliament ... No one, whether in national or local government should shirk their duty to deliver on the promise of this memorial, and the Government certainly will not”.

20. Despite the uncompromising terms of this injunction by the Secretary of State, who – never forgetting – was also the applicant for planning permission which was being considered by the City Council, their Planning (Major Applications) Sub-Committee resolved unanimously that they would have refused the application if it had not been called in by the Secretary of State.

21. This unanimous resolution of the City Council’s was made having full and proper regard to the planning merits and, although the committee supported the principle of the proposal, they accepted the recommendation of their professional officers and concluded that the development was objectionable because of its size, design, location and associated activity, as well as for reasons of harm to heritage assets, impact on the many mature trees on the application site and as a result of loss of recreational open space.

The Thorney Island Society/Save Victoria Tower Gardens and the London Gardens Trust

22. The stance of the Rule 6 parties whom I represent complements the position of the City Council (although Thorney Island Society/Save Victoria Tower Gardens raises two additional issues, namely, highways impact and flood risk – see further below). They have various but overlapping objections to the proposals before this inquiry.

23. The Thorney Island Society is the local amenity society for the area of south-east Westminster, which includes Victoria Tower Gardens. Their remit is to protect the amenities that people living and working in the area value. As a local amenity society they were officially consulted by the City Council on the application.

24. The Save Victoria Tower Gardens campaign was founded in the autumn of 2016 - to coincide with the launch of the design competition for the Holocaust Memorial proposed for Victoria Tower Gardens by David Cameron. The Campaign is supported by a very large number of individuals and organisations objecting to the project. Their supporters originate not only from SW1, but from all over London, the UK and even abroad.
25. The London Gardens Trust is a charity with the principal object of preserving and enhancing the quality and integrity of London's green open spaces. The Trust was never consulted before the launch of the public consultation with assumed the location of the proposals in Victoria Tower Gardens. This is surprising given its affiliation to the Gardens Trust, a statutory consultee in the planning process.
26. The Trust takes its work and responsibilities very seriously and has invested considerable effort to produce a carefully considered Heritage and Significance Statement for Victoria Tower Gardens (CD 8.46). The Trust has been actively involved in the planning process as an objector to the proposals and, because of its particular concern about the impact of the proposals on Victoria Tower Gardens a Grade II Registered Park and Garden, has also secured Rule 6 status in this inquiry.
27. The Trust were also the Claimants in the High Court judicial review of the Secretary of State's decision making arrangements proposed for the determination of the application before the inquiry.

The principle of the proposed development

28. As confirmed at the opening of the inquiry and as everyone should be well aware, the parties whom I represent are not opposed to the principle of an appropriate memorial to the horrors of the Holocaust. Indeed, many of their supporters are Jewish people whose families were either forced to flee the Holocaust or who perished in it.
29. Equally, Mr Lowndes' confirms that "delivery of the United Kingdom Holocaust and Learning Centre is an important public benefit" (albeit a "generic" one for the reasons he explained – see below), CD 8.51 para. 6.4. But the parties we represent nevertheless oppose the location of the proposals in Victoria Tower Gardens given the numerous and fundamental objections to them which are set out below.

Victoria Tower Gardens as a location for the proposals

30. Victoria Tower Gardens is an inherently unsuitable location for the proposed Holocaust Memorial and Learning Centre. Indeed, it is hard to think of a more sensitive location in terms of its cultural, historical and heritage significance. Moreover, and this substantial objection has been given scant consideration in the case put forward by the Secretary of State to justify these objectionable proposals, but it is proposed that they be located in a registered public park, an “existing open space” protected under development plan policies and the NPPF, and within an area of acknowledged shortage of provision.
31. So Victoria Tower Gardens is in policy terms (and on any common sense view) an inherently unsuitable location for the proposed development. The question of whether there is any actual benefit in locating the application proposals next door to Parliament is considered below.

Consideration of other sites

32. Proper consideration of alternative sites is yet another issue which received scant consideration in the choice of Victoria Tower Gardens as the location for the application proposals. In fact, Victoria Tower Gardens was only settled on as a location for the proposals in what Mr Balls described as the “moment of genius” in a meeting in January 2016. It will be recalled that Lord Pickles was asked whether there were any professional reports considered at that meeting to inform that choice. He said they would be produced to the inquiry if there were. Since no reports have been produced, it can be inferred that no such reports exist or were considered to inform that so-described “genius” decision to locate the development somewhere as inherently unsuitable as Victoria Tower Gardens.
33. As for the exercise which was undertaken, it is to be noted that the Holocaust Commission, see CD 5.9 pages 53-65, after studying the available options identified three individual Central London sites (IWM, Potter’s Field and Millbank) which were evidently regarded as fulfilling the Commission’s objective of providing a “striking new Memorial to serve as the focal point for national commemoration of the Holocaust... prominently located in Central London”, CD 5.9 page 41. Equally, CBRE shortlisted three potential sites to fulfil those objectives (Royal College of Gynaecologists, Knightsbridge Barracks and Middlesex Hospital) see Mr Goddard’s proof CD 8.34 para. 4.9, although Middlesex Hospital was ultimately regarded as not being a sufficiently prominent location.

34. Victoria Tower Gardens by contrast was chosen in a so-called “moment of genius” in January 2016 (Mr Balls’ coinage, Day 12 pm) without any professional assessment to support the choice of the site and, still less, no public consultation as to its suitability, acceptability or desirability as a location. For the avoidance of doubt, subsequent consultation through exhibitions and presentations cannot remedy this failure of consideration because there was no option, despite vocal opposition to the proposals from large numbers of members of the public, for the proposed location to be reconsidered by this stage.
35. Likewise, the exercise of consideration of alternatives in the Environmental Statement (CD 6.11 page 12 and updated in CD 6.49) was a mere perfunctory exercise carried out long after Victoria Tower Gardens had been settled on irrevocably in that highly questionable “moment of genius” in January 2016. Where IWM was concerned it was also based on an incorrect factual summary of the Sir Norman Foster designed bid, dismissing the Memorial element as being “attached to a back wall with no prominence and a below-ground learning centre adjacent to it”, CD 6.11 para. 4.1.3, when what was proposed was a three storey high wall of remembrance alongside the building and a sculpted memorial located beside that (with the learning centre provision below ground, ie the same as what is proposed for Victoria Tower Gardens).
36. These important matters have been effectively excluded from the justification of the proposals before the inquiry. As Mr Goddard said in his evidence in chief “VTG represents the end not the beginning of the search”, Day 17 am. That is, the attitude of the Secretary of State is that the choice has been made; location of the proposals in Victoria Tower Gardens is in effect a fait accompli; the site search process was not a matter for scrutiny in the public inquiry.

