

Reach for the Sky

A Lecture for the City of Westminster and Holborn Law Society in Memory of Nigel Mayhew

By Christopher Katkowski Q.C. (Landmark Chambers)

1. It is my honour to deliver this Nigel Mayhew Lecture. As the title implies, I intend to bring you up to date with the latest twists and turns in the battle to win planning consents for tall buildings in central London. A generally accepted definition of a tall building is one which is significantly higher than existing buildings in the vicinity but I have in mind much taller buildings, such as the “Gherkin” (more properly, 30 St. Mary Axe) in the City of London. Just to get our bearings, the Gherkin is some 180 metres (40 office storeys) high and was completed in 2004 (architect – Foster & Partners) fractionally shorter than Tower 42 (formerly the Nat West Tower) completed in 1980 at 183 metres (47 office storeys: Seifert).
2. As members of this Society will know, Westminster City Council has a long established position of resisting proposals for tall buildings within its area (although more recently with some exceptions, for example at Victoria). What might not be so well known is that the WCC has played a lead role in opposing tall buildings proposals in other authorities’ areas. More of this later. I should begin with some background by way of an introduction to the subject matter.
3. I will concentrate on the scene in London, where most (but by no means all) of the headline cases have been fought in recent years. Planning proposals are determined by local planning authorities unless the developer appeals to the Secretary of State for Communities and Local Government (Hazel Blears) against a refusal of, or failure to determine, his scheme, or – as has often been the case with tall buildings proposals – where the local planning authority favours the scheme but the Secretary of State steps in and takes the decision out of the authority’s hands for her own determination. This route to the Secretary of State is

known as a “call-in” and invariably means that a public inquiry, presided over by an inspector who reports to the Secretary of State, will be held.

4. Given the generally controversial nature of tall buildings proposals it is interesting to note that the scheme that blazed the trail in our era for such schemes, the “Gherkin” was permitted by the City of London Corporation without the intervention of the Secretary of State. (There was great concern at the time that a call-in with all its attendant delay and uncertainty would scupper the investment of Swiss Re in the scheme.) The Corporation has in the main supported tall buildings proposals as a means of seeking to fight back against the towers of Canary Wharf. A recent example of just how realistic this fear is can be seen in the loss of JP Morgan from a site at St. Alphage House near the Barbican to Riverside South in Canary Wharf. Schemes have tended to be called in by the Secretary of State at the suggestion of English Heritage which is charged with protecting the setting of heritage assets such as listed buildings and conservation areas. By their very nature, tall buildings have an effect beyond their immediate environs and English Heritage has often found itself concerned about the impact of proposed tall buildings on the historic environment.

5. One has to add the Mayor of London to this heady mix. The former Mayor, Ken Livingstone, was a well known champion of high quality tall buildings schemes. The London Plan – which forms the bedrock of planning in London – contains policies which support such schemes, as do various policy documents which supplement it. Mayor Livingstone maintained a close interest in such schemes and on a number of occasions encouraged developers to increase the height of their proposals. Much of Mayor Livingstone’s last term of office was spent formulating the London Views Management Framework [LVMF] which is a catalogue of views (e.g. of St. Paul’s) which require careful consideration; some of these views are protected by restrictions on the ability to build tall buildings which might affect them. Those who opposed the previous regime argue that the LVMF is nowhere near restrictive enough. Meanwhile, shortly before the fall of Mayor

Livingstone, legislation was enacted to give the Mayor significant powers of intervention to direct local authorities how to decide cases.

6. It is well known that there was no love lost between Mayor Livingstone on the one hand and English Heritage and Westminster City Council on the other. Before I turn to the new alignments which are emerging now that we have a new Mayor, Boris Johnson, I should give you a thumbnail sketch of the showcase battles of the decade so far.

