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INTRODUCTION

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I am Derek Myles Taylor, and I hold the position of Area Planning Officer in charge of one of four area development control teams in the Royal Borough of Kensington & Chelsea. I am the Area Planning Officer for the northern area of the Royal Borough, which includes Meanwhile Gardens. I am familiar with the appeal site and its surroundings. I have fifteen years experience in development control, hold a class 2:1 degree in Town Planning, and am a member of the Royal Town Planning Institute. I hereby present my Proof of Evidence regarding this Council's recent refusal to grant planning permission for development at Meanwhile Gardens, London W10.

In my Proof I set out the planning policy background to the Council's decision, and amplify the reasons why it was considered that planning permission should not be granted in this case.

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1.0

SITE DESCRIPTION

1.1

Meanwhile Gardens comprises an extensive linear parcel of open land, approximately 1.63 hectares (4 acres) in area located directly to the south west of the Grand Union Canal. The Gardens are bounded to the south west variously by Kensal Road, the Edenham Way/Trellick Tower housing developments, and Elkestone Road. At its north western end lies the Cobden Club, a Grade II listed building, and at its eastern extremity lies the Great Western Road. A Location Map is included as Appendix (1) of my Appendices.

1.2

The site was within the ownership and Borough boundary of the City of Westminster

until 1994 when, following boundary reorganisation, it was transferred to this Council. The site has a road frontage of approximately 50 metres with an average metres. The site includes a single storey factory building currently occupied by MGCA, which is in a poor state of physical repair, an associated concrete hardstanding used for servicing, turning, and parking, a composting and mulching area, an area utilised for storage, a nursery planting area, and an area of land known as the Courtyard Garden or 'scented garden', situated to the front of the factory building adjacent to Kensal Road. To the immediate south east of the site is a collection of storage containers and temporary structures which are occupied by the Meanwhile Gardens Community Association (MGCA) for storage purposes, and by MIND (The Mental Health Charity) as offices.

1.3

The Gardens were formerly derelict wasteland which over the past 25 years have been transformed into an area of community run open space following the founding of the Community Association (MGCA). The Association have been based in the factory buildings since 1976, and since then have been constantly involved in a wide variety of community projects, ranging from the maintenance of the gardens as a wildlife and recreation area and a general amenity asset, to running a boatclub, a pottery, a narrowboat for disabled people, providing a rehearsal space for a steel band, and providing educational opportunities for local schoolchildren.

1.4

The site is, with the exception of the factory building, identified in the UDP and Proposed Alterations thereto as being of Nature Conservation Importance. The Gardens are a site of Local Importance of particular value to the local community and to schools, and is part of the green corridor formed by the Grand Union Canal, a "near continuous area of open space serving as a conduit for wildlife and more isolated habitats providing a strategic network of habitats".

1.5

The site is not within a Conservation Area.

2.0 SUMMARY OF THE DEVELOPMENT TO WHICH THE APPEAL RELATES

2.1

Planning permission is sought for the demolition of existing storage buildings and erection of new part4/part5 storey building containing 18 flats for open market sale, 8 flats for affordable housing, and new office/storage facilities for Meanwhile Gardens Community Association and MIND together with formation of nursery and service area intens or open market sales

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and associated works.

2.2

The proposal involves the demolition of the existing single storey factory building and associated structures, and the erection of a part four storey and part five storey

building. The building would accommodate 18 two bed roomed self contained private open market flats and 8 affordable flats (2 three bed and 6 two bed). Offices, training rooms and storage facilities would be provided within the building at part ground and first floor level at the south eastern end for occupation by MGCA and MIND. MGCA will continue to work and maintain the adjacent gardens.

2.3

A total of 18 on site parking spaces would be provided within an 'undercroft' area at ground level. An additional 3 spaces for the affordable housing would be located to the front of the building, and a new vehicular access would be created onto Kensal Road from the car park.

2.4

An area of approximately 200sq.m located to the front of the building is proposed to be set aside for use by MGCA, whilst a hardstanding area of approximately 200sq.m and vehicular access thereto would be formed at the south eastern side of the site. This area is intended to incorporate composting and mulching facilities to replace the existing facilities on the site, and a pedestrian route through from the road to the towpath. Part of the front area would be planted and utilised as a private garden area for the open market flats.

2.5

The planning application was considered by the Planning Services Committee on 31st October 2000, with an Officer recommendation that planning permission should be granted subject to a total of sixteen Conditions and also a Planning Obligation under S.106 of the Town and Country Planning Act 1990 to secure the provision of the 8 affordable housing units. I include a copy of the Officer's Report as Appendix (2).

2.6

The Committee resolved to refer the application to the full Planning and Conservation Committee meeting of 13th November 2000.

2.7

An Addendum Report was prepared for the 13th November meeting, which I include as Appendix (3). It will be noted that the application was amended slightly between the two Committee meetings, to delete a path across the nursery area and to include a lift within the office portion of the building, and that two further Conditions were now recommended.