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

37. By way of preliminary comment it is to be noted that of course the heritage designations within and surrounding the application site intersect and overlap and many of the impacts on any one of them will also be suffered by others (see Mr Lowndes’ reference to the “complementary and overlapping heritage designations” in the Gardens, CD 8.51 para. 2.8 and compare Dr Miele’s description in his oral evidence: “the heritage designations dovetail and overlap to a significant degree”, Day 14 pm).

38. But it is appropriate to start with the impact of the proposed development on Victoria Tower Gardens as a Grade II Registered Park and Garden in its own right, the causing of any harm to which should require “clear and convincing justification” within the terms of para. 194 of the NPPF.
39. Furthermore, as an area of “existing open space” covered by the policy in para. 97 of the NPPF, the presumption is that it should not be built on unless specific criteria are satisfied, none of which apply here.
40. One would have thought that that submission could safely be left there. But for the fact that there was (1) a spirited but unconvincing attempt by Lord Pickles to argue that the proposals were for “alternative sports and recreational provision” – a point not apparently adopted by his professional team, XX by ML Day 12 pm and (2) a late attempt by Mr Goddard to lay claim to consistency of the proposals with paras. 97 (b) and (c) – albeit not prefigured in his proof, CD 8.34 (unless you count para. 8.8) and certainly not in the applicant’s statement of case, CD 5.24. But his stance did not involve a tenable construction for the reasons put forward in XX by Mr Edwards Day 17 pm.
41. As all parties accept, Victoria Tower Gardens is an oasis of calm in the heart of the capital, framed as it is by a large number of very fine substantial mature trees – which are integral to its special character – and benefitting from a most pleasing uncluttered openness of aspect. As described eloquently in Mr Moggridge’s evidence, it functions as a green lung in an area which already suffers from poor provision of recreational space.
42. As noted in Ms Prothero’s evidence, and this is plainly visible on the ground, “The visual character of the park is dependent on the quality and nature of views”, CD 8.46 page 88 para. 92 and compare the applicant’s evidence that the Gardens have an “elegant” and/or “powerful simplicity”, see XX of Sir David by Mr Edwards QC Day 9 pm and Mr O’Shea’s proof CD 8.7 para. 1.10.
43. As Ms Prothero pointed out, the applicant’s assessment of the special qualities of the Gardens, and therefore its estimation of the extent of harm to it, is inadequate in that it does not analyse the heritage asset in terms of its “values”, despite the clear guidance to that effect in English Heritage/Historic England’s Conservation Principles, Policies and

Guidance (CD 8.46 Part 2) see her proof CD 8.46 Part 1 para. 1.2.7. Dr Miele explained in cross-examination that he does not tend to use that Guidance because of some of its terminology including “communal value” which he said was sometimes hard to assess, XX by ML Day 14 pm. But it was not suggested that Ms Prothero’s assessment of the Gardens’ values was wanting in that respect. And of course “communal” value is a most important consideration in this particular case.

44. Ms Prothero also observed that the applicant’s analysis includes no consideration of wider or simultaneous views or the potential for enjoyment of more than one heritage asset within the wide, open landscape of the gardens, CD 8.46 Part 1 para. 1.2.8. Similarly, she said, their analysis includes little discussion of the impact of additional hardstanding, soil mounding, and the imposing Hostile Vehicle Mitigation barriers and other fencing and ancillary structures on the character and amenity of the Gardens (same reference).
45. Likewise, as set out in the evidence of Mr Moore, the application proposals with their associated grass mounding would completely change the existing intimate and tranquil atmosphere of the Gardens resulting in the loss of its special qualities and in its character being “irrevocably changed”, see Mr Moore’s proof CD 8.52 para. 4.2.1.
46. As assessed by Ms Prothero, the proposals would involve the loss of more than a quarter of existing open recreational park space, cramping the remainder of what remains and reducing in size and cutting off the children’s playground from the public realm, CD 8.46 Part 1 para. 2.1.11. These figures were disputed by Mr Katkowski QC in XX, Day 6 am. And it is acknowledged that in purely physical terms the area of the Gardens which would no longer be freely accessible is 1429 sq m, see Planning SoCG CD 5.30 para. 10.4, apparently equating to 7% of the total park area.
47. But an arithmetic approach does not ultimately assist in answering the question of what the visible and perceptible impact of developing the Holocaust Memorial and Learning Centre in Victoria Tower Gardens would be, and the parties whom I represent maintain that the applicant’s proposals will involve the loss of a large proportion of these most valuable and valued gardens and, as set out also in the evidence of Mr Moggridge and Ms Annamalai, will inevitably cause a substantial loss of the functional area of the park and result in its being swamped and overwhelmed by a huge increase in visitor numbers –

unrelated to the primary function of the Gardens as a public park. As Mr Moggridge pointed out, the mound will not be as accessible to all users as a flat, grassed park. For visitors to the gardens this physical loss of functional area will be reinforced by the presence of visitor management staff (whether uniformed or wearing high visibility jackets as anticipated by Mr Annamalai) whose role will be to supervise people coming to see the Memorial and Learning Centre.

48. What the experience will be for park users is one which will be transformed from one where they enter the Gardens unrestricted and enjoy its wide open views to one where they simply have the sense that they are entering the landscaped setting of the new Holocaust Memorial and Learning Centre. As Professor Tavernor agreed with me, the influence of the proposals before the inquiry will be felt throughout the Gardens “as a whole” once the proposals were in place, XX ML Day 13 pm.
49. That is, the consequences anticipated by Mr Moggridge, Ms Prothero, Mr Moore, Ms Annamalai and Mr Lowndes will come to pass. Ultimately, therefore, the character of the Gardens would be transformed from that of affording the wide open setting for the existing memorials within it into one where, far from being “the Garden of the Nation’s Conscience”, it would simply become “the Garden of the Holocaust Memorial and Learning Centre”. By way of reply to the Inspector’s question whether this “matters” the answer is that it most certainly does before the existing character of the Gardens would be lost, to the point that Ms Prothero thought that they would be deregistered, Inspector’s questions Day 6 late am (and Dr Miele did not dissent from that, Day 14 pm).
50. As explored in detail below, another completely unknown quantity on the current state of the applicant’s evidence is the likely extent of tree loss as a result of invasive excavations to accommodate the development which is another significant failing in the conception of the proposals.
51. As Ms Prothero’s evidence concludes, if allowed, the application proposals will irreversibly change and substantially harm the character of the consciously designed Grade II RPG. They would turn a calm green garden space into a cluttered, visually and physically congested and urbanised “landscape” to the substantial detriment of its special amenity and character, see CD 8.45 para. 6.1.7 and Mr Moggridge CD 8.45 paras. 22-23.

