

**Welcome to Landmark Chambers’
‘Planning for investment in London’ webinar**

The recording may be accessed [here](#).

Your speakers today are...



Topic:
Residential
development in
London – planning
trends and issues

Rupert Warren QC (Chair)



Topic:
Tall buildings and
regeneration in
London

Russell Harris QC



Topic:
Development
affecting MOL,
GB and Local
Green Spaces in
London

Robert Walton QC



Topic:
What's next for
the London
Plan?

Heather Sargent

Residential development in London – planning trends and issues



Rupert Warren QC (Chair)

Key issues

- Volatility in the market and the planning feedback loop
- Risks inherent in sites: community uses, employment areas, transitional locations, heritage assets
- “Too many compromises”: how design is increasing in importance, not decreasing
- Values, affordable housing and the role of the Mayor/GLA
- MHCLG – opportunities for flexibility?

Volatility and planning in London

- London is the greatest market opportunity for real estate investment in the UK. But what are the conditions for reasonable certainty of investment? – the rule of law, processes which are clear, assumptions which are relatively easy to make, risks identifiable
- *Westferry Printworks* – planning is political. For larger investments, the picture has been increasingly fractured (Grenfell; and see last year's *Kensington Forum* judicial review) The market's response?
- GLA affordable housing policy and the dynamic with the Boroughs – the 35% or 40% negotiation.
- Practical consequences – a well designed, viable scheme is quicker, surer

Risks inherent in London sites

- Existing community use: temptingly low-hanging fruit with a long, bitter after-taste: *Archway Methodist Church, Parkhurst Rd, Chelsea Police Station*
- Changes of use from employment: opportunity areas, 50% affordable, marketing issues in London
- Transitional areas – when is more height and density part of the expected backdrop, and when is it a jarring and harmful juxtaposition: *VIP Trading Estate SE7; Vauxhall Cross*
- Heritage: housing in the context of paragraph 196 NPPF

“Too many compromises”: design still central

- Basics of reasonable accommodation including external space increasingly non-negotiable – and should be with a scheme which may be called in or require consent via an appeal: *Love Lane SE18*; *Vauxhall Cross*; *Burgess Business Park* decisions.
- Risk management: architects with track record; viability appraisal/land deal with standards 80/90% fixed; how to approach the Design Review Panel; the importance of TVIA/presentation in the DAS
- The narrative of a scheme in a crowded and cynical space

Housing need - viability – AH – avoiding the loop

- Housing and affordable housing need – single housing market and significant weight – *Newcombe House*
- Whether the site is an EUV+ or AUV site needs to come before the interest is taken in the site. That question is a first round eliminator
- 35% - is it still the expressway to consent for larger schemes?
- Viability may point in different directions – loss of heritage asset; lower community use space; affordable housing: scope this out early
- What if the FVA shows the scheme to be undeliverable? What about CIL?
- Late Stage Review – down to details now, or can they be taken on – *Lewisham*.

MHCLG - responding to the Covid 19 challenge

- UCO and GPDO changes on the horizon – a single commercial class and a link through to residential PD
- How will Boroughs respond in terms of Article 4?
- What opportunities does it bring? Multi-phase developments – mixed use with residential designed-in as the next move; making the HLS picture more confused
- Alignment of schemes with MHCLG messaging – an additional string to the bow