2.8

The Planning and Conservation Committee decided that, notwithstanding the Officer's opinion, there was sufficient reason in this case to refuse planning permission. Having considered all of the relevant material, I share the judgement that it would be inappropriate for permission to be granted for this development.

2.9

Notice of Refusal was issued dated 28th November 2000, and included as Appendix

2.10

The Reasons for Refusal are:

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(1) The proposal would result in the loss of open space, which is contrary to policies contained within the Council's Unitary Development Plan, and Proposed Alterations thereto, in particular, Policies STRAT 35 and LR7.

(2) The proposal is considered to constitute an overdevelopment of the site within the context of the size and area of the application site, and is therefore contrary to policies contained within the Council's Unitary Development Plan, and Proposed Alterations thereto, in particular, Policies STRAT 1 and H12,

3.0

PLANNING POLICY BACKGROUND

3.1

The Unitary Development Plan (the UDP) for the Royal Borough, was formally adopted on 28th August 1995, and is the Statutory Plan for the Borough for the next ten years.

3.2

The Unitary Development Plan is currently at an advanced stage in its mid-term review, and a number of changes to the Plan and its Policies have been proposed. The Proposed Alterations to the UDP have been placed on Deposit and a Public Inquiry into the Alterations was held at the Town Hall from January 10th until February 16th 2001, with the Inspector's report currently awaited. Any relevant Proposed Changes to UDP Policies are described the appropriate section of my Proof.

3.3

Attention is drawn to Section 54A of the Town and Country Planning Act 1990, as inserted by Section 16 of the Planning and Compensation Act 1991, which stipulates that planning decisions should be taken in accordance with the Development Plan unless material considerations dictate otherwise.

3.4

The general principles guiding the control of development are set out in Planning Policy Guidance Note 1, as revised, (PPGI). In discussing the framework for development control the PPG states:

"2. At the heart of this framework are development plans which aim to give a measure of certainty and predictability to the system. Section 54A of the 1990 Act requires that, where the development plan contains relevant policies, applications for development which are in accordance with the plan shall be allowed unless material considerations indicate otherwise....."

3.5

The adopted UDP is the Development Plan for the Borough for the purposes of Section 54A of the Town and Country Planning Act 1990, as amended.

4.0

UNITARY DEVELOPMENT PLAN

4.1

The current status of the Unitary Development Plan (UDP) has been established above.

For completeness, I set out below the relevant policies in their up to date, adopted form.

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The Unitary Development Plan Policies specifically listed in the Reason for Refusal are as follows:

4.2.1 Policy STRAT 35 is:

TO MAINTAIN AND INCREASE THE PROVISION AND QUALITY OF
OPEN SPACE OF LOCAL AND METROPOLITAN VALUE

4.2.2

Policy LR7 is:

TO RESIST THE LOSS OF EXISTING PUBLIC AND PRIVATE OPEN
SPACE WHICH MEETS LEISURE AND RECREATION NEEDS

4.2.3 Policy STRAT 1 is:

TO GIVE PRIORITY TO THE PROTECTION AND ENHANCEMENT OF
THE RESIDENTIAL CHARACTER AND AMENITY OF THE ROYAL
BOROUGH

4.2.4

Policy H12 is:

NORMALLY TO RESIST HOUSING DESIGNED TO VERY HIGH
DENSITIES UNLESS NECESSARY FOR TOWNSCAPE REASONS TO
COMPLY WITH THE POLICIES OF THE CONSERVATION AND
DEVELOPMENT CHAPTER

4.3

I also consider that the following UDP Policies are relevant to the appeal proposals, although not listed in the Reasons for Refusal.

STRAT 2, STRAT 7, STRAT 10, STRAT 13, STRAT 14, STRAT 15, STRAT 32,
CD16, CD19, CD25, CD28, CD30, CD30a, CD31, CD61, CD72, CD73, CD79, H2,
H11, H21, H22, TR46, SC2, SC3, LR11, and LR22.

4.4

I include these Policies as Appendix (5).

4.5

Supplementary Guidance

Planning Guidance Notes were prepared in June 1999 for this site in response to discussions regarding its possible development. These Notes were not designed to be prescriptive, but were intended to guide any proposed development so that it would meet the requirements of planning policy contained within the Unitary Development Plan (UDP), the Proposed Alterations thereto, and other material planning considerations. The Guidance Notes were not the subject of public consultation; therefore, I consider that they carry little statutory weight. Nevertheless, they were approved by the Planning & Conservation Committee on 28th June 1999 and the Policy and Resources Committee on 29th June 1999, and they must therefore remain a material consideration and I will refer to them in my following assessment of the proposals. I have appended a copy of the Notes as Appendix (6).