52. Ms Prothero's evidence is also forcefully complemented and corroborated by Mr Lowndes' evidence as to the substantial harm which would be caused to this most important heritage asset, the significance of which he assesses, in common with Ms Prothero, as "very high", particularly in the light of the other very high value heritage assets located within it and surrounding it.
53. Both Ms Prothero and Mr Lowndes were tackled on the Bedford (CD 7.2 paras. 24-25) versus PPG (CD 4.13 para. 18a-018) debate. Mr Lowndes confirmed that he prefers the approach in the latter and made the point that he did not think that Bedford could have been decided in the same way if the PPG had been in existence at the time (which of course it was not), XX by Mr Katkowski QC Day 8 am. Ms Prothero was comfortable with either formulation, pointing to the phrase "very much reduced" and saying that she took the view that threshold was met, XX by Mr Katkowski QC Day 6 am. At the end of his cross-examination on this topic, Mr Lowndes confirmed that if the Bedford approach was to be applied, it was satisfied on the basis of the heritage significance of the Gardens, the conservation area and the Buxton Memorial being "very much reduced".
54. But for the avoidance of doubt, on behalf of the parties whom I represent, it is submitted that the Bedford case does not set out the legal definition of what "substantial harm" means. It cannot impose a gloss on the ordinary and natural meaning of the words in the NPPF. Similarly, it cannot be imposed as a substitute for the clear wording of the NPPG: "For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest". As Mr Lowndes said in XX, the NPPG does provide very helpful guidance as to how to assess the scale of harm and the impact upon significance.
55. Also on substantial harm, it is acknowledged that there is a variety of views across the range of parties to and participants in this inquiry as to whether the harm is substantial or less than substantial (and if less than substantial at what level within that spectrum). The witnesses for the Rule 6 parties whom I represent have explained cogently why they take the view that substantial harm would indeed be caused and there is a substantial degree of common ground between them and the City Council, especially having regard to the likely effect on trees. Dr Miele and Professor Tavernor "net" or "balance" out at lesser

degrees of harm (and Professor Tavernor even takes the view that there is positive enhancement). Historic England, as so often in cases of this sort, are somewhere in the middle. Dr Miele of course says that their conclusions should be tempered by “netting”. But the City Council and the Rule 6 parties point out respectively that (1) they did not seem to take full account of the obstruction of View 22 and (2) they focused on the built environment rather than the character of the RPG as a whole, reflecting their more limited remit (highlighted eloquently by Mr Lambert of the Gardens Trust).

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

56. Westminster Abbey and Parliament Square Conservation Area is one of the most, if not the most, significant and valuable conservation areas in the country, and assessed by Mr Lowndes as being of very high significance. It follows as above that the application proposals would not “preserve” but would in fact substantially harm the character and appearance of the conservation area of which the Gardens form an integral part and therefore cause substantial harm to its significance.
57. This issue very much overlaps with the topics of harm to the RPG above and to the WHS and to the Palace of Westminster as a listed building below and so the same causes of substantial harm to those assets are prayed in aid here. One issue specific point, however, is to record my discussion with Dr Miele in XX in which he agreed that impact on a conservation area is not to be judged according to how great or little a percentage of it is affected; the important consideration is to look at the impact on the part of the area which is affected, XX by ML Day 14 pm.

Whether the proposals would preserve setting of Grade II* Buxton Memorial

58. As above, the setting of the Grade II* Buxton Memorial would be substantially harmed if the application proposals were permitted to be constructed immediately alongside it, also assessed by Mr Lowndes as being of very high significance. As evocatively described by Mr Moggridge, CD 8.45 para. 7, the Buxton Memorial would be “engulfed” by the proposals, to the substantial detriment of its setting and significance.
59. This is starkly illustrated by the image from the DAS reproduced on page 8 of Mr Moore’s evidence, CD 8.52. Mr Moggridge’s evidence is of a piece in this respect with Ms Prothero’s, Mr Moore’s and Mr Lowndes’.

60. As the Inspector will appreciate, there is no viewpoint image from the north west entrance to the Gardens but it seems likely that the Buxton Memorial would be altogether obscured from this location and/or the position in front of the Pankhurst Memorial, eg as I raised with Sir David in XX Day 9 am and with other witnesses.
61. Likewise, despite the range of opinions expressed as to the severity of this adverse effect, the fact remains that the applicant's own Environmental Statement records that the impact in views from Dean Stanley Street would be a "moderate adverse effect to visual receptors. The effect would be direct, local and permanent", CD 5.1 para. 9.202. A moderate adverse effect is one described as being one where "the scheme would cause a noticeable deterioration in the value of the receptor", in CD 5.1 para. 2.44.
62. This impact is the more material and significant given the intentional placing of the Buxton Memorial at the end of that axial path continuing the line of Dean Stanley Street as shown on the very interesting 1949 plan (which nobody else had been able to find), see Ms Prothero's App. 5, CD 8.46 Part 1 page 67 and the accompanying letter at page 107: "it is desirable however that this memorial of an act outstanding in the annals of Parliament should not be far removed from the scene of its achievement. It is proposed therefore subject to the approval of Parliament to re-erect it on a site in the Victoria Tower Gardens at the river end of the footpath which continues the line of Dean Stanley Street. This site has been agreed with the Anti-Slavery Society and the Royal Fine Art Commission".
63. It is submitted generally that none of the benefits claimed as to the enhancement of its setting in the form of new benching, lighting and improvements to interpretation are sufficient to outweigh this identified harm. In any event, as pointed out by the City Council, those benefits (if benefits they be) could always be achieved independently of the application proposals, XX of Dr Miele by Mr Edwards QC Day 14 am.

Whether the proposals would preserve the setting of the Grade I Palace of Westminster

64. Again, the proposals would substantially harm the setting and therefore significance of the Grade I listed Palace of Westminster. As Mr Moore says, this substantial harm arises as a result of placing this "flawed and over large" Memorial within its setting. Its impact in views of the Palace would be marked and damaging.