Matters for further thought

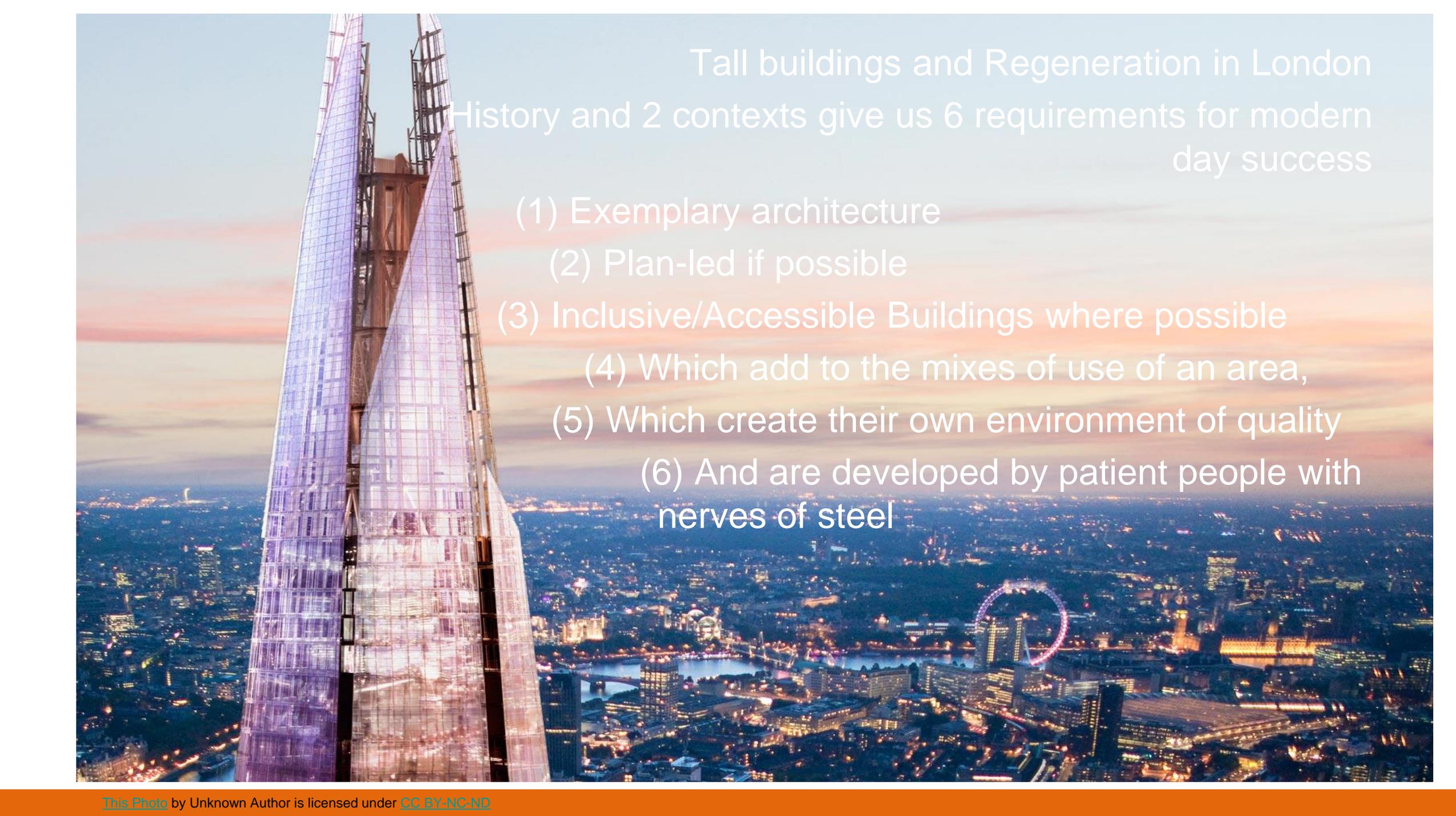
- How to streamline the process of site appraisal for an inward investor (or indeed home-grown developer), bearing in mind the key challenges of inherent risks, design and viability/AH
- Who is best placed to prosper? Town centre mixed use developer/investors; multiple-site Borough strategies; sites with Plan B (and maybe C).