5.0

AMPLIFICATION OF THE REASONS WHY THE COUNCIL CONSIDERED THAT PLANNING PERMISSION SHOULD BE REFUSED

Status of the Appeal Site

5.1

The appeal site is not listed in the UDP Schedule of Major Sites with Development Opportunities, and I do not consider that it should be. It is not a redundant site, or a derelict site; it is a site occupied by functioning buildings and functioning land. It is not previously developed land, but is presently developed. The factory use may have ceased, but a new use has been found for the buildings. The Meanwhile Gardens Community Association have been based in these buildings since 1976, occupy the buildings on a tenancy at will and occupy the gardens on a 25 year lease with 24 years left to run. This is not a site that is judged to require substantial redevelopment within the life of the development plan. It has been the subject of discussions and a planning application, but there is no compelling reason why it should not continue in worthwhile use. It is used at present as it has been for a great many years. Although the built development on the site could benefit from refurbishment, it is not a site where the absence of substantial redevelopment would result in harmful land-use consequences.

5.2

I consider these factors to be a useful starting point for consideration of the appeal proposals. A financial profit for involved parties may make development appear desirable, but the reality is that there is no compelling planning reason why this site must be redeveloped. In the case of many sites, particularly those that are redundant, empty or derelict, it is clear that whether a particular development proposal is approved and implemented or not, a development of one form or another is bound to take place at some point. However, I do not see that being the situation in the case of the appeal site; the existing buildings do need refurbishment and would benefit from improvement, but the fact remains that the appeal proposals are not necessary to ensure that this land, or Meanwhile Gardens as a whole, continues to provide a worthwhile land use planning function.

5.3

With this background borne in mind, I turn now to examine the appeal proposals.
Breaches of Planning Policies and the Harm Flowing From Them

5.4

Open Space

Although the UDP does not specifically identify or designate any part of the Borough as open space, it is considered that the majority of the area of Meanwhile Gardens is open space, and clearly demonstrates the characteristics of open space as defined in the Glossary thereto: "all open land with the exception of individual private gardens and yards, roads, car parks, and vacant land". With the exception of the factory building and the adjacent hardsurfacing, the north western part of the Gardens is

considered to be public open space.

I consider that a significant proportion of the appeal site should be considered open space. This area includes the scented garden (approximately 355 sq.m), and an area to the south east of the factory building comprising the plant nursery and access ways (approximately 324 sq.m). As such, of the 0.154 hectares (1,540 sq.m) that make up the appeal site, if the areas of the scented garden(355 sq.m), nursery (247 sq.m) and access ways 77 sq.m) are added together then 679 sq.m (or 42%) of its area) is open space. It

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5.5

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should be noted that this figure excludes the 183 sq.m of open storage space on the site along with 193 sq.m of hard surfaced open area; if these were added to the total then it can be seen that 862 sq.m of the site is not covered by building.

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5.6

The appeal proposals only offer a nursery area of 200 sq.m, a mulching area of 37 sq.m, incidental landscaping of 14 sq.m and a communal open area of 120 sq.m. The sum of these is 371 sq.m of open space, which is barely more than half of the existing 679 sq.m of open space on the site. Therefore, I conclude that in mathematical terms the proposed replacement open space compares very poorly with that existing.

5.7

It has been estimated that the appeal scheme would result in a net loss of 1.83% of the overall Meanwhile Gardens area of 16,350 sq.m.

5.8

All calculations of loss of open space must, however, be put into a proper planning framework

5.9

The Royal Borough has areas with some of the highest residential densities in the country. Such settlement often dates from Victorian and Edwardian times and is accepted as part of the character in many parts of the Borough. The high residential density places demand upon the limited amount of open space and local services available. Consequently, particular care must be taken to ensure that new buildings and infill development safeguard the outlook and amenity of others, and do not intrude upon existing open spaces. This Council undertook an Open Space Survey in 1992, which highlighted the open space deficiencies in the Borough, a conclusion supported by a research report by the London Planning Advisory Committee (LPAC) in the same year.

5.10

The ratio of open space to the population of the Borough is by far the lowest in London, with each lha serving 3,867 population (the next lowest is Islington with lha serving 1,990 population). The Unitary Development Plan, at paragraph 3.1 of the "Leisure and Recreation" chapter, (Appendix 7) explains that with the exception of

the City of London (2.1%) the Royal Borough has the least public open space as a proportion of land area (2.8%).

5.11

I consider a much more relevant figure is the percentage loss of open space within the application site, and the effect of such a loss in land use planning terms. The 371 sq.m of open space that would remain would be only 54% of that existing on the site.

5.12

The mathematics of the loss of open space must be considered in the context of the function and quality of the open space, as without this the figures themselves can be of little value. The role that a space plays in terms of visual contribution to its surroundings, and the role it plays in being enjoyed actively or passively in the local community, are just as important planning considerations as the number of square metres it may cover.

5.13

In this case I regard all of the open space existing within the appeal site as serving an important function, not just as part of the greater Meanwhile Gardens but in its own right. It is too easy to view the open space on the appeal site as being simply 1.83% of the greater garden, but such a limited view misses the true role and value of the existing open spaces.

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5.14

The 'scented garden' is an area of 355 sq.m, bounded by brick walls, immediately adjacent to Kensal Road and viewed from both sides of the road at that point as well as from the flats of Holmfield House immediately to the South. Along with the rest of Meanwhile Gardens, it provides significant visual value, and also makes a welcome contribution of visual interest in Kensal Road. However, in my view the true value, and real contribution of the space, is much greater than its visual value.