65. As Mr Moore forcefully described, the contrasting styles of the jagged bronze memorial and the geometric stone faced pavilion exacerbates the challenge of accommodating the proposals on their constrained site resulting in a “cacophony”, CD 8.52 para. 4.2.2.2.
66. As he said, the Buxton Memorial is left looking “incidental, a piece of flotsam in on the wave of new work”, same reference.
67. Mr Moore also referred to the incongruous “business” of the courtyard space and expressed views generally on the contended for quality of the proposals which are revisited below under the heading of benefits.
68. But the short point here is that the proposals would represent a damaging and unwelcome intrusion into views of the Grade I Palace of Westminster from a part of its setting which was consciously planned to afford those iconic views.
69. As Mr Lowndes concludes, CD 8.51 para. 5.33, the proposals would profoundly change the relationship between the Gardens and the Palace of Westminster so that the Palace, a heritage asset of the very highest significance, would no longer be seen “clearly and dramatically from the gardens” as it now is and that many views of it would be blocked, obscured or filtered by a built form quite alien to the character of the area. Again, it is hard to imagine a heritage asset of higher significance than the Palace of Westminster in the whole of the UK.

The effect of the proposals on the OUV of the World Heritage Site and its setting

70. This topic was covered comprehensively and authoritatively in the evidence of Ms Denyer, Secretary General of ICOMOS UK, who spoke on her own account but drawing on her impressive experience of the workings of that ICOMOS UK and International.
71. ICOMOS UK is the UK National Committee of ICOMOS (International Council on Monuments and Sites). ICOMOS develop best practice in the conservation and management of cultural sites, and are specialist advisers to the UNESCO World Heritage Committee on cultural World Heritage sites. Active in over 130 countries, it is one of the most highly regarded conservation organisations in the world.

72. So Ms Denyer is exceptionally well-placed to express the conclusion that the proposal would have a highly significant negative impact on the Outstanding Universal Value of the World Heritage Site amounting to “substantial harm” within the terms of the NPPF.
73. As she said in her evidence, development of the Holocaust Memorial and Learning Centre within Victoria Tower Gardens will very much reduce and restrict space from which Victoria Tower can be contemplated and understood so that detailed and medium distance views of Victoria Tower will be highly compromised.
74. She pointed out that the Palace of Westminster was designed to be dominant in the landscape through its form, size and siting and that Victoria Tower itself was designed to be the tallest and most visible part of it.
75. As she said, the setting of the Palace should allow an understanding of it as an entity, of its functions and of the dignity and symbolism with which it is endowed. If the Palace is compromised by structures around it that significantly impair its ability to rise above its surroundings as intended, then part of its symbolism will be lost.
76. As she concluded, the Memorial would compete with the Palace in terms of symbolism as well as visibility so that the symbolism of the Palace, and particularly the Victoria Tower, would be highly compromised. It will interfere with and demean the setting of the Palace as “vivid symbol of one of the oldest parliamentary institutions in the world”; will restrict views of the Victoria Tower intended to be a dominant element of its design, and weaken overall appreciation of the form and siting of the Palace.
77. Ms Denyer’s conclusions accord with Mr Lowndes’ assessment set out above.
78. She was cross-examined on the basis that the application proposals would not “lay a glove” on the features of integrity and authenticity contributing to the WHS’s OUV as set out in the statement of OUV, CD 4.18, XX by Mr Katkowski QC Day 7 am. But she maintained forcefully and thoroughly that the proposals would “interfere with and demean the setting of the Palace of Westminster” and “completely change the character of the Gardens which were designed and laid out to allow the appreciation of the Palace”. The Palace she said with its “intricate silhouettes” was “built to have “symbolism” and

Victoria Tower was a key element of its design. We say that if the Palace is to convey meaning it must have the ability for people to understand it as it was intended”.

79. She also made the point that the applicant had not carried out a Heritage Impact Assessment in accordance with the ICOMOS Guidance, CD 4.6. She did accept that the point made by Dr Miele that the Inspector had enough information to make an assessment of the issues arising and make a recommendation accordingly, XX by Mr Katkowski. But Dr Miele had no difficulty agreeing the importance of systematic methodology for identifying heritage impacts or adverse effects on the outstanding universal value of a World Heritage Site, XX by ML Day 14 pm.

80. So this is another respect in which the applicant’s background assessment was not carried out in accordance with available guidance and was not therefore appropriately “front loaded” in accordance with general principles of good planning (see further below).

81. Similarly, but more troublingly, it appears that the recommendations of the World Heritage Committee of July 2017 were not for some reason followed before the winning competition entry was chosen, see CD 4.19 respectively at pages 38 and 40:

“The mission team does believe that it might be possible to place a memorial in Victoria Tower Gardens, which would not have a negative impact on OUV and could possibly enhance the overall urban experience in the area. It will be a very difficult task, however. It is advised, therefore, that the jury take full account of the importance of the World Heritage property and its OUV when considering the final design options. The Foundation may even want to have a representative of the World Heritage Centre, or Advisory Bodies to advise the jury before decisions are taken. In any event, when a design is selected and plans are more developed, this work would definitely constitute a situation where the State Party, in compliance with Paragraph 172 of the Operational Guidelines, should submit any plans to the World Heritage Centre for review by the Advisory Bodies”.

“Recommendation 17: The Holocaust Foundation may wish to consider setting up a mechanism whereby the Jury of the design competition for the memorial is able to get advice from the World Heritage Centre and/or Advisory Bodies before a final decision is taken. In any event, the selected design and related developments should be submitted to

the World Heritage Centre, in conformity with Paragraph 172 of the Operational Guidelines”.

82. As set out in CD 4.21 page 91, the World Heritage Committee’s meeting in July 2019 records this ultimate verdict on the selected competition design was as follows: “Although ICOMOS strongly supports the idea of a Holocaust Memorial and Learning Centre in London, the proposed monument and its underground rooms located in Victoria Tower Gardens, as currently presented, would have an adverse impact on the OUV of the property, and would unacceptably compromise a key part of its immediate setting and key views. Alternative locations and/or designs should be considered”.

83. Compare the conclusion of ICOMOS’s second Technical Review, CD 8.53 page 41: “... It is further advised that, even if the project is not relocated, it should not proceed according to the current visually intrusive design. ICOMOS remains at the disposal of the State Party for further clarification on the above or assistance as required”.

84. So the stance of the Rule 6 parties whom I represent is forcefully corroborated by the conclusions of ICOMOS, as well as by those of the City Council.

Whether the proposals would preserve the character and appearance of Smith Square CA

85. Where the character and appearance of the Smith Square conservation area is concerned, again, the proposals would not preserve its character and appearance. The main issues here are the views from St John’s Smith Square and along Dean Stanley Street.