Russell Harris QC

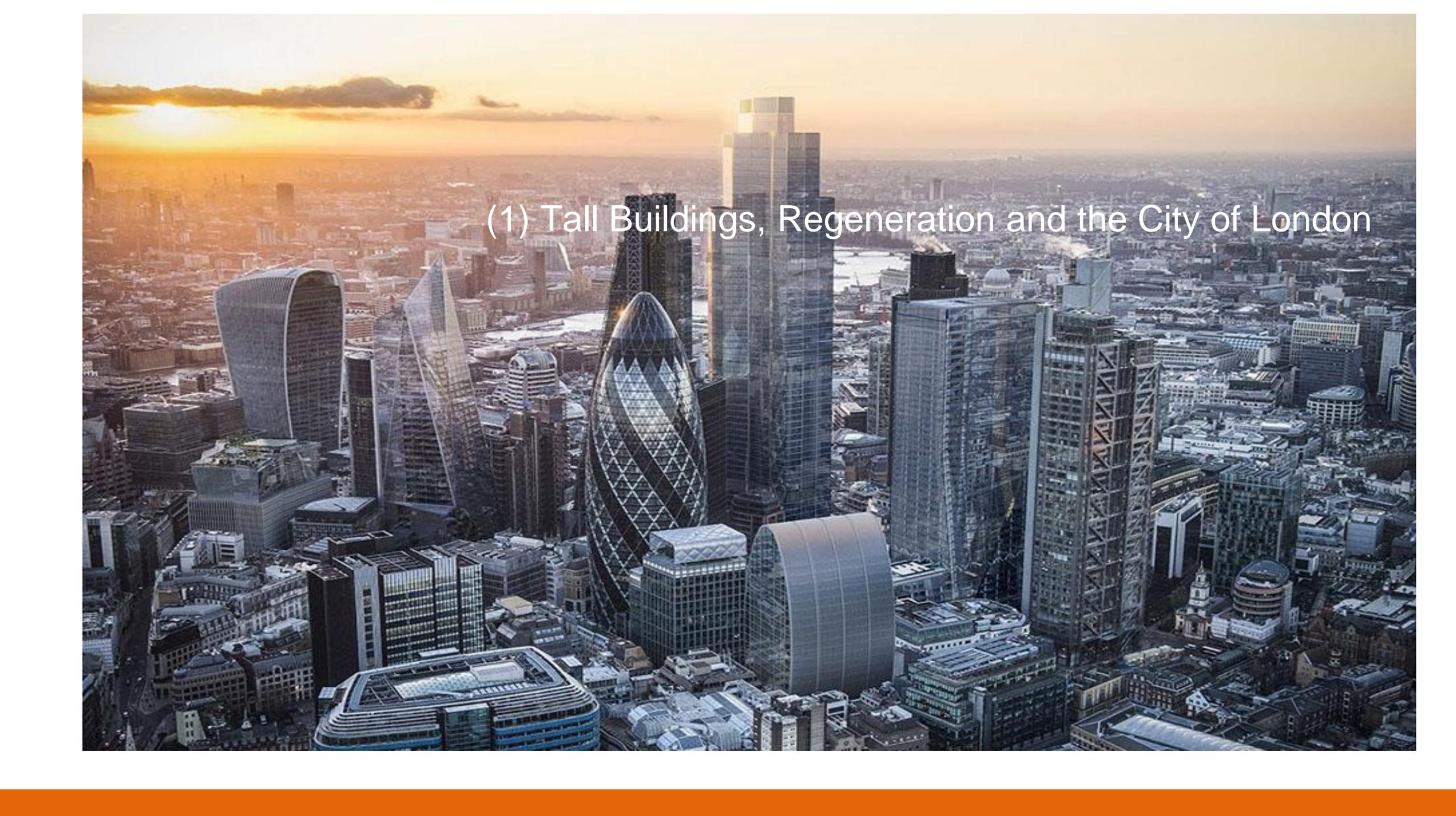
Tall buildings and Regeneration in London



An aerial photograph of London at dusk. The Shard skyscraper is the central focus on the left, its glass facade reflecting the twilight sky. The city below is illuminated with warm lights, and the London Eye is visible in the distance. The sky transitions from a pale blue to a soft orange and pink near the horizon.