5.15

The 'scented garden' is one of those spaces in an urban area that have charm, character and individuality, and that cannot simply be reproduced at a whim. It is a unique space within both Meanwhile Gardens and the wider area. The garden has existed in its present form for 17 years, having been created by 30 local residents with disabilities in the early 1980s and funded as a Manpower Services Commission "back to work" project. Since then it has been maintained by the MGCA, and has evidently been successful in enabling people to express a collective concern for the neighbourhood. Assistance in maintaining the space is provided by volunteers from Kensington & Chelsea, neighbouring City of Westminster, the New Deal Environmental Taskforce, the nearby Queen's Park Volunteers Bureaux, volunteers from the Body Shop who painted the railings last autumn, and contributions have also been made by young offenders carrying out reparation orders. It is visited regularly by those who live or have interests locally, including residents of Holmfield House, elderly people from the Edenham Way Centre, local playschemes, blind people from

Garrow House RNIB in Kensal Road and frequent visits over the last two years have been made by staff and pupils from St. Mary's Primary School, East Row with the garden thus also performing a service as an educational facility.

5.16

The space is also used as a picnic/lunch spot by visitors to the Cobden Club in the summer months. The garden is clearly just the sort of space that Policy LR11 of the Unitary Development Plan seeks to encourage.

5.17

As both a charming physical space, and valued local amenity, I consider that a significant weight should be attached to the special nature of this garden as a community asset in addition to its role as an important visual and recreational asset. Accordingly, I conclude that significant weight should be properly attached to its loss; the loss of this garden is much more than the loss of less than 2% of the greater Meanwhile Gardens area, and must weigh heavily and negatively in any assessment of the appeal proposals.

5.18

The nursery garden area is a different type of space to the scented garden, both visually and in its function. Nevertheless, I consider it to be of value too both visually in containing nursery trees, and in terms of its function as both a recreational and educational facility. Along with the 'scented garden', the nursery area is included with the rest of Meanwhile Gardens as a site of Nature Conservation Importance. The nursery area is a cared for space, in no way redundant or under used, and I consider it to be a fairly rare and important amenity that is enjoyed by many in the local community. Again, I attach a significant weight to the nursery space that is not in proportion to its size as only a small percentage of meanwhile Gardens as a whole.

5.19

I conclude that the 'scented garden and nursery areas must constitute opens spaces of at least local value as described in Policy STRAT35 and must also make a valuable

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contribution towards local "leisure and recreation needs" as described in Policy LR7. The proposals, which would result in the substantial loss of these features are, therefore, clearly contrary to these Policies.

5.20

Beyond being contrary to adopted and up to date Policies, I consider that the loss of these spaces would be harmful to the interests of those who work in, use, and enjoy open space and outdoor facilities provided by Meanwhile Gardens,

5.21.

It is worthwhile at this point to consider how other small open spaces in urban areas have been considered by appeal Inspectors as being of significant value, sufficient to justify their preservation in the face of development proposals. I refer to appeal decisions regarding Linden Mews W2 (two decisions) and Russell Road W14, dated

6th June 1994 and 7h January 1999 respectively, with the relevant Decision Letters included as Appendices (8) and (9) to this Proof. It will be noted that there are many differences between these sites and the appeal site, but I refer to them to demonstrate that relatively small areas of open space can be very important contributors to local amenity, to the extent that the fortunes of relatively large developments can turn on their fate.

5.22

The appeal decisions concerning land adjacent to no. 5 Linden Mews are worthwhile noting in the context of the present appeal as they involve a proposed residential development upon a small parcel of land accessed from Linden Mews of 0.03 ha (300 sq.m) that is part paved and had also contained some light industrial buildings. Despite the fact that, unlike Meanwhile Gardens, the appeal site was relatively hidden from public view, and was not a public space, the first Inspector (1994 decision) concluded that the site was "evidently a valued local feature", and that although not laid out as a formal park or garden he concluded that this small space provided "a visual break in the dense urban surroundings which merits protection in the public interest" (para.7). At the end of paragraph 7, the Inspector states "The key point in relation to the main issue is whether the appeal site's contribution to it would be preserved by the appeal proposal", and I consider that this must also be a key question in considering the present appeal.

5.23

Having regard to the scale of the proposed development the Inspector concluded that it would "intrude incisively into the open space as a whole" (para.9), and concluded overall (para. 10) that "the proposal would spoil the appeal site's contribution to the open space as a valuable visual characteristic of the Conservation Area.

5.24 Meanwhile Gardens may not be in a Conservation Area, but in my opinion the 'scented garden' in particular is certainly a valuable visual characteristic and a valuable amenity.