86. As noted above, in views from Dean Stanley Street there would be a “moderate adverse effect to visual receptors. The effect would be direct, local and permanent”, CD 5.1 para. 9.202. A moderate adverse effect being one where “the scheme would cause a noticeable deterioration in the value of the receptor”, in CD 5.1 para. 2.44.

87. As Mr Lowndes concludes, the proposals would not preserve the character or appearance of the Smith Square Conservation Area (a conservation area of high significance) and would cause less than substantial harm to it – but would cause substantial harm to the setting of St. John’s, a Grade I listed building of very high significance.

Whether the proposals would preserve the settings of adjacent listed buildings

88. As set out in Mr Lowndes' evidence, the proposed development would not preserve and would cause less than substantial harm to the settings of the adjacent listed buildings, namely, Norwest House, Nos 1 & 2 Millbank, the river embankment wall, Lambeth Bridge and its obelisks. He assesses these buildings as being of high significance.

Whether the proposals would result in the loss of or harm to trees of amenity value

89. This is another critical issue in the inquiry. The applicant's starting point is to assert that "no one contends that our proposals would cause the death of any of these magnificent trees", Applicant's Opening Submissions CD 11.2 para. 18. Compare Dr Hope's proof CD 8.16 para. 13.16: "there is no available evidence to confirm that any of the plane trees would be harmed in any way which would have consequences for their continued health and longevity, or killed, if the proposed development were to go ahead".

90. However, this is another example of a situation in which the applicant has not done enough front loaded preparation before coming to the inquiry.

91. Despite the number of reports produced by the applicant purporting to address this issue, the position remains that the majority of arboricultural witnesses before this inquiry (ie Mr Barrell, in common with Mr Mackworth-Praed and the officers of Westminster City Council) do not regard the submitted arboricultural documentation as sufficient in its level of detail to demonstrate that the potential impacts on the plane trees would not be likely to result in harm to them, potentially leading to their loss.

92. Therefore, and similarly, it is not agreed that these matters can be satisfactorily addressed or assured by means of an arboricultural method statement (presumably to include further after-the-event investigations and/or intrusive excavations) to be submitted pursuant to a condition or conditions to which any grant of planning permission might be subject – which is what the applicant still proposes.

93. As Mr Barrell said in cross-examination and re-examination, you cannot carry out trial investigations to see where the critical feeding roots of the trees are after the event. That has to be done before permission is granted on the basis of thorough investigations which simply have not occurred here. There is unanimity of opinion between Mr Barrell, Mr

Mackworth-Praed and Ms Milne of the City Council that plane tree roots can grow down to depths of several metres so that they will be at risk of severance from secant piling, see respectively CD 8.49 para. 2.2; CD 8.40 para. 2.5.14 and CD 5.11 page 63. Drs Helliwell, Biddle and Dobson would seem to agree with them: CD 8.40 part 2 para. 11; CD 13.3 page 298 and CD 8.16 page 82 para. 8. So would the Royal Parks, CD 6.46 Part 2 fourth page under heading root assessment: “Plane trees can and often do root down to depths of 4–6m, and sometimes deeper. The report reinforces this”.

94. The Royal Parks’ representations bear close rereading. Their views are conspicuously consistent with the balance and weight of expert opinion before the inquiry: “The root survey has identified roots only as deep as a metre and didn’t find any significant roots. This does not mean that they are not present. If the roots are not present in the surface, they must be deeper as the trees cannot survive without an extensive root system. For that reason, a reliable assessment of the impact of roots that will be cut must be made before planning permission is granted, otherwise the damage cannot be assessed. The reports make statements that suggest that the roots will be assessed when they are excavated, and a programme of work put forward at the time to help the trees recover. Some plane roots can be as large as 800mm diameter and be many decades old. Significant root loss like this can’t be recovered and encouraged to grow back by adopting techniques such as irrigation and fertilisation. Any suggestion that it can is conjecture, especially when there has been no identification of the roots affected”.
95. The lone voice against the balance and weight of these expert opinions was Dr Hope for the applicant. His stock in trade seemed more to be to dismiss the expert evidence of others rather than to present a positive case himself (see again “no available evidence to confirm that any of the plane trees would be harmed...” above).
96. He did this by referring to what he was pleased to describe as “gross inconsistency” or “unreliability” in the evidence of others or to contend that their approach was “simplistic and misguided”, “misleading” or “incredible” and that something they relied on “brings into question the credibility of the whole of their evidence”. This was the more surprising since he gave rather little evidence based on his own observations. But then he was not involved when the numerous other arboricultural experts engaged by the applicant were.

It is therefore all the more surprising that the applicant should have decided to call him as a witness at all.

97. There was a notable irony in the fact that Dr Hope said that Mr Barrell's impressive and sensitive work on the Green Park Ceremonial Wall "totally ignored" BS 5837, CD 4.16, see CD 9.2 para. 6.1.5 (even though the extensive report on that project – itself accompanied by a 98 page Manual for Managing Trees, CD 11.4 – which was before the inquiry confirmed that it was "fully compliant" with the British Standard, see CD 13.3 page 1). The irony was he himself was steadfast in his resistance of applying the terms of the "industry standard" standard where the drawing of root protection areas was concerned, see 4.16 para. 4.6.2: "The RPA for each tree should initially be plotted as a circle centred on the base of the stem. Where pre-existing site conditions or other factors indicate that rooting has occurred asymmetrically, a polygon of equivalent area should be produced".
98. Finally, on another point of critical significance, he maintained that "as the trees [on the west side of VTG] are healthy they can withstand even heavy pruning", CD 8.16 para. 8.1.5. I asked him whether this was based on his own observation or whether it was based on any independent evidence. After repeating a couple of times that the health of the trees was a matter of agreement (not an answer to my question) he then said that his conclusion was based on (1) his own observation of the trees' "health" and the fact that "they are producing healthy growth" and (2) the Bartlett report referred to in Mr Mackworth-Praed's CD 8.40 para. 3.3.1 which (he maintained in answer to another question from me) "confirms the good health of the trees to withstand even heavy pruning". When however that report (Bartlett's Tree Health & Vitality Diagnostic Assessment, CD 11.12) was produced at my request, it reveals that in fact trees 12, 13, 17 and 18 are (healthy but) suffering "mild to moderate physiological stress" and tree 12 has both suffers both "reduced vitality" and "mild to moderate physiological stress", page 5.
99. Moreover, whereas the above represents the applicant's assessment of the health of the trees at present, the report goes on to say that after "root pruning" (which the applicant has of course assumed will be less damaging than the Rule 6 parties and the City Council are satisfied it will be – based on the correct drawing of RPAs and the consistent evidence on the extent of plane tree root growth) "it would be reasonable to presume healthy trees

may experience a reduction in vitality; and the stress level of trees with “mild to moderate” stress may increase to “moderate””, see page 7. So that of course understates the likely degree of impact.