Tall buildings and Regeneration in London
History and 2 contexts give us 6 requirements for modern
day success

- (1) Exemplary architecture
- (2) Plan-led if possible
- (3) Inclusive/Accessible Buildings where possible
- (4) Which add to the mixes of use of an area,
- (5) Which create their own environment of quality
- (6) And are developed by patient people with nerves of steel

An aerial photograph of the London skyline at sunset. The sun is low on the horizon, casting a warm, golden glow over the city. Several prominent modern skyscrapers are visible, including the Gherkin (30 St Mary Axe) with its distinctive diamond-patterned facade, the Shard, and the Lloyd's building. The River Thames is visible in the background. The text "(1) Tall Buildings, Regeneration and the City of London" is overlaid in white on the image.

(1) Tall Buildings, Regeneration and the City of London

The City skyline 1980s : a World City?





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Exemplary Architecture



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Exemplary Architecture

Plan Led



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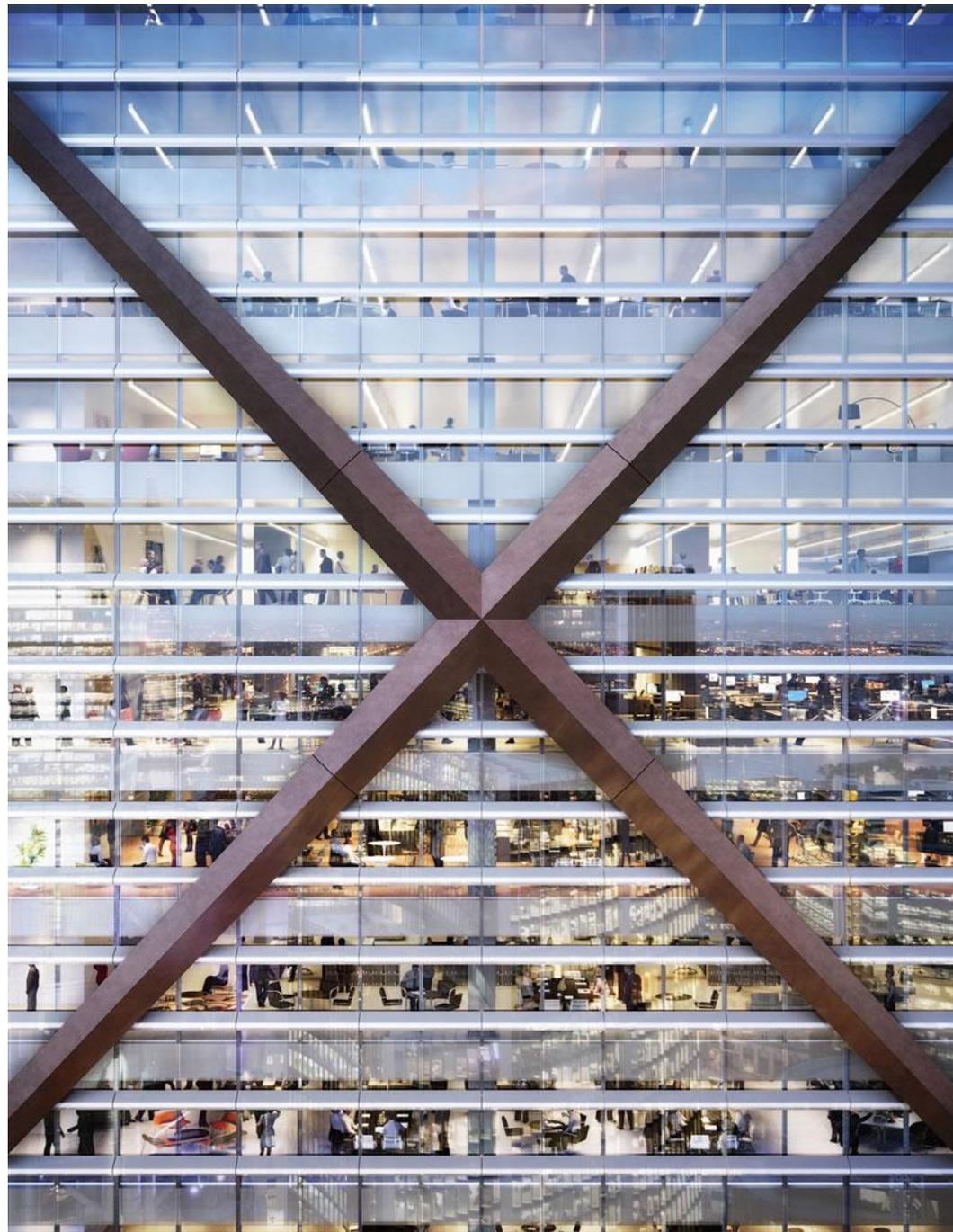
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Plan-led but not plan constrained- 1 Undershaft.