5.25

It is also important to note the Inspector's balancing of the issues in the final sentence of paragraph 11, where he states that "I do not regard the proposal's contribution to the Borough's housing stock as an overriding factor"

5.26

The subsequent Inspector (1996 decision) observed that the site was "a narrow belt of open space between the streets in this area of dense development" and that although the open space is enclosed and not readily visible to the public, it does form, in my opinion, a vital element in the amenity of the surroundings" (para.4). Although he

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accepted that the site had a "hard surface and rather untidy appearance", he considered it apparent that a conventional building on the site would cause a significant intrusion into the open area and would be contrary to the principle of protecting open space which makes, or is capable of making, a contribution to an area's character, and would

also diminish local residential amenities" (para.8).

5.27

I draw the same conclusions in relation to the present appeal proposals. An overall similarity between the conclusions drawn by the Inspectors in these cases and my own conclusions set out at the end of this Proof is that in both cases simply too much development was being proposed for each site.

5.28

The appeal decision regarding land at Russell Road concerned a proposal for a block of 39 flats as an amendment to an existing, implemented planning permission, resulting in the loss of 1,200 sq.m of open space that was supposed to be preserved under the permission.

5.29

A replacement open space was being offered by the appellants in that case, but the Inspector was concerned that the replacement space would overlook the petrol filling station", be "significantly smaller than that proposed in the extant scheme" and "would not make a contribution to the development in townscape terms". It will be noted from the Decision Letter that there were many other issues relating to that appeal proposal, however the decision does serve a useful purpose in the present appeal as it highlights the need to compare the quality and function of an existing open space with any proposed alternative.

5.30

Density of Development

I turn now to another aspect of the appeal proposal that I have identified as being contrary to UDP Policy, namely that of the density of the development.

5.31

The density requirements of the UDP are set out in paragraph 3.13 of the Housing chapter, and ensuing Policies H10, H11, and H12.

5.32

It will be noted that Policy H11 allows densities up to 350 hrh in exceptional circumstances, for example in cases where it is necessary for townscape reasons or enables the provision of special needs or affordable housing provision "on appropriate sites". However, it is not the case that the density of the appeal scheme could be justified on the basis of it being an affordable housing scheme; it is primarily an open market housing scheme. Moreover, the appeal scheme proposes a density of 442 hrh, which is anyway well above the upper level of Policy H11, and for reasons explained elsewhere in my Proof I do not consider the site to be "appropriate" for the development in any event.

5.33

The density of 442 hrh brings the appeal scheme into the ambit of Policy H12, which recommends that housing of over 350 hrh should normally be resisted unless the high density is necessary for townscape or conservation reasons. I do not consider that there are any townscape or conservation reasons why this development would be necessary in this location at the scale it is proposed.

5.34

I conclude that the appeal proposal is contrary to Policies H1 1 and H12.

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5.35

No changes have been proposed for the density Policies under the Unitary Development Plan Proposed Alterations, as these Policies are considered to be up to date and consistent with PPG3 as revised.

5.36

PPG3 1 (Appendix 10) encourages higher densities in development proposals subject to other relevant considerations, however the density figures of the adopted Unitary Development Plan are already high in comparison with many London boroughs. For example, the Borough of Wandsworth have adopted an upper limit figure of 210 hrh, and in Hammersmith & Fulham it is 247 hrh. In the City of Westminster, the adopted Unitary Development Plan (unaltered in their Alterations) includes a density zoning policy, with four zones covering a range of prescribed suitable densities indicated on their Proposals Map. The highest density zone is their Central Activities Zone (CAZ) in which densities of up to 618 hrh may be accepted, there is no equivalent Zone in the Royal Borough. The second zone (Victoria/Pimlico/Knightsbridge) allows for densities between 247-494 hrh; I do not consider that Meanwhile Gardens is comparable to these areas. The third zone (Queen's Park/Maida Vale) allows for densities between 210-346 hrh; this is broadly equivalent to the limit of 350 hrh in the Royal Borough, and these areas of Westminster are adjacent to and compatible with the northern part of the Royal Borough, including the appeal site. For completeness, there is a fourth zone in Westminster (St. John's Wood) with a range of 124 to 346 hrh, but this area is very different in character to North Kensington or Queen's Park.

5.37

The density figures identified by the Royal Borough are compatible with those of Westminster, and higher than Hammersmith & Fulham or Wandsworth, and I conclude that they are also compatible with good planning and the circumstances of the Royal Borough. The upper limit of 350 hrh is, in my opinion, sufficiently high and flexible to be entirely in accordance with the guidance presented in PPG3.

5.38

Clearly, establishing that the proposals exceed the density guidelines stipulated in the development plan, and that the density guidelines stipulated in the Plan are reasonable and up to date, there is a third stage to the analysis which requires examination of the harm that would result if the adopted density guidelines are not adhered to

5.39

I consider that the high density of the appeal proposals is symptomatic of the fact that a large building is proposed, and that in turn manifests itself in the degree loss of open space within the redlined site. The fact that the appellants could not actually contain

all the required facilities within the original redlined site, which I will return to shortly, is an even clearer indicator that the amount of development proposed for the site is excessive, and this too flows from the density of the development. The remaining open space would be physically dominated by the proposed development, with an impact upon the intended function of the open space as a replacement for that existing. Therefore, I conclude that the high density of the scheme does lead to harm in this case,

5.40

Having established that the density figures and loss of open space are clearly contrary to the adopted Policies of the Royal Borough, it is necessary to then assess whether the appeal scheme offers such significant benefits so as to justify an exception to these Policy. Before doing so, I will briefly examine the proposals in the context of the Planning Guidelines.