100. Mr Mackworth-Praed explained in detail what the consequences of root severance for trees are and how those consequences are exacerbated for trees suffering from stress, X in chief by Mr Edwards QC Day 4 am “Topic 5” and this position was maintained in XX by Mr Katkowski QC. It is to be borne in mind lastly on this aspect that his evidence as to its taking replacement plane trees 30-40 years to grow back went unchallenged by the applicant, his “Topic 7”.

101. So this issue is yet another respect in which the applicant’s evidence before the inquiry has failed to present a proper and complete picture of the relevant background.

102. On the basis of the above and the totality of the expert evidence, in common with the City Council, the Rule 6 parties whom I represent maintain that there are unacceptable risks to the splendid trees in Victoria Tower Gardens and the state of the evidence called by the applicant (the onus in this respect clearly being on them) on this most important issue is not sufficient to demonstrate with any confidence that trees will not be harmed and even killed.

103. So the answer to the question whether the proposals would result in the loss of or harm to trees of amenity value the position remains that the applicant has signally failed to exclude that very real risk. That was a charge which it fell to them to discharge and they quite simply have not.

104. This objection is entirely free-standing of the heritage and other objections to the application proposals. It represents a wholly but equally compelling separate basis for rejection of them.

Whether the proposals/increased visitor activity would result in loss of public open space and the functionality and character of Victoria Tower Gardens for recreational purposes

105. This matter is addressed above and generally in the evidence of Ms Annamalai. Messrs Moggridge and Lowndes also make specific comments on the loss of open space in the context of para. 97 of the NPPF.

106. The two particular additional issues to mention here are, first, the loss of playground area (measured by Ms Prothero at 167 sq m). Sir David disputed the extent of loss in cross-examination and emphasised what he contended for were improvements in the proposed new provision, XX by ML Day 10 am. The Rule 6 parties whom I represent maintain that there would be a loss of playground area at the north east corner and as result of relocating the kiosk to the southern end with a single aspect facing onto the playground area and also point out that the expansion westwards into the shrubbery along Millbank would result in the loss of important vehicle emission and noise mitigation. Also, they do not accept that the existing playground needs “improving”, see again Ms Annamalai’s evidence CD 8.48 and Day 7 pm. She also made general points about the inherent undesirability of potentially sharing park/kiosk/playground space with HMLC visitors and/or staff which I return to under the public benefits heading below.

107. Secondly, the mounded area accounts for another 2000 sq m of existing park space which will be remodelled to accommodate the application proposals. Self-evidently this will not be accessible to all park users (such as the old, infirm or disabled) and let alone the steeper slopes shown on Mr O’Shea’s CD 8.7 page 69. Ms Prothero made general observations about the unattractiveness of slopes when wet or muddy, Day 6 am. Also, as confirmed in XX of Mr Brittle on Day 16 am, if there was a persistent issue of people peering over the haha at the top of the slope there could be uniformed staff at the top. This is another matter which would limit the amenity and usability of the park as such.

The effect of the proposals on the security of the area

108. The adverse effects of having either yellow vested or uniformed security staff patrolling the Memorial and its surroundings are referred to in the evidence of Ms Annamalai. But the specific question as to the effect of the proposals on the security of the area is addressed in the written submission on security issues put in by the Thorney Island Society/Save Victoria Tower Gardens (CD 5.35).

Additional objections – highways impact and flood risk

109. In addition to the above, the Thorney Island Society/Save Victoria Tower Gardens also raise these two issues which were considered in the round table sessions, namely, highways impact and flood risk. These are maintained despite the lack of objection from the City Council or the Environment Agency.

110. As emerged from the round table discussion on highways issues, both the City Council and TfL acknowledge that there would be a “significant impact” especially on the pavement outside the Gardens especially when visitor numbers are at their peak (and Ms Seiler pointed out this morning that there is no limit on numbers). The pressured environment would be constrained by parked coaches (11 per day unloading and loading respectively for 5 and 15 minutes each time) and hostile vehicle mitigation measures (described as “temporary” but with no obvious plans to remove or relocate them). As Mr Peck pointed out, this would be an environment which was inimical to the objective of Healthy Streets which is to encourage greater pedestrian and cycle use of the public realm. He also made the telling point that, if nothing else, the inhospitable environment created around the entrances to the Gardens would further detract from their character as a popular public park.
111. The flooding issue is one which the Secretary of State specifically asked should be addressed, no doubt because of the importance under current planning policy of choosing the correct location for development having regard to ever-increasing flood risk as a result of climate change, see NPPF para. 155: “Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime...”
112. Mr Coombs concludes that the risk of a breach flooding event has not be adequately addressed or provided for, CD 8.50. As he pointed out, Day 18 am, the latest representation from the Environment Agency, CD 5.16 of 2 December 2019, which recommends certain conditions which should imposed if planning permission is granted nevertheless advises that “This proposal does not have a safe means of access and egress in the event of flooding from all new buildings to an area wholly outside the floodplain...”. But this is not a matter which can be remedied by any condition or flood evacuation plan.
113. The EA letter does go on to say “however, safe refuge within the higher floors of the proposed development is possible”. But this is not easy to understand and would not in any event help anyone who was either on the entrance stairs to the Learning Centre or in the basement when a breach event occurred. Indeed, their earlier letter advised the City

Council “if you are not satisfied with the emergency access/egress or refuge, then we would recommend you refuse the application on the grounds of safety”, CD 8.50 page 25.

114. As demonstrated by reference to Mr Coombs’ CD 8.50 Appendix 1 and Ms Nunns rebuttal CD 9.7 page 10, in the case of a breach flooding event assessed in accordance with TE2100, a 1 metre high wave of water travelling at 2.5 metres per second would swamp the Memorial and Learning Centre falling within the “danger for all – including emergency services” Hazard Rating leading to inevitable loss of life.

115. Indeed, Mr Coombs also pointed out that in the 2014 flood levels scenario even a wave of water 90mm would represent a serious hazard to someone on the Learning Centre stairs.

116. So it was not good enough to say that there was only a very low probability of a breach event occurring and so it did not need to be provided against. As Mr Coombs said: “It’s like saying we don’t need a fire escape because we don’t think a fire is ever going to happen (because we’ve got a sprinkler system or something)”.