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Inclusive and accessible.....in part







Adding to mix of uses.
The importance of the 24/7.







Exemplary Architecture
Plan-Led if possible
Accessible
Mix of Uses



(2) Residential Tall Buildings





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Using Tall Buildings as a catalyst for regeneration: “a badge of good change”



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What's next for the London Plan?



Heather Sargent

Recap

- 8 October 2019: Panel issues its report
- 9 December 2019: Mayor issues “Intend to Publish” version of the Plan
- 13 March 2020: Secretary of State directs that “due to the number of inconsistencies with national policy and missed opportunities to increase housing delivery”, the Plan cannot be published until the Directions set out by the Secretary of State have been incorporated
- 24 April 2020: Mayor’s response to Secretary of State

The Mayor's response

- “I believe **some amendments will be required** to ensure the directions are workable in practice. My officials have now assessed their specific impacts and we consider amendments are needed to the modifications in order to remove policy ambiguities and achieve the necessary outcomes. This assessment has included **identifying information that your officials did not have access to when drafting the directions** and we are happy to share it to underpin the discussions.”
- “Whilst I have instructed my officials to engage positively and constructively, I am hopeful that a form of wording we all find acceptable can be found as **it would be hard for me to propose publishing my Plan if I believed this would be detrimental to the needs of London.**”

The Secretary of State's letter

Criticisms made of the Mayor:

- Housing delivery “deeply disappointing” during Mayoralty
 - Critical strategic sites stalled
 - Delivery jeopardised by onerous conditions imposed on estate regeneration schemes
- Panel has only deemed plan credible to deliver 52,000 dpa against Mayor’s own identified need of 66,000 dpa
 - Plan “tilts” towards one-bed flats “at the expense of all else”
- Plan is overly prescriptive, “with policies on things as small as bed linen”
- “Throughout the Plan you have directly contradicted national policy”

The Secretary of State's letter

Specific areas in which the Secretary of State considers that the Plan has fallen short:

- “Actively discourages ambitious boroughs”
- Small sites policy
- Industrial land
- Housing mix
- Optimising density

Note additionally the final section of the letter, headed “Future Housing Delivery in London”: going beyond what can be achieved by directed modification of the draft Plan

Small sites

Panel: “major misgivings”; small sites targets are not realistically achievable

- Presumption in favour of small housing developments (Policy H2A) deleted
- Housing targets revised down:
 - Small sites target: 245,730 over ten years = 119,250 over ten years
 - Overall housing target: 649,300 over ten years = 523,000 over ten years
 - Overall annual target: 65,000 dpa = 52,000 dpa
- Result: **significant gap** between the overall housing target (52,000 dpa) and the need figure (66,000 dpa)

Panel's response to the "gap"

Decides against pausing the Plan or determining that it should be withdrawn

Either course of action would lead to considerable delay and a "knock-on" effect for new borough plans

"It is difficult to see how the number of deliverable housing units could be increased without consideration being given to a **review of the Green Belt** or further exploration of potential with **local authorities within the wider South East**"

- but that would all take time; better to proceed on the basis of an adopted plan than one that is in limbo

Industrial land

Secretary of State has directed that the requirement of “no net loss” of capacity within designated SIL and LSIS be removed