7. The first of these concerned the Heron Tower on Bishopsgate in the City of London. An excellent book on the subject of tall buildings – “London High” by Herbert Wright – says that: *“More even than 30 St. Mary Axe, this was the skyscraper that decided the future of the City’s skyline.”* The architect for this tower is Lee Polisano of KPF. It is mainly an office scheme and was originally proposed at a height of some 183 metres, plus a 39 metre spire / mast, comprising some 33 office storeys. At the time it would have been the tallest building in the City by virtue of its spire / mast. The proposals were supported by the City of London Corporation, Mayor Livingstone and by the Government’s advisor on architecture CABE but opposed by English Heritage, largely on the basis of the impact that the scheme would have on the setting of St. Paul’s as seen from Waterloo Bridge where as one walked across the bridge the tower would be seen to move closer and closer to the cathedral. (Westminster City Council also opposed.) The scheme was called-in for a public inquiry at which I was fortunate to be instructed by the developer (Gerald Ronson) together with a, then, junior barrister Russell Harris. The inquiry was held in 2001 and was hard fought by all the main participants. I have to confess that at the end of the inquiry I felt that the prospects were pretty evenly balanced so determined had English Heritage been in its opposition. We had fought each other to a standstill. The following year, 2002, in accordance with the recommendation of the inspector who had conducted the inquiry, the Secretary of State (then John Prescott) granted permission. Subsequently, the Corporation has given consent for an increase in the height of

- the tower to 202 metres (242 metres with its spire / mast) 46 storeys, and construction of the scheme is now underway. I hope to take the developer up on his very generous offer of a pass to access the Sky Bar at the top of the tower!
8. No sooner had the Heron Tower been decided than a proposal drawn up by Renzo Piano for Irvine Sellar for a mixed use (offices, hotel and apartments) scheme at London Bridge Station – the “Shards of Glass” (more commonly but inaccurately known as “the Shard”) – was called in and a public inquiry was held in 2003. The local planning authority, Southwark, supported the scheme as did Mayor Livingstone but English Heritage opposed largely on the basis of the effect of the scheme, which at 306 metres / 72 storeys would be the tallest building in Western Europe, on views from within the Tower of London – a World Heritage Site – and upon views of the WHS from outwith, especially from in front of the Royal Mint building. The old team of Katkowski and Harris was reunited (Russell took silk during the course of the inquiry) and there was another battle royal although it has to be said that Renzo was all but impossible to cross-examine! Later on in 2003 the Secretary of State, John Prescott, followed the recommendation of his inspector and granted permission. Demolition is underway on site and I hope to be able to take the developer up on his very generous offer of an access pass to the viewing gallery towards the top of the tower!
 9. The final set piece battle of Mayor Livingstone’s era concerned the “Walkie Talkie” in Fenchurch Street in the City of London. The scheme is for a 177 metre / 45 storeys office tower designed by Rafael Vinoly for Land Sec and was called in for a public inquiry held in 2007. The old protagonists lined up against each other, the developers were represented by Russell Harris Q.C. The City of London and Mayor Livingstone supported the scheme; English Heritage opposed largely on the basis of the effect of the tower on views of St. Paul’s and the Tower of London. In due course, later on in 2007, the Secretary of State (by now, Ruth Kelly) followed her inspector’s recommendation and granted consent.

10. Depending on one's personal opinions about such matters, by this stage in the tale one is either delighted or depressed by these seminal decisions! But planning is a restless subject seemingly incapable of standing still for long if at all. Earlier this year English Heritage won a significant inquiry, albeit not involving tall buildings, when the Secretary of State (Hazel Blears) refused permission to demolish the General Market Building at Smithfield and redevelop the site for a mixed retail and office scheme designed by KPF. (On this occasion I was on the losing side.)

11. Meanwhile Mayor Johnson has been elected with a manifesto and subsequent "direction of travel" planning statements which favour tall buildings but only in "appropriate locations" (Croydon is singled out as an example) and with a greater emphasis on protecting the settings of heritage assets. The new Mayor's much closer alignment with the views of Westminster City Council is well known and he has announced his intention to reword the relevant policies of the London Plan and to *very* significantly recast the LVMF. Interesting times are upon us.

12. The first major battle of the new era came too soon in Mayor Johnson's term for him to muster his forces with the inquiry having been held in February and March this year i.e. before the election but with the decision issued on 19th August 2008 some 3 months after the new Mayor took office. The site in question is in Doon Street, on the South Bank in Lambeth, where Lifschutz Davidson Sandilands have designed a 144 metres / 43 residential storeys tower for Coin Street Community Builders. The scheme was called-in having been supported by Lambeth LBC and Mayor Livingstone. The opposition was led by English Heritage and Westminster City Council (with the Royal Parks adding their weight as well). The main grounds of opposition concerned the impact of the tower on views from the Blue Bridge across the Lake in St. James's Park towards Horse Guards and the Foreign & Commonwealth Office, the argument being that the presence of the tower would fundamentally damage the composition of the scene from the bridge by upsetting the delicate balance between buildings and nature. Concerns were also

raised about the effect of the tower seemingly breaking the roofline in views from the courtyard of Somerset House.