117. The position remains that the identified concerns of the EA set out in CD 5.16 have not been addressed. The City Council did not pursue the matter as a point of objection but that seems to be on the basis of the EA’s statement that “safe refuge within the higher floors of the proposed development is possible”, see the City Council’s committee report CD 5.11 at page 80. But, again, that does not help someone who was either on the entrance stairs or in the basement when a breach event occurred.

118. As the Inspector pointed out, it may be that a breach flood event would affect the Houses of Parliament and/or its underground car park in the same way in any event. But, where the former is concerned, there really is the possibility to take refuge above ground and, where the latter is concerned, that is not a reason or justification for permitting a new development which would create that hazard (contrary to the consistent advice of the EA on breach flooding as referred to by Mr Coombs).

119. So this comes back round to the two prongs in para. 155 of the NPPF of (1) directing development away from areas at highest risk (whether existing or future) – eg at IWM where the same problems would not occur because it is not right next to the river or, if

development is going to be permitted nonetheless, (2) making it safe for its lifetime – which is not possible here.

120. Accordingly, both of these two additional matters remain objections of substance to the application proposals.

Other material considerations, including any public benefits the proposals might bring

121. The applicant refers to a number of public benefits as outweighing the harm caused by the proposals. The applicant's case is (now – contrast para. 6.9 of their statement of case, CD 5.24, which refers to “harm... if any”) that “less than substantial harm” will be caused to the significance of designated heritage assets by the application proposals.

122. As above, this is of course disputed by the parties whom I represent who contend that “substantial harm” would be caused to all of the heritage assets most nearly affected.

123. The perceived benefits referred to by the applicant include the delivery of the Holocaust Memorial and Learning Centre; “social benefits, by helping to fight racism and discrimination in all its guises...”; claimed environmental benefits in the form of the “highest architectural and design quality” and a contribution to the “economic importance of Westminster’s cultural and tourist attractions”, see section 10 of Mr Goddard’s proof of evidence.

124. As Mr Lowndes says in his evidence, the delivery of the Memorial and Learning Centre is an important public benefit. But he qualified that by pointing out that that benefit is “generic” in the sense that it would equally arise in any number of less sensitive locations, such as at the Imperial War Museum, of course. Therefore such a “public benefit” cannot be so substantial as to outweigh the substantial harm to heritage significance arising in and to Victoria Tower Gardens and the surrounding exceptionally high value heritage assets.

125. For the avoidance of doubt, even though the point was trailed in cross-examination by Mr Katkowski QC, Day 8 am, and even further emphasised by Mr Goddard in response to cross-examination by Mr Edwards QC, Day 17 am, it is not accepted that the existence of an alternative proposal or site is only a material consideration if there is a specific scheme

in existence (such as occurs in a conjoined planning appeal or otherwise), see eg Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299 per Simon Brown J, ie “Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

126. Mr Lowndes, in common with many other participants in this inquiry, also questions the need for co-locating the Memorial and Learning Centre with Parliament. The reasons for doing so are not clearly articulated and became less clear with repetition. Many of the numerous supporters used the same phrases did not actually serve to justify the choice of location beyond saying, in effect, that it would be a “good thing” to have the Holocaust Memorial and Learning Centre next to Parliament (or as so-described “the mother of Parliaments” located on the “timeless banks of the Thames”).
127. The idea of “contrasting the high ideals of government through parliamentary democracy against the depths of tyranny demonstrated in the Holocaust” or of reminding national governments that they were key players in the events of the Holocaust, CD 8.1 para. 51, is not something which really requires the HMLC next door to bring about.
128. The concepts become more nebulous as the catalogue of notions proceeds: “Asking what causes governments... to support such atrocities”; reminding people that “actions and decisions taken specifically by the British Government had profound implications for many victims of the Holocaust”; “a challenge specifically to British citizens and parliamentarians to take responsibility for the commitment to avoid future genocides”.
129. In any event, why does the UK need a Holocaust Memorial and Learning Centre next to Parliament to bring this about? Isn't that actually rather disparaging of the dutiful, hardworking and right thinking people and MPs who already appreciate and recognise these issues? Is putting the HMLC in Victoria Tower Gardens really going to teach those lessons to anyone who doesn't?

130. The claimed architectural quality of the proposals is disputed for the reasons set out in Mr Moore's evidence. He explained articulately and fairly why he took the view that the design of the application proposals were not up to the usually high standard of the very respected architects of them, see Day 6 pm. He made the point that "brilliant people can do less than brilliant work" and explained that a large part of the problem was that the architects had been presented with too large a project for too small and constrained a site.
131. Mr Moore justified his criticisms of the designs on grounds of what he described as "incoherence and clutter"; the negative effects of security/ticketing; what he meant by "generic"; what he thought made for a "good memorial" and lack of innovation.
132. I had the pleasure and privilege of debating these matters with Sir David, Mr O'Shea, Mr Bruno and Professor Tavernor and the Inspector will no doubt give the issues arising from those discussions very careful consideration, eg cacophony versus crescendo, general "business", the familiarity of the devices used (but their lack of resonance for many British people), the "one-way" conception of the journey through the Memorial and the fact that combining a Memorial and Learning Centre was not of itself innovative.
133. Of course, Mr Moore was not asked if he accepted either whether the designs were of listable quality or whether they would be listed Grade 1! One can of course anticipate what his response would have been. But this issue raised without forming any part of the applicant's case is another example of the over-enthusiasm and lack of proper justification which has gone into the Secretary of State's case.
134. In the light of the above, it is submitted that the proposals do not represent any positive addition to the Gardens having regard to the substantial harm which they would cause to the settings of to the surrounding heritage assets of the very highest significance. Accordingly, and as Mr Lowndes said, this factor amounts to "no public benefit", CD 8.51 para. 6.4 second bullet.
135. The contribution to the local economy would apply equally to a Memorial and Learning Centre located elsewhere in central London (such as at the Imperial War Museum). If there is to be no charge for tickets to visit the Memorial, as discussed with Mr Goddard in XX by Mr Edwards QC, Day 17 pm, then there is no economic benefit in that respect in any event.