Supporting text is also to require boroughs (where possible) to seek to deliver intensified industrial floorspace capacity in existing and/or new appropriate locations

Rationale: easier to replace existing industrial land that can subsequently be **released for housing development**

Green Belt

London Plan policy is to be aligned with the NPPF: Secretary of State has directed the introduction of the “**very special circumstances**” and “**exceptional circumstances**” tests

Panel:

- “Inescapable conclusion” is that if London’s development needs are to be met in future, a review of the Green Belt should be undertaken “at least” to establish “any potential for sustainable development”
- Recommends that the Plan include a commitment to a Green Belt review, best done as part of the next London Plan

Recommendation not accepted by Mayor

Green Belt

Secretary of State

- Both letter and directions are silent on the question of Green Belt review
- Letter:
 - “Preventing unnecessary urban sprawl so that we can protect the countryside for future generations. This means densifying, taking advantage of opportunities around existing infrastructure and making best use of brownfield and underutilised land”
 - Mayor’s “failure to tak[e] the tough choices necessary to bring enough land into the system to build the homes needed”
 - Need to support “ambitious boroughs” in going **beyond** the Plan’s housing targets

Density

Secretary of State has directed changes to Policy D3 but the requirement remains that the design of the development must “**optimise** site capacity”

- Higher density developments “should be promoted” in areas that are “well connected to jobs, services, infrastructure and amenities by public transport, walking and cycling”
- Expansion of existing clusters of high density development “should be positively considered” by boroughs
- “Gentle densification” should be actively encouraged in low- and mid-density locations

Final thoughts

- Significant gap between housing need and the Plan's housing target
- What's the solution?
 - The wider South East?
 - Green Belt review in the next London Plan “after all”?
- Impact on production of borough local plans

Development affecting MOL, GB and Local Green Spaces in London



Robert Walton QC

Contents

- Definitions
- Relevant policies
- Appeal decisions over the last 12 months
- Some success stories
- Some cautionary tales

Definitions

- Green Belt – Emerging London Plan:
“A designated area of open land around London (or other urban areas). The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”
- Metropolitan Open Land – Emerging London Plan:
“Extensive areas of land bounded by urban development around London that fulfils a similar function to Green Belt and is protected from inappropriate development by land-use planning policies”
- Local Green Space – PPG:
“Green areas of particular importance to local communities”

Summary of relevant policies

	Current London Plan	New London Plan	NPPF	PPG
GB	Policy 7.16	Policy G2	Chapter 13, in particular 143-147	“Green Belt” (22 nd July 2019), para 1
LGS	Para 7.58A	N/A	99-101 & Ch.13	*
MOL	Policy 7.17	Policy G3	Ch.13 (see LP7.56)	“Green Belt” (22 nd July 2019), para 1

*PPG, “Open space, sports and recreation facilities, public rights of way and local green space” (6th March 2014), paras 5-22 discusses the designation of LGS

What do the policies say?

- London Plan, Policy 7.16
 - Strongest protection should be given to London's GB
 - Inappropriate development should be refused except in VSC
 - Ref. to national guidance
- London Plan, Policy 7.17
 - MOL should be given same level of protection as GB
 - Essential ancillary facilities for appropriate uses only acceptable where they maintain the openness of MOL
- London Plan, para 7.58A
 - Policy for controlling development on LGS = GB policy

What do the policies say?

- NPPF, Chapter 13 – Protecting GB Land
 - 133: essential characteristics of GB = openness & permanence
 - 134: five GB purposes
 - 143: inappropriate development should not be approved except in VSC
 - 144: substantial weight to GB harm; must be clearly outweighed
 - 145: construction of new buildings = inappropriate dev.; 7 exceptions
 - 146: 6 more exceptions to inappropriate development
 - 147: renewable energy projects in GB often = inappropriate dev.
- NPPF, para 11(d)(i) – fn.6 – application of GB/LGS policies & tilted balance

What do the policies say?