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Variations from the Planning Guidance Notes

5.41

As I stated in paragraph 5.1 above, I do not consider the guidance notes should be afforded great weight given that they were not subjected to any consultation, and they must be secondary to the Policies of the UDP which have the emphasis of S54A. Benefiting from Committee approval they are, nevertheless, material considerations. However, it is important to note several areas where I have identified differences between the advice in the guidance Notes and the detail of the appeal proposals.

5.42

Open space

The guidance notes primarily deal with open space in two paragraphs, 4.4 and 4.5. Paragraph 4.4 acknowledges that open space is especially scarce in the Royal Borough, with publicly accessible open space making up only 4% of the Borough's total area. The paragraph concludes that it is essential to resist the loss of open spaces, in line with Policy LR7 of the Unitary Development Plan.

5.43

Paragraph 4.5 of the notes states clearly that a loss of open space would be contrary to policies STRAT 35 and LR7 of the Unitary Development Plan.

5.44

The next line of the paragraph qualifies this, by suggesting that:

"the loss of a modest amount of open space may be justifiable if it is necessary to ensure the viability of a scheme which confers benefits of much needed social and community facilities" (my italics) .

5.45

The guidance notes do not attempt to discuss the quality or function of open space that might possibly be lost, but only refer to a "modest amount". They do not state that a loss of open space would or should be acceptable, but only "may" be acceptable, and even then only when necessary. In the same paragraph the notes move on to advise

that the enhancement of accommodation and facilities for a community based organisation which would help ensure the continued management of the Meanwhile Gardens site "should be viewed positively".

5.46

In the next section of my Proof I examine the question of whether the benefits of the appeal are sufficient to justify the loss of open space that the development would entail. However, for the purposes of this section I consider that the appeal proposal exceeds the intentions of the guidance notes in involving the loss of open space that to my mind cannot reasonably be described as "modest". I do not consider that the loss of nearly half of the existing open space is a "modest amount", and nor do I consider the loss of a curious and special piece of open space such as the scented garden to be 1 modest either. In my view the loss of the scented garden, and the nursery, must be considered as a significant implication of these proposals.

5.47

Outdoor nursery/working requirements

Paragraph 5.4 of the guidelines describe the requirements for replacement outdoor facilities for those existing at present. It states

"It is a firm requirement that the outdoor space requirements are incorporated within the development site, to prevent displacement of these areas further eastwards of the

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development site boundary" (my underlining)

5.48

This requirement is thus stated clearly in the guidelines, but I have identified three ways in which the proposals fail to satisfy the requirement.

5.49

Firstly, the "replacement" outdoor facilities only offer a poor comparison to those existing in terms of their function and practicality. I expand on this later in paragraph 5.66 onwards of my Proof, however all the indications are that the proposed outdoor working spaces would fall far short of the requirements for these facilities.

5.50

Secondly, the site area is now greater than the original "red line" along its eastern boundary, by a strip about 2m in width. A result of the limited space allocated to the outdoor activities on the site results in part of the proposed mulching area being pushed out of the original red lined site area and into the adjacent wildlife area, which does not meet the requirement of paragraph 5.4 of the guidelines and demonstrates that the proposals are attempting to cram the facilities into a space that simply cannot accommodate them.

5.51

Thirdly, the courtyard garden is simply not replaced within the site at all; if it is replaced at all, then the only direction to go would be East, which is exactly what the guidelines warn against. Paragraph 5.5 of the guidelines discusses the implications of any "circumstances whereby the scented garden.... is lost", stating that the Council

will require the provision of a comparable replacement facility within Meanwhile Gardens, preferably immediately to the East of the development site. No such space is offered in the scheme at all.

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Density

Paragraph 5.3 of the guidance notes explains that:

5.52

"A residential density of up to 350 habitable rooms per hectare may be acceptable for an affordable housing scheme, in line with Unitary Development Plan Policy H11"

5.53

The same paragraph then advises that:

"Lower densities would be sought for alternative schemes, which should meet the requirements of Policy H11"

5.54

As I have shown above, the appeal proposals are not an affordable housing scheme", but include an amount of affordable housing (8 units) that is secondary to the primary provision of open market flats. And yet, rather than being of the "lower density" to be sought for "alternative schemes" to affordable housing, the proposals involve a higher density of approximately 442 hrh that does not comply with either Policy H11 or H12. In this respect, the appeal proposals differ markedly from the advice in the guidance notes.

5.55

Paragraph 7.6 of the guidance notes contains a simple statement on buildings heights.

This is:

"The maximum permitted storey height is four storeys"

15

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5.56

In proposing a building of part five storeys, the appeal scheme also departs from this instruction in the guidance notes. This departure is predictable in view of the footprint of the building and the very high residential density it involves. Again I fear that this is symptomatic of the overdevelopment of the site.