13. On this occasion – unlike in the Heron Tower, Shards and Walkie Talkie inquiries – the inspector sided with the opponents of the proposal and in a strongly worded report recommended refusal on the basis that the Doon Street Tower would overpower the scene from the Blue Bridge and would harm views of Somerset House to boot. However, in another twist in the tale, the Secretary of State (Hazel Blears) disagreed and explained that as far as she was concerned the inspector’s fears were exaggerated. She granted permission for the proposals just a few weeks ago. English Heritage and Westminster City Council have hinted strongly that they intend to challenge the decision in the High Court (the time to do so expires next Tuesday 30th September) and so there might be more to come in the battle of Doon Street.

14. This brings me to the latest news from the front line – the Blackfriars Road inquiry. This inquiry, which is currently underway (today was its 9th sitting day), concerns proposals for two separate schemes in Southwark. “Number One Blackfriars Road” is a proposal drawn up by Ian Simpson for a 170 metre / 51 storeys hotel and residential tower for Beetham. Ian Simpson is perhaps best known for his towers in Manchester and Birmingham. Russell Harris Q.C. is appearing for the developer. The site is the first that one comes to on the western side just as one has crossed Blackfriars Bridge from the City.

15. Southwark support the scheme along with proposals by Blackfriars Ltd. (Circle Plane) who have instructed me, for two towers on the site immediately south of the Beetham proposals, to the south of Stamford Street at Number 20 Blackfriars Road. The site lies between the Mad Hatter Hotel on Stamford Street and the 1950’s Christ Church and its Gardens. The scheme architect is Jim Eyre of Wilkinson Eyre perhaps best known for the remarkable “Blinking Eye” Millennium Bridge in Newcastle / Gateshead and for Stratford Station. (Just in

case you are wondering about his experience of towers, his design for what will be the tallest residential tower in the world – until displaced by a yet taller scheme – is rising out of the ground in Guangzhou in China as I address you.) The proposals at Number 20 are for two towers, the taller at 148 metres / 42 storeys would be residential and the smaller tower, at 105 metres / 23 storeys, offices.

16. There are many interesting aspects to this inquiry which was convened following the Secretary of State's decision to call-in both schemes for her consideration. One feature of the inquiry is that although English Heritage consider that both of the schemes would harm the view from the Blue Bridge in St. James's Park (one of the protected townscape views in the LVMF) it has decided – uniquely in the recent history of such schemes being considered at inquiry – not to appear at the inquiry and has confined itself to making its representations in written form only.
17. Instead the opposition at the inquiry is being led by Westminster City Council and the Royal Parks who object to both schemes on the basis of their impact on the views from the Blue Bridge and, in the case of Number 20, WCC objects to the way in which in certain views from Parliament Square (within the Palace of Westminster and Westminster Abbey WHS) the taller tower will drift across the gap between Portcullis House and Big Ben. (For those of you who are familiar with the view, the Shell Building at Waterloo does just this now although as it is that much nearer to Westminster it forms a higher feature in the view than Number 20 would.)
18. There are echoes of arguments pressed in previous inquiries in this current battle. On the promoters' side of the debate – and I will try my best to be even-handed in the way in which I summarise the competing arguments – we contend that the views in question should be assessed in a dynamic context, that is to say that the view changes as one walks across the Blue Bridge and as one moves around Parliament Square, and that far from overpowering the scene there is nothing wrong as a matter of principle in seeing the top of tall buildings over 2 km away

in the case of the views from St. James's Park (and some 1.7 km in the case of Parliament Square), indeed a number of consented tall buildings will form part of the scene in due course, not least the Doon Street Tower but also, amongst several others, the Pinnacle in the City and the Shards. Even without these, the scene is not one simply comprising of heritage and nature as the Shell Building and the London Eye are prominent as well. In the case of Number Twenty's impact on views from Parliament Square, our argument runs that from most of the Square one would not see the proposed residential tower but in any event views out of the Square currently include a host of modern buildings, some tall (such as the Shell Building) which are all part and parcel of the evolving wider setting. It is, we contend, unreasonable to exert control on this basis over buildings which are so far away and which are part of the regeneration of the South Bank and its hinterland.