- PPG – Green Belt, para 1 – factors to consider when assessing impact on openness of GB:
 - Openness incl. both spatial and visual aspects
 - Duration of development and remediability
 - Degree of activity likely to be generated e.g. traffic

Recent Appeal Decisions

- 12 decisions re GB, MOL and LGS in London over past 12 months
- Only 4/12 successful
- 6 MOL; 5 GB and 1 LGS

Success Story (1)

- **Land at Harrow School (APP/M5450/W/18/3208434)**
 - Proposal was inappropriate development in the MOL
 - Openness: no visual harm but harm through erosion of MOL
 - Proposed extension of MOL to restrict further development = “pragmatic and reasonable approach” but minimal weight given
 - **VSCs clearly outweigh harm and sufficient to justify development**
 - Educational need for science & sports – for school & local community
 - Free/discounted access for local state schools & community groups
 - Lack of alternative sites to deliver sports & science need
 - Compliance w/ Harrow School SPD
 - Biodiversity gains

Success Story (1)

- VSC balance upheld by the HC in Mayor of London v SSHCLG [2020] EWHC 1176, at [104]-[134]
 - NPPF144: “...and any other harm resulting from the proposal”
 - Test correctly set out in IR, [3]
 - Usual warning against “excessively legalistic” challenge to IR
 - Even if heritage harm was not properly taken into account in the SoS’s decision the outcome would inevitably have been the same

Success Story (2)

- **Heathrow Service Station (APP/R5510/W/19/3229922)**
 - NPPF, 145(g) – limited infilling or redevelopment of PDL w/o greater impact on openness of the GB
 - Infilling = “development of a small gap in an otherwise built-up context”
 - PDL = “land which is or was occupied by a permanent structure, including the curtilage of the developed land...”
 - Proposal arguably infill; appeal site = PDL
 - No conflict w/ 5 purposes in NPPF134
 - Openness – Euro Garages [2018] EWHC 753; loss of openness in spatial & visual sense but very little *harmful* loss given setting
 - **Not inappropriate development**

Success Story (3)

- **Pillory Down Stables [2020] P.A.D. 13**
 - Proposal did not accord w/ Local Plan Policy on re-use of buildings in GB
 - But Local Plan policy was more restrictive than London Plan 7.15 and NPPF so greater weight given to latter
 - Applicable exceptions:
 - 146(d): re-use of buildings of “permanent and substantial construction”
 - 146(e): material change in use of the land
 - 145(c): alteration of a building w/o disproportionate change in size
 - [20]-[24]: detailed comparison of the proposal’s impact on openness versus existing permission – considered spatial, visual and use changes
 - **Not inappropriate development**

Success Story (4)

- **Will to Win, Chiswick House Grounds (APP/F5540/W/19/3237850)**
 - MOL consideration very brief: [13]-[14]
 - Floodlights not considered to be inappropriate development so long as openness of MOL preserved
 - Floodlights would have visual presence but “height, number and scale” limited → no material harm to openness

Cautionary tales

- **Former Imperial College Private Ground (APP/L5810/W/18/3205616)**
 - Agreed that proposal = inappropriate development
 - Development needs to be considered as a whole
 - NPPF145(b) – provision of appropriate facilities for outdoor sport etc.
 - Have to preserve openness and not conflict w/ purposes
 - Purposes of LGS is “somewhat different” to purposes of GB → “protect green areas of particular importance to the community”
 - Provision of housing – even where unmet need – not usually sufficient to outweigh presumption against inappro. dev. in the GB → same for LGS

Cautionary tales

- Must consider proposal as a whole: Eltham Town FC (11/09/19)
- Extant permission on the site not relevant: The Barge Dock Site (13/02/20) but cp. Pillory Downs Stables (above)
- NPPF145(f) – affordable housing exception – cannot be met by financial contribution: The Barge Dock Site (above)
- London Plan Policy 7.17 is consistent with new NPPF → full weight given to it: Steam Packet Steps (30/07/19)
- Putting up a radio mast, antennae & shelter = building not engineering op. → GB policy applies: Lordland's Farm (17/07/19)

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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