5.57

I conclude that, in a number of key areas, the appeal proposals depart from, and exceed, the guidance offered in these notes.

Benefits Provided by the Proposals

5.58

Housing

The provision of 26 units of additional housing within the Royal Borough, including 8 affordable units, is supported and welcomed by Unitary Development Plan Policies and by central government guidance. These units would contribute to meeting the current

housing target of 7,750 dwellings identified in RPG3 for provision in Kensington & Chelsea by 2006. To this end the provision must be considered as a benefit of the proposal., although it is worthwhile noting the statement in para. 5.4.1c of the Proposed Alterations to the Unitary Development Plan that "there is every prospect that Kensington & Chelsea will exceed the minimum housing target" included in RPG3. There is therefore no overriding reason for setting aside the harms occasioned by this development in order to achieve an increase in housing numbers.(Appendix 11).

5.59

The appeal site was not included in the Housing Capacity Study for the Royal Borough prepared for the London Planning Advisory Committee in 1998, and which scheduled predicted housing delivery on sites until 2016, including affordable housing

5.60

The Mayor of London may suggest revisions to the Housing targets for the London Boroughs in his forthcoming Spatial Development Strategy, however there are no amendments proposed to the housing targets quoted in the Unitary Development Plan at this time

5.61

Whilst the provision of new housing units is of benefit to the Borough and to London, particularly the provision of affordable housing, I do not see them necessarily as a 'benefit' to the local community who currently benefit from the facility of the appeal site, and to this end I note that the guidance notes do not include this provision along with social and community facilities in paragraph 4.5 to be weighed against the loss of open space, but simply refers to affordable housing provision as acceptable" in the next paragraph, 4.6.

5.62

However, nowhere in the Unitary Development Plan or in guidance is it stated that the provision of new housing should necessarily take precedence over other material planning considerations, it will always be the case that an amount of weight should be accorded to the provision of new units that must be balanced against other elements of a development proposal. This requirement for balance is acknowledged in Policy STRAT 16 of the Unitary Development Plan, which supports an increase in the "amount and range" of housing "whilst maintaining the overall quality of the residential environment"; clearly, the overall quality of the local residential environment would not be maintained if a space that made a contribution to the amenity of that environment was to be lost and not satisfactorily replaced.

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5.63

Moving beyond the principle of new units of housing, it is my opinion that the housing scheme proposed in the appeal scheme does suffer from some inherent flaws, which further serve to reduce the weight that should be accorded to the housing as a "benefit".

5.64

The proposed housing would be located beside and above an area that the appeal proposals designate as a working area to replace the nursery, woodchipping and mulching facilities that would be lost in the proposal. In my view there is a potential for conflict given the proximity of these facilities to the housing. Even if restrictive Conditions upon noise and hours of operation were to be imposed and enforced successfully, a working yard would not necessarily provide an ideal outlook for residential flats. I acknowledge that in the period between presentation to the Planning Services Committee and the Planning & Conservation Committee the appellants confirmed that they would drop the idea of an access footpath to the flats bisecting the nursery area, however in my opinion this does not remove the concerns relating to this juxtaposition of uses.

5.65

There is no dedicated amenity space for the proposed housing units apart from balconies. There is no UDP Policy requirement for open amenity space, due to the fact that in this densely built up Borough the majority of conversion schemes or rebuilds simply cannot accommodate it, but in a proposal where there is new build and family sized units (3 bedroom flats) some dedicated outdoor space is clearly desirable. In the case of the appeal proposal, the absence of any dedicated amenity space only serves to exacerbate the difficult juxtaposition of uses where there is no separation at all between the working areas of the site and the proposed residential accommodation. Again, this is symptomatic of an overdevelopment of the site.

5.66

Replacement Outdoor Facilities

I do not see that there are any benefits in the proposed replacement outdoor facilities for the MGCA. All the indications are that the replacement nursery, mulching bays, and bin storage facilities are inferior to the existing arrangements for these functions, and the vehicular servicing area is also constricted in its turning areas and not well proportioned for its purpose. Evidence on these points will be provided by the MGCA themselves, however it seems reasonable to me to accord significant weight to the observations of those who are supposedly intended to enjoy the 'benefits' that the scheme is supposed to generate.

5.67

The existing nursery is approximately 200 sq.m in area, and a similar area is provided in the appeal proposals. However, the shape of the allocated space is awkward and the intended users of the space, the MGCA, consider that in reality only approximately 122 sq.m would be practicable as a nursery area.

5.68

The existing nursery area has a compact, easy to work shape, has easy access from three sides and is devoid of conflict with adjoining uses. The proposed nursery area would seem to lack any of these advantages, and yet introduces disadvantages of its own.

5.69

There would appear to be a significant potential for conflict between the nursery and associated working areas, and the proposed adjacent residential accommodation. I

cannot envisage residents being keen on people working immediately outside their doors and windows, manure being worked into the soil, machinery noise, and generally constant gardening activities for much of the year. There are other controls available, for example under the Environmental Protection Act, however these controls are generally retrospective and it must be for the planning system to seek to avoid such conflict in the first place. In my view this close juxtaposition of uses would be likely to prove an unhappy one.