136. It is further submitted generally that none of the sources of substantial harm identified above are “necessary” to achieve the contended for “substantial public benefits” within the terms of para. 195 of the NPPF, especially given the availability of the Imperial War Museum as a location where they could be realised in any event, see ML re-X of Mr Lowndes, Day 8 am.
137. In fact a lot of the “benefits” of implementing the proposals are questionable in any event. Despite the contentions on behalf of Learning from the Righteous and others, it is evident that the Jewish community, including survivors of the Holocaust, are far from being united behind the proposals. So how much public benefit is there in them if even those whose sacrifices are intended to be commemorated by the proposals are questioned by them?
138. In fact it emerged that Lord Pickles’ fellow Joint President at Learning from the Righteous is the self same Lili Pohlman who made representations before the inquiry is a supporter of provision being made at the Imperial War Museum, see comment of 6 October 2020: “I recommend the space, which is enormous, at the Imperial War Museum for the Holocaust Memorial. They have gardens and space, it is guarded, there is security and it is an excellent place, part of history and relevant to the war”.
139. In case there is any doubt about who Lili Pohlman is, if you google her name and “IWM”, this comes up (on the IWM website): “Lili has worked to ensure the horrors of the Holocaust are not forgotten and that that the courage of those who offered help to Jewish people is remembered. She is one of the Holocaust survivors who has been involved in IWM’s plans for constructing new Second World War and The Holocaust Galleries at IWM London”.
140. As I put to Lord Pickles in cross-examination, and he accepted, her position highlights the dichotomy in public opinion about the merits of the proposals, it highlights the dichotomy at the heart of the Jewish community and it highlights the dichotomy even amongst Holocaust survivors, Day 16 pm.
141. Similarly, aside from the debate about architectural quality, question marks have been raised about the value of the proposals and the extent to which they meet the objectives envisaged for the project, such as the extent to which they represent a meaningful symbol

of Holocaust remembrance eg in relation to the 22 passages between the 23 fins, XX Mr Bruno by Mr Doctor QC Day 11 pm. Sir Richard Evans Professor Emeritus in history at the University of Cambridge authoritatively described the number 22 as “arbitrary”. With respect to Mr Bruno, it is submitted that Sir Richard’s view is entitled to greater weight on this issue, despite Mr Bruno’s attempt to revisit it in CD 11.8.

142. Also, the Learning Centre offer has been pointed out to be less than was contemplated by the Holocaust Commission. What they anticipated was an educational “campus”, see CD 5.9 page 43, including a 150 seat auditorium for lectures, see CD 8.41 page 6. Sir Richard Evans summed it up pithily when he said that “The proposed Learning Center in Westminster would only be an embarrassment for Britain, if it laid claim to be a national centre of learning and research on the Holocaust”.

143. In fact, contrary to the submissions on public benefits, the position of the parties whom I represent is that there would be positive disbenefits resulting from the implementation of the appeal proposals. Apart from the undesirable and unacceptable direct and indirect impacts on designated heritage assets there would be the loss of a cherished public park through its transformation from a quiet, tranquil open space to a busy, congested and over-developed space. The quality of the space would be subordinated to the large “disruptive” Memorial with all the trappings of a civic space, staff, security guards and substantial visually intrusive landscaping to accommodate the built structures. Any “improvement” represented by the quality of these works is not justified or required by the current condition of the gardens, regardless of the disparaging descriptions advanced on them by those contending for the “merits” of the project.

144. As Ms Prothero memorably put it in cross-examination by Mr Katkowski QC, Day 6 am, she “literally” did not see any benefits in the proposals for Victoria Tower Gardens. As she explained in re-examination, “the character of the park is in the sum of all its values. Its character would be altered to such an extent that its overriding significance will be harmed”. As noted above, she took the view that the extent of harm was such that the Gardens would actually have to be deregistered as an RPG.

Conclusion

145. The proposals before the inquiry are unacceptable on grounds of conflict with policies for the protection of the historic environment, the protection of open space and protection of the natural environment. They cannot on any view lay claim to the description of “sustainable development”.
146. They would cause substantial harm to the settings of numerous designated heritage assets of the very highest value and significance. They would result in both the loss and transformation of substantial areas of valuable and valued open space in an area of already low provision. They would be likely to result in the loss of fine mature trees which contribute so substantially to the quality and value of Victoria Tower Gardens and the setting of the Palace of Westminster and the World Heritage Site.
147. Given the extent of harm caused by the proposals and the controversy they have generated, one might have expected that the justification for them would have been presented with more care and attention to detail. On the contrary, and as pointed out above, despite the policy imperative of front-loading planning proposals rather than presenting them as a *fait accompli*
- (1) the application proposals were not properly consulted on before Victoria Tower Gardens was suddenly lit on in the thoroughly misconceived so-called “moment of genius”;
 - (2) there was no transparent, let alone objectively justified assessment of the suitability of the Gardens as the location for the proposals (instead of eg IWM);
 - (3) there was no proper analysis of the significance of the Gardens having regard to their heritage values;
 - (4) no design review of the proposals by an independent body such as CABE;
 - (5) no heritage impact assessment undertaken in accordance with ICOMOS Guidelines. Indeed, (6) despite ICOMOS’s clear recommendation, no advice was taken by the design competition jury who selected the design on the impact on the World Heritage site. Aside from the heritage and other issues, even now
 - (7) the applicant is not in a position to assure the inquiry that trees will not be harmed if not actually destroyed as a result of the invasive deep excavations required to accommodate these incongruous, overlarge and unwelcome proposals.

148. I opened the case on behalf of the parties whom I represent by highlighting the premature and presumptuous assurance on the part of the Secretary of State, the Prime Minister and the Government that the proposals before this inquiry should or “will” be built in Victoria Tower Gardens, in effect regardless of any objection to them.

149. I put these statements in my cross-examination of Lord Pickles who nevertheless maintained, despite my charge of premature and presumptuous assurance and indeed “arrogance” on the Secretary of State’s part, that all the comments made on behalf of the Government were “subject to planning”.

150. However, that position is demonstrably irreconcilable with the statements by the Secretary of State recorded in paras. 18 and 19 above including the uncompromising injunction that “No one, whether in national or local government should shirk their duty to deliver on the promise of this memorial, and the Government certainly will not”.

151. In the face of that insistence by the Secretary of State that any ultimate decision maker is under a “duty to deliver on the promise of this memorial”, it is submitted finally that it would send out quite the wrong signal for these controversial, damaging and ultimately unjustified proposals for Victoria Tower Gardens to be permitted by Government, whether by the applicant Secretary of State in person or by a Minister of State as currently proposed. This is especially so when all of the objectives as originally resolved upon by the Holocaust Commission could be simply realised and delivered without any apparent objection in an alternative and self-evidently fit for purpose location at the Imperial War Museum. Indeed, if only those proposals had been pursued in back in 2015 when the Holocaust Commission resolved on them, the UK would probably have its international, world class, architect designed Holocaust Memorial and Learning Centre already by now.

152. In the light of all the foregoing, the Inspector is respectfully requested to recommend dismissal of the Secretary of State’s application.

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12 November 2020