19. Westminster City Council and the Royal Parks object to both proposals in terms of their effect in views from the Blue Bridge. Leaving aside the effect of Doon Street (which I will come to in a moment) it is said that Number One would dominate and overpower the scene from more central positions on the bridge, and that Number Twenty would have a similar effect from views towards the northern end of the bridge. (The different effects are due to the different location and heights of the schemes.) The Doon Street Tower would largely obscure Number One and the City Council acknowledges that in the event that the Doon Street scheme is built, the main argument against Number One is undermined. The Royal Parks argue that Number Twenty would spoil the silhouette of the Doon Street Tower. Trying my best to be fair to my opponents, the gist of the case is that the Doon Street decision is regrettable and enough is enough. WCC has issued draft documents which seek to protect a wider range of views. Thus, for example, in the draft "Metropolitan Views" SPD WCC seeks to protect views from the entire length of the Blue Bridge whereas in Mayor Livingstone's LVMF the designated protected viewpoint is from the centre of the bridge.

20. As for Parliament Square, the City Council argues that as the taller tower at Number 20 drifts across the gap in the view between Portcullis House and Big Ben it would appear to be “attached” to the base of Big Ben and so would spoil one’s ability to appreciate the outstanding universal value of Parliament.
21. In short, the developers’ arguments are keenly contested by Westminster City Council and the Royal Parks, and *visa versa*.
22. The case does give rise to some interesting issues of approach. The views which the City Council seeks to protect are obtained from within the Council’s area and yet the sites in question are a considerable distance away, on the other side of the Thames, in Southwark which is extremely keen to realise the regenerative benefits of these schemes for what is undoubtedly a run down area. The disparity between the wealth of the City of London across Blackfriars Bridge and this north-western corner of Southwark is striking. Does it really fall to Westminster City Council to intervene in and try its level best to stop schemes which Southwark, the local planning authority for the sites, are so in support of? Is this democratic?
23. This brings me to the role of the Mayor of London. My answer to the questions that I have just posed is that it should fall to the Mayor to protect strategic issues which cut across borough boundaries. Much of the tension in a number of these show trials to date has been caused by Mayor Livingstone acting in a way which Westminster City Council for example regards as failing to protect strategic interests in what it would regard as the appropriate manner. With the new Mayor it may well be the case that developers and authorities like Southwark conclude that the balance has shifted too far in the opposite direction.
24. The Blackfriars inquiry is the first instance of the new Mayor expressing a different planning judgement to that reached by his predecessor. Mayor Livingstone expressed support for both schemes but last week a letter arrived at the inquiry from Mayor Johnson opposing both schemes and contradicting the key

points made by his predecessor. For each London Plan policy that Mayor Livingstone said we complied with, Mayor Johnson argues that we breach the self-same policies. This might well be a taste of things to come especially in cases where Westminster City Council is leading the opposition.

25. The inquiry is due to close soon (on 2nd October) and the decision should be published within the next six months or so. It is eagerly awaited by many for several different reasons. I hope that I have given you some feel for why this decision will be of great interest to a wide range of interested parties and onlookers.
26. Looking ahead it may well be that English Heritage, Mayor Johnson and Westminster City Council will unite in seeking to have P&O's proposals for the "3 Sisters" (or "3 Ugly Sisters" as dubbed by objectors) at Elizabeth House, York Road near Waterloo Station (Lambeth LBC) called-in for a public inquiry. Views from Parliament Square form the main ground of opposition and if these three forces align a whole new era in tall buildings inquiries will dawn.
27. It seems to me inevitable that sooner or later, and it may well be fairly soon, an inquiry will be held in which the principles established in the earlier years of this decade are called into question head on by a newly aligned coalition of opposition forces.
28. The battle to Reach for the Sky will be fought keenly for years to come – I for one look forward to the challenges that lie ahead!