5.70

The mulching bays would also seem to be smaller than required, and thus impractical. Their oblong shape would be a hindrance to their effective use to heap up large mounds of manure, leaves and woodchips. The MGCA calculate that the mulching bays would need to spread beyond the "red line" not just by the 2m strip that appears in site layout plan To:196:02 Rev.D, but in practice would probably need to encroach by up to 5m into the adjacent wildlife garden of Meanwhile Gardens. Furthermore, direct vehicle access to the mulching bays would be difficult, and to construct a sufficient hardstanding for a 1.8m wide dumper vehicle, with turning area, would actually necessitate a 10m incursion into the wildlife area. All of these difficulties, in particular the need to spread beyond their originally selected red lined" area, demonstrate to me that the appellants are not just struggling to replace the existing facilities but, fundamentally, are attempting to squeeze facilities into a site that is simply too small in area to accommodate the mix and quantum of uses and facilities that the appellants propose.

5.71

Refuse storage requirements are estimated by MGCA as being three paladins, two recycling bins, plus general storage for items awaiting disposal (including any dumped items). These would need to be located near the road for easy access, but such provision is not clear in the appeal proposals and this is unsatisfactory.

5.72

New Offices and Training Facilities

As stated above, the existing ex-factory buildings are not redundant, or derelict, but are actually functioning buildings providing facilities for an important community based organisation. The appeal proposals are not providing an opportunity for a new community facility that would not otherwise exist; they are there already.

5.73

The 'benefit' in the proposal thus lies not in providing a facility or a comm that would not otherwise exist, but in providing an opportunity to improve upon what exists at present. Two questions that then present themselves; firstly whether the 'improved' facility on offer falls into the described "much needed social and community facilities" of the guidance notes and, secondly, whether the facilities offered are of such additional value to the community so as to outweigh objections to the scheme as rise under other considerations.

5.74

To my mind there can be little doubt that the existing MGCA facilities would benefit from refurbishment and improvement. Similarly, MIND should benefit from larger, and more permanent facilities. I have no doubt that the MGCA and MIND, and the community that they represent and who support them, should welcome the opportunity to move into better appointed offices with dedicated training and storage facilities, where those facilities would provide the opportunity to offer a much improved function and service.

5.74

However, the proposed new office and training facilities suffer from some inherent

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difficulties that mean that they, in a similar manner to the outdoor spaces, do not provide the degree of benefit that the appellants seem to assume. Because of this, the weight that can be attached to the offices and training rooms as "benefits" must be reduced.

5.75

Overall, the MGCA would lose approaching half its current internal floorspace, which in itself is hardly a 'benefit'. It may still be beneficial if the new facilities offered a greatly improved functionality over the old, but could not be so if the new facilities were cramped or poorly configured.

5.76

Various aspects of the proposed facilities seem to suffer from the overall reduction in floorspace. The main entrance is hidden away at the back of the development. The entrance hall and lobby areas are dominated by lavatories and storage cupboards, with all of these (six doors) opening onto the 1.3m wide main downstairs corridor, and upstairs the lavatory is directly off the kitchen which is not desirable. In a number of ways, then, the proposed MGCA premises would appear to be cramped and poorly configured.

5.77 MIND have commented that, in a number of ways, the proposed "replacement" accommodation for them would actually fall short of their needs. I enclose a copy of MIND's observations as Appendix (12), and it can be seen that whilst they originally voiced an interest in new shared facilities with MGCA, the proposals as they stand remain inadequate in their arrangements. I find these to be very significant observations, as one of the benefits' that the appellants see in their proposals is the provision of new MIND facilities. In terms of the weight in planning terms that should be accorded to the proposed new facilities, these comments by MIND can only serve to reduce such weight.

5.78

The garden storage space is an "L" shaped space with a width (and entrance width) of only 2.2m, with its entrance underneath a social housing bedroom. The MGCA have equipment such as a dumper vehicle, wheeled woodchipper, and mower, with MIND running a minibus, which means that this area would be congested and at many times very noisy. Furthermore, the proposed gardeners store amounts to 144 sq.m of usable space, which compares very unfavourably with the 48 sq.m of space intended to replace

it.

5.79

Again, these points indicate that the replacement facilities suffer from the fundamental problem with this proposed development; too much is being squeezed into this site for the various elements of the development to either operate in an improved manner over that existing, or even co-exist together without conflict which, all the evidence indicates, they manage to do quite successfully at present.

5.81

Aside from the practical difficulties suffered by the proposals, I strongly doubt any assertion that the only practical way to provide these improved office and training facilities is to redevelop the site to provide 26 flats. Alternative schemes are not before this Inquiry, but it is not difficult to surmise logically that there must be any number of potential schemes that could finance refurbished or even rebuilt facilities for the MGCA and MIND

5.82

The variables include the purchase or lease price of the buildings and land, and the amount and form of accommodation to be provided. The viability of a scheme will

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